

**AGENDA of the
Portfolio Committee: Infrastructure & Planning
19 June 2018
(Also the agenda for the Mayoral Committee Meeting: 27 June 2018)**

**6.
HERMANUS: IN PRINCIPLE APPROVAL FOR THE ALIENATION OF A PORTION
OF THE REMAINDER OF ERF 4771 HERMANUS ADJACENT TO ERF 2737
HERMANUS TO BRUCE NEIL ROYDEN HUXTER**

7/2/3/2

**N. Liebenberg
23 May 2018**

(028) 316 - 3724

Hermanus Administration

1. Executive Summary

To obtain approval in principle for the direct alienation of a portion of the remainder of Erf 4771 Hermanus, adjacent to Erf 2737 Hermanus ($\pm 295,8\text{m}^2$ in extent) as situated in 146 8th Street, Voëlklip, Hermanus, to the owner of Erf 2737 Hermanus, being Bruce Neil Royden Huxter.

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

4. Delegated Authority

None

5. Legal Requirements

- Local Government: Municipal Finance 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

6. Background/Discussion/Evaluation/Conclusion

Background/Discussion

An application was received from the owners of Erf 2737 Voëlklip, situated in 146 8th Street, Voëlklip, Hermanus for the purchase of a portion of the

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remainder of Erf 4771 Hermanus ($\pm 295,8\text{m}^2$ in extent) adjoining their property at the back in Seventh Street, as indicated on the locality map attached hereto marked Annexure A.

The subject property applied for is a slither of property zoned as Open Space Zone 2: Public Open Space and is situated at the back of Erf 2737 Hermanus. The reason for the application to purchase according to the applicant is to ensure safety to their property and access to their garage which is situated at the back of their property.

Due to the locality, lay-out, use and size of the property applied for, as well as the fact that there is a stream running close to the subject property and thus cannot be developed independently; 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 the adjoining property owner, subject to conditions.

The purchase will be with the condition that no structures, excluding a boundary fence or wall may be erected on the subject property.

Subsequent costs

The Applicants will be liable for the costs of the application, valuation, the closure of the public place, subdivision, consolidation and rezoning of the property as well as the required Section 14 advertisement in terms of the MFMA and the 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 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 subject property can be classified as a non-viable immovable property

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due to the location, lay-out, size and proposed use thereof as well as the presence of a stream close to it which in itself hampers the independent development thereof.

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 subject municipal property is not needed for the provision of the minimum level of basic municipal services.
- (b) Boland Valuers determined the market related value in April 2018 at an amount of R666.78/m² (SIX HUNDRED AND SIXTY SIX RAND AND SEVENTY EIGHT CENTS PER SQUARE METER)(VAT excluded). The valuation was done taking into consideration the size, locality, lay-out, zoning, vegetation and proposed use of and restrictions on the property.
- (c) 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 purchaser will be liable for all costs which include, but are not limited to, the costs for the application, valuation, subdivision and consolidation,

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closure of public place, rezoning of the property, the Section 14 advertisement and the transfer and related.

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 purchaser shall 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 exist which, in the opinion of the Municipality, make such consolidation undesirable.”

A condition to the effect that a consolidation must be done 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 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.”

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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 placed after obtaining this in principle decision. The Applicant will be liable for the costs of the Section 14 advertisement.

Conclusion

Taking the comments of the internal departments, as well as the above discussion, into consideration, it is recommended that the direct alienation of a portion of the remainder of Erf 4771 Hermanus ($\pm 295,8\text{m}^2$ in extent) to the owner of Erf 2737 Hermanus, being Bruce Neil Royden Huxter, be approved in principle.

Furthermore, it is recommended that the purchaser be liable for all cost involved to affect transfer of the property in the deeds office. Subsequently the costs will entail the closure of public place, subdivision and consolidation, rezoning, Section 14 advertisement and the transfer and related costs.

