

**AGENDA of the
Portfolio Committee: Investment & Infrastructure
2 June 2022
(Also the agenda for the Mayoral Committee Meeting: 27 June 2022)**

**8.
APPLICATION TO PURCHASE: A PORTION OF REMAINDER ERF 1253
HERMANUS (TRANSPORT ZONE: ROAD AND PARKING), ADJACENT TO ERF
12294 HERMANUS (62 MITCHELL STREET, HERMANUS) – MG DELPORT**

7/2/3/2

A Le Roux

Manager: Property Administration

29 April 2022

(028) 316 - 5623

1. Executive Summary

To consider the application received from MG Delport (the owner of Erf 12294 Hermanus) to purchase a portion of Remainder Erf 1253 Hermanus ($\pm 380\text{m}^2$ in extent) (Transport Zone: Road and Parking) adjacent to Erf 12294 Hermanus, situated at 62 Mitchell Street, Hermanus for parking purposes. 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 Financial Management Act (Act 56 of 2003) ("MFMA")
- Municipal Asset Transfer Regulations (R. 878 of 2008) ("MATR")
- Administration of Immovable Property Policy of the Overstrand Municipality, as amended

**AGENDA of the
Portfolio Committee: Investment & Infrastructure
2 June 2022
(Also the agenda for the Mayoral Committee Meeting: 27 June 2022)**

6. Background/Discussion/Evaluation/Conclusion

Background/Discussion

Mr Delport, hereafter referred to as “the Applicant”, applied to purchase a portion of Remainder Erf 1253 Hermanus ($\pm 380\text{m}^2$ in extent), hereafter referred to as “the Property”, for parking purposes.

Previous application

The Applicant previously erroneously built a boundary wall on another portion of Erf 1253, Hermanus. In order to rectify the matter, he applied to purchase the encroached area from the Municipality. Subsequently a portion of Erf 1253 Hermanus to the Northeastern side of the Applicant’s property was sold to the Applicant in 2018 for gardening purposes and to retain the boundary wall.

At that time the Applicant also applied for the portion of property that he is applying for now again.

In 2015 the comments received from the various departments on the sale of the Property were as follows:

Senior Manager Hermanus: Mr D Kearney

“I wish to re-iterate my comments as previously stated. I wish to emphasize that there never as a problem with this portion of land except for the metal chain that was removed by the Municipality after a pedestrian had fallen over it. This pocket of and might seem insignificant now, but as the town densifies and commercial activities spread towards Stemmet Street, it would become a valuable piece of land for a number of parking bays. I wish to compare it with the similar shaped piece of land adjoining the Hermanus Primary and the Free Mason Hall in Royal Street. Not long ago one seldom saw a vehicle parked there, whereas now, it is filled to capacity on a daily basis. I think it is short sighted to get rid of a piece of open land that is well maintained and has for higher community value than the insignificant income that will be received from the sale thereof.”

Senior Manager Operational Services: Mr P Burger

“The sewer rising main is 6,5 metres from the erf boundary. We do not have to move any services.”

**AGENDA of the
Portfolio Committee: Investment & Infrastructure
2 June 2022
(Also the agenda for the Mayoral Committee Meeting: 27 June 2022)**

Subsequently Council on 30 March 2016 resolved as follows:

*“that the alienation of Portion B of Erf 1253, Eastcliff, Hermanus (adjacent to Erven 11094 and 857 Hermanus) ±468m² in extent, for gardening purposes by means of a closed tender process **not be approved.**”*

Current Application

The application to purchase the Property was submitted in November 2021 after a notice of non-compliance was served on the Applicant by the Town Planning Department on 29 October 2021. The notice of non-compliance is attached hereto marked “Annexure B”. The main points of the notice were as follows:

- The property is utilized as a guest house (beyond the permitted extent) and additional uses which include self-catering accommodation, a bar (without a liquor license) and hosting of an event/s.
- The property is zoned Residential Zone 1: Single Residential with consent only for a five-bedroom guest house.
- The conditions of approvals are being contravened.

