

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
21 November 2017
(Also the agenda for the Mayoral Committee Meeting : 29 November 2017)**

5.

HERMANUS: IN PRINCIPLE APPROVAL FOR THE DIRECT ALIENATION OF A PORTION OF ERF 1 HAWSTON ($\pm 370\text{M}^2$ IN EXTENT) TO HAWSTON SERVICE STATION (PTY) LTD

7/2/3/2

W Murtz

(028) 316 - 3724

Hermanus Administration

9 October 2017

1. Executive Summary

To obtain approval in principle for the direct alienation of a portion of Erf 1 Hawston ($\pm 370\text{m}^2$ in extent) to the owner of the adjacent Erf 412 Hawston (George Viljoen Street), namely Hawston Service Station (Pty) Ltd.

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

- 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 Hawston Service Station (Pty) Ltd, the owner of the adjoining property, being Erf 412 Hawston, to purchase a portion

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of Erf 1 Hawston ($\pm 370\text{m}^2$ in extent) as indicated on the locality map attached hereto marked Annexure A for the purposes of additional parking and driveway to the service station on its property.

The subject property applied for is a portion of road reserve adjacent to Erf 412 Hawston situated on George Viljoen Street. The applicant applied to purchase this subject portion of road reserve in order to utilise it as additional parking and a proper driveway for the service station situated on Erf 412 Hawston. Bringing the driveway forward with $\pm 7-10$ meters will ease the traffic flow and reduce the major congestion currently experienced in George Viljoen Street.

As the property applied for is zoned as Transportation Zone 2 (road and parking), the said portion of the road will have to be closed, subdivided, rezoned to the relevant Business zone and consolidated with the applicant's property.

Due to the locality, proposed use and size of the subject portion of the property applied for, it can be classified as a non-viable property which can in terms of the Administration of Immovable Property Policy be alienated directly to the adjoining property owner.

Subsequent costs

The purchaser will be liable for the costs of the transaction which will include, but not limited to, the application fee, the cost for the valuation, the road closure, subdivision, consolidation and rezoning of the property as well as the required Section 14 advertisement in terms of the MFMA and 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

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therefore only become functional if alienated or leased to an adjoining owner for usage in conjunction with the said owner's property”.

This subject portion of Erf 1 Hawston can be classified as a non-viable immovable property due to the location and size. As the subject portion of the property is situated on a road reserve and the portion is only approximately ±7-10 meter in width which do not allow for any other useful purpose and can thus be seen that the property will not be of useful purpose to anyone else than the owner of the adjoining property after consolidation.

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 portion of municipal property is not needed for the provision of the minimum level of basic municipal services.
- (b) A market related value for the property will be obtained as required once the in principle approval is obtained. This market related purchase price will be disclosed to Council when the final approval for the transfer of the property is obtained.
- (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

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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 incidental to this transaction which include, but not limited to, the application fee, valuation cost, the road closure, subdivision, consolidation, rezoning, Section 14 advertisement and transfer costs.

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 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 suspensive condition to this effect will be included in the Deed of Sale that the sale of the property will be subject to the successful road closure, subdivision, rezoning and consolidation of the property.

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.

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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 MFMA will be published 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, as well as the above discussion, into consideration it is recommended that the direct alienation of a portion of Erf 1 Hawston ($\pm 370\text{m}^2$ in extent) to the owner of the adjoining Erf 415, namely Hawston Service Station (Pty) Ltd, at a market related purchase price be approved in principle.

Furthermore, the purchaser will be liable for all cost involved to affect transfer of the property in the deeds office. Subsequently the costs will entail the application fee, valuation cost, road closure, subdivision, consolidation, rezoning of the property, Section 14 advertisement and transfer costs.

7. Financial Implications

The Municipality stands to gain a market related purchase price for the property as determined by a professional valuer.

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 1, Hawston, is currently reflected in the Fixed Asset Register for Property, Plant and Equipment: Land with a carrying value of R13,000,000. The disposal of the portion adjacent to Erf 412 will have to be accounted for at the selling price in order to adjust the carrying value of the remaining portion of Erf 1 in the Fixed Asset Register.

