

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

12.

HERMANUS: IN PRINCIPLE APPROVAL FOR THE DIRECT ALIENATION OF A PORTION OF THE REMAINDER OF ERF 313 ZWELIHLE, ADJACENT TO ERF 5 ZWELIHLE, TO LT MBOYIYA

7/2/3/2

N Liebenberg
7 January 2019

(028) 316 - 3724

Hermanus Administration

1. Executive Summary

To obtain approval in principle for the direct alienation of a portion of the Remainder of Erf 313 Zwelihle ($\pm 229\text{m}^2$ in extent) adjacent to Erf 5 Zwelihle, to the owner of Erf 5 Zwelihle, being LT Mboyiya. See locality map attached 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
The encouragement of structured community participation in the matters of the municipality
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)
- Administration of Immovable Property Policy of the Overstrand Municipality, as amended

6. Background/Discussion/Evaluation/Conclusion

Background/Discussion

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

An application was received from Plan Active on behalf of the owner of Erf 5 Zwelihle, situated at 10 Tebele Road, Zwelihle, for the purchase of a portion of the Remainder of Erf 313 Zwelihle ($\pm 229\text{m}^2$ in extent) adjoining his property, as indicated on the locality map attached hereto marked Annexure A.

The property applied for is a portion of property zoned as Transport Zone 2: Road and Parking and situated adjacent to the Erf 5 Zwelihle. The house build on Erf 5 was wrongly build over a portion of the road and encroaches considerably onto the Remainder of Erf 313 Zwelihle.

There are two adjoining properties next to the said portion of Remainder of Erf 313 Zwelihle to which the said portion of property can be consolidated with to be used functionally. The owner of Erf 5 Zwelihle is the applicant and the owner of Erf 6 Zwelihle confirmed in a letter dated 26 June 2017 that he is not interested in purchasing the property, kindly see letter attached per Annexure "B". The owner of Erf 6 Zwelihle is however encroaching by means of an informal structure on the South Eastern corner of the portion of Erf 313 Zwelihle envisaged to be alienated. The purchaser confirmed that he discussed the matter with the owner of Erf 6 Zwelihle and will subsequently deal with the matter and the Municipality will not be liable or responsible for the removal for the encroachment and will thus not have to provide vacant possession of the property.

Due to the locality, use and size of the property applied for it cannot be developed independently and taking into consideration the above discussion it can thus 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 the adjoining property owner, subject to certain conditions.

Subsequent costs

The Applicant will be liable for the costs of the transaction which will include, but not limited to, the application fee, the cost for the valuation, subdivision, closure of the portion of public road, consolidation and rezoning of the property 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 will apply:

Paragraph 7: "The transfer of ownership of immovable property must be fair, equitable, transparent, competitive (unless it is not

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

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 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 subject property can be classified as a non-viable immovable property due to the location, size and proposed use thereof as well as the residential dwelling encroaching thereon.

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 Municipality preferring such direct transfer.”**

- (a) The comments received from the relevant departments indicate that the subject portion of municipal property is not needed for the provision of the minimum level of basic municipal services.
- (b) Boland Valuers determined the market related value on 5 November 2018 at an amount of R74.00/m² (SEVENTY FOUR RAND) (PER SQUARE METRE) (VAT excluded). The valuation was done taking into consideration the size, locality, zoning and proposed use of and restrictions on the property.
- (c) The reasons for preferred direct sale are discussed above and will subsequently be recorded in the minutes.

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

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 purchaser will be liable for the costs of the transaction which will include, but are not limited to, the application fee, the cost for the valuation, closure of the portion of public road, subdivision, rezoning 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 purchaser will be liable for all cost in this regard should it be necessary.

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 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.

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.”

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

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/purchaser will be liable for the costs of the Section 14 advertisement.

Conclusion

Taking the comments of the internal departments as well as the above discussion into consideration, it is recommended that the direct alienation of a portion of the Remainder of 313 Zwelihle, ±229m² in extent, to the owner of Erf 5 Zwelihle, being LT Mboyiya, be approved in principle.

Furthermore the purchaser will be liable for all cost involved to affect transfer of the property in the deeds office. Subsequently the costs will entail the subdivision, consolidation, closure of portion of public road, rezoning, Section 14 advertisement and the transfer costs.

7. Financial Implications

The Municipality stands to gain a market related purchase price of R74.00/m² (SEVENTY FOUR RAND) (PER SQUARE METRE) (VAT excluded).

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Town Planning, Mr. H Olivier - (028) 313 8900

The portion of Erf 313 Zwelihle is Zoned Transportation Zone 2 and is a portion of public road. There is no objection to the sale of such portion.

The process will include the Closure of the portion of Road, Subdivision, Rezoning to Residential Zone 1 and Consolidation with the applicant's

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

properties. The applicant will have to pay the cost of such applications in terms of the municipal budget and also the advertisement and notices.

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

Erf 313 Zwelihle is currently reflected in the Fixed Asset Register for Property, Plant and Equipment: Land. The eventual disposal of Erf 313 will have to be accounted for at the selling price in order to remove it from the Fixed Asset Register and to account for the gain / (loss).

