

**AGENDA of the
Portfolio Committee: Infrastructure & Planning
23 March 2021
(Also the agenda for the Mayoral Committee Meeting: 31 March 2021)**

3.

A PORTION OF REMAINDER ERF 294 STANFORD (SITUATED NEAR “DIE KOP”, STANFORD): DEVIATION FROM PARAGRAPH 20.1(b) OF THE ADMINISTRATION OF IMMOVABLE PROPERTY POLICY OF 2015 ALLOWING THE MUNICIPALITY TO ENTER INTO A LEASE AGREEMENT WITH VODACOM (PTY) LTD

7/2/3/1

A Le Roux

Manager: Property Administration

12 December 2020

(028) 316 - 5623

1. Executive Summary

To obtain approval from the Executive Mayor to enter into a lease agreement with Vodacom (Pty) Ltd, hereinafter referred to as “Vodacom”, for a period of 9 (NINE) years and 11 (ELEVEN) months in respect of a portion of Remainder Erf 294 Stanford (situated near “Die Kop”, Stanford) (±100m² in extent), hereinafter referred to as “the Property”, for the purpose of a telecommunication base station; and

To obtain approval from Council for the deviation from paragraph 20.1(b) of the Administration of Immovable Property Policy of 2015 allowing the Municipality to enter into a lease agreement with Vodacom in respect of the Property without following another public participation process.

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

Partly delegated to the Executive Mayor

5. Legal Requirements

- Municipal Asset Transfer Regulations (R. 878 of 2008)
- Administration of Immovable Property Policy of the Overstrand Municipality (2015)

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6. Background/Discussion/Evaluation/Conclusion

Background

Vodacom has been using the Property since 2009 for the purpose of a telecommunication base station and related purposes.

Vodacom's agreement initially in 2019 applied for the renewal of the lease agreement. After following a public participation process, which advert was published on 24 January 2019, the renewal of the agreement was approved by the Executive Mayor at an Executive Mayoral Committee meeting on 27 February 2019 and the agreement was signed on 13 September 2019 for a period of 9 (NINE) years and 11 (ELEVEN) months which commenced on 1 February 2019. This agreement was subject to Vodacom obtaining approval for consent use on the Property within 6 (SIX) months of signature of the agreement. Vodacom unfortunately did not obtain the necessary approvals within the 6 (SIX) months period which caused the agreement to lapse on March 2020 (non-fulfilment of a suspensive condition).

Vodacom explained that the Town Planning processes for the consent use on the Property are already well in advance, the process could however not be completed within the given 6 (SIX) months period that expired on 13 March 2020. Vodacom also failed to request an extension of this period before the expiry thereof, which request would have been considered favourably.

Although the lease agreement has lapsed, Vodacom is still in possession of the Property, has established infrastructure on the Property and continues to pay the monthly rental amount.

After the last agreement was declared void the in principle approval was gained from the Municipal Manager to commence the process for a long term lease of the Property to Vodacom as a new agreement had to be entered into. A new lease agreement was entered into (for administrative and audit purposes) with Vodacom with special conditions included in the agreement stipulating that the lease agreement is subject to the Executive Mayor's approval (as delegated authority) allowing the Municipality to enter into the said long term agreement and further subject to Council's approval of the deviation from paragraph 20.1(b) of the Administration of Immovable Property Policy (2015) as to the public participation process as one was followed in 2019. As Vodacom has been in occupation of the Property the whole time the lease agreement signed with a commencement date of 1 April 2020, which is the month after the previous agreement has lapsed due to the non-fulfilment of the suspensive condition.

The locality of the proposed lease area is indicated on the locality plan attached per "Annexure A".

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Discussion

Vodacom applied for a lease period of 9 (NINE) years and 11 (ELEVEN) months and they provide a very important telecommunication service to the community of Stanford and especially in the provision of communication and improvement of internet reception to their clients.

The Property applied for has been used by Vodacom for more than 10 (TEN) years without any complaints from the public regarding the use thereof. The municipal account is paid to date.

Evaluation

A. Administration of Immovable Property Policy of the Overstrand Municipality

The following paragraphs of the Administration of Immovable Property Policy are applicable:

Paragraph 17: “Taking into consideration the nature and duration of the lease to be entered into, the leasing of immovable property may be affected by means of either:

17.1 a competitive process, which may include a closed or public tender or proposal call, specifically in circumstances listed in paragraph 18 below; or

17.2 a direct lease.”

Paragraph 18: “A competitive process must at all times be followed in circumstances where:

18.1 the lease is for a long term with an income value in excess of R10 million;

18.2 the lease is for a formal business premises with a market related rental;

18.3 more than one party, in discretion of the municipality, is interested in the lease of the subject property; and/or

18.4 by discretion of the municipality, a competitive process will best serve the interests of the community.”