7. Financial Implications

The Municipality stands to gain a market related purchase price of R666.78/m² (SIX HUNDRED AND SIXTY SIX RAND AND SEVENTY EIGHT CENTS PER SQUARE METER)(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

The portion of the remainder of Erf 4771 Hermanus in question, is currently reflected in the Fixed Asset Register for Property, Plant and Equipment: Land as part of Erf 4771 Hermanus with a carrying value of R4'000'000 as at 30 June 2017. The disposal of the portion of the remainder of Erf 4771 Hermanus will have to be accounted for at the selling price 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.

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Townplanner: Mr Boshoff – (028) 313 8906

Should the owner of Erf 2737 Hermanus (Voëlklip) be allowed to acquire a portion of Erf 4771, the following conditions must apply:

- That the necessary prescribed application be submitted for the closure, subdivision, rezoning and consolidation of the portion of Erf 4771 with Erf 2737 at the cost of the applicant as per current tariffs – the aforementioned excludes all external costs i.e. final registration of subdivision and consolidation should application eventually be approved.
- The closeness of the small river over Erf 4771 must be discussed with our environmental section since it may trigger environmental regulations (all I know is that structures may not be constructed closer than 32m from natural water source – I do not know whether it is applicable within urban areas.)
- It may also be advisable to obtain the comment of the Department of Transport at this stage already (the application will in any event be forwarded to the latter Department when the planning application is submitted – it is however at the discretion of your Department.)
- It is suggested that the applicant approach a private professional town planner to assist in the compilation of the town planning application, in order to avoid sub-standard application should the applicant not be a registered planner.

Please find attached a letter from the Department of Transport hereto marked as Annexure B.

Comments from Property Administration Department: The town planning application must be circulated to the Department of Transport and Public Works as the current letter stipulates that access may only be from 8th Street, Voëlklip. This condition will hamper the application to purchase a portion of the remainder of Erf 4771 Hermanus as the applicant would like to use the property, amongst others, for access to their garage. Consent will have to be granted for access from 7th Street, Voëlklip.

Environmental Officer (Hermanus): Mrs P Aplon – (028) 316 3724

Even though this site is located adjacent to a stream, the Environmental Impact Assessment regulations are not triggered due to the fact that the application site is located within the urban area.

The following conditions are however set for the construction of a wall as proposed in the application:

- During the construction phase the applicant must ensure that no pollution and run-off will take place into the adjacent stream.

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- The applicant must ensure that the construction activities do not impede on the flow of the adjacent stream.

Building Manager: Mr J Simson – (028) 313 8039

This property always seems to have had access from 7th Street across commonage and their garage is situated on the northern side of their property which was approved as such so it would solve their problem of legal access across commonage.

10. Annexures

- Annexure A: Locality plan
Annexure B: Letter from Department of Transport

RECOMMENDATION TO THE COUNCIL:

1. that the direct alienation of a portion of the remainder of Erf 4771 Hermanus, adjacent to Erf 2737 Hermanus, ($\pm 295,8\text{m}^2$ in extent) to the owner of the adjoining erf, Bruce Neil Royden Huxter, at an amount of R666.78/m² (SIX HUNDRED AND SIXTY SIX RAND AND SEVENTY EIGHT CENTS PER SQUARE METER)(VAT excluded) for safety and access purposes be **approved in principle**;
2. that it be noted that a condition for alienation will be that there will be no construction allowed on the subject portion of the remainder of Erf 4771 Hermanus besides a boundary fence or wall;
3. that Council take cognisance of the fact that the direct alienation is only possible as subject portion of the remainder of Erf 4771 Hermanus applied for can be classified as a non-viable property;
4. that the abovementioned approval in principle be subject to a public participation process being followed at the cost of the Applicant due to the non-viability of the property;
5. that it be noted that a condition for alienation will be that the subject portion of the remainder of Erf 4771 Hermanus must be consolidated with the adjoining property of BNR Huxter, being Erf 2737 Hermanus;
6. that the alienation of the subject portion of the remainder of Erf 4771 Hermanus, be subject to obtaining the necessary closure of public place, subdivision and consolidation and rezoning approvals;
7. that all the costs pertaining to the transaction, e.g. application cost, valuation

