

**AGENDA of the
Portfolio Committee: Infrastructure & Planning
17 March 2020
(Also the agenda for the Council Meeting: 25 March 2020)**

3.

**IN PRINCIPLE APPROVAL FOR THE DIRECT ALIENATION OF A PORTION OF
ERF 6804 HERMANUS ADJACENT TO ERF 6515 HERMANUS SITUATED AT 72
KATJIEPIERING STREET, MOUNT PLEASANT TO DJ & MG COERT**

7/2/3/2

A le Roux

Manager : Property Administration

3 February 2020

(028) 316 - 3724

1. Executive Summary

To obtain approval in principle for the direct alienation of a portion of Erf 6804 ($\pm 180\text{m}^2$ in extent) Hermanus adjacent to Erf 6515 Hermanus, situated at 72 Katjeepering Street, Mount Pleasant, to the owner of Erf 6515 Hermanus, being DJ & MG Coert. See the locality plan attached hereto marked Annexure "A".

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
Promotion of tourism, economic and social development

4. Delegated Authority

None

5. Legal Requirements

- Local Government: Municipal Finance 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

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6. Background/Discussion/Evaluation/Conclusion

Background/Discussion

An application was received from DJ & MG Coert, hereafter referred to as “the applicant” for the purchase of a portion of Erf 6804 Hermanus ($\pm 180\text{m}^2$ in extent) adjacent to Erf 6515 Hermanus situated in upper Mount Pleasant.

The applicant is the owner of Erf 6515 Hermanus. According to the applicant the above mentioned municipal property is currently being misused for criminal activities such as alcohol and drug abuse. The applicant wishes to consolidate the said portion of municipal property with their own and enclose it with a boundary wall. The applicant is of the opinion that the shape and location of the property makes it difficult to fence the property and to have proper access to their property. If approved, the applicant will use said portion of municipal property for parking and security purposes with the hope that it will ensure security at their property. The size of the portion of municipal property in question is $\pm 180\text{m}^2$ in extent.

Due to the locality, shape, intended use and size of the property applied for, 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.

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

Subsequent costs

The Applicant will be liable for the costs of the transaction which include, but not limited to, the application fee, valuation, subdivision and consolidation, closure of public road, rezoning of the property and transfer costs, as well as the required Section 14 advertisement in terms of the MFMA and the 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 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

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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.” The subject property can be classified as a non-viable immovable property due to the location, shape, size and restricted use thereof.

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 subject portion of municipal property is not needed for the provision of municipal services.
- (b) Boland Valuers determined the market related value in January 2020 at an amount of R172.00/m² (ONE HUNDRED AND SEVENTY TWO RAND) (PER SQUARE METRE) (VAT excluded). The valuation was done taking into consideration the size, shape, locality, zoning and proposed use of the property (restriction imposed).
- (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,

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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 applicant/purchaser will be liable for the costs of the transaction which will include, but not limited to, the application fee, valuation, closure of public road, rezoning 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/purchaser shall be liable for all cost 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 applicant will be liable for the costs of the Section 14 advertisement.

Conclusion

Taking the comments of the internal departments, as well as the above discussion into consideration, it is recommended that the direct alienation of a portion of Erf 6804 Hermanus, ±180m² in extent, adjacent to Erf 6515 Hermanus, to the owner of Erf 6515 Hermanus, DJ & MG Coert, be approved in principle.

Furthermore the applicant/purchaser will be liable for all cost involved to affect transfer of the property in the deeds office. Subsequently the costs will entail the application fee, valuation costs, closure of public 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 R172.00/m² (ONE HUNDRED AND SEVENTY TWO RAND PER SQUARE METRE) (VAT excluded).

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Acting Senior Manager: Operational Services Hermanus: Mr P Burger – (028) 313 8092

"The Department: Operational Services (Hermanus) has no objection to the application to purchase a portion of Erf 6804 adjacent to Erf 6515 Mount Pleasant as indicated in the application, subject to the following conditions:

1 That the applicant must comply with all statutory requirements that may

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- be applicable to the undertaking of the proposed development on Erf 6804 Mount Pleasant.*
2. *That the developer investigate and determine the limitations of the site in terms of sewer drainage, subject to the minimum requirements of SANS 10400 – P:2010: Drainage.*
 3. *That on-site parking facilities be provided as per the Planning Schedule, and to the satisfaction of the Directorate: Infrastructure and Planning.*
 4. *That any additional and / or extended vehicle entrances will be for the owners' cost.*
 5. *That, upgrading and/or development of the relevant sidewalks adjacent to the property be required as part of the development, application for such development be made to the office of the Senior Manager: Operational Services (Hermanus) for written approval.*
 6. *Water and road infrastructure is available in the vicinity of Erf 6804 Mount Pleasant.*
 7. *It is incumbent upon the applicant / developer to ensure that all operational requirements in terms of water, sewerage and stormwater provision to the property are met."*

Comments from Property Administration: The above conditions will be incorporated into the deed of sale as special conditions to the transaction.

