

**AGENDA of the
Portfolio Committee : Investment & Infrastructure
4 October 2023
(Also the agenda for the Mayoral Committee Meeting : 11 October 2023)**

3.

A PORTION OF REMAINDER ERF 243 HERMANUS (SITUATED ON THE OLIFANTSBERG, ROTARY WAY): DEVIATION FROM PARAGRAPH 18 OF THE ADMINISTRATION OF IMMOVABLE PROPERTY POLICY OF 2015 ALLOWING THE MUNICIPALITY TO ENTER INTO A FURTHER LEASE AGREEMENT WITH FIDELITY ADT (PTY) LTD

**A Le Roux
4 September 2023**

Manager: Property Administration

(028) 316-5623

1. Executive Summary

To obtain approval from the Executive Mayor to enter into a further lease agreement with Fidelity ADT (Pty) Ltd (“ADT”) for a period of 9 (NINE) years and 11 (ELEVEN) months in respect of a portion of Remainder Erf 243 Hermanus, ±0.7m² (APPROXIMATELY ZERO COMMA SEVEN SQUARE METRES) in extent, situated on the Olifantsberg, Rotary Way, Hermanus, hereinafter referred to as “the Property”, for equipment on the mast and space in the building for telecommunication purposes; and

To obtain approval from Council for the deviation from paragraph 18 of the Administration of Immovable Property Policy (as approved by Council on 25 November 2015) allowing the Municipality to enter into a direct lease agreement with ADT in respect of the Property for equipment on the mast and space in the building for telecommunication purposes, without following a competitive 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
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)

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- Administration of Immovable Property Policy of the Overstrand Municipality, as amended

6. Background/Discussion/Evaluation/Conclusion

Background

ADT has been using the Property since 2008 for equipment on the mast and space in the building for telecommunication purposes.

The last agreement was for a period of 3 (THREE) years will expire on 30 September 2023. As ADT is still utilising the Property the rental is still being levied on the municipal account.

ADT applied to renew the lease agreement as there is a high increase in the demand for reception and in this case the application is to retain the existing equipment on the mast and space in the building for telecommunication purposes currently situated on municipal property.

The area applied for has been used by ADT for approximately fifteen 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 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.”

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As the application for renewal was received before the expiry of the last agreement there is no need for a formal application form to be completed and no application fee is payable.

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”.**

Although the application is for a long-term the rental will not be in excess of R10 million.

The site is not classified as a business site.

In this case a direct lease is proposed with a deviation from paragraph 18 in that a competitive process not be followed as this is for existing equipment which will serve the community. Should the lease not be approved ADT will have no communication for a large part of Hermanus which will pose a security risk for many in the community.

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**

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(c) the Executive Mayor, as delegated authority, has subsequently approved that the right may be granted.

The Municipal Manager approved in principle the long-term lease of the Property to ADT for a period of 9 (NINE) years and 11 (ELEVEN) months, subject to a public participation process being followed, the approval by the Executive Mayor as delegated authority of the long-term lease and approval of Council is obtained for the deviation from paragraph 18 of the Administration of Immovable Property Policy.

The proposed renewal of the lease agreement was advertised in the Hermanus Times on 23 August 2023 for a 30 (THIRTY) day comment/objection period. No comments/objections were received.

The Executive Mayor's approval of the long-term lease is hereby requested.

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."

The tariffs for equipment on a municipal mast and space in a building, is applicable.

The 2023/2024 tariff for equipment on a Mast is R2,446.09 (TWO THOUSAND FOUR HUNDRED AND FORTY-SIX RAND AND NINE CENTS) (VAT Excluded) per month, and the tariff for space in the building is R644.35 (SIX HUNDRED AND FORTY-FOUR RAND AND THIRTY-FIVE CENTS) (VAT excluded) per square metre per month. The total rental will be an amount of R2,897.14 (TWO THOUSAND EIGHT HUNDRED AND NINETY-SEVEN RAND AND FOURTEEN CENTS) (VAT Excluded) per month as ADT is only leasing 0,7m² of space in the building. The agreement will stipulate that the rental amount will escalate annually in accordance with the tariff as approved in the Annual Budget.

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."

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

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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 ADT.

B. Advertisement/Notification

The proposed renewal of the lease agreement was advertised in the Hermanus Times on 23 August 2023 for a 30 (THIRTY) day comment/objection period. No comments/objections were received.

