

**AGENDA of the
Portfolio Committee: Planning & Development
18 November 2025
(Also the agenda for the Mayoral Committee Meeting: 28 November 2025)**

6. Background/Discussion/Evaluation/Conclusion

Background/Discussion

The Applicant applied to purchase the Property for parking purposes on more than one occasion, and these applications are discussed in more detail below.

First Application

The Applicant previously erroneously built a boundary wall on another portion of Erf 1253 Hermanus. In order to rectify the matter, he applied in 2014 to purchase the area he encroached on from the Municipality. Subsequently a portion of Erf 1253 Hermanus (237m² in extent) to the North-Eastern side of the Applicant's property was sold to the Applicant for gardening purposes and to retain the boundary wall as indicated in the map below.



At that time the Applicant also applied for the Property that he is applying for now again and as indicated below.

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In 2015 the comments received from the various divisions on the sale of the Property were as follows:

(Previous) Senior Manager Hermanus: Mr D Kearney

“I wish to re-iterate my comments as previously stated. I wish to emphasize that there never was a problem with this portion of land except for the metal chain that was removed by the Municipality after a pedestrian had fallen over it. This pocket of land might seem insignificant now, but as the town densifies and commercial activities spread towards Stemmet Street, it would become a valuable piece of land for a number of parking bays. I wish to compare it with the similar shaped piece of land adjoining the Hermanus Primary and the Free Mason Hall in Royal Street. Not long ago one seldom saw a vehicle parked there, whereas now, it is filled to capacity on a daily basis. I think it is short sighted to get rid of a piece of open land that is well maintained and has far higher community value than the insignificant income that will be received from the sale thereof.”

(Previous) Senior Manager Operational Services: Mr P Burger

“The sewer rising main is 6,5 metres from the erf boundary. We do not have to move any services.”

At that stage the owner of the other adjoining property, Erf 857 Hermanus, indicated that he was interested in purchasing the Property himself but that he was not interested in taking part in a closed tender. Subsequently, on 30 March 2016 Council resolved as follows:

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*“that the alienation of Portion B of Erf 1253, Eastcliff, Hermanus (adjacent to Erven 11094 and 857 Hermanus) ±468m² in extent, for gardening purposes by means of a closed tender process **not be approved.**”*

The Minutes of the Council Meeting dated 30 March 2016 is attached hereto marked “Annexure B”.

Second Application

The application to purchase the Property was submitted again in November 2021 after a notice of non-compliance was served on the Applicant by the Town and Spatial Planning Division on 29 October 2021. The notice of non-compliance is attached hereto marked as “Annexure C”. The main points of the notice were as follows:

- The property (Erf 12294 Hermanus) is utilized as a guest house (beyond the permitted extent) and additional uses which include self-catering accommodation, a bar (without a liquor license) and hosting of an event/s.
- The property is zoned Residential Zone 1: Single Residential with consent only for a five-bedroom guest house.
- The conditions of approvals are being contravened.

The motivation from the Applicant for the application to purchase was that the guest house’s building plan on the Applicant’s property was approved for 15 rooms but as there is not sufficient parking on the Applicant’s property the guest house is restricted to 5 rooms. Therefore, the Applicant wants to purchase the Property to consolidate with his property to provide the required parking for the guesthouse.

In 2022 the comments received from the various divisions on the sale of the Property were as follows:

Town Planner: Mr P Roux

“It should be noted that the approval for the guest house on Erf 12294 is limited to five bedrooms, irrespective of whether the dwelling has building plans for more than the five bedrooms. The five-bedroom limit is applicable to single residential properties, and should the property owner wish to operate more than five bedrooms, then approval must be sought through a land use application (rezoning/consent use etc.). This type of application is considered a high-risk application due to the locality and history of the site. No detail regarding the proposed application is provided and therefore the amount of parking required cannot be provided, at minimum one parking bay is required per bedroom however additional parking bays may be required depended on the type of use.

