



STELLENBOSCH
STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

Ref no.3/4/2/5

2023-08-25

SPECIAL MAYORAL COMMITTEE MEETING
WEDNESDAY, 2023-08-30 AT 10:00

TO The Executive Mayor, Ald G Van Deventer
The Deputy Executive Mayor, Cllr J Fasser

COUNCILLORS JC Anthony
R du Toit
P Johnson
J Joon
X Kalipa
L Nkamisa
R Pheiffer
C van Wyk
J Williams

Notice is hereby given that a Special Mayoral Committee Meeting will be held via **MS Teams** on **Wednesday, 2023-08-30 at 10:00** to consider the attached agenda.

EXECUTIVE MAYOR, ALD GM VAN DEVENTER

CHAIRPERSON

AGENDA
SPECIAL MAYORAL COMMITTEE MEETING
2023-08-30
TABLE OF CONTENTS

ITEM	SUBJECT	PAGE
1.	OPENING AND WELCOME	
2.	COMMUNICATION	
3.	DISCLOSURE OF INTERESTS	
4.	APPLICATIONS FOR LEAVE OF ABSENCE	
5.	CONSIDERATION OF ITEMS BY THE EXECUTIVE MAYOR: [ALD G VAN DEVENTER]	
5.1	PROPOSED LEASE AGREEMENT: ERF 4163 (7 CHURCH STREET), STELLENBOSCH: LE GRAND DOMAINE	4
5.2	PROPOSED LEASE AGREEMENT: ERF 13830, 111 DORP STREET, STELLENBOSCH: JACK'S BAGELS	18
5.3	PROPOSED LEASE AGREEMENT: ERF 6083 (43 ADRINGA STREET), STELLENBOSCH: JULIAN'S CAFÉ BAR	34
5.4	PROPOSED LEASE AGREEMENT: ERF 13730 (CNR KRIGE AND DORP STREETS), STELLENBOSCH: KAPSTADT BRAUHAUS	50
5.5	PROPOSED LEASE AGREEMENT: ERF 547 (54 DORP STREET, STELLENBOSCH): CASA CERVEZA	68
5.6	PROPOSED LEASE AGREEMENT: ERF 6083 (EIKESTAD MALL, ADRINGA STREET), GOCHU GANG	88
5.7	PROPOSED LEASE AGREEMENT: ERF 1260 (13 RYNEVELD STREET), THE WINE GLASS	106
5.8	PROPOSED LEASE AGREEMENT: ERF 1238 (11 ADRINGA STREET), WIJNHUIS	126
5.9	PROPOSED LEASE AGREEMENT: ERF 1271, 20 RYNEVELD STREET, STELLENBOSCH: DE WARENMARKT RESTAURANT	140
5.10	PROPOSED LEASE AGREEMENT: ERF 3765 (52 DORP STREET, STELLENBOSCH): CIOVITA	163
5.11	PROPOSED LEASE AGREEMENT: ERF 4163 (CNR CHURCH AND BIRD STREETS), STELLENBOSCH – LE CHANT WINE BAR	182
5.12	PROPOSED LEASE AGREEMENT: ERF 1252 (14 ANDRINGA STREET), STELLENBOSCH: MANOUSHE	198
5.13	PROPOSED LEASE AGREEMENT: ERF 781 (87 DORP STREET), STELLENBOSCH: THE MEETING PLACE	216
5.14	LEASE AGREEMENT: ERF 8403 (3C ADRINGA STREET), STELLENBOSCH: SUSHI BOX	229
5.15	PROPOSED LEASE AGREEMENT: ERF 1264 (CNR VAN RYNEVELD & PLEIN STREETS), STELLENBOSCH: VIDA E CAFFE	245
5.16	PROPOSED LEASE AGREEMENT: ERF 722 (53 DORP STREET), STELLENBOSCH – ADAM AND EVE COLLAB	265
5.17	PROPOSED LEASE AGREEMENT: ERF 1265, 24 PLEIN STREET, STELLENBOSCH: FROM THE BLUE FISH AND CHIPS	285

5.18	PROPOSED LEASE AGREEMENT: ERF 1237 (13 ANDRINGA STREET), STELLENBOSCH: MORO	300
5.19	PROPOSED LEASE AGREEMENT: ERF 6460 (CHECKERS CENTRE SHOP 18, MILL STREET) STELLENBOSCH: THE WAFFLE MILL	315
5.20	PROPOSED LEASE AGREEMENT: ERF 645 (100 DORP STREET), STELLENBOSCH BEER AND WINE PURVEYORS - BLIX	331
5.21	PROPOSED LEASE AGREEMENT: ERF 1319 (132 DORP STREET) STELLENBOSCH: THE MILL COFFEE SHOP	350
5.22	PROPOSED LEASE AGREEMENT: ERF 1289 (2 RYNEVELD STREET), THE POTTERY STELLENBOSCH	363
5.23	PROPOSED LEASE AGREEMENT: ERF 1299, 21 CHURCH STREET, STELLENBOSCH: BASIC BISTRO	376
5.24	PROPOSED LEASE AGREEMENT: ERF 1321 (11 CHURCH STREET), BRAMPTON WINE STUDIO	391
5.25	PROPOSED LEASE AGREEMENT: ERF 1259 (19 RYNEVELD STREET), BEYERSKLOOF WINE BAR	409
5.26	PROPOSED LEASE AGREEMENT: ERF 1847 (50 PLEIN STREET), STELLENBOSCH: DECAMERON	426
5.27	PROPOSED LEASE AGREEMENT: ERF 561 (cnr HUGUENOT AND BORDEAUX STREETS, FRANSCHHOEK), FRANKS	438
5.28	STATUS REPORT ON OUTDOOR DINING AT SPECIAL MAYCO MEETING AUGUST 2023	453

5.	CONSIDERATION OF ITEMS BY THE EXECUTIVE MAYOR: [ALD G VAN DEVENTER]
-----------	--

5.1	PROPOSED LEASE AGREEMENT: ERF 4163 (7 CHURCH STREET), STELLENBOSCH: LE GRAND DOMAINE
------------	---

Collaborator No:

IDP KPA Ref No:

Meeting Date:

Good Governance

30 August 2023

**1. SUBJECT: PROPOSED LEASE AGREEMENT: ERF 4163 (7 CHURCH STREET),
STELLENBOSCH: LE GRAND DOMAINE**

2. PURPOSE

To consider an application from Le Grand Domaine, to enter into a Lease Agreement with Stellenbosch Municipality, in terms of where they would be able to use a portion of Council-owned property for outdoor dining purposes.

3. DELEGATED AUTHORITY

In terms of the approved System of Delegations the Executive Mayor, in consultation with the Executive Mayoral Committee, has the delegated Authority to consider applications for Lease Agreements, up to a contract value not exceeding R5M and not exceeding a period of 10 years. The Municipal Manager has a delegation to approve lease agreements of up to 3 years.

4. EXECUTIVE SUMMARY

An application to use a portion of the street reserve for Outdoor Dining purposes has been received from the owner of Le Grand Domaine trading from erf 4163, Stellenbosch. The current area being used is not in line with the provisions /requirements of the Outdoor Dining Policy and is currently not supported by the Engineering Department. There is not sufficient walkway left for the public in that the seating does not provide a 1.5m area for sidewalk users. Under 6.2.1 are photographs of the current area being used by the establishment. These photographs have been taken by property management because we received no information from the applicant, and we wanted to put the decision makers in a position to have an idea of the current situation. The applicant does not have a current lease agreement or previous encroachment agreement with the municipality and is therefore currently not paying any rent. We served the applicant with a letter requesting that they apply for the outdoor dining lease to ensure compliance.

They have not specified a requested time for the lease and the area they are interested in and currently using is 26m². They have also failed to file a diagram with the application indicating the area, furniture to be used and how the area of 1.5m will be left open for pedestrian use. Some of information on current use is evident from the photographs.

The application is not supported by the department as it does not comply with the criteria especially the 1,5m unobstructed pedestrian use area and there is still outstanding information that they have not supplied. It is clear from the photographs

that the current area is not in line with the 1.5m requested in terms of the requirements set by National guidelines for non motorised transport.

5. RECOMMENDATION

For Consideration.

6. DISCUSSION / CONTENT

6.1 Background

6.1.1 Application for encroachment

An application was received from Le Grand Domaine to enter into a lease agreement with Stellenbosch Municipality in terms whereof they would be able to use a portion of Council-owned property for outdoor dining purposes. A copy of the application is attached as **APPENDIX 1**. The extent of the proposed leased area is approximately 26m².

6.2 DISCUSSION

6.2.1. Locality and context

Erf 4163, Stellenbosch is located at the 7 Church Street, Shop 1, Oude Bank, Stellenbosch, as shown on Fig 1.and Fig 2, below as well as photographs of how area is currently used under Figure 3.

In their application there is no indication of the area to be left open for pedestrians. It is clear from the photographs that the current area is not in line with the 1.5m requested in terms of the requirements set by National guidelines for non motorised transport.



Fig 1. Location and context

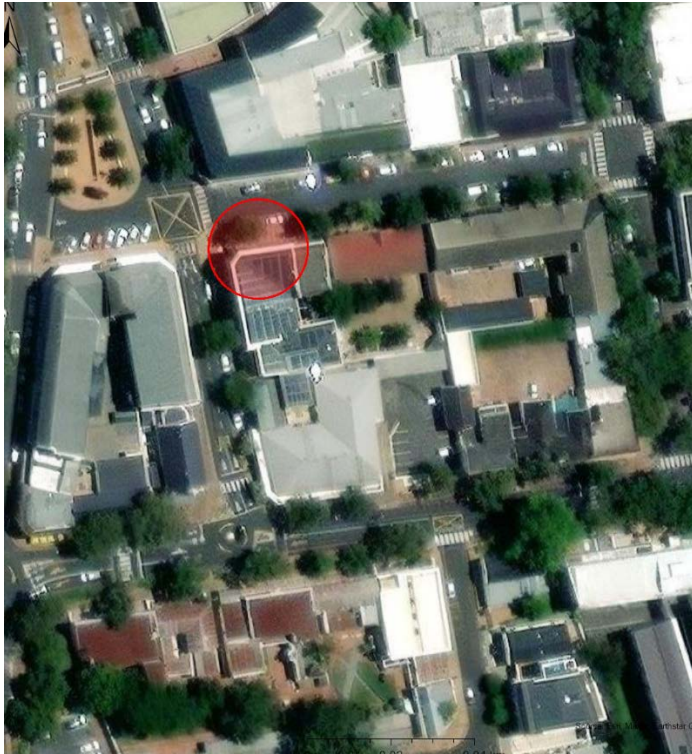


Fig 2 .Extent of area





Fig 3. Current area used for outdoor dining

6.2.2 Legal requirements

6.2.2.1 Municipal Asset Transfer Regulations

In terms of Section 36 of the Municipal Asset Transfer Regulation, when considering an application for an approval of a right to use municipal property, the following needs to be taken into account, *inter alia*-:

- a) whether the capital asset may be required for the municipality's own use during the period for which the right is to be granted;
- b) the extent to which any compensation to be received for the right, together with the estimated value of improvements or enhancements to the asset, will result in a significant financial benefit to the municipality;

c)the (possible) risks and rewards associated with the use in relation to the municipality's interests;

d)Any comments received from the local community, and

e) compliance with the legislative regime applicable to the proposed granting of the right.

6.2.2.2 Stellenbosch By-Law on Roads and Streets

In terms of section 4 of the Stellenbosch By-Law on Roads and Streets, no person may, **without prior written permission of the Municipality**, cause an encroachment on a street, sidewalk or road reserve forming part thereof.

6.2.2.3 Property Management policy

Section 9 2.2 deals with deviations from the competitive process, and reads as follows:

The Municipal Council **may dispense with the competitive processes** established in this policy and may enter into a Private Treaty Agreement through any convenient process, which may include direct negotiations, including in response to an unsolicited application, but only in the following circumstances, and only after having advertised Council's intention so to act. Should any objections be received as a consequence of such a notice, such objections first be considered before a final decision is taken to dispense with the competitive process established in this policy. However, should any objections, be received from potential, competitive bidders, then a public competitive process must be followed. The advertisement referred to above should also be served on adjoining landowners, where the Municipal Manager is of the opinion that such transaction may have a detrimental effect on such adjoining landowner(s):

(h)where encroachment applications are received from adjoining owners, including applications for outdoor dining permits, subject to approved tariff structure.

6.2.2.4 Outdoor Dining Policy

6.2.2.4.1 Policy Objective

To regulate the use of sidewalks or road reserves for the purpose of outdoor dining and trading, and the temporary use of Public Places for commercial ventures and displays.

6.2.2.4.2 Suitable Locations

Outdoor cafes, restaurants and traders may apply for encroachment where local conditions are favorable for their operation, including areas of Council e.g. road reserves, sidewalks, Public Open Spaces. All applications in locations of a high pedestrian usage, e.g. a retail center, will be required to take pedestrian needs into consideration.

6.2.2.4.3 Assessment Criteria

The most important local conditions to be considered when an application for encroachment of the road reserve area is received will be those issues pertaining to pedestrian (including pedestrians who are using wheelchairs, baby prams or are visually impaired) and vehicular circulation, convenience and safety of patrons and the general public, existing streetscape elements and residential amenity.

The ground surface must be sufficiently level to support a proper layout and safe use.

6.2.2.4.4 Layout

The style, layout and orientation of furniture should be chosen according to the extent and shape of the available space of the encroachment area.

The size of an outdoor cafe or placement of any object on the sidewalk will depend on the width of the sidewalk.

6.2.2.4.5 Defined Area

The applicant will be required to define the area with appropriate markers. (i.e a single galvanized steel nail inserted in between the pavers, or a paint spot no larger than 5cm in diameter placed at the corners of the defined area in a semi- permanent paint) to the satisfaction of Council.

6.2.2.4.6 Leased Conditions

The applicant must comply with the conditions set out in the lease agreement and this policy. These conditions would also generally require that the local environmental factors be reviewed annually and adjustments to the lease agreement may be required.

If the lease agreement that is entered into is seen as not providing long term rights, there is no need to advertise the proposed agreement for public input/comments or objections. Should the municipality receive any complaints the lease agreement may be terminated due to the objections.

6.3.1 Financial Implications

In terms of the current, approved tariff structure for outdoor dining lease agreements a monthly fee of R 3900.00 (incl. of VAT) is applicable and an escalation of 6% is recommended.

6.3.2 Legal Implications

The legal implications are discussed under 6.2.2 above. As the proposed term of the lease agreement is three (3) years and when the value of the lease and property is taken into account the asset transfer regulations are not applicable as it is not seen as long-term rights on council property that are being given.

6.4 Staff Implications

No additional staff implications.

6.6 Previous / Relevant Council Resolutions**SPECIAL COUNCIL MEETING: 2022-06-22: ITEM 9.2.5 RESOLVED (nem con)**

- (a) That council takes note of the intended communication to the public;
- (b) That council takes note that all restaurants and businesses will be given notice to apply/re-apply for a lease to use council property for outdoor dining purposes; and
- (c) That the approval of the leases of three (3) years and less be delegated to the Municipal Manager for approval.

6.7 Risk Implications

The application does not comply with Council's criteria.

6.8 Comments from Senior Management**6.8.1 Director: Infrastructure Services**

If approved the Municipality set the following conditions:

- The Municipality concludes an agreement with the applicant, detailing the conditions of approval.
- Leased area is zoned as road reserve and cannot be enclosed - to exclude the public, the municipality or other services provider from accessing the area.
- No deck must be erected without the prior written consent of the municipality, including the engineering department, building department and property management department.
- Council is indemnified against all possible 3rd party claims.
- The municipality or other public service provider must not be prohibited from maintaining, repairing, upgrading and / or installing new public services with-in the encroached area.
- For emergency works the applicant will be required to remove the tables and seating and all other objects immediately for the municipality or other public service provider to gain access.
- The municipality reserves the right to end the lease agreement when the need arises, i.e. when the encroached space is required for municipal or other public services purposes.
- Areas outside of the leased area must remain free from any obstruction to pedestrian movements.
- Note current area takes up whole sidewalk, and needs to be reduced, to allow for unobstructed pedestrian movements a keep clear with of 1.5m is required.
- **The application as submitted showing current area used, is not supported.**

6.8.2 Director: Planning and Economic Development

The Directorate: Planning and Economic Development would in principle not be opposed to the Municipality entering into a lease agreement with the applicant if the applicant adheres to the prescripts of the Stellenbosch Municipality Roads and Street Bylaw, 2021 as promulgated in the Provincial Gazette no. 8436 dated 28 May 2021; the Stellenbosch Municipality Integrated Zoning Scheme Bylaw, 2015; the Stellenbosch Municipality Outdoor Dining Policy; and the Stellenbosch Municipality Universal Access Policy.

However, in terms of the contents of the current application and the current operations of La Grand Domain, this Directorate cannot support the application as the application is not in adherence to the Stellenbosch Municipality Roads and Street Bylaw, 2021; the Stellenbosch Municipality Integrated Zoning Scheme Bylaw, 2015; the Stellenbosch Municipality Outdoor Dining Policy; and the Stellenbosch Municipality Universal Access Policy.

The Stellenbosch Municipality Roads and Street Bylaw, 2021 as promulgated in the Provincial Gazette no. 8436 dated 28 May 2021, defines "sidewalk" "means that portion of a street between the outer boundary of the roadway and the boundary lines of adjacent properties or buildings which is intended for the use of pedestrians, pedal cyclists and any other category of vehicles as may be determined by the Municipality in accordance with section 42(1);"

The definition clearly stipulates that the use of sidewalk is intended for pedestrians, pedal cyclists and any other vehicle. The use of sidewalks as part of the commercial activities of outdoor cafes and restaurants is a form of activity on the street that should improve the quality of public places and urban life. This use must however not be at the cost of overall safety of road users as intended in terms of the above bylaw.

The proposal of La Grand Domain includes pictures of the existing orientation of tables, chairs and benches which clearly indicates that the minimum 1,5m of the pedestrian zone directly along the kerb line as noted in Section 3.3.2 of the Stellenbosch Municipality Policy on Outdoor Dining, Trading and the Use of Public Places for Commercial Ventures and Display is not being adhered to. It is clear from the photos accompanying the application that the pedestrian zone is located in the centre, with chairs and benches on either side of the kerb. This is not safe for both the potential patrons, as well as for pedestrians, pedal cyclists and any other category of vehicle, which include wheelchairs, etc. The tables located on the kerb line causes obstruction when persons attempt to leave or enter their vehicles, as it would be difficult for doors to be opened. It is also noted that when using the bench as a scalable marker, the bench width would be 60cm which is a standard. This means the gap between the two (2) benches is less than 1,2m. The benches also would require to be moved out more should patrons have to use it. It is thus evident that the space is not sufficient to accommodate the intended use of the sidewalk as stipulated in the bylaw, and also the proposal as indicated in the photos.

It should be noted that currently the Final Draft Outdoor Dining and Events Overlay Zone, is undergoing a public participation process, of which the closing date for comments is 02 September 2023. In the absence of this overlay zone a suitable land use application must be submitted to evaluate the intended land usage, as the current and proposed land use is not in accordance with the applicable zoning.

6.8.3 Chief Financial Officer

Received no feedback.

6.8.4 Director: Community Services

Received no feedback.

6.8.5 Municipal Manager

Not supported as not in line with requirements

ANNEXURES: 1. Application**FOR FURTHER DETAILS CONTACT:**

NAME	Annalene de Beer
POSITION	Director: Corporate Services
DIRECTORATE	CORPORATE SERVICES
CONTACT NUMBERS	021-8088073
E-MAIL ADDRESS	Annalene.debeer@ Stellenbosch.gov.za
REPORT DATE	2023-06-01

ANNEXURE 1



STELLENBOSCH
STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

APPLICATION FOR LEASE OF MUNICIPAL LAND APPLICATION FORM

A: APPLICANT'S DETAILS

Name : Paul De Villiers

Physical address: 7 Church Street
Oude Bank, Shop 1
Le Grand Domaine Enoteca
.....
Postal code:7600

Mailing address: Same as above
.....
.....
.....
Postal code:.....

E-mail address: manager@legranddomaine.co.za

Telephone: 021 300 3279

Cell phone: 0712505814

B: PROPERTY DETAILS OF APPLICANT

Erf/farm number : ERF 4163

Suburb: Stellenbosch Central

Town: Stellenbosch

C: PROPERTY DETAILS OF LEASE AREA

Erf/farm number : ERF 4163

Suburb: Stellenbosch Central

Town: Stellenbosch

Area of encroachment: 26,1m²

* To be supplemented with a sketch-plan with dimension in m²

D: TYPE OF APPLICATION:

Please mark the appropriate block

For commercial purposes, other than for parking	X
---	---

For commercial parking purposes,	
----------------------------------	--

For residential parking purposes

For non-commercial purposes (such as garden purposes, gates,ect) ☐

For projecting structures onto street reserves ☐

For projecting structures onto other council-owned land ☐

Other: please provide description:

Brief description of application: Outdoor Seating for guests visiting the Le Grand Domaine Enoteca Restaurant

Motivation: Stellenbosch is a town where people love enjoying food and drinks on the pavement culture created in the Hub of Stellenbosch. We would like to keep up with the experience by offering guests outdoor seating to enjoy the scenery that Stellenbosch has to offer.

E: LIST OF ATTACHEMENTS AND SUPPORTING DOCUMENTS

Please mark the appropriate box

Special Power of Attorney, where Applicant is not the owner

☐

Diagram of proposed area of the lease area

☐

Letters of consent (affected neighbours)

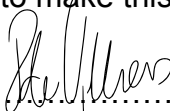
☐

Application fee (non-refundable)

☐

I hereby certify that the information supplied in this application form is correct and that I am properly authorized to make this application.

Applicant's signature:



Date:

23 Feb 2023

Full name: Paul De Wet De Villiers

FOR OFFICIAL USE

- The application was considered onby.....
- The application was

☐	APPROVED
--------------------------	-----------------

☐	NOT APPROVED
--------------------------	---------------------

Conditions (if any):

.....

.....

Applicant was informed of outcome on

.....
SIGNATURE OF RESPONSIBLE OFFICIAL **DATE**

Name:.....

***If approved**

- ☐ Encroachment fee paid
- ☐ Lease Agreement signed
- ☐ Agreement/Permit processed on Contract Management System

.....
SIGNATURE OF RESPONSIBLE OFFICIAL **DATE**

Name:.....

5.2	PROPOSED LEASE AGREEMENT: ERF 13830, 111 DORP STREET, STELLENBOSCH: JACK'S BAGELS
-----	--

Collaborator No:

IDP KPA Ref No:

Meeting Date:

Good Governance

30 August 2023

1. SUBJECT: PROPOSED LEASE AGREEMENT: ERF 13830, 111 DORP STREET, STELLENBOSCH: JACK'S BAGELS

2. PURPOSE

To consider an application from Jacks Bagels, to enter into a Lease Agreement with Stellenbosch Municipality, in terms whereof they would be able to use a portion of Council-owned property for outdoor dining purposes.

3. DELEGATED AUTHORITY

In terms of the approved System of Delegations the Executive Mayor, in consultation with the Executive Mayoral Committee, has the delegated Authority to consider applications for Lease Agreements, up to a contract value not exceeding R5M and not exceeding a period of 10 years. The Municipal manager may approve lease agreements of three (3) years and less.

4. EXECUTIVE SUMMARY

An application to use a portion of the street reserve for Outdoor Dining purposes has been received from the owner of Jacks Bagels trading from erf 13830, Stellenbosch. The application is in line with the council resolution setting out the requirements for the application and is supported by the Engineering Department. Under 6.2.1 are photos showing how area is currently being used. These photos were taken by Property administration as the applicant did not submit any information apart from what is attached as appendices.

The applicant does not currently have any lease agreement or previous encroachment agreement with the municipality and is paying rent for current use. We served the applicant with a letter requesting that they apply for the outdoor dining lease to ensure compliance.

They have not specified a requested time for the lease and the area they are interested in is 15 m² according to our measurement despite their application indicating 10 m². They have however not made it clear on their draft plan of what furniture will be used and how the area will be demarcated or where the 1,5 m will be left open for pedestrian use.

For the reasons indicated in the item the application is not supported in the current form.

5. RECOMMENDATION

For consideration.

6. DISCUSSION / CONTENT

6.1.1 Application for lease

An application was received from Jacks Bagels to enter into an agreement with Stellenbosch Municipality in terms whereof they would be able to use a portion of Council-owned property for outdoor dining purposes. A copy of the application is attached as **APPENDIX 1**, with drawings of the proposed lay-out attached as **APPENDIX 2**. The extent of the leased area is approximately 15m².

6.2 DISCUSSION.

6.2.1. Locality and context

Erf 13830, Stellenbosch is located at the 111 Dorp Street, Stellenbosch, as shown on Fig 1. and Fig 2, below as well as photographs of how area is currently used under Fig 3.

In their application (**APPENDIX 2**) they indicate that an area of 2,5 meters next to the pavement will be kept open for pedestrian use, but it is not in line with the current use. National guideline for non motorised transport requires unhindered access of 1,5 m.

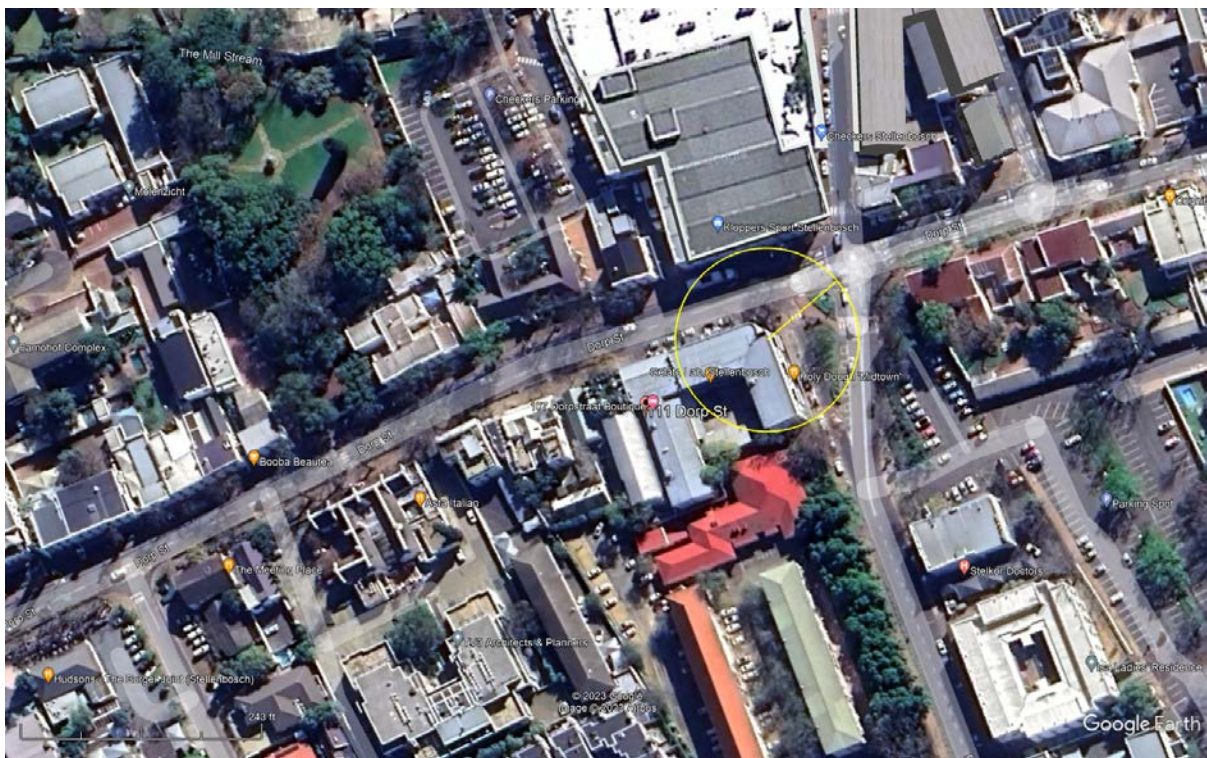


Fig 1. Location and context

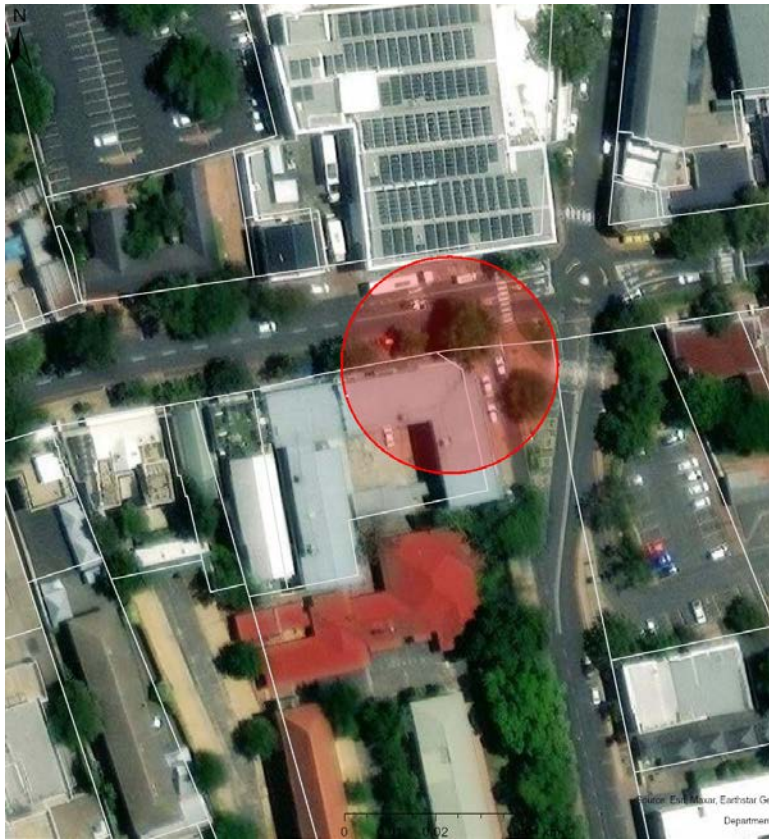


Fig 2 .Extent of area





Current area used for outdoor dining

6.2.2 Legal requirements**6.2.2.1 Municipal Asset Transfer Regulations**

In terms of Section 36 of the Municipal Asset Transfer Regulation, when considering an application for an approval of a right to use municipal property, the following needs to be taken into account, *inter alia*:-

- a) whether the capital asset may be required for the municipality's own use during the period for which the right is to be granted;
- b) the extent to which any compensation to be received for the right, together with the estimated value of improvements or enhancements to the asset, will result in a significant financial benefit to the municipality;
- c) the (possible) risks and rewards associated with the use in relation to the municipality's interests;
- d) Any comments received from the local community, and
- e) compliance with the legislative regime applicable to the proposed granting of the right.

6.2.2.2 Stellenbosch By-Law on Roads and Streets

In terms of section 4 of the Stellenbosch By-Law on Roads and Streets, no person may, cause an encroachment on a street, sidewalk or road reserve forming part thereof, other than in accordance with conditions prescribed by the municipality.

6.2.2.3 Property Management policy

Section 9 2.2 deals with deviations from the competitive process, and reads as follows:

The Municipal Council **may dispense with the competitive processes** established in this policy and may enter into a Private Treaty Agreement through any convenient process, which may include direct negotiations, including in response to an unsolicited application, but only in the following circumstances, and only after having advertised Council's intention so to act. Should any objections be received as a consequence of such a notice, such objections first be considered before a final decision is taken to dispense with the competitive process established in this policy. However, should any objections, be received from potential, competitive bidders, then a public competitive process must be followed. The advertisement referred to above should also be served on adjoining landowners, where the Municipal Manager is of the opinion that such transaction may have a detrimental effect on such adjoining land owner(s):

- (h) where encroachment applications are received from adjoining owners, including applications for outdoor dining permits, subject to approved tariff structure.

6.2.2.3 Outdoor Dining Policy**6.2.2.3.1 Policy Objective**

To regulate the use of sidewalks or road reserves for the purpose of outdoor dining and trading, and the temporary use of Public Places for commercial ventures and displays.

6.2.2.3.2 Suitable Locations

Outdoor cafes, restaurants and traders may apply for encroachment where local conditions are favorable for their operation, including areas of Council e.g. road reserves, sidewalks, Public Open Spaces. All applications in locations of a high pedestrian usage, e.g. a retail center, will be required to take pedestrian needs into consideration.

6.2.2.3.3 Assessment Criteria

The most important local conditions to be considered when an application for the use of the road reserve area for outdoor dining purposes is received will be those issues pertaining to pedestrian (including pedestrians who are using wheel chairs, baby prams or are visually impaired) and vehicular circulation, convenience and safety of patrons and the general public, existing streetscape elements and residential amenity.

The ground surface must be sufficiently level to support a proper layout and safe use.

6.2.2.3.4 Layout

The style, layout and orientation of furniture should be chosen according to the extent and shape of the available space of the leased area.

The size of an outdoor cafe or placement of any object on the sidewalk will depend on the width of the sidewalk.

6.2.2.3.5 Defined Area

The applicant will be required to define the area with appropriate markers. (ie a single galvanized steel nail inserted in between the pavers, or a paint spot no larger than 5cm in diameter placed at the corners of the defined area in a semi- permanent paint) to the satisfaction of Council.

6.2.2.3.6 Lease Conditions

The applicant must comply with the conditions set out in the lease agreement and this policy. The lease will be for a period of not more than 5 years with an option to renew. These conditions would also generally require that the local environmental factors be reviewed annually and adjustments to the lease agreement may be required.

If the lease agreement that is entered into is seen as not providing long term rights there is no need to advertise the proposed agreement for public input/comments or

objections. Should the municipality receive any complaints the lease agreement may be terminated due to the objections.

6.4 Financial Implications

In terms of the current, approved tariff structure for outdoor dining lease agreements a monthly fee of R 150.00 m² from 1 July 2023 is applicable and an escalation of 6% is recommended. If they require 10m² it will amount to a starting amount of R1500.00 per month.

6.5 Legal Implications

The legal implications are discussed under 6.2.2 above. As the proposed term of the lease agreement is three (3) years and when the value of the lease and property is taken into account the asset transfer regulations are not applicable as it is not seen as long-term rights on council property that are being given.

6.6 Staff Implications

No additional staff implications.

6.7 Previous / Relevant Council Resolutions

SPECIAL COUNCIL MEETING: 2022-06-22: ITEM 9.2.5 RESOLVED (nem con)

(a) that Council takes note of the intended communication to the public;

(b) that Council takes note that all restaurants and business will be given notice to apply/re-apply for a lease to use council property for outdoor dining purposes; and

(c) that the approval of the leases of three (3) years and less be delegated to the Municipal Manager for approval.

6.8 Risk Implications

The risks are addressed in the item.

6.9 Comments from Senior Management

6.9.1 Director: Infrastructure Services

- The Municipality concludes an agreement with the applicant, detailing the conditions of approval.
- Leased area is zoned as road reserve and cannot be enclosed - to exclude the public, the municipality or other services provider from accessing the area.
- Ensure public risk and liability insurance is in place to cover third party claims.
- Council is indemnified against all possible third-party claims.
- The municipality or other public service provider must not be prohibited from maintaining, repairing, upgrading and / or installing new public services within the leased area.

- The municipality reserves the right to end the lease agreement when the need arises, i.e. when the leased space is required for municipal or other public services purposes.
- Areas outside of the leased area must remain free from any obstruction to pedestrian movements.

6.9.2 Director: Planning and Economic Development

It should be noted that currently the Final Draft Outdoor Dining and Events Overlay Zone, is undergoing a public participation process, of which the closing date for comments is 02 September 2023. In the absence of this overlay zone a suitable land use application must be submitted to evaluate the intended land usage, as the current and proposed land use is not in accordance with the applicable zoning. No further comments requested.

6.9.3 Chief Financial Officer

No comments requested.

6.9.4 Director: Community Services

No comments requested.

6.9.5 Municipal Manager

No comments requested.

Appendix 1: Application

Appendix 2: Sketch plan

FOR FURTHER DETAILS CONTACT:

NAME	Annalene de Beer
POSITION	<i>Director: Corporate Services</i>
DIRECTORATE	<i>CORPORATE SERVICES</i>
CONTACT NUMBERS	<i>021-8088073</i>
E-MAIL ADDRESS	Annalene.debeer@ Stellenbosch.gov.za
REPORT DATE	<i>2023-08 -23</i>

ANNEXURE 1



STELLENBOSCH

STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

APPLICATION FOR LEASE OF MUNICIPAL LAND APPLICATION FORM

A: APPLICANT'S DETAILS

Jacks Bagels

Name : *Mynhardt van Zyl*

Physical address: *20 Cynaroides Street*
Paradyskloof

Postal code: *7600*

Mailing address: *111 Dorp Street*
Stellenbosch central

Postal code: *7600*

E-mail address: *jacksbagelswesterncape@gmail.com*

Telephone:

Cell phone: *076 403 1971*

B: PROPERTY DETAILS OF APPLICANT

Erf/farm number :

Suburb:

Town:
C: PROPERTY DETAILS OF LEASE AREA

Erf/farm number : Marnette Building, Unit 4
 c/o Piet Retief & Dorp Street
 Suburb: Stellenbosch Central
 Town: Stellenbosch Erf: 13830
 Area of encroachment: 10m²

* To be supplemented with a sketch-plan with dimension in m²

D: TYPE OF APPLICATION:

Please mark the appropriate block

For commercial purposes, other than for parking ☒

For commercial parking purposes, ☐

For residential parking purposes ☐

For non-commercial purposes (such as garden purposes, gates, ect) ☐

For projecting structures onto street reserves ☐

For projecting structures onto other council-owned land ☐

Other: please provide description: ☐

Brief description of application: I applied for an encroachment approval in 2020, with no feedback from the municipality. I suspect this was the effect of Covid and subsequent challenges.

Motivation: The main area of our outside seating falls within the boundaries of the Marnette building. The area of encroachment is very small - we only have two additional wooden benches in this area. In no way do they obstruct the walkway. There is at least a 2,5 meter gap for pedestrians and cyclists between the benches and buildings.

E: LIST OF ATTACHEMENTS AND SUPPORTING DOCUMENTS

Please mark the appropriate box

Special Power of Attorney, where Applicant is not the owner ☐

Diagram of proposed area of the lease area ☒

Letters of consent (affected neighbours) - Only other businesses ☐

Application fee (non-refundable) ☒

I hereby certify that the information supplied in this application form is correct and that I am properly authorized to make this application.

Applicant's signature: 

Date: 14 March 2023

Full name: Mynhardt van Zyl

FOR OFFICIAL USE

- The application was considered onby.....
- The application was

☐	APPROVED
--------------------------	-----------------

☐	NOT APPROVED
--------------------------	---------------------

Conditions (if any):

.....

.....

Applicant was informed of outcome on

.....
SIGNATURE OF RESPONSIBLE OFFICIAL

.....
DATE

Name:.....

***If approved**

☐

Encroachment fee paid

☐

Lease Agreement signed

☐

Agreement/Permit processed on Contract Management System

.....
SIGNATURE OF RESPONSIBLE OFFICIAL

.....
DATE

Name:.....

Dorp Street

Sidewalk

Marnette building

2m

Encroachment
area (2 benches)

5m

2,5 m



Jack's

Bagels

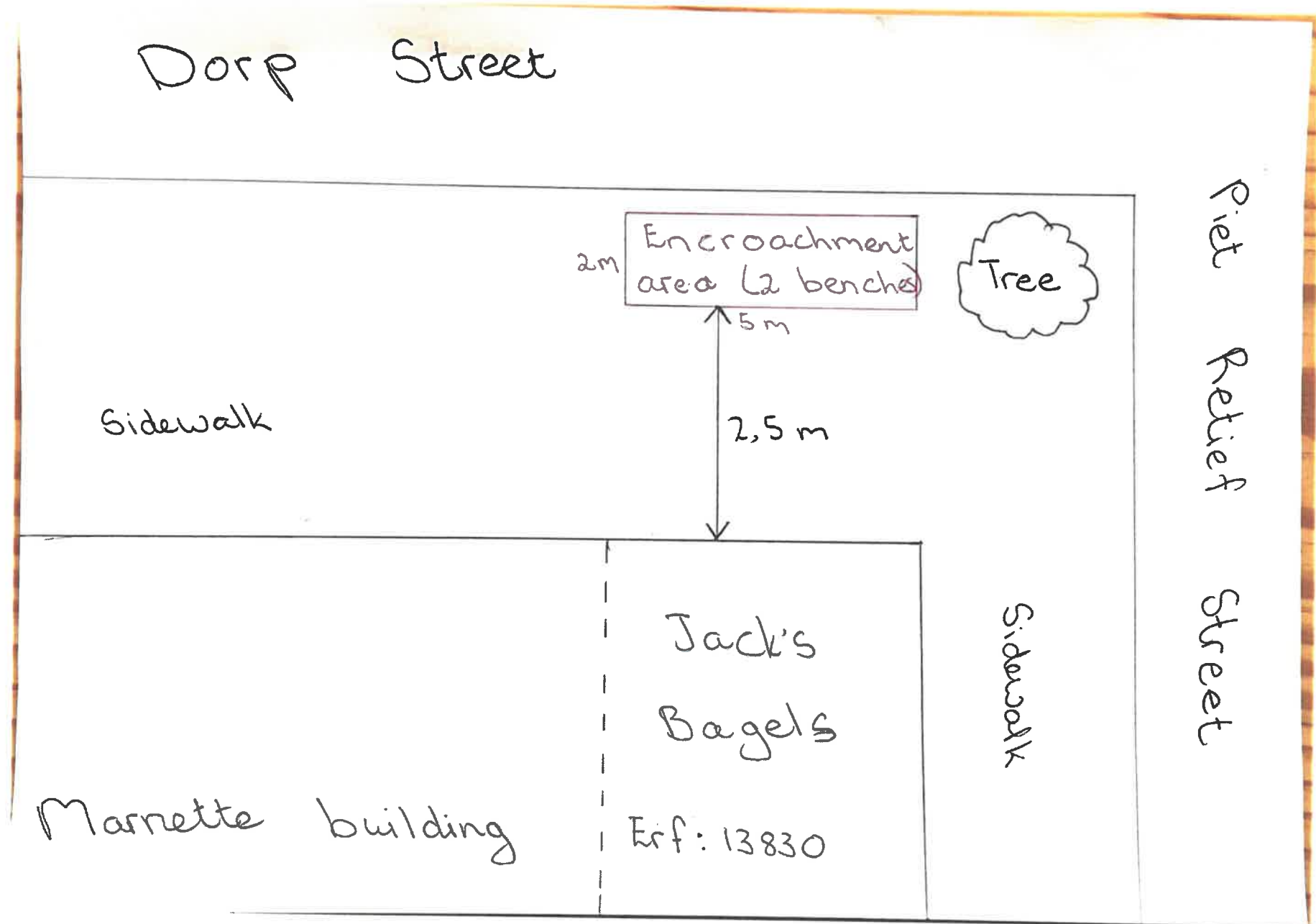
Erf: 13830

Sidewalk



Piet Retief Street

ANNEXURE 2



5.3	PROPOSED LEASE AGREEMENT: ERF 6083 (43 ADRINGA STREET), STELLENBOSCH: JULIAN'S CAFÉ BAR
-----	--

Collaborator No:

IDP KPA Ref No:

Meeting Date:

Good Governance

30 August 2023

1. SUBJECT: PROPOSED LEASE AGREEMENT: ERF 6083 (43 ADRINGA STREET), STELLENBOSCH: JULIAN'S CAFÉ BAR

2. PURPOSE

To consider an application from Julian's Café Bar (Pty) Ltd, to enter into a Lease Agreement with Stellenbosch Municipality, in terms of where they would be able to use a portion of Council-owned property for outdoor dining purposes.

3. DELEGATED AUTHORITY

In terms of the approved System of Delegations the Executive Mayor, in consultation with the Executive Mayoral Committee, has the delegated Authority to consider applications for Lease Agreements, up to a contract value not exceeding R5M and not exceeding a period of 10 years.

The Municipal Manager has delegated authority to approve leases of 3 (three) years or less.

4. EXECUTIVE SUMMARY

All the restaurants that are currently doing outdoor dining was given notices to apply for leases for the areas they use for outdoor dining.

An application to use a portion of the street reserve for Outdoor Dining purposes has been received from the owner of Julian's Café Bar trading from erf 6083, Stellenbosch. The application is supported by the Engineering Department.

Under 6.2.1 are photos showing how the area is currently being used. These photos were taken by contract management. The applicant has an old encroachment agreement with the municipality, and they are paying their monthly fees for the use of the area. We served the applicant with a letter requesting that they apply for a lease agreement to ensure compliance.

They have not specified a requested time for the lease and the area they are interested in is 37m². They have not made it clear in their draft plan what furniture they intend on using however some information is evident from the photographs in the item. The area has been demarcated with a movable fence and there is a space of 1.5m open for pedestrian use of the sidewalk.

The department cannot support the application without full information been submitted.

5. RECOMMENDATIONS

For consideration.

- (a) that the land as indicated on Fig 1 and 2, measuring approximately 37m². in extent, be identified as land not needed to provide the minimum level of basis municipal services during the period that the rights are awarded;
- (b) that the in-principle approval be considered for an initial period of 3 (three) years with the option of a renewal subject to the following conditions:
 - (i) the leased area is zoned as road reserve and can therefore not be enclosed to exclude the public, the municipality or other service providers from accessing the area;
 - (ii) council is indemnified from all possible third party claims;
 - (iii) the municipality or other public service providers must not be prohibited from maintaining, repairing, upgrading and / or installing new public services with-in the leased area. All structures must be removable to gain access to the area as and when required by the municipality or other public service providers. For planned maintenance, repairs, upgrades or new installations, the applicant will be provided with a 5-day written notice to remove all furniture and movable structures in order for the municipality to gain access. For emergency work the applicant will be required to remove all furniture and structures immediately.
 - (iv) no permanent structures will be built on the leased area without the prior written consent of the municipality and only after submitting building plans to the building department for approval;
 - (v) the municipality reserves the right to end the lease agreement when the need arises, i.e. when the leased area is required for municipal or other public services purposes or when the applicant refuses to remove the deck when given notice by the municipality.
- (c) that the Municipal Manager be authorised to determine the rental amount and escalation;
- (d) that the current encroachment agreement be terminated when the lease is concluded;
- (e) that the applicant removes the umbrellas they are currently using as per the images below; and
- (f) that the applicant provide full information for the application before a final decision is taken.

6. DISCUSSION / CONTENT

6.1 Background

6.1.1 Application for encroachment

An application was received from Julian's Café Bar to enter into an agreement with Stellenbosch Municipality in terms of whereof they would be able to use a portion of Council-owned property for outdoor dining purposes. A copy of the application is attached as **APPENDIX 1**, with drawings of the proposed lay-out attached as **APPENDIX 2**. The extent of the encroachment area is approximately 37m².

6.2 DISCUSSION.

6.2.1. Locality and context

Erf 6083, Stellenbosch is located at the 54 Astringa Street, Shop 36, Eikestad Mall, Stellenbosch, as shown on Fig 1. and Fig 2, below as well as photographs of how area is currently being used under Fig 3.

From the photographs it is clear that an area of at least 1.5m on the pavement is left open for pedestrian use. National guidelines for non motorised transport requires unhindered access of 1.5m.

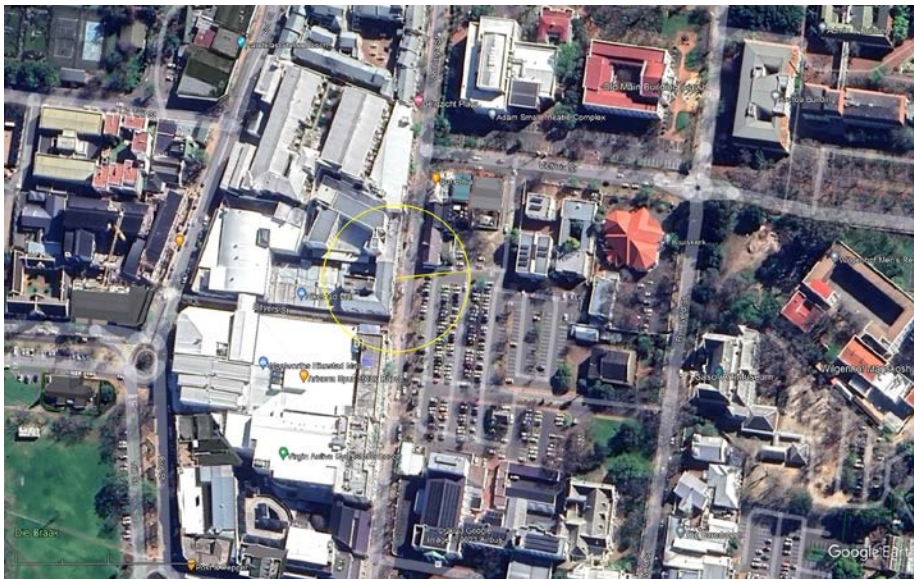


Fig 1. Location and context

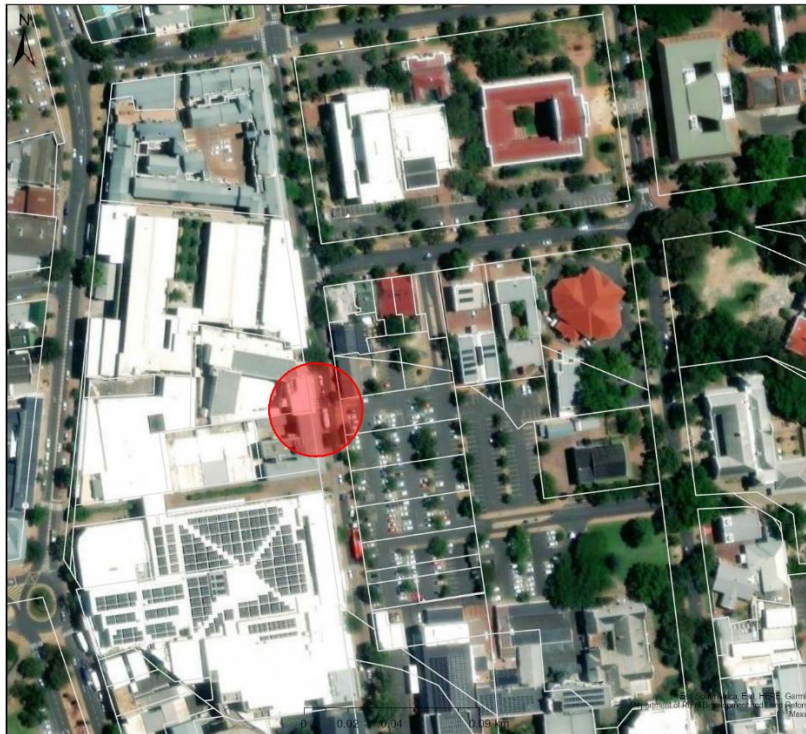


Fig 2 .Extent of area





Fig 3. Current area used for outdoor dining

6.2.2 Legal requirements

6.2.2.1 Municipal Asset Transfer Regulations

In terms of Section 36 of the Municipal Asset Transfer Regulation, when considering an application for an approval of a right to use municipal property, the following needs to be taken into account, *inter alia*:-

- a) whether the capital asset may be required for the municipality's own use during the period for which the right is to be granted;
- b) the extent to which any compensation to be received for the right, together with the estimated value of improvements or enhancements to the asset, will result in a significant financial benefit to the municipality;
- c) the (possible) risks and rewards associated with the use in relation to the municipality's interests;
- d) Any comments received from the local community, and

e) compliance with the legislative regime applicable to the proposed granting of the right.

6.2.2.2 Stellenbosch By-Law on Roads and Streets

In terms of section 4 of the Stellenbosch By-Law on Roads and Streets, no person may, **without prior written permission of the Municipality**, cause an encroachment on a street, sidewalk or road reserve forming part thereof.

6.2.2.3 Property Management policy

Section 9 2.2 deals with deviations from the competitive process, and reads as follows:

The Municipal Council **may dispense with the competitive processes** established in this policy and may enter into a Private Treaty Agreement through any convenient process, which may include direct negotiations, including in response to an unsolicited application, but only in the following circumstances, and only after having advertised Council's intention so to act. Should any objections be received as a consequence of such a notice, such objections first be considered before a final decision is taken to dispense with the competitive process established in this policy. However, should any objections be received from potential, competitive bidders, then a public competitive process must be followed. The advertisement referred to above should also be served on adjoining landowners, where the Municipal Manager is of the opinion that such transaction may have a detrimental effect on such adjoining landowner(s):

(h) where encroachment applications are received from adjoining owners, including applications for outdoor dining permits, subject to approved tariff structure;

6.2.2.4 Outdoor Dining Policy

6.2.2.4.1 Policy Objective

To regulate the use of sidewalks or road reserves for the purpose of outdoor dining and trading, and the temporary use of Public Places for commercial ventures and displays.

6.2.2.4.2 Suitable Locations

Outdoor cafes, restaurants and traders may apply for encroachment where local conditions are favourable for their operation, including areas of Council e.g. road reserves, sidewalks, Public Open Spaces. All applications in locations of a high pedestrian usage, e.g. a retail center, will be required to take pedestrian needs into consideration.

6.2.2.4.3 Assessment Criteria

The most important local conditions to be considered when an application for lease of the road reserve area is received will be those issues pertaining to pedestrian (including pedestrians who are using wheelchairs, baby prams or are visually impaired) and vehicular circulation, convenience and safety of patrons and the general public, existing streetscape elements and residential amenity.

The ground surface must be sufficiently level to support a proper layout and safe use.

6.2.2.4.4 Layout

The style, layout and orientation of furniture should be chosen according to the extent and shape of the available space of the leased area.

The size of an outdoor cafe or placement of any object on the sidewalk will depend on the width of the sidewalk.

6.2.2.4.5 Defined Area

The applicant will be required to define the area with appropriate markers. (ie a single galvanized steel nail inserted in between the pavers, or a paint spot no larger than 5cm in diameter placed at the corners of the defined area in a semi- permanent paint) to the satisfaction of Council.

6.2.2.4.6 Lease Conditions

The applicant must comply with the conditions set out in the lease agreement and this policy. The lease will be for a period of not more than 5 years with an option to renew. These conditions would also generally require that the local environmental factors be reviewed annually and adjustments to the lease agreement may be required.

If the lease agreement that is entered into is seen as not providing long term rights there is no need to advertise the proposed agreement for public input/comments or objections. Should the municipality receive any complaints the lease agreement may be terminated due to the objections.

6.3 Financial Implications

In terms of the current, approved tariff structure for outdoor dining lease agreements a monthly fee of R 5 550.00 (incl. of VAT) is applicable and an escalation of 6% is recommended.

6.4 Legal Implications

The legal implications are discussed under 6.2.2 above. As the proposed term of the lease agreement is three (3) years and when the value of the lease and property is taken into account the asset transfer regulations are not applicable as it is not seen as long-term rights on council property that are being given.

6.5 Staff Implications

No additional staff implications.

6.6 Previous / Relevant Council Resolutions**SPECIAL COUNCIL MEETING: 2022-06-22: ITEM 9.2.5 RESOLVED (nem con)**

- (a) That Council takes note of the intended communication to the public;
- (b) That Council takes note that all restaurants and businesses will be given notice to apply / re-apply for a lease to use council property for outdoor dining purposes; and
- (c) That the approval of the leases of three (3) years and less be delegated to the Municipal Manager for approval.

6.7 Risk Implications

The risks are addressed in the item.

6.8 Comments from Senior Management**6.8.5 Director: Infrastructure Services**

- The Municipality concludes an agreement with the applicant, detailing the conditions of approval.
- Leased area is zoned as road reserve and cannot be enclosed - to exclude the public, the municipality or other services provider from accessing the area.
- Council is indemnified against all possible 3rd party claims.
- The municipality or other public service provider must not be prohibited from maintaining, repairing, upgrading and / or installing new public services with-in the leased area.
- The approved structure must be removable to gain access to the leased area, as and when required by the Municipality or other public service provider.
- For planned maintenance, repairs, upgrades or new installations, the applicant will be provided with a 5-day written notice, to remove the structures for the Municipality or any other public service provider to gain access.
- For emergency works the applicant will be required to remove the structures immediately for the municipality or other public service provider to gain access.
- The municipality reserves the right to end the lease agreement when the need arises, i.e. when the leased space is required for municipal or other public services purposes

6.8.6 Director: Planning and Economic Development

It should be noted that currently the Final Draft Outdoor Dining and Events Overlay Zone, is undergoing a public participation process, of which the closing date for comments is 02 September 2023. In the absence of this overlay zone a suitable land use application must be submitted to evaluate the intended land usage, as the current and proposed land use is not in accordance with the applicable zoning.

6.8.7 Chief Financial Officer

No comments requested.

6.8.8 Director: Community Services

No comments requested.

6.8.5 Municipal Manager

No comments requested.

ANNEXURES: 1. Application**2. Diagram****FOR FURTHER DETAILS CONTACT:**

NAME	Annalene de Beer
POSITION	Director: Corporate Services
DIRECTORATE	CORPORATE SERVICES
CONTACT NUMBERS	021-8088073
E-MAIL ADDRESS	Annalene.debeer@ Stellenbosch.gov.za
REPORT DATE	2023-08-08

ANNEXURE 1



STELLENBOSCH

STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

**APPLICATION FOR LEASE OF MUNICIPAL LAND
APPLICATION FORM**

A: APPLICANT'S DETAILS

Name : Julian's Cafe Bar Pty (Ltd)

Physical address: Shop 36 Eikestad Mall
 43 Andringa street
 Stellenbosch

Postal code:.....

Mailing address:

.....

.....

.....

Postal code:.....

E-mail address: info@Julianscafebar.co.za

Telephone: 021 883 8817

Cell phone: 082 806 1459

B: PROPERTY DETAILS OF APPLICANT

Erf/farm number : 6083

Suburb: Stellenbosch Central

Town: Stellenbosch
C: PROPERTY DETAILS OF LEASE AREA

Erf/farm number : 6083

Suburb: Stellenbosch Central

Town: Stellenbosch

Area of encroachment: 37 .m²

* To be supplemented with a sketch-plan with dimension in m²

D: TYPE OF APPLICATION:

Please mark the appropriate block

For commercial purposes, other than for parking ☒

For commercial parking purposes, ☐

For residential parking purposes ☐

For non-commercial purposes (such as garden purposes, gates, ect) ☐

For projecting structures onto street reserves ☐

For projecting structures onto other council-owned land ☐

Other: please provide description: ☐

Brief description of application: Outdoor dining area

Motivation: We would like to continue with
the encroached area as this has
been a very important area to our
business. We have never had any complaints
as to obstruction of pedestrians and wheelchair
users.

E: LIST OF ATTACHEMENTS AND SUPPORTING DOCUMENTS

Please mark the appropriate box

- | | |
|---|--------------------------|
| Special Power of Attorney, where Applicant is not the owner | ☐ |
| Diagram of proposed area of the lease area | ☐ |
| Letters of consent (affected neighbours) | ☐ |
| Application fee (non-refundable) | ☐ |

I hereby certify that the information supplied in this application form is correct and that I am properly authorized to make this application.

Applicant's signature: C.E. Matthews Date: 15 March 2023

Full name: Charmaine E. Matthews

FOR OFFICIAL USE

- The application was considered onby.....
- The application was

☐	APPROVED
--------------------------	----------

☐	NOT APPROVED
--------------------------	--------------

Conditions (if any):

.....

.....

Applicant was informed of outcome on

.....
SIGNATURE OF RESPONSIBLE OFFICIAL

.....
DATE

Name:.....

***If approved**

☐

Encroachment fee paid

☐

Lease Agreement signed

☐

Agreement/Permit processed on Contract Management System

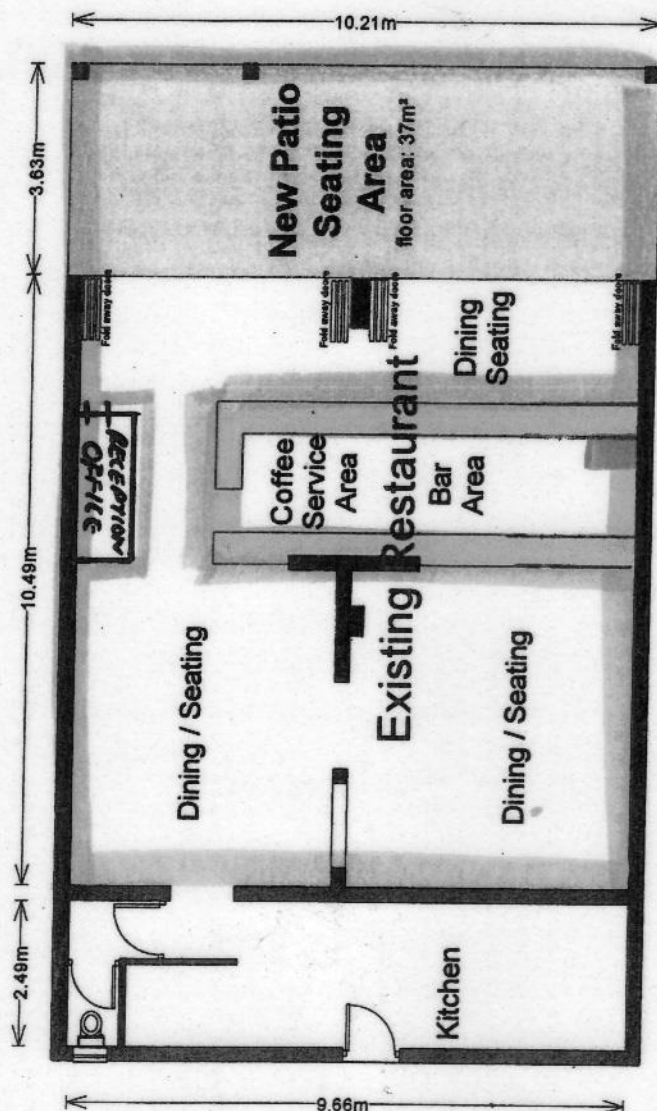
.....
SIGNATURE OF RESPONSIBLE OFFICIAL

.....
DATE

Name:.....

ANNEXURE 2

ANNEXURE -A-



Andringa Street

Quick served / stand

Quick consumed

Drawing:

JULIAN'S CAFE-BAR

ERF 6083, Shop 36 Eikestad Mall,
43 Andringa Street, Stellenbosch

AS-BUILT LAYOUT PLAN



9/12/2015

SCALE 1:100

FILED BY: RECORDING TRIBUNAL

25 AUG 2021

PRESIDENTIAL OFFICER

5.4	PROPOSED LEASE AGREEMENT: ERF 13730 (CNR KRIGE AND DORP STREETS), STELLENBOSCH: KAPSTADT BRAUHAUS
-----	--

Collaborator No:

IDP KPA Ref No:

Meeting Date:

Good Governance

30 August 2023

1. SUBJECT: PROPOSED LEASE AGREEMENT: ERF 13730 (CNR KRIGE AND DORP STREETS), STELLENBOSCH: KAPSTADT BRAUHAUS

2. PURPOSE

To consider an application from Bridgeport No. 79 (Pty) Ltd on behalf of Kapstadt Brauhaus, to enter into a Lease Agreement with Stellenbosch Municipality, in terms whereof they would be able to use a portion of Council-owned property for outdoor dining purposes.

3. DELEGATED AUTHORITY

In terms of the approved System of Delegations the Executive Mayor, in consultation with the Executive Mayoral Committee, has the delegated Authority to consider applications for Lease Agreements, up to a contract value not exceeding R5M and not exceeding a period of 10 years.

The approval of lease agreements of three (3) years and less has been delegated to the Municipal Manager.

4. EXECUTIVE SUMMARY

An application to use a portion of the street reserve for Outdoor Dining purposes has been received from the owner of the building wherein Kapstadt Brauhaus trades situated on erf 13730, Stellenbosch. The application is in line with the provisions /requirements of the Outdoor Dining Policy and is supported by the Engineering Department. Under 6.2.1 are photos showing how area is currently being used. The photos were taken by Contract Management as none was provided by the applicant. The applicant does currently have an encroachment agreement for a portion of the area currently in use, however no agreement for the extension of the deck that was erected in December 2022. They also do not have approved building plans or consent from council for the extension of the deck. The Heritage approval indicated that the greenery must remain open, however they covered the greenery with the deck extension. We served the applicant with a letter requesting that they apply for the outdoor dining lease to ensure compliance.

They have not specified a requested time for the lease and the area they are interested in is 189 m². A space of 1.5m is left open on the sidewalk for use by pedestrians.

The department cannot support the application without compliance with the requirements from planning and Infrastructure Directorates. There is also not unobstructed pedestrian access in Krige Street.

5. RECOMMENDATIONS

- (a) that the land as indicated on Fig 1 and 2, measuring approximately 189 m². in extent, be identified as land not needed to provide the minimum level of basis municipal services during the period that the rights are awarded;
- (b) that the in-principle approval be considered for an initial period of 3 years with the option of a renewal subject to the following conditions:
- (c) that the application to use a portion of Council-owned land for outdoor dining purposes be approved, subject thereto; -
 - (i) The current deck be amended to be in line with the approval from the Heritage Council;
 - (ii) Building plans be submitted for approval by the building department;
 - (iii) Council is indemnified against all possible 3rd party claims;
 - (iv) The municipality or other public services providers must not be prohibited from maintaining, repairing, upgrading and / or installing new public services within the leased area. The applicant will be responsible for taking the deck down and re-instating same at their own costs. For planned maintenance and repairs the applicant will be provided with a 5-day written notice to remove the deck for the municipality and any other public service provider to gain access. For emergency work the applicant will be required to remove everything immediately for the municipality or other public service providers to gain access;
 - (v) The municipality reserves the right to end the lease agreement when the need arises, i.e. when the leased area is required for municipal or other public services purposes or when the applicant refuses the municipality or other public services access as required.
- (d) that the municipal Manager be authorised to determine the rental amount and escalation.
- (e) that the encroachment agreement be terminated when the lease agreement is in place.

6. DISCUSSION / CONTENT**6.1 Background****6.1.1 Application for Lease**

An application was received from Bridgeport No.79 (Pty) Ltd, the registered owners of Erf 13730 from where Kapstadt Brauhaus currently trades to enter into an agreement with Stellenbosch Municipality in terms whereof they would be able to use a portion of Council-owned property for outdoor dining purposes. A copy of the application is attached as **APPENDIX 1**, with drawings of the proposed lay-out attached hereto as **APPENDIX 2**. The extent of the encroachment area is approximately 189m².

6.2 DISCUSSION

6.2.1. Locality and context

Erf 13730, Stellenbosch is located on the corner of Krige and Church Streets, Stellenbosch, as shown on Fig 1.and Fig 2, below. Fig 3 is photographs of the current area being used for outdoor dining purposes.



Fig 1. Location and context



Fig 2 .Extent of area





Fig 3. Current area being used for Outdoor Dining purposes

6.2.2 Legal requirements

6.2.2.1 Municipal Ordinance, No 20/1974

In terms of Section 127 (1) of the Municipal Ordinance, No 20 of 1974, when any immovable property owned by a municipality is encroached upon, the council may take steps to regularize such encroachment.

A council may further, subject to compliance with the provisions of Section 137, reduce the extent of a public place which is encroached upon by the extent of the encroachment.

Section 137 deals with the process/procedures to be followed before closure of a public place. Section 138 authorise a Council, without complying with the provisions of Section 137 (*supra*), to **temporary** close a public place, *inter alia*, “for any reason which, in the opinion of the Council, renders the temporary closing of such public place necessary or desirable”.

6.2.2.2 Municipal Asset Transfer Regulations

In terms of Section 36 of the Municipal Asset Transfer Regulation, when considering an application for an approval of a right to use municipal property, the following needs to be taken into account, *inter alia*:-

- a) whether the capital asset may be required for the municipality’s own use during the period for which the right is to be granted;
- b) the extent to which any compensation to be received for the right, together with the estimated value of improvements or enhancements to the asset, will result in a significant financial benefit to the municipality;
- c) the (possible) risks and rewards associated with the use in relation to the municipality’s interests;
- d) Any comments received from the local community, and
- e) compliance with the legislative regime applicable to the proposed granting of the right.

6.2.2.3 Stellenbosch By-Law on Roads and Streets

In terms of section 4 of the Stellenbosch By-Law on Roads and Streets, no person may, **without prior written permission of the Municipality**, cause an encroachment on a street, sidewalk or road reserve forming part thereof.

6.2.2.4 Property Management policy

Section 9 2.2 deals with deviations from the competitive process, and reads as follows:

The Municipal Council **may dispense with the competitive processes** established in this policy and may enter into a Private Treaty Agreement through any convenient process, which may include direct negotiations, including in response to an unsolicited application, but only in the following circumstances, and only after having advertised Council’s intention so to act. Should any objections be received as a consequence of such a notice, such objections first be considered before a final decision is taken to dispense with the competitive process established in this policy. However, should any objections, be received from potential, competitive bidders, then a public competitive process must be followed. The advertisement referred to above should also be served on adjoining landowners, where the Municipal Manager is of the opinion that such transaction may have a detrimental effect on such adjoining land owner(s):

- (h) where encroachment applications are received from adjoining owners, including applications for outdoor dining permits, subject to approved tariff structure.

6.2.2.4 Outdoor Dining Policy**6.2.2.4.1 Policy Objective**

To regulate the use of sidewalks or road reserves for the purpose of outdoor dining and trading, and the temporary use of Public Places for commercial ventures and displays.

6.2.2.4.2 Suitable Locations

Outdoor cafes, restaurants and traders may apply for lease where local conditions are favourable for their operation, including areas of Council e.g. road reserves, sidewalks, Public Open Spaces. All applications in locations of high pedestrian usage, e.g. a retail center, will be required to take pedestrian needs into consideration.

6.2.2.4.3 Assessment Criteria

The most important local conditions to be considered when an application for lease of the road reserve area is received will be those issues pertaining to pedestrian (including pedestrians who are using wheelchairs, baby prams or are visually impaired) and vehicular circulation, convenience and safety of patrons and the general public, existing streetscape elements and residential amenity.

The ground surface must be sufficiently level to support a proper layout and safe use.

6.2.2.4.4 Layout

The style, layout and orientation of furniture should be chosen according to the extent and shape of the available space of the encroachment area.

The size of an outdoor cafe or placement of any object on the sidewalk will depend on the width of the sidewalk.

6.2.2.4.5 Defined Area

The applicant will be required to define the area with appropriate markers. (ie a single galvanized steel nail inserted in between the pavers, or a paint spot no larger than 5cm in diameter placed at the corners of the defined area in a semi- permanent paint) to the satisfaction of Council.

6.2.2.4.6 Lease Conditions

The applicant must comply with the conditions set out in the lease agreement and this policy. The lease will be for a period of not more than 5 years with an option to renew. These conditions would also generally require that the local environmental factors be reviewed annually and adjustments to the lease agreement may be required.

If the lease agreement that is entered into is seen as not providing long-term rights there is no need to advertise the proposed agreement for public input/comments or objections. Should the municipality receive any complaints the lease agreement may be terminated due to the objections.

6.5 Financial Implications

In terms of the current, approved tariff structure for outdoor dining lease agreements a fee of R150 m² is charged on a monthly basis which means a monthly fee of R 28 350.00 (incl. of VAT) is applicable and an escalation of 6% is recommended.

