

**AGENDA of the
Portfolio Committee: Infrastructure & Planning
19 October 2021
(Also the agenda for the Mayoral Committee Meeting: 28 October 2021)**

13.

PORTIONS OF ERVEN 294, 227 AND 429 STANFORD (SITUATED NEXT TO THE R43 MAIN ROAD, STANFORD): RENEWAL OF LEASE OF MUNICIPAL PROPERTIES TO MALCOLM STUART ALEXANDER BURY FOR THE PURPOSE OF THE GRAZING OF SHEEP

7/2/3/1

R Marinus

Acting Manager: Property Administration

30 August 2021

(028) 316 - 5609

1. Executive Summary

To obtain approval to enter into a further lease agreement with Malcolm Stuart Alexander Bury (hereinafter referred to as the “Applicant”) for a period of 9 (NINE) years and 11 (ELEVEN) months in respect of municipal property, being portions of Erven 294, 227 and 429 Stanford (jointly ±1,8094ha in extent) situated next to the R43 Main Road, Stanford (hereinafter referred to as the “Property”), for the purpose of the grazing of sheep. See the locality plan 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

- 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/Discussion

The Applicant is the owner of Erven 1723 and 297 Stanford, which is adjacent to the municipal property Erf 294 Stanford.

The Applicant has been using the Property for the purpose of the grazing of sheep for approximately 10 (TEN) years without any complaints from the public regarding the use of the Property. The last agreement was for a period of 9 (NINE) years and 11 (ELEVEN) months, which commenced on 1 December 2012 and expires on 31 October 2021.

The Applicant applied to renew the lease agreement for a further period of 9 (NINE) years and 11 (ELEVEN) months. The Property's grass and other vegetation will be kept in a tidy condition as the sheep is grazing on the Property which will prevent the Property from becoming overgrown and thus enhancing the entrance to Stanford. Before the Applicant leased the Property, the Property was used as an illegal dumping site. The daily presence of the Applicant and his workers on the Property to guide his sheep to and from the Property will contribute to the prevention of illegal dumping on the Property. As it is not desirable that the Property be unoccupied it is proposed that a further period be approved as there is currently no plan for the development of the Property and no other adjoining property owner who can let sheep through for grazing and remove them again at night.

Only 30 (THIRTY) sheep will be allowed to graze on the Property and the Applicant will provide additional feeding and water daily to ensure that the sheep are not solely dependent on the natural grass and plants on the Property for food. The sheep will not be allowed to graze on the Property between dawn and dusk and must be removed from the Property every night. The sheep will be let back to the Applicant's property through the gate at the Northern boundary of Erf 294 Stanford adjoining his property.

A lease agreement is in the process of being compiled to be signed by the Applicant (for administrative and audit purposes) with special conditions included in the agreement stipulating that it is subject to the required public participation process and the Executive Mayor's approval (as delegated authority) allowing the Municipality to enter into a further lease period of 9 (NINE) years and 11 (ELEVEN) months.

The municipal account is paid up to date and rental is being levied pending the outcome of the report.

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Evaluation

A: Administration of Immovable Property Policy of the Overstrand Municipality:

The following conditions of the said Policy will apply:

Paragraph 4: *“No application for the purchase, lease of or encroachment on immovable property (save for the instances mentioned in paragraphs 58 to 62 and 64.1 below) shall be processed unless the prescribed application fee as per tariff approved in the annual budget for that financial year has been paid, nor shall any proposed lease or encroachment (save for the instances mentioned in paragraphs 58 to 62 and 64.1 below) be advertised unless the applicant has confirmed, in writing, that he/she will bear all costs involved in such transaction including – but not limited to – legal, survey, re-zoning, sub-division, consolidations, advertisement, relocation or provision of services and, where applicable, a deposit as per prescribed rate to cover incidental costs has been paid.”*

As the application for renewal was received before the expiry of the last agreement there is no need for a formal application form to be completed and no application fee is payable.

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 application is for a long term lease the income value for the lease of the Property will not be in excess of R10 million.

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Erf 294 Stanford is zoned as Open Space Zone 2: Public Open Space, Erf 227 Stanford is zoned as Residential Zone 1: Single Residential and Erf 429 Stanford is zoned as Transport Zone 2: Road and Parking and the Applicant uses the Property for own use and not for commercial gain.

The Property cannot be made available by means of a competitive tender process at this stage as there is no specific future development and use of the Property determined by the Municipality yet.

The Applicant is the only neighbouring farm and therefore the Property cannot be leased to anyone else for the same purpose as the sheep must be moved back to his property every night.

At this stage the only access to the Property is currently through the adjoining property of the Applicant and thus not accessible by anyone else. As it is not desirable that the Property be unoccupied and as the only access is through the adjoining property, it is recommended that the Property be leased directly to the Applicant as a competitive process will thus not serve a useful purpose and will not make financial sense.

Paragraph 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 approved that the right may be granted.”**

The Accounting Officer (Municipal Manager) approved in principle the further lease of the Property to the Applicant, subject to a public participation process being followed and further subject to the approval from the Executive Mayor.

The proposed lease was advertised in Gans-Berg News on 10 September 2021 for a 30 (THIRTY) day comment/objection period.

Paragraph 24: “The fair market value for the alienation of, the rental amount for the leasing or compensation payable for a servitude over municipal immovable property shall be determined by an independent professional valuer or professional associated valuer registered in terms of the Property Valuers Profession Act, 2000 (Act 47 of 2000), or any ensuing act at the cost of the

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purchaser (in the case of a direct sale) or lessee (in the case of a direct lease)/servitude holder (in the case of a servitude)."

