

**AGENDA of the
Portfolio Committee: Investment & Infrastructure
2 March 2022
(Also the agenda for the Mayoral Committee Meeting: 28 March 2022)**

5.

TRANSFER OF A PORTION OF REMAINDER OF ERF 2715 BETTY'S BAY (UNDEVELOPED ROAD) ADJACENT TO ERF 3463 BETTY'S BAY SITUATED AT BROADWITH AND HIGH LEVEL ROAD, BETTY'S BAY, TO MICHAEL DALL FAMILY TRUST AND PETER DALL FAMILY TRUST

7/2/3/2

A Le Roux

Manager: Property Administration

31 January 2022

(028) 316 - 5623

1. Executive Summary

To obtain final approval for the transfer of a portion of Remainder Erf 2715 Betty's Bay (undeveloped road) adjacent to Erf 3463 Betty's Bay, situated at Broadwith and High Level Road, Betty's Bay, ±3,293m² in extent, to the owners of Erf 3463 Betty's Bay, being Michael Dall Family Trust and Peter Dall Family Trust. 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
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

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6. Background/Discussion/Evaluation/Conclusion

Background/Discussion

Council on 27 November 2019 approved in principle the direct alienation of a portion of Remainder Erf 2715 Betty's Bay (adjacent to Erf 3463 Betty's Bay) situated at Broadwidth and High Level Road, Betty's Bay, ±3,519m² in extent (hereinafter referred to as "the Property") to the owner of the adjoining Erf 3463 Betty's Bay, Michael Dall Family Trust at a market related price for the purpose to ensure the preservation of the environment, for landscaping purposes and for a boundary fence or wall. The approval was subject to a public participation process being followed and subject further to gaining the approval for the closure of the public road, subdivision, consolidation and rezoning and all applicable town planning approvals. A fair market value was determined at an amount of R20.00/m² (TWENTY RAND PER SQUARE METRE) (VAT excluded). The public participation process was followed as discussed in more detail below.

After the above Council approval, it was later determined that there are more than one owner for the adjoining Erf 3463 Betty's Bay and the names of these owners are Michael Dall Family Trust as well as the Peter Dall Family Trust (hereinafter referred to as "the Applicants").

Although approval was given for ±3,519m² in extent it was later determined that the Property is closer to ±3,293m² in extent.

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 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." The Property can be classified as a non-viable immovable property due to the lay-out, size and proposed use thereof as it is a thin strip of land that

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cannot be developed independently. Due to the restrictions imposed on the Property no construction will be allowed besides a boundary fence or wall and can only be used to ensure the preservation of the environment and for landscaping purposes.

Paragraph 9(1)(a): “The Municipality may transfer ownership or otherwise dispose of a non-exempted immovable property only after the Municipal Council has, in terms of section 14(2)(a) and (b) of the MFMA decided on reasonable grounds that the immovable property is not needed to provide the minimum level of basic municipal services.”

Council, when the in principal approval was obtained, confirmed that the Property is not needed to provide the minimum level of basic municipal services.

Paragraph 9(1)(b): “The Municipality may transfer ownership or otherwise dispose of a non-exempted immovable property only after the municipal council, in terms of sections 14(2)(a) and (b) of the MFMA 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.”

Boland Valuers determined the fair market value on 14 December 2018 at an amount of R20.00/m² (TWENTY RAND PER SQUARE METRE) (VAT excluded). The valuation was done taking into consideration the size, locality, zoning and proposed use of the Property (restriction imposed). The total price of the Property will be approximately R65,860.00 (SIXTY FIVE THOUSAND EIGHT HUNDRED AND SIXTY RAND) (VAT excluded), depending on the final size of the Property after the survey is done at the Applicants costs.

