

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
17 April 2018
(Also the agenda for the Mayoral Committee Meeting : 25 April 2018)**

**5.
HERMANUS, A PORTION OF ERF 4771 HERMANUS: LEASE AGREEMENT WITH
BEVERLY & PAUL MARK LEWIN :
DEVIATION FROM PARAGRAPH 20.1(B) OF THE ADMINISTRATION OF
IMMOVABLE PROPERTY POLICY OF 2015 ALLOWING THE MUNICIPALITY TO
ENTER INTO A FURTHER LEASE AGREEMENT WITH BEVERLY & PAUL MARK
LEWIN WITHOUT FOLLOWING A PUBLIC PARTICIPATION PROCESS**

7/2/3/1

M Erasmus
5 February 2018

(028) 316-3724

Hermanus Administration

1. Executive Summary

To obtain approval from the Executive Mayor to enter into a further lease agreement with Beverly and Paul Mark Lewin, hereinafter referred to as “the Applicants”, for a period of 1 (ONE) year in respect of a portion of Erf 4771 Hermanus (± 205 m² in extent) for gardening purposes and the retention of retaining walls and the boundary wall; and

To obtain approval from Council for the deviation from paragraph 20.1(b) of the Administration of Immovable Property Policy of 2015 allowing the Municipality to enter into a further lease agreement with the Applicants in respect of a portion of Erf 4771 Hermanus (± 205 m² in extent) for gardening purposes and the erection of retaining walls and the boundary wall without following a public participation process.

2. Service Delivery and Budget Implementation Plan - IGNITE

Infrastructure and Planning
Property Administration

3. Compliance with Strategic Priorities

Provision of democratic, accountable and ethical governance
Promotion of tourism, economic and social development

4. Delegated Authority

Partly delegated to the Executive Mayor.

5. Legal Requirements

The Administration of Immovable Property Policy of the Overstrand Municipality of 2015.

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6. Background/Discussion/Evaluation/Conclusion

Background

An application to purchase a portion of Erf 4771 Hermanus ($\pm 205\text{m}^2$ in extent), situated at 325 Tenth Street, Voëlklip, Hermanus, was originally received in September 2013. The Applicants indicated in the application that the portion applied for "will afford privacy screening via landscaping, security provision via boundary fencing. In short, the additional land portions will be used for domestic gardening purposes".

A lease agreement was entered into between the Applicants and Overstrand Municipality in order for them to be able to erect a security wall pending the outcome and finalisation of the application to purchase. The lease agreement was entered into with the Applicants for a three year period from 1 April 2015 to 31 March 2018.

In terms of the said lease agreement, the Applicants obtained approval to erect a boundary wall on the border of the proposed consolidated property subject to the approval of the necessary building plans. The Applicants submitted a building plan for a boundary wall on the boundary of the "to be" consolidated property, which was approved.

On 30 March 2016 Council approved the alienation of the said portion of Erf 4771 Hermanus to the Applicants and a Deed of Sale was subsequently entered into on 13 August 2016. The Applicants are busy with the various Town Planning and other applications and processes and it is foreseen that the subject property will not be transferred to the Applicants before the expiry of the lease agreement on 31 March 2018. However, it is envisaged that the necessary will be finalised soon.

On 28 February 2018 the Council further approved as follows:

1. *that Condition 6 of the Council Resolution dated 25 November 2015 be deleted as it will not be necessary to register a servitude right of way;*
2. *that Condition 5 of the Council Resolution dated 30 March 2016 be deleted as it will not be necessary to register a servitude right of way; and*
3. *that Condition 1 of the Council Resolution dated 25 November 2015 be amended to stipulate as follows:*
4. *that the transfer of a portion of Erf 4771 adjacent to Erf 4075, Hermanus (Voëlklip), $\pm 205\text{m}^2$ in extent, for gardening purposes and the erection of retaining walls for the boundary wall, to Mr Paul Mark and Mrs Beverley Lewin for the amount of R1,509.00/m² (ONE THOUSAND*

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*FIVE HUNDRED AND NINE RAND ALONE PER SQUARE METER)
(VAT excluded), **be approved.***

Discussion

A. Administration of Immovable Property Policy of the Overstrand Municipality

The following conditions of said policy apply:

Paragraph 17: “Taking into consideration the nature and duration of the lease to be entered into, the leasing of immovable property may be affected by means of either:

17.1 a competitive process, which may include a closed or public tender or proposal call, specifically in circumstances listed in paragraph 18 below; or

17.2 a direct lease”.

