

**AGENDA of the
Portfolio Committee: Infrastructure & Planning
20 August 2019
(Also the agenda for the Mayoral Committee Meeting: 28 August 2019)**

**6.
TRANSFER OF UNREGISTERED ERF 9901 (A PORTION OF ERF 9894)
HERMANUS TO THE BERGRANT TRUST FOR GARDENING PURPOSES**

7/2/3/2

W Murtz

(028) 316 - 3724

Hermanus Administration

11 July 2019

1. Executive Summary

To obtain final approval for the transfer of unregistered Erf 9901 (a portion of Erf 9894) Hermanus (244m² in extent) to the owners of the adjoining Erf 3517 Hermanus, being The Bergrant Trust, located at 233 Eleventh Street, Hermanus, for gardening purposes. See the locality plan attached hereto marked Annexure "A".

2. Service Delivery and Budget Implementation Plan - IGNITE

Infrastructure & 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

- Administration of Immovable Property Policy of the Overstrand Municipality, as amended
- Local Government: Municipal Finance Management Act (No 56 of 2003) ("MFMA")
- Municipal Asset Transfer Regulations (R. 878 of 2008)

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6. Background/Discussion/Evaluation/Conclusion

Background/Discussion

Council on 25 October 2017 approved in principle 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 3517 Hermanus, being The Bergrant Trust, at a market related purchase price subject to a public participation process being followed and subject to further conditions (i.e. subdivision, etc.). A market related value was determined and an amended in principle approval was given on 28 February 2018 approving the purchase price of R527,500.00 (FIVE HUNDRED AND TWENTY SEVEN THOUSAND FIVE HUNDRED RAND)(VAT excluded) as well as the correction of the reference to the location (from northern to southern) of the building line for which a further approval needs to be gained through the Town Planning Department. The public participation process was followed as discussed in more detail below.

Council approved in principle the alienation subject to amongst others the 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 southern (rear) building line of the consolidated property. The Bergrant Trust has already applied for the said Town Planning approvals.

Evaluation

A. Administration of Immovable Property Policy of the Overstrand Municipality

The following conditions of said policy 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. ”

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 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 the Applicant’s property and it can thus be seen that the

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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 they will only be able to use it for gardening purposes.

Paragraph 9(1)(a): “The Municipality may transfer ownership or otherwise dispose of a non-exempted immovable property only after the municipal council, in terms of sections 14(2)(a) and (b) of the MFMA: decided on reasonable grounds that the immovable property is not needed to provide the minimum level of basic municipal services:”

Council, when the in principle approval was obtained, confirmed that the subject property is not needed to provide the minimum level of basic municipal services.

Paragraph 9(1)(b): “The Municipality may transfer ownership or otherwise dispose of a non-exempted immovable property only after the municipal council, in terms of sections 14(2)(a) and (b) of the MFMA: 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:”

Boland Valuers determined the market related value on 12 April 2017 at an amount of R527,500.00 (FIVE HUNDRED AND TWENTY SEVEN THOUSAND FIVE HUNDRED RAND) (VAT excluded). The valuation was done taking into consideration the usable size of the property, locality, zoning, proposed use of the property, the restrictions imposed on the property and the value it will add to the Applicant’s existing property.

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**

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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 municipal property is not needed for the provision of the minimum level of basic municipal services.
- (b) Boland Valuers determined the market related value on 12 April 2017 at an amount of R527,500.00 (FIVE HUNDRED AND TWENTY SEVEN THOUSAND FIVE HUNDRED RAND) (VAT excluded). The valuation was done taking into consideration the size, locality, zoning and proposed use of and restrictions on the property.
- (c) The reasons for preferred direct sale are discussed above and was recorded in the minutes of the in principle approvals granted by the Council on 25 October 2017 and 27 February 2018 respectively, copies of which is attached hereto marked Annexure “B” and “C”.

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 the costs relating to the transaction, including but not limited to the application fee, valuation costs, advertisement costs, transfer and related cost and all the costs related to the Town Planning processes.

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 is included in the Deed of Sale.

Paragraph 34: “A 10% deposit of the agreed/tendered purchase price will be due and payable by the purchaser/successful bidder within 10 days of date of request in writing thereof by the Municipality.”

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

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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 is included in the Deed of Sale.

B. Advertisement/Notification

An advertisement for the transfer of unregistered Erf 9901 (a portion of Erf 9894) Hermanus (244m² in extent) was placed in The Village News on 29 May 2019 for a 30 (THIRTY) day objection/comment period.

