

**AGENDA of the
Portfolio Committee: Infrastructure & Planning
18 June 2019
(Also the agenda for the Mayoral Committee Meeting: 26 June 2019)**

**4.
TRANSFER OF A PORTION OF THE REMAINDER OF ERF 313 ZWELIHLE,
ADJACENT TO ERF 5 ZWELIHLE, (±229m² IN EXTENT) TO LT MBOYIYA**

7/2/3/2

**N Liebenberg
6 May 2019**

(028) 316 - 3724

Hermanus Administration

1. Executive Summary

To obtain final approval for the transfer of a portion of the Remainder of Erf 313 Zwelihle (±229m² in extent) adjacent to Erf 5 Zwelihle, to the owner of Erf 5 Zwelihle, being LT Mboyiya located at 5 Tebele Street, Zwelihle. 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
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)
- Administration of Immovable Property Policy of the Overstrand Municipality, as amended

6. Background/Discussion/Evaluation/Conclusion

Background/Discussion

Council on 27 February 2019 approved in principle the direct alienation of a portion of the Remainder of Erf 313 Zwelihle (adjacent to Erf 5 Zwelihle), ±229m² in extent, to LT Mboyiya at a market related amount of R74.00/m²

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(VAT excluded) subject to a public participation process being followed. The public participation process was followed as described in more detail below.

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 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.”**

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- (a) The comments received from the relevant departments indicate that the subject municipal property is not needed for the provision of municipal services and that the existing services in the form of electrical cables can be moved at the cost of the applicant.
- (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 was recorded in the minutes of the in principle approval granted by the Council on 27 February 2019, a copy of which is attached hereto marked Annexure "B".

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 all costs which include, but are not limited to, the costs for the application, valuation, advertisement, closure of portion of public road and rezoning and the subdivision and consolidation. Furthermore, the purchaser will be liable for all costs related to the registration of the transaction in the Deeds Office. It must be noted that the registration of the transfer in the Deeds Office will be delayed as the transfer will only be possible after the Town Planning processes are finalised.

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 exist which, in the opinion of the Municipality, make such consolidation undesirable."*

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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.”

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

An advertisement for the transfer of the portion of the Remainder of Erf 313 Zwelihle adjacent to Erf 5 Zwelihle (±229m² in extent) was placed in The Village News on 17 April 2019 for a 30 (THIRTY) day objection/comment period. No objections/comments were received.

Conclusion

It is recommended that the transfer of a portion of the Remainder of Erf 313 Zwelihle, ±229m² in extent, to the owner of Erf 5 Zwelihle, being LT Mboyiya, be approved, subject to conditions.

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).

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8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

**Acting Senior Manager: Expenditure and Assets, Mr. C Oppelt
(028) 313 8063**

Erf 313 Zwelihle is currently reflected in the Fixed Asset Register for Property, Plant and Equipment: Land. The eventual disposal of a portion 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.

10. Annexures

Annexure A: Locality plan

Annexure B: Council decision dated 27 February 2019

RECOMMENDATION TO THE COUNCIL:

1. that the transfer 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/m² (SEVENTY FOUR RAND) (PER SQUARE METRE) (VAT excluded), **be approved**;
2. that it be noted that a condition of transfer will be that the said portion of the Remainder of Erf 313 Zwelihle must be consolidated with the adjoining property of LT Mboyiy, being Erf 5 Zwelihle;
3. that the transfer of the said portion of the Remainder of Erf 313 Zwelihle be subject to obtaining the necessary closure, subdivision, rezoning and consolidation approvals;
4. that all the costs pertaining to the transaction, e.g. application cost, valuation cost, advertisement, subdivision, closure of portion of public road, consolidation, rezoning, registration of transfer in the Deeds Office and related costs, etc. be paid by the Purchaser, LT Mboyiya; and

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5. 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 :	N LIEBENBERG
TARGET DATE FOR IMPLEMENTATION :	31 AUGUST 2019
TARGET DATE TO INFORM APPLICANT:	10 JULY 2019
TARGET DATE TO INFORM OBJECTOR:	N/A