Paragraph 18: “A competitive process must at all times be followed in circumstances where:

18.1 the lease is for a long term with an income value in excess of R10 million;

18.2 the lease is for a formal business premises with a market related rental;

18.3 more than one party, in discretion of the municipality, is interested in the lease of the subject property; and/or

18.4 by discretion of the municipality, a competitive process will best serve the interests of the community.”

A non-viable property is classified in the policy as follows: “A *property that, owing to urban planning, physical constraints or extent, cannot be developed on its own or function as a separate entity and can therefore only become functional if alienated or leased to an adjoining owner for usage in conjunction with the said owner’s property.*” As the site is a small portion adjacent to the Applicants’ property and the extent, layout and location of the property causes it to be functional only if leased to the adjoining owner, it can be leased directly to the Applicants without following a competitive process.

Paragraph 20.1: “The Municipality may grant a long term lease of municipal immovable property with a value less than R10 million only after:

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- a) **The accounting officer has approved the lease in principle;**
- b) **In the case of a direct lease, the proposed lease was advertised in terms of paragraph 10.1 and 10.2 above to invite the local community and other interested parties to submit comments or representations; and**
- c) **The municipal council has approved that the right may be granted.”**

In this case, seeing that the Applicants has already had a three year period lease agreement, a further short term lease in respect of the specific portion of Erf 4771 Hermanus will cause the said total lease period to be in excess of three years, which is not permissible in terms of Paragraph 20 of the Policy if a public participation process is not followed. As Council already approved the alienation and transfer of the portion of municipal property to the Applicants and further as a public participation process was followed for the alienation of the property and no objections were received, it is proposed that the deviation from paragraph 20.1(b) be approved in order to further lease the property to the Applicants for a period of 1 (ONE) year without following another public participation process which seems redundant and not cost effective. It must be noted that should the registration of the transfer be finalised before expiry of the lease agreement, the latter will be cancelled automatically.

Simultaneous with this request for a deviation, a further request will be made for the approval by the Executive Mayor of the long term rental (as the total period will be in excess of three years).

Paragraph 22: “The in principle approval of the Accounting Officer must be obtained with any request for the renewal of a lease agreement.”

The Accounting Officer has approved in principle the lease of the subject portion of Erf 4771 Hermanus to the Applicants.

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

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A market related value was determined by a professional valuer for the lease of the property on 20 February 2015 which amount was used in the previous lease agreement. In terms of the lease agreement the amount escalated annually on the 1st of July and is currently an amount of R2,107.54 (TWO THOUSAND ONE HUNDRED AND SEVEN RAND AND FIFTY FOUR CENTS) (VAT Excluded) per month. It is proposed that the rental from 1 April 2018 to 30 June 2018 be charged at R2,107.54 (VAT Excluded) per month with the next escalation on 1 July 2018.

Paragraph 36: “All costs pertaining to a transaction, e.g. survey, advertisements, valuation, relocation or provision of services where necessary, shall be borne by the Lessee. The Municipality may, however, waive its right to claim all or any portion of the costs. Where necessary a deposit to cover the costs may be required.”

The Applicants will pay the costs relating to the advertisement should Council not approve the deviation. No survey or valuation was done and therefore no costs were incurred in this regard.

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

A clause to this effect will be inserted in the lease agreement.

Paragraph 47: “Subject to paragraph 46 above, immovable property let by the Municipality shall be inspected at least once a year by the Municipality to ensure compliance with the terms and conditions of the agreement of sale or lease.”

The property will be inspected by the Property Administration Department at least once a year.

