

**AGENDA of the  
Portfolio Committee: Infrastructure & Planning  
23 October 2018  
(Also the agenda for the Mayoral Committee Meeting: 31 October 2018)**

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**2.  
HERMANUS: IN PRINCIPLE APPROVAL FOR THE ALIENATION OF A PORTION  
OF THE REMAINDER OF ERF 241 HERMANUS ADJACENT TO ERF 239  
HERMANUS TO DG JORDAAN**

**7/2/3/2**

**N Liebenberg**

**(028) 316 - 3724**

**Hermanus Administration**

**11 September 2018**

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**1. Executive Summary**

To obtain approval in principle for the direct alienation of a portion of the remainder of Erf 241 Hermanus adjacent to Erf 239 Hermanus (248m<sup>2</sup> in extent), to the owners of Erf 239 Hermanus, being DG Jordaan.

**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 owner of Erf 239 Hermanus, situated at 2 Rocklands Road, Hermanus, for the purchase of a portion of the remainder

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of Erf 241 Hermanus (248m<sup>2</sup> in extent) adjoining his property, as indicated on the locality map attached hereto marked Annexure A.

The property applied for is a portion of property zoned as Transport Zone 2: Road and Parking and adjacent to the Erf 239 Hermanus. The reason for the application to purchase is to ensure the safety of the owner of Erf 239. Currently the applicant is experiencing problems with pedestrians that are using the above mentioned portion of municipal property as a shortcut and are littered with bottles and other garbage. Subject property has also become overgrown and is used by vagrants from time to time.

Due to the locality, use and size of the property applied for it cannot be developed independently thus 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 certain conditions.

One of the conditions will be that no structures of any kind (excluding a boundary wall or fence) may be erected. As there are electrical cables running through the subject property, the applicant will be responsible for the costs of moving such cables.

Subsequent costs

The Applicant will be liable for the costs of the application, valuation, subdivision, closure of portion of public road, 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

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*owner for usage in conjunction with the said owner's property". The subject property can be classified as a non-viable immovable property due to the location, size and proposed use 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 and that the existing services in the form of electrical cables can be moved at the cost of the applicant.
- (b) Boland Valuers determined the market related value in September 2018 at an amount of R 327.40/m<sup>2</sup> (THREE HUNDRED AND TWENTY SEVEN RAND AND FORTY CENTS) (PER SQUARE METRE) (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."**

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The purchaser will be liable for all costs which include, but are not limited to, the costs for the application, valuation, closure of portion of public road, subdivision, rezoning and consolidation, 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. The purchaser will specifically be responsible for the relocation of the existing electrical cables on the property.

**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**

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***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 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 241 Hermanus, 248m<sup>2</sup> in extent, to the owner of Erf 239 Hermanus, being DG Jordaan, 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 subdivision, consolidation, closure of portion of public road, rezoning, Section 14 advertisement and the transfer costs.

**7. Financial Implications**

The Municipality stands to gain a market related purchase price of R327.40/m<sup>2</sup> (THREE HUNDRED AND TWENTY SEVEN RAND AND FOURTY SENTS) (PER SQUARE METRE) (VAT excluded).

**8. Staff Implications**

None

**9. Comments from other Departments, Divisions and Administrations**

**Senior Manager: Town and Spatial Planning, Mr. R Kuchar -  
(028) 313 8900**

The sale of the property is supported subject to the following conditions:

- All services be moved into the road reserve at the applicants costs,
- The portion to be sold to align with Erf 5305 Hermanus, and
- that a corner splay be provided on corner of Rocklands and De Goede Street.

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

Erf 241 Westcliff, is currently reflected in the Fixed Asset Register for Property, Plant and Equipment: Land. The eventual disposal of Erf 241 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.

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

This office has no objection to the proposed sale of a portion of Erf 241 Westcliff adjacent to Erf 239 Westcliff, Hermanus.

**Electrical Department: Mr J Klem – (028) 316 3724**

The Electrical department does not have a problem to sell the piece of Erf 241 adjacent to 239, however there are 2 electrical cables running over that property as per attached drawing and the applicant will have to pay for the relocation of the cables.

