

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
17 October 2017
(Also the agenda for the Mayoral Committee Meeting : 25 October 2017)**

4.

HERMANUS: IN PRINCIPLE APPROVAL FOR THE DIRECT ALIENATION OF UNREGISTERED ERF 9901 (A PORTION OF ERF 9894), VOËLKLIP, HERMANUS TO THE BERGRANT TRUST

7/2/3/2/

W Murtz

(028) 316 3724

Hermanus Administration

14 September 2017

1. Executive Summary

To obtain approval in principle for the direct alienation of unregistered Erf 9901 (a portion of Erf 9894) Hermanus, ±244m² in extent, to the owner of Erf 3517 Hermanus (233 Eleventh Street), The Bergrant Trust.

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
The encouragement of structured community participation in the matters of the municipality
Promotion of tourism, economic and social development

4. Delegated Authority

None

5. Legal Requirements

- Local Government: Municipal Finance Management Act (Act 56 of 2003) (MFMA)
- Municipal Asset Transfer Regulations (R. 878 of 2008)
- Administration of Immovable Property Policy of the Overstrand Municipality, as amended

6. Background/Discussion/Evaluation/Conclusion

Background/Discussion

An application was received from The Bergrant Trust, the owner of the adjoining property, being Erf 3517 Hermanus, for the purchase of

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unregistered Erf 9901 (a portion of Erf 9894) Hermanus ($\pm 244\text{m}^2$ in extent), as indicated on the locality map attached hereto marked Annexure A.

The subject property applied for formed part of a section of Twelfth Street in Voëlklip, Hermanus which was closed in 2003 and subdivided into five portions (Erven 9897 – 9901). Three of the five portions of the closed section of Twelfth Street were alienated to the adjoining owners during 2003 and 2004. The Applicant wishes to purchase unregistered Erf 9901 from the Municipality and consolidate it with Erf 3517.

The following conditions formed part of the original subdivision of Erf 9894, being the closed portion of the road, and will also be applicable in this matter:

1. The transaction will be subject to the successful rezoning of the subject portion to Residential Zone 1 and the consolidation thereof with Erf 3517 Hermanus, and
2. a 15,58m building line, from the southern boundary of the consolidated property, prohibiting any building to take place within the said building line, will be imposed.

Due to the locality, use and size of the portion of the property applied for, it can be classified as a non-viable property which can in terms of the amended Administration of Immovable Property Policy be alienated directly to the adjoining property owner.

Subsequent costs

The purchaser will be liable for the costs of the transaction which will include, but not limited to, the application fee, the cost for the valuation, the consolidation and rezoning of the property as well as the required Section 14 advertisement in terms of the MFMA and Administration of Immovable Property Policy.

Evaluation

A: Administration of Immovable Property Policy of the Overstrand Municipality:

The following conditions of the said Policy will apply:

Paragraph 7: “The transfer of ownership of immovable property must be fair, equitable, transparent, competitive (unless it is not applicable or unpractical e.g. non-viable immovable property) and consistent with the supply chain management policy of the Municipality in accordance with Section 14(5) of the MFMA.”

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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”. Unregistered Erf 9901 (a portion of Erf 9894) Hermanus, can be classified as a non-viable immovable property due to the location, size and the restrictions imposed on the property. The property is situated next to the bushes with no road leading to the said property. The only allowed access is through the Applicant’s property and it can thus be seen that the property will not be of useful purpose to anyone else. Due to the restrictions imposed on the property no new dwelling may be built on the property and will mainly be used for gardening purposes.

Paragraph 9.2: “The Municipality may transfer ownership or otherwise dispose of a non-viable immovable property, as non-exempted immovable property which can be of no practical use to any other person, directly to adjoining property owner(s), only after the Municipal Council has, in terms of sections 14(2)(a) and (b) of the MFMA

(a) decided on reasonable grounds that the non-viable immovable property is not needed to provide the minimum level of basic municipal services;

(b) considered the fair market value of the immovable property and the economic and community value to be received in exchange for the immovable property in accordance with Section 14(2) of the MFMA, and

(c) has as a consequence to 9.2(a) and (b) above approved in principle that the immovable property may be transferred or disposed, provided that, when giving the in principle approval, it is recorded in the minutes the full reasons for the Municipality preferring such direct transfer.”

