

**AGENDA of the
Portfolio Committee : Investment & Infrastructure
2 June 2022
(Also the agenda for the Mayoral Committee Meeting : 27 June 2022)**

14.

A PORTION OF UNREGISTERED ERF 2402 (A PORTION OF ERF 1) HAWSTON (SITUATED IN CHURCH STREET, HAWSTON): DEVIATION FROM PARAGRAPHS 4, 18, 20.1(b) AND 24 OF THE ADMINISTRATION OF IMMOVABLE PROPERTY POLICY OF 2015 ALLOWING THE MUNICIPALITY TO ENTER INTO A LEASE AGREEMENT WITH HAROLD HENRY LAMOHR

7/2/3/1

A Le Roux

Manager: Property Administration

22 April 2022

(028) 316-5623

1. Executive Summary

To obtain approval from the Executive Mayor to enter into a lease agreement for a period of 9 (NINE) years and 11 (ELEVEN) months with Harold Henry Lamohr ("Mr Lamohr") in respect of a portion of Unregistered Erf 2402 (a portion of Erf 1) Hawston, ±573m² (FIVE HUNDRED SEVENTY THREE SQUARE METRES) in extent, situated in Church Street, Hawston, hereinafter referred to as "the Property", for residential purposes; and

To obtain approval from Council for the deviation from paragraphs 4, 18, 20.1(b) and 24 of the Administration of Immovable Property Policy (as approved by Council on 25 November 2015) allowing the Municipality to enter into a direct lease agreement with Mr Lamohr in respect of the Property for residential purposes, without paying the prescribed application fee, without paying the advertisement fee and without obtaining a valuation from an independent valuer to determine the market related rental amount.

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

- Municipal Asset Transfer Regulations (R. 878 of 2008)

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- Administration of Immovable Property Policy of the Overstrand Municipality, as amended

6. Background/Discussion/Evaluation/Conclusion

Background

Mr Lamohr was employed by the bus services in Hawston many years ago that operated on the Property. The bus services leased the Property from the Caledon Divisional Council. As part of his employment with the bus services, Mr Lamohr was allocated the residential unit on the Property and has lived there for the past 40 years. Although the bus services were moved to Genadendal, Mr Lamohr stayed behind in Hawston. Erf 1 Hawston was transferred to the Municipality in July 2013. Please see locality maps hereby attached as “Annexures A1&2”.

Unfortunately, Mr Lamohr no longer has a copy of his agreement with the previous owner of the Property, and the Municipality does not have any documentation in this regard either. A municipal account was opened before 1998 which is indicative thereof that some form of agreement must have existed at that point in time. As the account was opened before 1998 the Finance Department has no record of the document on which basis the account was opened.

The Overberg District Municipality (“ODM”) was contacted to request any documentation they might have in respect of this matter. The documents and records of Hawston for the period 1961 to 1996 were however sent to Western Cape Archives and Record Services in 2017. ODM has agreed to continue to search for any documentation they can find, and a request will be sent to Archives and Records for a copy of any agreement they can find in this regard.

Mr Lamohr enclosed the Property and attended to the maintenance of the Property since he moved into the Property 40 years ago. Mr Lamohr is 66 years of age, has a sick wife that he is looking after, lives of a social grant (SASSA pension), is residing on the Property for the past 40 years and has no alternative place to live and therefor pleads with the Municipality to allow him to continue to reside on the Property, by way of a lease agreement.

Mr Lamohr has paid his municipal account, which includes water and electricity, every month and his account is up to date.

On 18 May 2021 the Municipal Manager approved in principle the lease of the Property to Mr Lamohr. In the interim, for administrative and audit purposes, a written lease agreement was signed that is subject to the approval of the

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Executive Mayor as to the long term lease and Council for the deviations from the Administration of Immovable Property Policy as requested herein.

Evaluation

A: Administration of Immovable Property Policy of the Overstrand Municipality:

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

Paragraph 4: “No application for the purchase, lease of or encroachment on immovable property (save for the instances mentioned in paragraphs 58 to 62 and 64.1 below) shall be processed unless the prescribed application fee as per tariff approved in the annual budget for that financial year has been paid, nor shall any proposed lease or encroachment (save for the instances mentioned in paragraphs 58 to 62 and 64.1 below) be advertised unless the applicant has confirmed, in writing, that he/she will bear all costs involved in such transaction including – but not limited to – legal, survey, re-zoning, sub-division, consolidations, advertisement, relocation or provision of services and, where applicable, a deposit as per prescribed rate to cover incidental costs has been paid.”