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The portion of Erf 1253, which is proposed to be used for parking purposes measures approximately 370m², however due to the odd shape the portion the developer will be hard-pressed to create the required additional parking bays on site while allowing for vehicles to manoeuvring on the property prior to exiting the property. A parking bay has a depth of 5m and a width of 2.5m, however, a vehicle requires at least 7,5m of manoeuvring space, therefore the average size required per parking bay is 25m²."

As per the comment from the Town and Spatial Planning Division, it was confirmed that although the building plan was approved for 15 rooms the use and rights on the Applicant's property does not allow for a 15-room guesthouse and therefore the Applicant will still not be allowed to operate as a 15-room guest house should the sale of the Property to him be approved, as the rights on the property is not in place. Although 15 rooms were approved on the building plan the use of only 5 rooms was approved for guesthouse purposes, and the additional rooms were approved to be used by the Applicant's extended family. The Town and Spatial Planning Division informed, amongst others, Mr Delport in February 2022 as follows:

"With the previous application (consent use to apply for a guest house) various objections was received from the adjacent property owners speculating that your client will utilise the additional rooms for guest house purposes, your client addressed the speculations by stating that he has an extended family which will make use of the additional bedrooms. By submitting an application now for rezoning to utilise the full extent of the dwelling for hotel use will be in line with what was speculated by the neighbouring property owners during the public participation phase, and it should be mentioned that the use will be mainly for single residential purposes (i.e. his family)."

Senior Superintendent: Operations: Traffic Services: Mr P de Gruchy

"I would like to refer back towards the comments as stated by the previous Area Manager Mr D Kearney on the first application (as follows):

Looking at both applications my opinion from a Traffic Law enforcement perspective is as follows:

Erven 12294 owned by Mr Delport is seeking to purchase for additional parking space. As provided on his application is an overhead of his erven, his entrance and garage are situated in Mitchell Street and unless the applicant has additional accommodation that is rented out on such erven I can't see the need for additional parking space. I propose that the remainder of erven 1253 be utilised for additional public parking space."

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The Electrical Division also confirmed that they do not support the fencing off of the Property for private parking as the supply cable to the kiosk on the road reserve is on the erf boundary.

Subsequently on 29 June 2022 Council resolved as follows:

“that the alienation of a portion of Remainder Erf 1253 Hermanus (±380m² in extent) to the owner of the adjoining Erf 12294 Hermanus, MG Delpont, not be approved as the property must be reserved for public parking and due to services located on the erf boundary.”

The Minutes of the Council Meeting dated 29 June 2022 is attached hereto marked “Annexure D”.

Current Application

WRAP Town Planning & Project Management, on behalf of the Applicant, submitted another application to purchase the Property. The Applicant motivated that the Property is currently vacant, irregular in shape, and zoned Transport Zone 2: Road and Parking. He further motivates that the Property is underutilised, contains no formal structures, and serves no active municipal or community function. The Applicant is therefore of the opinion that the alienation of the Property presents an opportunity for the Municipality to dispose of underutilised land, thereby reducing ongoing maintenance responsibilities and generating revenue.

The intent of the application is to allow the Applicant to consolidate the Property with Erf 12294 Hermanus and develop it as a parking area to serve the existing five-bedroom guesthouse operating on the Applicant’s erf. At present, the guesthouse utilises Mitchell Street for access, including the entrance, garage, and parking. The Applicant proposes to relocate the guesthouse parking to the Property, which would in turn free up the existing parking area on Erf 12294 for use as a garden and for private vehicle parking. This change is expected to enhance the functional layout of the erf and improve the visual character of the street frontage.

The owner of the adjacent Erf 857 Hermanus has formally indicated no interest in acquiring the Property, leaving the Applicant as the only willing and practical purchaser. Furthermore, the Applicant submits that acquiring the Property would result in improved site security and land management, thereby mitigating the potential for misuse or neglect often associated with vacant municipal land. Should any municipal services be located on the Property, the Applicant has undertaken to register a servitude in favour of the Municipality to safeguard such infrastructure.

