

**AGENDA of the
Portfolio Committee: Infrastructure & Planning
17 March 2020
(Also the agenda for the Mayoral Committee Meeting: 25 March 2020)**

**7.
IN PRINCIPLE AND TRANSFER APPROVAL FOR DIRECT ALIENATION OF A
PORTION OF ERF 2430 GANSBAAI ADJACENT TO ERF 3425 GANSBAAI (ON
THE CORNER OF KAMPEER AND VAN DYK STREET, GANSBAAI) TO THE
WESTERN CAPE GOVERNMENT VIA ITS DEPARTMENT OF TRANSPORT AND
PUBLIC WORKS (DEPARTMENT OF EDUCATION) FOR THE GANSBAAI
ACADEMIA HIGH SCHOOL**

7/2/3/2

A le Roux

Manager: Property Administration

20 November 2019

(028) 316 - 3724

1. Executive Summary

To obtain in principle approval for the direct alienation as well as transfer of a portion of Erf 2430 Gansbaai (± 0.9 ha in extent) (hereinafter called the "property") adjacent to Erf 3425 Gansbaai to the Western Cape Government via its Department of Transport and Public Works (on behalf of the Department of Education), herein after referred to as "the Department" for the purpose of extending the Gansbaai Academia High School. 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 Finance 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

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6. Background/Discussion/Evaluation/Conclusion

Background/Discussion

Gansbaai Academia is a Western Cape Government funded school situated on the corner of Kampeer and Van Dyk Street, Gansbaai. The school has been on the property as from 2010.

In July 2019 the school applied to lease a portion of Erf 2430 Gansbaai in order to compensate for the portion of playground and common area that will be used for the building of 5 (FIVE) additional classrooms that are needed to accommodate the growth in student numbers attending at the school. It was subsequently suggested in October 2019 that the subject portion of the property rather be donated to the Department for the extension of the school to the benefit of the community.

This request was discussed and was positively considered subject to the Department being held liable for the costs of the transaction which will include, but not limited to, the subdivision and consolidation, rezoning, closure of public space and transfer of the property. A formal letter dated 23 October 2019 was subsequently sent to the Minister of Education confirming that the Overstrand Municipality is prepared to donate the subject portion of the property to the Department, subject to the Department carry the costs as mentioned above. On 30 October 2019 The Minister of Education confirmed that the gesture is accepted. The matter was subsequently discussed with Mr Gerrit Coetzee from the Directorate Physical Resource Planning and Property Management who indicated that it will be easier for them to motivate a sale at a nominal amount than a donation. He has also indicated that he does not foresee a problem with the Department bearing all the costs, but cannot confirm same as he does not have the necessary approvals in place as yet.

Subsequent costs

The Department will be held liable for the costs of the transaction which will include, but not limited to, the subdivision and consolidation, rezoning, closure of public space and transfer of the property.

Evaluation

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

The following conditions of the said Policy apply:

Paragraph 4: “No application for the purchase, lease of or encroachment on immovable property (save for the instances

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mentioned in paragraphs 58 to 62 and 64.1 below) shall be processed unless the prescribed application fee as per tariff approved in the annual budget for that financial year has been paid, nor shall any proposed lease or encroachment (save for the instances mentioned in paragraphs 58 to 62 and 64.1 below) be advertised unless the applicant has confirmed, in writing, that he/she will bear all costs involved in such transaction including - but not limited to - legal, survey, re-zoning, sub-division, consolidations, advertisement, relocation or provision of services and, where applicable, a deposit as per prescribed rate to cover incidental costs has been paid.”

Organs of state are exempted from paying the application fee. As to the rest of the costs, the Department will be held liable and will be requested to confirm same in writing before any deed of sale is signed.

Paragraph 5: *“The Municipality may not transfer ownership as a result of a sale or other transaction or otherwise permanently dispose of a municipal immovable property needed to provide the minimum level of basic services, save where the transfer is to another organ of state, as provided for in section 14(6) of the MFMA read with Regulation 24 in Chapter 3 of the MATR.”*

The property to be alienated is not needed to provide basic services and alienating the property to the Department will be of a great benefit to the community of Gansbaai.

