

**AGENDA of the  
Portfolio Committee : Infrastructure & Planning  
20 February 2018  
(Also the agenda for the Mayoral Committee Meeting : 28 February 2018)**

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**5.  
HERMANUS: TRANSFER OF A PORTION OF ERF 1253 EASTCLIFF, HERMANUS  
(±361M<sup>2</sup> IN EXTENT) TO MARTIN GERHARDUS DELPORT FOR GARDENING  
PURPOSES**

**7/2/3/2**

**W Murtz**

**(028) 316 - 3724**

**Hermanus Administration**

**11 December 2017**

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**1. Executive Summary**

To obtain final approval for the transfer of a portion of Erf 1253 Eastcliff, Hermanus (adjacent to Erf 11094 Hermanus), ±361m<sup>2</sup> in extent, to Mr Martin Gerhardus Delport, for gardening purposes.

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

Infrastructure & Planning  
Property Administration

**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**

- Administration of Immovable Property Policy of the Overstrand Municipality, as amended
- Local Government: Municipal Finance Management Act (No 56 of 2003) ("MFMA")
- Municipal Asset Transfer Regulations (R. 878 of 2008)

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

**Background/Discussion**

Council approved in principle the direct alienation of a portion of Erf 1253 Eastcliff, Hermanus (adjacent to Erf 11094 Hermanus), ±361m<sup>2</sup> in extent, to

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Mr Martin Gerhardus Delport for gardening purposes at an amount of R141,41/m<sup>2</sup> (ONE HUNDRED AND FORTY ONE RAND AND FORTY ONE CENTS PER SQUARE METRE) (VAT excluded) on 30 March 2016 subject to a public participation process. The public participation process was followed as discussed in more detail below. Mr Martin Gerhardus Delport is the owner of the adjacent Erf 11094 Hermanus.

**Evaluation**

A. Administration of Immovable Property Policy of the Overstrand Municipality

The following conditions of said policy apply:

**Paragraph 9(1)(a): “The Municipality may transfer ownership or otherwise dispose of a non-exempted immovable property only after the municipal council, 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 subject property is not needed for the provision of the minimum level of basic municipal services. Council, when the in principle approval was obtained, confirmed that the subject property is not needed to provide 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, 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:”**

Boland Valuers determined the market related value of the portion of Erf 1253 Eastcliff, Hermanus in November 2013 at an amount of R141.41/m<sup>2</sup> (ONE HUNDRED AND FORTY ONE RAND AND FORTY ONE CENTS PER SQUARE METRE) (VAT excluded).

**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.”**

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The purchaser is liable for the cost of the advertisement as well as all the costs involved with the registration of the transfer in the Deeds office. The purchaser will also be liable for the cost relating to the transaction, including but not limited to the subdivision, consolidation, rezoning, water- and sewerage connections, etc.

**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 inserted 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 clause to this effect will be inserted in the Deed of Sale.

**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 inserted in the Deed of Sale.

**B. Advertisement/Notification**

An advertisement for the transfer of a portion of Erf 1253 Eastcliff, Hermanus ( $\pm 361\text{m}^2$  in extent) was placed in The Village News on 31 October 2017 for a 30 (THIRTY) day objection/comment period.

**The following objections/comments were received:**

One objection was received from Mr RA and Ms E Ketteringham whereby the following points were listed:

1. The Overstrand Municipality would find it difficult to justify their refusal to sell public open space. Should the sale be approved by the Municipality and the owners of property on the north western side of Linaria Road submit an application to purchase the public open space between their properties and the Main Road the Municipality will have no justification to refuse their request.

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2. The property is being sold at a low price of R51,049.00 which is R141.41/m<sup>2</sup> at this rate a ±800m<sup>2</sup> in Eastcliff would be valued at R113,128.00. If this municipal portion of property is consolidated with Mr Delport's adjacent property this will increase the value per m<sup>2</sup> of Mr Delport's property. If the Municipality approves the sale the price should at least be in line with the going price per m<sup>2</sup> of erven in the vicinity.
3. Mr Delport's reason for purchasing the property is for gardening purposes however Mr Delport has in the recent past overstepped the municipal building regulations during the construction of this house on the adjoining erf on the corner of Stemmet and Mitchell Streets. If Mr Delport has not complied with the regulations then it is reasonable to assume that he does not want the land for gardening but to provide parking space for visitors and family to his house and to increase the value of his existing property.
4. If Mr Delport or anyone else removes the indigenous trees growing on the property it will be a great pity.
5. Mr Barry van Vuuren's property is situated on Main Road, formally known as Braeside, and has a longer boundary with the portion of Erf 1253 than Mr Delport's property. Mr Barry van Vuuren applied, prior to Mr Delport's application, to purchase the same portion of property and this was not approved. It would be iniquitous if the Municipality decide to sell the property to Mr Delport if Mr Van Vuuren was not granted the opportunity to purchase it. Mr Van Vuuren has since maintained the property by keeping it tidy on his account. The suggestion is that the status quo be maintained as it costs the Municipality nothing except the interest on R51,049.00.
6. The suggestion is that the Municipality refrain from selling public open spaces as it further spoils the character of the town that was established in the 1950's and 60's.

**The following response comment was received from Mr Martin Gerhardus Delport on the above objection.**

Please take note that the objection from RA and E Ketteringham is not applicable to the piece of land in the proposed transfer as advertised. They are referring to the piece of land on the corner of Main and Stemmet streets - Al 6 points on their objection dated 29 November 2017 is therefore null and void.