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cost, subdivision and consolidation, closure of public space, rezoning, transfer and related costs, advertisement, etc., be paid by the Applicant; and

8. that it is confirmed that Council has taken cognisance of the fact that the Municipal property herewith 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 :	NICOLENE LIEBENBERG
TARGET DATE FOR IMPLEMENTATION :	PROCESS
TARGET DATE TO INFORM APPLICANT:	11 JULY 2018
TARGET DATE TO INFORM OBJECTOR:	N/A

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HERMANUS TO BRUCE NEIL ROYDEN HUXTER**

7/2/3/2

**N. Liebenberg
23 May 2018**

(028) 316 - 3724

Hermanus Administration

**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON
19 JUNE 2018, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:**

RECOMMENDATION TO THE COUNCIL:

1. that the direct alienation of a portion of the remainder of Erf 4771 Hermanus, adjacent to Erf 2737 Hermanus, ($\pm 295,8\text{m}^2$ in extent) to the owner of the adjoining erf, Bruce Neil Royden Huxter, at an amount of R666.78/m² (SIX HUNDRED AND SIXTY SIX RAND AND SEVENTY EIGHT CENTS PER SQUARE METER)(VAT excluded) for safety and access purposes be **approved in principle**;
2. that it be noted that a condition for alienation will be that there will be no construction allowed on the subject portion of the remainder of Erf 4771 Hermanus besides a boundary fence or wall;
3. that Council take cognisance of the fact that the direct alienation is only possible as subject portion of the remainder of Erf 4771 Hermanus applied for can be classified as a non-viable property;
4. that the abovementioned approval in principle be subject to a public participation process being followed at the cost of the Applicant due to the non-viability of the property;
5. that it be noted that a condition for alienation will be that the subject portion of the remainder of Erf 4771 Hermanus must be consolidated with the adjoining property of BNR Huxter, being Erf 2737 Hermanus;
6. that the alienation of the subject portion of the remainder of Erf 4771 Hermanus, be subject to obtaining the necessary closure of public place, subdivision and consolidation and rezoning approvals;
7. that all the costs pertaining to the transaction, e.g. application cost, valuation cost, subdivision and consolidation, closure of public space, rezoning, transfer and related costs, advertisement, etc., be paid by the Applicant; and

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8. that it is confirmed that Council has taken cognisance of the fact that the Municipal property herewith 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 :	N LIEBENBERG
TARGET DATE FOR IMPLEMENTATION :	PROCESS
TARGET DATE TO INFORM APPLICANT:	11 JULY 2018
TARGET DATE TO INFORM OBJECTOR:	N/A





ROAD NETWORK MANAGEMENT
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Rm 335, 9 Dorp Street, Cape Town, 8001
PO Box 2603, Cape Town, 8000

N Liebenberg

REFERENCE: 16/9/6/1-21/129 (Job 16772)
ENQUIRIES: Ms GD Swanepoel
DATE: 28 June 2017

The Municipal Manager
Overstrand Municipality
PO Box 20
HERMANUS
7200

Attention: Ms N Liebenberg

FILE NO:	712/3/2
SCAN NO:	
COLLABORATOR NO:	1049667

Dear Madam

ERF 4771, HERMANUS: MAIN ROAD 28: APPLICATION TO PURCHASE A PORTION OF ERF 4771

1. Your letter 7/2/3/2 dated 24 May 2017 refers.
2. It is understood that the Applicant wishes to purchase a piece of land to the rear of the property he owns in order to have legitimate access to Main Road 28.
3. This Branch has no issue with the proposal and hereby approves access to the affected portion of land off Main Road 28, on condition that if it were to be developed, access must be taken off 8th street.

Yours faithfully


ML WATTERS
For CHIEF DIRECTOR: ROAD NETWORK MANAGEMENT