

**AGENDA of the
Portfolio Committee: Infrastructure & Planning
17 August 2021
(Also the agenda for the Council Meeting: 24 August 2021)**

**6.
TRANSFER OF UNREGISTERED ERF 9828 HERMANUS (A PORTION OF ERF 572
HERMANUS) (ROAD RESERVE) ADJACENT TO ERF 624 HERMANUS SITUATED
AT 63 MARINE DRIVE, HERMANUS, TO HERMANUS ESPLANADE 1970 (PTY)
LTD**

7/2/3/2

A Le Roux

Manager: Property Administration

7 July 2021

(028) 316 - 5623

1. Executive Summary

To obtain final approval for the transfer of unregistered Erf 9828 (a portion of erf 572) Hermanus, 25m² in extent, adjacent to Erf 624 Hermanus, situated at 63 Marine Drive, Hermanus to the owners of Erf 624 Hermanus, being Hermanus Esplanade 1970 (Pty) Ltd. See the locality plan attached hereto marked Annexure "A" and diagram attached marked Annexure "B".

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 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

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6. Background/Discussion/Evaluation/Conclusion

Background/Discussion

The Hermanus Esplanade 1970 (Pty) Ltd, hereinafter referred to as “the Applicant”, had an encroachment agreement (at that time referred to as an Indemnity form) with the Municipality (pre 1979) for a part of the building (“Stoop area”) that encroaches onto road reserve (Erf 572 Hermanus).

On 9 October 2001 the Executive Committee resolved as follows:

- “1. That all legal requirements in connection with advertising, road closure (if applicable), rezoning and subdivision be dealt with and that subject to no objections being received, erf 9828 be transferred to the owner of erf 624 for consolidation therewith;
2. that the selling price be fixed at a nominal amount of R100, and
3. that all costs relating to the transaction be borne by the owner of erf 624.

The following information was given to the Executive Committee in motivation of the above recommendation:

“The portion of Marine Drive between the Windsor Hotel and Gearing Point contains some of the oldest buildings in Hermanus, most of them having been built before Marine Drive was constructed.

It appears that at the time of construction very little attention was paid to the surveyed erf boundaries and each building was simply lined up with its neighbours. The result is that practically all the buildings along this section of road encroach over their boundaries onto Marine Drive. The position is shown on the plan attached as Annexure A.

The owner of erf 624 (Hermanus Esplanade) is intending to sectionalise the property but because of the encroachment he has the option of either excluding portions of the existing stoeps from the proposed sections or of regularising the encroachment and acquiring the land from the Council.

The area of land involved is 25m² and has recently been surveyed as erf 9828 Hermanus.

The encroachment has obviously been in existence for a very long time and was referred to by Surveyor FJ Pope in 1955. It is therefore quite likely that the owner has acquired the land by prescription.

The line of Marine Drive is not affected by the encroachments, as they were in existence long before the road was built. The only property along this stretch of road which had been set back to the correct line was demolished recently

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and the Council has allowed the new owner to encroach to the same extent as the adjoining properties.

In view of the fact that the land is of no value to the Council it is suggested that it be transferred to the owner of erf 624 for a nominal sum, provided he pays all costs involved."

The Applicant submitted a request to proceed with the transaction and finalised the sale. After an extensive search in the archives, no sale agreement nor proof that a public participation process for the proposed alienation itself was followed, could be found and the process to transfer unregistered Erf 9828 Hermanus (a portion of Erf 572 Hermanus), hereinafter referred to as "the Property", was never completed. The subdivision, consolidation, and rezoning processes were however finalised and diagrams approved by the Surveyor-General. The Applicant now wishes to proceed with the necessary demolition of the rear portion of the building, retaining the portion of the structure that encroaches onto municipal property. These extensive renovations are necessary to make the building habitable and usable. For these upgrades, the comments of the Heritage and Aesthetics Committee were obtained in 2018 who indicated that the certain portions of the building must be retained, which includes the areas that encroaches onto municipal property.

To adhere to condition 1 of the Executive Committee's decision dated 9 October 2001 and to comply with the MFMA that was subsequently adopted, it was decided to now follow a public participation process at the cost of the Applicant and a Section 14 advertisement was published in The Village News on 12 May 2021.

