

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
23 March 2021
(Also the agenda for the Mayoral Committee Meeting : 31 March 2021)**

**5.
A PORTION OF ERF 249 AND A PORTION OF ERF 832 HERMANUS (KNOWN AS
THE HERMANUS MARKET SQUARE SITUATED IN MARKET SQUARE STREET):
PARTIAL REBATE ON RENTAL TO BE LEVIED, COTTON4U4EVER (PTY) LTD**

7/2/3/1

A Le Roux

Manager: Property Administration

2 February 2021

(028) 316-3724

1. Executive Summary

The purpose of the report is to request Council to approve a partial rebate of 25% of the rental payable by COTTON4U4EVER (Pty) Ltd to an amount of R565.00 (FIVE HUNDRED AND SIXTY FIVE RAND) (VAT included) per stall per month for a period of 6 (SIX) months from 1 March 2021 in relation to the lease of the Market Square Stalls.

2. Service Delivery and Budget Implementation Plan - IGNITE

Directorate Finance
Department Revenue

3. Compliance with Strategic Priorities

Provision of democratic, accountable and ethical governance
Promotion of tourism, economic and social development

4. Delegated Authority

None

5. Legal Requirements

Administration of Immovable Property Policy of the Overstrand Municipality,
as amended
Local Government: Municipal Finance Management Act, Act 56 of 2003
("MFMA")

6. Background/Discussion/Evaluation/Conclusion

Background

The widespread and commonly known Covid-19 virus, declared as a pandemic by the World Health Organisation, has wreaked havoc on the world, South-Africa and the Overstrand region.

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Furthermore, Dr Nkosazana Dlamini Zuma, Minister of Cooperative Governance and Traditional Affairs, designated under section 3 of the Disaster Management Act (Act No. 57 of 2002) (the “DMA”), following a declaration of a national state of disaster, published regulations in terms of section 27(2) of the DMA, after consultation with the relevant Cabinet members (the “Regulations”). The Regulations are amended from time to time and the state of disaster is continuing, currently until 15 March 2021 with no indication of whether it will again be extended after the said date.

Guidelines issued by the World Health Organisation to individuals in mitigating the potentially fatal risk posed by the Covid-19 virus include staying home, avoiding gatherings, social distancing, the regular washing of hands, etc.

The Regulations in turn impose strict legal obligations on all citizens and business within the Republic of South Africa. The main applicable restrictions currently in effect under Amended Alert Level 3 are the limitation of numbers visiting restaurants, the curfew, social distancing causing the number of patrons visiting the markets being limited, etc. The costs to comply with the responsibilities placed on business owners in order to adhere to the regulations have also had a drastic effect on the viability of businesses overall.

Discussion

A: REBATE

Following a competitive bidding process, a lease agreement for the Hermanus Market Square stalls was entered into with COTTON4U4EVER (Pty) Ltd for the lease, management, sub-letting, supervision and maintenance of the Hermanus Market Square stalls (34 stalls) at a total rental amount of R76,840.00 (SEVENTY SIX THOUSAND EIGHT HUNDRED AND FORTY RAND) (VAT included) per month.

Since 1 October 2020, when the lease agreement commenced, all the stalls were successfully occupied with sub-tenants paying rental promptly to COTTON4U4EVER (Pty) Ltd. The municipal account of COTTON4U4EVER (Pty) Ltd is up to date and payments are made to the Municipality in the prescribed period.

Many improvements and upgrades were made by COTTON4U4EVER (Pty) Ltd to attract visitors and tourists to support the local entrepreneurs at the Market Square Stalls who are desperately trying to make a living, supporting their families and contributing to our local economy.

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The Hermanus Market Square stalls have been hit hard as the traders' customer base consists primarily of tourists to the Overstrand area. During 2020 the traders lost 7 months of trade and income.

Travel for leisure purposes was severely restricted in terms of the Regulations and the traders had no viable customer base for a period of time. As also mentioned above, the Regulations prevented and albeit to a lesser extent recently, still prohibit the movement of persons. Only from 31 July 2020 were people resident within South Africa allowed to travel for leisure purposes and even then, such travel was still restricted to only within their own province. This was further lifted, as to allow for inter-provincial travel.

