

**AGENDA of the  
Portfolio Committee : Infrastructure & Planning  
17 November 2015  
(Also the agenda for the Mayoral Committee Meeting : 25 November 2015)**

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**3.**

**HERMANUS: RESCISSION OF COUNCIL DECISION AND DEVIATION FROM PARAGRAPHS 7 AND 15.1 OF THE ADMINISTRATION OF IMMOVABLE PROPERTY POLICY TO OBTAIN AN IN PRINCIPLE APPROVAL FOR THE DIRECT ALIENATION OF A PORTION OF ERF 4771, VOËLKLIP, HERMANUS**

**7/2/3/2/**

**Anja Kotze**

**(028) 316 - 3724**

**Hermanus Administration**

**15 October 2015**

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**1. Executive Summary**

To obtain approval for:

- (a) the rescission of Council's in principle decision dated 29 April 2015 for the alienation of a portion of Erf 4771, Voëlklip, Hermanus, by means of a competitive process; and
- (b) the deviation from paragraphs 7 and 15.1 of the Administration of Immovable Property Policy to obtain an in principle approval for the direct alienation of a portion of Erf 4771, Voëlklip, Hermanus, to Mr P & Mrs B Lewin, the owners of the adjoining property, to wit Erf 4075, Voëlklip, Hermanus.

**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

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- Municipal Asset Transfer Regulations (R. 878 of 2008)
- Overstrand Municipality Supply Chain Management Policy, as amended

## **6. Background/Discussion/Evaluation/Conclusion**

### **Background**

An application to purchase a portion of Erf 4075, Voëlklip, Hermanus ( $\pm 205\text{m}^2$  in extent) was originally received in September 2013. The Applicant applied to purchase the portion of property for safety and privacy reasons. They currently have an approved three year lease agreement with the Municipality for the subject property. Although a valuation of the subject property was obtained and a report finalized (which did not serve before Council) the application was delayed pending a legal opinion regarding the sale of municipal owned immovable property to the public without following a competitive bidding process.

The subject legal opinion regarding the validity of the direct alienation of municipal owned immovable property to the public was obtained late in 2014; this opinion stating that municipal owned immovable property may only be alienated by means of a competitive process when such alienation is to the public.

Following the outcome of this legal opinion, the Administration of Immoveable Property Policy had to be amended, which amendment was adopted by Council on 23 September 2014 with the commencement date of 1 October 2014.

However, despite this legal opinion, it was clear that it would not be practical to follow a competitive process at all times with the alienation of municipal owned immovable property.

### **Discussion/Evaluation**

#### **A: Legislation**

Section 14(5) of the Local Government: Municipal Finance Management Act (Act 56 of 2003) determines that:

*“(5) Any transfer of ownership of a capital asset in terms of subsection (2) or (4) must be fair, equitable, transparent, competitive and consistent with the supply chain management policy which the municipality must have and maintain in terms of section 111.”*

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The Supply Chain Management Policy (2015) stipulates as follows:

*“40 Disposal management*

- a) Assets must be disposed of in terms of the Municipal Asset Transfer Regulations, Overstrand Municipality’s Asset Management Policy and Administration of Immovable Property Policy respectively.”*

The policy thereof only indicates that the alienation of assets must be in accordance with the relevant policies.

**B: Rescission of Council Resolution**

On 29 April 2015 Council resolved as follows:

- “1. that the alienation of a portion of Erf 4771, Voëlklip, Hermanus, (±205m<sup>2</sup> in extent), by means of a competitive process be **approved in principle**;*
- 2. that the costs pertaining to the transaction, e.g. subdivision, possible consolidation, rezoning, transfer costs, water- and sewer connections, bulk services contribution, advertisements, etc., excluding the valuation costs, be paid by the purchaser; and*
- 3. that an access servitude be registered over the remainder of Erf 4771, Voëlklip, Hermanus to provide access to the proposed subdivided erf at the cost of the purchaser;*
- 4. 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).”*