Paragraph 12.1: *“Paragraphs 7 and 10 above do not apply to the transfer of immovable property to another municipality or to a municipal entity or to a national or provincial organ of state in circumstances and in respect of categories of assets approved by the National Treasury in Regulation 20 of the MATR, provided that such transfers are in accordance with a prescribed framework contained in Chapter 3 of the MATR.”*

Regulation 20 determines, amongst others that,

“Section 14(1) to (5) of the Act does not apply if a municipality or municipal entity transfers a capital asset to an organ of state in any of the following circumstances:(f) any other circumstance not provided in paragraph (a) to (e), provided that –

- (i) the capital asset to be transferred is determined by Council to be not needed for the provision of the minimum level of basic municipal services and to be surplus to the requirements of the municipality; and*

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- (ii) *if the capital asset is to be transferred for less than fair market value, the municipality takes into account-*
 (aa) *whether the capital asset may be required for the municipality or a minimum entity under the municipality's sole or shared control at a later date;*

The property will be developed specifically for the extension of the school, the latter being a Provincial mandated function. It is not envisaged that Municipality will require any control or shared control over the property and function anytime in the near future.

- (bb) *the expected loss or gain that is expected to result from the proposed transfer;*

The whole of Erf 2430 Gansbaai is currently reflected in the Municipality's Fixed asset register (Property Plant and Equipment) at a value of R2,990,441.04 (TWO MILLION NINE HUNDRED AND NINETY THOUSAND FOUR HUNDRED AND FORTY ONE RAND AND FOUR CENTS) (VAT included) with the general valuation (applicable as from 1 July 2016) being R3,250,000.00 (THREE MILLION TWO HUNDRED AND FIFTY THOUSAND RAND) (VAT included).

The eventual alienation of a portion of Erf 2430 Gansbaai adjacent to Erf 3425 Gansbaai will have to be accounted for order to remove it from the Fixed Asset Register and to account for the gain / (loss). The value to be accounted for in the Fixed Asset Register is R90,275.27 (NINETY THOUSAND TWO HUNDRED AND SEVENTY FIVE RAND AND TWENTY SEVEN CENTS) (VAT included) on an estimated size of 0.9 hectares which will represent the loss on the land portion of the property.

- (cc) *the extent to which any compensation to be received in respect of the proposed transfer will result in a significant economic or financial cost or benefit to the municipality;*

A nominal purchase price of R1.00 (ONE RAND)(VAT included) is proposed. Although a nominal purchase price will be received, the extension of the school will be to the benefit of the community.

- (dd) *the risks and rewards associated with the operation or control of the capital asset that is to be transferred in relation to the interests of the municipality or municipal entity;*

All risks and rewards related to the property will be taken over by the Department on date of signature of the deed of sale or any

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earlier date as agreed upon between the parties. In this regard, the Department has indicated that they might request earlier occupation.

(ee) the effect that the proposed transfer will have on the ability of the municipality or municipal entity to raise long-term or short-term borrowings in the future;

The value of the property is well below 1% of the total value of all the land and buildings of the Municipality. The alienation and transfer of the property will therefore have no effect on the ability of the Municipality to raise long term of short term borrowings in the future.

(ff) any limitation or conditions attached to the capital asset or the transfer of the asset, and the consequences of an potential non-compliance with those conditions;

The property may only be used for educational purposes, i.e. the extension of the current High School. No other uses will be allowed and this will be registered against the title deed of the property.

(gg) the estimated cost of the proposed transfer;

There will be no cost for the Municipality as all costs of transfer will be borne by the Department.

(hh) the transfer of any reserve funds associated with the capital asset;

There are no reserve funds associated with this property.

(ii) the interests of any affected organ of state, the municipality's own strategic, legal and economic interests and the interests of the local community; and

The additional portion of property will be of a bigger benefit to the community as the facilities will be better and more children will be accommodated in the school.

(jj) compliance with the legislative regime applicable to the proposed transfer."

The transfer will be in line with all relevant legislation from both a Municipal and Provincial side.

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Paragraph 12.2 *“Where the requirements stipulated in Chapter 3 of the MATR are met, then notwithstanding fact that the transfer or disposal may be in respect of immovable property which is required to provide the minimum level of basic services, such disposals need not be at market related value and do not require a public participation process described in the MATR in respect of non-exempted disposals.”*

As the property will be alienated to an organ of state and further as the purpose for which the property will be utilised is of great value and advantage to the community, the property may be alienated and a public participation process need not to be followed.

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 Department will be held liable for all costs pertaining to this transaction.

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 31: *“Where immovable property is alienated for development, a condition, taking into consideration the nature of the development, might be included in the Deed of Sale stipulating that such development must be completed within two years from date of registration. Likewise a condition may be included in the agreement to provide for forfeiture in the event that the development has not been completed within the required time period, unless a written extension has been granted by the Municipality.”*

A clause to this effect will be inserted 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.”*

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A clause to this effect will be inserted in the deed of sale.

B: Advertisement/Notification

As the property is exempted in terms of Regulation 20 of the MATR and alienated to an organ of state to the advantage of the community, the alienation of the property does not have to follow a public participation process.

