

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

**5.
HERMANUS, A PORTION OF ERF 1 HAWSTON: DEVIATION FROM
PARAGRAPHS 20.1(b) AND 26 OF THE ADMINISTRATION OF IMMOVABLE
PROPERTY POLICY OF 2015 ALLOWING THE MUNICIPALITY TO ENTER INTO A
FURTHER LEASE AGREEMENT WITH THE DEPARTMENT OF TRANSPORT AND
PUBLIC WORKS AT A FIXED ESCALATION RATE**

7/2/3/1

M Erasmus

(028) 316-3724

Hermanus Administration

11 January 2017

1. Executive Summary

To obtain approval for the deviation from paragraphs 20.1(b) and 26 of the Administration of Immovable Property Policy of 2015 allowing the Municipality to enter into a further lease agreement with the Department of Transport and Public Works in respect of an office in the Thusong Centre situated on a portion of Erf 1, Hawston for the purpose of delivering social development services to the community.

2. Service Delivery and Budget Implementation Plan - IGNITE

Infrastructure and Planning
Property Administration

3. Compliance with Strategic Priorities

Provision of democratic, accountable and ethical governance
Creation and maintenance of a safe and healthy environment
Promotion of tourism, economic and social development

4. Delegated Authority

Partly delegated to Executive Mayor

5. Legal Requirements

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

6. Background/Discussion/Evaluation/Conclusion

Background

A lease agreement was entered into with the Department of Transport and Public Works for a two years and eleven months period from 1 March 2014 to

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

31 January 2017. The rental charged in terms of this lease agreement was the tariff for the rental of offices as approved every year with the approval of the annual budget.

Discussion

The Department of Transport and Public Works applied to lease the said office for a further period of five years.

In terms of the Administration of Immovable Property Policy the Municipality may grant a long term lease if the Accounting Officer approved the lease in principle, a public participation process is followed and Executive Mayor's (as delegated authority) approval is gained in terms of the above policy.

The Municipal Manager, as accounting officer, approved in principle the renewal of the lease to the Department of Transport and Public Works. As the applicant is an organ of state it was further approved in principle that a public participation process not be followed especially since in the case of a sale to any organ of state the Administration of Immovable Property Policy stipulates that a public participation process does not need to be followed.

A lease amount for the rental of office space is approved in the 2016/2017 Budget at a tariff of R101.75 (ONE HUNDRED AND ONE RAND AND SEVENTY FIVE CENTS) (VAT excluded) per square metre. Upon providing the Department of Transport and Public Works with the terms and information regarding the proposed new lease agreement, they requested not to pay the tariffs as are approved annually by Council but to have a fixed escalation percentage in the lease agreement. They are of the opinion that the escalation percentage needs to be fixed in the lease agreement in order for them to ensure that the lease amount do not exceed the market rate and thereby conform with the Western Cape Land Administration Act, Act 6 of 1998.

Their initial request was that the escalation percentage be fixed at a percentage of 8%. At time of writing this report the request came through that the escalation be fixed at a percentage of 5,5%. The latest available CPI percentage made available by Stats SA is 6.6%. As the requested escalation percentage is lower than the CPI and also lower than the escalations in the annual budget, this Department cannot motivate or support a fixed escalation percentage of 5.5%.

The Manager: Property Administration also perused the said Act and has the following interpretation:

“Act 6 of 1998 and the regulations thereto were perused as it is used as a motivation for the deviation from the Administration of Immovable Property

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

Policy. Nowhere in the said Act and regulations is it mentioned that rental may only escalate at a fixed amount. It must then also be noted that they have paid rental in terms of the tariffs for a period of three years with no problem regarding the escalation percentage not being fixed. However, as they are delivering a service to the community and have requested that we obtain approval for the deviation, it was decided to proceed with the necessary.”

Evaluation

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”.

In this instance paragraph 18 is not applicable to the lease of the said property and therefore a competitive process does not need to be followed. As the overall purpose of the Thusong Centre is to provide services to the community and to make available office space to various organs of state and especially since the purpose of the proposed lease is to provide social development services to the community, it is proposed that a direct lease be entered into. By entering into a direct lease with the Department of Transport and Public Works for the mentioned purpose the community stands to benefit from the services rendered by the Department.

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

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

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

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 (Municipal Manager) approved in principle the renewal of the lease of the office in the Thusong Centre on the subject portion of Erf 1 Hawston. As the applicant is an organ of state it was further approved in principle that a public participation process not be followed especially since in the case of a sale to any organ of state the Administration of Immoveable Property Policy stipulates that a public participation process does not need to be followed. Therefore a deviation from paragraph 20.1(b) is recommended.

Paragraph 26: “In cases where a rental amount has been approved in the annual budget of the Municipality for certain types of leases and encroachments, the approved amount will be used for purposes of determining the rental amount.”