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

Manager: Engineering Services (Hermanus): Mr R Andrew – (028) 313 8972

The application to purchase a portion of Erf 313 Zwelihle will have minimal or no impact on the existing services.

Electrical Department: Mr J Klem – (028) 316 3724

There are no comments on the proposal.

Senior Superintendent: Traffic (Operations): Mr X Titus – (028) 316 3724

The above mentioned application will not have any effect on traffic and will not cause any obstructions for motorists. Therefore the Traffic Department has no objection regarding this application.

Building Inspector: Mr G Coetzee – (028) 313 8038

Application supported.

10. Annexures

Annexure A: Locality plan

Annexure B: Letter from owner of Erf 6 Zwelihle

RECOMMENDATION TO THE COUNCIL:

1. that the direct alienation of a portion of the Remainder of Erf 313 Zwelihle (adjacent to Erf 5 Zwelihle), $\pm 229\text{m}^2$ in extent, to the owner of the adjoining Erf, LT Mboyiya, at an amount of R74.00/m² (SEVENTY FOUR RAND) (PER SQUARE METRE) (VAT excluded) be **approved in principle**;

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

2. that it be noted that the direct alienation is possible as the said portion of the Remainder of Erf 313 Zwelihle can be classified as a non-viable property;
3. that, subject to the approval in 1 above, a public participation process be followed at the cost of the Applicant/purchaser;
4. that it be noted that a condition for the alienation will be that the said portion of the Remainder of Erf 313 Zwelihle must be consolidated with the adjoining property of LT Mboyiya, being Erf 5 Zwelihle;
5. that the alienation of said portion of the Remainder of Erf 313 Zwelihle be subject to a suspensive condition that the Applicant/purchaser obtains approval for the closure of the public road, subdivision, rezoning and consolidation;
6. that all the costs pertaining to the transaction, e.g. application cost, valuation cost, subdivision, closure of portion of public road, consolidation, rezoning, transfer and related costs, advertisements, etc., be paid by the Applicant/purchaser; 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 :	N LIEBENBERG
TARGET DATE FOR IMPLEMENTATION :	20 MARCH 2019
TARGET DATE TO INFORM APPLICANT:	13 MARCH 2019
TARGET DATE TO INFORM OBJECTOR:	N/A

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

12.

HERMANUS: IN PRINCIPLE APPROVAL FOR THE DIRECT ALIENATION OF A PORTION OF THE REMAINDER OF ERF 313 ZWELIHLE, ADJACENT TO ERF 5 ZWELIHLE, TO LT MBOYIYA

7/2/3/2

N Liebenberg
7 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 the direct alienation of a portion of the Remainder of Erf 313 Zwelihle (adjacent to Erf 5 Zwelihle), $\pm 229\text{m}^2$ in extent, to the owner of the adjoining Erf, LT Mboyiya, at an amount of R74.00/m² (SEVENTY FOUR RAND) (PER SQUARE METRE) (VAT excluded) be **approved in principle**;
2. that it be noted that the direct alienation is possible as the said portion of the Remainder of Erf 313 Zwelihle can be classified as a non-viable property;
3. that, subject to the approval in 1 above, a public participation process be followed at the cost of the Applicant/purchaser;
4. that it be noted that a condition for the alienation will be that the said portion of the Remainder of Erf 313 Zwelihle must be consolidated with the adjoining property of LT Mboyiya, being Erf 5 Zwelihle;
5. that the alienation of said portion of the Remainder of Erf 313 Zwelihle be subject to a suspensive condition that the Applicant/purchaser obtains approval for the closure of the public road, subdivision, rezoning and consolidation;
6. that all the costs pertaining to the transaction, e.g. application cost, valuation cost, subdivision, closure of portion of public road, consolidation, rezoning, transfer and related costs, advertisements, etc., be paid by the Applicant/purchaser; 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).

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

RESPONSIBLE OFFICIAL :	N LIEBENBERG
TARGET DATE FOR IMPLEMENTATION :	20 MARCH 2019
TARGET DATE TO INFORM APPLICANT:	13 MARCH 2019
TARGET DATE TO INFORM OBJECTOR:	N/A



Date 26 Jun. 17

Hermanus Admn 20
Hermanus
7200

Dear Sir / Madam

I, Mpumelelo Dlabongwana (ID:8509235855089) am the son of Zwelendaba Dlabongwana (ID:5908035684082) who bought ERF 6 & ERF 7 in Zwelihle from Sea Plant Product Ltd.

I am writing this letter after extensive consideration as a family that we do not have an interest of the land in-between our property ERF 6 and ERF 5 owned by Mr Mboyiya or the Mboyiya Family. We wish that all the municipality land in-between these two plots mentioned meant to be a street is given to Mr Mboyiya.

We indeed appreciate the given opportunity to this issue.

Thank you

Respectfull yours

Dlabongwana

Mpumelelo Dlabongwana

dlabongwana@gmail.com

444 Mfundo Street, Zwelihle, Hermanus, 7200

073 934 1983
