

**AGENDA of the
Portfolio Committee: Investment & Infrastructure
2 February 2022
(Also the agenda for the Mayoral Committee Meeting: 21 February 2022)**

9.

IN PRINCIPLE APPROVAL FOR THE DIRECT ALIENATION OF A PORTION OF ERF 2672 HAWSTON (ROAD RESERVE) ADJACENT TO ERF 2823 HAWSTON SITUATED ON THE CORNER OF CATTLE AND STAFFORD STREET, HAWSTON, TO MN ANDREWS

7/2/3/2

A Le Roux

Manager: Property Administration

3 December 2021

(028) 316 - 5623

1. Executive Summary

To obtain approval in principle for the direct alienation of a portion of Erf 2672 ($\pm 71\text{m}^2$ in extent) Hawston (Road reserve) adjacent to Erf 2823 Hawston, situated on the corner of Cattle and Stafford Street, Hawston, to the owner of Erf 2823 Hawston, being MN Andrews. See the locality plan attached hereto 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
Promotion of tourism, economic and social development

4. Delegated Authority

None

5. Legal Requirements

- Local Government: Municipal Financial Management Act (Act 56 of 2003) ("MFMA")
- Municipal Asset Transfer Regulations (R. 878 of 2008)
- Administration of Immovable Property Policy of the Overstrand Municipality, as amended

**AGENDA of the
Portfolio Committee: Investment & Infrastructure
2 February 2022
(Also the agenda for the Mayoral Committee Meeting: 21 February 2022)**

6. Background/Discussion/Evaluation/Conclusion

Background/Discussion

An application was received from MN Andrews (the owner of Erf 2823 Hawston), hereafter referred to as “the Applicant”, for the purchase of a portion of Erf 2672 Hawston ($\pm 71\text{m}^2$ in extent) adjacent to Erf 2823 Hawston situated on the corner of Cattle and Stafford Street, Hawston, hereafter referred to as “the Property”.

According to the Applicant when purchasing Erf 2823 Hawston from the previous owner she was brought under the impression that the Property formed part of Erf 2823 Hawston and she was unaware that the Property was municipal property. The previous owner had a lease agreement with the municipality for the Property for gardening purposes and a vibracrete wall.

The Applicant wants to purchase the Property to consolidate with her own property as the Property is already enclosed together with her Erf 2823 Hawston with a vibracrete wall as a boundary wall. If approved, the Applicant will use the Property for gardening purposes and boundary wall.

Due to the locality, shape, intended use and size of the Property, it cannot be developed independently, and thus it can be classified as a non-viable property. Non-viable property can in terms of the current Administration of Immovable Property Policy be alienated directly to an adjoining property owner, subject to certain conditions.

One of the conditions to the alienation will be that no structures of any kind (excluding a boundary wall or fence) may be erected thereon.

Subsequent costs

The Applicant will be liable for the costs of the transaction which include, but not limited to, the application fee, valuation, subdivision and consolidation, closure of portion of road, rezoning of the Property, transfer costs as well as the required Section 14 advertisement in terms of the MFMA and Administration of Immovable Property Policy.

Evaluation

A: Administration of Immovable Property Policy of the Overstrand Municipality:

The following conditions of the said Policy will apply:

Paragraph 7: “The transfer of ownership of immovable property

**AGENDA of the
Portfolio Committee: Investment & Infrastructure
2 February 2022
(Also the agenda for the Mayoral Committee Meeting: 21 February 2022)**

must be fair, equitable, transparent, competitive (unless it is not applicable or unpractical e.g. non-viable immovable property) and consistent with the supply chain management policy of the Municipality in accordance with Section 14(5) of the MFMA.”

Non-viable immovable property is defined in the relevant Policy as “a property that, owing to urban planning, physical constraints or extent, cannot be developed on its own or function as a separate entity and can therefore only become functional if alienated or leased to an adjoining owner for usage in conjunction with the said owner’s property.” The Property can be classified as a non-viable immovable property since the Property is situated on a corner with no other adjoining property owner (except for the Municipality) and is a small portion that cannot be developed independently.

Paragraph 9.2: “The Municipality may transfer ownership or otherwise dispose of a non-viable immovable property, as non-exempted immovable property which can be of no practical use to any other person, directly to adjoining property owner(s), only after the Municipal Council has, in terms of sections 14(2)(a) and (b) of the MFMA:

- (a) decided on reasonable grounds that the non-viable immovable property is not needed to provide the minimum level of basic municipal services;**
- (b) considered the fair market value of the immovable property and the economic and community value to be received in exchange for the immovable property in accordance with Section 14(2) of the MFMA, and**
- (c) has as a consequence to 9.2(a) and (b) above approved in principle that the immovable property may be transferred or disposed, provided that, when giving the in principle approval, it is recorded in the minutes the full reasons for the Municipality preferring such direct transfer.”**

- (a) The comments received from the relevant departments indicate that the Property is not needed for the provision of municipal services.
- (b) Boland Valuers determined the fair market value on 28 September 2021 at an amount of R365.00/m² (THREE HUNDRED AND SIXTY FIVE RAND PER SQUARE METRE) (VAT excluded). The valuation was done taking into consideration the size, shape, locality, zoning and proposed use (restriction) of the Property. The total price for the Property will be approximately R25,915.00 (TWENTY FIVE THOUSAND NINE HUNDRED AND FIFTEEN RAND) (VAT excluded).

