

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

**10.
APPLICATION TO PURCHASE: A PORTION OF ERF 3222 ONRUSTRIVIER
(PUBLIC OPEN SPACE) ADJACENT TO ERF 3221 ONRUSTRIVIER (16 LAGOON
DRIVE, ONRUSTRIVIER) – DR PH VAN NIEKERK**

7/2/3/2

A Le Roux

Manager: Property Administration

13 May 2022

(028) 316 - 5623

1. Executive Summary

To consider the application received from PH Van Niekerk (the owner of Erf 3221 Onrustrivier) to purchase a portion of Erf 3222 Onrustrivier ($\pm 356\text{m}^2$ in extent) (Public Open Space) adjacent to Erf 3221 Onrustrivier, situated at 16 Lagoon Drive, Onrustrivier for gardening purposes, a cement *braai* structure and to erect a boundary wall. See the locality plans attached hereto marked "Annexures A1&2".

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

Dr PH Van Niekerk, hereafter referred to as “the Applicant”, applied to purchase a portion of Erf 3222 Onrustrivier ($\pm 356\text{m}^2$ in extent), hereafter referred to as “the Property”, for gardening purposes, a cement *braai* structure and to erect a boundary wall.

The previous owners of Erf 3221 Onrustrivier erected a cement *braai* structure and a beta fence and established a garden on the Property. The Applicant is still using the Property for the same purposes.

There are currently no building plan approvals nor any agreement between the Municipality and the Applicant for the encroachment on the Property, however there was consent issued to the previous owner to encroach.

The Property Administration Department also conducted a site visit and found that the Property is fenced at the front with a brick wall, and along the side with wiring and behind the house it is fenced with the well-known iron type ‘beta fence’. Within the fenced Property there is a cement *braai* structure, indigenous plants planted up to the fence as well as 3 (THREE) milkwood trees. As there are no visible boundaries, it is not possible to say with 100% accuracy whether all 3 (THREE) milkwood trees are on the Property, but it appears that it is more on the Property than on Erf 3221 Onrustrivier. Except for the cement *braai* structure and fence, there are no other structures on the Property. The rest of the Property is covered with plant growth. See the site visit photographs attached hereto marked as “Annexure B”.

The Property is indicated in the Surveyor General’s diagram as a public place and therefore, although the Property is not registered in the name of the Municipality, vests *ex lege* in the Municipality in terms of section 37 of the Western Cape Land Use Planning Act (No. 2 of 2014).

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.”

**AGENDA of the
Portfolio Committee: Investment & Infrastructure
2 June 2022
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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 Property can be classified as a non-viable immovable property due to the location, shape, size, proposed use thereof and due to the Applicants being the only direct neighbour that can use the Property for the purpose of gardening, a cement *braai* structure and a boundary wall.

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 must remain municipal property as the Property falls within the Coastal Protection Zone (EMOZ).
- (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

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

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

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

“The Department: Operational Services do not have any objection with this application.”

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

“This is an Eskom supply area, therefore we cannot give any comment on the proposal.”

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

“Erf 3222 Onrustvriër is a wetland area and zoned Open Space I: Public Open Space. It is also indicated as a Public Place on the Survey Diagram. This area must therefore be accessible to the general public, which appear not to be the case.

The relevant portion of land is also under the setback line (5cm contour line) where no development should take place. The portion also falls in a HPOZ and EMOZ sensitive area.”

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

“The Fire Department have no objection.”

Building Control Officer: Building Services: Mr L Coetzee - (028) 313 8091

“Building Control has no objection. If the applicant constructed the boundary wall/fence and braai on municipal property, a building plan application with a consent letter by Property Administration Department must be submitted to our office by the Applicant. Any new structures will also require the consent of Property Administration Department and a building plan application must be submitted.”

**AGENDA of the
Portfolio Committee: Investment & Infrastructure
2 June 2022
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Senior Superintendent: Operations: Traffic Services: Mr P de Gruchy - (028) 313 8094

“Regarding this application there are no objections from my office.”

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 5610

“The Environmental Management Section has the following comments on the above-mentioned application after a site visit was conducted on 2 June 2021.

Environmental Management Overlay Zone:

- *In August 2020, the municipality gazetted Environmental Overlay Zone regulations. Erf 3222 Onrustrivier is located within the Coastal Protection Environmental Management Overlay Zone (EMOZ). The purpose of the EMOZ is managing the integrity of coastal ecosystems, ecosystems services, coastal dynamic processes, and biodiversity within Coastal Reserves.*

Estuarine Risk Areas:

- *Fencing must preferably be permeable to accommodate storm events and limit structural damage and associated negative impacts on the environment.*
- *Existing coastal processes and indigenous vegetation within the estuarine functional zone must be maintained.*

Additional Comments:

- *The application was distributed to the Onrus Estuary Forum (OREF) since the application is located adjacent to the Onrus estuary. The following comments were received from Hennie Greeff OREF member and representative of the Onrus Rate Payers Association: “I have no objection to, or comment on, the application referred to in this email.”*
- *The application was also sent to Mr Theodore Martin (Professional Officer: Coastal and Catchment) and Ms Rulien Volschenk (Environmental Management Officer) of the Overberg District Municipality, but no comments were received.”*

Conclusion:

- *The application to purchase the portion of Erf 3222 is not supported by the environmental section as this fall within the Coastal Protection Zone (EMOZ).*
- *Leasing the portion of Erf 3222 is supported however, no further development is supported as this fall within the Coastal Protection Zone*

**AGENDA of the
Portfolio Committee: Investment & Infrastructure
2 June 2022
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- (EMOZ).
- *The proposed area fencing should remain as is, if in future the fence should be replaced a similar fence should be erected to accommodate water level rises due to storm events. The building of a boundary wall is not supported.*

Manager: Solid Waste Planning: Mr C Mitchell – (028) 313 5045

“There is no objection on the request from a Solid Waste Planning point of view.”

