

**AGENDA of the
Portfolio Committee: Investment & Infrastructure
6 February 2023
(Also the agenda for the Mayoral Committee Meeting: 14 February 2023)**

6.

APPLICATION TO PURCHASE: A PORTION OF REMAINDER ERF 1253 HERMANUS, ADJACENT TO ERF 1300 HERMANUS (262 MAIN ROAD, EASTCLIFF) (COMMONAGE) – DM & L KIRSCH

A Le Roux

Senior Manager: Property Administration

23 November 2022

(028) 316 - 5623

1. Executive Summary

To consider the application received from DM & L Kirsch (the owners of Erf 1300 Hermanus) to purchase municipal property, being a portion of Remainder Erf 1253 Hermanus ($\pm 114\text{m}^2$ in extent), adjacent to Erf 1300 Hermanus, situated at 262 Main Road, Hermanus in Eastcliff. 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) ("MATR")
- Administration of Immovable Property Policy of the Overstrand Municipality, as amended

6. Background/Discussion/Evaluation/Conclusion

Background/Discussion

An application was received from DM & L Kirsch, the owners of Erf 1300 Hermanus, hereafter referred to as "the Applicants", to purchase a portion of

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Remainder Erf 1253 Hermanus ($\pm 114\text{m}^2$ in extent) adjacent to Erf 1300 Hermanus, hereinafter referred to as “the Property”, for the purpose of creating parking bays needed for the possible establishment of a guesthouse on their property.

The Applicants are investigating the possibility of establishing a guesthouse on Erf 1300 Hermanus. In terms of the zoning scheme provision will have to be made for 1 parking bay per guestroom. The position of the dwelling, swimming pool, garages etcetera on Erf 1300 Hermanus makes it impossible to make provision for additional parking onsite as required. The Applicants therefore applied to purchase the Property that is already partially used as public parking to make provision for 4 private parking bays.

The original application was for the lease or purchase of the Property. The application was circulated and discussed internally. The result of the internal comments and discussions was that the application was not supported due to the following reasons:

- Parking for guesthouses must be situated on the property of the owner’s own property as per the requirements of the land use scheme.
- The Property is a commonage/ public area and a passage for the public, and the subdivision (cutting) of the portion of the Property into smaller pieces for private use is considered undesirable.
- Parking on the proposed area must remain for public use as this parking area is a direct access to the cliff path.
- The alienation cannot be considered since the buying out of parking will reserve these parking bays for private use.

The Accounting Officer, as the delegated authority, did not approve the application to lease for the reasons as provided in the internal comments. The Applicants were informed on 7 July 2021 that the lease was not approved and a 21-day appeal period was provided. The Applicants did not submit an appeal to this outcome. As the decision was already made and communicated to the Applicants, the matter is *functus officio* (the principle in terms of which administrative decisions of officials are deemed to be final and binding once they are made and communicated). The decision cannot, once made, be revoked by the delegated authority, thus the application to lease cannot be considered further.

The application for the purchase of the Property can however only be approved/denied by Council, therefore this report is submitted to Council for consideration.

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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.” Although the Property can in all intents and purposes be classified as non-viable property, the subdivision of the Property in the requested shape and locality is not desirable for the area.

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 internal departments indicated that the Property is in fact needed for the provision for public parking for public use as this parking is a direct access to the cliff path. There is also a stormwater line running under this Property, however the parking of cars would not have an impact on

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this municipal service, but any possible enclosure thereof can be problematic.

- (b) No valuation will be done as the alienation of the Property is not supported.
- (c) The recommendation is that the application not be approved.

Conclusion

Taking the comments of the internal departments, as well as the above discussion, into consideration, it is recommended that the application to purchase the Property not be approved.

7. Financial Implications

None

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Town Planner: Mr P Roux – (028) 313 8900

“The proposed leasing or purchasing of a portion of Erf 1253 Hermanus is not supported due to the following reasons:

- *Parking for guest houses must be situated on the property owner’s own property as per the requirements of the land use scheme.*
- *Similar applications were not approved in the past and by allowing this application it will create an unwanted precedent in residential areas.*
- *This portion/area identified is a commonage area/public parking area and a passage (as per the SG Diagram) for the public and the subdivision (cutting) of the portion of public land into smaller pieces for private use is considered undesirable.*
- *Parking on the proposed area must remain for public use.”*

Assistant Chief Fire Safety & Health and Safety: Mr E Solomons – (028) 312 8978

“The Fire Department have no objection subject to the compliance with provision of SANS 10400-A:2016, SANS-T:2020 and bylaw- relating to community fire safety and compliance to Guesthouse or Bed and Breakfast accommodation (T4.58).”

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

“The Department: Operational Services do not support this application. Provision for parking bays must be made on private land and not municipal land.”

Manager: Building Control: Mr L Coetzee – (028) 384 8091

“Building Control has no objection. Any structure including a fence requires a building plan application compliant with all applicable laws. Please note there is a stormwater line indicated over the area which should not be a problem, but the relevant department to comment on this.”

(Previous) Senior Superintendent: Operations – Traffic: Mr X Titus – (028) 312 5033

“This application does not have any impact on traffic flow. I am in support of this application.”

Manager: Environment Management: Ms P Aplon – (028) 316 3724

“The Environmental Management Section has the following comments on the above-mentioned application after a site visit was conducted on 2 February 2021.

This office has no objection to the application to purchase or lease municipal property being a portion of Erf 1253 Hermanus situated in Eastcliff for the purpose of parking bays.

However, the following recommendation should be considered for site development:

- *The paving that will be used for the parking bays should be the same as the existing paving.*
- *The rainwater runoff should be managed to eliminate any impact on the cliff path.”*

10. Annexures

Annexure A: Locality Map

Annexure B: Locality Map indicating services

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RECOMMENDATION TO THE COUNCIL:

that the application to purchase a portion of Remainder Erf 1253 Hermanus ($\pm 114\text{m}^2$ in extent), adjacent to Erf 1300 Hermanus, by the owners of the adjoining Erf 1300 Hermanus, DM & L Kirsch, **not be approved** on the following reasons:

- (a) Parking for guest houses must be situated on the property owner's own property as per the requirements of the land use scheme;
- (b) The Property is a commonage/public area and the subdivision (cutting) of the portion of the Property into smaller pieces for private use is considered undesirable;
- (c) Parking on the proposed area must remain for public use as this parking area is a direct access to the cliff path; and
- (d) The alienation cannot be considered since the buying out of parking will reserve these parking bays for private use.

RESPONSIBLE OFFICIAL:

W MURTZ

TARGET DATE FOR IMPLEMENTATION:

31 MARCH 2023

TARGET DATE TO INFORM APPLICANT:

17 MARCH 2023

TARGET DATE TO INFORM OBJECTOR:

N/A



