

PORTFOLIO COMMITTEE :
INFRASTRUCTURE & PLANNING

**This item was considered
during the Portfolio Committee
meeting of 22 June 2021**

Refer to Pages 231a & 231b

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(Also the agenda for the Mayoral Committee Meeting: 30 June 2021)**

10.

IN PRINCIPLE APPROVAL FOR THE ALIENATION OF UNREGISTERED ERF 11869 (A PORTION OF REMAINDER ERF 243), HERMANUS (SITUATED ON THE CORNER OF SCHULPHOEK BOULEVARD AND THE R43), OVERSTRAND MUNICIPAL AREA, BY MEANS OF A COMPETITIVE PROCESS

7/2/3/2

R Kuchar

Senior Manager : Town & Spatial Planning

31 May 2021

(028) 3138900

1. Executive Summary

To obtain in principle approval for the alienation of unregistered Erf 11869 (a portion of Remainder Erf 243), Hermanus (1,09 ha in extent) situated on the corner of Schulphoek Boulevard and the R43 opposite CTM, Hermanus for the purpose of establishing, managing and maintaining commercial units and predominantly rental residential units (Social Housing units) by means of a competitive process. See locality plan attached as "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.

4. Delegated Authority

None

5. Legal Requirements

- Administration of Immovable Property Policy of the Overstrand Municipality (2015)
- Local Government: Municipal Finance Management Act, Act 56 of 2003 ("MFMA")
- Municipal Asset Transfer Regulations (R. 878 of 2008)
- Overstrand Municipality Supply Chain Management Policy, as amended
- Municipal Supply Chain Management Regulations (Notice 868 of 30 May 2005)

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- Chapter 2, 5.A of Social Housing Act 16 of 2008

6. Background/Discussion/Evaluation/Conclusion

Background/Discussion

The Overstrand Local Municipality (“Overstrand Municipality”) wishes to appoint a fully accredited Social Housing Institution (“SHI”) to develop and manage rental housing units in its Municipal Area on unregistered Erf 11869 (a portion of Erf 243), Hermanus (“the Property”). Tenders will be invited to develop a Social Housing project based on the Social Housing Regulatory Authority’s (SHRA) standards and criteria with assistance of the National Housing Finance Corporation (NHFC) for the construction of rental housing opportunities to qualifying beneficiaries. This is a multi-year project.

A report regarding the social housing and proposed amendment to the demarcated restructuring zones served before Council on 29 May 2019 where it was resolved as follows:

“RESOLVED (SUPPORTED BY 25 COUNCILLORS):

1. *that the amended list for the available Restructuring Zone sites **be approved**;*
2. *that the Western Cape Department of Human Settlements be notified of the amendment of the list of properties;*
3. *that the procurement process to appoint accredited Social Housing Institutions (SHI) be commenced;*
4. *that the proposed base criteria which needs to be met by a viable Social Housing Institution be noted; and*
5. *that the following minimum development incentives **be approved**:*
 - *Land is to be sold to the SHI at 10% of the market value - subject to special conditions of sale which limit the use and development of the property.*
 - *Bulk Service contribution is provided at 10% - subject to obtaining subsidy funding.*
 - *Mixed use developments be considered in order to subsidise the rental amounts for residential units - subject to a viability study and land use approval.*
 - *Possibilities of higher densities, subject to a viability study and land use approval.*

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- *Reduced fee for building plan applications at 50% of the normal tariff.”*

It should be noted, the reason for the incentives and in effect the sale of the land at a minimum of 10% of the market value, is to facilitate the development of the restructuring zones for rental housing units. Further although the subject property has the potential to be developed with commercial units, the said commercial units will have to subsidize the rental units on the property.

This is in line with the roles and responsibilities of municipalities as determined in terms of the Social Housing Act, 2008. It is further stated in the Act that municipalities must take all reasonable and necessary steps, within the national and provincial legislative, regulatory and policy framework-

- (a) to facilitate social housing delivery in its area of jurisdiction;
- (b) to encourage the development of new social housing stock and the upgrading of existing stock or the conversion of existing non-residential stock;
- (c) to provide access-
 - (i) to land and buildings for social housing development in designated restructuring zones;
 - (ii) for social housing institutions to acquire municipal rental stock;
 - (iii) to municipal infrastructure and services for approved projects in designated restructuring zones;

Considering the above-mentioned, the sale of the land at a minimum of 10% of the market value will be a benefit to the Social Housing Institutions who seek to tender the Municipality. What however needs to be considered in this report is the Immovable Property Policy of the Overstrand Municipality.

