

4.2**UNREGISTERED ERF 9901 AND ERF 3517, ELEVENTH STREET, VOËLKLIP, HERMANUS, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR CLOSURE OF PUBLIC OPEN PLACE, REZONING, DEPARTURE AND CONSOLIDATION: C HEYS ON BEHALF OF "DIE BERGRANT TRUST"**

Unregistered Erf 9901 &
Erf 3517 HVK (2909/2019)
P Roux
7 October 2019

(028) 313 8900

Hermanus Administration

1. EXECUTIVE SUMMARY

An application was received on 9 November 2018 from C Heys on behalf of "Die Bergrant Trust" on Erf 9901, Hermanus for the following:

- ❖ closure of unregistered Erf 9901, Hermanus in terms of Section 16(2)(n) of the Overstrand By-Law on Municipal Land Use Planning, 2015 (By-Law);
- ❖ rezoning of unregistered Erf 9901, Hermanus from Open Space Zone 2: Public Open Space to Residential Zone 1: Single Residential in terms of Section 16(2)(a) of the By-Law;
- ❖ consolidation of unregistered Erf 9901, Hermanus and Erf 3517, Hermanus in terms of Section 16(2)(e) of the By-Law, and
- ❖ relaxation of the 3m building line as decided by Council and to register a 12,58m servitude, instead of a 13,58m servitude, from the new southern boundary of the consolidated property.

A Locality Plan of the property concerned is attached as Annexure A. The Motivation Report from the applicant in support of the proposal is attached as Annexure B, while Consolidation Plan is attached as Annexure C.

2. DECISION AUTHORITY

Municipal Planning Tribunal

3. BACKGROUND / SITE HISTORY

Erf 9901, hereafter referred as the subject property, is situated in Voëlklip and is zoned Open Space Zone 2: Public Open Space. The subject property previously formed part of Twelve Street and in 2002 Council decided to close the section of abutting the following five (5) erven namely Erven 3503, 3504, 3505, 3506 and Erf 3517, Hermanus and that it be subdivided and sold to the property owners of the abutting erven. Three (3) of the adjacent property owners have opted in. The property owners of Erf 3517 has now also shown interest in procuring the portion which is abutting their erf, namely Erf 9901. Thus, the application is submitted in order to procure the subject property and to utilise it for gardening purposes.

4. SUMMARY OF APPLICANT'S MOTIVATION

- The owner of Erf 3517 has received in principle approval to purchase Erf 9901, Hermanus from the Municipality.
- In order to proceed with the property transaction, land use approval must first be obtained, which includes the closure of the subject property, rezoning from

Opens Space Zone 2: Public Open Space to Residential Zone 1: Single Residential, consolidation of Erf 3517 (1220m²) with Erf 9901 (224m²) and the relaxation of the building line restriction.

- Most of the portions of Twelve Street have been sold to adjacent land owners and most of the surrounding land owners have benefitted from the sale, only two (2) portions have not been sold.
- The proposal is in line with Council's vision to alienate these portions of unutilised public land as only the abutting owners can purchase these portions.
- The proposed addition will only be utilised for gardening/landscaping purposes, hence a 12,58m servitude will be registered in order to limit development.
- Council will receive R527 000.00 for an unutilised portion of land and therefore be benefitted in the sale of the portion. The revenue can then be used to benefit the community.
- No new erven will be created and therefore the existing services will be sufficient.

5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
Village News	Yes	6/02/2019 and 29/05/2019	15/03/2019 and 27/06/2019
Notices	Yes	4/02/2019 and 12/06/2019	15/03/2019 and 12/07/2019
Ward Councillor	Yes	4/02/2019 and 12/06/2019	15/03/2019 and 12/07/2019
Total letters of objection	ONE (1)		
Is the proposal consistent with the principles referred to in Chapter 2 of SPLUMA and Chapter VI of LUPA?			Yes
Was public participation undertaken in accordance with Section 46- 50 of the By-law on Municipal Land Use Planning?			Yes
Was the application processed correctly?			Yes

6. SUMMARY OF COMMENTS FROM ORGANS OF STATE AND/OR MUNICIPAL DEPARTMENTS

Name	Date received	Summary of comments	Recommendation
Building Department	11/02/2019	Supported	Supported
Overstrand Heritage & Aesthetics Committee	12/02/2019	No comment.	Supported
Fire Department	28/02/2019	No objection	Supported
Engineering Services	4/03/2019	Annexure F.	Supported
Telkom	9/05/2019	Annexure G.	Supported.

7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

It should be noted that the application was advertised twice due to the fact that the departure application not being stipulated in the first notice. On both accounts the Hermanus Ratepayers Association (HRA) provided an objection with similar issues being highlighted. The reasons of objection and the comments thereto are summarised in bold below:

The amount negotiated for the sale of the Erf 9901 is at a massive discount for prime seafront property, in favour of the abutting land owner.

Applicant's reply to comments

The amount negotiated for the sale was based on an independent property valuation by a registered valuer.

Town planner's comment

The sale of the property and the purchase price is determined by Property Administration and presented and approved by Council. Therefore this question is irrelevant with regard to the land use planning application. It is noted that Property Administration received similar comments in terms of their public participation process.

The acquisition of Erf 9901 will unlock massive value for Erf 3517 and open up panoramic views with the additional 2m building line relaxation, which is gifted by the Municipality at a great sales price.

Applicant's reply to comments

The acquisition will not unlock 'massive value'. There is a building restriction applicable to Erf 9901 which will prohibit the development on the property. Further, it would have been much cheaper to secure the panoramic views through a building line departure than through the acquisition.

Town planner's comment

The applicant or property owner does not secure any development rights by purchasing Erf 9901. Further, the point of objection does not state why the proposed departure of the building line will have a negative effect or not be desirable.

A sales history of the nearby open spaces shows a worrying trend in under evaluation of the assets.

Applicant's reply to comments

If the objector has concerns in the way Council is alienating public land then they should take it up with the Municipal Manager. This application is the wrong platform.

Town planner's comment

The statement from the applicant is agreed with. Should the objector not be satisfied with purchasing prices of similar municipal properties then they should enquire the

relevant department. This objection is therefore irrelevant towards the planning application.

The fact that the status Erf 9901 is not mentioned in the application is worrying.

Applicant's reply to comments

The applicant contests that this is incorrect as the subject property's zoning, land use and ownership status is all clearly stated.

Town planner's comment

The statement made by the objector is unclear. The objector should have provided more detail regarding this point of the objection as the applicant provided detail of the subject property in the motivation.

Erf 9901 is currently owned by the Overstrand Municipality, and presumably forming part of the "Piet se Bos" Milkwood Forest and by extension, part of the Cliff Path and Fernkloof Nature Reserve, it is a highly sensitive ecological area and unsuitable for active use and even less so for landscaping.

Applicant's reply to comments

Erf 9901 was a public road reserve and according to the Surveyor General's Noting Sheet it does not form part of the public open space system (Erf 4471).

The client's intention is not to develop the property but to sensitively landscape it.

Town planner's comment

Erf 9901 are one of the two (2) remaining portions of land which formed part of Twelve Street. It is and was therefore precluded from the Fernkloof Nature Reserve. The applicant has indicated that his client will only landscape the property. Should there be endangered plant species then the property owner will have to contact the relevant authority before removing the vegetation.

The last recommendation made by the HRA is that the Overstrand Municipality renegotiates this application in order to obtain a more realistic income and that the input from Fernkloof Advisory Board is obtained.

Applicant's reply to comments

The decision to sell the property to the client has already been made and cannot be renegotiated. Also the Municipal Finance Management Act (MFMA) sets out the process and standards for how a Municipality may alienate land. It does not happen on an ad-hoc basis and each Municipality cannot make its own rules and each Municipality must comply with national legislation.

