

**AGENDA of the
Portfolio Committee : Investment and Infrastructure
2 March 2022
(Also the agenda for the Mayoral Committee Meeting : 28 March 2022)**

**4.
RECOMMENDATION TO NOT EXERCISE RIGHT OF PRE-EMPTION IN RESPECT
OF ERF 1142 HAWSTON SITUATED ON THE CORNER OF SCHOOL STREET AND
WILLSBY STREET, HAWSTON**

7/2/3/2

A Le Roux

Manager: Property Administration

31 January 2022

(028) 316-5623

1. Executive Summary

To recommend that Council not exercise a right of pre-emption in respect of unregistered Erf 3551 (a portion of Erf 1142) Hawston, 1,387m² in extent, (hereinafter referred to as the "Property") allowing The Hermanus Child and Family Welfare Society to sell to the Overstrand Association for Persons with Disabilities the subdivided portion of Erf 1142 Hawston.

The locality of unregistered Erf 3551 (a portion of Erf 1142) Hawston is indicated on a locality plan attached per "Annexure A".

2. Service Delivery and Budget Implementation Plan - IGNITE

Infrastructure and Planning
Property Administration

3. Compliance with Strategic Priorities

Creation and maintenance of a safe and healthy environment
The encouragement of structured community participation in the matters of the municipality
Promotion of tourism, economic and social development

4. Delegated Authority

None

5. Legal Requirements

- Administration of Immovable Property Policy of the Overstrand Municipality (2015)
- Municipal Finance Management Act (Act No. 56 of 2003)
- Municipal Asset Transfer Regulations (R. 878 of 2008)

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6. Background/Discussion/Evaluation/Conclusion

Background

The Hermanus Child and Family Welfare Society (“Child Welfare”) is the registered owner of Erf 1142 Hawston. Please see the locality map of the property attached per “Annexure A”.

Erf 1142 Hawston (2387m² in extent) is a consolidation of the following erven, which consolidation was formally registered in the Deeds Office on 29 April 1992 as indicated on the attached diagram marked “Annexure B”:

- Erf 427 Hawston : 1,000m² in extent (indicated in green); and
- Erf 1141 Hawston : 1,387m² in extent (indicated in orange).

The previous owner, the “Afdelingsraad van Caledon” sold both erven to Child Welfare. With the original transfer of the previous Erf 1141 Hawston, the following condition was imposed by the Transferor (“Afdelingsraad van Caledon”) when the property was sold to the current owner, which condition was included in the consolidation deed, T25177/92 (the “Title Deed”), to form Erf 1142 Hawston:

“II. WAT betref die figuur hBCDEfgh op Kaart S.G. Nr. 8506/89

B. ONDERHEWIG VERDER aan die volgende voorwaarde opgelê deur en ten gunste van die Transportgewer:

1. *Die Transportgewer of sy opvolger in titel verkoop hiermee die eiendom aan die Trustees van die HERMANUS CHILD AND FAMILY WELFARE SOCIETY op voorwaarde dat daar slegs ‘n Crèche op die eiendom gerig mag word en indien die Transportnemer dit nie meer vir ‘n crèche gebruik nie, sal hul verplig wees om die eiendom terug aan te bied aan die Transportgewers of hul opvolgers in titel vir dieselfde prys as wat hul daarvoor betaal het, naamlik R2,00 (Twee Rand), maar sal die Transportgewer verantwoordelik wees vir die betaling van die transportkoste.*
2. *Indien die Transportgewer of sy opvolgers in titel nie belangstel om die eiendom terug te neem nie, sal die Transportnemer geregtig wees om die eiendom te verkoop, maar moet die eiendom eers aan die Transportgewer aangebied word vir dieselfde prys, naamlik R2,00.”*

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Roughly translated, it reads as follows:

“II. As for the figure hBCDEfgh on Map S.G. Nr. 8506/89

B. FURTHER SUBJECT TO the following condition imposed by and in favour of the Transferor:

- 1. The Transferor or its successor in title hereby sells the property to the Trustees of the HERMANUS CHILD AND FAMILY WELFARE SOCIETY on condition that only a crèche may be operated on the property and if the Transferee no longer uses it for a Crèche, they will be obliged to offer the property back to the Transferor or their successors in title for the same price as they paid for it, namely R2,00 (Two Rand), but the Transferor will be responsible for paying the transport costs.*
- 2. If the Transferor or his successors in title are not interested in taking back the property, the Transferee will be entitled to sell the property, but the property must first be offered to the Transferor for the same price, namely R2,00.”*

Child Welfare established a crèche on a portion of the property and subsequently proceeded to subdivide Erf 1142 Hawston to be the same size properties it was before the consolidation was done. The approval was obtained to subdivide Erf 1142 Hawston into:

- unregistered Erf 3551 (a portion of Erf 1142) Hawston, 1,387m² in extent; and
- remainder Erf 1142 Hawston, 1,000m² in extent.