As no objections were received it is recommended that the transfer of the Property be approved.

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.” The Property can be classified as a non-viable immovable property due to the lay-out, size and proposed use thereof as well as the fact that the Applicant already encroaches on the Property and the Property can therefore not practically be used by anyone else.

Paragraph 9(1)(a): “The Municipality may transfer ownership or otherwise dispose of a non-exempted immovable property only after the Municipal Council has, in terms of section 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.”

The decision by the Executive Committee in 2001 that the Property can be alienated indicates that the Property is not needed for municipal services.

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 decision by the Executive Committee in 2001 that the Property can be alienated indicates that the Property is not needed for municipal services. The fact that a portion of the building encroaches on this slither of road reserve pre 1979 has the effect that the Municipality cannot use the Property for municipal services.

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(b) As the Executive Committee resolved that the Property may be alienated at a nominal cost of R100.00 (ONE HUNDRED RAND) (VAT Incl.) a deviation from this paragraph is recommended in order to adhere to this decision. The value of the 25m² of municipal property will be too low to justify the appointment of a valuer.

(d) The reasons for preferred direct sale are discussed above.

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 Applicant will be liable for the costs of the transaction which will include, but not limited to, Section 14 advertisement, all cost related to the Town Planning processes (if all not completed yet) and the 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 Applicant 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 exists which, in the opinion of the Municipality, make such consolidation undesirable."

A condition to this effect was 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 was 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"

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

As the purchase amount is only R100.00 (ONE HUNDRED RAND) (VAT Incl.) it will not make sense to request a 10% (TEN PERCENT) deposit.

B: Advertisement/Notification

An advertisement for the transfer of the Property was published in The Village News on 12 May 2021 for a 30 (THIRTY) day objection/comment period. No objections/comments were received.

Conclusion

It is recommended that the direct alienation of the Property, as an archaic matter, to the Applicant for the amount of R100.00 (ONE HUNDRED RAND) (VAT Incl.) be approved.

7. Financial Implications

The Municipality stands to gain an income of R100.00 (ONE HUNDRED RAND) (VAT Incl.) for the sale of the Property.

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

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

“There is no objection as the application complies with the Administration of Immoveable Property Policy. Unregistered Erf 9828 is a portion of Erf 572 Hermanus, and the latter is currently reflected in the Fixed Asset Register for Heritage Assets (Land) with a carrying value of R1’500’000 as on 30 June 2021. 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).”

10. Annexures

Annexure A: Locality map
Annexure B: Diagram

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RECOMMENDATION TO THE COUNCIL:

1. that the transfer of unregistered Erf 9828 (a portion of erf 572) Hermanus, 25m² in extent, (adjacent to Erf 624 Hermanus) situated at 63 Marine Drive, Hermanus, to the owners of the adjoining Erf 624 Hermanus, Hermanus Esplanade 1970 (Pty) Ltd, at an amount of R100.00 (ONE HUNDRED RAND) (VAT Incl.) **be approved;**
2. that Council take cognisance of the fact that the direct alienation and subsequent transfer is approved as the unregistered Erf 9828 (a portion of erf 572) Hermanus can be classified as a non-viable property;
3. that it be noted that a condition for the transfer will be that unregistered Erf 9828 (a portion of erf 572) Hermanus must be consolidated with the adjoining properties of Hermanus Esplanade 1970 (Pty) Ltd, being Erven 624 and 642 Hermanus;
4. that all the costs pertaining to the transaction, including, but not limited to, transfer and related costs, advertisements, etc. be paid by the applicant/purchaser, Hermanus Esplanade 1970 (Pty) Ltd; and
5. that it be noted that the municipal property herewith envisaged to be transferred 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: | M ERASMUS |
| TARGET DATE FOR IMPLEMENTATION: | PROCESS |
| TARGET DATE TO INFORM APPLICANT: | 16 SEPTEMBER 2021 |
| TARGET DATE TO INFORM OBJECTOR: | N/A |

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AT 63 MARINE DRIVE, HERMANUS, TO HERMANUS ESPLANADE 1970 (PTY) LTD**

