

**AGENDA of the
Portfolio Committee: Investment & Infrastructure
2 November 2022
(Also the agenda for the Mayoral Committee Meeting: 16 November 2022)**

**3.
PORTION 18 OF THE FARM RIVERSIDE NO. 644 STANFORD (KNOWN AS “DIE KOP”): HISTORY AND CURRENT USE OF THE MUNICIPAL PROPERTY BY THE HERMANUS RAINBOW TRUST AS WELL AS FOOD FOUR THOUGHT COMMUNITY PROJECTS NPC**

7/2/3/1

A Le Roux

Manager: Property Administration

28 June 2022

(028) 316 - 5623

1. Executive Summary

To inform the Mayoral Committee, as requested, of the history and current use of Portion 18 of Farm Riverside No. 644 Stanford (known as “Die Kop”) by the Hermanus Rainbow Trust as well as Food Four Thought Community Projects NPC.

See the locality map attached hereto marked “Annexure A”.

2. Service Delivery and Budget Implementation Plan - IGNITE

Infrastructure and Planning
Property Administration

3. Compliance with Strategic Priorities

Provision of democratic, accountable and ethical governance
Creation and maintenance of a safe and healthy environment
Promotion of tourism, economic and social development

4. Delegated Authority

Executive Mayor

5. Legal Requirements

- Administration of Immovable Property Policy of the Overstrand Municipality (2015)

6. Background/Discussion/Evaluation/Conclusion

Background/Discussion

Portion 18 of the Farm Riverside Nr. 644 Stanford, hereinafter referred to as “the Property”, was previously owned by the Overberg District Municipality. There were 3 (THREE) buildings built on the Property by the Overberg District

**AGENDA of the
Portfolio Committee: Investment & Infrastructure
2 November 2022
(Also the agenda for the Mayoral Committee Meeting: 16 November 2022)**

Municipality as housing for their road workers. The Property, together with the buildings, were transferred to the Overstrand Municipality in 2003.

Shortly thereafter the one building was used as a crèche (under management of Stanplan), one as a community hall and the third as a satellite clinic. With the building of the new clinic, the building on the Property used as a satellite clinic was left vacant and the community approached the Ward Committee requesting that the building be used for a Day Care Centre for babies and toddlers

Buildings 1 and 2 (Food Four Thought)

Upon a verbal agreement with the Overstrand Municipality Food Four Thought Community Projects NPC, hereinafter referred to as “Food Four Thought”, took occupation of the first building and started using it for the purpose of a pre-school project. Later the second building was also used by Food Four Thought as part of the pre-school project with 1 (ONE) room excluded and reserved for community meetings.

The situation came to the attention of the Property Administration Department in 2010 at which time communication was commenced with Food Four Thought to have a legal written agreement in place as required by legislation.

Property Administration had difficulty in gaining all the relevant information and documentation and later received legal letters from the attorneys appointed by Food Four Thought as they were of the opinion that they did not have to pay any application fee nor a monthly rental amount as they have been on the Property for so long. They were informed of the Administration of Immovable Property Policy of the Municipality which stipulated and required that an application fee be paid with all applications and that a monthly rental must be levied as the Municipality cannot make property available for a lease at no cost. In May 2013 a formal letter was again sent to the attorneys informing them that a lowered application fee was approved, requesting Food Four Thought to send proof of payment of the application fee. As no response was received on the various correspondence a final notice was written to the attorneys to inform them that their client had to vacate the Property as they had no formal lease agreement and was not willing to follow the required processes nor pay the required fees. Only after this notice Food Four Thought paid the application fee and submitted their formal application in September 2014.

Paragraph 21.1 of the Administration of Immovable Property Policy approved by Council on 23 September 2014 stipulated as follows:

“21.1 Immovable property let for a period up to three years without the option of renewal may be approved by the accounting officer and need

**AGENDA of the
Portfolio Committee: Investment & Infrastructure
2 November 2022
(Also the agenda for the Mayoral Committee Meeting: 16 November 2022)**

not be advertised in terms of paragraph 10.1 and 10.2 but shall be subject inter alia to the following:

- (a) The lessee shall be responsible for all costs regarding services, ablution facilities, etc. if required;*
- (b) The Municipality shall determine the rental, if it is not prescribed that market related rental must be charged;*
- (c) The lessee shall undertake in writing to compensate the Municipality for damages caused to the immovable property for whatever reason;*
- (d) The lessee shall indemnify the Municipality against any claims; and*
- (e) The Municipality may request proof of financial viability to honour the lease."*

In terms of the above paragraph a memorandum was submitted to the Municipal Manager, as accounting officer, and a 3 (THREE) year lease to Food Four Thought for a pre-school project was approved. A lease agreement was entered into for the period from 1 February 2015 to 31 January 2018 at a monthly rental amount of R114.80 (ONE HUNDRED AND FORTY-FOUR RAND AND EIGHTY CENTS) (VAT Excluded), which was the rental approved for leases to social organisations at that stage, escalating annually in accordance with the CPI.