Town planner's comment

The sale of the property and the purchase price is determined by Property Administration and presented and approved by Council. Therefore this question is irrelevant with regard to the land use planning application.

What process was followed to arrive at the valuation at which the Overstrand Municipality is prepared to alienate this property?

Applicant's reply to comments

The request should be addressed by the Municipal Manager as the land use application is not the forum to complain about the value of the subject property.

Town planner's comment

The sale of the property and the purchase price is determined by Property Administration and presented and approved by Council. Therefore this question is irrelevant with regard to the land use planning application. It is noted that Property Administration received similar comments in terms of their public participation process.

If a professional valuator was involved, why is there such a vast difference between the municipal valuation rate per m² and the agreed price for public land?

Applicant's reply to comments

The request should be addressed by the Municipal Manager as the land use application is not the forum to complain about the value done by the professional valuator.

Town planner's comment

The sale of the property and the purchase price is determined by Property Administration and presented and approved by Council. Therefore this question is irrelevant with regard to the land use planning application. It is noted that Property Administration received similar comments in terms of their public participation process.

What is the status (zoning) of the adjoining "public open land"?

Applicant's reply to comments

The public open land is zoned Open Space Zone 2.

Town planner's comment

Erf 9901 is zoned Open Space Zone 2: Public Open Space. It should be noted that if the application is approved the development of the subject property will be limited for gardening purposes and therefore no structures will be constructed on the property.

Was any environmental considerations made for the land to be alienated?

Applicant's reply to comments

Yes, however the land use application does not trigger any listed environmental activities. It is the client's intention to develop the subject property with indigenous vegetation, no structure.

Town planner's comment

The application was circulated to the Overstrand Environmental Section however no comment was received during the public participation process. That being stated, after consultation with the environmental department an email was received stating that the subject application will not trigger any listed activities in terms of environmental legislation.

Can the transfer of land be stopped before answers to the above questions can be received?

Applicant's reply to comments

This request should be addressed by the Municipal Manager. The land use planning application will now be submitted to the Municipal Planning Tribunal (MPT) for a decision.

Town planner's comment

The representation/objection made to the sale of the property would have been considered by the Council before the final decision is made to alienate the subject property. Therefore this question is irrelevant with regard to the land use planning application. It is noted that Property Administration received similar comments in terms of their public participation process.

From the abovementioned discussion the following can be determined:

- The objection by the HRA is not against the land use application, but leans heavily towards the sale of the property and the price which was negotiated by the Municipality.
- Where some of the points of objection were considered relevant to the application they were adequately addressed.
- None of the statements in the objection provide substantial proof that the proposed land use application cannot be considered desirable.

8. SUMMARY OF APPLICANT'S REPLY TO COMMENTS

Comments received in response to the objection received were discussed under point 7.

9. MUNICIPAL ASSESSMENT OF COMMENTS

No objections were received from the internal departments. Objection received was assessed under point 7.

10. MUNICIPAL PLANNING EVALUATION (REFER TO RELEVANT CONSIDERATIONS GUIDELINE)

10.1 Background

N/A

10.2 (In)consistency with the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013)

The application is in line with the planning objectives applicable to this application.

The objectives relating to:

Spatial Justice

N/A

Spatial sustainability

The application is within the urban edge with no impact on the environment or agricultural valuable land.

Efficiency

N/A

Spatial Resilience

N/A

Good administration

The application followed the required planning procedures in terms of the Municipal By-Laws and the public process has been followed.

10.3 (In)consistency with the principles referred to in Chapter VI of the Land Use Planning Act, 2014 (Act 3 of 2014)

Same as Point 10.2 above.

10.4 (In)consistency with the IDP/Various levels of SDF's/Applicable policies

The zoning of the property will remain unchanged and the proposal will not have an impact on the objectives contained in the Municipality's forward planning documents.

10.5 (In)consistency with guidelines prepared by the Provincial Minister

N/A

10.6 Impact on Municipal engineering services

The existing services are available and the application has been viewed positively by the Engineering Services Department. Should additional capacity be required then the developer must contact the user department.

10.7 Outcomes of investigations/applications i.t.o other legislation

The application was circulated to the Overstrand Environmental Section however no comment was received during the public participation process. That being stated, after consultation with the environmental department an email was received stating that the following; "*After reviewing the application this office has no objection to this application. The activity does not trigger any EIA activities. Even though it is adjacent to Fernkloof Nature Reserve, it would*

be impractical to want to include it within the boundaries of the reserve. This section falls within the draft Protected Areas Buffer Environmental Overlay Zone and the applicant must familiarize themselves with the regulations linked to this zone.

Please also note comments below received from the Fernkloof Advisory Board as the property is adjacent to the reserve.

Without undertaking a site visit, and if EMS have satisfied themselves that there is no reason to want to retain this piece of FNR based on conservation factors; I have no in-principle objection to this piece of municipal property being sold off. From a conservation management perspective; its small size, awkward position and obvious proneness to negative impacts makes it difficult to manage effectively."

10.8 Existing and proposed zoning comparisons and considerations

As stated earlier; unregistered Erf 9901, Hermanus is zoned as Open Space Zone 2: Public Open Space and therefore the land use application as proposed is required.

11. ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS

N/A

12. THE DESIRABILITY OF THE PROPOSAL

When assessing the desirability of the proposal the main aspects which must be considered are the following:

- ❖ the comments in response to the notice of the application;
- ❖ the response by the applicant to the comments, and
- ❖ the compatibility of the proposed use with surrounding land uses.

As stated under section 7. the objection received from the Hermanus Ratepayers Association is not against the land use application but leans heavily towards the sale of the property with regard to what the price was which was negotiated by the Municipality. The statements made by the HRA were addressed by the applicant. Further, none of the statements in the objection provided substantial proof that the proposed land use application cannot be considered desirable.

Closure and Rezoning of Erf 9901

As stated earlier; unregistered Erf 9901, Hermanus is zoned as Open Space Zone 2: Public Open Space. Erf 9901 are one of the two (2) remaining portions of land which formed part of Twelve Street which has been closed. It is therefore precluded from the Fernkloof Nature Reserve. The applicant or property owner does not secure any development rights by purchasing Erf 9901 and will be limited to landscaping Erf 9901 once it has been consolidated with Erf 3517. The applicant has also indicated that his client only intends to landscape the property and not to develop it. The subject property is situated in the urban environment and the property size is 224m² and the proposed

application will not trigger any listed activities in terms of environmental legislation. This however does not preclude the property owner from acting against other legislation and therefore should there be endangered plant species on the property the property owner will have to contact the relevant authority before removing the vegetation. Considering the aforementioned the closure of the public place and rezoning of the subject property from Open Space Zone 2: Public Open Space to Residential Zone 1: Single Residential can be considered desirable.

Consolidation of Erf 9901 with Erf 3517

Erf 3517 is currently approximately 1220m² in extent and is owned by "Die Bergant Trust". Erf 9901 is approximately 224m² in extent and is owned by the Municipality. Once Erf 9901 is consolidated with Erf 3517 the consolidated portion will measure approximately 1444m² in extent.

The consolidation is considered desirable due to the following:

- ❖ the consolidation will allow the property owner of Erf 3517 to gain easier access to Erf 9901 and to maintain the property as a whole;
- ❖ Erf 9901 is precluded from Fernkloof Nature Reserve and should it not be rezoned and consolidated with Erf 3517, then the Municipality will have to maintain Erf 9901 or include it into the Fernkloof Nature Reserve, and
- ❖ Twelve Street was closed and subdivided into a portion abutting Erven 3503, 3504, 3505, 3506 and Erf 3517, Hermanus. Erf 9901 are one of the two (2) remaining portions of land which formed part of Twelve Street. Therefore, by completing the consolidation it will comply with Council's original decision in 2002 to subdivide the section of the street and allow the abutting property owners to purchase and maintain the property.