The Overstrand area is generally regarded as a tourist destination where international and national visitors frequent our facilities such as restaurants, stalls, beaches and parks. The Regulations prohibit leisure travel (except for the recently allowed inter-provincial travel from 18 August 2020) which, together with the closure of most tourist facilities such as beaches and parks etc. for a period, resulted in substantially fewer visitors to Hermanus, especially since the Overberg was declared a hotspot.

Traders are dependent on tourists and visitors at the Market buying their products to make a living and to pay their monthly rental. Since the level 3 lockdown commenced there was a substantial absence of tourists and visitors at the Market Square Stalls. The turnover on the market has dropped by approximately 80%. The sub-tenants, who represents at least 34 families in Hermanus, have no more savings left to carry them through this financial difficult time.

COTTON4U4EVER (Pty) Ltd, has shifted its focus from profit-making to only covering the operating costs of the Market Square Stalls for now, requested a partial rebate of 25% in the rental payable by COTTON4U4EVER (Pty) Ltd in the amount of R565.00 (FIVE HUNDRED AND SIXTY FIVE RAND) (VAT included) per stall per month for a period of 6 (SIX) months from 1 March 2021.

COTTON4U4EVER (Pty) Ltd explained that it will provide the sub-tenants with a further rebate, additional to the requested rebate from the Municipality, on the sub-rental amount in the amount of R537.00 (FIVE HUNDRED AND TIRTY SEVEN RAND) (VAT included) which will give the sub-tenants a total rebate of R1,102.00 (ONE THOUSAND ONE HUNDRED AND TWO RAND) (VAT included) per month. This will have the effect that the sub-tenants' rental will be reduced from R4,408.00 (FOUR THOUSAND FOUR HUNDRED AND EIGHT RAND (VAT included) to R3,306.00 (THREE THOUSAND THREE HUNDRED AND

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SIX RAND) (VAT included) per month for the said period the rebate is requested.

The remainder of the income (after the R565.00 per stall rebate and after rental is paid to the Municipality) to COTTON4U4EVER (Pty) Ltd will be sufficient to cover the basic monthly operating costs and the cost to clean and sanitize the ablution facilities at the Hermanus Market Square.

B: EFFECT IF NO REBATE IS GRANTED

Should the full payment of the rental amount without any rebate be required, there is a reasonable prospect that the detrimental consequences may materialise.

1. Consequences of termination of lease agreement

Should the sub-tenants not receive rebate on their rental they will not be able to pay their rental which will subsequently lead to COTTON4U4EVER (Pty) Ltd not being able to pay the full rental amount due to the Municipality.

It is a standard term of all lease agreements that the Municipality may cancel a lease agreement where the tenant fails to pay the rental amount and proceed with the formal collection proceedings at the cost of the Municipality. Should rental remain unpaid, the Municipality may be left with no alternative but to enforce the lease cancellation provision leaving the property vacant.

Vacant properties can become a huge administrative burden to the Municipality. From experience it is known that vacant properties are usually targets for vandalism and theft. Having tenants in premises eases the burden of protecting and securing the asset of the Municipality.

Section 63 of the MFMA stipulates as follows:

“63.(1) The accounting officer of a municipality is responsible for the management of
(a) the assets of the municipality, including the safeguarding and the maintenance of those assets; and
(b) the liabilities of the municipality.”

The property is an asset of the Overstrand Municipality and the Accounting Officer will be obligated to incur costs in safeguarding the asset if it is left vacant.

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It is required by the Administration of Immovable Property Policy of the Municipality as well as the lease agreement entered into, that tenants are responsible for the maintenance and upkeep of the properties they lease. Should the lease agreement be cancelled the Overstrand Municipality will have to resume the maintenance obligations of the property. This will result in substantial administrative duties and maintenance costs and expenses.

