

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
20 October 2020
(Also the agenda for the Mayoral Committee Meeting : 28 October 2020)**

7.

TRANSFER OF UNREGISTERED ERF 1929 (A PORTION OF ERF 599) PEARLY BEACH, SITUATED IN BROADWAY STREET, AS WELL AS A PORTION OF THE REMAINDER ERF 599 PEARLY BEACH, SITUATED IN OR BEHIND BROADWAY STREET, TO DE PYP TRUST

7/2/3/2

A Le Roux

Manager: Property Administration

9 September 2020

(028) 316 - 3724

1. Executive Summary

To obtain final approval for the transfer of unregistered Erf 1929 (a portion of Erf 599) Pearly Beach (413m² in extent), adjacent to Erf 1930 Pearly Beach situated in Broadway Street, Pearly Beach, to the owner of Erf 1930 Pearly Beach, being De Pyp Trust.

Further, to obtain final approval for the transfer of a portion of Remainder Erf 599 Pearly Beach (±300m² in extent), adjacent to Erven 1930 and 604 Pearly Beach situated behind Broadway Street, Pearly Beach, to the owner of Erven 1930 and 604 Pearly Beach, being De Pyp Trust (hereinafter referred to as the "Applicant"). See locality map attached and 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)

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

6. Background/Discussion/Evaluation/Conclusion

Background/Discussion

- (a) Unregistered Erf 1929 (a portion of Erf 599) Pearly Beach (413m² in extent)

Council on 26 February 2020 approved in principle the direct alienation of unregistered Erf 1929 (a portion of Erf 599) Pearly Beach, adjacent to Erf 1930 Pearly Beach, (413m² in extent) to the owner of the adjoining property, the Applicant, at a market related purchase price of R49,560.00 (FORTY NINE THOUSAND FIVE HUNDRED AND SIXTY RAND) (VAT excluded) subject to a public participation process being followed and subject to further conditions (i.e. road closure, subdivision, rezoning and consolidation). The public participation process was followed as discussed in more detail below.

Council approved in principle the alienation subject to amongst others the suspensive condition that a water pipeline servitude be registered over unregistered Erf 1929 Pearly Beach in favour of the Overstrand Municipality at the cost of the Applicant with the specific conditions that:

- (a) the Applicant provides access at all times to the Overstrand Municipality for the purpose of inspecting, maintaining, repairing or removing, if necessary at a later stage, of water line or equipment; and
- (b) no structures, trees or plants may be erected within 1,5m (one and a half metre) on each side of the water pipeline.

A condition to the alienation of the property will be that no structures, excluding a boundary fence or wall, may be erected on the property and this condition will be registered against the title deed of the consolidated property.

The Applicant must still apply for the necessary Town Planning approvals.

- (b) A portion of Remainder Erf 599 Pearly Beach (±300m² in extent)

Council on 26 February 2020 approved in principle the direct alienation of a portion of Remainder Erf 599 Pearly Beach, adjacent to Erf 1930 Pearly Beach, (±300m² in extent) to the owner of the adjoining property,

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the Applicant, at a market related purchase price of R120.00/m² (ONE HUNDRED AND TWENTY RAND) PER SQUARE METRE (VAT excluded) subject to a public participation process being followed and subject to further conditions (i.e. subdivision, rezoning and consolidation). The public participation process was followed as discussed in more detail below.

A condition to the alienation of the property will be that no structures, excluding a boundary fence or wall, may be erected thereon and this condition will be registered against the title deed of the consolidated property.

De Applicant must still apply for the necessary Town Planning approvals.

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”.

Unregistered Erf 1929 (a portion of Erf 599) Pearly Beach (413m² in extent) can be classified as a non-viable immovable property due to the lay-out, intended use and odd shape and size of the subject property which makes it very difficult to develop independently and the fact that the subject property is not required for access to any other erf as the only adjoining owner to the above mentioned property, besides the applicant, is the Overstrand Municipality. The municipal water line is located on the said property, and should the property be alienated, without the waterline being relocated, the alienation will be subject thereto:

- that the applicant apply for the necessary way leave before the erection of the fence on the border of the property;

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- that the applicant provide access at all times to the Municipality for the purposes of inspecting, maintaining, repairing or removing, if necessary at a later stage, the water line or equipment, and
- that no structures, tree or plant be erected within 1,5 metre of the water line.

Due to the above restrictions no structures will thus be allowed on the property which will mean that the property which cannot be developed will not be of value to another party.