Evaluation

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

The following conditions of the said Policy will apply:

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 officials confirmed that the

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Property is not needed for the provision of the minimum level of basic municipal services. It should be noted that the proposed development will however enable and allow for a differentiated housing approach which will in turn assure that the community's needs are still met with a variety of housing options in the Overstrand Municipal area.

Paragraph 9.1(b): *“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 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 the property on 1 October 2020 at an amount of R960,000.00 (*NINE HUNDRED AND SIXTY THOUSAND RAND ALONE*) (VAT excluded). After the community value was taken into account Council approved on 29 May 2019 that the property may be alienated at 10% of the market value. The indicative value in the tender document will thus be set at R96,000.00 (*NINETY SIX THOUSAND RAND ALONE*) (VAT excluded).

Paragraph 9.1(c): *“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 has as a consequence to 9.1(a) and (b) above approved in principle that the immovable property may be transferred or disposed of, and the method of disposal or transfer.”*

The purpose of this report is to request an in-principle approval from Council for the alienation of the said property by means of a competitive process. It should be noted that although the minimum tender price will be set at 10% of the market value, the tender will be awarded to the highest bid price for the property which will be higher than the 10% market value.

Paragraph 15.1: *“The transfer of immovable property must, except in the case of non-viable immovable property, be affected by means of competitive process, which may include a public or closed tender, auction or proposal call.”*

It is recommended that the Property be alienated by means of a competitive process and in this case a public tender. It should be noted that Council has identified and earmarked the property as a Restructuring Zone (and subsequently the development of Social Housing) since 2016. Therefore, the utilisation of the site for other land

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uses, and not for the Social Housing Programme, will encumber the Municipality's ability to meet its responsibility in terms of the Social Housing Act, 2008 and Social Housing Programme.

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 successful bidder/purchaser will be liable for all costs pertaining to the transaction, excluding the cost for the valuation of the property. Costs for the successful bidder/purchaser will include a Section 14 advertisement, transfer costs, connection of services, surveying and any other costs pertaining to the transaction and as stated in the tender document which may require specialised studies to be done. As this is not a direct alienation, it is not needed to pay an application fee.

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.”*

No services need to be relocated and no servitude needs to be registered. As per comment form the Engineering Department the developer will be responsible for the construction of internal civil and electrical services. It should be noted that the property will be developed with reasonable building lines in order to allow for the routing of services where needed.

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 reversion condition will be included in the Deed of Sale as well as the Title Deed that the Property be predominantly utilised for development and management of Social Housing in terms of the Western Cape Department of Human Settlements and the Social Housing Regulatory Authority Social Housing Programs and should the successful Bidder fail to erect such buildings and obtain an Occupancy Certificate for the proposed use within ten (10) years from date of registration and not use the Property as specified, the Property will revert back to the Municipality for the same amount as the original purchase price.

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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 clause to this effect will be included in any Deed of Sale to be entered into between the Municipality and the successful bidder/purchaser.

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 clause to this effect will be included in the Deed of Sale to be entered into between the Municipality and the successful bidder/purchaser.

B: Advertisement/Notification

The necessary advertisement in terms of Section 14 of the MFMA will be published after the tender is duly awarded. The successful bidder/purchaser will be liable for the costs of the Section 14 advertisement.

Conclusion

It is recommended that the Property be alienated by means of a competitive process at 10% of the market related value. As stated above the Property will still be alienated by means of a competitive process and in this case a public tender.

Furthermore, it is recommended that the successful bidder/purchaser be liable for all costs as discussed in the report which served before Council on 29 May 2019 and excluding the costs for the valuation of the Property. Subsequently the costs will amongst others entail the aforementioned Section 14 advertisement, transfer costs and connection of services.

7. Financial Implications

At minimum the Municipality stands to gain an amount of R96,000.00 (*NINETY SIX THOUSAND RAND ALONE*) (VAT excluded). However, as discussed in this report the tender will be awarded to the highest bid amount above the minimum amount.

