

**AGENDA of the
Portfolio Committee: Infrastructure & Planning
19 November 2019
(Also the agenda for the Mayoral Committee Meeting: 27 November 2019)**

10.

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

7/2/3/2

A le Roux

Manager: Property Administration

30 September 2019

(028) 316-3724

1. Executive Summary

To obtain approval in principle for the direct alienation of a portion of the Remainder of Erf 2715 Betty's Bay, adjacent to Erf 3463 Betty's Bay ($\pm 3,519\text{m}^2$ in extent), situated in Broadwith and High Level Road to the owner of Erf 3463 Betty's Bay, being the Michael 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
The encouragement of structured community participation in the matters of the municipality
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

An application was received from Friedlaender, Burger & Volkman on behalf of the Michael Dall Family Trust, the owner of Erf 3463 Betty's Bay, situated in High Level Road, to purchase a portion of the Remainder of Erf 2715 Betty's Bay ($\pm 3,519\text{m}^2$ in extent) adjoining their property, as indicated on the attached locality map. The reason for the application to purchase is to ensure the preservation of the environment and for landscaping purposes.

The specific portion of Erf 2715 Betty's Bay borders 5 adjoining properties on both sides of which portions of the mentioned property can be consolidated with to be used functionally. The owner of Erf 3463 Betty's Bay is the applicant and the owners of Erven 5599, 5600, 2962 and 2961 Betty's Bay confirmed in a letter dated 18 July 2017 that they support the proposed closure of the road and the consolidation thereof with Erf 3463 Betty's Bay, kindly see letter attached per Annexure "B". Affidavits were also provided by the owners of Erven 2962, 5599 and 5600 Betty's Bay confirming that they are aware of the application to purchase and that they are not interested in purchasing the above mentioned portion of the Remainder of Erf 2715 Betty's Bay, kindly see said affidavits attached per Annexure "C". As this portion of property is a thin strip of road that cannot be developed independently, 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 the adjoining property owner, subject to certain conditions. Furthermore, as the adjoining owners have confirmed that they are not interested in purchasing the portion of property, it is not needed to follow a competitive process for the sale of the subject property.

One of the conditions of the sale will be 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 and that it must be consolidated with the property of the purchaser.

Subsequent costs

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

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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 subject property can be classified as a non-viable immovable property as it is a thin strip of land that cannot be developed independently.

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) Boland Valuers determined the market related value in December 2018 at an amount of R20.00 /m² (TWENTY RAND) (PER SQUARE

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METRE) (VAT excluded). The valuation was done taking into consideration the size, locality, zoning, vegetation and proposed use of and restrictions on the property.

- (c) 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.”

The purchaser will be liable for the costs of the transaction which will include, but not limited to, the application fee, the cost for the valuation, closure of the portion of public road, subdivision and consolidation, rezoning, Section 14 advertisement and 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 purchaser 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, unless circumstances exists 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.”

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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

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

Taking the comments of the internal departments, as well as the above discussion, into consideration it is recommended that the direct alienation of a portion of the Remainder of Erf 2715 Betty’s Bay, ± 3,519m² in extent, to the owner of Erf 3463 Betty’s Bay, being the Michael Dall Family Trust, be approved in principle.

Furthermore, the purchaser will be liable for all cost involved to affect transfer of the property in the deeds office. Subsequently the costs will entail the subdivision, consolidation, closure of portion of public road, rezoning, Section 14 advertisement and the transfer costs.

7. Financial Implications

The Municipality stands to gain a market related purchase price of R20.00/m² (TWENTY RAND) (PER SQUARE METRE) (VAT excluded).

8. Staff Implications

None

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9. Comments from other Departments, Divisions and Administrations

Senior Town Planner: Mrs H van der Stoep - (028) 313 8900

“The portion of the road to be closed in extent of 3519sq is acceptable. Please note that according the Municipal GIS there is a pipeline at the corner of Broadwidth and Mountain Road. Should this be included a servitude must be registered against the relevant Title Deed in favour of the Municipality and that access be available at all times. The reserve of the pipeline must be determined by the Engineering Department to ensure sufficient space is available should repairs and maintenance need to be done. Therefore it is imperative that the Engineering Department with the Operational Department establish the line at the corner of Broadwidth and Mountain Road rather exclude the pipeline reserve, thus eliminating servitudes and registration thereof against the applicant's Title Deed.”

