

ADDITIONAL ITEM

7.3	CORPORATE SERVICES: (PC: CLLR L NKAMISA)
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7.3.5	RETURN ITEM: PROPOSED LEASE AGREEMENT: ERF 1281 STELLENBOSCH (cnr RYNEVELD AND CHURCH STREETS), MERAKI
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Collaborator No:

IDP KPA Ref No:

Meeting Date:

Good Governance

26 September 2024

1. SUBJECT: RETURN ITEM: PROPOSED LEASE AGREEMENT: ERF 1281 STELLENBOSCH (cnr RYNEVELD AND CHURCH STREETS), MERAKI

2. PURPOSE

Is to provide the Executive Mayoral Committee with feedback after the Public Participation Process was followed.

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 delegation to enter into lease agreements on behalf of the Municipality.

4. EXECUTIVE SUMMARY

An application to continue to use a portion of the street reserve for Outdoor Dining purposes has been received from the owner of Meraki trading of erf 1221, Stellenbosch. The application is in line with the provisions /requirements of the Outdoor Dining Policy. The applicant does have a lease agreement with the municipality which is terminating on 30 September 2024, and they are paying for the use of the sidewalk. The lease agreement was signed in terms of a resolution taken by the Mayoral Committee and is for a period of three years. The applicants have applied for a new lease agreement which was approved in principle by the Executive Mayoral Committee on 22 May 2024 and the item should be brought back after a public participation process was followed.

The area they are interested in is 113 m².

The applicant has not submitted a new diagram as their current use is in line with the approved usage from three years ago and they have not indicated that they wish to make any changes. There is an erected and existing deck which is used for the outdoor dining purposes and for which they have planning permission. This was the first outdoor dining approval that was granted and the applicants got all permissions in place prior to putting up the deck. They are only using the space as approved and have not ventured out of

the area in the last three years. They have added the rolling blinds(awnings) as protection against wind and rain. They only use it when it is rainy and windy and even then in the evenings roll up the awnings. They will be informed to apply for permission for these awnings.

An Official Notice was published in Die Burger calling on the public to provide comments, objections or alternative proposals. The closing date for these comments, objections or alternative proposals was 14 August 2024.

No comments, objections or alternative proposals were received. The item is returned for final consideration.

5. RECOMMENDATIONS – for consideration:

5.1. That the Mayoral Committee takes note of the public participation process and that no comments, objections or alternative proposals were received;

5.2 That the land (erf 1281) measuring approximately 113m² 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;

5.2 That the application for outdoor dining be approved for a further period of 5 years.

5.2.1 That no changes are made to the deck without the prior written consent of council, including approved building plans and approval from the Heritage Advisory Committee.

5.2.2 A minimum of 1.5m (unobstructed walkway) be left open for pedestrian use, adjacent to the street kerb.

The impact of proposed outdoor dining on pedestrian movements, is subject to an assessment in terms of the Municipality's Sidewalk Accessibility Policy and the Municipal Manager is mandated to amend the layout and demarcation of the area when assessing applications.

5.2.3 Demarcation must be maintained by the lessee.

5.2.4 No advertising signs (including A- frames) to be placed on the sidewalk or displayed against the building without the prior approval of council the Municipal Manager or delegate and if such signs is displayed, it must be within the demarcated area. All signs displayed outside the demarcated area may be removed by law enforcement and outdoor dining furniture outside the demarcated area can be confiscated and repeated offences may result therein that the lease be cancelled forthwith after a 30-day notice period.

5.2.5 All umbrellas to be used has to be at least 2.2m high.

5.2.6 Any awnings will require pre-approval from council.

5.2.7 Council is indemnified against all possible 3rd party claims.

5.2.8 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.

- 5.2.9 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.
- 5.3 That the rental amount be determined as per the annual approved tariffs for outdoor dining.
- 5.4 Where the lessee does not comply with the conditions attach to the lease within 30 days after receipt of the approval, the approval may be withdrawn and the lease ended after a 30-day notice period. Such establishment will not be allowed to trade on Municipal Property until they comply and then re-apply for approval.
- 5.5 The lease agreement with the municipality must be signed within 30 days after receipt of the letter of approval and the draft agreement.
- 5.6 Where the lessee put furniture or signs outside the demarcated agreed areas such furniture and signs will be removed by Law Enforcement without further notice after a notice was served on the establishment.

