

**AGENDA of the
Portfolio Committee: Investment & Infrastructure
2 November 2022
(Also the agenda for the Mayoral Committee Meeting: 16 November 2022)**

**7.
ZWELIHLE: RECISSION OF COUNCIL RESOLUTION DATED 28 SEPTEMBER
2010 FOR THE ALIENATION OF ERF 88 ZWELIHLE AND ERF 40 ZWELIHLE –
ZWELIHLE COMMUNITY DEVELOPMENT TRUST**

7/2/3/2

Anja Le Roux

Manager: Property Administration

7 October 2022

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1. Executive Summary

To obtain approval for the rescission of the Council's resolution dated 28 September 2010 in respect of the alienation of Erf 40 Zwelihle (1,272m² in extent) and Erf 88 Zwelihle (942m² in extent) to the Zwelihle Community Development Trust ("ZCDT"), both situated in Lusiba Street, Zwelihle. 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

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) ("MATR")
- Administration of Immovable Property Policy of the Overstrand Municipality, as amended

6. Background/Discussion/Evaluation/Conclusion

Background/Discussion/Evaluation

COUNCIL RESOLUTION AND STATUS

On 29 September 2010 Council resolved as follows:

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- “1. that the alienation of Erf 88 Zwelihle be **approved in principle** subject to the advertisement of the application and that the consent of the current Lessee be obtained;
2. that the alienation of Erf 40 Zwelihle be **approved in principle** subject to the advertisement of the application and that the consent of the current Lessee be obtained;
3. that the alienation of both erven at market value less 50% be **approved in principle**, subject to adequate proof of community value being submitted at a later stage;
4. that all costs estimated at R16 000.00 pertaining to the transaction, e.g. transfer costs, survey, advertisement, valuation, subdivision, rezoning, water- and sewer connections, etc. be paid by the applicant in advance, and
5. that the lease of a portion of Erf 315 Zwelihle **not be approved**;
6. that **cognisance be taken** 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).”

At the time of obtaining the above approval, a portion of Erf 40 Zwelihle was leased to the South African Police Services (“SAPS”) and Erf 88 Zwelihle to the Siyazama Service Centre (the latter is still leasing Erf 88 from the Municipality for the purpose of a care centre for the elderly

As to the conditions imposed in the Council approval:

1. Siyazama Service Centre was not willing to consent to the proposed sale and requested that Erf 88 be sold to them.
2. SAPS did not respond to any of the correspondence sent to them regarding the proposed sale.
3. The proposed sale was never advertised as the ZCDT never formally accepted the conditions imposed. They at one stage indicated in a meeting that they only want to purchase a portion of Erf 40, but this was never received in writing and approved by the Trustees of the Trust in writing.
4. ZCDT never submitted the required proof of community value in order to motivate the payment of only 50% of the market value of the properties.

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5. ZCDT never paid the costs of the transaction in advance as was required.
6. No final approval was obtained for the transfer of the properties to the ZCDT.

No deed of sale was entered into between the Municipality and the ZCDT, presumably as they did not formally accept the conditions imposed, could not fulfil some of the conditions imposed and also as they indicated that they would rather purchase a portion of Erf 40 in stead of the whole property (the latter was however never reduced to writing).

Currently there are no buildings on Erf 40 anymore as the SAPS building was destroyed in riots and the old Resources Centre was demolished as it was not being used anymore and was not safe for occupation anymore. There are thus no activities on the property. Council should however urgently have to decide on the future use of Erf 40 Zwelihle and whether it should be made available to the community for sale by means of a competitive process. Erf 88 is still being leased to the Siyazama Service Centre who manages to the satisfaction of the Municipality and with no complaints from the community.

LEGISLATION AND POLICY

The above approval was obtained in terms of Council's Administration of Immovable Property Policy (approved 27 May 2009) which was applicable at the time. This version of the Policy made provision for the direct sale of municipal owned immovable property and also for the sale thereof at an amount lesser than market related.

After an internal concern that was raised, a legal opinion regarding the validity of the direct alienation of municipal owned immovable property to the public was obtained late in 2014. This opinion clearly stated that municipal owned immovable property may only be alienated by means of a competitive process when such alienation is to the public.

Following the outcome of this legal opinion, the Administration of Immovable Property Policy was amended, which amendment was first adopted by Council on 23 September 2014 with the commencement date of 1 October 2014 with a further amendment in November 2015 which was adopted by Council on 25 November 2015. The main amendment to the Policy was to address the sale/alienation/disposal of municipal immovable property to be in accordance with the MATR (as to the processes to be followed) and the MFMA, the latter being clear in section 14(5) thereof that:

“Any transfer of ownership of a capital asset in terms of subsection (2) or (4) must be fair, equitable, transparent, competitive and consistent with the

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supply chain management policy which the municipality must have and maintain in terms of section 111.”

As the MFMA came into effect as early as 1 July 2004 and the MATR came into effect on 1 September 2008, the decision of Council to alienate Erf 40 and Erf 88 by means of a direct sale would have been invalid at that time and is still invalid and irregular today. This has the effect that the Municipality cannot proceed with the sale as approved by Council in 2010 irrespective of the history behind the transaction.

Conclusion

As the Municipality is not permitted to sell viable municipal owned immovable property without following a competitive process, the Municipality cannot proceed with the implementation of the Council resolution dated 29 September 2010, and is it thus recommended that the said resolution be rescinded.

7. Financial Implications

None

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

None

10. Annexures

Annexure A: Locality Map

RECOMMENDATION TO THE COUNCIL:

that the whole of Council's resolution dated 29 September 2010 for the alienation of Erf 88 Zwelihle and Erf 40 Zwelihle to the Zwelihle Community Development Trust, **be rescinded.**

RESPONSIBLE OFFICIAL:

A LE ROUX

TARGET DATE FOR IMPLEMENTATION:

12 DECEMBER 2022

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7 October 2022

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**THIS MATTER SERVED BEFORE THE INVESTMENT & INFRASTRUCTURE
PORTFOLIO COMMITTEE ON 2 NOVEMBER 2022, WHICH COMMITTEE
RECOMMENDED AS FOLLOWS:**

RECOMMENDATION TO THE COUNCIL:

that the whole of Council's resolution dated 29 September 2010 for the alienation of Erf 88 Zwelihle and Erf 40 Zwelihle to the Zwelihle Community Development Trust, **be rescinded.**

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