Departure from the building line requirements

One of the conditions of approval dated December 2002, stated: "*that the building line is measured from the original rear property boundary and not from the new rear property boundary.*" At the time (2002) a 3m building line was to be measured from the original southern erf boundary and not from the new boundary. It is noted that the applicant requests that this be relaxed and that the owner be allowed to build up to the original erf boundary.

When considering the desirability of the request one must have regard what the impact of the proposal will be.

Firstly, Erf 9901 will be restricted with a 12,58m servitude which will be registered from the "new" rear boundary of the consolidated properties that restricts any building or construction on the said portion, other than a boundary wall. Therefore, the impact on the Fernkloof Nature Reserve will be limited as the property owner will not be able to develop on Erf 9901.

Secondly, the 2m lateral building lines and height restriction will have to be complied with; therefore sea views of the northern properties will be protected. Further, the adjacent dwelling on Erf 10315 has already deviate from the clause; therefore the proposed relaxation will not impact on the property owner and the group housing unit on Erf 9854, which is developed with a predominant southern view which is not obstructed. It is also noted that there is an access

walk way between Erven 3517 and 9854 which further mitigates the impact on the sea views.

Considering the abovementioned the proposed relaxation of the building line can be considered desirable.

Conclusion

Considering the abovementioned and the limited impact of the proposal, the application can be considered desirable.

13. RECOMMENDATION

1. that the objection be dismissed;
2. that the application received on unregistered Erf 9901 and Erf 3517, Hermanus in terms of the Overstrand Municipal Land Use Planning By-Law, 2015 (By-Law) for the following:
 - ❖ the closure of unregistered Erf 9901, Hermanus in terms of Section 16(2)(n) of the By-law;
 - ❖ the rezoning of unregistered Erf 9901, Hermanus from Open Space Zone 2: Public Open Space to Residential Zone 1: Single Residential in terms of Section 16(2)(a) of the By-Law;
 - ❖ the consolidation of unregistered Erf 9901, Hermanus and Erf 3517, Hermanus in terms of Section 16(2)(e) of the By-Law, and
 - ❖ the relaxation from the 3,0m building line as decided by Council to 0m from the original erf boundary and to register a 12,58m servitude, instead of a 13,58m servitude, from the new southern boundary of the consolidated property;

be approved in terms of the provisions of Section 61 of the By-Law, subject to the following conditions:

- (a) that the approval be limited to the Consolidation Plan *Project No 3596-P* dated 24/10/2018 as submitted with the application;
- (b) that land surveyor diagrams be submitted to the Municipality indicating the erf numbers and property details to the satisfaction of the Senior Manager: Town and Spatial Planning;
- (c) that a 12,58m servitude be registered from the new southern boundary of the consolidated property which restricts the use of servitude area for gardening purposes;
- (d) that building plans should be submitted to the Building Department for approval, prior to the development of the property;
- (e) that all the conditions in the Services Report (attached as Annexure F), be complied with;
- (f) that all the conditions imposed by Telkom (attached as Annexure G), be complied with, and

- (g) that this approval does not absolve the owner/applicant from compliance with any other relevant legislation.
4. that the applicant and objector be notified of their right of appeal in terms of Section 78 of the Overstrand Municipality By-Law on Land Use Planning, 2015 with regard to the above decision.

14. REASONS FOR RECOMMENDATION

- ❖ The objections received were adequately addressed by the applicant.
- ❖ The statements in the objection failed to provide substantial information on why the land use applicant cannot be considered desirable.
- ❖ The proposed application has limited impact on the rights of the surrounding property owners.
- ❖ The proposed application is an extension of the Council's decision taken in 2002.
- ❖ The proposed servitude on Erf 9901 will create a buffer area between the development on Erf 3517 and Fernkloof Nature Reserve.
- ❖ The consolidated property will be used in line with Residential Zone 1 parameters.
- ❖ The application has followed due procedure.
- ❖ None of the internal departments have any objection.
- ❖ The proposal is compliant with the spatial policies contained in the SDF.
- ❖ The proposal is constant with the spatial principles as set out in SPLUMA and LUPA.

15. ANNEXURES

Annexure A:	Locality Plan
Annexure B:	Motivation
Annexure C:	Consolidation Plan
Annexure D:	Objection
Annexure E:	Comment on objection
Annexure F:	Services Report
Annexure G:	Comment: Telkom

