

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
22 March 2017
(Also the agenda for the Mayoral Committee Meeting : 29 March 2017)**

**5.
HERMANUS: RESCISSION OF COUNCIL DECISION OF 23 SEPTEMBER 2014
AND IN PRINCIPLE APPROVAL FOR THE DIRECT ALIENATION OF A PORTION
OF ERF 241 HERMANUS (ADJOINING ERF 7190 HERMANUS) TO MR JF & MRS
LI CRONJÉ**

7/2/3/2

A Kotze

(028) 316 - 3724

Hermanus Administration

3 February 2017

1. Executive Summary

To obtain approval for:

- (a) the rescission of Council's in principle decision dated 23 September 2014 for the alienation of a portion of Erf 241 Hermanus, by means of a competitive bidding process; and
- (b) the direct alienation of a portion of Erf 241 Hermanus, $\pm 172\text{m}^2$ in extent, to the owners of Erf 7190 Hermanus (57 Rocklands Road), Mr JF & Mrs LI Cronjé.

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

- Administration of Immovable Property Policy of the Overstrand Municipality, as amended
- Local Government: Municipal Finance Management Act, Act 56 of 2003 (MFMA)
- Municipal Asset Transfer Regulations (R. 878 of 2008)

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6. Background/Discussion/Evaluation/Conclusion

Background

During 2008 Mr and Mrs Cronje submitted a request to purchase a portion of the road reserve (Rocklands Road), but their application was not approved because of a water pipeline which is located in the road reserve and not knowing if the future might necessitate the construction of the road. Other comments from the relevant departments also stated that there might be future developments on the Public Open Space and that the Public Open Space might be used for services in the future. However, during a site inspection by the Portfolio Committee in 2013, it was proposed that the road be closed and a portion be alienated to the applicant (see the indication in red on the attached building plan).

Subsequent to the above, Council resolved on 23 September 2014 as follows:

“that the proposed sale of the 4m (approximately 172m²) area along the northern boundary, be approved, subject to the following conditions:

- (a) that the sale of a portion of road (Rocklands Road – Portion of Erf 241, Hermanus) by means of a competitive bidding process be approved in principle;*
- (b) that the successful bidder/purchaser be responsible for all cost pertaining to the surveying, rezoning and consolidation and registration of the transaction; and*
- (c) that, should the applicant be successful pertaining to conditions (a) and (b) above, applications for departure to legalize the existing dwelling and close stoep of the street building line, rezoning and consolidation be submitted.”*

Discussion

Since obtaining the abovementioned approval, the Administration of Municipal Property Policy was amended to make provision for the direct alienation of municipal immovable property in certain circumstances, and more specifically the sale of non-viable property. “Non-viable immovable property” is defined the Administration of Immovable Property 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”.

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Due to the locality, use and size of the portion Erf 241 Hermanus applied for, it can be classified as a non-viable property which can in terms of the amended Administration of Immovable Property Policy be alienated directly to the adjoining property owner.

The purchasers will be liable for the costs of the application, valuation, the subdivision, closure of any public place/road, consolidation and rezoning of the property as well as the required Section 14 advertisement in terms of the MFMA and Administration of Immovable Property Policy. This will have the effect that the registration of the transfer in the Deed Office will be delayed as the transfer will only be possible after the successful subdivision of the property.

Evaluation

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

The following conditions of the said Policy 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.”

The subject portion of Erf 241 Hermanus can be classified as a non-viable immovable property due to the location, size and use thereof.

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.”

Council has already decided that the subject property is not needed to provide the minimum level of basic municipal services.

Paragraph 9(1)(b): “The Municipality may transfer ownership or otherwise dispose of a non-exempted immovable property only after the municipal council, 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.”

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A valuation will be done by Boland Valuers at the cost of the purchasers after obtaining this in principle approval.

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”*

The subject portion of Erf 241 Hermanus can be classified as a non-viable immovable property due to its locality, size and use thereof by the adjoining owner.

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 purchasers will be liable for all costs which include, but are not limited to, the costs for the application, valuation, subdivision and consolidation, Section 14 advertisement, transfer and related costs and the rezoning of the property.

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 purchasers will 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 this effect 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.”*

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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 and the Administration of Immoveable Property Policy will be placed after obtaining this in principle decision. The purchasers will be liable for the costs of the Section 14 advertisement.

