

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
22 March 2016
(Also the agenda for the Mayoral Committee Meeting : 30 March 2016)**

**17.
HERMANUS: IN PRINCIPLE APPROVAL FOR THE ALIENATION OF TWO
PORTIONS OF ERF 1253, STEMMET STREET, EASTCLIFF, HERMANUS**

7/2/3/2/

**Anja Kotze
15 January 2016**

(028) 316 - 3724

Hermanus Administration

1. Executive Summary

To obtain approval in principle for the alienation of two portions of Erf 1253, Eastcliff, Hermanus, being:

- (a) Portion A ($\pm 361\text{m}^2$ in extent); and
- (b) Portion B ($\pm 468\text{m}^2$ in extent).

Situated in Stemmet Street as indicated on the locality map 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
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, as amended
- Local Government: Municipal Finance Management Act, Act 56 of 2003
- Municipal Asset Transfer Regulations (R. 878 of 2008)
- Overstrand Municipality Supply Chain Management Policy, as amended

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6. Background/Discussion/Evaluation/Conclusion

Background/Discussion

Mr Delpont, the owner of erf 11094, Hermanus, applied to purchase portions A and B as indicated on the attached locality plan for gardening purposes. The application of Mr Delpont was initially held back pending a legal opinion regarding the sale and leasing of municipal owned immovable property. Subsequent to the legal opinion received, it was recommended that no direct sales of municipal owned immovable property will be allowed and the Policy was amended. However, the use of a competitive process was found to be impractical and not cost effective in cases where the sale of non-viable property was envisaged. The Administration of Immoveable Property was thus amended again in November 2015 to make provision for the direct sale of municipal owned immovable property in certain circumstances.

Portion A ($\pm 361\text{m}^2$)

Mr Delpont, the owner of Erf 11094, Hermanus, has erroneously built a boundary wall on a portion of Erf 1253, Hermanus, being municipal property (the said Portion A). In order to rectify the matter, the he applied in 2014 to purchase the encroached area from the Municipality. The applicant has confirmed that he is willing to bear all the costs of the subdivision, closure (if applicable), consolidation and rezoning (and all subsequent costs) in order to affect transfer of the portions of property.

Portion B ($\pm 468\text{m}^2$)

Mr Delpont further showed interest in purchasing Portion B for gardening purposes. As this subject portion of property adjoins two privately owned properties, it was decided to consider a closed tender process, but only after both owners have shown interest in purchasing the subject property. The new owner of the other adjoining property, Mr van Vuren (Erf 547, Eastcliff, Hermanus), however indicated that he is not interested in purchasing the said portion of property by means of a competitive process (closed tender) and would prefer that it be sold to him directly or not be sold at all.

Although both the subject portions of property can be classified as a non-viable property (i.e. it cannot be used on its own due to the size and locality), Portion B can still only be alienated by means of a closed tender process as there could be two possible purchasers who can benefit from purchasing the said property. Portion A can, in terms of the amended Administration of Immoveable Property Policy be alienated directly to the adjoining property owner.

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Valuation

A valuation was obtained for Portion B in November 2013. This was done to enable discussions with the owners of the adjoining properties to determine their interest in purchasing the said portion. Should both parties have shown interest, it was envisaged that a closed tender process for the sale of Portion B be followed. At that stage both the adjoining owners were interested in purchasing Portion B.

This valuation will also be applicable to Portion A as it is part of the same property and subject to the same conditions. The said Portion B was valued in November 2013 at a amount of R141.41/m² (VAT excluded).

As both portions of erf 1253 Hermanus are deemed to be non-viable properties, both properties will have restrictions as to the use/development thereof and as the purchaser will have to bear all the costs relating to the subdivision, closure (if applicable), rezoning, consolidation, advertisement and transfer, it will be recommended that it be sold at the market related valuation as obtained in 2013.

Subsequent costs

In both cases the purchaser/successful bidder will be liable for the costs of the subdivision, possible closure of any public place/road, consolidation and rezoning of the properties as well as the required Section 14 advertisement in terms of the Municipal Finance Management Act and Administration of Immovable Property Policy. This will have the effect that the registration of the transfer in the Deed Office will be delayed as the transfer will only be possible after the successful subdivision of the property.