8. Staff Implications

None

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9. Comments from other Departments, Divisions and Administrations

Manager: Property Administration: Mrs A Le Roux - (028) 316 5623

“The legislation is very strict when it comes to the sale of municipal land. The latter may only be sold by means of a competitive process at market related price. For the latter a separate report must serve before Council motivating the sale as well as why the property will be sold for less than a market related price. In this regard, National and Provincial Treasury will also have to be informed and provide opportunity with an opportunity to comment.”

Senior Manager: Hermanus Administration: Mr A Wyngaard – (028) 313 8187

“No objection.”

Senior Manager: Operational Services Hermanus: Mr T Marx – (028) 313 8092

“Operational Services Kleinmond have no objection to the application. Property should have sewer connection at south eastern corner of property (to be confirmed). Property should be able to connect to the water network (Normal connection tariff applicable).”

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

“If approved, the following comments need to be considered:

- 1. Municipal Services are available in the vicinity of the proposed development.*
- 2. A Bulk Services Contribution Levy (BICL) must be paid by the developer to supplement municipal services and amenities in accordance with the relevant legislation and/or as determined by the Council. The BICL tariff is adjusted by Council on an annual basis.*
- 3. The developer at his/her cost constructs the internal municipal civil and electrical services for the development as well as any link or bulk municipal services that need to be provided;*
- 4. The developer must enter into an agreement with the Council to install or upgrade bulk and/or link municipal services and amenities at the agreed cost*
- 5. An investigation be done by the developer to determine the availability and capacity for water and sewer at the developer’s cost, by the*

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municipality's consulting engineers GLS Consulting."

Manager: Building Control: Mr L Coetzee – (028) 313 8091

"Building Control has no objection to the proposed development. A building plan application is required to comply with all applicable legislation."

Manager: Environmental Services Hermanus: Mrs A Aplon – (028) 316 5619

The site:

The site is currently zoned as Business Zone III: Local Business.

In terms of SANBI mapping the vegetation type is listed as Hangklip Sand Fynbos, classified as endangered.

The site is currently vacant.

Proposal:

Council has given approval for the development and management of the site by a Social Housing Institution (SHI) for the provision of affordable rental housing units to beneficiaries who qualify.

Recommendations:

Given the status of the site, the activity could trigger LN3 activity 12 in terms of the EIA Regulations. However, based on the highly disturbed nature of the site the presence of endangered plant species on site, appears very unlikely.

It is however recommended that a botanist ground-truths the area for any endangered plant species. Based on the findings, a "search and rescue" operation to relocate species can be done.

This office reserves the right to revise these comments based on the availability of additional information."

Snr Superintendent Projects Electrical Services Hermanus: Mr J Klem – 028-316 2630

The Electrical Department does not have any objection towards the amendment to the demarcated restructuring zones, however keep in mind that there are no electrical connection or electrical infrastructure on this erf. There is a 11kV cable running next to the western boundary of the erf.

10. Annexures

Annexure A: Locality Map

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RECOMMENDATION TO THE COUNCIL:

1. that the alienation of unregistered Erf 11869 (a portion of Remainder Erf 243), Hermanus (1,09 ha in extent), for commercial and predominantly residential purposes by means of a competitive process, **be approved in principle**;
2. that all costs pertaining to the transaction, e.g. the transfer costs, water-, sewer- and electricity connections, the Section 14 advertisement, the cost for the feasibility study, etc., but excluding the valuation costs and application fee, be paid by the successful bidder/purchaser;
3. that a reversion condition will be included in the Deed of Sale as well as the Title Deed that the Property be predominantly utilised for development and management of Social Housing in terms of the Western Cape Department of Human Settlements and the Social Housing Regulatory Authority Social Housing Programs and should the successful Bidder fails to erect such buildings and obtain an Occupancy Certificate for the proposed use within ten (10) years from date of registration and not use the Property as specified, the Property will revert back to the Municipality for the same amount as the original purchase price;
4. that the alienation of the Property be subject to the approval of land use rights in terms of the Overstrand Municipality's Amendment By-Law on municipal Land Use Planning, if applicable;
5. that the alienation of the Property be subject to the successful bidder/purchaser conducting a feasibility study in order to lay a solid foundation for the project;
6. that the successful bidder/purchaser appoint a botanist which will ground-truths the area for any endangered plant species. Based on the findings, a "search and rescue" operation to relocate species can be done;
7. that the alienation of the Property be subject to a viability study by the successful bidder/purchaser which must be approved by the Social Housing Regulatory Authority for funding purposes;
8. that the Social Housing Units or Property be managed as affordable rental stock and not sold under Sectional Title without permission of the Overstrand Municipality and the Social Housing Regulatory Authority and this condition must also be included in the Title Deed; and

