

5.**A PORTION OF REMAINDER ERF 210 GANSBAAI: SIZISA UKHANYO TRADING (PTY) LTD - COMPENSATION AGREEMENT****7/2/3/1****M Erasmus****Acting Manager: Property Administration****11 October 2021****(028) 316-5602****1. Executive Summary**

To obtain approval to enter into a compensation agreement with Sizisa Ukhanyo Trading (Proprietary) Limited in respect of a portion of Remainder Erf 210 Gansbaai, 28,1193 (TWENTY-EIGHT COMMA ONE ONE NINE THREE) hectares in extent. The relevant subject portion of Remainder Erf 210 Gansbaai is identified by the figure P Q R S T U V2 V1 V W on the locality map attached as per "Annexure A".

2. Service Delivery and Budget Implementation Plan - IGNITE

Infrastructure and Planning
Property Administration

3. Compliance with Strategic Priority/ies

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, as amended
- Local Government: Municipal Finance Management Act, No 56 of 2003
- Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002)

6. Background/Discussion/Evaluation/Conclusion**Background**

Sizika Ukhanyo Trading 410 (Proprietary Limited) (hereinafter called the "Applicant") has an existing right to mine sand on a portion of Remainder Erf 210 Gansbaai and on Erf 335 Gansbaai (±1.5ha in extent) as indicated by figure A B C D E F G H J K L on the locality map attached hereto as Annexure A (the "Existing Mining Area"). The right to mine is issued by the Minister of

Mineral Resources in terms of the Mineral and Petroleum Resources Act No. 28 of 2002 (the “Act”).

The Act provides that the ‘State’ is the custodian of South Africa’s Mineral Resources and that, as custodian acting through the Minister of Minerals and Energy it may, amongst others, grant a mining right / permit. The Act also provides that the holder of a mining right is granted a limited real right in respect of the mineral or petroleum and the land to which such right relates. Section 5(3) of the Act further specifically provide that:

“(3) Subject to this Act, any holder of a prospecting right, a mining right, exploration right or production right may—

- (a) enter the land to which such right relates together with his or her employees, and may bring onto that land any plant, machinery or equipment and build, construct or lay down any surface, underground or under sea infrastructure which may be required for the purposes of prospecting, mining, exploration or production, as the case may be;*
- (b) prospect, mine, explore or produce, as the case may be, for his or her own account on or under that land for the mineral or petroleum for which such right has been granted;*
- (c) remove and dispose of any such mineral found during the course of prospecting, mining, exploration or production, as the case may be;*
- (d) subject to the National Water Act, 1998 (Act No. 36 of 1998), use water from any natural spring, lake, river or stream, situated on, or flowing through, such land or from any excavation previously made and used for prospecting, mining, exploration or production purposes, or sink a well or borehole required for use relating to prospecting, mining, exploration or production on such land; and*
- (e) carry out any other activity incidental to prospecting, mining, exploration or production operations, which activity does not contravene the provisions of this Act.”*

Pursuant to the above provisions of the Act, especially because the Act grants the holder access to the property, a lease agreement is not the appropriate method of regulate the Applicant’s use of the areas appropriately it received a mining right for. Therefore, on 6 May 2015 the Municipality and the Applicant entered into a compensation agreement in respect of the Existing Area as the most appropriate agreement for such use.

The Applicant has applied to the Department of Mineral Resources in terms of the Act for the right to mine sand and gravel, on a further portion of the Remainder Erf 210 Gansbaai, as shown by the figure P Q R S T U V2 V1 V W on the attached locality map marked “Annexure A”, 28,1193 (TWENTY-EIGHT COMMA ONE ONE NINE THREE) hectares in extent, (the “New Area”). It is in respect of this New Area that permission from Council is sought for the entering into of a compensation agreement.

Discussion

Whilst the Administration of Immovable Property Policy of the Overstrand Municipality, as amended, finds minimal application to the current envisaged use of municipal property, the provisions of the Act does call for many procedures and conditions that are similar to those the Municipality would undergo for a lease application.

The application for a mining right goes through a public participation process whereby, in terms of section 10 of the Act, the delegated official must make known that an application for a prospecting right, mining right or mining permit has been received in respect of the land in question; and (b) call upon interested and affected persons to submit their comments regarding the application within 30 days from the date of the notice. The Municipality also follows a public participation process that allows parties to submit comments within a 30 day period.

The Applicant will have to complete Town Planning processes in order to make sure that its uses / activities on the municipal property is in line with applicable land use planning legislation.

The Act requires a substantial application to be made for the mining right and the Minister must consider the prescribed information before granting the mining right. Section 23 of the Act provide as follows:

“23. (1) Subject to subsection (4), the Minister must grant a mining right if—

- (a) the mineral can be mined optimally in accordance with the mining work programme;*
- (b) the applicant has access to financial resources and has the technical ability to conduct the proposed mining operation optimally;*
- (c) the financing plan is compatible with the intended mining operation and the duration thereof;*
- (d) the mining will not result in unacceptable pollution, ecological degradation or damage to the environment;*
- (e) the applicant has provided financially and otherwise for the prescribed social and labour plan;*
- (f) the applicant has the ability to comply with the relevant provisions of the Mine Health and Safety Act, 1996 (Act No. 29 of 1996);*
- (g) the applicant is not in contravention of any provision of this Act;*
- and*
- (h) the granting of such right will further the objects referred to in section 2(d) and*
- (f) and in accordance with the charter contemplated in section 100 and the prescribed social and labour plan.”*

It is clear that the Act does make provision for safeguards and checks for relevant considerations such as the Applicant's viability, environmental concerns and safety.

