

**AGENDA of the
Portfolio Committee: Infrastructure & Planning
19 February 2019
(Also the agenda for the Mayoral Committee Meeting: 27 February 2019)**

11.

HERMANUS, ALIENATION OF UNREGISTERED ERF 1936 (A PORTION OF REMAINDER OF ERF 314) ZWELIHLE: AMENDMENT OF IN PRINCIPLE APPROVAL FOR DIRECT ALIENATION AS WELL AS TRANSFER TO THE WESTERN CAPE GOVERNMENT (DEPARTMENT OF TRANSPORT AND PUBLIC WORKS)

7/2/3/2

**M Erasmus & A le Roux
10 January 2019**

(028) 316-3724

Hermanus Administration

1. Executive Summary

To obtain approval for the amendment of paragraph 1 of the Council Resolution dated 28 May 2014 in order to remove the reference to the amount payable by the Western Cape Government (Department of Transport and Public Works) as there is no longer a library building situated on the said property for which a replacement value is payable; and

to obtain final approval for the transfer of unregistered Erf 1936 (a portion of Remainder of Erf 314) Zwelihle ($\pm 1,7683$ hectare in extent), to the Western Cape Government (Department of Transport and Public Works), hereinafter referred to as the "Department". 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
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) ("MATR")

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

6. Background/Discussion/Evaluation/Conclusion

Background/Discussion

The Qhayiya Secondary School, operated by the Western Cape Education Department, is situated on unregistered Erf 1936 (a portion of Remainder of Erf 314) Zwelihle. The school has been on the property for an extensive period of time and has at all times been used as a secondary school. The Municipal public library was also situated on the property.

In November 2013 The Western Cape Government applied to purchase a portion of Remainder of Erf 314 Zwelihle in order to build a new replacement school on the property. This request was subsequently changed to a request in December 2013 that the subject portion of the property rather be donated to the Department.

This request was discussed, but as the Municipal public library was also situated on the portion of the property they applied for, it was recommended that the Department at least pay for the replacement value of the library building in order for the Municipality to relocate the library. This recommendation was accepted by the Department and the market related replacement value of the building was determined in 2014 at R2,200,000.00 (Vat Excluded).

Council subsequently approved in principle on 28 May 2014 the direct alienation of a portion of Remainder of Erf 314 Zwelihle to the Department. The Council Resolution stipulated as follows (also attached as Annexure "B"):

- "1. that the alienation of a portion of the remainder of Erf 314 Zwelihle at a value of R2,200,000,00 (VAT excluded), (\pm 1,7683 ha in extent) directly to the Western Cape Government (Department of Transport and Public Works) in order for the Western Cape Department of Education to build the new replacement school on the property, be approved in principle;*
- 2. that the costs pertaining to the transaction, e.g. transfer costs, water- and sewer connections, bulk services contribution, advertisements, valuation, etc, be paid by the purchaser; and*

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3. *that it is confirmed that Council has taken cognisance of the fact that the Municipal property herewith alienated is not required for the provision of basic municipal services in terms of the provisions of paragraph 6(1)(b)(i) of Council's Administration of Immovable Property Policy and Section 14 of the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003). "*

Negotiations between the Department and Overstrand Municipality took place regarding the deed of sale and it was agreed upon that possession of the said portion on which the library was situated will only be given to the Department 5 (FIVE) years after date of registration of the transaction in the Deeds Office, which would afford the Municipality sufficient time to rebuild the public library on other municipal property. The agreement was finalised in 2018 after extensive negotiations but unfortunately prior to the final signature of the deed of sale, the library building was vandalised due to civil unrest and protest action beyond repair. The Department has been in possession of a portion of the property for years and has taken possession of another portion of the property in March 2017. Construction of the new replacement school has already started.

During the civil unrest and protest action in Zwelihle which took place in 2018 the library building on the said portion of municipal property was extremely vandalised and burned to such an extent that it can no longer be used and therefore the property will be alienated without a building, excluding their current school facilities. Subsequently there is no replacement value for the library building.

The damage to the public library was included in an insurance claim submitted by the Municipality. Taking into consideration that the Municipality's initial intention was to build a new library building on other municipal property it does not make sense to have the library building rebuilt. It was rather requested that the claim be paid out in cash for the damages caused.

