

6. TRANSFER ERF 279 FISHERHAVEN (SITUATED IN SCHOOL ROAD, FISHERHAVEN) TO THE WESTERN CAPE GOVERNMENT VIA ITS DEPARTMENT OF TRANSPORT AND PUBLIC WORKS (WESTERN CAPE EDUCATIONAL DEPARTMENT) TO RETAIN THE NEWLY BUILT JUNIOR HIGH SCHOOL AS PART OF THE RAPID SCHOOL BUILD PROGRAMME

A Le Roux

Divisional Manager: Property Management

26 September 2024

(028) 316 5623

1. Executive Summary

To obtain final approval for the transfer of Erf 279 Fisherhaven (3,9575 ha in extent), situated in School Street, Fisherhaven (hereinafter referred to as “the Property”), to the Western Cape Government via its Department of Transport and Public Works (on behalf of the Western Cape Education Department), hereinafter referred to as “the Department”, to develop a new Junior High School as part of the Rapid School Build Programme.

The locality maps are attached hereto as “Annexure A1” and “Annexure 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
Creation and maintenance of a safe and healthy environment
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 (2015)

6. Background/Discussion/Evaluation/Conclusion

Background/Discussion

Council on 31 May 2023 approved the following:

- “1. that the direct alienation of Erf 279 Fisherhaven (3,9575 ha in extent) to the Western Cape Government via its Department of Transport and Public Works (on behalf of the Western Cape Educational Department), at a nominal purchase price of R100.00 (ONE HUNDRED RAND) (VAT included) to develop a new Junior High School as part of the Rapid School Build Programme, be approved in principle;*
- 2. that it be noted it is not necessary to follow a competitive process for the alienation and transfer as this transaction is exempted in terms of Regulation 20 of the Municipal Asset Transfer Regulations (R. 878 of 2008);*
- 3. that it be noted that a final transfer approval must still be obtained before the property may be transferred to the Department in the Deeds Office;*
- 4. that it be noted that the municipal property herewith envisaged to be 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);*
- 5. that it be noted that there are economic and community value to be received in exchange for the municipal property as a new school will be established for the community;*
- 6. that the alienation of said Erf 279 Fisherhaven be subject to a suspensive condition that the Department obtains at own cost all required land use planning, environmental and related approvals;*
- 7. that all the costs pertaining to the transaction, e.g. land use planning, environmental and related processes costs, the registration of the transfer of the property in the Deeds Office, and possibly the costs for the public participation, should they request that it be advertised, be borne by the Department;*
- 8. that a condition be registered against the title deed of the property that the property may only be used for Educational Purposes;*
- 9. that a servitude be registered in favour of the Municipality against the title deed of the property to secure the municipal services situated thereon; and*
- 10. that a consent be issued to the Department:*

- (a) *to apply for rights on the property and to submit all necessary applications including, but not limited to, any land use management, planning, environmental, heritage and any other development rights in terms the relevant legislation;*
 - (b) *to submit courtesy building plans for the proposed development on the property;*
 - (c) *to gain early occupation of the property before signature of a deed of sale and pending the finalisation of the alienation process in order to start the construction of the school, subject to all other required approvals; and*
 - (d) *to apply for the necessary municipal services connections for the property.*
11. *that a public participation process be followed at the cost of the Department.”*

Evaluation

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

The following conditions of the said Policy will apply:

Paragraph 4: “No application for the purchase, lease of or encroachment on immovable property (save for the instances mentioned in paragraphs 58 to 62 and 64.1 below) shall be processed unless the prescribed application fee as per tariff approved in the annual budget for that financial year has been paid, nor shall any proposed lease or encroachment (save for the instances mentioned in paragraph 58 to 62 and 64.1 below) be advertised unless the applicant has confirmed, in writing, that he/she will bear all costs involved in such transaction including – but not limited to – legal, survey, re-zoning, sub-division, consolidations, advertisement, relocation or provision of services and, where applicable, a deposit as per prescribed rate to cover incidental costs has been paid.”

Organs of state are exempted from paying the application fee. As to the rest of the costs, the Department will be held liable for all costs involved.

Paragraph 5: “The Municipality may not transfer ownership as a result of a sale or other transaction or otherwise permanently dispose of a municipal immovable property needed to provide the minimum level of basic services, save where the transfer is to another organ of state, as provided for in section 14(6) of the MFMA read with Regulation 24 in Chapter 3 of the MATR.”

Council, when the in-principle approval was obtained, confirmed that the Property is not needed to provide the minimum level of basic municipal services. There are currently services on the Property will be secured by means of a registered servitude due to the location thereof. See “Annexure B” attached indicating the services and “Annexure C” indicating the proposed boundaries of the servitude.

