

**AGENDA of the  
Portfolio Committee: Investment & Infrastructure  
6 February 2023  
(Also the agenda for the Mayoral Committee Meeting: 14 February 2023)**

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16.

**APPLICATION TO PURCHASE: A PORTION OF PORTION 3 OF THE FARM NO 566 CALEDON REGIONAL DISTRICT, ADJACENT TO ERF 191 HAWSTON (191 MARINE DRIVE, HAWSTON) – B & AC GARDINER**

**A Le Roux  
14 December 2022**

**Senior Manager: Property Administration**

**(028) 316 - 5623**

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**1. Executive Summary**

To consider the application received from B & AC Gardiner (the owners of Erf 191 Hawston) for the direct alienation of municipal property, being a portion of portion 3 of the Farm No 566 Caledon Regional District, adjacent to Erf 191 Hawston, situated at 191 Marine Drive, Hawston. 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) ("MATR")
- Administration of Immovable Property Policy of the Overstrand Municipality, as amended

**6. Background/Discussion/Evaluation/Conclusion**

**Background/Discussion**

An application was received from B & AC Gardiner, the owners of Erf 191 Hawston, hereafter referred to as "the Applicants", to purchase one of two

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portions of a portion of portion 3 of the Farm No 566 Caledon Regional District adjacent to Erf 191 Hawston, for the purpose of creating parking, planting vegetables that will be donated to Non-Government Organisations (NGO's) and further to gain access to parking at the back of their house on Erf 191 Hawston.

The application to purchase one of the 2 (TWO) portions of the municipal property is motivated by the Applicants and are discussed hereafter as Property A and Property B.

**Property A: A portion of portion 3 of the Farm No 566 Caledon Regional District ( $\pm 200\text{m}^2$  in extent) – South of Erf 191 Hawston**

The Applicants provided the following motivation to purchase Property A:

1. There is no connection to the municipal sewerage system at the Applicants' property as they are using a French Drain System. This additional piece of land (municipal property applied for) at the southern boundary will allow access to the back of the Applicants' property for when the drain needs to be emptied.
2. The additional property will provide parking for visitors that are not as exposed and vulnerable to break-ins.
3. There are several households in the Overstrand Area that are living under the breadline. The plan is to fence the area to grow vegetables for distribution to various NGO's / NPO's. The Applicants' tried to grow vegetables on the municipal property in the past, but without fencing criminals reaped the benefit before they could harvest it for distribution.
4. This piece of land is currently being used by criminals for criminal activities as well as by residents for illegal dumping.
5. This piece of land is a haven for snakes and Cape Cobras as well as Puff Adders are frequently being sighted.

**Property B. A portion of portion 3 of the Farm No 566 Caledon Regional District ( $\pm 200\text{m}^2$  in extent) – West of Erf 191 Hawston**

The Applicants provided the following motivation to purchase Property B:

1. The southern boundary has an existing stone wall which is aesthetically pleasing. It was erected by the previous owner, and the Applicants do not want to demolish this wall and therefor Property B is more desirable.
2. The piece of land on the western boundary will be better suited for the planting of crops as it will get more sunlight.

The portions are hereafter combinedly referred to as "the Property".

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**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 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 not be classified as a non-viable immovable property as it forms part of a bigger property that can be developed on its own and it is not ideal to subdivide viable property into smaller non-viable portions.

***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 internal departments indicated that the Property is not needed for the provision of basic municipal services, however the Property is zoned Agriculture Zone 1 and forms part of a protected buffer area and coastal protection zone. The Property is outside of the urban edge and to cut up

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portion 3 of the Farm No 566 Caledon Regional District for 1 (ONE) individual purchase application is not supported.

- (b) No valuation will be done as the alienation of the Property is not supported.
- (c) The recommendation is that the application not be approved.

**Conclusion**

Taking the above discussion into consideration, with regards to the undesirability to subdivide the subject property into smaller non-viable properties in cases where it could be subdivided in viable properties, if possible, it is recommended that the application to purchase the Property not be approved.