The Department agreed that the library not be rebuild on the said unregistered Erf 1936 (a portion of Remainder of Erf 314) Zwelihle and confirmed that they prefer to now take possession of the portion on which the library was located on a voetstoets basis. Should the transfer be approved the deed of sale will be amended accordingly.

Taking the above into consideration and especially the fact that it was decided to donate the property to the Department there will no longer be a purchase price payable and the property will be donated to Department for the purpose of a secondary school and related purposes which is a great advantage to the community.

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Evaluation

A: Administration of Immovable Property Policy of the Overstrand Municipality:

The following conditions of the said Policy will apply:

Paragraph 5: “The Municipality may not transfer ownership as a result of a sale or other transaction or otherwise permanently dispose of a municipal immovable property needed to provide the minimum level of basic services, save where the transfer is to another organ of state, as provided for in section 14(6) of the MFMA read with Regulation 24 in Chapter 3 of the MATR.”

A portion of the subject property is already used by the Western Cape Educational Department and is therefore not needed to provide basic services. Council has already decided on 28 May 2014 that the whole portion of property to be alienated is not needed for basic municipal services.

Paragraph 12.1: “Paragraphs 7 and 10 above do not apply to the transfer of immovable property to another municipality or to a municipal entity or to a national or provincial organ of state in circumstances and in respect of categories of assets approved by the National Treasury in Regulation 20 of the MATR, provided that such transfers are in accordance with a prescribed framework contained in Chapter 3 of the MATR.”

Regulation 20 determines, amongst others that, “Section 14(1) to (5) of the Act does not apply if a municipality or municipal entity transfers a capital asset to an organ of state in any of the following circumstances:

- (f) any other circumstance not provided in paragraph (a) to (e), provided that –
- (i) the capital asset to be transferred is determined by Council to be not needed for the provision of the minimum level of basic municipal services and to be surplus to the requirements of the municipality; and”

Council has already decided that the property is not needed for the provision of the minimum level of basic municipal services and thus it is a surplus.

- (ii) if the capital asset is to be transferred for less than fair market value, the municipality takes into account-

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(aa) whether the capital asset may be required for the municipality or a minimum entity under the municipality's sole or shared control at a later date;

The property will be developed specifically to build a new replacement school next to the current Qhayiya Secondary School, the latter being a Provincial function. It is not envisaged that Municipality will require any control or shared control over the property and function anytime in the near future.

(bb) the expected loss or gain that is expected to result from the proposed transfer;

The whole of Remainder Erf 314 Zwelihle is currently reflected in the Municipality's Fixed Asset Register (Property Plant and Equipment) at a value of R3,441,039.87 with the general valuation (applicable as from 1 July 2016) being R3,850,000.00.

The eventual alienation of a portion of Remainder of Erf 314 Zwelihle will have to be accounted for in order to remove it from the Fixed Asset Register and to account for the gain / (loss). The value to be accounted for in the Fixed Asset Register is R124,162.43 which will represent the loss on the land portion of the property.

The value of the library building in the Fixed Asset Register before the vandalism took place was R1,639,156.86. With the sale of the building we would have made a profit of R560,843.14 in the Fixed Asset Register. However, it will now be a loss of R1,639,156.86 in the Fixed Asset Register.

The school building does not belong to the Municipality and the Municipality does not have control over the said building, thus it is not recognised on the Fixed Asset Register.

(cc) the extent to which any compensation to be received in respect of the proposed transfer will result in a significant economic or financial cost or benefit to the municipality;

No compensation will be received.

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- (dd) the risks and rewards associated with the operation or control of the capital asset that is to be transferred in relation to the interests of the municipality or municipal entity;*

All risks and rewards in relation to two portions of the total property to be sold and transferred have already passed to the Western Cape Government (Department of Transport and Public Works). All risk of the library portion of the property will be taken over by them on the date of signature of the Deed of Donation or any earlier date as agreed upon between the parties.

