

10.

HERMANUS, RESCISSION OF COUNCIL RESOLUTION FOR THE TRANSFER OF THE REMAINDER OF ERF 2834 (EXCLUDING ERF 2836 AND INCLUDING ERF 2837), SANDBAAI, ±39,5ha IN EXTENT, FOR MIXED RESIDENTIAL DEVELOPMENT AND A RETIREMENT VILLAGE

7/2/3/2

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3 May 2016

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Hermanus Administration

1. Executive Summary

To obtain approval for the rescission of Council's resolution dated 3 December 2014 for the transfer of the Remainder of Erf 2834 (excluding Erf 2836 and including Erf 2837), Sandbaai, ±39,5ha in extent, for mixed residential development and a retirement village, to Edevco International (Pty) Ltd.

2. Service Delivery and Budget Implementation Plan - IGNITE

Infrastructure & Planning
Property Administration

3. Compliance with Strategic Priorities

Provision of democratic, accountable and ethical governance
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
- Municipal Asset Transfer Regulations (R. 878 of 2008)
- Overstrand Municipality Supply Chain Management Policy, as amended

6. Background/Discussion/Evaluation/Conclusion

Council Approval

Council at a meeting held on 3 December 2014 approved the transfer of the Remainder of Erf 2834 (excluding Erf 2836 and including Erf 2837), Sandbaai, ±39,5ha in extent, for mixed residential development and a retirement village, to Edevco International (Pty) Ltd and resolved as follows:

- “1. that the transfer of the Remainder of Erf 2834 (excluding Erf 2836 and including Erf 2837), Sandbaai, ±39,5ha in extent, for the development of mixed residential purposes and a retirement village to Edevco International (Pty) Ltd for the amount of R42,500,000.00 (Vat excluded), **be approved**;
2. that the Municipal Manager be authorised to sign all documents relating to the transfer of the property to Edevco International (Pty) Ltd;
3. that cognisance be taken of the fact that the subject portion of Municipal property 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, No 56 of 2003;
4. that Edevco International (Pty) Ltd be responsible for the costs pertaining to the advertisement of the transfer and the registration of the property in the Deeds Office; and
5. that Edevco International (Pty) Ltd enter into a Services Agreement with the Municipality for the provision of internal-, link- and bulk services in terms of the tender, applicable legislation and Council policies.”

Deed of sale

Subsequent to obtaining the abovementioned Council approval, the deed of sale was signed on the 10th and 11th of February 2015 respectively. Clause 2.2 of the said deed of sale stipulated as follows:

“The PURCHASER shall within 14 (FOURTEEN) days from date of request by the transferring attorneys deliver to the SELLER’s attorneys an irrevocable bank guarantee in favour of the SELLER for the full purchase price (including VAT) (total purchase price R48,450,000.00) and transferring costs, together in the total amount of R48,665,820.00 (FORTY EIGHT MILLION SIX HUNDRED AND SIXTY FIVE THOUSAND EIGHT HUNDRED AND TWENTY RAND).”

A formal request for the delivery of the guarantee was sent on 30 September 2014 to the Purchaser in accordance with the awarded and signed tender document. On 12 December 2014, before signature of the deed of sale, we informed the Purchaser in writing of our guarantee requirements in order for them to proceed with providing the required guarantee. On 12 March 2015 the Purchaser indicated in writing that they are in the process of obtaining the required guarantee as indicated in the deed of sale. The issuing of the guarantee was followed up on several occasions with no success. We were subsequently informed by Mr du Plessis on behalf of the Purchaser that no guarantee will be issued as the full purchase price will be paid to our attorneys of record in order to proceed with the transfer. Despite several requests for

progress as to the payment of the purchase price, no purchase price has been paid into our attorneys trust account in order for them to proceed with the transfer in the Deeds Office.

Clause 9 of the deed of sale stipulates as follows:

“In the event of either party failing to comply with any conditions of this agreement by the due date thereof (which shall include failure to sign the necessary documentation to effect transfer when requested to do so or failure to provide any information required by the transferring attorneys for the purpose of effecting transfer) the aggrieved party shall be entitled to give the defaulting party 10 (TEN) business days written notice to remedy the breach. In the event of the defaulter failing to comply with such demand to remedy the breach within the time given, the aggrieved party shall be entitled, without prejudice to any other rights to which it may, in law, be entitled:

9.1 Should the aggrieved party be the SELLER:

9.1.1 to cancel this agreement without prejudice to the SELLER’S other legal rights and remedies to claim such damages as it may have suffered, in which event the PURCHASER shall have no retention; or

9.1.2 to enforce specific performance of this agreement and furthermore to recover any damages and interest.”

Although the abovementioned clause refers to a period of 10 business days, the Municipality as a sign of goodwill gave the Purchaser an opportunity until the end of business day on 30 November 2015 to:

- (a) Pay the full purchase price into the trust account of our attorneys of record; or
- (b) Deliver an acceptable guarantee in favour of the Municipality for payment of the full purchase price.

On request of the Purchaser in November 2015 with supporting documentation, the Municipality gave a further extension to them to provide the necessary. As they were not able to provide the requested guarantee or payment of the full purchase price a final letter was sent on 10 March 2016 in terms of clause 9 of the deed of sale. Again, despite several promises, the Purchaser could not adhere to our request. Subsequently the deed of sale was cancelled.

After rescission of the mentioned Council resolution, the property will be disposed of again by means of a competitive process.

7. Financial Implications

None

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

None

10. Annexures

None

RECOMMENDATION TO THE COUNCIL

that Council's resolution dated 3 December 2014 for the transfer of the Remainder of Erf 2834 (excluding Erf 2836 and including Erf 2837), Sandbaai, ±39,5ha in extent, for mixed residential development and a retirement village, to Edevco International (Pty) Ltd at an amount of R42,500,000.00 (VAT excluded), **be rescinded.**

RESPONSIBLE OFFICIAL :**A KOTZE****TARGET DATE FOR IMPLEMENTATION :****8 JUNE 2016****TARGET DATE TO INFORM APPLICANT :****N/A****TARGET DATE TO INFORM OBJECTOR :****N/A**