6.6 Legal Implications

The legal implications are discussed under 6.2.2 above. As the proposed term of the lease agreement is three (3) years and when the value of the lease and property is taken into account the asset transfer regulations are not applicable as it is not seen as long-term rights on council property that are being given.

6.7 Staff Implications

No additional staff implications.

6.8 Previous / Relevant Council Resolutions**SPECIAL COUNCIL MEETING: 2022-06-22: ITEM 9.2.5 RESOLVED (nem con)**

- (a) That council takes note in the intended communication to the public;
- (b) That council takes note that all restaurants and businesses will be given notice to apply / re-apply for a lease to use council property for outdoor dining purposes; and
- (c) That the approval of the lease of three (3) years and less be delegated to the Municipal Manager for approval.

6.9 Risk Implications

The risks are addressed in the item.

6.10 Comments from Senior Management**6.10.1 Director: Infrastructure Services**

- The Municipality concludes an agreement with the applicant, detailing the conditions of approval.
- Leased area is zoned as road reserve and cannot be enclosed - to exclude the public, the municipality or other services provider from accessing the area.
- During its operational phase, the deck must not hinder pedestrian movements on the sidewalk.
- The deck remains the property of the applicant, the applicant must:
 - Attend to maintenance and repairs of the deck.
 - Ensure public risk and liability insurance is in place to cover 3rd party claims.
 - Council is indemnified against all possible 3rd party claims.
- The municipality or other public service provider must not be prohibited from maintaining, repairing, upgrading and / or installing new public services with-in the leased area.

- The desk or portion of the deck must be removable to gain access to the leased area, as and when required by the Municipality or other public service provider.
- For planned maintenance, repairs, upgrades or new installations, the applicant will be provided with a 5-day written notice, to remove the deck or portion of the deck for the Municipality or any other public service provider to gain access.
- For emergency works the applicant will be required to remove the deck or portion of the deck immediately for the municipality or other public service provider to gain access.
- The applicant to re-install the deck once the works on the public services are complete.
- The cost for the removal and re-installation for the deck will be for the account of the applicant.
- The municipality reserves the right to end the lease agreement when the need arises, i.e. when the leased space is required for municipal or other public services purposes.

6.10.2 Director: Planning and Economic Development

It should be noted that currently the Final Draft Outdoor Dining and Events Overlay Zone, is undergoing a public participation process, of which the closing date for comments is 02 September 2023. In the absence of this overlay zone a suitable land use application must be submitted to evaluate the intended land usage, as the current and proposed land use is not in accordance with the applicable zoning.

They are not in compliance with the requirements that Heritage Western Cape has set.

6.10.3 Chief Financial Officer

No comments requested.

6.10.4 Director: Community Services

No comments requested.

6.10.5 Municipal Manager

No comments requested.

ANNEXURES: 1. Application**2. Diagram**

FOR FURTHER DETAILS CONTACT:

NAME	Annalene de Beer
POSITION	<i>Director: Corporate Services</i>
DIRECTORATE	CORPORATE SERVICES
CONTACT NUMBERS	021-8088073
E-MAIL ADDRESS	Annalene.debeer@ Stellenbosch.gov.za
REPORT DATE	2023-08-18

ANNEXURE 1



STELLENBOSCH
STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

APPLICATION FOR LEASE OF MUNICIPAL LAND APPLICATION FORM

A: APPLICANT'S DETAILS

Name : Bridgeport No 79 Ltd.....

Physical address: 1 st Floor Oude Bank Building Cnr Church and Bird
Street

Postal code:.....7600.....

Mailing address: 1 st Floor Oude Bank Building Cnr Church and Bird
Street

Postal code:.....7600.....

E-mail address: mariska@foundationcapital.co.za

Telephone:

Cell phone: ...079 180 7701.....

B: PROPERTY DETAILS OF APPLICANT

Erf/farm number : 13730.....

Suburb: Stellenbosch.....

Town: ...Cape Town

C: PROPERTY DETAILS OF LEASE AREA

Erf/farm number : Road reserve adjacent to erf 13730, Dorp Str

Suburb: Stellenbosch.....

Town: Cape Town.....

Area of encroachment:m²

* To be supplemented with a sketch-plan with dimension in m²

D: TYPE OF APPLICATION:

Please mark the appropriate block

- | | |
|--|-------------------------------------|
| For commercial purposes, other than for parking | ☒ |
| For commercial parking purposes, | ☐ |
| For residential parking purposes | ☐ |
| For non-commercial purposes (such as garden purposes, gates,ect) | ☐ |
| For projecting structures onto street reserves | ☐ |
| For projecting structures onto other council-owned land | ☐ |
| Other: please provide description: | ☐ |

Brief description of application: Use of timber deck for outdoor dining and road reserve

.....

Motivation: It is viable to extend this space as it provides safety to the public regarding the raised deck and handrail.

Economical to be able to operate the business under one roof.

Use of timber deck for outdoor dining and road reserve.

.....

E: LIST OF ATTACHEMENTS AND SUPPORTING DOCUMENTS

Please mark the appropriate box

- | | |
|---|--------------------------|
| Special Power of Attorney, where Applicant is not the owner | ☐ |
| Diagram of proposed area of the lease area | ☐ |
| Letters of consent (affected neighbours) | ☐ |
| Application fee (non-refundable) | ☐ |

I hereby certify that the information supplied in this application form is correct and that I am property authorized to make this application.

Applicant's signature:  Date: 23 / 02 / 2023

Full name: ... Nico van der Westhuizen

FOR OFFICIAL USE

- The application was considered onby.....
- The application was

☐	APPROVED
--------------------------	----------

☐	NOT APPROVED
--------------------------	--------------

Conditions (if any):

.....

.....

Applicant was informed of outcome on

.....
SIGNATURE OF RESPONSIBLE OFFICIAL **DATE**

Name:.....

***If approved**

- ☐ Encroachment fee paid
- ☐ Lease Agreement signed
- ☐ Agreement/Permit processed on Contract Management System

.....
SIGNATURE OF RESPONSIBLE OFFICIAL **DATE**

Name:.....

Title	BP79 - APPLICATION MUN LAND
File name	Application form municipal land.doc
Document ID	8ec8a2583faea06f329ce647c8833464e085967e
Audit trail date format	DD / MM / YYYY
Status	● Signed

Document history



SENT

23 / 02 / 2023

13:55:59 UTC+2

Sent for signature to Nico van der Westhuizen
(nico@foundationcapital.co.za) from marike@finleys.co.za
IP: 209.203.14.154



VIEWED

23 / 02 / 2023

14:31:00 UTC+2

Viewed by Nico van der Westhuizen
(nico@foundationcapital.co.za)
IP: 197.185.114.48



SIGNED

23 / 02 / 2023

14:32:37 UTC+2

Signed by Nico van der Westhuizen
(nico@foundationcapital.co.za)
IP: 197.185.114.48



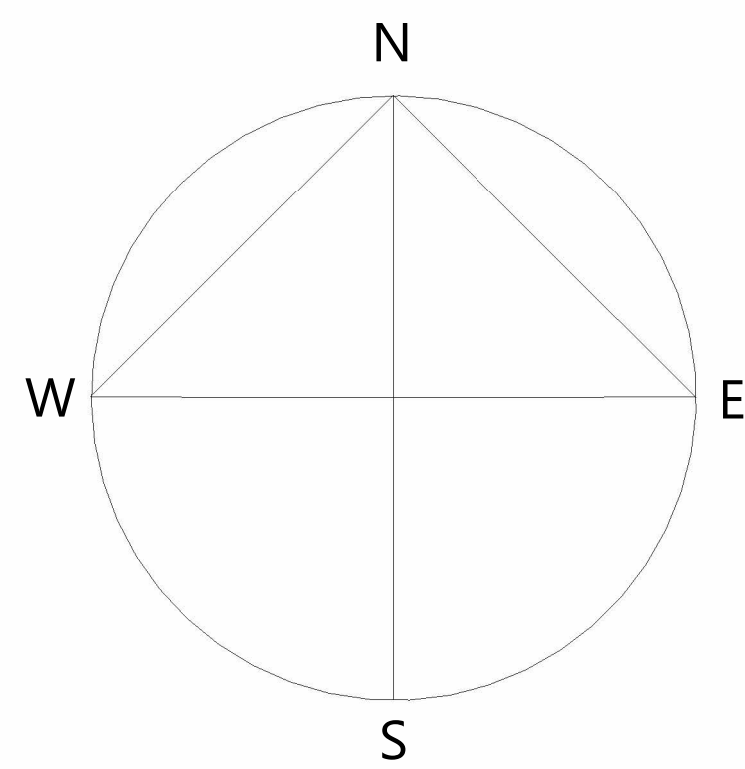
COMPLETED

23 / 02 / 2023

14:32:37 UTC+2

The document has been completed.

ANNEXURE 2



1 A-Site Plan - Lease Area
1 : 100

Email: info@7storeys.com
Website: www.7storeys.com
Telephone: 021 813 9644

This drawing is the sole property of 7Storeys and may not be copied or used in part or whole without written permission. Copyright reserved.

7STOREYS
Architecture | Quantity
Surveying | Construction |
Project Management

No.	Description	Date

Bridgeport No 79 (Pty) Ltd
Signature
PW Van Heerden_T1094
Signature

Sheet Name: **Site Plan - Lease Area**
Bridgeport No 79 (Pty) Ltd
Proposed Lease Area on Erf 13730 - Stellenbosch

Project No.: **KB-2023-02**
Drawn by: **Alexander Conradie**
Checked by: **PW Van Heerden_T1094**

Sheet No. **A101-A**
Print Date: **2023/05/05 11:33:43**
Prj. Issue Date: **2023/05/05**
Scale **1 : 100**

5.5	PROPOSED LEASE AGREEMENT: ERF 547 (54 DORP STREET, STELLENBOSCH): CASA CERVEZA
-----	---

Collaborator No:

IDP KPA Ref No:

Meeting Date:

Good Governance

30 August 2023

1. SUBJECT: PROPOSED LEASE AGREEMENT: ERF 547 (54 DORP STREET, STELLENBOSCH): CASA CERVEZA

2. PURPOSE

To consider an application from Casa Cerveza, to enter into a Lease Agreement with Stellenbosch Municipality, in terms of whereof they would be able to use a portion of Council-owned property for outdoor dining purposes.

3. DELEGATED AUTHORITY

In terms of the approved System of Delegations the Executive Mayor, in consultation with the Executive Mayoral Committee, has the delegated Authority to consider applications for Lease Agreements, up to a contract value not exceeding R5M and not exceeding a period of 10 years.

The Municipal Manager has the delegated authority to enter into lease agreements of three (3) years or less.

4. EXECUTIVE SUMMARY

An application to use a portion of the street reserve for Outdoor Dining purposes has been received from the owner of Casa Cerveza operating from Erf 547, Stellenbosch. The application is in line with the provisions /requirements of the Outdoor Dining Policy and is supported by the Engineering Department. Under 6.2.1 are photographs showing how area is currently being used. The contract management unit took the photographs to assist Mayco in the decision-making process. The applicant does not currently have any lease agreement or previous encroachment agreement with the municipality and is therefore not paying any rent for current use. We served the applicant with a letter requesting that they apply for the outdoor dining lease to ensure compliance.

They have not specified a requested time for the lease and the area they are interested in is 59m². The area is specified on a diagram however the furniture is not specified. Some can be seen on the photographs in the item. The diagram does indicate that an area of 1.8m will be left open on the sidewalk for pedestrian use. This is not what is currently the situation as per the photographs below – the area open for pedestrian is not 1.8 meters at the moment. They have also enclosed the electrical box which is now lawful.

The department cannot support the application in the current form and usage as per the photographs shown.

5. RECOMMENDATIONS

For Consideration:

- (a) that the land as indicated on Fig 1 and 2, measuring approximately 59m². in extent, be identified as land not needed to provide the minimum level of basic municipal services during the period that the rights are awarded;
- (b) that the application to use a portion of Council-owned land for outdoor dining purposes be approved, subject thereto; -
 - 1. The applicant gets approval from the Heritage Council;
 - 2. Building plans be submitted for approval by the building department;
 - 3. Council is indemnified against all possible 3rd party claims;
 - 4. The municipality or other public services providers must not be prohibited from maintaining, repairing, upgrading and / or installing new public services within the leased area. The applicant will be responsible for taking the deck down and re-instating same at their own costs. For planned maintenance and repairs the applicant will be provided with a 5-day written notice to remove the deck for the municipality and any other public service provider to gain access. For emergency work the applicant will be required to remove everything immediately for the municipality or other public service providers to gain access;
 - 5. The municipality reserves the right to end the lease agreement when the need arises, i.e. when the leased area is required for municipal or other public services purposes or when the applicant refuses the municipality or other public services access as required.
 - 6. That an application for the deck in accordance with the planning legislation be submitted for approval;
 - 7. That an unobstructed area of 1,5 meters be ensured for pedestrian use
- (c) that the municipal Manager be authorised to determine the rental amount and escalation.
- (d) that an approval be considered for an initial period 3 (three) years with an option to renew.

6. DISCUSSION / CONTENT**6.1 Background****6.1.1 Application for lease agreement**

An application was received from Casa Cerveza to enter into an agreement with Stellenbosch Municipality in terms whereof they would be able to use a portion of Council-owned property for outdoor dining purposes. A copy of the application is attached as **APPENDIX 1**, with drawings of the proposed lay-out attached hereto as **APPENDIX 2**. The extent of the encroachment area is approximately 59m².

6.2 DISCUSSION

6.2.1. Locality and context

Erf 547, Stellenbosch is located at 54 Dorp Street, Stellenbosch, as shown on Fig 1. and Fig 2, below as well as photographs of how area is currently used under Fig 3.

In their application they indicate that an area of 1.8m next to the already constructed wooden deck will be kept open for pedestrian use. National guidelines for non-motorized transport requires unhindered access of 1.5m.

The wooden deck was constructed around a municipal electrical box.



Fig 1. Location and context



Fig 2 .Extent of area







Fig 3. Current area being used for outdoor dining

6.2.2 Legal requirements

6.2.2.1 Municipal Asset Transfer Regulations

In terms of Section 36 of the Municipal Asset Transfer Regulation, when considering an application for an approval of a right to use municipal property, the following needs to be taken into account, *inter alia*:-

- a) whether the capital asset may be required for the municipality's own use during the period for which the right is to be granted;
- b) the extent to which any compensation to be received for the right, together with the estimated value of improvements or enhancements to the asset, will result in a significant financial benefit to the municipality;
- c) the (possible) risks and rewards associated with the use in relation to the municipality's interests;
- d) Any comments received from the local community, and
- e) compliance with the legislative regime applicable to the proposed granting of the right.

6.2.2.2 Stellenbosch By-Law on Roads and Streets

In terms of section 4 of the Stellenbosch By-Law on Roads and Streets, no person may, **without prior written permission of the Municipality**, cause an encroachment on a street, sidewalk or road reserve forming part thereof.

6.2.2.3 Property Management policy

Section 9 2.2 deals with deviations from the competitive process, and reads as follows:

The Municipal Council **may dispense with the competitive processes** established in this policy and may enter into a Private Treaty Agreement through any convenient process, which may include direct negotiations, including in response to an unsolicited application, but only in the following circumstances, and only after having advertised Council's intention so to act. Should any objections be received as a consequence of such a notice, such objections first be considered before a final decision is taken to dispense with the competitive process established in this policy. However, should any objections be received from potential, competitive bidders, then a public competitive process must be followed. The advertisement referred to above should also be served on adjoining landowners, where the Municipal Manager is of the opinion that such transaction may have a detrimental effect on such adjoining landowner(s):

(h)where encroachment applications are received from adjoining owners, including applications for outdoor dining permits, subject to approved tariff structure.

6.2.2.4 Outdoor Dining Policy**6.2.2.4.1 Policy Objective**

To regulate the use of sidewalks or road reserves for the purpose of outdoor dining and trading, and the temporary use of Public Places for commercial ventures and displays.

6.2.2.4.2 Suitable Locations

Outdoor cafes, restaurants and traders may apply for lease agreements where local conditions are favourable for their operation, including areas of Council e.g. road reserves, sidewalks, Public Open Spaces. All applications in locations of high pedestrian usage, e.g. a retail center, will be required to take pedestrian needs into consideration.

6.2.2.4.3 Assessment Criteria

The most important local conditions to be considered when an application for lease of the road reserve area is received will be those issues pertaining to pedestrian (including pedestrians who are using wheelchairs, baby prams or are visually impaired) and vehicular circulation, convenience and safety of patrons and the general public, existing streetscape elements and residential amenity. The ground surface must be sufficiently level to support a proper layout and safe use.

6.2.2.4.4 Layout

The style, layout and orientation of furniture should be chosen according to the extent and shape of the available space of the leased area.

The size of an outdoor cafe or placement of any object on the sidewalk will depend on the width of the sidewalk.

6.2.2.4.5 Defined Area

The applicant will be required to define the area with appropriate markers. (ie a single galvanized steel nail inserted in between the pavers, or a paint spot no larger than 5cm in diameter placed at the corners of the defined area in a semi- permanent paint) to the satisfaction of Council.

6.2.2.4.6 Lease Conditions

The applicant must comply with the conditions set out in the lease agreement and this policy. The lease will be for a period of not more than 5 years with an option to renew. These conditions would also generally require that the local environmental factors be reviewed annually and adjustments to the lease agreement may be required.

If the lease agreement that is entered into is seen as not providing long-term rights there is no need to advertise the proposed agreement for public input/comments or objections. Should the municipality receive any complaints the lease agreement may be terminated due to the objections.

6.3 Financial Implications

In terms of the current, approved tariff structure for outdoor dining lease agreements a monthly fee of R 8850.00 (incl. of VAT) is applicable and an escalation of 6% is recommended.

6.4 Legal Implications

The legal implications are discussed under 6.2.2 above. As the proposed term of the lease agreement is three (3) years and when the value of the lease and property is taken into account the asset transfer regulations are not applicable as it is not seen as long-term rights on council property that are being given.

6.5 Staff Implications

No additional staff implications.

6.6 Previous / Relevant Council Resolutions

SPECIAL COUNCIL MEETING: 2022-06-22: ITEM 9.2.5 RESOLVED (nem con)

- (a) That Council takes note of the intended communication to the public;
- (b) That Council takes note that all restaurants and businesses will be given notice to apply/re-apply for a lease to use council property for outdoor dining purposes; and

-
- (c) That the approval of the leases of three (3) years and less be delegated to the Municipal Manager for approval.

6.7 Risk Implications

The risks are addressed in the item.

6.8 Comments from Senior Management

6.8.1 Director: Infrastructure Services

- The Municipality concludes an agreement with the applicant, detailing the conditions of approval.
- Leased area is zoned as road reserve and cannot be enclosed - to exclude the public, the municipality or other services provider from accessing the area.
- During the construction phase as well as during its operational phase, the deck must not hinder pedestrian movements on the sidewalk.
- The deck remains the property of the applicant, the applicant must:
 - Attend to maintenance and repairs of the deck.
 - Ensure public risk and liability insurance is in place to cover 3rd party claims.
 - Council is indemnified against all possible 3rd party claims.
- The municipality or other public service provider must not be prohibited from maintaining, repairing, upgrading and / or installing new public services with-in the leased area.
- The deck must be constructed and installed in manner that aids removal and re-installation as and when required.
- The desk or portion of the deck must therefore be removable to gain access to the leased area, as and when required by the Municipality or other public service provider.
- For planned maintenance, repairs, upgrades or new installations, the applicant will be provided with a 5-day written notice, to remove the deck or portion of the deck for the Municipality or any other public service provider to gain access.
- For emergency works the applicant will be required to remove the deck or portion of the deck immediately for the municipality or other public service provider to gain access.
- The applicant to re-install the deck once the works on the public services are complete.
- The cost for the removal and re-installation for the deck will be for the account of the applicant.
- The municipality reserves the right to end the lease agreement when the need arises, i.e. when the encroached space is required for municipal or other public services purposes.

6.8.2 Director: Planning and Economic Development

It should be noted that currently the Final Draft Outdoor Dining and Events Overlay Zone, is undergoing a public participation process, of which the closing date for comments is 02 September 2023. In the absence of this overlay zone a suitable land use application must be submitted to evaluate the intended land usage, as the current and proposed land use is not in accordance with the applicable zoning. Application for the approval of the deck is required.

6.8.3 Chief Financial Officer

No comments required.

6.8.4 Director: Community Services

No comments required.

6.8.5 Municipal Manager

No comments required.

ANNEXURES: 1. Application**2. Diagram****FOR FURTHER DETAILS CONTACT:**

NAME	Annalene de Beer
POSITION	Director: Corporate Services
DIRECTORATE	CORPORATE SERVICES
CONTACT NUMBERS	021-8088073
E-MAIL ADDRESS	Annalene.debeer@ Stellenbosch.gov.za
REPORT DATE	2023/08/08

ANNEXURE 1



STELLENBOSCH
STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

Date: 21/02/2023

TO WHOM IT MAY CONCERN

Dear Sir / Madam

**POLICY ON OUTDOOR DINING, TRADING AND THE USE OF PUBLIC PLACES FOR
COMMERCIAL TRADING AND DISPLAY**

Stellenbosch is a unique town. Residents, Students, Local visitors and International Tourists alike enjoy the variety of restaurants, cafes, wine bars and coffee shops that are on offer. Restaurants spilling onto sidewalks and patrons enjoying meals and drinks beneath giant oak tree canopies have become synonymous with our town. As a municipality, we fully embrace the uses and opportunities that outdoor dining brings, and we want to work with Business Owners to preserve this unique character. In the same vein we want to ensure that everyone, especially people with limited mobility, can make use of sidewalks safely.

It has however become prudent for the Municipality to standardise the outdoor dining operations to ensure that everyone operates within the confines of the law. Whereby all businesses that offer outdoor dining must apply and re-apply for a lease of the space they are using for their outdoor dining.

This approach will standardise the approval process of the leases and replace the current encroachments. The Municipality strives to create an environment that is conducive to economic activity while at the same time addressing all the current violations. The current encroachment approach is outdated and not in compliance with the latest legislation.

To give effect to this, the municipality has put in place the following measures as it relates to businesses who offer outdoor dining options:

- All businesses that use the sidewalk (Municipal property) for outdoor dining or the display of goods for sale must apply for a lease for the area they use or want to use.
- All businesses in the CBD that are participating in outdoor dining or the selling of goods on the sidewalk will receive a letter from the Municipality shortly.

CURRENT ENCROACHMENTS:

- Business Owners who are presently in possession of an approved Encroachment Agreement and who applies within 20 days after the receipt of the letter may continue with the outdoor dining use until the lease application has been considered.

ENCROACHMENT IN PROCESS:

- Business Owners who have applied for an encroachment but are not in possession of an approved encroachment agreement must re-apply for a lease. These Business Owners will be allowed to continue with the current use until the lease application has been processed.

ILLEGAL ENCROACHMENTS:

- Business Owners who have not applied on or before 28 February 2023 and are presently not in possession of an approved agreement, but are operating nevertheless, must apply within 30 days and must cease all operations until the lease application has been considered.
- All new establishments intending to operate an outdoor dining facility or sell goods from outside their shops must apply before starting to operate such an outdoor dining / shopping facility.
- Any business owner who does not apply within the 30 days' time frame will have to cease their operations with immediate effect.
- Please note that application will require at least a sketch plan of how the outdoor space will be used and need to be clearly demarcated to stop spilling over the area agreed on.



STELLENBOSCH
STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

APPLICATION FOR LEASE OF MUNICIPAL LAND APPLICATION FORM

A: APPLICANT'S DETAILS

Name : Casa Cerveza

Physical address: 54 Dorp Street
Stellenbosch

Postal code: 7600

Mailing address: As Above

Postal code:

E-mail address: info@casacerveza.co.za

Telephone: 081 764 9215

Cell phone: As Above

B: PROPERTY DETAILS OF APPLICANT

Erf/farm number : SB 547

Suburb: Stellenbosch Central

Town: Stellenbosch

C: PROPERTY DETAILS OF LEASE AREA

Erf/farm number : SB 547

Suburb: Stellenbosch Central

Town: Stellenbosch

Area of encroachment: 59 .m²

* To be supplemented with a sketch-plan with dimension in m²

D: TYPE OF APPLICATION:

Please mark the appropriate block

For commercial purposes, other than for parking

☒

For commercial parking purposes,

☐

For residential parking purposes

☐

For non-commercial purposes (such as garden purposes, gates, ect)

☐

For projecting structures onto street reserves

☐

For projecting structures onto other council-owned land

☐

Other: please provide description:

☐

Brief description of application: The temporary timber deck is a beautiful part of Casa Gerveze and is used for clients to enjoy Stellenbosch outdoors

Motivation: We have done all the applications and submitted all plans to council. The deck is not an eyesore and we believe complies with all plans etc

- If any structure is built or intended to be built on the area it will require approved building plans.
- All Business Owners must ensure that the intended encroachment area complies with zoning regulations.
- No advertising board can be placed on pavements.

Business owners must ensure that they operate within the approved area as illegal encroachments will be addressed going forward.

It should be emphasised that this process is intended to promote better outdoor experience, limit illegal activities and to ensure fair competition amongst businesses.

Attached hereto is an application form to apply for a lease of municipal land. Kindly complete the form and email to Yolande.vandenBerg@ Stellenbosch.gov.za or hand deliver to NPK Building, cnr Ryneveld and Plein Streets, Stellenbosch for attention Property Management. Please also direct queries in this regard to same.

Yours faithfully



.....
HEAD: CONTRACT MANAGEMENT
YOLANDE VAN DEN BERG

Yolande.vandenberg@ Stellenbosch.gov.za

Tel: 021 808 8073

.....

E: LIST OF ATTACHEMENTS AND SUPPORTING DOCUMENTS

Please mark the appropriate box

Special Power of Attorney, where Applicant is not the owner

☐

Diagram of proposed area of the lease area

☒

Letters of consent (affected neighbours)

☐

Application fee (non-refundable)

☐

I hereby certify that the information supplied in this application form is correct and that I am properly authorized to make this application.

Applicant's signature:

Date: 14/03/2023

Full name: Christopher Norton

FOR OFFICIAL USE

- The application was considered onby.....
- The application was

☐	APPROVED
--------------------------	-----------------

☐	NOT APPROVED
--------------------------	---------------------

Conditions (if any):

.....

.....

Applicant was informed of outcome on

.....
SIGNATURE OF RESPONSIBLE OFFICIAL

.....
DATE

Name:.....

***If approved**

- ☐ Encroachment fee paid
- ☐ Lease Agreement signed
- ☐ Agreement/Permit processed on Contract Management System

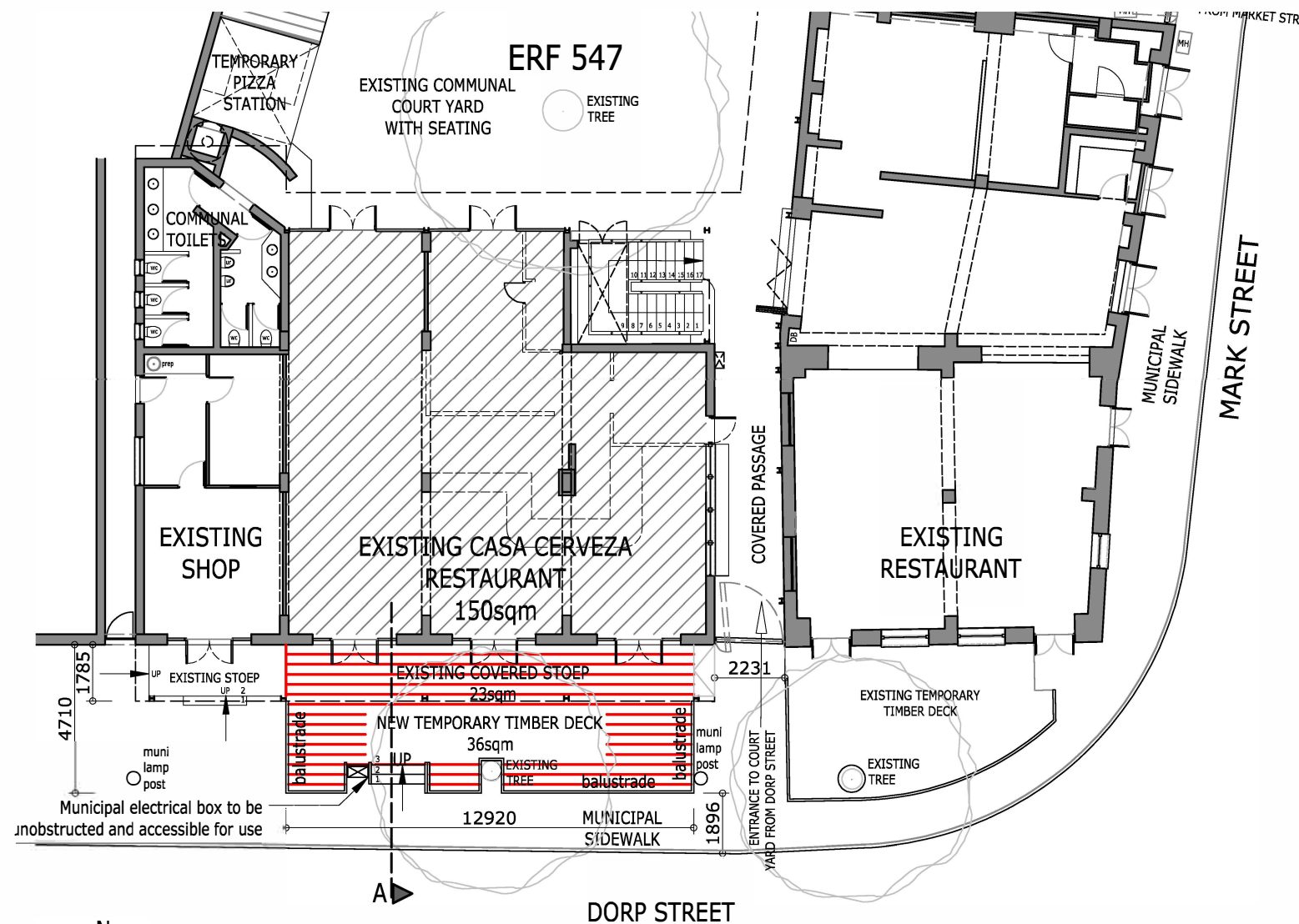
.....
SIGNATURE OF RESPONSIBLE OFFICIAL

.....
DATE

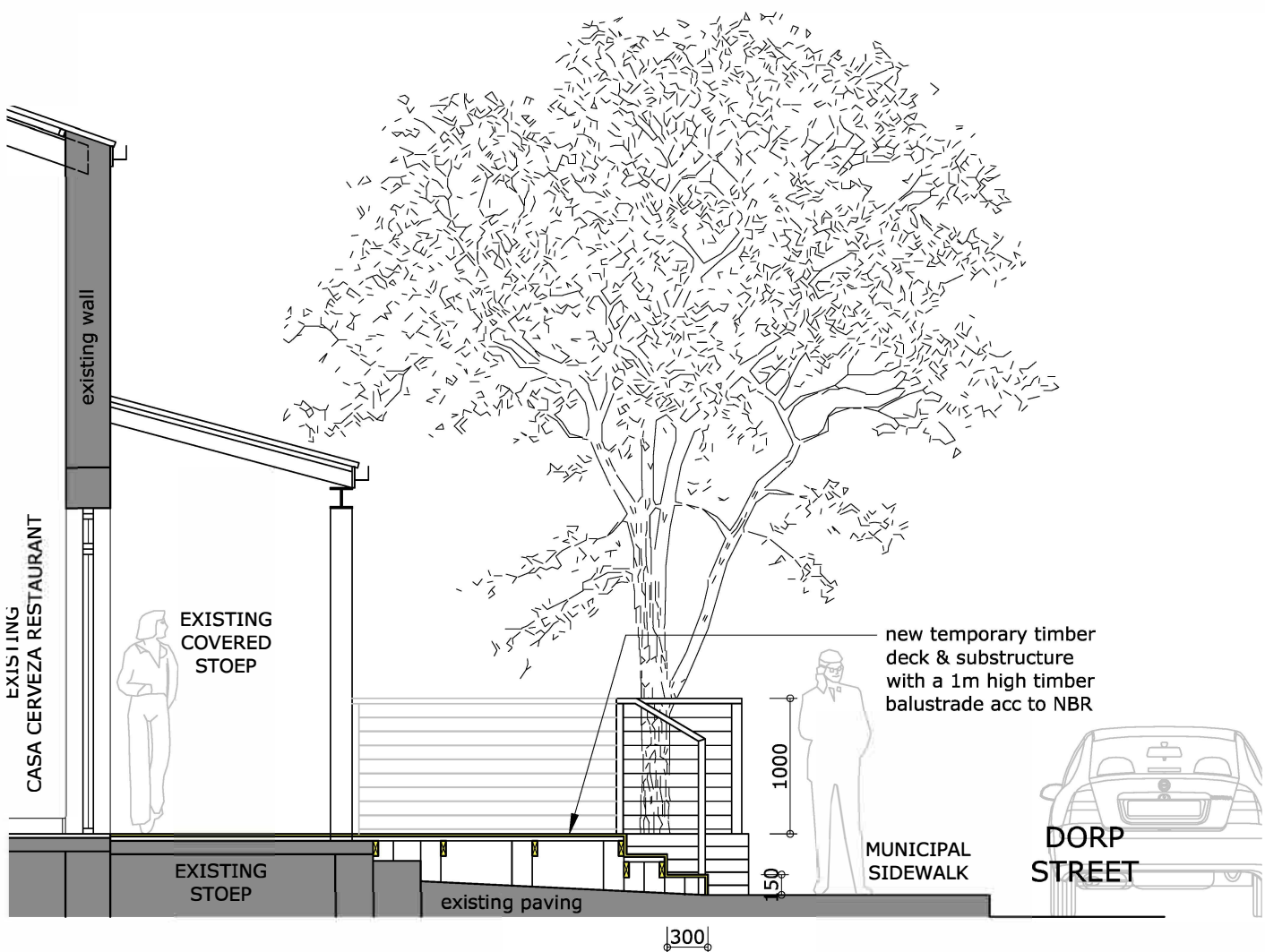
Name:.....

ANNEXURE 2

COPYRIGHT NOTICE
COPYRIGHT SUBSISTS IN THIS DRAWING. THE PERSON OR ENTITY WHOS NAME APPEARS IN THE TITLE BLOCK OF THIS DRAWING, IS HEREBY GRANTED A NON-EXCLUSIVE LIENSE TO USE, DISPLAY, PRINT AND/ OR REPRODUCE THIS DRAWING TO THE EXTENT NECESSARY TO CARRY OUT AND COMPLETE THE PROJECT DESCRIBED IN THE TITLE BLOCK OF THIS DRAWING.



PLAN LAYOUT
1:200



SECTION A-A
1:50

DOXAH
ARCHITECTURE

info@doxah.co.za
18 Van Ryneveld Street,
Strand, 7140.
079 692 6128

Henry Enslin_PrArch44336682
henry@doxah.co.za

PROJECT TITLE	Casa Cerveza Restaurant	Temporary Addition to an existing Restaurant, C/O Mark & Dorp Street, Black Horse Building, Stellenbosch - Erf 547		
DRAWING TITLE:	PLAN LAYOUT & SECTION			PURPOSE FOR: STELLENBOSCH MUNICIPALITY
DATE:	15-03-2023	DRAWN BY: H ENSLIN	CHECKED BY: H ENSLIN	PROJECT NO: 2300
SCALE: AS INDICATED	REVISION NO.			SHEET NO: 00
PAPER SIZE: A3				

5.6	PROPOSED LEASE AGREEMENT: ERF 6083 (EIKESTAD MALL, ADRINGA STREET), GOCHU GANG
-----	---

Collaborator No:

IDP KPA Ref No:

Meeting Date:

Good Governance

30 August 2023

1. SUBJECT: PROPOSED LEASE AGREEMENT: ERF 6083 (EIKESTAD MALL, ADRINGA STREET), GOCHU GANG

2. PURPOSE

To consider an application from Gochu Gang, to enter into a Lease Agreement with Stellenbosch Municipality, in terms of where they would be able to use a portion of Council-owned property for outdoor dining purposes.

3. DELEGATED AUTHORITY

In terms of the approved System of Delegations the Executive Mayor, in consultation with the Executive Mayoral Committee, has the delegated Authority to consider applications for Lease Agreements, up to a contract value not exceeding R5M and not exceeding a period of 10 years.

The approval of lease agreements of three (3) years and less has been delegated to the Municipal Manager.

4. EXECUTIVE SUMMARY

An application to use a portion of the street reserve for Outdoor Dining purposes has been received from the owner of Gochu Gang trading of erf 6083, Stellenbosch. The application is in line with the provisions /requirements of the Outdoor Dining Policy and is supported by the Engineering Department. Under 6.2.1 are photos showing how are is currently being used. The photos were taken by contract management unit. The applicant does not currently have any lease agreement or previous encroachment agreement with the municipality and is not paying rent for current use. The applicant was not served with a letter to request compliance and approached the municipality with the assistance of Visit Stellenbosch.

They have not specified a requested time for the lease and the area they are interested in is 17 m².

The applicant has submitted a diagram which indicates a walkway of only 1m however they are not utilising the area as indicated on the diagram. From the photographs in the item, it can be seen that less tables are used and a 1.5m walkway for pedestrians has been left open. The department can support this application.

5. RECOMMENDATIONS

For consideration.

- (a) that the land as indicated on Fig 1 and 2, measuring approximately 17m². in extent, be identified as land not needed to provide the minimum level of basic municipal services during the period that the rights are awarded;
- (b) that the in principle approval be considered for an initial period of 3 years with the option of a renewal subject to the following conditions:
 - 1. That no permanent structure or deck be erected without the prior written consent of council, as well as approved building plans from the building department.
 - 2. Council is indemnified against all possible 3rd party claims.
 - 3. The municipality or other public service providers must not be prohibited from maintaining, repairing, upgrading and / or installing new public services within the leased area. For planned maintenance and repairs, upgrades or new installations, the applicant will be provided with a 5-day written notice to remove all furniture for the municipality and any other public service provider to gain access. For emergency work the applicant will be required to remove everything immediately for the municipality or other public service providers to gain access.
 - 4. The municipality reserves the right to end the lease agreement when the need arises, i.e. when the leased area is required for municipal or other public services purposes or when the applicant refuses the municipality or other public service providers access if required.
- (c) that the Municipal Manager be authorised to determine the rental amount and escalation.

6. DISCUSSION / CONTENT

6.1 Background

6.1.1 Application for lease

An application was received from Gochu Gang to enter into an agreement with Stellenbosch Municipality in terms of where they would be able to use a portion of Council-owned property for outdoor dining purposes. A copy of the application is attached as **APPENDIX 1**, with photos of the proposed lay-out attached as **APPENDIX 2**. The extent of the encroachment area is approximately 17m². A consent letter from the shop next door is attached hereto as **APPENDIX 3**.

6.2 DISCUSSION

6.2.1. Locality and context

Erf 6083, Stellenbosch is located at Eikestad Mall, Adringa Street, Stellenbosch, as shown on Fig 1.and Fig 2, below as well as photographs of how area is currently used under Fig 3.

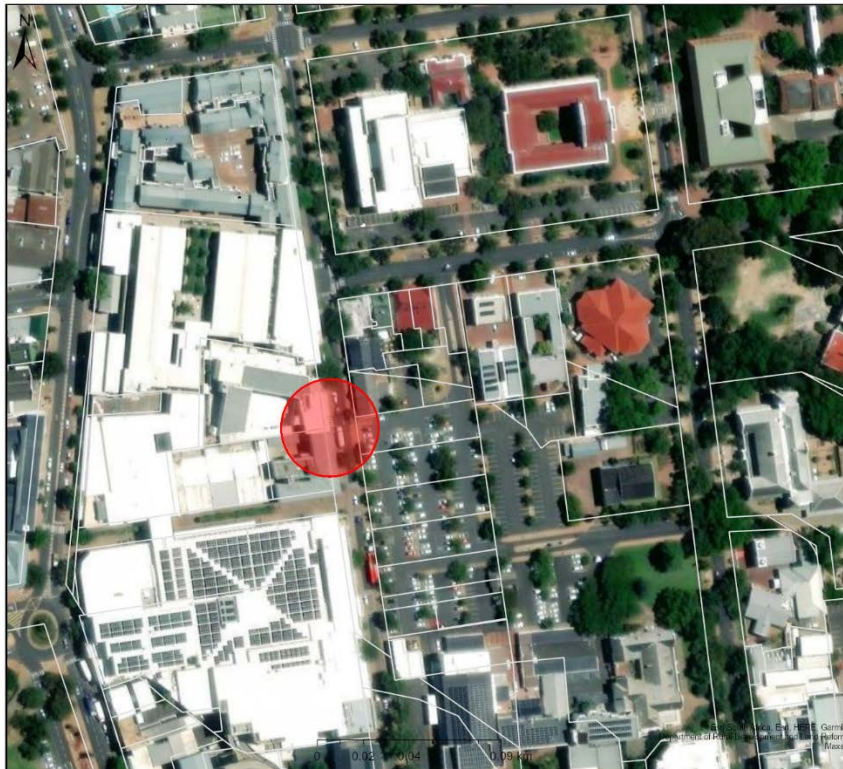


Fig 1. Location and context



Fig 2 .Extent of area





Fig. 3 Current area used for outdoor dining

6.2.2 Legal requirements

6.2.2.1 Municipal Asset Transfer Regulations

In terms of Section 36 of the Municipal Asset Transfer Regulation, when considering an application for an approval of a right to use municipal property, the following needs to be taken into account, *inter alia*:-

- a) whether the capital asset may be required for the municipality's own use during the period for which the right is to be granted;
- b) the extent to which any compensation to be received for the right, together with the estimated value of improvements or enhancements to the asset, will result in a significant financial benefit to the municipality;
- c) the (possible) risks and rewards associated with the use in relation to the municipality's interests;
- d) Any comments received from the local community, and
- e) compliance with the legislative regime applicable to the proposed granting of the right.

6.2.2.2 Stellenbosch By-Law on Roads and Streets

In terms of section 4 of the Stellenbosch By-Law on Roads and Streets, no person may, **without prior written permission of the Municipality**, cause an encroachment on a street, sidewalk or road reserve forming part thereof.

6.2.2.3 Property Management policy

Section 9 2.2 deals with deviations from the competitive process, and reads as follows:

The Municipal Council **may dispense with the competitive processes** established in this policy and may enter into a Private Treaty Agreement through any convenient process, which may include direct negotiations, including in response to an unsolicited application, but only in the following circumstances, and only after having advertised Council's intention so to act. Should any objections be received as a consequence of such a notice, such objections first be considered before a final decision is taken to dispense with the competitive process established in this policy. However, should any objections be received from potential, competitive bidders, then a public competitive process must be followed. The advertisement referred to above should also be served on adjoining landowners, where the Municipal Manager is of the opinion that such transaction may have a detrimental effect on such adjoining landowner(s):

- (h) where encroachment applications are received from adjoining owners, including applications for outdoor dining permits, subject to approved tariff structure.

6.2.2.4 Outdoor Dining Policy**6.2.2.4.1 Policy Objective**

To regulate the use of sidewalks or road reserves for the purpose of outdoor dining and trading, and the temporary use of Public Places for commercial ventures and displays.

6.2.2.4.2 Suitable Locations

Outdoor cafes, restaurants and traders may apply for lease where local conditions are favourable for their operation, including areas of Council e.g. road reserves, sidewalks, Public Open Spaces. All applications in locations of high pedestrian usage, e.g. a retail centre, will be required to take pedestrian needs into consideration.

6.2.2.4.3 Assessment Criteria

The most important local conditions to be considered when an application for lease of the road reserve area is received will be those issues pertaining to pedestrian (including pedestrians who are using wheelchairs, baby prams or are visually impaired) and vehicular circulation, convenience and safety of patrons and the general public, existing streetscape elements and residential amenity. The ground surface must be sufficiently level to support a proper layout and safe use.

6.2.2.4.4 Layout

The style, layout and orientation of furniture should be chosen according to the extent and shape of the available space of the leased area.

The size of an outdoor cafe or placement of any object on the sidewalk will depend on the width of the sidewalk.

6.2.2.4.5 Defined Area

The applicant will be required to define the area with appropriate markers. (ie a single galvanized steel nail inserted in between the pavers, or a paint spot no larger than 5cm in diameter placed at the corners of the defined area in a semi- permanent paint) to the satisfaction of Council.

6.2.2.4.6 Lease Conditions

The applicant must comply with the conditions set out in the lease agreement and this policy. The lease will be for a period of not more than 5 years with an option to renew. These conditions would also generally require that the local environmental factors be reviewed annually and adjustments to the lease agreement may be required.

If the lease agreement that is entered into is seen as not providing long-term rights there is no need to advertise the proposed agreement for public input/comments or objections. Should the municipality receive any complaints the lease agreement may be terminated due to the objections.

6.3 Financial Implications

In terms of the current, approved tariff structure for outdoor dining lease agreements a fee of R150 per m² is charged on a monthly basis which means that the monthly rental will be R 2 550.00 (incl. of VAT) and an escalation of 6% is recommended.

6.4 Legal Implications

The legal implications are discussed under 6.2.2 above. As the proposed term of the lease agreement is three (3) years and when the value of the lease and property is taken into account the asset transfer regulations are not applicable as it is not seen as long-term rights on council property that are being given.

6.5 Staff Implications

No additional staff implications.

6.6 Previous / Relevant Council Resolutions**SPECIAL COUNCIL MEETING: 2002-06-22: ITEM 9.2.5 RESOLVEND (nem con)**

- (a) That council takes note of the intended communication to the public;
- (b) That Council takes note that all restaurants and business will be given notice to apply / re-apply for a lease to use council property for outdoor dining purposes; and
- (c) That the approval of the leases of three (3) years and less be delegated to the Municipal Manager for approval.

6.7 Risk Implications

The risks are addressed in the item.

6.7 Comments from Senior Management**6.7.1 Director: Infrastructure Services**

- The Municipality concludes an agreement with the applicant, detailing the conditions of approval.
- Leased area is zoned as road reserve and cannot be enclosed - to exclude the public, the municipality or other services provider from accessing the area.
- Ensure public risk and liability insurance is in place to cover 3rd party claims.
- Council is indemnified against all possible 3rd party claims.
- The municipality or other public service provider must not be prohibited from maintaining, repairing, upgrading and / or installing new public services with-in the leased area.
- The municipality reserves the right to end the lease agreement when the need arises, i.e. when the leased space is required for municipal or other public services purposes.
- Areas outside of the leased area must remain free from any obstruction to pedestrian movements.

6.7.2 Director: Planning and Economic Development

The Stellenbosch Municipality Roads and Street Bylaw, 2021 as promulgated in the Provincial Gazette no. 8436 dated 28 May 2021, defines “sidewalk” “means that portion of a street between the outer boundary of the roadway and the boundary lines of adjacent properties or buildings which is intended for the use of pedestrians, pedal cyclists and any other category of vehicles as may be determined by the Municipality in accordance with section 42(1):”

The definition clearly stipulates that the use of sidewalk is intended for pedestrians, pedal cyclists and any other vehicle. The use of sidewalks as part of the commercial activities of outdoor cafes and restaurants is a form of activity on the street that should improve the quality of public places and urban life. This use must however not be at the cost of overall safety of road users as intended in terms of the above bylaw.

It should be noted that currently the Final Draft Outdoor Dining and Events Overlay Zone, is undergoing a public participation process, of which the closing date for comments is 02 September 2023. In the absence of this overlay zone a suitable land use application must be submitted to evaluate the intended land usage, as the current and proposed land use is not in accordance with the applicable zoning.

6.7.3 Chief Financial Officer

No comments requested.

6.7.4 Director: Community Services

No comments requested.

6.8.5 Municipal Manager

No comments requested yet.

ANNEXURES: 1. Application**2. Proposed Lay-out****3. Consent letter****FOR FURTHER DETAILS CONTACT:**

NAME	Annalene de Beer
POSITION	Director: Corporate Services
DIRECTORATE	CORPORATE SERVICES
CONTACT NUMBERS	021-8088073
E-MAIL ADDRESS	Annalene.debeer@ Stellenbosch.gov.za
REPORT DATE	2023-08-24

ANNEXURE 1



STELLENBOSCH
STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

APPLICATION FOR LEASE OF MUNICIPAL LAND APPLICATION FORM

A: APPLICANT'S DETAILS

Name : Steven Rex Comrie

Physical address: 4 Dorpsig
..... Stellenbosch

Postal code: 7600

Mailing address: 4 Dorpsig
..... Stellenbosch

Postal code: 7600

E-mail address: Stevencomrie51@gmail.com

Telephone: N/A

Cell phone: 0618016367

B: PROPERTY DETAILS OF APPLICANT

Erf/farm number : 6083

Suburb: Stellenbosch Central

Town: Stellenbosch

C: PROPERTY DETAILS OF LEASE AREA

Erf/farm number : 6083

Suburb: Stellenbosch Central

Town: Stellenbosch

Area of encroachment: 16.6 m²

* To be supplemented with a sketch-plan with dimension in m²

D: TYPE OF APPLICATION:

Please mark the appropriate block

For commercial purposes, other than for parking ☒

For commercial parking purposes, ☐

For residential parking purposes ☐

For non-commercial purposes (such as garden purposes, gates, ect) ☐

For projecting structures onto street reserves ☐

For projecting structures onto other council-owned land ☐

Other: please provide description: ☐

Brief description of application: We are applying to put
four tables with benches in the encroachment area for
people to sit on and eat the food ordered from our
restaurant, Gochugang.
Motivation: For clients to be able to order our food
and sit outside and enjoy anytime of day. To allow
them to eat in the fresh air, and encourage good
community with people passing by.

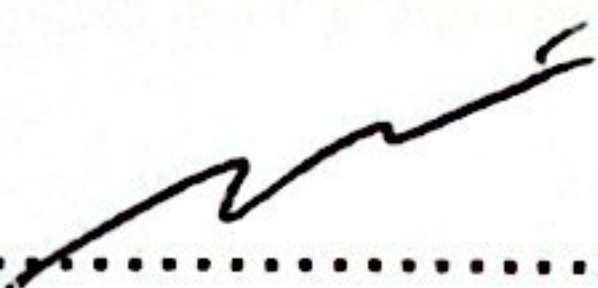
.....

E: LIST OF ATTACHEMENTS AND SUPPORTING DOCUMENTS

Please mark the appropriate box

- | | |
|---|-------------------------------------|
| Special Power of Attorney, where Applicant is not the owner | ☐ N/A |
| Diagram of proposed area of the lease area | ☒ |
| Letters of consent (affected neighbours) | ☒ |
| Application fee (non-refundable) | ☒ |

I hereby certify that the information supplied in this application form is correct and that I am property authorized to make this application.

Applicant's signature:  Date: 27/05/23

Full name: Steven Rex Comrie

FOR OFFICIAL USE

- The application was considered onby.....
- The application was

APPROVED

☐	NOT APPROVED
--------------------------	---------------------

Conditions (if any):

.....

.....

Applicant was informed of outcome on

.....
SIGNATURE OF RESPONSIBLE OFFICIAL

.....
DATE

Name:.....

***If approved**

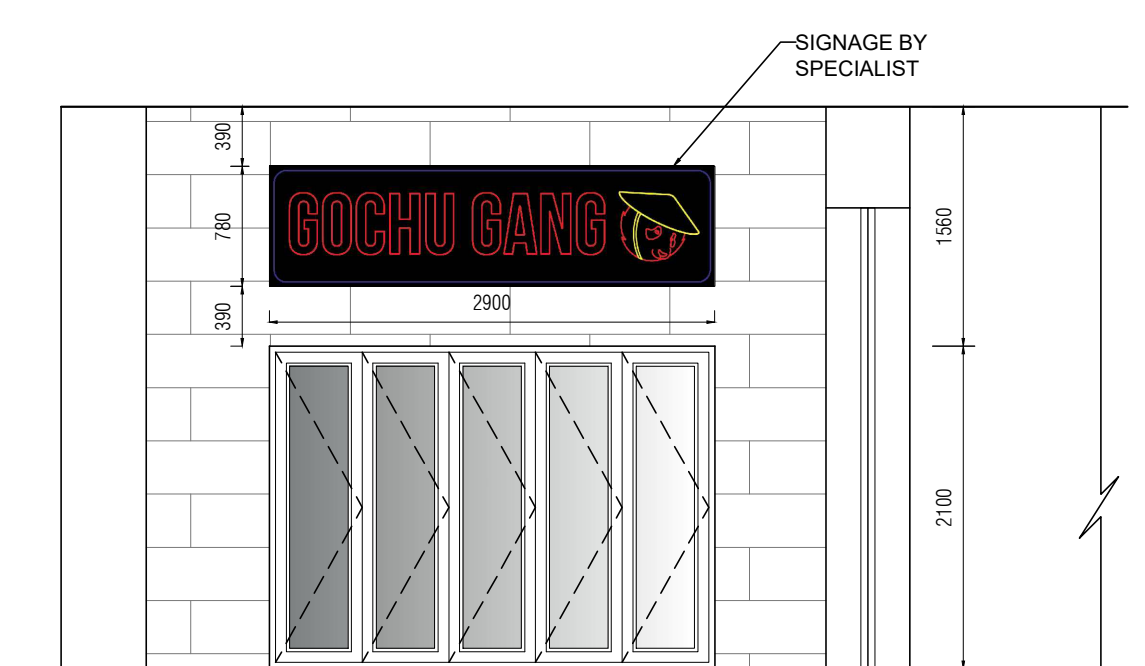
- ☐ Encroachment fee paid
- ☐ Lease Agreement signed
- ☐ Agreement/Permit processed on Contract Management System

.....
SIGNATURE OF RESPONSIBLE OFFICIAL

.....
DATE

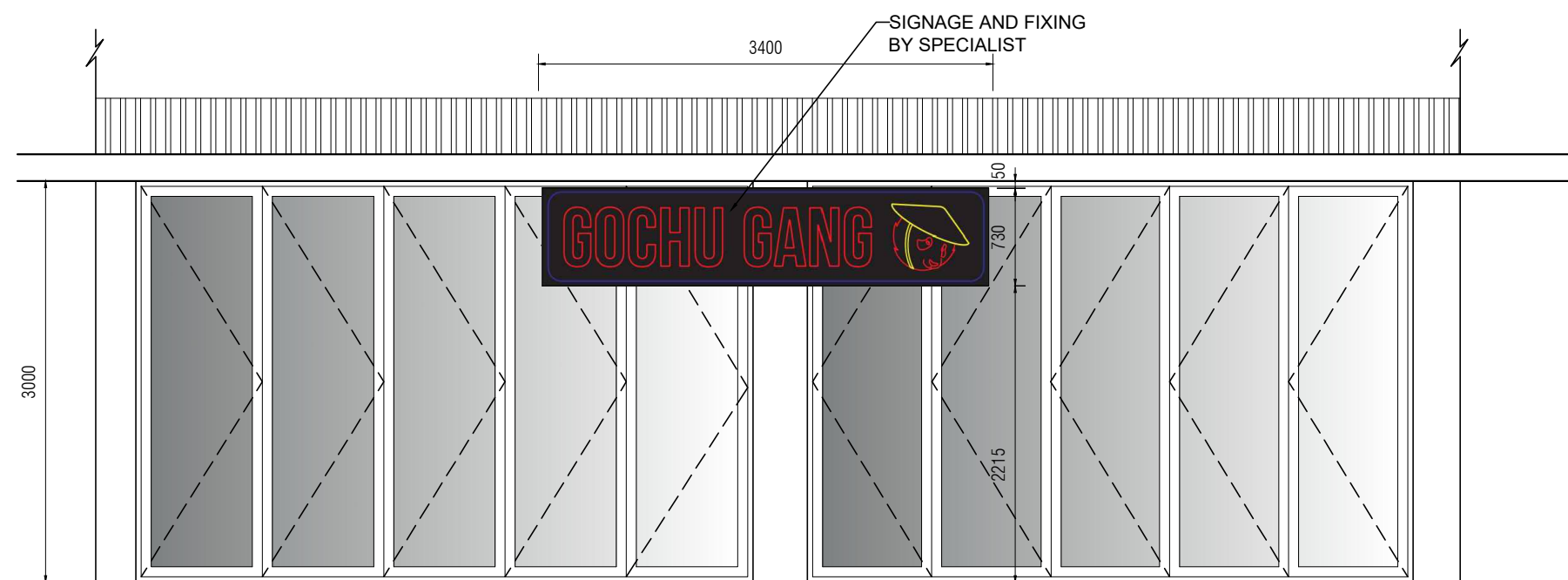
Name:.....

ANNEXURE 2



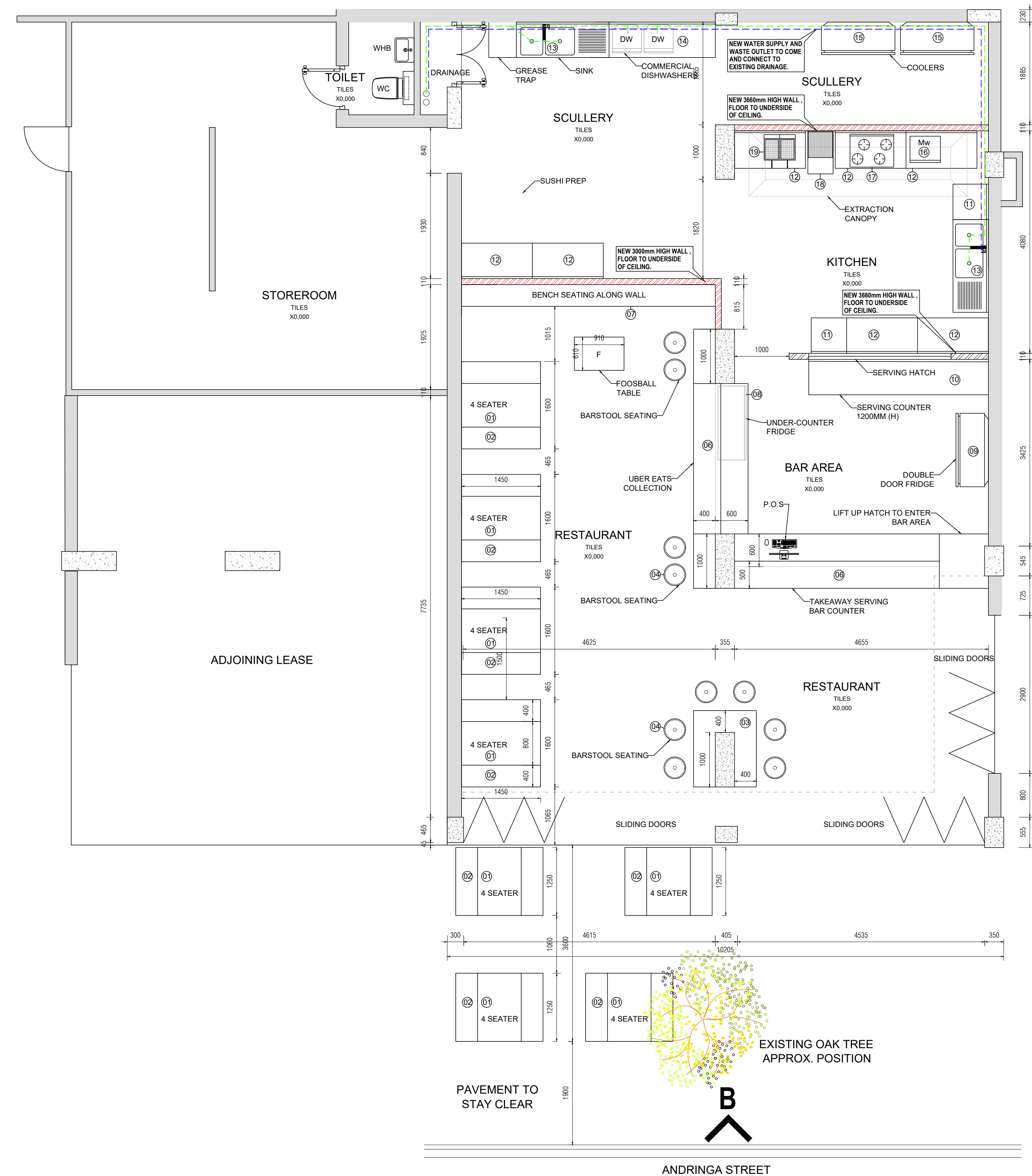
ELEVATION - A - (SIGNAGE)

SCALE 1:50

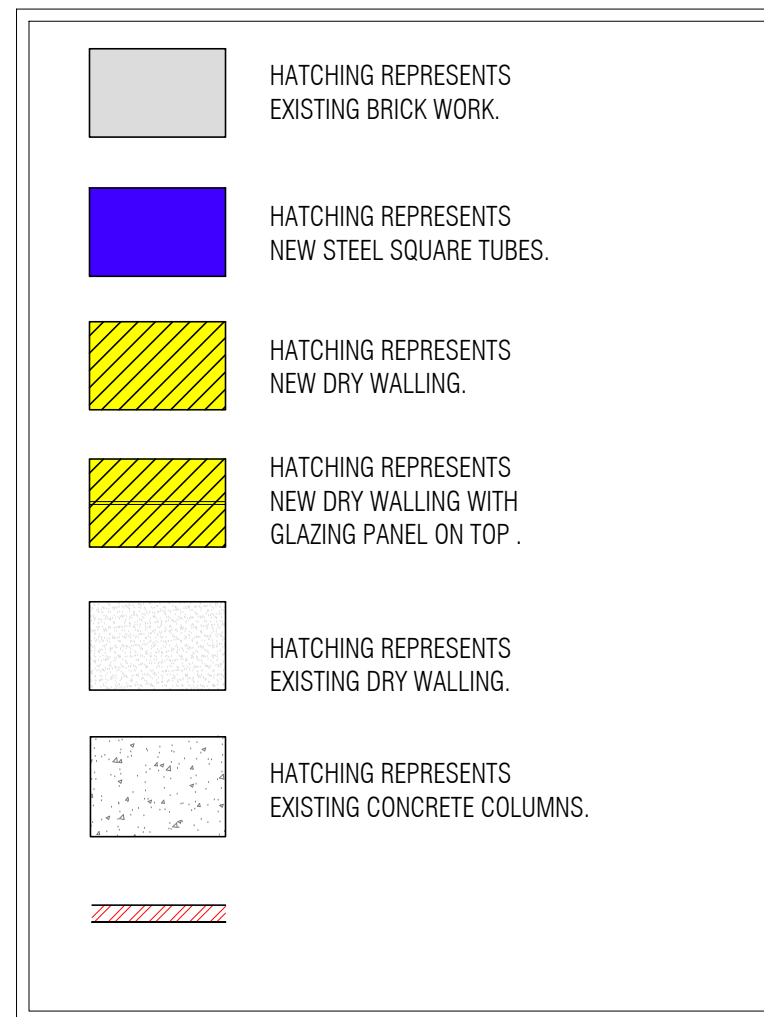


ELEVATION - B - (SIGNAGE)

SCALE 1:50



GENERAL FLOOR PLAN



ELECTRICAL LEGEND

TV POINT
SINGLE WALL PLUG - 300mm ABOVE FFL
SINGLE WALL PLUG - 300mm ABOVE FFL
SINGLE WALL PLUG WITH 2 POINT - 300mm ABOVE FFL
ABOVE COUNTER SINGLE WALL PLUG - 1100mm ABOVE FFL
ABOVE COUNTER SINGLE WALL PLUG WITH 2 POINT-1100mm ABOVE FFL

AREA: 66,7 m2 (Back of house)

AREA: 78,8 m2 (Front of house)

AREA: 46,4 m2 (Store)

INSIDE SEATING: 30 Seats

OUTSIDE SEATING: 8 Seats

TOTAL SEATING: 34 Seats

FF&E LEGEND

01	1250 X 800MM CUSTOM MADE 4 SEATER TABLE. DETAILS TO BE CONFIRMED BY DESIGNERS.
02	1250 X 400MM CUSTOM MADE BENCH SEATING. DETAILS TO BE CONFIRMED BY DESIGNERS.
03	CUSTOM MADE TABLE ATTACHED TO COLUMN. DETAILS TO BE CONFIRMED BY DESIGNERS.
04	BARSTOOLS. DETAILS TO BE CONFIRMED BY DESIGNERS.
05	640 X 570MM ARCADE GAME. DETAILS TO BE CONFIRMED BY DESIGNERS.
06	CUSTOM BUILT BAR. DETAILS TO BE CONFIRMED BY DESIGNERS. SECTION ALONGSIDE LEGEND SHOWS A CUT THROUGH THE BAR.
07	BENCH SEATING FIXED TO WALL. DETAILS TO BE CONFIRMED BY DESIGNERS.
08	1355 X 515 X 870MM TEFLOID BACKBAR COOLER. 3 SLIDING DOUBLE GLAZED GLASS DOORS. FREESTANDING UNDER BAR UNIT AS INDICATED ON PLAN. SUPPLIER: TBC BY CHEF AND DESIGNERS.
09	DOUBLE DOOR FRIDGE. SUPPLIER: TBC BY CHEF AND DESIGNERS.
10	1200MM HIGH SERVING COUNTER. SUPPLIER: TBC BY CHEF AND DESIGNERS.
11	650 X 650 X 900MM CRIONI STAINLESS STEEL TABLE- SPLASH BACK. FREESTANDING IN KITCHEN AS INDICATED ON PLAN. SUPPLIER: TBC BY CHEF AND DESIGNERS.
12	1300 X 690 X 900MM WORK TABLE STAINLESS STEEL - 2 TIER- SPLASH BACK. FREESTANDING IN KITCHEN AS INDICATED ON PLAN. SUPPLIER: TBC BY CHEF AND DESIGNERS.
13	1700 X 650 X 900MM CRIONI COMBINATION SINK. SPOUT INCLUDED- OVERHEAD PRE-RINSE SPRAY. FREESTANDING IN KITCHEN AND SCULLERY AS INDICATED ON PLAN. SUPPLIER: TBC BY CHEF AND DESIGNERS.
14	650 X 2300 X 900MM CRIONI STAINLESS STEEL TABLE- SPLASH BACK. FREESTANDING IN KITCHEN AS INDICATED ON PLAN. SUPPLIER: TBC BY CHEF AND DESIGNERS.
15	1350 X 520 X 850MM HIGH POLAR CAB BACK BAR COOLER - 3 SLIDING DOORS. FREESTANDING IN SCULLERY AS INDICATED ON PLAN. SUPPLIER: TBC BY CHEF AND DESIGNERS.
16	558 X 482 X 349MM MICROWAVE MENUMASTER COMMERCIAL. FREESTANDING IN KITCHEN ON WORK TABLE AS INDICATED ON PLAN. SUPPLIER: TBC BY CHEF AND DESIGNERS.
17	HOT PLATES. TBC BY CHEF AND DESIGNERS.
18	462 X 791 X 954MM GAS GRILLER ANVIL- 4 BURNER RADIANT- FREESTANDING. FREESTANDING IN KITCHEN AS INDICATED ON PLAN. SUPPLIER: TBC BY CHEF AND DESIGNERS.
19	573 X 470 X 288MM FISH FRYER ANVIL- TABLE TOP DOUBLE PAN (ELEC). FREESTANDING ON TABLE TOP IN KITCHEN AS INDICATED ON PLAN. SUPPLIER: TBC BY CHEF AND DESIGNERS.

NOTE

THIS IS A VERY BASIC LAYOUT FOR APPROVAL FROM THE LANDLORD. TO BE HANDED OVER AND COMPLETED BY ARCHITECT FOR COUNCIL SUBMISSION AND APPROVAL.

ALL FURNITURE AND KITCHEN APPLIANCES LISTED AND SHOWN ABOVE ARE EXAMPLES AND NOT THE FINAL PRODUCTS.

GENERAL NOTES:

- ALL LEVELS HEIGHTS DEPTHS AND DIMENSIONS TO BE CHECKED BY CONTRACTOR ON SITE BEFORE BUILDING.
- ALL WORK TO BE IN ACCORDANCE WITH THE LATEST EDITION OF THE NATIONAL BUILDING REGULATIONS.
- ALL BUILDING MATERIALS AND COMPONENTS TO BE TREATED IN ACCORDANCE WITH THE MANUFACTURERS SPECIFICATIONS.
- FIGURED DIMENSIONS TO BE READ IN PREFERENCE TO SCALING.
- ELECTRICAL: ALL ELECTRICAL WORK TO BE CARRIED OUT BY A REGISTERED ELECTRICIAN.
- VENTILATION AND LIGHT: TO MECHANICAL AND ELECTRICAL ENGS DETAIL TO COMPLY WITH NHBR'S.
- DRAINAGE NOTES: DRAINAGE COMPLES WITH SANS10400 PART P.
- WASTE FITTINGS TO HAVE RESEAL TRAPS.
- WASTE PIPES TO BE FULLY ACCESSIBLE FOR SERVICING.
- SEWER PIPES TO HAVE IE'S AT ALL BENDS AND JUNCTIONS WITH MARKED COVERS AT GROUND LEVEL.
- NO BENDS OR JUNCTIONS ALLOWED UNDER FLOORS OR FOUNDATIONS.
- SEWER PIPES AND WASTE PIPES TO HAVE VENTILATION VALVES.
- OVPS TO BE Ø100MM PVC.
- ASVP'S TO BE Ø50MM PVC.
- SOIL PIPES TO BE 100MM PVC @ 1:60 MIN. FALL.
- WASH HAND BASIN PIPES TO BE Ø40MM.
- BASIN DRAIN PIPES TO BE Ø40MM.
- ALL DRAINAGE TO COMPLY WITH PART P. OF THE NATIONAL BUILDING REGULATIONS.
- ALL DRAINAGE TO BE IN STRICT ACCORDANCE WITH THE LOCAL AUTHORITIES BY LAWS.
- WHERE DRAINS RUN THROUGH WALL BRICK WORK TO BE BRIDGED WITH R.C. LINTOL BEAM TO SATISFACTION OF LOCAL AUTHORITY.
- FOUNDATIONS: SANS 10400 PART H.
- ALL FOUNDATIONS AND SURFACE BEDS TO STRUCTURAL ENGINEERS DETAILS. 250 MICRON USB GREEN UNDERLAY ON WELL COMPACTED AND POISONED FILL TO ENGS DETAIL.
- DPC TO ALL WALLS WITH MIN. 100MM OVERLAPS AT ALL JUNCTIONS.
- INSTALL BRICKGRIP DPC TO ALL WINDOW CILLS. GUNDE 250 MICRON DAMP PROOF MEMBRANE CARRIED UP A MIN OF 2ND. BRICK COURSES ABOVE G.L. TO FORM DPC'S TO PROTECT ALL WALLS.
- WITH SANS 10082 BY ENGINEER.
- BRICKWORK: SANS 10400 PART K BRICKS TO BE LAID IN STRETCHER BOND WITH JOINTS NOT EXCEEDING 12MM.
- BRICK REINFORCING: BRICKFORCE STEEL WIRE REINFORCING TO BE INSTALLED IN EVERY COURSE OF FOUNDATION BRICKWORK FOR MIN 5 COURSES AND EVERY 3RD COURSE THEREAFTER. BRICKFORCE TO BE INSTALLED IN EVERY COURSE BELOW GROUND SLAB WHERE BRICK WALL IS 110MM. BRICKFORCE OVER LINTOLS.
- LINTOLS: TO HAVE REINFORCING & CURING ON PROPS TO ENGINEERS SPECIFICATION. STANDARD 152X75MM PRE STRESSED CONCRETE LINTOLS. ABOVE ALL NEW DOORS AND WINDOWS.
- PLASTER WORK: ALL INTERNAL AND EXTERNAL PLASTERWORK TO BE MIN. 15MM PLASTER.
- GLAZING: GLAZING TO COMPLY WITH SANS 10400. PART N AND SANS 204. ALL GLAZING TO BE CLEAR UNLESS OTHERWISE SPECIFIED IN ARCHITECT'S DETAILS & SCHEDULES.
- FLOORS: 1. WITH REF. TO PART J- FLOORS. ALL STRUCTURAL TIMBER TO COMPLY WITH SANS 10082 BY ENGINEER.
- FALLS TO DRAINAGE NOT TO EXCEED A GRADIENT OF MORE THAN 1IN 200 (5mm) IN HEIGHT FOR EVERY 1000mm IN LENGTH.