The motivation from the Applicant for the application was that the guest house’s building plan on the Applicant’s property was approved for 15 rooms but as there is not sufficient parking on the property the guest house is restricted to 5 rooms. Therefore, the Applicant wants to purchase the Property to consolidate with his property to provide the required parking for the guesthouse.

As per comment from the Town Planning Department, also under point 9 below, it is confirmed that although the building plan was approved for 15 rooms the use and rights on the property does not allow for a 15-room guesthouse and therefore the Applicant will still not be allowed to operate as a 15-room guest house should the sale of the Property to him be approved, as the rights on the property is not in place. Although 15 rooms were approved on the building plan the use of only 5 rooms was approved for guesthouse purposes and the additional rooms were approved to be used by the Applicant’s extended family. The Town Planning Department informed, amongst others, Mr Delpont in February 2022 as follows:

“With the previous application (consent use to apply for a guest house) various objections was received form the adjacent property owners speculating that your client will utilise the additional rooms for guest house purposes, your client addressed the speculations by stating that he has an extended family which will make use of the additional bedrooms. By submitting an application now for rezoning to utilise the full extent of the dwelling for hotel use will be in line with what was speculated by the

**AGENDA of the
Portfolio Committee: Investment & Infrastructure
2 June 2022
(Also the agenda for the Mayoral Committee Meeting: 27 June 2022)**

neighbouring property owners during the public participation phase, and it should be mentioned we also speculated this however your client has always assured that the use will be mainly for single residential purposes (i.e his family). Therefore, I am of the opinion additional objection will be provided from the neighbouring property owners for the rezoning of the property and that the proposed application is contrary to the motivation as presented to the Municipality.”

From the above one can only derive to a conclusion that the application is submitted to again legalise an irregularity on the Applicant’s property.

The recommendation from the Traffic Department is that the Property rather be reserved for public parking and public use.

The Electrical Department does not support the fencing off of the Property for private parking as the supply cable to the kiosk on the road reserve is on the erf boundary.

It should be noted that another application was received from Mr B van Vuuren for the registration of a servitude right of way over the Property. With the sale of non-viable immovable property to adjoining owners the applicant must submit affidavits from other neighbouring owners stating that they have no objection to the sale of the Property to the Applicant and further that they are not interested in the Property. As the other adjoining owner to the Property also submitted an application on the Property the Applicant will not be able to submit an affidavit from the other adjoining owner as requested as he does not support the sale of the Property.

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 consistent with the supply chain management policy of the Municipality in accordance with Section 14(5) of the MFMA.”

Although the Property cannot be developed on its own there are two adjoining owners who can make use of the Property if incorporated into their property. The other adjoining owner also applied for a servitude right of way over the Property to his property and is not in favour of the Property being alienated to the Applicant.

**AGENDA of the
Portfolio Committee: Investment & Infrastructure
2 June 2022
(Also the agenda for the Mayoral Committee Meeting: 27 June 2022)**

Paragraph 9.2: “The Municipality may transfer ownership or otherwise dispose of a non-exempted immovable property 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 internal departments indicated that the Property is preferred to be kept for municipal use such as public parking and public area.
- (b) No valuation will be done as the alienation of the Property is not supported.
- (c) The request will be not to approve the alienation.

Conclusion

Taking the comments of the internal departments, as well as the above discussion, into consideration, it is recommended that the alienation of the Property to the Applicant not be approved.

7. Financial Implications

None

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Senior Manager: Operational Service Hermanus: Mr T Marx – (028) 313 8092

“There is a waterline on the boundary of Stemmet Street and Erf 857. Should you consider selling the land something must be written in as to protect our infrastructure. Type of service servitude.”