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Overall, the Applicant maintains that the proposed acquisition and intended use of the Property align with its current zoning and support the optimal and responsible utilisation of municipal assets. He maintains that the consolidation is anticipated to enhance land use efficiency, contribute to improved spatial integration, and support the orderly development of the area.

From the above one can only derive to a conclusion that the application is submitted to possibly again legalise an irregularity on the Applicant's property.

Currently, the Property is zoned for Transport Zone 2: Road and Parking, and Hermanus already faces a significant shortage of public parking. The Traffic Services Division has explicitly objected to the alienation, stating that the Property should be retained for public use to meet current and future parking demands in the area, as and when needed.

Council previously resolved that the alienation should not proceed, citing the need to reserve the Property for public parking and the presence of essential municipal services along the erf boundary. Approving the application now would contradict this decision and raise concerns about consistency in municipal decision-making.

Additionally, the Town and Spatial Planning Division does not support the alienation, highlighting ongoing land use compliance issues on the Applicant's property. It is alleged that more rooms are being rented out than permitted, and the Applicant's property is already operating beyond its approved capacity. Approving this application may enable further unauthorised intensification of land use under the pretence of providing additional parking. Furthermore, the Electrical Services Division confirmed that there is electrical infrastructure on the Property, making the Property unsuitable for alienation and complicating any future development.

Taken together, these concerns confirm that the Property is not surplus to municipal needs and that its alienation would not serve the broader public interest. The upkeep and maintenance of the Property, in relation to all the public places in the area is minimal. Therefore, the application cannot be supported.

Evaluation

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

The following conditions of the said Policy will apply:

Paragraph 4: “No application for the purchase, lease of or encroachment on immovable property (save for the instances

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mentioned in paragraphs 58 to 62 and 64.1 below) shall be processed unless the prescribed application fee as per tariff approved in the annual budget for the financial year has been paid, nor shall any proposed lease or encroachment (save for the instances mentioned in paragraphs 58 to 62 and 64.1 below) be advertised unless the applicant has confirmed, in writing, that he/she will bear all costs involved in such transaction including – but not limited to – legal, survey, re-zoning, sub-division, consolidation, advertisement, relocation or provision of services and, where applicable, a deposit as per prescribed rate to cover incidental costs has been paid.”

The Applicant completed the formal application form and made payment of the application fee.

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.*

The Property accommodates municipal electrical infrastructure, is earmarked for future development, and must be reserved for public parking purposes. Accordingly, the Property cannot be made available for disposal.

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 in 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.”

Although the Applicant is the only adjoining owner who currently expresses interest and intends to utilise the Property in conjunction with their existing erf, the current zoning and previous departmental input indicate that the Property is not physically constrained, nor is it limited in such a manner that it can only be used if consolidated with the adjacent erf.

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Considering the policy definition, and considering the long-term urban planning potential, including the possibility for independent use for municipal purposes such as public parking and electrical infrastructure and development, the Property does not meet the criteria of non-viable immovable property.

Furthermore, it must be noted that municipal services are present on the Property. The existence of such infrastructure reinforces the view that the Property holds operational value within the municipal service delivery network. This further undermines any argument for non-viability, as the land remains functional in its current state and cannot be freely alienated without potentially compromising municipal infrastructure and interests.

Paragraph 9.2: “The Municipality may transfer ownership or otherwise dispose of a non-viable immovable property, as nonexempted 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 divisions indicate that there are electrical services located on the Property as well as other services located on the boundary of the Property, earmarked for future municipal services and that the Property be kept for municipal use such as public parking and public area.
- (b) No valuation will be done as the direct alienation of the Property is not supported.
- (c) The request will be that the direct alienation not be approved.

Conclusion

Considering the comments from the internal divisions, as well as the above discussion, it is recommended that the direct alienation of the Property to the Applicant not be approved.

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7. Financial Implications

None

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Principal Technologist Civil - Mr T Marx

“The Department: Civil Services, Hermanus, do not have any objection with regards to this application.”

