

**AGENDA of the
Portfolio Committee: Investment & Infrastructure
2 February 2022
(Also the agenda for the Mayoral Committee Meeting: 21 February 2022)**

6.

**IN PRINCIPLE APPROVAL FOR THE DIRECT ALIENATION OF A PORTION OF
REMAINDER ERF 1 HAWSTON (ROAD RESERVE) ADJACENT TO ERF 412
HAWSTON SITUATED IN GEORGE VILJOEN STREET, HAWSTON, TO HAWSTON
SERVICE STATION (PTY) LTD**

7/2/3/2

A Le Roux

Manager: Property Administration

7 December 2021

(028) 316 - 5623

1. Executive Summary

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

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6. Background/Discussion/Evaluation/Conclusion

Background

An application was received in 2017 from Hawston Service Station (Pty) Ltd, hereafter referred to as “the Applicant”, the owner of Erf 412 Hawston, to purchase a portion of Remainder Erf 1 Hawston ($\pm 370\text{m}^2$ in extent), adjacent to their property, situated in George Viljoen Street, Hawston, hereafter referred to as “the Property” for the purpose of additional parking and driveway to the existing service station on its property. The process for alienation was followed and the alienation of the Property was approved.

After approval the Applicant informed the Municipality that they no longer wish to purchase the Property and requested that the application be cancelled, and the Council’s approval was subsequently rescinded.

Discussion

The Applicant now again applied to purchase the Property as they have the need for the Property and the means to purchase the Property and complete the application process.

The Property is a portion of road reserve adjacent to Erf 412 Hawston. The proposal is to bring the driveway forward with $\pm 7-10$ metres which will ease the traffic flow and reduce the major congestion currently experienced in George Viljoen Street.

As the Property is zoned Transport Zone II: Public Road the portion of the public road will have to be closed, subdivided, rezoned to the relevant Business Zone and consolidated with the Applicant’s property.

Due to the locality, shape, intended use and size of the Property, it cannot be developed independently, and 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 an adjoining property owner, subject to certain conditions.

One of the conditions to the alienation will be that no structures of any kind may be erected thereon.

Subsequent costs

The Applicant will be liable for the costs of the transaction which include, but not limited to, the application fee, valuation, closure of portion of public road, subdivision, consolidation and rezoning of the Property, transfer costs as well

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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 therefore only become functional if alienated or leased to an adjoining owner for usage in conjunction with the said owner’s property.” The Property can be classified as a non-viable immovable property due to the location, shape, size and proposed use thereof. The Property is part of a road reserve and the portion is only approximately ±7-10 meter in width which is not of useful purpose to anyone else than the owner of the adjoining property after consolidation. The Property can thus not be developed on its own and there is a further restriction that no structures may be erected on the Property.

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***

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preferring such direct transfer.”

- (a) The comments received from the relevant departments indicate that the Property is not needed for the provision of municipal services.
- (b) Boland Valuers determined the fair market value on 3 December 2021 at an amount of R170.00/m² (ONE HUNDRED-AND SEVENTY-RAND PER SQUARE METRE) (VAT excluded). The total value of the Property will amount to approximately R62,900.00 (SIXTY-TWO THOUSAND NINE HUNDRED RAND) (VAT excluded). The valuation was done taking into consideration the size, shape, locality, zoning and proposed use (restriction) of the Property.
- (d) 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 Applicant will be liable for the costs of the transaction which will include, but not limited to, the application fee, valuation, closure of portion of public road, 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 Applicant 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 exists which, in the opinion of the Municipality, make such consolidation undesirable.”

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

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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.

B: Advertisement/Notification

The necessary advertisement in terms of Section 14 of the MFMA will be published after obtaining this in principle decision. The Applicant will be liable for the costs of the Section 14 advertisement.

Conclusion

Considering the comments of the internal departments, as well as the above discussion, it is recommended that the direct alienation of the Property to the Applicant be approved in principle.

Furthermore, the Applicant 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 costs, closure of portion of public road, subdivision, consolidation, rezoning, Section 14 advertisement and the transfer costs.

