

**AGENDA of the  
Portfolio Committee : Infrastructure & Planning  
21 November 2017  
(Also the agenda for the Mayoral Committee Meeting : 29 November 2017)**

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**6.  
ROOI-ELS, A PORTION OF UNREGISTERED ERF 325 (A PORTION OF ERF 324),  
LEASE OF MUNICIPAL PROPERTY TO MOBILE TELEPHONE NETWORKS (PTY)  
LTD**

**7/2/3/1**

**M Erasmus**

**(028) 316-3724**

**Hermanus Administration**

**4 October 2017**

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**1. Executive Summary**

To obtain approval to enter into a further lease agreement with Mobile Telephone Networks (Pty) Ltd, hereafter referred to as "MTN", in respect of a portion of unregistered Erf 325 (a portion of Erf 324) Rooi-El's (±9,6m<sup>2</sup> in extent) for a period of 9 (NINE) years and 11 (ELEVEN) months for telecommunication and related purposes.

**2. Service Delivery and Budget Implementation Plan - IGNITE**

Infrastructure and Planning;  
Property Administration

**3. Compliance with Strategic Priority**

Provision of democratic, accountable and ethical governance

**4. Delegated Authority**

Executive Mayor

**5. Legal Requirements**

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

**6. Background/Discussion/Evaluation/Conclusion**

**Background**

MTN has been leasing the portion of unregistered Erf 325 (a portion of Erf 324) Rooi-El's for telecommunication purposes since 1996.

The last agreement expired on 31 May 2016 and although MTN applied for renewal of the lease agreement before the expiry date the processes for the long term lease could not be finalised before said date as there were issues and misunderstandings regarding the municipal account that had to be sorted

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out first. Pending the outcome of these issues, the monthly rental was still levied on their account.

Although unregistered Erf 325 (a portion of Erf 324) Rooi-Els is not registered in the name of the Overstrand Municipality yet the property is under the management of the Overstrand Municipality as there is a water reservoir situated on the property and the said property is thus also used for municipal service delivery.

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

### **Discussion**

MTN has been utilising the said space for well over 20 years and provides a very important service to the community of Rooi-Els and especially in the provision of communication and improvement of mobile and internet reception to their clients. MTN has applied for a long term lease agreement of 9 (NINE) years and 11 (ELEVEN) months.

In terms of the Administration of Immovable Property Policy the Municipality may grant a long term lease if the Accounting Officer has approved the lease in principle, a public participation process is followed and Executive Mayor's (as delegated authority) approval is gained in terms of the above policy.

The Accounting Officer approved in principle the lease of the property to MTN subject thereto that the required processes are followed. As the site is not classified as a business site and since it is in the interest of the community to have the service provider on the property and further as we have not received any other applications for the said property, the said portion of the property can be leased directly to MTN without following a competitive process.

The lease amount (tariff) for the lease of space for a mast is annually determined and approved in the Annual Budget which is approved by Council. The current amount is R60.44 (SIXTY RAND AND FORTY FOUR CENTS) (VAT excluded) per square meter.

No complaints regarding the use of the property by MTN have been received during their previous period of lease.

As previously confirmed MTN applied for a further lease in time and the process was also commenced with by the Property Administration Department in time. Unfortunately due to unforeseen circumstances the lease agreement could not be entered into before the expiration of the previous agreement. As MTN is still in occupation of the property the lease amount is still levied monthly on their municipal account and paid by MTN. Should the

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further lease be approved the commencement date will be backdated to commence the day after expiry of the said previous agreement.

**Evaluation**

A. Administration of Immovable Property Policy of the Overstrand Municipality

The following conditions of said policy apply:

**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”.**

As the site is not classified as a business site and since it is in the interest of the community to have the service provider on the property and further as we have not received any other applications for the said property, the said portion of the property can be leased directly to MTN without following a competitive process.

**Paragraph 20.1: “The Municipality may grant a long term lease of municipal immovable property with a value 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 municipal council has approved that the right may be granted.”**

The Accounting Officer approved in principle the lease of the subject portion of unregistered Erf 325 (a portion of Erf 324) Rooi-Els to MTN subject thereto that a public participation process be followed. The proposed lease was advertised in the Overstrand Herald on 21 April 2016 and no objections were received.

**Paragraph 26: “In cases where a rental amount has been approved in the annual budget of the Municipality for certain types of leases**

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**and encroachments, the approved amount will be used for purposes of determining the rental amount”.**

In this regard the rental charged will be in accordance with the tariff 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.”**

MTN will pay the costs relating to the advertisement. No survey or valuation was done and therefore no costs were incurred in this regard.