Senior Manager: Engineering Services: Mr D Hendriks – (028) 313 5059

"Both applications are supported in principal."

The other application mentioned above is that of the owner of Erf 6516 Hermanus, which will be dealt with in a separate report.

Town Planner: Mr H Olivier – (028) 313 8900

"Note that the Environmental Section indicated that in terms of their records the edge of Fernkloof Nature Reserve borders Mountain Drive on the eastern side of the road, but they will have to still confirm the final position. Also please note that the Engineering Department must also still provide comments on the layout plan.

The layout will mean that an area of approximately 180 square meters could be consolidated with erf 6515, and an area of approximately 120 Square meters could be consolidated with erf 6516.

Note that a planning application will have to be required for the proposal which will include a closure of road, rezoning, subdivision and also consolidation."

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Comments from Property Administration: The edge/boundary of the Fernkloof Nature Reserve will not be affected by the transaction.

Manager: Biodiversity Conservation, Environment Section: Mr T Dry – (028) 316 3724

“The land to the west of the road has no conservation value. To my knowledge, the land to the Fernkloof Nature Reserve boundary only starts on the Eastern Edge of the road reserve.”

Manager: Building Control: Mr L Coetzee – (028) 313 8091

“The applicant must submit a building plan for approval to the building department if they get approval to purchase the land.”

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

“Erf 6804 is currently reflected in the Fixed Asset Register as “Road Reserve”, 800m² in extent and with a carrying value of R510'000 as at 30 June 2019. Upon disposal of the proposed ±180m² it will have to be recorded in the Fixed Asset Register as such in order to adjust both the extent and the carrying value of the remainder of Erf 6804.”

10. Annexures

Annexure A: Locality Map

Annexure B: Layout Plan

RECOMMENDATION TO THE COUNCIL:

1. that the direct alienation of a portion of Erf 6804 Hermanus (adjacent to Erf 6515 Hermanus) situated in Mount Pleasant, ±180m² in extent, to the owner of the adjoining Erf 6515 Hermanus, DJ & MG Coert, at an amount of R172.00/m² (ONE HUNDRED AND SEVENTY TWO 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 Erf 6804 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 applicant/purchaser;
4. that it be noted that a condition for the alienation will be that the said portion of Erf 6804 Hermanus must be consolidated with the adjoining property of DJ & MG Coert, being Erf 6515 Hermanus;

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5. that no structures of any kind (excluding a boundary wall or fence) may be erected on the said portion of Erf 6804 Hermanus, which condition must be registered against the title deed of the consolidated property;
6. that the alienation of said portion of Erf 6804 Hermanus be subject to a suspensive condition that the applicant/purchaser obtains approval for the closure of the public road, subdivision, consolidation and rezoning and all related town planning approvals applicable;
7. that all the costs pertaining to the transaction, e.g. application cost, valuation cost, subdivision and consolidation, closure of portion of public road, rezoning, transfer and related costs, advertisements, etc. be paid by the applicant/purchaser, DJ & MG Coert; and
8. 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).

RESPONSIBLE OFFICIAL:	W MURTZ
TARGET DATE FOR IMPLEMENTATION:	11 APRIL 2020
TARGET DATE TO INFORM APPLICANT:	30 APRIL 2020
TARGET DATE TO INFORM OBJECTOR:	N/A

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KATJIEPIERING STREET, MOUNT PLEASANT TO DJ & MG COERT**

7/2/3/2

A Le Roux

3 February 2020

Manager : Property Administration

(028) 316 - 3724

**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON
17 MARCH 2020, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:**

RECOMMENDATION TO THE COUNCIL:

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2. that it be noted that the direct alienation is possible as the said portion of Erf 6804 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 applicant/purchaser;
4. that it be noted that a condition for the alienation will be that the said portion of Erf 6804 Hermanus must be consolidated with the adjoining property of DJ & MG Coert, being Erf 6515 Hermanus;
5. that no structures of any kind (excluding a boundary wall or fence) may be erected on the said portion of Erf 6804 Hermanus, which condition must be registered against the title deed of the consolidated property;
6. that the alienation of said portion of Erf 6804 Hermanus be subject to a suspensive condition that the applicant/purchaser obtains approval for the closure of the public road, subdivision, consolidation and rezoning and all related town planning approvals applicable;
7. that all the costs pertaining to the transaction, e.g. application cost, valuation cost, subdivision and consolidation, closure of portion of public road, rezoning, transfer and related costs, advertisements, etc. be paid by the applicant/purchaser, DJ & MG Coert; and

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8. 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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