

**AGENDA of the
Portfolio Committee : Investment, Infrastructure and Tourism
7 February 2024
(Also the agenda for the Mayoral Committee Meeting : 13 February 2024)**

13.

**IN PRINCIPLE APPROVAL FOR THE DIRECT ALIENATION OF A PORTION OF
REMAINDER ERF 241 HERMANUS (ROAD RESERVE), ADJACENT TO ERF 100
HERMANUS, SITUATED AT 54 ROCKLANDS DRIVE, HERMANUS TO MJ & K
SMUTS**

**A Le Roux
28 November 2023**

Manager: Property Administration

(028) 316 - 5623

1. Executive Summary

To obtain approval in principle for the direct alienation of a portion of Remainder Erf 241 Hermanus ($\pm 170\text{m}^2$ in extent) adjacent to Erf 100 Hermanus, situated at 54 Rocklands Street, Hermanus to the owners of the adjoining property, MJ & K Smuts for gardening purposes and the erection of a boundary fence or wall. See the locality plans attached hereto marked Annexure "A1" and "A2".

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

- 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

6. Background/Discussion/Evaluation/Conclusion

Background/Discussion

An application was received from MJ & K Smuts, hereafter referred to as "the Applicants", to purchase a portion of Remainder Erf 241 Hermanus ($\pm 199\text{m}^2$

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in extent) adjacent to Erf 100 Hermanus, situated at 54 Rocklands Street, Hermanus, hereafter referred to as “the Property”.

The Applicants wish to purchase the Property for gardening purposes and to erect a boundary fence or wall. The Applicants also intend applying to the Building Department to build the current garage up to the current property boundary of Erf 100 Hermanus. However, the Property applied for is zoned Transport Zone 2: Road and Parking and the Municipality can only consider alienating the Property with a condition against the Title Deed of the Property stipulating that any new structures (excluding the boundary fence or wall) will not be allowed on the Property.

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 paragraphs 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.”

The Applicants will be liable for the costs of the transaction which include, but not limited to, the application costs, valuation costs, road closure, rezoning, subdivision and consolidation of the Property, transfer costs as well as the required Section 14 advertisement.

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,

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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 Property forms part of a road reserve and due to the locality, shape, intended use and size of the Property, it cannot be developed independently, and thus it can be classified as a non-viable property. Non-viable property can in terms of the current Administration of Immovable Property Policy be alienated directly to adjoining property owner, subject to certain conditions.

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."**

- (a) The comments received from the relevant departments indicate that the Property is not needed for the provision of municipal services.
- (b) HCB Valuations and Services (Pty) Ltd determined the market related value on 1 January 2023 at an amount of R650.00/m² (SIX HUNDRED AND FIFTY RAND) per square metre (VAT excluded). The valuation was done taking into consideration the size, shape, locality, zoning and proposed use (restriction) of the Property.
- (d) The reasons for preferred direct sale are discussed above and will subsequently be recorded in the minutes.

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

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necessary, etc. The Municipality may, however, waive its right to claim the costs should it be to its advantage to bear the costs.

The Applicants will be liable for the costs of the transaction which will include, but not be limited to, the application costs, valuation costs, road closure, rezoning, subdivision and consolidation of the Property, transfer costs as well as the required Section 14 advertisement in terms of the MFMA and Administration of Immovable Property Policy.

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 Applicants will be liable for all costs in this regard should it be necessary.

Paragraph 30: *“Small areas of land such as closed roads or portions of public place sold to an adjacent owner must be consolidated with the existing property of the adjacent owner, unless circumstances exists which, in the opinion of the Municipality, make such consolidation undesirable.”*

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 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

The necessary advertisement in terms of Section 14 of the MFMA will be published after obtaining this in principle decision. The Applicants will be liable for the costs of the Section 14 advertisement.

Conclusion

Considering the comments of the internal departments, as well as the above discussion, it is recommended that the direct alienation of the Property to the Applicants be approved in principle.

7. Financial Implications

The Municipality stands to gain a market related purchase price of R650.00/m² (SIX HUNDRED AND FIFTY RAND) per square metre (VAT excluded).

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Senior Manager: Expenditure and Assets - Mr J Vorster

“The full extent of Erf 241 Hermanus, adjacent to Erf 100 Hermanus, is currently reflected as Public Place (Open Space 2) in the fixed asset register for PPE: Land at a carrying value of R4’892’407-40 as at 30 June 2023. Once the proposed alienation of the ±199m² has been concluded, it will have to be written out of the fixed asset register at the applicable selling price in order to account for the actual gain / (loss) on the disposal of a portion of an asset.

