

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
19 November 2019
(Also the agenda for the Mayoral Committee Meeting: 27 November 2019)**

**6.
A PORTION OF THE REMAINDER OF ERF 1 HAWSTON: RENEWAL OF LEASE
OF MUNICIPAL PROPERTY TO SENTECH SOC LTD
DEVIATION FROM PARAGRAPH 26 OF THE ADMINISTRATION OF IMMOVABLE
PROPERTY POLICY OF 2015**

7/2/3/1

A le Roux

Manager: Property Administration

16 September 2019

(028) 316-3724

1. Executive Summary

To obtain approval from the Executive Mayor to enter into a further lease agreement with Sentech SOC Ltd, in respect of a portion of the Remainder of Erf 1 Hawston for the purpose of a mast for radio- and television broadcasting and related purposes.

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 further lease agreement with Sentech SOC Ltd, hereinafter referred to as "Sentech", in respect of a portion of the Remainder of Erf 1 Hawston for the purpose of a mast for radio- and television broadcasting and related purposes at a rental amount lower than the rental prescribed in the tariffs as approved by Council due to the community value of the said lease.

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 the Executive Mayor.

5. Legal Requirements

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

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
19 November 2019
(Also the agenda for the Mayoral Committee Meeting: 27 November 2019)**

6. Background/Discussion/Evaluation/Conclusion

Background

Sentech has been using a portion of the Remainder of Erf 1 Hawston since 2009 for telecommunications broadcasting mast and related purposes. The size of the portion of land they are occupying is $\pm 74\text{m}^2$ in extent and forms part of the Hawston Reservoir site.

The last agreement was for a period of 9 (NINE) years and 11 (ELEVEN) months which expired on 31 January 2019.

Although the lease agreement expired, Sentech is still in possession of the property and continued to pay their monthly rental amount.

A lease will in the meantime be entered into (for administrative and audit purposes) with Sentech with special conditions included in the agreement stipulating that the lease agreement is subject to the Executive Mayor's approval (as delegated authority) allowing the Municipality to enter into the said long term agreement and further subject to Council's approval of the deviation from paragraph 26 of the Administration of Immovable Property Policy (2015).

The locality of the proposed lease area is indicated on the locality plan attached per "Annexure A" and a sketch plan is attached per "Annexure B".

Discussion

Sentech applied for a further lease agreement of 9 (NINE) years and 11 (ELEVEN) months as it provides a very important service to the community of Hawston and Kleinmond, especially in the provision of radio and television broadcasting to their clients.

Although the process for the renewal of the agreement was commenced with timeously the process could unfortunately not be completed before expiry of the said agreement as our Department was waiting for the confirmation from Sentech that they want to renew their lease agreement after the cost implications and rental were provided to them.

After informing Sentech of the tariff for the lease of space for a mast approved in the budget they requested a reduced rental amount as they will not be able to afford the tariff as approved in the Municipality's Annual Budget. This request to deviate will be discussed below under the heading "Evaluation" as to paragraph 26 of the Policy.

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
19 November 2019
(Also the agenda for the Mayoral Committee Meeting: 27 November 2019)**

The area applied for was used by Sentech for approximately ten years without any complaints from the public regarding the use of the property. The municipal account is paid to date.

Evaluation

A. Administration of Immovable Property Policy of the Overstrand Municipality

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

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.”

The property is zoned Authority Zone and therefore not classified as a business site and Sentech is a State-Owned Enterprise (SOE) that is licensed to provide communication network services as stipulated under the Electronic Communications Act (ECA). The lease area with the Sentech mast and telecommunication equipment is well established on the site for more than a decade and no complaints were received against these services. The Kleinmond to Hawston community benefit from these services and the government mandate is accomplished. The lease area is a portion of the water reservoir site and therefore the property is not suitable for any other activities. Taking into consideration the above discussion, the nature of the lease and the benefit to the community the

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
19 November 2019
(Also the agenda for the Mayoral Committee Meeting: 27 November 2019)**

property can be leased directly to Sentech without following a competitive process.

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.”**

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 portion of the Remainder of Erf 1 Hawston to Sentech subject thereto that:

- a public participation process is followed;
- the approval from the Executive Mayor is obtained; and
- Council approves the deviation from paragraph 26 of the Administration of Immovable Property Policy.

The proposed lease was advertised in the Village News on 9 October 2019 for a 30 (THIRTY) day comment/objection period.

Paragraph 25: “The Municipality, as a rule, bearing in mind the provisions of 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;**
- (b) sell, alienate or dispose of immovable property, grant a servitude or alienate a right at a lower amount than the amount at which it has been valued;**

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.”

