

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
14 February 2017
(Also the agenda for the Mayoral Committee Meeting : 22 February 2017)**

**4.
HERMANUS, A PORTION OF ERF 4565 HERMANUS: LEASE AGREEMENT WITH
HERMANUS SQUASH AND TENNIS CLUB
DEVIATION FROM PARAGRAPH 20 OF THE ADMINISTRATION OF IMMOVABLE
PROPERTY POLICY OF 2015**

7/2/3/1

M Müller & A Kotze
19 January 2017

(028) 316-3724

Hermanus Administration

1. Executive Summary

To obtain approval from the Executive Mayor to enter into a further lease agreement with Hermanus Squash and Tennis Club in respect of a portion of Erf 4565 Hermanus for the purpose of operating a squash and tennis club; and

To obtain approval from Council for the deviation from paragraph 20 of the Administration of Immovable Property Policy of 2015 allowing the Municipality to enter into a further lease agreement with Hermanus Squash and Tennis Club in respect of a portion of Erf 4565 Hermanus for the purpose of operating a squash and tennis club 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

The Hermanus Squash and Tennis Club, hereafter referred to as “the Club”, has been operating a squash and tennis club from a portion of Erf 4565 Hermanus (“the premises”) as indicated on the locality map attached hereto as early as 1988. The last three agreements were all for a one year period, more specifically from 1 July 2013 to 30 June 2014, 1 July 2014 to 30 June 2015 and from 1 July 2015 to 30 June 2016.

These short term agreements were entered into in anticipation of the sale of the property known as the Sandbaai Commonage (Remainder Erf 2834 Sandbaai). A portion of the proceeds of the sale of the abovementioned property was committed by the Municipality to the envisaged move of the Club to the Hermanus Sports Centre.

Due to unforeseen circumstances Council approved the cancellation of the sale of the Sandbaai Commonage on 27 July 2016. This has an effect that the Club cannot be relocated at this stage. The subsequent cancellation of the tender resulted in a new competitive process for the sale of the said Sandbaai Commonage to commence and the consequential approval of the transfer and the ultimate registration thereof in the name of a successful purchaser will to all estimation take one year to finalize. The tender was advertised with a closing date of 3 March 2017 where after several processes need to be followed. Therefore, in light of the aforementioned, it is recommended that a lease agreement for another 2 (TWO) years be entered into with the Club subject thereto that Council approves the requested deviation and the Executive Mayor approves the renewal of the lease agreement.

The Club’s municipal account is up to date and no complaints regarding the use of the premises have been received during their previous period of lease.

Discussion/Evaluation

The following paragraphs of the Administration of Immovable Property Policy are applicable:

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

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

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17.2 a direct lease.”

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

- 18.1 the lease is for a long term with an income value in excess of R10 million;***
- 18.2 the lease is for a formal business premises with a market related rental;***
- 18.3 more than one party, in discretion of the municipality, is interested in the lease of the subject property; and/or***
- 18.4 by discretion of the municipality, a competitive process will best serve the interests of the community.”***

As the premises is not classified as a business site and the leasing of the said property to the Club is in the interest of the community and they have been leasing it successfully for several years it is proposed that the property be leased directly to Hermanus Squash and Tennis Club without following a competitive process.

Paragraph 20: “Long term lease of municipal immovable property with an income value less than R10 million:

- 20.1 The Municipality may grant a long term lease of municipal immovable property with an income value of less than R10 million only after:***
 - (a) the Accounting Officer has approved the lease in principle;***
 - (b) in the case of a direct lease, the proposed lease was advertised in terms of paragraph 10.1 and 10.2 above to invite the local community and other interested parties to submit comments or representations; and***
 - (b) the Executive Mayor, as delegated authority, has subsequently approved that the right may be granted.”***

The Accounting Officer (Municipal Manager) approved in principle the lease of the subject portion of Erf 4565 Hermanus to the Hermanus Squash and Tennis Club subject thereto that the approval of Council is obtained as to the deviation from paragraph 20 of the Policy as requested in this report. A in principle approval for a two year period was obtained.