The following objections/comments were received from Hermanus Ratepayers Association which was recorded during a Ward 3 Committee Meeting held on 12 June 2019. The minutes of the meeting noted the objection as follows:

“Recommended:

1. *That the HRA objected to the selling of the portion of land at the price indicated in the document relating to Erf 9901, 11th Street, Voëlklip they have received, and*
2. *that the land be properly evaluated and sell at a realistic / market related price.”*

Discussion of objection:

It is recommended that the objection be dismissed for the following reasons:

There is no reason given by the Hermanus Ratepayers Association for their objection to the sale of the subject property. It seems as if the only concern they have is the market related price of the property.

The subject property was valued by a registered valuer taking into account the location, useable size, zoning, use, restrictions thereon and the value it will add to the adjoining property. Because this property is not zoned as a residential property, it cannot be valued as a residential property itself. There were also restrictions placed on the property, i.e. that they may at no stage build on the property, except for a boundary wall/fence, and may thus only use it for gardening purposes. This means that the subject property may not be developed, and again can thus not be valued at the same value as a residential property that can be developed.

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It is confirmed that two valuations were obtained, both from duly registered valuers. The outcome of the two valuations was:

- (a) Boland Valuers CC (obo Municipality) : R527,500.00 (VAT excluded);
- (b) Pendo Property Valuers (obo Applicant) : R400,000.00 (VAT excluded)

The Municipality accepted the higher of the two valuations.

The following further questions/objections (summarised) were received from the Hermanus Ratepayers Association on 26 June 2019 (see attached as Annexure D):

“We request to be informed:

- *why our objection was ignored, and no comment received, before proceeding to prepare 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 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 the transfer of this property can be stopped before answers to the above questions can be received.”*

Discussion of questions/objection:

- The objection received against the sale of the property was not submitted during the public participation process followed for the transfer of the property. As Council still needs to approve the transfer in the Deeds Office, no instruction has been given to an attorney to proceed with the transfer.
- A registered valuer was appointed by the Municipality to provide a market related valuation for the property. This is a requirement in terms of the Overstrand Municipality’s Administration of Immovable Property Policy, as well as the Municipal Asset Transfer Regulations. The criteria used in determining the value was discussed above.
- The current calculated municipal valuation for this property is R110,407.24 (VAT included), which valuation was done in 2016. The valuation for this property that was done by the registered valuer, was done in 2017 and came to an amount of R527,500.00 (VAT excluded), which is more than the municipal valuation. The

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latter valuation was, amongst others, done on the useable size of the property the Municipality envisages to transfer.

- The zoning of the property to be alienated is Open Space Zone 2: Public Open Space. The subject property is adjacent to a portion of Erf 4771 Hermanus which is included in the Fernkloof Nature Reserve.
- The comments of the Municipality's Environmental Section to the alienation of the property was obtained, thus any environmental considerations were taken into account when the initial in principle approval to alienate the property was obtained from Council.
- It is not recommended to stop the sale pending answers being given to the objector. All objections/comments will be incorporated into this report in order for Council to take an informed decision as to whether the transfer will be approved or denied.

Conclusion

It is recommended that the transfer of unregistered Erf 9901 (a portion of Erf 9894) Hermanus, (244m² in extent), to The Bergrant Trust for the amount of R527,500.00 (FIVE HUNDRED AND TWENTY SEVEN THOUSAND FIVE HUNDRED RAND) (VAT excluded) for gardening purposes be approved.

7. Financial Implications

The Municipality stands to gain an income of R527,500.00 (FIVE HUNDRED AND TWENTY SEVEN THOUSAND FIVE HUNDRED RAND) (VAT excluded) for the sale of the said property.

8. Staff Implications

None

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 R4000 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 Immovable Property Policy.

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10. Annexures

- Annexure A: Locality Plan
- Annexure B: Council resolution dated 25 October 2017
- Annexure C: Council resolution dated 28 February 2018
- Annexure D: Questions/Objection by the Hermanus Ratepayers Association

RECOMMENDATION TO THE COUNCIL:

1. that the objections submitted by the Hermanus Ratepayers Association on 12 and 26 June 2019 respectively be dismissed for the reasons as discussed in this report;
2. that the transfer of unregistered Erf 9901 (a portion of Erf 9894), Hermanus (244m² in extent) to The Bergrant Trust for the amount of R527,500.00 (FIVE HUNDRED AND TWENTY SEVEN THOUSAND FIVE HUNDRED RAND) (VAT excluded) for gardening purposes, **be approved**;
3. that Council take cognisance of the fact that the direct alienation and subsequent transfer is only approved as unregistered Erf 9901 (a portion of Erf 9894) Hermanus is classified as a non-viable property;
4. that it be noted that a condition of transfer will be that unregistered Erf 9901 (a portion of Erf 9894) Hermanus must consolidated with the adjoining property of The Bergrant Trust, being Erf 3517 Hermanus;
5. that the transfer of unregistered Erf 9901 (a portion of Erf 9894) Hermanus be subject to the suspensive condition that the Applicant/purchaser obtains approval at own cost for the consolidation and rezoning of the property as well as the approval for the relaxation of the southern (rear) building line of the to be consolidated property;
6. that any restriction on the building line imposed by the Town Planning Department be registered against the title deed of the to be consolidated property;
7. that a condition be registered against the title deed of the to be consolidated property that the portion of property envisaged to be transferred may only be used for gardening purposes and no structures, excluding a boundary wall, may be erected thereon;
8. 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