Furthermore, the portion of the remainder of Erf 599 Pearly Beach ($\pm 300\text{m}^2$ in extent) applied for can be classified as a non-viable immovable property due to the fact that a waste transfer station is located on the majority of the property and the remaining portion of the property is very small, the only adjoining owner to the said portion of the property, beside the applicant, is the Overstrand Municipality and no other party requires the portion of property for access purposes. Only the applicant can truly gain advantage from the purchase of the property for access purposes. The applicant already has a gravel road across his erf, Erf 604 Pearly Beach, which he uses, together with the portion applied for, to gain access to the garages built at the back of Erf 1930 Pearly Beach.

Taking the above discussion, the locality, intended use, shape and size of the properties applied for into consideration the properties applied for can be classified as a non-viable property.

Paragraph 9(1)(a): “The Municipality may transfer ownership or otherwise dispose of a non-exempted immovable property only after the municipal council, 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 principle approval was obtained, confirmed that the subject properties are 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 section 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:”

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Boland Valuers determined the market related value 15 November 2019 at an amount of R120.00/m² (ONE HUNDRED AND TWENTY RAND) PER SQUARE METRE (VAT excluded) for both erven. The valuation was done taking into consideration the size, locality, zoning, proposed use of and restriction on the property and the value it will add to the Applicant's existing property.

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 there are services located on unregistered Erf 1929 Pearly Beach but that the property can be alienated should no structures except for a boundary wall or fence be erected on the property. It was further confirmed that the subject portion of Remainder Erf 599 Pearly Beach is not needed for the provision of the minimum level of basic municipal services.
- (b) Boland Valuers determined the market related value in November 2019 at an amount of R120.00/m² (ONE HUNDRED AND TWENTY RAND) (PER SQUARE METRE) (VAT excluded) for both erven. The valuation was done taking into consideration the size, locality, zoning proposed use of and restrictions on the property.
- (c) 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 26 February 2020, a copy of which is attached hereto marked as “Annexure B”.

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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 all costs relating to the transaction which include, but are not limited to, the application fee, valuation costs, advertisement costs, the related transfer costs and all the costs related to the Town Planning Processes.

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.

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 the effect that a consolidation must be done 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.”

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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

An advertisement for the transfer of unregistered Erf 1929 (a portion of Erf 599) Pearly Beach (413m² in extent) as well as a portion of Remainder Erf 599 Pearly Beach (±300m² in extent) was placed in The Village News on 19 August 2020 for a 30 (THIRTY) day objection/comment period. No objections/comments were received.

Conclusion

It is recommended that the transfer of unregistered Erf 1929 (a portion of Erf 599) Pearly Beach (413m² in extent) as well as a portion of Remainder Erf 599 Pearly Beach (±300m² in extent) to the owner of Erf 1930 Pearly Beach, being the Applicant be approved.

7. Financial Implications

The Municipality stands to gain a market related purchase amount of R49,560.00 (FORTY NINE THOUSAND FIVE HUNDRED AND SIXTY RAND) (VAT excluded) (R120.00 x 413m²) for the alienation of unregistered Erf 1929 (a portion of Erf 599) Pearly Beach.

The Municipality further stands to gain a market related purchase amount of R120.00/m² (ONE HUNDRED AND TWENTY RAND) PER SQUARE METRE (VAT excluded) for the alienation of a portion of Remainder Erf 599 Pearly Beach.

8. Staff Implications

None

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9. Comments from other Departments, Divisions and Administrations

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

- (a) Unregistered Erf 1929 (a portion of Erf 599) Pearly Beach ($\pm 413\text{m}^2$ in extent)

“Unregistered Erf 1929 Pearly Beach is currently reflected in the Fixed Asset Register for Property, Plant and Equipment: Land as part of Erf 599 with a total extent of $11'028\text{ m}^2$ and a carrying value of R1'260'000. The eventual disposal of Unregistered Erf 1929 will have to be accounted for at the selling price in order to derecognize 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.”

- (b) A portion of Remainder Erf 599 Pearly Beach ($\pm 300\text{m}^2$ in extent)

“The remainder of Erf 599 Pearly Beach is currently reflected in the Fixed Asset Register for Property, Plant and Equipment: Land with a total extent of $11'028\text{ m}^2$ and a carrying value of R1'260'000. The eventual disposal of a portion of Erf 599 will have to be accounted for at the selling price in order to derecognize 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.”