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9. that it is hereby confirmed by Council that the municipal property herewith envisaged to be alienated is not required for the provision of basic municipal services in terms of paragraph 5 of the Administration of Immovable Property Policy approved by Council on 25 November 2015 and Section 14 of the Local Government: Municipal Finance Management Act (Act 56 of 2003).

RESPONSIBLE OFFICIAL:	R KUCHAR
TARGET DATE FOR IMPLEMENTATION:	14 JULY 2021
TARGET DATE TO INFORM APPLICANT:	N/A
TARGET DATE TO INFORM OBJECTOR:	N/A

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10.

IN PRINCIPLE APPROVAL FOR THE ALIENATION OF UNREGISTERED ERF 11869 (A PORTION OF REMAINDER ERF 243), HERMANUS (SITUATED ON THE CORNER OF SCHULPHOEK BOULEVARD AND THE R43), OVERSTRAND MUNICIPAL AREA, BY MEANS OF A COMPETITIVE PROCESS

7/2/3/2

R Kuchar

Senior Manager : Town & Spatial Planning

31 May 2021

(028) 3138900

THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON 22 JUNE 2021, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:

RECOMMENDATION TO THE COUNCIL:

1. that the alienation of unregistered Erf 11869 (a portion of Remainder Erf 243), Hermanus (1,09 ha in extent), for commercial and predominantly residential purposes by means of a competitive process, **be approved in principle**;
2. that all costs pertaining to the transaction, e.g. the transfer costs, water-, sewer- and electricity connections, the Section 14 advertisement, the cost for the feasibility study, etc., but excluding the valuation costs and application fee, be paid by the successful bidder/purchaser;
3. that a reversion condition will be included in the Deed of Sale as well as the Title Deed that the Property be predominantly utilised for development and management of Social Housing in terms of the Western Cape Department of Human Settlements and the Social Housing Regulatory Authority Social Housing Programs and should the successful Bidder fails to erect such buildings and obtain an Occupancy Certificate for the proposed use within ten (10) years from date of registration and not use the Property as specified, the Property will revert back to the Municipality for the same amount as the original purchase price;
4. that the alienation of the Property be subject to the approval of land use rights in terms of the Overstrand Municipality's Amendment By-Law on municipal Land Use Planning, if applicable;
5. that the alienation of the Property be subject to the successful bidder/purchaser conducting a feasibility study in order to lay a solid foundation for the project;
6. that the successful bidder/purchaser appoint a botanist who will ground-truth the area for any endangered plant species. Based on the findings, a "search and rescue" operation to relocate species can be done;
7. that the alienation of the Property be subject to a viability study by the successful bidder/purchaser which must be approved by the Social Housing Regulatory Authority for funding purposes;

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8. that the Social Housing Units or Property be managed as affordable rental stock and not sold under Sectional Title without permission of the Overstrand Municipality and the Social Housing Regulatory Authority and this condition must also be included in the Title Deed; and
9. that it is hereby confirmed by Council that the municipal property herewith envisaged to be alienated is not required for the provision of basic municipal services in terms of paragraph 5 of the Administration of Immovable Property Policy approved by Council on 25 November 2015 and Section 14 of the Local Government: Municipal Finance Management Act (Act 56 of 2003).

RESPONSIBLE OFFICIAL:

R KUCHAR

TARGET DATE FOR IMPLEMENTATION:

13 SEPTEMBER 2021

TARGET DATE TO INFORM APPLICANT:

N/A

TARGET DATE TO INFORM OBJECTOR:

N/A

ANNEXURE A



OVERSTRAND MUNICIPALITY

Local context

Date: 2020/08/19