DO NOT SCALE THIS DRAWING. USE PROVIDED DIMENSIONS ONLY.

DESIGN NOTES:

THE DESIGN OF THIS DRAWING IS THE PROPERTY OF THE AUTHOR.

ALL WORK TO BE CARRIED OUT STRICTLY IN ACCORDANCE WITH THE NATIONAL BUILDING REGS AND LOCAL AUTHORITY BY LAWS

ALL RELEVANT DETAILS, LEVELS AND DIMENSIONS TO BE CHECKED PRIOR TO COMMENCEMENT OF WORK ON SITE. ANY DISCREPANCIES TO BE BROUGHT TO THE AUTHORS ATTENTION IMMEDIATELY.

NO DEVIATION FROM THE AUTHORS DESIGN WITHOUT WRITTEN SIGNATURE FROM THE AUTHOR.

ALL MEASUREMENTS TO BE CHECKED ON SITE BEFORE COMMENCEMENT OF WORK. RDC DESIGNS WILL NOT BE HELD RESPONSIBLE FOR ANY MEASUREMENTS THAT REFLECT DIFFERENTLY ON SITE TO THE PLANS. IT IS THE CONTRACTOR'S RESPONSIBILITY TO CONDUCT A SITE SURVEY PRIOR TO UNDERTAKING THE WORK.

General notes:

- Contractor and Sub-Contractors to check all levels and dimensions on site before any work is commenced and any discrepancies to be reported to the Architect immediately.
- Figured dimensions to be taken in preference to scaled measurements and large scale details supercede small scale drawings.
- All work to be done in accordance National building regulations SANS 10400 and all requirements of Municipal and Local Authorities concerned, to be adhered to.
- Natural light and ventilation area of all openings in accordance SANS 10400 Part O natural light area : min.10% of floor area and natural ventilation : min.5% of floor area.
- All glass areas bigger than 1sqm and at a height of less than 500mm from finished floor level to be 6mm safety glass.
- All cavities below floor level to be filled with concrete and dpc's to be stepped.

RDC Designs cc

Architectural Technologist

Registered with SACAP

PO Box 195

Pniel Stellenbosch -7680

Tel / Fax: 021-885 1509

Cell: 083 9994782

Email: ruald@webmail.co.za

CLIENT:

GOCHU GANG

PROJECT TITLE:

GENERAL FLOOR PLAN
INTERNAL ALTERATIONS
SHOP 38
43 ANDRINGA STREET
EIKESTAD MALL

DRAWING TITLE:

GENERAL PLAN
SIGNAGE ELEVATIONS

PROJECT No.: MY 0423

SCALE: INDICATED

DRAWING No.: 100

DATE: 28/05/2023

REV: 00

DRAWN: RDC

FOR APPROVAL

ANNEXURE 3

**PREMCOLOG (PTY) LTD
T/A NEW YORK SLICE STELLENBOSCH**

Shop 39 Andringa Straat
Eikestad Mall
Stellenbosch
7600

TEL: (021) 850 8846
info.nyslice@gmail.com

Co Reg. 2020/852056/07

Vat no. 4780305035

Date: 29 May 2023

To Whom It May Concern

As neighbours of Gochu Gang, we, NY Slice Pizza Stellenbosch, acknowledge and support their request to create a seating area outside their shop to accommodate their restaurant patrons.

We have no objections to them utilising this space for that specific purpose. We eagerly anticipate fostering a positive and cooperative relationship with Gochu Gang.

Kind Regards



DS Jooste
Director
PremColog Pty Ltd
(NY Slice Pizza Stellenbosch)

5.7	PROPOSED LEASE AGREEMENT: ERF 1260 (13 RYNEVELD STREET), THE WINE GLASS
-----	--

Collaborator No:

IDP KPA Ref No:

Meeting Date:

Good Governance

30 August 2023

1. SUBJECT: PROPOSED LEASE AGREEMENT: ERF 1260 (13 RYNEVELD STREET), THE WINE GLASS

2. PURPOSE

To consider an application from Wine Travellers (Pty) Ltd t/a The Wine Glass Stellenbosch, to enter into a Lease Agreement with Stellenbosch Municipality, in terms whereof they would be able to use a portion of Council-owned property for outdoor dining purposes.

3. DELEGATED AUTHORITY

In terms of the approved System of Delegations the Executive Mayor, in consultation with the Executive Mayoral Committee, has the delegated Authority to consider applications for Lease Agreements, up to a contract value not exceeding R5M and not exceeding a period of 10 years.

The approval of lease agreements of three (3) years and less has been delegated to the Municipal Manager.

4. EXECUTIVE SUMMARY

An application to use a portion of the street reserve for Outdoor Dining purposes has been received from the owner of The Wine Glass trading of erf 1260, Stellenbosch. The application is in line with the provisions /requirements of the Outdoor Dining Policy and is supported by the Engineering Department. Under 6.2.1 are photos showing how are is currently being used. The photos were taken by contract management unit. The applicant does not currently have any lease agreement or previous encroachment agreement with the municipality and is not paying rent for current use. We served the applicant with a letter requesting that they apply for the outdoor dining lease to ensure compliance.

They have not specified a requested time for the lease and the area they are interested in is 28 m².

The applicant has submitted photographs attached as an annexure to indicate the area being used and in the item are also photographs to indicate that an area of 1.5m is left open on the sidewalk for the use of pedestrians.

It has no information on the type of furniture. They have no approval for the deck that was build.

The application cannot be supported by the department for the current usage unless an application for the deck is submitted and approved and they comply with the other requirements from Infrastructure.

5. RECOMMENDATIONS

For consideration.

- (a) that the land as indicated on Fig 1 and 2, measuring approximately 28m². in extent, be identified as land not needed to provide the minimum level of basic municipal services during the period that the rights are awarded;
- (b) that the in principle approval be considered for an initial period of 3 years with the option of a renewal subject to the following conditions:
 - 1. That no permanent structure or deck be erected without the prior written consent of council, as well as approved building plans from the building department.
 - 2. Council is indemnified against all possible 3rd party claims.
 - 3. The municipality or other public service providers must not be prohibited from maintaining, repairing, upgrading and / or installing new public services within the leased area. For planned maintenance and repairs, upgrades or new installations, the applicant will be provided with a 5-day written notice to remove all furniture for the municipality and any other public service provider to gain access. For emergency work the applicant will be required to remove everything immediately for the municipality or other public service providers to gain access.
 - 4. The municipality reserves the right to end the lease agreement when the need arises, i.e. when the leased area is required for municipal or other public services purposes or when the applicant refuses the municipality or other public service providers access if required.
 - 5. An area of 1.5m is left open on the sidewalk for the use of pedestrians.
 - 6. An application for the deck must be submitted to planning and approved.
- (c) that the Municipal Manager be authorised to determine the rental amount and escalation.

6. DISCUSSION / CONTENT

6.1 Background

6.1.1 Application for lease

An application was received from The Wine Glass to enter into an agreement with Stellenbosch Municipality in terms whereof they would be able to use a portion of Council-owned property for outdoor dining purposes. A copy of the application is attached as **APPENDIX 1**, with photos of the proposed lay-out attached as **APPENDIX 2**. The extent of the encroachment area is approximately 28m². A consent letter from the shop next door is attached hereto as **APPENDIX 3**.

Fig 1. Location and context

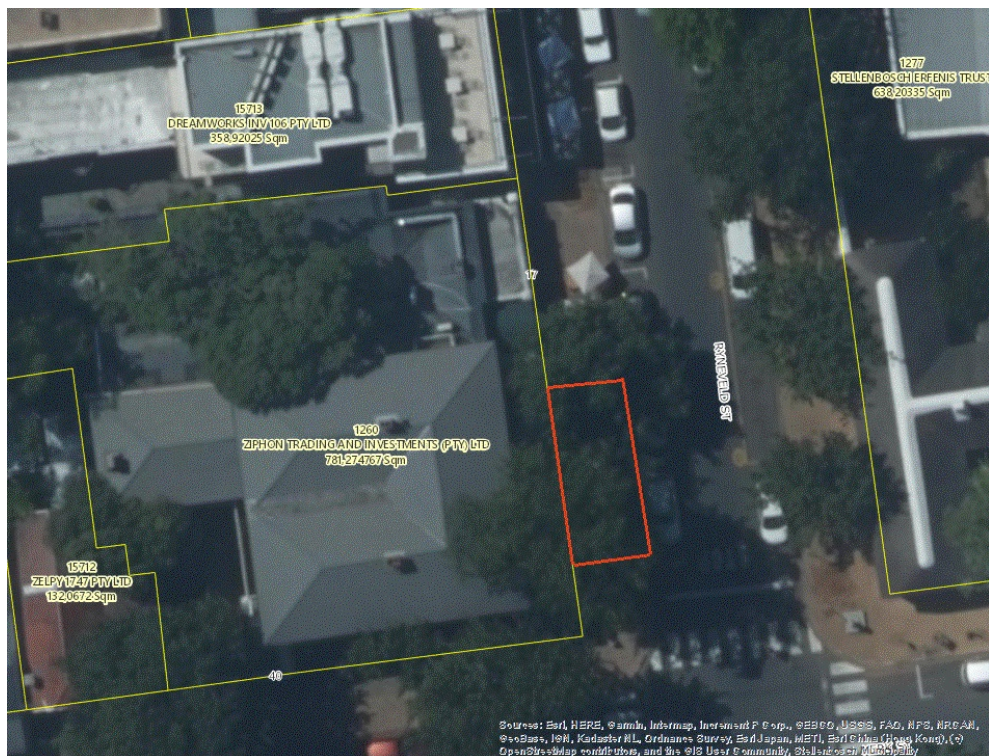


Fig 2 .Extent of area





Fig. 3 Current area used for outdoor dining

6.2.2 Legal requirements

6.2.2.1 Municipal Asset Transfer Regulations

In terms of Section 36 of the Municipal Asset Transfer Regulation, when considering an application for an approval of a right to use municipal property, the following needs to be taken into account, *inter alia*:-

- a) whether the capital asset may be required for the municipality's own use during the period for which the right is to be granted;
- b) the extent to which any compensation to be received for the right, together with the estimated value of improvements or enhancements to the asset, will result in a significant financial benefit to the municipality;

c)the (possible) risks and rewards associated with the use in relation to the municipality's interests;

d)Any comments received from the local community, and

e) compliance with the legislative regime applicable to the proposed granting of the right.

6.2.2.2 Stellenbosch By-Law on Roads and Streets

In terms of section 4 of the Stellenbosch By-Law on Roads and Streets, no person may, **without prior written permission of the Municipality**, cause an encroachment on a street, sidewalk or road reserve forming part thereof.

6.2.2.3 Property Management policy

Section 9 2.2 deals with deviations from the competitive process, and reads as follows:

The Municipal Council **may dispense with the competitive processes** established in this policy, and may enter into a Private Treaty Agreement through any convenient process, which may include direct negotiations, including in response to an unsolicited application, but only in the following circumstances, and only after having advertised Council's intention so to act. Should any objections be received as a consequence of such a notice, such objections first be considered before a final decision is taken to dispense with the competitive process established in this policy. However, should any objections, be received from potential, competitive bidders, then a public competitive process must be followed. The advertisement referred to above should also be served on adjoining landowners, where the Municipal Manager is of the opinion that such transaction may have a detrimental effect on such adjoining landowner(s):

(h)where encroachment applications are received from adjoining owners, including applications for outdoor dining permits, subject to approved tariff structure.

6.2.2.4 Outdoor Dining Policy

6.2.2.4.1 Policy Objective

To regulate the use of sidewalks or road reserves for the purpose of outdoor dining and trading, and the temporary use of Public Places for commercial ventures and displays.

6.2.2.4.2 Suitable Locations

Outdoor cafes, restaurants and traders may apply for lease where local conditions are favourable for their operation, including areas of Council e.g. road reserves, sidewalks, Public Open Spaces. All applications in locations of a high pedestrian usage, e.g. a retail center, will be required to take pedestrian needs into consideration.

6.2.2.4.3 Assessment Criteria

The most important local conditions to be considered when an application for encroachment of the road reserve area is received will be those issues pertaining to pedestrian (including pedestrians who are using wheelchairs, baby prams or are visually impaired) and vehicular circulation, convenience and safety of patrons and the general public, existing streetscape elements and residential amenity.

The ground surface must be sufficiently level to support a proper layout and safe use.

6.2.2.4.4 Layout

The style, layout and orientation of furniture should be chosen according to the extent and shape of the available space of the encroachment area.

The size of an outdoor cafe or placement of any object on the sidewalk will depend on the width of the sidewalk.

6.2.2.4.5 Defined Area

The applicant will be required to define the area with appropriate markers. (ie a single galvanized steel nail inserted in between the pavers, or a paint spot no larger than 5cm in diameter placed at the corners of the defined area in a semi- permanent paint) to the satisfaction of Council.

6.2.2.4.6 Lease Conditions

The applicant must comply with the conditions set out in the lease agreement and this policy. The lease will be for a period of not more than 5 years with an option to renew. These conditions would also generally require that the local environmental factors be reviewed annually and adjustments to the lease agreement may be required.

If the lease agreement that is entered into is seen as not providing long term rights, there is no need to advertise the proposed agreement for public input/comments or objections. Should the municipality receive any complaints the lease agreement may be terminated due to the objections.

6.3 Financial Implications

In terms of the current, approved tariff structure for outdoor dining lease agreements a fee of R150 per m² is charged monthly which means that the monthly rental will be R 4 200.00 (incl. of VAT) and an escalation of 6% is recommended.

6.4 Legal Implications

The legal implications are discussed under 6.2.2 above. As the proposed term of the lease agreement is three (3) years and when the value of the lease and property is taken into account the asset transfer regulations are not applicable as it is not seen as long term rights on council property that are being given.

6.5 Staff Implications

No additional staff implications.

6.6 Previous / Relevant Council Resolutions

SPECIAL COUNCIL MEETING: 2002-06-22: ITEM 9.2.5 RESOLVEND (nem con)

- (a) That council takes note of the intended communication to the public;
- (b) That Council takes note that all restaurants and business will be given notice to apply / re-apply for a lease to use council property for outdoor dining purposes; and
- (c) That the approval of the leases of three (3) years and less be delegated to the Municipal Manager for approval.

6.7 Risk Implications

The risks are addressed in the item.

6.8 Comments from Senior Management**6.8.1 Director: Infrastructure Services**

- The Municipality concludes an agreement with the applicant, detailing the conditions of approval.
- Leased area is zoned as road reserve and cannot be enclosed - to exclude the public, the municipality or other services provider from accessing the area.
- Ensure public risk and liability insurance is in place to cover 3rd party claims.
- Council is indemnified against all possible 3rd party claims.
- The municipality or other public service provider must not be prohibited from maintaining, repairing, upgrading and / or installing new public services with-in the leased area.
- The municipality reserves the right to end the lease agreement when the need arises, i.e. when the leased space is required for municipal or other public services purposes.
- Areas outside of the leased area must remain free from any obstruction to pedestrian movements.

6.8.2 Director: Planning and Economic Development

The Stellenbosch Municipality Roads and Street Bylaw, 2021 as promulgated in the Provincial Gazette no. 8436 dated 28 May 2021, defines "sidewalk" "means that portion of a street between the outer boundary of the roadway and the boundary lines of adjacent properties or buildings which is intended for the use of pedestrians, pedal cyclists and any other category of vehicles as may be determined by the Municipality in accordance with section 42(1);"

The definition clearly stipulates that the use of sidewalk is intended for pedestrians, pedal cyclists and any other vehicle. The use of sidewalks as part of the commercial activities of outdoor cafes and restaurants is a form of activity on the street that should improve the quality of public places and urban life. This use must however not be at the cost of overall safety of road users as intended in terms of the above bylaw.

It should be noted that currently the Final Draft Outdoor Dining and Events Overlay Zone, is undergoing a public participation process, of which the closing date for comments is 02 September 2023. In the absence of this overlay zone a suitable land use application must be submitted to evaluate the intended land usage, as the current and proposed land use is not in accordance with the applicable zoning.

6.8.3 Chief Financial Officer

No comments requested.

6.8.4 Director: Community Services

No comments requested.

6.8.5 Municipal Manager

No comments requested yet.

ANNEXURES: 1. Application

2. Proposed Lay-out

3. Consent letter

FOR FURTHER DETAILS CONTACT:

NAME	Annalene de Beer
POSITION	Director: Corporate Services
DIRECTORATE	CORPORATE SERVICES
CONTACT NUMBERS	021-8088073
E-MAIL ADDRESS	Annalene.debeer@ Stellenbosch.gov.za
REPORT DATE	2023-08-24

ANNEXURE 1



STELLENBOSCH
STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

APPLICATION FOR LEASE OF MUNICIPAL LAND APPLICATION FORM

A: APPLICANT'S DETAILS

Name : Wine Travellers Pty Ltd T/A The Wine Glass Stellenbosch
represented by Brennan Davis

Physical address: 13 Ryneveld Street
Stellenbosch

Postal code: 7600.....

Mailing address: Postnet Suite 157, Pvt Bag X16
Hermanus

Postal code: 7200.....

E-mail address: info@twgstellies.co.za

Telephone: 082 555 2332

Cell phone: 082 896 4343

B: PROPERTY DETAILS OF APPLICANT

Erf/farm number : Erf 1260

Suburb: Stellenbosch CBD

Town: Stellenbosch

C: PROPERTY DETAILS OF LEASE AREA

Erf/farm number : Street reserve adjacent to erf 1260

Suburb: Stellenbosch CBD

Town: Stellenbosch

Area of encroachment: 28 m²

* To be supplemented with a sketch-plan with dimension in m²

D: TYPE OF APPLICATION:

Please mark the appropriate block

For commercial purposes, other than for parking	☒
For commercial parking purposes,	☐
For residential parking purposes	☐
For non-commercial purposes (such as garden purposes, gates, ect)	☐
For projecting structures onto street reserves	☐
For projecting structures onto other council-owned land	☐
Other: please provide description:	☐

Brief description of application:

We wish to submit an application to make use of the street reserve in front of our restaurant located at 13 Ryneveld Street in Stellenbosch.

.....

Motivation

The Wine Glass is an upmarket restaurant that highlights and showcases the world-class wine and food produce of the Stellenbosch Region. Our stylish and well-considered concept, design and offering add great value to the street and to this important tourist node of town.

This application builds on the touristy atmosphere already established in this part of Ryneveld Street by our neighbouring businesses, a number of whom are trading successfully on the pavement areas fronting their properties - including De Warenmarkt, Beyerskloof and Bootleggers.

E: LIST OF ATTACHEMENTS AND SUPPORTING DOCUMENTS

Please mark the appropriate box

Special Power of Attorney, where Applicant is not the owner ☒

Diagram of proposed area of the lease area ☒

Letters of consent (affected neighbours) ☒

Application fee (non-refundable) ☐

I hereby certify that the information supplied in this application form is correct and that I am properly authorized to make this application.

Applicant's signature:



Date: 15 May 2023

Full name: Brennan Victor Davis

FOR OFFICIAL USE

- The application was considered onby.....
- The application was

☐	APPROVED
--------------------------	-----------------

☐	NOT APPROVED
--------------------------	---------------------

Conditions (if any):

.....

.....

Applicant was informed of outcome on

.....
SIGNATURE OF RESPONSIBLE OFFICIAL

.....
DATE

Name:.....

***If approved**

- ☐ Encroachment fee paid
- ☐ Lease Agreement signed
- ☐ Agreement/Permit processed on Contract Management System

.....
SIGNATURE OF RESPONSIBLE OFFICIAL

.....
DATE

Name:.....

ANNEXURE 2

WINE TRAVELLERS (PTY) LTD
Registration number: 2021/877747/07
("the Company")

**RESOLUTIONS OF DIRECTORS OF THE COMPANY PASSED AT HERMANUS ON THE
5TH OCTOBER 2021**

RESOLVED:

1. That the Company shall be entitled to make the following applications to the Stellenbosch Municipality in relation to Erf 1260, Sectional Title Scheme "Devonshire House", SS Number 47/2011, situate at 13 Ryneveld Street in Stellenbosch.
 - a. For an Encroachment Permit (allowing the Company to use the sidewalk), and
 - b. a Temporary Departure in terms of the Municipal Land Use Planning By-Law.
2. That Brennan Davis is hereby authorised to sign the applications and all documents necessary to give effect to the applications.



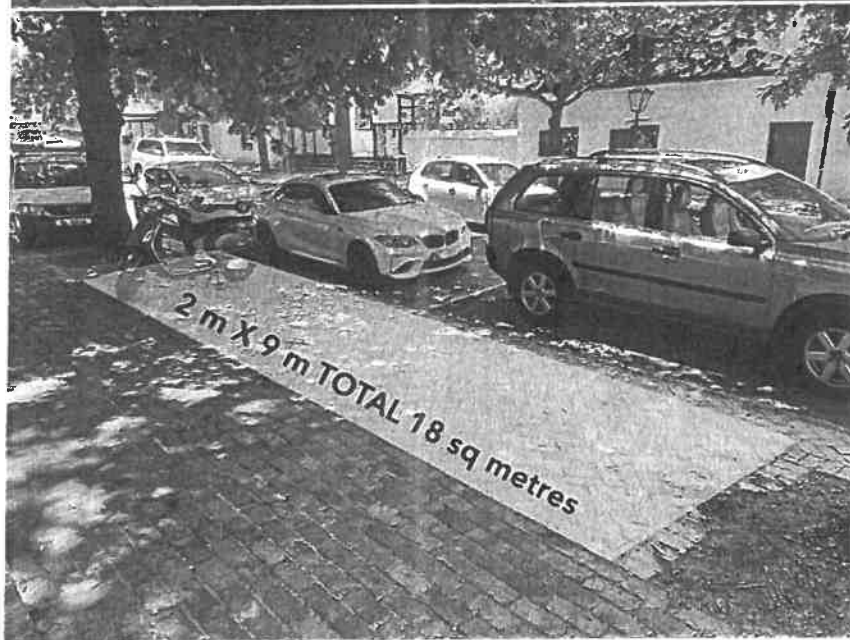
BRENNAN DAVIS

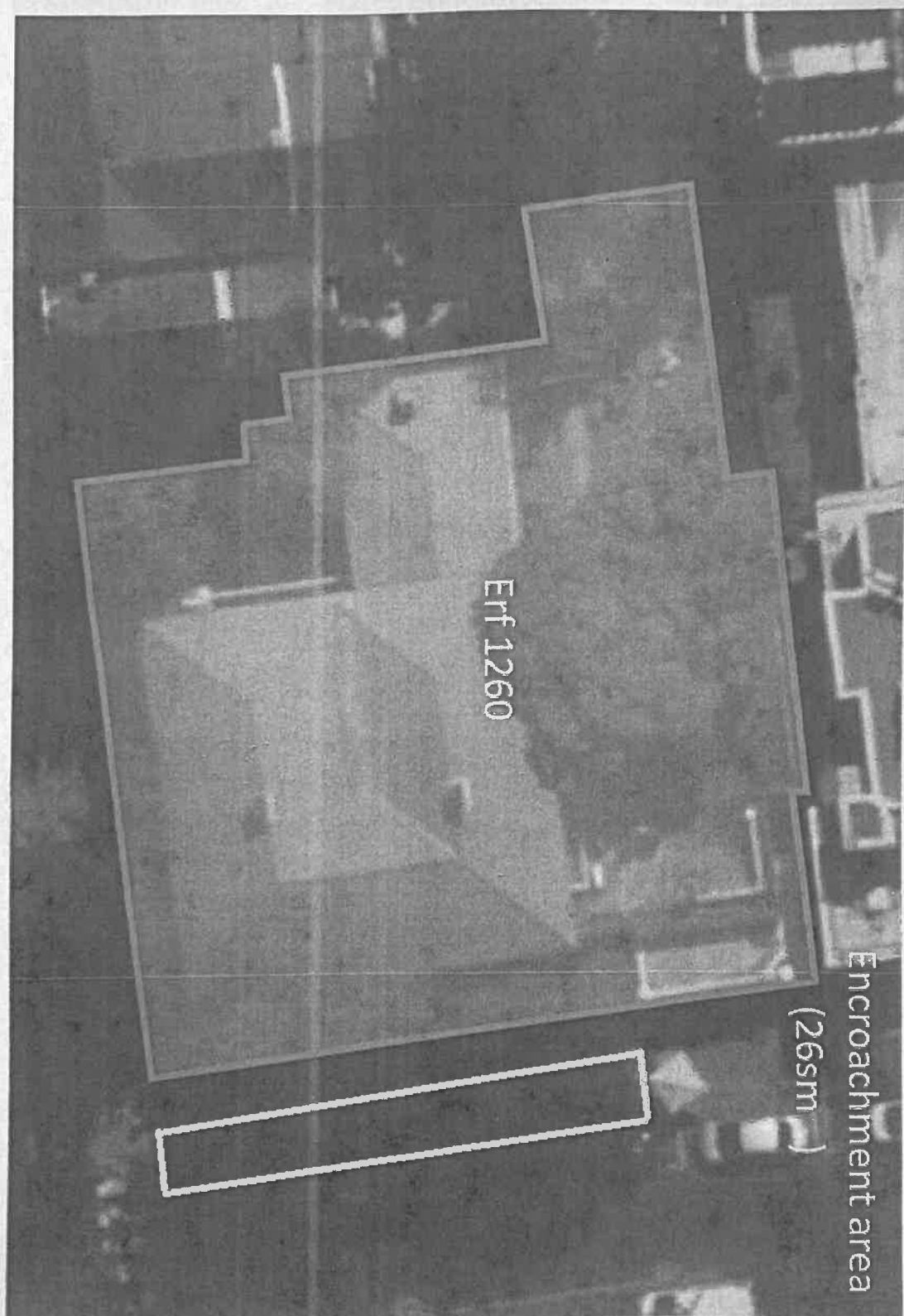


JACQUES LE ROUX

WINE TRAVELLERS (PTY) LTD

 the Wine glass





ANNEXURE 3

Freedom of Movement
Stellenbosch
7600

29 November 2021

To whom it may concern,

As the abutting neighbour to The Wine Glass in Ryneveld Street, Stellenbosch we have no objection to the use of the street reserve for dining purposes and give our consent to their application for the 10sqm and 18sqm areas as indicated in the attached photographs provided that the street view to our store is not materially obstructed.

You are welcome to contact me should you need to.

Sincerely,
Freedom Of Movement Owner

Verified by PDFfiller



12-03-2021 00:00

stb@freedomofmovement.co.za
021 8839114

5.8	PROPOSED LEASE AGREEMENT: ERF 1238 (11 ADRINGA STREET), WIJNHUIS
------------	---

Collaborator No:

IDP KPA Ref No:

Good Governance

Meeting Date:

30 August 2023

1. SUBJECT: PROPOSED LEASE AGREEMENT: ERF 1238 (11 ADRINGA STREET), WIJNHUIS**2. PURPOSE**

To consider an application from Wijnhuis Dorpsmeent t/a Wijnhuis, to enter into a Lease Agreement with Stellenbosch Municipality, in terms whereof they would be able to use a portion of Council-owned property for outdoor dining purposes.

3. DELEGATED AUTHORITY

In terms of the approved System of Delegations the Executive Mayor, in consultation with the Executive Mayoral Committee, has the delegated Authority to consider applications for Lease Agreements, up to a contract value not exceeding R5M and not exceeding a period of 10 years.

The approval of lease agreements of three (3) years and less has been delegated to the Municipal Manager.

4. EXECUTIVE SUMMARY

An application to use a portion of the street reserve for Outdoor Dining purposes has been received from the owner of Wijnhuis trading of erf 1238, Stellenbosch. The application is not in line with the provisions / requirements of the Outdoor Dining Policy and is not supported by the Engineering Department. There is not 1.5m unobstructed walkway for pedestrian use available on sidewalk due to a tree situated in front of the restaurant. Under 6.2.1 are photos showing how area is currently being used. The photos was taken by the contract management unit. We served the applicant with a letter requesting that they apply for the outdoor dining lease to ensure compliance.

They have not specified a requested time for the lease and the area they are interested in is 4 m². The applicant has not provided a diagram indicating the placement of furniture on the sidewalk. The placement is indicated in the photographs in the item.

The department cannot support the application in its current form as it does not comply with the legislation.

5. RECOMMENDATION

For consideration.

6. DISCUSSION / CONTENT

6.1 Background

6.1.1 Application for lease

An application was received from Wijnhuis to enter into an agreement with Stellenbosch Municipality in terms of where they would be able to use a portion of Council-owned property for outdoor dining purposes. A copy of the application is attached as **APPENDIX 1**. The extent of the encroachment area is approximately 4m².

6.2 DISCUSSION

6.2.1. Locality and context

Erf 1238, Stellenbosch is located at 11 Adringa Street, Stellenbosch, as shown on Fig 1. and Fig 2, below as well as photographs of how area is currently used under Fig 3.

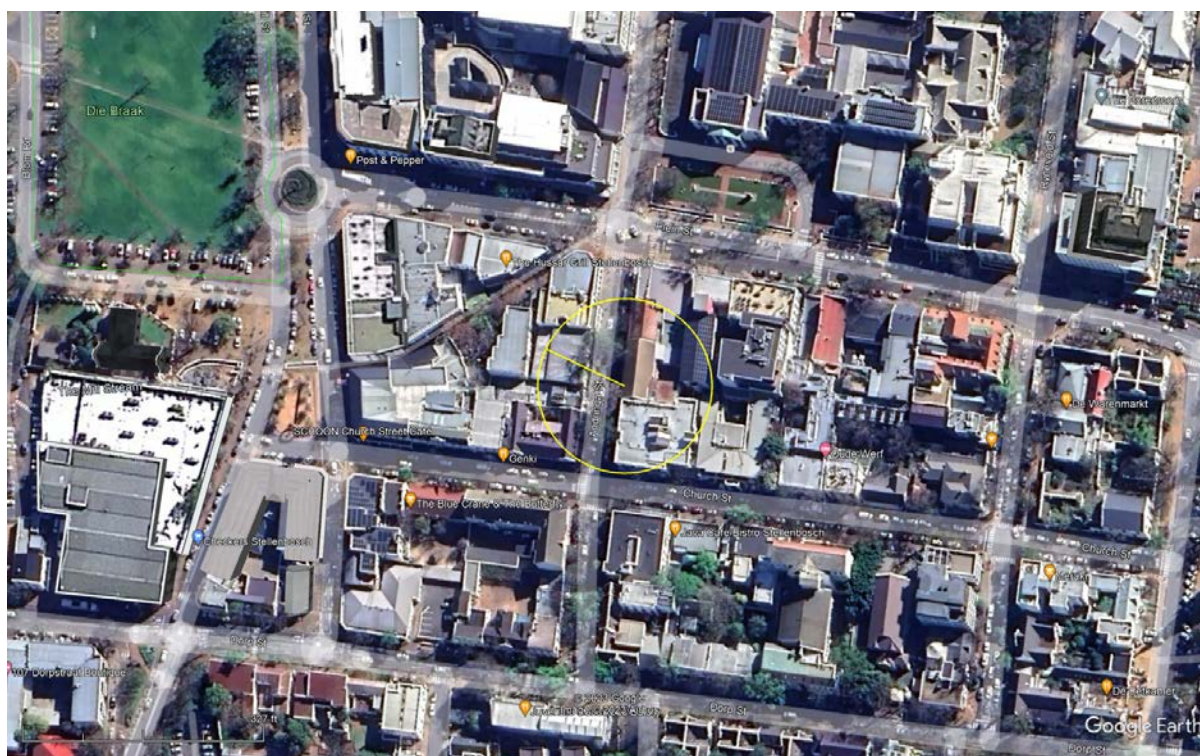


Fig 1. Location and context



Fig 2 .Extent of area





Fig. 3 Current area used for outdoor dining

6.2.2 Legal requirements

6.2.2.1 Municipal Asset Transfer Regulations

In terms of Section 36 of the Municipal Asset Transfer Regulation, when considering an application for an approval of a right to use municipal property, the following needs to be taken into account, *inter alia*:-

- a) whether the capital asset may be required for the municipality's own use during the period for which the right is to be granted;
- b) the extent to which any compensation to be received for the right, together with the estimated value of improvements or enhancements to the asset, will result in a significant financial benefit to the municipality;
- c) the (possible) risks and rewards associated with the use in relation to the municipality's interests;
- d) Any comments received from the local community, and

e) compliance with the legislative regime applicable to the proposed granting of the right.

6.2.2.2 Stellenbosch By-Law on Roads and Streets

In terms of section 4 of the Stellenbosch By-Law on Roads and Streets, no person may, **without prior written permission of the Municipality**, cause an encroachment on a street, sidewalk or road reserve forming part thereof.

6.2.2.3 Property Management policy

Section 9 2.2 deals with deviations from the competitive process, and reads as follows:

The Municipal Council **may dispense with the competitive processes** established in this policy and may enter into a Private Treaty Agreement through any convenient process, which may include direct negotiations, including in response to an unsolicited application, but only in the following circumstances, and only after having advertised Council's intention so to act. Should any objections be received as a consequence of such a notice, such objections first be considered before a final decision is taken to dispense with the competitive process established in this policy. However, should any objections, be received from potential, competitive bidders, then a public competitive process must be followed. The advertisement referred to above should also be served on adjoining landowners, where the Municipal Manager is of the opinion that such transaction may have a detrimental effect on such adjoining landowner(s):

(h)where encroachment applications are received from adjoining owners, including applications for outdoor dining permits, subject to approved tariff structure.

6.2.2.4 Outdoor Dining Policy

6.2.2.4.1 Policy Objective

To regulate the use of sidewalks or road reserves for the purpose of outdoor dining and trading, and the temporary use of Public Places for commercial ventures and displays.

6.2.2.4.2 Suitable Locations

Outdoor cafes, restaurants and traders may apply for lease where local conditions are favourable for their operation, including areas of Council e.g. road reserves, sidewalks, Public Open Spaces. All applications in locations of high pedestrian usage, e.g. a retail center, will be required to take pedestrian needs into consideration.

6.2.2.4.3 Assessment Criteria

The most important local conditions to be considered when an application for lease of the road reserve area is received will be those issues pertaining to pedestrian (including pedestrians who are using wheelchairs, baby prams or are visually impaired) and vehicular circulation, convenience and safety of patrons and the general public, existing streetscape elements and residential amenity.

The ground surface must be sufficiently level to support a proper layout and safe use.

6.2.2.4.4 Layout

The style, layout and orientation of furniture should be chosen according to the extent and shape of the available space of the leased area.

The size of an outdoor cafe or placement of any object on the sidewalk will depend on the width of the sidewalk.

6.2.2.4.5 Defined Area

The applicant will be required to define the area with appropriate markers. (ie a single galvanized steel nail inserted in between the pavers, or a paint spot no larger than 5cm in diameter placed at the corners of the defined area in a semi- permanent paint) to the satisfaction of Council.

6.2.2.4.6 Lease Conditions

The applicant must comply with the conditions set out in the lease agreement and this policy. The lease will be for a period of not more than 5 years with an option to renew. These conditions would also generally require that the local environmental factors be reviewed annually and adjustments to the lease agreement may be required.

If the lease agreement that is entered into is seen as not providing long-term rights, there is no need to advertise the proposed agreement for public input/comments or objections. Should the municipality receive any complaints the lease agreement may be terminated due to the objections.

6.3 Financial Implications

In terms of the current, approved tariff structure for outdoor dining lease agreements a fee of R150 per m² is charged on a monthly basis which means that the monthly rental will be R 600.00 (incl. of VAT) and an escalation of 6% is recommended.

6.4 Legal Implications

The legal implications are discussed under 6.2.2 above. As the proposed term of the lease agreement is three (3) years and when the value of the lease and property is taken into account the asset transfer regulations are not applicable as it is not seen as long-term rights on council property that are being given.

6.5 Staff Implications

No additional staff implications.

6.6 Previous / Relevant Council Resolutions**SPECIAL COUNCIL MEETING: 2002-06-22: ITEM 9.2.5 RESOLVEND (nem con)**

- (a) That council takes note of the intended communication to the public;
- (b) That Council takes note that all restaurants and business will be given notice to apply / re-apply for a lease to use council property for outdoor dining purposes; and
- (c) That the approval of the leases of three (3) years and less be delegated to the Municipal Manager for approval.

6.7 Risk Implications

The risks are addressed in the item.

6.8 Comments from Senior Management**6.8.1 Director: Infrastructure Services**

- The Municipality concludes an agreement with the applicant, detailing the conditions of approval.
- Leased area is zoned as road reserve and cannot be enclosed - to exclude the public, the municipality or other services provider from accessing the area.
- Ensure public risk and liability insurance is in place to cover 3rd party claims.
- Council is indemnified against all possible 3rd party claims.
- The municipality or other public service provider must not be prohibited from maintaining, repairing, upgrading and / or installing new public services with-in the leased area.
- The municipality reserves the right to end the lease agreement when the need arises, i.e. when the leased space is required for municipal or other public services purposes.
- Areas outside of the leased area must remain free from any obstruction to pedestrian movements.

6.8.2 Director: Planning and Economic Development

The Stellenbosch Municipality Roads and Street Bylaw, 2021 as promulgated in the Provincial Gazette no. 8436 dated 28 May 2021, defines "sidewalk" "means that portion of a street between the outer boundary of the roadway and the boundary lines of adjacent properties or buildings which is intended for the use of pedestrians, pedal cyclists and any other category of vehicles as may be determined by the Municipality in accordance with section 42(1);"

The definition clearly stipulates that the use of sidewalk is intended for pedestrians, pedal cyclists and any other vehicle. The use of sidewalks as part of the commercial activities of outdoor cafes and restaurants is a form of activity on the street that should improve the quality of public places and urban life. This use must however not be at the cost of overall safety of road users as intended in terms of the above bylaw.

It should be noted that currently the Final Draft Outdoor Dining and Events Overlay Zone, is undergoing a public participation process, of which the closing date for comments is 02 September 2023. In the absence of this overlay zone a suitable land use application must be submitted to evaluate the intended land usage, as the current and proposed land use is not in accordance with the applicable zoning.

6.8.3 Chief Financial Officer

No comments requested.

6.8.4 Director: Community Services

No comments requested.

6.8.5 Municipal Manager

No comments requested yet.

ANNEXURES: 1. Application

FOR FURTHER DETAILS CONTACT:

NAME	Annalene de Beer
POSITION	Director: Corporate Services
DIRECTORATE	CORPORATE SERVICES
CONTACT NUMBERS	021-8088073
E-MAIL ADDRESS	Annalene.debeer@ Stellenbosch.gov.za
REPORT DATE	2023-08-24

ANNEXURE 1



STELLENBOSCH

STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

APPLICATION FOR LEASE OF MUNICIPAL LAND APPLICATION FORM

A: APPLICANT'S DETAILS

Name : Wijnhuis Dorpsmeent

Physical address: 11 Andringa Street
Stellenbosch

Postal code: 7600

Mailing address: PO Box 697
Stellenbosch

Postal code: 7599

E-mail address: admin@rank.co.za / amy@rank.co.za

Telephone: 021 887 3606

Cell phone:

B: PROPERTY DETAILS OF APPLICANT

Erf/farm number : 1238

Suburb: Stellenbosch Central

Town: Stellenbosch

C: PROPERTY DETAILS OF LEASE AREA

Erf/farm number : 1238

Suburb: Stellenbosch Central

Town: Stellenbosch

Area of encroachment: 4 m²

* To be supplemented with a sketch-plan with dimension in m²

D: TYPE OF APPLICATION:

Please mark the appropriate block

For commercial purposes, other than for parking	☐
For commercial parking purposes,	☐
For residential parking purposes	☐
For non-commercial purposes (such as garden purposes, gates, ect)	☒
For projecting structures onto street reserves	☐
For projecting structures onto other council-owned land	☐
Other: please provide description:	☐

Brief description of application:

Small extension to front premises entrance for planters.

Motivation:.....

More than adequate sidewalk space in front premises.

The small extension request will be barely noticeable.

E: LIST OF ATTACHEMENTS AND SUPPORTING DOCUMENTS

Please mark the appropriate box

Special Power of Attorney, where Applicant is not the owner

☐

Diagram of proposed area of the lease area [Available on request.](#)

☐

Letters of consent (affected neighbours) [Available on request.](#)

☐

Application fee (non-refundable) [Please advise on fee.](#)

☐

I hereby certify that the information supplied in this application form is correct and that I am properly authorized to make this application.

Applicant's signature: 

Date: 20th March 2023

Full name: Amy Kleu

FOR OFFICIAL USE

- The application was considered onby
- The application was

APPROVED**NOT APPROVED**

Conditions (if any):

.....

.....

Applicant was informed of outcome on

.....
SIGNATURE OF RESPONSIBLE OFFICIAL

.....
DATE

Name:.....

***If approved**☐

Encroachment fee paid

☐

Lease Agreement signed

☐

Agreement/Permit processed on Contract Management System

.....
SIGNATURE OF RESPONSIBLE OFFICIAL

.....
DATE

Name:.....

5.9	PROPOSED LEASE AGREEMENT: ERF 1271, 20 RYNEVELD STREET, STELLENBOSCH: DE WARENMARKT RESTAURANT
-----	---

Collaborator No:

IDP KPA Ref No:

Meeting Date:

Good Governance

30 August 2023

1. SUBJECT: PROPOSED LEASE AGREEMENT: ERF 1271, 20 RYNEVELD STREET, STELLENBOSCH: DE WARENMARKT RESTAURANT

2. PURPOSE

To consider an application from De Warenmarkt Restaurant, to enter into a Lease Agreement with Stellenbosch Municipality, in terms whereof they would be able to use a portion of Council-owned property for outdoor dining purposes.

3. DELEGATED AUTHORITY

In terms of the approved System of Delegations the Executive Mayor, in consultation with the Executive Mayoral Committee, has the delegated Authority to consider applications for Lease Agreements, up to a contract value not exceeding R5M and not exceeding a period of 10 years.

The Municipal Manager has the delegated authority to enter into lease agreements of three (3) years or less.

4. EXECUTIVE SUMMARY

An application to use a portion of the street reserve for Outdoor Dining purposes has been received from the owner of De Warenmarkt Restaurant trading from erf 1271, Stellenbosch. The application is in line with the provisions /requirements of the Outdoor Dining Policy and is supported by the Engineering Department. Under 6.2.1 are photos showing how area is currently being used. The applicant does not currently have any lease agreement of previous encroachment agreement with the municipality and is therefore not paying rent for current use. We served the applicant with a letter requesting that they apply for the outdoor dining lease to ensure compliance.

They have not specified a requested time for the lease and the area they are interested in is 46m². They have however not made it clear on their draft plan of what furniture will be used however same is visible on the photographs in the item as well as the demarcation being used. The photos were taken by the contract management unit.

A space for pedestrians of 1.5m on the walkway is currently being left open.

The applicant has also filed an application for approval to add a new deck on Ryneveld street. A proposed design for the new deck has also been submitted and is visible in the item. The department can only support the application for the Plein Street usage provided that an application for the deck is submitted and approved.

5. RECOMMENDATIONS

- (a) that the land as indicated on Fig 1 and 2, measuring approximately 46m². in extent, be identified as land not needed to provide the minimum level of basic municipal services during the period that the rights are awarded;
- (b) that the in-principle approval be considered for an initial period of three (3) years with the option of a renewal subject to the following conditions:
 - 1. Should the application to erect a further deck be approved by council the approval will be subject to Heritage approval being obtained as well as submission of building plans with the building department for approval;
 - 2. Council be indemnified against all possible 3rd party claims;
 - 3. The municipality or other public service providers must not be prohibited from maintaining, repairing, upgrading and / or installing new public services within the leased area. For planned maintenance and repairs, upgrades or new installations, the applicant will be provided with a 5-day written notice to remove all furniture for the municipality and any other public service provider to gain access. For emergency work the applicant will be required to remove everything immediately for the municipality or other public service providers to gain access.
 - 4. The cost of removing and re-instating the deck will be for the applicant;
- (c) that the Municipal Manager be authorised to determine the rental amount and escalation;
- (d) that the area in Ryneveld Street be kept open for pedestrian use given the trees on the sidewalk; and
- (e) that an application must be submitted for the deck in Plein Street.

6. DISCUSSION / CONTENT**6.1 Background****6.1.1 Application for lease**

An application was received from De Warenmarkt Restaurant to enter into an agreement with Stellenbosch Municipality in terms whereof they would be able to use a portion of Council-owned property for outdoor dining purposes. A copy of the application is attached as **APPENDIX 1**, with drawings of the proposed lay-out attached as **APPENDIX 2**. The extent of the area is approximately 46m². A further application was received to erect a new deck with an area of 39 m². A copy of the design of the new deck is attached hereto as **APPENDIX 3**.

6.2 DISCUSSION

6.2.1. Locality and context

Erf 1271, Stellenbosch is located at 20 Ryneveld Street, Stellenbosch, as shown on Fig 1. and Fig 2, below as well as photographs of how the area is currently being used under Fig 3. Under Fig 4 is the design of the new deck that the applicant wishes to erect.

From the photographs it is clear that sufficient space is available for pedestrian use. National guidelines for non motorised transport requires unhindered access of 1.5m.



Fig 1. Location and context



Fig 2 .Extent of area



Fig. 3 Current area being used for outside Dining

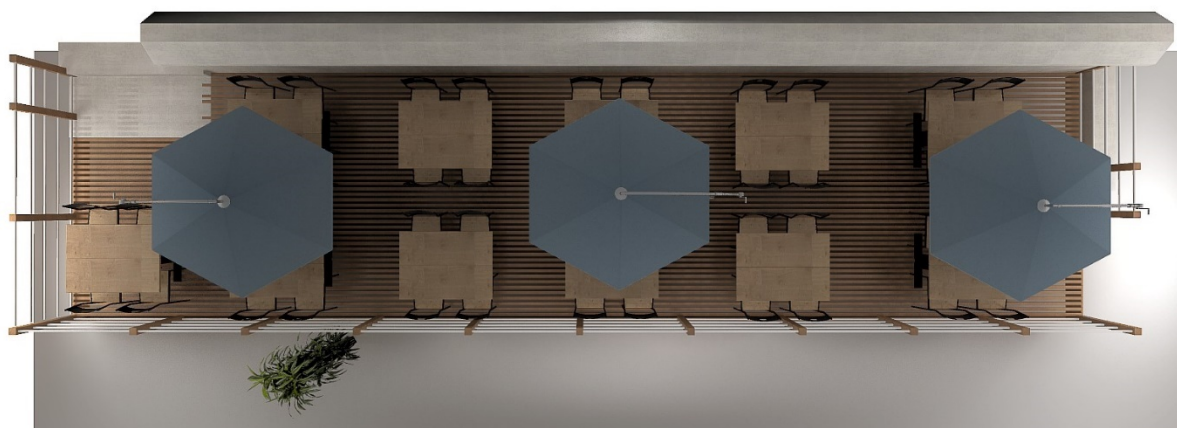


Fig 4. Design of new deck in Ryneveld Street

6.2.2 Legal requirements

6.2.2.1 Municipal Asset Transfer Regulations

In terms of Section 36 of the Municipal Asset Transfer Regulation, when considering an application for an approval of a right to use municipal property, the following needs to be taken into account, *inter alia*:-

- a) whether the capital asset may be required for the municipality's own use during the period for which the right is to be granted;
- b) the extent to which any compensation to be received for the right, together with the estimated value of improvements or enhancements to the asset, will result in a significant financial benefit to the municipality;
- c) the (possible) risks and rewards associated with the use in relation to the municipality's interests;
- d) Any comments received from the local community, and
- e) compliance with the legislative regime applicable to the proposed granting of the right.

6.2.2.2 Stellenbosch By-Law on Roads and Streets

In terms of section 4 of the Stellenbosch By-Law on Roads and Streets, no person may, **without prior written permission of the Municipality**, cause an encroachment on a street, sidewalk or road reserve forming part thereof.

6.2.2.3 Property Management policy

Section 9 2.2 deals with deviations from the competitive process, and reads as follows:

The Municipal Council **may dispense with the competitive processes** established in this policy and may enter into a Private Treaty Agreement through any convenient process, which may include direct negotiations, including in response to an unsolicited application, but only in the following circumstances, and only after having advertised Council's intention so to act. Should any objections be received as a consequence of such a notice, such objections first be considered before a final decision is taken to dispense with the competitive process established in this policy. However, should any objections, be received from potential, competitive bidders, then a public competitive process must be followed. The advertisement referred to above should also be served on adjoining landowners, where the Municipal Manager is of the opinion that such transaction may have a detrimental effect on such adjoining land owner(s):

(h)where encroachment applications are received from adjoining owners, including applications for outdoor dining permits, subject to approved tariff structure.

6.2.2.4 Outdoor Dining Policy

6.2.2.4.1 Policy Objective

To regulate the use of sidewalks or road reserves for the purpose of outdoor dining and trading, and the temporary use of Public Places for commercial ventures and displays.

6.2.2.4.2 Suitable Locations

Outdoor cafes, restaurants and traders may apply for encroachment where local conditions are favourable for their operation, including areas of Council e.g. road reserves, sidewalks, Public Open Spaces. All applications in locations of a high pedestrian usage, e.g. a retail center, will be required to take pedestrian needs into consideration.

6.2.2.4.3 Assessment Criteria

The most important local conditions to be considered when an application for encroachment of the road reserve area is received will be those issues pertaining to pedestrian (including pedestrians who are using wheelchairs, baby prams or are visually impaired) and vehicular circulation, convenience and safety of patrons and the general public, existing streetscape elements and residential amenity.

The ground surface must be sufficiently level to support a proper layout and safe use.

6.2.2.4.4 Layout

The style, layout and orientation of furniture should be chosen according to the extent and shape of the available space of the leased area.

The size of an outdoor cafe or placement of any object on the sidewalk will depend on the width of the sidewalk.

6.2.2.4.5 Defined Area

The applicant will be required to define the area with appropriate markers. (ie a single galvanized steel nail inserted in between the pavers, or a paint spot no larger than 5cm in diameter placed at the corners of the defined area in a semi- permanent paint) to the satisfaction of Council.

6.2.2.4.6 Lease Conditions

The applicant must comply with the conditions set out in the lease agreement and this policy. The lease will be for a period of not more than 5 years with an option to renew. These conditions would also generally require that the local environmental factors be reviewed annually and adjustments to the lease may be required.

If the lease agreement that is entered into is seen as not providing long term rights, there is no need to advertise the proposed agreement for public input/comments or objections. Should the municipality receive any complaints the lease agreement may be terminated due to the objections.

6.3 Financial Implications

In terms of the current, approved tariff structure for outdoor dining lease agreements a monthly fee of R150.00 per square meter is charged so for the current area being used R6 900.00(incl. of VAT) is applicable and if the new deck is approved a further R5 850.00 (incl. VAT) will be applicable and an escalation of 6% is recommended.

6.4 Legal Implications

The legal implications are discussed under 6.2.2 above. As the proposed term of the lease agreement is three (3) years and when the value of the lease and property is taken into account the asset transfer regulations are not applicable as it is not seen as long-term rights on council property that are being given.

6.5 Staff Implications

No additional staff implications.

6.6 Previous / Relevant Council Resolutions

SPECIAL COUNCIL MEETING: 2022-06-22: ITEM 9.2.5 RESOLVED (nem con)

- (a) that Council takes note of the intended communication to the public;
- (b) that Council takes note that all restaurants and businesses will be give notice to apply / re-apply for a lease to use council property for outdoor dining purposes; and

- (c) that the approval of the leases of three (3) years and less be delegated to the Municipal Manager for approval.

6.7 Risk Implications

The risks are addressed in the item.

6.8 Comments from Senior Management

6.8.1 Director: Infrastructure Services

- The Municipality concludes an agreement with the applicant, detailing the conditions of approval.
- Leased area is zoned as road reserve and cannot be enclosed - to exclude the public, the municipality or other services provider from accessing the area.
- Ensure public risk and liability insurance is in place to cover 3rd party claims.
- Council is indemnified against all possible 3rd party claims.
- The municipality or other public service provider must not be prohibited from maintaining, repairing, upgrading and / or installing new public services with-in the leased area.
- The municipality reserves the right to end the encroachment agreement when the need arises, i.e. when the encroached space is required for municipal or other public services purposes.
- Areas outside of the leased area must remain free from any obstruction to pedestrian movements.

6.8.2 Director: Planning and Economic Development

The Stellenbosch Municipality Roads and Street Bylaw, 2021 as promulgated in the Provincial Gazette no. 8436 dated 28 May 2021, defines "sidewalk" "means that portion of a street between the outer boundary of the roadway and the boundary lines of adjacent properties or buildings which is intended for the use of pedestrians, pedal cyclists and any other category of vehicles as may be determined by the Municipality in accordance with section 42(1);"

The definition clearly stipulates that the use of sidewalk is intended for pedestrians, pedal cyclists and any other vehicle. The use of sidewalks as part of the commercial activities of outdoor cafes and restaurants is a form of activity on the street that should improve the quality of public places and urban life. This use must however not be at the cost of overall safety of road users as intended in terms of the above bylaw.

It should be noted that currently the Final Draft Outdoor Dining and Events Overlay Zone, is undergoing a public participation process, of which the closing date for comments is 02 September 2023. In the absence of this overlay zone a suitable land use application must be submitted to evaluate the intended land usage, as the current and proposed land use is not in accordance with the applicable zoning.

6.8.3 Chief Financial Officer

No comments requested.

6.8.4 Director: Community Services

No comments requested.

6.8.5 Municipal Manager

No comments requested yet.

ANNEXURES: 1. Application**2. Diagram****3. New deck design****FOR FURTHER DETAILS CONTACT:**

NAME	Annalene de Beer
POSITION	Director: Corporate Services
DIRECTORATE	CORPORATE SERVICES
CONTACT NUMBERS	021-8088073
E-MAIL ADDRESS	Annalene.debeer@stellenbosch.gov.za
REPORT DATE	07/08/2023

ANNEXURE 1



STELLENBOSCH
STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

Date: 21/02/2023

TO WHOM IT MAY CONCERN

Dear Sir / Madam

**POLICY ON OUTDOOR DINING, TRADING AND THE USE OF PUBLIC PLACES FOR
COMMERCIAL TRADING AND DISPLAY**

Stellenbosch is a unique town. Residents, Students, Local visitors and International Tourists alike enjoy the variety of restaurants, cafes, wine bars and coffee shops that are on offer. Restaurants spilling onto sidewalks and patrons enjoying meals and drinks beneath giant oak tree canopies have become synonymous with our town. As a municipality, we fully embrace the uses and opportunities that outdoor dining brings, and we want to work with Business Owners to preserve this unique character. In the same vein we want to ensure that everyone, especially people with limited mobility, can make use of sidewalks safely.

It has however become prudent for the Municipality to standardise the outdoor dining operations to ensure that everyone operates within the confines of the law. Whereby all businesses that offer outdoor dining must apply and re-apply for a lease of the space they are using for their outdoor dining.

This approach will standardise the approval process of the leases and replace the current encroachments. The Municipality strives to create an environment that is conducive to economic activity while at the same time addressing all the current violations. The current encroachment approach is outdated and not in compliance with the latest legislation.

To give effect to this, the municipality has put in place the following measures as it relates to businesses who offer outdoor dining options:

- All businesses that use the sidewalk (Municipal property) for outdoor dining or the display of goods for sale must apply for a lease for the area they use or want to use.
- All businesses in the CBD that are participating in outdoor dining or the selling of goods on the sidewalk will receive a letter from the Municipality shortly.

CURRENT ENCROACHMENTS:

- Business Owners who are presently in possession of an approved Encroachment Agreement and who applies within 20 days after the receipt of the letter may continue with the outdoor dining use until the lease application has been considered.

ENCROACHMENT IN PROCESS:

- Business Owners who have applied for an encroachment but are not in possession of an approved encroachment agreement must re-apply for a lease. These Business Owners will be allowed to continue with the current use until the lease application has been processed.

ILLEGAL ENCROACHMENTS:

- Business Owners who have not applied on or before 28 February 2023 and are presently not in possession of an approved agreement, but are operating nevertheless, must apply within 30 days and must cease all operations until the lease application has been considered.
- All new establishments intending to operate an outdoor dining facility or sell goods from outside their shops must apply before starting to operate such an outdoor dining / shopping facility.
- Any business owner who does not apply within the 30 days' time frame will have to cease their operations with immediate effect.
- Please note that application will require at least a sketch plan of how the outdoor space will be used and need to be clearly demarcated to stop spilling over the area agreed on.

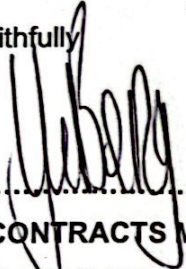
- If any structure is built or intended to be built on the area it will require approved building plans.
- All Business Owners must ensure that the intended encroachment area complies with zoning regulations.
- No advertising board can be placed on pavements.

Business owners must ensure that they operate within the approved area as illegal encroachments will be addressed going forward.

It should be emphasised that this process is intended to promote better outdoor experience, limit illegal activities and to ensure fair competition amongst businesses.

Attached hereto is an application form to apply for a lease of municipal land. Kindly complete the form and email to Yolande.vandenBerg@ Stellenbosch.gov.za or hand deliver to NPK Building, cnr Ryneveld and Plein Streets, Stellenbosch for attention Property Management. Please also direct queries in this regard to same.

Yours faithfully


.....
HEAD: CONTRACTS MANAGEMENT
YOLANDE VAN DEN BERG

Yolande.vandenberg@ Stellenbosch.gov.za

Tel: 021 808 8073

ACKNOWLEDGEMENT OF RECEIPT

De Warenmarkt

.....
NAME OF THE BUSINESS


.....
SIGNATURE
TENANT/OWNER

25 February 2023
.....

DATE

WITNESS 1:

WITNESS 2:



STELLENBOSCH
STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

**APPLICATION FOR LEASE OF MUNICIPAL LAND
APPLICATION FORM**

A: APPLICANT'S DETAILS

Name : De Warenmarkt Restaurant

Physical address: 20 Ryneveld Street

Stellenbosch

Postal code: 7600

Mailing address: As Physical

Postal code:

E-mail address: daniel@dewarenmarkt.com

Telephone: 021 883 2274

Cell phone: 083 414 7374

B: PROPERTY DETAILS OF APPLICANT

Erf/farm number : 1271

Suburb: Stellenbosch

Town:

C: PROPERTY DETAILS OF LEASE AREA

Erf/farm number :1271.....

Suburb:Stellenbosch.....

Town:

Area of encroachment:m²

* To be supplemented with a sketch-plan with dimension in m²

D: TYPE OF APPLICATION:

Please mark the appropriate block

- For commercial purposes, other than for parking ☒
- For commercial parking purposes, ☐
- For residential parking purposes ☐
- For non-commercial purposes (such as garden purposes, gates, ect) ☐
- For projecting structures onto street reserves ☐
- For projecting structures onto other council-owned land ☐
- Other: please provide description: ☐

Brief description of application:To make use of the area onto Rynelveld Street for commercial/.....

.....restauranting purposes.....

Motivation:.....

.....

.....

.....
.....

E: LIST OF ATTACHEMENTS AND SUPPORTING DOCUMENTS

Please mark the appropriate box

- | | |
|---|--------------------------|
| Special Power of Attorney, where Applicant is not the owner | ☐ |
| Diagram of proposed area of the lease area | ☐ |
| Letters of consent (affected neighbours) | ☐ |
| Application fee (non-refundable) | ☐ |

I hereby certify that the information supplied in this application form is correct and that I am properly authorized to make this application.

Applicant's signature:

Date: 25 February 2023

Full name: Daniel Eduard Kriel

FOR OFFICIAL USE

- The application was considered onby.....
- The application was

☐	APPROVED
--------------------------	-----------------

☐	NOT APPROVED
--------------------------	---------------------

Conditions (if any):

.....

.....

Applicant was informed of outcome on

.....
SIGNATURE OF RESPONSIBLE OFFICIAL

.....
DATE

Name:.....

***If approved**

- ☐ Encroachment fee paid
- ☐ Lease Agreement signed
- ☐ Agreement/Permit processed on Contract Management System

.....
SIGNATURE OF RESPONSIBLE OFFICIAL

.....
DATE

Name:.....

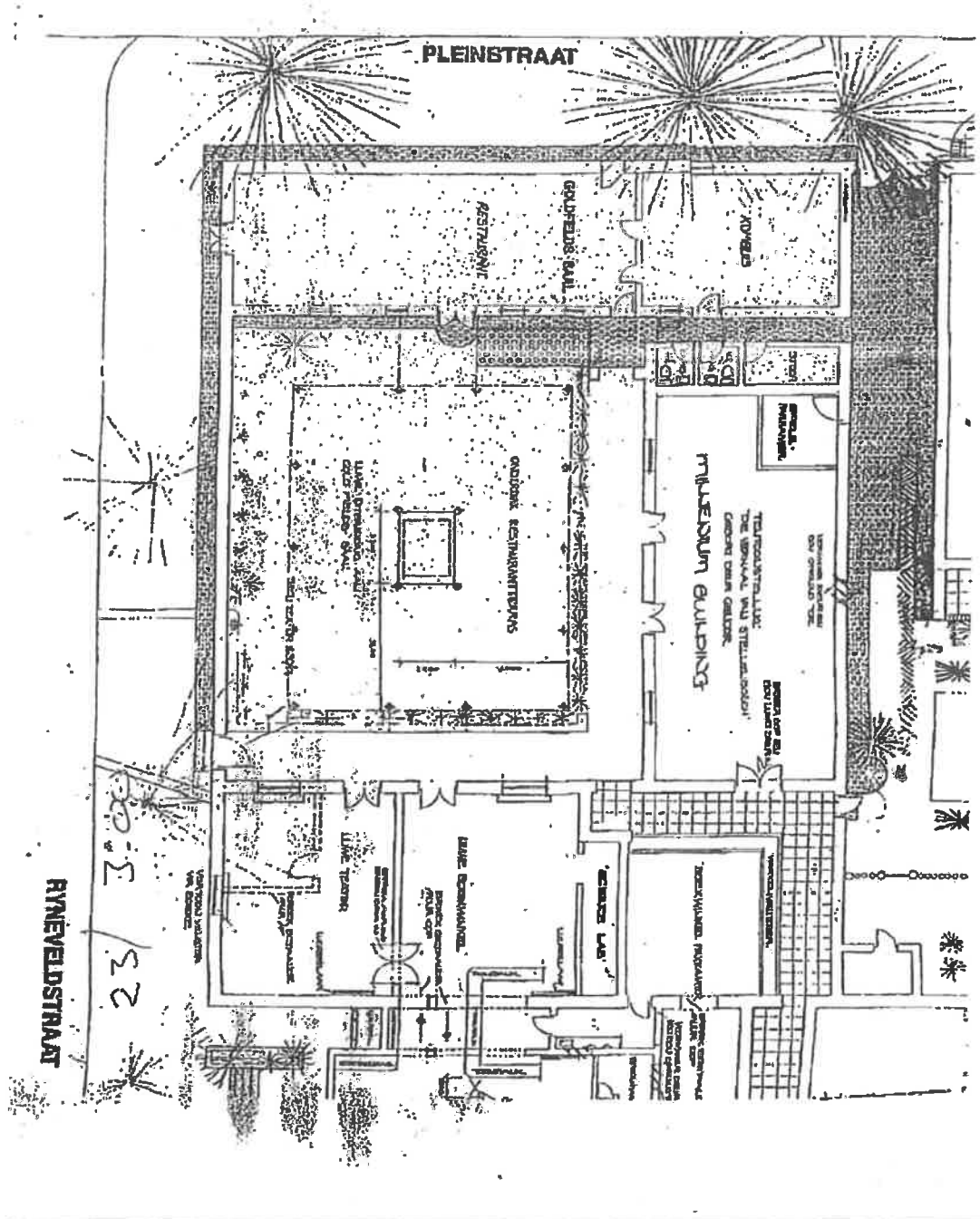
ANNEXURE 2

k:\corp\jv002\de warenhuis\lease agreement\140901 final lease agreement exe.docx

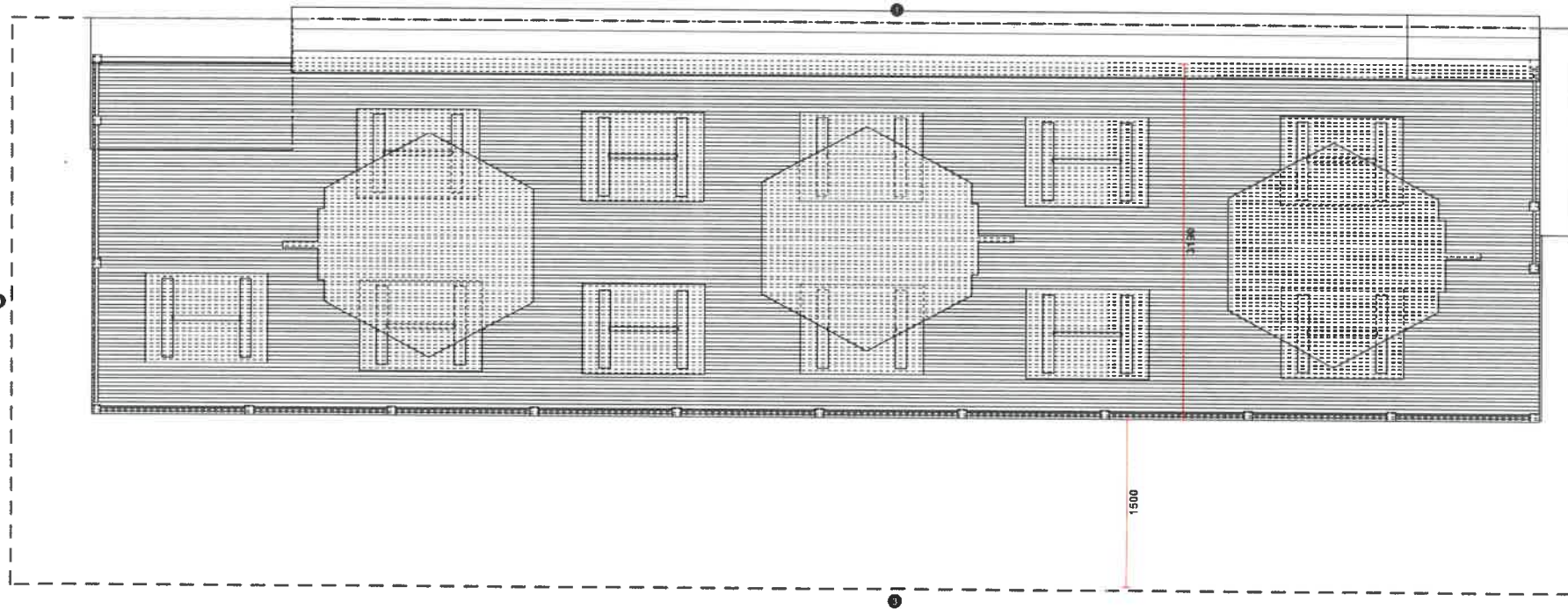
- 19 -

ANNEXURE C

FLOOR PLAN / SITE DIAGRAM



ANNEXURE 3



Scale : Fit to frame

5.10	PROPOSED LEASE AGREEMENT: ERF 3765 (52 DORP STREET, STELLENBOSCH): CIOVITA
------	---

Collaborator No:

IDP KPA Ref No:

Meeting Date:

Good Governance

30 August 2023

1. SUBJECT: PROPOSED LEASE AGREEMENT: ERF 3765 (52 DORP STREET, STELLENBOSCH): CIOVITA

2. PURPOSE

To consider an application from Ciovita to enter into a Lease Agreement with Stellenbosch Municipality, in terms of where they would be able to use a portion of Council-owned property for outdoor dining purposes.

3. DELEGATED AUTHORITY

In terms of the approved System of Delegations the Executive Mayor, in consultation with the Executive Mayoral Committee, has the delegated Authority to consider applications for Lease Agreements, up to a contract value not exceeding R5M and not exceeding a period of 10 years.

The Municipal Manager as the delegation to enter into lease agreements of three (3) years or less.

4. EXECUTIVE SUMMARY

An application to use a portion of the street reserve for Outdoor Dining purposes has been received from the owner of Ciovita operating from Erf 3765, Stellenbosch. The application is in line with the provisions /requirements of the Outdoor Dining Policy and is supported by the Engineering Department. Under 6.2.1 are photos showing how area is currently being used. The photos were taken by the Contract Management Unit. The applicant does not currently have any lease agreement or previous encroachment agreement with the municipality and is therefore not paying rent for current use. We served the applicant with a letter requesting that they apply for the outdoor dining lease to ensure compliance.

They have not specified a requested time for the lease and the area they are interested in is 16m². They have however not made it clear on their draft plan what furniture they will be using and a small wooden deck has already been erected. They have no permission for the deck. A 1.5m area has been left open for pedestrian use of the sidewalk.

The department can only support the application if all requirements are complied with including the approval of the erected deck.

5. RECOMMENDATIONS

- (a) that the land as indicated on Fig 1 and 2, measuring approximately 16m². in extent, be identified as land not needed to provide the minimum level of basic municipal services during the period that the rights are awarded;
- (b) that the in-principle approval be considered for an initial period of 3 years with the option of a renewal subject to the following conditions;
- (c) that the application to use a portion of Council-owned land for outdoor dining purposes be approved, subject thereto; -
 - 1. The applicant applies for approval from the Heritage Council;
 - 2. Building plans be submitted for approval by the building department;
 - 3. Council is indemnified against all possible 3rd party claims;
 - 4. The municipality or other public services providers must not be prohibited from maintaining, repairing, upgrading and / or installing new public services within the leased area. The applicant will be responsible for taking the deck down and re-instating same at their own costs. For planned maintenance and repairs the applicant will be provided with a 5-day written notice to remove the deck for the municipality and any other public service provider to gain access. For emergency work the applicant will be required to remove everything immediately for the municipality or other public service providers to gain access;
 - 5. The municipality reserves the right to end the lease agreement when the need arises, i.e. when the leased area is required for municipal or other public services purposes or when the applicant refuses the municipality or other public services access as required.
- (d) that the application must be submitted for the deck already erected;
- (e) that the municipal Manager be authorised to determine the rental amount and escalation; and
- (f) that the applicant must ensure that the unobstructed pedestrian are ais 1.5 meter wide.

6. DISCUSSION / CONTENT**6.1 Background****6.1.1 Application for lease agreement**

An application was received from Ciovita to enter into an agreement with Stellenbosch Municipality in terms whereof they would be able to use a portion of Council-owned property for outdoor dining purposes. A copy of the application is attached as **APPENDIX 1**, with drawings of the proposed lay-out attached hereto as **APPENDIX 2**. The extent of the encroachment area is approximately 16m².

