

14.

PORTION 3 OF THE FARM NO 585 SITUATED IN THE HEMEL AND AARDE VALLEY HERMANUS: SERVITUDE RIGHT OF WAY IN FAVOUR OF THE OWNERS OF PORTION 2 OF THE FARM NO 578 HERMANUS

7/2/3

M Erasmus

Acting Manager: Property Administration

12 August 2021

(028) 316 5602

1. Executive Summary

To obtain approval for a servitude right of way over Municipal property, being a portion of Portion 3 of the Farm No 585 situated in the Hemel and Aarde Valley, Hermanus (hereinafter referred to as “the Property”) in favour of the owners of Portion 2 of the Farm No 578 situated in the Hemel and Aarde Valley, Hermanus. 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

WRAP, on behalf of the owners of Portion 2 of the Farm No 578, Hermanus (Redbuild Trust), (hereinafter referred to as “the Applicant”) applied to gain access to their property via a servitude to be registered on the Property.

Discussion

Portion 2 of the Farm No 578 is land locked and the Applicant requires access to their property. The Applicant indicated as follows in their application:

“1. At present the owner has no vehicular access to the property and the top of the property can only be reached by foot. The owner has no intentions with the property other than exercising his primary rights which may include the construction of a primary dwelling on the property. If any of the consent uses under the Agriculture zoning may be applied for in the future, the municipality as grantor of the servitude will need to be consulted.

The more pressing requirement to have access is for fire prevention, making fire breaks and to be able to access the property in case of fire. It is also required for alien control to transport workers and equipment to the top of the property to take out alien vegetation.

2. Only existing tracks will be used for the access and although some of the tracks may be overgrown with alien vegetation, it can easily be cleared for purpose of the road. It is not envisaged that a new road will need to be constructed, but if required the required process in terms of the EIA regulations will be followed. It is proposed that if it may assist in considering the servitude positively, a site inspection be arranged with the applicant and officials from the environmental section to agree on the most suitable route.

3. The applicant investigated all options to gain access to his property and the proposed route is the easiest in terms of gradient and can be achieved with the least impact on the environment. The position also links up with existing roads and tracks on the municipal property.”

Several possible access routes have been explored and is the most acceptable route across the Property, as indicated on the attached plan in both green and blue. This route is from the Camphill Road with the existing dirt road providing access to the De Bosdam pipeline. The green line represents a servitude right of way already registered in favour of the owners of Erf 283 Hermanus (2019) who gave their consent to share a portion of the existing servitude up to where the split is made as indicated in blue on the map.

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.”

The owners of Erf 283 Hermanus paid compensation of R8000.00 per hectare (excluding VAT) for the approved servitude. It is therefore only fair that the Applicant also pays the necessary compensation. 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.

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**Deputy Director: Engineering Services – H Blighnaut 028 313 5047**

In principle, we do not object, subject to the following conditions:

- 1.) Any upgrade of the servitude road for the purposes of the application shall be at the cost of the applicant.
- 2.) The applicant will be responsible for maintaining the servitude road at his own expense.
- 3.) Overstrand Municipality and its appointed agents and contractors have right of access to the servitude road for access to municipal borehole HAV1 and the associated water pipeline at all times, and any future municipal infrastructure in the area.
- 4.) Overstrand Municipality is indemnified from claims for any damage or loss that may result from the applicant's use of the servitude road.

Town Planner, Hermanus – H Olivier 028 313 8900

“The contour maps were scrutinized and it appears the only way for the property owner to access his property will be over the Municipal farm. If the construction of any buildings or roads are proposed in future the, contour heights will have to be considered and environmental processes will duly have to be followed if so required. Any environmental processes to construct a roadway on Municipal land will also have to be the applicants responsibility and for their cost.”

This office therefore support the proposal, subject thereto that Council supports the additional right of way servitude over this municipal property.”

Senior Operational Manager, Hermanus – J Vorster 028 313 8948

We have no problem with the application, but also discuss Hanré, because the main supply from De Bos Dam runs over that green section if I am right.

Manager: Biodiversity Conservation – T Dry 028 316 5620

“Given the state of the area and the existing roads, the environmental section has no objections to the proposed servitude.”