Conclusion

It is recommended that the direct alienation as well as transfer of a portion of Erf 2430 Gansbaai (± 0.9 ha in extent) adjacent to Erf 3425 Gansbaai to the Western Cape Government via its Department of Transport and Public Works (on behalf of the Department of Education) at a nominal purchase price of R1.00 (ONE RAND)(VAT included) for the purpose of extending the current Gansbaai Academia High School be approved.

7. Financial Implications

Although Erf 2430 Gansbaai is reflected in the Fixed Asset Register for Property, Plant and Equipment at an amount of R2,990,441.04 (TWO MILLION NINE HUNDRED AND NINETY THOUSAND FOUR HUNDRED AND FORTY ONE RAND AND FOUR CENTS) (VAT included). Only a portion of Erf 2430 Gansbaai (± 0.9 hectare in extent) will be alienated to the Department a loss of R90,275.27 (NINETY THOUSAND TWO HUNDRED AND SEVENTY FIVE RAND AND TWENTY SEVEN CENTS) (VAT included) will be shown on the register in the financial year the sale is finalised. The value of the extension to the High School to the community can however not be expressed in financial value.

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

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

Erf 2430 Gansbaai is currently reflected in the Fixed Asset Register for Property, Plant and Equipment: Land at an amount of R2,990,441.04 (TWO MILLION NINE HUNDRED AND NINETY THOUSAND FOUR HUNDRED AND FORTY ONE RAND AND FOUR CENTS) (VAT included). The eventual disposal of a portion of Erf 2430 Gansbaai will have to be accounted for as a disposal in order to remove it from the Fixed Asset Register and to account for the (loss).

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

Senior Manager: Gansbaai/Stanford Administration: Mr F Myburgh - (028) 384 8365

“As it surely would be in the best interest of the community, permission be given to deviate from the masterplan of the future development of Gansbaai Communal Sportgrounds (Spaces for Sport) in order to allow the extension of the school yard of the high school (Gansbaai Academia). That the portion of land to be allocated to the applicant be designed in a way that the entrance in Kampeerweg, Blompark be aligned with Roos Street to form a proper intersection where a 4-way stop could be considered in future.

That the possibility to move the proposed swimming pool to an alternative position be investigated.”

Town Planner: Mr S van der Merwe - (028) 313 8900

“The zoning of the application area (portion of Erf 2430, Gansbaai) is Open Space Zone 1 : Public Open Space. The SDF reserves the application area together with the adjoining school site for community use. The application area forms part of a densification zone in terms of the Growth Management Strategy but is situated outside the recently approved restructuring zone.

The addition of classrooms will create permanent rights / structures and as such, the application for a lease is not supported. The proposed development could be accommodated by means of alienation to the department. Thus, the department will be responsible for the subdivision of application area, rezoning to community zone, closure of public place, consolidation of the subdivided portion with Erf 3425. The applicant will also be responsible for all costs pertaining to the status report, survey of the application area and conveyancer certificate (if applicable).”

Comments of Property Administration: This will be addressed in the deed of sale.

Senior Manager: Electrical Services: Gansbaai & Stanford: Mr D Maree - (028) 384 8311

“We have no objection. Kindly note that should any additional capacity be required, standard application fees and procedures will apply. All cost pertaining to any investigations, upgrading or the repositioning of any existing services will be for the client's account.”

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Comments of Property Administration: This will be addressed in the deed of sale.

Manager: Engineering Services: Mr R Andrew - (028) 313 5073

“The GIS indicates that there is a water pipe running over the land being applied for.

I'll suggest that the applicant meet with the Gansbaai Operational Management (on-site) and determine, what is practical or allowable.”

Comments from Property Administration: It has been confirmed by the Operational Department (Gansbaai) that no services will be affected by the proposed alienation of the subject portion of Erf 2430 Gansbaai.

(Previous) Senior Manager: Operational Services Gansbaai: Mr T Steenberg - (028) 384 8312

“With regard to the application to acquire a Portion of Erf 2430, Gansbaai, the Department: Operational Services has no objection to the application, subject to the following conditions:

1. *That, as no municipal water services will be rendered to the relevant Portion of Erf 2430, the applicant is responsible for the provision of any water supply and / or –services to the development on the relevant portion of Erf 2430.*
2. *The applicant shall be responsible for removal of all sewerage generated on the property, and disposal thereof at a licensed municipal sewerage treatment facility.*
3. *That the developer investigates and determines the limitations of the site in terms of sewer drainage, subject to the minimum requirements of SANS 1400 – P: 2010: Drainage.*
4. *That, on-site parking facilities be provided as per the Planning Schedule, and to the satisfaction of the Department: Operational Services.*
5. *That the Electrical- and Traffic Departments, as well as Telkom and any other relevant authorities and service providers not have any objections to the application.”*

Comments from Property Administration: The comments from external departments will be obtained during the town planning processes.