6.2 DISCUSSION

6.2.1. Locality and context

Erf 3765, Stellenbosch is located at 52 Dorp Street, Stellenbosch, as shown on Fig 1. and Fig 2, below as well as photographs of how area is currently used under Fig 3.

From the photographs it can be seen that there is at least 1.5m walk away available for pedestrians. National guideline for non motorised transport requires unhindered access of 1.5m.



Fig 1. Location and context



Fig 2 .Extent of area





Fig 3. Current area being used for outdoor dining

6.2.2 Legal requirements

6.2.2.1 Municipal Asset Transfer Regulations

In terms of Section 36 of the Municipal Asset Transfer Regulation, when considering an application for an approval of a right to use municipal property, the following needs to be taken into account, *inter alia*:-

- a) whether the capital asset may be required for the municipality's own use during the period for which the right is to be granted;
- b) the extent to which any compensation to be received for the right, together with the estimated value of improvements or enhancements to the asset, will result in a significant financial benefit to the municipality;
- c) the (possible) risks and rewards associated with the use in relation to the municipality's interests;
- d) Any comments received from the local community, and

e) compliance with the legislative regime applicable to the proposed granting of the right.

6.2.2.2 Stellenbosch By-Law on Roads and Streets

In terms of section 4 of the Stellenbosch By-Law on Roads and Streets, no person may, **without prior written permission of the Municipality**, cause an encroachment on a street, sidewalk or road reserve forming part thereof.

6.2.2.2 Property Management policy

Section 9 2.2 deals with deviations from the competitive process, and reads as follows:

The Municipal Council **may dispense with the competitive processes** established in this policy and may enter into a Private Treaty Agreement through any convenient process, which may include direct negotiations, including in response to an unsolicited application, but only in the following circumstances, and only after having advertised Council's intention so to act. Should any objections be received as a consequence of such a notice, such objections first be considered before a final decision is taken to dispense with the competitive process established in this policy. However, should any objections be received from potential, competitive bidders, then a public competitive process must be followed. The advertisement referred to above should also be served on adjoining landowners, where the Municipal Manager is of the opinion that such transaction may have a detrimental effect on such adjoining landowner(s):

(h)where encroachment applications are received from adjoining owners, including applications for outdoor dining permits, subject to approved tariff structure;

6.2.2.3 Outdoor Dining Policy

6.2.2.3.1 Policy Objective

To regulate the use of sidewalks or road reserves for the purpose of outdoor dining and trading, and the temporary use of Public Places for commercial ventures and displays.

6.2.2.3.2 Suitable Locations

Outdoor cafes, restaurants and traders may apply for lease agreements where local conditions are favorable for their operation, including areas of Council e.g. road reserves, sidewalks, Public Open Spaces. All applications in locations of high pedestrian usage, e.g. a retail center, will be required to take pedestrian needs into consideration.

6.2.2.3.3 Assessment Criteria

The most important local conditions to be considered when an application for lease of the road reserve area is received will be those issues pertaining to pedestrian (including pedestrians who are using wheelchairs, baby prams or are visually impaired) and vehicular circulation, convenience and safety of patrons and the general public, existing streetscape elements and residential amenity.

The ground surface must be sufficiently level to support a proper layout and safe use.

6.2.2.3.4 Layout

The style, layout and orientation of furniture should be chosen according to the extent and shape of the available space of the leased area.

The size of an outdoor cafe or placement of any object on the sidewalk will depend on the width of the sidewalk.

6.2.2.3.5 Defined Area

The applicant will be required to define the area with appropriate markers. (ie a single galvanized steel nail inserted in between the pavers, or a paint spot no larger than 5cm in diameter placed at the corners of the defined area in a semi- permanent paint) to the satisfaction of Council.

6.2.2.3.6 Lease Conditions

The applicant must comply with the conditions set out in the lease agreement and this policy. The lease will be for a period of not more than 5 years with an option to renew. These conditions would also generally require that the local environmental factors be reviewed annually and adjustments to the encroachment may be required.

If the lease agreement that is entered into is seen as not providing long-term rights there is no need to advertise the proposed agreement for public input/comments or objections. Should the municipality receive any complaints the lease agreement may be terminated due to the objections.

6.3 Financial Implications

In terms of the current, approved tariff structure for outdoor dining encroachments a monthly fee of R 2400.00 (incl. of VAT) is applicable and an escalation of 6% is recommended.

6.4 Legal Implications

The legal implications are discussed under 6.2.2 above. As the proposed term of the lease agreement is three (3) years and when the value of the lease and property is taken into account the asset transfer regulations are not applicable as it is not seen as long-term rights on council property that are being given.

6.5 Staff Implications

No additional staff implications.

6.6 Previous / Relevant Council Resolutions

SPECIAL COUNCIL MEETING: 2022-06-22: ITEM 9.2.5 RESOLVED (nem con)

- (a) that Council takes note of the intended communication to the public;
- (b) that Council takes note that all restaurants and businesses will be given notice to apply / re-apply for a lease to use council property for outdoor dining purposes; and

-
- (c) that the approval of the leases of three (3) years and less be delegated to the Municipal Manager for approval.

6.7 Risk Implications

The risks are addressed in the item.

6.8 Comments from Senior Management

6.8.1 Director: Infrastructure Services

- The Municipality concludes an agreement with the applicant, detailing the conditions of approval.
- Leased area is zoned as road reserve and cannot be enclosed - to exclude the public, the municipality or other services provider from accessing the area.
- During the construction phase as well as during its operational phase, the deck must not hinder pedestrian movements on the sidewalk.
- The deck remains the property of the applicant, the applicant must:
 - Attend to maintenance and repairs of the deck.
 - Ensure public risk and liability insurance is in place to cover 3rd party claims.
 - Council is indemnified against all possible 3rd party claims.
- The municipality or other public service provider must not be prohibited from maintaining, repairing, upgrading and / or installing new public services with-in the encroached area.
- The deck must be constructed and installed in manner that aids removal and re-installation as and when required.
- The desk or portion of the deck must therefore be removable to gain access to the encroached area, as and when required by the Municipality or other public service provider.
- For planned maintenance, repairs, upgrades or new installations, the applicant will be provided with a 5-day written notice, to remove the deck or portion of the deck for the Municipality or any other public service provider to gain access.
- For emergency works the applicant will be required to remove the deck or portion of the deck immediately for the municipality or other public service provider to gain access.
- The applicant to re-install the deck once the works on the public services are complete.
- The cost for the removal and re-installation for the deck will be for the account of the applicant.
- The municipality reserves the right to end the lease agreement when the need arises, i.e. when the encroached space is required for municipal or other public services purposes.

6.8.2 Director: Planning and Economic Development

The Stellenbosch Municipality Roads and Street Bylaw, 2021 as promulgated in the Provincial Gazette no. 8436 dated 28 May 2021, defines “sidewalk” “means that portion of a street between the outer boundary of the roadway and the boundary lines of adjacent properties or buildings which is intended for the use of pedestrians, pedal cyclists and any other category of vehicles as may be determined by the Municipality in accordance with section 42(1);”

The definition clearly stipulates that the use of sidewalk is intended for pedestrians, pedal cyclists and any other vehicle. The use of sidewalks as part of the commercial activities of outdoor cafes and restaurants is a form of activity on the street that should improve the quality of public places and urban life. This use must however not be at the cost of overall safety of road users as intended in terms of the above bylaw.

It should be noted that currently the Final Draft Outdoor Dining and Events Overlay Zone, is undergoing a public participation process, of which the closing date for comments is 02 September 2023. In the absence of this overlay zone a suitable land use application must be submitted to evaluate the intended land usage, as the current and proposed land use is not in accordance with the applicable zoning.

6.8.3 Chief Financial Officer

Not requested.

6.8.4 Director: Community Services

Not requested

6.8.5 Municipal Manager

Not requested yet.

ANNEXURES: 1. Application**2. Diagram****FOR FURTHER DETAILS CONTACT:**

NAME	Annalene de Beer
POSITION	Director: Corporate Services
DIRECTORATE	CORPORATE SERVICES
CONTACT NUMBERS	021-8088073
E-MAIL ADDRESS	Annalene.debeer@ Stellenbosch.gov.za
REPORT DATE	2023/08/08

ANNEXURE 1



STELLENBOSCH
STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

APPLICATION FOR LEASE OF MUNICIPAL LAND APPLICATION FORM

A: APPLICANT'S DETAILS

Name : ...Camryn Steenkamp.....

Physical address: ...52 Dorp Street.....
...Stellenbosch.....

.....

.....

Postal code:...7600.....

Mailing address: ...52 Dorp Street.....
...Stellenbosch.....

.....

.....

Postal code:...7600.....

E-mail address: camryn.s@ciovita..com....

Telephone: 0210548541

Cell phone: 0760392211

B: PROPERTY DETAILS OF APPLICANT

Erf/farm number :

Suburb:

Town:

C: PROPERTY DETAILS OF LEASE AREA

Erf/farm number :3765.....

Suburb: ...Stellenbosch Central.....

Town: ...Stellenbosch

Area of encroachment:16m².....

* To be supplemented with a sketch-plan with dimension in m²

D: TYPE OF APPLICATION:

Please mark the appropriate block

- | | |
|--|-------------------------------------|
| For commercial purposes, other than for parking | ☒ |
| For commercial parking purposes, | ☐ |
| For residential parking purposes | ☐ |
| For non-commercial purposes (such as garden purposes, gates,ect) | ☐ |
| For projecting structures onto street reserves | ☐ |
| For projecting structures onto other council-owned land | ☐ |
| Other: please provide description: | ☐ |

Brief description of application: To continue use of the deck currently on the front exterior of the store located at 52 Dorp Street.

.....

Motivation:.....As a cycling focused brand, it is very important to us that we have the option to accommodate our customers during their stops on long rides. In order to do this, we have provided seating on our front deck where customers are able to sit and relax, while drinking their coffee.

.....

.....

.....
.....

E: LIST OF ATTACHMENTS AND SUPPORTING DOCUMENTS

Please mark the appropriate box

Special Power of Attorney, where Applicant is not the owner

☐

Diagram of proposed area of the lease area

☐

Letters of consent (affected neighbours)

☐

Application fee (non-refundable)

☐

I hereby certify that the information supplied in this application form is correct and that I am properly authorized to make this application.

Applicant's signature:



Date: 16/03/2023.....

Full name: ...Camryn Robin Steenkamp.....

FOR OFFICIAL USE

- The application was considered onby.....
- The application was

APPROVED

	NOT APPROVED
--	--------------

Conditions (if any):

.....

.....

Applicant was informed of outcome on

.....
SIGNATURE OF RESPONSIBLE OFFICIAL **DATE**

Name:.....

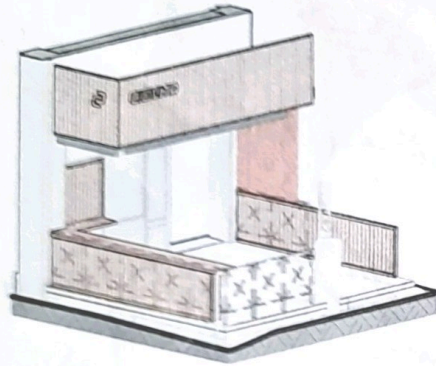
***If approved**

- ☐ Encroachment fee paid
- ☐ Lease Agreement signed
- ☐ Agreement/Permit processed on Contract Management System

.....
SIGNATURE OF RESPONSIBLE OFFICIAL **DATE**

Name:.....

ANNEXURE 2



Laser-cut and Powder-coated white Ciovita Logo to be mounted on pins 20mm away from backing. Colour to be approved by Client

New Tongue and Groove vertically boarded Signage Boarding, painted to match decking. Diagonal Stays to be added where required for support - to Specialists Detail

Existing Awning and roller blind material to be replaced with Black weather-resistant material and mechanism to be re-positioned to allow clearance to Signage Boarding

New Hardwood (meranti) Timber Openable and Internally Lockable Hatch door to replace existing glass panel. Hatch to be painted to match decking colour and include opening assistance and 'hold-open' mechanism, to specialists detail.

Timber hatch to be tongue and groove boarded and painted to match existing timber shop-front and door - to Specialists Detail

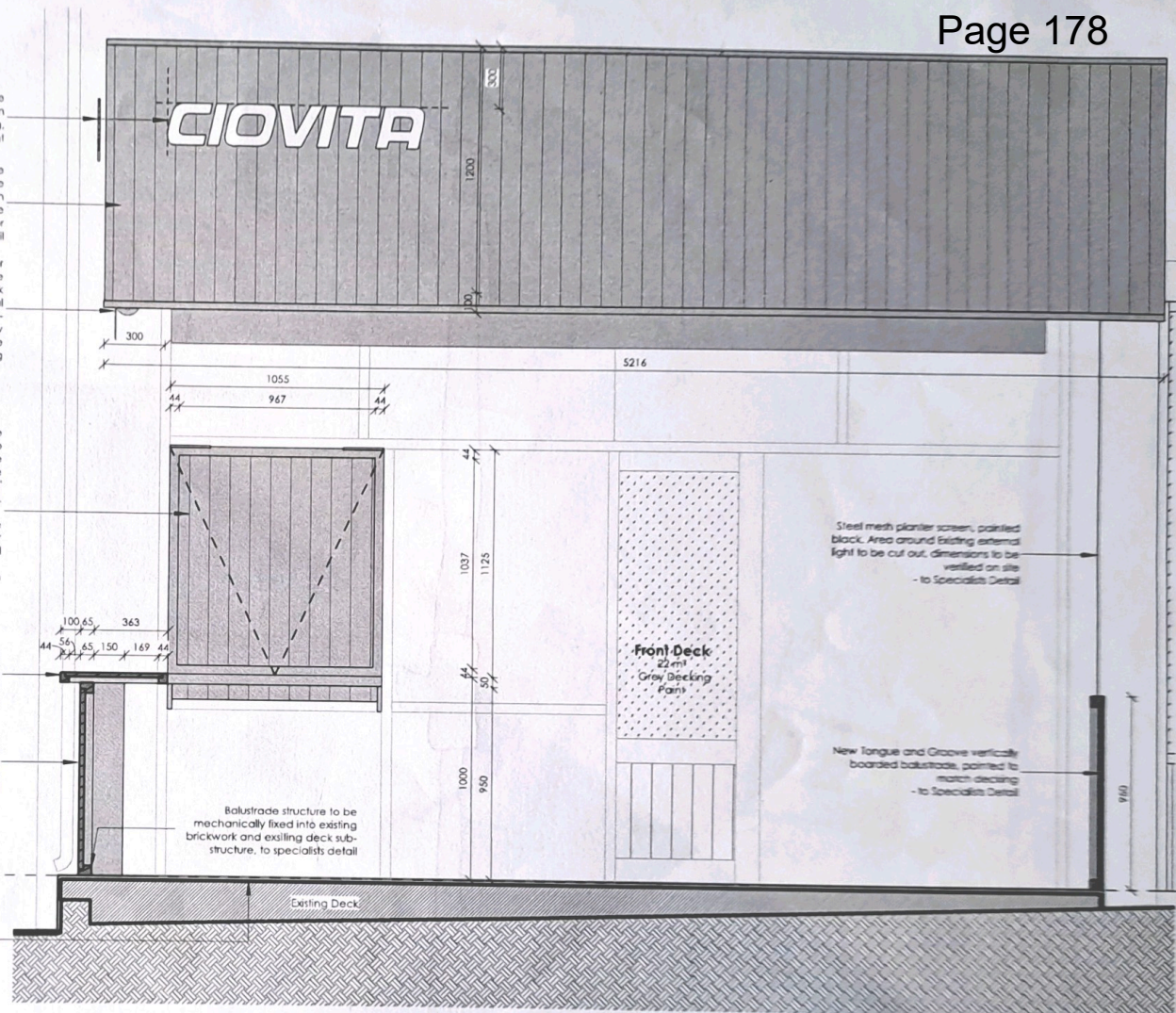
Refer Deck Section 3 for Elevation

New Timber Counter. Timber Top to be Decking planks treated and appropriate for external use, painted to match timber deck, - to Specialists Detail

New Tongue and Groove vertically boarded balustrade below counter, also painted to match decking - to Specialists Detail

Internal FFL 0

Existing Deck to be repaired where required. Existing Balustrade to be removed and made good. Timber Decking to be painted with Charcoal/Dark Grey Deck paint to approved Sample



Deck Section 3 | Scale 1 : 25 (1)

NOTE

All Dimensions to be Verified on Site

GENERAL NOTES

- All work, including mechanical and electrical work, is to be done in accordance with the National Building Regulations.
- All materials and workmanship are to comply with the relevant S.A.S. codes.
- This drawing is to be deemed to include all that is required for and consistent with good building practice regardless of any specific omissions.
- This drawing is not to be scaled. Figured dimensions are to be used. All dimensions are in millimetres unless otherwise stated.
- This drawing must be read in conjunction with all relevant drawings and specifications.
- All dimensions and levels must be checked on site by the Contractor before putting any work in hand.
- Any discrepancies on the drawings are to be brought to the Architect's attention by the Contractor before putting any work in hand.
- The Contractor must obtain the Architect's written confirmation of any instructions which involve a variation to the contract before putting that work in hand.
- All voids, suspended ceilings and partitions to be radon-proofed in accordance with the Government radon-sealing regulations.
- The Architects retain Copyright of this Drawing.
- Contractor and Sub-contractor are to ensure the structural stability of all components of their work, and to ascertain that the main structure is capable of supporting all loads applied thereto.



Ciovita Store/Clubhouse
52 Dorp Str. Stellenbosch

Timber Deck Section 3

FOR INFORMATION		
rev	date	description
0	2021.1.10	Deck layout and internal updates

scale
drawn
file
job number, drawing number
revision

2105CS_C114

1:25
Author
2105CS

0

4900
4800
99400

Annexure "A"

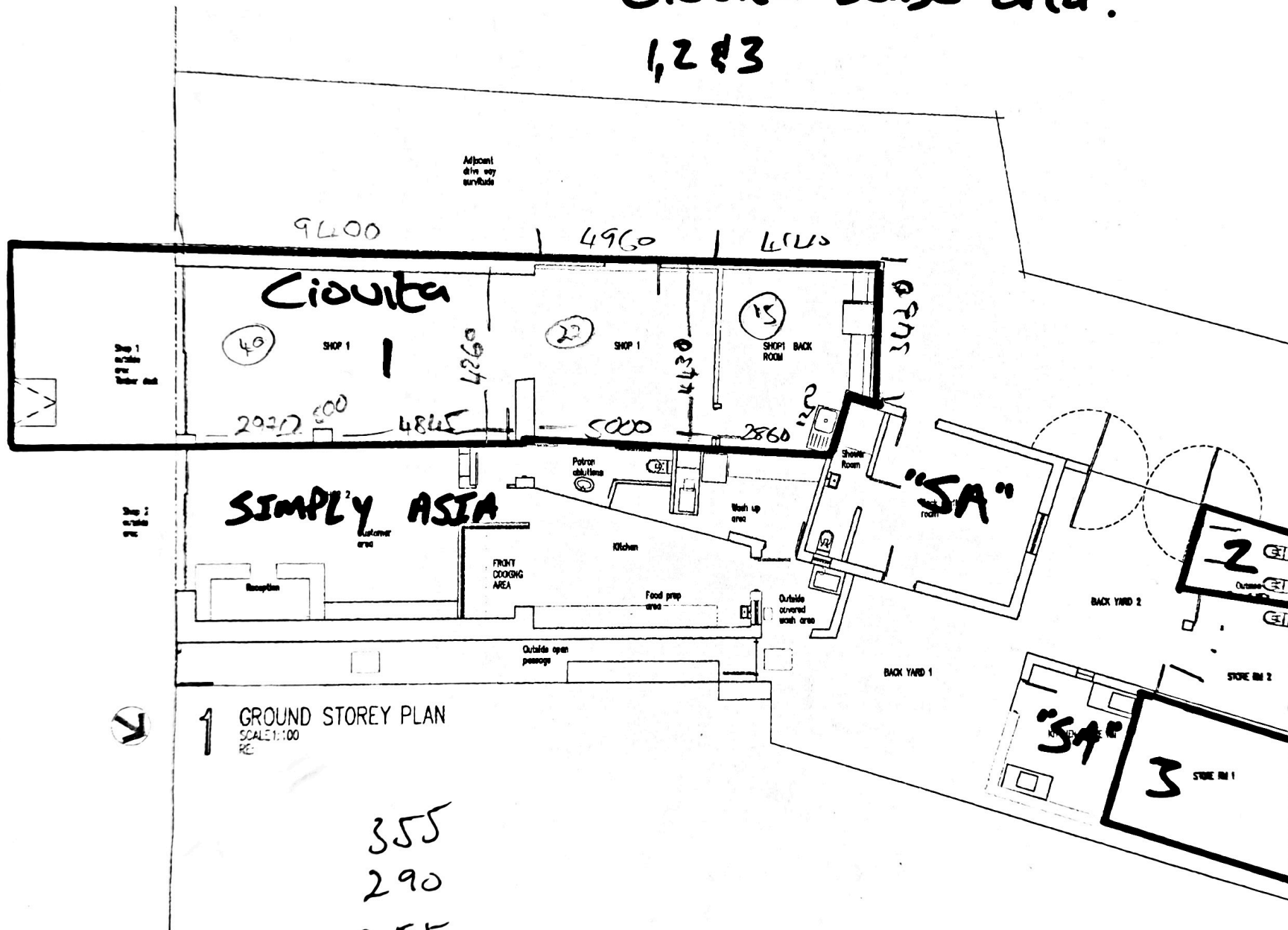
Ciouita Lease area.

1, 2 & 3

Page 179

© 2021 MWP Architects. All rights reserved. This drawing is not to be used, reproduced, modified or altered in any manner without the written consent of MWP Architects. This drawing is not to be used for any other purpose than that for which it was prepared.

NOTES:
All work to comply with DMR and standards therein as well as the provisions of the relevant local authority.
All dimensions are to be verified on the ground. Do not scale off drawings.
Drawings are to be used in conjunction with drawings from other consultants as is applicable.
Any discrepancies in drawings are to be reported to the architect immediately.



1 GROUND STOREY PLAN
SCALE 1:100
RE

355
290
255

Project	32 - 34 DEMP STREET, STEELBUSH
MWP ARCHITECTS	
11/08/2021	
Project No.	2021
Client	EX 100





5.11	PROPOSED LEASE AGREEMENT: ERF 4163 (CNR CHURCH AND BIRD STREETS), STELLENBOSCH – LE CHANT WINE BAR
------	---

Collaborator No:

IDP KPA Ref No:

Meeting Date:

Good Governance

30 August 2023

1. SUBJECT: PROPOSED LEASE AGREEMENT: ERF 4163 (CNR CHURCH AND BIRD STREETS), STELLENBOSCH – LE CHANT WINE BAR

2. PURPOSE

To consider an application from Oddo Banque Wine Bar (Pty) Ltd t/a Le Chant Wine Bar, to enter into a Lease Agreement with Stellenbosch Municipality, in terms whereof they would be able to use a portion of Council-owned property for outdoor dining purposes.

3. DELEGATED AUTHORITY

In terms of the approved System of Delegations the Executive Mayor, in consultation with the Executive Mayoral Committee, has the delegated Authority to consider applications for Lease Agreements, up to a contract value not exceeding R10M and not exceeding a period of 10 years.

The approval of lease agreements of three (3) years and less has been delegated to the Municipal Manager.

4. EXECUTIVE SUMMARY

An application to use a portion of the street reserve for Outdoor Dining purposes has been received from the owner of Le Chant Wine Bar trading of erf 4163, Stellenbosch. The application is not in line with the provisions /requirements of the Outdoor Dining Policy and is not supported by the Engineering Department as there is not sufficient space on the sidewalk for pedestrian use. Under 6.2.1 are photos showing how are is currently being used. The photos were taken by the Contract Management Unit. The applicant does not currently have any lease agreement or previous encroachment agreement with the municipality and is not paying rent for current use. We served the applicant with a letter requesting that they apply for the outdoor dining lease to ensure compliance.

They have not specified a requested time for the lease and the area they are interested in is 55 m².

Tables and chairs will be used in the outside dining area. 1.5 m is not left on the sidewalk adjacent to the street for pedestrians to use the sidewalk. The department cannot support the application in its current form.

5. RECOMMENDATIONS

For consideration.

Fig 1. Location and context



Fig 2 .Extent of area







Fig. 3 Current area used for outdoor dining

6.2.2 Legal requirements

6.2.2.1 Municipal Asset Transfer Regulations

In terms of Section 36 of the Municipal Asset Transfer Regulation, when considering an application for an approval of a right to use municipal property, the following needs to be taken into account, *inter alia*:-

- a) whether the capital asset may be required for the municipality's own use during the period for which the right is to be granted;
- b) the extent to which any compensation to be received for the right, together with the estimated value of improvements or enhancements to the asset, will result in a significant financial benefit to the municipality;
- c) the (possible) risks and rewards associated with the use in relation to the municipality's interests;
- d) Any comments received from the local community, and
- e) compliance with the legislative regime applicable to the proposed granting of the right.

6.2.2.2 Stellenbosch By-Law on Roads and Streets

In terms of section 4 of the Stellenbosch By-Law on Roads and Streets, no person may, **without prior written permission of the Municipality**, cause an encroachment on a street, sidewalk or road reserve forming part thereof.

6.2.2.3 Property Management policy

Section 9 2.2 deals with deviations from the competitive process, and reads as follows:

The Municipal Council **may dispense with the competitive processes** established in this policy and may enter into a Private Treaty Agreement through any convenient process, which may include direct negotiations, including in response to an unsolicited application, but only in the following circumstances, and only after having advertised Council's intention so to act. Should any objections be received as a consequence of such a notice, such objections first be considered before a final decision is taken to dispense with the competitive process established in this policy. However, should any objections, be received from potential, competitive bidders, then a public competitive process must be followed. The advertisement referred to above should also be served on adjoining landowners, where the Municipal Manager is of the opinion that such transaction may have a detrimental effect on such adjoining landowner(s):

(h)where encroachment applications are received from adjoining owners, including applications for outdoor dining permits, subject to approved tariff structure.

6.2.2.4 Outdoor Dining Policy**6.2.2.4.1 Policy Objective**

To regulate the use of sidewalks or road reserves for the purpose of outdoor dining and trading, and the temporary use of Public Places for commercial ventures and displays.

6.2.2.4.2 Suitable Locations

Outdoor cafes, restaurants and traders may apply for encroachment where local conditions are favorable for their operation, including areas of Council e.g. road reserves, sidewalks, Public Open Spaces. All applications in locations of a high pedestrian usage, e.g. a retail center, will be required to take pedestrian needs into consideration.

6.2.2.4.3 Assessment Criteria

The most important local conditions to be considered when an application for encroachment of the road reserve area is received will be those issues pertaining to pedestrian (including pedestrians who are using wheelchairs, baby prams or are visually impaired) and vehicular circulation, convenience and safety of patrons and the general public, existing streetscape elements and residential amenity.

The ground surface must be sufficiently level to support a proper layout and safe use.

6.2.2.4.4 Layout

The style, layout and orientation of furniture should be chosen according to the extent and shape of the available space of the encroachment area.

The size of an outdoor cafe or placement of any object on the sidewalk will depend on the width of the sidewalk.

6.2.2.4.5 Defined Area

The applicant will be required to define the area with appropriate markers. (ie a single galvanized steel nail inserted in between the pavers, or a paint spot no larger than 5cm in diameter placed at the corners of the defined area in a semi- permanent paint) to the satisfaction of Council.

6.2.2.4.6 Lease Conditions

The applicant must comply with the conditions set out in the lease agreement and this policy. The lease will be for a period of not more than 5 years with an option to renew. These conditions would also generally require that the local environmental factors be reviewed annually and adjustments to the lease agreement may be required.

If the lease agreement that is entered into is seen as not providing long-term rights there is no need to advertise the proposed agreement for public input/comments or objections. Should the municipality receive any complaints the lease agreement may be terminated due to the objections.

6.3 Financial Implications

In terms of the current, approved tariff structure for outdoor dining lease agreements a fee of R150 per m² is charged monthly which means that the monthly rental will be R 8 250.00 (incl. of VAT) and an escalation of 6% is recommended.

6.4 Legal Implications

The legal implications are discussed under 6.2.2 above. As the proposed term of the lease agreement is three (3) years and when the value of the lease and property is taken into account the asset transfer regulations are not applicable as it is not seen as long-term rights on council property that are being given.

6.5 Staff Implications

No additional staff implications/

6.6 Previous / Relevant Council Resolutions

SPECIAL COUNCIL MEETING: 2002-06-22: ITEM 9.2.5 RESOLVEND (nem con)

- (a) That council takes note of the intended communication to the public;
- (b) That Council takes note that all restaurants and business will be given notice to apply / re-apply for a lease to use council property for outdoor dining purposes; and

- (c) That the approval of the leases of three (3) years and less be delegated to the Municipal Manager for approval.

6.7 Risk Implications

The risks are addressed in the item.

6.8 Comments from Senior Management

6.8.1 Director: Infrastructure Services

The application is not in line with the provisions /requirements of the Outdoor Dining Policy and is not supported by the Engineering Department as there is not sufficient space on the sidewalk for pedestrian use.

6.8.2 Director: Planning and Economic Development

The Stellenbosch Municipality Roads and Street Bylaw, 2021 as promulgated in the Provincial Gazette no. 8436 dated 28 May 2021, defines "sidewalk" "means that portion of a street between the outer boundary of the roadway and the boundary lines of adjacent properties or buildings which is intended for the use of pedestrians, pedal cyclists and any other category of vehicles as may be determined by the Municipality in accordance with section 42(1);"

The definition clearly stipulates that the use of sidewalk is intended for pedestrians, pedal cyclists and any other vehicle. The use of sidewalks as part of the commercial activities of outdoor cafes and restaurants is a form of activity on the street that should improve the quality of public places and urban life. This use must however not be at the cost of overall safety of road users as intended in terms of the above bylaw.

It should be noted that currently the Final Draft Outdoor Dining and Events Overlay Zone, is undergoing a public participation process, of which the closing date for comments is 02 September 2023. In the absence of this overlay zone a suitable land use application must be submitted to evaluate the intended land usage, as the current and proposed land use is not in accordance with the applicable zoning.

6.8.3 Chief Financial Officer

Not Requested

6.8.4 Director: Community Services

Not requested

6.8.5 Municipal Manager

Not requested yet.

ANNEXURES: 1. Application

2. Diagram

FOR FURTHER DETAILS CONTACT:

NAME	Annalene de Beer
POSITION	Director: Corporate Services
DIRECTORATE	CORPORATE SERVICES
CONTACT NUMBERS	021-8088073
E-MAIL ADDRESS	Annalene.debeer@ Stellenbosch.gov.za
REPORT DATE	2023-08-17

ANNEXURE 1



STELLENBOSCH

STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

ENCROACHMENT PERMIT APPLICATION FORM

A: APPLICANT'S DETAILS

Name : Oddo Banque Wine Bar (Pty) Ltd t/a Le Chant
Wine Bar

Physical address: Shop A1, Ground Floor,
Oude Bank Building,
Cnr of Church & Bird Street
Stellenbosch

Postal code: 7600

Mailing address: PO Box 5609
Heidelberg

Postal code: 7135

E-mail address: mariska@taalboschwines.com

Telephone: 021 855 3744

Cell phone: 082 683 6307

B: PROPERTY DETAILS OF APPLICANT

Erf/farm number : 4163

Suburb: Stellenbosch

Town: Stellenbosch

C: PROPERTY DETAILS OF ENCROACHMENT AREA

Erf/farm number : 4163

Suburb:

Town: Stellenbosch

Area of encroachment: 55 m²

* To be supplemented with a sketch-plan with dimension in m²

D: TYPE OF APPLICATION:

Please mark the appropriate block

- For commercial purposes, other than for parking ☒
- For commercial parking purposes, ☐
- For residential parking purposes ☐
- For non-commercial purposes (such as garden purposes, gates, ect) ☐
- For projecting structures onto street reserves ☐
- For projecting structures onto other council-owned land ☐
- Other: please provide description: ☐

Brief description of application: Application for outside
dining for our clients.

Motivation: We want to add to the ambience of
all our neighbours. All the restaurants on
both sides have tables outside. To form part of the
Stellenbosch feeling, where sitting outside and
enjoying a meal and a glass of wine with friends
and family.

E: LIST OF ATTACHEMENTS AND SUPPORTING DOCUMENTS

Please mark the appropriate box

Special Power of Attorney, where Applicant is not the owner



Diagram of proposed area of encroachment



Letters of consent (affected neighbours)



Application fee - non-refundable



I hereby certify that the information supplied in this application form is correct
and that I am properly authorized to make this application.

Applicant's signature: Mariska Date: 31/01/2023

Full name: Mariska van der Merwe
obo Oddo Banque Wine Bar (Pty) Ltd
t/a Le Chant Wine Bar

FOR OFFICIAL USE

- The application was considered onby.....
- The application was

	APPROVED
--	-----------------

	NOT APPROVED
--	---------------------

Conditions (if any):

.....

.....

Applicant was informed of outcome on

.....
SIGNATURE OF RESPONSIBLE OFFICIAL

.....
DATE

Name:.....

***If approved**

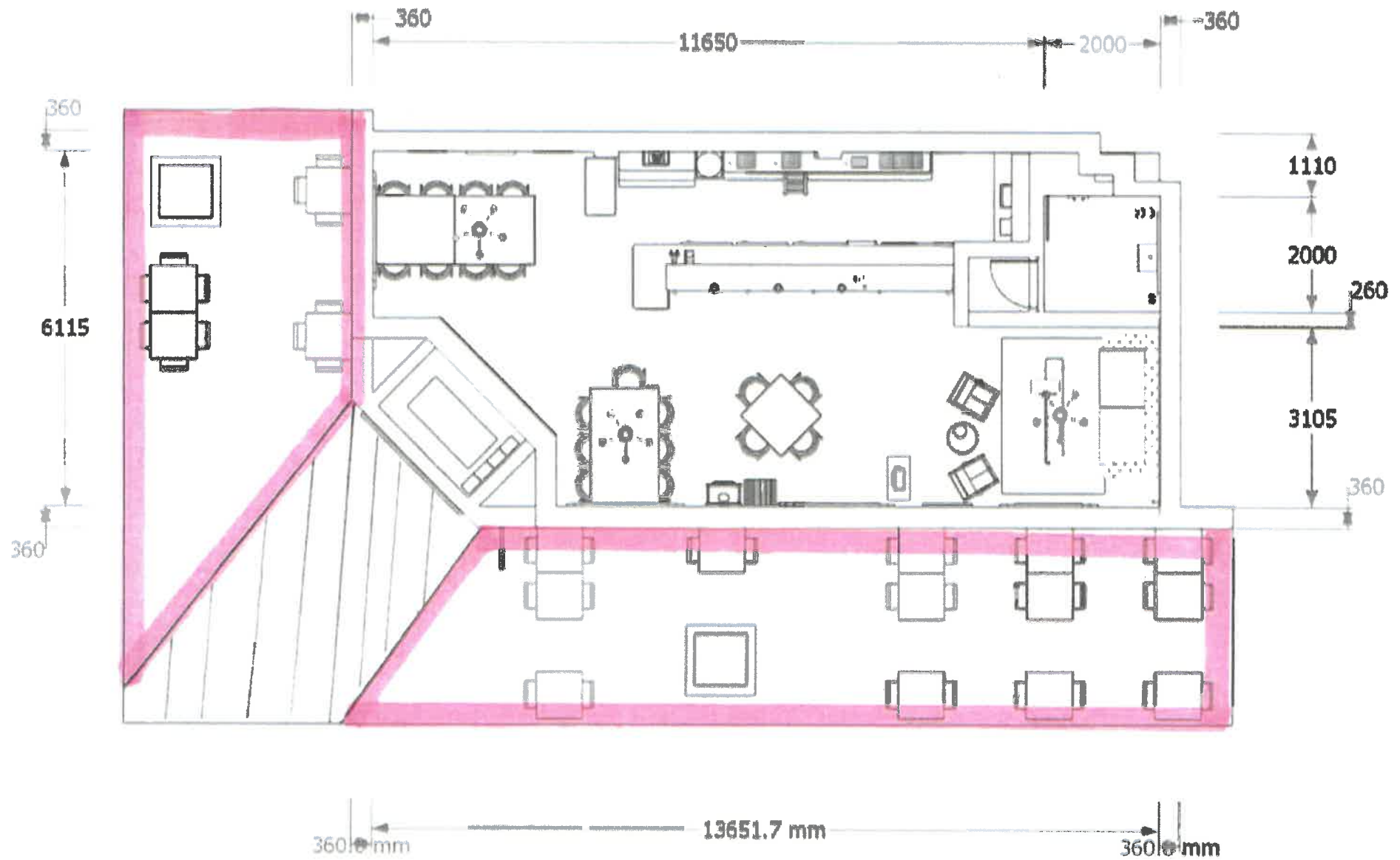
- ☐ Encroachment fee paid
- ☐ Encroachment Agreement signed
- ☐ Agreement/Permit processed on Contract Management System

.....
SIGNATURE OF RESPONSIBLE OFFICIAL

.....
DATE

Name:.....

ANNEXURE 2



5.12	PROPOSED LEASE AGREEMENT: ERF 1252 (14 ANDRINGA STREET), STELLENBOSCH: MANOUSHE
------	--

Collaborator No:

IDP KPA Ref No:

Meeting Date:

Good Governance

30 August 2023

1. SUBJECT: PROPOSED LEASE AGREEMENT: ERF 1252 (14 ANDRINGA STREET), STELLENBOSCH: MANOUSHE

2. PURPOSE

To consider an application from Stellenbakes 501 CC t/a Manoushe, to enter into a Lease Agreement with Stellenbosch Municipality, in terms of whereof they would be able to use a portion of Council-owned property for outdoor dining purposes.

3. DELEGATED AUTHORITY

In terms of the approved System of Delegations the Executive Mayor, in consultation with the Executive Mayoral Committee, has the delegated Authority to consider applications for Lease Agreements, up to a contract value not exceeding R5M and not exceeding a period of 10 years.

The approval of lease agreements of three (3) years and less has been delegated to the Municipal Manager.

4. EXECUTIVE SUMMARY

An application to use a portion of the street reserve for Outdoor Dining purposes has been received from the owner of Manoushe trading from erf 1252, Stellenbosch. The application is not in line with the provisions /requirements of the Outdoor Dining Policy and is not supported by the Engineering Department. The current seating does not leave 1.5m of unobstructed pavement for pedestrian use as per national guidelines. Under 6.2.1 are photos showing how the area is currently being used. The Photos has been taken by the contract management unit. The applicant does have an encroachment agreement with the municipality, and they are paying for the use of the area. We served the applicant with a letter requesting that they re-apply for the outdoor dining lease to ensure compliance.

They have not specified a requested time for the lease and the area they are interested in is 30m².

The diagram submitted by the applicant does not show how the area will be demarcated, however it does indicate the placement of the table and chairs, which is also evident from the photographs in the item.

The department does not support the application in its current form as there is no 1.5 meters unobstructed pedestrian space.

5. RECOMMENDATION

For consideration

6. DISCUSSION / CONTENT

6.1 Background

6.1.1 Application for encroachment

An application was received from Manoushe to enter into an agreement with Stellenbosch Municipality in terms whereof they would be able to use a portion of Council-owned property for outdoor dining purposes. A copy of the application is attached as **APPENDIX 1**, with drawings of the proposed lay-out attached hereto as **APPENDIX 2**. The extent of the encroachment area is approximately 30m².

6.2 DISCUSSION.

6.2.1. Locality and context

Erf 1252, Stellenbosch is located at the 14 Andringa Street, Stellenbosch, as shown on Fig 1. and Fig 2, below as well as photographs of how area is currently used under Fig 3.

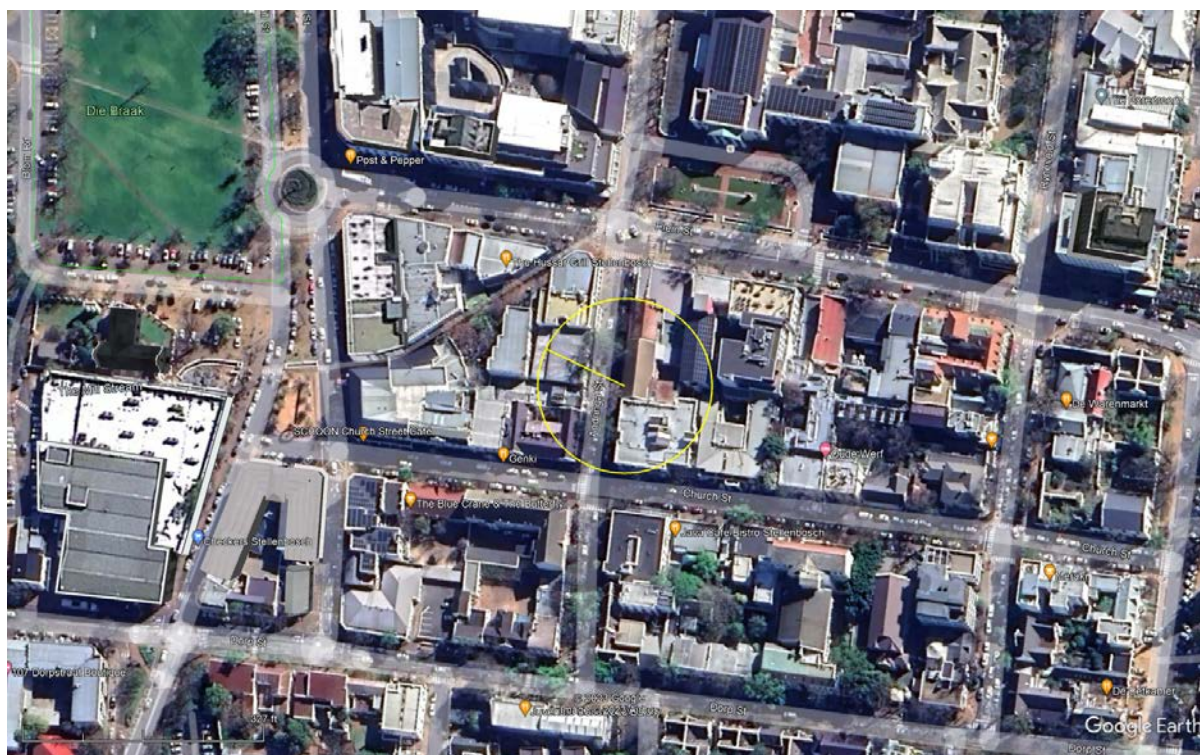


Fig 1. Location and context



Fig 2.





Fig 3. Current area used for outdoor dining

6.2.2 Legal requirements

6.2.2.1 Municipal Asset Transfer Regulations

In terms of Section 36 of the Municipal Asset Transfer Regulation, when considering an application for an approval of a right to use municipal property, the following needs to be taken into account, *inter alia*:-

- a) whether the capital asset may be required for the municipality's own use during the period for which the right is to be granted;
- b) the extent to which any compensation to be received for the right, together with the estimated value of improvements or enhancements to the asset, will result in a significant financial benefit to the municipality;
- c) the (possible) risks and rewards associated with the use in relation to the municipality's interests;
- d) Any comments received from the local community, and
- e) compliance with the legislative regime applicable to the proposed granting of the right.

6.2.2.2 Stellenbosch By-Law on Roads and Streets

In terms of section 4 of the Stellenbosch By-Law on Roads and Streets, no person may, **without prior written permission of the Municipality**, cause an encroachment on a street, sidewalk or road reserve forming part thereof.

6.2.2.3 Property Management policy

Section 9 2.2 deals with deviations from the competitive process, and reads as follows:

The Municipal Council **may dispense with the competitive processes** established in this policy, and may enter into a Private Treaty Agreement through any convenient process, which may include direct negotiations, including in response to an unsolicited application, but only in the following circumstances, and only after having advertised Council's intention so to act. Should any objections be received as a consequence of such a notice, such objections first be considered before a final decision is taken to dispense with the competitive process established in this policy. However, should any objections, be received from potential, competitive bidders, then a public competitive process must be followed. The advertisement referred to above should also be served on adjoining land owners, where the Municipal Manager is of the opinion that such transaction may have a detrimental effect on such adjoining land owner(s):

(h) where encroachment applications are received from adjoining owners, including applications for outdoor dining permits, subject to approved tariff structure;

6.2.2.4 Outdoor Dining Policy

6.2.2.4.1 Policy Objective

To regulate the use of sidewalks or road reserves for the purpose of outdoor dining and trading, and the temporary use of Public Places for commercial ventures and displays.

6.2.2.4.2 Suitable Locations

Outdoor cafes, restaurants and traders may apply for encroachment where local conditions are favorable for their operation, including areas of Council e.g. road reserves, sidewalks, Public Open Spaces. All applications in locations of a high pedestrian usage, e.g. a retail center, will be required to take pedestrian needs into consideration.

6.2.2.4.3 Assessment Criteria

The most important local conditions to be considered when an application for encroachment of the road reserve area is received will be those issues pertaining to pedestrian (including pedestrians who are using wheelchairs, baby prams or are visually impaired) and vehicular circulation, convenience and safety of patrons and the general public, existing streetscape elements and residential amenity.

The ground surface must be sufficiently level to support a proper layout and safe use.

6.2.2.4.4 Layout

The style, layout and orientation of furniture should be chosen according to the extent and shape of the available space of the encroachment area.

The size of an outdoor cafe or placement of any object on the sidewalk will depend on the width of the sidewalk

6.2.2.4.5 Defined Area

The applicant will be required to define the area with appropriate markers. (ie a single galvanized steel nail inserted in between the pavers, or a paint spot no larger than 5cm in diameter placed at the corners of the defined area in a semi- permanent paint) to the satisfaction of Council.

6.2.2.4.6 Lease Conditions

The applicant must comply with the conditions set out in the lease agreement and this policy. The Lease will be for a period of not more than 5 years with an option to renew. These conditions would also generally require that the local environmental factors be reviewed annually and adjustments to the lease agreement may be required.

If the lease agreement that is entered into is seen as not providing long term rights, there is no need to advertise the proposed agreement for public input/comments or objections. Should the municipality receive any complaints the lease agreement may be terminated due to the objections.

6.3 Financial Implications

In terms of the current, approved tariff structure for outdoor dining lease agreements a monthly fee of R150.00 per square meter is charged and therefore R 4500.00 (incl. of VAT) is applicable and an escalation of 6% is recommended.

6.4 Legal Implications

The legal implications are discussed under 6.2.2 above. As the proposed term of the lease agreement is three (3) years and when the value of the lease and property is taken into account the asset transfer regulations is not applicable as it is not seen as long term rights on council property that are being given.

6.5 Staff Implications

No additional staff implications.

6.6 Previous / Relevant Council Resolutions

SPECIAL COUNCIL MEETING: 2022-06-22: ITEM 9.2.5 RESOLVED (nem con)

- (a) That council takes note of the intended communication to the public;
- (b) That council takes note that all restaurants and businesses will be given notice to apply / re-apply for a lease to use council property for outdoor dining purposes; and
- (c) That the approval of the lease of three (3) years and less be delegated to the Municipal Manager for approval.

6.7 Risk Implications

The risks are addressed in the item.

6.7 Comments from Senior Management**6.8.1 Director: Infrastructure Services**

- The Municipality concludes an agreement with the applicant, detailing the conditions of approval.
- Encroached area is zoned as road reserve and cannot be enclosed - to exclude the public, the municipality or other services provider from accessing the area.
- Council is indemnified against all possible 3rd party claims.
- The municipality or other public service provider must not be prohibited from maintaining, repairing, upgrading and / or installing new public services with-in the encroached area.
- For planned maintenance, repairs, upgrades or new installations, the applicant will be provided with a 5-day written notice.
- For emergency works the applicant will be required to remove the tables, chairs and other objects immediately for the municipality or other public service provider to gain access.
- The municipality reserves the right to end the encroachment agreement when the need arises, i.e. when the encroached space is required for municipal or other public services purposes.

6.8.2 Director: Planning and Economic Development

The Stellenbosch Municipality Roads and Street Bylaw, 2021 as promulgated in the Provincial Gazette no. 8436 dated 28 May 2021, defines "sidewalk" "means that portion of a street between the outer boundary of the roadway and the boundary lines of adjacent properties or buildings which is intended for the use of pedestrians, pedal cyclists and any other category of vehicles as may be determined by the Municipality in accordance with section 42(1):"

The definition clearly stipulates that the use of sidewalk is intended for pedestrians, pedal cyclists and any other vehicle. The use of sidewalks as part of the commercial activities of outdoor cafes and restaurants is a form of activity on the street that should improve the quality of public places and urban life. This use must however not be at the cost of overall safety of road users as intended in terms of the above bylaw.

It should be noted that currently the Final Draft Outdoor Dining and Events Overlay Zone, is undergoing a public participation process, of which the closing date for comments is 02 September 2023. In the absence of this overlay zone a suitable land use application must be submitted to evaluate the intended land usage, as the current and proposed land use is not in accordance with the applicable zoning.

6.8.3 Chief Financial Officer

Not Requested

6.8.4 Director: Community Services

Not requested

6.8.5 Municipal Manager

Not requested yet

ANNEXURES: 1. Application**2. Diagram****FOR FURTHER DETAILS CONTACT:**

NAME	Annalene de Beer
POSITION	Director: Corporate Services
DIRECTORATE	CORPORATE SERVICES
CONTACT NUMBERS	021-8088073
E-MAIL ADDRESS	Annalene.debeer@ Stellenbosch.gov.za
REPORT DATE	2023-08-24

ANNEXURE 1



STELLENBOSCH
STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

APPLICATION FOR LEASE OF MUNICIPAL LAND APPLICATION FORM

A: APPLICANT'S DETAILS

Name : Stellenbakes sole trading as manoushe

Physical address: 14A Andriana
Street, Stellenbosch

Postal code: 7600

Mailing address: 11

Postal code: 11

E-mail address: craighoblyn@hotmail.com

Telephone: 021-8867545

Cell phone: 071229 1232

B: PROPERTY DETAILS OF APPLICANT

Erf/farm number : 1252

Suburb: CBD

Town: Stellenbosch

C: PROPERTY DETAILS OF LEASE AREA

Erf/farm number : 1252

Suburb: CBD

Town: Stellenbosch

Area of encroachment: 30 m²

* To be supplemented with a sketch-plan with dimension in m²

D: TYPE OF APPLICATION:

Please mark the appropriate block

For commercial purposes, other than for parking

☒

For commercial parking purposes,

☐

For residential parking purposes

☐

For non-commercial purposes (such as garden purposes, gates, ect)

☐

For projecting structures onto street reserves

☐

For projecting structures onto other council-owned land

☐

Other: please provide description:

☐

Brief description of application: We are a restaurant that
is situated in the heart of Stellenbosch. We
use the proposed area for outside dining.

Motivation: We feel that having outdoor dining contributes
greatly to the local economy. It draws in lots of tourism,
creates jobs. Furthermore we keep the streets

clean and we provide security.

E: LIST OF ATTACHEMENTS AND SUPPORTING DOCUMENTS

Please mark the appropriate box

Special Power of Attorney, where Applicant is not the owner

☐

Diagram of proposed area of the lease area

☒

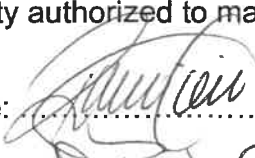
Letters of consent (affected neighbours)

☐

Application fee (non-refundable)

☐

I hereby certify that the information supplied in this application form is correct and that I am property authorized to make this application.

Applicant's signature: 

Date: 27/02/23

Full name: Ramon Daniel Corne

FOR OFFICIAL USE

- The application was considered onby.....
- The application was

☐	APPROVED
--------------------------	-----------------

☐	NOT APPROVED
--------------------------	---------------------

Conditions (if any):

.....

.....

Applicant was informed of outcome on

.....
SIGNATURE OF RESPONSIBLE OFFICIAL

.....
DATE

Name:.....

***If approved**

- ☐ Encroachment fee paid
- ☐ Lease Agreement signed
- ☐ Agreement/Permit processed on Contract Management System

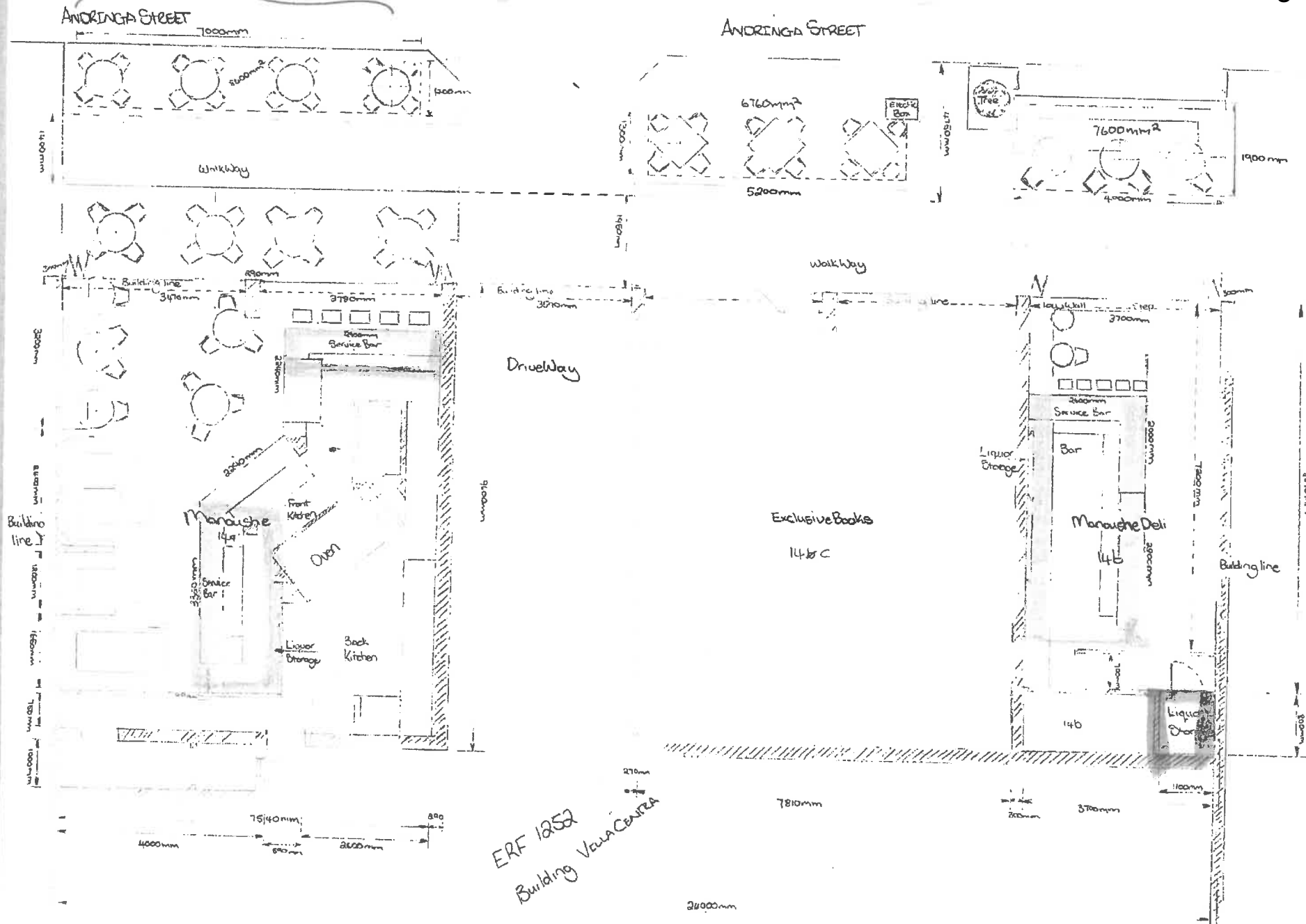
.....
SIGNATURE OF RESPONSIBLE OFFICIAL

.....
DATE

Name:.....

ANNEXURE 2

CURRENT LICENSED PREMISES



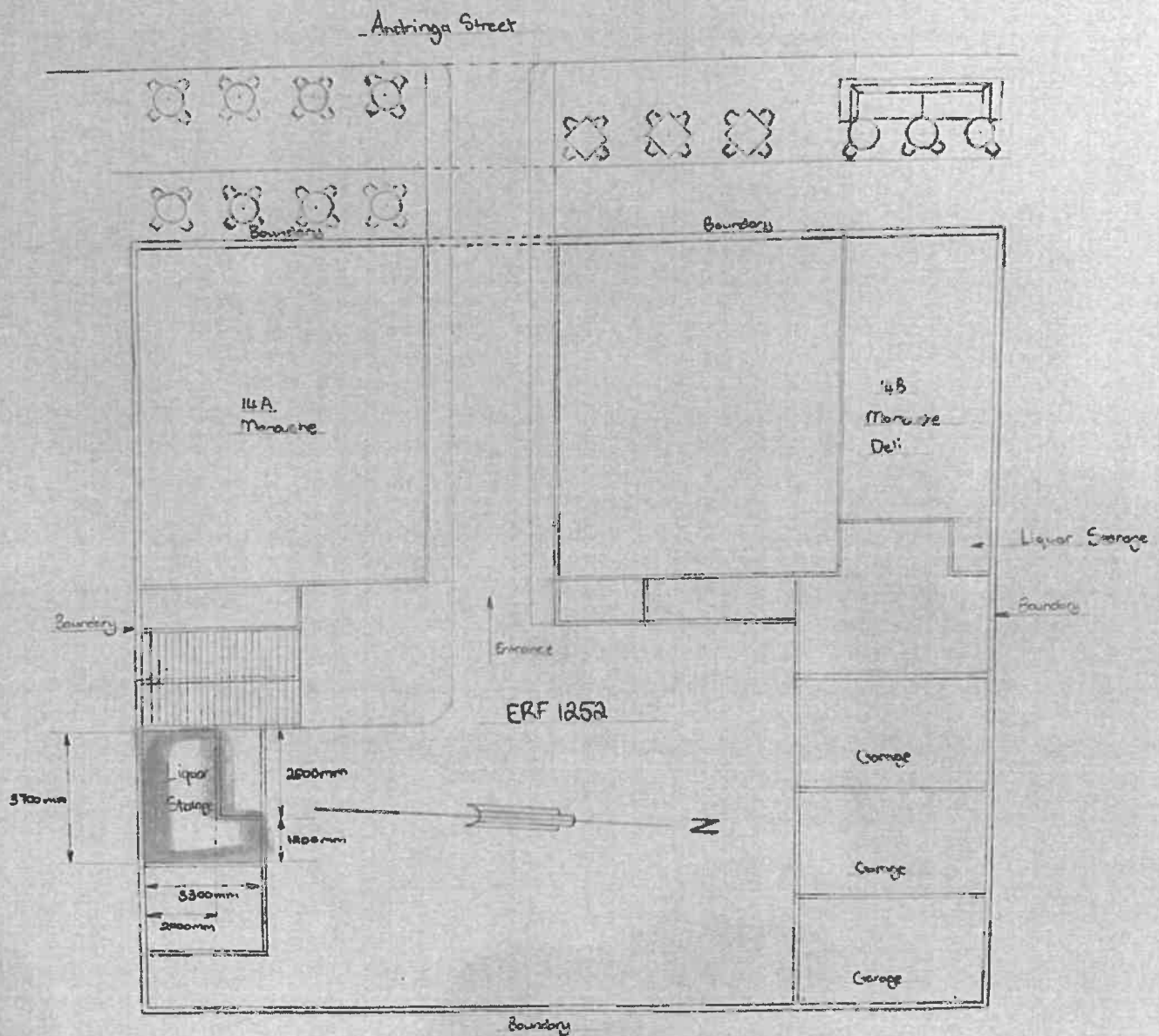
LIQUOR CONSUMED

LIQUOR STORED

LIQUOR SERVED

Scale 10:1000 mm

A

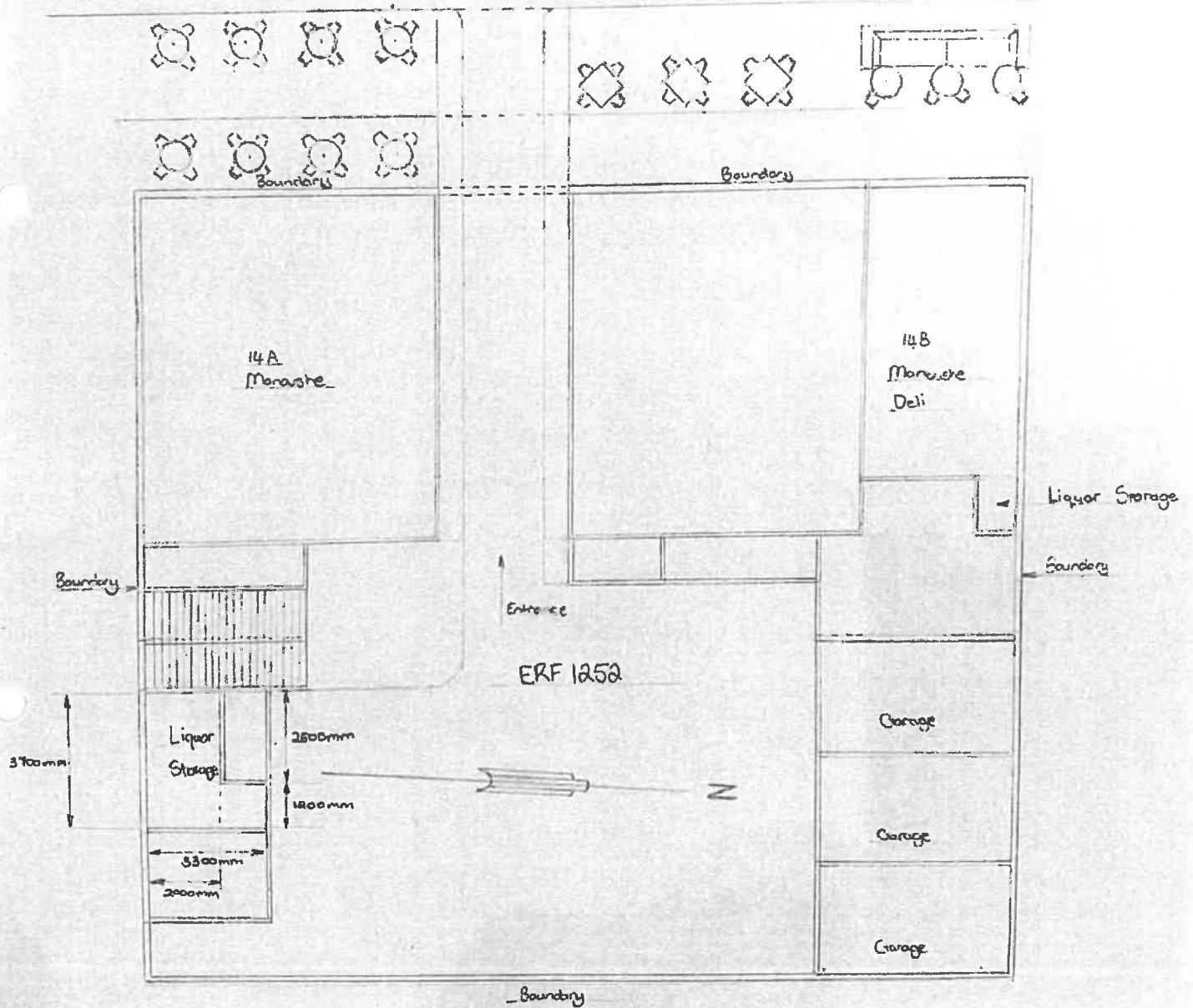


SITE PLAN

LAYOUT - LIQUOR STORE

A
A

Anchorage Street



SITE PLAN

5.13	PROPOSED LEASE AGREEMENT: ERF 781 (87 DORP STREET), STELLENBOSCH: THE MEETING PLACE
------	--

Collaborator No:

IDP KPA Ref No:

Meeting Date:

Good Governance

30 August 2023

1. SUBJECT: PROPOSED LEASE AGREEMENT: ERF 781 (87 DORP STREET), STELLENBOSCH: THE MEETING PLACE

2. PURPOSE

To consider an application from Willis Bosch the owner of The Meeting Place, to enter into a Lease Agreement with Stellenbosch Municipality, in terms whereof they would be able to use a portion of Council-owned property for outdoor dining purposes.

3. DELEGATED AUTHORITY

In terms of the approved System of Delegations the Executive Mayor, in consultation with the Executive Mayoral Committee, has the delegated Authority to consider applications for Lease Agreements, up to a contract value not exceeding R5M and not exceeding a period of 10 years.

The approval of lease agreements of three (3) years and less has been delegated to the Municipal Manager.

4. EXECUTIVE SUMMARY

An application to use a portion of the street reserve for Outdoor Dining purposes has been received from the owner of The Meeting Place trading from erf 781, Stellenbosch. The application is in line with the provisions /requirements of the Outdoor Dining Policy and is supported by the Engineering Department. Under 6.2.1 are photos showing how area is currently being used. The photos were taken by the contract management unit. The applicant does not currently have any lease agreement or previous encroachment agreement with the municipality and is not paying rent for current use. We served the applicant with a letter requesting that they apply for the outdoor dining lease to ensure compliance.

They have not specified a requested time for the lease and the area they are interested in is 45m².

The area is demarcated by concrete pot plants and the sidewalk has just under 1.5m open for pedestrian use. They have also not filed a diagram however the usage can be seen on the photographs in the item.

The application can only be supported by the department if they move the demarcated area to leave a 1,5-meter area for pedestrian use.

5. RECOMMENDATIONS

- (a) that the land as indicated on Fig 1 and 2, measuring approximately 45m². in extent, be identified as land not needed to provide the minimum level of basic municipal services during the period that the rights are awarded;
- (b) that the in-principle approval be considered for an initial period of 3 (three) years with the option of a renewal subject to the following conditions:
 - 1. the leased area is zoned as road reserve and can therefore not be enclosed to exclude the public, the municipality or other public service providers from accessing the area;
 - 2. council is indemnified from all possible third party claims;
 - 3. the municipality or other public service providers must not be prohibited from maintaining, repairing, upgrading and/or installing new public services within the leased area. All structures must be removable to gain access to the area as and when required by the municipality or other public service providers. For planned maintenance, repairs, upgrades or new installations, the applicant will be provided with a 5-day written notice to remove all furniture and movable structures in order for the municipality to gain access. For emergency work the applicant will be required to remove all furniture and structures immediately.
 - 4. no permanent structures will be built on the leased area without the prior written consent of the municipality and only after submitting building plans to the building department for approval.
 - 5. the municipality reserves the right to end the lease agreement when the need arises, i.e. when the leased area is required for municipal or other public services purposes.
- (c) that the Municipal Manager be authorised to conclude a Lease Agreement for a period of three (3) years, with the option of renewal;
- (d) that the demarcated area be adjusted to allow a 1,5 meter unobstructed area for pedestrian use; and
- (e) that the municipal Manager be authorised to determine the rental amount and escalation.

6. DISCUSSION / CONTENT**6.1 Background****6.1.1 Application for lease**

An application was received from The Meeting Place to enter into an agreement with Stellenbosch Municipality in terms whereof they would be able to use a portion of Council-owned property for outdoor dining purposes. A copy of the application is attached as **APPENDIX 1**. The extent of the area is approximately 45m².

6.2 DISCUSSION

6.2.1. Locality and context

Erf 781, Stellenbosch is located at the 87 Dorp Street, Stellenbosch, as shown on Fig 1. and Fig 2, below as well as photographs of how area is currently used under Fig 3.

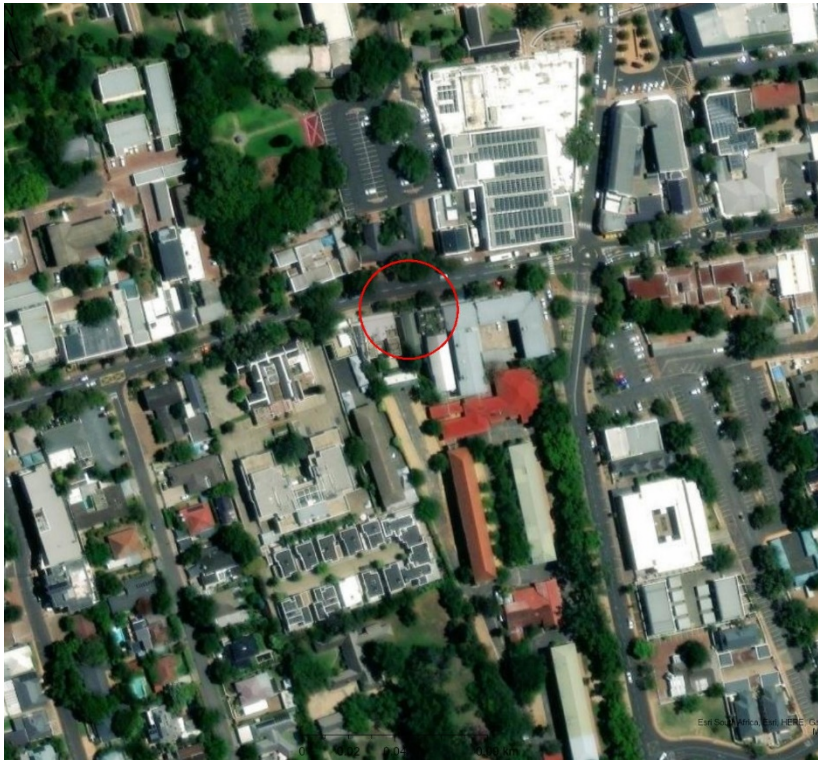


Fig 1. Location and context



Fig 2 .Extent of area





Fig 3. Current area used for outdoor dining

6.2.2 Legal requirements

6.2.2.1 Municipal Asset Transfer Regulations

In terms of Section 36 of the Municipal Asset Transfer Regulation, when considering an application for an approval of a right to use municipal property, the following needs to be taken into account, *inter alia*:-

- a) whether the capital asset may be required for the municipality's own use during the period for which the right is to be granted;
- b) the extent to which any compensation to be received for the right, together with the estimated value of improvements or enhancements to the asset, will result in a significant financial benefit to the municipality;
- c) the (possible) risks and rewards associated with the use in relation to the municipality's interests;
- d) Any comments received from the local community, and
- e) compliance with the legislative regime applicable to the proposed granting of the right.

6.2.2.2 Stellenbosch By-Law on Roads and Streets

In terms of section 4 of the Stellenbosch By-Law on Roads and Streets, no person may, **without prior written permission of the Municipality**, cause an encroachment on a street, sidewalk or road reserve forming part thereof.

6.2.2.3 Property Management policy

Section 9 2.2 deals with deviations from the competitive process, and reads as follows:

The Municipal Council **may dispense with the competitive processes** established in this policy and may enter into a Private Treaty Agreement through any convenient process, which may include direct negotiations, including in response to an unsolicited application, but only in the following circumstances, and only after having advertised Council's intention so to act. Should any objections be received as a consequence of such a notice, such objections first be considered before a final decision is taken to dispense with the competitive process established in this policy. However, should any objections, be received from potential, competitive bidders, then a public competitive process must be followed. The advertisement referred to above should also be served on adjoining landowners, where the Municipal Manager is of the opinion that such transaction may have a detrimental effect on such adjoining landowner(s):

- (h) where encroachment applications are received from adjoining owners, including applications for outdoor dining permits, subject to approved tariff structure.