There is no objection against the alienation.”

Senior Town Planner - Ms H van der Stoep

“The alienation of the relevant portion of the road reserve is supported. Also approach the adjacent neighbour to purchase the portion of the road reserve

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in front of its property to ensure that the road reserve runs evenly.

The support of the application is subject thereto that the Applicants, at own cost, appoint an independent town planner to formulate the necessary town planning application (road closure, rezoning, subdivision, and consolidation) to be submitted to this Department.”

Manager: Building Control - Mr L Coetzee

“No objection: a building plan application is required for the boundary wall and proposed extension to the dwelling house. This application must comply with all applicable law.”

Manager: Engineering Services - Mr R Andrew

“The corner splay portion of the application is not supported:

- a) It contains stormwater infrastructure.*
- b) The tree on the street corner is already hampering visibility. Reduction to the area or angle would just make it worse.”*

The Property Administration Department further enquired from the Engineering Services Department whether there are any other alternatives in which the stormwater infrastructure could be preserved if still approved? Also, whether a condition that any fence may only be a clear view type fence and the response of Engineering Services was as follows:

“The stormwater infrastructure could be preserved by a servitude. The clear view fence option is not acceptable. The motorist still needs to look through the fence. The standards or poles may also obscure the motorist view.

Acceptable alternatives would be to:

- a) Not to allow any fencing or walls or*
- b) Amend the area to exclude the corner splay.”*

Property Administration Department comment: The proposed area was amended to exclude the corner splay as indicated in Annexure “B”. This has the effect that no services will be affected and vehicular visibility will not be obscured.

Senior Superintendent (Projects): Electrical Services - Mr J Klem

“The kiosk and the post stand 2 metres from the edge of the road and the cable also lies between 1.5 and 2 metres from the road around the corner. There is not any service from us in the area in your drawing with yellow. I am simply attaching a drawing to show how far the real services are from the yeast drawing (see Annexure “C”).”

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10. Annexures

- Annexure A1 Locality Map 1
- Annexure A2: Locality Map 2
- Annexure B: Locality Map for Proposed Alternative Area
- Annexure C: Drawing – location of electrical services

RECOMMENDATION TO THE COUNCIL:

1. that the direct alienation of a portion of Remainder Erf 241 Hermanus ($\pm 170\text{m}^2$ in extent) adjacent to Erf 100, situated at 54 Rocklands Street, Hermanus, to MJ & K Smuts, the owners of the adjoining property, for gardening purposes and the erection of a boundary fence or wall, at an amount of R650.00/m² (SIX HUNDRED AND FIFTY RAND) per square metre (VAT excluded) be **approved in principle**;
2. that it be noted that the direct alienation is possible as the said portion of Remainder Erf 241 Hermanus can be classified as a non-viable property;
3. that, subject to the approval in 1 above, a public participation process be followed at the cost of the Applicants/purchasers;
4. that it be noted that a condition for the alienation will be that the said portion of Remainder Erf 241 Hermanus must be consolidated with the adjoining property of Applicants/purchasers, being Erf 100 Hermanus, simultaneous with the registration of the transfer;
6. 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 gardening purposes and no structures, excluding a boundary fence or wall, may be erected thereon;
7. that the alienation of said portion of Remainder Erf 241 Hermanus be subject to a suspensive condition that the Applicant/purchasers obtains approval for all the required land use rights, which may include, the partial closure of a road, rezoning, subdivision and consolidation;
8. that all the costs pertaining to the transaction, e.g. application costs, valuation costs, closure, rezoning, subdivision and consolidation, advertisement and the related costs, etc. be paid by the Applicants/purchasers; and
9. 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).

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RESPONSIBLE OFFICIAL:	W MURTZ
TARGET DATE FOR IMPLEMENTATION:	15 MARCH 2024
TARGET DATE TO INFORM APPLICANT:	29 MARCH 2024
TARGET DATE TO INFORM OBJECTOR:	N/A

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**A Le Roux
28 November 2023**

Manager: Property Administration

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**THIS MATTER SERVED BEFORE THE INVESTMENT & INFRASTRUCTURE
PORTFOLIO COMMITTEE ON 7 FEBRUARY 2024, WHICH COMMITTEE
RECOMMENDED AS FOLLOWS:**

RECOMMENDATION TO THE COUNCIL:

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3. that, subject to the approval in 1 above, a public participation process be followed at the cost of the Applicants/purchasers;
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8. that all the costs pertaining to the transaction, e.g. application costs, valuation costs, closure, rezoning, subdivision and consolidation, advertisement and the related costs, etc. be paid by the Applicants/purchasers; and

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ANNEXURE C