SIGNATURES

AUTHOR

Name : **P ROUX**

SACPLAN Reg No: **A/2246/2015**

Signature : _____

Date: _____

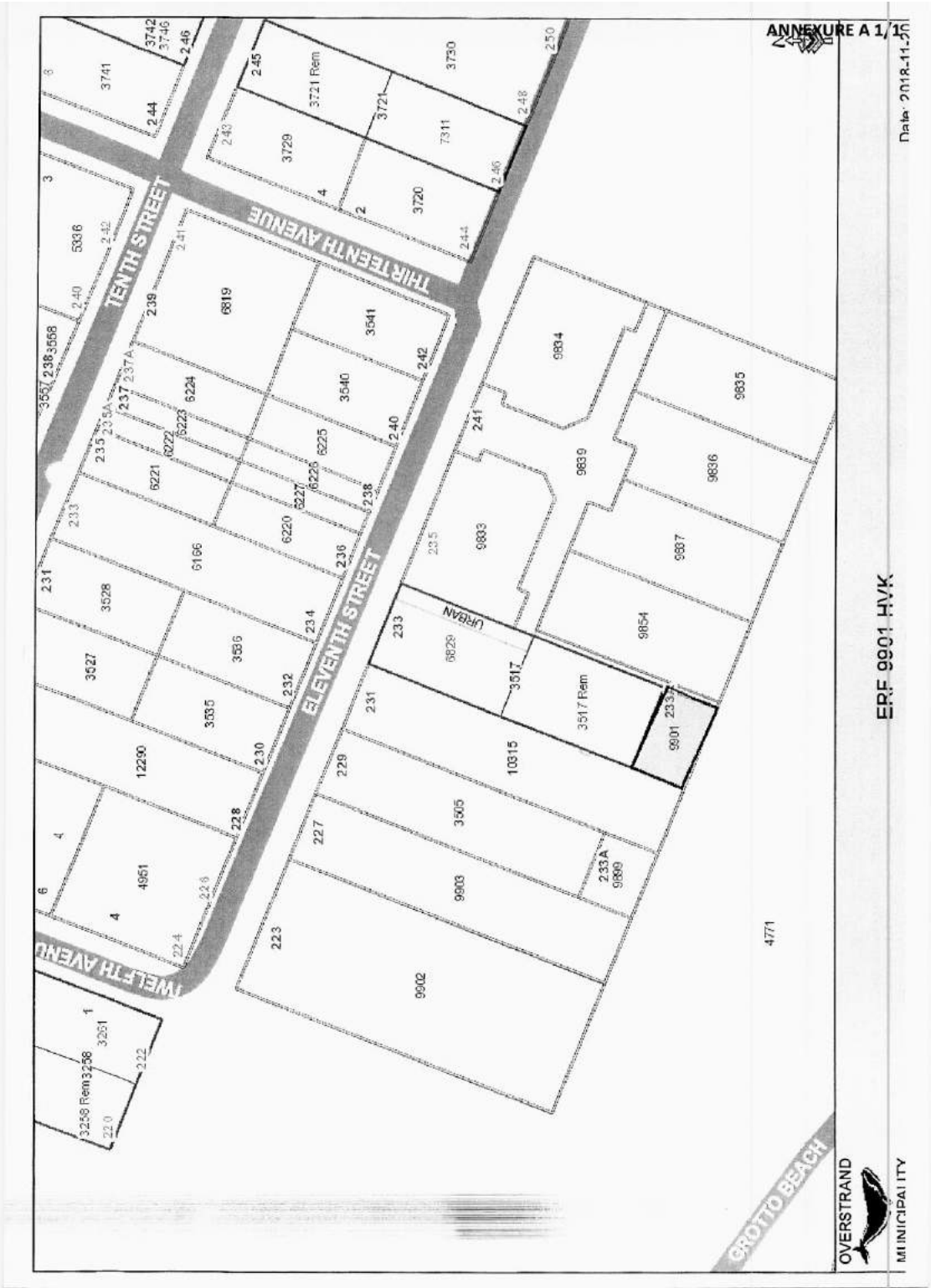
REGISTERED PLANNER

Name : **S VAN DER MERWE**

SACPLAN Reg No: **A/1850/2014**

Signature : _____

Date: _____



ANNEXURE A 1

Date: 2018-11-20

ERF 9901 HVK

GROTTO BEACH





ARCHITECTS AND TOWN PLANNERS
ARGITEKTE EN STADSBEPLANNERS

97 DORP STREET
FIRST FLOOR
LA GRATITUDE
OFFICE BUILDING
STELLERBOSCH 7600
TEL +27 (0) 1861 3800
FAX +27 (0) 1862 8025
EMAIL: info@tv.co.za

Our Reference: 3596-P

29 October 2018

Director: Town & Spatial Planning Department
Overstrand Municipality
16 Paterson Street
7200 HERMANUS

Attention: **Mr. Schalk van der Merwe**

Sir

**APPLICATION FOR THE CLOSURE OF PUBLIC PLACE, REZONING,
CONSOLIDATION AND AMENDMENT OF A BUILDING RESTRICTION ON THE
UNREGISTERED ERF 9901, HERMANUS**

1. Land use planning applications

We refer to the pre-submission consultation held on 5 October 2018 and subsequent correspondence regarding the municipal unregistered Erf 9901, Hermanus (i.e. the subject property).

As discussed, the following land use planning applications are hereby made:

- Application is made in terms of the Overstrand Municipality By-Law on Municipal Land Use Planning, 2015 (By-Law), for:
 - The closure of unregistered Erf 9901, Hermanus in terms of Section 16.(2)(n) of the By-Law;

TV3 PROJECTS (PTY) LTD REGISTRATION NO: 2006/055278/07
DIRECTORS: JNL van Rensburg | E Ewaldoppert | IS Britz | WJ Smits | LK Kruger | MM Walthall
ASSOCIATES: J Brounsee | WJ Pienaar | CR Neys | A Pottius | H Huib

- The rezoning of unregistered Erf 9901, Hermanus in terms of Section 16.(2)(a) of the By-Law from Open Space Zone 2: Public Open Space to Residential Zone 1: Single Residential; and
 - The consolidation of unregistered Erf 9901, Hermanus with Erf 3517, Hermanus in terms of Section 16.(2)(e) of the By-Law.
- Application is made for the amendment of the 15.58m building restriction (measured from the southern boundary of Erf 9901, Hermanus) to 12.58m.

We hereby confirm that the preliminary municipal application and advertising fee of R16 066 has been paid to the Overstrand Municipality. The proof of payment is attached below (see Figure 1).

To whom it may concern	
Investec hereby confirms that the following payment has been made:	
Payment From	Bergrant Trust
Amount	16066.00
Payment Date from Investec	2018-10-23
Payment Reference	UP0024550373
Beneficiary Account Name	Overstrand Municipality
Beneficiary Bank	ABSA BANK
Beneficiary Branch Number	334812
Beneficiary Bank Account Number	3220000035
Beneficiary Reference or Account Number	Erf 9901 Voelklip

Figure 1: Proof of payment of application and advertising fee

2. Purpose of the application

Our client – Die Bergrant Trust – is the owner of the abutting Erf 3517, Hermanus. They have now received approval from the Overstrand Municipality – as the owner of the subject property – to purchase the subject property from Council for R527 500 (at a valued price of R2 162/m²). A copy of the Council decision is attached hereto.

In order to proceed with the property transaction approval must be obtained from the Overstrand Municipality for the closure and rezoning of the subject property, for the consolidation of the subject property with our client's Erf 3517, and for the relaxation of the building restriction; hence our land use planning application.

We have attached hereto a consolidation plan for your approval.

3. Property description, size and ownership

The subject property is the unregistered Erf 9901, Hermanus. The subject property and our client's abutting erf's property details are listed below.

Erf no.	Size	Title Deed	Ownership	Zoning
Erf 9901, Hermanus	244m ²	Unregistered (Title Deed does not exist)	Overstrand Municipality (our client is in the process of purchasing this erf)	Open Space Zone 2
Erf 3517, Hermanus	1220m ²	T35916/2016	Die Bergrant Trust (our client's erf)	Residential Zone 1

Copies of the erven's (available) Title Deeds and SG Diagrams are attached hereto.

3. Locality of the site

The subject property is located in 11th Street, Voëlklip, Hermanus. The locality of the subject property is indicated on the attached locality maps and the aerial photograph below (see Figure 2).



Figure 2: Locality of the subject property

4. MOTIVATION FOR CLOSURE, REZONING, CONSOLIDATION AND AMENDMENT OF BUILDING RESTRICTION

Our land use planning application for the closure and rezoning of the subject property, for the consolidation of the subject property with our client's Erf 3517, and for the relaxation of the building restriction is motivated as follows (in order to illustrate the need and desirability):

- The Overstrand Municipality has sold most of the parcels of (unitilised) public land to the land owners on 11th Street. Most of the surrounding land owners have benefitted from Council's vision and the subject property is one of the few remaining properties not yet sold to the abutting land owner. For example; in 2004 Erf 9898 was sold to the abutting land owner and in 2006 Erf 9900 was sold to the abutting land owners – see Figure 3 below.

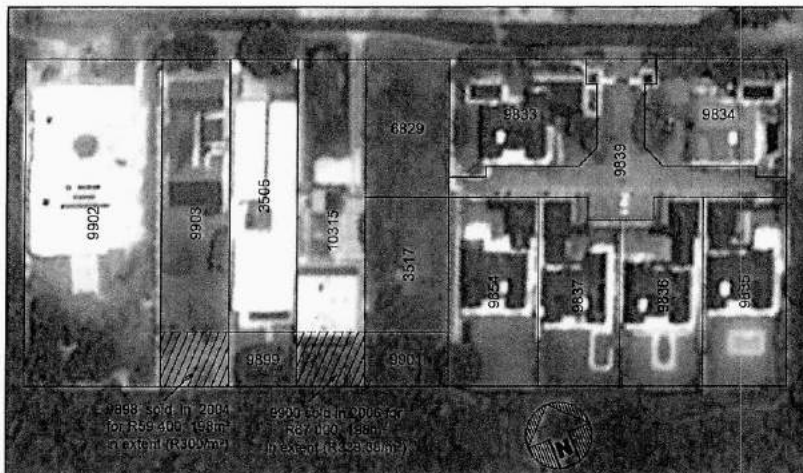


Figure 3: Public land that have recently been sold

- This sale of the subject property to the abutting land owner is therefore in line with Council's vision to alienate these portions of unutilised public land as it is only the abutting land owners that can actively use these portions.
- It is also the new land owner's intent to utilise the subject property for only landscaping purposes; i.e. the new land owner will not be able to construct a building on the subject property. For this reason there will be a 12.58m building restriction (measured from the southern boundary of the subject property) applicable on the consolidated property. The principle of a 12.58m building restriction has been established by the abutting Erf 10315, Hermanus.
- Council (and the broader community of Hermanus) will significantly benefit from this property transaction by receiving R527 500 for a piece of unutilised public land. This money will be used by the Overstrand Municipality to the benefit of the local community.