Comments from the Property Administration Department:

A condition will be imposed in the Deed of Sale that a water pipeline servitude must be registered in favour of the Municipality against the title deed of the to be consolidated property at the cost of the purchaser. The Engineering and Operational Departments will be requested to assist with the necessary information to ensure that the servitude is correctly described in the Deed of Sale as to also make provision for a maintenance area. The standard, however, is to allow for a minimum area of 1 (one) metre on each side of the pipeline for maintenance purposes. The registration of this servitude is in line with paragraph 29 of the current Administration of Immoveable Property Policy of the Municipality.

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

“Erf 2715 Bettys 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 Immoveable Property Policy.”

Manager: Engineering Services (Hermanus): Mr R Andrew – (028) 313 8972

“The Engineering Services Department supports the amended proposal. Property Administration can proceed with processing the amended proposal.”

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Electrical Department: Mr R Buckle – (028) 271 8484

Concerning Erf 2715 Bettys Bay, the Electrical Department Overstrand has no comment.”

Senior Manager: Kleinmond Administration: Mr D Lakey – (028) 271 8413

“I have no objection against the application.”

10. Annexures

Annexure A: Locality plan

Annexure B: Letter from owners of erven 559, 5600, 2962 and 2961

RECOMMENDATION TO THE COUNCIL:

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

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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).

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

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REMAINDER OF ERF 2715 BETTY'S BAY, ADJACENT TO ERF 3463 BETTY'S
BAY, TO MICHAEL DALL FAMILY TRUST**

7/2/3/2

A le Roux

Manager: Property Administration

30 September 2019

(028) 316-3724

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

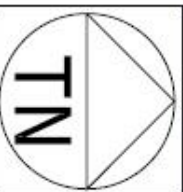
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2. that it be noted that the direct alienation is possible as the said portion of the Remainder of Erf 2715 Betty's Bay is classified as a non-viable property;
3. that, subject to the approval in 1 above, a public participation process be followed 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

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



Caveat
 1. Any areas and dimensions are provisional and will be finalised at time of subdivision survey.
 2. All levels are to be confirmed prior to construction.

Scale 1:2000 GA4 **Date: 27/11/2018**

**PROPOSED ROAD CLOSURE
 OF PORTIONS OF BROADWIDTH ROAD
 AND HIGH LEVEL ROAD
 BETTY'S BAY**

Ref: BB3463 **Dwg: PROP_CLOSURE-REV3**

Contours: N/A **System: WG 19**

friedlaender, burger & volkmann
 PROFESSIONAL LAND SURVEYORS, GEOTECHNICAL, TITLE CONSULTANTS, SETTING OUT ENGINEERS
 39 HANBOLD STREET, HANBOLD, TASMANIA 7280
 Tel: +61 8 27 271 001 Fax: +61 8 27 271 002 Email: info@friedlaender.com.au



WE THE UNDERSIGNED REGISTERED OWNERS HEREBY CONFIRM THAT WE SUPPORT THE PROPOSED CLOSURE OF SECTIONS OF HIGH LEVEL ROAD AND BROADWIDTH ROAD AND THE CONSOLIDATION THEREOFF WITH ERF 3463 AS INDICATED ON THIS PLAN

REGISTERED OWNER	ERF NUMBER	DATE	SIGNATURE	NOTE
1 GP DALL	5599	19/7/17		
2 MI DALL	5600	20/7/17		
3 JP VAN ZYL TRUST	2968	14/08/17		DULY AUTHORIZED
4 M DALL FAMILY TRUST	2961	20/7/17		DULY AUTHORIZED

Caveat
 1. Any areas and dimensions are provisional and will be finalised at time of subdivision survey.
 2. All levels are to be confirmed prior to construction.