Subsequent to obtaining the abovementioned in principle approval, the process for the alienation of the property by means of a competitive process. When the Bid Specification meeting was held, the Supply Chain Management Unit was of opinion that:

*“Following our Bid Specification Meeting held on 18 August 2015 regarding the sale of a portion of unregistered ERF 4771, the committee’s opinion is that, given the position of this property, the way it is made-up, the current lease agreement in place relating to it and what the property can be used for, a competitive bidding*

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*process will not be competitive nor cost effective and as a result is not the correct process to follow for the disposal of this property.*

*In terms of MFMA Section 14, any transfer of a capital asset must be consistent with a municipality's Supply Chain Management (SCM) Policy. The Asset Transfer Regulations, which applies to the transfer and disposal of capital assets by a municipality, goes further to say that the transfer or disposal of an asset and the compensation paid for the asset must be consistent with criteria set out in the disposal management system of the municipality (i.e. being the system contemplated in regulation 40 of the SCM Regulations).*

*The SCM Regulations give the municipality various options on how to dispose of its assets, but in relation to immovable property states only that it must be sold at market related prices except when the public interest of the plight of the poor demands otherwise. It is not specific to say that a competitive bidding process needs to be followed.*

*Although our municipality applies disposal in terms of its own asset management policy, similar principles can apply to disposal management as those applied to procurement. When considering the procurement of goods and services a municipality must look at principles such as; the nature of the product/service, what it will be used for and whether or not the market has the capacity to offer what the municipality needs. Only once that is identified can a municipality identify the best procurement process to be followed, whether it be competitive bidding, deviation, transversal contract, procuring the services from another organ of state, etc.*

*When considering a competitive bidding process, one must be able to confirm that the market has the capacity to deliver the needed goods/services, that there are enough suppliers in the market to ensure competition and that the process will result in a cost effective outcome (not only with regards to the final cost paid, but also that the process itself is the most cost effective one possible).*

*With this in mind it is the committee's opinion that a competitive bidding process is not the most advantages and that an alternative disposal process be followed.*

Ms Heleine Potgieter, a former legal advisor for the Municipality, indicated at the Bid Specification Meeting that she concurs with the Supply Chain Management Unit insofar as the following of a competitive process in this situation will not be competitive and cost effective.

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The subject portion of property is of such nature that the alienation thereof by means of a competitive process will not be competitive and cost effective. Only the adjoining owner will be able to tender for the subject portion for consolidation with its own property in order to make the subject property a viable property.

**C: Deviation**

The Administration of Immovable Property Policy stipulates as follow:

- “7. Any transfer of ownership of immovable property must be fair, equitable, transparent, competitive and consistent with the supply chain management policy of the Municipality in accordance with Section 14(5) of the MFMA.*
11. *Approval in terms of 9.1(c) may be given subject to any conditions, including:*
- (a) the way in which the immovable property is to be sold or disposed of;*
  - (b) a reserve price or minimum compensation for the immovable property;*
  - (c) whether the immovable property may be transferred or disposed of for less than its fair market value, in which case the criteria set out in clause 9 must be considered, and*
  - (d) a framework within which direct negotiations for the transfer or disposal of the immovable property must be conducted with another person, if transfer or disposal is subject to direct negotiations.*
- 15.1 *The transfer of immovable property must be affected by means of competitive process, which may include a public or closed tender, auction or proposal call.*

In motivation of this request, the policies of, amongst others, the following Municipalities were studied:

- (a) Policy of the Management of certain of the City of Cape Town’s Immovable Property Policy (2010);
- (b) Cape Agulhas Municipality’s Land Disposal Policy (2012);
- (c) Drakenstein Municipality’s Policy for the Management and Administration of Immovable Property (2009);
- (d) Swartland Municipality’s “Beleid Insake die Beheer en Administrasie van Munisipale Onroerende Eiendom”.

