

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

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**4.  
HERMANUS, APPLICATION BY THE MALAN FAMILY TRUST AND PELICAN  
TRUST TO PURCHASE A PORTION OF THE REMAINDER OF ERF 4771  
HERMANUS, ADJACENT TO ERVEN 7149, 7617 & 7618 VOËLKLIP HERMANUS**

**7/2/5**

**N Liebenberg / A le Roux  
29 September 2017**

**(028) 316-3724**

**Hermanus Administration**

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**1. Executive Summary**

To consider the application received from the Malan Family Trust and Pelican Trust to purchase a portion of municipal property, being a portion of remainder of Erf 4771 Hermanus ( $\pm 456\text{m}^2$  in extent), adjacent to Erven 7149, 7617 & 7618 Hermanus situated in Sixth Avenue, Voëlklip; Hermanus.

**2. Service Delivery and Budget Implementation Plan - IGNITE**

Infrastructure and Planning;  
Property Administration

**3. Compliance with Strategic Priority**

Provision of democratic, accountable and ethical governance

**4. Delegated Authority**

None

**5. Legal Requirements**

- Administration of Immovable Property Policy of the Overstrand Municipality, as amended
- Local Government: Municipal Finance Management Act (No 56 of 2003) ("MFMA")
- Municipal Asset Transfer Regulations (R. 878 of 2008)

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

**Background**

The Malan Family Trust is the current owner of Erf 7149 Hermanus and the Pelican Trust the current owner of Erven 7617 & 7618 Hermanus. The Malan Family Trust has initially applied in November 2006 for a lease of 20 years of the said portion of municipal property. As the application was for a long term

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lease, a public participation was followed to inform the public of the application to lease. The responses/comments/objections received with regards to this proposed lease were negative and the public requested that this lease should not be approved. This application was subsequently not approved by Executive Mayor at a Mayoral Committee Meeting held on 28 February 2007, the reasons for the non-approval being:

- (a) Mr Malan already enjoys guaranteed access to his property as the public is prevented from parking on the subject portion of 6th Avenue by means of a pole fence and a no parking sign;
- (b) the leasing of the two parking bays from the abutting property, erf 7149, already adequately addresses the condition of the provision of the two off-street parking bays for the operation of a Bed & Breakfast, and
- (c) according to Council's Asset Management Policy "Council may not transfer ownership as a result of sale or other transaction or otherwise permanently dispose of immovable property needed to provide the minimum level of basic municipal services".

It was further resolved that:

- (a) the applicant be instructed to remove the parking he established on the subject portion of 6th Avenue and to refrain from using the area for parking, and
- (b) **the applicant be informed accordingly and that Council considers this matter to be closed.**

The abovementioned decision was taken on appeal where the Appeal Committee resolved that:

- (a) the appeal be dismissed, and
- (b) the resolution passed by the Executive Mayor on 28 February 2007 be reaffirmed.

It is also mentioned that a previous Executive Mayor sent a letter on 14 March 2007 to Mr Malan stating the following:

*"While Council could not agree to your request to lease the extension of Sixth Avenue from 11<sup>th</sup> Street to its termination in front of your property, we find your request that the restoration of the original road dimensions be allowed, to be reasonable.*

*You are therefore granted permission to move the fence back to the original border of the road.*

*Please liaise with Mr Glen Wakfer so as to obviate any misunderstanding as to the positioning of the fence.*

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*A signboard may be placed on 11<sup>th</sup> Street as requested. Please liaise with Mr John Simson on the type of board and positioning thereof.”*

Subsequently to the above outcome of the Section 62 appeal, Mr Neil Malan applied on behalf of the Malan Family Trust and the Pelican Trust for the purchase of the same portion of the remainder of Erf 4771 Hermanus adjacent to Erven 7149, 7617 & 7618 Voëlklip Hermanus for the main purpose to secure access to Erf 7149 as a pan handle property. He further indicated that no buildings or erections will be made on this portion of the road, but a security fence will be erected and obscured under the melkbos to prevent squatters in the adjacent cave form gaining entry to the property.

A locality map and photo of the area are attached hereto marked “Annexure A” and “Annexure B” respectively.

After obtaining the comments of all the relevant internal departments, the applicants were informed that the application will not be supported and subsequently is denied on the following reasons:

- (a) The property holds great value for the community and can be developed for much needed parking space for the Kamma Bay (it is presumed that the extension of Sixth Avenue might be used for access to this possible parking place); and
- (b) There are services allocated on the municipal property in the form of a sewerage pipe line running through it.