10. Annexures

Annexures A1 & 2: Locality Maps
Annexure B: Property Administration: Site Visit Photographs

RECOMMENDATION TO THE COUNCIL:

that the alienation of a portion of Erf 3222 Onrustrivier ($\pm 356\text{m}^2$ in extent) to the owner of the adjoining Erf 3221 Onrustrivier, Dr PH Van Niekerk, **not be approved** as the property fall within the Coastal Protection Zone (EMOZ).

RESPONSIBLE OFFICIAL:	W MURTZ
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
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A Le Roux

13 May 2022

Manager: Property Administration

(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 Erf 3222 Onrustrivier ($\pm 356\text{m}^2$ in extent) to the owner of the adjoining Erf 3221 Onrustrivier, Dr PH Van Niekerk, **not be approved** as the property fall within the Coastal Protection Zone (EMOZ).

RESPONSIBLE OFFICIAL:

W MURTZ

TARGET DATE FOR IMPLEMENTATION:

14 AUGUST 2022

TARGET DATE TO INFORM APPLICANT:

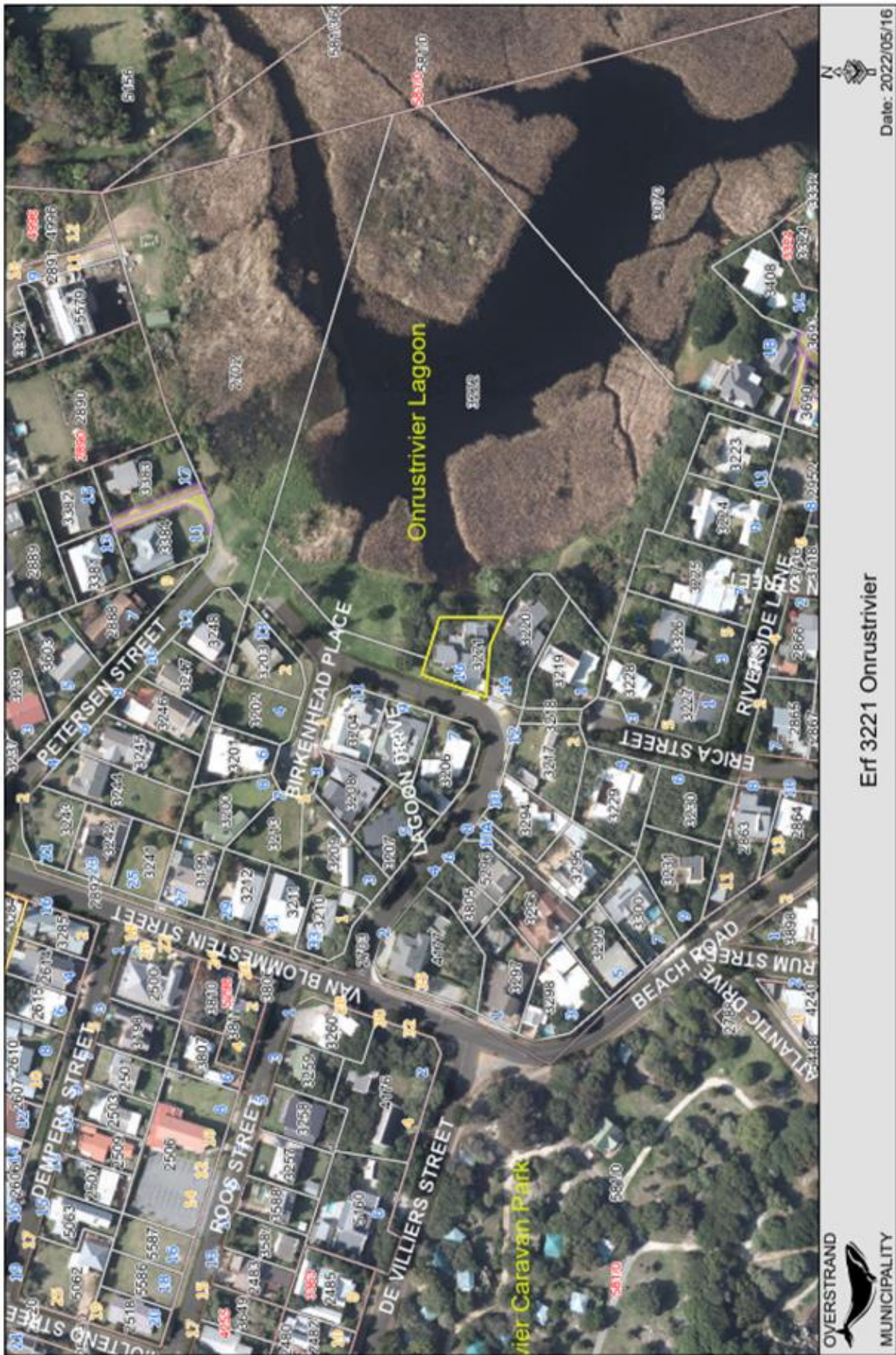
27 AUGUST 2022

TARGET DATE TO INFORM OBJECTOR:

N/A



ANNEXURE A2



Erf 3221 Onnrustvriër



ANNEXURE B