2. Closing of businesses

Should they remain liable to pay their full rental amounts at this time and stage of economic uncertainty in the South African nation at large, this may be the tipping point for many businesses that are already standing on the proverbial edge of closure. It is a reality faced by many businesses that have not been able to generate an income sufficient to keep them afloat. It should be noted that the pandemic and the resulting Regulations are the reasons for the businesses' dismal income, as these businesses have been trading profitably for the most part of their lease durations and where they have not made their payments, they have usually been able to recover in the next busy month or so. These are circumstances beyond the normal and expected slow trading months.

The closure of businesses, regardless of how big or small, includes job losses. Unemployment is a major threat to the economy and state of South Africa and must be prevented where possible. An increase in crime is a well-known effect of unemployment within an area. An increase in hunger and crime is not something that the Municipality can afford. A job loss can result in families being placed into poverty, where they previously lived beyond the so-called bread line.

The impact job losses have on a community must not be understated, the ripple effects of crime, poverty, increased need for subsidised living and the decrease in spending within a community can eradicate years of socio-economic advancement within less than a couple of months. Higher unemployment places a larger burden on the Overstrand Municipality as it will need to subsidise the poor and at the same time it diminishes the amount of revenue it can collect for rates and services in the long term.

Evaluation

Administration of Immovable Property Policy of the Overstrand Municipality

The following conditions of said policy apply to this report:

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Paragraph 25(a): *The Municipality, as a rule, bearing in mind the provisions of paragraph 23 and save for those cases mentioned in paragraphs 21, 25, 26 and 58 to 62, shall not (a) let immovable property at a lower rental than market related rental or the rental approved in the tariffs except in cases when the public interest or the plight of the poor demands otherwise and taking into account the provisions of Regulation 13(2) of the MATR, the latter in circumstances of an alienation.*

In this event, the public interest and the plight of the poor (insofar the employees/traders) justify the request for a partial exemption from the payment of rental for a limited time-period, being the months of March to August 2021. This is not an alienation / transfer of a municipal asset and therefore the reference to Regulation 13(2) is not applicable here.

Conclusion

Taking into consideration the above and the loss of income suffered by the lessee and sub-tenants at the Hermanus Market Square Stalls, it is recommended that they are partially exempted from having to pay rental for the months of March to August 2021.

7. Financial Implications

A total decrease in rental income for the period 1 March 2021 to 31 August 2021 will amount to R115,260.00 (ONE HUNDRED AND FIFTEEN THOUSAND TWO HUNDRED AND SIXTY RAND) (VAT included), which amount is calculated as follows:

<u>Current rental (VAT incl)</u>	<u>Requested Rebate per month (VAT incl)</u>	<u>Balance rental per month (VAT incl)</u>
R76,840.00	R19,210.00	R57,630.00

$R19,210.00 \times 6 \text{ months} = R115,260.00$

The Municipality will still receive rental in the amount of R57,630.00 (FIFTY-SEVEN THOUSAND SIX HUNDRED AND THIRTY RAND (VAT included) per month for the said rebate period.

8. Staff Implications

None

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9. Comments from other Departments, Divisions and Administrations

None

10. Annexures

None

RECOMMENDATION TO THE COUNCIL:

that a partial rebate in the rental payable by COTTON4U4EVER (Pty) Ltd to an amount of R565.00 (FIVE HUNDRED AND SIXTY FIVE RAND) (VAT included) per stall per month for a period of 6 (SIX) months from 1 March 2021, **be approved.**

RESPONSIBLE OFFICIAL :

**M ERASMUS
E HOONEBERG**

TARGET DATE FOR IMPLEMENTATION :

30 April 2021

TARGET DATE TO INFORM APPLICANT :

14 April 2021

TARGET DATE TO INFORM OBJECTOR :

N/A

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A Le Roux

Manager: Property Administration

2 February 2021

(028) 316-3724

**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON
23 MARCH 2021, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:**

RECOMMENDATION TO THE COUNCIL:

that a partial rebate in the rental payable by COTTON4U4EVER (Pty) Ltd to an amount of R565.00 (FIVE HUNDRED AND SIXTY FIVE RAND) (VAT included) per stall per month for a period of 6 (SIX) months from 1 March 2021, **be approved**.

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