- (ee) the effect that the proposed transfer will have on the ability of the municipality or municipal entity to raise long-term or short-term borrowings in the future;*

The value of the subject portion of Remainder Erf 314 Zwelihle is well below 1% of the total value of all the land and buildings of the Municipality. The alienation and transfer of this portion of property will therefore have no effect on the ability of the Municipality to raise long term or short term borrowings in the future.

- (ff) any limitation or conditions attached to the capital asset or the transfer of the asset, and the consequences of a potential non-compliance with those conditions;*

The property may only be used for educational purposes, thus the establishment of the replacement school. No other uses will be allowed and this will be registered against the title deed of the property. If the Western Cape Government does not comply with this, it will transgress all legislation regarding the zoning of the property.

- (gg) the estimated cost of the proposed transfer;*

There will be no cost for the Municipality as all costs of transfer will be borne by the Western Cape Government (Department of Transport and Public Works).

- (hh) the transfer of any reserve funds associated with the capital asset;*

There are no reserve funds associated with the property.

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- (ii) *the interests of any affected organ of state, the municipality's own strategic, legal and economic interests and the interests of the local community; and*

The new replacement school will be of a bigger advantage to the community as the facilities will be better and more children will most probably be accommodated in the school.

- (jj) *compliance with the legislative regime applicable to the proposed transfer."*

The transfer is in line with all relevant legislation from both a Municipal and Provincial side.

Paragraph 12.2 *"Where the requirements stipulated in Chapter 3 of the MATR are met, then notwithstanding fact that the transfer or disposal may be in respect of immovable property which is required to provide the minimum level of basic services, such disposals need not be at market related value and do not require a public participation process described in the MATR in respect of non-exempted disposals."*

As the property will be alienated to an organ of state and further as the purpose for which the property will be utilised is of great value and advantage to the community, the property may be donated and a public participation process need not to be followed.

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 Department will be held liable for all costs pertaining to this transaction.

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 will be included in the Deed of Sale.

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Paragraph 31: “Where immovable property is alienated for development, a condition, taking into consideration the nature of the development, might be included in the Deed of Sale stipulating that such development must be completed within two years from date of registration. Likewise a condition may be included in the agreement to provide for forfeiture in the event that the development has not been completed within the required time period, unless a written extension has been granted by the Municipality.”

A clause to this effect will be inserted 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 clause to this effect will be inserted in the Deed of Sale.

B: Advertisement/Notification

As the property is exempted in terms of Regulation 20 of the MATR and alienated to an organ of state for the advantage of the community the alienation of the property does not have to follow a public participation process.

Conclusion

It is recommended that paragraph 1 of the Council Resolution dated 28 May 2014 be amended in order to remove the reference to the amount payable by the Department as the property will be donated due to the fact that there is no longer a library building situated on the said property for which a replacement value is payable.

It is further recommended that the transfer of unregistered Erf 1936 (a portion of Remainder of Erf 314) Zwelihle (±1,7683 hectare in extent), to the Department be approved.

7. Financial Implications

The latest market value for the library building was an amount of R2,508,000.00 (TWO MILLION FIVE HUNDRED AND EIGHT THOUSAND RAND) (Vat included). This was the replacement amount the Department would have paid to the Municipality. As the building was vandalised to such a dilapidated state there is no longer a replacement amount payable by the

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Department. An insurance claim for the vandalised building has however been submitted.

The whole of Remainder of Erf 314 Zwelihle is reflected in the Fixed Asset Register for Property, Plant and Equipment at an amount of R3,441,039.87 (THREE MILLION FOUR HUNDRED FORTY ONE THOUSAND AND THIRTY NINE RAND AND EIGHTY SEVEN CENTS) (Vat included). As only a portion of Remainder of Erf 314 Zwelihle (\pm 1,7683 hectare in extent) will be donated to the Department at a loss of R124,162.43 (ONE HUNDRED AND TWENTY FOUR THOUSAND ONE HUNDRED AND SIXTY TWO RAND AND FORTY THREE CENTS) (Vat included) will be shown on the register for the 2018/2019 financial year. The value of the secondary school to the community can however not be expressed in financial value.

