

**AGENDA of the  
Portfolio Committee : Planning & Development  
18 August 2026  
(Also the agenda for the Mayoral Committee Meeting : 25 August 2026)**

---

**7.**

**REMOVAL OF TITLE DEED CONDITIONS: ERF 1518 HAWSTON SITUATED AT GEORGE VILJOEN STREET, HAWSTON**

**A Le Roux  
13 May 2026**

**Divisional Manager: Property Management**

**(028) 316-5623**

---

**1. Executive Summary**

To recommend that Council:

- (a) not exercise a right of pre-emption in respect of Erf 1518 Hawston, 555m<sup>2</sup> in extent, (hereinafter referred to as the "Property"); and
- (b) consents to the removal of title deed restrictions B4 & B5 as contained in title deed number T31739/2017,

allowing Mr FAK & Ms AA Africa (hereinafter referred to as the "Applicants") to sell the Property in due course.

The locality of the Property is indicated on a locality map attached marked Annexure A

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

Planning & Development  
Property Management

**3. Compliance with Strategic Priority**

Provision of democratic, accountable and ethical governance

**4. Delegated Authority**

None

**5. Legal Requirements**

- Municipal Finance Management Act (Act No. 56 of 2003)

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

**Background**

The following conditions were imposed by the Overstrand Municipality when the Property was sold to the Applicants in January 2017 for an amount of R22 000.00 (TWENTY-TWO THOUSAND RAND ONLY) (VAT excluded),

**AGENDA of the  
Portfolio Committee : Planning & Development  
18 August 2026  
(Also the agenda for the Mayoral Committee Meeting : 25 August 2026)**

---

which conditions were registered against the title deed, T31739/2017 (the "Title Deed"):

**B. ONDERHEWIG** aan die volgende spesiale voorwaardes opgelê deur die Overstrand Munisipaliteit met die verkoop van die herinvermelde eiendom, naamlik:

4. *Should the PURCHASER not erect a building with a minimum value of at least **R150 000,00 (Hundred and Fifty Thousand Rand Only)** on the property within a period of 2 years from date of registration of the transfer of the property into the name of the **PURCHASER**, ownership of the property shall revert back to the **SELLER** and shall the **PURCHASER**, or its successors in title:*
  - 4.1 *be compelled to sign the transfer documents within 7 (SEVEN) days within receiving a notice to that effect, failing which the duly authorised agent of the **SELLER** is hereby appointed by the **PURCHASER** to sin such documentation, and*
  - 4.2 *be responsible for all transfer costs and statutory duties payable in connection with the retransfer of the property to the **SELLER** and/or any third party with regards to the purchase or retransfer of the property, and*
  - 4.3 *shall the **SELLER** refund the total purchase price mentioned in paragraph 2 hereof free of interest on the date of registration of transfer less any damages or loss incurred by the **SELLER** as a result of the omission of this clause.*
5. *The **PURCHASER** shall not be entitled to sell or transfer the property hereby sold, or any portion thereof before a building with a minimum value of at least **R150 000,00 (Hundred and Fifty Thousand Rand Alone)** has been erected on the property without the prior written consent of the **SELLER**, which consent may in the discretion of the **SELLER** be withheld without having to furnish reasons for its decision or alternatively which consent may be granted subject to such terms and conditions as the **SELLER** may in its discretion decide to impose."*

### **Discussion**

As mentioned, it is a title deed condition that the Property may not be alienated if buildings to the value of R150,000.00 have not been erected unless it is first offered to the Overstrand Municipality ("right of pre-emption"). Should the Municipality not be interested in acquiring the Property, the Applicants,

**AGENDA of the  
Portfolio Committee : Planning & Development  
18 August 2026  
(Also the agenda for the Mayoral Committee Meeting : 25 August 2026)**

---

hereinafter referred to as “the Applicant”, will be entitled to sell the Property to a third-party.