Child Welfare sold the subdivided portion of Erf 1142 Hawston (unregistered Erf 3551 Hawston) to the Overstrand Association for Persons with Disabilities (the “OAPD”), subject to conditions. The OAPD itself is a registered Non-Profit Organisation with the purpose to *“raise the quality of life of persons with disabilities by assisting them to achieve their optimum social, emotional and functional level to become “able” within their community. Services are open to all persons with disabilities in the Overstrand area. However, due to staffing constraints, the focus area for service delivery is the Greater Hermanus area which includes rural areas and informal settlements such as Zwelihle, Mount Pleasant and Hawston”*. OAPD has been trying for years to find a more permanent location as it has been renting over the years. The service they deliver to the community is of utmost importance.

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Discussion

As mentioned, it is a condition of the Title Deed that the property may only be used for the purposes of a crèche, failing which, Erf 1142 Hawston must be offered to the Municipality (“Afdelingsraad van Caledon”) for a purchase price of R2.00 (TWO RAND), subject to the Municipality paying for the transfer costs. Should the Municipality not be interested in acquiring the Property, Child Welfare shall be entitled to sell the Property to a third-party but only after offering same to the Municipality for a purchase price of R2.00 (TWO RAND).

An application was received from KVV Du Plooy Incorporated for the removal of Condition II. B on page 5 of the Title Deed to make the transfer of the Property from Child Welfare to the OAPD possible. The remainder of Erf 1142 Hawston will still be operating as a crèche.

Although the condition was imposed in favour of the previous “Afdelingsraad van Caledon”, the Overstrand Municipality is the successor in title of this right as with the establishment of the Overstrand Municipality (Establishment Notice of 22 September 2000 - Municipal Structures Act 117 of 1998), the area of Hawston now falls under the jurisdiction of the Overstrand Municipality and the Overstrand Municipality collects the taxes levied on the property.

As the relevant conditions referred to above provide that the Municipality has the right of pre-emption and because Child Welfare wants to sell the Property for a purpose other than a crèche, the Municipality must decide whether it wishes to acquire the Property or not.

KVV Du Plooy confirmed that the purchase price of the Property payable by the OAPD will be R650,000.00 (SIX HUNDRED AND FIFTY THOUSAND RAND). The income derived from the proposed sale will benefit Child Welfare, which operates a crèche that is of great benefit to the community.

The proposed sale will allow the OAPD to have permanent premises in order for them to reach more disabled people with its care services which would benefit the community, especially disabled people who is one of the most vulnerable groups in society. The OAPD have been delivering much needed services in the community for many years now and have been struggling to acquire property of their own and have also applied to the Municipality for property in the past. They have been paying rental, which is an unnecessary expense, and which expense they will not have if they are able to acquire ownership of a property. The consent for the sale of the Property to the OAPD will thus be for the benefit of the community.

Should the Municipality purchase the Property it would be at an amount of R2.00 (TWO RAND). In such an event Child Welfare would lose a substantial amount of property without gaining any income. Furthermore, the community

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may be deprived of further services that the OAPD can offer to people with disabilities in the community. Similarly, if the Municipality decides to exercise the right, it will only be able to sell the property by means of a competitive bidding process (tender) with no guarantee that the OAPD will be successful in a submitted bid. This is a high risk that they can lose a suitable, permanent property.

The subdivision of Erf 1142 Hawston has already been approved.

Evaluation

Evaluation in terms of the Administration of Immovable Property Policy of the Overstrand Municipality

Paragraph 51. “The municipality may acquire by purchase immovable property within- or outside the municipal boundary provided it complies with the requirements of the MFMA and subject thereto that the cost of the purchase has been budgeted for and approved by Council.”

There has not been budgeted for the acquisition of the Property. Whilst the purchase price in terms of the Title Deed is extremely low, there has not been budgeted for the attorney and transfer costs should the Municipality purchase the Property. Furthermore, if the Municipality exercises the right, it will only be able to sell the Property by means of a competitive bidding process which in itself incurs expenses (advertisements must be placed). This report is not seeking Council’s approval for acquiring the Property but rather requesting Council to not exercise the Municipality’s right of pre-emption.