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

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

Remainder of Erf 314 Zwelihle is currently reflected in the Fixed Asset Register for Property, Plant and Equipment: Land. As the building was severely damaged during the public unrest, the carrying value thereof will have to be impaired in order to write it out of the asset register in the 2018/2019 financial year. The eventual disposal of a portion of Remainder of Erf 314 will have to be accounted for as a donation in order to remove it from the Fixed Asset Register and to account for the (loss).

There is no objection as the application complies with the Administration of Immoveable Property Policy.

10. Annexures

- Annexure A: Locality plan
- Annexure B: Council decision dated 28 May 2014
- Annexure C: Diagram SG 775/2014

RECOMMENDATION TO THE COUNCIL:

1. that paragraph 1 of the Council Resolution dated 28 May 2014 be amended to read as follows:

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that the alienation of a portion of Remainder of Erf 314 Zwelihle ($\pm 1,7683$ ha in extent) directly to the Western Cape Government (Department of Transport and Public Works) by means of a donation in order for the Western Cape Department of Education to utilise same as an extension to the grounds of Qhayiya Secondary School, **be approved in principle**;

2. that the transfer of unregistered Erf 1936 (a portion of Remainder of Erf 314) Zwelihle ($\pm 1,7683$ ha in extent) to the Western Cape Government (Department of Transport and Public Works) by means of a donation to the Western Cape Department of Education (Department of Transport and Public Works), **be approved**; and
3. that it be noted that the Municipal property herewith 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 :	3 APRIL 2019
TARGET DATE TO INFORM APPLICANT:	13 MARCH 2019
TARGET DATE TO INFORM OBJECTOR:	N/A

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11.

HERMANUS, ALIENATION OF UNREGISTERED ERF 1936 (A PORTION OF REMAINDER OF ERF 314) ZWELIHLE: AMENDMENT OF IN PRINCIPLE APPROVAL FOR DIRECT ALIENATION AS WELL AS TRANSFER TO THE WESTERN CAPE GOVERNMENT (DEPARTMENT OF TRANSPORT AND PUBLIC WORKS)

7/2/3/2

**M Erasmus & A le Roux
10 January 2019**

(028) 316-3724

Hermanus Administration

THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON 19 FEBRUARY 2019, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:

RECOMMENDATION TO THE COUNCIL:

1. that paragraph 1 of the Council Resolution dated 28 May 2014 be amended to read as follows:

that the alienation of a portion of Remainder of Erf 314 Zwelihle ($\pm 1,7683$ ha in extent) directly to the Western Cape Government (Department of Transport and Public Works) by means of a donation in order for the Western Cape Department of Education to utilise same as an extension to the grounds of Qhayiya Secondary School, **be approved in principle;**

2. that the transfer of unregistered Erf 1936 (a portion of Remainder of Erf 314) Zwelihle ($\pm 1,7683$ ha in extent) to the Western Cape Government (Department of Transport and Public Works) by means of a donation to the Western Cape Department of Education (Department of Transport and Public Works), **be approved;** and
3. that it be noted that the Municipal property herewith 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 :

