

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
16 February 2016
(Also the agenda for the Mayoral Committee Meeting : 24 February 2016)**

11.

HERMANUS, A PORTION OF ERF 243 (MOUNT PLEASANT): DEVIATION FROM PARAGRAPH 5.2.1.1 OF THE MUNICIPAL RESIDENCE POLICY AND PARAGRAPHS 20.1(b) AND 24 OF THE ADMINISTRATION OF IMMOVABLE PROPERTY POLICY OF 2015 TO ENTER INTO A LEASE AGREEMENT WITH A FORMER EMPLOYEE OF THE MUNICIPALITY

7/2/3/1

M Erasmus

(028) 316 3724

Hermanus Administration

12 January 2016

1. Executive Summary

To obtain approval for the deviation from paragraph 5.2.1.1 of the Municipal Residence Policy and paragraphs 20.1(b) and 24 of the Administration of Immovable Property Policy of 2015 to enter into a lease agreement with Karel Botha, a former employee of the Municipality.

2. Service Delivery and Budget Implementation Plan - IGNITE

Infrastructure and Planning
Property Administration

3. Compliance with Strategic Priority

Provision of democratic, accountable and ethical governance

4. Delegated Authority

None

5. Legal Requirements

- Municipal Residence Policy of the Overstrand Municipality (2012).
- Administration of Immovable Property Policy of the Overstrand Municipality (2015).
- Local Government: Municipal Finance Management Act, 2003 Municipal Asset Transfer Regulations, 2008 (No R. 878 of 2008).

6. Background/Discussion/Evaluation/Conclusion

Background

Mr Karel Botha worked at the Overstrand Municipality as the Foreman at Waterworks. A lease agreement was entered into with him for the lease of

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
16 February 2016
(Also the agenda for the Mayoral Committee Meeting : 24 February 2016)**

Mount Pleasant Hostel Room number 5 on a portion of Erf 243, Mount Pleasant. The Mount Pleasant Hostels are, in terms of the Municipal Property Policy, not directly linked to a specific post but are reserved for officials who work in the Operational Department. The agreement with Mr. Botha came into effect on 1 November 2011 and the agreement stipulated that it will continue until such a time as he is no longer in the service of the Overstrand Municipality in the Operational Department.

Council, on 22 January 2014, approved in principle the outsourcing of the operation and maintenance of water and wastewater treatment. A tender was advertised in this regard and the Bid Adjudication Committee (hereinafter referred to as the BAC) awarded the tender to Veolia Water Solutions & Technologies South Africa (Pty) Ltd. (hereinafter called "Veolia") on 22 July 2015. After the award of the tender by the BAC a report was submitted to Council and subsequently approved on 29 July 2015.

An agreement was entered into between the Overstrand Municipality and Veolia on 2 October 2015 and is valid for a period of 15 (FIFTEEN) years with an option for renewal for a further 5 (FIVE) years. Municipal officials involved in the water treatment department were transferred to Veolia and are now in terms of the said agreement employees of Veolia. When the contract with Veolia expires or are canceled, for whatever reason, the officials will transfer back to the Overstrand Municipality as employees.

Discussion/Evaluation

A: Current Agreements

The following clauses of the agreement between the Overstrand Municipality and Veolia have reference:

Clause 28.1 *"In accordance with s197(2) read with s197(3) of the Labour Relations Act (LRA) the Transferred Employees will transfer to the Operator on the Effective Date in accordance with terms and conditions of employment which shall on the whole be no less favourable than the conditions of Transferred Employees' terms and conditions of employment as at the date of transfer."*

Clause 28.9 *"It is recorded that there will be no decrease in existing remuneration or benefits of the Transferred Employees as a direct result of the transfer of the Transferred Employees to the Operator triggered by the coming into effect of this Agreement."*

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
16 February 2016
(Also the agenda for the Mayoral Committee Meeting : 24 February 2016)**

Clause 29.5 *“The Operator shall be responsible for paying employees their salaries and benefits.”*

Since Mr. Botha’s terms and conditions of employment, in terms of the Labour Relations Act and the agreement between the Municipality and Veolia, may in whole not be less favourable than the terms of conditions as at date of transfer to Veolia, it is proposed that he continues to lease the hostel room from the Municipality.

