

**AGENDA of the
Portfolio Committee: Investment & Infrastructure
2 February 2022
(Also the agenda for the Mayoral Committee Meeting: 21 February 2022)**

2.

IN PRINCIPLE APPROVAL FOR THE DIRECT ALIENATION OF A PORTION OF ERF 226 PRINGLE BAY (PORTION OF RESIDENTENTIAL ERF) ADJACENT TO ERF 227 PRINGLE BAY SITUATED IN BELL ROAD NORTH, PRINGLE BAY, TO POPPY ICE TRADING 15 (PTY) LTD

7/2/3/2

A Le Roux

Manager: Property Administration

6 December 2021

(028) 316 - 5623

1. Executive Summary

To obtain approval in principle for the direct alienation of a portion of Erf 226 Pringle Bay ($\pm 95\text{m}^2$ in extent) adjacent to Erf 227 Pringle Bay, situated in Bell Road North, Pringle Bay, to the owner of Erf 227 Pringle Bay, being Poppy Ice Trading 15 (Pty) Ltd. 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
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 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 Poppy Ice Trading 15 (Pty) Ltd, hereafter referred to as “the Applicant”, for the purchase of a portion of Erf 226 Pringle Bay ($\pm 95\text{m}^2$ in extent) adjacent to Erf 227 Pringle Bay situated in Bell Road North, Pringle Bay, hereafter referred to as “the Property”.

The Applicant became the owner of Erf 227 Pringle Bay in 2013, at which time they received various documentation from the previous owners as confirmation of the boundary of Erf 227 Pringle Bay. However, recently it came under the attention of the Applicant that the Applicant is encroaching onto the Property by means of a surfaced driveway, a fence and a portion of the electrical gate which was built beyond the erf boundary. A portion of the fence and driveway also encroaches over private property, Erf 225 Pringle Bay, which will have to be settled between the two owners themselves.

The Applicant is applying to purchase the Property for the purpose of retaining the surfaced driveway, fence and a portion of the electrical gate.

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 an adjoining property owner, subject to certain conditions. The intention is to alienate the remainder of Erf 227 Pringle Bay by means of a competitive process for residential purposes once this transaction is finalised.

One of the conditions to the alienation to the Applicant will be that no structures of any kind (excluding a boundary wall or fence and gate) may be erected thereon.

Subsequent costs

The Applicant will be liable for the costs of the transaction which include, but not limited to the application fee, valuation costs, removal of restrictive conditions (if any), subdivision, rezoning 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.

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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 Property can be classified as a non-viable immovable property as it is only a very small portion that cannot be developed independently. The remainder of Erf 227 Pringle Bay, which is a viable property, can be made available by means of a competitive process.

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 Property is not needed for the provision of municipal services.

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- (b) Boland Valuers determined the fair market value on 30 November 2021 at an amount of R850.00/m² (EIGHT HUNDRED AND FIFTY RAND PER SQUARE METRE) (VAT excluded). The total price will be approximately R80,750.00 (EIGHTY THOUSAND SEVEN HUNDRED AND FIFTY RAND) (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."

The Applicant will be liable for the costs of the transaction which will include, but not limited to the application fee, valuation costs, removal of restrictive conditions (if any), rezoning and consolidation, 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 Applicant 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.

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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

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 the application fee, valuation costs, removal of restrictive conditions (if any), subdivision, rezoning and consolidation, Section 14 advertisement and the transfer costs.

7. Financial Implications

The Municipality stands to gain a fair market purchase price of R850.00/m² (EIGHT HUNDRED AND FIFTY RAND PER SQUARE METRE) (VAT excluded).

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8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

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

“Erf 226 Pringle Bay is reflected in the Fixed Asset Register for IP Land as Undertermined Use with a carrying value of R270’000-00 (TWO HUNDRED AND SEVENTY THOUSAND RAND) (VAT included) as on 30 June 2021. The eventual disposal of Erf 226 Pringle Bay, will have to be accounted for as a disposal 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.”

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

“I support the application, provided that municipal services will not be negatively affected.”

Senior Operational Manager: Kleinmond: Mr D van Rhodie – (028) 271 8431

“Operational Services Kleinmond have no objection against the application. No known operational services are affected by the application.”

Senior Superintendent: Operations: Traffic Services: P De Gruchy – (028) 313 8094

“There are no objections from my office towards this application. There are no impacts towards the flow of traffic as it is their driveway.”