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***

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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 confirm that the Property is not needed for the provision of municipal services.
- (b) Boland Valuers determined the fair market value on 14 December 2018 at an amount of R20.00/m² (TWENTY RAND PER SQUARE METRE) (VAT excluded). The valuation was done taking into consideration the size, shape, locality, zoning and proposed use of the Property (restriction imposed).
- (d) 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 November 2019, which is attached hereto marked as 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 Applicants will be liable for the costs of the transaction which will include, but not limited to, the application fee, valuation, closure of public road, rezoning and consolidation, Section 14 advertisement, all cost related to the Town Planning processes and the transfer costs.

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 Applicants shall 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,

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unless circumstances exists which, in the opinion of the Municipality, make such consolidation undesirable.”

A condition to this effect was 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 was 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 was 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 was 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 was included in the deed of sale.

B: Advertisement/Notification

An advertisement for the transfer of a portion of Remainder Erf 2715 Betty’s Bay (adjacent to Erf 3463 Betty’s Bay), ±3,293m² in extent, was published in Overstrand Herald on 2 December 2021 for a 30 (THIRTY) day objection/comment period. No objections/comments were received.

Conclusion

It is recommended that the direct alienation of the Property, to the Applicant for R20.00/m² (TWENTY RAND PER SQUARE METRE) (VAT excluded) for the purpose to ensure the preservation of the environment, for landscaping purposes and the erection of a boundary wall or fence be approved.

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7. Financial Implications

The Municipality stands to gain an income of R20.00/m² (TWENTY RAND PER SQUARE METRE) (VAT excluded) for the sale of the Property.

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Senior Manager: Expenditure and Assets, Mr J Vorster – (028) 313 8046

“Erf 2715 Betty’s Bay is currently reflected in the Fixed Asset Register for Property, Plant and Equipment: Land. The eventual disposal of Erf 2715 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 Immovable Property Policy.”

10. Annexures

Annexure A: Locality map

Annexure B: Council resolution dated 27 November 2019

RECOMMENDATION TO THE COUNCIL:

1. that the transfer of a portion of Remainder of Erf 2715 Betty’s Bay (adjacent to Erf 3463 Betty’s Bay) situated at Broadwith and High Level Road, Betty’s Bay, ±3,293m² in extent, to the owners of the adjoining Erf 3463 Betty’s Bay, Michael Dall Family Trust and Peter Dall Family Trust, at an amount of R20.00/m² (TWENTY RAND PER SQUARE METRE) (VAT excluded) for the purpose to ensure the preservation of the environment and for landscaping purposes and for a boundary fence or wall, **be approved**;
2. that Council take cognisance of the fact that the direct alienation and subsequent transfer is only approved as the subject portion of Remainder of Erf 2715 Betty’s Bay is classified as a non-viable property;
3. that it be noted that a condition for the transfer is that the said portion of Remainder of Erf 2715 Betty’s Bay must be consolidated with the adjoining property of Michael Dall Family Trust and Peter Dall Family Trust, being Erf 3463 Betty’s Bay;

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4. 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 the purpose to ensure the preservation of the environment and no structures, excluding a boundary fence or wall, may be erected thereon;
5. that the transfer of a portion of Remainder Erf 2715 Betty's Bay be subject to a suspensive condition that the Applicants obtain approval for the closure of the public road, subdivision, consolidation and rezoning and all applicable town planning approvals;
6. that all the costs pertaining to the transaction, e.g. application cost, valuation cost, subdivision and consolidation, closure of portion of public road, rezoning, transfer and related costs, advertisements, etc. be paid by the Applicants; and
7. that it be noted that the municipal property envisaged to be 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:	W MURTZ
TARGET DATE FOR IMPLEMENTATION:	23 APRIL 2022
TARGET DATE TO INFORM APPLICANT:	14 APRIL 2022
TARGET DATE TO INFORM OBJECTOR:	N/A

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7/2/3/2

A Le Roux

Manager: Property Administration

31 January 2022

(028) 316 - 5623

THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON 2 MARCH 2022, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:

RECOMMENDATION TO THE COUNCIL:

1. that the transfer of a portion of Remainder of Erf 2715 Betty's Bay (adjacent to Erf 3463 Betty's Bay) situated at Broadwith and High Level Road, Betty's Bay, ±3,293m² in extent, to the owners of the adjoining Erf 3463 Betty's Bay, Michael Dall Family Trust and Peter Dall Family Trust, at an amount of R20.00/m² (TWENTY RAND PER SQUARE METRE) (VAT excluded) for the purpose to ensure the preservation of the environment and for landscaping purposes and for a boundary fence or wall, **be approved**;
2. that Council take cognisance of the fact that the direct alienation and subsequent transfer is only approved as the subject portion of Remainder of Erf 2715 Betty's Bay is classified as a non-viable property;
3. that it be noted that a condition for the transfer is that the said portion of Remainder of Erf 2715 Betty's Bay must be consolidated with the adjoining property of Michael Dall Family Trust and Peter Dall Family Trust, being Erf 3463 Betty's Bay;
4. 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 the purpose to ensure the preservation of the environment and no structures, excluding a boundary fence or wall, may be erected thereon;
5. that the transfer of a portion of Remainder Erf 2715 Betty's Bay be subject to a suspensive condition that the Applicants obtain approval for the closure of the public road, subdivision, consolidation and rezoning and all applicable town planning approvals;
6. that all the costs pertaining to the transaction, e.g. application cost, valuation cost, subdivision and consolidation, closure of portion of public road, rezoning, transfer and related costs, advertisements, etc. be paid by the Applicants; and

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7. that it be noted that the municipal property envisaged to be 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:	W MURTZ
TARGET DATE FOR IMPLEMENTATION:	23 APRIL 2022
TARGET DATE TO INFORM APPLICANT:	14 APRIL 2022
TARGET DATE TO INFORM OBJECTOR:	N/A





A Portion of
Remainder Erf 2715
Betty's Bay
(±3,293m²)

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MINUTES : ORDINARY MEETING OF THE COUNCIL 27 NOVEMBER 2019

5.4

IN PRINCIPLE APPROVAL FOR THE DIRECT ALIENATION OF A PORTION OF THE REMAINDER OF ERF 2715 BETTY'S BAY, ADJACENT TO ERF 3463 BETTY'S BAY, TO MICHAEL DALL FAMILY TRUST

(ITEM 10, PAGE 204 : INFRASTRUCTURE & PLANNING PORTFOLIO - MAYORAL COMMITTEE MEETING : 27 NOVEMBER 2019)

RESOLVED (SUPPORTED BY 24 COUNCILLORS):

1. that the direct alienation of a portion of the Remainder of Erf 2715 Betty's Bay (adjacent to Erf 3463 Betty's Bay), ±3,519m² in extent, to the owner of the adjoining Erf 3463 Betty's Bay, the Michael Dall Family Trust, at an amount of R20.00/m² (TWENTY 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 2715 Betty's Bay is 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 2715 Betty's Bay must be consolidated with the adjoining property of the Michael Dall Family Trust, being Erf 3463 Betty's Bay;
5. that no structures of any kind (excluding a boundary wall or fence) may be erected on the said portion of the Remainder of Erf 2715 Betty's bay, which condition must be registered against the title deed of the property;
6. that the alienation of said portion of the Remainder of Erf 2715 Betty's Bay be subject to a suspensive condition that the purchaser obtains approval for the closure of the public road, subdivision, rezoning and consolidation;
7. 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, the Michael Dall Family Trust; and
8. 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 NOVEMBER 2019

RESPONSIBLE OFFICIAL :	N LIEBENBERG
TARGET DATE FOR IMPLEMENTATION :	20 DECEMBER 2019
TARGET DATE TO INFORM APPLICANT:	11 DECEMBER 2019
TARGET DATE TO INFORM OBJECTOR:	N/A