The following clauses from the agreement between the Overstrand Municipality and Mr. Botha which commenced on 1 November 2011 have reference:

Clause 1.4.3 *“‘employee’ a member of the staff of the Overstrand Municipality employed permanently on or contract;”*

Clause 2.1 *“It is hereby specifically declared and acknowledged that the property hereby let is registered in the name of the **LESSOR** and that this lease is accordingly entered into for the sole purpose of providing the **LESSEE** with accommodation to enable him to properly perform the duties related to his position as Superintendent of water works”.*

Clause 3.1 *“This lease shall commence on 1 November 2011 and shall continue until the **LESSEE** is no longer in service of the Overstrand Municipality as a worker in the Operational Department, unless terminated by operation of law or by virtue of the provisions contained in this Agreement of Lease.”*

Clause 4.1 *“The **LESSEE** shall pay to the **LESSOR** for the property hereby let a rental of **3% of the LESSEE’S basic monthly salary**, which amount shall be calculated on a monthly basis and payable in advance.”*

Clause 8.1 *“The **LESSEE** shall be liable for the payment of all water, sewerage and electricity service charges levied and due to the Municipality of Overstrand in terms of any resolution of the Municipal Council and/or by-laws in force from time to time.”*

Clause 8.2 *“The **LESSEE** undertakes for the currency of this lease to pay to the **LESSOR** the pro rata calculated property rates and insurance premium in respect of the official accommodation which will come into operation as soon as the subject provisions of the Municipal Residence Policy*

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
16 February 2016
(Also the agenda for the Mayoral Committee Meeting : 24 February 2016)**

have been amended and approved. The buildings and/or structures will be insured against damage or loss by the LESSOR in terms of this lease.”

In terms of clause 3.1 of the said agreement and as stipulated above the agreement is no longer valid as the agreement stipulates that it will be valid and in force only until such a time as Mr. Botha is no longer in the service of the Overstrand Municipality in the Operational Department. Although he is no longer and employee of the Municipality he is still and employee of a contractor appointed by the Municipality to render essential operational services.

B: Policies

The Municipal Residence Policy stipulates that the Mount Pleasant Hostels forms part of the Municipal Residences which can only be leased to officials of the Overstrand Municipality appointed in the Operational Department.

The following paragraph of the Municipal Residence Policy has reference:

Paragraph 2.3 *“Employee/s” A member of the staff of the Overstrand Municipality.”*

Paragraph 5.2.1.1 *“The Mount Pleasant Hostels shall be allocated to Employees of the Overstrand Municipality only.”*

It therefore recommended that paragraph 5.2.1.1 of the Municipal Residence Policy be deviated from to allow the Municipality to lease the said hostel room to Mr. Botha who is no longer an employee of the Overstrand Municipality.

As Mr. Botha is no longer an employee of the Overstrand Municipality the Municipal Residence Policy no longer apply to the leasing of property to him. The following paragraphs of the Administration of Immovable Property Policy has reference:

Par 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.”

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
16 February 2016
(Also the agenda for the Mayoral Committee Meeting : 24 February 2016)**

- Par 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*
 - (b) the municipal council has approved that the right may be granted.”*
- Par 50** *“The Municipality reserves the right, where necessary, to resume immovable property let, or portion thereof, and to cancel an existing lease in its entirety where such immovable property is required for operational purpose or in the interest of the community or for any reason necessitating the cancellation thereof”*

In this case a direct lease is proposed with a deviation from paragraph 20.1(b) in that the public participation process not be followed as this will not serve a useful purpose, will be costly and the Municipality is bound by agreement to not place Mr. Botha in less favourable condition than when he was transferred to Veolia.

A deviation from paragraph 24, which determines that the fair market value for the lease must be determined, is further proposed as Mr. Botha’s previous agreement stipulated, in accordance with the Municipal Residence Policy, that the rent payable be 3% of his basic salary. It is therefore proposed that the commencement lease amount be R461.25 (FOUR HUNDRED AND SIXTY ONE RAND AND TWENTY FIVE CENTS) and escalate on the 1st of July every year by a percentage fixed in accordance with the prevailing consumer price index as stipulated in paragraph 40 of the Administration of Immovable Property Policy. It should be noted that the Mount Pleasant Hostel Rooms are quite small, with no yard of their own and not very modern or luxurious and consists of 2 rooms and a small bathroom.

Since an agreement will be entered into with Mr. Botha in terms of the Administration of Immovable Property Policy paragraph 50 as discussed above will also be included as there is a standard clause to this effect in the lease agreements.

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
16 February 2016
(Also the agenda for the Mayoral Committee Meeting : 24 February 2016)**

Conclusion

It is recommended that the deviations from paragraph 5.2.1.1 of the Municipal Residence Policy and paragraphs 20.1(b) and 24 of the Administration of Immovable Property Policy be approved and subsequently that the lease of Mount Pleasant Hostel Room number 5 on a portion of Erf 243, Mount Pleasant to Mr. Botha be approved at a rental amount of R461.25 (FOUR HUNDRED AND SIXTY ONE RAND AND TWENTY FIVE CENTS) per month until such a period when Mr. Botha is no longer in service of Veolia in the position he is currently occupying.

7. Financial Implications

The Municipality stands to gain a lease income of R461.25 (FOUR HUNDRED AND SIXTY ONE RAND AND TWENTY FIVE CENTS) per month where after the amount will escalate on the 1st of July every year.