**AGENDA of the
Portfolio Committee: Investment & Infrastructure
2 June 2022
(Also the agenda for the Mayoral Committee Meeting: 27 June 2022)**

**Senior Superintendent Projects: Electrotechnical Services: Hermanus:
Mr J Klem - (028) 316 5625**

"The Electrical department will support the usage of the erf for parking and for an entrance to the adjacent 857 erf. Please keep in mind that before any excavation is done a wayleave must be acquired from the electrical department because the service cable to erf 857 lay across the open erf HEC 1253. The erf cannot be fenced in with a wall because the supply cable to the kiosk in the road reserve is on the erf boundary".

Town Planner: Mr P Roux – (028) 313 8900

"It should be noted that the approval for the guest house on Erf 12294 is limited to five bedrooms, irrespective of whether the dwelling has building plans for more than the five bedrooms. The five bedroom limit is applicable to single residential properties and should property owner wish to operate more than five bedrooms, then approval must be sought through a land use application (rezoning/consent use etc.). This type of application is considered a high risk application due to the locality and history of the site. No detail regarding the proposed application is provided and therefore the amount of parking required cannot be provided, at minimum one parking bay is required per bedroom however additional parking bays may be required depended on the type of use.

The portion of Erf 1253, which is proposed to be used for parking purposes measures approximately 370m², however due to the odd shape the portion the developer will be hard-pressed to create the required additional parking bays on site while allowing for vehicles to manoeuvring on the property prior to exiting the property. A parking bay has a depth of 5m and a width of 2.5m, however a vehicle requires at least 7,5m of manoeuvring space, therefore the average size required per parking bay is 25m²."

**Assistant Chief Fire Safety & Health and Safety: Mr E Solomons – (028)
312 8978**

"Fire Department have no objection to the application."

Building Control Officer: Building Services: Mr G Coetzee (028) 313 8085

"No objection from building control".

**Senior Superintendent: Operations: Traffic Services: Mr P de Gruchy -
(028) 313 8094**

"I would like to refer back towards the comments as stated by the previous Area Manager Mr D Kearney on the first application (as follows):

**AGENDA of the
Portfolio Committee: Investment & Infrastructure
2 June 2022
(Also the agenda for the Mayoral Committee Meeting: 27 June 2022)**

Looking at both applications my opinion from a Traffic Law enforcement perspective is as follows:

- *Erven 12294 owned by Mr Delport is seeking to purchase for additional parking space. As provided on his application is an overhead of his erven, his entrance and garage are situated in Mitchell Street and unless the applicant has additional accommodation that is rented out on such erven I can't see the need for additional parking space.*

I propose that the remainder of erven 1253 be utilised for additional public parking space."

Manager: Engineering Services: Mr R Andrew – (028) 312 8972

"The Engineering Services Department has no comment."

Environmental Audit Officer: Hermanus: Ms H Fortune (028) 316 5614

"The EMS has no objection to this application."

10. Annexures

- Annexure A1: Locality Map
- Annexure A2: Lay-out Map
- Annexure B: Notice of non-compliance

RECOMMENDATION TO THE COUNCIL:

that the alienation of a portion of Remainder Erf 1253 Hermanus ($\pm 380\text{m}^2$ in extent) to the owner of the adjoining Erf 12294 Hermanus, MG Delport, **not be approved** as the property must be reserved for public parking and due to services located on the Erf boundary.

RESPONSIBLE OFFICIAL:	M ERASMUS
TARGET DATE FOR IMPLEMENTATION:	14 AUGUST 2022
TARGET DATE TO INFORM APPLICANT:	27 AUGUST 2022
TARGET DATE TO INFORM OBJECTOR:	N/A

**AGENDA of the
Portfolio Committee : Investment & Infrastructure
2 June 2022
(Also the agenda for the Mayoral Committee Meeting : 27 June 2022)**

8.