(a) The comments received from the relevant departments indicate that the subject portion of municipal property is not needed for the provision of the minimum level of basic municipal services.

(b) A market related value for the property will be obtained as required once the in principle approval is obtained. This market related purchase price will be disclosed to Council when the final approval for the transfer of the property is obtained. It is herewith however mentioned that the previous three portions of Erf 9894 were sold to the adjoining owners in 2003 and 2004 at an amount of R300.00/m².

(c) The reasons for preferred direct sale are discussed above and will subsequently be recorded in the minutes.

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Paragraph 28: “All costs pertaining to a transaction shall be borne by the successful bidder/purchaser, e.g. survey, advertisements, valuation, rezoning, relocation or provision of services where necessary, etc. The Municipality may, however, waive its right to claim the costs should it be to its advantage to bear the costs.”

The purchaser will be liable for all costs incidental to this transaction which include, but not limited to, the application fee, the cost for the valuation, rezoning and consolidation, Section 14 advertisement and transfer costs.

Paragraph 29: “Should existing services need to be relocated or secured by means of the registration of a servitude in favour of the Municipality as a result of the alienation of the immovable property, all related costs shall be for the account of the successful bidder/purchaser.”

The purchaser shall be liable for all cost in this regard should it be necessary.

Paragraph 30: “Small areas of land such as closed roads or portions of public place sold to an adjacent owner must be consolidated with the existing property of the adjacent owner, unless circumstances exist which, in the opinion of the Municipality, make such consolidation undesirable.”

A condition to this effect will be included in the Deed of Sale.

Paragraph 32: “Save with prior approval, the immovable property alienated may only be used for the purpose for which it was originally sold and purposes permitted by town planning scheme regulations pertaining to such purposes.”

A condition to this effect will be included in the Deed of Sale.

Paragraph 33: “The agreement might contain a suspensive condition in respect of immovable property which is sold subject to approval in terms of land use planning legislation.”

A suspensive condition to this effect will be included in the Deed of Sale that the sale of the property will be subject to the successful rezoning and consolidation of the property as well as the relaxation of the northern boundary line of the consolidated property.

Paragraph 34: “A 10% deposit of the agreed/tendered purchase price will be due and payable by the purchaser/successful bidder

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within 10 days of date of request in writing thereof by the Municipality.”

A condition to this effect will be included in the Deed of Sale.

Paragraph 35: “Interest on the purchase price, as from date of signature of the deed of sale, must be charged by the Municipality should payment or transfer be delayed due to an action or failure on the part of the successful bidder/ purchaser.”

A condition to this effect will be included in the Deed of Sale.

B: Advertisement/Notification

The necessary advertisement in terms of Section 14 of the MFMA will be placed after obtaining this in principle decision. The purchaser will be liable for the costs of the Section 14 advertisement.

Conclusion

Taking the comments of our internal departments, as well as the above discussion, into consideration it is recommended that the direct alienation of unregistered Erf 9901 (a portion of Erf 9894) Hermanus ($\pm 244\text{m}^2$ in extent) to the owner of the adjoining Erf 3517 Hermanus, being The Bergrant Trust, at a market related purchase price be approved in principle.

Furthermore, the purchaser will be liable for all cost involved to affect transfer of the property in the deeds office. Subsequently the costs will entail the application, the cost for the valuation, the consolidation and rezoning of the property, application for relaxation of the building line, Section 14 advertisement and transfer costs.

7. Financial Implications

The Municipality stands to gain a market related purchase price for the property as determined by a professional valuer.

8. Staff Implications

None

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9. Comments from other Departments, Divisions and Administrations

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

Unregistered Erf 9901, a portion of Erf 9894 Hermanus, is currently reflected in the Fixed Asset Register for Property, Plant and Equipment: Land with a carrying value of R200 000. It forms part of the larger Erf 4771 which is reflected in the Fixed Asset Register with a total carrying value of R4 000 000. The disposal of the erf will have to be accounted for at the selling price in order to remove it from the Fixed Asset Register and to account for the gain / (loss).