Motivation received from the Applicants’ attorney of record

- “6. *There are various conditions in the Title Deed as to the usage of the property and timeframes within which our client had to improve the property. The last mentioned conditions are framed as a reversionary clause in terms of which the property had to be transferred back to the Municipality in the event that our client do not comply therewith.*
- 6.1 *We pause to mention that the reversionary clause is tantamount to a debt being owed by my client to the Overstrand Municipality. See Makate v Vodacom Ltd [2016] ZACC 13; 2016(4) SA 121 CC in this regard.*
- 6.2 *The debt contained in these clauses, have prescribed, and as such are in violation of current legal principles. See eThekweni Municipality v Mounthaven (Pty) Limited (2018) ZACC 43 at par 8.*
- 6.3 *In light of the aforesaid, we will not deal with the rights and/or prohibitions created by the reversionary clauses and the proper procedure to have same removed, but rather focus on the remedies to our client through which they may obtain their desired purpose being the legitimate sale of the property.*
7. *In order to sell the aforesaid property, our client could either:*
- 7.1 *Follow the process to have the offending clauses removed from the Title Deed; or*
- 7.2 *Obtain the permission of the Overstrand Municipality to sell the property.”*

With reference to the Constitutional Court judgement of eThekweni Municipality v Mounthaven (Pty) Limited (2018) ZACC 43 where the discussed clauses are very similar to which can be found in Clause B4 as contained in Title Deed Nr. T31739/2017. In this court case, the Municipality tried to enforce the following conditions referred to as clause C:

- “(1) *The purchaser shall erect, or cause to be erected on the property, buildings to the value of not less than ONE HUNDRED THOUSAND RAND (R100 000.00) and failing the erection of buildings to that value within two (2) years from date of sale, then, for the purpose of levying the general rate and sewer rate payable to the Verulam Town Council by the Purchaser or his successors in title, there shall be deemed to be buildings to such required value on the property and all valuation and rating provisions of section 157 of Ordinance 25 of 1974 or any amendment thereof shall apply to the property and be binding upon the Purchaser or his successors in title.*

**AGENDA of the  
Portfolio Committee : Planning & Development  
18 August 2026  
(Also the agenda for the Mayoral Committee Meeting : 25 August 2026)**

---

- (2) *If at the expiry of a period of three (3) years from the date of sale the Purchaser has failed to complete buildings to the value of not less than ONE HUNDRED THOUSAND RAND (R100 000.00) on the property, ownership of the property shall revert to the Seller which shall be entitled to demand re-transfer thereof to it from the Purchaser who shall be obliged to effect transfer thereof to the Seller against payment by the Seller to the Purchaser of all payments made on account of the purchase price less any costs incurred by the Seller in obtaining re-transfer of the property into its name, including costs as between attorney and client, all costs of transfer, transfer duty, stamp duty and the like.*
- (3) *The Seller shall have a pre-emptive right to re-purchase the property at the price paid by the Purchaser, if the Purchaser desires to sell the property within five (5) years from the date of sale, provided that this condition shall not apply where buildings to the value of not less than ONE HUNDRED THOUSAND RAND (R100 000.00) shall have been erected on the Lot within three (3) years from the date of sale.”*

The Constitutional Court held that the reversionary right contained in clause C2 of the Mounthaven matter, constitutes a debt and therefore does fall under the scope of the Prescription Act 68 of 1969, which means that this debt had prescribed three years after the purchase of the property. The court further held that the reversionary right does not constitute a real right, but rather a personal right and that the registration thereof in the Title Deed does not convert the ordinary personal right into a real right.

From the above, it is clear, that clause B4 as contained in the Title Deed of the Applicants thus also constitutes a debt in terms of the Prescription Act and has therefore prescribed within three years after the purchase or registration of the property into the name of our client, to wit 2017. This means that Overstrand Municipality cannot claim that the Property be transferred back to the Municipality, nor force the Applicants to develop the Property. If the said condition B4 has prescribed and is removed from the title deed, the effect will be that condition B5 will, but default, not be enforceable either.

Should the Municipality wish to exercise the pre-emptive right by means of a High Court judgement, the attorney will challenge the right on grounds of the above case law which is substantially similar to this matter.