6. DISCUSSION / CONTENT

6.1 Background

6.1.1 Application for lease and previous lease agreement

An application was received from the owner of Meraki to enter into a further lease agreement with Stellenbosch Municipality in terms whereof they would be able to continue using a portion of Council-owned property for outdoor dining purposes.

6.2 DISCUSSION.

6.2.1. Locality and context

Erf 1281, Stellenbosch is located on the corner of Church and Ryneveld streets, Stellenbosch, as shown on Fig 1.and Fig 2.



Fig 1. Location and context



Fig 2 .Extent of area

6.2.2 Official Notice

Following the previous Council resolution and Official Notice was published in Die Burger on 16 July 2024 calling on the public to provide comments, objections or alternative proposals. The closing date for these comments, objections or alternative proposals was 14 August 2024. No comments, objections or alternative proposals were received. A copy of the Official Notice is attached hereto as **APPENDIX 1**.

6.2.3 Legal requirements

6.2.3.1Municipal 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.

6.2.3.2 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.

6.2.3.3 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;

6.2.3.4 Outdoor Dining Policy

6.2.3.4.1 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.

6.2.3.4.2 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 high pedestrian usage, e.g. a retail center, will be required to take pedestrian needs into consideration.

6.2.3.4.3 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.

6.2.3.4.4 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

6.2.3.4.5 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.

6.2.3.4.6 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 R159.00 per m² is payable which will be R17 967.00 per month and an escalation is per the approved tariffs annually. They pay their monthly rental and is up to date.

6.4 Legal Implications

The legal implications are discussed above.

6.5 Staff Implications

No additional staff implications.

6.6 Previous / Relevant Council Resolutions**EXECUTIVE MAYORAL COMMITTEE: 2021-07-21: ITEM 7.2.1 RESOLVED**

- (a) that the land as indicated on Fig 1 and 2, measuring approximately 113m². 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 a lease agreement for a period of 3 years be approved with the specific conditions that it be used for outdoor dining purposes as per the agreement to be concluded.
- (c) that the application to use a portion of Council-owned land for outdoor dining purposes be approved, subject thereto; -
 - a) that an Application for a Temporary Departure be approved by the Planning and Economic Development Department; and
 - b) further subject to the conditions imposed by the Engineering Department namely:
 - i) The Municipality concludes an lease agreement with the applicant, detailing the conditions of approval.
 - ii) The 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.
 - iii) The deck must be constructed within the leased area and as per Drawing No.: Concord R11 OPT2 -Meraki1-100 01 Terrace.pdf b
 - iv) During the construction phase as well as during its operational phase, the deck must not hinder pedestrian movements on the sidewalk.
 - v) 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.
 - vi) Council is indemnified against all possible 3rd party claims.
 - vii) 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.
 - viii) The deck must be constructed and installed in manner that aids removal and re-installation as and when required.
 - ix) 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.
 - x) 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 public service provider to gain access.
 - xi) 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.

xii) The applicant to re-install the deck once the works on the public services are complete.

xiii) The cost for the removal and re-installation for the deck will be for the account of the applicant.

xiv) The municipality reserves the right to end the lease agreement when the leased area is required for municipal services.

(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 municipal Manager be authorised to determine the rental amount and escalation.

SPECIAL COUNCIL MEETING: 2022-06-22: 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.

20TH COUNCIL MEETING: 2024-02-21: ITEM 11.3.1

RESOLVED

- (a) that Council takes note of the report; and
- (b) that the amended General Conditions on Outdoor dining be approved.

EXECUTIVE MAYORAL COMMITTEE: 2024-05-22: ITEM 7.3.7 RESOLVED

5.1. that the land (erf 1281) measuring approximately 113m² 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;

5.2 that the application for outdoor dining be approved in principle for a further period of 5 years with the option of a renewal subject to the following conditions:

5.2.1 That no permanent structure or deck be erected without the prior written consent of council, including approved building plans and approval from the Heritage Advisory Committee.

5.2.2 A minimum of 1.5m (unobstructed walkway) be left open for pedestrian use, adjacent to the street kerb. In exceptional circumstances, a 1.5m unobstructed walkway adjacent to a shop front, may be allowed, in these instances a further 0.8m must be left open adjacent to the street kerb. Any deviations must be approved by the Municipal Manager on application. The impact of proposed outdoor dining on pedestrian movements, is subject to an assessment in terms of the Municipality's Sidewalk Accessibility Policy and the Municipal Manager is mandated to amend the layout and demarcation of the area when assessing applications.