Conclusion

As the proposed sale is from one registered non-profit community organisation to another, it is recommended that Council does not exercise its right of pre-emption and consent to the proposed sale.

As the proposed usage by the OAPD is not that of a crèche, it is further recommended that Council approves the removal of Conditions II. B. 1. to 2. of the Title Deed in respect of Unregistered Erf 3551 Hawston only, subject thereto that a new condition be registered against the title deed of the Property to the effect that it may only be used for community purposes. The services offered by the OAPD are in line with community purposes.

7. Financial Implications

None

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8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Manager: Social Development: Mr G Smit - (028) 313 8035

"I am familiar with both organisations and both provide a very important service to our communities. Overstrand Association for Persons with Disabilities are desperately in need for facilities to accommodate their programmes. Hermanus Child and Family services provide their services for free to the most needy in our communities and need funding to sustain their services.

Your proposal is supported."

10. Annexures

Annexure A: Locality Map

Annexure B: Diagram of Erf 1142 Hawston

Annexure C: Diagram of Unregistered Erf 3551 (a portion of Erf 1142) Hawston

RECOMMENDATION TO THE COUNCIL:

1. that Council does not exercise the right of pre-emption as contained in Conditions II. B. 1. to 2. of Certificate of Consolidated Title number T25177/92 in respect of a portion of Erf 1142 Hawston;
2. that Council consents to the transfer of Unregistered Erf 3551 (a portion of Erf 1142) Hawston to the Overstrand Association for Persons with Disabilities and grants approval for the removal of Conditions II. B. 1. to 2. of Certificate of Consolidated Title No. T25177/1992 insofar this portion of Erf 1142 Hawston, should the Deeds Office duly insist that it be removed; and
3. that a condition be registered against the title deed of Unregistered Erf 3551 Hawston that it may only be used for community purposes.

| | |
|------------------------------------------|---------------------|
| RESPONSIBLE OFFICIAL : | R MARINUS |
| TARGET DATE FOR IMPLEMENTATION : | 6 APRIL 2022 |
| TARGET DATE TO INFORM APPLICANT : | 6 APRIL 2022 |
| TARGET DATE TO INFORM OBJECTOR : | N/A |

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OF ERF 1142 HAWSTON SITUATED ON THE CORNER OF SCHOOL STREET AND
WILLSBY STREET, HAWSTON**

7/2/3/2

A Le Roux

Manager: Property Administration

31 January 2022

(028) 316-5623

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

RECOMMENDATION TO THE COUNCIL:

1. that Council does not exercise the right of pre-emption as contained in Conditions II. B. 1. to 2. of Certificate of Consolidated Title number T25177/92 in respect of a portion of Erf 1142 Hawston;
2. that Council consents to the transfer of Unregistered Erf 3551 (a portion of Erf 1142) Hawston to the Overstrand Association for Persons with Disabilities and grants approval for the removal of Conditions II. B. 1. to 2. of Certificate of Consolidated Title No. T25177/1992 insofar this portion of Erf 1142 Hawston, should the Deeds Office duly insist that it be removed; and
3. that a condition be registered against the title deed of Unregistered Erf 3551 Hawston that it may only be used for community purposes.

RESPONSIBLE OFFICIAL :

R MARINUS

TARGET DATE FOR IMPLEMENTATION :

6 APRIL 2022

TARGET DATE TO INFORM APPLICANT :

6 APRIL 2022

TARGET DATE TO INFORM OBJECTOR :

N/A

OFFICE COPY

Land Surveyor: **Heraanus**

| SIDES Metres | ANGLES OF DIRECTION | CO-ORDINATES | |
|-----------------|------------------------|--------------|-----------------------|
| | | Y System | Lo, 19 ⁰ X |
| | Constant | - 10 000,00 | +3 800 000,00 |
| AB 35,00 | 244 02 40 | A - 2 284,34 | +6 514,58 |
| BC 7,08 | 289 01 40 | B - 2 315,81 | +6 499,26 |
| CD 54,98 | 334 00 50 | C - 2 322,50 | +6 501,57 |
| DE 40,00 | 64 00 50 | D - 2 346,59 | +6 550,99 |
| EA 60,01 | 154 00 50 | E - 2 310,63 | +6 568,52 |
| | ▲ (31) Mudge Point | - 3 749,09 | +7 542,76 |
| | ▲ (59) Lekker Water | + 2 144,78 | - 1 428,95 |

