

6.

ERF 3454 HAWSTON: DEVIATION FROM PARAGRAPHS 20.1(b) AND 26 OF THE ADMINISTRATION OF IMMOVABLE PROPERTY POLICY OF 2015 ALLOWING THE MUNICIPALITY TO ENTER INTO A FURTHER LEASE AGREEMENT WITH THE DEPARTMENT OF TRANSPORT AND PUBLIC WORKS AT A FIXED ESCALATION RATE

7/2/3/1**M Erasmus****Acting Manager: Property Administration****11 October 2021****(028) 316 5602**

1. Executive Summary

To obtain approval to enter into a further lease agreement with Western Cape Government via its Department of Transport and Public Works in respect of an office in the Thusong Centre on Erf 3454 Hawston situated in Disa Street, Hawston for a period of 5 (FIVE) years for the purpose of delivering social development services to the community of Hawston, and

To obtain approval from Council for the deviation from paragraphs 20.1(b) and 26 of the Administration of Immoveable Property Policy of 2015 allowing the Municipality to enter into a further lease agreement with the Department of Transport and Public Works (hereinafter referred to as "DTPW"), in respect of an office in the Thusong Centre on Erf 3454 for the purpose of delivering social development services to the community of Hawston without following a public participation process.

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 Executive Mayor

5. Legal Requirements

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

6. Background/Discussion/Evaluation/Conclusion

Background

DTPW have been utilising an office in the Thusong Centre in Hawston since 2014 for the purpose of delivering social development services to the community of Hawston.

The last agreement was for a period of 5 (FIVE) years which commenced on 1 February 2017 and will expire on 31 January 2022.

Discussion

DTPW applied for the renewal of the lease agreement and the lease renewal was approved in principle by the Municipal Manager on 6 October 2021 for a period of 5 (FIVE) years.

In terms of the Administration of Immoveable Property Policy, the Municipality may grant a long term lease if the Municipal Manager, as Accounting Officer, approves the lease in principle, a public participation process is followed and the Executive Mayor's approval is gained in terms of the above policy.

As DTPW is an organ of state it is recommended that a public process not to be followed especially since in the case of a sale to any organ of state the Administration of Immoveable Property Policy stipulates that the public participation process does not need to be followed and the recommendation is that the same apply to this lease to an organ of state.

A lease amount for the rental of office space to NGO's/NPO's/Government Departments etc. is approved in the 2021/2022 Budget at a tariff of R40.00 (FORTY RAND) (VAT excluded) per square metre per month. Upon providing the DTPW with the terms and information regarding the proposed new lease agreement they requested not to pay the escalated tariffs as are approved annually by Council but to have a fixed escalation percentage in the lease agreement. They are of the opinion that 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.

Their request was that the escalation percentage be fixed at a percentage of 5%. The percentage with which the specific tariff escalated the last two years was 4,5% and 4,6% respectively. As the requested escalation percentage is not less than the escalations in the annual budget, it is proposed that the 5% fixed escalation be supported.

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.”

DTPW delivers an important service to the community of Hawston and no complaints regarding the use of the Property by DTPW were received during their previous periods of lease.

The locality map is attached hereto as “Annexure A”.

Evaluation

A. Administration of Immoveable Property Policy of the Overstrand Municipality

The following conditions of said policy apply:

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”.**

In this instance paragraph 18 is not applicable to the lease of the Property and therefore a competitive process does not need to be followed. As the overall purpose of the Thusong Centre is to provide services to the community of Hawston and to make available office space to various organs of state.

The main purpose of this lease is to provide social development services to the community and as the community stands to benefit from the services rendered by DTPW it is therefore proposed that a direct lease be entered into with DTPW.

Paragraph 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 approved that the right may be granted.”**

The Accounting Officer (Municipal Manager) approved in principle the lease of the Property to DTPW for a further 5 (FIVE) years.

As DTPW is an organ of state it is recommended that a public process not to be followed especially since in the case of a sale to any organ of state the Administration of Immoveable Property Policy stipulates that the public participation process does not need to be followed and the recommendation is that the same apply to this lease to an organ of state.

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 2021/2022 Budget at a tariff of R40.00 (FORTY RAND) (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 will be included in the lease agreement with DTPW.

Conclusion

Taking the above into consideration, it is recommended that:

- (a) The Executive Mayor approves the renewal of the lease of an office in the Thuong Centre on Erf 3454 Hawston to the DTPW for a period of 5 (FIVE) years from 1 February 2022 to 31 January 2027 for the purpose of delivering social development services to the community of Hawston,

at a rental amount of R1,320.00. (ONE THOUSAND THREE HUNDRED AND TWENTY RAND) (VAT Excluded) per month, escalating annually on the 1st of July with 5%;

- (b) Council approves the deviation from paragraph 20.1(b) of the Administration of Immovable Property Policy in order to renew the current lease agreement with the DTPW for a further period of 5 (FIVE) years without following a public participation process, and
- (c) Council approves the deviation from paragraph 26 of the Administration of Immovable Property Policy in order to renew the current lease agreement with the DTPW for a further period of 5 (FIVE) years at a fixed annual escalation percentage.

7. Financial Implications

The Municipality stands to gain rental in the amount of R1,320.00. (ONE THOUSAND THREE HUNDRED AND TWENTY RAND) (VAT Excluded) per month from 1 February 2022 where after the rental amount will escalate annually on 1 July with 5%, the next escalation to be on 1 July 2022.

8. Staff Implications

None

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

RECOMMENDATION TO THE EXECUTIVE MAYOR:

1. that the renewal of the lease of an office in the Thusong Centre on Erf 3454 Hawston ($\pm 33\text{m}^2$ in extent), to the Western Cape Government via its Department of Transport and Public Works for a period of 5 (FIVE) years from 1 February 2022 to 31 January 2027 for the purpose of delivering social development services to the community of Hawston, at a rental amount of R1,320.00. (ONE THOUSAND THREE HUNDRED AND TWENTY RAND) (VAT Excluded) per month, **be approved**; and

2. that the abovementioned approval be subject to Council approving a deviation from paragraphs 20.1(b) and 26 of the Administration of Immovable Property Policy of 2015.

RECOMMENDATION TO THE COUNCIL:

1. that the deviation from paragraph 20.1(b) of the Administration of Immovable Property Policy in order to renew the current lease agreement with the Western Cape Government via its Department of Transport and Public Works for a period of 5 (FIVE) years without following a public participation process, **be approved**; and
2. 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**.

RESPONSIBLE OFFICIAL :**R OCTOBER****TARGET DATE FOR IMPLEMENTATION :****30 DECEMBER 2021****TARGET DATE TO INFORM APPLICANT :****15 DECEMBER 2021****TARGET DATE TO INFORM OBJECTOR :****N/A**

ANNEXURE A