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
19 November 2019
(Also the agenda for the Mayoral Committee Meeting: 27 November 2019)**

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.”

Currently, the tariff, in the amount of R67.83/m² (SIXTY SEVEN RAND AND EIGHTY THREE CENTS) (VAT excluded) per month, for the lease of municipal land for a mast is applicable and the rental amount escalates annually on the 1st of July in accordance with the tariff as approved in the annual budget.

The last rental amount however paid by Sentech was an amount of R393.08 (THREE HUNDRED AND NINETY THREE RAND AND EIGHT CENTS) (VAT excluded) per month for a lease area of ±225m² in extent. During the lease period, a monthly tariff was introduced and approved by Council for the leasing of municipal land for the erection and retaining of a mast. If this tariff is used to calculate the rental for the 2018/2019 and 2019/2020 financial years respectively, they will have to pay a monthly rental amount of:

- R14,478.75 (FOURTEEN THOUSAND FOUR HUNDRED AND SEVENTY EIGHT RAND AND SEVENTY FIVE CENTS) (VAT excluded) for the 2018/2019 financial year; and
- R15,261.75 (FIFTEEN THOUSAND TWO HUNDRED AND SIXTY ONE RAND AND SEVENTY FIVE CENTS)(VAT excluded) for the 2019/2020 financial year;

which rentals Sentech is not able to afford as it is only receiving a fixed income. These rentals have the effect that the rental will escalate with more than 250% which is unreasonable.

In order to mitigate the request for a lower rental, Sentech offered to reduce the lease area to ±74m², which reduction will not have an effect on their service delivery.

Should the rental be charged in terms of the tariffs for ±74m², the rental from 1 February 2019 will be an amount of R4,761.90 (FOUR THOUSAND SEVEN HUNDRED AND SIXTY ONE RAND AND NINETY CENTS) (VAT excluded) per month and from 1 July 2019 a rental amount of R5,019.42 (FIVE THOUSAND AND NINETEEN RAND AND FORTY TWO CENTS) (VAT excluded) per month.

Sentech is a State-Owned Enterprise (SOE) operating in the broadcasting signal distribution and telecommunications sectors reporting to the Minister of Telecommunications and Postal Services. Sentech is licensed to provide Electronic Communications Network Services (ECSNS) and Electronic Communications Services (ECS)

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
19 November 2019
(Also the agenda for the Mayoral Committee Meeting: 27 November 2019)**

services as stipulated under the Electronic Communications Act (ECA). Sentech's mandate from the shareholder is not for profit making but providing services to the public including the previously marginalized areas of South Africa. The Sentech Tower provides broadcasting signal distribution for 3 (THREE) FM services namely RSG, SAFM, KFM (from mainly the Kleinmond to the Hawston area), Analogue TV Services and DTT services in the form of SABC TV channels. They are paid a fixed amount for this service.

As Sentech is delivering a service to adhere to the Government mandate and Sentech does not make a profit in delivering this service to the community in general they have indicated that they would have to close down the site and remove the mast as they cannot afford the rental amount and it is not sustainable. The site is just breaking even and the maintenance of the transmission equipment and the labour involved is costly and is paid from rental they receive from sub-letting space on the mast. The rental received is not sufficient to be able to pay the tariffs as approved in the municipality budget.

Taking the above into consideration and the fact that it is in the best interest of the community to have the continuance of the service on the property, it is therefore requested that Council deviate from paragraph 26 of the Administration of Immovable Property Policy (2015) and that the commencement rental amount from 1 February 2019 be determined at an amount of R393.08 (THREE HUNDRED AND NINETY THREE RAND AND EIGHT CENTS) (VAT excluded) per month and a rental amount of R410.38 (FOUR HUNDRED AND TEN RAND AND THIRTY EIGHT CENTS) (VAT excluded) per month for 2019/2020 financial year which the previous rental amount escalated with the CPI percentage, escalating annually on the 1st of July in accordance with the CPI, the next escalation to be on 1 July 2020.

Paragraph 36: “All costs pertaining to a transaction, e.g. survey, advertisements, valuation, relocation or provision of services where necessary, shall be borne by the Lessee. The Municipality may, however, waive its right to claim all or any portion of the costs. Where necessary a deposit to cover the costs may be required.”

Sentech will pay all costs relating to the renewal of the lease agreement which in this case so far is only the advertisement costs.