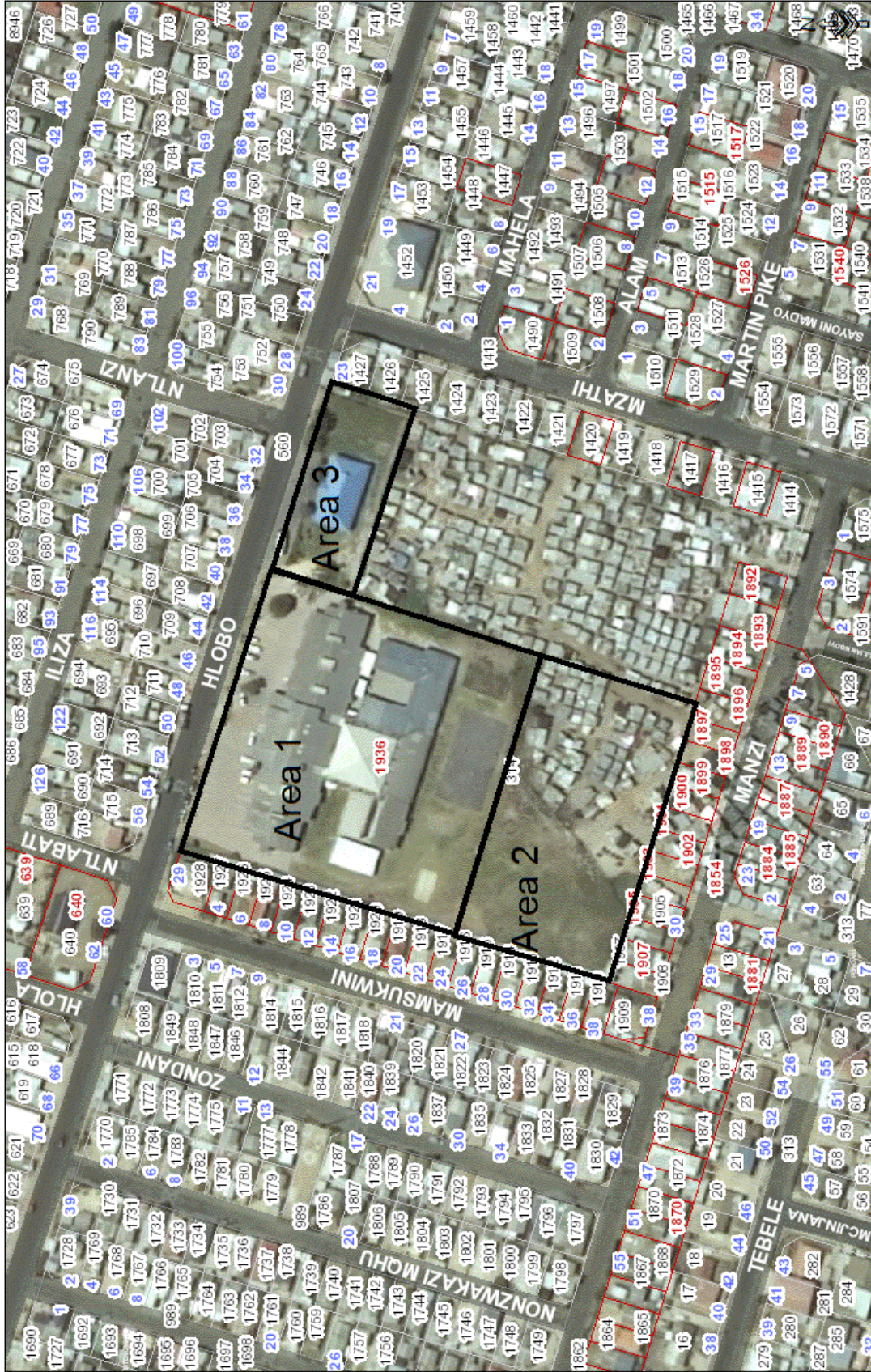
3 APRIL 2019

TARGET DATE TO INFORM APPLICANT:

13 MARCH 2019

TARGET DATE TO INFORM OBJECTOR:

N/A



5.6

HERMANUS, ALIENATION OF A PORTION OF REMAINDER OF ERF 314 ZWELIHLE TO THE WESTERN CAPE GOVERNMENT (DEPARTMENT OF TRANSPORT AND PUBLIC WORKS)

(ITEM 9, PAGE 165 : INFRASTRUCTURE AND PLANNING PORTFOLIO – MAYORAL COMMITTEE MEETING : 28 MAY 2014)

RESOLVED (UNANIMOUSLY):

1. that the alienation of a portion of the remainder of Erf 314 Zwelihle at a value of R2,200,000,00 (VAT excluded), (±1,7683 ha in extent) directly to the Western Cape Government (Department of Transport and Public Works) in order for the Western Cape Department of Education to build the new replacement school on the property, **be approved in principle**;
2. that the costs pertaining to the transaction, e.g. transfer costs, water- and sewer connections, bulk services contribution, advertisements, valuation, etc, be paid by the purchaser; and
3. that it is confirmed that Council has taken cognisance of the fact that the Municipal property herewith alienated is not required for the provision of basic municipal services in terms of the provisions of paragraph 6(1)(b)(i) of Council's Administration of Immovable Property Policy and Section 14 of the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003).