It is further confirmed that the other Conditions of Lease as stipulated in paragraph 36 - 50 of the said policy will be included in the lease agreement with the Applicant.

Conclusion

Taking the above into consideration it is recommended that:

- a) The Executive Mayor approves the lease of a portion of Erf 4771 Hermanus to the Applicants for a period of 1 (ONE) year for gardening purposes and the retention of retaining walls and the boundary wall at a rental amount of R2,107.54 (TWO THOUSAND ONE HUNDRED AND

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SEVEN RAND AND FIFTY FOUR CENTS) (VAT Excluded) per month with the first escalation on 1 July 2018.

- b) Council approves the deviation from paragraph 20.1(b) of the Administration of Immovable Property Policy of 2015 with regards to the public participation process.

7. Financial Implications

The Municipality stands to gain a rental income of R2,107.54 (TWO THOUSAND ONE HUNDRED AND SEVEN RAND AND FIFTY FOUR CENTS) (VAT Excluded) per month until 30 June 2018, where-after the lease amount will escalate on 1 July 2018 with a percentage equal to the prevailing consumer price index.

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

J Vorster – Senior Manager: Expenditure & Assets

As this is an income generating proposal, concluded in terms of the conditions set out in the Administration of Immovable Property Policy of the Municipality, there is no objection to the report.

10. Annexures

Annexure A: Locality Map

RECOMMENDATION TO THE EXECUTIVE MAYOR:

1. that the renewal of the lease of municipal property, being a portion of Erf 4771 Hermanus ($\pm 205\text{M}^2$ in extent), to Beverly and Paul Mark Lewin for gardening purposes and the retention of retaining walls and the boundary wall for a period of 1 (ONE) year from 1 April 2018 at an amount of R2,107.54 (TWO THOUSAND ONE HUNDRED AND SEVEN RAND AND FIFTY FOUR CENTS) (VAT Excluded) per month in terms of the Administration of Immovable Property Policy of the Overstrand Municipality, **be approved** subject to Council approving a deviation from paragraph 20.1(b) of the Administration of Immovable Property Policy; and
2. that the rental amount mentioned in 1 above escalate every year on 1 July by a percentage fixed in accordance with the prevailing consumer price index, the first escalation to be on 1 July 2018.

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RECOMMENDATION TO THE COUNCIL:

that the deviation from paragraph 20.1(b) of the Administration of Immovable Property Policy in order to renew the current lease agreement with Beverly and Paul Mark Lewin for a further period of 1 (ONE) year without following a public participation process, **be approved.**

RESPONSIBLE OFFICIAL :	M ERASMUS
TARGET DATE FOR IMPLEMENTATION :	15 MAY 2018
TARGET DATE TO INFORM APPLICANT :	26 APRIL 2018
TARGET DATE TO INFORM OBJECTOR :	N/A

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7/2/3/1

M Erasmus
5 February 2018

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Hermanus Administration

THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON 17 APRIL 2018, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:

RECOMMENDATION TO THE EXECUTIVE MAYOR:

1. that the renewal of the lease of municipal property, being a portion of Erf 4771 Hermanus ($\pm 205\text{M}^2$ in extent), to Beverly and Paul Mark Lewin for gardening purposes and the retention of retaining walls and the boundary wall for a period of 1 (ONE) year from 1 April 2018 at an amount of R2,107.54 (TWO THOUSAND ONE HUNDRED AND SEVEN RAND AND FIFTY FOUR CENTS) (VAT Excluded) per month in terms of the Administration of Immovable Property Policy of the Overstrand Municipality, **be approved** subject to Council approving a deviation from paragraph 20.1(b) of the Administration of Immovable Property Policy; and
2. that the rental amount mentioned in 1 above escalate every year on 1 July by a percentage fixed in accordance with the prevailing consumer price index, the first escalation to be on 1 July 2018.

RECOMMENDATION TO THE COUNCIL:

that the deviation from paragraph 20.1(b) of the Administration of Immovable Property Policy in order to renew the current lease agreement with Beverly and Paul Mark Lewin for a further period of 1 (ONE) year without following a public participation process, **be approved**.

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