**AGENDA of the
Portfolio Committee: Investment & Infrastructure
2 February 2022
(Also the agenda for the Mayoral Committee Meeting: 21 February 2022)**

- (d) The reasons for preferred direct sale are discussed above and will subsequently be recorded in the minutes.

Paragraph 28: “All costs pertaining to a transaction shall be borne by the successful bidder/purchaser, e.g. survey, advertisements, valuation, rezoning, relocation or provision of services where necessary, etc. The Municipality may, however, waive its right to claim the costs should it be to its advantage to bear the costs.”

The Applicant will be liable for the costs of the transaction which will include, but not limited to, the application fee, valuation, closure of road, rezoning and consolidation, Section 14 advertisement and transfer costs.

Paragraph 29: “Should existing services need to be relocated or secured by means of the registration of a servitude in favour of the Municipality as a result of the alienation of the immovable property, all related costs shall be for the account of the successful bidder/purchaser.”

The Applicant will be liable for all cost in this regard should it be necessary.

Paragraph 30: “Small areas of land such as closed roads or portions of public place sold to an adjacent owner must be consolidated with the existing property of the adjacent owner, unless circumstances exists which, in the opinion of the Municipality, make such consolidation undesirable.”

A condition to this effect will be included in the Deed of Sale.

Paragraph 32: “Save with prior approval, the immovable property alienated may only be used for the purpose for which it was originally sold and purposes permitted by town planning scheme regulations pertaining to such purposes.”

A condition to this effect will be included in the Deed of Sale.

Paragraph 33: “The agreement might contain a suspensive condition in respect of immovable property which is sold subject to approval in terms of land use planning legislation.”

A condition to this effect will be included in the Deed of Sale.

Paragraph 34: “A 10% deposit of the agreed/tendered purchase price will be due and payable by the purchaser/successful bidder

**AGENDA of the
Portfolio Committee: Investment & Infrastructure
2 February 2022
(Also the agenda for the Mayoral Committee Meeting: 21 February 2022)**

within 10 days of date of request in writing thereof by the Municipality.”

A condition to this effect will be included in the Deed of Sale.

Paragraph 35: “Interest on the purchase price, as from date of signature of the deed of sale, must be charged by the Municipality should payment or transfer be delayed due to an action or failure on the part of the successful bidder/ purchaser.”

A condition to this effect will be included in the Deed of Sale.

B: Advertisement/Notification

The necessary advertisement in terms of Section 14 of the MFMA will be published after obtaining this in principle decision. The Applicant will be liable for the costs of the Section 14 advertisement.

Conclusion

Considering the comments of the internal departments, as well as the above discussion, it is recommended that the direct alienation of the Property to the Applicant be approved in principle.

Furthermore, the Applicant will be liable for all cost involved to affect transfer of the Property in the deeds office. Subsequently the costs will entail the application fee, valuation costs, closure of road, rezoning, subdivision and consolidation, Section 14 advertisement and the transfer costs.

7. Financial Implications

The Municipality stands to gain a fair market purchase price of R365.00/m² (THREE HUNDRED AND SIXTY FIVE RAND PER SQUARE METRE) (VAT excluded).

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Senior Manager: Expenditure and Assets, Mr J Vorster - (028) 313 8046

“Erf 2672 Hawston is reflected in the Fixed Asset Register for PPE Land as Road Remainder with a carrying value of R62’000-00 (SIXTY TWO THOUSAND RAND) (VAT included) as on 30 June 2021. The eventual

**AGENDA of the
Portfolio Committee: Investment & Infrastructure
2 February 2022
(Also the agenda for the Mayoral Committee Meeting: 21 February 2022)**

disposal of Erf 2672 Hawston, will have to be accounted for as a disposal in order to remove it from the Fixed Asset Register and to account for the gain/(loss).

There is no objection as the application complies with the Administration of Immoveable Property Policy.”

Senior Manager: Operational Services Hermanus: Mr T Marx – (028) 313 8948

“The Department: Operational Services (Hermanus) has no objection to the application for proposed purchase of a Ptn of Erf 2672 adjacent to Erf 2823, Hawston as indicated in the application, subject to the following conditions:

- 1. That the applicant must comply with all statutory requirements that may be applicable to the undertaking of the proposed development on Ptn of Erf 2672, Hawston.*
- 2. That the developer investigates and determine the limitations of the site in terms of sewer drainage, subject to the minimum requirements of SANS 10400 – P: 2010: Drainage.*
- 3. That on-site parking facilities be provided as per the Planning Schedule, and to the satisfaction of the Directorate: Infrastructure and Planning.*
- 4. That any additional and / or extended vehicle entrances will be for the owner’s account.*
- 5. That, upgrading and/or development of the relevant sidewalks adjacent to the property be required as part of the development, application for such development be made to the office of the Senior Manager: Operational Services (Hermanus) for written approval.*
- 6. Water and road infrastructure is available in the vicinity of Ptn of Erf 2672, Hawston.*
- 7. If it incumbent upon the applicant / developer to ensure that all operational requirements in terms of water, sewerage and stormwater provision to the property are met.”*

Comments from Property Administration: The applicable conditions will be incorporated into the deed of sale as special conditions to the transaction.