APPLICATION TO PURCHASE: A PORTION OF REMAINDER ERF 1253 HERMANUS (TRANSPORT ZONE: ROAD AND PARKING), ADJACENT TO ERF 12294 HERMANUS (62 MITCHELL STREET, HERMANUS) – MG DELPORT

7/2/3/2

A Le Roux

Manager: Property Administration

29 April 2022

(028) 316 - 5623

THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON 2 JUNE 2022, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:

RECOMMENDATION TO THE COUNCIL:

that the alienation of a portion of Remainder Erf 1253 Hermanus ($\pm 380\text{m}^2$ in extent) to the owner of the adjoining Erf 12294 Hermanus, MG Delpport, **not be approved** as the property must be reserved for public parking and due to services located on the Erf boundary.

RESPONSIBLE OFFICIAL:

M ERASMUS

TARGET DATE FOR IMPLEMENTATION:

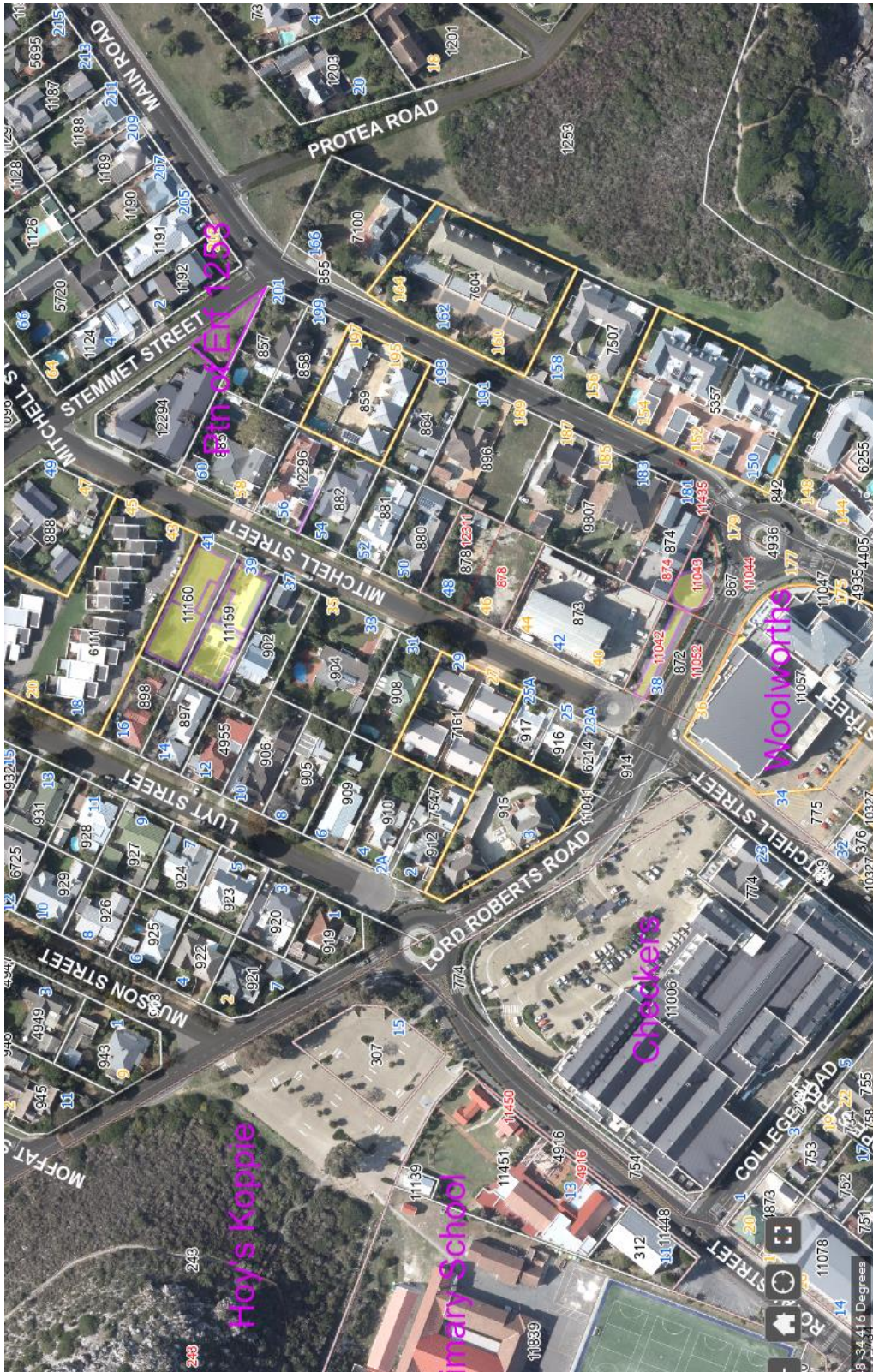
14 AUGUST 2022

TARGET DATE TO INFORM APPLICANT:

27 AUGUST 2022

TARGET DATE TO INFORM OBJECTOR:

N/A





OFFICE OF THE DIRECTOR: INFRASTRUCTURE & PLANNING
TOWN PLANNING

ENQUIRIES | NAVRAE: N Gerber
FILE REFERENCE | LEËRVERWYSING: 12294 HEC
DATE | DATUM: 29 October 2021



Attention: Mr MG Delpont
P O Box 74703
LYNNWOODRIF
0040
raymorhof@mweb.co.za; pdelmar@telkomsa.net

ELECTRONIC MAIL

Dear Sir

NOTICE OF NON-COMPLIANCE

UNAUTHORISED LAND USES AND NON-COMPLIANCE: ERF 12294 HERMANUS, 62 MITCHELL STREET, EASTCLIFF

1. The Municipality has noticed that you are **transgressing Section 84(1)(a) and (c) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning 2020 (By-Law)** as follows:
 - ❖ Contravenes and fails to comply with Sections 16(1), 16(5) and 84(2).
 - ❖ Utilises land in a manner other than prescribed by a land use scheme.
2. The subject property is being utilised as a guest house (seemingly beyond the permitted extent) and additional uses which include self-catering accommodation, a bar (without a liquor license) and hosting of an event/s.