Senior Manager: Expenditure & Assets, Hermanus – J Vorster 028 313 8046

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

10. Annexures




Annexure A: Locality Plan

RECOMMENDATION TO THE COUNCIL:

that a servitude right of way over Municipal property, being a portion of Portion 3 of the Farm No 585 situated in the Hemel and Aarde Valley, Hermanus in favour of the owners of Portion 2 of the Farm No 578 situated in the Hemel and Aarde Valley, Hermanus at a market related price, **be approved.**

RESPONSIBLE OFFICIAL :	M ERASMUS
TARGET DATE FOR IMPLEMENTATION :	31 DECEMBER 2021
TARGET DATE TO INFORM APPLICANT :	31 DECEMBER 2021
TARGET DATE TO INFORM OBJECTOR :	N/A

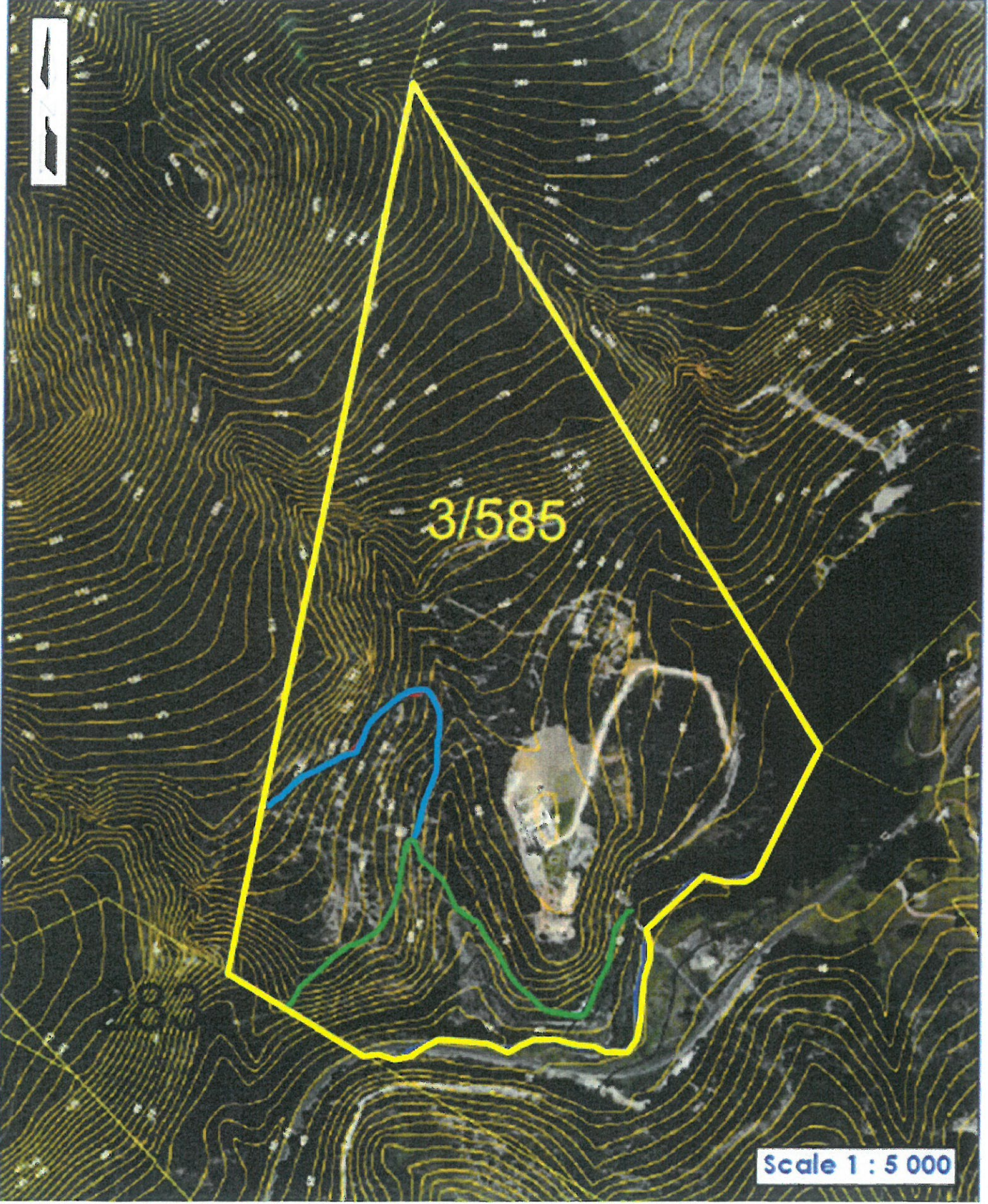
Access 339 Over Portion 3 of the Farm Hemel en Aarde 585 Caledon

-  Subject Property
-  Existing Servitude
-  Proposed Right of Way Servitude

Tel: 020 313 1411
Email: admin@wrapgroup.co.za
Unit 5, Standard House Corner of Royal
and De la Rey Street Henricus, 7100
Plan prepared by: Peñi Jansen
All distances are approximate
and subject to a survey



Project Office
Town Planning & Project Management



Scale 1 : 5 000