

**AGENDA of the
Portfolio Committee: Investment & Infrastructure
7 June 2023
(Also the agenda for the Mayoral Committee Meeting: 12 June 2023)**

**5.
IN PRINCIPLE APPROVAL FOR THE DIRECT ALIENATION OF A PORTION OF
ERF 3048 BETTYS BAY, ADJACENT TO ERF 3196 BETTY'S BAY, SITUATED ON
THE CORNER OF ROCKWAY DRIVE AND PEARL DRIVE, BETTY'S BAY, TO L R
MCCANN**

**A Le Roux
24 April 2023**

Manager: Property Administration

(028) 316 - 5623

1. Executive Summary

To obtain approval in principle for the direct alienation of a portion of Erf 3048 Betty's Bay ($\pm 155\text{m}^2$ in extent) adjacent to Erf 3196 Betty's Bay, situated on the corner of Rockway Drive and Pearl Drive, Betty's Bay, to the owner of the adjoining property, L R McCann for gardening purposes and the erection of a fence / boundary wall. See the locality plans attached hereto marked Annexure "A1" and "A2".

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

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

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6. Background/Discussion/Evaluation/Conclusion

Background/Discussion

An application was received from L R McCann, hereafter referred to as “the Applicant”, for the purchase of a portion of Erf 3048 Betty’s Bay (±155m² in extent) adjacent to Erf 3196 Betty’s Bay, situated on the corner of Rockway Drive and Pearl Drive, Betty’s Bay, hereafter referred to as “the Property”.

The Applicant wishes to retain a small encroachment onto municipal property and use the Property for gardening purposes and the erection of a boundary wall or fence. When the Applicant purchased his property, he was under the impression that the builders built on the correct area so that he would still be able to erect a fence, however, when the building department conducted a site inspection it became apparent that the Applicant’s house had been built very close to the boundary of his property and that a small part of the immovable property encroaches over his property onto municipal property. The portion of the Applicant’s property that is over his boundary line is indicated on the photos attached as Annexure B.

Subsequent costs

The Applicant will be liable for the costs of the transaction which include, but not limited to, the application costs, valuation costs, road closure, rezoning, subdivision and consolidation of the Property, transfer costs as well as the required Section 14 advertisement in terms of the MFMA and Administration of Immoveable Property Policy.

Evaluation

A: Administration of Immoveable 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 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.”

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The Property forms part of a road reserve and due to the locality, shape, intended use and size of the Property, it cannot be developed independently, and thus it can 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 adjoining property owner, subject to certain conditions.

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 municipal services.
- (b) HCB Valuations and Services (Pty) Ltd determined the market related value on 1 January 2023 at an amount of R350.00/m² (three hundred and fifty Rand alone) per square metre (VAT excluded). The valuation was done taking into consideration the size, shape, locality, zoning and proposed use (restriction) of the Property.
- (d) The reasons for preferred direct sale are discussed above and will subsequently be recorded in the minutes.

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.”

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The Applicant will be liable for the costs of the transaction which will include, but not be limited to, the application costs, valuation costs, road closure, rezoning, subdivision and consolidation of the Property, transfer costs as well as the required Section 14 advertisement in terms of the MFMA and Administration of Immovable Property Policy.

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 Applicant will be liable for all costs 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."

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"

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

Conclusion

Considering the comments of the internal departments, as well as the above discussion, it is recommended that the direct alienation of the Property to the Applicant be approved in principle.

Furthermore, the Applicant will be liable for all cost involved to affect transfer of the Property in the deeds office. Subsequently the costs will entail, amongst others, the application costs, valuation costs, closure of public open space, rezoning, subdivision and consolidation, Section 14 advertisement and the transfer costs.

7. Financial Implications

The Municipality stands to gain a market related purchase price of R350.00/m² (three hundred and fifty Rand alone) per square metre (VAT excluded) per square metre (VAT excluded).

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Senior Manager: Expenditure and Assets - Mr J Vorster

“The full extent of Erf 3048 Betty’s Bay is currently reflected as Road Remainder in the fixed asset register for PPE: Land at a carrying value of R590’000-00 as at 30 June 2022. Once the proposed alienation of the ±155m² portion has been concluded, it will have to be written out of the fixed asset register at the applicable selling price in order to account for the actual gain / (loss) on the disposal of a portion of an asset.

There is no objection against the alienation.”

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Senior Town Planner - Ms H van der Stoep

“The applicant must purchase a portion of land along Rockway Drive in order to comply with the 4,72m street building line. His house is presently transgressing the street building line. This will entail a road closure, subdivision, rezoning and a consolidation.

There is no objection in purchasing a portion of road reserve along Rockway Drive for him to legalise the house without having to demolish the building. Rockway Drive has an extensive road reserve and should a portion be purchased, there will not be any impact on road safety, traffic flow etc.”

Senior Manager: Operational Services - Mr D van Rhodie

“I would support the application, if the layout is changed to the attached configuration.

Comment given by the Manager: Engineering Services w.r.t to further services, I feel is still valid on the proposed configuration. We must still do sewer, paved roads & stormwater infrastructure in the road reserve and the fibre network will also take up space.”