Scale 1:2000 @A4 Date: 18/07/2017 Contours: NA System: WG 19
PROPOSED ROAD CLOSURE OF PORTIONS OF BROADWIDTH ROAD AND HIGH LEVEL ROAD BETTY'S BAY
 Ref: BB3463 Dwg: PROP_CLOSURE-REV1

FRIEDLAENDER, BURGER & VOLKMANN
 Professional Land Surveyors Sectional Title Consultants Mapping Consultants
 Professionele Landmeters Deelstat Konsultante Kartering Konsultante
 29 Heine Street / Heinestraat PG Box / Postbus 154, Stellenbosch, 7899
 TEL: 27 21 8864004, FAX: 27 21 8870001 E-mail: info@friedlaender.co.za

AFFIDAVIT

(To be completed in the presence of a Commissioner of Oaths)

I MICHAEL JOHN DALL

Declare under oath that I am the registered owner of

ERF 5600 BETTY'S BAY

and that I am aware of the proposed closure of portions of High Level Road that adjoin my property and confirm that I am not interested in purchasing any portion of the proposed closure.

I am familiar with, and understand the contents of this declaration. I have no objection/have objection to taking the prescribed oath. I consider the prescribed oath as binding to my conscience.

Place: Kleinfontein.....

Date: 28 January 2019.....

Signature: M. J. Dall.....

I certify that the above statement was taken from me and that the deponent has acknowledge that he/she knows and understands the contents of the statement. The statement was sworn to/affirmed before me and deponents' signature was placed thereon in my presence.

Signe^d at CAPE TOWN.....on 28 JANUARY.....2019


.....
Commissioner of Oaths
Capacity:


.....
JOHN CLIPPAIR LIGHTFOOT CA (SA)
25 Bergzicht Circle
Tokai
Cape Town 7945
2019/1/28
Commissioner of Oaths (RSA)

AFFIDAVIT

(To be completed in the presence of a Commissioner of Oaths)

I GEORGE PETER DALL

Declare under oath that I am the registered owner of

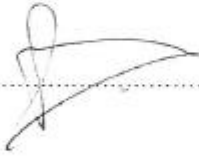
ERF 5599 BETTY'S BAY

And that I am aware of the proposed closure of portions of Broadwidth and High Level Road that adjoin my property and confirm that I am not interested in purchasing any portion of the proposed closure.

I am familiar with, and understand the contents of this declaration. I have no objection/have objection to taking the prescribed oath. I consider the prescribed oath as binding to my conscience.

Place: Kleinmond


Date: 30/1/2019

Signature: 

I certify that the above statement was taken from me and that the deponent has acknowledge that he/she knows and understands the contents of the statement. The statement was sworn to/affirmed before me and deponents' signature was placed thereon in my presence.

Signe at Kleinmond on

30 January 2019


Commissioner of Oaths
Capacity:



AFFIDAVIT

(To be completed in the presence of a Commissioner of Oaths)

I **Jacobus Petrus van Zyl**

Duly authorized to act on behalf of the **JACOBUS PETRUS VAN ZYL TRUST**
the registered owner of

ERF 2962 BETTY'S BAY

Declare under oath that I am aware of the proposed closure of portions of High Level Road that adjoin the property and am confirm that the Trust is not interested in purchasing any portion of the proposed closure.

I am familiar with, and understand the contents of this declaration. I have no objection/have objection to taking the prescribed oath. I consider the prescribed oath as binding to my conscience.

Place: Cape Town


Date: 11 February 2019

Signature: 

I certify that the above statement was taken from me and that the deponent has acknowledge that he/she knows and understands the contents of the statement. The statement was sworn to/affirmed before me and deponents' signature was placed thereon in my presence.

Signe at Cape Town on

11 February 2019


Commissioner of Oaths
Capacity:

JARYD KAY
34 PLEIN STREET, CAPE TOWN
COMMISSIONER OF OATHS
PRACTISING ATTORNEY
REPUBLIC OF SOUTH AFRICA