

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

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15.

**IN PRINCIPLE APPROVAL FOR THE DIRECT ALIENATION OF A PORTION OF  
ERF 379 HERMANUS, ADJACENT TO ERF 6137 HERMANUS, SITUATED ON THE  
CORNER OF DE GOEDE STREET AND WESTCLIFF ROAD (ROAD RESERVE),  
HERMANUS, TO MS MAGDALENA OTTO**

**M Erasmus  
21 November 2023**

**Acting Manager: Property Administration**

**(028) 316 - 5602**

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**1. Executive Summary**

To obtain in principle approval for the direct alienation of a portion of Erf 379 Hermanus ( $\pm 88\text{m}^2$  in extent) adjacent to Erf 6137 Hermanus, situated on the corner of De Goede Street and Westcliff Road, Hermanus, to the owner of the adjoining property, Erf 6137 Hermanus, being Ms Magdalena Otto, to retain the existing partial enclosure. See the locality maps attached hereto marked Annexure "A1" And "A2".

**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  
Creation and maintenance of a safe and healthy environment

**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.

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

---

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

**Background/Discussion**

An application was received from Ms Magdalena Otto, hereafter referred to as “the Applicant”, to purchase a portion of Erf 379 Hermanus ( $\pm 88\text{m}^2$  in extent), adjacent to Erf 6137 Hermanus, situated on the corner of De Goede Street and Westcliff Road, Hermanus, hereafter referred to as “the Property”.

The Applicant submitted her first application in 2020 to purchase the whole of Erf 379 Hermanus ( $314\text{m}^2$  in extent), for gardening purposes and to erect a boundary wall/fence. The application was circulated to internal departments for comments and was subsequently not supported mainly due to the municipal services on the property and comments from other departments.

The Applicant was informed in writing that the application was not supported, whereafter she submitted an amended application to purchase only a portion ( $\pm 294,5\text{m}^2$  in extent) of Erf 379 Hermanus.

The second application was circulated to internal departments for comments, and the application was again not supported. The application was submitted to Council to serve at a Council meeting held on 28 October 2021 for further discussion and was not approved. Please see copy of minutes of the Council Meeting attached hereto as “Annexure B”. The Applicant was informed of the Council’s decision that the application was not approved.

A new amended application to purchase a smaller portion of Erf 379 Hermanus ( $\pm 24\text{m}^2$  in extent) was received from the Applicant for safety and security purposes. The Applicant mentioned that the main reason for the amended application was that she had multiple incidents of theft at her property which threatened her safety and that of her family. The Applicant wants to erect a gate with fencing on the Property, to secure parked vehicles and for safety when entering or exiting her motor vehicle from the garage. The Applicant explained that should the fence be erected on the existing property boundary there will not be enough space to park a vehicle in front of the garage as the space between the garage and the property boundary is not sufficient for a car should a fence be erected on the boundary. Therefore, the request is to purchase the Property to have the fence erected on the boundary of the proposed newly consolidated property, which will allow enough space to park a vehicle inside the fenced property.

The new application was circulated to internal departments with no objection, although taking into consideration the comments from Town Planning, the Manager: Property Administration, scheduled a meeting with

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

---

the Applicant to discuss the comments received. The comments received from Town Planning were as follow:

*“This Department’s comment is purely from a town planning point of view and should thus be dissociated from the decision of Council to refuse the previous application of the landowner.*

*The proposed 24m<sup>2</sup> portion of land is zoned Transport Zone 2: Road and Parking. Should Council decide to alienate the portion of road, a town planning application will be triggered at the expense of the Applicant (cost as per approved tariffs). The application entails the closure of the portion of road, subdivision, rezoning, and the eventual consolidation thereof with the Applicant’s property.*

*General note: The Applicant’s reasons to purchase the portion of the road is questionable. There is no evidence provided of “...multiple incidents of theft at the property threatening their safety.” and “The additional land will allow for a gate with fencing behind parked garages”. Therefore, it is the opinion that there is ample space to affix a sliding gate and fence that will allow for ample for vehicles to park in from the garages (a fence and a gate will also not be a deterrent for theft). The approval of the application will create a precedent for the adjacent property owner to also purchase a section of the road.”*

The meeting between the Manager: Property Administration and the Applicant was held on 19 April 2023 and the Applicant explained in detail regarding the space that is not sufficient for a parked vehicle on their own property as well as the attempted break-ins they have had in the past. They provided case numbers from SAPS in their new application regarding the attempted break-ins. Furthermore, the Applicant explained that the garage is not big enough for her to park in and unload her car, thus she must unload her car in front of the garage which is a safety risk for her and her daughters.