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9. that it be noted that the municipal property envisaged to be transferred is not required for the provision of the minimum level 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:

9 SEPTEMBER 2019

TARGET DATE TO INFORM APPLICANT:

30 SEPTEMBER 2019

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**6.
TRANSFER OF UNREGISTERED ERF 9901 (A PORTION OF ERF 9894)
HERMANUS TO THE BERGRANT TRUST FOR GARDENING PURPOSES**

7/2/3/2

W Murtz

(028) 316 - 3724

Hermanus Administration

11 July 2019

**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON
20 AUGUST 2019, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:**

RECOMMENDATION TO THE COUNCIL:

1. that the objections submitted by the Hermanus Ratepayers Association on 12 and 26 June 2019 respectively be dismissed for the reasons as discussed in this report;
2. that the transfer of unregistered Erf 9901 (a portion of Erf 9894), Hermanus (244m² in extent) to The Bergrant Trust for the amount of R527,500.00 (FIVE HUNDRED AND TWENTY SEVEN THOUSAND FIVE HUNDRED RAND) (VAT excluded) for gardening purposes, **be approved**;
3. that Council take cognisance of the fact that the direct alienation and subsequent transfer is only approved as unregistered Erf 9901 (a portion of Erf 9894) Hermanus is classified as a non-viable property;
4. that it be noted that a condition of transfer will be that unregistered Erf 9901 (a portion of Erf 9894) Hermanus must be consolidated with the adjoining property of The Bergrant Trust, being Erf 3517 Hermanus;
5. that the transfer of unregistered Erf 9901 (a portion of Erf 9894) Hermanus be subject to the suspensive condition that the Applicant/purchaser obtains approval at own cost for the consolidation and rezoning of the property as well as the approval for the relaxation of the southern (rear) building line of the to be consolidated property;
6. that any restriction on the building line imposed by the Town Planning Department be registered against the title deed of the to be consolidated property;
7. that a condition be registered against the title deed of the to be consolidated property that the portion of property envisaged to be transferred may only be used for gardening purposes and no structures, excluding a boundary wall, may be erected thereon;

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8. 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
9. that it be noted that the municipal property envisaged to be transferred is not required for the provision of the minimum level 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:

9 SEPTEMBER 2019

TARGET DATE TO INFORM APPLICANT:

30 SEPTEMBER 2019



OVERSTRAND MUNICIPALITY

Unregistered Erf 9901 Hermanus

Date: 2017-12-28

5.4

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

(ITEM 4, PAGE 63 : INFRASTRUCTURE AND PLANNING PORTFOLIO - MAYORAL COMMITTEE MEETING : 25 OCTOBER 2017)

RESOLVED (SUPPORTED BY 24 COUNCILLORS):

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).

5.4

HERMANUS: AMENDMENT OF CONDITIONS 1 AND 5 OF THE IN PRINCIPLE APPROVAL DATED 25 OCTOBER 2017 FOR THE DIRECT ALIENATION OF UNREGISTERED ERF 9901 (A PORTION OF ERF 9894), VOËLKLIP, HERMANUS TO THE BERGRANT TRUST

(ITEM 6, PAGE 131 : INFRASTRUCTURE & PLANNING PORTFOLIO - MAYORAL COMMITTEE MEETING : 28 FEBRUARY 2018)

RESOLVED (SUPPORTED BY 23 COUNCILLORS):

that conditions 1 and 5 only of Council Resolution dated 25 October 2017 be amended to read as follows:

- (a) 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, for an amount of R527 500.00 (FIVE HUNDRED AND TWENTY SEVEN THOUSAND FIVE HUNDRED RAND) (VAT excluded) be **approved in principle**; and
- (b) 5. that the abovementioned approval in principle be subject to the 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 southern (rear) building line of the consolidated property.

RESPONSIBLE OFFICIAL :

W MURTZ

TARGET DATE FOR IMPLEMENTATION:

14 MARCH 2018

TARGET DATE TO INFORM APPLICANT:

7 MARCH 2018

TARGET DATE TO INFORM OBJECTOR:

N/A

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.

ANNEXURE D

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: 082 486 0617
E-Mail: jancrop@hermanus.co.za

For and on behalf of Hermanus Ratepayers Association