

**AGENDA of the
Portfolio Committee: Infrastructure & Planning
22 September 2020
(Also the agenda for the Mayoral Committee Meeting: 30 September 2020)**

**3.
ERF 9851 AND A PORTION OF ERF 832 HERMANUS (MARINE DRIVE,
HERMANUS): LEASE OF MUNICIPAL PROPERTY TO INGWESEC (PTY) LTD**

7/2/3/1

A Le Roux

Manager: Property Administration

28 July 2020

(028) 316 - 3724

1. Executive Summary

To obtain approval to enter into a lease agreement with Ingwesec (Pty) Ltd for a period of 9 (NINE) years and 11 (ELEVEN) months in respect of municipal properties, being Erf 9851 and a portion of Erf 832 Hermanus (jointly ±44m² in extent) situated in Marine Drive, Hermanus in front of the Bistro Burgundy restaurant for the purpose of outdoor restaurant seating. 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)

6. Background/Discussion/Evaluation/Conclusion

Background/Discussion

Ingwesec (Pty) Ltd is the owner of Erf 9862 Hermanus and applied to lease the adjacent municipal properties being Erf 9851 and a portion of Erf 832 Hermanus (hereinafter jointly referred to as "the property").

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Ingwesec (Pty) Ltd wants to lease this property for a period of 9 (NINE) years and 11 (ELEVEN) months for outdoor seating by placing tables and chairs (and/or benches) for restaurant purposes.

The previous owner of Erf 9862 Hermanus had a lease agreement with the Overstrand Municipality and erected a wooden deck on the leased area on which the seating is provided. Now that Ingwesec (Pty) Ltd is the new owner they are applying to continue to lease the property.

The outdoor tables and chairs (and/or benches) for restaurant purposes are already placed on the property and Ingwesec (Pty) Ltd is therefore applying to enter into a formal agreement with the Municipality.

No complaints regarding the use of the specific portion of municipal property for outdoor seating purposes were received in the past.

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.”

Ingwesec (Pty) Ltd made payment of the prescribed application fee.

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

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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 interest of the community.”**

As the property applied for is a small area which is adjoining the property of Ingwesec (Pty) Ltd, it will on its own, not be of any practical use to anyone else for the purpose of outdoor restaurant seating, especially as the portion is between a road for parking and the Applicant’s property, it is therefore recommended that the property be leased directly to Ingwesec (Pty) Ltd without following a competitive process.

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 lease of Erf 9851 and a portion of Erf 832 Hermanus to Ingwesec (Pty) Ltd on condition that a public participation process is followed and further subject to the approval from the Executive Mayor.

The proposed lease was advertised in The Village News on 24 June 2020 for a 30 (THIRTY) day comment/objection period. 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

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of leases 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 for outdoor seating for restaurant purposes. The tariff for the 2020/2021 financial year is R31.30 (THIRTY ONE RAND AND THIRTY CENTS) (VAT excluded) per square metre per month.

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.”

Ingwesec (Pty) Ltd will pay all costs relating to the lease agreement which in this case so far is only the advertisement 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.

Paragraph 64: “The Municipality may, subject to such conditions as it may deem fit –}

64.5 “permit the use of municipal land for outdoor seating adjoining a restaurant or for parking of vehicles, provided inter alia that this will be dealt with as a formal lease agreement and the procedure for a lease agreement be followed.”

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 Erf 9851 and a portion of Erf 832 Hermanus (jointly ±44m² in extent) was placed in The Village News on 24 June 2020 for a 30 (THIRTY) day objection/comment period. No objections were received.

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Conclusion

With reference to the above discussion it is recommended that the direct lease to Ingwesec (Pty) Ltd of Erf 9851 and a portion of Erf Hermanus (jointly ±44m² in extent) be approved for a period of 9 (NINE) years and 11 (ELEVEN) months at a rental amount of R1,377.20 (ONE THOUSAND THREE HUNDRED AND SEVENTY SEVEN RAND AND TWENTY CENTS) (VAT excluded) per month (R31.30 (THIRTY ONE RAND AND THIRTY CENTS) (VAT excluded) per square metre per month) as approved in the Annual Budget for the 2020/2021 financial year.

7. Financial Implications

The Municipality stands to gain rental in the amount of R1,377.20 (ONE THOUSAND THREE HUNDRED AND SEVENTY SEVEN RAND AND TWENTY CENTS) (VAT excluded) per month (R31.30 (THIRTY ONE RAND AND THIRTY CENTS) (VAT excluded) per square metre per month) where after the lease amount will escalate every year on the 1st of July in accordance with the tariffs stipulated in the Annual Budget as approved by Council. All expenses pertaining to the proposed lease will be borne by Ingwesec (Pty) Ltd.

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Town Planner: Ms H Van der Stoep – (028) 313 8900

“The seating arrangement has no impact on pedestrian flow and contributes to the tourist value of the CBD. There is no objection against the application”

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

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RECOMMENDATION:

1. that the lease of municipal property, being Erf 9851 and a portion of Erf 832 Hermanus (jointly ±44m² in extent), to Ingwesec (Pty) Ltd for the purpose of outdoor restaurant seating at the rental amount of R1,377.20 (ONE THOUSAND THREE HUNDRED AND SEVENTY SEVEN RAND AND TWENTY CENTS) (VAT excluded) per month (R31.30 (THIRTY ONE RAND AND THIRTY CENTS) (VAT excluded) per square metre per month) for a period of 9 (NINE) years and 11 (ELEVEN) months in terms of the Administration of Immovable Property Policy of the Overstrand Municipality, **be approved**; and
2. that the rental amount mentioned in 1 above escalate every year on the 1st of July in accordance with the tariffs stipulated in the Annual Budget as approved by Council.

RESPONSIBLE OFFICIAL:

W MURTZ

TARGET DATE FOR IMPLEMENTATION:

18 SEPTEMBER 2020

TARGET DATE TO INFORM APPLICANT:

30 SEPTEMBER 2020

TARGET DATE TO INFORM OBJECTOR:

N/A

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A Le Roux

Manager: Property Administration

28 July 2020

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**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON
22 SEPTEMBER 2020, WHICH COMMITTEE SUPPORTED THE
RECOMMENDATION**

RESPONSIBLE OFFICIAL:

W MURTZ

TARGET DATE FOR IMPLEMENTATION:

18 SEPTEMBER 2020

TARGET DATE TO INFORM APPLICANT:

30 SEPTEMBER 2020

TARGET DATE TO INFORM OBJECTOR:

N/A