Even if the Municipality could have been able to exercise the pre-emptive right without any challenges, provision will have to be made in the capital budget for the purchase price and costs. If the Municipality then decide to alienate the Property, a competitive bidding process will have to be followed. This competitive process will have additional costs involved, being a new valuation to be obtained as well as the tender advertisements to be placed. The Municipality did not budget for these additional costs.

**AGENDA of the  
Portfolio Committee : Planning & Development  
18 August 2026  
(Also the agenda for the Mayoral Committee Meeting : 25 August 2026)**

---

Thus, although the Applicants are only requesting that consent be given to them to sell the Property, there is no legitimate reason for the said clauses B4 and B5 to remain in the title deed of all subsequent transfers. It will remain unenforceable. The request from administration will be that the said clauses be removed.

### **Evaluation**

Evaluation in terms of the Administration of Immovable Property Policy of the Overstrand Municipality

**Paragraph 51:** *“The municipality may acquire by purchase immovable property within- or outside the municipal boundary provided it complies with the requirements of the MFMA and subject thereto that the cost of the purchase has been budgeted for and approved by Council.”*

There has not been budgeted for the acquisition of the Property, which will include but not be limited to the purchase price should the Municipality purchase the Property back. Furthermore, if the Municipality exercise the right, it will only be able to sell the Property by means of a competitive bidding process which incurs expenses (valuation must be done and advertisements must be placed). This report is not seeking Council's approval for acquiring the Property but rather requesting Council to not exercise the Municipality's right of pre-emption.

### **Conclusion**

Taking the above into legal challenge into consideration and further considering all the possible costs involved should the Municipality wish to try and exercise the pre-emptive right and the attorneys challenging the action, it is recommended that Council does not exercise its right of pre-emption and consent to the removal of title deed restrictions B4 and B5 as contained in Title Deed Number T31739/2017.

## **7. Financial Implications**

Should the Municipality not choose to exercise its pre-emptive right, the Municipality will not have to incur any costs for which it has not budgeted for.

## **8. Staff Implications**

None

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

None

**AGENDA of the  
Portfolio Committee : Planning & Development  
18 August 2026  
(Also the agenda for the Mayoral Committee Meeting : 25 August 2026)**

---

**10. Annexures**

Annexure A: Locality Map

**RECOMMENDATION TO THE COUNCIL:**

1. that the application for Council not to exercise the right of pre-emption as contained in Condition B4 of Deed of Transfer Title number T31739/2017 in respect of Erf 1515 Hawston, **be approved**; and
2. that the recommendation to Council to remove title deed conditions B4 and B5 as contained in title deed number T31739/2017, **be approved**.

**RESPONSIBLE OFFICIAL :**

**A LE ROUX**

**TARGET DATE FOR IMPLEMENTATION :**

**16 SEPTEMBER 2026**

**TARGET DATE TO INFORM APPLICANT :**

**16 SEPTEMBER 2026**

**TARGET DATE TO INFORM OBJECTOR :**

**N/A**

**AGENDA of the  
Portfolio Committee : Planning & Development  
18 August 2026  
(Also the Agenda for the Mayoral Committee Meeting : 25 August 2026)**

---

**7.**

**REMOVAL OF TITLE DEED CONDITIONS: ERF 1518 HAWSTON SITUATED AT GEORGE VILJOEN STREET, HAWSTON**

**A Le Roux  
13 May 2026**

**Divisional Manager: Property Management**

**(028) 316-5623**

---

**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON 18 AUGUST 2026, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:**

**RECOMMENDATION TO THE COUNCIL:**

1. that the application for Council not to exercise the right of pre-emption as contained in Condition B4 of Deed of Transfer Title number T31739/2017 in respect of Erf 1515 Hawston, **be approved**; and
2. that the recommendation to Council to remove title deed conditions B4 and B5 as contained in title deed number T31739/2017, **be approved**.

**RESPONSIBLE OFFICIAL :**

**A LE ROUX**

**TARGET DATE FOR IMPLEMENTATION :**

**16 SEPTEMBER 2026**

**TARGET DATE TO INFORM APPLICANT :**

**16 SEPTEMBER 2026**

**TARGET DATE TO INFORM OBJECTOR :**

**N/A**