Before the expiry of the above-mentioned agreement Food Four Thought applied for a renewal of the lease agreement for a period of 9 (NINE) years and 11 (ELEVEN) months. An amended Administration of Immoveable Property Policy was approved by Council on 25 November 2015 and paragraph 20.1 of the agreement stipulated as follows:

- "20.1 The Municipality may grant a long-term lease of municipal immovable property with an income value of less than R10 million only after:*
- (a) The Accounting Officer has approved the lease in principle;*
 - (b) In the case of a direct lease, the proposed lease was advertised in terms of paragraph 10.1 and 10.2 above to invite the local community and other interested parties to submit comments or representations; and*
 - (c) The Executive Mayor, as delegated authority, has subsequently approved that the right may be granted."*

The lease was approved in principle by the Municipal Manager on 29 June 2017 whereafter an advertisement was published in the Gansbaai Courant on 14 September 2017 to which no objections or comments were received. A report subsequently served at a Mayoral Committee meeting on 28 February 2018 where the lease to Food Four Thought for a period of 9 (NINE) years and 11 (ELEVEN) months was approved for the purpose of a pre-school project at a monthly rental amount of R131.58 (ONE HUNDRED AND THIRTY-ONE RAND AND FIFTY-EIGHT CENTS) (VAT Excluded) with

**AGENDA of the
Portfolio Committee: Investment & Infrastructure
2 November 2022
(Also the agenda for the Mayoral Committee Meeting: 16 November 2022)**

an annual escalation in accordance with the CPI. The lease agreement was subsequently entered into for the period from 1 February 2018 to 31 December 2027.

Early in 2021 Food Four Thought applied to also use an additional room which was reserved for community meetings. The Senior Manager: Gansbaai/Stanford Administration supported this request, and it was agreed that the room be made available when needed for community meetings at no charge. The Municipal Manager approved in principle the incorporation of the additional room into the existing lease area. A report served before the Mayoral Committee meeting on 24 August 2021 where the inclusion of additional room to the existing lease area was approved and subsequently an addendum to the lease agreement was entered into to this effect.

Building 3 (Hermanus Rainbow Trust)

The Hermanus Rainbow Trust, a Non-profit organisation, (hereafter referred to as "HRT"), applied in 2007 to lease building 3 on the Property for a Day Care for babies and toddlers, a Children's Circle Support and HIV/AIDS education and awareness programmes.

The proposed lease was advertised in the Hermanus Times on 18 January 2008 for the use as a Day Care Centre for babies and toddlers and no objections or comments were received from the public. Unfortunately, the report submitted also did not make mention of any of the additional usages as described in the application. The lease was approved at a Mayoral Committee Meeting on 25 June 2008 for a period of 9 (NINE) years and 11 (ELEVEN) months at a rental amount of R100.00 (ONE HUNDRED RAND ALONE) per annum escalating annually with 8,43%. This was the rental applicable to social care organisations at that stage. Subsequently a lease agreement was entered into for the period from 1 July 2008 to 31 May 2018.

HRT applied for the renewal of the lease agreement and the process was commenced with timeously. During the application process where comments from various internal departments were requested the Property Administration Department was informed that HRT were using the Property for additional uses other than stipulated in the lease agreement. A full audit report was sent to the Property Administration Department which indicated the following:

- It could not be verified how many children are accommodated when interviewing one of the staff members due to the fact that the partial care facility closed 3 (THREE) years ago and has been operating as a soup kitchen for the community ever since.
- The facility also caters for children from disadvantage backgrounds and offers food to these children three times a week in the form of an aftercare facility.

**AGENDA of the
Portfolio Committee: Investment & Infrastructure
2 November 2022
(Also the agenda for the Mayoral Committee Meeting: 16 November 2022)**

- There is a parenting class on parenthood that runs every Tuesday and Thursday.
- There is also an agricultural class that teaches the community about agriculture and farming.

HRT was informed of the outcome of the audit and requested to respond to the finding that the Day Care Centre has been closed for the past 3 (THREE) years and to confirm for which purposes the Property was used for. It was confirmed that the Property was in fact used for other purposes alongside the Day Care Centre and that the latter never closed but merely extended to a comprehensive Parenting programme developed in conjunction with Stellenbosch University called Parenting Worx. According to HRT this includes all aspects of parenting with a focus on Early Childhood Development and family bonding and creating loving homes for the children. It further also includes various development skills to assist with opportunities to find local work and lastly the HRT also feed both the parents and children. The HRT was informed that and due to the inspection and audit report, it subsequently had to submit a new application for the uses on the Property as the current use was not in line with the purpose stipulated in the previous lease agreement and therefore a renewal could not be considered.

