

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

**4.
APPLICATION TO PURCHASE: A PORTION OF REMAINDER ERF 243
HERMANUS (OPEN SPACE ZONE 1: NATURE RESERVE), ADJACENT TO
ERVEN 357 AND 366 HERMANUS (15 AND 17 WESTCLIFF ROAD, HERMANUS) –
JL COCKWELL**

7/2/3/2

A Le Roux

10 May 2022

Manager: Property Administration

(028) 316 - 5623

1. Executive Summary

To consider the application received from JL Cockwell (the owner of Erven 357 and 366 Hermanus) for the alienation of a portion of Remainder Erf 243 Hermanus ($\pm 230\text{m}^2$ in extent) (Open Space Zone 1: Nature Reserve) adjacent to Erven 357 and 366 Hermanus, situated at 17 Westcliff Road, Hermanus for gardening purposes and to retain the boundary wall. See the locality maps 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

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6. Background/Discussion/Evaluation/Conclusion

Background/Discussion

JL Cockwell, hereafter referred to as “the Applicant”, applied to purchase a portion of Remainder Erf 243 Hermanus ($\pm 230\text{m}^2$ in extent), hereafter referred to as “the Property”, for gardening purposes and to retain the boundary wall.

The Applicant is currently encroaching on the Property with a garden and boundary wall.

The Applicant had an encroachment agreement / indemnity dated 21 December 1984 stipulating that the encroachment is for the purpose of garden on commonage adjacent to Erf 357 Hermanus, however, this agreement did not include the boundary wall behind Erven 357 and 366 Hermanus nor the garden adjacent to Erf 366 Hermanus. There is thus no agreement in place for the encroachment of the boundary wall on the Property.

The Applicant now applied to purchase the Property. The application to purchase and consolidate the Property with Erven 357 and 366 Hermanus was motivated by the Applicant as follows:

Erf 357 Hermanus was purchased by the Cockwell family during 1979/80 and years later they also purchased Erf 366 Hermanus. At that time the encroachment of the boundary wall already existed on the Property adjacent to both Erven 357 and 366 Hermanus. The wall is a double stone wall and is 80cm high at its highest point and 25cm high at its lowest point. The Applicant’s house is basically built on the erf boundary and for this reason this led to the encroachment of a garden and boundary wall on the Property. There have been numerous break-ins on the Applicant’s property and thieves have stepped over the wall and due to this intrusion, the Applicant erected a palisade fence on top of the stone wall for security purposes.

Evaluation

A: Administration of Immoveable 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 as 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.”

Although the Property can in most instances classify as a non-viable property as a subdivision of Remainder Erf 243 Hermanus, it is not desirable to attend to a subdivision in this specifically environmental sensitive area.

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 reserved as a NEMPAA protected area and kept for municipal use as there is a sewer main pipeline located on the Property.
- (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. The possibility of a further lease/encroachment of on the Property will be investigated.

7. Financial Implications

None

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8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

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

“The Department: Operational Services do not have any objection to this application. There is a gravity sewer line on the property so they must be careful not to break it.”

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

“There are no comments on the proposal.”

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

“Should an in principle approval be obtained from Council to sell these land portions, the Applicant should be responsible for the following application at its own cost:

- The property is zoned Open Space Zone 1: Nature Reserve*
- It is unsure whether a closure of the land parcel in terms of the Municipal Land Use Planning By-Law is required since closures apply on land parcels indicated on a General Plan or a surveyed approved diagram. It is advisable to contact the Surveyor General’s office as well as the Registrar of Deeds’ office in this regard to obtain clarity in the matter.*
- The land parcel rezoning from nature reserve purposes to Residential Zone 1: Single Residential.*
- The consolidation of the rezoned portion with the subject property.*
- Building Control needs to be contacted regarding building plans.*
- In order to avoid a sub-standard application, the applicant must appoint a professional town planner and land surveyor to assist him in compiling the necessary application and the compilation of the required consolidation diagram.”*

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

“Fire Department have no objection to the application.”

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

“Building Control has no objection. There is an approved plan dated 1999 for a boundary wall around Erf 357 on the street boundary (Westcliff Road) as well as for Erf 366 on the Southern boundary. A plan (Minor Works Application) is required for the wall on Erf 243.”