In light of the aforementioned discussion regarding the Department of Transport and Public Works’ interpretation of their legislation and their request, it is recommended that paragraph 26 be deviated from and that the annual escalation percentage be a fixed percentage of 8%.

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

Conclusion

It is recommended that the deviation from paragraphs 20.1(b) and 26 of the Administration of Immoveable Property Policy of 2015 be approved. It is further recommended that the lease agreement with the Department of Transport and Public Works be approved for a further period of 5 (FIVE) years

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

at a rental amount of R3,357.75 (THREE THOUSAND THREE HUNDRED AND FIFTY SEVEN RAND AND SEVENTY FIVE CENT) (VAT excluded) per month which is calculated in terms of the 2016/2017 tariffs.

7. Financial Implications

The Municipality stands to gain a lease in the amount of R3,357.75 (THREE THOUSAND THREE HUNDRED AND FIFTY SEVEN RAND AND SEVENTY FIVE CENTS) (VAT excluded) per month where after the lease amount will escalate every year on 1 July by 8%.

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Senior Manager: Expenditure and Assets, Mr. J Vorster - (028) 313 8046

Consideration should be given to whether or not the proposed leasing of the asset would constitute a commercial lease in the true sense of the word. If so, the property must be reclassified as Investment Property and be disclosed in the Fixed Asset Register and Annual Financial Statements in accordance with GRAP 16.

If, however, the intention of this rental agreement is to provide an enhanced community service, the property must be classified as PPE (Property Plant and Equipment) and be disclosed in the Fixed Asset Register and Annual Financial Statements in accordance with GRAP 17.

From the available information it would appear that the proposed agreement would be classified as the latter.

Reply from Manager: Property Administration:

The Property is classified as PPE (Property Plant and Equipment) in the Fixed Asset Register and will remain as PPE as the building is mainly used as a community hall.

10. Annexures

Annexure A: Locality Map

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
14 February 2017
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RECOMMENDATION TO THE EXECUTIVE MAYOR:

that the renewal of the lease of Municipal Property, being an office on portion of Erf 1 Hawston, to the Department of Transport and Public Works for the purpose of delivering social development services to the community at a monthly rental amount of R3,357.75 (THREE THOUSAND THREE HUNDRED AND FIFTY SEVEN RAND AND SEVENTY FIVE CENT) (VAT excluded), **be approved subject to Council's approval of the deviation from paragraphs 20.1(b) and 26 of the Administration of Immovable Property Policy.**

RECOMMENDATION TO THE COUNCIL:

1. that the deviation from paragraph 20.1(b) of the Administration of Immovable Property Policy in order to renew the current lease agreement with the Department of Transport and Public Works for a further period of 5 (FIVE) years without following a public participation process, **be approved**; and
2. that the deviation from paragraph 26 of the Administration of Immovable Property Policy in order for the lease amount to escalate every year on 1 July with a fixed percentage of 8% and not as to be approved in the said annual budget, **be approved.**

RESPONSIBLE OFFICIAL :	M ERASMUS
TARGET DATE FOR IMPLEMENTATION :	31 MARCH 2017
TARGET DATE TO INFORM APPLICANT :	7 MARCH 2017
TARGET DATE TO INFORM OBJECTOR :	N/A

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7/2/3/1

M Erasmus

(028) 316-3724

Hermanus Administration

11 January 2017

THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON 14 FEBRUARY 2017, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:

RECOMMENDATION TO THE EXECUTIVE MAYOR:

that the renewal of the lease of Municipal Property, being an office on portion of Erf 1 Hawston, to the Department of Transport and Public Works for the purpose of delivering social development services to the community at a monthly rental amount of R3,357.75 (THREE THOUSAND THREE HUNDRED AND FIFTY SEVEN RAND AND SEVENTY FIVE CENT) (VAT excluded), **be approved subject to Council's approval of the deviation from paragraphs 20.1(b) and 26 of the Administration of Immovable Property Policy.**

RECOMMENDATION TO THE COUNCIL:

1. that the deviation from paragraph 20.1(b) of the Administration of Immovable Property Policy in order to renew the current lease agreement with the Department of Transport and Public Works for a further period of 5 (FIVE) years without following a public participation process, **be approved**; and
2. that the deviation from paragraph 26 of the Administration of Immovable Property Policy in order for the lease amount to escalate every year on 1 July with a fixed percentage of 8% and not as to be approved in the said annual budget, **be approved.**

RESPONSIBLE OFFICIAL :

M ERASMUS

TARGET DATE FOR IMPLEMENTATION :

31 MARCH 2017

TARGET DATE TO INFORM APPLICANT :

7 MARCH 2017

TARGET DATE TO INFORM OBJECTOR :

N/A

