

**AGENDA of the
Portfolio Committee: Investment, Infrastructure and Tourism
7 February 2024
(Also the agenda for the Mayoral Committee Meeting: 13 February 2024)**

9.

**IN PRINCIPLE APPROVAL FOR THE DIRECT ALIENATION OF A PORTION OF
REMAINDER ERF 243 HERMANUS, ADJACENT TO ERF 283 HERMANUS AND
PORTION 338 (A PORTION OF PORTION 4) OF THE FARM NO 581
ONRUSTRIVIER, CALEDON REGIONAL DISTRICT, TO REDBUILD TRUST**

**M Erasmus
19 December 2023**

Acting Manager: Property Administration

(028) 316 - 5623

1. Executive Summary

To obtain in principle approval for the direct alienation of a portion of Remainder Erf 243 Hermanus ($\pm 1,52$ ha in extent), to the owner of the adjoining properties, Erf 283 Hermanus and Portion 338 (a portion of Portion 4) of the Farm No 581 Onrustrivier, being Redbuild Trust, to clear and destump the area and for the erection of a fence / boundary wall. See the locality plan attached hereto marked 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
Creation and maintenance of a safe and healthy environment

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)
- Administration of Immovable Property Policy of the Overstrand Municipality, as amended.

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6. Background/Discussion/Evaluation/Conclusion

Background/Discussion

An application was received from WRAP, on behalf of Redbuild Trust, hereafter referred to as “the Applicant”, to purchase a portion of Remainder Erf 243 Hermanus (±1,52 ha in extent), adjacent to Erf 283 Hermanus and Portion 338 (a portion of Portion 4) of the Farm No 581 Onrustvriër, hereafter referred to as “the Property”.

The main reason for the application is to clear and destump the area and for safety purposes, due to squatters illegally sleeping on the Property and who also illegally and regularly cut down huge eucalyptus trees, which are a health and safety risk. The Applicant also confirmed that the area is a fire risk, as the Overstrand Fire Department had to be deployed on several occasions to extinguish large threatening fires that were caused by trespassers.

One of the conditions to the alienation will be that no structures of any kind (excluding a boundary wall or fence) may be erected on the Property.

Subsequent costs

The Applicant will be liable for the costs of the transaction which include, but not limited to, the application costs, valuation costs, closure of public place, rezoning, subdivision and consolidation of the Property, transfer costs 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 apply:

Paragraph 4: “No application for the purchase, lease of or encroachment on immovable property (save for the instances mentioned in paragraphs 58 to 62 and 64.1 below) shall be processed unless the prescribed application fee as per tariff approved in the annual budget for that financial year has been paid, nor shall any proposed lease or encroachment (save for the instances mentioned in paragraphs 58 to 62 and 64.1 below) be advertised unless the applicant has confirmed, in writing, that he/she will bear all costs involved in such transaction including – but not limited to – legal, survey, re-zoning, sub-division, consolidations, advertisement, relocation or provision of services

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and, where applicable, a deposit as per prescribed rate to cover incidental costs has been paid.

The Applicant already paid the application fee. The transaction will only proceed once the Applicant accepted the conditions imposed by Council, which will include the acceptance of the cost implications.

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.”

The Property is zoned Open Space Zone 2: Public Open Space, and although it forms part of a bigger property it is cut off by the R320 running through it which creates a strange shape of the property above the R320 which is not of practical use to anyone else. Due to the locality, shape, intended use and size of the Property, it cannot be developed independently, and thus it can be classified as a non-viable property. Non-viable property can in terms of the current Administration of Immovable Property Policy be alienated directly to an adjoining property owner, subject to certain conditions.

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**

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Municipality preferring such direct transfer.”

- (a) The comments received from the relevant departments indicate that the Property is not needed for the provision of municipal services.
- (b) HCB Property Valuations determined the market related value on 1 September 2023 at an amount of R15.00/m² (FIFTEEN RAND PER SQUARE METRE) (VAT excluded). The valuation was done taking into consideration the size, shape, locality, zoning and proposed use (restriction) of the Property. No community value will be received for the Property.
- (d) The reasons for preferred direct sale are discussed above and will subsequently be recorded in the minutes.

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 be limited to, the application fee, valuation costs, removal of restrictive conditions (if any), closure of public place, rezoning, subdivision 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 Applicant will be liable for all cost in this regard should it be necessary. From the comments received, no services will be affected.

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 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

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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. The condition that no structures may be erected on the Property will be registered against the title deed of the Property.

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 condition to this effect will be 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 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 published after obtaining this in principle decision. The applicant will be liable for the costs of the Section 14 advertisement.

Conclusion

Considering the comments of the internal departments, as well as the above discussion, it is recommended that the direct alienation of the Property to the Applicant be approved in principle.

Furthermore, the Applicant will be liable for all cost involved to affect transfer of the Property in the Deeds Office. Subsequently the costs will entail, amongst others, the application costs, valuation costs, closure of public place, rezoning, subdivision and consolidation, Section 14 advertisement, and the transfer costs.

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7. Financial Implications

The Municipality stands to gain a market related purchase price of R15.00/m² (FIFTEEN RAND PER SQUARE METRE) (VAT excluded). On an estimated size of ±1,52ha the price will be R228,000.00 (TWO HUNDRED AND TWENTY-EIGHT THOUSAND RAND) (VAT excluded).

