

**AGENDA of the
Portfolio Committee: Infrastructure & Planning
22 October 2019
(Also the agenda for the Mayoral Committee Meeting: 30 October 2019)**

**8.
TRANSFER OF A PORTION OF THE REMAINDER OF ERF 4771 HERMANUS TO
BRUCE NEIL ROYDEN HUXTER FOR SAFETY AND ACCESS PURPOSES**

7/2/3/2

W Murtz

(028) 316 - 3724

Hermanus Administration

3 September 2019

1. Executive Summary

To obtain final approval for the transfer of a portion of the remainder of Erf 4771 Hermanus ($\pm 295,8\text{m}^2$ in extent) to the owner of the adjoining Erf 2737 Hermanus, being Bruce Neil Royden Huxter, located at 146 8th Street, Voëlklip, Hermanus, for safety and access purposes. 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
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 (No 56 of 2003) ("MFMA")
- Municipal Asset Transfer Regulations (R. 787 of 2008)

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6. Background/Discussion/Evaluation/Conclusion

Background/Discussion

Council on 27 June 2018 approved in principle the direct alienation of a portion of the remainder of Erf 4771 Hermanus ($\pm 295,8\text{m}^2$ in extent) to the owner of the adjoining Erf 2737 Hermanus, being Bruce Neil Royden Huxter, at a market related purchase price subject to a public participation process being followed and subject to further conditions (i.e. closure of public place, subdivision, consolidation and rezoning). A market related value was determined at an amount of R666.78m² (SIX HUNDRED AND SIXTY SIX RAND AND SEVENTY EIGHT CENTS PER SQUARE METRE) (VAT excluded). The public participation process was followed as discussed in more detail below.

Council approved in principle the alienation subject to amongst others the suspensive condition that the Applicant obtaining the necessary approvals for the closure of public place, subdivision, consolidation and rezoning of the property.

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 subject portion of the remainder of Erf 4771 Hermanus can be classified as a non-viable immovable property due to the lay-out, size and proposed use thereof as well as the presence of a stream running close to the subject property which in itself hampers the independent development thereof. Due to the restriction imposed on the property no construction will be allowed on the subject portion of the remainder of Erf 4771 Hermanus besides a boundary fence or wall and applicant will only be able to use it for safety and access purposes.

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Paragraph 9(1)(a): “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: decided on reasonable grounds that the immovable property is not needed to provide the minimum level of basic municipal services:”

Council, when the in principle approval was obtained, confirmed 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:”

Boland Valuers determined the market related value in April 2018 at an amount of R666.78m² (SIX HUNDRED AND SIXTY SIX RAND AND SEVENTY EIGHT CENTS PER SQUARE METRE) (VAT excluded). The valuation was done taking into consideration the size, locality, lay-out, zoning, proposed use of the property, the restrictions imposed on the property and the value it will add to the Applicant’s existing 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 preferring such direct transfer.”**

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- (a) The comments received from the relevant departments confirm that the subject portion of municipal property is not needed for the provision of the minimum level of basic municipal services.
- (b) Boland Valuers determined the market related value in April 2018 at an amount of R666.78/m² (SIX HUNDRED AND SIXTY SIX RAND AND SEVENTY EIGHT CENTS PER SQUARE METRE) (VAT excluded). The valuation was done taking into consideration the size, locality, lay-out, zoning and proposed use of and restrictions on the property.
- (c) The reasons for preferred direct sale are discussed above and was recorded in the minutes of the in principle approval granted by the Council on 27 June 2018, of which is attached hereto marked as Annexure "B".

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/purchaser will be liable for all the costs relating to the transaction, including but not limited to the application fee, valuation costs, advertisement costs, transfer and related costs and all the costs related to Town Planning processes.

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.

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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

An advertisement for the transfer of a portion of the remainder of Erf 4771 Hermanus ($\pm 295,8\text{m}^2$ in extent) was placed in The Village News on 24 July 2019 for a 30 (THIRTY) day objection/comment period. No objections/comments were received.