6.2.2.4 Outdoor Dining Policy**6.2.2.4.1 Policy Objective**

To regulate the use of sidewalks or road reserves for the purpose of outdoor dining and trading, and the temporary use of Public Places for commercial ventures and displays.

6.2.2.4.2 Suitable Locations

Outdoor cafes, restaurants and traders may apply for lease agreements where local conditions are favorable for their operation, including areas of Council e.g. road reserves, sidewalks, Public Open Spaces. All applications in locations of a high pedestrian usage, e.g. a retail center, will be required to take pedestrian needs into consideration.

6.2.2.4.3 Assessment Criteria

The most important local conditions to be considered when an application for lease of the road reserve area is received will be those issues pertaining to pedestrian (including pedestrians who are using wheelchairs, baby prams or are visually impaired) and vehicular circulation, convenience and safety of patrons and the general public, existing streetscape elements and residential amenity. The ground surface must be sufficiently level to support a proper layout and safe use.

6.2.2.4.4 Layout

The style, layout and orientation of furniture should be chosen according to the extent and shape of the available space of the encroachment area.

The size of an outdoor cafe or placement of any object on the sidewalk will depend on the width of the sidewalk.

6.2.2.4.5 Defined Area

The applicant will be required to define the area with appropriate markers. (ie a single galvanized steel nail inserted in between the pavers, or a paint spot no larger than 5cm in diameter placed at the corners of the defined area in a semi- permanent paint) to the satisfaction of Council.

6.2.2.4.6 Lease Conditions

The applicant must comply with the conditions set out in the lease agreement and this policy. The Lease will be for a period of not more than 5 years with an option to renew. These conditions would also generally require that the local environmental factors be reviewed annually and adjustments to the lease agreement may be required.

If the lease agreement that is entered into is seen as not providing long term rights, there is no need to advertise the proposed agreement for public input/comments or objections. Should the municipality receive any complaints the lease agreement may be terminated due to the objections.

6.3 Financial Implications

In terms of the current, approved tariff structure for outdoor dining lease agreements a monthly fee of R150.00 per square meter is charged and in this instance R 6 750.00 (incl. of VAT) is applicable and an escalation of 6% is recommended.

6.4 Legal Implications

The legal implications are discussed under 6.2.2 above. As the proposed term of the lease agreement is three (3) years and when the value of the lease and property is taken into account the asset transfer regulations are not applicable as it is not seen as long-term rights on council property that are being given.

6.5 Staff Implications

No additional staff implications.

6.6 Previous / Relevant Council Resolutions

SPECIAL COUNCIL MEETING: 2022-06-22: ITEM 9.2.5 RESOLVED (nem con)

- (a) That council takes note of the intended communication to the public;
- (b) That council takes note that all restaurants and businesses will be given notice to apply / re-apply for a lease to use council property for outdoor dining purposes; and
- (c) That the approval of the lease of three (3) years and less be delegated to the Municipal Manager for approval.

6.7 Risk Implications

The risks are addressed in the item.

6.8 Comments from Senior Management**6.8.1 Director: Infrastructure Services**

- The Municipality concludes an agreement with the applicant, detailing the conditions of approval.
- Leased area is zoned as road reserve and cannot be enclosed - to exclude the public, the municipality or other services provider from accessing the area.
- Council is indemnified against all possible 3rd party claims.
- The municipality or other public service provider must not be prohibited from maintaining, repairing, upgrading and / or installing new public services with-in the leased area.
- For planned maintenance, repairs, upgrades or new installations, the applicant will be provided with a 5-day written notice.
- For emergency works the applicant will be required to remove the tables, chairs and other objects immediately for the municipality or other public service provider to gain access.

- The municipality reserves the right to end the encroachment agreement when the need arises, i.e. when the leased space is required for municipal or other public services purposes.

6.8.2 Director: Planning and Economic Development

The Stellenbosch Municipality Roads and Street Bylaw, 2021 as promulgated in the Provincial Gazette no. 8436 dated 28 May 2021, defines “sidewalk” “means that portion of a street between the outer boundary of the roadway and the boundary lines of adjacent properties or buildings which is intended for the use of pedestrians, pedal cyclists and any other category of vehicles as may be determined by the Municipality in accordance with section 42(1);”

The definition clearly stipulates that the use of sidewalk is intended for pedestrians, pedal cyclists and any other vehicle. The use of sidewalks as part of the commercial activities of outdoor cafes and restaurants is a form of activity on the street that should improve the quality of public places and urban life. This use must however not be at the cost of overall safety of road users as intended in terms of the above bylaw.

It should be noted that currently the Final Draft Outdoor Dining and Events Overlay Zone, is undergoing a public participation process, of which the closing date for comments is 02 September 2023. In the absence of this overlay zone a suitable land use application must be submitted to evaluate the intended land usage, as the current and proposed land use is not in accordance with the applicable zoning.

6.8.3 Chief Financial Officer

Not requested

6.8.4 Director: Community Services

Not requested

6.8.5 Municipal Manager

Not requested yet.

ANNEXURES: 1. Application

FOR FURTHER DETAILS CONTACT:

NAME	Annalene de Beer
POSITION	Director: Corporate Services
DIRECTORATE	CORPORATE SERVICES
CONTACT NUMBERS	021-8088073
E-MAIL ADDRESS	Annalene.debeer@ Stellenbosch.gov.za
REPORT DATE	2023-08-22

ANNEXURE 1



STELLENBOSCH
STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

**APPLICATION FOR LEASE OF MUNICIPAL LAND
APPLICATION FORM**

A: APPLICANT'S DETAILS

Name :

W.illus

Bosch

Restaurant : The Meeting Place
87 Dorp Street
Stellenbosch

Physical address:

12 Carsten Street
Tamboerskloof
Cape Town

Postal code: 8001

Mailing address:

87 Dorp Street
Stellenbosch
7600

Postal code:

E-mail address:

~~tmps~~ tmpstellenbosch@gmail.com

Telephone:

082 770 6326

Cell phone:

082 770 6326

B: PROPERTY DETAILS OF APPLICANT

Erf/farm number :

781

Suburb:

Stellenbosch Central

Town: Stellenbosch
C: PROPERTY DETAILS OF LEASE AREA
 Erf/farm number : 781
 Suburb: Stellenbosch Central
 Town: Stellenbosch
 Area of encroachment: the.....m²

* To be supplemented with a sketch-plan with dimension in m²

D: TYPE OF APPLICATION:

Please mark the appropriate block

- For commercial purposes, other than for parking ☒
- For commercial parking purposes, ☐
- For residential parking purposes ☐
- For non-commercial purposes (such as garden purposes, gates, ect) ☐
- For projecting structures onto street reserves ☐
- For projecting structures onto other council-owned land ☐
- Other: please provide description: ☐

Brief description of application: The restaurant has been
operating for 10 years at 87 Deep Street.
We might be using around a meter
or less of municipal grounds.
 Motivation: We wish to continue using it as it
is a big part of our character

E: LIST OF ATTACHEMENTS AND SUPPORTING DOCUMENTS

Please mark the appropriate box

To Follow.

Special Power of Attorney, where Applicant is not the owner

☐

Diagram of proposed area of the lease area

☐

Letters of consent (affected neighbours)

☐

Application fee (non-refundable)

☐

I hereby certify that the information supplied in this application form is correct
and that I am properly authorized to make this application.

Applicant's signature: *W. Bosch*Date: *15/03*Full name: *Willem Petrus Bosch*

5.14	LEASE AGREEMENT: ERF 8403 (3C ADRINGA STREET), STELLENBOSCH: SUSHI BOX
------	--

Collaborator No:

IDP KPA Ref No:

Meeting Date:

Good Governance

30 August 2023

1. SUBJECT: PROPOSED LEASE AGREEMENT: ERF 8403 (3C ADRINGA STREET), STELLENBOSCH: SUSHI BOX

2. PURPOSE

To consider an application from Christo Bornman the owner of Sushi Box, to enter into a Lease Agreement with Stellenbosch Municipality, in terms whereof they would be able to use a portion of Council-owned property for outdoor dining purposes.

3. DELEGATED AUTHORITY

In terms of the approved System of Delegations the Executive Mayor, in consultation with the Executive Mayoral Committee, has the delegated Authority to consider applications for Lease Agreements, up to a contract value not exceeding R5M and not exceeding a period of 10 years.

The approval of lease agreements of three (3) years and less has been delegated to the Municipal Manager.

4. EXECUTIVE SUMMARY

An application to use a portion of the street reserve for Outdoor Dining purposes has been received from the owner of Sushi Box trading from erf 8403, Stellenbosch. The application is in line with the provisions /requirements of the Outdoor Dining Policy and is supported by the Engineering Department. Under 6.2.1 are photos showing how area is currently being used. The photos were taken by the contract management unit. The applicant does not have any lease agreement or previous encroachment agreements in place and is therefore not paying for the use of the area. We served the applicant with a letter requesting that they apply for the outdoor dining lease to ensure compliance.

They have not specified a requested time for the lease and the area they are interested in is 16m². The area is demarcated on the one side with plants however no other demarcation is clearly marked on the diagram. A space of 1.5m is left open on the sidewalk for pedestrian use.

The department can in principle support the application provided that all provisions are complied with.

5. RECOMMENDATIONS

- (a) that the land as indicated on Fig 1 and 2, measuring approximately 16m². in extent, be identified as land not needed to provide the minimum level of basic municipal services during the period that the rights are awarded;
- (b) that the in-principle approval be considered for an initial period of 3 (three) years with the option of a renewal subject to the following conditions:
 - 1. the leased area is zoned as road reserve and can therefore not be enclosed to exclude the public, the municipality or other public service providers from accessing the area;
 - 2. council is indemnified from all possible third party claims;
 - 3. the municipality or other public service providers must not be prohibited from maintaining, repairing, upgrading and/or installing new public services within the leased area. All structures must be removable to gain access to the area as and when required by the municipality or other public service providers. For planned maintenance, repairs, upgrades or new installations, the applicant will be provided with a 5-day written notice to remove all furniture and movable structures in order for the municipality to gain access. For emergency work the applicant will be required to remove all furniture and structures immediately.
 - 4. no permanent structures will be built on the leased area without the prior written consent of the municipality and only after submitting building plans to the building department for approval.
 - 5. the municipality reserves the right to end the lease agreement when the need arises, i.e. when the leased area is required for municipal or other public services purposes.
- (c) that the demarcated areas be clearly marked and a 1,5 unobstructed area is open for pedestrian use; and
- (d) that the municipal Manager be authorised to determine the rental amount and escalation.

6. DISCUSSION / CONTENT**6.1 Background****6.1.1 Application for lease agreement**

An application was received from Sushi Box to enter into an agreement with Stellenbosch Municipality in terms whereof they would be able to use a portion of Council-owned property for outdoor dining purposes. A copy of the application is attached as **APPENDIX 1**, with drawings of the proposed lay-out attached as **APPENDIX 2**. The extent of the area is approximately 16m².

Fig 1. Location and context



Fig 2 .Extent of area





Fig 3. Current area used for outdoor dining

6.2.2 Legal requirements**6.2.2.1 Municipal Asset Transfer Regulations**

In terms of Section 36 of the Municipal Asset Transfer Regulation, when considering an application for an approval of a right to use municipal property, the following needs to be taken into account, *inter alia*:-

- a) whether the capital asset may be required for the municipality's own use during the period for which the right is to be granted;
- b) the extent to which any compensation to be received for the right, together with the estimated value of improvements or enhancements to the asset, will result in a significant financial benefit to the municipality;
- c) the (possible) risks and rewards associated with the use in relation to the municipality's interests;
- d) Any comments received from the local community, and
- e) compliance with the legislative regime applicable to the proposed granting of the right.

6.2.2.2 Stellenbosch By-Law on Roads and Streets

In terms of section 4 of the Stellenbosch By-Law on Roads and Streets, no person may, **without prior written permission of the Municipality**, cause an encroachment on a street, sidewalk or road reserve forming part thereof.

6.2.2.3 Property Management policy

Section 9 2.2 deals with deviations from the competitive process, and reads as follows:

The Municipal Council **may dispense with the competitive processes** established in this policy and may enter into a Private Treaty Agreement through any convenient process, which may include direct negotiations, including in response to an unsolicited application, but only in the following circumstances, and only after having advertised Council's intention so to act. Should any objections be received as a consequence of such a notice, such objections first be considered before a final decision is taken to dispense with the competitive process established in this policy. However, should any objections, be received from potential, competitive bidders, then a public competitive process must be followed. The advertisement referred to above should also be served on adjoining landowners, where the Municipal Manager is of the opinion that such transaction may have a detrimental effect on such adjoining land owner(s):

- (h) where encroachment applications are received from adjoining owners, including applications for outdoor dining permits, subject to approved tariff structure.

6.2.2.4 Outdoor Dining Policy**6.2.2.4.1 Policy Objective**

To regulate the use of sidewalks or road reserves for the purpose of outdoor dining and trading, and the temporary use of Public Places for commercial ventures and displays.

6.2.2.4.2 Suitable Locations

Outdoor cafes, restaurants and traders may apply for lease agreements where local conditions are favorable for their operation, including areas of Council e.g. road reserves, sidewalks, Public Open Spaces. All applications in locations of a high pedestrian usage, e.g. a retail centre, will be required to take pedestrian needs into consideration.

6.2.2.4.3 Assessment Criteria

The most important local conditions to be considered when an application for lease of the road reserve area is received will be those issues pertaining to pedestrian (including pedestrians who are using wheelchairs, baby prams or are visually impaired) and vehicular circulation, convenience and safety of patrons and the general public, existing streetscape elements and residential amenity.

The ground surface must be sufficiently level to support a proper layout and safe use.

6.2.2.4.4 Layout

The style, layout and orientation of furniture should be chosen according to the extent and shape of the available space of the leased area.

The size of an outdoor cafe or placement of any object on the sidewalk will depend on the width of the sidewalk.

6.2.2.4.5 Defined Area

The applicant will be required to define the area with appropriate markers. (ie a single galvanized steel nail inserted in between the pavers, or a paint spot no larger than 5cm in diameter placed at the corners of the defined area in a semi- permanent paint) to the satisfaction of Council.

6.2.2.4.6 Lease Conditions

The applicant must comply with the conditions set out in the lease agreement and this policy. The Lease will be for a period of not more than 5 years with an option to renew. These conditions would also generally require that the local environmental factors be reviewed annually and adjustments to the lease agreement may be required.

If the lease agreement that is entered into is seen as not providing long term rights, there is no need to advertise the proposed agreement for public input/comments or objections. Should the municipality receive any complaints the lease agreement may be terminated due to the objections.

6.3 Financial Implications

In terms of the current, approved tariff structure for outdoor dining lease agreements a monthly fee of R150.00 per square meter is charged so in this case R 2 400.00 (incl. of VAT) is applicable and an escalation of 6% is recommended.

6.4 Legal Implications

The legal implications are discussed under 6.2.2 above. As the proposed term of the lease agreement is three (3) years and when the value of the lease and property is taken into account the asset transfer regulations are not applicable as it is not seen as long-term rights on council property that are being given.

6.5 Staff Implications

No additional staff implications.

6.6 Previous / Relevant Council Resolutions**SPECIAL COUNCIL MEETING: 2022-06-22: ITEM 9.2.5 RESOLVED (nem con)**

- (a) That council takes note of the intended communication to the public;
- (b) That council takes note that all restaurants and businesses will be given notice to apply / re-apply for a lease to use council property for outdoor dining purposes; and
- (c) That the approval of the lease of three (3) years and less be delegated to the Municipal Manager for approval.

6.7 Risk Implications

The risks are addressed in the item.

6.8. Comments from Senior Management**6.8.1 Director: Infrastructure Services**

- The Municipality concludes an agreement with the applicant, detailing the conditions of approval.
- Leased area is zoned as road reserve and cannot be enclosed - to exclude the public, the municipality or other services provider from accessing the area.
- Council is indemnified against all possible 3rd party claims.
- The municipality or other public service provider must not be prohibited from maintaining, repairing, upgrading and / or installing new public services with-in the leased area.
- For planned maintenance, repairs, upgrades or new installations, the applicant will be provided with a 5-day written notice.
- For emergency works the applicant will be required to remove the tables, chairs and other objects immediately for the municipality or other public service provider to gain access.

- The municipality reserves the right to end the lease agreement when the need arises, i.e. when the encroached space is required for municipal or other public services purposes.

6.8.2 Director: Planning and Economic Development

The Stellenbosch Municipality Roads and Street Bylaw, 2021 as promulgated in the Provincial Gazette no. 8436 dated 28 May 2021, defines "sidewalk" "means that portion of a street between the outer boundary of the roadway and the boundary lines of adjacent properties or buildings which is intended for the use of pedestrians, pedal cyclists and any other category of vehicles as may be determined by the Municipality in accordance with section 42(1):"

The definition clearly stipulates that the use of sidewalk is intended for pedestrians, pedal cyclists and any other vehicle. The use of sidewalks as part of the commercial activities of outdoor cafes and restaurants is a form of activity on the street that should improve the quality of public places and urban life. This use must however not be at the cost of overall safety of road users as intended in terms of the above bylaw.

It should be noted that currently the Final Draft Outdoor Dining and Events Overlay Zone, is undergoing a public participation process, of which the closing date for comments is 02 September 2023. In the absence of this overlay zone a suitable land use application must be submitted to evaluate the intended land usage, as the current and proposed land use is not in accordance with the applicable zoning.

6.8.3 Chief Financial Officer

Not requested

6.8.4 Director: Community Services

Not requested

6.8.5 Municipal Manager

Not requested yet

ANNEXURES: 1. Application

2. Diagram

FOR FURTHER DETAILS CONTACT:

NAME	Annalene de Beer
POSITION	Director: Corporate Services
DIRECTORATE	CORPORATE SERVICES
CONTACT NUMBERS	021-8088073
E-MAIL ADDRESS	Annalene.debeer@ Stellenbosch.gov.za
REPORT DATE	2023-08 - 24

ANNEXURE 1



STELLENBOSCH

STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

APPLICATION FOR LEASE OF MUNICIPAL LAND APPLICATION FORM

A: APPLICANT'S DETAILS

Name : CHRISTO BOENMAN

Physical address: 3C ANDERSON ST, Stellenbosch
Central, Stellenbosch
7549

Postal code: 7549

Mailing address: boenman-christo@gmail.com
AS ABOVE

Postal code:

E-mail address: christo@sushibox.co.za

Telephone: 0823822648

Cell phone: AS ABOVE

B: PROPERTY DETAILS OF APPLICANT

Erf/farm number :

Suburb:

Town:
C: PROPERTY DETAILS OF LEASE AREA

Erf/farm number :

Suburb:

Town:

Area of encroachment:m²

* To be supplemented with a sketch-plan with dimension in m²

D: TYPE OF APPLICATION:

Please mark the appropriate block

For commercial purposes, other than for parking

☐

For commercial parking purposes,

☐

For residential parking purposes

☐

For non-commercial purposes (such as garden purposes, gates, ect)

☐

For projecting structures onto street reserves

☐

For projecting structures onto other council-owned land

☐

Other: please provide description:

☐

Brief description of application: SIDEWALK SPACE

Motivation: TABLE SEATING SPACE IN FRONT OF
RESTAURANT

E: LIST OF ATTACHEMENTS AND SUPPORTING DOCUMENTS

Please mark the appropriate box

Special Power of Attorney, where Applicant is not the owner

☐

Diagram of proposed area of the lease area

☐

Letters of consent (affected neighbours)

☐

Application fee (non-refundable)

☐

I hereby certify that the information supplied in this application form is correct and that I am properly authorized to make this application.

Applicant's signature:

Date: 24/03/2023

Full name: CHRISTO BOERMAN

FOR OFFICIAL USE

- The application was considered onby.....
- The application was

	APPROVED
--	-----------------

	NOT APPROVED
--	---------------------

Conditions (if any):

.....

.....

Applicant was informed of outcome on

.....
SIGNATURE OF RESPONSIBLE OFFICIAL

.....
DATE

Name:.....

***If approved**

☐

Encroachment fee paid

☐

Lease Agreement signed

☐

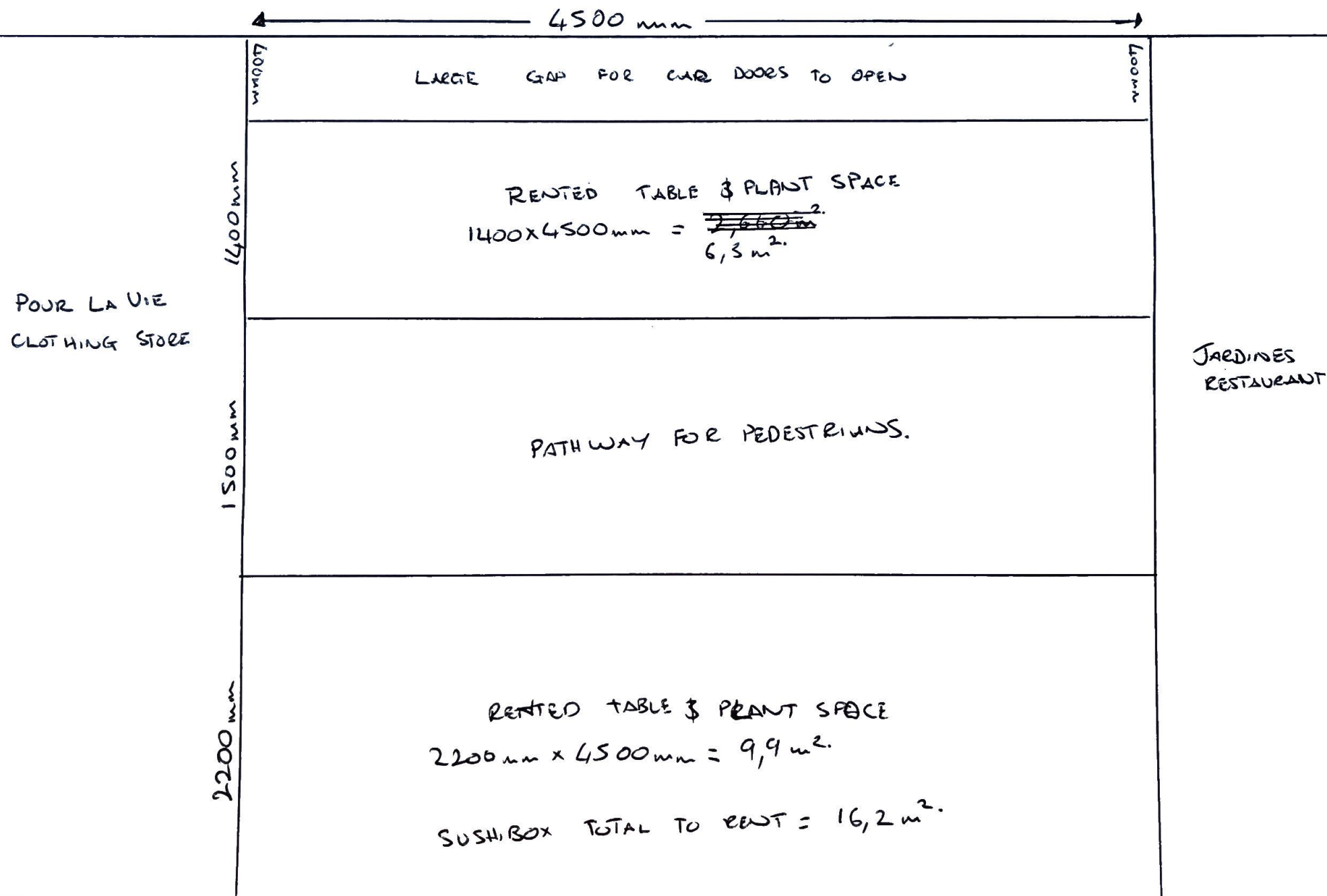
Agreement/Permit processed on Contract Management System

.....
SIGNATURE OF RESPONSIBLE OFFICIAL

.....
DATE

Name:.....

ANNEXURE 2



5.15	PROPOSED LEASE AGREEMENT: ERF 1264 (CNR VAN RYNEVELD & PLEIN STREETS), STELLENBOSCH: VIDA E CAFFE
------	--

Collaborator No:

IDP KPA Ref No:

Meeting Date:

Good Governance

30 August 2023

1. SUBJECT: PROPOSED LEASE AGREEMENT: ERF 1264 (CNR VAN RYNEVELD & PLEIN STREETS), STELLENBOSCH: VIDA E CAFFE

2. PURPOSE

To consider an application from Vida E Caffe, to enter into a Lease Agreement with Stellenbosch Municipality, in terms whereof they would be able to use a portion of Council-owned property for outdoor dining purposes.

3. DELEGATED AUTHORITY

In terms of the approved System of Delegations the Executive Mayor, in consultation with the Executive Mayoral Committee, has the delegated Authority to consider applications for Lease Agreements, up to a contract value not exceeding R5M and not exceeding a period of 10 years.

The approval of lease agreements of three (3) years and less has been delegated to the Municipal Manager.

4. EXECUTIVE SUMMARY

An application to use a portion of the street reserve for Outdoor Dining purposes has been received from the owner of Vida E Caffe trading from erf 1264, Stellenbosch. The application is in line with the provisions /requirements of the Outdoor Dining Policy and is supported by the Engineering Department. Under 6.2.1 are photos showing how area is currently being used. The photos were taken by the contract management unit. The applicant does not currently have any lease agreement or previous encroachment agreement with the municipality and is not paying rent for current use. We served the applicant with a letter requesting that they apply for the outdoor dining lease to ensure compliance.

They have not specified a requested time for the lease and the area they are interested in is 30m².

There is a diagram to indicate how the area will be used but not what furniture will be used however the furniture and placement can be seen on the photographs in the item. 1.5m will be left open on the sidewalk for use by pedestrians.

The department can only support the application if the area in both Plein and Reyneveld streets are demarcated and an unobstructed area of 1,5 meters are left open closest to the road for pedestrian use. Currently the area a Ryneveld street is not an unobstructed 1,5m area.

5. RECOMMENDATIONS

- (a) that the land as indicated on Fig 1 and 2, measuring approximately 30m². in extent, be identified as land not needed to provide the minimum level of basic municipal services during the period that the rights are awarded.
- (b) that the in-principle approval be considered for an initial period of three (3) years with the option of a renewal subject to the following conditions:
 - 1. That no permanent structure or deck be erected without the prior written consent of council.
 - 2. Council is indemnified against all possible 3rd party claims.
 - 3. The municipality or other service providers must not be prohibited from maintaining, repairing, upgrading and / or installing new public services within the leased area. For planned maintenance and repairs, upgrades or new installations, the applicant will be provided with a 5-day written notice to remove all furniture for the municipality and any other public service provider to gain access. For emergency work the applicant will be required to remove everything immediately for the municipality or other public service providers to gain access.
 - 4. The municipality reserves the right to end the lease agreement when the need arises, i.e. when the leased area is required for municipal or other public services purposes or when the applicant refuses the municipality or other public service providers access if required.
- (c) that a 1,5 meter unobstructed area closest to the road is left open for pedestrian use;
- (d) that the area they use be demarcated properly; and
- (e) that the municipal Manager be authorised to determine the rental amount and escalation.

6. DISCUSSION / CONTENT**6.1 Background****6.1.1 Application for lease**

An application was received from Vida E Caffè to enter into an agreement with Stellenbosch Municipality in terms whereof they would be able to use a portion of Council-owned property for outdoor dining purposes. A copy of the application is attached as **APPENDIX 1** and the diagram is attached hereto as **APPENDIX 2**. The extent of the area is approximately 30m².

6.2 DISCUSSION

6.2.1. Locality and context

Erf 1264, Stellenbosch is located at the Cnr Van Ryneveld & Plein Street, Stellenbosch, as shown on Fig 1. and Fig 2, below as well as photographs of how area is currently being used under Fig 3.

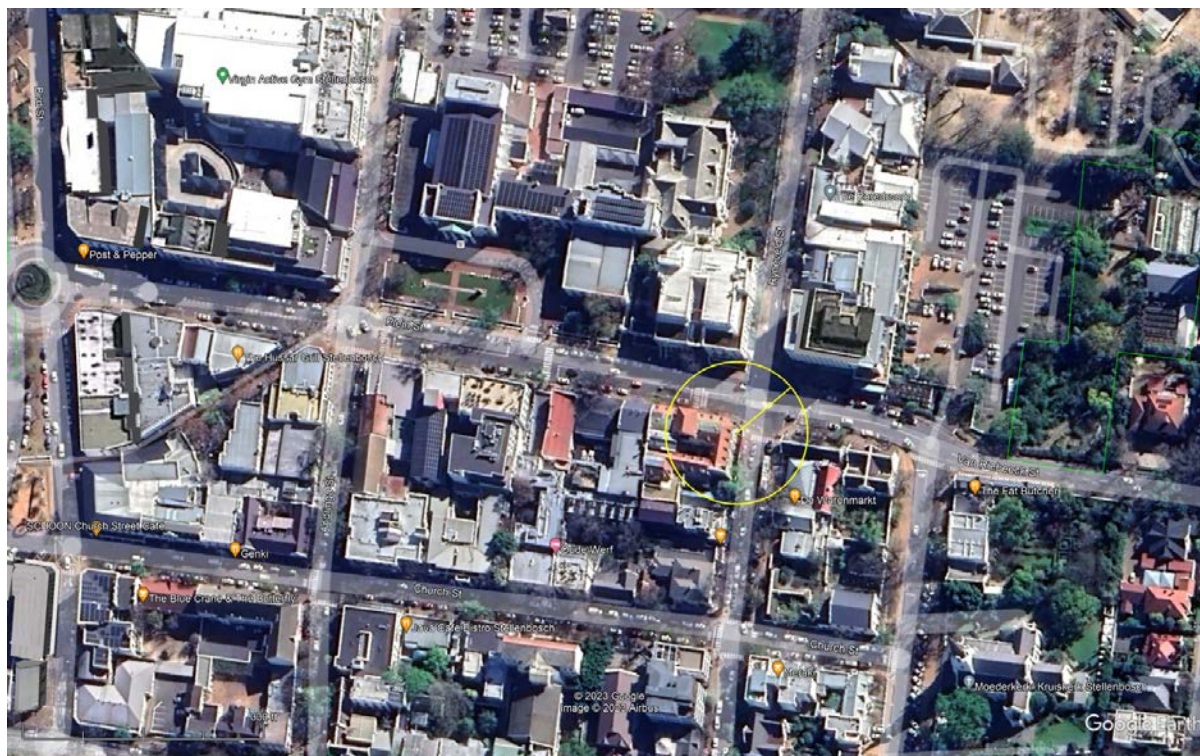


Fig 1. Location and context



Fig 2 .Extent of area





Fig 3. Current area used for outdoor dining

6.2.2 Legal requirements

6.2.2.1 Municipal Asset Transfer Regulations

In terms of Section 36 of the Municipal Asset Transfer Regulation, when considering an application for an approval of a right to use municipal property, the following needs to be taken into account, *inter alia*:-

- a) whether the capital asset may be required for the municipality's own use during the period for which the right is to be granted;
- b) the extent to which any compensation to be received for the right, together with the estimated value of improvements or enhancements to the asset, will result in a significant financial benefit to the municipality;
- c) the (possible) risks and rewards associated with the use in relation to the municipality's interests;
- d) Any comments received from the local community, and
- e) compliance with the legislative regime applicable to the proposed granting of the right.

6.2.2.2 Stellenbosch By-Law on Roads and Streets

In terms of section 4 of the Stellenbosch By-Law on Roads and Streets, no person may, **without prior written permission of the Municipality**, cause an encroachment on a street, sidewalk or road reserve forming part thereof.

6.2.2.3 Property Management policy

Section 9 2.2 deals with deviations from the competitive process, and reads as follows:

The Municipal Council **may dispense with the competitive processes** established in this policy, and may enter into a Private Treaty Agreement through any convenient process, which may include direct negotiations, including in response to an unsolicited application, but only in the following circumstances, and only after having advertised Council's intention so to act. Should any objections be received as a consequence of such a notice, such objections first be considered before a final decision is taken to dispense with the competitive process established in this policy. However, should any objections, be received from potential, competitive bidders, then a public competitive process must be followed. The advertisement referred to above should also be served on adjoining land owners, where the Municipal Manager is of the opinion that such transaction may have a detrimental effect on such adjoining land owner(s):

(h) where encroachment applications are received from adjoining owners, including applications for outdoor dining permits, subject to approved tariff structure;

6.2.2.4 Outdoor Dining Policy**6.2.2.4.1 Policy Objective**

To regulate the use of sidewalks or road reserves for the purpose of outdoor dining and trading, and the temporary use of Public Places for commercial ventures and displays.

6.2.2.4.2 Suitable Locations

Outdoor cafes, restaurants and traders may apply for lease agreements where local conditions are favorable for their operation, including areas of Council e.g. road reserves, sidewalks, Public Open Spaces. All applications in locations of a high pedestrian usage, e.g. a retail center, will be required to take pedestrian needs into consideration.

6.2.2.4.3 Assessment Criteria

The most important local conditions to be considered when an application for lease of the road reserve area is received will be those issues pertaining to pedestrian (including pedestrians who are using wheelchairs, baby prams or are visually impaired) and vehicular circulation, convenience and safety of patrons and the general public, existing streetscape elements and residential amenity.

The ground surface must be sufficiently level to support a proper layout and safe use.

6.2.2.4.4 Layout

The style, layout and orientation of furniture should be chosen according to the extent and shape of the available space of the leased area.

The size of an outdoor cafe or placement of any object on the sidewalk will depend on the width of the sidewalk.

6.2.2.4.5 Defined Area

The applicant will be required to define the area with appropriate markers. (ie a single galvanized steel nail inserted in between the pavers, or a paint spot no larger than 5cm in diameter placed at the corners of the defined area in a semi- permanent paint) to the satisfaction of Council.

6.2.2.4.6 Lease Conditions

The applicant must comply with the conditions set out in the lease agreement and this policy. The lease will be for a period of not more than 5 years with an option to renew. These conditions would also generally require that the local environmental factors be reviewed annually and adjustments to the lease agreement may be required.

If the lease agreement that is entered into is seen as not providing long-term rights, there is no need to advertise the proposed agreement for public input/comments or objections. Should the municipality receive any complaints the lease agreement may be terminated due to the objections.

6.3 Financial Implications

In terms of the current, approved tariff structure for outdoor dining lease agreements a monthly fee of R150.00 per square meter is charged so R4500.00 (incl. of VAT) is applicable and an escalation of 6% is recommended.

6.4 Legal Implications

The legal implications are discussed under 6.2.2 above. As the proposed term of the lease agreement is three (3) years and when the value of the lease and property is taken into account the asset transfer regulations are not applicable as it is not seen as long-term rights on council property that are being given.

6.5 Staff Implications

No additional staff implications.

6.6 Previous / Relevant Council Resolutions

SPECIAL COUNCIL MEETING: 2022-06-22: RESOLVED (nem con):

- (a) That Council takes note of the intended communication to the public;
- (b) That Council takes note that all restaurants and businesses will be given notice to apply / re-apply for a lease to use council property for outdoor dining purposes; and

- (c) That the approval of the leases of three (3) years and less be delegated to the Municipal Manager for approval.

6.7 Risk Implications

The risks are addressed in the item.

6.8 Comments from Senior Management

6.8.1 Director: Infrastructure Services

- The Municipality concludes an agreement with the applicant, detailing the conditions of approval.
- Leased area is zoned as road reserve and cannot be enclosed - to exclude the public, the municipality or other services provider from accessing the area.
- Council is indemnified against all possible 3rd party claims.
- The municipality or other public service provider must not be prohibited from maintaining, repairing, upgrading and / or installing new public services with-in the leased area.
- For planned maintenance, repairs, upgrades or new installations, the applicant will be provided with a 5-day written notice.
- For emergency works the applicant will be required to remove the tables, chairs and other objects immediately for the municipality or other public service provider to gain access.
- The municipality reserves the right to end the lease agreement when the need arises, i.e. when the encroached space is required for municipal or other public services purposes.

6.8.2 Director: Planning and Economic Development

The Stellenbosch Municipality Roads and Street Bylaw, 2021 as promulgated in the Provincial Gazette no. 8436 dated 28 May 2021, defines "sidewalk" "means that portion of a street between the outer boundary of the roadway and the boundary lines of adjacent properties or buildings which is intended for the use of pedestrians, pedal cyclists and any other category of vehicles as may be determined by the Municipality in accordance with section 42(1);"

The definition clearly stipulates that the use of sidewalk is intended for pedestrians, pedal cyclists and any other vehicle. The use of sidewalks as part of the commercial activities of outdoor cafes and restaurants is a form of activity on the street that should improve the quality of public places and urban life. This use must however not be at the cost of overall safety of road users as intended in terms of the above bylaw.

It should be noted that currently the Final Draft Outdoor Dining and Events Overlay Zone, is undergoing a public participation process, of which the closing date for comments is 02 September 2023. In the absence of this overlay zone a suitable land use application must be submitted to evaluate the intended land usage, as the current and proposed land use is not in accordance with the applicable zoning.

6.8.3 Chief Financial Officer

Not requested

6.8.4 Director: Community Services

Not requested

6.8.5 Municipal Manager

Not requested yet.

ANNEXURES: 1. Application**2. Diagram****FOR FURTHER DETAILS CONTACT:**

NAME	Annalene de Beer
POSITION	Director: Corporate Services
DIRECTORATE	CORPORATE SERVICES
CONTACT NUMBERS	021-8088073
E-MAIL ADDRESS	Annalene.debeer@ Stellenbosch.gov.za
REPORT DATE	2023-08 -24

ANNEXURE 1



STELLENBOSCH
STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

Date: 21/02/2023

TO WHOM IT MAY CONCERN

Dear Sir / Madam

**POLICY ON OUTDOOR DINING, TRADING AND THE USE OF PUBLIC PLACES FOR
COMMERCIAL TRADING AND DISPLAY**

Stellenbosch is a unique town. Residents, Students, Local visitors and International Tourists alike enjoy the variety of restaurants, cafes, wine bars and coffee shops that are on offer. Restaurants spilling onto sidewalks an patrons enjoying meals and drinks beneath giant oak tree canopies have become synonymous with our town. As a municipality, we fully embrace the uses and opportunities that outdoor dining brings, and we want to work with Business Owners to preserve this unique character. In the same vein we want to ensure that everyone, especially people with limited mobility, can make use of sidewalks safely.

It has however become prudent for the Municipality to standardise the outdoor dining operations to ensure that everyone operates within the confines of the law. Whereby all businesses that offer outdoor dining must apply and re-apply for a lease of the space they are using for their outdoor dining.

This approach will standardise the approval process of the leases and replace the current encroachments. The Municipality strives to create an environment that is conducive to economic activity while at the same time addressing all the current violations. The current encroachment approach is outdated and not in compliance with the latest legislation.

To give effect to this, the municipality has put in place the following measures as it relates to businesses who offer outdoor dining options:

- All businesses that use the sidewalk (Municipal property) for outdoor dining or the display of goods for sale must apply for a lease for the area they use or want to use.
- All businesses in the CBD that are participating in outdoor dining or the selling of goods on the sidewalk will receive a letter from the Municipality shortly.

CURRENT ENCROACHMENTS:

- Business Owners who are presently in possession of an approved Encroachment Agreement and who applies within 20 days after the receipt of the letter may continue with the outdoor dining use until the lease application has been considered.

ENCROACHMENT IN PROCESS:

- Business Owners who have applied for an encroachment but are not in possession of an approved encroachment agreement must re-apply for a lease. These Business Owners will be allowed to continue with the current use until the lease application has been processed.

ILLEGAL ENCROACHMENTS:

- Business Owners who have not applied on or before 28 February 2023 and are presently not in possession of an approved agreement, but are operating nevertheless, must apply within 30 days and must cease all operations until the lease application has been considered.
- All new establishments intending to operate an outdoor dining facility or sell goods from outside their shops must apply before starting to operate such an outdoor dining / shopping facility.
- Any business owner who does not apply within the 30 days' time frame will have to cease their operations with immediate effect.
- Please note that application will require at least a sketch plan of how the outdoor space will be used and need to be clearly demarcated to stop spilling over the area agreed on.

- If any structure is built or intended to be built on the area it will require approved building plans.
- All Business Owners must ensure that the intended encroachment area complies with zoning regulations.
- No advertising board can be placed on pavements.

Business owners must ensure that they operate within the approved area as illegal encroachments will be addressed going forward.

It should be emphasised that this process is intended to promote better outdoor experience, limit illegal activities and to ensure fair competition amongst businesses.

Attached hereto is an application form to apply for a lease of municipal land. Kindly complete the form and email to Yolande.vandenBerg@ Stellenbosch.gov.za or hand deliver to NPK Building, cnr Ryneveld and Plein Streets, Stellenbosch for attention Property Management. Please also direct queries in this regard to same.

Yours faithfully



.....
HEAD: CONTRACTS MANAGEMENT
YOLANDE VAN DEN BERG

Yolande.vandenBerg@ Stellenbosch.gov.za

Tel: 021 808 8073

ACKNOWLEDGEMENT OF RECEIPT

VIDA E CAFFE HOLDINGS (PTY) LTD

.....
NAME OF THE BUSINESS

JMSwanepoel

.....
SIGNATURE

TENANT/OWNER

03 March 2023

.....
DATE

WITNESS 1:

WITNESS 2:



STELLENBOSCH
STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

APPLICATION FOR LEASE OF MUNICIPAL LAND APPLICATION FORM

A: APPLICANT'S DETAILS

Name : VIDA E CAFFE HOLDINGS (PTY) LTD

Physical address: UNIT C3, FIRST FLOOR, BLOCK 2, NORTHGATE PARK,
20 SECTION STREET, BROOKLYN, CAPE TOWN

Postal code:

Mailing address: UNIT C3, FIRST FLOOR, BLOCK 2, NORTHGATE PARK,
20 SECTION STREET, BROOKLYN, CAPE TOWN

Postal code: 7405

E-mail address:

Telephone: 021 461 0421

Cell phone:

B: PROPERTY DETAILS OF APPLICANT

Erf/farm number : ECCLESIA BUILDING, CNR VAN RYNEVELD & PLEIN STREET

Suburb: STELLENBOSCH

Town: STELLENBOSCH

C: PROPERTY DETAILS OF LEASE AREA

Erf/farm number : ECCLESIA BUILDING, CNR VAN RYNEVELD & PLEIN STREET

Suburb: STELLENBOSCH

Town: STELLENBOSCH

Area of encroachment: 80 30 m2 outsidem²

* To be supplemented with a sketch-plan with dimension in m²

D: TYPE OF APPLICATION:

Please mark the appropriate block

- For commercial purposes, other than for parking ☐
- For commercial parking purposes, ☐
- For residential parking purposes ☐
- For non-commercial purposes (such as garden purposes, gates,ect) ☐
- For projecting structures onto street reserves ☐
- For projecting structures onto other council-owned land ☐
- Other: please provide description: ☐

Brief description of application:
 . MUNICIPAL SIDEWALK TO PLACE TABLES AND CHAIRS FOR CUSTOMERS

Motivation:.....

.....

E: LIST OF ATTACHEMENTS AND SUPPORTING DOCUMENTS

Please mark the appropriate box

- | | |
|---|--------------------------|
| Special Power of Attorney, where Applicant is not the owner | ☐ |
| Diagram of proposed area of the lease area | ☐ |
| Letters of consent (affected neighbours) | ☐ |
| Application fee (non-refundable) | ☐ |

I hereby certify that the information supplied in this application form is correct and that I am properly authorized to make this application.

Applicant's signature: *JMSwanepoel* Date: 3 MARCH 2023

Full name: JOHANNES MARX SWANEPOEL

FOR OFFICIAL USE

- The application was considered onby.....
- The application was

☐	APPROVED
--------------------------	-----------------

☐	NOT APPROVED
--------------------------	---------------------

Conditions (if any):

.....

.....

Applicant was informed of outcome on

.....
SIGNATURE OF RESPONSIBLE OFFICIAL

Name:

.....
DATE

***If approved**

☐

Encroachment fee paid

☐

Lease Agreement signed

☐

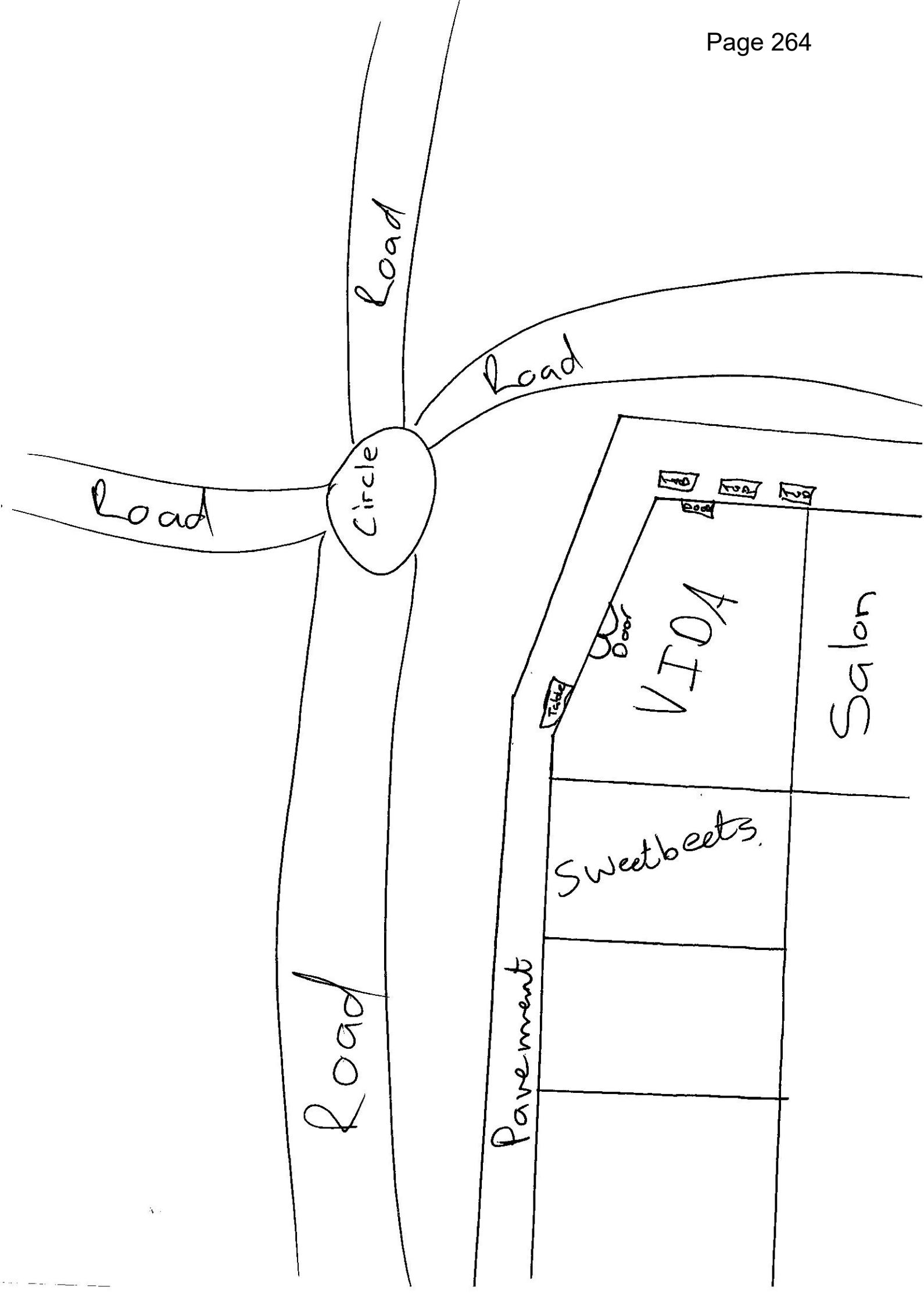
Agreement/Permit processed on Contract Management System

.....
SIGNATURE OF RESPONSIBLE OFFICIAL

Name:

.....
DATE

ANNEXURE 2



5.16	PROPOSED LEASE AGREEMENT: ERF 722 (53 DORP STREET), STELLENBOSCH – ADAM AND EVE COLLAB
------	---

Collaborator No:

IDP KPA Ref No:

Meeting Date:

Good Governance

30 August 2023

1. SUBJECT: PROPOSED LEASE AGREEMENT: ERF 722 (53 DORP STREET), STELLENBOSCH – ADAM AND EVE COLLAB

2. PURPOSE

To consider an application from Adam and Eve Collab, to enter into a Lease Agreement with Stellenbosch Municipality, in terms whereof they would be able to use a portion of Council-owned property for outdoor dining purposes.

3. DELEGATED AUTHORITY

In terms of the approved System of Delegations the Executive Mayor, in consultation with the Executive Mayoral Committee, has the delegated Authority to consider applications for Lease Agreements, up to a contract value not exceeding R5M and not exceeding a period of 10 years.

The Municipal Manager has delegated authority to approve leases of 3 (three) years and less.

4. EXECUTIVE SUMMARY

An application to use a portion of the street reserve for Outdoor Dining purposes has been received from the owner of the restaurant called Adam and Eve Collab operating on erf 722, Stellenbosch. The registered owner of the property has knowledge of the application and is in support of same. The application is in line with the provisions /requirements of the Outdoor Dining Policy and is supported by the Engineering Department.

Under 6.2.1 are photos showing how the area is currently being used. The photos were taken by the contract management unit. The applicant does not currently have a lease agreement or a previous encroachment agreement with the municipality and is not paying for the use of the area. We served the applicant with a letter requesting that they apply for a lease in order to ensure compliance.

They have not specified a requested time for the lease and the area they are interested in is 18m². They have not filed a diagram to indicate the furniture to be used however same is evident from the photographs in the item.

An objection has been received from Remgro who owns the property next to the establishment which indicates that they do not want the applicants to make use of the sidewalk in front of their building. (See **APPENDIX 3**). The applicant will have to apply to Heritage Western Cape for approval as well. The open space closest to the road is not a full 1,5 meters unobstructed area.

The application is not supported at this stage.

5. RECOMMENDATION

For consideration

6. DISCUSSION / CONTENT

6.1 Background

6.1.1 Application for Lease agreement

An application was received from Adam and Eve Collab to enter into an agreement with Stellenbosch Municipality in terms of where they would be able to use a portion of Council-owned property for outdoor dining purposes. A copy of the application is attached as **APPENDIX 1**, with a letter from the one neighbor consenting to same attached hereto as **APPENDIX 2**. The extent of the proposed lease area is approximately 18m².

6.2 DISCUSSION

6.2.1. Locality and context

Erf 722, Stellenbosch is located at 54 Dorp Street, Stellenbosch, as shown on Fig 1. and Fig 2, below as well as photographs of how area is currently being used under Fig 3.

From the photographs it is not clear if 1.5m is left open on the pavement for pedestrian use as per national guidelines.



Fig 1. Location and context



Fig 2 .Extent of area





Fig 3. Photographs of current area

6.2.2 Legal requirements

6.2.2.1 Municipal Asset Transfer Regulations

In terms of Section 36 of the Municipal Asset Transfer Regulation, when considering an application for an approval of a right to use municipal property, the following needs to be taken into account, *inter alia*:-

- a) whether the capital asset may be required for the municipality's own use during the period for which the right is to be granted;
- b) the extent to which any compensation to be received for the right, together with the estimated value of improvements or enhancements to the asset, will result in a significant financial benefit to the municipality;
- c) the (possible) risks and rewards associated with the use in relation to the municipality's interests;
- d) Any comments received from the local community, and
- e) compliance with the legislative regime applicable to the proposed granting of the right.

6.2.2.2 Stellenbosch By-Law on Roads and Streets

In terms of section 4 of the Stellenbosch By-Law on Roads and Streets, no person may, **without prior written permission of the Municipality**, cause an encroachment on a street, sidewalk or road reserve forming part thereof.

6.2.2.3 Property Management policy

Section 9 2.2 deals with deviations from the competitive process, and reads as follows:

The Municipal Council **may dispense with the competitive processes** established in this policy and may enter into a Private Treaty Agreement through any convenient process, which may include direct negotiations, including in response to an unsolicited application, but only in the following circumstances, and only after having advertised Council's intention so to act. Should any objections be received as a consequence of such a notice, such objections first be considered before a final decision is taken to dispense with the competitive process established in this policy. However, should any objections be received from potential, competitive bidders, then a public competitive process must be followed. The advertisement referred to above should also be served on adjoining landowners, where the Municipal Manager is of the opinion that such transaction may have a detrimental effect on such adjoining landowner(s):

- (h) where encroachment applications are received from adjoining owners, including applications for outdoor dining permits, subject to approved tariff structure.

6.2.2.4 Outdoor Dining Policy**6.2.2.4.1 Policy Objective**

To regulate the use of sidewalks or road reserves for the purpose of outdoor dining and trading, and the temporary use of Public Places for commercial ventures and displays.

6.2.2.4.2 Suitable Locations

Outdoor cafes, restaurants and traders may apply for a lease where local conditions are favorable for their operation, including areas of Council e.g. road reserves, sidewalks, Public Open Spaces. All applications in locations of a high pedestrian usage, e.g. a retail centre, will be required to take pedestrian needs into consideration.

6.2.2.4.3 Assessment Criteria

The most important local conditions to be considered when an application for a lease agreement of the road reserve area is received will be those issues pertaining to pedestrian (including pedestrians who are using wheelchairs, baby prams or are visually impaired) and vehicular circulation, convenience and safety of patrons and the general public, existing streetscape elements and residential amenity.

The ground surface must be sufficiently level to support a proper layout and safe use.

6.2.2.4.4 Layout

The style, layout and orientation of furniture should be chosen according to the extent and shape of the available space of the encroachment area.

The size of an outdoor cafe or placement of any object on the sidewalk will depend on the width of the sidewalk.

6.2.2.4.5 Defined Area

The applicant will be required to define the area with appropriate markers. (ie a single galvanized steel nail inserted in between the pavers, or a paint spot no larger than 5cm in diameter placed at the corners of the defined area in a semi- permanent paint) to the satisfaction of Council.

6.2.2.4.6 Lease Conditions

The applicant must comply with the conditions set out in the lease agreement and this policy. The lease will be for a period of not more than 5 years with an option to renew. These conditions would also generally require that the local environmental factors be reviewed annually and adjustments to the lease may be required.

If the lease agreement that is entered into is seen as not providing long term rights, there is no need to advertise the proposed agreement for public input/comments or objections. Should the municipality receive any complaints the lease agreement may be terminated due to the objections.

6.3 Financial Implications

In terms of the current, approved tariff structure for outdoor dining lease agreement and amount of R150.00 is charged per square meter and in this instance a monthly fee of R 2 700.00 (incl. of VAT) is applicable and an escalation of 6% is recommended.

6.4 Legal Implications

The legal implications are discussed under 6.2.2 above. As the proposed term of the lease agreement is three (3) years and when the value of the lease and property is taken into account the asset transfer regulations are not applicable as it is not seen as long-term rights on council property that are being given.

6.5 Staff Implications

No additional staff implications.

6.6 Previous / Relevant Council Resolutions**SPECIAL COUNCIL MEETING: 2022-06-22: ITEM 9.2.5 RESOLVED (nem con)**

- (a) That council takes note of the intended communication to the public;
- (b) That council takes note that all restaurants and businesses will be given notice to apply / re-apply for a lease to use council property for outdoor dining purposes; and
- (c) That the approval of the lease of three (3) years and less be delegated to the Municipal Manager for approval.

6.7 Risk Implications

The risks are addressed in the item.

6.8 Comments from Senior Management**6.8.1 Director: Infrastructure Services**

- The municipality concludes an agreement with the applicant, detailing the conditions of approval.
- Leased area is zoned as road reserve and cannot be enclosed – to exclude the public, the municipality or other service provider from accessing the area.
- Council is indemnified against all possible 3rd party claims.
- The municipality or other public service providers must not be prohibited from maintaining, repairing, upgrading and / or installing new public services within the leased area.
- The approved structure must be removable to gain access to the leased area, as and when required by the municipality or other service providers.
- For planned maintenance, repairs, upgrades or new installations, the applicant will be provided with a 5-day written notice, to remove any structures from the municipality or any other public service providers to gain access.

- For emergency works the applicant will be required to remove everything immediately for the municipality or other public service providers to gain access.
- The municipality reserves the right to end the lease agreement when the need arises, i.e. when the leased space is required for municipal or other public services purposes.

6.8.2 Director: Planning and Economic Development

The Stellenbosch Municipality Roads and Street Bylaw, 2021 as promulgated in the Provincial Gazette no. 8436 dated 28 May 2021, defines "sidewalk" "means that portion of a street between the outer boundary of the roadway and the boundary lines of adjacent properties or buildings which is intended for the use of pedestrians, pedal cyclists and any other category of vehicles as may be determined by the Municipality in accordance with section 42(1);"

The definition clearly stipulates that the use of sidewalk is intended for pedestrians, pedal cyclists and any other vehicle. The use of sidewalks as part of the commercial activities of outdoor cafes and restaurants is a form of activity on the street that should improve the quality of public places and urban life. This use must however not be at the cost of overall safety of road users as intended in terms of the above bylaw.

It should be noted that currently the Final Draft Outdoor Dining and Events Overlay Zone, is undergoing a public participation process, of which the closing date for comments is 02 September 2023. In the absence of this overlay zone a suitable land use application must be submitted to evaluate the intended land usage, as the current and proposed land use is not in accordance with the applicable zoning.

Heritage Western Cape must also provide application.

6.8.3 Chief Financial Officer

Not requested.

6.8.4 Director: Community Services

Not requested

6.8.5 Municipal Manager

Not requested yet

ANNEXURES: 1. Application
2. Consent letter
3. Historiese huise objection

FOR FURTHER DETAILS CONTACT:

NAME	Annalene de Beer
POSITION	Director: Corporate Services
DIRECTORATE	CORPORATE SERVICES
CONTACT NUMBERS	021-8088189
E-MAIL ADDRESS	Annalene.debeer@ Stellenbosch.gov.za
REPORT DATE	2023-08-24

ANNEXURE 1



STELLENBOSCH

STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

APPLICATION FOR LEASE OF MUNICIPAL LAND APPLICATION FORM

A: APPLICANT'S DETAILS

Name : Adam and Eve Collab.

Physical address: 53 Dorp Street
..... Stellenbosch.

Postal code: 7600

Mailing address: 53 Dorp Street
..... Stellenbosch

Postal code: 7600

E-mail address: danneel@adamandevecollab.co.za

Telephone: 064 747 3910

Cell phone: 078 402 9982

B: PROPERTY DETAILS OF APPLICANT

Erf/farm number :

Suburb:

Town:
C: PROPERTY DETAILS OF LEASE AREA

Erf/farm number : Erf 722.
 Suburb: Stellenbosch.
 Town: Stellenbosch
 Area of encroachment: (9m x 2m) = 18 m²

* To be supplemented with a sketch-plan with dimension in m²

D: TYPE OF APPLICATION:

Please mark the appropriate block

For commercial purposes, other than for parking



For commercial parking purposes,



For residential parking purposes



For non-commercial purposes (such as garden purposes, gates, ect)



For projecting structures onto street reserves



For projecting structures onto other council-owned land



Other: please provide description:



Brief description of application: The area will be
 for the use of hospitality purposes,
 such as customer seating to serve dining
 L beverages and meals (coffee etc.).

Motivation:
 L We would like to care after the
 leased space into a classy and
 garden-filled seating area for customers
 and enhance the beauty of Dorp Street.
 The area will still have a 1.8m space
 for pedestrians walking, even with seating

Our landlord, Karl Pieber are more than
happy with our seating. ^{Page 277} ~~we~~ should you
like to confirm. Contact - 082 928 1653.

We also need space for dining as our inside
space is limited. We have planted new greenery
and enhanced the sidewalk garden previously.

E: LIST OF ATTACHEMENTS AND SUPPORTING DOCUMENTS

Please mark the appropriate box

Special Power of Attorney, where Applicant is not the owner

☐

Diagram of proposed area of the lease area

☒

Letters of consent (affected neighbours)

☒

Application fee (non-refundable)

☐

I hereby certify that the information supplied in this application form is correct
and that I am properly authorized to make this application.

Applicant's signature: 

Date: 15/03/23

Full name: Daniel Jean Stone

FOR OFFICIAL USE

- The application was considered onby.....
- The application was

☐	APPROVED
--------------------------	-----------------

☐	NOT APPROVED
--------------------------	---------------------

Conditions (if any):

.....

.....

Applicant was informed of outcome on

.....
SIGNATURE OF RESPONSIBLE OFFICIAL

.....
DATE

Name:.....

***If approved**

- ☐ Encroachment fee paid
- ☐ Lease Agreement signed
- ☐ Agreement/Permit processed on Contract Management System

.....
SIGNATURE OF RESPONSIBLE OFFICIAL

.....
DATE

Name:.....

ANNEXURE 2



To whom this letter may concern,

As neighbours of Adam and Eve,
we understand they would like seating for their clients that visit the
café

They have a petite café that they run,
and the premises is always kept neat and tidy.

We have no problem with them wanting to add the seating for
their clientele,
as its convenient for our awaiting clients as well.

We have a great working relationship with Adam and Eve staff
and management.

Please feel free to contact me if you require any further
assistance

Kind regards,

Rudaybah Slamang
Branch Supervisor – Stellenbosch
First Car Rental / SIXT Rent a Car

☐ +27 21 882 8349
☐ rudaybahs@cmh.co.za

KwaZulu-Natal - Durban
Head Office
Fleet
Finance
Damages
Roadside Assistance
1st Floor, CMH Building, 7
Union Street, Durban, 4001
Tel: +27 (0) 31 335 8400

Johannesburg - Pomona
Operations
Contact Centre
Customer Centre
Sales
106 Constatia Avenue
Pomona, 1619
Tel: 0861 1STCAR
Tel: +27 (0) 11 230 9999

Cape Town - CPT Airport
Industry
Development
Strategy
Marketing
7 Tower Road, Airport
Industry, Cape Town
International Airport, 7490
Tel: +27 (0) 21 534 7490

A Member of the CMH GROUP

ANNEXURE 3

Historiese Huise van Suid-Afrika Limited

THE BURGHER HOUSE · P O BOX 51 · TELEPHONE (021) 887 0339 · FAX (021) 887 9337 · STELLENBOSCH 7599 · REPUBLIC OF SOUTH AFRICA
e-mail: hhuise@remgro.com

ADAM AND EVE COLLABORATION (PTY) LTD
Reg. No. 2020/178934/07
ATTENTION: DANNEEL JEAN STONE
53 DORP STREET
STELLENBOSCH
7600

“Without prejudice”

20 July 2022

Via email: adamandevercol@gmail.com
And by Hand delivery.

Dear Mr. Danneel Jean Stone

ILLEGAL ENCROACHMENT OF PROPERTY: YOURSELF | HISTORIESE HUISE VAN SUID-AFRIKCA LIMITED

The above matter refers.

Since 1968 Historiese Huise van Suid-Afrika Limited has been the rightful owner of the unmovable property situated at 51 Dorp street, Stellenbosch (the “Property”).

Recently it came to our attention that you – without our knowledge and/or consent – erected a wooden floor fixture/fitting as well as table and chairs (“Fixture”) on and/or in front of our Property.

Furthermore, as depicted by the photo evidence attached hereto and marked as “**Annex A**”, it is clear and undisputable that you are utilising the Fixture as part of your shop by serving food and liquor on our Property and/or Stellenbosch Municipality’s premises. Again, we did not consent to this.

We confirm that our Mr. Pieter Kotzé has twice already discussed our disapproval of you utilising our Property and requested that the removal of the Fixture with your manager. However, your manager has neglected and/or refuse to remove the Fixture.

Therefore, we hereby inform you in writing that you do not have our consent to encroach our Property with your Fixture and usage of our Property for selling food and liquor and are doing so illegally.

We hereby demand that you remove the Fixture from our Property **on or before close of business today**. Should you not meet this deadline, we will have no other option as to take legal action.

Accordingly, we reserve the right to take any other actions and pursue any other legal rights available to us and will defend any and all legal action.

Kindly note that we are providing a copy of this letter to Stellenbosch Municipality to inform them that you are using their power box (as depicted in Fig. 3 and Fig. 4) as a table to serve seated customers as well as inform them that you neglect and/or refuse to adhere to our request to remove your Fixture on/or our Property as well as the side walk of the Municipality.

We are also proving a copy of this letter to the Liquor Inspector at SAPS Stellenbosch to inform them that you are using our Property to serve liquor without our consent as well in contradiction to your liquor license.

Should you have any queries pertaining to this letter, please contact our legal department on ag@remgro.com.

Kind regards,

P.A. VAN A. KOTZÉ

CC: STELLENBOSCH MUNICIPALITY
DIRECTORATE: INFRASTRUCTURE SERVICES
Email: engineering.services@stellenbosch.gov.za

STELLENBOSCH MUNICIPALITY
Town Planning
Email: nazeema.mohamed@stellenbosch.gov.za

SAPS STELLENBOSCH (LIQUOR LICENSE INSPECTOR)
Attention o/a Smit
Email: StellenboschDFO@saps.gov.za

I hereby acknowledge safe receipt of this letter on 20 July 2022.

.....
ON BEHALF OF ADAM & EVE COLLABORATION PTY LTD

NAME: _____

ANNEXURE A



Fig 1:



Fig 2:



Fig 3:

5.17	PROPOSED LEASE AGREEMENT: ERF 1265, 24 PLEIN STREET, STELLENBOSCH: FROM THE BLUE FISH AND CHIPS
------	--

Collaborator No:

IDP KPA Ref No:

Meeting Date:

Good Governance

30 August 2023

1. **SUBJECT: PROPOSED LEASE AGREEMENT: ERF 1265, 24 PLEIN STREET, STELLENBOSCH: FROM THE BLUE FISH AND CHIPS**
2. **PURPOSE**

To consider an application from From the Blue Fish and Chip Shop, to enter into a Lease Agreement with Stellenbosch Municipality, in terms whereof they would be able to use a portion of Council-owned property for outdoor dining purposes.

3. **DELEGATED AUTHORITY**

In terms of the approved System of Delegations the Executive Mayor, in consultation with the Executive Mayoral Committee, has the delegated Authority to consider applications for Lease Agreements, up to a contract value not exceeding R5M and not exceeding a period of 10 years.

4. **EXECUTIVE SUMMARY**

An application to use a portion of the street reserve for Outdoor Dining purposes has been received from the owner of From the Blue Fish and Chip Shop trading of erf 1265, Stellenbosch. The application is in line with the provisions /requirements of the Outdoor Dining Policy and is supported by the Engineering Department. Under 6.2.1 are photos showing how area is currently being used. The photos were taken by the contract management unit. The applicant does not currently have a lease agreement or previous encroachment agreement with the municipality and is therefore not paying rent for the current area being used. We served the applicant with a letter requesting that they apply for the outdoor dining lease to ensure compliance.

They have not specified the requested time and the area they are interested in is 6m². The draft plan indicates two round tables with four chairs as is also evident from the photographs. The area left open is not unobstructed and also not 1.5m for pedestrian use. There are lamp posts and trees on the sidewalk. Should they wish to do continue with outdoor dining except closest to the shopfront where only 1 table width is possible, they will have to reconsider where the pedestrian usage area is. They also put signs in the area. The area is also not demarcated.

The department does not support the application at this stage taking into account the current use and non-demarcation.

5. **RECOMMENDATION**

For Consideration.

6. DISCUSSION / CONTENT

6.1 Background

6.1.1 Application for encroachment

An application was received from From the Blue Fish and Chip Shop to enter into an agreement with Stellenbosch Municipality in terms whereof they would be able to use a portion of Council-owned property for outdoor dining purposes. A copy of the application is attached as **APPENDIX 1**, with drawings of the proposed lay-out attached as **APPENDIX 2**. The extent of the encroachment area is approximately 6m².

6.2 DISCUSSION

6.2.1. Locality and context

Erf 1265, Stellenbosch is located at 61 Plein Street, Stellenbosch, as shown on Fig 1. and Fig 2, below as well as photographs of how area is currently used under Fig 3.

From the photographs it is evident that an area of 1.5m will be open for pedestrian use. National guidelines for non motorised transport requires unhindered access of 1.5m.

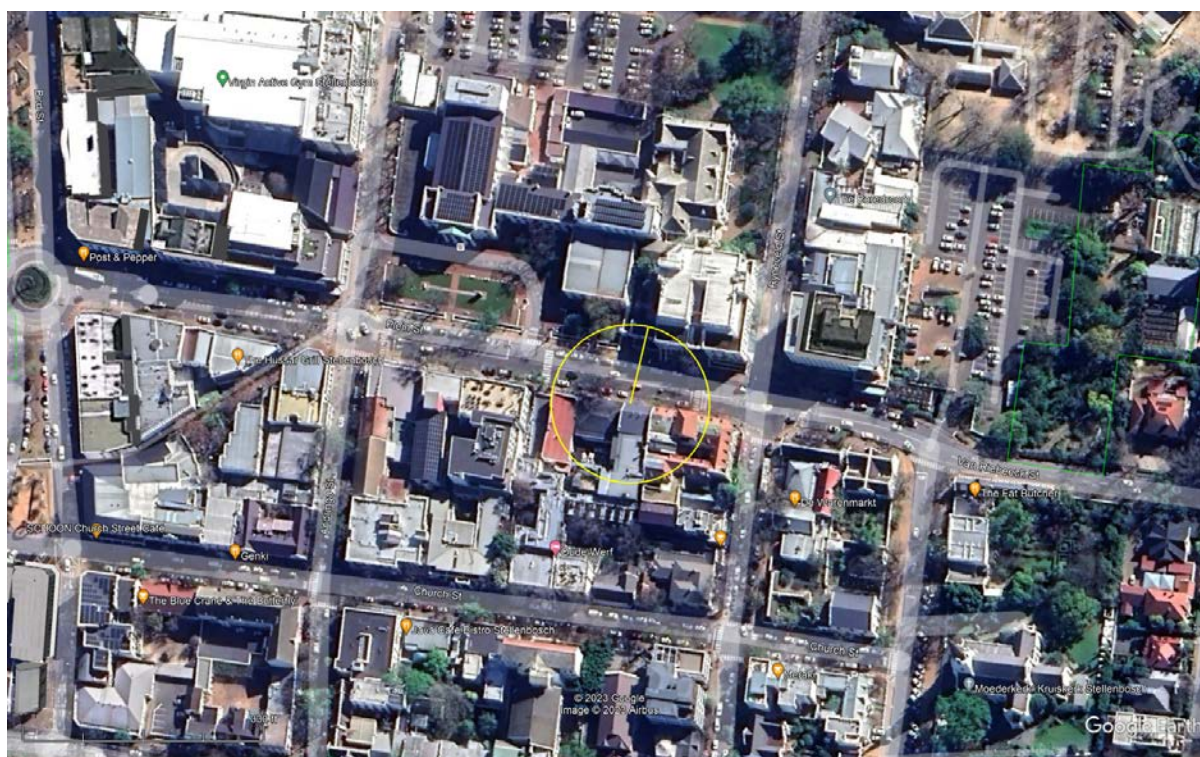


Fig 1. Location and context



Fig 2 .Extent of area





Fig 3. Current area being used for outdoor dining

6.2.2 Legal requirements

6.2.2.1 Municipal Asset Transfer Regulations

In terms of Section 36 of the Municipal Asset Transfer Regulation, when considering an application for an approval of a right to use municipal property, the following needs to be taken into account, *inter alia*:-

- a) whether the capital asset may be required for the municipality's own use during the period for which the right is to be granted;
- b) the extent to which any compensation to be received for the right, together with the estimated value of improvements or enhancements to the asset, will result in a significant financial benefit to the municipality;
- c) the (possible) risks and rewards associated with the use in relation to the municipality's interests;
- d) Any comments received from the local community, and
- e) compliance with the legislative regime applicable to the proposed granting of the right.