Conclusion

It is recommended that approval be given for:

- (a) the rescission of Council’s in principle decision dated 23 September 2014 for the alienation of a portion of Erf 241 Hermanus, by means of a competitive bidding process; and
- (b) the direct alienation of a portion of Erf 241 Hermanus, ±172m² in extent, to the owner of Erf 7190 Hermanus (57 Rocklands Road), Mr JF & Mrs LI Cronjé, at a market related purchase price.

Furthermore, it is recommended that the purchasers be liable for all costs. Subsequently the costs will entail, but is not limited to, the application, valuation, subdivision, consolidation, Section 14 advertisement, transfer and related costs, the connection of services and rezoning of the property.

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7. Financial Implications

The Municipality stands to gain a market related purchase price.

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

The relevant Departments, Divisions and Administrations have already indicated that the subject portion of property is not needed to provide basic municipal services.

10. Annexures

Annexure A: Building plan

RECOMMENDATION TO THE COUNCIL:

1. that Council's resolution dated 23 September 2014 for the sale of a portion of road (Rocklands Road – Portion of Erf 241, Hermanus) by means of a competitive bidding process, **be rescinded**;
2. that the direct alienation of a portion of Erf 241 Hermanus, ±172m² in extent, to the owners of Erf 7190 Hermanus (57 Rocklands Road), Mr JF & Mrs LI Cronjé, at a market related purchase price, **be approved in principle**, subject to the following conditions:
 - (a) that a public participation process be followed in terms of Section 14 of the Local Government: Municipal Finance Management Act (Act 56 of 2003) at the cost of the purchasers due to the non-viability of the property;
 - (b) that the purchasers obtain the necessary closure, subdivision, rezoning and consolidation approvals for the subject property;
 - (c) that the costs pertaining to the transaction, e.g. valuation, subdivision, consolidation, rezoning, transfer and related costs, water- and sewer connections, bulk services contribution, advertisements, etc. be paid by the purchasers;
 - (d) that the subject portion of Erf 241 Hermanus must be consolidated with the adjoining property of the purchasers, to wit Erf 7190 Hermanus, at their cost; and

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- (e) that, should the purchasers be successful pertaining to conditions (a) to (d) above, applications for the departure to legalize the existing dwelling and closed stoep on the street building line be submitted;
- 2. that Council take cognisance of the fact that the direct alienation is only approved as the subject portion of Erf 241 Hermanus is classified as a non-viable property;
- 3. 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).

RESPONSIBLE OFFICIAL :	A KOTZE
TARGET DATE FOR IMPLEMENTATION:	IN PROCESS
TARGET DATE TO INFORM APPLICANT:	5 APRIL 2017
TARGET DATE TO INFORM OBJECTOR:	N/A

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7/2/3/2

A Kotze

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Hermanus Administration

3 February 2017

THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON 22 MARCH 2017, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:

RECOMMENDATION TO THE COUNCIL:

1. that Council's resolution dated 23 September 2014 for the sale of a portion of road (Rocklands Road – Portion of Erf 241, Hermanus) by means of a competitive bidding process, **be rescinded**;
2. that the direct alienation of a portion of Erf 241 Hermanus, ±172m² in extent, to the owners of Erf 7190 Hermanus (57 Rocklands Road), Mr JF & Mrs LI Cronjé, at a market related purchase price, **be approved in principle**, subject to the following conditions:
 - (a) that a public participation process be followed in terms of Section 14 of the Local Government: Municipal Finance Management Act (Act 56 of 2003) at the cost of the purchasers due to the non-viability of the property;
 - (b) that the purchasers obtain the necessary closure, subdivision, rezoning and consolidation approvals for the subject property;
 - (c) that the costs pertaining to the transaction, e.g. valuation, subdivision, consolidation, rezoning, transfer and related costs, water- and sewer connections, bulk services contribution, advertisements, etc. be paid by the purchasers;
 - (d) that the subject portion of Erf 241 Hermanus must be consolidated with the adjoining property of the purchasers, to wit Erf 7190 Hermanus, at their cost; and
 - (e) that, should the purchasers be successful pertaining to conditions (a) to (d) above, applications for the departure to legalize the existing dwelling and closed stoep on the street building line be submitted;
2. that Council take cognisance of the fact that the direct alienation is only approved as the subject portion of Erf 241 Hermanus is classified as a non-viable property;

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3. 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).

RESPONSIBLE OFFICIAL :	A KOTZE
TARGET DATE FOR IMPLEMENTATION:	IN PROCESS
TARGET DATE TO INFORM APPLICANT:	5 APRIL 2017
TARGET DATE TO INFORM OBJECTOR:	N/A