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The abovementioned policies all make provision for the direct alienation of municipal owned immovable property in certain circumstances and are the mentioned Municipalities of opinion that direct sales must be allowed in certain circumstances. One of these circumstances is when the Municipality wants to alienate a non-viable property to the owner of the adjoining property. A non-viable property can be defined 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 that can therefore become functional only if used by an adjoining owner in conjunction with such owner's property.

The subject portion of property (a portion of erf 4771, Hermanus) can be classified as a non-viable property (i.e. it cannot be used on its own due to the size and locality).

Due to the value of the property, the non-viability of the property and the costs involved in advertising the tender, it is suggested that the successful bidder bear the costs of the subdivision, possible consolidation and rezoning of the property. 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.

Furthermore an access servitude will have to be registered over the remainder of Erf 4771 to enable access to the proposed subdivided portion of property.

**D: Advertisement**

To ensure that the alienation of this portion of property is transparent, fair and equitable, it will be necessary to advertise the alienation thereof to obtain the comments of the public. The Applicant will be liable for the payment of the costs of the advertisement.

**Conclusion**

It is recommended that approval be given for:

- (a) the partial rescission of Council's in principle decision dated 29 April 2015 for the alienation of a portion of Erf 4771, Voëlklip, Hermanus, by means of a competitive process; and
- (b) the deviation from paragraphs 7 and 15.1 of the Administration of Immovable Property Policy to obtain an in principle approval for the direct alienation of a portion of Erf 4771, Voëlklip, Hermanus, to Mr Paul Mark and Mrs Beverley Lewin.

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Furthermore, it is recommended that the applicant/purchaser be liable for all costs. Subsequently the costs will entail the subdivision, possible consolidation, Section 14 advertisement, transfer costs, the connection of services and rezoning of the property.

**7. Financial Implications**

The Municipality stands to gain the market related purchase price of R1,509.00 per square metre Vat excluded.

**8. Staff Implications**

None

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

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

**10. Annexures**

Annexure A: Locality plan and diagram

**RECOMMENDATION TO THE COUNCIL:**

1. that Council's resolution dated 29 April 2015 for the alienation of a portion of Erf 4771, Voëlklip, Hermanus, ( $\pm 205\text{m}^2$  in extent), by means of a competitive process **be rescinded**;
2. that the deviation from paragraphs 7 and 15.1 of the Administration of Immovable Property Policy of 2014 **be approved**;
3. that the direct alienation of a portion of Erf 4771, Voëlklip, Hermanus, ( $\pm 205\text{m}^2$  in extent) to Mr Paul Mark and Mrs Beverley Lewin **be approved in principle**;
4. that the abovementioned approval in principle be subject to a public participation process being followed due to the non-viability of the property and the costs involved in advertising a tender;
5. that the costs pertaining to the transaction, e.g. subdivision, consolidation, rezoning, transfer costs, water- and sewer connections, bulk services contribution, advertisements, etc., excluding the valuation costs, be paid by the purchaser; and

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6. that an access servitude be registered over the remainder of Erf 4771, Voëlklip, Hermanus to provide access to the proposed subdivided erf at the cost of the purchaser;
7. that the subject portion of Erf 4771, Voëlklip, Hermanus, must be consolidated with the adjoining property of the Applicants, to wit Erf 4075, Voëlklip, Hermanus; and
8. 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>A KOTZE</b>
<b>TARGET DATE FOR IMPLEMENTATION:</b>	<b>2 DECEMBER 2015</b>
<b>TARGET DATE TO INFORM APPLICANT:</b>	<b>2 DECEMBER 2015</b>
<b>TARGET DATE TO INFORM OBJECTOR:</b>	<b>N/A</b>

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*7/2/3/2/*

A Kotze

(028) 316 - 3724

Hermanus Administration

15 October 2015

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**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON 17 NOVEMBER 2015, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:**