Given the financial status of Mr Lamohr as a pensioner that only receives a social grant, it is evident that Mr Lamohr is not able to pay the application fee of R3,000.00 (THREE THOUSAND RAND ALONE). It is further argued that this application is not for a new residence/application as Mr Lamohr has lived there for the past 40 years.

A request is made to Council to deviate from paragraph 4 to exempt Mr Lamohr from paying the prescribed application fee for this application as this is not a new application, but an existing situation that needs to be formalised by means of a written agreement.

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:

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- 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”.**

Although the application is for a long-term the rental will not be in excess of R10 million. The property is not a business site.

Although there is always a general need and desire for residential properties in the Overstrand, it must also be considered whether a competitive process will best serve the interests of the community. Mr Lamohr has been residing in, and maintaining, the Property for the past 40 years, without any complaint from the public. If the lease of the Property is made available by means of a competitive process, it is difficult to imagine that Mr Lamohr would be the successful bidder with his financial position and in the event that he is not the successful bidder, the Municipality would be tasked with evicting an elderly member of society and his ailing wife from the Property where they have resided for more than 40 years without any complaint from the community. In addition thereto, the Municipality would incur a lot of costs to evict Mr Lamohr if he does not move willingly and it is probable that those costs would not be recoverable.

Taking the above into consideration a request is made to Council to deviate from Paragraph 18 in that a competitive process not be followed, and that the Property be leased directly to Mr Lamohr.

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**
- (c) the Executive Mayor, as delegated authority, has subsequently approved that the right may be granted.”**

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The Municipal Manager approved in principle the long-term lease of the Property to Mr Lamohr for a period of 9 (NINE) years and 11 (ELEVEN) months, subject thereto that the approval of Council is obtained for the deviation from paragraphs 4, 18, 20.1(b) and 24 of the Administration of Immovable Property Policy.

Mr Lamohr is not financially stable to pay any other expenses except his normal monthly household expenses due to his only source of income being the social pension grant he receives from Government. Mr Lamohr was afforded more than 3 months since the Municipal Manager's in principle approval was obtained, to pay-off the advert cost and he is still not able to pay the advert cost.

A request is made to Council to exempt Mr Lamohr from paying the advert cost, and if Council approves the request, that the Municipality bears the advert cost to still follow a public participation process in respect of this lease. There is sufficient funding in the specific vote to bear the costs of the advertisement.

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).”*

As there is no tariff for this type of lease and taking Mr Lamohr's financial position into consideration a deviation is requested from this paragraph to the effect that Mr Lamohr not pay market related rental as determined by a professional valuer, but rather the tariff approved for Wetcore Stands (Social Housing) which is an amount of R37.39 (THIRTY SEVEN RAND AND THIRTY-NINE CENTS) (Excluding VAT) per month for the 2021/2022 financial year.

B. Advertisement/Notification

It is requested that Council exempt Mr Lamohr from paying the advert cost and that the Municipality bears the cost for the advert.

If approved, the Property Administration Department will publish the advert and if any comments are received this matter will be referred back to the Executive Mayor and Council together with the comments received.

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Conclusion

Taking the above into consideration, it is recommended that:

- (a) The Executive Mayor approves the lease of the Property to Mr Lamohr for a period of 9 (NINE) years and 11 (ELEVEN) months at a rental amount equal to the tariff approved for Wetcore Stands (Social Housing) in the Municipality's annual budget, subject to Council's approval for a deviation from paragraphs 4, 18, 20.1(b) and 24 of the Administration of Immovable Property Policy, as amended; and
- (b) Council approves a deviation from paragraph 4 of the Administration of Immovable Property Policy, exempting Mr Lamohr from payment of the prescribed application fee;
- (c) Council approves a deviation from paragraph 18 of the Administration of Immovable Property Policy, in order to enter into a direct lease with Mr Lamohr;
- (d) Council approves a deviation from paragraph 20.1(b) of the Administration of Immovable Property Policy, exempting Mr Lamohr from payment of the prescribed advert fee and that the Municipality bears the advert cost, and
- (e) Council approves the deviation from paragraph 24 of the Administration of Immovable Property Policy, exempting the Municipality from obtaining a valuation from an independent valuer at the cost of Mr Lamohr to determine the market related rental amount and that the rental amount be an amount equal to the tariff approved for Wetcore Stands (Social Housing) in the Municipality's annual budget.

7. Financial Implications

The Municipality stands to gain a rental amount of R37.39 (THIRTY SEVEN RAND AND THIRTY-NINE CENTS) (Excluding VAT) per month as well as service charges.

The Municipality will waive the application costs in the amount of R3,000.00 (THREE THOUSAND RAND).