**7. Financial Implications**

None

**8. Staff Implications**

None

**9. Comments from other Departments, Divisions and Administrations**

**Senior Manager: Hermanus Administration: Mr A Wyngaard**

*Property A & Property B: "I have no objection to this application."*

**Senior Manager: Building Control: Mr L Coetzee**

*Property A: "Building Control has no objection. A minor works application is required for the proposed fence."*

*Property B: "Building Control has no objection. Any proposed structure will require a building plan application."*

**Senior Manager: Operational Services Hermanus: Mr T Marx**

*Property A & Property B: "The Department: Operational Services, Hermanus do not have any objection with regards to this application."*

**Environmental Audit Officer: Ms H Fortune**

*Property A & Property B: "The Environmental Management Section has no objection to this application. However, the Applicants should take note of the following:*

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*ENVIRONMENTAL MANAGEMENT OVERLAY ZONES REGULATIONS: In August 2020, the municipality gazetted Environmental Overlay Zone regulations. The proposed portion is located within the Coastal Protection EMOZ. The purpose of the EMOZ is managing the integrity of coastal ecosystem, ecosystem services, coastal dynamic processes and biodiversity within Coastal Reserves.*

*The regulations have 3 schedules containing activities which are A: prohibited, B: requires Council consent and C: General regulations. The Applicants should therefore familiarize themselves with the schedules of the Coastal Protection EMOZ.*

*This application does not trigger any of the schedules of the regulations and therefore this office does not have any objection. We only requested that the Applicants familiarize themselves with the regulations to see what activities are prohibited in the coastal protection zone. Such as:*

- *Agricultural practices in the EMOZ which may cause waterlogging and siltation;*
- *Planting of alien invasive species within the EMOZ;*
- *Planting and harbouring of weeds within the EMOZ;*
- *Discharging of domestic effluent into natural systems;*
- *Littering;*
- *Disposal of cigarette butts, ash or other hazardous materials, etc.”*

**Town Planner: Mr H Olivier**

*Property A & Property B: “The area the Applicants wants to purchase is zoned Agriculture Zone 1. It forms part of a protected area buffer and coastal protection zone. The area is also outside the urban edge. Town Planning is not supportive to cut up this land with an individual application. Should the creation of erven be considered on some of this area, only the environmental suitable land should be identified, and it could then be that the Municipality should rather create larger residential erven that can be sold as an individual erf for a higher prize. The application is therefore not supported. Should the municipality support the application, application will have to be made to amend the Urban Edge and the rezone the portion for consolidation with Erf 191.”*

**Senior Superintendent: Projects Electrical Services (Hermanus): Mr J Klem**

*Property A & Property B: “The Electrical Department does not have any objection.”*

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**10. Annexures**

Annexure A1 & A2:        Locality Map

**RECOMMENDATION TO THE COUNCIL:**

that the direct alienation of a portion of portion 3 of the Farm No 566 Caledon Regional District described as Property A ( $\pm 200\text{m}^2$  in extent) and Property B ( $\pm 200\text{m}^2$  in extent), adjacent to Erf 191 Hawston, to the owners of the adjoining Erf 191 Hawston, B & AC Gardiner, **not be approved** on the following reasons:

- (a) The Property is zoned Agriculture Zone 1 and forms part of a protected buffer area and coastal protection zone and is outside of the urban edge; and
- (b) The undesirability of subdividing portion 3 of the Farm No 566 Caledon Regional District to create a single non-viable property for 1 (ONE) individual purchase application where a viable property can be created.

<b>RESPONSIBLE OFFICIAL:</b>	<b>W MURTZ</b>
<b>TARGET DATE FOR IMPLEMENTATION:</b>	<b>31 MARCH 2023</b>
<b>TARGET DATE TO INFORM APPLICANT:</b>	<b>17 MARCH 2023</b>
<b>TARGET DATE TO INFORM OBJECTOR:</b>	<b>N/A</b>

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15.

**A PORTION OF REMAINDER ERF 3011 ONRUSTRIVIER, ADJACENT TO ERF 3010 ONRUSTRIVIER (SITUATED IN BEACH ROAD): LEASE OF MUNICIPAL PROPERTY TO HOLTZHAUSEN, JA**

**A Le Roux                      Senior Manager: Property Administration  
13 December 2022**

**(028) 316 5623**

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**THIS MATTER SERVED BEFORE THE INVESTMENT & INFRASTRUCTURE PORTFOLIO COMMITTEE ON 6 FEBRUARY 2023, WHICH COMMITTEE SUPPORTED THE RECOMMENDATION**

<b>RESPONSIBLE OFFICIAL :</b>	<b>R OCTOBER</b>
<b>TARGET DATE FOR IMPLEMENTATION :</b>	<b>15 MARCH 2023</b>
<b>TARGET DATE TO INFORM APPLICANT :</b>	<b>30 MARCH 2023</b>
<b>TARGET DATE TO INFORM OBJECTOR :</b>	<b>N/A</b>