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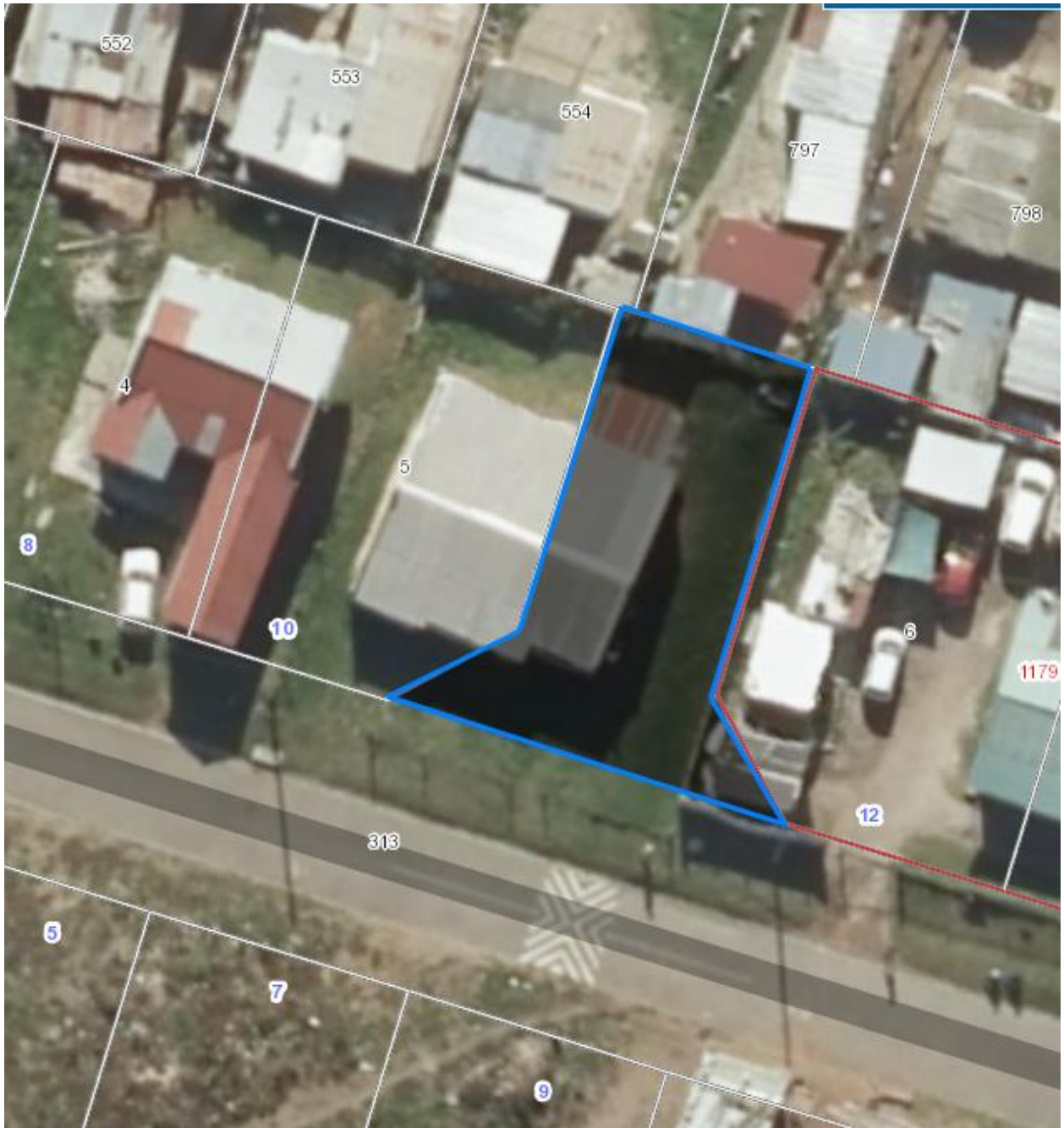
**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON
18 JUNE 2019, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:**

RECOMMENDATION TO THE COUNCIL:

1. that the transfer of a portion of the Remainder of Erf 313 Zwelihle (adjacent to Erf 5 Zwelihle), ±229m² in extent, to the owner of the adjoining Erf, LT Mboyiya, at an amount of R74/m² (SEVENTY FOUR RAND) (PER SQUARE METRE) (VAT excluded), **be approved**;
2. that it be noted that a condition of transfer will be that the said portion of the Remainder of Erf 313 Zwelihle must be consolidated with the adjoining property of LT Mboyiy, being Erf 5 Zwelihle;
3. that the transfer of the said portion of the Remainder of Erf 313 Zwelihle be subject to obtaining the necessary closure, subdivision, rezoning and consolidation approvals;
4. that all the costs pertaining to the transaction, e.g. application cost, valuation cost, advertisement, subdivision, closure of portion of public road, consolidation, rezoning, registration of transfer in the Deeds Office and related costs, etc. be paid by the Purchaser, LT Mboyiya; and
5. 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 :	N LIEBENBERG
TARGET DATE FOR IMPLEMENTATION :	31 AUGUST 2019
TARGET DATE TO INFORM APPLICANT:	10 JULY 2019
TARGET DATE TO INFORM OBJECTOR:	N/A

ANNEXURE A



5.6

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

(ITEM 12, PAGE 457 : INFRASTRUCTURE & PLANNING PORTFOLIO - MAYORAL COMMITTEE MEETING : 27 FEBRUARY 2019)

RESOLVED (SUPPORTED BY 23 COUNCILLORS):

1. that the direct alienation of a portion of the Remainder of Erf 313 Zwelihle (adjacent to Erf 5 Zwelihle), ±229m² 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).

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MINUTES : ORDINARY MEETING OF THE COUNCIL 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