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**Discussion of objection:**

It is recommended that the objection be dismissed for the following reasons:

1. Hermanus has many open spaces and each application is dealt with based on its own merit and whereby the applicable internal departments are requested to investigate property applications and to provide comments in order to make a more informed decision before a decision. This subject portion to be alienated has been enclosed for many years and therefore was not used as a public open space. As each application is investigated on its own merits, the Municipality will have the necessary justification to deny future applications to purchase pieces of public road / public open spaces.
2. The Municipality appointed an professional valuer to determine the market value of the said portion Erf 1253 Eastcliff, Hermanus ( $\pm 361\text{m}^2$  in extent) and the Valuer determined the value at a value of R141.41/m<sup>2</sup>. As this value was done on the current zoning, size and restricted use of the piece of property (i.e. public open space) it cannot be compared to the value of a property that is already zoned for residential purposes and which is classified as a viable property which can be developed on its own.
3. The property is non-viable which means it cannot be developed on its own or function as a separate entity and can therefore only become functional if alienated to an adjoining owner for usage in conjunction with the said owner's property. Any transgressions by Mr Delport in the use of this enclosed portion of property was addressed and rectified. The title deed will contain a restrictive condition that the subject portion of property may only be used for gardening purposes.
4. Mr Delport has indicated in his application that he does not want to remove any trees on the subject portion as it has sentimental value for him. However, if the registration is effected in the deeds office, the Municipality will not be able to restrict Mr Delport from removing trees on the consolidated property.
5. Mr van Vuuren's application was for another portion of Erf 1253 Hermanus adjacent to his property as well as Mr Delport's property. Such alienation would have been by means of a closed tender, which was not approved by Council. As the portion Mr Delport applied to purchase is enclosed with a wall, it cannot be made available to Mr van Vuuren to purchase. Mr Ketteringham is thus referring to the wrong portion of Erf 1253 Hermanus. Mr van

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Vuuren has however applied for an encroachment agreement for the portion of property Mr Ketteringham is referring to.

6. As mentioned above, this portion of public open space is already enclosed and not open to the public and therefore the sale will not have an effect on the character of the town.

### **Conclusion**

It is recommended that the transfer of a portion of Erf 1253 Eastcliff, Hermanus ( $\pm 361\text{m}^2$  in extent) to Mr Martin Gerhardus Delport for the amount of R141.41/m<sup>2</sup> (ONE HUNDRED AND FORTY ONE RAND AND FORTY ONE CENTS PER SQUARE METRE) (VAT excluded). for gardening purposes be approved.

### **7. Financial Implications**

The Municipality stands to gain an income of R141.41/m<sup>2</sup> (ONE HUNDRED AND FORTY ONE RAND AND FORTY ONE CENTS PER SQUARE METRE) (VAT excluded). for the sale of the property.

### **8. Staff Implications**

None

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

#### **Senior Manager: Expenditure and Assets, Mr. J Vorster - (028) 313 8046**

The full extent of Erf 1253 Eastcliff, Hermanus is currently reflected in the Fixed Asset Register for Property, Plant and Equipment: Land with a carrying value of R18'000'000. The disposal of the portion adjacent to Erf 11094 will have to be accounted for at the selling price in order to adjust the carrying value of the remaining portion of Erf 1253 in the Fixed Asset Register.

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

### **10. Annexures**

Annexure A: Locality Plan

### **RECOMMENDATION TO THE COUNCIL:**

1. that the objection submitted by Mr RA and Ms E Ketteringham **be dismissed** for the reasons contained in the report;

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2. that the transfer of a portion of Erf 1253 Eastcliff, Hermanus ( $\pm 361\text{m}^2$  in extent) to Mr Martin Gerhardus Delport for the amount of R141.41/m<sup>2</sup> (ONE HUNDRED AND FORTY ONE RAND AND FORTY ONE CENTS PER SQUARE METRE) (VAT excluded) for gardening purposes, **be approved**;
3. that the subject portion of Erf 1253 Eastcliff, Hermanus, be consolidated with the adjoining property of the purchaser, Erf 11094 Hermanus;
4. that the transfer of a portion of Erf 1253 Eastcliff, Hermanus be subject to obtaining the necessary subdivision, closure, rezoning and consolidation approvals;
5. that the costs pertaining to the transaction, e.g. advertisement, subdivision, consolidation, closure, rezoning, registration of transfer in the Deed Office, water and sewer connections, etc, excluding the valuation costs, be paid by Mr Martin Gerhardus Delport; and
6. that it be noted that the municipal property envisaged to be transferred is not required for the provision of the minimum level 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).

**RESPONSIBLE OFFICIAL :**

**W MURTZ**

**TARGET DATE FOR IMPLEMENTATION:**

**26 APRIL 2018**

**TARGET DATE TO INFORM APPLICANT:**

**28 MARCH 2018**

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**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON  
20 FEBRUARY 2018, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:**

**RECOMMENDATION TO THE COUNCIL:**

1. that the item **be referred back** so that all comments received can be included in the item;
2. that the calculations of how the price of land was determined, **be included** in the item; and
3. that the item **be submitted** during the next cycle.

**RESPONSIBLE OFFICIAL :**

**W MURTZ**

**TARGET DATE FOR IMPLEMENTATION:**

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