Conclusion

It is recommended that the transfer of a portion of the remainder of Erf 4771 Hermanus ($\pm 295,8\text{m}^2$ in extent), to Bruce Neil Royden Huxter for the amount of R666.78/m² (SIX HUNDRED AND SIXTY SIX RAND AND SEVENTY EIGHT CENTS PER SQUARE METRE) (VAT excluded) for safety and access purposes be approved.

7. Financial Implications

The Municipality stands to gain an income of R666.78/m² (SIX HUNDRED AND SIXTY SIX RAND AND SEVENTY EIGHT CENTS PER SQUARE METRE) (VAT excluded) for the sale of the said property.

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 the remainder of Erf 4771 Hermanus in question, is currently reflected in the Fixed Asset Register for Property, Plant and Equipment: Land as part of Erf 4771 Hermanus with a carrying value of R4'000'000 as at 30 June 2017. The disposal of the portion of the remainder of Erf 4771 Hermanus will have to be accounted for at the selling price in order to remove it from 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.

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10. Annexures

- Annexure A: Locality plan
Annexure B: Council resolution dated 27 June 2018

RECOMMENDATION TO THE COUNCIL:

1. that the transfer of a portion of the remainder of Erf 4771 Hermanus, ($\pm 295,8\text{m}^2$ in extent) to Bruce Neil Royden Huxter, at an amount of R666.78/m² (SIX HUNDRED AND SIXTY SIX RAND AND SEVENTY EIGHT CENTS PER SQUARE METRE) (VAT excluded) for safety and access purposes, **be approved**;
2. that Council take cognisance of the fact that the direct alienation and subsequent transfer is only approved as a portion of the remainder of Erf 4771 Hermanus is classified as a non-viable property;
3. that it be noted that a condition of transfer will be that a portion of the remainder of Erf 4771 Hermanus must be consolidated with the adjoining property of Bruce Neil Royden Huxter, being Erf 2737 Hermanus;
4. that the transfer of a portion of the remainder of Erf 4771 Hermanus ($\pm 295,8\text{m}^2$ in extent) be subject to the suspensive condition that the applicant/purchaser obtains approval at own cost for the closure of public space, subdivision, consolidation and rezoning of the property;
5. that a condition be registered against the title deed of the to be consolidated property that the portion of property envisaged to be transferred may only be used for safety and access purposes and no structures, excluding a boundary fence or wall, may be erected thereon;
6. that all the costs pertaining to the transaction, e.g. application fee, valuation cost, closure of public space, subdivision and consolidation, rezoning, transfer and related costs, advertisement, etc, be paid by the applicant/purchaser; and
7. that it be noted that the municipal property envisaged to be transferred is not required for the provision of the minimum level 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:	PROCESS
TARGET DATE TO INFORM APPLICANT:	15 NOVEMBER 2019
TARGET DATE TO INFORM OBJECTOR:	N/A

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TRANSFER OF A PORTION OF THE REMAINDER OF ERF 4771 HERMANUS TO
BRUCE NEIL ROYDEN HUXTER FOR SAFETY AND ACCESS PURPOSES**