Please find attached hereto the above mentioned drawing marked as Annexure B.

**Building Inspector: Mr J Simson – (028) 313 8039**

Supported subject to any structures erected within that area should comply with the Town planning scheme. It is also suggested that the boundary protection i.e. Wall be of a see through nature to keep the open feeling intact i.e. palisade.

**10. Annexures**

Annexure A: Locality plan

Annexure B: Drawing of electrical cables

**RECOMMENDATION TO THE COUNCIL:**

1. that the direct alienation of a portion of the remainder of Erf 241 Hermanus (adjacent to Erf 239 Hermanus),  $\pm 248\text{m}^2$  in extent, to the owner of the adjoining Erf, DG Jordaan, at an amount of R327.40/m<sup>2</sup> (THREE HUNDRED AND TWENTY SEVEN RAND AND FORTY CENTS) (PER SQUARE METRE) (VAT excluded) be **approved in principle**;

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2. that Council take cognisance of the fact that the direct alienation is approved as the said portion of the remainder of Erf 241 Hermanus is classified as a non-viable property;
3. 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;
4. that said portion of the remainder of Erf 241 Hermanus must be consolidated with the adjoining property of DG Jordaan, being Erf 239 Hermanus;
5. that the alienation of said portion of the remainder of Erf 241 Hermanus, be subject to obtaining the necessary closure, subdivision, rezoning and consolidation approvals;
6. that all the costs pertaining to the transaction, e.g. application cost, valuation cost, subdivision, closure of portion of public road, consolidation, rezoning, transfer and related costs, advertisements, etc., be paid by the Applicant;
7. that the purchaser will be responsible for the cost of the relocation of the existing electrical cables on the said portion of the Remainder of Erf 241 Hermanus;
8. that no structures of any kind (excluding a boundary wall or fence) may be erected on the said portion of the Remainder of Erf 241 Hermanus; and
9. 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).

<b>RESPONSIBLE OFFICIAL :</b>	<b>N LIEBENBERG</b>
<b>TARGET DATE FOR IMPLEMENTATION :</b>	<b>3 DECEMBER 2018</b>
<b>TARGET DATE TO INFORM APPLICANT:</b>	<b>14 NOVEMBER 2018</b>
<b>TARGET DATE TO INFORM OBJECTOR:</b>	<b>N/A</b>

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**N Liebenberg**

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**Hermanus Administration**

**11 September 2018**

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**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON 23 OCTOBER 2018, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:**

**RECOMMENDATION TO THE COUNCIL:**

1. that the direct alienation of a portion of the remainder of Erf 241 Hermanus (adjacent to Erf 239 Hermanus),  $\pm 248\text{m}^2$  in extent, to the owner of the adjoining Erf, DG Jordaan, at an amount of R327.40/m<sup>2</sup> (THREE HUNDRED AND TWENTY SEVEN RAND AND FORTY CENTS) (PER SQUARE METRE) (VAT excluded) be **approved in principle**;
2. that Council take cognisance of the fact that the direct alienation is approved as the said portion of the remainder of Erf 241 Hermanus is classified as a non-viable property;
3. 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;
4. that said portion of the remainder of Erf 241 Hermanus must be consolidated with the adjoining property of DG Jordaan, being Erf 239 Hermanus;
5. that the alienation of said portion of the remainder of Erf 241 Hermanus, be subject to obtaining the necessary closure, subdivision, rezoning and consolidation approvals;
6. that all the costs pertaining to the transaction, e.g. application cost, valuation cost, subdivision, closure of portion of public road, consolidation, rezoning, transfer and related costs, advertisements, etc., be paid by the Applicant;
7. that the purchaser will be responsible for the cost of the relocation of the existing electrical cables on the said portion of the Remainder of Erf 241 Hermanus;
8. that no structures of any kind (excluding a boundary wall or fence) may be erected on the said portion of the Remainder of Erf 241 Hermanus; and

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9. 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).

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