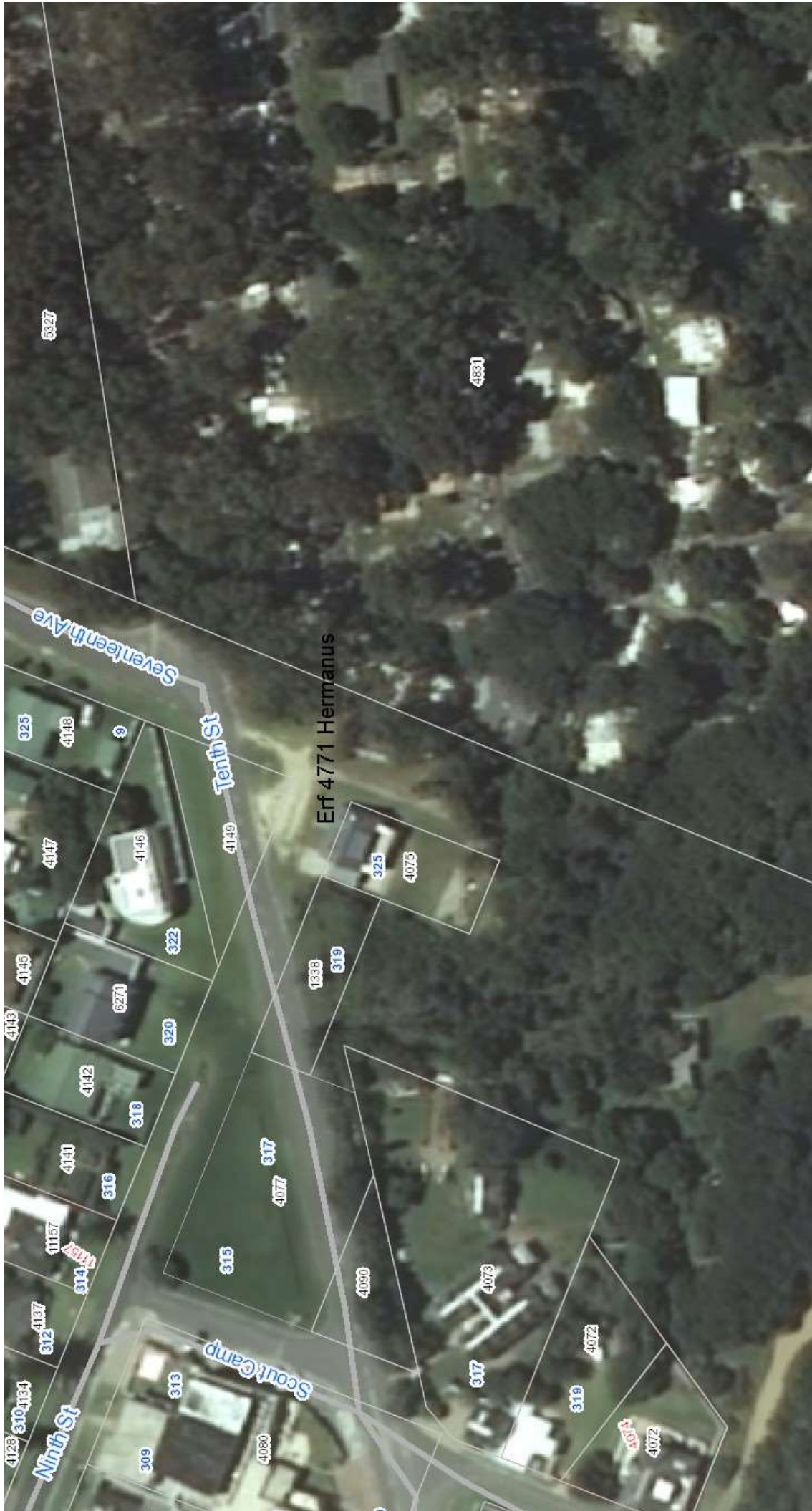
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7. that the subject portion of Erf 4771, Voëlklip, Hermanus, must be consolidated with the adjoining property of the Applicants, being Erf 4075, Voëlklip, Hermanus; and
8. that it is confirmed that Council has taken cognisance of the fact that the 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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DIAGRAM