Although the proposed lease period is a long-term period the income value of the agreement is not more than R10 million.

The site is zoned as Rural Zone 2: Conservation Usage and therefore not classified as a business site although Vodacom is a business.

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The lease area with the Vodacom high mast and telecommunication equipment are well established on the site for more than 10 (TEN) years. The Stanford community benefits from these telecommunication services.

Vodacom is already busy with the application process for the approval of a consent use for the continuation of the use for the purpose of a telecommunication base station. Due to the nature of the lease and benefit to the community and Municipality and further as the site is not classified as a business site, it is proposed that the Property be leased directly to Vodacom without following a competitive process.

Paragraph 20: “Long term lease of municipal immovable property with an income value less than R10 million:

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 Accounting Officer (Municipal Manager) approved in principle the lease of the Property to Vodacom subject thereto:

- that Council approves the deviation from paragraph 20.1(b) of the Administration of Immovable Property Policy 2015; and
- that the Executive Mayor approves the long term lease.

The proposed renewal of the lease for the previous lease agreement was advertised in the Gansbaai Courant on 24 January 2019 for a 30 (THIRTY) day comment/objection period. No comments/objections from the public were received and since this advertisement was placed in 2019 it can be recommended that it would not be much benefit to advertise this lease again and gaining the same public response. It can furthermore be mentioned that Vodacom has been using the Property for many years without any negative comments or complaints received from the public since they occupied this Property.

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A deviation from Paragraph 20.1(b) is therefore requested from Council in order to lease the property without following another public participation process.

Paragraph 26: "In cases where a rental amount has been approved in the annual budget of the Municipality for certain types of leases and encroachments, the approved amount will be used for purposes of determining the rental amount."

The application initially indicated the lease area as $\pm 80\text{m}^2$ in extent, but with the submission of the Town Planning application for the consent use, it was found that the more accurate size of the lease area (it is fenced off) is $\pm 100\text{m}^2$ as indicated on the drawing attached hereto marked "Annexure B". This means that the lease agreement already signed will have to be amended to reflect the correct extent of the lease area and subsequent rental amount.

The 2019/2020 tariff for land for a Mast is R67.83 (SIXTY-SEVEN RAND AND EIGHTY-THREE CENTS) (VAT Excluded) per square metre per month. As the area Vodacom occupies is $\pm 100\text{m}^2$ in extent, the total rental will be an amount of R6,783.00 (SIX THOUSAND SEVEN HUNDRED AND EIGHTY-THREE RAND) (VAT excluded) per month for the period from 1 April 2020 to 30 June 2020. The 2020/2021 tariff for land for a Mast is R71.30 (SEVENTY ONE RAND AND THIRTY CENTS) (VAT Excluded) per square metre per month the total rental from 1 June 2020 will be the amount R7,130.00 (SEVEN THOUSAND ONE HUNDRED AND THIRTY RAND) (VAT excluded) per month. The agreement stipulates that the rental amount shall escalate annually on the 1st of July in accordance with the tariff as approved in the annual budget.

Paragraph 36: "All costs pertaining to a transaction, e.g. survey, advertisements, valuation, relocation or provision of services where necessary, shall be borne by the Lessee. The Municipality may, however, waive its right to claim all or any portion of the costs. Where necessary a deposit to cover the costs may be required."

Vodacom will be liable for the payment of all costs relating to the application for the lease agreement.

Paragraph 47: "Subject to paragraph 46 above, immovable property let by the Municipality shall be inspected at least once a year by the Municipality to ensure compliance with the terms and conditions of the agreement of sale or lease."

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The Property will be inspected by the Property Administration Department at least once a year.

It is further confirmed that the other Conditions of Lease as stipulated in paragraph 36 - 50 will be included in the lease agreement entered into with the Vodacom.

B. Advertisement/Notification

An advertisement for the lease of the Property was placed in Gansbaai Courant on 24 January 2019 for a 30 (THIRTY) day objection/comment period. No objections/comments were received. It is therefore recommended that Council approves the deviation from paragraph 20.1(b) of the Administration of Immovable Property Policy in that another public participation process not need to be followed.

Conclusion

Taking the above into consideration, it is recommended that:

- (a) The Executive Mayor approves the lease of the Property to Vodacom for a period of 9 (NINE) years and 11 (ELEVEN) months from 1 April 2020 for telecommunication base station and related purposes, subject thereto that Council approves the deviation from paragraph 20.1(b) of the Administration of Immovable Property Policy of 2015.
- (b) Council approves the deviation from paragraph 20.1(b) of the Administration of Immovable Property Policy of 2015 allowing the Municipality to enter into a lease agreement without following another public participation process.