10. Annexures

Annexure A: Locality Plan

Annexure B1 & B2: Council Resolution Dated 26 February 2020

RECOMMENDATION TO THE COUNCIL:

1. that the transfer of unregistered Erf 1929 (a portion of Erf 599) Pearly Beach, adjacent to Erf 1930 Pearly Beach, (413m^2 in extent) to the owner of the adjoining property, De Pyp Trust, at a market related value of R49,560.00 (FORTY NINE THOUSAND FIVE HUNDRED AND SIXTY RAND) (VAT excluded), **be approved**;
2. that the transfer of a portion of Remainder Erf 599 Pearly Beach, adjacent to Erf 1930, ($\pm 300\text{m}^2$ in extent) to the owner of the adjoining property, De Pyp Trust, at a market related value of R120.00/ m^2 (ONE HUNDRED AND TWENTY RAND) PER SQUARE METRE (VAT excluded) **be approved**;

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3. that it be confirmed, as per condition of the in principle approval dated 26 February 2020, that no construction except a boundary fence or wall be allowed on the properties to be alienated and this condition must be registered against the title deed of the consolidated property;
4. that it be confirmed, as per condition of the in principle approval dated 26 February 2020, that Council take cognisance of the fact that the direct alienation is only possible as unregistered Erf 1929 (a portion of Erf 599) Pearly Beach and the subject portion of Remainder Erf 599 Pearly Beach can be classified as non-viable property;
5. that it be confirmed, as per condition of the in principle approval dated 26 February 2020, that it be noted that a condition for alienation will be that the subject properties to be alienated, must be consolidated with the adjoining property of De Pyp Trust, being Erf 1930 Pearly Beach;
6. that it be confirmed, as per condition of the in principle approval dated 26 February 2020, that the transfer of the properties, be subject to the suspensive condition that the Applicant, at own cost, obtain the necessary Town Planning approvals;
7. that it be confirmed, as per condition of the in principle approval dated 26 February 2020, that all costs pertaining to the transaction, e.g. application cost, valuation cost, road closure, subdivision, rezoning and consolidation, transfer and related costs, advertisement, etc., be paid by the Applicant;
8. that it is confirmed that Council has taken cognisance of the fact that the municipal properties herewith envisaged to be alienated are 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
9. that it be confirmed, as per condition of the in principle approval dated 26 February 2020, that a water pipeline servitude be registered over unregistered Erf 1929 Pearly Beach in favour of the Overstrand Municipality at the cost of the Applicant with the specific conditions that:
 - (a) the applicant provides access at all times to the Overstrand Municipality for the purpose of inspecting, maintaining, repairing or removing, if necessary at a later stage, of water line or equipment; and
 - (b) no structures, trees or plants may be erected within 1,5m (one and a half metre) on each side of the water pipeline.

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RESPONSIBLE OFFICIAL :	W MURTZ
TARGET DATE FOR IMPLEMENTATION :	30 NOVEMBER 2020
TARGET DATE TO INFORM APPLICANT :	13 NOVEMBER 2020
TARGET DATE TO INFORM OBJECTOR :	N/A

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7.

TRANSFER OF UNREGISTERED ERF 1929 (A PORTION OF ERF 599) PEARLY BEACH, SITUATED IN BROADWAY STREET, AS WELL AS A PORTION OF THE REMAINDER ERF 599 PEARLY BEACH, SITUATED IN OR BEHIND BROADWAY STREET, TO DE PYP TRUST

7/2/3/2

A Le Roux

Manager: Property Administration

9 September 2020

(028) 316 - 3724

THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON 20 OCTOBER 2020, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:

RECOMMENDATION TO THE COUNCIL:

1. that the transfer of unregistered Erf 1929 (a portion of Erf 599) Pearly Beach, adjacent to Erf 1930 Pearly Beach, (413m² in extent) to the owner of the adjoining property, De Pyp Trust, at a market related value of R49,560.00 (FORTY NINE THOUSAND FIVE HUNDRED AND SIXTY RAND) (VAT excluded), **be approved;**
2. that the transfer of a portion of Remainder Erf 599 Pearly Beach, adjacent to Erf 1930, (±300m² in extent) to the owner of the adjoining property, De Pyp Trust, at a market related value of R120.00/m² (ONE HUNDRED AND TWENTY RAND) PER SQUARE METRE (VAT excluded) **be approved;**
3. that it be confirmed, as per condition of the in principle approval dated 26 February 2020, that no construction except a boundary fence or wall be allowed on the properties to be alienated and this condition must be registered against the title deed of the consolidated property;
4. that it be confirmed, as per condition of the in principle approval dated 26 February 2020, that Council take cognisance of the fact that the direct alienation is only possible as unregistered Erf 1929 (a portion of Erf 599) Pearly Beach and the subject portion of Remainder Erf 599 Pearly Beach can be classified as non-viable property;
5. that it be confirmed, as per condition of the in principle approval dated 26 February 2020, that it be noted that a condition for alienation will be that the subject properties to be alienated, must be consolidated with the adjoining property of De Pyp Trust, being Erf 1930 Pearly Beach;
6. that it be confirmed, as per condition of the in principle approval dated 26 February 2020, that the transfer of the properties, be subject to the suspensive condition that the Applicant, at own cost, obtain the necessary Town Planning approvals;