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Senior Manager: Expenditure and Assets - Mr J Vorster

“Remainder of Erf 243 Hermanus, is currently reflected in the fixed asset register for PPE: Land as part of the greater commonage at an overall value of R9’433’673-05 9 as at 30 June 2023. Once the proposed alienation has been concluded the ±1,52 ha portion of the erf will have to be written out of the fixed asset register at the applicable selling price in order to account for actual gain / (loss) on the disposal of an asset.

There is no objection against the proposed alienation as the application complies with the Administration of Immovable Property Policy.”

Senior Manager: Hermanus Administration - Mr A Wyngaard

“The Office of the Senior Manager: Hermanus Administration has no objection.”

Senior Manager: Operational Services - Mr T Marx

“The Department: Operational Services, Hermanus, do not have any objection with regards to this application.”

Town Planner: Town Planning Department - Mr H Olivier

“From Town Planning we do not have any objection. The applicant will however have to close, subdivide, rezone, and then consolidate the portion with their property. Careful consideration will also have to be given as to where the property will be subdivided, as the line is close to the Onrust River and the Hemel & Aarde Road.”

Manager: Building Control - Mr L Coetzee

“No objection. Any proposed structure (fence, wall, building) will require a

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building plan application that must comply with all applicable law.”

Senior Superintendent: Electrical Department - Mr J Klem

“This is an Eskom supply area; therefore, we cannot give any comment on the proposal.”

Manager: Engineering Services - Mr R Andrew

“No comment.”

Assistant Chief: Fire and Emergency Services - Mr E Solomons

“The Fire Department has no objection.”

Senior Superintendent: Traffic Department - Mr P de Gruchy

“There are no objections towards this application.”

Manager: Biodiversity Conservation - Mr T Dry

“I have no objections with the application as long as it is only for the section north of the road, as indicated on the applicant’s map.”

10. Annexures

Annexure A: Locality Map

RECOMMENDATION TO THE COUNCIL:

1. that the direct alienation of a portion of Remainder Erf 243 Hermanus (±1,52 ha in extent), to the owner of the adjoining properties, being Erf 283 Hermanus and Portion 338 (a portion of Portion 4) of the Farm No 581 Onrustvriër, Caledon Regional District, Redbuild Trust, at an amount of R15.00/m² (FIFTEEN RAND PER SQUARE METRE) (VAT excluded), to clear and destump the area and for the erection of a fence / boundary wall, be **approved in principle**;
2. that it be noted that the direct alienation is possible as the said portion of Remainder Erf 243 Hermanus, can be classified as a non-viable property;
3. that it be noted that a condition for the alienation will be that the said portion of Remainder Erf 243 Hermanus must be consolidated with the adjoining properties of Redbuild Trust, being Erf 283 Hermanus and Portion 338 (a portion of Portion 4) of the Farm No 581 Onrustvriër, Caledon Regional District;

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4. that no structures of any kind (excluding a boundary wall or fence) may be erected on the said portion of Remainder Erf 243 Hermanus, which condition must be registered against the title deed of the consolidated property;
5. that the alienation of said portion of Remainder Erf 243 Hermanus be subject to a suspensive condition that the applicant/purchaser obtains approval for all the required land use rights, which include, the closure of public place, rezoning, subdivision, and consolidation;
6. that all the costs pertaining to the transaction, e.g., application costs, valuation cost, closure of public open space, rezoning, subdivision and consolidation, advertisement, and the related costs, etc. be paid by Redbuild Trust; 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:	M BEKKER
TARGET DATE FOR IMPLEMENTATION:	13 MARCH 2024
TARGET DATE TO INFORM APPLICANT:	13 MARCH 2024
TARGET DATE TO INFORM OBJECTOR:	N/A

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**M Erasmus
19 December 2023**

Acting Manager: Property Administration

(028) 316 - 5623

THIS MATTER SERVED BEFORE THE INVESTMENT & INFRASTRUCTURE PORTFOLIO COMMITTEE ON 7 FEBRUARY 2024, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:

RECOMMENDATION TO THE COUNCIL:

1. that the direct alienation of a portion of Remainder Erf 243 Hermanus ($\pm 1,52$ ha in extent), to the owner of the adjoining properties, being Erf 283 Hermanus and Portion 338 (a portion of Portion 4) of the Farm No 581 Onrustrivier, Caledon Regional District, Redbuild Trust, at an amount of R15.00/m² (FIFTEEN RAND PER SQUARE METRE) (VAT excluded), to clear and destump the area and for the erection of a fence / boundary wall, be **approved in principle**;
2. that it be noted that the direct alienation is possible as the said portion of Remainder Erf 243 Hermanus, can be classified as a non-viable property;
3. that it be noted that a condition for the alienation will be that the said portion of Remainder Erf 243 Hermanus must be consolidated with the adjoining properties of Redbuild Trust, being Erf 283 Hermanus and Portion 338 (a portion of Portion 4) of the Farm No 581 Onrustrivier, Caledon Regional District;
4. that no structures of any kind (excluding a boundary wall or fence) may be erected on the said portion of Remainder Erf 243 Hermanus, which condition must be registered against the title deed of the consolidated property;
5. that the alienation of said portion of Remainder Erf 243 Hermanus be subject to a suspensive condition that the applicant/purchaser obtains approval for all the required land use rights, which include, the closure of public place, rezoning, subdivision, and consolidation;
6. that all the costs pertaining to the transaction, e.g., application costs, valuation cost, closure of public open space, rezoning, subdivision and consolidation, advertisement, and the related costs, etc. be paid by Redbuild Trust; and

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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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ANNEXURE A