In this case, seeing that the Club has already had three one year period lease agreements, a further short term lease in respect of the specific portion of Erf 4565 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. It is in this regard that a deviation from Paragraph 20 is requested as to the public participation process. More specifically then for the reason that the adherence to this paragraph as to the

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public participation of the said Policy will not serve a useful purpose and will be costly considering the further renewal term requested.

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).

Cognisance should be taken of the fact that, should the premises be vacant for the period from expiry of the lease agreement, the property would likely be vandalised resulting in damages, insurance claims to be made and in all likelihood impacting on the envisaged development of the area's timeframe.

Paragraph 27: *“In the case of a direct lease of immovable property to registered social care organisations/institutions, sports/public facilities or registered non profit organisations, the rental shall be determined by the Accounting Officer taking into consideration the community value of the lease.”*

The lease amount for the period 1 July 2015 to 30 June 2016 was R119.64 (ONE HUNDRED AND NINETEEN RAND AND SIXTY FOUR CENTS) (VAT excluded) per month. After the required escalation on 1 July 2016 the lease amount is R127.16 (ONE HUNDRED AND TWENTY SEVEN RAND AND SIXTEEN CENTS) (VAT excluded) per month, which is currently being levied on their municipal account.

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 will be included in the lease agreement entered into with the Club.

Conclusion

Taking the above into consideration, it is recommended that:

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- (a) The Executive Mayor approves the lease of a portion of Erf 4565 Hermanus to the Hermanus Squash and Tennis Club for a period of 2 (TWO) years from 1 July 2016 for the operation of a squash and tennis club at an amount of R127.16 (ONE HUNDRED AND TWENTY SEVEN RAND AND SIXTEEN CENTS) (VAT excluded) per month for the period 1 July 2016 until 30 June 2017 where after the lease amount will escalate every year on 1 July in accordance with the prevailing consumer price index (all items); and
- (b) Council approves the deviation from paragraph 20 of the Administration of Immovable Property Policy of 2015 as to the public participation process.

7. Financial Implications

The Municipality has and will receive a lease income of R127.16 (ONE HUNDRED AND TWENTY SEVEN RAND AND SIXTEEN CENTS) (VAT excluded) per month for the period 1 July 2016 until 30 June 2017 where after the lease amount will escalate every year on 1 July in accordance with the prevailing consumer price index (all items).

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

None

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 4565 Hermanus, to Hermanus Squash and Tennis Club for operating a squash and tennis club for a period of 2 (TWO) years from 1 July 2016 at an amount of R127.16 (ONE HUNDRED AND TWENTY SEVEN RAND AND SIXTEEN 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 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 (all items).

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RECOMMENDATION TO THE COUNCIL:

that the deviation from paragraph 20 of the Administration of Immovable Property Policy in order to renew the current lease agreement with Hermanus Squash and Tennis Club for a further period of 2 (TWO) years without following a public participation process, **be approved.**

RESPONSIBLE OFFICIAL :	M Müller
TARGET DATE FOR IMPLEMENTATION :	3 APRIL 2017
TARGET DATE TO INFORM APPLICANT :	14 MARCH 2017
TARGET DATE TO INFORM OBJECTOR :	N/A

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Hermanus Administration

**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON
14 FEBRUARY 2017, 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 4565 Hermanus, to Hermanus Squash and Tennis Club for operating a squash and tennis club for a period of 2 (TWO) years from 1 July 2016 at an amount of R127.16 (ONE HUNDRED AND TWENTY SEVEN RAND AND SIXTEEN 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 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 (all items).

RECOMMENDATION TO THE COUNCIL:

that the deviation from paragraph 20 of the Administration of Immovable Property Policy in order to renew the current lease agreement with Hermanus Squash and Tennis Club for a further period of 2 (TWO) years without following a public participation process, **be approved.**

RESPONSIBLE OFFICIAL :

M MÜLLER

TARGET DATE FOR IMPLEMENTATION :

3 APRIL 2017

TARGET DATE TO INFORM APPLICANT :

14 MARCH 2017

TARGET DATE TO INFORM OBJECTOR :

N/A

