

**AGENDA of the  
Portfolio Committee : Investment & Infrastructure  
6 February 2023  
(Also the agenda for the Mayoral Committee Meeting : 14 February 2023)**

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21.

**ERF 2649 BETTY'S BAY: DEVIATION FROM PARAGRAPH 26 OF THE ADMINISTRATION OF IMMOVABLE PROPERTY POLICY OF 2015 ALLOWING THE MUNICIPALITY TO ENTER INTO A LEASE AGREEMENT WITH THE DEPARTMENT OF TRANSPORT AND PUBLIC WORKS AT A FIXED ESCALATION RATE**

**A Le Roux**

**Senior Manager: Property Administration**

**23 November 2022**

**(028) 316 5623**

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**1. Executive Summary**

To obtain approval from Council for the deviation from paragraph 26 of the Administration of Immovable Property Policy of 2015 allowing the Municipality to enter into a lease agreement with a fixed escalation rate with the Department of Transport and Public Works (hereinafter referred to as "DTPW"), in respect of the lease of space in a building on a portion of Erf 2649 Betty's Bay for the purpose of operating a health care clinic to serve the community of Betty's Bay.

**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

**4. Delegated Authority**

None

**5. Legal Requirements**

- Administration of Immovable Property Policy of the Overstrand Municipality (2015)
- Municipal Asset Transfer Regulations (R. 878 of 2008)

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## **6. Background/Discussion/Evaluation/Conclusion**

### **Background**

Following an application from the Western Cape Government, on 14 January 2021 the Municipal Manager approved an application to lease space in a building on a portion of Erf 2649 Betty's Bay, ±74.14m<sup>2</sup> (approximately seventy-four point seven four square metres) in extent (the "Property") to the DTPW for the purpose of operating a health care clinic to serve the community of Betty's Bay on and subject to the following conditions:

- (a) The approval of a building plan for the minor interior alterations, at the cost of the DTPW.
- (b) The minor alterations will be at the expense of the DTPW.
- (c) The commencement date of the lease agreement to be decided at a later date, after the necessary alterations are done.
- (d) The applicant may take occupation of the Property two weeks prior to the commencement date, free of charge to attend to the necessary alterations.

Locality maps of the Property is attached hereto as "Annexure A" and "Annexure B" respectively.

DTPW have attended to the minor alterations and has started utilising the Property as a health care clinic for the community of Betty's Bay. The nearest public health care facility is situated in Kleinmond. This is a welcome service as residents of Rooi-Els, Pringle Bay and Betty's Bay can all now make use of this facility which is closer than the one in Kleinmond.

A draft lease agreement was negotiated between the Municipality and DTPW. DTPW's legal services department vetted the latest draft lease and the DTPW's representative accepted the lease terms and conditions, save for a request that the annual escalation rate be fixed instead of being linked to inflation. This is mainly because they have to budget for the expense in advance.

### **Discussion**

In terms of the Administration of Immoveable Property Policy, the Municipality may grant a short-term lease if the Municipal Manager, as Accounting Officer, approves the lease.

Paragraph 26 of the Administration of Immoveable Property Policy provided that in cases where a rental amount has been approved in the annual budget of the Municipality for certain types of leases, the approved amount will be used for purposes of determining the rental amount. In this case there is an applicable approved rental amount in the annual budget of the Municipality,

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namely tariff S46A2 for the “*Rental for office space to NGO's/NPO's/Government Departments/State Owned Enterprises irrespective of area (per m<sup>2</sup> per month)*”. In terms of the Administration of Immoveable Property Policy the rental amount should escalate annually as calculated in accordance with the Municipality’s approved tariffs in the budget for the specific municipal financial year.

In respect of a different lease agreement with the DTPW for the lease of an office in the Thusong Centre on Erf 3454 Hawston (±33m<sup>2</sup> in extent) (the “Thusong Lease”), Council resolved on 25 November 2021, amongst others, 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 5% and not as to be approved in the said annual budget; be approved.

The motivation for the request of a fixed escalation for the Thusong lease was because, in the DTPW’s understanding 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.