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

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

As this is an income generating tender with no intension to dispose of the asset, there is no objection to the report.

It would, however, be recommended that Veolia continues the practice to deduct the monthly rental amount from Mr. Botha's salary and then deposit it into the Council's account. This will also serve as further confirmation that Mr. Botha is still in the employ of Veolia as the lease agreement would have to be terminated upon such time as he is no longer in their employ.

10. Annexures

Annexure A: Locality plan

RECOMMENDATION TO THE COUNCIL:

1. that the deviation from paragraph 5.2.1.1 of the Municipal Residence Policy, in order to allow for the lease of the Municipal Residence leased to Mr. Botha, who is not an employee of the Overstrand Municipality, **be approved;**

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
16 February 2016
(Also the agenda for the Mayoral Committee Meeting : 24 February 2016)**

2. that the deviation from paragraph 20.1(b) of the Administration of Immovable Property Policy of 2015 in order for a long term lease agreement to be entered into without following a public participation process, **be approved;**
3. that the deviation from paragraph 24 of the Administration of Immovable Property Policy of 2015 in order to lease the Municipal Residence Mount Pleasant Hostel Room number 5 at the amount currently being paid and not having to determine the fair market value by appointing a professional valuer **be approved;**
4. that the lease of the Mount Pleasant Hostel Room number 5 to Karel Botha at a rental amount of R461.25 (FOUR HUNDRED AND SIXTY ONE RAND AND TWENTY FIVE CENTS) per month **be approved;**
5. that the lease amount mentioned in 4 above escalates on the 1st of July of every year, by a percentage fixed in accordance with the prevailing consumer price index (all items) in accordance with paragraph 40 of the Administration of Immovable Property Policy of 2015; and
6. that the following condition be included in the lease agreement: "The lease agreement shall be valid and continue until the LESSEE is no longer an employee of Veolia in his current position. Should Veolia's agreement with the Municipality end and the LESSEE be transferred back to the Overstrand Municipality as an employee a new agreement will be entered into between the LESSEE and the LESSOR in terms of the Municipal Residence Policy."

RESPONSIBLE OFFICIAL :

M ERASMUS

TARGET DATE FOR IMPLEMENTATION :

1 APRIL 2016

TARGET DATE TO INFORM APPLICANT :

7 MARCH 2016

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
16 February 2016
(Also the agenda for the Mayoral Committee Meeting : 24 February 2016)**

11.

HERMANUS, A PORTION OF ERF 243 (MOUNT PLEASANT): DEVIATION FROM PARAGRAPH 5.2.1.1 OF THE MUNICIPAL RESIDENCE POLICY AND PARAGRAPHS 20.1(b) AND 24 OF THE ADMINISTRATION OF IMMOVABLE PROPERTY POLICY OF 2015 TO ENTER INTO A LEASE AGREEMENT WITH A FORMER EMPLOYEE OF THE MUNICIPALITY

7/2/3/1

M Erasmus

(028) 316 3724

Hermanus Administration

12 January 2016

THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON 16 FEBRUARY 2016, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:

RECOMMENDATION TO THE COUNCIL:

1. that the deviation from paragraph 5.2.1.1 of the Municipal Residence Policy, in order to allow for the lease of the Municipal Residence leased to Mr. Botha, who is not an employee of the Overstrand Municipality, **be approved;**
2. that the deviation from paragraph 20.1(b) of the Administration of Immovable Property Policy of 2015 in order for a long term lease agreement to be entered into without following a public participation process, **be approved;**
3. that the deviation from paragraph 24 of the Administration of Immovable Property Policy of 2015 in order to lease the Municipal Residence Mount Pleasant Hostel Room number 5 at the amount currently being paid and not having to determine the fair market value by appointing a professional valuer **be approved;**
4. that the lease of the Mount Pleasant Hostel Room number 5 to Karel Botha at a rental amount of R461.25 (FOUR HUNDRED AND SIXTY ONE RAND AND TWENTY FIVE CENTS) per month **be approved;**
5. that the lease amount mentioned in 4 above escalates on the 1st of July of every year, by a percentage fixed in accordance with the prevailing consumer price index (all items) in accordance with paragraph 40 of the Administration of Immovable Property Policy of 2015; and
6. that the following condition be included in the lease agreement: "The lease agreement shall be valid and continue until the LESSEE is no longer an employee of Veolia in his current position. Should Veolia's agreement with the Municipality end and the LESSEE be transferred back to the Overstrand Municipality as an employee a new agreement will be entered into between the LESSEE and the LESSOR in terms of the Municipal Residence Policy."

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
16 February 2016
(Also the agenda for the Mayoral Committee Meeting : 24 February 2016)**

RESPONSIBLE OFFICIAL :	M ERASMUS
TARGET DATE FOR IMPLEMENTATION :	1 APRIL 2016
TARGET DATE TO INFORM APPLICANT :	7 MARCH 2016