Paragraph 47: “Subject to paragraph 46 above, immovable property let by the Municipality shall be inspected at least once a year by the Municipality to ensure compliance with the terms and conditions of the agreement of sale or lease.”

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
19 November 2019
(Also the agenda for the Mayoral Committee Meeting: 27 November 2019)**

The property will be inspected by the Property Administration Department at least once a year.

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

B. Advertisement/Notification

An advertisement for the lease of a portion of the Remainder of Erf 1 Hawston ($\pm 74\text{m}^2$ in extent) was published in the Village News on 9 October 2019 for a 30 (THIRTY) day objection/comment period. At the time of compiling this report, no objections/comments were received. The receipt of objections, if any, will be confirmed during the Portfolio Committee Meeting.

Conclusion

Taking the above into consideration, it is recommended that:

- (a) The Executive Mayor approves the lease of a portion of the Remainder of Erf 1 Hawston to Sentech for a further period of 9 (NINE) years and 11 (ELEVEN) months from 1 February 2019 for a mast for radio- and television broadcasting and related purposes, and
- (b) Council approves the deviation from paragraph 26 of the Administration of Immovable Property Policy (2015) in order to lease a portion of the Remainder of Erf 1 Hawston to Sentech at a rental amount of R393.08 (THREE HUNDRED AND NINETY THREE RAND AND EIGHT CENTS) (VAT excluded) per month for the period 1 February 2019 until 30 June 2019 and a monthly rental amount of R410.38 (FOUR HUNDRED AND TEN RAND AND THIRTY EIGHT CENTS) (VAT excluded) per month from 1 July 2019 for 2019/2020 financial year (which rental amount was the previous rental amount as escalated with the CPI percentage) escalating annually on the 1st of July in accordance with the CPI.

7. Financial Implications

The Municipality stands to gain a rental amount of R393.08 (THREE HUNDRED AND NINETY THREE RAND AND EIGHT CENTS) (VAT excluded) per month for the 2018/2019 financial year and a rental amount of R410.38 (FOUR HUNDRED AND TEN RAND AND THIRTY EIGHT CENTS) (VAT excluded) per month from 1 July 2019 for the 2019/2020 financial year where after the lease amount will escalate every year on the 1st of July in accordance with the CPI, the next escalation to be on 1 July 2020. All expenses pertaining to the proposed lease will be borne by Sentech.

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
19 November 2019
(Also the agenda for the Mayoral Committee Meeting: 27 November 2019)**

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 proposal with no intention to dispose of the asset, there is no objection to the report.

10. Annexures

Annexure A: Locality Map

Annexure B: Sketch Plan

RECOMMENDATION TO THE EXECUTIVE MAYOR:

that the renewal of the lease of municipal property, being a portion of the Remainder of Erf 1 Hawston ($\pm 74\text{m}^2$ in extent), to Sentech SOC Ltd for a mast for radio- and television broadcasting and related purposes as from 1 February 2019, **be approved**, subject to Council approving a deviation from paragraph 26 of the Administration of Immovable Property Policy.

RECOMMENDATION TO THE COUNCIL:

that the deviation from paragraph 26 of the Administration of Immovable Property Policy in order to renew the lease agreement with Sentech SOC Ltd at a rental amount of R393.08 (THREE HUNDRED AND NINETY THREE RAND AND EIGHT CENT) (VAT excluded) per month as from 1 February 2019 and a rental amount of R410.38 (FOUR HUNDRED AND TEN RAND AND THIRTY EIGHT CENT) (VAT excluded) per month as from 1 July 2019 for the 2019/2020 financial year with an annual escalation on the 1st of July equal to the CPI, **be approved**.

RESPONSIBLE OFFICIAL:

W MURTZ

TARGET DATE FOR IMPLEMENTATION:

31 DECEMBER 2019

TARGET DATE TO INFORM APPLICANT:

16 DECEMBER 2019

TARGET DATE TO INFORM OBJECTOR:

N/A

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
19 November 2019
(Also the agenda for the Mayoral Committee Meeting : 27 November 2019)**

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DEVIATION FROM PARAGRAPH 26 OF THE ADMINISTRATION OF IMMOVABLE PROPERTY POLICY OF 2015**

7/2/3/1

A le Roux

Manager: Property Administration

16 September 2019

(028) 316-3724

THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON 19 NOVEMBER 2019, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:

RECOMMENDATION TO THE EXECUTIVE MAYOR:

that the renewal of the lease of municipal property, being a portion of the Remainder of Erf 1 Hawston ($\pm 74\text{m}^2$ in extent), to Sentech SOC Ltd for a mast for radio- and television broadcasting and related purposes as from 1 February 2019, **be approved**, subject to Council approving a deviation from paragraph 26 of the Administration of Immovable Property Policy.