In light of the above comment received from the Building Control Department it can be confirmed that there is currently no approved building plan for the stone wall with palisade steel fence situated on the Property.

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

“Regarding this application of the Erf 243, there are no objections from my office. There are no pedestrian or traffic flow obstructions that will be caused.”

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

“There is no objection from a Solid Waste Planning point of view to the purchase of the Property.”

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

Comments received for sale/alienation as follows:

“The land under consideration contains a sewer main pipeline serving approximately 10 residential erven. The application is not supported.”

Manager: Biodiversity Conservation, Environmental Section: Mr T Dry (028) 316 5610

“Notes:

- *Erf 243 is zoned as Open Space Zone 1*
- *Erf 243 falls under Fernkloof Nature Reserve, a NEMPAA (Act 57 of 2003) protected area*
- *The vegetation type is Overberg Sandstone Fynbos – Critically Endangered*
- *The proposed purchase area falls outside of the urban edge and is a total of 221m² (this does not include additional encroachments clearing of natural vegetation)) by other properties on Erf 243*
- *The proposed purchase area falls within the Coastal Protection Zone (EMOZ)*

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National Environmental Management Act, 1998 (Act No. 107 of 1998)

Listing Notice 3:

Activity 12: The clearance of an area of 300m² or more of indigenous vegetation except where such clearance of indigenous vegetation is required for maintenance purposes undertaken in accordance with a maintenance management plan:

- i. Western Cape:

 - i. Within any critically endangered or endangered ecosystem listed in terms of Section 52 of the NEMBA or prior to the publication of such a list, within an area that has been identified as critically endangered in the National Spatial Biodiversity Assessment 2004;*
 - ii. Within critical biodiversity areas identified in bioregional plans;*
 - iii. Within the littoral activity zone or 100 metres inland from high water mark of the sea or an estuarine functional zone, whichever distance is the greater, excluding where such removal will occur behind the development setback line on erven in urban area;*
 - iv. On land, where, at the time of the coming into effect of this Notice or thereafter such land was zoned open space, conservation or had an equivalent zoning; or*
 - v. On land designated for protection or conservation purposes in an Environmental Management Framework adopted in the prescribed manner, or a Spatial Development Framework adopted by the MEC or Minister.**

Activity 15: The transformation of land bigger than 1000m² in size, to residential, retail, commercial, industrial or institutional use, where, such land was zoned open space, conservation or had an equivalent zoning, on or after 2 August 2010.

- f. Western Cape:

 - i. Outside urban areas.*
 - Any sale of a NEMPAA protected area will have to go through public participation.*
 - Combined clearance of more than 300m² will trigger NEMA listing notice 3 activity 15. This clearing has to take into account all other encroachments on Erf 243 and not just the area that is being applied for (221m²).**

Conclusion:

- I have been unable, on the historical aerial photos (1962/3, 1973 and 1989), to determine the approximate age of the boundary wall. ("Number 15 Westcliff Road was purchased in 1979/80 and at that time the wall on the municipal land already existed across the two properties. The wall is a double stone wall and is 80cm high at its highest point and 25cm at its lowest point. From your photo (locality map) you will notice that the Property is virtually on the boundary. I presume for this reason the person who erected the wall obtained permission from the municipality. Hence the*

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encroachment levy being debited to both Municipal Accounts of number 15 and number 17 Westcliff Road.”). As such it is not possible for our department to establish whether or not the wall has heritage status. Should the wall have such status it would be unreasonable to request for this removal and rehabilitation.

- *The application to purchase the portion of Erf 243 is not supported by the Environmental Section as this is a NEMPAA protection area.*
- *It is recommended that the lease of this portion of the Property is continued and extended.”*

10. Annexures

Annexures A1 & 2: Locality Maps

RECOMMENDATION TO THE COUNCIL:

that the alienation of a portion of Remainder Erf 243 Hermanus ($\pm 230\text{m}^2$ in extent) to the owner of the adjoining Erven 357 and 366 Hermanus, JL Cockwell, **not be approved** as the Property must be reserved as a NEMPAA protected area and there are municipal services in the form of a sewer main pipeline located on the Property.

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

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7/2/3/2

A Le Roux

10 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:

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