Evaluation

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

The following conditions of the said Policy will apply to both or either of the two portions:

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.”

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Portion A can be classified as a non-viable immovable property due to the location thereof and the circumstances surrounding the wall encroaching on the subject municipal property.

Portion B, although classified as a non-viable property, adjoins two separately privately owned immovable properties which necessitates a competitive process, i.e. closed tender process.

Paragraph 9(1)(a): *“The Municipality may transfer ownership or otherwise dispose of a non-exempted immovable property only after the Municipal Council has, in terms of sections 14(2)(a) and (b) of the MFMA decided on reasonable grounds that the immovable property is not needed to provide the minimum level of basic municipal services.”*

The comments received from the relevant departments indicate that the subject portion of municipal property is not needed for the provision of the minimum level of basic municipal services.

Paragraph 9(1)(b): *“The Municipality may transfer ownership or otherwise dispose of a non-exempted immovable property only after the municipal council, in terms of sections 14(2)(a) and (b) of the MFMA 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.”*

Boland Valuers determined the market related value of a portion B of Erf 1253, Eastcliff, Hermanus in November 2013 at an amount of R141.41 (ONE HUNDRED AND FOURTY ONE RAND AND FOURTY ONE CENTS) per square metre (VAT excluded). As the successful bidder will be liable for the costs related to the subdivision, closure, rezoning and possible consolidations, it is recommended that the subject properties be sold at the value obtained in 2013.

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”*

Portion A can be classified as a non-viable immovable property due to its locality and the wall that is built on the subject portion. Portion B can also be classified as a non-viable property, but as there are two adjoining

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property owners that could be interested in the purchase of this portion, a competitive process (by means of a closed tender) will be more suitable.

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, excluding the costs for the valuation. Subsequently the costs will entail the subdivision and possible consolidation, Section 14 advertisement, transfer costs, the connection of services and the rezoning of the property.

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.

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 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

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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 Local Government: Municipal Finance Management Act (Act 56 of 2003) will be placed after obtaining this in principle decision. The purchaser will be liable for the costs of the Section 14 advertisement.

Conclusion

Taking the comments of our internal departments into consideration, as well as the comment from Mr van Vuren (the owner of Erf 857, Eastcliff, Hermanus, being the one adjoining property owner) it is recommended that:

- (a) Portion A be alienated directly to Mr Martin Gerhardus Delport at a market related value of R141.41 (FOUR HUNDRED AND FOURTY RAND AND FOURTY ONE CENTS) per square metre (VAT excluded) subject to certain conditions as he is the only purchaser who will benefit from the purchase and the only person who can use the subject property, and
- (b) Portion B not be alienated at this stage.

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

7. Financial Implications

The Municipality stands to gain the market related purchase price of R141.41 (ONE HUNDRED AND FOURTY ONE THOUSAND RAND AND FOURTY ONE CENTS) per square metre (VAT excluded).

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8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

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

The full extent of Erf 1253, Hermanus (Eastcliff), is currently reflected in the Fixed Asset Register for Property, Plant and Equipment: Land with a carrying value of R18'000'000. The disposal of the portion adjacent to Erf 11094 will have to be accounted for at the selling price in order to adjust the carrying value of the remaining portion of Erf 1253 in the Fixed Asset Register.

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

Senior Manager Operational Services (Hermanus): Mr P Burger – (028) 313 8092

Portion A:

No comment.

Portion B:

The sewer rising main is 6.5 meters from the erf boundary. We do not have to move any services

Senior Townplanner: Mrs H van der Stoep – (028) 313 8906

Portion A:

No Problem.

Portion B:

No objection. A splay has to be made. The garden must not cause any visual obstructions for motorists.

Senior Manager Engineering Services: Mr D Hendriks: - (028) 313 8245

No comments.

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Senior Superintendent Projects (Hermanus): Mr J Klem – (028) 313 8000

Portion A:

No comments received.

Portion B:

The two service cables on Erf 1253 are about 400mm below the ground level and will not be damaged in the erf is only used for gardening. If the cables are damaged, the cost for the repair thereof will have to cover the cost of moving it out of the erf altogether at that stage.

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

This office has no objection to the sale.