- Since the application will not lead to any new erven and since Erf 3517 is already serviced, no additional engineering infrastructure will be required to accommodate the application. Consequently, no development charges will have to be paid to the Overstrand Municipality.

7. LIST OF ATTACHMENTS

Find attached hereto the following supporting documents:

- **Section A:** Power of Attorney
- **Section B:** Title Deeds and SG Diagrams
- **Section C:** Overstrand Municipality's decision letter
- **Section D:** Plans
- **Section E:** Land Use Management Application Form

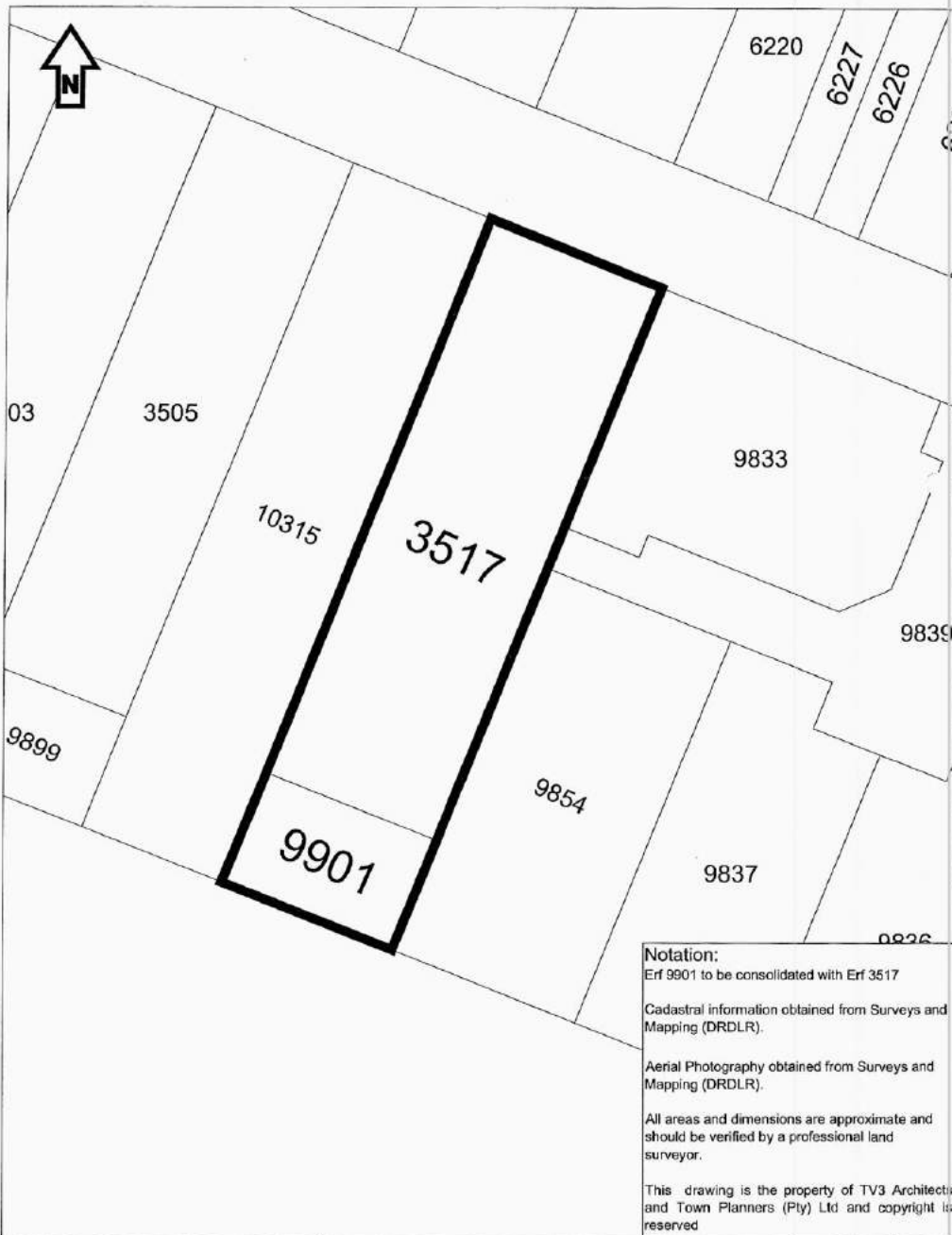
8. CONCLUSION

The purpose of this application is to actualise Council's decision to alienate the subject property – which is similar to the sale of other parcels of public land to the surrounding land owners – and for this reason we request that the applications be granted. Please feel free to contact the undersigned at 021-861 3800 or clifford@tv3.co.za if you have any queries or require any additional information.

Yours faithfully



CLIFFORD HEYS
TV3 PROJECTS (PTY) LTD



Notation:
 Erf 9901 to be consolidated with Erf 3517

Cadastral information obtained from Surveys and Mapping (DRDLR).

Aerial Photography obtained from Surveys and Mapping (DRDLR).

All areas and dimensions are approximate and should be verified by a professional land surveyor.

This drawing is the property of TV3 Architects and Town Planners (Pty) Ltd and copyright is reserved.

tv3
 ARCHITECTS AND TOWN PLANNERS

First Floor - La Gratitude Office Building
 97 Corp Street - Stellenbosch 7600
 tel: (021) 861 9800
 fax: (021) 862 9825
 e-mail: info@tv3.co.za
 web: www.tv3.co.za

**Erf 9901,
 Hermanus**

Drawing:	Consolidation Plan	Plan no.:	3
Date:	24/10/2018	Scale:	1:500 (A4)
Project no.:	3596-P	Drawn:	WH
		Checked:	CH

Date: 25 February 2019

26 FEB 2019

TRATheart
C.H.Olivier

**The Director: Infrastructure and Planning
S MÜLLER**

Overstrand Municipality
PO Box 20
Hermanus 7200
smuller@overstrand.gov.za



Dear Sir

OBJECTION TO APPLICATION:

**ERF 9901, ELEVENTH STREET, VÖELKLIP, HERMANUS, OVERSTRAND MUNICIPAL AREA:
PROPOSED CLOSURE OF A PUBLIC PLACE, REZONING AND CONSOLIDATION: C HEYS
ON BEHALF OF "DIE BERGRANT TRUST"**

I wish to object to the above application, on behalf of the Hermanus Ratepayers Association, on the following grounds:

The current application is motivated for the consolidation of the subject property to the abutting land owner, in line with Council's vision to alienate portions of unutilised public land, as it is only the abutting owners that can actively utilise these portions.

It may sound very reasonable, but in this particular instance, the amount negotiated for the sale, on behalf of ratepayers of Hermanus, are at a massive discount in favour of the abutting land owners (Erf 3517, 223 Eleventh Street):

ERF 3517	- 1220M ²	- MUNICIPAL VALUATION: R16,000,000	- R13,114.75/M ²
ERF 9901	- 244M ²	- AGREED SALE PRICE: R 527,500	- R2,161.89/M ²

One would assume that the municipal value of the adjoining vacant erf (R16,000,000), which works out at R13,114.75/m², would be a clear measure of the value that could be obtained on the open market, not the lowly sum of R527,500 (R2,161.89/m²) for prime seafront property that unlocks even further value for the abutting owner.

Having inspected the site, it becomes clear that the acquisition of the additional land unlocks massive value, as the site has a blinkered sea view, which opens up to a panoramic vista with the additional 2 metres forward creep of the building line, afforded by the additional land gifted by the Overstrand Municipality at the agreed sale price.

The previous sales history of nearby and adjoining parcels of municipal public open spaces confirm a worrying trend of undervaluation of these assets.