Months passed during which the matter was regularly followed up with emails and phone calls, with no success. A formal letter was sent to the HRT on 15 October 2019 stating that if no application form was received by 31 October 2019, the Property would have to be vacated by 1 November 2019.

An application form with proof of payment was subsequently received on 31 October 2019 stating the purpose of the application to be for the use of the Parenting Worx programme, incorporating family preservation, parenting, early childhood development, feeding, training, skills development and special programmes focusing on the family responsibilities of men and pregnant first-time moms, especially teenage mothers.

Once again internal comments had to be obtained as the purpose of the lease has changed. According to the Manager: Social Development: Mr Gerhard Smit, the Property was not being used to its full potential. Mr Smit also recommended that consent rather be granted to the HRT to use one of the rooms on the Property for the few days when they need it, free of charge, and that the Property be leased out to the neighbouring lessee, Food Four Thought (who is successfully operating an ECD), subject to Food Four Thought making a room and the kitchen available on the Property for the HRT at no cost to the HRT.

Taking all of the above into consideration a memorandum was compiled and submitted to the Municipal Manager with the recommendation to not approve

**AGENDA of the
Portfolio Committee: Investment & Infrastructure
2 November 2022
(Also the agenda for the Mayoral Committee Meeting: 16 November 2022)**

the application to lease, and instead approve the recommendation to allow the HRT to use a room as needed, free of charge. The Municipal Manager approved the above-mentioned recommendations on 15 June 2020 in terms of Delegation 4.2.51 of the System of Delegation of Powers and Duties (approved by Council on 26 February 2020). The HRT was informed on 4 September 2020 of the outcome of the application and the reason for the outcome was given that the Property is not being used to its full potential and that the Municipality is currently busy with an investigation to determine whether the HRT can be accommodated another way.

The HRT submitted an appeal, with supporting documents, against the Municipal Manager's decision on 21 September 2020. The applicant was requested to provide additional information to support their times and usage as it seemed from the documents received that the Property was only used 3 (THREE) to 5 (FIVE) days per month. A document was received from the Applicant confirming the following:

- The Applicant uses the Property 5 (FIVE) days a week as an office and particularly to do paperwork after and before sessions.
- The Property is used 2 (TWO) days a week as an afterschool facility.
- Parenting sessions takes place twice a month. These sessions include the programmes for parents with children of the age 1 – 5 years, Fathers Programme as well as the Expecting Mothers programme.
- Group work is usually done 3 (THREE) days a month by the Social Worker.
- The area-based Carer conducts Parenting Worx home visits and recruitment from Monday to Friday, when he/she is not busy with the above-mentioned programmes. Afterward the Property is used to update all the paperwork.

It became very clear that valuable information and supporting documents that might have affected the outcome of the application was not provided to the Property Administration Department and subsequent delegated authority. It was however noted that the Property was not used to its full potential as a Day Care Centre for babies and toddlers exclusively but used to its full potential in collaboration with other important community orientated activities/programmes/services in the interest of the community, which seems to be in line with what was originally applied for in 2007.

Subsequently the appeal succeeded and the decision by the Municipal Manager set aside by the Executive Mayor (the Appeal Authority for decisions by the Municipal Manager) on 10 November 2020. The Executive Mayor further approved the 3 (THREE) year lease to the HRT at a monthly rental amount of R154.78 (ONE HUNDRED AND FIFTY-FOUR RAND AND SEVENTY-EIGHT CENTS) (VAT Excluded) which was the tariff approved in

**AGENDA of the
Portfolio Committee: Investment & Infrastructure
2 November 2022
(Also the agenda for the Mayoral Committee Meeting: 16 November 2022)**

the annual budget for the specific financial year, such rental to escalate annually in accordance with the approved tariff.

A lease agreement was entered into for the period from 1 November 2020 to 31 October 2023. The purpose of the lease agreement is for Parenting Worx Programme (incorporating family preservation, parenting classes as well as early childhood development), feeding scheme and skills development and a school aftercare facility.

Vacant portion of the Property (Food Four Thought)

In 2019 Food Four Thought applied for another vacant portion of the Property as well as a portion of Remainder Erf 294 Stanford to lease for a 3 (THREE) year period for agricultural purposes. At that stage they had already commenced with the clearing of a 2HA portion of the Property. The area applied for on a portion of the Remainder of Erf 294 Stanford was 10HA.