3. The subject property is zoned **Residential Zone 1: Single Residential (SR1)** with consent for a five-bedroom guest house. The combination of activities as mentioned above are in contravention of the permitted land uses and development parameters in terms of the Overstrand Municipality Land Use Scheme 2020 (Scheme).
4. Furthermore, the **conditions of approvals are being contravened**. The conditions of approval stated, amongst other conditions, that no self-catering is permitted, that only five guest bedrooms may be provided, that parking must be demarcated, that no facilities may be provided for non-residents of the accommodation establishment and that the selling and serving of liquor on the premises are subject to obtaining a liquor license, of which there is no record.

Tel: 028 313 8900 | Fax: 028 313 2093 | E-mail: ngerber@overstrand.gov.za
PO Box 20 | HERMANUS 7200
www.overstrand.gov.za

ANNEXURE B2/2

5. As per the conditions of approvals, a copy of the requested R918 certificate of acceptability and a Site Development Plan indicating the bedrooms being utilised for guest house purposes should be provided.
6. You are hereby requested in terms of Section 85 of the By-Law, to **cease the unlawful land uses with immediate effect**. Please provide an affidavit confirming that the unlawful land uses will cease.
7. Please provide the required documentation as per the conditions of approval **within 30 days of this notice**.
8. Kindly note that failure to comply with the above requests may result in further action, legal or otherwise, being taken against you in terms of Section 88 of the By-Law.
9. Also note that, in terms of Section 86 of the By-Law, in the case of a contravention relating to a consent use, which is the case, the approval could be withdrawn.
10. Please ensure compliance with the National Building Regulations and Standards as well as the conditions contained in the title deed of your property.
11. An inspection will be conducted to ensure that the required steps to cease the unlawful activities have been taken.

Yours faithfully

PP 

S MÜLLER
DIRECTOR: INFRASTRUCTURE & PLANNING