Paragraph 12.1: “Paragraphs 7 and 10 above do not apply to the transfer of immovable property to another municipality or to a municipal entity or to a national or provincial organ of the state in circumstances and in respect of categories of assets approved by the National Treasury in Regulation 20 of the MATR, provided that such transfers are in accordance with a prescribed framework contained in Chapter 3 of the MATR.”

Regulation 20 determines, amongst others that:

“Section 14(1) to (5) of the Act does not apply if a municipality or municipal entity transfers a capital asset to an organ of state in any of the following circumstances:

- (f) any other circumstances not provided in paragraph (a) to (e), provided that –*
 - (i) the capital asset to be transferred is determined by Council to be not needed for the provision of the minimum level of basic municipal services and to be surplus to the requirements of the municipality; and*
 - (ii) if the capital asset is to be transferred for less than fair market value, the municipality takes into account –*
 - (aa) whether the capital asset may be required for the municipality or a minimum entity under the municipality’s sole or shared control at a later date;*

Council has already indicated that the Property is not needed for the provision of the minimum level of basic services. The Property will be developed specifically to accommodate a Junior High School, the latter being a Provincial mandated function. It is not envisaged that the Municipality will require any control or shared control over the Property and function anytime in the near future.

- (bb) the expected loss or gain that is expected to result from the proposed transfer;*

Erf 279 Fisherhaven is currently reflecting in the Municipality’s Fixed Asset Register for Investment Property at a value of R3,500,000.00 (THREE MILLION FIVE HUNDRED THOUSAND RAND) (VAT included) as on 30 June 2024.

The eventual alienation the Property will have to be accounted for order to remove it from the Fixed Asset Register and to account for the loss.

(cc) the extent to which any compensation to be received in respect of the proposed transfer will result in a significant economic or financial cost or benefit to the municipality;

A nominal purchase price of R100.00 (ONE HUNDRED RAND) (VAT included) is proposed. Although a nominal purchase price will be received, the establishment of the new school will be to the benefit of the Overstrand community.

(dd) the risks and rewards associated with the operation or control of the capital asset that is to be transferred in relation to the interests of the municipality or municipal entity;

All risks and rewards related to the Property were taken over by the Department as from June 2023 when occupation was given.

(ee) the effect that the proposed transfer will have on the ability of the municipality or municipal entity to raise long-term or short-term borrowings in the future;

The value of the Property is well below 1% of the total value of all the land and buildings of the Municipality. The alienation and transfer of the Property will therefore have no effect on the ability of the Municipality to raise long term of short-term borrowings in the future.

(ff) any limitation or conditions attached to the capital asset or the transfer of the asset, and the consequences of an potential non-compliance with those conditions;

The Property may only be used for educational purposes, i.e. the establishment of a Junior High School. No other uses will be allowed, and this will be registered against the title deed of the Property.

(gg) the estimated cost of the proposed transfer;

There will be no cost for the Municipality as all costs of transfer will be borne by the Department. In this regard the transfer will be attended to by the State Attorneys.

(hh) the transfer of any reserve funds associated with the capital asset;

There are no reserve funds associated with the Property.

- (ii) *the interest of any affected organ of the state, the municipality's own strategic, legal and economic interests and the interests of the local community; and*

The use of the Property for the development of a Junior High School will be of a far bigger benefit to the community, especially as it will alleviate the pressure on the two closest high schools and will provide opportunities to those learners who cannot be accommodated at the current high schools in Overstrand.

- (jj) *compliance with the legislation regime applicable to the proposed transfer."*

The sale will be in line with all relevant legislation from both a Municipal and Provincial side. After obtaining the necessary in principle approval, a final transfer approval must still be obtained.

Paragraph 12.2: "Where the requirements stipulated in Chapter 3 of the MATR are met, then notwithstanding fact that the transfer or disposal may be in respect of immovable property which is required to provide the minimum level of basic services, such disposals need not be at market related value and do not require a public participation process described in the MATR in respect of non-exempted disposals."

As the property will be alienated to an organ of state and further as the purpose for which the property will be utilised is of great value and advantage to the community, the Property may be alienated, and a public participation process need not to be followed. However, as per the council resolution obtained, the application was advertised for public comment.

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 Department will be held liable for all costs pertaining to this transaction.

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."

A servitude will be registered on the property to accommodate the current services thereon. This will be included in the deed of sale to be registered directly in the title deed.

Paragraph 31: “Where immovable property is alienated for development, a condition, taking into consideration the nature of the development, might be included in the Deed of Sale stipulating that such development must be completed within two years from date of registration. Likewise, a condition may be included in the agreement to provide for forfeiture in the event that the development has not been completed within the required time period, unless a written extension has been granted by the Municipality.

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.”

A condition to this effect was included in the Deed of Sale.

B: Advertisement / Notification:

An advertisement for the transfer of the Property was published in Hermanus Times on 25 October 2023 for a 30 (THIRTY) day objection/comment period.