The application was circulated for comments and the Senior Manager: Gansbaai/Stanford did not support the application due to the lack of resources (water supply). Town Planning confirmed that Erf 294 Stanford does not allow for agriculture uses and that it is a sensitive and conservation worthy area. The Environmental Department further confirmed that the portion of Remainder Erf 294 forms part of EMOZ.

Food Four Thought then applied to use the old reservoir to upgrade at their own cost and lay the necessary water pipes to get the water to the area requested which will be a solution to the concern regarding the lack of resources.

The Municipal Manager approved the 3 (THREE) year lease on 30 April 2021 in terms of Delegation 4.2.51 of the System of Delegation of Powers and Duties (approved by Council on 12 January 2021) for the purpose of vegetable farming only. This approval was subject to Council approving a deviation from the Administration of Immovable Property policy allowing a direct lease to Food Four Thought.

Subsequently a lease agreement was entered into for ±25,500m² of the Property for the period from 1 December 2021 to 30 November 2024 at a monthly rental amount of R160.87 (ONE HUNDRED AND SIXTY RAND AND EIGHTY-SEVEN CENTS) (VAT Excluded) escalating annually in accordance with the tariffs approved in the annual budget. The lease agreement contains the following two suspensive conditions:

1. That a Site Development Plan be submitted and approved by the delegated authority, and
2. That Council approves the deviation allowing a direct lease to Food Four Thought.

**AGENDA of the
Portfolio Committee: Investment & Infrastructure
2 November 2022
(Also the agenda for the Mayoral Committee Meeting: 16 November 2022)**

Food Four Thought also applied to use a portion of the Property for the stacking of wood which application was not approved.

A report requesting approval from Council for the deviation from paragraph 18 of the Administration of Immovable Property Policy allowing the Municipality to enter into a direct lease with Food Four Thought was submitted for the June 2022 cycle and was referred back at the Portfolio Meeting. The motivation for the deviation was as follows:

“The Property is zoned for agricultural use (Agricultural Zone 1: Agriculture) and allow for the cultivation of land for crops and plants, including plantations. Therefore the Property is well suited for the lease purpose as approved.

Food for Thought is a non profit company and started the project to help rejuvenate the local economy and provide a source of healthy food for the community.

To the user department’s knowledge, there have been no applications for agricultural purposes on this specific piece of land, however there is general interest in the Overstrand area for agricultural land.

Whilst agricultural activities and farming is generally a business related operation from which profit is derived, in this case the applicant is a non profit company and cannot use any proceeds from the on-sale of vegetables as profit and furthermore, the project is aimed at revitalising the local economy and providing food security in the community.

Considering that the applicant is a non profit company, food security being a priority as the country recovers from the effects of Covid 19 and as the lease is for a short term it is the Property Administration Department’s view that in this case a direct lease will best serve the interests of the community. Therefore it is recommended that Council approves a deviation from paragraph 18.”

During the Mayoral Committee Meeting held on 27 June 2022 it was requested that a report serve before the Mayoral Committee at the Mayoral Committee meeting scheduled for August providing the history and current situation on the Property, thus the reason for this report.

7. Financial Implications

None

8. Staff Implications

None

**AGENDA of the
Portfolio Committee: Investment & Infrastructure
2 November 2022
(Also the agenda for the Mayoral Committee Meeting: 16 November 2022)**

10. Annexures

Annexure A: Locality Map
Annexure B: Site Map

RECOMMENDATION:

that the contents of this report **be noted**.

RESPONSIBLE OFFICIAL:	M ERASMUS
TARGET DATE FOR IMPLEMENTATION:	N/A
TARGET DATE TO INFORM APPLICANT:	N/A
TARGET DATE TO INFORM OBJECTOR:	N/A

**AGENDA of the
Portfolio Committee : Investment & Infrastructure
2 November 2022
(Also the agenda for the Mayoral Committee Meeting : 16 November 2022)**

**3.
PORTION 18 OF THE FARM RIVERSIDE NO. 644 STANFORD (KNOWN AS “DIE KOP”): HISTORY AND CURRENT USE OF THE MUNICIPAL PROPERTY BY THE HERMANUS RAINBOW TRUST AS WELL AS FOOD FOUR THOUGHT COMMUNITY PROJECTS NPC**

7/2/3/1

A Le Roux

Manager: Property Administration

28 June 2022

(028) 316 - 5623

THIS MATTER SERVED BEFORE THE INVESTMENT & INFRASTRUCTURE PORTFOLIO COMMITTEE ON 2 NOVEMBER 2022, WHICH COMMITTEE SUPPORTED THE RECOMMENDATION

RESPONSIBLE OFFICIAL:	M ERASMUS
TARGET DATE FOR IMPLEMENTATION:	N/A
TARGET DATE TO INFORM APPLICANT:	N/A
TARGET DATE TO INFORM OBJECTOR:	N/A



