

16.

**IN PRINCIPLE APPROVAL FOR THE ALIENATION OF ERF 634 FISHERHAVEN SITUATED IN BOLERO LANE, FISHERHAVEN BY MEANS OF A COMPETITIVE PROCESS**

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Divisional Manager: Property Management

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**1. Executive Summary**

To obtain in principle approval for the alienation of Erf 634 Fisherhaven (2,6688ha in extent) situated in Bolero Lane, Fisherhaven, for the purpose of an educational facility with recreational activities. See the locality maps attached hereto marked Annexures "A1" and "A2".

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

Planning and Development  
Property Management

**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**

- Local Government: Municipal Financial Management Act (Act 56 of 2003) ("MFMA")
- Municipal Asset Transfer Regulations (R. 878 of 2008)
- Administration of Immovable Property Policy of the Overstrand Municipality, as amended
- Municipal Supply Chain Management Regulations (Notice 868 of 30 May 2005)
- Overstrand Municipality Supply Chain Management Policy, as amended

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

**Background/Discussion**

Erf 634 Fisherhaven (2,6688ha in extent) is situated in Bolero Lane, Fisherhaven, hereinafter referred to as "the Property". It is zoned Community

Zone 1: Community Facilities with the following primary uses: clinic, crèche, day care centre, multi-purpose centre, place of assembly, place of instruction and place of worship.

The title deed of the Property however indicates that the Property is reserved for educational purposes. The Property is, due to its location and the restrictions of the title deed, ideally suited to be used and developed as an educational facility (i.e. creche, day care centre, place of instruction, etc.) with recreational activities. The recreational aspect can be dealt with by means of a consent use.

The Property is a vacant plot and currently unserved, the successful bidder/purchaser will be responsible for cost pertaining to the services connections as well as any bulk services should it be required.

As there is a need for educational properties and as the Property is suitable for the development of an educational facility, it is recommended that it be made available in the open market by means of a competitive process.

### Evaluation

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

The following conditions of the said Policy will apply:

**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.”**

The comments received from the relevant officials confirmed that the Property is not needed for the provision of 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 has, 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.”**

HCB Property Valuations determined the market related value of the Property on 1 September 2024 at an amount of R85.00 (EIGHTY-FIVE RAND) (VAT excluded) per square metre. This amounts to a market related price of R2,268,480.00 (TWO MILLION TWO HUNDRED AND

SIXTY EIGHT THOUSAND FOUR HUNDRED AND EIGHTY RAND)  
(VAT excluded)

**Paragraph 9.1(c): “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 has a consequence to 9.1(a) and (b) above approved in principle that the immovable property may be transferred or disposed of, and the method of disposal or transfer.”**

The purpose of this report is to request in principle approval from Council for the alienation of the Property by means of a competitive process.

**Paragraph 15.1: “The transfer of immovable property must, except in the case of non-viable immovable property, be affected by means of competitive process, which may include a public or closed tender, auction or proposal call.”**

It is recommended that the Property be alienated by means of a competitive process.

**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 successful bidder will be liable for all costs pertaining to the transaction, excluding the cost for the valuation of the Property. Costs for the successful bidder will include, but is not limited to, the public participation process after award of the bid, transfer costs, connection of services and any other costs pertaining to the transaction and proposed development.

**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 successful bidder shall be liable for all cost in this regard should it be necessary.

**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 clause to this effect will be included in the deed of sale to be entered into between the Municipality and the successful bidder/purchaser.*

**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 clause to this effect will be included in the deed of sale to be entered into between the Municipality and the successful bidder/purchaser.

**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 clause to this effect will be included in the deed of sale to be entered into between the Municipality and the successful bidder/purchaser.

B: Advertisement/Notification:

The necessary advertisement in terms of the MFMA will be published after the tender is duly awarded. The successful bidder/purchaser will be liable for the cost.

### **Conclusion**

It is recommended that the Property be alienated to be developed for educational and related creational purposes (the latter after a consent use is approved and only if required by the bidder) as per the approved zoning by means of a competitive process, at not less than the market related value.

Furthermore, it is recommended that the successful bidder/purchaser be liable for all costs, excluding the cost for the valuation of the Property.

### **7. Financial Implications**

The Municipality stands to gain a market related purchase price to the minimum amount of R2,268,480.00 (TWO MILLION TWO HUNDRED AND SIXTY EIGHT THOUSAND FOUR HUNDRED AND EIGHTY RAND) (VAT excluded) for the Property.