The fact that the status of Erf 9901 is not mentioned in the application, is also extremely worrying. Currently owned by the Overstrand Municipality, and presumably forming part of the "Piet se Bos" milkwood forest and, by extension, part of the Cliff Path and Fernkloof Nature Reserve, it is a highly sensitive ecological area, and unsuitable for active use, and even less so for landscaping

We therefore recommend that the Overstrand Municipality renegotiate this application with the view of setting new standards for obtaining a more realistic income from public properties, and obtains input from the Fernkloof Advisory Board, before concluding any agreement on this land.

Yours faithfully

J D Cilliers

HRA Exco Member
38 Canterbury Street, Hermanus 7200
Cell: 082 956 6517
E-Mail: jancprop@hermanus.co.za

For and on behalf of Hermanus Ratepayers Association

FILE NO: EL 9901 Hermanus
SCAN NO: HVK 9901
COLLABORATOR NO: 1259563

OBJECTION TO TRANSFER OF UNREGISTERED ERF 9901 (A PORTION OF ERF 9894) HERMANUS FOR GARDENING PURPOSES AND RELAXATION OF BUILDING RESTRICTION



Date: 26 June 2019

To: The Municipal Manager
Overstrand Municipality
P O Box 20
Hermanus 7200
C/o aconradie@overstrand.gov.za

OBJECTION (Municipal Notice No. 35/2019)

From: J D Cilliers
38 Canterbury Street, Westcliff, Hermanus 7200
P O Box 406, Hermanus 7200
Cell: 082 896 0517
E-Mail: jancprop@hermanus.co.za
Exco Member Hermanus Ratepayers Association
For and on behalf of:

Concerned Body:
The Hermanus Ratepayers Association (HRA)
Chairman: Mr Brian Wridgway
13 Fynbos Street, Hermanus Heights, Hermanus 7200
Cell: 076 941 8065
E-Mail: wridgways@gmail.com

Dear Sir

OBJECTION TO TRANSFER OF UNREGISTERED ERF 9901 (A PORTION OF ERF 9894) HERMANUS FOR GARDENING PURPOSES AND RELAXATION OF BUILDING RESTRICTION

The above matter refers. Please find set out below, the HRA's comments on, and objection to:

- a) the proposed closure of a public place, rezoning and consolidation: C. Heys on behalf of "Die Bergrant Trust" (HRA Objection submitted 25 February 2019)
- b) supplementary notice: application for closure of public open place, rezoning, consolidation and departure (application to relax the southern building line restriction of the proposed consolidated erf from 15,58m to 12,58m) - TPAMS: 2909/2019
- c) transfer of unregistered Erf 9901 (244m² in extent) to The Bergrant Trust, for purchase price of R527,500.00 (VAT excluded), for gardening purposes.

Our comments are submitted for and on behalf of the HRA, its members, affected and interested parties.

OBJECTION TO TRANSFER OF UNREGISTERED ERF 9901 (A PORTION OF ERF 9894) HERMANUS FOR GARDENING PURPOSES AND RELAXATION OF BUILDING RESTRICTION

Receipt of our objection to the application a) above was acknowledged on the 19th March 2019, to be forwarded to the applicant for comment, and a further communication was to follow in due course.

We received a supplementary notice: b) above, dated 12th June 2019, and an advertisement appeared in the Village News of 29th May 2019 - c) above - but no further communication as promised in the acknowledgement of 19th March 2019.

Our objection was that the Overstrand Municipality is alienating part of the Fernkloof Nature Reserve (i.e. Piet-se-Bos) to private property owners, in order for them to secure the 180° view they desire – by giving them enough space not only to “relax” their building line of 15.58m, but by an additional three metres seaward, to 12.58m.

The application points out the “significant benefit” to the broader community of Hermanus from this transaction, by the Overstrand Municipality receiving R527,500 for a piece of unutilised land.

We are perplexed at the disconnect between the Municipal Valuation (2015) of the vacant erf 3517 (R16,000,000) - which translates to R13,115 per square metre (or R3,200,000 for 244m²), and the mere R527,500 or **LOSS of R2,627,500** which the municipality has incurred on behalf of the broader Hermanus community.

The fact that pristine forest land will now also be at the mercy of gardeners without, as far as we know, any environmental impact study applied to the land in question, is troubling.

We have received no response to our original objection – other than acknowledgement of receipt from the Overstrand Municipality, whereas it has been indicated that the applicant has been informed of our objection, but apparently had no comment, other than to proceed with this application.

We request to be informed:

- why our objection was ignored, and no comment received, before proceeding to prepare for the transfer of the property to the applicant.
- what process was followed to arrived at the valuation at which the Overstrand Municipality is prepared to alienate this property
- if a professional valuer was involved, why there is such a vast difference between the municipal valuation rate per m² and the agreed price for public open land
- what the status (zoning) of the adjoining “public open land” is,
- whether any environmental considerations were given to the land to be alienated
- and whether transfer of this property can be stopped before answers to the above questions can be received.

Yours faithfully

J D Cilliers

HRA Exco Member
38 Canterbury Street, Hermanus 7200
Cell: 082 896 0517
E-Mail: jancprop@hermanus.co.za

For and on behalf of Hermanus Ratepayers Association



ARCHITECTS AND TOWN PLANNERS
ARGITEXTE EN STADSBEPLANNERS

97 DORP STREET
FIRST FLOOR
LA GRATITUDE
OFFICE BUILDING
STELLENBOSCH 7600
TEL +27 (21) 861 3800
FAX +27 (21) 862 8025
EMAIL info@tv.co.za

Our Reference: 3596-P
Application ID: 2909/2019

20 April 2019

Director: Infrastructure & Planning
Overstrand Municipality
16 Paterson Street
7200 HERMANUS

Attention: Ms. Alida Conradie

Madam

APPLICANT'S RESPONSE TO THE OBJECTION RECEIVED AGAINST THE APPLICATION FOR THE CLOSURE OF PUBLIC PLACE, REZONING, CONSOLIDATION AND AMENDMENT OF A BUILDING RESTRICTION ON THE UNREGISTERED ERF 9901, HERMANUS

1. The Overstrand Municipality's letter of 19 March 2019 has reference.
2. The abovementioned application was advertised for public comments. After advertising only one objection was received from the Hermanus Ratepayers' Association (HRA). None of surrounding land owners submitted an objection.
3. The HRA's objections are listed below (with our response in red):
 - *The amount negotiated for the sale of Erf 9901 are at a massive discount for prime seafront property, in favour of the abutting land owner.*

The amount negotiated for the sale of Erf 9901 was based on an independent property valuation by a registered valuer. It was not sold "at a massive discount" as claimed by the objector.

- *It is clear that the acquisition of the additional land (Erf 9901) unlocks massive value, as the site (Erf 3517), which opens up to a panoramic vista with the additional 2m forward creep of the building line, afforded by the additional land gifted by Overstrand Municipality at the agreed sale price.*

The acquisition of Erf 9901 will not unlock "massive value" as claimed by the objector. There is a building restriction that will prohibit our client from erecting any structures on Erf 9901 (i.e. our client is purchasing a de facto garden erf with no development rights). Also, it will be significantly cheaper for our client to apply for a building line relaxation (in lieu of purchasing Erf 9901) in order to enjoy the "panoramic vista" (as claimed by the objector). The acquisition of Erf 9901 will therefore not "massively" increase the value Erf 3517.

- *A previous sales history of nearby and adjoining parcels of municipal public open spaces confirm a worrying trend of undervaluation of these assets.*

If the objector is concerned with the way that Council is alienating public land, then they should take it up with the Municipal Manager. It is wrong to use a Planning By-law application as a platform to complain about Council's (alleged) misdeeds.