7. Financial Implications

The Municipality stands to gain a rental amount of R6,783.00 (SIX THOUSAND SEVEN HUNDRED AND EIGHTY-THREE RAND) (VAT excluded) per month for the period from 1 April 2020 to 30 June 2020 and a rental amount of R7,130.00 (SEVEN THOUSAND ONE HUNDRED AND THIRTY RAND) (VAT excluded) per month from 1 July 2020 where after the rental amount will escalate every year on the 1st of July in accordance with the tariffs stipulated in the Annual Budget as approved by Council, the next escalation to be on 1 July 2021. All expenses pertaining to the proposed lease will be borne by Vodacom.

8. Staff Implications

None

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9. Comments from other Departments, Divisions and Administrations

Senior Manager: Expenditure and Assets, Mr J Vorster – (028) 313 8046

“As this is an income generating proposal involving an institution who delivers an essential service to the community of Stanford, with no intention to dispose of the asset, there is no objection to the report.”

10. Annexures

Annexure A: Locality Map

Annexure B: Drawing of lease area submitted with Town Planning application

RECOMMENDATION TO THE EXECUTIVE MAYOR:

1. that the lease of municipal property, being a portion of Remainder Erf 294 Stanford ($\pm 100\text{m}^2$ in extent), to Vodacom (Pty) Ltd, for telecommunication base station and related purposes for a period of 9 (NINE) years and 11 (ELEVEN) months from 1 April 2020 in terms of the Administration of Immovable Property Policy of the Overstrand Municipality, **be approved**;
2. that the rental be determined at an amount of R6,783.00 (SIX THOUSAND SEVEN HUNDRED AND EIGHTY-THREE RAND) (VAT excluded) per month for the period from 1 April 2020 to 30 June 2020 and R7,130.00 (SEVEN THOUSAND ONE HUNDRED AND THIRTY RAND) (VAT excluded) per month from 1 July 2020;
3. that the rental amount mentioned in 2 above escalate every year on the 1st of July in accordance with the tariffs stipulated in the Annual Budget as approved by Council, the first escalation to be on 1 July 2021; and
4. that the approval in 1 above be subject to Council approving a deviation from paragraph 20.1(b) of the Administration of Immovable Property Policy of 2015.

RECOMMENDATION TO THE COUNCIL:

that the deviation from paragraph 20.1(b) of the Administration of Immovable Property Policy in order to enter into a lease agreement with Vodacom (Pty) Ltd for a period of 9 (NINE) years and 11 (ELEVEN) months without following a public participation process, **be approved**.

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RESPONSIBLE OFFICIAL:	W MURTZ
TARGET DATE FOR IMPLEMENTATION:	31 MARCH 2021
TARGET DATE TO INFORM APPLICANT:	18 MARCH 2021
TARGET DATE TO INFORM OBJECTOR:	N/A

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7/2/3/1

A Le Roux

Manager: Property Administration

12 December 2020

(028) 316 - 5623

THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON 23 MARCH 2021, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:

RECOMMENDATION TO THE EXECUTIVE MAYOR:

1. that the lease of municipal property, being a portion of Remainder Erf 294 Stanford ($\pm 100\text{m}^2$ in extent), to Vodacom (Pty) Ltd, for telecommunication base station and related purposes for a period of 9 (NINE) years and 11 (ELEVEN) months from 1 April 2020 in terms of the Administration of Immovable Property Policy of the Overstrand Municipality, **be approved**;
2. that the rental be determined at an amount of R6,783.00 (SIX THOUSAND SEVEN HUNDRED AND EIGHTY-THREE RAND) (VAT excluded) per month for the period from 1 April 2020 to 30 June 2020 and R7,130.00 (SEVEN THOUSAND ONE HUNDRED AND THIRTY RAND) (VAT excluded) per month from 1 July 2020;
3. that the rental amount mentioned in 2 above escalate every year on the 1st of July in accordance with the tariffs stipulated in the Annual Budget as approved by Council, the first escalation to be on 1 July 2021; and
4. that the approval in 1 above be subject to Council approving a deviation from paragraph 20.1(b) of the Administration of Immovable Property Policy of 2015.

RECOMMENDATION TO THE COUNCIL:

that the deviation from paragraph 20.1(b) of the Administration of Immovable Property Policy in order to enter into a lease agreement with Vodacom (Pty) Ltd for a period of 9 (NINE) years and 11 (ELEVEN) months without following a public participation process, **be approved**.

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RESPONSIBLE OFFICIAL:	W MURTZ
TARGET DATE FOR IMPLEMENTATION:	31 MARCH 2021
TARGET DATE TO INFORM APPLICANT:	18 MARCH 2021
TARGET DATE TO INFORM OBJECTOR:	N/A