Town Planner - Mr P Roux

“The Town & Spatial Planning Department does not support the proposed sale of land. The motivation provided by the Applicant is not agreed with as this department is aware of several instances where the property was utilized for other purposes as opposed to the residential zoning and approved guest house. Further the number of rooms being rented out and the placement of the rooms do not coincide with the land use approval. Parking is currently the site’s limiting factor and limits the site’s extensive utilization. The opinion is therefore maintained that the area proposed for parking will be used for the accommodation of additional guests and used not in line with the land use scheme.

Lastly, the owner of Erf 857 also inquired to purchase the Property, which was also not supported by the Municipality, therefore out of principle a direct sale cannot be supported.”

Building Control Officer – Mr G Coetzee

“No objection from Building Control.”

Senior Superintendent: Technical Planning: Electrical Services– Mr J Klem

“There are Electrical Services on this Property therefore the Property cannot be sold to the Applicant.”

Assistant Chief: Fire, Health and Safety – Mr E Solomons

“The Fire Department has no objection.”

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Senior Superintendent: Traffic Operations - Mr P de Gruchy

“Traffic is still of the opinion that the portion of Erf 1253 be kept for public parking, as the town has insufficient parking areas. Therefore, the Traffic Department doesn’t support the lease/sale of this land for private parking.”

Manager: Environmental Management & Conservation – Ms H Fortune

“This office has no objection to this application.”

Senior Engineer: Waste Management – Mr C Mitchell

“No objection from Waste Management.”

Property Management comments:

After careful consideration of the application by the Applicant to purchase the Property, it can be concluded that the proposed alienation cannot be recommended as per the below reasons.

Council previously resolved on 30 March 2016 and again on 29 June 2022 that the alienation of the Property should not be approved, citing the Property's importance for public parking and the presence of municipal services. Reversing this decision now, without any substantive change in circumstance, would undermine the consistency and credibility of Council's decision-making processes.

The Applicant has been in contravention of the land use rights applicable to Erf 12294 Hermanus on several occasions. The property is zoned Residential Zone 1, with consent use limited to a five-bedroom guesthouse. The Town and Spatial Planning Division has confirmed that the property does not comply with the approved land use conditions. Supporting the alienation of municipal land in the context of ongoing non-compliance could be seen as enabling and legitimising unauthorised use.

Furthermore, the Property is zoned Transport Zone 2: Road and Parking, which aligns with its intended purpose to serve the broader public need for parking infrastructure. Hermanus is experiencing increasing pressure on public parking due to densification and growing visitor numbers. The Traffic Services Division maintains that the Property must be retained for public parking to meet current and future demand. Alienating this Property for private use would be short-sighted and contrary to the principle of optimising municipal land for maximum public benefit.

The Electrical Services Division has confirmed that there are existing municipal electrical cables and infrastructure on the Property. The presence of

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such services presents a constraint to alienation, as any future development on the Property could compromise access and functionality. Although the Applicant has offered to register a servitude, the risk of interference with essential services remains, and the Municipality cannot compromise operational integrity for private gain.

In addition, the Town and Spatial Planning Division has indicated that, due to the irregular shape and size of the site, it would be difficult for the Applicant to establish the required number of functional parking bays while still allowing for vehicle manoeuvrability. The suggestion that the site can meaningfully resolve parking shortfalls for the Applicant's guesthouse is therefore questionable, and the proposed use may ultimately serve to enable further unauthorised expansion of operations.

In terms of section 14 of the Municipal Finance Management Act (MFMA) and its associated regulations, a municipality may not dispose of immovable property unless it is satisfied that the property is not needed to provide the minimum level of basic municipal services. Given the confirmed public parking needs, zoning purpose, and presence of infrastructure, the Property clearly remains required for municipal purposes and cannot be classified as surplus.