S.G. No.
8506-89

Approved
[Signature]
Lr. Surveyor-General
1990-01-17

Beacons:
 A : 12mm iron peg in cement
 B C D E: 12mm iron peg
 E: 12mm iron peg in concrete

| NO | FIGURE | REPRESENTS | DIAGRAM NO. | DEED NO. |
|----|----------|------------------|-------------|-------------|
| 1 | ahgf | Erf 427 Hawston | 2490/1975 | 1980- -2439 |
| 2 | hBCDEfgh | Erf 1141 Hawston | 8505/1989 | 26176/92 |


Scale 1: 1000

The figure **A B C D E** represents **2387 square metres** of land, being **ERF 1142 HAWSTON** comprising the properties as specified above situate in **Local Area of Hawston-Middelvllei** Administrative District of **Caledon** Province of Cape of Good Hope. Surveyed in **November, 1989** by me, **S. Faure** Land Surveyor

| | | |
|----------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------|
| This diagram is annexed to No. 25177/92 dated i.f.o. | The original diagrams are as specified above No. _____ annexed to Transfer/Grant No. _____ | File No. S/2757 7257 S.R. No. S 2878/89 Comp. A1-3CB/WX(435) |
|----------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------|

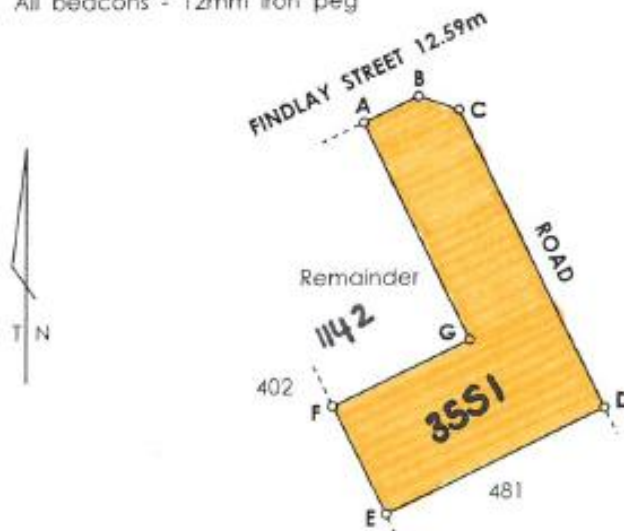
114-2

| SIDES Metres | | ANGLES OF DIRECTION | CO-ORDINATES Y System: WG19° X | | S.G. No. 1117/2021 |
|-----------------|-------|------------------------|-----------------------------------|------------|-----------------------|
| | | Constants: | | ± 0,00 | ± 0,00 |
| AB | 10,00 | 244 02 40 | A | -12 244,44 | +3 806 801,95 |
| BC | 7,08 | 289 01 40 | B | -12 253,43 | +3 806 797,57 |
| CD | 54,98 | 334 00 50 | C | -12 260,12 | +3 806 799,88 |
| DE | 40,00 | 64 00 50 | D | -12 284,21 | +3 806 849,30 |
| EF | 20,00 | 154 00 50 | E | -12 248,25 | +3 806 866,83 |
| FG | 25,00 | 244 00 50 | F | -12 239,49 | +3 806 848,85 |
| GA | 39,99 | 154 00 50 | G | -12 261,96 | +3 806 837,90 |
| | | 5AC13 ⊕ | | -12 160,74 | +3 806 495,51 |
| | | 6AC13 ⊕ | | -12 445,68 | +3 806 478,21 |

Approved

 for
 SURVEYOR-
 GENERAL
 12-07-2021

Description of Beacons

All beacons - 12mm iron peg



Scale 1:1000

A B C D E F G

The figure represents 1387 square metres of land being

ERF 3551 (A PORTION OF ERF 1142) HAWSTON

Situate in Overstrand Municipality
 Administrative District of Caledon
 Province of Western Cape
 Surveyed in June 2021 by me



NA Clark
 Professional Land Surveyor
 Registration Number PL51072

EXEMPT FROM PROVISIONS OF ACT
 70 OF 1970
 SECTION 1(a)

Approved L.O. Section 61
 Of Municipal Bylaw of Act 3/2014
 Ref: 1142/HHW
 Date: 23 April 2021

| | | |
|----------------------------|-------------------------|----------------------|
| This diagram is annexed to | The original diagram is | File : S/7257 v.5 |
| No.: | S.G. No. 8506/1989 | S.R. : 705/2021 |
| d.d.: | Transfer 1992. 25177 | G.P. : |
| i.f.o. | Grant : | Comp.A1-3CB/W11(435) |
| Registrar of Deeds | | LPI C0130012 |