There is no objection as the application complies with the Administration of Immoveable Property Policy.

Senior Townplanner: Mr H Boshoff – (028) 313 8906

Our departmental comments/conditions regarding the above application: Should the above owner of Erf 3517, Hermanus (Voëlklip) be allowed to acquire unregistered Erf 9901, the following conditions must apply:

- That the necessary prescribed application be submitted for the consolidation and rezoning of unregistered Erf 9901 at the cost of the applicant.
- That a 3m rear building line is applicable from the original boundary (prior to consolidation) or alternatively worded, a 15,58m rear building line (from the new rear boundary measured after consolidation).

Senior Manager Engineering Services: Mr D Hendriks: - (028) 313 8245

No comment.

Senior Superintendent Projects (Hermanus): Mr J Klem – (028) 313 8000

The electrical department has no comment on the proposal.

Environmental Officer (Hermanus): Mrs P Aplon – (028) 316 3724

This office has no objection to the sale of unregistered Erf 9901. However the applicant must acknowledge that this erf is adjacent to Piet-se-Bos, a milkwood forest within Fernkloof Nature Reserve. This is a Municipal nature reserve which is managed in terms of the National Environmental Management: Protected Areas Act (amongst other legislation). This property, as well as Erf 3517 falls within the proposed Protected Areas Buffer Overlay Zone. These overlay zones, accompanied by specific regulations are currently being advertised for public comment. When these regulations come into effect, it will not invalidate any existing land use

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rights or authorizations, but may place additional constraints on existing rights.

Chief Fire and Disaster Management: Mr L Smith – (028) 313 5041

Fire Safety has no comment as the application does not impact on Fire Protection Regulations or The Community Fire Safety By-Law.

Manager: Building Control: Mr J Simson – (028) 313 8091

Building services has no further comment about the sale of unregistered Erf 9901 as they are restricted from building on the Erf and provided that they abide by the building lines laid down by Town Planning and that any plans being submitted on the consolidated erf comply with Sans 10400.

10. Annexures

- Annexure A: Locality plan
- Annexure B: Diagram S.G. No. 4723/2003
- Annexure C: Diagram S.G. No. 4718/2003

RECOMMENDATION TO THE COUNCIL:

1. that the direct alienation of unregistered Erf 9901 (a portion of Erf 9894) Hermanus ($\pm 244\text{m}^2$ in extent) to the owners of the adjoining erf, The Bergrant Trust, at a market related purchase price as determined by a registered valuer be **approved in principle**;
2. that it be noted that the direct alienation is possible as unregistered Erf 9901 (a portion of Erf 9894) Hermanus is classified as a non-viable property;
3. that, subject to the approval in 1. above, a public participation process be followed at the cost of the Applicant;
4. that it be noted that a condition for the alienation will be that unregistered Erf 9901 (a portion of Erf 9894) Hermanus be consolidated with the adjoining property of The Bergrant Trust, being Erf 3517 Hermanus;
5. that the alienation of unregistered Erf 9901 (a portion of Erf 9894) Hermanus furthermore be subject to a suspensive condition that the Applicant obtains approval for the consolidation and rezoning of the portion of property as well as the approval for the relaxation of the northern (rear) building line of the consolidated property;

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6. that all the costs pertaining to the transaction, e.g. application fee, valuation costs, consolidation, rezoning, application for relaxation of the building rear building line, transfer and related costs, advertisements, etc., be paid by the Applicant/purchaser; and
7. that it be noted that the municipal property herewith envisaged to be alienated is not required for the provision of basic municipal services in terms of the provisions of paragraph 5 of Council's Administration of Immovable Property Policy and Section 14 of the Local Government: Municipal Finance Management Act (Act 56 of 2003).