7/2/3/2

**A Le Roux
7 July 2021**

Manager: Property Administration

(028) 316 - 5623

**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON
17 AUGUST 2021, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:**

RECOMMENDATION TO THE COUNCIL:

1. that the transfer of unregistered Erf 9828 (a portion of erf 572) Hermanus, 25m² in extent, (adjacent to Erf 624 Hermanus) situated at 63 Marine Drive, Hermanus, to the owners of the adjoining Erf 624 Hermanus, Hermanus Esplanade 1970 (Pty) Ltd, at an amount of R100.00 (ONE HUNDRED RAND) (VAT Incl.) **be approved;**
2. that Council take cognisance of the fact that the direct alienation and subsequent transfer is approved as the unregistered Erf 9828 (a portion of erf 572) Hermanus can be classified as a non-viable property;
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5. that it be noted that the municipal property herewith envisaged to be transferred 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:

M ERASMUS

TARGET DATE FOR IMPLEMENTATION:

PROCESS

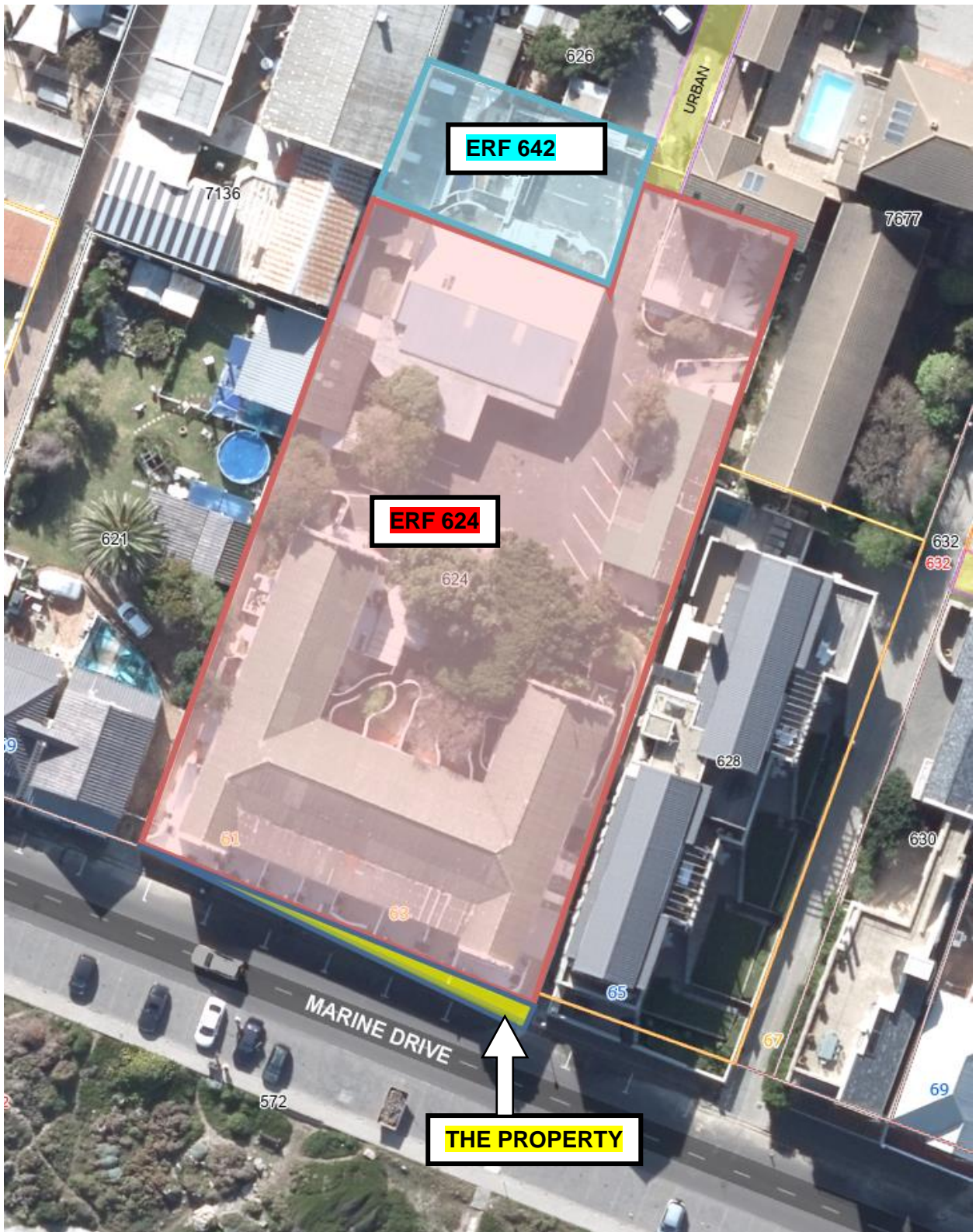
TARGET DATE TO INFORM APPLICANT:

16 SEPTEMBER 2021

TARGET DATE TO INFORM OBJECTOR:


N/A

ANNEXURE A

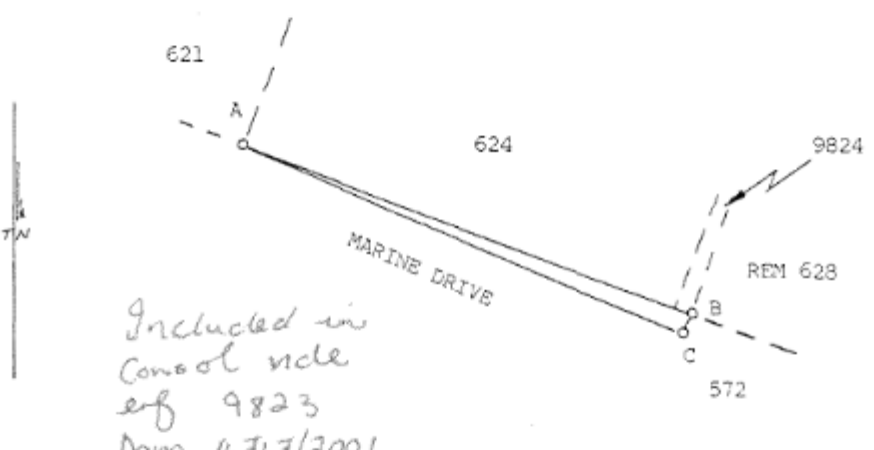


ANNEXURE B

PAD WHITFIELD HERMANUS OFFICE COPY

| SIDES Metres | ANGLES OF DIRECTION | CO-ORDINATES System WGL9 | | S.G. No. |
|-----------------|------------------------|-----------------------------|---------------------------|---|
| | | Y | X | |
| | Constant | 0,00 | +3 800 000,00 | 4716/2001 |
| AB | 39,06 | 290 12 00 | A - 22 231,66 + 10 468,06 | Approved  Surveyor-General 2001.11.20 |
| BC | 1,27 | 18 48 20 | B - 22 268,31 + 10 481,55 | |
| CA | 39,11 | 112 04 00 | C - 22 267,90 + 10 482,75 | |
| | | ⊕ 15 G2 | - 22 345,01 + 10 516,54 | |
| | | ⊕ 16 G2 | - 22 352,98 + 10 390,56 | |

BEACON DESCRIPTION:
 A : Wall Corner
 B : Not beaconsed
 C : 12mm drill hole on wall



*Included in
Consol vcl
ef 9823
Dgm 4717/2001*

Scale 1:500

The figure A B C represents 25 Square Metres of land, being ERF 9828 A PORTION OF ERF 572 HERMANUS situate in the Overstrand Municipality Administrative District of Caledon Province of Western Cape Surveyed in June, 2001 by me. *Pad Whitfield* PAD WHITFIELD (0718) Professional Land Surveyor

| | | |
|----------------------------|---|-------------------------|
| This diagram is annexed to | The original diagram is | File No. S/2479/27 |
| No. dated i.f.o. | No. 139/1941 annexed to -Transfer/Grant | S.R. No. E 1796/2001 |
| Registrar of Deeds | No. 1941- -159 GP 3419 | Comp. AINW-1194 (M3876) |