The Act adequately regulates all the conditions of use that a standard lease agreement would in respect of the municipal property.

For administrative purposes in order for the Applicant to proceed with Town Planning applications required by the Municipality, the Municipal Manager has approved that a written compensation agreement may be entered with the Applicant subject to and/or containing the following conditions, namely that the:

- agreement is subject to Council's final approval therefor;
- the Applicant shall pay to the Overstrand Municipality R33.03 (THIRTY THREE RAND AND THREE CENTS) (VAT Included) per cubic meter of minerals mined, and this rate per cubic meter shall annually increase in accordance with the consumer price index on 1 July;
- agreement is subject to completion of the necessary town planning approvals, which must be completed at the Applicant's cost;
- agreement is subject to the Applicant obtaining final approval for the right to mine sand and/or gravel in terms of the Act from the relevant governmental department(s) / authorities and that no mining activities may commence until the rights are awarded; and
- agreement's term shall be linked to the duration for which the Applicant is in possession of a valid right and/or permit to mine sand and/or gravel. Should the right / permit expire or lapse the agreement shall also automatically lapse.

Furthermore, the written compensation agreement shall also require that the Applicant indemnifies the Municipality against any claims in respect of its operations on the New Area, that the Applicant must abide by the rehabilitation of the municipal property requirements as prescribed by the Act and that a breach of the conditions of the Act, shall be deemed a breach of the agreement, which would allow the Municipality to terminate the compensation agreement.

Evaluation

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

The following paragraphs of the Administration of Immovable Property Policy are applicable:

Paragraph 3: “The Municipality may:

(a) alienate or let or permit to be built upon, occupied, enclosed or cultivated any immovable property owned by the Municipality;

(b) grant a servitude, way leave, encroachment or other rights on any immovable property of which the Municipality is the owner

(i) subject to this policy document and the provisions of applicable legislation; or

(ii) unless it is precluded from so doing by law or the conditions under which such property was acquired by the Municipality.”

The Municipality’s Administration of Immovable Property Policy makes provision for the occupation / cultivation and the granting of other rights in respect of the New Area (of which the Municipality is the owner). In this instance the Applicant’s use of the New Area would be subject to the provisions of the Act. Furthermore, the Applicant’s use on the New Area would be subject to the completion of the necessary Town Planning procedures.

Paragraph 24: “The fair market value for the alienation of, the rental amount for the leasing or compensation payable for a servitude over municipal immovable property shall be determined by an independent professional valuer or professional associated valuer registered in terms of the Property Valuers Profession Act, 2000 (Act 47 of 2000), or any ensuing act at the cost of the purchaser (in the case of a direct sale) or lessee (in the case of a direct lease)/servitude holder (in the case of a servitude).”

Whilst the agreement hereby proposed is not a lease agreement, servitude, encroachment agreement but rather one to regulate the use on municipal property, the compensation payable shall still be market related.

The previous compensation agreement determined the amount payable to the Municipality by the Applicant was calculated with reference to the amount that it would cost the Overstrand Municipality to mine the materials itself. Thereafter and from this initial amount the price payable to the Municipality has increased annually in accordance with the Consumer Price Index. Currently the amount is R33.03 (THIRTY-THREE RAND AND THREE CENTS) (VAT Included) per cubic meter of materials mined.

It is proposed that for this compensation agreement in respect of the New Area, the Applicant shall pay to the Municipality an amount of **R33.03 (THIRTY-THREE RAND AND THREE CENTS) (VAT Included)** per cubic meter of materials mined and that this amount escalates annually in accordance with the Consumer Price Index of South Africa.

Conclusion

Taking the above into consideration, it is recommended that the entering into of a compensation agreement with Sizisa Ukhanyo Trading (Proprietary Limited) for an amount of an amount of R33.03 (THIRTY-THREE RAND AND THREE CENTS) (VAT Included) per cubic meter of materials mined be approved.

7. Financial Implications

The Municipality stands to gain an income of R33.03 (THIRTY-THREE RAND AND THREE CENTS) (VAT Included) per cubic meter of materials mined.

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Senior Manager: Expenditure and Assets: Mr 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 Map

RECOMMENDATION TO THE COUNCIL:

1. that the entering into of a compensation agreement with Sizisa Ukhanyo Trading (Proprietary Limited) for an amount of R33.03 (THIRTY-THREE RAND AND THREE CENTS) (VAT Included) per cubic meter of materials mined in respect of a portion of Remainder Erf 210 Gansbaai, 28,1193 (TWENTY-EIGHT COMMA ONE ONE NINE THREE) hectares, **be approved;**
2. that the compensation agreement be subject to the Applicant, at its cost, making application for and obtaining final approval for:
 - (a) the necessary town planning applications for its activities on the municipal property; and
 - (b) the right to mine sand and/or gravel in terms of the Mineral and Petroleum Resources Act No. 28 of 2002,
3. that the compensation agreement contains the following conditions:

- (a) the rate of compensation payable per cubic meter of materials mined shall increase annually on 1 July in accordance with the consumer price index; and
- (b) the agreement's term shall be linked to the duration for which the Applicant is in possession of a valid mining right and/or permit.

RESPONSIBLE OFFICIAL :

R MARINUS

TARGET DATE FOR IMPLEMENTATION :

3 DECEMBER 2021

TARGET DATE TO INFORM APPLICANT :

3 DECEMBER 2021

TARGET DATE TO INFORM OBJECTOR :

N/A

ANNEXURE A – LOCALITY MAP