- *The fact that the status of Erf 9901 is not mentioned in the application, is also worrying.*

This is incorrect. The subject property's zoning, land use and ownership status are all clearly stated in the application.

- *Currently owned by the Overstrand Municipality, and presumably forming part of the "Piet se Bos" milkwood forest and, by extension, part of the Cliff Path*

and Fernkloof Nature Reserve, it is a highly sensitive ecological area, and unsuitable for active use, and even less so for landscaping.

Erf 9901 was a public road reserve and according to the SG Office's Noting Sheet it does not form part of the public open space system (Erf 4771) – see Figure 1 below.



Figure 1: Extract of the Noting Sheet

It is also not our client's intention to use Erf 9901 for any development (hence the building restriction); in fact the site's uneven topography makes it very hard to actively utilise this piece of land. The subject property will be sensitively landscaped (with primarily indigenous plants) and maintained by our client.

- The HRA recommends that the Overstrand Municipality renegotiates this application with the view of setting new standards for obtaining a more realistic income from public properties.

Council has already decided to sell Erf 9901 to our client and there is a signed deed of sale. It cannot now be renegotiated. Also, the Municipal Finance Mangement Act (2003) sets out the process and standards for how a Municipality may alienate public land. It does not happen on an ad hoc basis and it is not for every Municipality in the country to set its own standards. A Municipality must just comply with this national legislation.

4. It is clear from the HRA's objection that their protest is not with the land use planning application (rezoning, consolidation, etc.) per se, but rather with the sale price of Erf 9901 as decided by Council. The sales price was the subject of an independent valuation (it was not arbitrarily decided by Council) and if they feel that the valuation was done erroneously then they should contact the Municipal Manager in this regard. The land use planning application (that was advertised) is not the platform to determine the value of public land and it is therefore also not the platform to object against a land value determined by Council.

The purpose of this land use planning application is to actualise Council's decision to alienate Erf 9901. The HRA did not submit any objections against the land use planning application and for this reason we request that the application be granted.

Yours faithfully



CLIFFORD HEYS
TV3 PROJECTS (PTY) LTD



tv

ARCHITECTS AND TOWN PLANNERS
ARGITEKTE EN STADSBEPLANNERS

Our Reference: 3596-P
Application ID: 2909/2019

16 July 2019

Director: Infrastructure & Planning
Overstrand Municipality
16 Paterson Street
7200 HERMANUS

T/A Thea
C Holivier

FILE NO:	EL 9901
	Hermanus
SCAN NO:	
COLLABORATOR NO:	1302834

97 CORP. STREET
FIRST FLOOR
GRATITUDE
OFFICE BUILDING
STELLENDOSCH 7620
TEL: +27 (21) 861 3800
FAX: +27 (21) 862 8025
E-MAIL: tv@stadeliv3.co.za

Attention: Ms. Alida Conradie

Madam

APPLICANT'S RESPONSE TO THE OBJECTION RECEIVED AGAINST THE APPLICATION FOR THE CLOSURE OF PUBLIC PLACE, REZONING, CONSOLIDATION AND AMENDMENT OF A BUILDING RESTRICTION ON THE UNREGISTERED ERF 9901, HERMANUS

1. The Overstrand Municipality's letter of 16 July 2019 has reference.
2. The abovementioned application was advertised for public comments. After advertising only an objection was received from the Hermanus Ratepayers' Association (HRA). On 20 March 2019 we submitted our response to the objection. A copy of our letter is attached hereto.
3. The abovementioned application was re-advertised in June 2019 and the HRA (again) submitted an objection (similar to their original objection). For this reason, our original response is still relevant.
4. In their 2nd letter of objection, the HRA makes the following request (with our response in red):
 - *Why our objection was ignored, and no comment received, before proceeding to prepare for the transfer of the property to the applicant.*

The objection was not ignored. It will be assessed by the municipal planners and submitted to the Municipal Planning Tribunal (MPT) as part of the land use planning application, for a decision.

15 JUL 2019

- *What process was followed to arrive at the valuation at which the Overstrand Municipality is prepared to alienate this property.*

This request should be addressed to the Municipal Manager as the alienating of public land is not considered i.t.o. the Planning By-law process; i.e. this land use planning application is not the correct forum to complain about the value of the subject property.

- *If a professional valuer was involved, why there is such a vast difference between the municipal valuation rate per m² and the agreed price for public open land.*

This request should be addressed to the Municipal Manager as the alienating of public land is not considered i.t.o. the Planning By-law process; i.e. this land use planning application is not the correct forum to complain about the professional valuations to determine a land price.

- *What the status (zoning) of the adjoining "public open land" is.*

The "public open land" is zoned Open Space Zone 2.

- *Whether any environmental considerations were given to the land to be alienated.*

Yes – however, the land use planning application does not trigger any of the listed environmental activities (i.t.o. the National Environmental Management Act, 1998) and no buildings are proposed on the subject property. It is our client's intention to (sensitively) landscape the subject property with primarily indigenous plants and to maintain it.

- *Whether transfer of this property can be stopped before answers to the above questions can be received.*

This request should be addressed to the Municipal Manager. The land use planning application will now be submitted to the MPT for a decision.

5. It is clear from the HRA's objections that their complaint is not with the land use planning application (rezoning, consolidation, etc.) per se, but rather with the sale price of Erf 9901 as decided by Council. The sales price was the subject of an independent valuation (it was not arbitrarily decided by Council) and if they feel that the valuation was done erroneously then they should contact the Municipal Manager in this regard. The land use planning

application (that was advertised) is not the platform to determine the value of public land and it is therefore also not the platform to object against a land value determined by Council.

The purpose of this land use planning application is to actualise Council's decision to alienate Erf 9901. The HRA did not submit any objections against the land use planning application and for this reason we request that the application be granted.

Yours faithfully

A handwritten signature in black ink, appearing to read 'CRH', with a long horizontal flourish extending to the right.

CLIFFORD HEYS
TV3 PROJECTS (PTY) LTD

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR CLOSURE OF PUBLIC OPEN PLACE, REZONING &
CONSOLIDATION: ERF 9901, VOELKLIP**

Stormwater (SW) : In Order
Electricity : In Order
Water : In Order
Sewer : In Order
Roads and traffic : In Order

Conditions:

1. that only the existing water and sewerage connections will be available to the development, should larger capacity in any of these services be required, the upgrading will be at the owner's cost;
2. that only the existing electricity connection will be available for the development and that, should additional capacity be required, an investigation be conducted, with regard to the capacity required and that available, at the owner's cost;
3. that any commercial food preparation facilities (e.g. restaurant / guest house etc.) must be provided with a grease trap, which must comply with the standards and specification of the Department: Operational Services;
4. 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;
5. that, should any 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 Area Manager: Hermanus for written approval;
6. that stormwater be allowed to discharge through Erf 9901, Voelklip, unobstructed;
7. that any additional and / or extended vehicle entrances will be for the owner's account;
8. that no on-street parking be allowed.


DENNIS HENDRIKS
SENIOR MANAGER:
ENGINEERING SERVICES


DATE



TP - A Theart
(H. Olivier)

Division of Telkom SA SOC Ltd

10 Jan Smuts Drive
Pinelands
7404

9 May 2019

FILE NO: EL 9901 - HVK
SCAN NO: HVK 9901
COLLABORATOR NO: 1283802

Candice Spammer

Tel: 021 414 5582

Fax: 086 480 0617

Email: spammec1@telkom.co.za

Our Ref.: WWIP_WVKL1339_19

Your Ref.: 9901 HVK

Attention: S Muller

Overstrand Municipality
HERMANUS

PLANT AFFECTED:

**PROPOSED REZONING, CONSOLIDATION AND CLOSURE OF A PUBLIC PLACE: ERF 9901,
ELEVENTH STREET, VOELKLIP**

With reference to your application received **February 2019**.