The applicants, via their attorney, replied as follows:

- (a) The decision made was based on generalized and unsubstantiated assertions about the future anticipated use of the property and the purported effect of the contemplated disposal of the property on sewerage works.
- (b) The sewerage pipe is the overflow from the septic tank on erf 7149 which runs under the garage on the property (erf 7149). If the applicants were to acquire the unused road, they have undertaken to the Municipality, and hereby do so again, that they would not build on the unused road. Accordingly the Municipality could still access the unused road for purposes of any sewerage services. This could be included as a condition of the disposal and if necessary, regulated by means of an appropriate servitude being registered over the unused road in favour of the Municipality.
- (c) There appears to be no specific concrete plans for parking at Kamma Bay.
- (d) The unused road currently only provides access to the applicants’ current properties.

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### **Discussion**

The particular portion of remainder of Erf 4771 Hermanus is zoned as Transport Zone 2, with the current status of public road, therefore providing access for the applicants to their respective properties. As the subject property is already a public road, the applicants already have a secure access to their respective properties.

The Municipality at one stage, as a sign of goodwill, permitted the installation of bollards to demarcate the access to the road and put sufficient signage to ensure that nobody parks in front of the access to ensure that the applicants have undisturbed access on the road to their properties (see the letter of a previous Executive Mayor referred to above). It must then also be noted that the applicant have had free access to their respective properties at all times.

As this road is used by the applicants to gain access to their properties, it cannot be referred to as “unused road”. It is however road that has not been formally developed (“tarred”) by the Municipality, however, it is paved. One must also remember, that from the application one can defer that the Pelican Trust wants to purchase the property and then register a servitude in favour of the Malan Family Trust to ensure access to its property and that both applicants will be liable for the cost of the purchase.

By only stating the reason for the purchase to secure access to their properties, is in opinion not sufficient reason to approve the alienation of portion of Sixth Avenue. The requested purchase will only ensure additionally that they have exclusive use of the portion of road. As to the erection of a security fence, it is the opinion that this can be done on the applicants’ respective property boundaries. It must also be mentioned, as indicated in the previous finding of the Appeal Committee, a party cannot be forced to enter into a contract for i.e. the sale / purchase of land. In this instance, if there is any possibility that the road can be used in the future to gain access to any possible development (i.e. parking to the community), it would not be desirable to alienate it for exclusive use by any adjoining owner. Furthermore, if the area is fenced off as indicated by the applicant, free access to the 90mm bulk underground municipal services running diagonally across the property will be impeded. There is no reason at this stage as to why the Municipality must sell the subject portion of property.

### **Evaluation**

The following condition of Administration of Immovable Property Policy of the Overstrand Municipality is of utmost importance:

**Paragraph 5: “The Municipality may not transfer ownership as a result of a sale or other transaction or otherwise permanently dispose of a**

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**municipal immovable property needed to provide the minimum level of basic services, save where the transfer is to another organ of the state, as provided for in section 14(6) of the MFMA read with Regulation 24 in Chapter 3 of the MATR”.**

There is a main sewer pipeline running diagonally across the subject portion of Erf 4771 Hermanus. By disposing of this portion of property and allowing the fencing off thereof, the Municipality will not have free and undisturbed access to this portion of the sewerage line. Unfortunately, as this sewerage line also crosses the privately owned properties, the Municipality might not have undisturbed access to those portions.

### **Conclusion**

With reference to the above discussion it is recommended that the application to purchase a portion of Sixth Avenue, Voëlklip, Hermanus (portion of the remainder of Erf 4771 Hermanus) received from the Malan Family Trust and Pelican Trust not be approved on the following reasons:

- (a) The applicants already have a guaranteed right of access over the portion of remainder of Erf 4771 Hermanus as it is a public road (extension of Sixth Avenue).
- (b) The applicants have adequate, uninterrupted, unrestricted access to their respective properties as the public is prevented from parking on the public road access by means of the bollards and no parking signage.
- (c) The Municipality currently has a sewerage works pipe line running diagonally across the road and the fencing off of this portion will disturb the Municipality's free access to the pipe line.
- (d) Should future development in the adjacent area be envisaged in the form of much needed parking, the road could serve as an access road to the public area.

### **7. Financial Implications**

None

### **8. Staff Implications**

None

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

**Senior Manager: Hermanus Administration: Mr D Kearney– (028) 313 8112**

This portion of land is basically an entrance to 6<sup>th</sup> Avenue, Voëlklip. It was not fully developed due to the obvious reason that it provides access to only two properties lower down. The owners have beautified the road and presumably placed grass blocks to stabilise the road surface.

The Voëlklip Beach parking area lies just on the other side of this block, extending out of 7<sup>th</sup> Avenue. This is an extremely popular beach but has limited parking space. It fills up quickly over peak periods and weekends. No additional parking for this beach has been created since prior 1990. The Town and particularly the Voëlklip area, has developed at a high rate, which means that more people are permanent residents and more visit their holiday homes. Visitors (beachgoers) are forced to park some distance away due to the situation.