Comments from Property Administration: The layout proposed by Mr van Rhodie is attached as “Annexure C”. The area and configuration proposed by Mr van Rhodie is approximately 85m² in extent. The comment with regard to services by the Manager: Engineering Services appears below.

Manager: Engineering Services - Mr R Andrew

“The initial comment was:

*“The proposed lease is not the supported:
The planned boundary wall will create reduced visibility at the intersection of Rockway Drive and Pearl Drive.
The proposed reduction in the width of the road reserve may create challenges for any future road works or installation of services,*

We have no objection to an encroachment agreement.”

Following a request on whether the comment is the same in respect of a purchase, and following the comment of the Senior Manager: Operational Services (Kleinmond), the final comment from the Manager: Engineering Services is:

“We have no objection to the lease or purchase (as per attached, modified map). The map proposed by the Senior Operational Manager: Kleinmond is

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supported and preferred.”

Comments from Property Administration: The alternative layout proposed by the Senior Operational Manager: Kleinmond was discussed at an internal meeting and the proposed alternative area was not supported and a sale of the application area as per Annexure A was supported. The proposed area indicated on Annexure C does not take into account the 4.72m building line restriction and will be sufficient to enclose the area, thus defeating the reasons for the application. The remainder of the road reserve is sufficient in width to accommodate any services / telecommunication infrastructure. Therefore the area indicated in Annexure A is recommended.

The following Departments had no objections: Area Management, Environmental, Building, Traffic and Fire Safety and Health and Safety.

10. Annexures

Annexure A1 Locality Map 1
Annexure A2: Locality Map 2
Annexure B: Photographs
Annexure C: Area proposed by the Senior Manager: Operational Services

RECOMMENDATION TO THE COUNCIL:

1. that the direct alienation of a portion of Erf 3048 Betty's Bay ($\pm 155\text{m}^2$ in extent) adjacent to Erf 3196 Betty's Bay, situated on the corner of Rockway Drive and Pearl Drive, Betty's Bay, to the owner of the adjoining property to retain an encroachment, for gardening purposes and the erection of a fence / boundary wall, at an amount of R350.00/m² (three hundred and fifty Rand alone) 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 Erf 3048 Betty's Bay 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 Erf 3048 Betty's Bay must be consolidated with the adjoining property of applicant/purchaser, being Erf 3196 Betty's Bay, simultaneous with the registration of the transfer;
6. that a condition be registered against the title deed of the to be consolidated property that the portion of property envisaged to be transferred may only be used for gardening purposes and no structures, excluding the existing encroachment and a boundary fence or wall, may be erected thereon;

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7. that the alienation of said portion of Erf 3048 Betty's Bay be subject to a suspensive condition that the applicant/purchaser obtains approval for all the required land use rights, which may include, the partial closure of a road, rezoning, subdivision and consolidation;
8. that all the costs pertaining to the transaction, e.g. application costs, valuation costs, closure, rezoning, subdivision and consolidation, advertisement and the related costs, etc. be paid by the applicant/purchaser;
9. that it be noted that there no economic and community value will be received in exchange for the portion of municipal property; and
10. 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:	R MARINUS
TARGET DATE FOR IMPLEMENTATION:	12 JULY 2023
TARGET DATE TO INFORM APPLICANT:	5 JULY 2023
TARGET DATE TO INFORM OBJECTOR:	N/A

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5.

IN PRINCIPLE APPROVAL FOR THE DIRECT ALIENATION OF A PORTION OF ERF 3048 BETTYS BAY, ADJACENT TO ERF 3196 BETTY'S BAY, SITUATED ON THE CORNER OF ROCKWAY DRIVE AND PEARL DRIVE, BETTY'S BAY, TO L R MCCANN

**A Le Roux
24 April 2023**

Manager: Property Administration

(028) 316 - 5623

THIS MATTER SERVED BEFORE THE INVESTMENT & INFRASTRUCTURE PORTFOLIO COMMITTEE ON 7 JUNE 2023, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:

RECOMMENDATION TO THE COUNCIL:

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2. that it be noted that the direct alienation is possible as the said portion of Erf 3048 Betty's Bay 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 Erf 3048 Betty's Bay must be consolidated with the adjoining property of applicant/purchaser, being Erf 3196 Betty's Bay, simultaneous with the registration of the transfer;
6. that a condition be registered against the title deed of the to be consolidated property that the portion of property envisaged to be transferred may only be used for gardening purposes and no structures, excluding the existing encroachment and a boundary fence or wall, may be erected thereon;
7. that the alienation of said portion of Erf 3048 Betty's Bay be subject to a suspensive condition that the applicant/purchaser obtains approval for all the required land use rights, which may include, the partial closure of a road, rezoning, subdivision and consolidation;
8. that all the costs pertaining to the transaction, e.g. application costs, valuation costs, closure, rezoning, subdivision and consolidation, advertisement and the related costs, etc. be paid by the applicant/purchaser;

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9. that it be noted that there no economic and community value will be received in exchange for the portion of municipal property; and
10. 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:	R MARINUS
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ANNEXURE A1 – LOCALITY MAP 1



ANNEXURE A2 – LOCALITY MAP 2



ANNEXURE B – PHOTOGRAPHS OF ENCROACHMENT



ANNEXURE C – PROPOSED ALTERNATIVE AREA