6.2.2.2 Stellenbosch By-Law on Roads and Streets

In terms of section 4 of the Stellenbosch By-Law on Roads and Streets, no person may, **without prior written permission of the Municipality**, cause an encroachment on a street, sidewalk or road reserve forming part thereof.

6.2.2.3 Property Management policy

Section 9 2.2 deals with deviations from the competitive process, and reads as follows:

The Municipal Council **may dispense with the competitive processes** established in this policy and may enter into a Private Treaty Agreement through any convenient process, which may include direct negotiations, including in response to an unsolicited application, but only in the following circumstances, and only after having advertised Council's intention so to act. Should any objections be received as a consequence of such a notice, such objections first be considered before a final decision is taken to dispense with the competitive process established in this policy. However, should any objections, be received from potential, competitive bidders, then a public competitive process must be followed. The advertisement referred to above should also be served on adjoining landowners, where the Municipal Manager is of the opinion that such transaction may have a detrimental effect on such adjoining landowner(s):

(h)where encroachment applications are received from adjoining owners, including applications for outdoor dining permits, subject to approved tariff structure.

6.2.2.4 Outdoor Dining Policy

6.2.2.4.1 Policy Objective

To regulate the use of sidewalks or road reserves for the purpose of outdoor dining and trading, and the temporary use of Public Places for commercial ventures and displays.

6.2.2.4.2 Suitable Locations

Outdoor cafes, restaurants and traders may apply for lease agreements where local conditions are favourable for their operation, including areas of Council e.g. road reserves, sidewalks, Public Open Spaces. All applications in locations of a high pedestrian usage, e.g. a retail center, will be required to take pedestrian needs into consideration.

6.2.2.4.3 Assessment Criteria

The most important local conditions to be considered when an application for lease of the road reserve area is received will be those issues pertaining to pedestrian (including pedestrians who are using wheelchairs, baby prams or are visually impaired) and vehicular circulation, convenience and safety of patrons and the general public, existing streetscape elements and residential amenity.

The ground surface must be sufficiently level to support a proper layout and safe use.

6.2.2.4.4 Layout

The style, layout and orientation of furniture should be chosen according to the extent and shape of the available space of the leased area.

The size of an outdoor cafe or placement of any object on the sidewalk will depend on the width of the sidewalk.

6.2.2.4.5 Defined Area

The applicant will be required to define the area with appropriate markers. (ie a single galvanized steel nail inserted in between the pavers, or a paint spot no larger than 5cm in diameter placed at the corners of the defined area in a semi- permanent paint) to the satisfaction of Council.

6.2.2.4.6 Lease Conditions

The applicant must comply with the conditions set out in the lease agreement and this policy. The lease will be for a period of not more than 5 years with an option to renew. These conditions would also generally require that the local environmental factors be reviewed annually and adjustments to the lease may be required.

If the lease agreement that is entered into is seen as not providing long term rights, there is no need to advertise the proposed agreement for public input/comments or objections. Should the municipality receive any complaints the lease agreement may be terminated due to the objections.

6.3 Financial Implications

In terms of the current, approved tariff structure for outdoor dining encroachments a monthly fee of R 900.00 (incl. of VAT) is applicable and an escalation of 6% is recommended.

6.4 Legal Implications

The legal implications are discussed under 6.2.2 above. As the proposed term of the lease agreement is three (3) years and when the value of the lease and property is taken into account the asset transfer regulations are not applicable as it is not seen as long-term rights on council property that are being given.

6.5 Staff Implications

No additional staff implications.

6.6 Previous / Relevant Council Resolutions**SPECIAL COUNCIL MEETING: 2022-06-22: ITEM 9.2.5 RESOLVED (nem con)**

- (a) that Council takes note of the intended communication to the public;
- (b) that Council takes note that all restaurants and businesses will be given notice to apply / re-apply for a lease to use council property for outdoor dining purposes; and
- (c) that the approval of the leases of three (3) years and less be delegated to the Municipal Manager for approval.

6.7 Risk Implications

The risks are addressed in the item.

6.8 Comments from Senior Management**6.8.1 Director: Infrastructure Services**

The Municipality concludes an agreement with the applicant, detailing the conditions of approval.

Leased area is zoned as road reserve and cannot be enclosed - to exclude the public, the municipality or other services provider from accessing the area.

Council is indemnified against all possible 3rd party claims.

The municipality or other public service provider must not be prohibited from maintaining, repairing, upgrading and / or installing new public services with-in the leased area.

For planned maintenance, repairs, upgrades or new installations, the applicant will be provided with a 5-day written notice.

For emergency works the applicant will be required to remove the tables, chairs and other objects immediately for the municipality or other public service provider to gain access.

The municipality reserves the right to end the leased agreement when the need arises, i.e. when the leased space is required for municipal or other public services purposes.

6.8.2 Director: Planning and Economic Development

The Stellenbosch Municipality Roads and Street Bylaw, 2021 as promulgated in the Provincial Gazette no. 8436 dated 28 May 2021, defines "sidewalk" "means that portion of a street between the outer boundary of the roadway and the boundary lines of adjacent properties or buildings which is intended for the use of pedestrians, pedal cyclists and any other category of vehicles as may be determined by the Municipality in accordance with section 42(1);"

The definition clearly stipulates that the use of sidewalk is intended for pedestrians, pedal cyclists and any other vehicle. The use of sidewalks as part of the commercial activities of outdoor cafes and restaurants is a form of activity on the street that should improve the quality of public places and urban life. This use must however not be at the cost of overall safety of road users as intended in terms of the above bylaw.

It should be noted that currently the Final Draft Outdoor Dining and Events Overlay Zone, is undergoing a public participation process, of which the closing date for comments is 02 September 2023. In the absence of this overlay zone a suitable land use application must be submitted to evaluate the intended land usage, as the current and proposed land use is not in accordance with the applicable zoning.

6.8.3 Chief Financial Officer

Not requested

6.8.4 Director: Community Services

Not requested

6.8.5 Municipal Manager

Not requested yet

ANNEXURES: 1. Application

2. Diagram

FOR FURTHER DETAILS CONTACT:

NAME	Annalene de Beer
POSITION	<i>Director: Corporate Services</i>
DIRECTORATE	CORPORATE SERVICES
CONTACT NUMBERS	021-8088073
E-MAIL ADDRESS	Annalene.debeer@ Stellenbosch.gov.za
REPORT DATE	2023-08-08

ANNEXURE 1



STELLENBOSCH

STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

APPLICATION FOR LEASE OF MUNICIPAL LAND APPLICATION FORM

A: APPLICANT'S DETAILS

Name : From The Blue Fish n Chip Shop

Physical address: 61 Plein street
..... Shop 24 Simonsplein Centre
..... Stellenbosch

Postal code: 7600

Mailing address: As above

Postal code:

E-mail address: info@fromthebluefishnchipshop.co.za

Telephone: 066 280 8324

Cell phone: as above

B: PROPERTY DETAILS OF APPLICANT

Erf/farm number : Shop 24 Simonsplein Centre

Suburb: Stellenbosch

Town: Stellenbosch

C: PROPERTY DETAILS OF LEASE AREA

Erf/farm number : Shop 24 Simonsplein Centre

Suburb: Stellenbosch

Town: Stellenbosch

Area of encroachment: 4m x 1,5m m²

* To be supplemented with a sketch-plan with dimension in m² (Attached)

D: TYPE OF APPLICATION:

Please mark the appropriate block

For commercial purposes, other than for parking



For commercial parking purposes,



For residential parking purposes



For non-commercial purposes (such as garden purposes, gates, ect)



For projecting structures onto street reserves



For projecting structures onto other council-owned land



Other: please provide description:



Brief description of application: We would like to have ~~an~~
~~extra~~ 4 x tables plus chairs outside the shop

..... for outdoor dining. it would be extra 2x tables + chairs

Motivation: We believe this will make it more

..... appealing and create a better "Stellenbosch

..... Vibe" for our customers. the shop is small

inside so having the outdoor space will assist us to cater for more customers.

E: LIST OF ATTACHEMENTS AND SUPPORTING DOCUMENTS

Please mark the appropriate box

- Special Power of Attorney, where Applicant is not the owner ☐
- Diagram of proposed area of the lease area *Sketch attached.* ☒
- Letters of consent (affected neighbours) ☐
- Application fee (non-refundable) ☐

I hereby certify that the information supplied in this application form is correct and that I am properly authorized to make this application.

Applicant's signature: *Eddie Dos Passos* Date: *2/3/23*

Full name: *Eddie Dos Passos*
(Owner: From The Blue Fish n Chip Shop)

FOR OFFICIAL USE

- The application was considered onby.....
- The application was

☐	APPROVED
--------------------------	----------

☐	NOT APPROVED
--------------------------	--------------

Conditions (if any):

.....

.....

Applicant was informed of outcome on

.....
SIGNATURE OF RESPONSIBLE OFFICIAL DATE

Name:.....

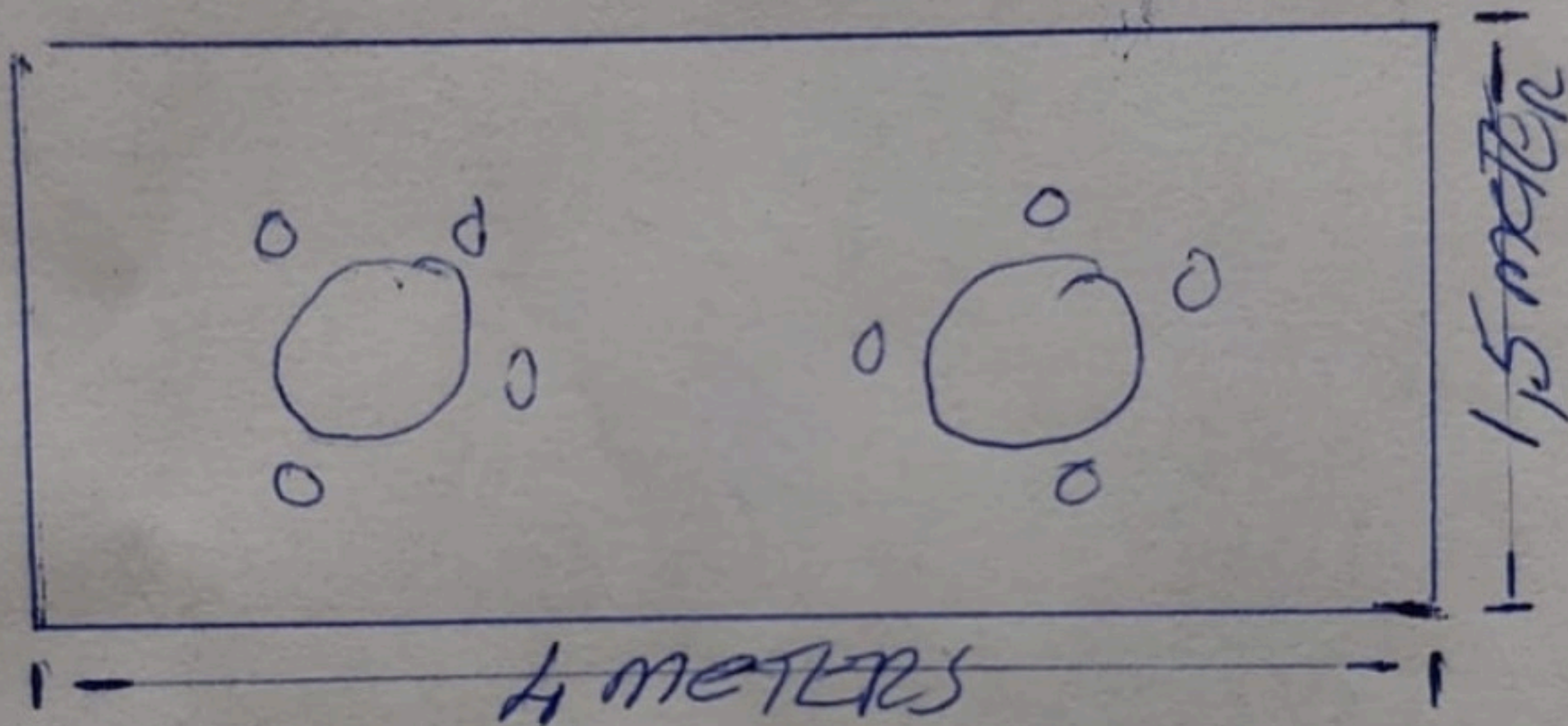
***If approved**

- ☐ Encroachment fee paid
- ☐ Lease Agreement signed
- ☐ Agreement/Permit processed on Contract Management System

.....
SIGNATURE OF RESPONSIBLE OFFICIAL DATE

Name:.....

ANNEXURE 2



SITOP PAVEMENT

SITOP FRONT

5.18	PROPOSED LEASE AGREEMENT: ERF 1237 (13 ANDRINGA STREET), STELLENBOSCH: MORO
------	--

Collaborator No:

IDP KPA Ref No:

Meeting Date:

Good Governance

30 August 2023

1. SUBJECT: PROPOSED LEASE AGREEMENT: ERF 1237 (13 ANDRINGA STREET), STELLENBOSCH: MORO

2. PURPOSE

To consider an application from Heine van Wyk the owner of Moro Stellenbosch, to enter into a Lease Agreement with Stellenbosch Municipality, in terms whereof they would be able to use a portion of Council-owned property for outdoor dining purposes.

3. DELEGATED AUTHORITY

In terms of the approved System of Delegations the Executive Mayor, in consultation with the Executive Mayoral Committee, has the delegated Authority to consider applications for Lease Agreements, up to a contract value not exceeding R5M and not exceeding a period of 10 years.

The approval of lease agreement of three (3) years and less has been delegated to the Municipal Manager.

4. EXECUTIVE SUMMARY

An application to use a portion of the street reserve for Outdoor Dining purposes has been received from the owner of Moro trading from erf 1237, Stellenbosch. The application is in line with the provisions / requirements of the Outdoor Dining Policy and is supported by the Engineering Department. Under 6.2.1 are photos showing how the area is currently being used. The Photos were taken by the contract management unit. The applicant does not currently have a lease agreement with the municipality and is not paying rent for the use of the area. We served the applicant with a letter requesting that they apply for the outdoor dining lease in order to ensure compliance.

They have not specified a requested time for the lease and the are they are interested in is 5m².

They have not filed a diagram to indicate placement of furniture however same is evident from the photographs in the item. The area left open for pedestrian use is not a complete 1.5m and is not unobstructed. The are ais also not clearly demarcated.

The department can only support the application if all provisions are complied with.

5. RECOMMENDATIONS

- (a) that the land as indicated on Fig 1 and 2, measuring approximately 5m². in extent, be identified as land not needed to provide the minimum level of basic municipal services during the period that the rights are awarded;
- (b) that the in-principle approval be considered for an initial period of three (3) years with the option of a renewal subject to the following conditions:
 - 1. That no permanent structure or deck be erected without the prior written consent of council.
 - 2. Council is indemnified against all possible 3rd party claims.
 - 3. The municipality or other public service providers must not be prohibited from maintaining, repairing, upgrading and/or installing new public services within the leased area. All structures must be removable to gain access to the area as and when required by the municipality or other public service providers. For planned maintenance, repairs, upgrades or new installations, the applicant will be provided with a 5-day written notice to remove all furniture and movable structures in order for the municipality to gain access. For emergency work the applicant will be required to remove all furniture and structures immediately.
 - 4. The municipality reserves the right to end the lease agreement when the need arises, i.e. when the leased area is required for municipal or other public service purposes or when the applicant refuses the municipality or other public service providers access if required.
- (c) that the municipal Manager be authorised to determine the rental amount and escalation; and
- (d) that the applicant file a plan for approval indicating the demarcation and the unobstructed 1,5m area for pedestrian use.

6. DISCUSSION / CONTENT**6.1 Background****6.1.1 Application for Lease agreement**

An application was received from Moro to enter into an agreement with Stellenbosch Municipality in terms whereof they would be able to use a portion of Council-owned property for outdoor dining purposes. A copy of the application is attached as **APPENDIX**

1. The extent of the encroachment area is approximately 5m².

Erf 1237, Stellenbosch is located at the 13 Andringa Street, Stellenbosch, as shown on Fig 1.and Fig 2, below as well as photographs of how area is currently being used under Fig 3.

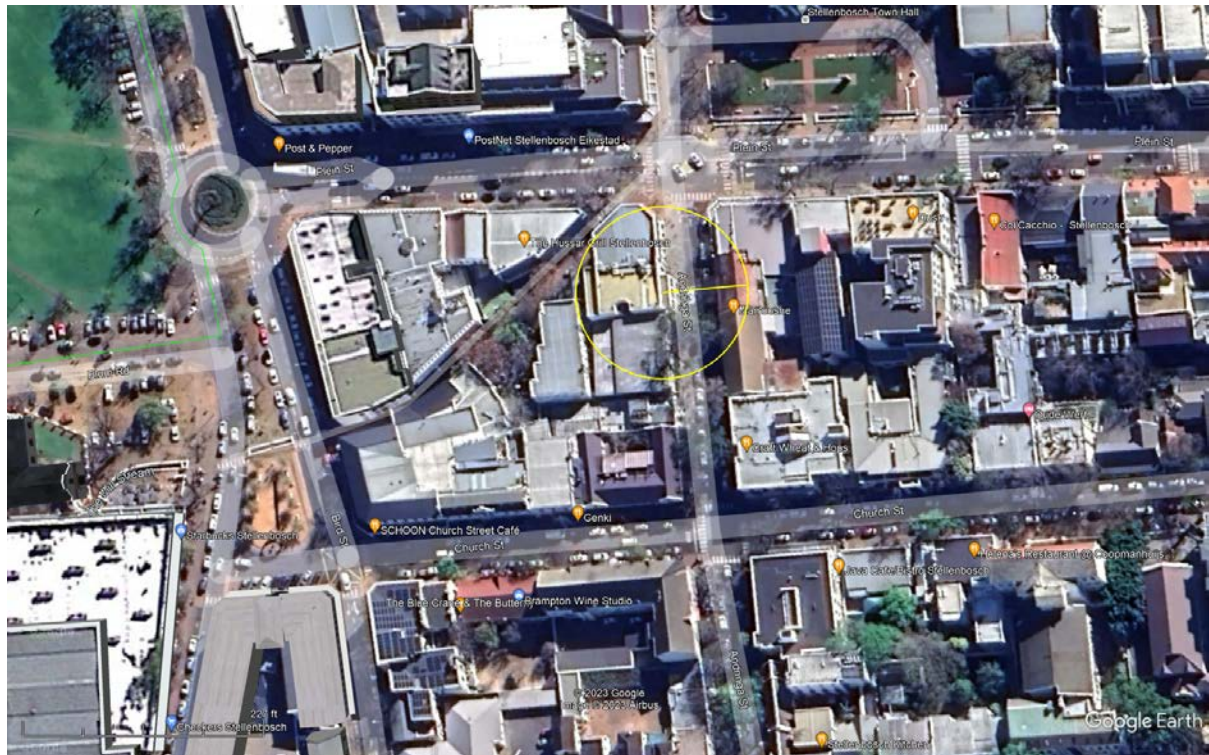


Fig 1. Location and context

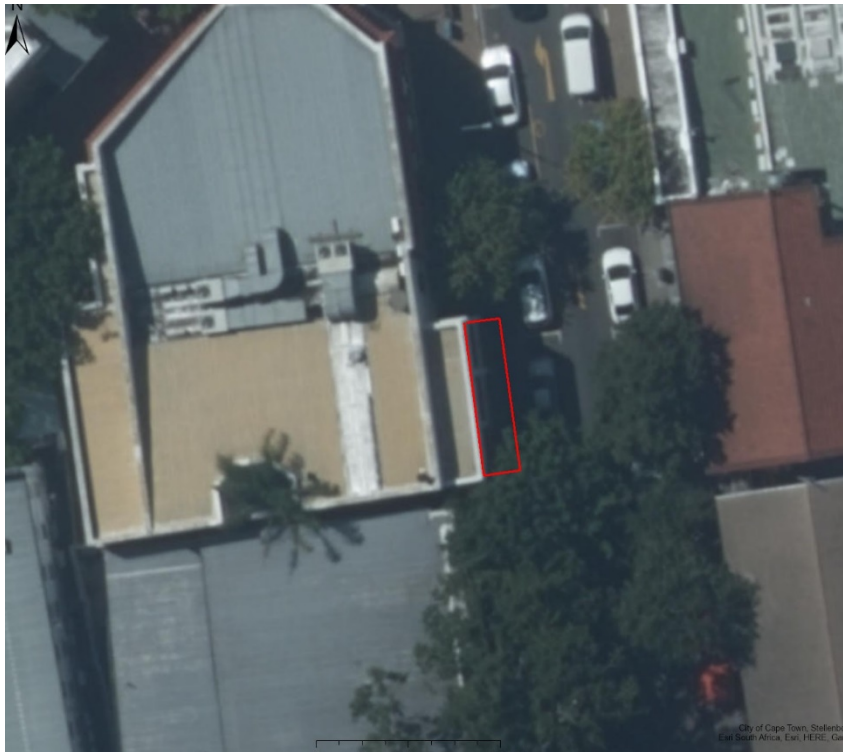


Fig 2 .Extent of area





Fig 3. Current area used for outdoor dining

6.2.2 Legal requirements

6.2.2.1Municipal Asset Transfer Regulations

In terms of Section 36 of the Municipal Asset Transfer Regulation, when considering an application for an approval of a right to use municipal property, the following needs to be taken into account, *inter alia*:-

- a) whether the capital asset may be required for the municipality's own use during the period for which the right is to be granted;
- b) the extent to which any compensation to be received for the right, together with the estimated value of improvements or enhancements to the asset, will result in a significant financial benefit to the municipality;
- c)the (possible) risks and rewards associated with the use in relation to the municipality's interests;
- d)Any comments received from the local community, and
- e) compliance with the legislative regime applicable to the proposed granting of the right.

6.2.2.2 Stellenbosch By-Law on Roads and Streets

In terms of section 4 of the Stellenbosch By-Law on Roads and Streets, no person may, **without prior written permission of the Municipality**, cause an encroachment on a street, sidewalk or road reserve forming part thereof.

6.2.2.3 Property Management policy

Section 9 2.2 deals with deviations from the competitive process, and reads as follows:

The Municipal Council **may dispense with the competitive processes** established in this policy and may enter into a Private Treaty Agreement through any convenient process, which may include direct negotiations, including in response to an unsolicited application, but only in the following circumstances, and only after having advertised Council's intention so to act. Should any objections be received as a consequence of such a notice, such objections first be considered before a final decision is taken to dispense with the competitive process established in this policy. However, should any objections, be received from potential, competitive bidders, then a public competitive process must be followed. The advertisement referred to above should also be served on adjoining landowners, where the Municipal Manager is of the opinion that such transaction may have a detrimental effect on such adjoining landowner(s):

(h)where encroachment applications are received from adjoining owners, including applications for outdoor dining permits, subject to approved tariff structure.

6.2.2.4 Outdoor Dining Policy

6.2.2.4.1 Policy Objective

To regulate the use of sidewalks or road reserves for the purpose of outdoor dining and trading, and the temporary use of Public Places for commercial ventures and displays.

6.2.2.4.2 Suitable Locations

Outdoor cafes, restaurants and traders may apply for a lease agreement where local conditions are favorable for their operation, including areas of Council e.g. road reserves, sidewalks, Public Open Spaces. All applications in locations of a high pedestrian usage, e.g. a retail center, will be required to take pedestrian needs into consideration.

6.2.2.4.3 Assessment Criteria

The most important local conditions to be considered when an application for lease of the road reserve area is received will be those issues pertaining to pedestrian (including pedestrians who are using wheelchairs, baby prams or are visually impaired) and vehicular circulation, convenience and safety of patrons and the general public, existing streetscape elements and residential amenity.

The ground surface must be sufficiently level to support a proper layout and safe use.

6.2.2.4.4 Layout

The style, layout and orientation of furniture should be chosen according to the extent and shape of the available space of the leased area.

The size of an outdoor cafe or placement of any object on the sidewalk will depend on the width of the sidewalk.

6.2.2.4.5 Defined Area

The applicant will be required to define the area with appropriate markers. (ie a single galvanized steel nail inserted in between the pavers, or a paint spot no larger than 5cm in diameter placed at the corners of the defined area in a semi- permanent paint) to the satisfaction of Council.

6.2.2.4.6 Lease Conditions

The applicant must comply with the conditions set out in the lease agreement and this policy. The Lease agreement will be for a period of not more than 5 years with an option to renew. These conditions would also generally require that the local environmental factors be reviewed annually and adjustments to the lease agreement may be required.

If the lease agreement that is entered into is seen as not providing long term rights there is no need to advertise the proposed agreement for public input/comments or objections. Should the municipality receive any complaints the lease agreement may be terminated due to the objections.

6.3 Financial Implications

In terms of the current, approved tariff structure for outdoor dining lease agreements a monthly fee of R150.00 per square meter is charged and in this case R 750.00 (incl. of VAT) is applicable and an escalation of 6% is recommended.

6.4 Legal Implications

The legal implications are discussed under 6.2.2 above. As the proposed term of the lease agreement is three (3) years and when the value of the lease and property is taken into account the asset transfer regulations are not applicable as it is not seen as long-term rights on council property that are being given.

6.5 Staff Implications

No additional staff implications.

6.6 Previous / Relevant Council Resolutions

SPECIAL COUNCIL MEETING: 2022-06-22: ITEM 9.2.5 RESOLVED (nem con)

- (a) That council takes note of the intended communication to the public;
- (b) That council takes note that all restaurants and businesses will be given notice to apply / re-apply for a lease to use council property for outdoor dining purposes; and

- (c) That the approval of the lease of three (3) years and less be delegated to the Municipal Manager for approval.

6.7 Risk Implications

The risks are addressed in the item.

6.8 Comments from Senior Management

6.8.1 Director: Infrastructure Services

- The Municipality concludes an agreement with the applicant, detailing the conditions of approval.
- Leased area is zoned as road reserve and cannot be enclosed - to exclude the public, the municipality or other services provider from accessing the area.
- Council is indemnified against all possible 3rd party claims.
- The municipality or other public service provider must not be prohibited from maintaining, repairing, upgrading and / or installing new public services with-in the leased area.
- For planned maintenance, repairs, upgrades or new installations, the applicant will be provided with a 5-day written notice.
- For emergency works the applicant will be required to remove the tables, chairs and other objects immediately for the municipality or other public service provider to gain access.
- The municipality reserves the right to end the lease agreement when the need arises, i.e. when the encroached space is required for municipal or other public services purposes.

6.8.2 Director: Planning and Economic Development

The Stellenbosch Municipality Roads and Street Bylaw, 2021 as promulgated in the Provincial Gazette no. 8436 dated 28 May 2021, defines "sidewalk" "means that portion of a street between the outer boundary of the roadway and the boundary lines of adjacent properties or buildings which is intended for the use of pedestrians, pedal cyclists and any other category of vehicles as may be determined by the Municipality in accordance with section 42(1);"

The definition clearly stipulates that the use of sidewalk is intended for pedestrians, pedal cyclists and any other vehicle. The use of sidewalks as part of the commercial activities of outdoor cafes and restaurants is a form of activity on the street that should improve the quality of public places and urban life. This use must however not be at the cost of overall safety of road users as intended in terms of the above bylaw.

It should be noted that currently the Final Draft Outdoor Dining and Events Overlay Zone, is undergoing a public participation process, of which the closing date for comments is 02 September 2023. In the absence of this overlay zone a suitable land use application must be submitted to evaluate the intended land usage, as the current and proposed land use is not in accordance with the applicable zoning.

6.8.3 Chief Financial Officer

Not requested.

6.8.4 Director: Community Services

Not requested

6.8.5 Municipal Manager

Not requested yet.

ANNEXURES: 1. Application**FOR FURTHER DETAILS CONTACT:**

NAME	Annalene de Beer
POSITION	Director: Corporate Services
DIRECTORATE	CORPORATE SERVICES
CONTACT NUMBERS	021-8088073
E-MAIL ADDRESS	Annalene.debeer@ Stellenbosch.gov.za
REPORT DATE	2023-08-24

ANNEXURE 1

ACKNOWLEDGEMENT OF RECEIPT

Moro Stellenbosch

NAME OF THE BUSINESS

[Signature]

SIGNATURE

TENANT/OWNER

24/02/2023

DATE

WITNESS 1:

WITNESS 2:



STELLENBOSCH

STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

APPLICATION FOR LEASE OF MUNICIPAL LAND APPLICATION FORM

A: APPLICANT'S DETAILS

Name : Heine van Wyk

Physical address: Maro Stellenbosch
13 Andriëga St

Postal code: 7601

Mailing address:

Postal code:

E-mail address: heine@marovanwyk.co.za

Telephone: 0

Cell phone: 0834628491

B: PROPERTY DETAILS OF APPLICANT

Erf/farm number : 1237

Suburb: CBD

Town: Stellenbosch

C: PROPERTY DETAILS OF LEASE AREA

Erf/farm number : Sidewalk in front of shop

Suburb: CBD

Town: Stellenbosch

Area of encroachment: 5 m²

* To be supplemented with a sketch-plan with dimension in m²

D: TYPE OF APPLICATION:

Please mark the appropriate block

For commercial purposes, other than for parking ☐

For commercial parking purposes, ☐

For residential parking purposes ☐

For non-commercial purposes (such as garden purposes, gates, ect) ☐

For projecting structures onto street reserves ☐

For projecting structures onto other council-owned land ☐

Other: please provide description: ☐

Brief description of application: Not to sell outside our
shop nor serving at tables. Only for seating.

Motivation:

.....

.....

E: LIST OF ATTACHEMENTS AND SUPPORTING DOCUMENTS

Please mark the appropriate box

Special Power of Attorney, where Applicant is not the owner

☐

Diagram of proposed area of the lease area

☐

Letters of consent (affected neighbours)

☐

Application fee (non-refundable)

☐

I hereby certify that the information supplied in this application form is correct
and that I am properly authorized to make this application.

Applicant's signature:

Date: 27/02/2023

Full name: Heine van Wyk

FOR OFFICIAL USE

- The application was considered onby.....
- The application was

☐	APPROVED
--------------------------	----------

☐	NOT APPROVED
--------------------------	--------------

Conditions (if any):

.....

.....

Applicant was informed of outcome on

.....
SIGNATURE OF RESPONSIBLE OFFICIAL

.....
DATE

Name:.....

*If approved

☐

Encroachment fee paid

☐

Lease Agreement signed

☐

Agreement/Permit processed on Contract Management System

.....
SIGNATURE OF RESPONSIBLE OFFICIAL

.....
DATE

Name:.....

5.19	PROPOSED LEASE AGREEMENT: ERF 6460 (CHECKERS CENTRE SHOP 18, MILL STREET) STELLENBOSCH: THE WAFFLE MILL
------	--

Collaborator No:

IDP KPA Ref No:

Meeting Date:

Good Governance

30 August 2023

1. SUBJECT :PROPOSED LEASE AGREEMENT: ERF 6460 (CHECKERS CENTRE SHOP 18, MILL STREET) STELLENBOSCH: THE WAFFLE MILL

2. PURPOSE

to consider an application from The Waffle Mill, to enter into a Lease Agreement with Stellenbosch Municipality, in terms whereof they would be able to use a portion of Council-owned property for outdoor dining purposes.

3. DELEGATED AUTHORITY

In terms of the approved System of Delegations the Executive Mayor, in consultation with the Executive Mayoral Committee, has the delegated Authority to consider applications for Lease Agreements, up to a contract value not exceeding R5M and not exceeding a period of 10 years.

The approval of lease agreements of three (3) years and less has been delegated to the Municipal Manager.

4. EXECUTIVE SUMMARY

An application to use a portion of the street reserve for Outdoor Dining purposes has been received from the owner of The Waffle Mill trading from erf 6460, Stellenbosch. The application is in line with the provisions /requirements of the Outdoor Dining Policy and is supported by the Engineering Department. Under 6.2.1 are photos showing how area is currently being used. The photos were taken by the contract management unit. The applicant does not currently have any lease agreement or previous encroachment agreement with the municipality and is not paying rent for current use. We served the applicant with a letter requesting that they apply for the outdoor dining lease to ensure compliance.

They have not specified a requested time for the lease and the area they are interested in is 40m².

The area is demarcated with a movable wooden fence. 1.5m will be left on the sidewalk adjacent to the street for pedestrians to use the sidewalk. They have filed a diagram to indicate what furniture will be used as well as the intended area and same is further evident from the photographs in the item. There are some trees and bicycle racks on the pavement that may obstruct pedestrian usage.

The department can in principle support the application provide that the 1,5 meters unobstructed pedestrian use is ensured.

5. RECOMMENDATIONS

- (a) that the land as indicated on Fig 1 and 2, measuring approximately 40m². in extent, be identified as land not needed to provide the minimum level of basic municipal services during the period that the rights are awarded;
- (b) that the in-principle approval be considered for an initial period of three (3) years with the option of a renewal subject to the following conditions:
 - 1. That no permanent structure or deck be erected without the prior written consent of council.
 - 2. Council is indemnified against all possible 3rd party claims.
 - 3. The municipality or other service providers must not be prohibited from maintaining, repairing, upgrading and / or installing new public services within the leased area. For planned maintenance and repairs, upgrades or new installations, the applicant will be provided with a 5-day written notice to remove all furniture for the municipality and any other public service provider to gain access. For emergency work the applicant will be required to remove everything immediately for the municipality or other public service providers to gain access.
 - 4. The municipality reserves the right to end the lease agreement when the need arises, i.e. when the leased area is required for municipal or other public services purposes or when the applicant refuses the municipality or other public service providers access if required.
- (c) that the Municipal Manager be authorised to conclude a Lease Agreement for a period of three (3) years, with the option of renewal; and
- (d) that the municipal Manager be authorised to determine the rental amount and escalation.

6. DISCUSSION / CONTENT**6.1 Background****6.1.1 Application for lease**

An application was received from The Waffle Mill to enter into an agreement with Stellenbosch Municipality in terms whereof they would be able to use a portion of Council-owned property for outdoor dining purposes. A copy of the application is attached as **APPENDIX 1** and a diagram of the area is attached as **APPENDIX 2**. The extent of the area is approximately 40m².

6.2 DISCUSSION.

6.2.1. Locality and context

Erf 6460, Stellenbosch is located at Shop 18, Checkers Shopping Center, Mill Street, Stellenbosch, as shown on Fig 1. and Fig 2, below as well as photographs of the current use under Fig 3.



Fig 1. Location and context



Fig 2 .Extent of area



Fig 3. Current area used for outdoor dining

6.2.2 Legal requirements

6.2.2.1 Municipal Asset Transfer Regulations

In terms of Section 36 of the Municipal Asset Transfer Regulation, when considering an application for an approval of a right to use municipal property, the following needs to be taken into account, *inter alia*:-

- a) whether the capital asset may be required for the municipality's own use during the period for which the right is to be granted;
- b) the extent to which any compensation to be received for the right, together with the estimated value of improvements or enhancements to the asset, will result in a significant financial benefit to the municipality;
- c) the (possible) risks and rewards associated with the use in relation to the municipality's interests;
- d) Any comments received from the local community, and
- e) compliance with the legislative regime applicable to the proposed granting of the right.

6.2.2.2 STELLENBOSCH BY-LAW ON ROADS AND STREETS

In terms of section 4 of the Stellenbosch By-Law on Roads and Streets, no person may, **without prior written permission of the Municipality**, cause an encroachment on a street, sidewalk or road reserve forming part thereof.

6.2.2.3 Property Management policy

Section 9 2.2 deals with deviations from the competitive process, and reads as follows:

The Municipal Council **may dispense with the competitive processes** established in this policy and may enter into a Private Treaty Agreement through any convenient process, which may include direct negotiations, including in response to an unsolicited application, but only in the following circumstances, and only after having advertised Council's intention so to act. Should any objections be received as a consequence of such a notice, such objections first be considered before a final decision is taken to dispense with the competitive process established in this policy. However, should any objections, be received from potential, competitive bidders, then a public competitive process must be followed. The advertisement referred to above should also be served on adjoining landowners, where the Municipal Manager is of the opinion that such transaction may have a detrimental effect on such adjoining landowner(s):

- (h) where encroachment applications are received from adjoining owners, including applications for outdoor dining permits, subject to approved tariff structure.

6.2.2.4 Outdoor Dining Policy**6.2.2.4.1 Policy Objective**

To regulate the use of sidewalks or road reserves for the purpose of outdoor dining and trading, and the temporary use of Public Places for commercial ventures and displays.

6.2.2.4.2 Suitable Locations

Outdoor cafes, restaurants and traders may apply for lease agreements where local conditions are favorable for their operation, including areas of Council e.g. road reserves, sidewalks, Public Open Spaces. All applications in locations of a high pedestrian usage, e.g. a retail center, will be required to take pedestrian needs into consideration.

6.2.2.4.3 Assessment Criteria

The most important local conditions to be considered when an application for lease of the road reserve area is received will be those issues pertaining to pedestrian (including pedestrians who are using wheelchairs, baby prams or are visually impaired) and vehicular circulation, convenience and safety of patrons and the general public, existing streetscape elements and residential amenity.

The ground surface must be sufficiently level to support a proper layout and safe use.

6.2.2.4.4 Layout

The style, layout and orientation of furniture should be chosen according to the extent and shape of the available space of the leased area.

The size of an outdoor cafe or placement of any object on the sidewalk will depend on the width of the sidewalk.

6.2.2.4.5 Defined Area

The applicant will be required to define the area with appropriate markers. (ie a single galvanized steel nail inserted in between the pavers, or a paint spot no larger than 5cm in diameter placed at the corners of the defined area in a semi- permanent paint) to the satisfaction of Council.

6.2.2.4.6 Lease Conditions

The applicant must comply with the conditions set out in the lease agreement and this policy. The Lease will be for a period of not more than 5 years with an option to renew. These conditions would also generally require that the local environmental factors be reviewed annually and adjustments to the lease may be required.

If the lease agreement that is entered into is seen as not providing long term rights there is no need to advertise the proposed agreement for public input/comments or objections. Should the municipality receive any complaints the lease agreement may be terminated due to the objections.

6.3 Financial Implications

In terms of the current, approved tariff structure for outdoor dining lease agreements a monthly fee of R150.00 per square meters is charged and in this instance R 6000.00 (incl. of VAT) is applicable and an escalation of 6% is recommended.

6.4 Legal Implications

The legal implications are discussed under 6.2.2 above. As the proposed term of the lease agreement is three (3) years and when the value of the lease and property is taken into account the asset transfer regulations are not applicable as it is not seen as long term rights on council property that are being given.

6.5 Staff Implications

No additional staff implications.

6.6 Previous / Relevant Council Resolutions**SPECIAL COUNCIL MEETING: 2022-06-22: RESOLVED (nem con):**

- (a) That Council takes note of the intended communication to the public;
- (b) That Council takes note that all restaurants and businesses will be given notice to apply / re-apply for a lease to use council property for outdoor dining purposes; and
- (c) That the approval of the leases of three (3) years and less be delegated to the Municipal Manager for approval.

6.7 Risk Implications

The risks are addressed in the item.

6.8 Comments from Senior Management**6.8.1 Director: Infrastructure Services**

- The Municipality concludes an agreement with the applicant, detailing the conditions of approval.
- Lease area is zoned as road reserve and cannot be enclosed - to exclude the public, the municipality or other services provider from accessing the area.
- Council is indemnified against all possible 3rd party claims.
- The municipality or other public service provider must not be prohibited from maintaining, repairing, upgrading and / or installing new public services with-in the leased area.
- For planned maintenance, repairs, upgrades or new installations, the applicant will be provided with a 5-day written notice.
- For emergency works the applicant will be required to remove the tables, chairs and other objects immediately for the municipality or other public service provider to gain access.

- The municipality reserves the right to end the lease agreement when the need arises, i.e. when the leased space is required for municipal or other public services purposes

6.8.2 Director: Planning and Economic Development

The Stellenbosch Municipality Roads and Street Bylaw, 2021 as promulgated in the Provincial Gazette no. 8436 dated 28 May 2021, defines "sidewalk" "means that portion of a street between the outer boundary of the roadway and the boundary lines of adjacent properties or buildings which is intended for the use of pedestrians, pedal cyclists and any other category of vehicles as may be determined by the Municipality in accordance with section 42(1);"

The definition clearly stipulates that the use of sidewalk is intended for pedestrians, pedal cyclists and any other vehicle. The use of sidewalks as part of the commercial activities of outdoor cafes and restaurants is a form of activity on the street that should improve the quality of public places and urban life. This use must however not be at the cost of overall safety of road users as intended in terms of the above bylaw.

It should be noted that currently the Final Draft Outdoor Dining and Events Overlay Zone, is undergoing a public participation process, of which the closing date for comments is 02 September 2023. In the absence of this overlay zone a suitable land use application must be submitted to evaluate the intended land usage, as the current and proposed land use is not in accordance with the applicable zoning.

6.8.3 Chief Financial Officer

Not requested

6.8.4 Director: Community Services

Not requested

6.8.5 Municipal Manager

Not requested yet.

ANNEXURES: 1. Application

2. Diagram

FOR FURTHER DETAILS CONTACT:

NAME	Annalene de Beer
POSITION	Director: Corporate Services
DIRECTORATE	CORPORATE SERVICES
CONTACT NUMBERS	021-8088073
E-MAIL ADDRESS	Annalene.debeer@ Stellenbosch.gov.za
REPORT DATE	2023-08-24

ANNEXURE 1



STELLENBOSCH
STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

**APPLICATION FOR LEASE OF MUNICIPAL LAND
APPLICATION FORM**

A: APPLICANT'S DETAILS

Name : Simone Laura Jardim

Physical address: Plot 13 Bottelary
Road, Brackenfell

Postal code: 7560

Mailing address: P.O. Box
1710

Brackenfell

Postal code: 7561

E-mail address: simonejardim2910@gmail.com

Telephone: —

Cell phone: 0745529094

B: PROPERTY DETAILS OF APPLICANT

Erf/farm number : Plot 13

Suburb: Brackenfell

Town: Cape Town
C: PROPERTY DETAILS OF LEASE AREA
 Erf/farm number : 6460
 Suburb: Stellenbosch
 Town: Cape Town
 Area of encroachment: 40 m²

* To be supplemented with a sketch-plan with dimension in m²

D: TYPE OF APPLICATION:

Please mark the appropriate block

For commercial purposes, other than for parking ☒

For commercial parking purposes, ☐

For residential parking purposes ☐

For non-commercial purposes (such as garden purposes, gates, ect) ☐

For projecting structures onto street reserves ☐

For projecting structures onto other council-owned land ☒

Other: please provide description: ☐

Brief description of application: Outdoor dining
area.

Motivation: The outdoor seating area is essential
for our business to survive. Tourists and
customers enjoy the added outdoor experience
especially in Stellenbosch, as it is not only enjoyable
to be seated outside and experience a part of nature
but an added bonus of experiencing the special
culture in a traditional town, such as Stellenbosch

E: LIST OF ATTACHEMENTS AND SUPPORTING DOCUMENTS

Please mark the appropriate box

Special Power of Attorney, where Applicant is not the owner

☐

Diagram of proposed area of the lease area

☒

Letters of consent (affected neighbours)

☐

Application fee (non-refundable)

☐

I hereby certify that the information supplied in this application form is correct and that I am property authorized to make this application.

Applicant's signature:

Date: 11/4/23

Full name: Simone Laura Jardim

FOR OFFICIAL USE

- The application was considered onby.....
- The application was

☐	APPROVED
--------------------------	-----------------

☐	NOT APPROVED
--------------------------	---------------------

Conditions (if any):

.....

.....

Applicant was informed of outcome on

.....
SIGNATURE OF RESPONSIBLE OFFICIAL

.....
DATE

Name:.....

***If approved**

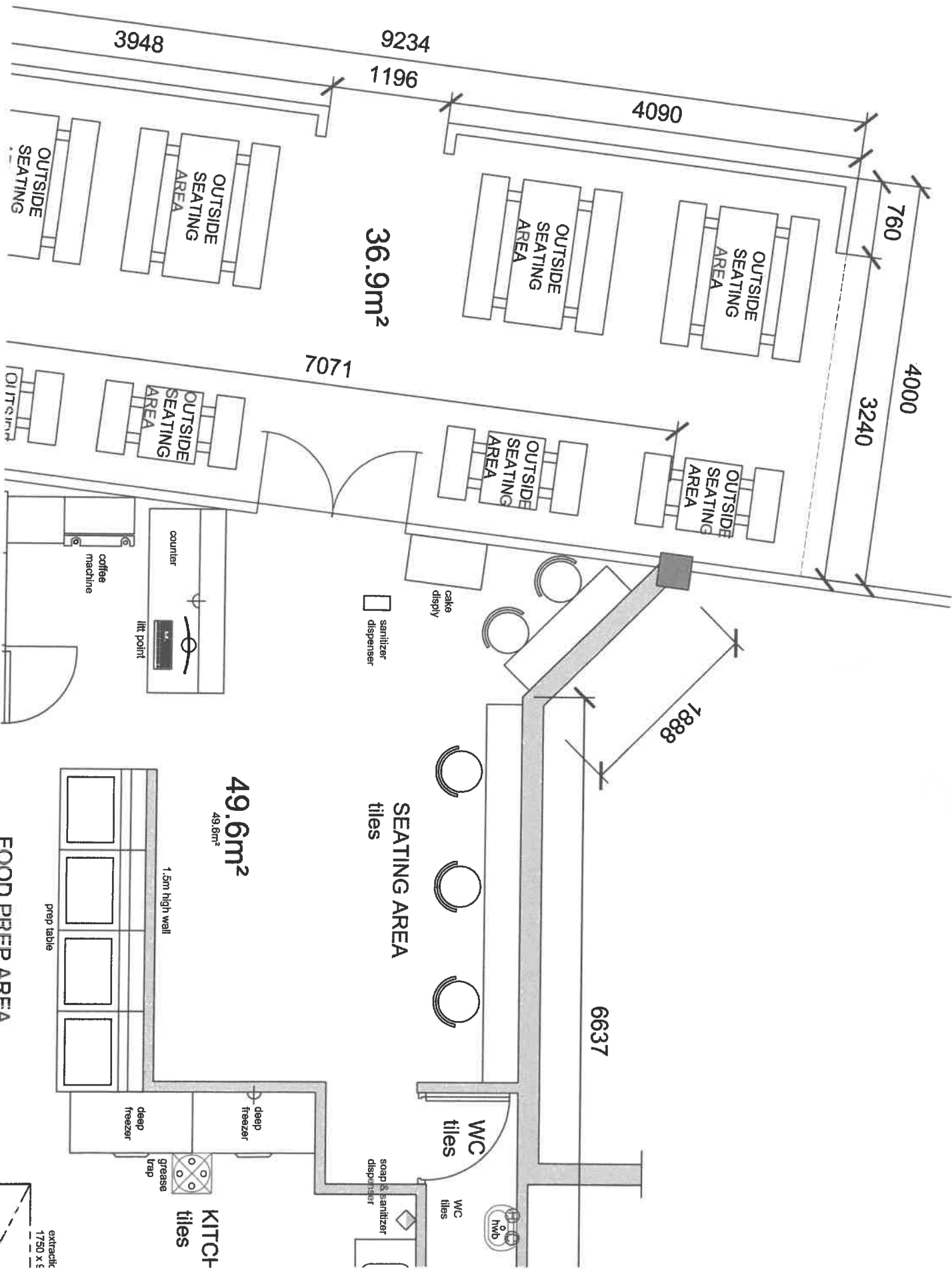
- ☐ Encroachment fee paid
- ☐ Lease Agreement signed
- ☐ Agreement/Permit processed on Contract Management System

.....
SIGNATURE OF RESPONSIBLE OFFICIAL

.....
DATE

Name:.....

ANNEXURE 2



NO	REVISIONS	DATE
1	ISSUED TO CLIENT	10-09-2019
1	MUNICIPAL	

Legal notes:

- Please note that the legal liability of this plan expires after 5 years from date on plan.
- All products specified have to be installed as specified. Any other method of installation or deviation from the specs. will release Van Heerden Architecture (Pty) Ltd of any legal liability.
- All products carry a manufacturer's guarantee, and can't be guaranteed by Van Heerden Architecture (Pty) Ltd.
- Any deviation from the plans has to be reported to Van Heerden Architecture (Pty) Ltd before such deviation is applied, and a new altered plan has to be acquired before any deviation may be made. Making any changes contradicting this plan is an offence.
- All building work has to comply with SANS 10400 and NHBRC regulations.

ERF 6460	
ERF AREA	5937.0m ²
EXIST SHOP	49.6m ²
OUTSIDE SEATING	36.9m ²
TOTAL SHOP EXTENT	86.5m ²
TOTAL COVERAGE	1.45%

PROPOSED NEW SHOP FOR BAGELS & FUDGE

PROPERTY DETAILS

ERF 6460
MILL STREET
STELLENBOSCH

VAN HEERDEN ARCHITECTURE

SHOP 21A, Boland Square, Cir of Brabantia Boulevard & Prinsloo, Pekaia Heights, Brabantia
REG. NO. 20190046507
Pekaia van Heerden
072 546 5070
info@vheerden.co.za
06MT 58042

DRAWING STATUS CODES:

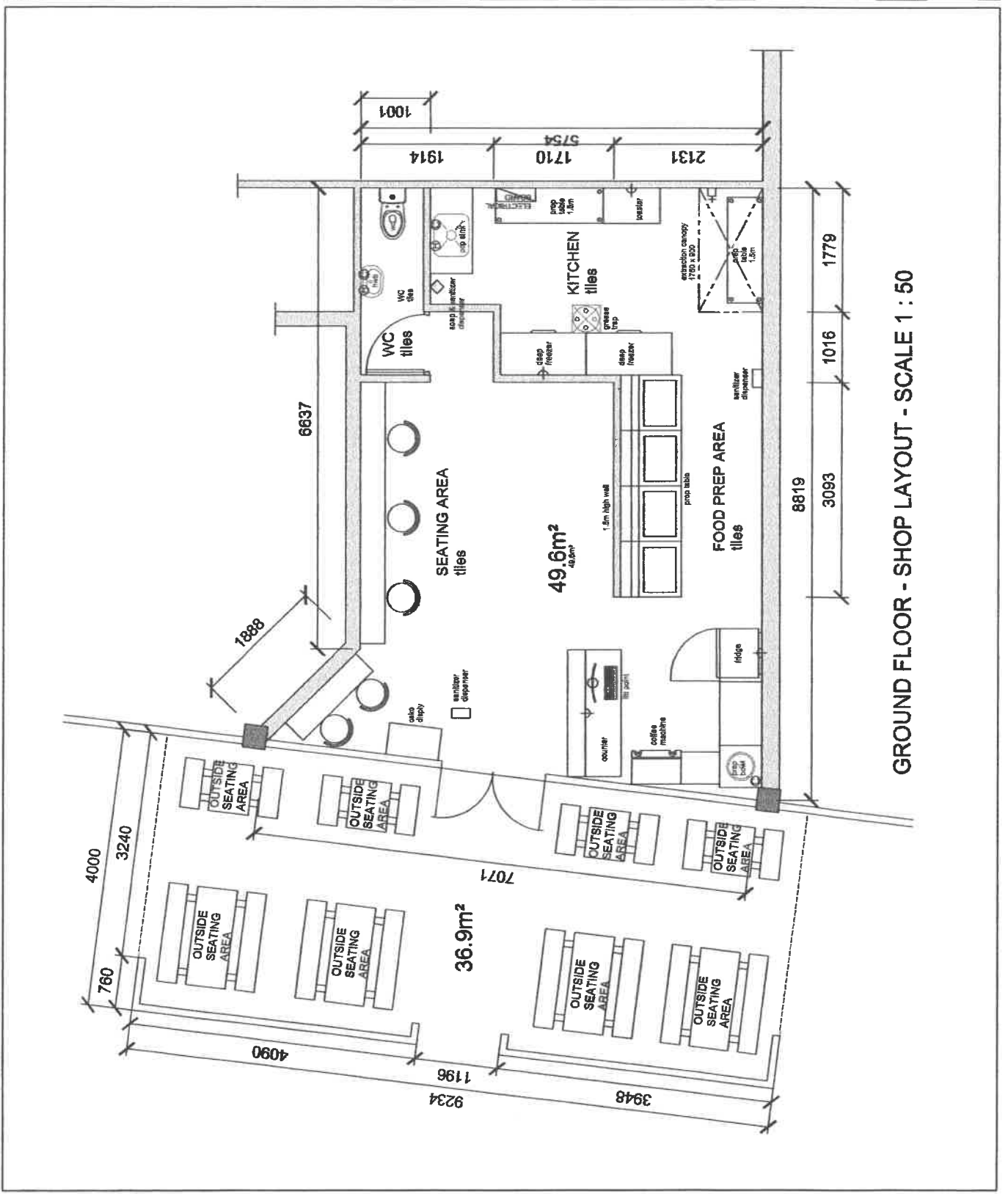
OWNER'S SIGNATURE: _____
DRAWN BY: _____
CHECKED BY: _____
DATE: _____

Legend:

NO	REVISIONS	DATE
1	ISSUED TO CLIENT	10-09-2019
1	MUNICIPAL	

2019-0648-C-01

MUNICIPAL



5.20	PROPOSED LEASE AGREEMENT: ERF 645 (100 DORP STREET), STELLENBOSCH BEER AND WINE PURVEYORS - BLIX
------	---

Collaborator No:

IDP KPA Ref No:

Meeting Date:

Good Governance

30 August 2023

1. SUBJECT: PROPOSED LEASE AGREEMENT: ERF 645 (100 DORP STREET), STELLENBOSCH BEER AND WINE PURVEYORS – BLIX

2. PURPOSE

To consider an application from Stellenbosch Beer and Wine Purveyors t/a Blix, to enter into a Lease Agreement with Stellenbosch Municipality, in terms whereof they would be able to use a portion of Council-owned property for outdoor dining purposes.

3. DELEGATED AUTHORITY

In terms of the approved System of Delegations the Executive Mayor, in consultation with the Executive Mayoral Committee, has the delegated Authority to consider applications for Lease Agreements, up to a contract value not exceeding R10M and not exceeding a period of 10 years.

The approval of lease agreements of three (3) years and less has been delegated to the Municipal Manager.

4. EXECUTIVE SUMMARY

An application to use a portion of the street reserve for Outdoor Dining purposes has been received from the owner of Stellenbosch Beer and Wine Purveyors t/a Blix trading of erf 645, Stellenbosch. The application is in line with the provisions /requirements of the Outdoor Dining Policy and is supported by the Engineering Department. Under 6.2.1 are photos showing how are is currently being used. The photos were taken by the Contract Management Unit. The applicant does not currently have any lease agreement or previous encroachment agreement with the municipality and is not paying rent for current use. We served the applicant with a letter requesting that they apply for the outdoor dining lease to ensure compliance.

They have not specified a requested time for the lease and the area they are interested in is 54 m².

The area will be demarcated with a plant hedge and tables and chairs will be used in the outside dining area. 1.5 m will be left on the sidewalk adjacent to the street for pedestrians to use the sidewalk. There are old oak trees on that side of the street some of which roots protrude onto the 1.5m paved pavement area.

They have also provided consent letters from the neighbors in regard to the use of the outside area.

5. RECOMMENDATIONS

- (a) that the land as indicated on Fig 1 and 2, measuring approximately 54m². in extent, be identified as land not needed to provide the minimum level of basic municipal services during the period that the rights are awarded;
- (b) that the in-principle approval be considered for an initial period of 3 years with the option of a renewal subject to the following conditions:
 - 1. That no permanent structure or deck be erected without the prior written consent of council.
 - 2. Council is indemnified against all possible 3rd party claims.
 - 3. The municipality or other public service providers must not be prohibited from maintaining, repairing, upgrading and / or installing new public services within the leased area. For planned maintenance and repairs, upgrades or new installations, the applicant will be provided with a 5-day written notice to remove all furniture for the municipality and any other public service provider to gain access. For emergency work the applicant will be required to remove everything immediately for the municipality or other public service providers to gain access.
 - 4. The municipality reserves the right to end the lease agreement when the need arises, i.e. when the leased area is required for municipal or other public services purposes or when the applicant refuses the municipality or other public service providers access if required.
- (c) that the Municipal Manager be authorised to determine the rental amount and escalation.

6. DISCUSSION / CONTENT

6.1 Background

6.1.1 Application for encroachment

An application was received from Stellenbosch Beer and Wine Purveyors t/a Blix to enter into an agreement with Stellenbosch Municipality in terms whereof they would be able to use a portion of Council-owned property for outdoor dining purposes. A copy of the application is attached as **APPENDIX 1**, with drawings of the proposed lay-out attached as **APPENDIX 2**. Consent letters from the neighbours are attaches hereto as **APPENDIX 3**. The extent of the encroachment area is approximately 54m².

6.2 DISCUSSION.

6.2.1. Locality and context

Erf 645, Stellenbosch is located at 100 Dorp Street, Stellenbosch, as shown on Fig 1.and Fig 2, below as well as photographs of how area is currently used under Fig 3.



Fig 1. Location and context



Fig 2 .Extent of area





Fig. 3 Current area used for outdoor dining

6.2.2 Legal requirements

6.2.2.1 Municipal Asset Transfer Regulations

In terms of Section 36 of the Municipal Asset Transfer Regulation, when considering an application for an approval of a right to use municipal property, the following needs to be taken into account, *inter alia*:-

- a) whether the capital asset may be required for the municipality's own use during the period for which the right is to be granted;
- b) the extent to which any compensation to be received for the right, together with the estimated value of improvements or enhancements to the asset, will result in a significant financial benefit to the municipality;
- c) the (possible) risks and rewards associated with the use in relation to the municipality's interests;

d) Any comments received from the local community, and

e) compliance with the legislative regime applicable to the proposed granting of the right.

6.2.2.2 Stellenbosch By-Law on Roads and Streets

In terms of section 4 of the Stellenbosch By-Law on Roads and Streets, no person may, **without prior written permission of the Municipality**, cause an encroachment on a street, sidewalk or road reserve forming part thereof.

6.2.2.3 Property Management policy

Section 9 2.2 deals with deviations from the competitive process, and reads as follows:

The Municipal Council **may dispense with the competitive processes** established in this policy and may enter into a Private Treaty Agreement through any convenient process, which may include direct negotiations, including in response to an unsolicited application, but only in the following circumstances, and only after having advertised Council's intention so to act. Should any objections be received as a consequence of such a notice, such objections first be considered before a final decision is taken to dispense with the competitive process established in this policy. However, should any objections, be received from potential, competitive bidders, then a public competitive process must be followed. The advertisement referred to above should also be served on adjoining landowners, where the Municipal Manager is of the opinion that such transaction may have a detrimental effect on such adjoining landowner(s):

(h) where encroachment applications are received from adjoining owners, including applications for outdoor dining permits, subject to approved tariff structure.

6.2.2.4 Outdoor Dining Policy

6.2.2.4.1 Policy Objective

To regulate the use of sidewalks or road reserves for the purpose of outdoor dining and trading, and the temporary use of Public Places for commercial ventures and displays.

6.2.2.4.2 Suitable Locations

Outdoor cafes, restaurants and traders may apply for encroachment where local conditions are favorable for their operation, including areas of Council e.g. road reserves, sidewalks, Public Open Spaces. All applications in locations of a high pedestrian usage, e.g. a retail center, will be required to take pedestrian needs into consideration.

6.2.2.4.3 Assessment Criteria

The most important local conditions to be considered when an application for encroachment of the road reserve area is received will be those issues pertaining to pedestrian (including pedestrians who are using wheelchairs, baby prams or are visually impaired) and vehicular circulation, convenience and safety of patrons and the general public, existing streetscape elements and residential amenity.

The ground surface must be sufficiently level to support a proper layout and safe use.

6.2.2.4.4 Layout

The style, layout and orientation of furniture should be chosen according to the extent and shape of the available space of the encroachment area.

The size of an outdoor cafe or placement of any object on the sidewalk will depend on the width of the sidewalk.

6.2.2.4.5 Defined Area

The applicant will be required to define the area with appropriate markers. (ie a single galvanized steel nail inserted in between the pavers, or a paint spot no larger than 5cm in diameter placed at the corners of the defined area in a semi- permanent paint) to the satisfaction of Council.

6.2.2.4.6 Lease Conditions

The applicant must comply with the conditions set out in the lease agreement and this policy. The lease will be for a period of not more than 5 years with an option to renew. These conditions would also generally require that the local environmental factors be reviewed annually and adjustments to the lease agreement may be required.

If the lease agreement that is entered into is seen as not providing long term rights there is no need to advertise the proposed agreement for public input/comments or objections. Should the municipality receive any complaints the lease agreement may be terminated due to the objections.

6.3 Financial Implications

In terms of the current, approved tariff structure for outdoor dining lease agreements a fee of R150 per m² is charges on a monthly basis which means that the monthly rental will be R 8 100.00 (incl. of VAT) and an escalation of 6% is recommended.

6.4 Legal Implications

The legal implications are discussed under 6.2.2 above. As the proposed term of the lease agreement is three (3) years and when the value of the lease and property is taken into account the asset transfer regulations are not applicable as it is not seen as long term rights on council property that are being given.

6.5 Staff Implications

No additional staff implications/

6.6 Previous / Relevant Council Resolutions

SPECIAL COUNCIL MEETING: 2002-06-22: ITEM 9.2.5 RESOLVEND (nem con)

- (a) That council takes note of the intended communication to the public;
- (b) That Council takes note that all restaurants and business will be given notice to apply / re-apply for a lease to use council property for outdoor dining purposes; and

- (c) That the approval of the leases of three (3) years and less be delegated to the Municipal Manager for approval.

6.7 Risk Implications

The risks are addressed in the item.

6.8 Comments from Senior Management

6.8.1 Director: Infrastructure Services

- The Municipality concludes an agreement with the applicant, detailing the conditions of approval.
- Leased area is zoned as road reserve and cannot be enclosed - to exclude the public, the municipality or other services provider from accessing the area.
- Ensure public risk and liability insurance is in place to cover 3rd party claims.
- Council is indemnified against all possible 3rd party claims.
- The municipality or other public service provider must not be prohibited from maintaining, repairing, upgrading and / or installing new public services with-in the leased area.
- The municipality reserves the right to end the lease agreement when the need arises, i.e. when the leased space is required for municipal or other public services purposes.
- Areas outside of the leased area must remain free from any obstruction to pedestrian movements.

6.8.2 Director: Planning and Economic Development

The Stellenbosch Municipality Roads and Street Bylaw, 2021 as promulgated in the Provincial Gazette no. 8436 dated 28 May 2021, defines "sidewalk" "means that portion of a street between the outer boundary of the roadway and the boundary lines of adjacent properties or buildings which is intended for the use of pedestrians, pedal cyclists and any other category of vehicles as may be determined by the Municipality in accordance with section 42(1);"

The definition clearly stipulates that the use of sidewalk is intended for pedestrians, pedal cyclists and any other vehicle. The use of sidewalks as part of the commercial activities of outdoor cafes and restaurants is a form of activity on the street that should improve the quality of public places and urban life. This use must however not be at the cost of overall safety of road users as intended in terms of the above bylaw.

It should be noted that currently the Final Draft Outdoor Dining and Events Overlay Zone, is undergoing a public participation process, of which the closing date for comments is 02 September 2023. In the absence of this overlay zone a suitable land use application must be submitted to evaluate the intended land usage, as the current and proposed land use is not in accordance with the applicable zoning.

6.8.3 Chief Financial Officer

Not requested

6.8.4 Director: Community Services

Not requested

6.8.5 Municipal Manager

Not requested yet

ANNEXURES: 1. Application**2. Diagram****3. Consent Letters by neighbours****FOR FURTHER DETAILS CONTACT:**

NAME	Annalene de Beer
POSITION	Director: Corporate Services
DIRECTORATE	CORPORATE SERVICES
CONTACT NUMBERS	021-8088073
E-MAIL ADDRESS	Annalene.debeer@ Stellenbosch.gov.za
REPORT DATE	2023-08-08

ANNEXURE 1



STELLENBOSCH
STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

LEASE AGREEMENT APPLICATION FORM

A: APPLICANT'S DETAILS

Name: **STELLENBOSCH BEER AND WINE PURVEYORS**

Physical address: **100 DORP STEET
STELLENBOSCH**

.....

.....

Postal code: **7600**

Mailing address: **100 DORP STREET
STELLENBOSCH**

.....

.....

Postal code: **7600**

E-mail address: hannah@blix.africa

Telephone:

Cell phone: **078 528 5236**

B: PROPERTY DETAILS OF APPLICANT

Erf/farm number: **ERF 645**

Suburb: **STELLENBOSCH**

Town: **STELLENBOSCH**

C: PROPERTY DETAILS OF LEASE AREA

Erf/farm number: **ERF 5388**

Suburb: **DORP STREET**

Town: **STELLENBOSCH**

Area of encroachment: **±54m²**

* To be supplemented with a sketch-plan with dimension in m²

D: TYPE OF APPLICATION:

Please mark the appropriate block

- | | |
|--|--|
| For commercial purposes, other than for parking | ☒ |
| For commercial parking purposes, | ☐ |
| For residential parking purposes | ☐ |
| For non-commercial purposes (such as garden purposes, gates, etc.) | ☐ |
| For projecting structures onto street reserves | ☐ |
| For projecting structures onto other council-owned land | ☐ |
| Other: please provide description: | ☐ |

Brief description of application: **APPLICATION IS MADE TO LEASE A PORTION OF THE DORP STREET SIDEWALK TO ACCOMMODATE OUTDOOR SEATING FOR THE BLIX TAVERN.**

Motivation: **THE PROPOSAL OF OUTDOOR SEATING ON AN UNUSED PORTION OF THE SIDEWALK IS NOT FOREIGN TO THE AREA. IN FACT, STELLENBOSCH IS KNOWN FOR ITS STREET CAFÉ ATMOSPHERE, AND THIS PROPOSAL WILL SUPPORT THIS VERY POPULAR ACTIVITY. ALSO,**

**IT WILL BE SIMILAR (BUT ON A SMALLER SCALE) TO OTHER
SURROUNDING ESTABLISHMENTS; SUCH AS DE AKKER, HUDSONS,
KAPSTADT BRAUHAUS, ETC.**

E: LIST OF ATTACHEMENTS AND SUPPORTING DOCUMENTS

Please mark the appropriate box

Special Power of Attorney, where Applicant is not the owner

☐

Diagram of proposed area of the lease area

☒

Letters of consent (affected neighbours)

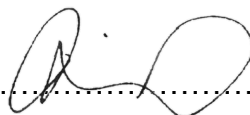
☐

Application fee (non-refundable)

☐

I hereby certify that the information supplied in this application form is correct
and that I am properly authorized to make this application.

Applicant's signature:



Date: 15 March 2023

Full name: ..Johannes Jacobus Pickard.....

FOR OFFICIAL USE

- The application was considered onby.....
- The application was

☐	APPROVED
--------------------------	-----------------

☐	NOT APPROVED
--------------------------	---------------------

Conditions (if any):

.....

.....

Applicant was informed of outcome on

.....
SIGNATURE OF RESPONSIBLE OFFICIAL **DATE**

Name:.....

***If approved**

- ☐ Encroachment fee paid
- ☐ Lease Agreement signed
- ☐ Agreement/Permit processed on Contract Management System

.....
SIGNATURE OF RESPONSIBLE OFFICIAL **DATE**

Name:.....

ANNEXURE 2

3766

655

9506

646

645

13730

Proposed
Lease Area
 $\pm 54\text{m}^2$
 $\pm 6\text{m}$
 $\pm 9\text{m}$

DORP STREET

5388

772

Notation:

Cadastral information obtained from Surveys and Mapping (DRDLR).

Aerial Photography obtained from Stellenbosch Municipality.

All areas and dimensions are approximate and should be verified by a professional land surveyor.

This drawing is the property of TV3 Architects and Town Planners (Pty) Ltd and copyright is reserved



ARCHITECTS
TOWN PLANNERS
URBAN DESIGNERS

FIRST FLOOR LA GRATITUDE OFFICE BUILDING | 97 DORP STREET
STELLENBOSCH 7600 | TEL +27 (21) 861 3800 | www.tv3.co.za

Lease Area Plan for a Portion of Dorp Street (Erf 5388, Stellenbosch)

Drawing:	Plan no.:	
Lease Area Plan	1	
Date:	Scale:	
14/03/2023	1:300(A4)	
Project no.:	Drawn:	Checked:
3625-P	WH	CH

ANNEXURE 3



DORPSTRAAT

4 May 2023

To Whom It May Concern

RE: BLIX TAVERN

As neighbours of Blix Tavern, we understand that they require outside seating for their clients that visit their bar and café.

They have a petite bar and café that they run, and their premises are always kept neat and tidy.

We have no problem with them wanting to add the outside seating for their clientele.

We have a great working relationship with Blix Tavern's staff and management.

Please feel free to contact me if you require any further assistance.

Kind regards,

SJ KELBRICK
DIRECTOR



KAPSTADT BRAUHAUS

09/05/2023

To whom it may concern,

As neighbours of Blix Tavern, we understand they would like seating for their clients that visit their bar and café.

They have a petite bar and café that they run, and their premises is always kept neat and tidy.

We have no problem with them wanting to add the seating for their clientele and its convenient for our awaiting clients as well.

We have a great working relationship with Blix Tavern's staff and management.

Please feel free to contact me if you require any further assistance.

Kind regards,

A handwritten signature in dark ink, appearing to read 'Jaco Louw', is positioned above the printed name.

Jaco Louw
General manager
Kapstadt Brauhaus Stellenbosch

076 093 2395

jacostellenbosch@kapstadtbrauhaus.co.za

5.21	PROPOSED LEASE AGREEMENT: ERF 1319 (132 DORP STREET) STELLENBOSCH: THE MILL COFFEE SHOP
------	--

Collaborator No:

IDP KPA Ref No:

Meeting Date:

Good Governance

30 August 2023

1. SUBJECT: PROPOSED LEASE AGREEMENT: ERF 1319 (132 DORP STREET) STELLENBOSCH: THE MILL COFFEE SHOP

2. PURPOSE

To consider an application from The Mill Coffee Shop, to enter into a Lease Agreement with Stellenbosch Municipality, in terms of where they would be able to use a portion of Council-owned property for outdoor dining purposes.

3. DELEGATED AUTHORITY

In terms of the approved System of Delegations the Executive Mayor, in consultation with the Executive Mayoral Committee, has the delegated Authority to consider applications for Lease Agreements, up to a contract value not exceeding R5M and not exceeding a period of 10 years.

The approval of lease agreements of three (3) years and less has been delegated to the Municipal Manager.

