

8.

A PORTION OF ERF 10572, A CLOSED PORTION OF GOLF STREET, HERMANUS: SERVITUDE RIGHT OF WAY IN FAVOUR OF THE OWNERS OF ERF 1272 HERMANUS, THE EDC HOUSE TRUST

**A Le Roux
2 November 2022**

Manager: Property Administration

(028) 316 5623

1. Executive Summary

To obtain approval for the registration of a servitude right of way over municipal property, being a portion of Erf 10572 Hermanus, a closed portion of Golf Street, Hermanus (hereinafter referred to as “the Property”) in favour of the owners of Erf 1272 Hermanus, Hermanus being the EDC House Trust. The locality map is attached hereto as “Annexure A”.

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
Promotion of tourism, economic and social development

4. Delegated Authority

None

5. Legal Requirements

- Administration of Immovable Property Policy of the Overstrand Municipality (2015)
- Municipal Asset Transfer Regulations (R. 878 of 2008)

6. Background/Discussion/Evaluation/Conclusion

Background/Discussion

The EDC House Trust is the owner of Erf 1272 Hermanus, situated at 297 Main Road.

The owner intends to use Erf 1272 Hermanus for storage of golf carts and submitted an application at the Town Planning Department for rezoning of the property. WRAP, on behalf of the owner, applied for a servitude right of way (see “Annexure B”) over the Property for the purpose of access between the golf club and Erf 1272 Hermanus for golf carts only.

The intention is that golfers will park at the golf club and walk to Erf 1272 Hermanus where their golf carts are stored and drive their golf carts from there to the golf course.

As the approval of this servitude will have an effect on the Hermanus Golf Club, the owner was advised to liaise with them before any application is submitted. In this regard, the owner's consultant submitted an email from the Hermanus Golf Club stating: *"The Committee does not object to your endeavour provided that access to our car park is only for golf carts"*. See "Annexure C" attached.

Evaluation

A. Administration of Immoveable Property Policy of the Overstrand Municipality

The following conditions of said policy apply:

Paragraph 54: *"A servitude can be defined as a right which one person has over the immovable asset of another and includes instances in which the Municipality grants a party a right over a municipal owned immovable property. Servitudes result in a burden on the immovable property for extensive periods of time, sometimes permanently. It is for this reason that servitudes should only be granted after careful assessment of the impact of the proposed servitude on the immovable asset"*.

This application is for a right of way servitude across municipal property.

Paragraph 55: *"If the proposed servitude will result in the immovable property, in discretion of the municipality, being negatively affected, including the impairment of the ability to productively enjoy, utilise, permanently dispose or otherwise deal with the immovable asset, then such servitude might not be granted"*.

The comments to date do not indicate that the Property will be negatively affected by the proposed servitude. The route was determined to have the least possible effect on the municipal property.

Paragraph 56: *"Subject to paragraph 55 above, servitudes may be granted to any person (private or state organ) subject to payment of an appropriate market related compensation by such person provided that in certain circumstances, e.g. where another organ of state requires a servitude for the benefit of the general public or in cases of so called "land locked" property, and subject to the necessary authority having been obtained, the payment to the granting of the servitude, may be waived."*

A valuation will be done to determine the current market related value for the servitude right of way.

Paragraph 57: “The party requiring the servitude on municipal immovable property is responsible for all costs relating to the granting and registration of the servitude”.

The Applicant will be responsible for all costs. Currently, no application fee has been approved in the budget for the type of application. The Applicant will indeed have to pay for a valuation in addition to the servitude registration costs.

For the registration of the servitude, a servitude diagram will have to be approved by the Surveyor-General for inclusion in the servitude agreement. The latter must be registered against the title deed of the municipal property. This will be at the cost of the Applicant.

Conclusion

With reference to the above discussion, it is recommended that a servitude right of way over the Property in favour of the Applicant be approved at a market related price for the servitude.

7. Financial Implications

The Municipality stands to gain a once off market related payment for the servitude. All expenses pertaining to registration of the servitude will be borne by the Applicant.

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Town Planner, Hermanus – P Roux

“From a town planning perspective I do not have an objection towards the proposed servitude subject to the following conditions:

- *The ROW cannot prohibit any public access on the road to cross,*
- *The area must be clearly demarcated with the correct road traffic signs,*
- *Other road users must have priority and,*
- *The proposed land use rights must be obtained prior to the registration fo a servitude.”*

Comment from Property Administration Department: These conditions can be included in the agreement.

Senior Operational Manager, Hermanus – T Marx

“No objection but there is a sewer and water line in this specific area so they must not block access to mentioned services.”

Senior Manager: Expenditure & Assets, Hermanus – J Vorster

“As this is a revenue generating proposal with no intention to dispose of the asset, there is no objection.”

Senior Superintendent: Traffic Operational: Traffic Services – P de Gruchy

“I am at ease with having the indemnity included with the registration and approval of the servitude.”

Senior Superintendent (Projects): Electro Technical Services –J Klem

“The Electrical Department has no objection towards the ROW, however keep in mind that no excavation will be allowed because main feeder cables to Kwaaiwater and Voëlklip are running through this service servitude.”