RESPONSIBLE OFFICIAL :**A KOTZE****TARGET DATE FOR IMPLEMENTATION :****27 JUNE 2014****TARGET DATE TO INFORM APPLICANT :****N/A**

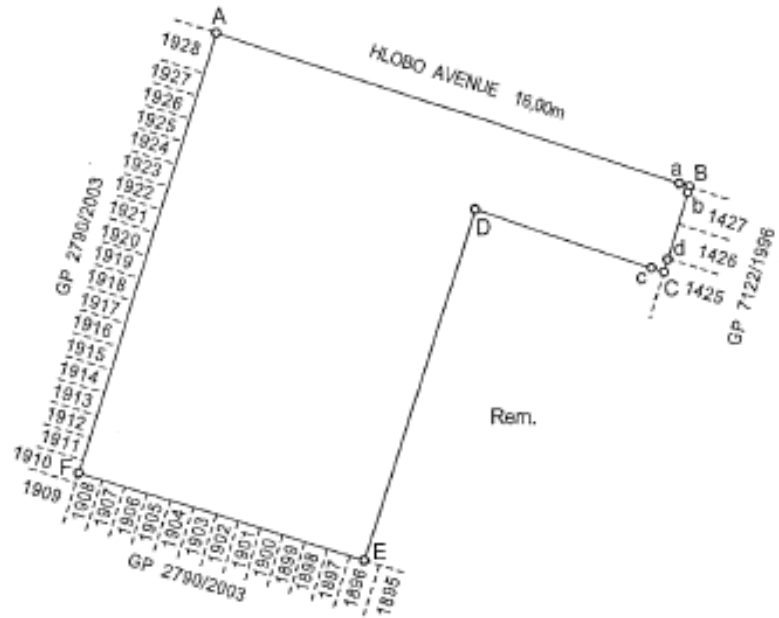
Town & Country, Pr. Land Surveyors, Bredasdorp

CERTIFIED COPY FOR REGISTRATION
 FOR SURVEYOR-GENERAL
 DATE 30 MAY 2014

SIDES metres	ANGLES OF DIRECTION	CO-ORDINATES Y System: WG 19 ^o X		SG No. 775/2014 Approved <i>D. L. Nel</i> for SURVEYOR-GENERAL 2014-05-30
		Constants	0,00 +3 800 000,00	
A B	170,55	287.55.30	A -19 748,73 +11 131,43	
B C	29,85	17.15.10	B -19 911,00 +11 183,92	
C D	68,87	107.57.20	C -19 902,15 +11 212,42	
D E	123,54	17.25.20	D -19 836,63 +11 191,19	
E F	101,30	107.15.40	E -19 799,64 +11 309,07	
F A	154,53	197.15.10	F -19 702,90 +11 279,01	
Indicatory Data				
a B	3,66	287.55.30	a -19 907,52 +11 182,79	
b B	2,07	197.15.10	b -19 910,39 +11 185,90	
c C	4,42	287.57.20	c -19 897,94 +11 211,06	
d C	4,43	17.15.10	d -19 903,46 +11 208,19	
73G2			⊕ -20 858,47 +10 980,65	
75G2			⊕ -20 461,66 +11 528,30	

BEACON DESCRIPTIONS

B,C Not beacons
 D,c Round Iron Fence Post
 All other beacons .. 12mm Iron Peg



Scale: 1/ 2000

The figure A B C D E F

represents 1,7683 hectares of land being
ERF 1936, portion of Erf 314 ZWELIHLE

situate in the Overstrand Municipality
 Administrative District of Caledon
 Province of Western Cape
 Surveyed by me in March 2014

PLS 1141 F. Truter
 Professional Land Surveyor

This Diagram is annexed to No.	The original diagram is SG No. 3962/1980	File No.: Zwelihle 641
Dated	Transfer No. 1981. .21886	S.R. 384/2014
Registrar of Deeds		Comp. AI-3CB/Z42(458) LPI C0130026

Erf 1936 Zwelihle

EXEMPT FROM PROVISIONS OF ACT
 70 OF 1970
 SECTION 1(G)

APPROVED IN TERMS OF SECT. 25
 OF ORD. 131/1985
 REF. Erf 314
 DATE 9 April 2014