RESPONSIBLE OFFICIAL :	W MURTZ
TARGET DATE FOR IMPLEMENTATION:	30 NOVEMBER 2017
TARGET DATE TO INFORM APPLICANT:	8 NOVEMBER 2017
TARGET DATE TO INFORM OBJECTOR:	N/A

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TO THE BERGRANT TRUST**

7/2/3/2/

W Murtz

(028) 316 3724

Hermanus Administration

14 September 2017

**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON
17 OCTOBER 2017, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:**

RECOMMENDATION TO THE COUNCIL:

1. that the direct alienation of unregistered Erf 9901 (a portion of Erf 9894) Hermanus ($\pm 244\text{m}^2$ in extent) to the owners of the adjoining erf, The Bergrant Trust, at a market related purchase price as determined by a registered valuer be **approved in principle**;
2. that it be noted that the direct alienation is possible as unregistered Erf 9901 (a portion of Erf 9894) Hermanus is classified as a non-viable property;
3. that, subject to the approval in 1. above, a public participation process be followed at the cost of the Applicant;
4. that it be noted that a condition for the alienation will be that unregistered Erf 9901 (a portion of Erf 9894) Hermanus be consolidated with the adjoining property of The Bergrant Trust, being Erf 3517 Hermanus;
5. that the alienation of unregistered Erf 9901 (a portion of Erf 9894) Hermanus furthermore be subject to a suspensive condition that the Applicant obtains approval for the consolidation and rezoning of the portion of property as well as the approval for the relaxation of the northern (rear) building line of the consolidated property;
6. that all the costs pertaining to the transaction, e.g. application fee, valuation costs, consolidation, rezoning, application for relaxation of the building rear building line, transfer and related costs, advertisements, etc., be paid by the Applicant/purchaser; and
7. that it be noted that the municipal property herewith envisaged to be alienated is not required for the provision of basic municipal services in terms of the provisions of paragraph 5 of Council's Administration of Immovable Property Policy and Section 14 of the Local Government: Municipal Finance Management Act (Act 56 of 2003).

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RESPONSIBLE OFFICIAL :	W MURTZ
TARGET DATE FOR IMPLEMENTATION:	30 NOVEMBER 2017
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TARGET DATE TO INFORM OBJECTOR:	N/A



Unregistered Municipal
Erf 9901 (Blue block)
a portion of Erf 9894,
adjacent to Erf 3517

-34.414 19.291 Degrees

POWERED BY esri

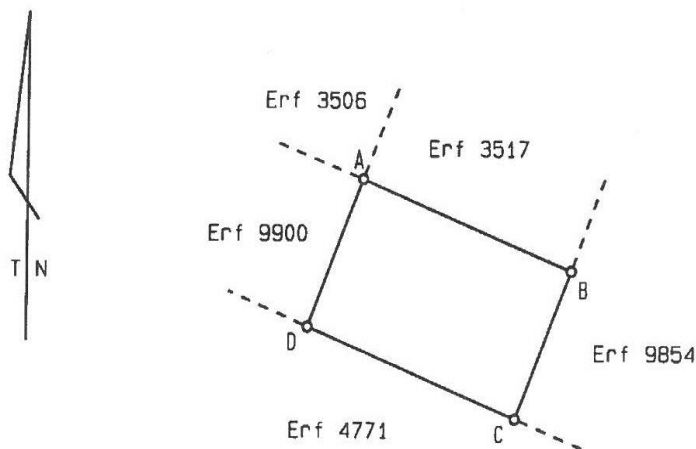
SPRONK LAND SURVEYORS

SIDES Metres		ANGLES OF DIRECTION	CO-ORDINATES Y System: WG 19' X		S.G. No. 4723/2003
		Constants.	+	0,00	+3800 000,00
AB	19,38	291 50 00	A	- 26 664,98	+ 9 589,34
BC	12,58	21 50 30	B	- 26 682,97	+ 9 596,55
CD	19,38	111 50 00	C	- 26 678,29	+ 9 608,23
DA	12,58	201 50 30	D	- 26 660,30	+ 9 601,02
		2163 ⊕	-	26 108,15	+ 9 210,40
		2263 ⊕	-	26 294,79	+ 9 285,25