As Area Manager, I have been looking for ways to increase the number of parking bays to accommodate more vehicles. Due to the layout and development of the area, this is almost impossible. However, this road extension, if used to its full extent, could accommodate quite a number of additional parking bays that could contribute towards relieving the inadequate parking bays at the beach.

The community value of this piece of land for present and future generations far outweigh the convenience of that of the applicants, (yet it would increase the value of their properties significantly).

The development of the said portion of road (6<sup>th</sup> Avenue) might not take place within the next year or so but if sold, the opportunity to expand the limited number of parking bays will be lost forever.

Over and above this fact, a main sewer line does run through a portion of the land, a fact that the applicant is attempting to play down as irrelevant. It is imperative that the Municipality has access to all its full service networks. If the property is sold off, the new owners will exercise their full rights and it could become problematic to do maintenance/upgrading thereof.

Both Area and Operational Managers are opposed to the sale of the said land.

There is no objection to the current continued use of the road up until it is fully developed by the Municipality.

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**Senior Townplanner: Mr H Olivier – (028) 313 8906**

In principle there is no objection against the purchase of the southern section of Sixth Street adjacent to unregistered Erf 12233 and Erf 7149, Voëklip subject to the following conditions:

- Only a 6m wide section of the road along the boundaries of the above erven is supported for alienation. The reason is to ensure that public access to the coast will remain intact and to further ensure access for fire services (a firebreak) when needed.
- Neither owners of unregistered Erf 12233 and 7149 are allowed direct access from the remainder (after being partially closed) of Sixth Street. The owners of afore-said erven must therefore come to some sort of a legal agreement regarding access to the lower lying Erf 7149, i.e by means of right of way servitude over unregistered Erf 12233 or otherwise. The reason is to ensure that the remaining section of Sixth Street will still be practical for two way traffic.
- Both the owners of the above properties will solely be responsible for all costs pertaining to the town planning processes that needs to be followed, as well as any post town planning approval costs.
- No structures/buildings, except boundary walls, are allowed on those road portions acquired by the individual land owners. It is strongly advised that a condition to this effect be registered against the title deeds of the properties, as well as the condition that no direct access is allowed from the remainder of the road.
- The owner of unregistered Erf 12233 previously (during 2016) obtained approval for the consolidation of the still registered Erven 7617 and 7618 (therefore all three portions to be consolidated simultaneously).

The town planning applications include, but are not necessarily limited to, the subdivision of the road into 3 portions (the road is zoned as Transport Zone 2), namely 2 portions, 1 portion each for the individual landowners for eventual consolidation with their respective erven, and the remainder portion of the road. The subsequent closure of the portions of the road, the rezoning thereof to single residential purposes, and the consolidation of the two 6m wide portions with the individual erven.

**Manager: Building Control: Mr J Simson – (028) 313 8091**

No issues from building department except, access to all sites currently serviced by the current road reserve must remain. And no structures to be built, this is a public road and there must be no visual impediment.

**10. Annexures**

Annexure A: Locality Plan

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**RECOMMENDATION TO THE COUNCIL:**

that the application to purchase a portion of the remainder of Erf 4771 Voëlklip Hermanus (portion of Sixth Avenue) adjacent to Erf 7149 and Erven 7617 and 7618 Hermanus received from the Malan Family Trust and the Pelican Trust **not be approved** on the following reasons:

- (a) The applicants already have a guaranteed right of access over the portion of remainder of Erf 4771 Hermanus as it is a public road (extension of Sixth Avenue);
- (b) The applicants have adequate, uninterrupted, unrestricted access to their respective properties as the public is prevented from parking on the public road access by means of the bollards and no parking signage;
- (c) The Municipality currently has a sewerage works pipe line running diagonally across the road and the fencing off of this portion will disturb the Municipality's free access to the pipe line; and
- (d) Should future development in the adjacent area be envisaged in the form of much needed parking, the road could serve as an access road to the public area.

**RESPONSIBLE OFFICIAL: N LIEBENBERG**

**TARGET DATE FOR IMPLEMENTATION: N/A**

**TARGET DATE TO INFORM APPLICANT: N/A**

**TARGET DATE TO INFORM OBJECTOR: N/A**

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**7/2/5**

**N Liebenberg / A le Roux  
29 September 2017**

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**Hermanus Administration**

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**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON  
21 NOVEMBER 2017, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:**

**RECOMMENDATION TO THE COUNCIL:**

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**RESPONSIBLE OFFICIAL:**

**N LIEBENBERG**

**TARGET DATE FOR IMPLEMENTATION:**

**N/A**

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**N/A**