4. EXECUTIVE SUMMARY

An application to use a portion of the street reserve for Outdoor Dining purposes has been received from the owner of The Mill Coffee Shop trading from erf 1319, Stellenbosch. The application is in line with the provisions /requirements of the Outdoor Dining Policy and is supported by the Engineering Department. Under 6.2.1 are photos showing how area is currently being used. The photos were taken by the contract management unit. The applicant does not currently have a lease agreement or previous encroachment agreement with the municipality and is not paying rent for current use. We served the applicant with a letter requesting that they apply for the outdoor dining lease to ensure compliance.

They have not specified a requested time for the lease and the area they are interested in is 28 m².

There is no diagram to indicate how the area will be demarcated however the current lay out can be seen on the photos in the item. 1.5m is left on the sidewalk for pedestrians as per national guidelines.

The department does not support the application as per the current use. The sidewalk must be kept open for pedestrian use. The area closest to the shopfront in Dorp street is supported for outdoor dining provided that it is demarcated properly. The area in bird street is not supported for outdoor dining as there is no other sidewalk where pedestrians can walk than next to the shopfront. The applicant will have to file a sketch for consideration.

5. RECOMMENDATION

For consideration.

6. DISCUSSION / CONTENT

6.1 Background

6.1.1 Application for lease agreement

An application was received from The Mill Coffee Shop to enter into an agreement with Stellenbosch Municipality in terms whereof they would be able to use a portion of Council-owned property for outdoor dining purposes. A copy of the application is attached as **APPENDIX 1**. The extent of the area is approximately 28m².

6.2 DISCUSSION.

6.2.1. Locality and context

Erf 1319, Stellenbosch is located at the 132 Dorp Street, Stellenbosch, as shown on Fig 1. and Fig 2, below as well as photographs of how area is currently used under Fig 3.



Fig 1. Location and context



Fig 2 .Extent of area





Fig 3. Current area used for outdoor dining

6.2.2 Legal requirements

6.2.2.1 Municipal Asset Transfer Regulations

In terms of Section 36 of the Municipal Asset Transfer Regulation, when considering an application for an approval of a right to use municipal property, the following needs to be taken into account, *inter alia*:-

- a) whether the capital asset may be required for the municipality's own use during the period for which the right is to be granted;
- b) the extent to which any compensation to be received for the right, together with the estimated value of improvements or enhancements to the asset, will result in a significant financial benefit to the municipality;
- c) the (possible) risks and rewards associated with the use in relation to the municipality's interests;
- d) Any comments received from the local community, and
- e) compliance with the legislative regime applicable to the proposed granting of the right.

6.2.2.2 Stellenbosch By-Law on Roads and Streets

In terms of section 4 of the Stellenbosch By-Law on Roads and Streets, no person may, **without prior written permission of the Municipality**, cause an encroachment on a street, sidewalk or road reserve forming part thereof.

6.2.2.3 Property Management policy

Section 9 2.2 deals with deviations from the competitive process, and reads as follows:

The Municipal Council **may dispense with the competitive processes** established in this policy and may enter into a Private Treaty Agreement through any convenient process, which may include direct negotiations, including in response to an unsolicited application, but only in the following circumstances, and only after having advertised Council's intention so to act. Should any objections be received as a consequence of such a notice, such objections first be considered before a final decision is taken to dispense with the competitive process established in this policy. However, should any objections, be received from potential, competitive bidders, then a public competitive process must be followed. The advertisement referred to above should also be served on adjoining landowners, where the Municipal Manager is of the opinion that such transaction may have a detrimental effect on such adjoining land owner(s):

(h) where encroachment applications are received from adjoining owners, including applications for outdoor dining permits, subject to approved tariff structure.

6.2.2.4 Outdoor Dining Policy

6.2.2.4.1 Policy Objective

To regulate the use of sidewalks or road reserves for the purpose of outdoor dining and trading, and the temporary use of Public Places for commercial ventures and displays.

6.2.2.4.2 Suitable Locations

Outdoor cafes, restaurants and traders may apply for lease agreements where local conditions are favorable for their operation, including areas of Council e.g. road reserves, sidewalks, Public Open Spaces. All applications in locations of high pedestrian usage, e.g. a retail center, will be required to take pedestrian needs into consideration.

6.2.2.4.3 Assessment Criteria

The most important local conditions to be considered when an application for lease of the road reserve area is received will be those issues pertaining to pedestrian (including pedestrians who are using wheelchairs, baby prams or are visually impaired) and vehicular circulation, convenience and safety of patrons and the general public, existing streetscape elements and residential amenity.

The ground surface must be sufficiently level to support a proper layout and safe use.

6.2.2.4.4 Layout

The style, layout and orientation of furniture should be chosen according to the extent and shape of the available space of the encroachment area.

The size of an outdoor cafe or placement of any object on the sidewalk will depend on the width of the sidewalk.

6.2.2.4.5 Defined Area

The applicant will be required to define the area with appropriate markers. (ie a single galvanized steel nail inserted in between the pavers, or a paint spot no larger than 5cm in diameter placed at the corners of the defined area in a semi- permanent paint) to the satisfaction of Council.

6.2.2.4.6 Lease Conditions

The applicant must comply with the conditions set out in the lease agreement and this policy. The lease will be for a period of not more than 5 years with an option to renew. These conditions would also generally require that the local environmental factors be reviewed annually and adjustments to the lease agreement may be required.

If the lease agreement that is entered into is seen as not providing long term rights there is no need to advertise the proposed agreement for public input/comments or objections. Should the municipality receive any complaints the lease agreement may be terminated due to the objections.

6.3 Financial Implications

In terms of the current, approved tariff structure for outdoor dining lease agreements a monthly fee of R150.00 per square meter is charged and in this instance R 4200.00 (incl. of VAT) is applicable and an escalation of 6% is recommended.

6.4 Legal Implications

The legal implications are discussed under 6.2.2 above. As the proposed term of the lease agreement is three (3) years and when the value of the lease and property is taken into account the asset transfer regulations are not applicable as it is not seen as long-term rights on council property that are being given.

6.5 Staff Implications

No additional staff implications.

6.6 Previous / Relevant Council Resolutions

SPECIAL COUNCIL MEETING: 2022-06-22: RESOLVED (nem con):

- (a) That Council takes note of the intended communication to the public;
- (b) That Council takes note that all restaurants and businesses will be given notice to apply / re-apply for a lease to use council property for outdoor dining purposes; and

- (c) That the approval of the leases of three (3) years and less be delegated to the Municipal Manager for approval.

6.7 Risk Implications

The risks are addressed in the item.

6.8 Comments from Senior Management

6.8.1 Director: Infrastructure Services

- The Municipality concludes an agreement with the applicant, detailing the conditions of approval.
- Leased area is zoned as road reserve and cannot be enclosed - to exclude the public, the municipality or other services provider from accessing the area.
- Council is indemnified against all possible 3rd party claims.
- The municipality or other public service provider must not be prohibited from maintaining, repairing, upgrading and / or installing new public services with-in the encroached area.
- For planned maintenance, repairs, upgrades or new installations, the applicant will be provided with a 5-day written notice.
- For emergency works the applicant will be required to remove the tables, chairs and other objects immediately for the municipality or other public service provider to gain access.
- The municipality reserves the right to end the lease agreement when the need arises, i.e. when the encroached space is required for municipal or other public services purposes.

6.8.2 Director: Planning and Economic Development

The Stellenbosch Municipality Roads and Street Bylaw, 2021 as promulgated in the Provincial Gazette no. 8436 dated 28 May 2021, defines "sidewalk" "means that portion of a street between the outer boundary of the roadway and the boundary lines of adjacent properties or buildings which is intended for the use of pedestrians, pedal cyclists and any other category of vehicles as may be determined by the Municipality in accordance with section 42(1);"

The definition clearly stipulates that the use of sidewalk is intended for pedestrians, pedal cyclists and any other vehicle. The use of sidewalks as part of the commercial activities of outdoor cafes and restaurants is a form of activity on the street that should improve the quality of public places and urban life. This use must however not be at the cost of overall safety of road users as intended in terms of the above bylaw.

It should be noted that currently the Final Draft Outdoor Dining and Events Overlay Zone, is undergoing a public participation process, of which the closing date for comments is 02 September 2023. In the absence of this overlay zone a suitable land use application must be submitted to evaluate the intended land usage, as the current and proposed land use is not in accordance with the applicable zoning.

Given the area in which the restaurant is situated the input from Heritage Western Cape will be required.

6.8.3 Chief Financial Officer

Not requested

6.8.4 Director: Community Services

Not requested

6.8.5 Municipal Manager

Not requested yet.

ANNEXURES: 1. Application

FOR FURTHER DETAILS CONTACT:

NAME	Annalene de Beer
POSITION	Director: Corporate Services
DIRECTORATE	CORPORATE SERVICES
CONTACT NUMBERS	021-8088073
E-MAIL ADDRESS	Annalene.debeer@ Stellenbosch.gov.za
REPORT DATE	2023-04-27

ANNEXURE 1



STELLENBOSCH

STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

APPLICATION FOR LEASE OF MUNICIPAL LAND APPLICATION FORM

A: APPLICANT'S DETAILS

Name :

Arno Zacharias

Physical address:

132 Dorp Street
Stellenbosch

Postal code:

7600

Mailing address:

11

Postal code:

E-mail address:

info@deoudemeul.com

Telephone:

0829230744

Cell phone:

11

B: PROPERTY DETAILS OF APPLICANT

Erf/farm number :

132 Dorp / Acropolis Building

Suburb:

Stellenbosch

C: Town:
PROPERTY DETAILS OF LEASE AREA

Erf/farm number :

Suburb:

Town:

Area of encroachment:m²

* To be supplemented with a sketch-plan with dimension in m²

to be
completed
by
municipal
team.

D: **TYPE OF APPLICATION:**

Please mark the appropriate block

For commercial purposes, other than for parking

☒

For commercial parking purposes,

☐

For residential parking purposes

☐

For non-commercial purposes (such as garden purposes, gates, ect)

☐

For projecting structures onto street reserves

☐

For projecting structures onto other council-owned land

☐

Other: please provide description:

☐

Brief description of application:

Coffee Shop with
 outdoor seating

Motivation:

there is a 2,5 open space
 to street curb

E: LIST OF ATTACHEMENTS AND SUPPORTING DOCUMENTS

Please mark the appropriate box

- Special Power of Attorney, where Applicant is not the owner ☐
- Diagram of proposed area of the lease area ☐
- Letters of consent (affected neighbours) ☐
- Application fee (non-refundable) ☐

I hereby certify that the information supplied in this application form is correct and that I am properly authorized to make this application.

Applicant's signature: Date:

Full name: ABZAD ARIN

5.22	PROPOSED LEASE AGREEMENT: ERF 1289 (2 RYNEVELD STREET), THE POTTERY STELLENBOSCH
------	---

Collaborator No:

IDP KPA Ref No:

Meeting Date:

Good Governance

30 August 2023

1. SUBJECT: PROPOSED LEASE AGREEMENT: ERF 1289 (2 RYNEVELD STREET), THE POTTERY STELLENBOSCH

2. PURPOSE

To consider an application from The Pottery to enter into a Lease Agreement with Stellenbosch Municipality, in terms whereof they would be able to use a portion of Council-owned property for outdoor dining purposes.

3. DELEGATED AUTHORITY

In terms of the approved System of Delegations the Executive Mayor, in consultation with the Executive Mayoral Committee, has the delegated Authority to consider applications for Lease Agreements, up to a contract value not exceeding R5M and not exceeding a period of 10 years.

The approval of lease agreements of three (3) years and less has been delegated to the Municipal Manager.

4. EXECUTIVE SUMMARY

An application to use a portion of the street reserve for Outdoor Dining purposes has been received from the owner of The Pottery trading of erf 1289, Stellenbosch. The application is in line with the provisions / requirements of the Outdoor Dining Policy and is supported by the Engineering Department. Under 6.2.1 are photos showing how area is currently being used. We served the applicant with a letter requesting that they apply for the outdoor dining lease to ensure compliance. The photos were taken by the contract management unit.

They have not specified a requested time for the lease and the area they are interested in is 20 m².

The applicant has not provided a diagram. The applicant has built a wooden deck on the sidewalk without submitting building plans and without approval from the municipality.

There is 1.5m unobstructed walkway available to pedestrians on the sidewalk.

The department can support the application in principle provided that applicant comply with the conditions for approval.

5. RECOMMENDATIONS

- (a) that the land as indicated on Fig 1 and 2, measuring approximately 20m². in extent, be identified as land not needed to provide the minimum level of basic municipal services during the period that the rights are awarded;
- (b) that the in-principle approval be considered for an initial period of 3 years with the option of a renewal subject to the following conditions:
 - 1. That the applicant submits building plans to the building department for approval.
 - 2. Council is indemnified against all possible 3rd party claims.
 - 3. The municipality or other public service providers must not be prohibited from maintaining, repairing, upgrading and / or installing new public services within the leased area. For planned maintenance and repairs, upgrades or new installations, the applicant will be provided with a 5-day written notice to remove all furniture for the municipality and any other public service provider to gain access. For emergency work the applicant will be required to remove everything immediately for the municipality or other public service providers to gain access. In the event that the deck needs to be taken down it will be for the costs of the applicant as well as the re-instatement costs.
 - 4. The municipality reserves the right to end the lease agreement when the need arises, i.e. when the leased area is required for municipal or other public services purposes or when the applicant refuses the municipality or other public service providers access if required.
 - 5. The applicant must submit an application for approval of the deck that was erected.
- (c) that the Municipal Manager be authorised to determine the rental amount and escalation.

6. DISCUSSION / CONTENT**6.1 Background****6.1.1 Application for lease**

An application was received from The Pottery to enter into an agreement with Stellenbosch Municipality in terms whereof they would be able to use a portion of Council-owned property for outdoor dining purposes. A copy of the application is attached as **APPENDIX 1**. The extent of the area is approximately 20m².

6.2.1. Locality and context

STATE LAND

KERK ST

DORP ST

ANSONIA ST

BROOKLYN ST

1253, 10835, 15729, 14502, 1265, 15713, 1260, 15712, 1277, 1272, 1275, 1254, 14593, 16044, 1251, 1284, 6171, 1282, 1289, 1288, 14547, 1290, 1291, 4294, 6268, 6270, 14487, 14488, 1455, 1316, 145, 1160, 1179, 13187, 13183, 13213, 1168, 4114, 13566, 1356, 1357, 1358, 1359, 1360, 1361, 1362, 1363, 1364, 1365, 1366, 1367, 1368, 1369, 1370, 1371, 1372, 1373, 1374, 1375, 1376, 1377, 1378, 1379, 1380, 1381, 1382, 1383, 1384, 1385, 1386, 1387, 1388, 1389, 1390, 1391, 1392, 1393, 1394, 1395, 1396, 1397, 1398, 1399, 1400, 1401, 1402, 1403, 1404, 1405, 1406, 1407, 1408, 1409, 1410, 1411, 1412, 1413, 1414, 1415, 1416, 1417, 1418, 1419, 1420, 1421, 1422, 1423, 1424, 1425, 1426, 1427, 1428, 1429, 1430, 1431, 1432, 1433, 1434, 1435, 1436, 1437, 1438, 1439, 1440, 1441, 1442, 1443, 1444, 1445, 1446, 1447, 1448, 1449, 1450, 1451, 1452, 1453, 1454, 1455, 1456, 1457, 1458, 1459, 1460, 1461, 1462, 1463, 1464, 1465, 1466, 1467, 1468, 1469, 1470, 1471, 1472, 1473, 1474, 1475, 1476, 1477, 1478, 1479, 1480, 1481, 1482, 1483, 1484, 1485, 1486, 1487, 1488, 1489, 1490, 1491, 1492, 1493, 1494, 1495, 1496, 1497, 1498, 1499, 1500, 1501, 1502, 1503, 1504, 1505, 1506, 1507, 1508, 1509, 1510, 1511, 1512, 1513, 1514, 1515, 1516, 1517, 1518, 1519, 1520, 1521, 1522, 1523, 1524, 1525, 1526, 1527, 1528, 1529, 1530, 1531, 1532, 1533, 1534, 1535, 1536, 1537, 1538, 1539, 1540, 1541, 1542, 1543, 1544, 1545, 1546, 1547, 1548, 1549, 1550, 1551, 1552, 1553, 1554, 1555, 1556, 1557, 1558, 1559, 1560, 1561, 1562, 1563, 1564, 1565, 1566, 1567, 1568, 1569, 1570, 1571, 1572, 1573, 1574, 1575, 1576, 1577, 1578, 1579, 1580, 1581, 1582, 1583, 1584, 1585, 1586, 1587, 1588, 1589, 1590, 1591, 1592, 1593, 1594, 1595, 1596, 1597, 1598, 1599, 1600, 1601, 1602, 1603, 1604, 1605, 1606, 1607, 1608, 1609, 1610, 1611, 1612, 1613, 1614, 1615, 1616, 1617, 1618, 1619, 1620, 1621, 1622, 1623, 1624, 1625, 1626, 1627, 1628, 1629, 1630, 1631, 1632, 1633, 1634, 1635, 1636, 1637, 1638, 1639, 1640, 1641, 1642, 1643, 1644, 1645, 1646, 1647, 1648, 1649, 1650, 1651, 1652, 1653, 1654, 1655, 1656, 1657, 1658, 1659, 1660, 1661, 1662, 1663, 1664, 1665, 1666, 1667, 1668, 1669, 1670, 1671, 1672, 1673, 1674, 1675, 1676, 1677, 1678, 1679, 1680, 1681, 1682, 1683, 1684, 1685, 1686, 1687, 1688, 1689, 1690, 1691, 1692, 1693, 1694, 1695, 1696, 1697, 1698, 1699, 1700, 1701, 1702, 1703, 1704, 1705, 1706, 1707, 1708, 1709, 1710, 1711, 1712, 1713, 1714, 1715, 1716, 1717, 1718, 1719, 1720, 1721, 1722, 1723, 1724, 1725, 1726, 1727, 1728, 1729, 1730, 1731, 1732, 1733, 1734, 1735, 1736, 1737, 1738, 1739, 1740, 1741, 1742, 1743, 1744, 1745, 1746, 1747, 1748, 1749, 1750, 1751, 1752, 1753, 1754, 1755, 1756, 1757, 1758, 1759, 1760, 1761, 1762, 1763, 1764, 1765, 1766, 1767, 1768, 1769, 1770, 1771, 1772, 1773, 1774, 1775, 1776, 1777, 1778, 1779, 1780, 1781, 1782, 1783, 1784, 1785, 1786, 1787, 1788, 1789, 1790, 1791, 1792, 1793, 1794, 1795, 1796, 1797, 1798, 1799, 1800, 1801, 1802, 1803, 1804, 1805, 1806, 1807, 1808, 1809, 1810, 1811, 1812, 1813, 1814, 1815, 1816, 1817, 1818, 1819, 1820, 1821, 1822, 1823, 1824, 1825, 1826, 1827, 1828, 1829, 1830, 1831, 1832, 1833, 1834, 1835, 1836, 1837, 1838, 1839, 1840, 1841, 1842, 1843, 1844, 1845, 1846, 1847, 1848, 1849, 1850, 1851, 1852, 1853, 1854, 1855, 1856, 1857, 1858, 1859, 1860, 1861, 1862, 1863, 1864, 1865, 1866, 1867, 1868, 1869, 1870, 1871, 1872, 1873, 1874, 1875, 1876, 1877, 1878, 1879, 1880, 1881, 1882, 1883, 1884, 1885, 1886, 1887, 1888, 1889, 1890, 1891, 1892, 1893, 1894, 1895, 1896, 1897, 1898, 1899, 1900, 1901, 1902, 1903, 1904, 1905, 1906, 1907, 1908, 1909, 1910, 1911, 1912, 1913, 1914, 1915, 1916, 1917, 1918, 1919, 1920, 1921, 1922, 1923, 1924, 1925, 1926, 1927, 1928, 1929, 1930, 1931, 1932, 1933, 1934, 1935, 1936, 1937, 1938, 1939, 1940, 1941, 1942, 1943, 1944, 1945, 1946, 1947, 1948, 1949, 1950, 1951, 1952, 1953, 1954, 1955, 1956, 1957, 1958, 1959, 1960, 1961, 1962, 1963, 1964, 1965, 1966, 1967, 1968, 1969, 1970

Fig 1. Location and context



Fig 2 .Extent of area





Fig. 3 Current area used for outdoor dining

6.2.2 Legal requirements

6.2.2.1 Municipal Asset Transfer Regulations

In terms of Section 36 of the Municipal Asset Transfer Regulation, when considering an application for an approval of a right to use municipal property, the following needs to be taken into account, *inter alia*:-

- a) whether the capital asset may be required for the municipality's own use during the period for which the right is to be granted;
- b) the extent to which any compensation to be received for the right, together with the estimated value of improvements or enhancements to the asset, will result in a significant financial benefit to the municipality;
- c) the (possible) risks and rewards associated with the use in relation to the municipality's interests;
- d) Any comments received from the local community, and
- e) compliance with the legislative regime applicable to the proposed granting of the right.

6.2.2.2 Stellenbosch By-Law on Roads and Streets

In terms of section 4 of the Stellenbosch By-Law on Roads and Streets, no person may, **without prior written permission of the Municipality**, cause an encroachment on a street, sidewalk or road reserve forming part thereof.

6.2.2.3 Property Management policy

Section 9 2.2 deals with deviations from the competitive process, and reads as follows:

The Municipal Council **may dispense with the competitive processes** established in this policy and may enter into a Private Treaty Agreement through any convenient process, which may include direct negotiations, including in response to an unsolicited application, but only in the following circumstances, and only after having advertised Council's intention so to act. Should any objections be received as a consequence of such a notice, such objections first be considered before a final decision is taken to dispense with the competitive process established in this policy. However, should any objections, be received from potential, competitive bidders, then a public competitive process must be followed. The advertisement referred to above should also be served on adjoining landowners, where the Municipal Manager is of the opinion that such transaction may have a detrimental effect on such adjoining landowner(s):

(h)where encroachment applications are received from adjoining owners, including applications for outdoor dining permits, subject to approved tariff structure.

6.2.2.4 Outdoor Dining Policy

6.2.2.4.1 Policy Objective

To regulate the use of sidewalks or road reserves for the purpose of outdoor dining and trading, and the temporary use of Public Places for commercial ventures and displays.

6.2.2.4.2 Suitable Locations

Outdoor cafes, restaurants and traders may apply for lease where local conditions are favorable for their operation, including areas of Council e.g. road reserves, sidewalks, Public Open Spaces. All applications in locations of a high pedestrian usage, e.g. a retail center, will be required to take pedestrian needs into consideration.

6.2.2.4.3 Assessment Criteria

The most important local conditions to be considered when an application for lease of the road reserve area is received will be those issues pertaining to pedestrian (including pedestrians who are using wheelchairs, baby prams or are visually impaired) and vehicular circulation, convenience and safety of patrons and the general public, existing streetscape elements and residential amenity.

The ground surface must be sufficiently level to support a proper layout and safe use.

6.2.2.4.4 Layout

The style, layout and orientation of furniture should be chosen according to the extent and shape of the available space of the leased area.

The size of an outdoor cafe or placement of any object on the sidewalk will depend on the width of the sidewalk.

6.2.2.4.5 Defined Area

The applicant will be required to define the area with appropriate markers. (ie a single galvanized steel nail inserted in between the pavers, or a paint spot no larger than 5cm in diameter placed at the corners of the defined area in a semi- permanent paint) to the satisfaction of Council.

6.2.2.4.6 Lease Conditions

The applicant must comply with the conditions set out in the lease agreement and this policy. The lease will be for a period of not more than 5 years with an option to renew. These conditions would also generally require that the local environmental factors be reviewed annually and adjustments to the lease agreement may be required.

If the lease agreement that is entered into is seen as not providing long term rights there is no need to advertise the proposed agreement for public input/comments or objections. Should the municipality receive any complaints the lease agreement may be terminated due to the objections.

6.3 Financial Implications

In terms of the current, approved tariff structure for outdoor dining lease agreements a fee of R150 per m² is charged monthly which means that the monthly rental will be R 3000.00 (incl. of VAT) and an escalation of 6% is recommended.

6.4 Legal Implications

The legal implications are discussed under 6.2.2 above. As the proposed term of the lease agreement is three (3) years and when the value of the lease and property is taken into account the asset transfer regulations are not applicable as it is not seen as long-term rights on council property that are being given.

6.5 Staff Implications

No additional staff implications.

6.6 Previous / Relevant Council Resolutions**SPECIAL COUNCIL MEETING: 2002-06-22: ITEM 9.2.5 RESOLVEND (nem con)**

- (a) That council takes note of the intended communication to the public;
- (b) That Council takes note that all restaurants and business will be given notice to apply / re-apply for a lease to use council property for outdoor dining purposes; and
- (c) That the approval of the leases of three (3) years and less be delegated to the Municipal Manager for approval.

6.7 Risk Implications

The risks are addressed in the item.

6.7 Comments from Senior Management**6.8.1 Director: Infrastructure Services**

- The Municipality concludes an agreement with the applicant, detailing the conditions of approval.
- Leased area is zoned as road reserve and cannot be enclosed - to exclude the public, the municipality or other services provider from accessing the area.
- Ensure public risk and liability insurance is in place to cover 3rd party claims.
- Council is indemnified against all possible 3rd party claims.
- The municipality or other public service provider must not be prohibited from maintaining, repairing, upgrading and / or installing new public services with-in the leased area.
- The municipality reserves the right to end the lease agreement when the need arises, i.e. when the leased space is required for municipal or other public services purposes.
- Areas outside of the leased area must remain free from any obstruction to pedestrian movements.

6.8.2 Director: Planning and Economic Development

The Stellenbosch Municipality Roads and Street Bylaw, 2021 as promulgated in the Provincial Gazette no. 8436 dated 28 May 2021, defines "sidewalk" "means that portion of a street between the outer boundary of the roadway and the boundary lines of adjacent properties or buildings which is intended for the use of pedestrians, pedal cyclists and any other category of vehicles as may be determined by the Municipality in accordance with section 42(1);"

The definition clearly stipulates that the use of sidewalk is intended for pedestrians, pedal cyclists and any other vehicle. The use of sidewalks as part of the commercial activities of outdoor cafes and restaurants is a form of activity on the street that should improve the quality of public places and urban life. This use must however not be at the cost of overall safety of road users as intended in terms of the above bylaw.

It should be noted that currently the Final Draft Outdoor Dining and Events Overlay Zone, is undergoing a public participation process, of which the closing date for comments is 02 September 2023. In the absence of this overlay zone a suitable land use application must be submitted to evaluate the intended land usage, as the current and proposed land use is not in accordance with the applicable zoning.

6.8.3 Chief Financial Officer

Not requested

6.8.4 Director: Community Services

Not requested

6.8.5 Municipal Manager

Not requested yet.

ANNEXURES: 1. Application

FOR FURTHER DETAILS CONTACT:

NAME	Annalene de Beer
POSITION	Director: Corporate Services
DIRECTORATE	CORPORATE SERVICES
CONTACT NUMBERS	021-8088073
E-MAIL ADDRESS	Annalene.debeer@ Stellenbosch.gov.za
REPORT DATE	2023-08-24

ANNEXURE 1



STELLENBOSCH
STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

**APPLICATION FOR LEASE OF MUNICIPAL LAND
APPLICATION FORM**

A: APPLICANT'S DETAILS

Name : The Pottery Stellenbosch

Physical address: 2 Ryneveld Street

Postal code: 7600

Mailing address: 2 Ryneveld Street

Postal code: 7600

E-mail address: stellenbosch@thepottery.co.za

Telephone: 072651 9088

Cell phone: 072651 9088

B: PROPERTY DETAILS OF APPLICANT

Erf/farm number : 1289 Dorp Street

Suburb: Stellenbosch

Town: Stellenbosch

C: PROPERTY DETAILS OF LEASE AREA APPLYING FOR

Erf/farm number : 1289 Dampstreet

Suburb:

Town: Stellenbosch

Area applying for 20 m²

* To be supplemented with a sketch-plan with dimension in m²

D: TYPE OF APPLICATION:

Please mark the appropriate block

- | | |
|---|-------------------------------------|
| For commercial purposes, other than for parking | ☒ |
| For commercial parking purposes | ☐ |
| For residential parking purposes | ☐ |
| For non-commercial purposes | ☐ |
| For projecting structures onto street reserves | ☐ |
| For projecting structures onto other council-owned land | ☐ |
| Other: please provide description: | ☐ |

Brief description of application: Please may we apply

for the use of the area in front of our
coffee shop to use as outside seating.

Motivation: we intend, with your permission, to
use the outside area of our leased
premises as a decked seating area.

we have been granted permission by
 our landlord, please see attached
 supporting document.

E: LIST OF ATTACHEMENTS AND SUPPORTING DOCUMENTS

Please mark the appropriate box

Special Power of Attorney, where Applicant is not the owner

☒

Diagram of proposed area of the lease area

☐

Letters of consent (affected neighbours)

☐

Application fee (non-refundable)

☐

I hereby certify that the information supplied in this application form is correct
 and that I am properly authorized to make this application.

Applicant's signature: 

Date: 14 Aug 2023

Full name: Shawn Han

5.23	PROPOSED LEASE AGREEMENT: ERF 1299, 21 CHURCH STREET, STELLENBOSCH: BASIC BISTRO
------	---

Collaborator No:

IDP KPA Ref No:

Meeting Date:

Good Governance

30 August 2023

1. SUBJECT: PROPOSED LEASE AGREEMENT: ERF 1299, 21 CHURCH STREET, STELLENBOSCH: BASIC BISTRO

2. PURPOSE

To consider an application from Basic Bistro, to enter into a Lease Agreement with Stellenbosch Municipality, in terms whereof they would be able to use a portion of Council-owned property for outdoor dining purposes.

3. DELEGATED AUTHORITY

In terms of the approved System of Delegations the Executive Mayor, in consultation with the Executive Mayoral Committee, has the delegated Authority to consider applications for Lease Agreements, up to a contract value not exceeding R5M and not exceeding a period of 10 years.

The approval of lease agreements of three (3) years and less has been delegated to the Municipal Manager.

4. EXECUTIVE SUMMARY

An application to use a portion of the street reserve for Outdoor Dining purposes has been received from the owner of Basic Bistro situated on erf 1299, Stellenbosch. The application is in line with the provisions /requirements of the Outdoor Dining Policy and is supported by the Engineering Department. Under 6.2.1 are photos showing how area is currently being used. The photos were taken by the contract management unit. The applicant does not currently have any lease agreement or previous encroachment agreement with the municipality and is not paying rent for current use. We served the applicant with a letter requesting that they apply for the outdoor dining lease to ensure compliance.

They have not specified a requested time for the lease and the area they are interested in is 10 m². They have indicated on their diagram that there is already a small wooden deck which leaves 1.45m sidewalk open to pedestrians. Should the applicant not have approval for the deck they must submit a plan for approval.

The area left open for pedestrian use is not 1,5 meters towards the roadside for pedestrian use.

The department cannot support the application in its current form given the usage as indicated. An area of 1,5 meters for pedestrian use must be left open towards the road. Approval must be requested for the erected deck.

5. RECOMMENDATIONS

For Consideration:

- (a) that the land as indicated on Fig 1 and 2, measuring approximately 10m². in extent, be identified as land not needed to provide the minimum level of basic municipal services during the period that the rights are awarded;
- (b) that the in principle approval be considered for an initial period of 3 years with the option of a renewal subject to the following conditions:
 - 1. That approval be requested for the deck that was erected.
 - 2. Council is indemnified against all possible 3rd party claims.
 - 3. The deck must be positioned in such a manner that 1,5 meters are left for pedestrian use.
 - 4. The municipality or other public service providers must not be prohibited from maintaining, repairing, upgrading and / or installing new public services within the leased area. For planned maintenance and repairs, upgrades or new installations, the applicant will be provided with a 5-day written notice to remove all furniture for the municipality and any other public service provider to gain access. For emergency work the applicant will be required to remove everything immediately for the municipality or other public service providers to gain access.
 - 5. The municipality reserves the right to end the lease agreement when the need arises, i.e. when the leased area is required for municipal or other public services purposes or when the applicant refuses the municipality or other public service providers access if required.
- (c) that the Municipal Manager be authorised to determine the rental amount and escalation.

6. DISCUSSION / CONTENT

6.1.1 Application for lease

An application was received from Basic Bistro to enter into an agreement with Stellenbosch Municipality in terms whereof they would be able to use a portion of Council-owned property for outdoor dining purposes. A copy of the application is attached as **APPENDIX 1**, with drawings of the proposed lay-out attached as **APPENDIX 2**. The extent of the leased area is approximately 10m².

6.2 DISCUSSION.

6.2.1. Locality and context

Erf 1299, Stellenbosch is located at 21 Church Street, Stellenbosch, as shown on Fig 1. and Fig 2, below. Fig 3 is photographs of the current area being used for outdoor dining purposes.



Fig 1. Location and context



Fig 2 .Extent of area



Fig 3. Current area being used for Outdoor Dining purposes

6.2.2 Legal requirements

6.2.2.1 Municipal Asset Transfer Regulations

In terms of Section 36 of the Municipal Asset Transfer Regulation, when considering an application for an approval of a right to use municipal property, the following needs to be taken into account, *inter alia*-

- a) whether the capital asset may be required for the municipality's own use during the period for which the right is to be granted;
- b) the extent to which any compensation to be received for the right, together with the estimated value of improvements or enhancements to the asset, will result in a significant financial benefit to the municipality;
- c) the (possible) risks and rewards associated with the use in relation to the municipality's interests;
- d) Any comments received from the local community, and
- e) compliance with the legislative regime applicable to the proposed granting of the right.

6.2.2.2 Stellenbosch By-Law on Roads and Streets

In terms of section 4 of the Stellenbosch By-Law on Roads and Streets, no person may, **without prior written permission of the Municipality**, cause an encroachment on a street, sidewalk or road reserve forming part thereof.

6.2.2.3 Property Management policy

Section 9 2.2 deals with deviations from the competitive process, and reads as follows:

The Municipal Council **may dispense with the competitive processes** established in this policy, and may enter into a Private Treaty Agreement through any convenient process, which may include direct negotiations, including in response to an unsolicited application, but only in the following circumstances, and only after having advertised Council's intention so to act. Should any objections be received as a consequence of such a notice, such objections first be considered before a final decision is taken to dispense with the competitive process established in this policy. However, should any objections, be received from potential, competitive bidders, then a public competitive process must be followed. The advertisement referred to above should also be served on adjoining landowners, where the Municipal Manager is of the opinion that such transaction may have a detrimental effect on such adjoining land owner(s):

(h) where encroachment applications are received from adjoining owners, including applications for outdoor dining permits, subject to approved tariff structure;

6.2.2.3 Outdoor Dining Policy

6.2.2.3.1 Policy Objective

To regulate the use of sidewalks or road reserves for the purpose of outdoor dining and trading, and the temporary use of Public Places for commercial ventures and displays.

6.2.2.3.2 Suitable Locations

Outdoor cafes, restaurants and traders may apply for encroachment where local conditions are favourable for their operation, including areas of Council e.g. road reserves, sidewalks, Public Open Spaces. All applications in locations of a high

pedestrian usage, e.g. a retail centre, will be required to take pedestrian needs into consideration.

6.2.2.3.3 Assessment Criteria

The most important local conditions to be considered when an application for use of the road reserve area is received will be those issues pertaining to pedestrian (including pedestrians who are using wheelchairs, baby prams or are visually impaired) and vehicular circulation, convenience and safety of patrons and the general public, existing streetscape elements and residential amenity.

The ground surface must be sufficiently level to support a proper layout and safe use.

6.2.2.3.4 Layout

The style, layout and orientation of furniture should be chosen according to the extent and shape of the available space of the encroachment area.

The size of an outdoor cafe or placement of any object on the sidewalk will depend on the width of the sidewalk.

6.2.2.3.5 Defined Area

The applicant will be required to define the area with appropriate markers. (ie a single galvanized steel nail inserted in between the pavers, or a paint spot no larger than 5cm in diameter placed at the corners of the defined area in a semi- permanent paint) to the satisfaction of Council.

6.2.2.3.6 Lease Conditions

The applicant must comply with the conditions set out in the lease agreement and this policy. The lease will be for a period of not more than 3 years with an option to renew. These conditions would also generally require that the local environmental factors be reviewed annually and adjustments to the lease agreement may be required.

If the lease agreement that is entered into is seen as not providing long term rights, there is no need to advertise the proposed agreement for public input/comments or objections. Should the municipality receive any complaints the lease agreement may be terminated due to the objections.

6.3 Financial Implications

In terms of the current, approved tariff structure for outdoor dining lease agreements a monthly fee of R 1 50.00 (incl. of VAT) per m² from 1 July 2023 is applicable and an escalation of 6% is recommended. If they require 10m² it will amount to a starting amount of R1500.00 (incl. of VAT) per month.

6.4 Legal Implications

The legal implications are discussed under 6.2.2 above. As the proposed term of the lease agreement is three (3) years and when the value of the lease and property is taken into account the asset transfer regulations are not applicable as it is not seen as long-term rights on council property that are being given.

6.5 Staff Implications

No additional staff implications.

6.6 Previous / Relevant Council Resolutions**SPECIAL COUNCIL MEETING: 2022-06-22: ITEM 9.2.5 RESOLVED (nem con)**

- (a) That Council takes note of the intended communication to the public;
- (b) That Council takes note that all restaurants and businesses will be given notice to apply/re-apply for a lease to use council property for outdoor dining purposes; and
- (c) That the approval of the leases of three (3 years) and less be delegated to the Municipal Manager for approval.

6.7 Risk Implications

The risks are addressed in the item.

6.8 Comments from Senior Management**6.8.1 Director: Infrastructure Services**

- The Municipality concludes an agreement with the applicant, detailing the conditions of approval.
- Leased area is zoned as road reserve and cannot be enclosed - to exclude the public, the municipality or other services provider from accessing the area.
- During its operational phase, the deck must not hinder pedestrian movements on the sidewalk. Areas outside of the leased area must remain free from any obstruction to pedestrian movements.
- The deck remains the property of the applicant, the applicant must:
 - o Attend to maintenance and repairs of the deck.
 - o Ensure public risk and liability insurance is in place to cover 3rd party claims.
- Council is indemnified against all possible 3rd party claims.
- The municipality or other public service provider must not be prohibited from maintaining, repairing, upgrading and / or installing new public services with-in the encroached area.
- The deck or portion of the deck must be removable to gain access to the encroached area, as and when required by the Municipality or other public service provider.
- For planned maintenance, repairs, upgrades or new installations, the applicant will be provided with a 5-day written notice, to remove the deck or portion of the deck for the Municipality or any other public service provider to gain access.
- For emergency works the applicant will be required to remove the deck or portion of the deck immediately for the municipality or other public service provider to gain access.
- The applicant to re-install the deck once the works on the public services are complete.

- The cost for the removal and re-installation for the deck will be for the account of the applicant.
- The municipality reserves the right to end the lease agreement when the need arises, i.e. when the leased space is required for municipal or other public services purposes or when the applicant refuses to remove the deck when given notice by the Municipality.

6.8.2 Director: Planning and Economic Development

The Stellenbosch Municipality Roads and Street Bylaw, 2021 as promulgated in the Provincial Gazette no. 8436 dated 28 May 2021, defines "sidewalk" "means that portion of a street between the outer boundary of the roadway and the boundary lines of adjacent properties or buildings which is intended for the use of pedestrians, pedal cyclists and any other category of vehicles as may be determined by the Municipality in accordance with section 42(1);"

The definition clearly stipulates that the use of sidewalk is intended for pedestrians, pedal cyclists and any other vehicle. The use of sidewalks as part of the commercial activities of outdoor cafes and restaurants is a form of activity on the street that should improve the quality of public places and urban life. This use must however not be at the cost of overall safety of road users as intended in terms of the above bylaw.

It should be noted that currently the Final Draft Outdoor Dining and Events Overlay Zone, is undergoing a public participation process, of which the closing date for comments is 02 September 2023. In the absence of this overlay zone a suitable land use application must be submitted to evaluate the intended land usage, as the current and proposed land use is not in accordance with the applicable zoning.

6.8.3 Chief Financial Officer

Not requested

6.8.4 Director: Community Services

Not requested

6.8.5 Municipal Manager

Not requested yet

ANNEXURES: 1. Application

2. Sketch plan

FOR FURTHER DETAILS CONTACT:

NAME	Annalene de Beer
POSITION	Director: Corporate Services
DIRECTORATE	CORPORATE SERVICES
CONTACT NUMBERS	021-8088073
E-MAIL ADDRESS	Annalene.debeer@ Stellenbosch.gov.za
REPORT DATE	2023-07-24

ANNEXURE 1



STELLENBOSCH

STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

APPLICATION FOR LEASE OF MUNICIPAL LAND APPLICATION FORM

A: APPLICANT'S DETAILS

Name : BASIC BISTRO

Physical address: 21 CHURCH STREET
STELLENBOSCH

Postal code: 7600

Mailing address: AS ADOLF

Postal code:

E-mail address: INFO@BASICBISTRO.CO.ZA

Telephone: 021 8822629

Cell phone: 074 486 51224

B: PROPERTY DETAILS OF APPLICANT

Erf/farm number : 1299

Suburb: STELLENBOSCH CENTRAL

Town: STREUM DOSEY

C: PROPERTY DETAILS OF LEASE AREA

Erf/farm number : 1299

Suburb: TOWN CENTRAL

Town: STREUM DOSEY

Area of encroachment:m²

* To be supplemented with a sketch-plan with dimension in m²

D: TYPE OF APPLICATION:

Please mark the appropriate block

For commercial purposes, other than for parking

☒

For commercial parking purposes,

☐

For residential parking purposes

☐

For non-commercial purposes (such as garden purposes, gates, ect)

☐

For projecting structures onto street reserves

☐

For projecting structures onto other council-owned land

☐

Other: please provide description:

☐

Brief description of application:

MOVABLE SEATED TABLE AND CHAIRS

Motivation: TO ENHANCE OUTSIDE SEATING

IN A BEAUTIFUL TOWN LIKE STREUM DOSEY

WITH THE FINE WEATHER WE HAVE THERE

TOWNERS LOVE THE EXPERIENCE

E: LIST OF ATTACHEMENTS AND SUPPORTING DOCUMENTS

Please mark the appropriate box

Special Power of Attorney, where Applicant is not the owner

☐

Diagram of proposed area of the lease area

☒

Letters of consent (affected neighbours)

☐

Application fee (non-refundable)

☐

I hereby certify that the information supplied in this application form is correct and that I am properly authorized to make this application.

Applicant's signature:

Date: 8th March 2022,

Full name:

JULIAN HOSACK.

FOR OFFICIAL USE

- The application was considered onby.....
- The application was

☐	APPROVED
--------------------------	-----------------

☐	NOT APPROVED
--------------------------	---------------------

Conditions (if any):

.....

.....

Applicant was informed of outcome on

.....
SIGNATURE OF RESPONSIBLE OFFICIAL

.....
DATE

Name:.....

***If approved**

- ☐ Encroachment fee paid
- ☐ Lease Agreement signed
- ☐ Agreement/Permit processed on Contract Management System

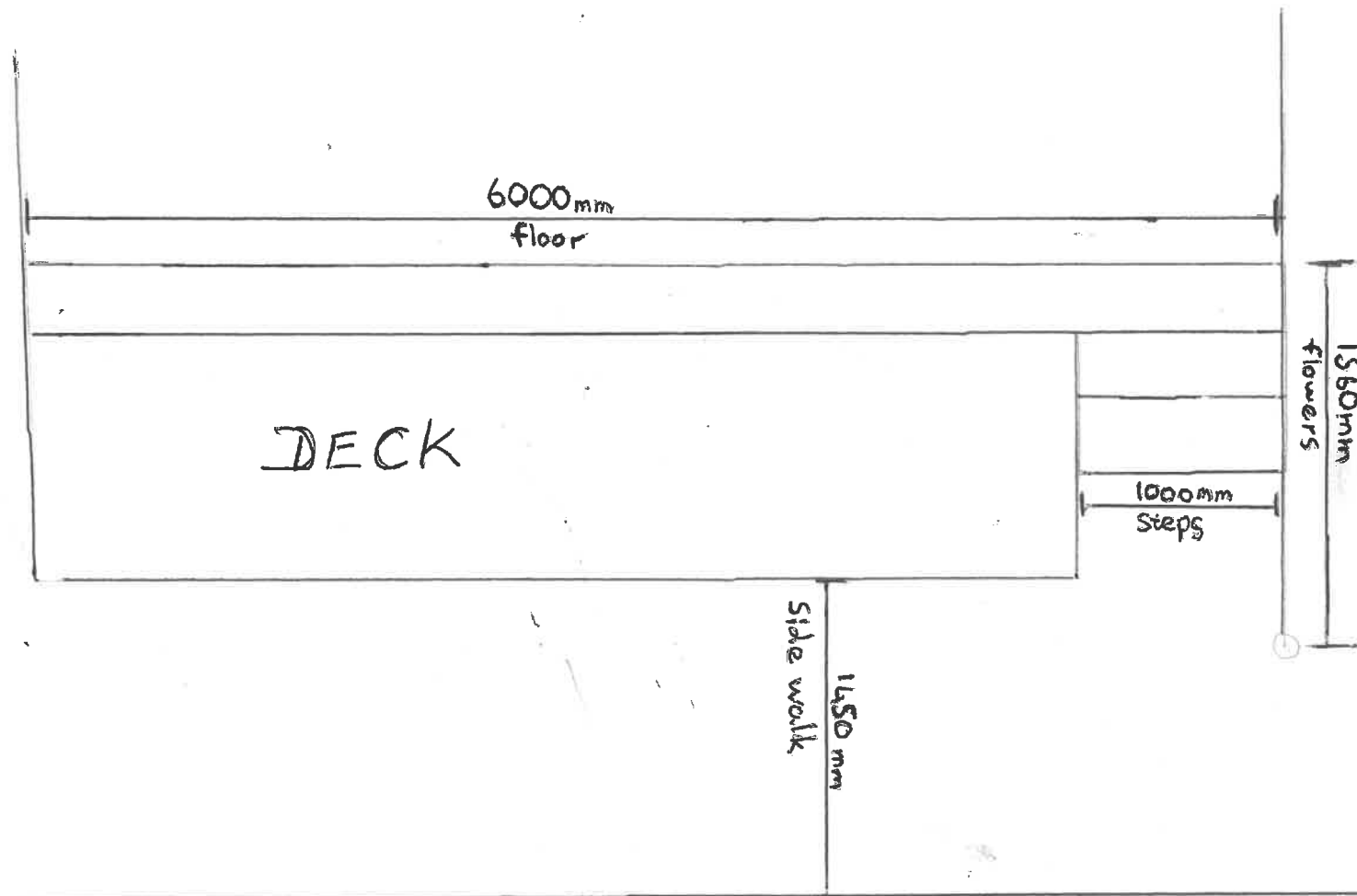
.....
SIGNATURE OF RESPONSIBLE OFFICIAL

.....
DATE

Name:.....

ANNEXURE 2

Basic Bistro



5.24	PROPOSED LEASE AGREEMENT: ERF 1321 (11 CHURCH STREET), BRAMPTON WINE STUDIO
------	--

Collaborator No:

IDP KPA Ref No:

Meeting Date:

Good Governance

30 August 2023

1. SUBJECT: PROPOSED LEASE AGREEMENT: ERF 1321 (11 CHURCH STREET), BRAMPTON WINE STUDIO

2. PURPOSE

To consider an application from Brampton Wine Studio, to enter into a Lease Agreement with Stellenbosch Municipality, in terms whereof they would be able to use a portion of Council-owned property for outdoor dining purposes.

3. DELEGATED AUTHORITY

In terms of the approved System of Delegations the Executive Mayor, in consultation with the Executive Mayoral Committee, has the delegated Authority to consider applications for Lease Agreements, up to a contract value not exceeding R5M and not exceeding a period of 10 years.

The approval of lease agreements of three (3) years and less has been delegated to the Municipal Manager.

4. EXECUTIVE SUMMARY

An application to use a portion of the street reserve for Outdoor Dining purposes has been received from the owner of Brampton Wine Studio trading of erf 1321, Stellenbosch. The application is in line with the provisions /requirements of the Outdoor Dining Policy and is supported by the Engineering Department. Under 6.2.1 are photos showing how are is currently being used. The photos were taken by the contract management unit. We served the applicant with a letter requesting that they apply for the outdoor dining lease to ensure compliance.

They have not specified a requested time for the lease and the area they are interested in is 24 m².

The applicant has provided a diagram indicating the placement of furniture on the sidewalk however there is no indication that 1.5m will be left open on the sidewalk for pedestrian use. The seating is on both sides of the sidewalk and the walkway would be between the tables. The placement is indicated in the photographs in the item.

The applicant has also filed a consent letter from the restaurant next door consenting to the use of the outside area.

The department can support the application provide that the 1,5m unobstructed pedestrian area is strictly enforced. If they do not have permission for the deck an application must be submitted for approval.

5. RECOMMENDATIONS

- (a) that the land as indicated on Fig 1 and 2, measuring approximately 24m². in extent, be identified as land not needed to provide the minimum level of basic municipal services during the period that the rights are awarded;
- (b) that the in-principle approval be considered for an initial period of 3 years with the option of a renewal subject to the following conditions:
 - 1. That no permanent structure or deck be erected without the prior written consent of council, as well as approved building plans from the building department.
 - 2. Council is indemnified against all possible 3rd party claims.
 - 3. The municipality or other public service providers must not be prohibited from maintaining, repairing, upgrading and / or installing new public services within the leased area. For planned maintenance and repairs, upgrades or new installations, the applicant will be provided with a 5-day written notice to remove all furniture for the municipality and any other public service provider to gain access. For emergency work the applicant will be required to remove everything immediately for the municipality or other public service providers to gain access.
 - 4. The municipality reserves the right to end the lease agreement when the need arises, i.e. when the leased area is required for municipal or other public services purposes or when the applicant refuses the municipality or other public service providers access if required.
 - 5. That the 1,5 m unobstructed pedestrian area be strictly enforced and the area be demarcated.
 - 6. That approval be obtained for the erected deck if not already obtained.
- (c) that the Municipal Manager be authorised to determine the rental amount and escalation.

6. DISCUSSION / CONTENT

6.1 Background

6.1.1 Application for lease

An application was received from Brampton Wine Studio to enter into an agreement with Stellenbosch Municipality in terms whereof they would be able to use a portion of Council-owned property for outdoor dining purposes. A copy of the application is attached as **APPENDIX 1**, with drawings of the proposed lay-out attached as **APPENDIX 2**. The extent of the encroachment area is approximately 24m². A consent letter from the neighboring restaurant is also attached hereto as **APPENDIX 3**.

6.2 DISCUSSION

6.2.1. Locality and context

Erf 1321, Stellenbosch is located at 11 Church Street, Stellenbosch, as shown on Fig 1. and Fig 2, below as well as photographs of how area is currently used under Fig 3.







Fig. 3 Current area used for outdoor dining

6.2.2 Legal requirements

6.2.2.1 Municipal Asset Transfer Regulations

In terms of Section 36 of the Municipal Asset Transfer Regulation, when considering an application for an approval of a right to use municipal property, the following needs to be taken into account, *inter alia*-:

- a) whether the capital asset may be required for the municipality's own use during the period for which the right is to be granted;
- b) the extent to which any compensation to be received for the right, together with the estimated value of improvements or enhancements to the asset, will result in a significant financial benefit to the municipality;
- c) the (possible) risks and rewards associated with the use in relation to the municipality's interests;
- d) Any comments received from the local community, and
- e) compliance with the legislative regime applicable to the proposed granting of the right.

6.2.2.2 Stellenbosch By-Law on Roads and Streets

In terms of section 4 of the Stellenbosch By-Law on Roads and Streets, no person may, **without prior written permission of the Municipality**, cause an encroachment on a street, sidewalk or road reserve forming part thereof.

6.2.2.3 Property Management policy

Section 9 2.2 deals with deviations from the competitive process, and reads as follows:

The Municipal Council **may dispense with the competitive processes** established in this policy and may enter into a Private Treaty Agreement through any convenient process, which may include direct negotiations, including in response to an unsolicited application, but only in the following circumstances, and only after having advertised Council's intention so to act. Should any objections be received as a consequence of such a notice, such objections first be considered before a final decision is taken to dispense with the competitive process established in this policy. However, should any objections, be received from potential, competitive bidders, then a public competitive process must be followed. The advertisement referred to above should also be served on adjoining landowners, where the Municipal Manager is of the opinion that such transaction may have a detrimental effect on such adjoining land owner(s):

(h)where encroachment applications are received from adjoining owners, including applications for outdoor dining permits, subject to approved tariff structure.

6.2.2.4 Outdoor Dining Policy

6.2.2.4.1 Policy Objective

To regulate the use of sidewalks or road reserves for the purpose of outdoor dining and trading, and the temporary use of Public Places for commercial ventures and displays.

6.2.2.4.2 Suitable Locations

Outdoor cafes, restaurants and traders may apply for lease where local conditions are favorable for their operation, including areas of Council e.g. road reserves, sidewalks, Public Open Spaces. All applications in locations of a high pedestrian usage, e.g. a retail center, will be required to take pedestrian needs into consideration.

6.2.2.4.3 Assessment Criteria

The most important local conditions to be considered when an application for lease of the road reserve area is received will be those issues pertaining to pedestrian (including pedestrians who are using wheelchairs, baby prams or are visually impaired) and vehicular circulation, convenience and safety of patrons and the general public, existing streetscape elements and residential amenity.

The ground surface must be sufficiently level to support a proper layout and safe use.

6.2.2.4.4 Layout

The style, layout and orientation of furniture should be chosen according to the extent and shape of the available space of the leased area.

The size of an outdoor cafe or placement of any object on the sidewalk will depend on the width of the sidewalk.

6.2.2.4.5 Defined Area

The applicant will be required to define the area with appropriate markers. (ie a single galvanized steel nail inserted in between the pavers, or a paint spot no larger than 5cm in diameter placed at the corners of the defined area in a semi- permanent paint) to the satisfaction of Council.

6.2.2.4.6 Lease Conditions

The applicant must comply with the conditions set out in the lease agreement and this policy. The lease will be for a period of not more than 5 years with an option to renew. These conditions would also generally require that the local environmental factors be reviewed annually and adjustments to the lease agreement may be required.

If the lease agreement that is entered into is seen as not providing long term rights there is no need to advertise the proposed agreement for public input/comments or objections. Should the municipality receive any complaints the lease agreement may be terminated due to the objections.

6.3 Financial Implications

In terms of the current, approved tariff structure for outdoor dining lease agreements a fee of R150 per m² is charged on a monthly basis which means that the monthly rental will be R 3 600.00 if the new lay out is approved (incl. of VAT) and an escalation of 6% is recommended.

6.4 Legal Implications

The legal implications are discussed under 6.2.2 above. As the proposed term of the lease agreement is three (3) years and when the value of the lease and property is taken into account the asset transfer regulations are not applicable as it is not seen as long term rights on council property that are being given.

6.5 Staff Implications

No additional staff implications.

6.6 Previous / Relevant Council Resolutions**SPECIAL COUNCIL MEETING: 2002-06-22: ITEM 9.2.5 RESOLVEND (nem con)**

- (a) That council takes note of the intended communication to the public;
- (b) That Council takes note that all restaurants and business will be given notice to apply / re-apply for a lease to use council property for outdoor dining purposes; and
- (c) That the approval of the leases of three (3) years and less be delegated to the Municipal Manager for approval.

6.7 Risk Implications

The risks are addressed in the item.

6.8 Comments from Senior Management**6.8.1 Director: Infrastructure Services**

- The Municipality concludes an agreement with the applicant, detailing the conditions of approval.
- Leased area is zoned as road reserve and cannot be enclosed - to exclude the public, the municipality or other services provider from accessing the area.
- Ensure public risk and liability insurance is in place to cover 3rd party claims.
- Council is indemnified against all possible 3rd party claims.
- The municipality or other public service provider must not be prohibited from maintaining, repairing, upgrading and / or installing new public services with-in the leased area.
- The municipality reserves the right to end the lease agreement when the need arises, i.e. when the leased space is required for municipal or other public services purposes.
- Areas outside of the leased area must remain free from any obstruction to pedestrian movements.

6.8.2 Director: Planning and Economic Development

The Stellenbosch Municipality Roads and Street Bylaw, 2021 as promulgated in the Provincial Gazette no. 8436 dated 28 May 2021, defines "sidewalk" "means that portion of a street between the outer boundary of the roadway and the boundary lines of adjacent properties or buildings which is intended for the use of pedestrians, pedal cyclists and any other category of vehicles as may be determined by the Municipality in accordance with section 42(1);"

The definition clearly stipulates that the use of sidewalk is intended for pedestrians, pedal cyclists and any other vehicle. The use of sidewalks as part of the commercial activities of outdoor cafes and restaurants is a form of activity on the street that should improve the quality of public places and urban life. This use must however not be at the cost of overall safety of road users as intended in terms of the above bylaw.

It should be noted that currently the Final Draft Outdoor Dining and Events Overlay Zone, is undergoing a public participation process, of which the closing date for comments is 02 September 2023. In the absence of this overlay zone a suitable land use application must be submitted to evaluate the intended land usage, as the current and proposed land use is not in accordance with the applicable zoning.

6.8.3 Chief Financial Officer

Not requested

6.8.4 Director: Community Services

Not requested

6.8.5 Municipal Manager

Not requested yet.

ANNEXURES: 1. Application

2. Proposed Lay-out

3. Consent letter

FOR FURTHER DETAILS CONTACT:

NAME	Annalene de Beer
POSITION	Director: Corporate Services
DIRECTORATE	CORPORATE SERVICES
CONTACT NUMBERS	021-8088073
E-MAIL ADDRESS	Annalene.debeer@ Stellenbosch.gov.za
REPORT DATE	2023-08-24

ANNEXURE 1



STELLENBOSCH
STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

APPLICATION FOR LEASE OF MUNICIPAL LAND APPLICATION FORM

A: APPLICANT'S DETAILS

Name : Brampton Wine Studio

Physical address: 11 Church Street
Stellenbosch
7600

Mailing address: DGB (Pty) Ltd.
P.O. Box 7896
Halfway House
1685

E-mail address: bramptonstudio@dgb.co.za

Telephone: 021 883 9097

Cell phone: 071 150 8890

B: PROPERTY DETAILS OF APPLICANT

Erf/farm number : 1321

Suburb: Middledorp

Town: Stellenbosch

C: PROPERTY DETAILS OF LEASE AREA

Erf/farm number : 1321

Suburb: Middledorp

Town: Stellenbosch

Area of encroachment: 24.4m²

* To be supplemented with a sketch-plan with dimension in m²

D: TYPE OF APPLICATION:

Please mark the appropriate block

For commercial purposes, other than for parking

☒

For commercial parking purposes,

☐

For residential parking purposes

☐

For non-commercial purposes (such as garden purposes, gates,ect)

☐

For projecting structures onto street reserves

☐

For projecting structures onto other council-owned land

☐

Other: please provide description:

☐

Brief description of application:

To use a portion of Council owned property for outdoor street dining.

Motivation:

Brampton Wine Studio has been offering the original and authentic experience *al fresco* outdoor wine tasting and dining experience for Stellenbosch residents and tourists for more than a decade, with the street dining atmosphere playing an integral part as to our business success and Brand; offering an authentic European concept and atmosphere to the surrounding businesses and streets in the town center. We would therefor wish to continue with this model.

E: LIST OF ATTACHEMENTS AND SUPPORTING DOCUMENTS

Please mark the appropriate box

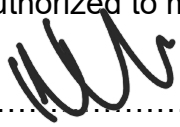
Special Power of Attorney, where Applicant is not the owner ☐

Diagram of proposed area of the lease area ☐

Letters of consent (affected neighbours) ☐

Application fee (non-refundable) ☐

I hereby certify that the information supplied in this application form is correct and that I am property authorized to make this application.

Applicant's signature:  Date: 22 May 2023

Full name: Henk Schalk van der Westhuyzen for DGB Pty Ltd

FOR OFFICIAL USE

- The application was considered onby.....
- The application was

☐	APPROVED
--------------------------	-----------------

☐	NOT APPROVED
--------------------------	---------------------

Conditions (if any):

.....

.....

Applicant was informed of outcome on

.....
SIGNATURE OF RESPONSIBLE OFFICIAL **DATE**

Name:.....

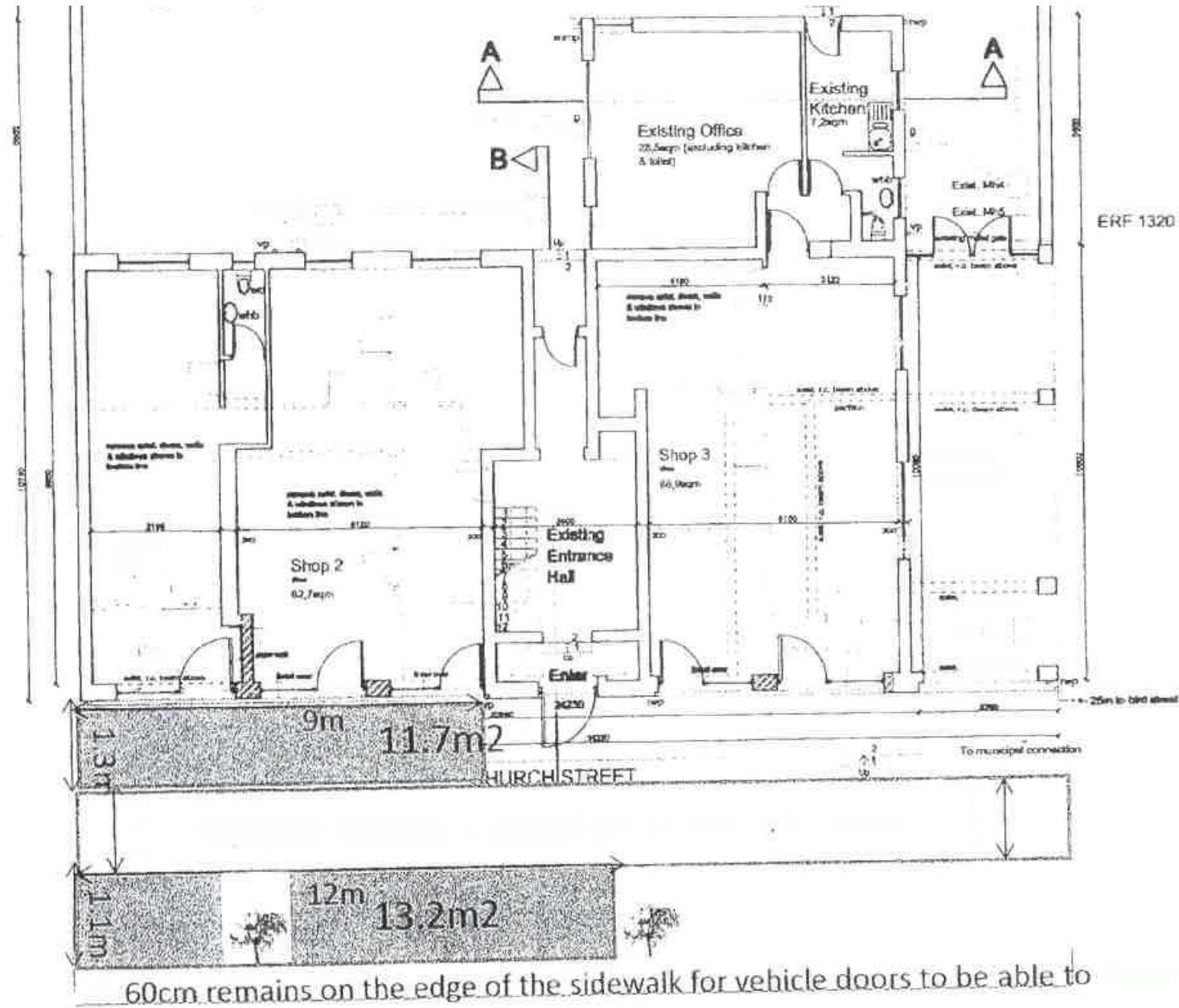
***If approved**

- ☐ Encroachment fee paid
- ☐ Lease Agreement signed
- ☐ Agreement/Permit processed on Contract Management System

.....
SIGNATURE OF RESPONSIBLE OFFICIAL **DATE**

Name:.....

ANNEXURE 2



ANNEXURE 3



11-13 Church Street,
Stellenbosch, Western Cape
7600

+27 82 333 7659

melissa@hyggestellenbosch.com

Reg Nr: 2020/838455/07

To whom it may concern,

This letter is to confirm that us (Hygge Hygge Restaurant) situated at 11 Church Street, Stellenbosch hereby have no objection to the outside seating arrangement of our neighbours; Brampton Wine Studio. We approve and are happy with their outside dining area.

Should you have any questions or require further information please do not hesitate to contact me on 0823337659.

Your sincerely,

A handwritten signature in black ink that reads 'Melissa' in a cursive script.

Melissa Crous

Managing Director

5.25	PROPOSED LEASE AGREEMENT: ERF 1259 (19 RYNEVELD STREET), BEYERSKLOOF WINE BAR
------	--

Collaborator No:

IDP KPA Ref No:

Meeting Date:

Good Governance

30 August 2023

1. SUBJECT: PROPOSED LEASE AGREEMENT: ERF 1259 (19 RYNEVELD STREET), BEYERSKLOOF WINE BAR

2. PURPOSE

To consider an application from Beyerskloof Wine Bar, to enter into a Lease Agreement with Stellenbosch Municipality, in terms whereof they would be able to use a portion of Council-owned property for outdoor dining purposes.

3. DELEGATED AUTHORITY

In terms of the approved System of Delegations the Executive Mayor, in consultation with the Executive Mayoral Committee, has the delegated Authority to consider applications for Lease Agreements, up to a contract value not exceeding R5M and not exceeding a period of 10 years.

The approval of lease agreements of three (3) years and less has been delegated to the Municipal Manager.

4. EXECUTIVE SUMMARY

An application to use a portion of the street reserve for Outdoor Dining purposes has been received from the owner of Beyerskloof Wine Bar trading of erf 1259, Stellenbosch. The application is in line with the provisions /requirements of the Outdoor Dining Policy and is supported by the Engineering Department. Under 6.2.1 are photos showing how are is currently being used. The photos were taken by the contract management unit. The applicant does not currently have any lease agreement or previous encroachment agreement with the municipality and is not paying rent for current use. We served the applicant with a letter requesting that they apply for the outdoor dining lease to ensure compliance.

They have not specified a requested time for the lease and the area they are interested in is 22 m².

The applicant is of the intention to erect certain structures on the proposed leased area and has submitted draft plans in support of the application. With the new structures there is still a walkway left open for use of the public that is in line with the pillars already erected on the property. There is no indication on whether this is 1.5m however this is an old building, and the pillars were erected years ago.

The department does not support the proposal of the applicant. The current sidewalk must be kept open for pedestrian use on for at least 1,5m. The current structure was erected without approval.

5. RECOMMENDATIONS

- (a) that the land as indicated on Fig 1 and 2, measuring approximately 22m². in extent, be identified as land not needed to provide the minimum level of basic municipal services during the period that the rights are awarded;
- (b) that the in principle approval be considered for an initial period of 3 years with the option of a renewal subject to the following conditions:
 - 1. That an application be submitted for the deck be that was erected without the prior written consent of council, as well as building plans.
 - 2. Council is indemnified against all possible 3rd party claims.
 - 3. The municipality or other public service providers must not be prohibited from maintaining, repairing, upgrading and / or installing new public services within the leased area. For planned maintenance and repairs, upgrades or new installations, the applicant will be provided with a 5-day written notice to remove all furniture for the municipality and any other public service provider to gain access. For emergency work the applicant will be required to remove everything immediately for the municipality or other public service providers to gain access.
 - 4. In the event that the deck needs to be removed the cost of the removal and re-installation will be for the applicant.
 - 5. The municipality reserves the right to end the lease agreement when the need arises, i.e. when the leased area is required for municipal or other public services purposes or when the applicant refuses the municipality or other public service providers access if required.
- (c) that an unobstructed 1,5 meter be strictly enforced for pedestrian use; and
- (d) that the Municipal Manager be authorised to determine the rental amount and escalation.

6. DISCUSSION / CONTENT**6.1 Background****6.1.1 Application for lease**

An application was received from Beyerskloof Wine Bar to enter into an agreement with Stellenbosch Municipality in terms whereof they would be able to use a portion of Council-owned property for outdoor dining purposes. A copy of the application is attached as **APPENDIX 1**, with drawings of the proposed lay-out attached as **APPENDIX 2**. The extent of the area is approximately 22m².

6.2 DISCUSSION.

6.2.1. Locality and context

Erf 1259, Stellenbosch is located at 19 Ryneveld Street, Stellenbosch, as shown on Fig 1. and Fig 2, below as well as photographs of how area is currently used under Fig 3.

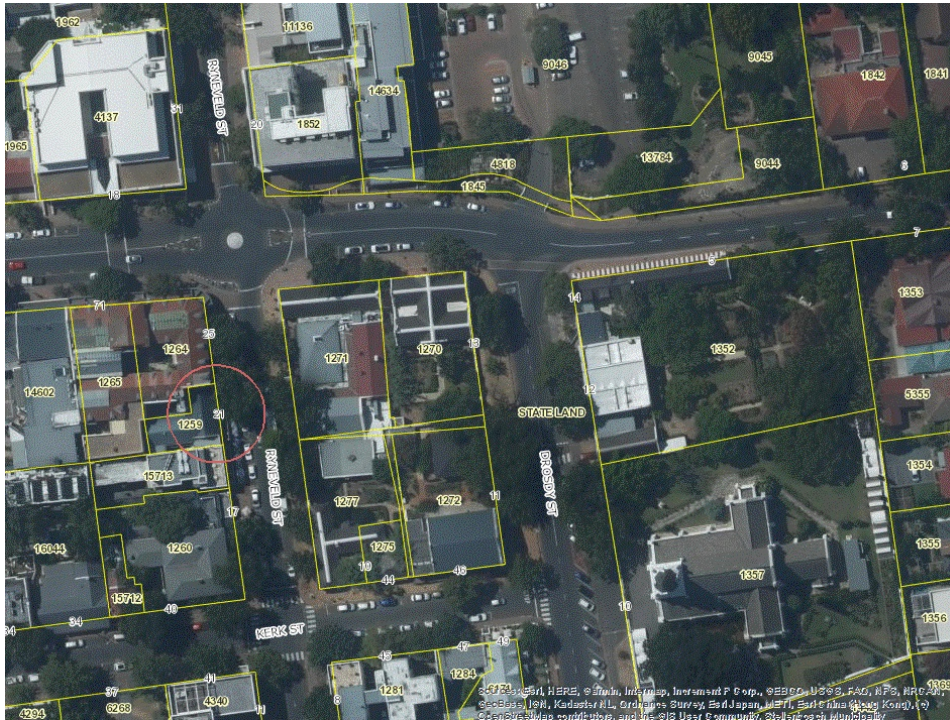


Fig 1. Location and context



Fig 2 .Extent of area

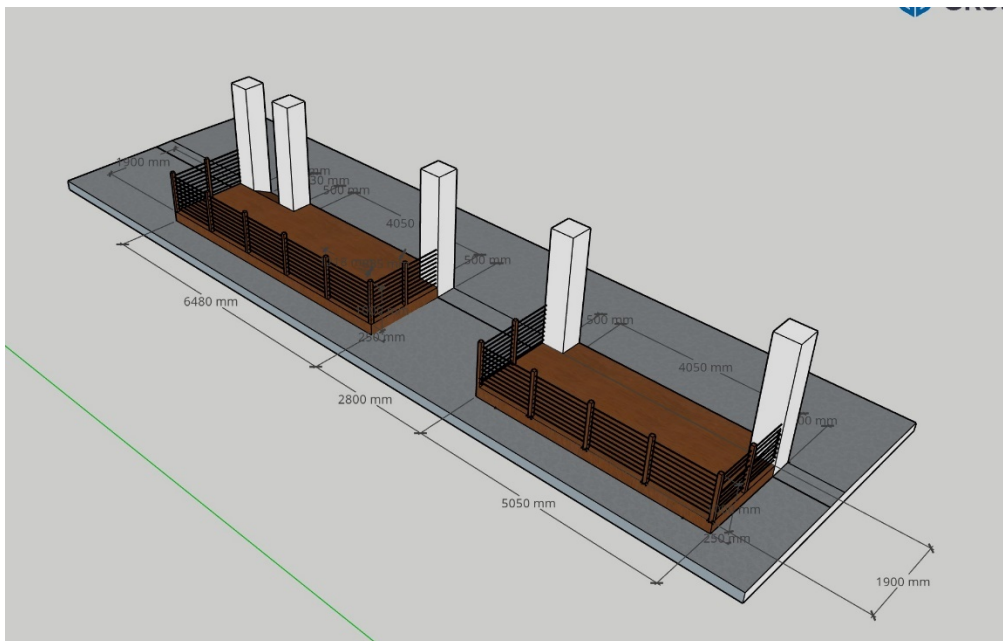


Fig. 3 Current area used for outdoor dining with suggested changes

6.2.2 Legal requirements

6.2.2.1Municipal Asset Transfer Regulations

In terms of Section 36 of the Municipal Asset Transfer Regulation, when considering an application for an approval of a right to use municipal property, the following needs to be taken into account, *inter alia*:-

- a) whether the capital asset may be required for the municipality's own use during the period for which the right is to be granted;
- b) the extent to which any compensation to be received for the right, together with the estimated value of improvements or enhancements to the asset, will result in a significant financial benefit to the municipality;
- c) the (possible) risks and rewards associated with the use in relation to the municipality's interests;
- d) Any comments received from the local community, and
- e) compliance with the legislative regime applicable to the proposed granting of the right.