10. Annexures

Annexure A: Locality Map

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RECOMMENDATION TO THE COUNCIL:

1. that the direct alienation of a portion of Erf 2430 Gansbaai (± 0.9 ha in extent) adjacent to Erf 3425 Gansbaai to the Western Cape Government via its Department of Transport and Public Works (on behalf of the Department of Education) at a nominal purchase price of R1.00 (ONE RAND)(VAT included) for the extension of the Gansbaai Academia High School and related purposes, **be approved in principle**;
2. that the transfer of a portion of Erf 2430 Gansbaai (± 0.9 ha in extent) adjacent to Erf 3425 Gansbaai to the Western Cape Government via its Department of Transport and Public Works (on behalf of the Department of Education) at a nominal purchase price of R1.00 (ONE RAND)(VAT included) for Gansbaai Academia High School and related purposes, **be approved**;
3. that it be noted that it is not necessary to follow a competitive process for the alienation and transfer as this transaction is exempted in terms of Regulation 20 of the Municipal Asset Transfer Regulations (R. 878 of 2008);
4. that it be noted that a condition for the alienation will be that the said portion of Erf 2430 Gansbaai must be consolidated with the adjoining property, being Erf 3425 Gansbaai;
5. that the alienation of said portion of Erf 2430 Gansbaai be subject to a suspensive condition that the Department obtains at own cost all required town planning approvals;
6. that all the costs pertaining to the transaction, e.g. subdivision and consolidation, closure of portion of public open space, rezoning, transfer and related costs, etc. be paid by the Department;
7. that a condition be registered against the title deed of the consolidated property that the property may only be used for educational purposes; and
8. that it be noted that the portion of municipal property herewith alienated and transferred 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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RESPONSIBLE OFFICIAL:	N LIEBENBERG
TARGET DATE FOR IMPLEMENTATION:	25 APRIL 2020
TARGET DATE TO INFORM APPLICANT:	9 APRIL 2020
TARGET DATE TO INFORM OBJECTOR:	N/A

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7.

IN PRINCIPLE AND TRANSFER APPROVAL FOR DIRECT ALIENATION OF A PORTION OF ERF 2430 GANSBAAI ADJACENT TO ERF 3425 GANSBAAI (ON THE CORNER OF KAMPEER AND VAN DYK STREET, GANSBAAI) TO THE WESTERN CAPE GOVERNMENT VIA ITS DEPARTMENT OF TRANSPORT AND PUBLIC WORKS (DEPARTMENT OF EDUCATION) FOR THE GANSBAAI ACADEMIA HIGH SCHOOL

7/2/3/2

A Le Roux

Manager: Property Administration

20 November 2019

(028) 316 - 3724

THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON 17 MARCH 2020, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:

RECOMMENDATION TO THE COUNCIL:

1. that the direct alienation of a portion of Erf 2430 Gansbaai (± 0.9 ha in extent) adjacent to Erf 3425 Gansbaai to the Western Cape Government via its Department of Transport and Public Works (on behalf of the Department of Education) at a nominal purchase price of R1.00 (ONE RAND)(VAT included) for the extension of the Gansbaai Academia High School and related purposes, **be approved in principle;**
2. that the transfer of a portion of Erf 2430 Gansbaai (± 0.9 ha in extent) adjacent to Erf 3425 Gansbaai to the Western Cape Government via its Department of Transport and Public Works (on behalf of the Department of Education) at a nominal purchase price of R1.00 (ONE RAND)(VAT included) for Gansbaai Academia High School and related purposes, **be approved;**
3. that it be noted that it is not necessary to follow a competitive process for the alienation and transfer as this transaction is exempted in terms of Regulation 20 of the Municipal Asset Transfer Regulations (R. 878 of 2008);
4. that it be noted that a condition for the alienation will be that the said portion of Erf 2430 Gansbaai must be consolidated with the adjoining property, being Erf 3425 Gansbaai;
5. that the alienation of said portion of Erf 2430 Gansbaai be subject to a suspensive condition that the Department obtains at own cost all required town planning approvals;
6. that all the costs pertaining to the transaction, e.g. subdivision and consolidation, closure of portion of public open space, rezoning, transfer and related costs, etc. be paid by the Department;

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7. that a condition be registered against the title deed of the consolidated property that the property may only be used for educational purposes; and
8. that it be noted that the portion of municipal property herewith alienated and transferred 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:	25 APRIL 2020
TARGET DATE TO INFORM APPLICANT:	9 APRIL 2020
TARGET DATE TO INFORM OBJECTOR:	N/A

ANNEXURE A