5.2.3 Demarcation must be provided and maintained by the lessee.

5.2.4 No advertising signs (including A- frames) to be placed on the sidewalk or displayed against the building without the prior approval of council the Municipal Manager or delegate and if such signs is displayed, it must be within the demarcated area. All signs displayed outside the demarcated area may be removed by law enforcement and outdoor dining furniture outside the demarcated area can be confiscated and repeated offences may result therein that the lease be cancelled forthwith after a 30-day notice period.

5.2.5 All umbrellas to be used has to be at least 2.2m high and may not have any signage on them.

5.2.6 Any awnings will require pre-approval from council.

5.2.7 Council is indemnified against all possible 3rd party claims.

5.2.8 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. 5.2.9 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.

5.3 that the rental amount be determined as per the annual approved tariffs for outdoor dining;

5.4 that where the lessee does not comply with the conditions attach to the lease within 30 days after receipt of the approval, the approval may be withdrawn and the lease ended after a 30 day notice period. Such establishment will not be allowed to trade on Municipal Property until they comply and then re-apply for approval;

5.5 that the lease agreement with the municipality must be signed within 30 days after receipt of the letter of approval and the draft agreement;

5.6 that where the lessee put furniture or signs outside the demarcated agreed areas such furniture and signs will be removed by Law Enforcement without further notice after a notice was served on the establishment; and

5.7 that the intention to lease the property be advertised for any input/comment/alternative proposals and returned to Council after the public participation process.

6.7 Risk Implications

The risks are addressed in the item.

6.8 Comments from Senior Management

As this is an existing use and prior approval was obtained when the first lease was entered into the item was not circulated for comments.

ANNEXURES: 1. Official Notice

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>	2024-09-09

ANNEXURE 1



STELLENBOSCH

STELLENBOSCH • PNIEL • FRANSCHHOEK
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OFFICIAL NOTICE

PROPOSED LEASE AGREEMENT: KNAR PROPERTIES (PTY) LTD: ERF 1281 STELLENBOSCH - MERAKI

Knar Properties (Pty) Ltd has brought an application for a to lease the road reserve adjacent to Erf 1281 Stellenbosch (cnr Ryneveld and Church Streets) for Outdoor Dining purposes by Meraki Restaurant. They have an existing lease agreement that expires in September 2024 and have approval for the deck that was build.

The Executive Mayor in consultation with the Mayoral Committee considered the matter on 2024-05-22 and resolved *inter alia*:

5.1. that the land (erf 1281) measuring approximately 113m² 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;

5.2 that the application for outdoor dining be approved in principle for a further period of 5 years with the option of a renewal subject to the approved general conditions for outdoor dining.

5.3 that all the provisions as approved by Council on 14 June 2024 regarding outdoor dining is applicable to the in principle approval and any outstanding issues applicable to the site that have not been addressed, must be addressed before a final decision will be taken.

5.4 that the item be returned to Council after the public participation process.

It be noted that the tariff in the approved tariff book is applicable per m² to the proposed lease.

FURTHER INFORMATION

Further information, such as the agenda item that served before the Mayoral Committee, is available on the website of the municipality in the agenda for the meeting. This includes the full extent of the provisions regarding outdoor dining as approved by Council.

INVITATION TO SUBMIT COMMENTS /OBJECTIONS OR ALTERNATIVE PROPOSALS

The public is invited to submit comments/objections or alternative proposals in respect of the proposed granting of the rights referred to above.

Any such comments /inputs/objections must be in writing and must reach the Office of the Head: Contract Management by no later than close of business on **14 August 2024** at the address or e-mail listed.

Email: yolande.vandenberg@stellenbosch.gov.za

Physical address: 3rd Floor, NPK Building, corner of Ryneveld and Plein Streets, Stellenbosch.

Cell phone: 082 418 1610

Landline: 021 808 8073

PERSONS WITH DISABILITIES

Notice is further given in accordance with Section 21 of the Local Government: Municipal Systems Act, No 32 of 2000 that anyone with disabilities or who is unable to write, but need to participate in the process, may present him/herself during office hours at the office of the Head: Contract Management, where a staff member of the Municipality will assist such person to transcribe that person's comments/inputs or alternative proposals.

GERALDINE METTLER

DATE

MUNICIPAL MANAGER:
STELLENBOSCH MUNICIPALITY