Chief Fire and Disaster Management: Mr L Smith – (028) 313 5041

That the Fire Hazard Policy be noted

Chief Traffic and Licences: Mr R Fraser – (028) 313 8165

From Fire and Disaster Management we will only add that the area applicable not create a fire hazard and that our Fire Hazard management Policy be noted

10. Annexures

Annexure A: Locality plan

RECOMMENDATION TO THE COUNCIL:

1. that the direct alienation of Portion A of Erf 1253, Eastcliff, Hermanus (adjacent to Erf 11094 Hermanus), ±361m² in extent, for gardening purposes to Mr Martin Gerhardus Delpport for an amount of R141,41/m² (ONE HUNDRED AND FOURTY ONE RAND AND FOURTY ONE CENTS PER SQUARE METRE) (VAT excluded) be **approved in principle**;
2. that Council take cognisance of the fact that the direct alienation is only approved as the subject portion Portion A of Erf 1253, Eastcliff, Hermanus, is classified as a non-viable property;
3. that the abovementioned approval in principle be subject to a public participation process being followed due to the non-viability of the property;

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4. that Portion A of Erf 1253, Eastcliff, Hermanus, may only be used for gardening purposes;
5. that Portion A of Erf 1253, Eastcliff, Hermanus, must be consolidated with the adjoining property of Mr Martin Gerhardus Delpont, being Erf 11094, Eastcliff, Hermanus;
6. that the alienation of Portion A of Erf 1253, Eastcliff, Hermanus, be subject to obtaining the necessary subdivision, rezoning and consolidation approvals;
7. that the costs pertaining to the transaction, e.g. subdivision, possible consolidation, rezoning, transfer costs, water- and sewer connections, bulk services contribution, advertisements, etc., excluding the valuation costs, be paid by the purchaser;
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); and
9. that the alienation of Portion B of Erf 1253, Eastcliff, Hermanus (adjacent to Erven 11094 and 857, Hermanus), ±468m² in extent, for gardening purposes by means of a closed tender process **not be approved**.

RESPONSIBLE OFFICIAL :	A KOTZE
TARGET DATE FOR IMPLEMENTATION :	29 APRIL 2015
TARGET DATE TO INFORM APPLICANT :	15 APRIL 2015
TARGET DATE TO INFORM OBJECTOR :	N/A

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7/2/3/2/

A Kotze

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Hermanus Administration

15 January 2016

THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON 22 MARCH 2016, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:

RECOMMENDATION TO THE COUNCIL:

1. that the direct alienation of Portion A of Erf 1253, Eastcliff, Hermanus (adjacent to Erf 11094 Hermanus), ±361m² in extent, for gardening purposes to Mr Martin Gerhardus Delport for an amount of R141,41/m² (ONE HUNDRED AND FOURTY ONE RAND AND FOURTY ONE CENTS PER SQUARE METRE) (VAT excluded) be **approved in principle**;
2. that Council take cognisance of the fact that the direct alienation is only approved as the subject portion Portion A of Erf 1253, Eastcliff, Hermanus, is classified as a non-viable property;
3. that the abovementioned approval in principle be subject to a public participation process being followed due to the non-viability of the property;
4. that Portion A of Erf 1253, Eastcliff, Hermanus, may only be used for gardening purposes;
5. that Portion A of Erf 1253, Eastcliff, Hermanus, must be consolidated with the adjoining property of Mr Martin Gerhardus Delport, being Erf 11094, Eastcliff, Hermanus;
6. that the alienation of Portion A of Erf 1253, Eastcliff, Hermanus, be subject to obtaining the necessary subdivision, rezoning and consolidation approvals;
7. that the costs pertaining to the transaction, e.g. subdivision, possible consolidation, rezoning, transfer costs, water- and sewer connections, bulk services contribution, advertisements, etc., excluding the valuation costs, be paid by the purchaser;
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); and

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9. that the alienation of Portion B of Erf 1253, Eastcliff, Hermanus (adjacent to Erven 11094 and 857, Hermanus), ±468m² in extent, for gardening purposes by means of a closed tender process **not be approved**.

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TARGET DATE FOR IMPLEMENTATION :	29 APRIL 2015
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