As important cables and other infrastructure are affected, please contact our representative Frederik Swart at 028 514 1199 / 081 363 7815 / FrederikS@openseve.co.za 48 hours prior to commencement of construction work.

I hereby inform you that Open Serve approves the proposed work indicated on your drawing in principle. This approval is **valid for 12 months only**, after which reapplication must be made if the work has not been completed.

Any changes or deviations from the original planning during or prior to construction must immediately be communicated to this office.

Approval is granted, subject to the following conditions.

As per sketch attached, Open Serve infrastructure **will be affected**, consequently the conditions below and on the attached legend will apply.

61 Oak Avenue, Highveld, Techno Park, Centurion 0157,
Private Bag X881, Pretoria, Gauteng, 0001

- 9 MAY 2019

Telecommunication services position is shown as accurately as possible but should be regarded as approximate only.

Should alterations or relocation of existing infrastructure be required, such work will be done at the request and cost of the applicant.


Please notify this office within 21 working days from this letter of acceptance and if any alternative proposal is available or if a recoverable work should commence.

It would be appreciated if this office can be notified within 30 days of completion of the construction work. Confirmation is required on completion of construction as per agreed requirements.

Should Open Serve infrastructure be damaged while work is undertaken, kindly contact our representative immediately.

All Open Serve rights remain reserved.

Yours faithfully



Selwyn Bowers
Operations Manager
Wayleave Management: Western Region

PLANT AFFECTED : COPPER

This wayleave, Reference Number **WWIP WVKL1339 19** is valid for 12 months from date hereof and is subject to the following conditions:

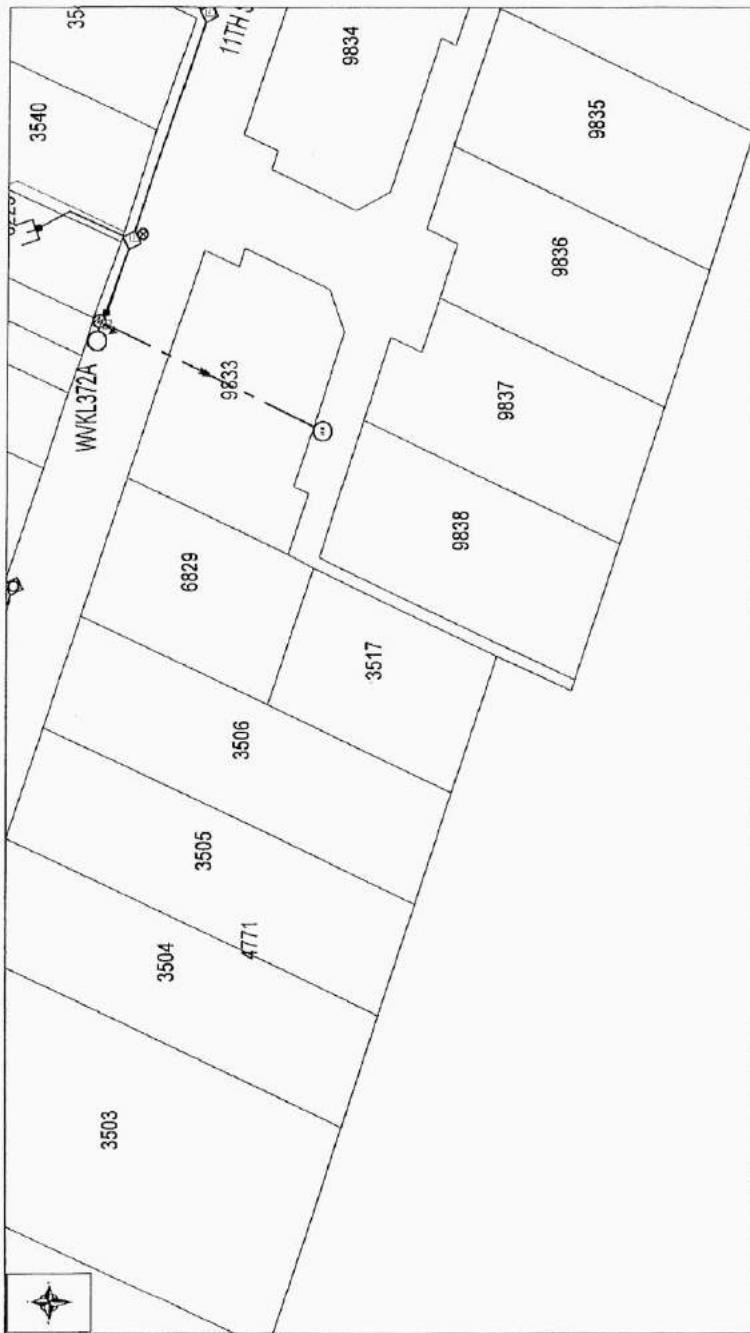
1. No mechanical plant or vibrator type compactors may be used within three meters of any Openserve Plant (I.E. any Telecommunication equipment above or below ground level).
2. The position of our plant affected by the proposal is indicated as approximate and **Frederik Swart** at Telephone No **081 363 7815** must be contacted at least 48 hours prior to commencement of the work, upon which the actual location of the Openserve Plant will be indicated on site.
3. A written request must be submitted to Openserve for consideration, should the of the work, upon which the actual location of Openserve Plant will be applicant require our plant to be relocated. The cost of such a relocation will be recoverable from the applicant.
4. It is the responsibility of the applicant to verify the existance of the indicated plant and to notify Openserve immediately, should the applicant locate any Openserve Plant which is not indicated on the plans.
5. Should the applicant expose any Open Serve plant, the safeguard thereof will be the applicant's full responsibility.
6. Failing to comply with the above conditions or any special conditions addendum hereto will be regarded as gross negligence and the applicant will be held responsible for any damage or loss as a result thereof.

Date: 2019/05/09

By: C Spammer
For Regional General Manager
Western Cape

Legend	Green
1. Underground Pipe	
2. Underground Cable	
3. Manhole	
4. Street Distributio Cabinet (SDC)	
5. Jointing Pit / AJB	
6. Jointing Pillar (PJ)	
7. Pipe Junction Box (B/S)	
8. Robot Control	
9. Pole	
10. Stay	
11. Strut	
12. Aerial Cable (A/C)	





Legend		TELKOM REGIONAL EXECUTIVE	
	Existing Manhole		Existing SDC
	Planned Manhole		Planned SDC
	To Be Abandoned Manhole		To Be Recovered SDC
	Existing Manhole P1		Existing D/C
	Planned Manhole P1		Planned D/C
	To Be Abandoned Manhole P1		To Be Recovered D/C
	Existing Manhole Joint		Existing Manhole Joint
	Planned Manhole Joint		Planned Manhole Joint
	To Be Abandoned Manhole Joint		To Be Recovered Manhole Joint
	Existing Underground Route		Existing Underground Route
	Planned Underground Route		Planned Underground Route
	To Be Abandoned Underground Route		To Be Recovered Underground Route
	Existing Overhead Route		Existing Overhead Route
	Planned Overhead Route		Planned Overhead Route
	To Be Abandoned Overhead Route		To Be Recovered Overhead Route
	Existing Manhole		Existing Manhole
	Planned Manhole		Planned Manhole
	To Be Abandoned Manhole		To Be Recovered Manhole
	Existing Manhole Joint		Existing Manhole Joint
	Planned Manhole Joint		Planned Manhole Joint
	To Be Abandoned Manhole Joint		To Be Recovered Manhole Joint

Completed By	C. Spurrer	Date	06/05/19
Client		Open/Service ref	RMF_AVR.139.10
Client ref		Details	Details
CABLE SERVICES AFFECTED			
Page Size	A4	Sheet No	1 of 2