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7. Financial Implications

The Municipality stands to gain a fair market purchase price of R170.00/m² (ONE HUNDRED AND SEVENTY RAND PER SQUARE METRE) (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

“The portion of Erf 1 Hawston is reflected in the Fixed Asset Register for PPE Land as part of the global Commonage with a carrying value of R2’806’140-30 (TWO MILLION EIGHT HUNDRED AND SIX THOUSAND ONE HUNDRED AND FOURTY RAND THIRTY CENTS) (VAT included) as on 30 June 2021. The eventual disposal of the portion of Erf 1 Hawston, will have to be accounted for as a partial disposal in order to adjust the extent and carrying value remaining in 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.”

Senior Manager: Hermanus Administration: Mr A Wyngaardt – (028) 313 8112

“I have no objection on the application.”

Senior Manager: Operational Services Hermanus: Mr T Marx – (028) 313 8948

“The Department: Operational Services Hermanus, do not have any objection with regards to this application.”

Town Planner: Mr H Olivier – (028) 313 8900

“This request was previously supported and therefore this office has no objection to the sale of this portion of land.”

“The land is zoned Transport Zone II: Public Road, and this portion will have to be closed, subdivided, rezoned to the same zoning as Erf 412 Hawston and consolidated with such erf. It is recommended that it be at the Applicant’s cost.”

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Comments from Property Administration: The above conditions will be incorporated into the deed of sale as special conditions to the transaction.

Environmental Audit Officer: Mrs H Fortune – (028) 316 5614

“The Environmental Management Section has the following comments on the above mentioned application.

The site falls outside any of the Environmental Management Overlay Zone.

Legislative Framework:

In terms of the National Environmental Management Act, 1998 (Act 107 of 1998), Environmental Impact Assessment regulations, the following activity may be applicable to the development:

14. The development and related operations of facilities or infrastructure, for the storage, or for the storage and handling, of a dangerous good, where such storage occurs in containers with a combined capacity of 80 cubic metres or more, but not exceeding 500 cubic metres.

The applicant must consider these thresholds during the design stage of the service station. Commencement of activities which are not within this threshold may only take place when prior approval has been obtained from the Department of Environmental Affairs & Development Planning.”

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

“Building Control has no objection.”

Manager: Engineering Services: Mr R Andrew – (028) 312 8972

“The Engineering Department will support the application subject to the following conditions:

- *No structures or boundary walls may be erected on the land under consideration.*
- *The land may only be utilized for roads and parking purposes.”*

Comments from Property Administration: The above conditions will be incorporated into the deed of sale as special conditions to the transaction.

Assistant Chief Fire and Rescue & Disaster Management: Mr E Solomons – (028) 313 5052

“The Fire Department has no objection.”

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***Senior Superintendent: Operations: Traffic Services: Mr P De Gruchy –
(028) 313 5033***

“There are no objections towards this application from my office.”

10. Annexures

Annexure A: Locality Map

RECOMMENDATION TO THE COUNCIL:

1. that the direct alienation of a portion of Remainder Erf 1 Hawston (adjacent to Erf 412 Hawston) situated in George Viljoen Street, Hawston, ±370m² in extent, to the owner of the adjoining Erf 412 Hawston, Hawston Service Station (Pty) Ltd, at an amount of R170.00/m² (ONE HUNDRED AND SEVENTY RAND PER SQUARE METRE) (VAT excluded) be **approved in principle**;
2. that it be noted that the direct alienation is possible as the said portion of Remainder Erf 1 Hawston can be 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 said portion of Remainder Erf 1 Hawston must be consolidated with the adjoining property of Hawston Service Station (Pty) Ltd, being Erf 412 Hawston;
5. that no structures of any kind may be erected on the said portion of Remainder Erf 1 Hawston, which condition must be registered against the title deed of the consolidated property;
6. that the alienation of said portion of Remainder Erf 1 Hawston be subject to a suspensive condition that the Applicant obtains approval for the closure of portion of public road, subdivision, consolidation and rezoning;
7. that all the costs pertaining to the transaction, e.g. application fee, valuation costs subdivision and consolidation, closure of portion of public road, rezoning, transfer and related costs, advertisements, etc. be paid by the Applicant, Hawston Service Station (Pty) Ltd; and
8. 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:	26 MARCH 2022
TARGET DATE TO INFORM APPLICANT:	12 MARCH 2022
TARGET DATE TO INFORM OBJECTOR:	N/A

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7/2/3/2

A Le Roux

Manager: Property Administration

7 December 2021

(028) 316 - 5623

THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON 2 FEBRUARY 2022, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:

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8. 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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