RECOMMENDATION TO THE COUNCIL:

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RESPONSIBLE OFFICIAL:

W MURTZ

TARGET DATE FOR IMPLEMENTATION:

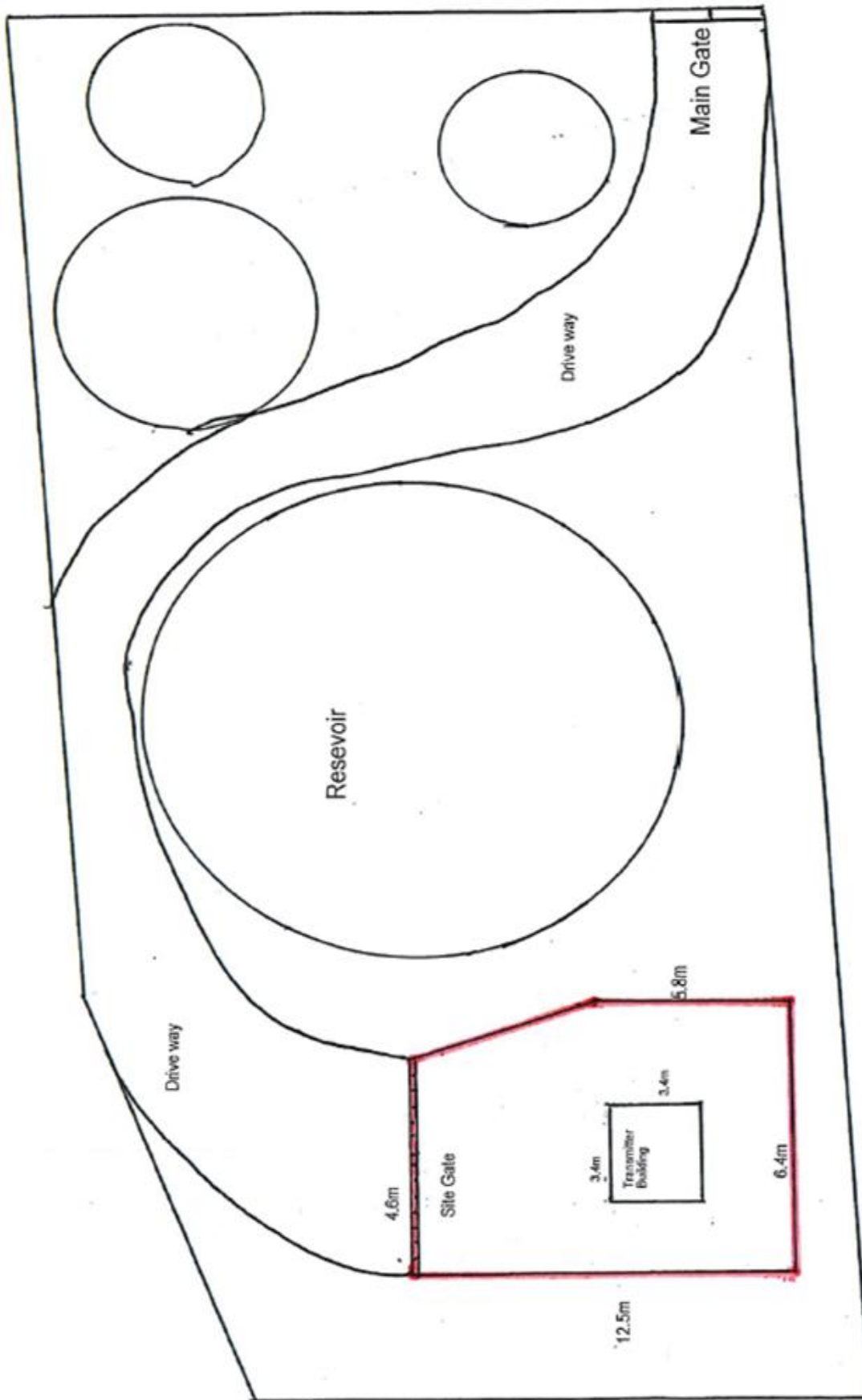
31 DECEMBER 2019

TARGET DATE TO INFORM APPLICANT:

16 DECEMBER 2019

TARGET DATE TO INFORM OBJECTOR:

N/A



Sentech portion fence (red line)
(74m²)