

**AGENDA of the
Portfolio Committee: Infrastructure & Planning
17 October 2017
(Also the agenda for the Mayoral Committee Meeting: 25 October 2017)**

2.

**HERMANUS: IN PRINCIPLE APPROVAL FOR THE ALIENATION OF ERF 1406
SANDBAAI TO JL & NJ HENZEN, S BROUWER AND J MARQUART**

7/2/3/2/

N Liebenberg

(028) 316 3724

Hermanus Administration

26 September 2017

1. Executive Summary

To obtain approval in principle for the direct alienation of Erf 1406 Sandbaai (198m² in extent), to the owners of Erf 1405 Sandbaai , being JL & NJ Henzen, S Brouwer and J Marquart.

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)
- 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 1405 Sandbaai, situated at 18 Branderdraai Street, Sandbaai, for the purchase of Erf 1406 Sandbaai (198m² in extent) adjoining their property, as indicated on the locality map attached hereto marked Annexure A.

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The subject property applied for is a slither of property zoned as public place and adjacent to the Erf 1405 Sandbaai. The reason for the application to purchase is to ensure safety. The applicants want to erect a fence in order to secure Erf 1405 Sandbaai. Currently the applicants are experiencing problems with the public that trespasses over their property and uses their property as a walk way to other properties in the vicinity, especially to Habonim.

Due to the locality, use and size of the property applied for, as well as the fact that there are Milkwood trees growing on it 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 applicants also supplied a letter from the neighbour, the owner of Erf 1407 Sandbaai, stating that they have no interest in purchasing Erf 1406 Sandbaai - see letter attached hereto marked Annexure B.

There will be a condition that no structures of any kind (excluding a boundary wall) may be erected on the subject property especially as there are Milkwood trees growing on it which is an endangered plant species.

Subsequent costs

The Applicants will be liable for the costs of the application, valuation, the closure of the public place, consolidation and rezoning of the property as well as the required Section 14 advertisement in terms of the Municipal Finance Management Act 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 therefore only become functional if alienated or leased to an adjoining owner for usage in conjunction with the said owner’s property”. The

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subject property can be classified as a non-viable immovable property due to the location, size and proposed use thereof as well as the presence of Milkwood trees on it.

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 August 2017 at an amount of R63,500.00 (SIXTY THREE THOUSAND FIVE HUNDRED RAND)(VAT excluded). The valuation was done taking into consideration the size, locality, 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 and consolidation, Section 14 advertisement, transfer costs and the rezoning of the property.

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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.”

A condition to this effect will be included in the Deed of Sale.

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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 Applicants 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 Erf 1406 Sandbaai, 198m² in extent, to the owners of Erf 1405 Sandbaai, being JL & NJ Henzen, S Brouwer and J Marquart, be approved in principle.

Furthermore, the purchaser shall be liable for all costs involved to effect transfer of the property in the deeds office. Subsequently the costs will entail the closure, consolidation, rezoning, Section 14 advertisement and the transfer costs.

7. Financial Implications

The Municipality stands to gain a market related purchase price of R63,500.00 (SIXTY THREE THOUSAND FIVE HUNDRED RAND) (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

Erf 1406, Sandbaai, is currently reflected in the Fixed Asset Register for Property, Plant and Equipment: Land with a carrying value of R1'000 as at 30 June 2017. The disposal of Erf 1406 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.

Townplanner: Mr Boshoff – (028) 313 8906

The property is zoned Public Open Space. In principle this department has no objection to the application. The applicant will have to undergo a

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successful town planning application prior to the property being sold. Such application entails, in terms of the relevant legislation, the closure of the public space, the rezoning thereof to Residential Zone 1, and the eventual consolidation thereof with Erf 1405.

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

A section of the property has protected, indigenous trees on it, construction on this section will not be supported.

Building Inspector: Ms L Potgieter – (028) 313 8039

The purchase of Erf 1406 will have no effect on the buildings on either side of the property. The sale is supported by the Building Department.

10. Annexures

Annexure A: Locality plan

Annexure B: Letter from neighbour stating no interest in purchasing Erf 1406 Sandbaai

RECOMMENDATION TO THE COUNCIL:

1. that the direct alienation of Erf 1406 Sandbaai (adjacent to Erf 1405 Sandbaai), ±198m² in extent, to the owners of the adjoining erf, JL & NJ Henzen, S Brouwer and J Marquart, at an amount of R63,500.00 (SIXTY THREE THOUSAND FIVE HUNDRED RAND) (VAT excluded) be **approved in principle**;
2. that it be noted that the direct alienation is possible as Erf 1406 Sandbaai is classified as a non-viable property;
3. that, subject to the approval in principle referred to in 1. above, a public participation process be followed at the cost of the Applicants;
4. that it be noted that a condition for alienation will be that Erf 1406 Sandbaai must be consolidated with the adjoining property of JL & NJ Henzen, S Brouwer and J Marquart, being Erf 1405 Sandbaai;
5. that the alienation of Erf 1406 Sandbaai, furthermore be subject to the necessary closure, rezoning and consolidation approvals being granted;
6. that all the costs pertaining to the transaction, e.g. application cost, valuation cost, consolidation, closure of public space, rezoning, transfer and related costs, advertisements, etc., be paid by the Applicants; and

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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).

RESPONSIBLE OFFICIAL :	N LIEBENBERG
TARGET DATE FOR IMPLEMENTATION :	PROCESS
TARGET DATE TO INFORM APPLICANT:	8 NOVEMBER 2017
TARGET DATE TO INFORM OBJECTOR:	N/A

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7/2/3/2/

N Liebenberg

(028) 316 3724

Hermanus Administration

26 September 2017

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

RECOMMENDATION TO THE COUNCIL:

1. that the direct alienation of Erf 1406 Sandbaai (adjacent to Erf 1405 Sandbaai), $\pm 198\text{m}^2$ in extent, to the owners of the adjoining erf, JL & NJ Henzen, S Brouwer and J Marquart, at an amount of R63,500.00 (SIXTY THREE THOUSAND FIVE HUNDRED RAND) (VAT excluded) be **approved in principle**;
2. that it be noted that the direct alienation is possible as Erf 1406 Sandbaai is classified as a non-viable property;
3. that, subject to the approval in principle referred to in 1. above, a public participation process be followed at the cost of the Applicants;
4. that it be noted that a condition for alienation will be that Erf 1406 Sandbaai must be consolidated with the adjoining property of JL & NJ Henzen, S Brouwer and J Marquart, being Erf 1405 Sandbaai;
5. that the alienation of Erf 1406 Sandbaai, furthermore be subject to the necessary closure, rezoning and consolidation approvals being granted;
6. that all the costs pertaining to the transaction, e.g. application cost, valuation cost, consolidation, closure of public space, rezoning, transfer and related costs, advertisements, etc., be paid by the Applicants; 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 :	N LIEBENBERG
TARGET DATE FOR IMPLEMENTATION :	PROCESS
TARGET DATE TO INFORM APPLICANT:	8 NOVEMBER 2017
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Swempoort Trust
Branderdraai 20
Sandbaai
Hermanus

Henzen Familie

20 September 2018

Goedkeuring van Servituut aankoop

Hiermee gee ons goedkeuring dat die servituut 1406, wat grens langs Branderdraai 20 Sandbaai deur die Henzen familie aangekoop kan word. Ons het geen beswaar teen die transaksie nie. Hierdie dokument is onderteken deur my in my hoedanigheid as hoof verteenwoordiger van die Swempoort Trust

Die uwe



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