Conclusion

Taking the above into consideration, it is recommended that:

- (a) The Executive Mayor approves the renewal of the lease of municipal property, being a portion of Remainder Erf 243 Hermanus ($\pm 0.7\text{m}^2$ in extent), to Fidelity ADT (Pty) Ltd as from 1 October 2023 for equipment on the mast and space in the building for telecommunication purposes at the rental amount of R2,897.14 (TWO THOUSAND EIGHT HUNDRED AND NINETY SEVEN RAND AND FOURTEEN CENTS) (VAT Excluded) per month, for a period of 9 (NINE) years and 11 (ELEVEN) months subject to Council approving a deviation from paragraph 18 of the Administration of Immovable Property Policy, and that
- (b) Council approves a deviation from paragraph 18 of the Administration of Immovable Property Policy, in order to enter into a direct lease with Fidelity ADT (Pty) Ltd without following a competitive process.

7. Financial Implications

The Municipality stands to gain a rental amount of R2,897.14 (TWO THOUSAND EIGHT HUNDRED AND NINETY-SEVEN RAND AND FOURTEEN CENTS) (VAT Excluded) per month, where after the lease amount will escalate every year on the 1st of July in accordance with the tariffs stipulated in the Annual Budget as approved by Council, the next escalation to be on 1 July 2024. All expenses pertaining to the proposed lease will be borne by ADT.

8. Staff Implications

None

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9. Comments from other Departments, Divisions and Administrations

Senior Town Planner - Ms. Hanneen van der Stoep

“The area is located in the Fernkloof Nature Reserve and thus an application for a consent Use needs to be submitted.”

Comments from Property Administration: This has never been a requirement in the past. ADT only uses a portion for equipment on a municipal mast and small portion in the building/container. This condition will thus be discussed further between the departments.

Manager: Systems Development - Mr. Craig Johnson

“I have no objection to the renewal.”

Senior Manager: Expenditure and Assets - Mr J Vorster

“As this is a revenue generating proposal with no intention to dispose of the asset, there is no objection.”

10. Annexures

Annexures A1 & 2: Locality Map

RECOMMENDATION TO THE EXECUTIVE MAYOR:

1. that the lease of municipal property, being a portion of Remainder Erf 243 Hermanus ($\pm 0.7\text{m}^2$ in extent), to Fidelity ADT (Pty) Ltd for equipment on the mast and space in the building for telecommunication purposes at the rental amount of R2,897.14 (TWO THOUSAND EIGHT HUNDRED AND NINETY SEVEN RAND AND FOURTEEN CENTS) (VAT Excluded) per month for a period of 9 (NINE) years and 11 (ELEVEN) months from 1 October 2023 in terms of the Administration of Immovable Property Policy of the Overstrand Municipality, **be approved**; and
2. that the rental amount mentioned in 1 above escalate every year on the 1st of July in accordance with the tariffs stipulated in the Annual Budget as approved by Council, the next escalation to be on 1 July 2024.

RECOMMENDATION TO THE COUNCIL:

that the deviation from paragraph 18 of the Administration of Immovable Property Policy allowing a direct lease to Fidelity ADT (Pty) Ltd, **be approved**.

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RESPONSIBLE OFFICIAL :	R OCTOBER
TARGET DATE FOR IMPLEMENTATION :	8 NOVEMBER 2023
TARGET DATE TO INFORM APPLICANT :	15 NOVEMBER 2023
TARGET DATE TO INFORM OBJECTOR :	N/A

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8 November 2023
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3.

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**A Le Roux
4 September 2023**

Manager: Property Administration

(028) 316-5623

THIS MATTER SERVED BEFORE THE INVESTMENT & INFRASTRUCTURE PORTFOLIO COMMITTEE ON 8 NOVEMBER 2023, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:

RECOMMENDATION TO THE EXECUTIVE MAYOR:

1. that the lease of municipal property, being a portion of Remainder Erf 243 Hermanus ($\pm 0.7\text{m}^2$ in extent), to Fidelity ADT (Pty) Ltd for equipment on the mast and space in the building for telecommunication purposes at the rental amount of R2,897.14 (TWO THOUSAND EIGHT HUNDRED AND NINETY SEVEN RAND AND FOURTEEN CENTS) (VAT Excluded) per month for a period of 9 (NINE) years and 11 (ELEVEN) months from 1 October 2023 in terms of the Administration of Immovable Property Policy of the Overstrand Municipality, **be approved**; and
2. that the rental amount mentioned in 1 above escalate every year on the 1st of July in accordance with the tariffs stipulated in the Annual Budget as approved by Council, the next escalation to be on 1 July 2024.

RECOMMENDATION TO THE COUNCIL:

that the deviation from paragraph 18 of the Administration of Immovable Property Policy allowing a direct lease to Fidelity ADT (Pty) Ltd, **be approved**.

RESPONSIBLE OFFICIAL :

R OCTOBER

TARGET DATE FOR IMPLEMENTATION :

13 DECEMBER 2023

TARGET DATE TO INFORM APPLICANT :

13 DECEMBER 2023

TARGET DATE TO INFORM OBJECTOR :

N/A