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7. that it be confirmed, as per condition of the in principle approval dated 26 February 2020, that all costs pertaining to the transaction, e.g. application cost, valuation cost, road closure, subdivision, rezoning and consolidation, transfer and related costs, advertisement, etc., be paid by the Applicant;
8. that it is confirmed that Council has taken cognisance of the fact that the municipal properties herewith envisaged to be alienated are 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
9. that it be confirmed, as per condition of the in principle approval dated 26 February 2020, that a water pipeline servitude be registered over unregistered Erf 1929 Pearly Beach in favour of the Overstrand Municipality at the cost of the Applicant with the specific conditions that:
 - (a) the applicant provides access at all times to the Overstrand Municipality for the purpose of inspecting, maintaining, repairing or removing, if necessary at a later stage, of water line or equipment; and
 - (b) no structures, trees or plants may be erected within 1,5m (one and a half metre) on each side of the water pipeline.

RESPONSIBLE OFFICIAL :	W MURTZ
TARGET DATE FOR IMPLEMENTATION :	30 NOVEMBER 2020
TARGET DATE TO INFORM APPLICANT :	13 NOVEMBER 2020
TARGET DATE TO INFORM OBJECTOR :	N/A



MINUTES : ORDINARY MEETING OF THE COUNCIL 26 FEBRUARY 2020

5.2

IN PRINCIPLE APPROVAL FOR THE ALIENATION OF UNREGISTERED ERF 1929 (A PORTION OF ERF 599) PEARLY BEACH AS WELL AS A PORTION OF THE REMAINDER OF ERF 599 PEARLY BEACH TO DE PYP TRUST

(ITEM 4, PAGE 424 : INFRASTRUCTURE & PLANNING PORTFOLIO - MAYORAL COMMITTEE MEETING : 26 FEBRUARY 2020)

RESOLVED (SUPPORTED BY 22 COUNCILLORS):

1. that the direct alienation of unregistered Erf 1929 (a portion of Erf 599) Pearly Beach, adjacent to Erf 1930 Pearly Beach, (413m² in extent) to the owner of the adjoining property, De Pyp Trust, at R49,560.00 (FORTY NINE THOUSAND FIVE HUNDRED AND SIXTY RAND) (VAT excluded) be **approved in principle**;
2. that the direct alienation of a portion of the remainder of Erf 599 Pearly Beach, adjacent to Erf 1930, (±300m² in extent) to the owner of the adjoining property, De Pyp Trust, at R120.00/m² (ONE HUNDRED AND TWENTY RAND) PER SQUARE METRE (VAT excluded) be **approved in principle**;
3. that no construction except a boundary fence or wall be allowed on the properties to be alienated and this condition must be registered against the title deed of the consolidated property;
4. that Council take cognisance of the fact that the direct alienation is only possible as unregistered Erf 1929 (a portion of Erf 599) Pearly Beach and the subject portion of the remainder of Erf 599 Pearly Beach can be classified as non-viable property;
5. that, subject to the approval in 1 and 2 above, a public participation process be followed at the cost of the applicant/purchaser;
6. that it be noted that a condition for alienation will be that the subject properties to be alienated must be consolidated with the adjoining property of De Pyp Trust, being Erf 1930 Pearly Beach;
7. that the alienation of the properties to be alienated, be subject to obtaining the necessary Town Planning approvals;
8. that all costs pertaining to the transaction, e.g. application cost, valuation cost, road closure, subdivision, rezoning and consolidation, transfer and related costs, advertisement, etc be paid by the applicant/purchaser; and

MINUTES : ORDINARY MEETING OF THE COUNCIL 26 FEBRUARY 2020

9. that it is confirmed that Council has taken cognisance of the fact that the municipal properties herewith envisaged to be alienated are 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).
10. that a water pipeline servitude be registered over unregistered Erf 1929, Pearly Beach in favour of the Overstrand Municipality at the cost of the applicant/ purchaser with the specific conditions that:
- (a) the applicant provides access at all times to the Overstrand Municipality for the purpose of inspecting, maintaining, repairing or removing, if necessary at a later stage, of water line or equipment; and
 - (b) no structures, trees or plants may be erected within 1,5 m (one and a half metre) on each side of the water pipeline.

RESPONSIBLE OFFICIAL :	W MURTZ
TARGET DATE FOR IMPLEMENTATION :	13 MARCH 2020
TARGET DATE TO INFORM APPLICANT :	27 MARCH 2020
TARGET DATE TO INFORM OBJECTOR :	N/A