Approved
T. Swan
for
SURVEYOR-
GENERAL
2004/01/4

Description of Beacons

A, B, C, D : 12mm Iron peg



Scale 1:500

The figure A B C D

represents 244 square metres of land being
Erf 9901 (a portion of Erf 9894) , Hermanus.
situate in the Overstrand Municipality

Administrative District of Caledon
Province of Western Cape

Surveyed in July 2003 by me

L.A. Van Dyk
L A VAN DYK PLS 1069
Professional Land Surveyor

EXEMPT FROM PROVISIONS OF ACT
70 OF 1970
SECTION 1(2)

APPROVED IN TERMS OF SECT. 25
OF ORD. 15/1985
REF. 16/3/4/2.
DATE 4 August 2003

This diagram is annexed to No d d i f o. Registrar of Deeds	The original diagram is	File S/2479/102
	S G No 4718/2003	S R E 2147/2003
	Transfer	G P
	Grant	Comp AI-38A/Y22 AINW-1263(M3811) LPI C0130013

ERF 9901 HERMANUS

OFFICE COPY

SIDES Metres		ANGLES OF DIRECTION	CO-ORDINATES System: WG 19 X		S.G. No.
		Constants:	+	0,00	+3800 000,00
AB	98,09	291 50 00	A	- 26 591,92	+ 9 560,07
BC	12,58	21 50 30	B	- 26 682,97	+ 9 596,55
CD	98,09	111 50 00	C	- 26 678,29	+ 9 608,23
DA	12,58	201 50 30	D	- 26 587,24	+ 9 571,75
		2163	⊕	- 26 108,15	+ 9 210,40
		2263	⊕	- 26 294,79	+ 9 285,25

Approved
L.A. Van Dyk
for
SURVEYOR-
GENERAL
2004-01-14

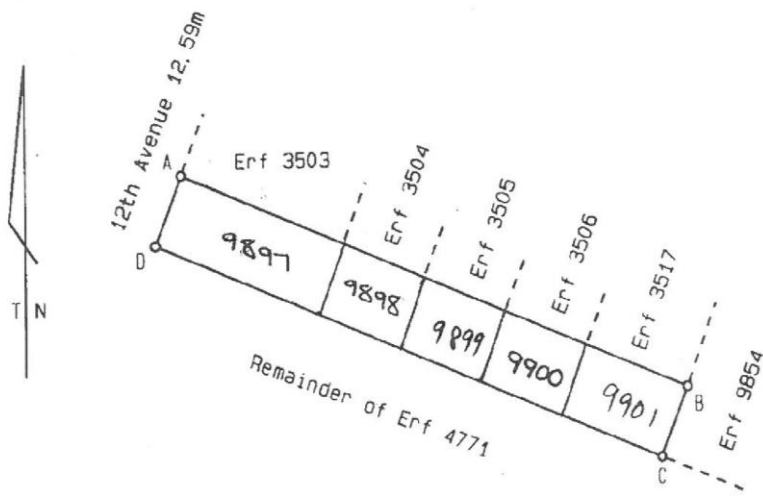
Description of Beacons

- A : 20mm Iron peg
- B, C, D : 12mm Iron peg

EXEMPT FROM PROVISIONS OF ACT
70 OF 1970
SECTION 11(a)

APPROVED IN TERMS OF SECT. 25
OF ORD. 15/1985
REF. 16/3/4/1
DATE 2003-11-28

This diagram represents
closed road



Scale 1:1000

The figure A B C D
represents 1234 square metres of land being
Erf 9894 (portion of Erf 4771), Hermanus,
situate in the Overstrand Municipality

Administrative District of Caledon
Province of Western Cape
Surveyed in July 2003 by me

L.A. Van Dyk
L A VAN DYK PLS 1069
Professional Land Surveyor

This diagram is annexed to No T70567/2004 d.d. i.f.o. Registrar of Deeds	The original diagram is S.G. No. A 4054/1931 Transfer 1934.202.10530 Filed as Plan M568 (2831)	File S/2479/102 S.R. E 2147/2003 G.P. Comp AI-30A/Y22 (472) AINW-1263 (M3811) LPI C0130013
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FOR ENDORSEMENTS
SEE BACK OF DGM. Erf 9894 Hermanus