10. Annexures

Annexure A1 & A2:	Locality Plan
Annexure B:	Proposed Servitude drawing
Annexure C:	Correspondence with Hermanus Golf Club

RECOMMENDATION TO THE COUNCIL:

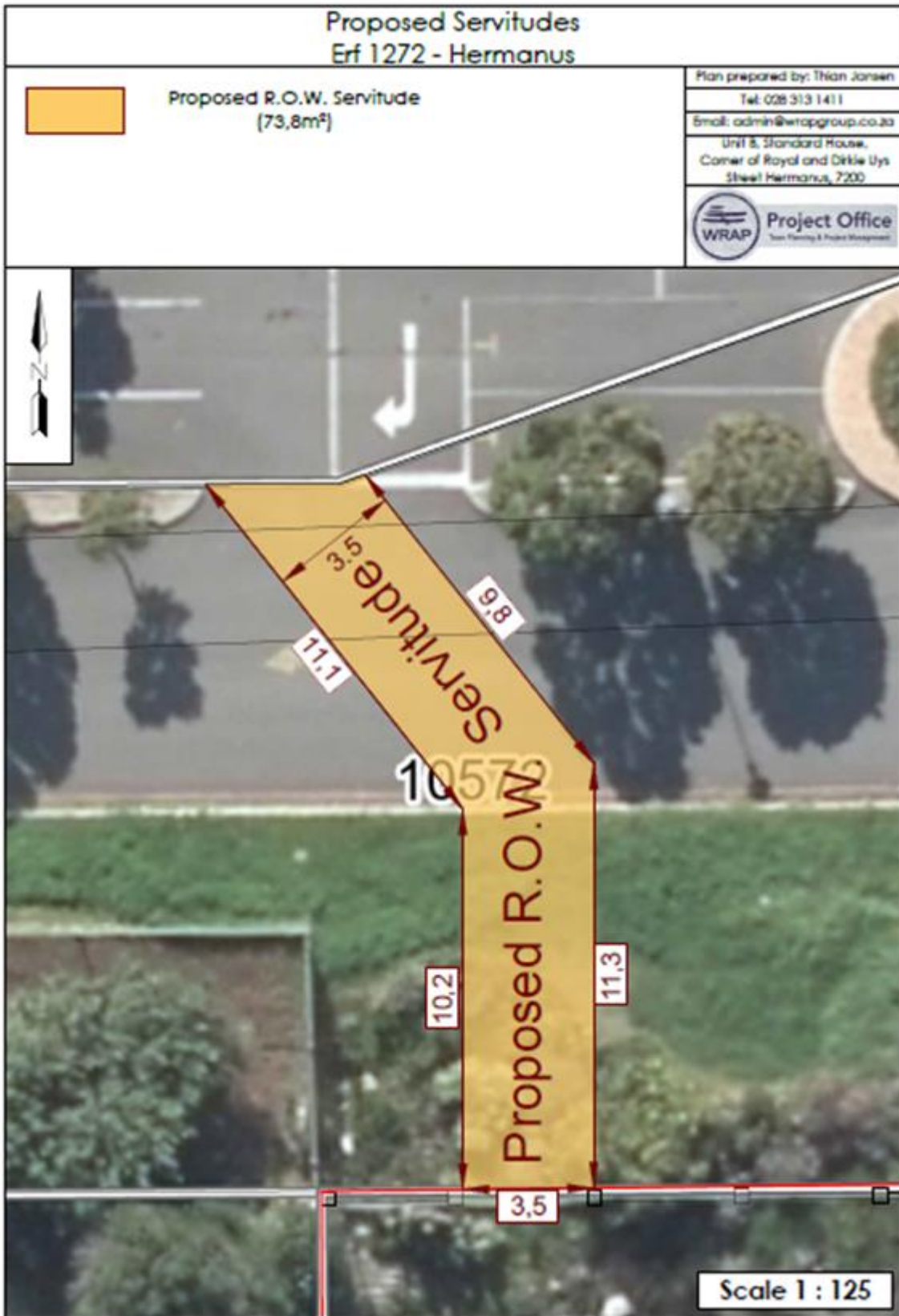
that, subject to the outcome of the Land Use Planning application, the registration of a servitude right of way over Municipal property, being a portion of Erf 10572 Hermanus, a closed portion of Golf Street, Hermanus in favour of the owners of Erf 1272 Hermanus at a market related price, **be approved.**

RESPONSIBLE OFFICIAL :	M ERASMUS
TARGET DATE FOR IMPLEMENTATION :	28 APRIL 2022
TARGET DATE TO INFORM APPLICANT :	28 APRIL 2022
TARGET DATE TO INFORM OBJECTOR :	N/A





ANNEXURE B



From: Bill M [REDACTED] >
Sent: Wednesday, 01 June 2022 10:23 AM
To: 'Hermanus Golf Club | Manager' [REDACTED] >
Subject: RE: Proposal - additional garages

Hi Sharon

Thanks for your email I would like to set up an appointment with you to discuss the feasibility of this project in particular giving the first options to members currently on the waiting list for a garage.

Best Regards Bill

From: Hermanus Golf Club | Manager <[REDACTED]>
Sent: Wednesday, 01 June 2022 8:16 AM
To: Bill Mc Geachy <[REDACTED]>
Cc: Metcalf Fick <[REDACTED]>; [REDACTED]
Subject: Proposal - additional garages

Dear Bill

Following your meeting with the Captain and Treasurer, the Committee discussed your proposal, to build 80 garages on the empty plot of land adjoining our car park, at their meeting on Monday evening.

The Committee does not object to your endeavour provided that access to our car park is only for golf carts.

Kind regards

Sharon Sleigh
General Manager
Hermanus Golf Club
Golf Road, Hermanus, South Africa