Boland Valuers determined the market related rental in July 2021 at an amount of R425.58 (FOUR HUNDRED AND TWENTY-FIVE RAND AND FIFTY-EIGHT CENTS) (VAT excluded) per month. The valuation was done taking into consideration the size, shape, locality, zoning and proposed use (restriction) of the Property.

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."*

The Applicant will be liable for the payment of all costs relating to the renewal of the lease agreement which so far is only the advertisement and valuation costs.

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 the Property was placed in Gans-Berg News on 10 September 2021 for a 30 (THIRTY) day objection/comment period.

Conclusion

With reference to the above discussion it is recommended that the lease of the Property to the Applicant be approved for a further period of 9 (NINE) years and 11 (ELEVEN) months from 1 November 2021.

It is further recommended that the rental be determined at the rental amount of R425.58 (FOUR HUNDRED AND TWENTY-FIVE RAND AND FIFTY EIGHT CENTS) (VAT excluded) per month as from 1 November 2021 which

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will escalate annually on the 1st of July by a percentage fixed in accordance with the prevailing consumer price index (all items).

Lastly it is recommended that a cancellation clause be included in the agreement providing the Municipality with the right to cancel the lease when necessary.

7. Financial Implications

The Municipality stands to gain rental in the amount of R425.58 (FOUR HUNDRED AND TWENTY-FIVE RAND AND FIFTY EIGHT CENTS) (VAT excluded) per month as of from 1 November 2021 for the 2021/2022 financial year where after the rental amount will escalate every year on the 1st of July in accordance with the consumer price index, the next escalation to be on 1 July 2022. All expenses pertaining to the proposed lease will be borne by the Applicant.

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Town Planner: Mr Petrus Roux – (028) 313 8000

“In terms of the relevant development requirements (refer to paragraph 3.4.4b of the Stanford Scheme Regulations) the Council can grant permission to keep animal farms on residential properties bigger than 2500m2 in extent subject to the conditions set out in Paragraph 4.4 of the Scheme Regulations namely:

- (a) that the animals only be kept for own use,*
- (b) that the health officer monitor the health situation,*
- (c) that Council determine the allowed number of animals, and*
- (d) that Council reserves the right to revoke the permission.*

From a Town Planning view there is no objection to the proposed lease.

The zonings is correct as per the approved zoning maps that was gazetted with the scheme regulations on 7 August 2020.

*GIS has provided the following Zoning Status of the Property as follows:
Erf 294 Stanford as Open Space Zone 2: Public Open Space,
Erf 227 Stanford as Residential Zone 1: Single Residential; and
Erf 429 Stanford as Transport Zone 2: Road and Parking.*

The lease however commenced in accordance with the provisions of the

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former Stanford Zoning Scheme, therefore constitutes a non-conforming use in terms of the Overstrand Municipal Land Use Planning Amendment By-law, 2020. The proposal for the renewal of the lease agreement for a further period is therefore supported on the same terms and conditions as per the Town Planners comment, dated 4 March 2021. The applicant should however be advised that any future extension or upgrade of rights, will trigger the provisions of the 2020 By-Law.

That the following conditions be included in the lease agreement:

- (a) that the property be used for own use only and not for commercial use,*
- (b) that the Applicant provide the sheep with additional feeding and water and not allow the sheep to be solely dependent on the natural grass and plants on the Property,*
- (c) that the sheep only be allowed to graze on the Property between dawn and dusk.*
- (d) that the Applicant be responsible for the upkeep of the boundary fence to ensure that no sheep be able to walk unto the R43.*
- (e) that no advertising signs shall be allowed to be erected on the leased property; and*
- (f) that no person will be allowed to reside or overnight on the Property.”*

Comment from Property Administration: These conditions are included in the lease agreement.

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

“As this is an income generating proposal, with no intention of selling the asset, there is no objection against the application.”

10. Annexures

Annexure A: Locality Map

RECOMMENDATION:

1. that the renewal of the lease of municipal properties, being portions of Erven 294, 227 and 429 Stanford, (jointly ±1,8094ha in extent), to Malcolm Stuart Alexander Bury, for the purpose of the grazing of sheep for a further period of 9 (NINE) years and 11 (ELEVEN) months as from 1 November 2021 in terms of the Administration of Immoveable Property Policy of the Overstrand Municipality, **be approved**;
2. that the rental be determined at R425.58 (FOUR HUNDRED AND TWENTY-FIVE RAND AND FIFTY EIGHT CENTS) (VAT excluded) per month for the 2021/2022 financial year; and

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3. that the rental amount mentioned in 2 above escalate every year on the 1st of July in accordance with the Consumer Price Index as published by Stats SA, the next escalation to be on 1 July 2022.

RESPONSIBLE OFFICIAL:	W MURTZ
TARGET DATE FOR IMPLEMENTATION:	30 NOVEMBER 2021
TARGET DATE TO INFORM APPLICANT:	19 NOVEMBER 2021
TARGET DATE TO INFORM OBJECTOR:	N/A

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7/2/3/1

R Marinus

Acting Manager: Property Administration

30 August 2021

(028) 316 - 5609

**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON
19 OCTOBER 2021, WHICH COMMITTEE SUPPORTED THE RECOMMENDATION**

RESPONSIBLE OFFICIAL:

W MURTZ

TARGET DATE FOR IMPLEMENTATION:

30 NOVEMBER 2021

TARGET DATE TO INFORM APPLICANT:

19 NOVEMBER 2021

TARGET DATE TO INFORM OBJECTOR:

N/A



A portion of
Erven 294, 227 and 429
Stanford
(±1,8094 hectare in extent)