The advertisement in the estimated cost of R3,000.00 (THREE THOUSAND RAND) can be paid out of the following operational budget:

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<i>SCOA description</i>	<i>Advertising, Publicity and Marketing</i>
<i>SCOA cost account</i>	<i>10226221470000</i>
<i>SCOA business key</i>	<i>20210629094181</i>

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Acting Senior Manager: Expenditure and Assets, Mr C Oppelt - (028) 313 8960

“As this is an income generating proposal, with no intention of selling the asset, there is no objection against the application.”

10. Annexures

Annexures A1&2: Locality Map

RECOMMENDATION TO THE EXECUTIVE MAYOR:

1. that the lease of a portion of Unregistered Erf 2402 (a portion of Erf 1) Hawston, ±573m² in extent, to Harold Henry Lamohr for a period of 9 (NINE) years and 11 (ELEVEN) months, from 1 November 2021 for residential purposes, at a rental amount equal to the tariff approved for Wetcore Stands (Social Housing) in the Municipality’s annual budget per month, **be approved**;
2. that the abovementioned approval be subject to Council approving the deviation from paragraphs 4, 18, 20.1(b) and 24 of the Administration of Immovable Property Policy of 2015; and
3. that the abovementioned approval be subject to a public participation process being followed and that any comments / objections received from the public following the public participation process be submitted to the Executive Mayor for consideration.

RECOMMENDATION TO THE COUNCIL:

1. that the deviation from paragraph 4 of the Administration of Immovable Property Policy exempting Mr Harold Henry Lamohr from paying the prescribed application fee, **be approved**;

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2. that the deviation from paragraph 18 of the Administration of Immovable Property Policy allowing a direct lease to Mr Harold Henry Lamohr, **be approved**;
3. that the deviation from paragraph 20.1(b) of the Administration of Immovable Property Policy, exempting Mr Harold Henry Lamohr from payment of the prescribed advert cost and that the Municipality bears the advert cost, **be approved**; and
4. that the deviation from paragraph 24 of the Administration of Immovable Property Policy, exempting Mr Harold Henry Lamohr from obtaining a valuation from an independent valuer to determine the market related rental amount and that the rental amount be an amount equal to the tariff approved for Wetcore Stands (Social Housing) in the Municipality's annual budget, **be approved**.

RESPONSIBLE OFFICIAL :	R OCTOBER
TARGET DATE FOR IMPLEMENTATION :	29 JULY 2022
TARGET DATE TO INFORM APPLICANT :	15 JULY 2022
TARGET DATE TO INFORM OBJECTOR :	N/A

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7/2/3/1

A Le Roux

Manager: Property Administration

22 April 2022

(028) 316-5623

THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON 2 JUNE 2022, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:

RECOMMENDATION TO THE EXECUTIVE MAYOR:

1. that the lease of a portion of Unregistered Erf 2402 (a portion of Erf 1) Hawston, ±573m² in extent, to Harold Henry Lamohr for a period of 9 (NINE) years and 11 (ELEVEN) months, from 1 November 2021 for residential purposes, at a rental amount equal to the tariff approved for Wetcore Stands (Social Housing) in the Municipality's annual budget per month, **be approved**;
2. that the abovementioned approval be subject to Council approving the deviation from paragraphs 4, 18, 20.1(b) and 24 of the Administration of Immovable Property Policy of 2015; and
3. that the abovementioned approval be subject to a public participation process being followed and that any comments / objections received from the public following the public participation process be submitted to the Executive Mayor for consideration.

RECOMMENDATION TO THE COUNCIL:

1. that the deviation from paragraph 4 of the Administration of Immovable Property Policy exempting Mr Harold Henry Lamohr from paying the prescribed application fee, **be approved**;
2. that the deviation from paragraph 18 of the Administration of Immovable Property Policy allowing a direct lease to Mr Harold Henry Lamohr, **be approved**;
3. that the deviation from paragraph 20.1(b) of the Administration of Immovable Property Policy, exempting Mr Harold Henry Lamohr from payment of the prescribed advert cost and that the Municipality bears the advert cost, **be approved**; and

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4. that the deviation from paragraph 24 of the Administration of Immovable Property Policy, exempting Mr Harold Henry Lamohr from obtaining a valuation from an independent valuer to determine the market related rental amount and that the rental amount be an amount equal to the tariff approved for Wetcore Stands (Social Housing) in the Municipality's annual budget, **be approved.**

RESPONSIBLE OFFICIAL :	R OCTOBER
TARGET DATE FOR IMPLEMENTATION :	29 JULY 2022
TARGET DATE TO INFORM APPLICANT :	15 JULY 2022
TARGET DATE TO INFORM OBJECTOR :	N/A



ANNEXURE A2



OVERSTRAND MUNICIPALITY

A portion of Unregistered Erf 2402 Hawston

Date: 2022/05/18