In conclusion, the Applicant's application to purchase the Property cannot be recommended on the grounds of land use non-compliance, conflict with prior Council decisions, the need to retain land for public parking, the presence of municipal infrastructure, feasibility concerns, and the requirement for fairness and consistency in administrative action. The Property is not surplus to municipal needs, and the proposed alienation does not serve the broader public interest.

10. Annexures

Annexures A1 & A2: Locality maps
Annexure B: Minutes of the Council Meeting dated 30 March 2016
Annexure C1-2: Notice of non-compliance
Annexure D: Minutes of the Council Meeting dated 29 June 2022

RECOMMENDATION TO THE COUNCIL:

that the alienation of a portion of Remainder Erf 1253 Hermanus ($\pm 380\text{m}^2$ in extent) to the owner of the adjoining Erf 12294 Hermanus, MG Delpont, **not be approved** as the Property must be reserved for public parking and it is needed to provide essential municipal services as electrical infrastructure is situated thereon.

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RESPONSIBLE OFFICIAL:

M ERASMUS

TARGET DATE FOR IMPLEMENTATION :

12 DECEMBER 2025

TARGET DATE TO INFORM APPLICANTS:

20 DECEMBER 2025



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MINUTES : ORDINARY MEETING OF THE COUNCIL**30 MARCH 2016****5.5****HERMANUS: IN PRINCIPLE APPROVAL FOR THE ALIENATION OF TWO PORTIONS OF ERF 1253, STEMMET STREET, EASTCLIFF, HERMANUS****(ITEM 17, PAGE 596 : INFRASTRUCTURE AND PLANNING PORTFOLIO - MAYORAL COMMITTEE MEETING : 30 MARCH 2016)****RESOLVED (UNANIMOUSLY):**

1. that the direct alienation of Portion A of Erf 1253, Eastcliff, Hermanus (adjacent to Erf 11094 Hermanus), $\pm 361\text{m}^2$ in extent, for gardening purposes to Mr Martin Gerhardus Delpport for an amount of R141,41/m² (ONE HUNDRED AND FOURTY ONE RAND AND FOURTY ONE CENTS PER SQUARE METRE) (VAT excluded) be **approved in principle**;
2. that Council take cognisance of the fact that the direct alienation is only approved as the subject portion Portion A of Erf 1253, Eastcliff, Hermanus, is classified as a non-viable property;
3. that the abovementioned approval in principle be subject to a public participation process being followed due to the non-viability of the property;
4. that Portion A of Erf 1253, Eastcliff, Hermanus, may only be used for gardening purposes;
5. that Portion A of Erf 1253, Eastcliff, Hermanus, must be consolidated with the adjoining property of Mr Martin Gerhardus Delpport, being Erf 11094, Eastcliff, Hermanus;
6. that the alienation of Portion A of Erf 1253, Eastcliff, Hermanus, be subject to obtaining the necessary subdivision, rezoning and consolidation approvals;
7. that the costs pertaining to the transaction, e.g. subdivision, possible consolidation, rezoning, transfer costs, water- and sewer connections, bulk services contribution, advertisements, etc., excluding the valuation costs, be paid by the purchaser;
8. 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 5 of Council's Administration of Immovable Property Policy and Section 14 of the Local Government: Municipal Finance Management Act (Act 56 of 2003); and

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MINUTES : ORDINARY MEETING OF THE COUNCIL**30 MARCH 2016**

9. that the alienation of Portion B of Erf 1253, Eastcliff, Hermanus (adjacent to Erven 11094 and 857, Hermanus), $\pm 468\text{m}^2$ in extent, for gardening purposes by means of a closed tender process **not be approved**.