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 Policy. Nowhere in the said Act and regulations is it mentioned that rental may only escalate at a fixed amount. 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.”

The DTPW has now requested that a similar fixed escalation, not exceeding 7%, also be used for the lease of the Property in this matter because in its opinion their Department needs to use a fixed escalation.

The tariff for office space to NGO's/NPO's/Government Departments/State Owned Enterprises irrespective of area (per m<sup>2</sup> per month) increased by 4.3% from the 2021/2022 to the 2022/2023 financial year and prior thereto it increased by 4.5% from the 2020/2021 to the 2021/2022 financial year.

As the Municipality has approved a fixed escalation of 5% for a similar lease to the DTPW and as 5% is not less than the last two escalations in the annual budget, it is proposed that a 5% fixed escalation also be approved for this lease for the sake of uniformity and to allow the DTPW to render the healthcare service to the community.

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## **Evaluation**

### **A. Administration of Immoveable Property Policy of the Overstrand Municipality**

The following conditions of said policy apply:

**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*”.**

A lease amount for the rental of office space to NGO's/NPO's/Government Departments etc. is approved in the 2022/2023 Budget at a tariff of R41.74 (FORTY-ONE RAND AND SEVENTY-FOUR CENTS) (VAT excluded) per square metre per month. As discussed above it is recommended that Council approves a deviation from paragraph 26 so that the annual escalation percentage be a fixed percentage of 5%.

It is further confirmed that the other conditions of lease as stipulated in paragraph 36 - 50 of the Administration of Immoveable Property Policy of the Overstrand Municipality will be included in the lease agreement with DTPW.

## **Conclusion**

Taking the above into consideration, it is recommended that Council approves the deviation from paragraph 26 of the Administration of Immoveable Property Policy allowing the Municipality to enter into a lease agreement with a fixed escalation rate of 5% with the DTPW in respect of the lease of the Property for the purpose of erecting and operating a health care clinic.

## **7. Financial Implications**

The Municipality stands to gain rental in the amount of R3,094.60. (THREE THOUSAND NINETY-FOUR RAND AND SIXTY CENTS) (VAT Excluded) per month for the 2022/2023 financial year where after the rental amount will escalate annually on 1 July with 5%, the next escalation to be on 1 July 2023.

## **8. Staff Implications**

None

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**9. Comments from other Departments, Divisions and Administrations**

**Senior Manager: Expenditure & Assets, Hermanus – J Vorster 028 313 8046**

“As this is a revenue generating proposal with no intention to dispose of the asset, there is no objection”.

**10. Annexures**

Annexure A: Locality Plan 1  
Annexure B: Locality Plan 2

**RECOMMENDATION TO THE COUNCIL:**

that the deviation from paragraph 26 of the Administration of Immovable Property Policy of 2015 in order for the lease amount to escalate every year on 1 July with a fixed percentage of 5%; **be approved.**

<b>RESPONSIBLE OFFICIAL :</b>	<b>R MARINUS</b>
<b>TARGET DATE FOR IMPLEMENTATION :</b>	<b>14 MARCH 2023</b>
<b>TARGET DATE TO INFORM APPLICANT :</b>	<b>7 MARCH 2023</b>
<b>TARGET DATE TO INFORM OBJECTOR :</b>	<b>N/A</b>

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**23 November 2022**

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**THIS MATTER SERVED BEFORE THE INVESTMENT & INFRASTRUCTURE PORTFOLIO COMMITTEE ON 6 FEBRUARY 2023, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:**

**RECOMMENDATION TO THE COUNCIL:**

that the deviation from paragraph 26 of the Administration of Immovable Property Policy of 2015 in order for the lease amount to escalate every year on 1 July with a fixed percentage of 5%; **be approved.**

**RESPONSIBLE OFFICIAL :**

**R MARINUS**

**TARGET DATE FOR IMPLEMENTATION :**

**14 MARCH 2023**

**TARGET DATE TO INFORM APPLICANT :**

**7 MARCH 2023**

**TARGET DATE TO INFORM OBJECTOR :**

**N/A**

ANNEXURE A – LOCALITY MAP 1



ANNEXURE B – LOCALITY MAP 2