C: Public/Residents’ Concerns:

The following key concerns were raised by the residents of Fisherhaven via the Fisherhaven Homeowners Association via email on 2 November 2023:

1. *“Impact on Fisherhaven Infrastructure: Residents are worried about the strain the school may place on our existing infrastructure, such as storm water reticulation, sewerage, and the effects of flooding.*
2. *Sewerage System: There is uncertainty about whether the school will have a waterborne sewerage system or if it will rely on the already stretched ‘Honeysucker’ Tanker services.*
3. *Traffic Road Infrastructure: Additional traffic and busses could worsen the condition of our gravel and dust-controlled road. Speed and traffic management at the entrance/exit point of Fisherhaven, where the speed limit on the R43 is 120km/h pose safety concerns, especially for busses.*
4. *Employment Opportunities: Residents are interested in understanding the employment prospects of Fisherhaven residents arising from this project.*

5. *Lack of Site Information: Despite the construction being at an advanced stage, there is no site information/notice board, which is legally required. The absence has left the community uninformed about crucial details like the project scope, contractor information, architect, Occupational Health and Safety Officer, after-hours contact number, etc.”*

The Property Management Division subsequently arranged a meeting between the role players from Western Cape Educational Department and the concerned members of Fisherhaven, which meeting took place on 7 December 2023 at the Fisherhaven Yacht & Boat Club in Fisherhaven. During this meeting, an attempt to address the concerns raised was made, but not all matters could be resolved. However, since the meeting, the school has been established and operational with no complaints received by the Property Management Division.

Conclusion

It is recommended that the transfer of Erf 279 Fisherhaven (3,9575ha in extent), situated in School Street, Fisherhaven, to the Western Cape Government via its Department of Transport and Public Works (on behalf of the Western Cape Government Education Department), to retain the new Junior High School as part of the Rapid School Build Programme at a nominal purchase price of R100.00 (ONE HUNDRED RAND) (VAT included) be approved, subject to conditions.

7. Financial Implications

Erf 279 Fisherhaven is currently reflected in the Municipality's Fixed Asset Register for Investment Property at a value of R3,500,000.00 (THREE MILLION FIVE HUNDRED THOUSAND RAND) (VAT included) as on 30 June 2023. As the proposed purchase price is R100.00 (ONE HUNDRED RAND) (VAT included), a (loss) will be shown on the register in the financial year the sale is finalised. The value that the establishing a new junior high school will bring to the community can however not be expressed in financial value. Similarly further income will be earned from rates, taxes and services charged payable to the Municipality.

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Acting Divisional Manager: Expenditure, Fleet & Asset Management - Mr C Oppelt

“Erf 279 Fisherhaven is currently reflected in the Fixed Asset Register for Investment Property at a value of R3,500,000.00 (THREE MILLION FIVE

HUNDRED THOUSAND RAND) (VAT included) as on 30 June 2024. The eventual alienation will have to be accounted for as a disposal in order to remove it from the Fixed Asset Register and to account for the (loss).

There is no objection as the application complies with the Administration of Immovable Property Policy.”

10. Annexures

Annexures A1 and A2: Locality maps
 Annexure B: Municipal Services
 Annexure C: Proposed servitude

RECOMMENDATION TO THE COUNCIL:

1. that the transfer of Erf 279 Fisherhaven (3,9575 ha in extent) situated in School Street, Fisherhaven, to the Western Cape Government via its Department of Transport and Public Works (on behalf of the Western Cape Education Department), at a nominal purchase price of R100.00 (ONE HUNDRED RAND) (VAT included) to retain the new developed Junior High School a part of the Rapid School Build Programme, **be approved**;
2. that it be noted that it is not necessary to follow a competitive process for the alienation and transfer as this transaction is exempted in terms of Regulation 20 of the Municipal Asset Transfer Regulations (R. 878 of 2008);
3. that it be noted that there are economic and community value to be received in exchange for the municipal property as a new school will be established for the community;
4. that it be noted that the municipal property herewith envisaged to be 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);
5. that all the costs pertaining to the transaction, e.g. land use planning, environmental and related processes costs, the public participation cost, the registration of the transfer of the Property in the Deeds Office, and the costs of the public participation, be borne by the Department;
6. that a condition be registered against the title deed of the Property that the Property may only be used for Educational Purposes; and
7. that a servitude be registered in favour of the Municipality against the title deed of the Property to secure the municipal services situated thereon.

RESPONSIBLE OFFICIAL :	W MURTZ
TARGET DATE FOR IMPLEMENTATION :	18 DECEMBER 2024
TARGET DATE TO INFORM APPLICANT :	18 DECEMBER 2024
TARGET DATE TO INFORM OBJECTOR :	N/A



Erf 279 Fisherhaven





ANNEXURE B



STREET VIEW OF PUMP STATION



STREET VIEW OF ELEC SUBSTATION

ANNEXURE C