Senior Town Planner: Ms H Van Der Stoep– (028) 313 8900

“The application is supported. The remainder of Erf 226 will still be in line with the average size of the area. Please note it will entail a subdivision, consolidation, rezoning and removal of restrictive conditions, if applicable.”

Comments from Property Administration: The above conditions will be incorporated into the deed of sale as special conditions to the transaction.

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Senior Manager: Building Services: Mr L Coetzee – (028) 313 8091

“Building Control has no objection. A building plan application is required to indicate vehicular access, gate, fence, paving and must comply with all applicable legislation.”

Comments from Property Administration: The above conditions will be incorporated into the deed of sale as special conditions to the transaction.

Manager: Engineering Services: Mr R Andrew – (028) 312 5073

“The Engineering Services Department has no comment.”

Assistant Chief: Fire Safety & Health and Safety: Enrico Solomons – (028) 313 8979

“The Fire Department has no objection.”

Senior Superintendent: Metering and Distribution: Electrotechnical Services: Kleinmond: Mr R Buckle – (028) 271 8484

“The Electrical Department Overstrand has no comment.”

Environmental Officer: Ms T Zweig – (028) 271 8420

“The Environmental Management Section (EMS) has no objection to the application to purchase a portion of Erf 226 Pringle Bay.

(a) Erf 226 is zoned as Residential I

(b) Environmental Management Overlay Zones: None

(c) The property is within the urban edge, no National Environmental Management Act, Environmental Impact Assessment Regulation Listed Activities are triggered by this Application to Purchase.”

10. Annexures

Annexure A: Locality Map

RECOMMENDATION TO THE COUNCIL:

1. that the direct alienation of a portion of Erf 226 Pringle Bay (adjacent to Erf 227 Pringle Bay) situated at Bell Road North, Pringle Bay, ±95m² in extent, to the owner of the adjoining Erf 227 Pringle Bay, Poppy Ice Trading 15 (Pty) Ltd, at an amount of R850.00/m² (EIGHT HUNDRED AND FIFTY RAND PER SQUARE METRE) (VAT excluded) be **approved in principle**;

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2. that it be noted that the direct alienation is possible as the said portion of Erf 226 Pringle 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;
4. that it be noted that a condition for the alienation will be that the said portion of Erf 226 Pringle Bay must be consolidated with the adjoining property of Poppy Ice Trading 15 (Pty) Ltd, being Erf 227 Pringle Bay;
5. that no structures of any kind (excluding a boundary wall or fence and gate) may be erected on the said portion of Erf 226 Pringle Bay, which condition must be registered against the title deed of the consolidated property;
6. that the alienation of said portion of Erf 226 Pringle Bay be subject to a suspensive condition that the Applicant obtains approval for the removal of restrictive conditions (if any), subdivision, rezoning and consolidation;
7. that all the costs pertaining to the transaction, e.g. application costs, valuation costs, rezoning, removal of restrictive conditions (if any), subdivision and consolidation, transfer and related costs, advertisements, etc. be paid by the Applicant, Poppy Ice Trading 15 (Pty) Ltd; 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).

RESPONSIBLE OFFICIAL:	W MURTZ
TARGET DATE FOR IMPLEMENTATION:	26 MARCH 2022
TARGET DATE TO INFORM APPLICANT:	12 MARCH 2022
TARGET DATE TO INFORM OBJECTOR:	N/A

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7/2/3/2

A Le Roux

Manager: Property Administration

6 December 2021

(028) 316 - 5623

THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON 2 FEBRUARY 2022, 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 226 Pringle 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;
4. that it be noted that a condition for the alienation will be that the said portion of Erf 226 Pringle Bay must be consolidated with the adjoining property of Poppy Ice Trading 15 (Pty) Ltd, being Erf 227 Pringle Bay;
5. that no structures of any kind (excluding a boundary wall or fence and gate) may be erected on the said portion of Erf 226 Pringle Bay, which condition must be registered against the title deed of the consolidated property;
6. that the alienation of said portion of Erf 226 Pringle Bay be subject to a suspensive condition that the Applicant obtains approval for the removal of restrictive conditions (if any), subdivision, rezoning and consolidation;
7. that all the costs pertaining to the transaction, e.g. application costs, valuation costs, rezoning, removal of restrictive conditions (if any), subdivision and consolidation, transfer and related costs, advertisements, etc. be paid by the Applicant, Poppy Ice Trading 15 (Pty) Ltd; 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).

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