RESPONSIBLE OFFICIAL :	A KOTZE
TARGET DATE FOR IMPLEMENTATION :	29 APRIL 2015
TARGET DATE TO INFORM APPLICANT :	15 APRIL 2015
TARGET DATE TO INFORM OBJECTOR :	N/A

OFFICE OF THE DIRECTOR: INFRASTRUCTURE & PLANNING
TOWN PLANNING

ENQUIRIES | NAVRAE: N Gerber
FILE REFERENCE | LEËRVERWYSING: 12294 HEC
DATE | DATUM: 29 October 2021



Attention: Mr MG Delpont
P O Box 74703
LYNNWOODRIF
0040
raymorhof@mweb.co.za; pdelmar@telkomsa.net

ELECTRONIC MAIL

Dear Sir

NOTICE OF NON-COMPLIANCE

UNAUTHORISED LAND USES AND NON-COMPLIANCE: ERF 12294 HERMANUS, 62 MITCHELL STREET, EASTCLIFF

1. The Municipality has noticed that you are **transgressing Section 84(1)(a) and (c) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning 2020 (By-Law)** as follows:
 - ❖ Contravenes and fails to comply with Sections 16(1), 16(5) and 84(2).
 - ❖ Utilises land in a manner other than prescribed by a land use scheme.
2. The subject property is being utilised as a guest house (seemingly beyond the permitted extent) and additional uses which include self-catering accommodation, a bar (without a liquor license) and hosting of an event/s.
3. The subject property is zoned **Residential Zone 1: Single Residential (SR1)** with consent for a five-bedroom guest house. The combination of activities as mentioned above are in contravention of the permitted land uses and development parameters in terms of the Overstrand Municipality Land Use Scheme 2020 (Scheme).
4. Furthermore, the **conditions of approvals are being contravened**. The conditions of approval stated, amongst other conditions, that no self-catering is permitted, that only five guest bedrooms may be provided, that parking must be demarcated, that no facilities may be provided for non-residents of the accommodation establishment and that the selling and serving of liquor on the premises are subject to obtaining a liquor license, of which there is no record.

Tel: 028 313 8900 | Fax: 028 313 2093 | E-mail: ngerber@overstrand.gov.za
PO Box 20 | **HERMANUS** 7200
www.overstrand.gov.za

5. As per the conditions of approvals, a copy of the requested R918 certificate of acceptability and a Site Development Plan indicating the bedrooms being utilised for guest house purposes should be provided.
6. You are hereby requested in terms of Section 85 of the By-Law, to **cease the unlawful land uses with immediate effect**. Please provide an affidavit confirming that the unlawful land uses will cease.
7. Please provide the required documentation as per the conditions of approval **within 30 days of this notice**.
8. Kindly note that failure to comply with the above requests may result in further action, legal or otherwise, being taken against you in terms of Section 88 of the By-Law.
9. Also note that, in terms of Section 86 of the By-Law, in the case of a contravention relating to a consent use, which is the case, the approval could be withdrawn.
10. Please ensure compliance with the National Building Regulations and Standards as well as the conditions contained in the title deed of your property.
11. An inspection will be conducted to ensure that the required steps to cease the unlawful activities have been taken.

Yours faithfully

pp 

S MÜLLER
DIRECTOR: INFRASTRUCTURE & PLANNING

5.5

APPLICATION TO PURCHASE: A PORTION OF REMAINDER ERF 1253 HERMANUS (TRANSPORT ZONE: ROAD AND PARKING), ADJACENT TO ERF 12294 HERMANUS (62 MITCHELL STREET, HERMANUS) – MG DELPORT

**(ITEM 8 PAGE 178 : INVESTMENT & INFRASTRUCTURE PORTFOLIO
- MAYORAL COMMITTEE MEETING : 27 JUNE 2022)**

RESOLVED (SUPPORTED BY 23 COUNCILLORS):

that the alienation of a portion of Remainder Erf 1253 Hermanus ($\pm 380\text{m}^2$ in extent) to the owner of the adjoining Erf 12294 Hermanus, MG Delpport, **not be approved** as the property must be reserved for public parking and due to services located on the erf boundary.

RESPONSIBLE OFFICIAL:	M ERASMUS
TARGET DATE FOR IMPLEMENTATION:	14 AUGUST 2022
TARGET DATE TO INFORM APPLICANT:	27 AUGUST 2022
TARGET DATE TO INFORM OBJECTOR:	N/A