Town Planner: Mr H Olivier – (028) 313 8900

“The portion the person wants to purchase is zoned Transportation Zone 2:

**AGENDA of the
Portfolio Committee: Investment & Infrastructure
2 February 2022
(Also the agenda for the Mayoral Committee Meeting: 21 February 2022)**

Roads and parking and is part of the public road reserve. There is no objection to the sale of the land from a planning perspective, but the purchaser will have to be responsible for the closure of the portion of road, subdivision and rezoning to Residential Zone 1, and consolidation with the owner's property."

Manager: Environmental Services, Environment Section: Mrs P Aplon – (028) 316 5610

"This office has no objection to this application for the purchase of a portion of Erf 2672 Hawston."

Senior Manager: Building Services: Mr L Coetzee – (028) 313 8091

"No objection on the sale. If the sale goes through, they will have to submit a building plan to this office for the vibracrete wall."

Senior Superintendent Projects (Electrical Services): Mr J Klem – (028) 316 5625

"There are no comments on the proposal."

Manager: Engineering Services: Mr R Andrew – (028) 312 8972

"The Engineering Services Department has no comment."

Senior Manager: Fire and Rescue & Disaster Management: Mr L Smith – (028) 313 5041

"The Fire Department have no objection."

Senior Superintendent: Operations: Traffic Services: Mr X Titus – (028) 313 5033

"Traffic does not have any objections as long as they comply with building guidelines. The property is on a corner so the fencing must not cause any obstructions to motorists obscuring view."

10. Annexures

Annexure A: Locality Map

**AGENDA of the
Portfolio Committee: Investment & Infrastructure
2 February 2022
(Also the agenda for the Mayoral Committee Meeting: 21 February 2022)**

RECOMMENDATION TO THE COUNCIL:

1. that the direct alienation of a portion of Erf 2672 Hawston (adjacent to Erf 2823 Hawston) situated on the corner of Cattle and Stafford Street, Hawston, ±71m² in extent, to the owner of the adjoining Erf 2823 Hawston, MN Andrews, at an amount of R365.00/m² (THREE HUNDRED AND SIXTY FIVE RAND PER SQUARE METRE) (VAT excluded) be **approved in principle**;
2. that it be noted that the direct alienation is possible as the said portion of Erf 2672 Hawston can be classified as a non-viable property;
3. that, subject to the approval in 1 above, a public participation process be followed at the cost of the applicant;
4. that it be noted that a condition for the alienation will be that the said portion of Erf 2672 Hawston must be consolidated with the adjoining property of MN Andrews, being Erf 2823 Hawston;
5. that no structures of any kind (excluding a boundary wall or fence) may be erected on the said portion of Erf 2672 Hawston, which condition must be registered against the title deed of the to be consolidated property;
6. that the alienation of said portion of Erf 2672 Hawston be subject to a suspensive condition that the applicant obtains approval for the closure of the public road, subdivision, rezoning and consolidation;
7. that all the costs pertaining to the transaction, e.g. application cost, valuation cost, subdivision and consolidation, closure of portion of public road, rezoning, transfer and related costs, advertisements, etc. be paid by the applicant, MN Andrews; and
8. that it be noted that the municipal property herewith envisaged to be alienated is not required for the provision of basic municipal services in terms of the provisions of paragraph 5 of Council's Administration of Immovable Property Policy and Section 14 of the Local Government: Municipal Finance Management Act (Act 56 of 2003).

RESPONSIBLE OFFICIAL:	W MURTZ
TARGET DATE FOR IMPLEMENTATION:	26 MARCH 2022
TARGET DATE TO INFORM APPLICANT:	12 MARCH 2022
TARGET DATE TO INFORM OBJECTOR:	N/A

**AGENDA of the
Portfolio Committee : Investment & Infrastructure
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(Also the agenda for the Mayoral Committee Meeting : 21 February 2022)**

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7/2/3/2

A Le Roux

Manager: Property Administration

3 December 2021

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THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON 2 FEBRUARY 2022, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:

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5. that no structures of any kind (excluding a boundary wall or fence) may be erected on the said portion of Erf 2672 Hawston, which condition must be registered against the title deed of the to be consolidated property;
6. that the alienation of said portion of Erf 2672 Hawston be subject to a suspensive condition that the applicant obtains approval for the closure of the public road, subdivision, rezoning and consolidation;
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**AGENDA of the
Portfolio Committee : Investment & Infrastructure
2 February 2022
(Also the agenda for the Mayoral Committee Meeting : 21 February 2022)**

8. that it be noted that the municipal property herewith envisaged to be alienated is not required for the provision of basic municipal services in terms of the provisions of paragraph 5 of Council's Administration of Immovable Property Policy and Section 14 of the Local Government: Municipal Finance Management Act (Act 56 of 2003).

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