7/2/3/2

W Murtz

(028) 316 - 3724

Hermanus Administration

3 September 2019

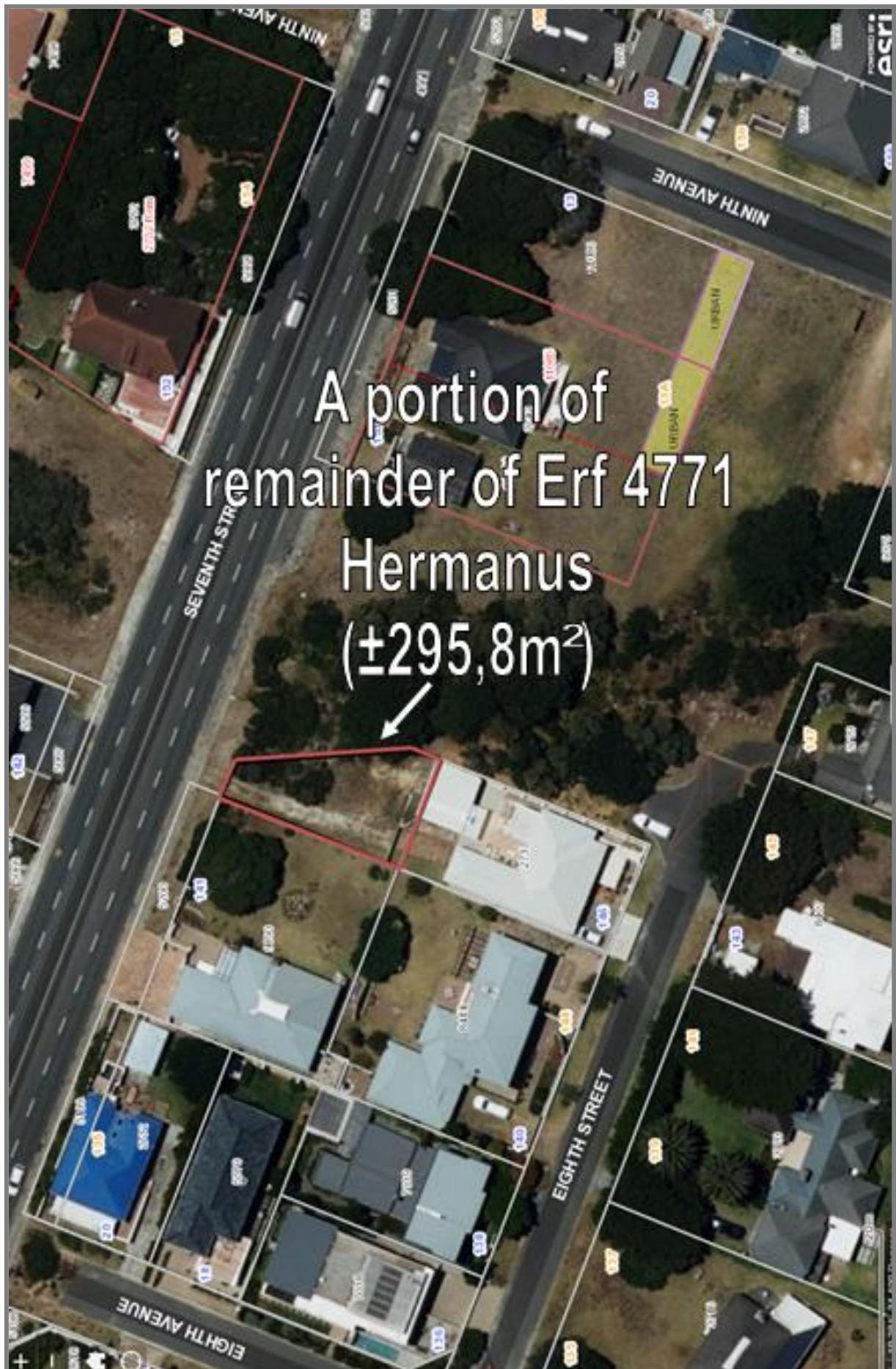
**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON
22 OCTOBER 2019, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:**

RECOMMENDATION TO THE COUNCIL:

1. that the transfer of a portion of the remainder of Erf 4771 Hermanus, ($\pm 295,8\text{m}^2$ in extent) to Bruce Neil Royden Huxter, at an amount of R666.78/m² (SIX HUNDRED AND SIXTY SIX RAND AND SEVENTY EIGHT CENTS PER SQUARE METRE) (VAT excluded) for safety and access purposes, **be approved;**
2. that Council take cognisance of the fact that the direct alienation and subsequent transfer is only approved as a portion of the remainder of Erf 4771 Hermanus is classified as a non-viable property;
3. that it be noted that a condition of transfer will be that a portion of the remainder of Erf 4771 Hermanus must be consolidated with the adjoining property of Bruce Neil Royden Huxter, being Erf 2737 Hermanus;
4. that the transfer of a portion of the remainder of Erf 4771 Hermanus ($\pm 295,8\text{m}^2$ in extent) be subject to the suspensive condition that the applicant/purchaser obtains approval at own cost for the closure of public space, subdivision, consolidation and rezoning of the property;
5. that a condition be registered against the title deed of the to be consolidated property that the portion of property envisaged to be transferred may only be used for safety and access purposes and no structures, excluding a boundary fence or wall, may be erected thereon;
6. that all the costs pertaining to the transaction, e.g. application fee, valuation cost, closure of public space, subdivision and consolidation, rezoning, transfer and related costs, advertisement, etc, be paid by the applicant/purchaser; and
7. that it be noted that the municipal property envisaged to be transferred is not required for the provision of the minimum level 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:	PROCESS
TARGET DATE TO INFORM APPLICANT:	15 NOVEMBER 2019
TARGET DATE TO INFORM OBJECTOR:	N/A



MINUTES : ORDINARY MEETING OF THE COUNCIL**27 JUNE 2018****5.3**

HERMANUS: IN PRINCIPLE APPROVAL FOR THE ALIENATION OF A PORTION OF THE REMAINDER OF ERF 4771 HERMANUS ADJACENT TO ERF 2737 HERMANUS TO BRUCE NEIL ROYDEN HUXTER

(ITEM 6, PAGE 94 : INFRASTRUCTURE & PLANNING PORTFOLIO - MAYORAL COMMITTEE MEETING : 27 JUNE 2018)

RESOLVED (SUPPORTED BY 24 COUNCILLORS):

1. that the direct alienation of a portion of the remainder of Erf 4771 Hermanus, adjacent to Erf 2737 Hermanus, ($\pm 295,8\text{m}^2$ in extent) to the owner of the adjoining erf, Bruce Neil Royden Huxter, at an amount of R666.78/m² (SIX HUNDRED AND SIXTY SIX RAND AND SEVENTY EIGHT CENTS PER SQUARE METER)(VAT excluded) for safety and access purposes be **approved in principle**;
2. that it be noted that a condition for alienation will be that there will be no construction allowed on the subject portion of the remainder of Erf 4771 Hermanus besides a boundary fence or wall;
3. that Council take cognisance of the fact that the direct alienation is only possible as subject portion of the remainder of Erf 4771 Hermanus applied for can be classified as a non-viable property;
4. that the abovementioned approval in principle be subject to a public participation process being followed at the cost of the Applicant due to the non-viability of the property;
5. that it be noted that a condition for alienation will be that the subject portion of the remainder of Erf 4771 Hermanus must be consolidated with the adjoining property of BNR Huxter, being Erf 2737 Hermanus;
6. that the alienation of the subject portion of the remainder of Erf 4771 Hermanus, be subject to obtaining the necessary closure of public place, subdivision and consolidation and rezoning approvals;
7. that all the costs pertaining to the transaction, e.g. application cost, valuation cost, subdivision and consolidation, closure of public space, rezoning, transfer and related costs, advertisement, etc., be paid by the Applicant; and

6**MINUTES : ORDINARY MEETING OF THE COUNCIL****27 JUNE 2018**

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).

RESPONSIBLE OFFICIAL :	N LIEBENBERG
TARGET DATE FOR IMPLEMENTATION :	PROCESS
TARGET DATE TO INFORM APPLICANT:	11 JULY 2018
TARGET DATE TO INFORM OBJECTOR:	N/A