**Paragraph 40: “Rental, except where it is decided otherwise by the Municipality shall escalate annually by a percentage fixed in accordance with the prevailing consumer price index (all items).”**

The lease amount (tariff) for the lease of a mast are annually determined and approved in the Annual Budget which is approved by Council.

**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.”**

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 of the said policy will be included in the lease agreement with the Applicant.**

**B. Advertisement/Notification**

An advertisement for the lease of a portion of unregistered Erf 325 (a portion of Erf 324) Rooi-Els to MTN was published in the Overstrand Herald on 21 April 2016 for a 30 (THIRTY) day objection/comment period. No objections/comments were received.

**Conclusion**

With reference to the above discussion it is recommended that the lease agreement with MTN be approved for a further period of 9 (NINE) years and 11 (ELEVEN) months from 1 June 2016 at a total rental amount of R513.70

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(FIVE HUNDRED AND THIRTEEN RAND AND SEVENTY CENTS) (VAT excluded) for June 2016, a rental amount of R547.39 (FIVE HUNDRED AND FORTY SEVEN RAND AND THIRTY NINE CENTS) (VAT excluded) per month for the 2016/2017 financial year and a rental amount of R580.22 (FIVE HUNDRED AND EIGHTY RAND AND TWENTY TWO CENTS) (VAT excluded) per month for the 2017/2018 financial year. The rental amount will escalate every year on the 1<sup>st</sup> of July in accordance with the tariffs stipulated in the Annual Budget as approved by Council, the next escalation to be on 1 July 2018.

**7. Financial Implications**

The Municipality stands to gain a rental in the amount of R513.70 (FIVE HUNDRED AND THIRTEEN RAND AND SEVENTY CENTS) (VAT excluded) for June 2016, a rental amount of R547.39 (FIVE HUNDRED AND FORTY SEVEN RAND AND THIRTY NINE CENTS) (VAT excluded) per month for the 2016/2017 financial year and a rental amount of R580.22 (FIVE HUNDRED AND EIGHTY RAND AND TWENTY TWO CENTS) (VAT excluded) per month for the 2017/2018 financial year where after the lease amount will escalate every year on the 1<sup>st</sup> of July in accordance with the tariffs stipulated in the Annual Budget as approved by Council with the next escalation on 1 July 2018. All expenses pertaining to the proposed lease will be borne by MTN.

**8. Staff Implications**

None

**9. Comments from other Departments, Divisions and Administrations**

**J Vorster – Senior Manager: Expenditure & Assets**

As this is an income generating proposal involving an institution who delivers an essential service to the community of Rooi-Els, concluded in terms of the conditions set out in the Administration of Immovable Property Policy of the Municipality and with no intension to dispose of the asset, there is no objection to the report.

**10. Annexures**

Annexure A: Locality Plan

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**RECOMMENDATION:**

1. that the lease of a portion of unregistered Erf 325 (a portion of Erf 324) Rooi-Els to Mobile Telephone Networks (Pty) Ltd for telecommunication and related purposes at the rental amount of R513.70 (FIVE HUNDRED AND THIRTEEN RAND AND SEVENTY CENTS) (VAT excluded) for June 2016, a rental amount of R547.39 (FIVE HUNDRED AND FORTY SEVEN RAND AND THIRTY NINE CENTS) (VAT excluded) per month for the 2016/2017 financial year and a rental amount of R580.22 (FIVE HUNDRED AND EIGHTY RAND AND TWENTY TWO CENTS) (VAT excluded) per month for the 2017/2018 financial year for a period of 9 (NINE) years and 11 (ELEVEN) months from 1 June 2016 in terms of the Administration of Immoveable Property Policy of the Overstrand Municipality, **be approved**; and
2. that the rental amount mentioned in 1 above escalate annually on the 1<sup>st</sup> of July in accordance with the tariffs as determined and approved in the Annual Budget with the next escalation on 1 July 2018.

<b>RESPONSIBLE OFFICIAL :</b>	<b>M ERASMUS</b>
<b>TARGET DATE FOR IMPLEMENTATION :</b>	<b>31 JANUARY 2018</b>
<b>TARGET DATE TO INFORM APPLICANT :</b>	<b>31 DECEMBER 2017</b>
<b>TARGET DATE TO INFORM OBJECTOR :</b>	<b>N/A</b>

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**4 October 2017**

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**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON  
21 NOVEMBER 2017, WHICH COMMITTEE SUPPORTED THE RECOMMENDATION**

**RESPONSIBLE OFFICIAL :**

**M ERASMUS**

**TARGET DATE FOR IMPLEMENTATION :**

**31 JANUARY 2018**

**TARGET DATE TO INFORM APPLICANT :**

**31 DECEMBER 2017**

**TARGET DATE TO INFORM OBJECTOR :**

**N/A**

