

9.

A PORTION OF UNREGISTERED ERF 12212 HERMANUS (SITUATED IN MUSSEL ROAD, HERMANUS): DEVIATION FROM PARAGRAPHS 4, 26 AND 41 OF THE ADMINISTRATION OF IMMOVABLE PROPERTY POLICY OF 2015 TO WAIVE THE APPLICATION FEE, THE COSTS PERTAINING TO THE APPLICATION PROCESS, ANY RENTAL PAYABLE AND GENERAL CONDITIONS

7/2/3/1

N Michaels

Director : Protection Services

1 September 2020

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1. Executive Summary

To obtain approval for the deviation from conditions contained in paragraphs 4, 24, 36, 40 and 41 of the Administration of Immovable Property Policy of 2015 in order to:

- (a) waive the payment of the required application fee payable by the applicant upon submission of an application to use municipal property (paragraph 4);
- (b) waive any rental/compensation payable in lieu of services that will be rendered (paragraph 26); and
- (c) waive the Municipality's claim for the payment of rates and taxes and services charges (paragraph 41);

in order for the Municipality to enter into a memorandum of agreement Hermanus Public Protection (NPC) (hereinafter referred to as "HPP") for the use of floor space in a designated room in the Fire Brigade Service Building, Mussel Road, Hermanus (hereinafter referred to as the "room"), for a period of 3 (three) years for the purposes of establishing and operating its control room only.

See locality map attached marked Annexure A.

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
The encouragement of structured community participation in the matters of the municipality

4. Delegated Authority

None

5. Legal Requirements

- 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**

The Overstrand Municipality previously entered into a lease agreement with HPP for the lease of municipal property, where HPP served as the management body of Greater Hermanus Improvement District. The municipality however notified HPP during April 2019 that the By-Law for the Establishment of Improvement Districts dictates the dissolution of the improvement district. This lease agreement expired.

Subsequent to this, the Hermanus Special Rating Area (hereinafter referred to as the "HSRA") was established after due process was followed and the application was approved by Council on 25 March 2020 in terms of the Overstrand Municipality: Special Rating Area By-Law, 2016 read together with the Overstrand Municipality: Special Rating Area Policy, as amended (1 July 2019).

The HSRA also notified the municipality at that stage of their intent that the HPP, serving as the management body of the CID, was to be the management body of the HSRA, in the instance of a decision by Council to approve the establishment of HSRA. The HPP subsequently registered a new Memorandum of Incorporation on 13 August 2020, in order to adopt the objects of the HSRA, the company thus now serving as the management body of the HSRA.

Discussion

As mentioned, HPP had a lease agreement with the municipality. HPP, as HSRA Management body, now wishes to continue to make use of a room for the purposes of establishing and operating a control room to give effect to their duties under the newly approved Hermanus Special Rating area for which a financial agreement was entered into between the Municipality and HPP as the Management body of the Hermanus Special rating area.

As they will be using the room to deliver a service to the community in terms of the approved HSRA, it will not recommended to enter into a lease agreement with HPP, but rather to enter into a memorandum of agreement for the use of the room. This agreement is necessary to give clarity on the responsibilities of each party to the agreement.

Evaluation

The request for the necessary deviation is in terms of the following conditions of the Administration of Immovable Property Policy of the Overstrand Municipality of 2015:

- (1) **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.”**

This paragraph deals with an application fee payable for applications for purchase/lease/encroachment in relation to municipal property. As it is recommended that no lease agreement be entered into with HPP, but rather a memorandum of agreement to use municipal property, the payment of an application fee is not relevant.

- (2) **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.”**

As HPP is a Non Profit Company rental would have been charged in accordance with the tariff approved in the annual budget for the lease of municipal land to Social Care Institutions/Organisations/NPO's/ PBO's/ Community organisations. As

- (a) the Municipality and the community of the Overstrand stand to gain advantage from the HSRA's supplementary services that the Hermanus Public Protection will provide in terms of the special rating area that was approved by Council; and
- (b) it is requested that no lease agreement be entered into, but instead a memorandum of agreement for the use of the room;

it is recommended that no rental be charged.

Furthermore, it must be mentioned, that the community value of the HSRA's supplementary service to be rendered through HPP cannot be quantified due to its ongoing value, but must also be taken into consideration.

- (3) Paragraph 41: “The lessee shall, as a rule, be liable for the payment of rates, taxes and service charges in respect of the leased property. In the case of leases to certain social care users and sports facilities at rentals lower than market value the Municipality may consider granting a rebate on rates in accordance with the Rates Policy of the Municipality.”**

As only a portion of a room in a building will be used by HPP as the HSRA management body and taking into consideration the services to be rendered by them, it is requested that no rates, taxes and service charges be levied.

Conclusion

It is proposed that the deviation from paragraph 4, 26 and 41 of the Administration of Immovable Property Policy be approved in order to enter into a memorandum of agreement with HPP for the use of a room within the Fire Brigade Service Building, Mussel Road, Hermanus. These recommendations are due to the envisaged HSRA’s supplementary services that the Hermanus Public Protection will provide in terms of the special rating area that was approved by Council.

7. Financial Implications

The Municipality will not receive the applicable application fee, which is currently R600.00 (Vat excluded), for Social Care Institutions / Organisations / NPO's/PBO's/Community organisations.

The Municipality will furthermore not receive a minimum total rental amount of R154.78 (VAT excluded) per month.

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

None

10. Annexures

Annexure A: Locality Map

RECOMMENDATION TO THE COUNCIL:

that the deviation from paragraphs 4, 26, and 41 of the Administration of Immovable Property Policy of 2015 in order for the Municipality to enter into a memorandum of agreement with Hermanus Public Protection NPC for the use of a portion of a room in the Fire Brigade Service Building situated on unregistered Erf 12212 Hermanus, for the establishment and operating of a control room in order to render the Hermanus Special Rating Area supplementary services to the community, **be approved.**

RESPONSIBLE OFFICIAL :**L SMITH****TARGET DATE FOR IMPLEMENTATION :****16 OCTOBER 2020****TARGET DATE TO INFORM APPLICANT :****16 OCTOBER 2020**

ANNEXURE A



Portion of Erf 12212 Hermanus