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

Senior Manager: Hermanus Administration: Mr D Kearney– (028) 313 8112

The sale of the portion of Erf 1 Hawston adjacent to Erf 412 is supported in principle, provided that it is only utilised for the purpose as indicated in the application. Furthermore, pedestrians' traffic on the sidewalk and across the entrance should not be compromised as there is a very high volume of pedestrian traffic in the vicinity. The "entrance" and "exit" from the road should be clearly marked and indicated with the appropriate traffic signs.

Senior Townplanner: Mr H Olivier – (028) 313 8906

This office in principle does not have an objection to the proposal. It should however be taken into consideration that the two adjacent erven also have the same wide road reserve in front of them, and it would probably be wise to also consider selling such portions to such land owners at the same time. It is however very important that the Engineering Branch provide their support for the application. This portion of Erf 1 is zoned. Transport Zone 2 (road and parking). This would mean that a portion of the road will have to be closed, subdivided, rezoned to the relevant Business zone and consolidated with the applicant's property.

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

In principle I have no objection with the sale of the property. If there is any existing services on or crossing the property, the relocation of the services will be for the developer's cost.

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

There are no objection towards the extension of the service station, however keep in mind that the electrical supply to the current building run across the planned area to be excavated.

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

This office has no objection to the proposed alienation of a portion of Erf 1, adjacent to Erf 412 HHW.

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

No objection. Must comply with all fire related regulations.

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Manager: Building Control: Mr J Simson – (028) 313 8091

A plan should be submitted so it can be evaluated in terms of all the relevant regulations relating to petrol/diesel.

10. Annexures

Annexure A: Locality plan

RECOMMENDATION TO THE COUNCIL:

1. that the direct alienation of a portion of Erf 1 Hawston ($\pm 370\text{m}^2$) in extent, to the owner of the adjoining erf, Hawston Service Station (Pty) Ltd, at a market related purchase price as determined by a registered valuer be **approved in principle**;
2. that it be noted that the direct alienation is possible as the subject portion of Erf 1 Hawston is classified as a non-viable property;
3. that, subject to the approval in 1. above, a public participation process be followed at the cost of the Applicant;
4. that it be noted that a condition for the alienation will be that the subject portion of Erf 1 Hawston be consolidated with the adjoining property of Hawston Service Station (Pty) Ltd, being Erf 412 Hawston;
5. that the alienation of a portion of Erf 1 Hawston furthermore be subject to a suspensive condition that the Applicant obtains approval for the road closure, subdivision, consolidation and rezoning of the portion of property;
6. that all the costs pertaining to the transaction, e.g. application fee, valuation costs, road closure, subdivision, consolidation, , rezoning, transfer and related costs, advertisements, etc., be paid by the Applicant; and
7. that it be noted that the municipal property herewith envisaged to be 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).

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RESPONSIBLE OFFICIAL :	W MURTZ
TARGET DATE FOR IMPLEMENTATION:	28 FEBRUARY 2018
TARGET DATE TO INFORM APPLICANT:	22 DECEMBER 2017
TARGET DATE TO INFORM OBJECTOR:	N/A

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7/2/3/2

W Murtz

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Hermanus Administration

9 October 2017

**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON
21 NOVEMBER 2017, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:**

RECOMMENDATION TO THE COUNCIL:

1. that the direct alienation of a portion of Erf 1 Hawston ($\pm 370\text{m}^2$) in extent, to the owner of the adjoining erf, Hawston Service Station (Pty) Ltd, at a market related purchase price as determined by a registered valuer be **approved in principle**;
2. that it be noted that the direct alienation is possible as the subject portion of Erf 1 Hawston is classified as a non-viable property;
3. that, subject to the approval in 1. above, a public participation process be followed at the cost of the Applicant;
4. that it be noted that a condition for the alienation will be that the subject portion of Erf 1 Hawston be consolidated with the adjoining property of Hawston Service Station (Pty) Ltd, being Erf 412 Hawston;
5. that the alienation of a portion of Erf 1 Hawston furthermore be subject to a suspensive condition that the Applicant obtains approval for the road closure, subdivision, consolidation and rezoning of the portion of property;
6. that all the costs pertaining to the transaction, e.g. application fee, valuation costs, road closure, subdivision, consolidation, , rezoning, transfer and related costs, advertisements, etc., be paid by the Applicant; and
7. that it be noted that the municipal property herewith envisaged to be 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).

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