### **8. Staff Implications**

None

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

### **Divisional Manager: Expenditure, Fleet & Asset Management - Mr J Vorster**

*“Erf 634 Fisherhaven (2,6688ha in extent) is reflected in the Fixed Asset Register for IP Land at a fair value of R1’950’000 (ONE MILLION NINE HUNDRED AND FIFTY THOUSAND RAND) as at 30 June 2024. The eventual disposal of Erf 634, Fisherhaven, will have to be accounted for as a disposal in the Fixed Asset Register for IP Land in order to account for the gain / (loss).”*

### **Divisional Manager: Building Control - Mr L Coetzee**

*“Building Control has no objection. A building plan application is required for any proposed structures. The building plan application must comply with all applicable law.”*

### **Assistant Chief: Fire, Health and Safety – Mr E Solomons**

*“The Fire Department has no objection subject to compliance with the provisions of SANS 10400 A:2016, 10400-T:2020 and the By-Law relating fire safety.”*

### **Principal Technologist: Development Control - Mr R Andrew**

- “1. The developer should identify and locate all municipal services located on the Property under consideration.*
- 2. The existing municipal services must stay intact and can't be compromised. If any of the existing services need to be relocated, it will be done by the applicants at his cost, and to the satisfaction of the Director: Infrastructure and Planning. Servitudes should be registered for all municipal services on private property.*
- 3. The developer will only utilize the existing roads/accesses, and no new additional roads/accesses will be created without the written approval of the Senior Manager: Engineering Services.*
- 4. Bulk Infrastructure Contribution Levies are payable by the developer where there is an intensification of land use and a resultant increase in loading on the municipal engineering services. Bulk Contribution Levies will be charged according to the Overstrand Bulk Contribution Levy Policy and the prescribed tariffs as contained in Council's budget. These tariffs are subject to annual adjustment. Levies will be payable prior to the submission of building plans (for sectional title units / commercial buildings), or rates clearance being issued (for free-standing properties).*
- 5. The developer will be responsible for the construction and provision of all bulk and link municipal services to the proposed development, including all connection fees and investigation levies.*
- 6. The developer must enter into a service level agreement with the Municipality.”*

**Environmental Officer – Ms H Fortune**

*“The Site Erf 634 has intact portions of Hangklip Sand Fynbos and Elim Ferricrete Fynbos according to SANBI mapping.*

*In terms of the National Environmental Management: Biodiversity Act, 2004 (Act 10 of 2004): National list of threatened ecosystems, Hangklip Sand Fynbos vegetation type is endangered, and Elim Ferricrete Fynbos vegetation type is critically endangered.*

*Interpretation:*

*NEMA regulations:*

*Given the status of the vegetation on site, the activity would trigger listed activity 12 in terms of the*

*NEMA EIA regulations and the following would normally apply:*

*The clearance of an area of 300 square metres or more of indigenous vegetation except where such clearance of indigenous vegetation is required for maintenance purposes undertaken in accordance with a maintenance management plan.*

*Western Cape:*

*Within any critically endangered or endangered ecosystem listed in terms of section 52 of the NEMBA or prior publication of such a list, within an area that that has been identified as critically endangered in the National Spatial Biodiversity Assessment 2004.*

*However, in terms of circular 0024/2014: Interpretation of “commence” in terms of the NEMA, the following applies:*

- The construction works are to remain within the specific parameters of the erf.*

*No additional approval from DEA&DP is required for the development of the site. Recommendations: Considering the above, this office has no office objection to this application.*

*However, the following conditions should be set for site development:*

- Given the critically endangered status of the intact fynbos, careful landscaping should form part of the site development plan.”*

*This condition will be included in the specification document as well as the deed of sale.*

**Senior Superintendent: Traffic Operations - Mr P de Gruchy**

*“If no parking will take place on a public road and all parking is provided on erven. There are no objections then towards this application.”*

**Town Planner – Mr H Olivier**

*“The site is zoned for Community purposes. As far as I am aware the Title Deed limit the use for school purposes. (Please scan the Title Deed). There is a shortage of sites for ECD’s and school in the greater Hermanus area and is recommended that only proposals for such purposes should be considered for this site. The Department of Education is already developing a school in Fisherhaven and might also require additional land to extend the school and require land for school sports fields in future.”*

**Senior Engineer: Waste Management – Mr C Mitchell**

*“There is no objection from Solid Waste Planning point of view.”*

**Principal Technologist Civil – Mr T Marx**

*“We do not have any objection with regards to this application.”*

**10. Annexures**

Annexures A1 and A2: Locality maps

**RECOMMENDATION TO THE COUNCIL:**

1. that the alienation of Erf 634 Fisherhaven (2,6688ha in extent) by means of a competitive process at a market related price for educational and related recreational purposes, **be approved in principle**;
2. that all costs pertaining to the transaction, including, but not limited to, the transfer costs, water, sewer and electricity connections, the required advertisement, but excluding the valuation costs, where applicable, be paid by the successful bidder/purchaser;
3. that a condition be registered against the title deed of the Property that it may only be used and developed for educational and related recreational purposes in line with the zoning for Community Zone 1: Community; and
4. that it is hereby confirmed by Council that the municipal property herewith envisaged to be alienated is not required for the provision of basic municipal services in terms of paragraph 5 of the Administration of Immovable Property Policy approved by Council on 25 November 2015 and Section 14 of the Local Government: Municipal Finance Management Act (Act 56 of 2003).

**RESPONSIBLE OFFICIAL:**

**W MURTZ**

**TARGET DATE FOR IMPLEMENTATION:**

**14 MARCH 2025**





OVERSTRAND MUNICIPALITY



Erf 634 Fisherhaven



Date: 2025/01/10