After the meeting the Applicant submitted a new application with a new proposed area to purchase which includes the area indicated in red on the locality map, marked Annexure “A1”. This was amended to create a smoother boundary line to the property as it is undesirable to have a property with a strange boundary line as it would have been if only the area indicated in blue on the map would have been purchased. The amendment is more acceptable to the Municipality.

One of the conditions to the alienation will be that no structures of any kind (excluding a boundary wall or fence) may be erected on the Property.

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

---

Subsequent costs

The Applicant will be liable for the costs of the transaction which include, but not limited to, the application costs, valuation costs, closure of public place (road), 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.

**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 Applicant already paid the application fee. The transaction will only proceed once the Applicant accepted the conditions imposed by Council, which will include the acceptance of the cost implications.

**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.”

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

---

The Property is a portion of 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 an 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 Property Valuations determined the market related value on 1 October 2023 at an amount of R750.00/m<sup>2</sup> (SEVEN 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. No community value is applicable to this transaction.
- (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 necessary, etc. The Municipality may, however, waive its right to claim the costs should it be to its advantage to bear the costs.”**

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

---

The Applicant will be liable for the costs of the transaction which will include, but not be limited to, the application fee, valuation cost, removal of restrictive conditions (if any), closure of public place (road), rezoning, subdivision and consolidation, Section 14 advertisement and transfer costs.

**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 Applicant will be liable for all cost in this regard should it be necessary. From the comments received, no services will be affected.

**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 exist 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. The condition that no structures (excluding a boundary wall/fence) may be erected on the Property will be registered against the title deed of the Property.

**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.

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

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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 applicant 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 Applicant be approved in principle.

Furthermore, the Applicant will be liable for all cost involved to affect transfer of the Property in the Deeds Office. Subsequently the costs will entail, amongst others, the application cost, valuation cost, closure of public place (road), rezoning, subdivision and consolidation, Section 14 advertisement, and the transfer costs.

**7. Financial Implications**

The Municipality stands to gain a market related purchase price of R750.00/m<sup>2</sup> (SEVEN 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 379 Hermanus is currently reflected as a street corner (public road) in the fixed asset register for PPE: Land at a carrying value of R350’00-00 as at 30 June 2023. Once the proposed transfer of the portion 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.*

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

---

*There is no objection against the alienation.”*

**Senior Manager: Hermanus Administration - Mr A Wyngaard**

*“The Office of the Senior Manager: Hermanus Administration has no objection.”*

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

*“No objection. Any structure (wall/gate/fence) on proposed additional area requires a building plan application that must comply with all applicable law.”*

**Town Planner - Mr H Boshoff**

*“This Department’s comment is purely from a town planning point of view and should thus be dissociated from the decision of Council to refuse the previous application of the landowner. The proposed 24m<sup>2</sup> portion of land and the proposed additional portion of Erf 379, Hermanus is zoned Transport Zone 2: Road and Parking. Should Council decide to alienate the portion of road, a town planning application will be triggered at the expense of the applicant (cost as per approved tariffs). The application entails the closure of the portion of road, subdivision, rezoning and the eventual consolidation thereof with the applicant’s property”*

**Senior Manager: Operational Services - Mr T Marx**

*“The Department: Operational Services, Hermanus do not have any objection with regards to this application.”*

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

*“If Town Planning still earmarks this section of roadway to be broadened, I will have to remain on my point that there would then be no room for pedestrians. Therefore, do not support this application.”*

**Manager: Engineering Services - Mr R Andrew**

*“No objection.”*

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

*“The Electrical Department does not have any objections towards the sale of the two small pieces, since there are no electrical cables on it, and it will not be needed for services in the future.”*

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

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**10. Annexures**

Annexure A1 & A2:	Locality Maps
Annexure B:	Copy of the minutes of the Council Meeting dated 28 October 2021

**RECOMMENDATION TO THE COUNCIL:**

1. that the direct alienation of a portion of Erf 379 Hermanus (adjacent to Erf 6137 Hermanus) situated on the corner of De Goede Street and Westcliff Road, Hermanus ( $\pm 88\text{m}^2$  in extent), to the owner of the adjoining Erf 6137 Hermanus, Ms Magdalena Otto, at an amount of R750.00/m<sup>2</sup> (SEVEN HUNDRED AND FIFTY RAND PER SQUARE METRE) (VAT excluded), for the purpose of a boundary wall/fence, **be approved in principle**;
2. that it be noted that the direct alienation is possible as the said portion of Erf 379 Hermanus can be classified as a non-viable property;
3. that it be noted that a condition for the alienation will be that the said portion of Erf 379 Hermanus must be consolidated with the adjoining property of Ms Magdalena Otto, being Erf 6137 Hermanus;
4. that no structures of any kind (excluding a boundary wall or fence) may be erected on the said portion of Erf 379 Hermanus, which condition must be registered against the title deed of the consolidated property;
5. that the alienation of said portion of Erf 379 Hermanus be subject to a suspensive condition that the applicant/purchaser obtains approval for all the required land use rights, which include, the closure of public place (road), rezoning, subdivision, and consolidation;
6. that all the costs pertaining to the transaction, e.g., application costs, valuation cost, closure of public open space, rezoning, subdivision and consolidation, advertisement, and the related costs, etc. be paid by the Applicant/purchaser, Ms Magdalena Otto; and
7. 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).