6.2.2.2 Stellenbosch By-Law on Roads and Streets

In terms of section 4 of the Stellenbosch By-Law on Roads and Streets, no person may, **without prior written permission of the Municipality**, cause an encroachment on a street, sidewalk or road reserve forming part thereof.

6.2.2.3 Property Management policy

Section 9 2.2 deals with deviations from the competitive process, and reads as follows:

The Municipal Council **may dispense with the competitive processes** established in this policy and may enter into a Private Treaty Agreement through any convenient process, which may include direct negotiations, including in response to an unsolicited application, but only in the following circumstances, and only after having advertised Council's intention so to act. Should any objections be received as a consequence of

such a notice, such objections first be considered before a final decision is taken to dispense with the competitive process established in this policy. However, should any objections, be received from potential, competitive bidders, then a public competitive process must be followed. The advertisement referred to above should also be served on adjoining landowners, where the Municipal Manager is of the opinion that such transaction may have a detrimental effect on such adjoining land owner(s):

(h)where encroachment applications are received from adjoining owners, including applications for outdoor dining permits, subject to approved tariff structure;

6.2.2.4 Outdoor Dining Policy

6.2.2.4.1 Policy Objective

To regulate the use of sidewalks or road reserves for the purpose of outdoor dining and trading, and the temporary use of Public Places for commercial ventures and displays.

6.2.2.4.2 Suitable Locations

Outdoor cafes, restaurants and traders may apply for lease where local conditions are favorable for their operation, including areas of Council e.g. road reserves, sidewalks, Public Open Spaces. All applications in locations of a high pedestrian usage, e.g. a retail center, will be required to take pedestrian needs into consideration.

6.2.2.4.3 Assessment Criteria

The most important local conditions to be considered when an application for encroachment of the road reserve area is received will be those issues pertaining to pedestrian (including pedestrians who are using wheel chairs, baby prams or are visually impaired) and vehicular circulation, convenience and safety of patrons and the general public, existing streetscape elements and residential amenity.

The ground surface must be sufficiently level to support a proper layout and safe use.

6.2.2.4.4 Layout

The style, layout and orientation of furniture should be chosen according to the extent and shape of the available space of the encroachment area.

The size of an outdoor cafe or placement of any object on the sidewalk will depend on the width of the sidewalk.

6.2.2.4.5 Defined Area

The applicant will be required to define the area with appropriate markers. (ie a single galvanized steel nail inserted in between the pavers, or a paint spot no larger than 5cm in diameter placed at the corners of the defined area in a semi- permanent paint) to the satisfaction of Council.

6.2.2.4.6 Lease Conditions

The applicant must comply with the conditions set out in the lease agreement and this policy. The lease will be for a period of not more than 5 years with an option to renew. These conditions would also generally require that the local environmental factors be reviewed annually and adjustments to the lease agreement may be required.

If the lease agreement that is entered into is seen as not providing long term rights, there is no need to advertise the proposed agreement for public input/comments or objections. Should the municipality receive any complaints the lease agreement may be terminated due to the objections.

6.3 Financial Implications

In terms of the current, approved tariff structure for outdoor dining lease agreements a fee of R150 per m² is charged monthly which means that the monthly rental will be R 3 300.00 if the new lay out is approved (incl. of VAT) and an escalation of 6% is recommended.

6.4 Legal Implications

The legal implications are discussed under 6.2.2 above. As the proposed term of the lease agreement is three (3) years and when the value of the lease and property is taken into account the asset transfer regulations are not applicable as it is not seen as long-term rights on council property that are being given.

6.5 Staff Implications

No additional staff implications.

6.6 Previous / Relevant Council Resolutions**SPECIAL COUNCIL MEETING: 2002-06-22: ITEM 9.2.5 RESOLVEND (nem con)**

- (a) That council takes note of the intended communication to the public;
- (b) That Council takes note that all restaurants and business will be given notice to apply / re-apply for a lease to use council property for outdoor dining purposes; and
- (c) That the approval of the leases of three (3) years and less be delegated to the Municipal Manager for approval.

6.7 Risk Implications

The risks are addressed in the item.

6.8 Comments from Senior Management**6.8.1 Director: Infrastructure Services**

- The Municipality concludes an agreement with the applicant, detailing the conditions of approval.
- Leased area is zoned as road reserve and cannot be enclosed - to exclude the public, the municipality or other services provider from accessing the area.
- Ensure public risk and liability insurance is in place to cover 3rd party claims.
- Council is indemnified against all possible 3rd party claims.
- The municipality or other public service provider must not be prohibited from maintaining, repairing, upgrading and / or installing new public services with-in the leased area.
- The municipality reserves the right to end the lease agreement when the need arises, i.e. when the leased space is required for municipal or other public services purposes.
- Areas outside of the leased area must remain free from any obstruction to pedestrian movements.

6.8.2 Director: Planning and Economic Development

The Stellenbosch Municipality Roads and Street Bylaw, 2021 as promulgated in the Provincial Gazette no. 8436 dated 28 May 2021, defines "sidewalk" "means that portion of a street between the outer boundary of the roadway and the boundary lines of adjacent properties or buildings which is intended for the use of pedestrians, pedal cyclists and any other category of vehicles as may be determined by the Municipality in accordance with section 42(1);"

The definition clearly stipulates that the use of sidewalk is intended for pedestrians, pedal cyclists and any other vehicle. The use of sidewalks as part of the commercial activities of outdoor cafes and restaurants is a form of activity on the street that should improve the quality of public places and urban life. This use must however not be at the cost of overall safety of road users as intended in terms of the above bylaw.

It should be noted that currently the Final Draft Outdoor Dining and Events Overlay Zone, is undergoing a public participation process, of which the closing date for comments is 02 September 2023. In the absence of this overlay zone a suitable land use application must be submitted to evaluate the intended land usage, as the current and proposed land use is not in accordance with the applicable zoning.

6.8.3 Chief Financial Officer

Not requested

6.8.4 Director: Community Services

Not requested.

6.8.5 Municipal Manager

Not requested yet.

ANNEXURES: 1. Application

2. Proposed Lay-out

FOR FURTHER DETAILS CONTACT:

<i>NAME</i>	Annalene de Beer
<i>POSITION</i>	<i>Director: Corporate Services</i>
<i>DIRECTORATE</i>	<i>CORPORATE SERVICES</i>
<i>CONTACT NUMBERS</i>	021-8088073
<i>E-MAIL ADDRESS</i>	Annalene.debeer@ Stellenbosch.gov.za
<i>REPORT DATE</i>	2023-08-24

ANNEXURE 1



STELLENBOSCH
STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

APPLICATION FOR LEASE OF MUNICIPAL LAND APPLICATION FORM

A: APPLICANT'S DETAILS

Name : Beyerskloof Wynbar

Physical address: 19 Ryneveldstraat

.....
.....
.....

Postal code: 7600

Mailing address: Posbus 107

Koelenhof

.....

Postal code: 7605

E-mail address: wynbar@beyerskloof.co.za

Telephone: 0818467997

Cell phone: 0715615672

B: PROPERTY DETAILS OF APPLICANT

Erf/farm number : 1259

Suburb: Stellenbosch CBD

Town: Stellenbosch

C: PROPERTY DETAILS OF LEASE AREA

Erf/farm number : 1259

Suburb: Stellenbosch CBD

Town: Stellenbosch

Area of encroachment: 21,907m²

* To be supplemented with a sketch-plan with dimension in m²

D: TYPE OF APPLICATION:

Please mark the appropriate block

For commercial purposes, other than for parking	X	☒
For commercial parking purposes,		☐
For residential parking purposes		☐
For non-commercial purposes (such as garden purposes, gates,ect)		☐
For projecting structures onto street reserves		☐
For projecting structures onto other council-owned land		☐
Other: please provide description:		☐

Brief description of application: Application for decking for dinning purpose as well as a retractable awning installation over the application area for coverage from weather elements, falling branches etc.

Motivation: Outside dining areas throughout Stellenbosch has become part of the cultural and tourism aesthetic of the town. The use of outside dining of course is also an economic necessity as it gives the opportunity to add extra seats for our business in order to help cover growing overheads. Our objective is to install a deck and awning for comfortable seating and shading for our patrons as well as to keep in style with the visual aesthetic around Stellenbosch – IE: Meraki, Cognito, Bartinny, Le Grand Domaine, Manouche, Basic Bistro and many other.

Attached is a rendering of the deck from the company who will manufacture as well as a rendering of the awning from the supplier – It will be a Burgundy awning. (The rendering has more of a red – which is not the accurate colour.)

.....

E: LIST OF ATTACHEMENTS AND SUPPORTING DOCUMENTS

Please mark the appropriate box

- | | |
|--|--------------------------|
| Special Power of Attorney, where Applicant is not the owner | ☐ |
| Diagram of proposed area of the lease area. x | ☐ |
| Letters of consent (affected neighbours). | ☐ |
| Application fee (non-refundable) | ☐ |

I hereby certify that the information supplied in this application form is correct and that I am property authorized to make this application.

Applicant's signature:



Date: 18 April 2023

Full name: Jacques Barnard van Straten

FOR OFFICIAL USE

- The application was considered onby.....
- The application was

☐	APPROVED
--------------------------	----------

☐	NOT APPROVED
--------------------------	--------------

Conditions (if any):

.....

.....

Applicant was informed of outcome on

.....
SIGNATURE OF RESPONSIBLE OFFICIAL

.....
DATE

Name:.....

***If approved**

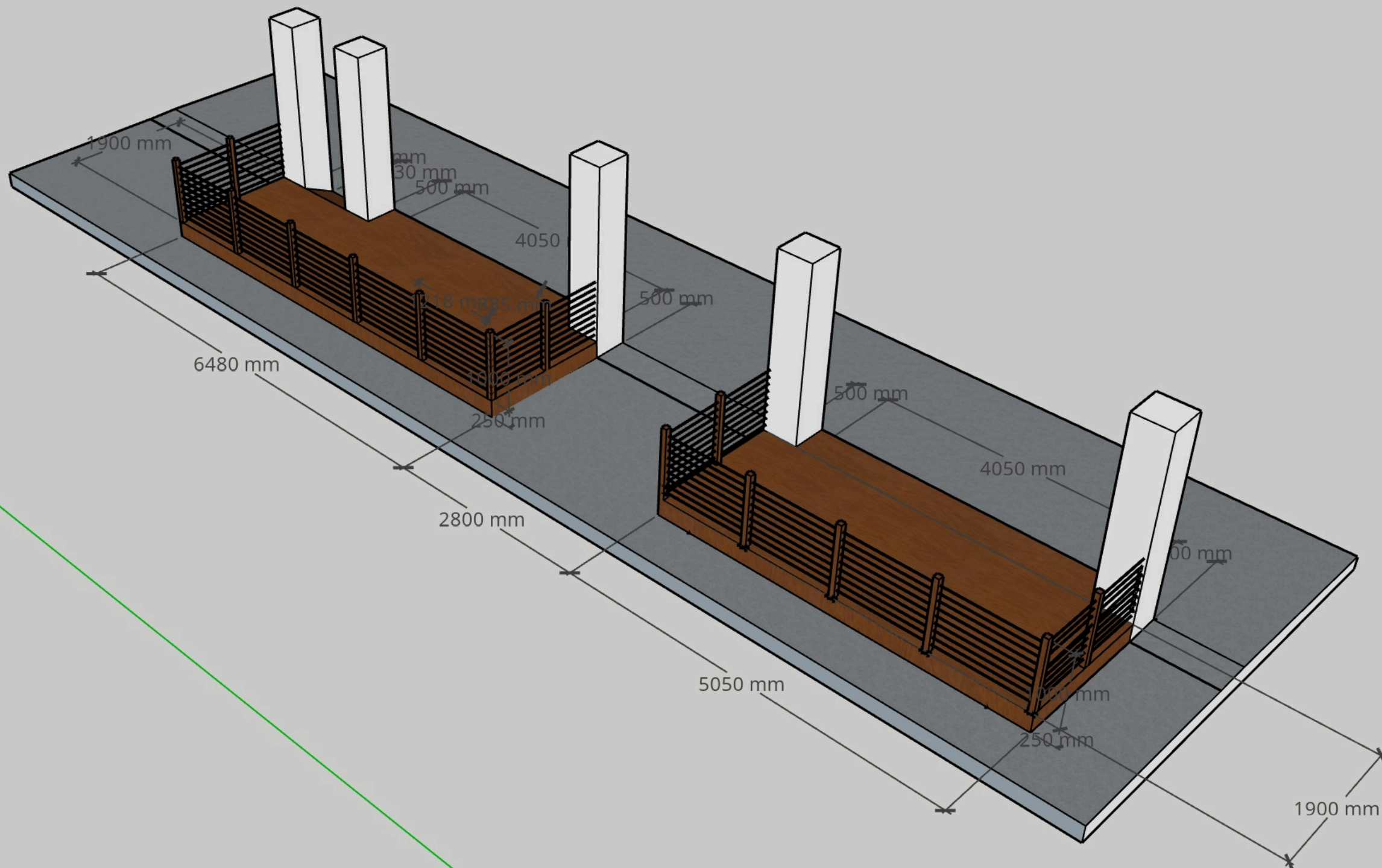
- ☐ Encroachment fee paid
- ☐ Lease Agreement signed
- ☐ Agreement/Permit processed on Contract Management System

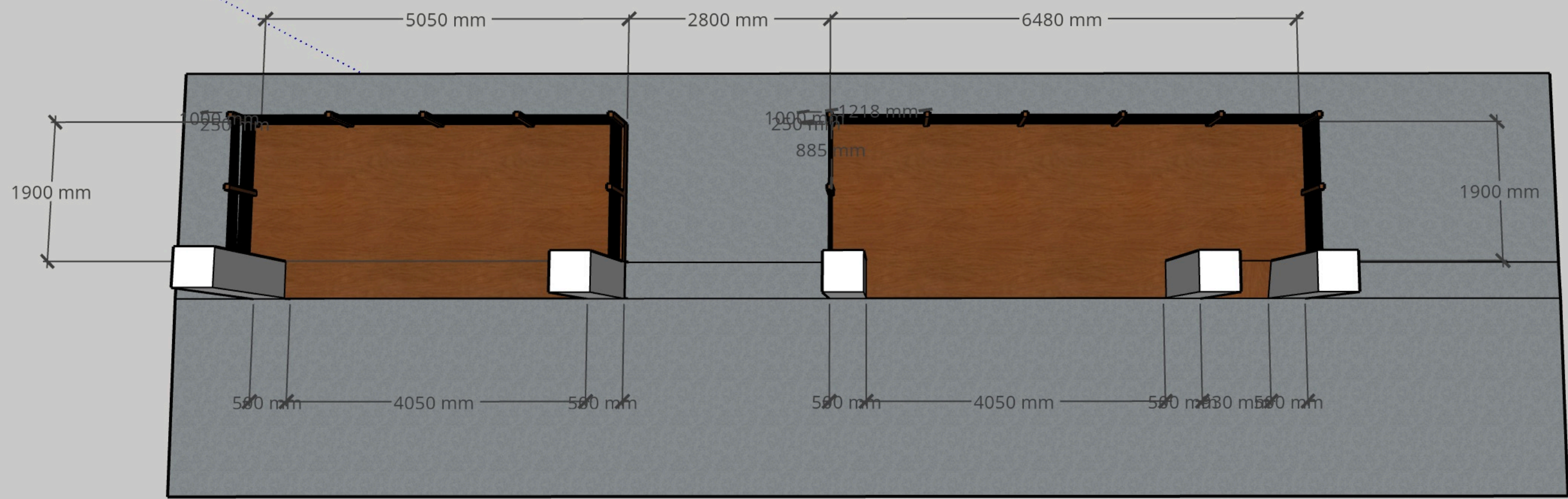
.....
SIGNATURE OF RESPONSIBLE OFFICIAL

.....
DATE

Name:.....

ANNEXURE 2





5.26	PROPOSED LEASE AGREEMENT: ERF 1847 (50 PLEIN STREET), STELLENBOSCH: DECAMERON
------	--

Collaborator No:

IDP KPA Ref No:

Meeting Date:

Good Governance

30 August 2023

1. SUBJECT: PROPOSED LEASE AGREEMENT: ERF 1847 (50 PLEIN STREET), STELLENBOSCH: DECAMERON

2. PURPOSE

To consider an application from Dannic CC on behalf of Decameron Restaurant, to enter into a Lease Agreement with Stellenbosch Municipality, in terms whereof they would be able to use a portion of Council-owned property for outdoor dining purposes.

3. DELEGATED AUTHORITY

In terms of the approved System of Delegations the Executive Mayor, in consultation with the Executive Mayoral Committee, has the delegated Authority to consider applications for Lease Agreements, up to a contract value not exceeding R5M and not exceeding a period of 10 years.

The approval of lease agreements of three (3) years and less has been delegated to the Municipal Manager.

4. EXECUTIVE SUMMARY

An application to use a portion of the street reserve for Outdoor Dining purposes has been received from Dannic CC, the owner of the building where Decameron Restaurant trades from situated on erf 1847, Stellenbosch. The application is in line with the provisions /requirements of the Outdoor Dining Policy and is supported by the Engineering Department. Under 6.2.1 are photographs showing how area is currently being used. The photos were taken by the contract management unit. The applicant has an encroachment agreement with the municipality and has been paying for the use of the area since November 2015. We served them with a letter requesting them to reapply for a new lease in order to ensure they are compliant.

They have not specified a requested time for the lease in the application however the applicant has indicated that they wish to ask for a longer-term lease agreement since they are of the intention of doing some work on the area in order to be able to use the outside area during rainy and winter seasons. The area they are interested in is 60m². They have also not filed a diagram of the proposed area however same is evident from the pictures in the item. The area is situated away from the sidewalk and therefore complies with the requirements for the area of 1.5m to be left open for pedestrian use.

The department can support the application based on current use and in line with the current practise of a three (3) year lease.

5. RECOMMENDATIONS

- (a) that the land as indicated on Fig 1 and 2, measuring approximately 60m². in extent, be identified as land not needed to provide the minimum level of basic municipal services during the period that the rights are awarded;
- (b) that the in principle approval be considered for an initial period of 3 years with the option of a renewal subject to the following conditions:
 - 1. That no permanent structure or deck be erected without the prior written consent of council, including approved building plans.
 - 2. Council is indemnified against all possible 3rd party claims.
 - 3. The municipality or other public service providers must not be prohibited from maintaining, repairing, upgrading and / or installing new public services within the leased area. For planned maintenance and repairs, upgrades or new installations, the applicant will be provided with a 5-day written notice to remove all furniture for the municipality and any other public service provider to gain access. For emergency work the applicant will be required to remove everything immediately for the municipality or other public service providers to gain access.
 - 4. The municipality reserves the right to end the lease agreement when the need arises, i.e. when the leased area is required for municipal or other public services purposes or when the applicant refuses the municipality or other public service providers access if required.
- (c) that the Municipal Manager be authorised to determine the rental amount and escalation; and
- (d) that the current encroachment agreement be cancelled when the lease is signed.

6. DISCUSSION / CONTENT**6.1 Background****6.1.1 Application for encroachment**

An application was received from Dannic CC, the owner of the property situated on 1847 Stellenbosch, from where Decameron Restaurant trades to enter into an agreement with Stellenbosch Municipality in terms whereof they would be able to use a portion of Council-owned property for outdoor dining purposes. A copy of the application is attached as **APPENDIX 1**. The extent of the encroachment area is approximately 60m².

6.2 DISCUSSION**6.2.1. Locality and context**

Erf 1847, Stellenbosch is located at 50 Plein Street, Stellenbosch, as shown on Fig 1. and Fig 2, below. Fig 3 is photographs of the current area being used for outdoor dining purposes.

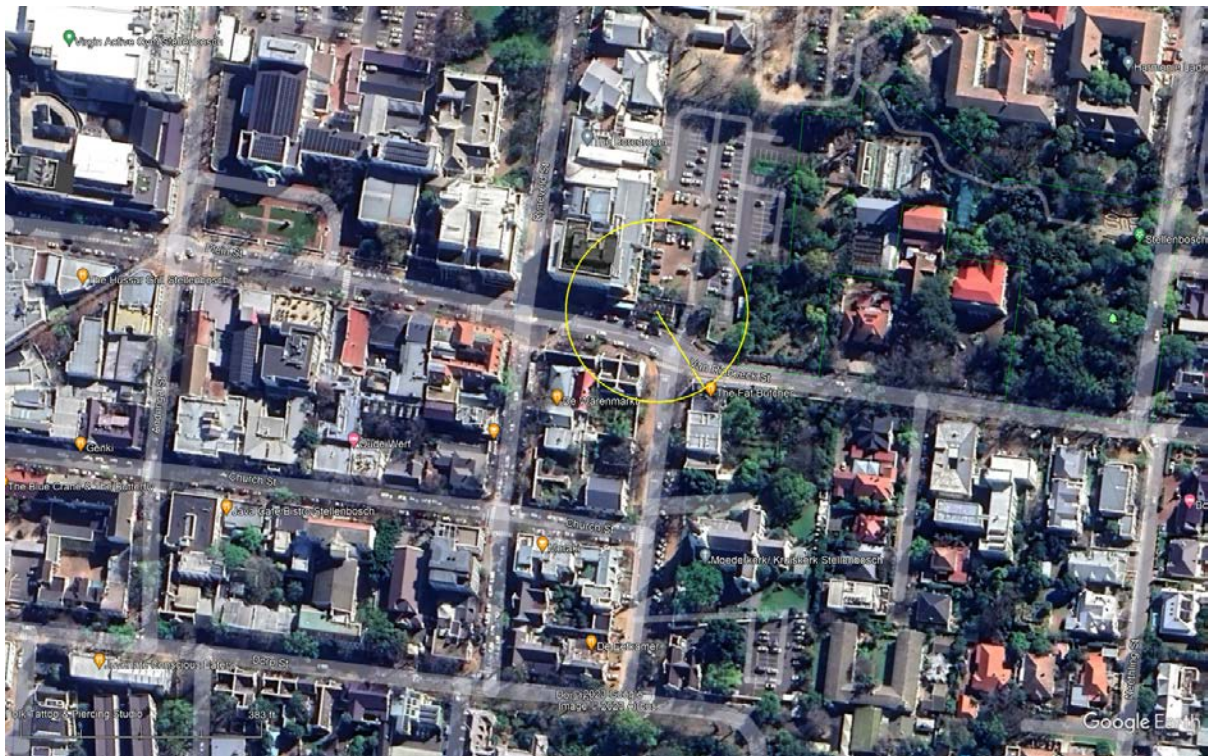


Fig 1. Location and context



Fig 2 .Extent of area





Fig 3. Current area being used for Outdoor Dining purposes

6.2.2 Legal requirements

6.2.2.1 Municipal Asset Transfer Regulations

In terms of Section 36 of the Municipal Asset Transfer Regulation, when considering an application for an approval of a right to use municipal property, the following needs to be taken into account, *inter alia*:-

- a) whether the capital asset may be required for the municipality's own use during the period for which the right is to be granted;
- b) the extent to which any compensation to be received for the right, together with the estimated value of improvements or enhancements to the asset, will result in a significant financial benefit to the municipality;
- c) the (possible) risks and rewards associated with the use in relation to the municipality's interests;
- d) Any comments received from the local community, and
- e) compliance with the legislative regime applicable to the proposed granting of the right.

6.2.2.2 Stellenbosch By-Law on Roads and Streets

In terms of section 4 of the Stellenbosch By-Law on Roads and Streets, no person may, **without prior written permission of the Municipality**, cause an encroachment on a street, sidewalk or road reserve forming part thereof.

6.2.2.3 Property Management policy

Section 9 2.2 deals with deviations from the competitive process, and reads as follows:

The Municipal Council **may dispense with the competitive processes** established in this policy and may enter into a Private Treaty Agreement through any convenient process, which may include direct negotiations, including in response to an unsolicited application, but only in the following circumstances, and only after having advertised Council's intention so to act. Should any objections be received as a consequence of such a notice, such objections first be considered before a final decision is taken to dispense with the competitive process established in this policy. However, should any objections, be received from potential, competitive bidders, then a public competitive process must be followed. The advertisement referred to above should also be served on adjoining landowners, where the Municipal Manager is of the opinion that such transaction may have a detrimental effect on such adjoining land owner(s):

(h) where encroachment applications are received from adjoining owners, including applications for outdoor dining permits, subject to approved tariff structure.

6.2.2.4 Outdoor Dining Policy

6.2.2.4.1 Policy Objective

To regulate the use of sidewalks or road reserves for the purpose of outdoor dining and trading, and the temporary use of Public Places for commercial ventures and displays.

6.2.2.4.2 Suitable Locations

Outdoor cafes, restaurants and traders may apply for lease agreements where local conditions are favorable for their operation, including areas of Council e.g. road reserves, sidewalks, Public Open Spaces. All applications in locations of a high pedestrian usage, e.g. a retail center, will be required to take pedestrian needs into consideration.

6.2.2.4.3 Assessment Criteria

The most important local conditions to be considered when an application for lease of the road reserve area is received will be those issues pertaining to pedestrian (including pedestrians who are using wheelchairs, baby prams or are visually impaired) and vehicular circulation, convenience and safety of patrons and the general public, existing streetscape elements and residential amenity.

The ground surface must be sufficiently level to support a proper layout and safe use.

6.2.2.4.4 Layout

The style, layout and orientation of furniture should be chosen according to the extent and shape of the available space of the encroachment area.

The size of an outdoor cafe or placement of any object on the sidewalk will depend on the width of the sidewalk.

6.2.2.4.5 Defined Area

The applicant will be required to define the area with appropriate markers. (ie a single galvanized steel nail inserted in between the pavers, or a paint spot no larger than 5cm in diameter placed at the corners of the defined area in a semi- permanent paint) to the satisfaction of Council.

6.2.2.4.6 Leased Conditions

The applicant must comply with the conditions set out in the lease agreement and this policy. The Lease will be for a period of not more than 5 years with an option to renew. These conditions would also generally require that the local environmental factors be reviewed annually and adjustments to the encroachment may be required.

If the lease agreement that is entered into is seen as not providing long term rights there is no need to advertise the proposed agreement for public input/comments or objections. Should the municipality receive any complaints the lease agreement may be terminated due to the objections.

6.3 Financial Implications

In terms of the current, approved tariff structure for outdoor dining lease agreements a monthly fee of R150.00 per square meters is charged and in this case R 9 000.00 (incl. of VAT) is applicable and an escalation of 6% is recommended.

6.4 Legal Implications

The legal implications are discussed under 6.2.2 above. As the proposed term of the lease agreement is three (3) years and when the value of the lease and property is taken into account the asset transfer regulations are not applicable as it is not seen as long-term rights on council property that are being given.

6.5 Staff Implications

No additional staff implications.

6.6 Previous / Relevant Council Resolutions**SPECIAL COUNCIL MEETING: 2022-06-22: ITEM 9.2.5 RESOLVED (nem con)**

- (a) that Council takes note of the intended communication to the public;
- (b) that Council takes note that all restaurants and businesses will be given notice to apply / re-apply for a lease to use council property for outdoor dining purposes; and
- (c) that the approval of the leases of three (3) years and less be delegated to the Municipal Manager for approval.

6.7 Risk Implications

The risks are addressed in the item.

6.7 Comments from Senior Management**6.8.1 Director: Infrastructure Services**

- The Municipality concludes an agreement with the applicant, detailing the conditions of approval.
- Leased area is zoned as road reserve and cannot be enclosed - to exclude the public, the municipality or other services provider from accessing the area.
- Ensure public risk and liability insurance is in place to cover 3rd party claims.
- Council is indemnified against all possible 3rd party claims.
- The municipality or other public service provider must not be prohibited from maintaining, repairing, upgrading and / or installing new public services with-in the leased area.
- The municipality reserves the right to end the lease agreement when the need arises, i.e. when the encroached space is required for municipal or other public services purposes.

6.8.2 Director: Planning and Economic Development

The Stellenbosch Municipality Roads and Street Bylaw, 2021 as promulgated in the Provincial Gazette no. 8436 dated 28 May 2021, defines "sidewalk" "means that portion of a street between the outer boundary of the roadway and the boundary lines of adjacent properties or buildings which is intended for the use of pedestrians, pedal cyclists and any other category of vehicles as may be determined by the Municipality in accordance with section 42(1);"

The definition clearly stipulates that the use of sidewalk is intended for pedestrians, pedal cyclists and any other vehicle. The use of sidewalks as part of the commercial activities of outdoor cafes and restaurants is a form of activity on the street that should improve the quality of public places and urban life. This use must however not be at the cost of overall safety of road users as intended in terms of the above bylaw.

It should be noted that currently the Final Draft Outdoor Dining and Events Overlay Zone, is undergoing a public participation process, of which the closing date for comments is 02 September 2023. In the absence of this overlay zone a suitable land use application must be submitted to evaluate the intended land usage, as the current and proposed land use is not in accordance with the applicable zoning.

6.8.3 Chief Financial Officer

Not requested.

6.8.4 Director: Community Services

Not requested

6.8.5 Municipal Manager

Not requested yet.

ANNEXURES: 1. Application

FOR FURTHER DETAILS CONTACT:

<i>NAME</i>	Annalene de Beer
<i>POSITION</i>	<i>Director: Corporate Services</i>
<i>DIRECTORATE</i>	<i>CORPORATE SERVICES</i>
<i>CONTACT NUMBERS</i>	021-8088073
<i>E-MAIL ADDRESS</i>	Annalene.debeer@ Stellenbosch.gov.za
<i>REPORT DATE</i>	2023-08-08

ANNEXURE 1



STELLENBOSCH
STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

APPLICATION FOR LEASE OF MUNICIPAL LAND APPLICATION FORM

A: APPLICANT'S DETAILS

Name : DANNIK CC

Physical address: 6 Dorp STREET
STELLENBOSCH

Postal code: 7600

Mailing address: Box 262
STELLENBOSCH

Postal code: 7599

E-mail address: Salomeb@intotech.co.za

Telephone: 021-882 8525

Cell phone:

B: PROPERTY DETAILS OF APPLICANT

Erf/farm number : 4818

Suburb: STELLENBOSCH

E: LIST OF ATTACHEMENTS AND SUPPORTING DOCUMENTS

Please mark the appropriate box

Special Power of Attorney, where Applicant is not the owner

☐

Diagram of proposed area of the lease area

☐

Letters of consent (affected neighbours)

☐

Application fee (non-refundable)

☐

I hereby certify that the information supplied in this application form is correct and that I am properly authorized to make this application.

Applicant's signature: F. Naude Date: 2nd May 2023

Full name: FREDERIK STEPHANUS NAUDE

5.27	PROPOSED LEASE AGREEMENT: ERF 561 (cnr HUGUENOT AND BORDEAUX STREETS, FRANSCHHOEK), FRANKS
------	---

Collaborator No:

IDP KPA Ref No:

Meeting Date:

Good Governance

30 August 2023

1. SUBJECT: PROPOSED LEASE AGREEMENT: ERF 561 (cnr HUGUENOT AND BORDEAUX STREETS, FRANSCHHOEK), FRANKS

2. PURPOSE

To consider an application from Franks, to enter into a Lease Agreement with Stellenbosch Municipality, in terms whereof they would be able to use a portion of Council-owned property for outdoor dining purposes.

3. DELEGATED AUTHORITY

In terms of the approved System of Delegations the Executive Mayor, in consultation with the Executive Mayoral Committee, has the delegated Authority to consider applications for Lease Agreements, up to a contract value not exceeding R5M and not exceeding a period of 10 years.

The approval of lease agreements of three (3) years and less has been delegated to the Municipal Manager.

4. EXECUTIVE SUMMARY

An application to use a portion of the street reserve for Outdoor Dining purposes has been received from the owner of Franks trading of erf 561, Franschhoek. The application is in line with the provisions /requirements of the Outdoor Dining Policy and is supported by the Engineering Department. Under 6.2.1 are photos showing how are they intend on using the area. The photos were taken by the contract management unit. The applicant does not currently have any lease agreement or previous encroachment agreement with the municipality.

They have not specified a requested time for the lease and the area they are interested in is 39 m².

The applicant is of the intention to erect certain structures on the proposed leased area and has submitted draft plans in support of the application. With the new structures there is still a walkway left open for use of the public. The diagram indicates that 1.5m will be left unobstructed on the sidewalk for pedestrian use.

The department can in principle support the application provided that all conditions set are adhered to.

5. RECOMMENDATIONS

- (a) that the land as indicated on Fig 1 and 2, measuring approximately 39m² in extent, be identified as land not needed to provide the minimum level of basic municipal services during the period that the rights are awarded;
- (b) that the in principle approval be considered for an initial period of 3 years with the option of a renewal subject to the following conditions:
 - 1. That no permanent structure or deck be erected without the prior written consent of council, as well as approved building plans from the building department.
 - 2. Council is indemnified against all possible 3rd party claims.
 - 3. The municipality or other public service providers must not be prohibited from maintaining, repairing, upgrading and / or installing new public services within the leased area. For planned maintenance and repairs, upgrades or new installations, the applicant will be provided with a 5-day written notice to remove all furniture for the municipality and any other public service provider to gain access. For emergency work the applicant will be required to remove everything immediately for the municipality or other public service providers to gain access.
 - 4. In the event that the deck needs to be removed the cost of the removal and re-installation will be for the applicant.
 - 5. The municipality reserves the right to end the lease agreement when the need arises, i.e. when the leased area is required for municipal or other public services purposes or when the applicant refuses the municipality or other public service providers access if required.
 - 6. That the area to be used be properly demarcated.
- (c) that the Municipal Manager be authorised to determine the rental amount and escalation.

6. DISCUSSION / CONTENT

6.1 Background

6.1.1 Application for lease

An application was received from Franks to enter into an agreement with Stellenbosch Municipality in terms whereof they would be able to use a portion of Council-owned property for outdoor dining purposes. A copy of the application is attached as **APPENDIX 1**, with drawings of the proposed lay-out attached as **APPENDIX 2**. The extent of the area is approximately 39m².

6.2 DISCUSSION.

6.2.1. Locality and context

Erf 561, Franschoek is located on the corner of Huguenot and Bordeaux Streets, as shown on Fig 1. and Fig 2, below as well as photographs of how they intend on using the area under Fig 3.



Fig 1. Location and context

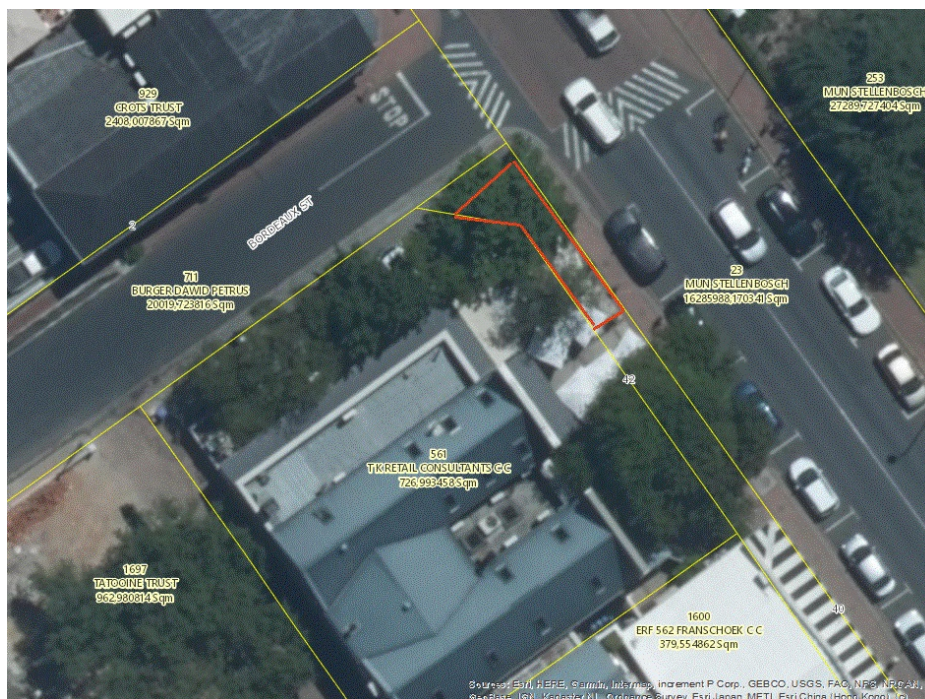


Fig 2. Extent of area





Fig. 3 Suggested area for outdoor dining

6.2.2 Legal requirements

6.2.2.1Municipal Asset Transfer Regulations

In terms of Section 36 of the Municipal Asset Transfer Regulation, when considering an application for an approval of a right to use municipal property, the following needs to be taken into account, *inter alia*:-

- a) whether the capital asset may be required for the municipality's own use during the period for which the right is to be granted;
- b) the extent to which any compensation to be received for the right, together with the estimated value of improvements or enhancements to the asset, will result in a significant financial benefit to the municipality;
- c) the (possible) risks and rewards associated with the use in relation to the municipality's interests;
- d) Any comments received from the local community, and
- e) compliance with the legislative regime applicable to the proposed granting of the right.

6.2.2.2 Stellenbosch By-Law on Roads and Streets

In terms of section 4 of the Stellenbosch By-Law on Roads and Streets, no person may, **without prior written permission of the Municipality**, cause an encroachment on a street, sidewalk or road reserve forming part thereof.

6.2.2.3 Property Management policy

Section 9 2.2 deals with deviations from the competitive process, and reads as follows:

The Municipal Council **may dispense with the competitive processes** established in this policy and may enter into a Private Treaty Agreement through any convenient process, which may include direct negotiations, including in response to an unsolicited application, but only in the following circumstances, and only after having advertised Council's intention so to act. Should any objections be received as a consequence of such a notice, such objections first be considered before a final decision is taken to dispense with the competitive process established in this policy. However, should any objections be received from potential, competitive bidders, then a public competitive process must be followed. The advertisement referred to above should also be served on adjoining landowners, where the Municipal Manager is of the opinion that such transaction may have a detrimental effect on such adjoining land owner(s):

(h)where encroachment applications are received from adjoining owners, including applications for outdoor dining permits, subject to approved tariff structure.

6.2.2.4 Outdoor Dining Policy

6.2.2.4.1 Policy Objective

To regulate the use of sidewalks or road reserves for the purpose of outdoor dining and trading, and the temporary use of Public Places for commercial ventures and displays.

6.2.2.4.2 Suitable Locations

Outdoor cafes, restaurants and traders may apply for lease where local conditions are favorable for their operation, including areas of Council e.g. road reserves, sidewalks, Public Open Spaces. All applications in locations of a high pedestrian usage, e.g. a retail center, will be required to take pedestrian needs into consideration.

6.2.2.4.3 Assessment Criteria

The most important local conditions to be considered when an application for encroachment of the road reserve area is received will be those issues pertaining to pedestrian (including pedestrians who are using wheelchairs, baby prams or are visually impaired) and vehicular circulation, convenience and safety of patrons and the general public, existing streetscape elements and residential amenity.

The ground surface must be sufficiently level to support a proper layout and safe use.

6.2.2.4.4 Layout

The style, layout and orientation of furniture should be chosen according to the extent and shape of the available space of the encroachment area.

The size of an outdoor cafe or placement of any object on the sidewalk will depend on the width of the sidewalk.

6.2.2.4.5 Defined Area

The applicant will be required to define the area with appropriate markers. (ie a single galvanized steel nail inserted in between the pavers, or a paint spot no larger than 5cm in diameter placed at the corners of the defined area in a semi- permanent paint) to the satisfaction of Council.

6.2.2.4.6 Lease Conditions

The applicant must comply with the conditions set out in the lease agreement and this policy. The lease will be for a period of not more than 5 years with an option to renew. These conditions would also generally require that the local environmental factors be reviewed annually and adjustments to the lease agreement may be required.

If the lease agreement that is entered into is seen as not providing long-term rights, there is no need to advertise the proposed agreement for public input/comments or objections. Should the municipality receive any complaints the lease agreement may be terminated due to the objections.

6.3 Financial Implications

In terms of the current, approved tariff structure for outdoor dining lease agreements a fee of R150 per m² is charged on a monthly basis which means that the monthly rental will be R 5 850.00 if the new lay out is approved (incl. of VAT) and an escalation of 6% is recommended.

6.4 Legal Implications

The legal implications are discussed under 6.2.2 above. As the proposed term of the lease agreement is three (3) years and when the value of the lease and property is taken into account the asset transfer regulations are not applicable as it is not seen as long term rights on council property that are being given.

6.5 Staff Implications

No additional staff implications.

6.6 Previous / Relevant Council Resolutions**SPECIAL COUNCIL MEETING: 2002-06-22: ITEM 9.2.5 RESOLVEND (nem con)**

- (a) That council takes note of the intended communication to the public;
- (b) That Council takes note that all restaurants and business will be given notice to apply / re-apply for a lease to use council property for outdoor dining purposes; and
- (c) That the approval of the leases of three (3) years and less be delegated to the Municipal Manager for approval.

6.7 Risk Implications

The risks are addressed in the item.

6.8 Comments from Senior Management**6.8.1 Director: Infrastructure Services**

- The Municipality concludes an agreement with the applicant, detailing the conditions of approval.
- Leased area is zoned as road reserve and cannot be enclosed - to exclude the public, the municipality or other services provider from accessing the area.
- Ensure public risk and liability insurance is in place to cover 3rd party claims.
- Council is indemnified against all possible 3rd party claims.
- The municipality or other public service provider must not be prohibited from maintaining, repairing, upgrading and / or installing new public services with-in the leased area.
- The municipality reserves the right to end the lease agreement when the need arises, i.e. when the leased space is required for municipal or other public services purposes.
- Areas outside of the leased area must remain free from any obstruction to pedestrian movements.

6.8.2 Director: Planning and Economic Development

The Stellenbosch Municipality Roads and Street Bylaw, 2021 as promulgated in the Provincial Gazette no. 8436 dated 28 May 2021, defines "sidewalk" "means that portion of a street between the outer boundary of the roadway and the boundary lines of adjacent properties or buildings which is intended for the use of pedestrians, pedal cyclists and any other category of vehicles as may be determined by the Municipality in accordance with section 42(1);"

The definition clearly stipulates that the use of sidewalk is intended for pedestrians, pedal cyclists and any other vehicle. The use of sidewalks as part of the commercial activities of outdoor cafes and restaurants is a form of activity on the street that should improve the quality of public places and urban life. This use must however not be at the cost of overall safety of road users as intended in terms of the above bylaw.

It should be noted that currently the Final Draft Outdoor Dining and Events Overlay Zone, is undergoing a public participation process, of which the closing date for comments is 02 September 2023. In the absence of this overlay zone a suitable land use application must be submitted to evaluate the intended land usage, as the current and proposed land use is not in accordance with the applicable zoning.

6.8.3 Chief Financial Officer

Not requested

6.8.4 Director: Community Services

Not requested

6.8.5 Municipal Manager

Not requested yet.

ANNEXURES: 1. Application

2. Proposed Lay-out

FOR FURTHER DETAILS CONTACT:

NAME	Annalene de Beer
POSITION	Director: Corporate Services
DIRECTORATE	CORPORATE SERVICES
CONTACT NUMBERS	021-8088018
E-MAIL ADDRESS	Annalene.debeer@ Stellenbosch.gov.za
REPORT DATE	2023-08-24

ANNEXURE 1



STELLENBOSCH
STELLENBOSCH • PNIEL • FRANSCHHOEK

MUNICIPALITY • UMASIPALA • MUNISIPALITEIT

APPLICATION FOR LEASE OF MUNICIPAL LAND APPLICATION FORM

A: APPLICANT'S DETAILS

Name : SUZANNE SCHEKMAN

Physical address: 7 FIN WHALE WAY, KLEIN SLANGKOP

.....

.....

Postal code: 7975

Mailing address: 7 FIN WHALE WAY, KLEIN SLANGKOP

.....

.....

Postal code: 7975

E-mail address: SUZANNE@UNTITLED-DESIGNHUB.COM

Telephone:

Cell phone: 0829285100

B: PROPERTY DETAILS OF APPLICANT

Erf/farm number : 561

Suburb: FRANSCHHOEK

Town: STELLENBOSCH

C: PROPERTY DETAILS OF LEASE AREA APPLYING FOR

Erf/farm number : 564

Suburb: FRANSCHHOEK

Town: STELLENBOSCH

Area applying for 39m²

* To be supplemented with a sketch-plan with dimension in m²

D: TYPE OF APPLICATION:

Please mark the appropriate block

For commercial purposes, other than for parking ☒

For commercial parking purposes ☐

For residential parking purposes ☐

For non-commercial purposes ☐

For projecting structures onto street reserves ☐

For projecting structures onto other council-owned land ☒

Other: please provide description: ☐

Brief description of application: We would like to build a new pergola, planter and seating structure to the front of our restaurant space up to the line of an existing planter on site.

The full width of sidewalk is to be maintained

Motivation: We would like to activate the street front of the property. The pergola will offer shade in summer as well rain cover in the winter, ensuring the space is kept active all year round, keeping "life" on the street. The planter and seating creates a clear boundary

to the property ensuring the walkway and pavement is clear to human traffic. The planter
will also soften the street line bringing in a green element to the hard built edge of the road.
.....
.....
.....
.....
.....

E: LIST OF ATTACHEMENTS AND SUPPORTING DOCUMENTS

Please mark the appropriate box

- Special Power of Attorney, where Applicant is not the owner

☒
- Diagram of proposed area of the lease area

☒
- Letters of consent (affected neighbours)

☐
- Application fee (non-refundable)

☐

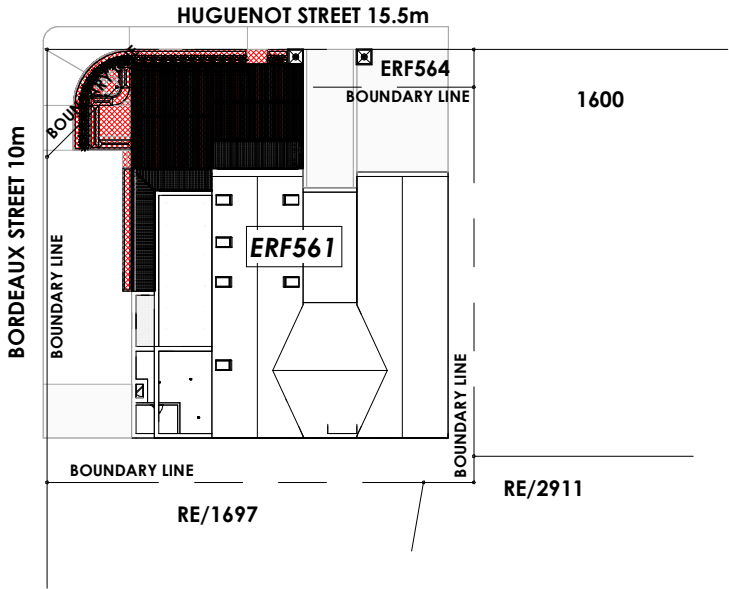
I hereby certify that the information supplied in this application form is correct
and that I am property authorized to make this application.

Applicant's signature: *Suzanne Schekman*.....Date: 2023.06.22.....

Full name: SUZANNE SCHEKMAN.....

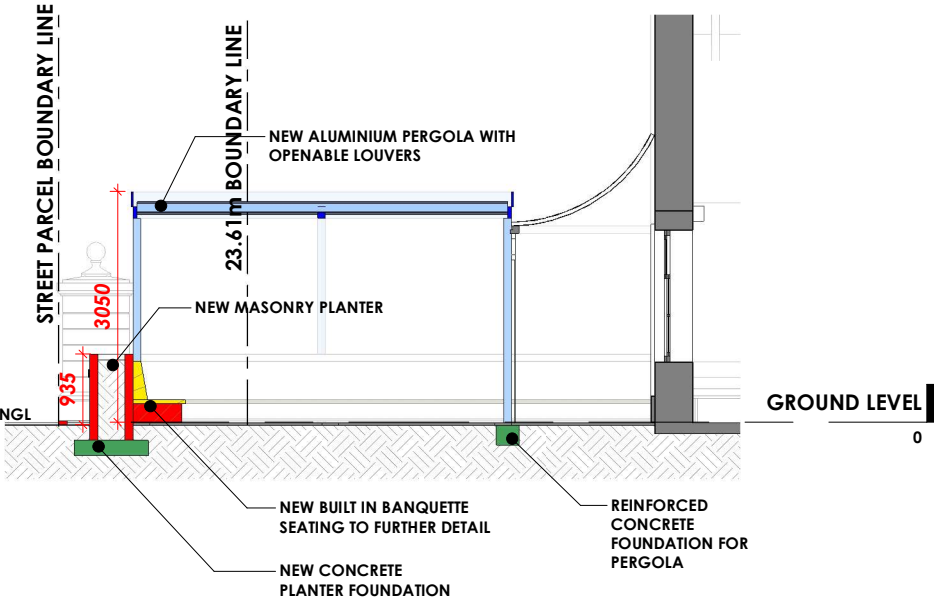
ANNEXURE 2

this drawing is copyright and remains the property of untitled – design hub and is to be read in conjunction with relevant engineers drawings where applicable. contractor to keep a full set of drawings on site. all works to be carried out in accordance with local authority regulations. all dimensions are given in millimetres. figured dimensions to be used in preference to scaled dimensions. all relevant details, levels, dimensions are to be checked on site prior to commencement of any work, and any discrepancies are to be reported immediately to untitled – design hub.



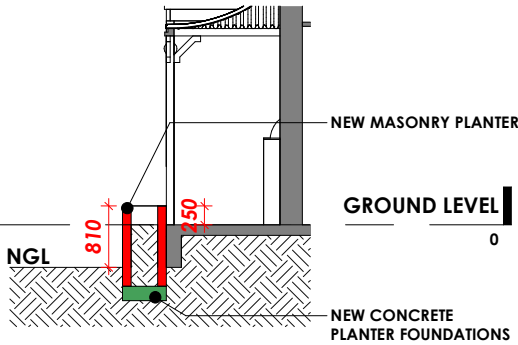
SITE PLAN

scale 1 : 500



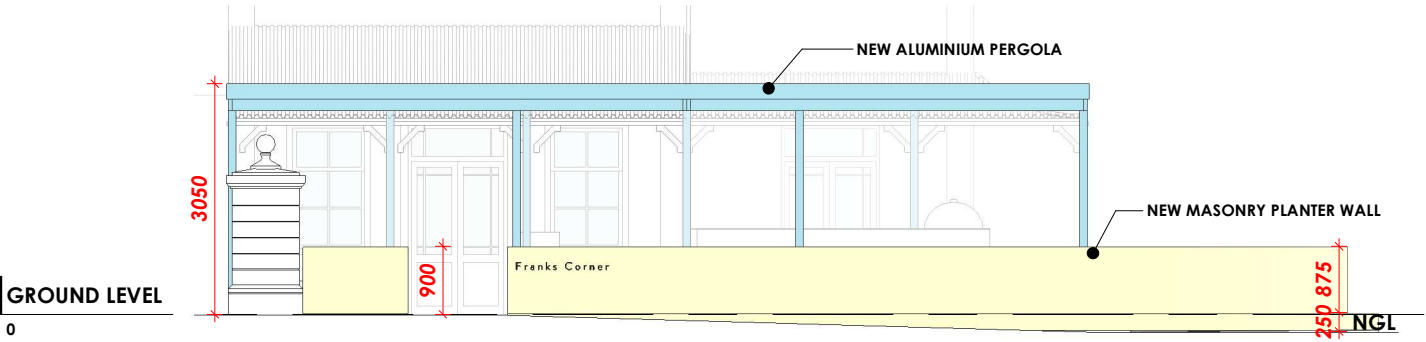
SECTION A

scale 1 : 100



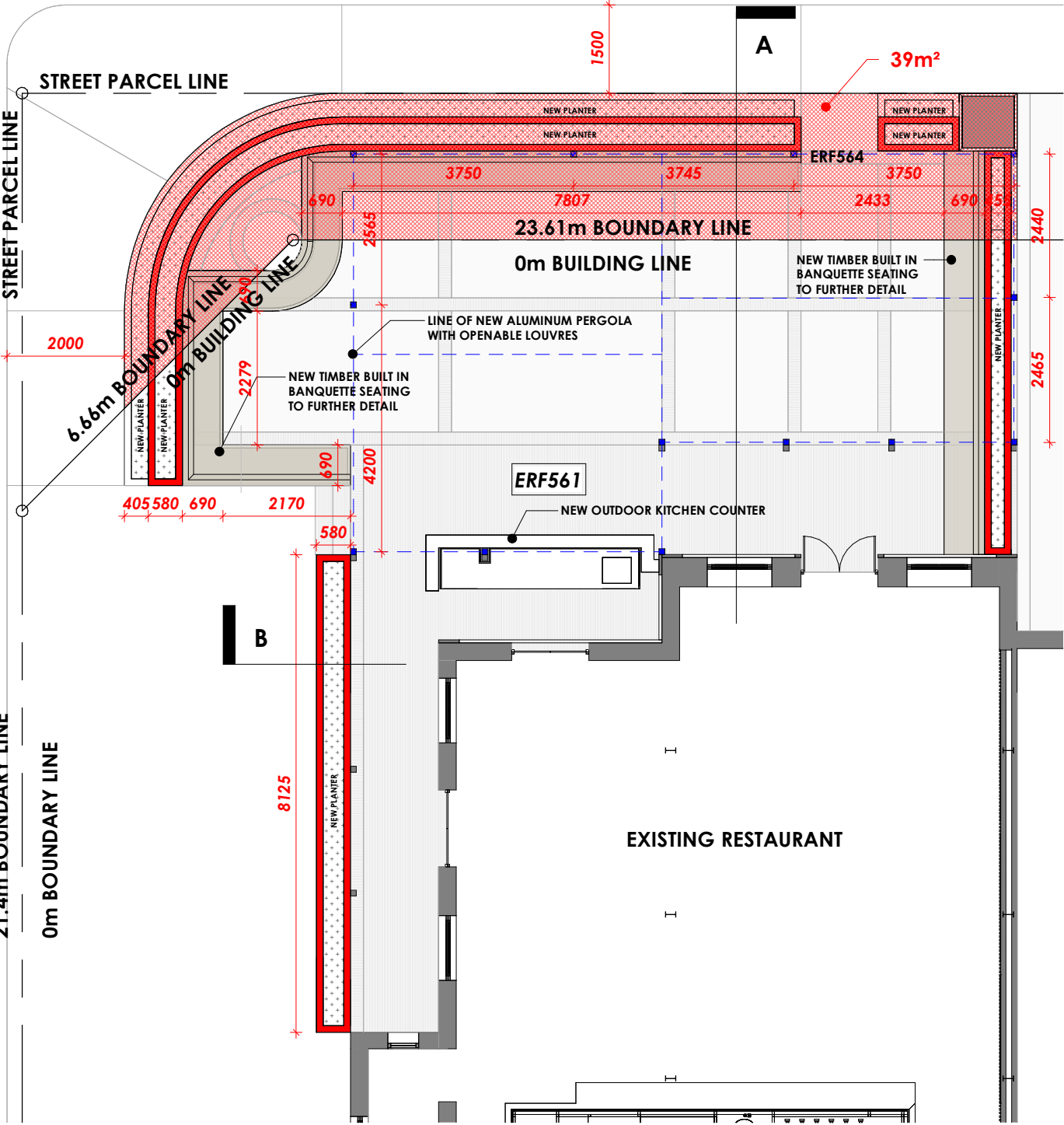
SECTION B

scale 1 : 100



FRONT ELEVATION

scale 1 : 100



GROUND FLOOR PLAN

scale 1 : 100

PROPOSED NEW PERGOLA, PLANTER AND BANQUETTE SEATING TO

FRANKS

ERF 561
42 HUGUENOT STREET
FRANSCHHOEK

REVISIONS

REV. DESCRIPTION DATE

2307_

AC.1001

COUNCIL SUBMISSION

CLIENT

T. RETAIL CONSULTANTS C C

ARCHITECT

SUZANNE SCHICKMAN PR ARCH28994368

DATE 2023.06.22

SCALE As indicated

5.28	STATUS REPORT ON OUTDOOR DINING AT SPECIAL MAYCO MEETING AUGUST 2023
------	---

Collaborator No:

IDP KPA Ref No:

Meeting Date:

Good Governance

30 August 2023

1. **SUBJECT: STATUS REPORT ON OUTDOOR DINING AT SPECIAL MAYCO MEETING AUGUST 2023**
2. **PURPOSE**

to provide feedback to the Executive Mayor on the status of the Outdoor Dining Applications.

3. **DELEGATED AUTHORITY**

The Executive Mayor in consultation with the Mayoral committee.

4. **EXECUTIVE SUMMARY**

During the Council Meeting of June 2022, it was resolved that communication was to be handed to all restaurants and businesses indicating that they need to apply for lease agreements in order to comply with the Outdoor Dining Policy of the municipality.

Subsequent to the communication being delivered the municipality received applications from a number of restaurants and businesses and items have been prepared for consideration by the Executive Mayor in consultation with the Mayoral Committee.

5. **RECOMMENDATIONS**

- (a) that the Mayoral Committee takes note of the report; and
- (b) that the way forward be considered of those restaurants who received notices, but are not complying by applying to lease the land they are using for outdoor dining or not complying with the requirements/conditions set for them

6. **DISCUSSION / CONTENT**

6.1 Background

In 2022 Council approved formal communication to be delivered to all restaurants and businesses making use of road reserved for Outdoor Dining purposes. This included businesses making use of the sidewalk.

6.2 DISCUSSION

During February 2023 the property management unit, together with law enforcement, hand delivered 65 letters to restaurants and businesses in the Stellenbosch CBD requesting them to apply for the lease of municipal land in order to be compliant with the Outdoor Dining Policy. To date, the municipality has received 32 applications in line with the Outdoor Dining Policy. The contract management unit took photos of all the restaurants that applied and are using the spaces for outdoor dining to enable the administration to put items together for the meeting that was requested and scheduled for 30 August 2023. It also meant drawing information from

GIS herself as the GIS unit indicated that they do not provide this information to other directorates. A total of 28 items are serving at this meeting. The photos were required as most of the restaurants did not comply with the requirements set for them to supply the necessary information. There are also restaurants that have not responded and provided their applications yet they continue to use the areas for outdoor dining and is not in compliance with our bylaws. The Outdoor Dining Policy is currently under review to include all the changes and the council resolutions of June 2022 and will be submitted for consideration shortly.

A list of the restaurants and businesses that received notification letters, as well as a summary of applications received, and items is attached hereto marked as **APPENDIX 1**.

6.2.2 Legal requirements

6.2.2.1 Stellenbosch By-Law on Roads and Streets

In terms of section 4 of the Stellenbosch By-Law on Roads and Streets, no person may, **without prior written permission of the Municipality**, cause an encroachment on a street, sidewalk or road reserve forming part thereof.

6.2.2.2 Property Management policy

Section 9 2.2 deals with deviations from the competitive process, and reads as follows:

The Municipal Council **may dispense with the competitive processes** established in this policy, and may enter into a Private Treaty Agreement through any convenient process, which may include direct negotiations, including in response to an unsolicited application, but only in the following circumstances, and only after having advertised Council's intention so to act. Should any objections be received as a consequence of such a notice, such objections first be considered before a final decision is taken to dispense with the competitive process established in this policy. However, should any objections, be received from potential, competitive bidders, then a public competitive process must be followed. The advertisement referred to above should also be served on adjoining land owners, where the Municipal Manager is of the opinion that such transaction may have a detrimental effect on such adjoining land owner(s):

(h)where encroachment applications are received from adjoining owners, including applications for outdoor dining permits, subject to approved tariff structure;

6.2.2.3 Outdoor Dining Policy

6.2.2.3.1 Policy Objective

To regulate the use of sidewalks or road reserves for the purpose of outdoor dining and trading, and the temporary use of Public Places for commercial ventures and displays.

6.2.2.3.2 Suitable Locations

Outdoor cafes, restaurants and traders may apply for lease where local conditions are favorable for their operation, including areas of Council e.g. road reserves, sidewalks, Public Open Spaces. All applications in locations of a high pedestrian usage, e.g. a retail center, will be required to take pedestrian needs into consideration.

6.2.2.3.3 Assessment Criteria

The most important local conditions to be considered when an application for encroachment of the road reserve area is received will be those issues pertaining to pedestrian (including pedestrians who are using wheelchairs, baby prams or are visually impaired) and vehicular circulation, convenience and safety of patrons and the general public, existing streetscape elements and residential amenity.

The ground surface must be sufficiently level to support a proper layout and safe use.

6.2.2.3.4 Layout

The style, layout and orientation of furniture should be chosen according to the extent and shape of the available space of the encroachment area.

The size of an outdoor cafe or placement of any object on the sidewalk will depend on the width of the sidewalk.

6.2.2.3.5 Defined Area

The applicant will be required to define the area with appropriate markers. (ie a single galvanized steel nail inserted in between the pavers, or a paint spot no larger than 5cm in diameter placed at the corners of the defined area in a semi- permanent paint) to the satisfaction of Council.

6.2.2.3.6 Lease Conditions

The applicant must comply with the conditions set out in the lease agreement and this policy. The lease will be for a period of not more than 5 years with an option to renew. These conditions would also generally require that the local environmental factors be reviewed annually and adjustments to the lease agreement may be required.

If the lease agreement that is entered into is seen as not providing long term rights, there is no need to advertise the proposed agreement for public input/comments or objections. Should the municipality receive any complaints the lease agreement may be terminated due to the objections.

6.3 Financial Implications

In terms of the current, approved tariff structure for outdoor dining lease agreements a rental rate based on the tariff in the tariff book of R150 per m² is charged on a monthly basis. The financial implications will therefore be determined by the size and area that each applicant has applied for. These rates are amended annually with the budget process.

6.4 Legal Implications

The legal implications are discussed under 6.2.2 above. It was decided to give an initial lease of three (3) years to restaurants that complies for several reasons – the turnover of restaurants is high and often a restaurant closes down and a new one opens and the intention is that the lease agreements are then not transferred, but a new agreement be entered into with the new restaurateur. It will also provide a platform to see if they

restauranteur complies with the provisions of their lease agreement and pays rental as required.

As the proposed term of the lease agreement is three (3) years and when the value of the lease and property is taken into account the asset transfer regulations is not applicable as it is not seen as long term rights on council property that are being given.

6.5 Staff Implications

The unit currently comprises of one person who deals with all lease agreements of council property excluding LED and housing rental stock. This unit also assists Supply Chain Management and the MM's office with disputes around tenders and handles all other lease agreements of Council land excluding properties used for LED projects and rental stock.

Two additional employees are intended to be appointed to assist with the administration and the investigations for compliance.

6.6 Previous / Relevant Council Resolutions

SPECIAL COUNCIL MEETING: 2002-06-22: ITEM 9.2.5 RESOLVEND (nem con)

- (a) That council takes note of the intended communication to the public;
- (b) That Council takes note that all restaurants and business will be given notice to apply / re-apply for a lease to use council property for outdoor dining purposes; and
- (c) That the approval of the leases of three (3) years and less be delegated to the Municipal Manager for approval.

6.7 Risk Implications

An enormous amount of administration goes into the contract management of the outdoor dining spaces.

The non-compliance of restaurants with provisions linked to their contracts or just not applying for the use of the outdoor spaces and actions against those restaurants poses a huge challenge.

6.8 Comments from Senior Management

Not requested.

ANNEXURES: 1. Summary of outdoor dining notifications and applications

FOR FURTHER DETAILS CONTACT:

NAME	Annalene de Beer
POSITION	<i>Director: Corporate Services</i>
DIRECTORATE	CORPORATE SERVICES
CONTACT NUMBERS	021-8088018
E-MAIL ADDRESS	Annalene.debeer@ Stellenbosch.gov.za
REPORT DATE	2023-08-24

ANNEXURE 1

RESTAURANT	NOTIFICATION	APPLICATION RECEIVED	COMMENTS:
DECAMERON RESTAURANT	23/02/2023	YES	Item to serve at special Mayco on 30/08/2023
VADAS	23/02/2023	NO	No response
MOJI	23/02/2023	NO	No response
TASTE	23/02/2023	NO	No response
STUD	23/02/2023	NO	No response
FIDDERS	23/02/2023	NO	No response
MANOUSHE	23/02/2023	YES	Item to serve at special Mayco on 30/08/2023
MORO	23/02/2023	YES	Item to serve at special Mayco on 30/08/2023
STELLENBOSCH WINE BAR	23/02/2023	NO	No response
LA COCO	23/02/2023	NO	No response
LYNNE	23/02/2023	NO	Moved - no longer making use of sidewalk
COFFEE AT JUSTICE	23/02/2023	NO	No response
LEGADO ANDRING	23/02/2023	NO	No response
JARDINE	23/02/2023	YES	Closed
JUVENATE	23/02/2023	NO	No response
LEGADO	23/02/2023	NO	No response
COGNITO	23/02/2023	YES	Item served at Mayco in August 2023
MOOD COFFEE BAR	23/02/2023	NO	No response
STELLENBOSCH KITCHEN	23/02/2023	NO	No response
SUSHI BOX	23/02/2023	YES	Item to serve at special Mayco on 30/08/2023
RYKAARTS	23/02/2023	YES	To determine erf line before submitting to Mayco
TUTTI	23/02/2023	NO	No response
CRÈME DE LEVAIN	23/02/2023	NO	No response
BRAMPTON WINE STUDIO	23/02/2023	YES	Item to serve at special Mayco on 30/08/2023
HYGGE HYGGE	23/02/2023	NO	No response
SWIRL'N	23/02/2023	NO	No response
CRAFT WHEAT AND HOPS	23/02/2023	NO	No response
CRÈME DE LEVAIN	23/02/2023	NO	No response
JAVA BISTRO	23/02/2023	NO	No response
BASIC BISTRO	23/02/2023	YES	Item to serve at special Mayco on 30/08/2023
KOOPMANHUIJS	23/02/2023	NO	No response

LIRA & FYNN	23/02/2023	NO	No longer using sidewalk
THE CHURCH STREET AFRICA ART GALLERY	23/02/2023	NO	No response
SKEP	23/02/2023	NO	No response
ADDRES WHAT TO WEAR	23/02/2023	NO	No response
MILIEU	23/02/2023	NO	No response
DE STOMME JONGE	23/02/2023	NO	Closed
THE WINE GLASS STELLENBOSCH	23/02/2023	YES	Item to serve at special Mayco on 30/08/2023
BOOTLEGGER COFFEE COMPANY	23/02/2023	YES	Ownership changed - to file new application
VIDA E CAFÉ	23/02/2023	YES	Item to serve at special Mayco on 30/08/2023
DE WARENMARKET	23/02/2023	YES	Item to serve at special Mayco on 30/08/2023
KAPSTADT BRAUHAUS		YES	Item to serve at special Mayco on 30/08/2023
ZUSIPHE RESTAURANT		YES	Item to serve at special Mayco in September 2023
SHIFT EXPRESSO		YES	Old application, to obtain new application form
LE GRAND DOMAINE		YES	Item to serve at special Mayco on 30/08/2023
JULIAN'S CAFÉ BAR	14/03/2023	YES	Item to serve at special Mayco on 30/08/2023
CIOVITA	14/03/2023	YES	Item to serve at special Mayco on 30/08/2023
STARBUCKS	14/03/2023	NO	No response
HUDSONS	14/03/2023	YES	To determine erf line before submitting to Mayco
THE WAFFLE MILL	14/03/2023	YES	Item to serve at special Mayco on 30/08/2023
ART WICKER MALAWI	14/03/2023	NO	No longer using sidewalk
MUGG & BEAN	14/03/2023	NO	No response
SUSHI GURU	14/03/2023	NO	No response
EMMA'S FRESHLY BAKED	14/03/2023	NO	No response
ADAM & EVE COLAB	14/03/2023	YES	Item to serve at special Mayco on 30/08/2023
CASA CERVEZA	14/03/2023	YES	Item to serve at special Mayco on 30/08/2023
BOOBABEAUTE A	14/03/2023	NO	No response
DE VLEISPALEIS	14/03/2023	NO	No response

LE SIEMMA CAFÉ BISTROT	14/03/2023	YES	Application withdrawn, unhappy about fees
DE AKKER	14/03/2023	NO	No response
BLIX	14/03/2023	YES	Item to serve at special Mayco on 30/08/2023
MILL COFFEE HOUSE	14/03/2023	YES	Item to serve at special Mayco on 30/08/2023
JACKS BAGELS	14/03/2023	YES	Item to serve at special Mayco on 30/08/2023
THE MEETING PLACE	14/03/2023	YES	Item to serve at special Mayco on 30/08/2023
ROCOMAMAS	14/03/2023	NO	Large outstanding debt, no response
SEATTLE COFFEE CO	14/03/2023	NO	No response
GARY ROM MAN	14/03/2023	NO	No response
SIMPLY GREEK	14/03/2023	NO	No response
COL CACHIO FRANSCHHOEK		YES	Item to serve at Mayco September 2023
TAISHAN RESTAURANT		YES	Application withdrawn, unhappy about fees
ROME IN A BITE		YES	Item to serve at Mayco September 2023
CAFÉ SOFIA		YES	Item to serve at Mayco September 2023