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

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<b>RESPONSIBLE OFFICIAL:</b>	<b>M BEKKER</b>
<b>TARGET DATE FOR IMPLEMENTATION:</b>	<b>13 MARCH 2024</b>
<b>TARGET DATE TO INFORM APPLICANT:</b>	<b>13 MARCH 2024</b>
<b>TARGET DATE TO INFORM OBJECTOR:</b>	<b>N/A</b>

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

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15.

**IN PRINCIPLE APPROVAL FOR THE DIRECT ALIENATION OF A PORTION OF ERF 379 HERMANUS, ADJACENT TO ERF 6137 HERMANUS, SITUATED ON THE CORNER OF DE GOEDE STREET AND WESTCLIFF ROAD (ROAD RESERVE), HERMANUS, TO MS MAGDALENA OTTO**

**M Erasmus  
21 November 2023**

**Acting Manager: Property Administration**

**(028) 316 - 5602**

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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:**

1. that the direct alienation of a portion of Erf 379 Hermanus (adjacent to Erf 6137 Hermanus) situated on the corner of De Goede Street and Westcliff Road, Hermanus ( $\pm 88\text{m}^2$  in extent), to the owner of the adjoining Erf 6137 Hermanus, Ms Magdalena Otto, at an amount of R750.00/m<sup>2</sup> (SEVEN HUNDRED AND FIFTY RAND PER SQUARE METRE) (VAT excluded), for the purpose of a boundary wall/fence, **be approved in principle**;
2. that it be noted that the direct alienation is possible as the said portion of Erf 379 Hermanus can be classified as a non-viable property;
3. that it be noted that a condition for the alienation will be that the said portion of Erf 379 Hermanus must be consolidated with the adjoining property of Ms Magdalena Otto, being Erf 6137 Hermanus;
4. that no structures of any kind (excluding a boundary wall or fence) may be erected on the said portion of Erf 379 Hermanus, which condition must be registered against the title deed of the consolidated property;
5. that the alienation of said portion of Erf 379 Hermanus be subject to a suspensive condition that the applicant/purchaser obtains approval for all the required land use rights, which include, the closure of public place (road), rezoning, subdivision, and consolidation;
6. that all the costs pertaining to the transaction, e.g., application costs, valuation cost, closure of public open space, rezoning, subdivision and consolidation, advertisement, and the related costs, etc. be paid by the Applicant/purchaser, Ms Magdalena Otto; and

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

---

7. 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).

<b>RESPONSIBLE OFFICIAL:</b>	<b>M BEKKER</b>
<b>TARGET DATE FOR IMPLEMENTATION:</b>	<b>13 MARCH 2024</b>
<b>TARGET DATE TO INFORM APPLICANT:</b>	<b>13 MARCH 2024</b>
<b>TARGET DATE TO INFORM OBJECTOR:</b>	<b>N/A</b>



Original proposed purchase area

Proposed additional purchase area



## 5.13

**APPLICATION TO PURCHASE: A PORTION OF ERF 379 (A PORTION OF ERF 370) HERMANUS (DE GOEDE STREET, HERMANUS), ADJACENT TO ERF 6137 HERMANUS (18 WESTCLIFF ROAD, HERMANUS) – MG OTTO**

**(ITEM 16, PAGE 360 : INFRASTRUCTURE & PLANNING PORTFOLIO - MAYORAL COMMITTEE MEETING : 28 OCTOBER 2021)**

**RESOLVED (SUPPORTED BY 25 COUNCILLORS):**

that the direct alienation of a portion of Erf 379 (a portion of Erf 370) Hermanus ( $\pm 294,5\text{m}^2$  in extent), adjacent to Erf 6137 Hermanus, to the owner of the adjoining Erf 6137 Hermanus, MG Otto, **not be approved** as the property must be reserved for current line of sight as well as future road widening.

**RESPONSIBLE OFFICIAL:****R OCTOBER****TARGET DATE FOR IMPLEMENTATION:****30 NOVEMBER 2021****TARGET DATE TO INFORM APPLICANT:****15 NOVEMBER 2021****TARGET DATE TO INFORM OBJECTOR:****N/A**