

**AGENDA of the
Portfolio Committee: Infrastructure & Planning
19 October 2021
(Also the agenda for the Mayoral Committee Meeting: 28 October 2021)**

**11.
TRANSFER OF A PORTION OF ERF 2423 BETTY'S BAY ADJACENT TO ERF
2674 BETTY'S BAY SITUATED AT 199 PORTER DRIVE, BETTY'S BAY, TO
AFRICA PRO CURE CC**

7/2/3/2

R Marinus Acting Manager: Property Administration

25 August 2021

(028) 316 - 5609

1. Executive Summary

To obtain final approval for the transfer of a portion of Erf 2423 Betty's Bay adjacent to Erf 2674 Betty's Bay situated at 199 Porter Drive, Betty's Bay, ±60m² in extent, to the owner of Erf 2674 Betty's Bay, being Africa Pro Cure CC. 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

Council on 27 May 2020 approved in principle the direct alienation of a portion of Erf 2423 Betty's Bay (adjacent to Erf 2674 Betty's Bay) situated at 199 Porter Drive, Betty's Bay, $\pm 53\text{m}^2$ in extent, hereinafter referred to as "the Property", for parking purposes to the owner of the adjoining Erf 2674 Betty's Bay, Africa Pro Cure CC, hereinafter referred to as "the Applicant", at a fair market value subject to a public participation process being followed and subject to further conditions (i.e. closure of a portion of public road, subdivision, consolidation and rezoning). A fair market value was determined at an amount of R150.00/m² (ONE HUNDRED AND FIFTY RAND PER SQUARE METRE) (VAT excluded). The public participation was followed as discussed in more detail below.

Council approved in principle the alienation subject to amongst others the suspensive condition that the Applicant obtains the necessary approvals for the closure of the portion of public road, subdivision, consolidation and rezoning of the Property. A deed of sale, which includes these suspensive conditions, was entered into on 13 October 2020.

During the application for the subdivision it was determined that the actual size of the Property is slightly larger and is indicated on the surveyors' sketch as $\pm 60\text{m}^2$ in extent. As the in principle approval was for an approximate size of 53m^2 in extent, the measured size of $\pm 60\text{m}^2$ in extent is acceptable. The correct size was indicated in the deed of sale as well as the advertisement which was published in the local newspaper.

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

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owner for usage in conjunction with the said owner's property.” as the Property is located next to the road, has an odd shape that cannot be developed independently and is a very small portion and further taking the intended use into consideration the Property can be classified as 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 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 26 February 2020 at an amount of R150.00/m² (ONE HUNDRED AND FIFTY 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).

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***

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- (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 26 February 2020 at an amount of R150.00/m² (ONE HUNDRED AND FIFTY 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 May 2020, 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 Applicant/purchaser will be liable for the costs of the transaction which will include, but not limited to, the application fee, valuation, closure of portion of public road, subdivision, consolidation and rezoning, 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 Applicant/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."

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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 Erf 2423 Betty’s Bay (adjacent to Erf 2674 Betty’s Bay), ±60m² in extent, was published in the Overstrand Herald on 4 March 2021 for a 30 (THIRTY) day objection/comment period. No objections/comments were received.

Conclusion

It is recommended that the direct alienation of a portion of Erf 2423 Betty’s Bay, ±60m² in extent, to Africa Pro Cure CC at an amount of R150.00/m² (ONE HUNDRED AND FIFTY RAND PER SQUARE METRE) (VAT excluded) for parking purposes be approved.

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7. Financial Implications

The Municipality stands to gain an income of R150.00/m² (ONE HUNDRED AND FIFTY 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 2423 is currently reflected in the Fixed Asset Register as “Road” with a carrying value of R235’000 as at 30 June 2021. Upon disposal of the proposed ±60m² it” will have to be recorded in the Fixed Asset Register as such in order to reduce both the extent and the carrying value of the remainder of Erf 2423 and to recognize the gain / (loss) on the disposed portion of ±60m².

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 May 2020

RECOMMENDATION TO THE COUNCIL:

1. that the transfer of a portion of Erf 2423 Betty’s Bay (adjacent to Erf 2674 Betty’s Bay) situated at 199 Porter Drive, Betty’s Bay, ±60m² in extent, to the owner of the adjoining Erf 2674 Betty’s Bay, Africa Pro Cure CC, at an amount of R150.00/m² (ONE HUNDRED AND FIFTY RAND PER SQUARE METRE) (VAT excluded) for parking purposes 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 Erf 2423 Betty’s Bay is classified as a non-viable property;
3. that it be noted that a condition for the transfer will be that the said portion of Erf 2423 Betty’s Bay must be consolidated with the adjoining property of Africa Pro Cure CC, being Erf 2674 Betty’s Bay;

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4. that a condition be registered against the title deed of the to be consolidated property that no structures, excluding a boundary fence or wall, may be erected thereon;
5. that the transfer of a portion of Erf 2423 Betty's Bay be subject to a suspensive condition that the applicant/purchaser obtains approval for the closure of the portion of public road, subdivision, consolidation and rezoning and all related town planning approvals applicable;
6. that all the costs pertaining to the transaction, e.g. application cost, valuation cost, closure of portion of public road, subdivision, consolidation, rezoning, transfer and related costs, advertisements, etc. be paid by the applicant/purchaser, Africa Pro Cure CC; and
8. 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:	30 NOVEMBER 2021
TARGET DATE TO INFORM APPLICANT:	19 NOVEMBER 2021
TARGET DATE TO INFORM OBJECTOR:	N/A

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11.

TRANSFER OF A PORTION OF ERF 2423 BETTY'S BAY ADJACENT TO ERF 2674 BETTY'S BAY SITUATED AT 199 PORTER DRIVE, BETTY'S BAY, TO AFRICA PRO CURE CC

7/2/3/2

R Marinus

Acting Manager: Property Administration

25 August 2021

(028) 316 - 5609

THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON 19 OCTOBER 2021, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:

RECOMMENDATION TO THE COUNCIL:

1. that the transfer of a portion of Erf 2423 Betty's Bay (adjacent to Erf 2674 Betty's Bay) situated at 199 Porter Drive, Betty's Bay, $\pm 60\text{m}^2$ in extent, to the owner of the adjoining Erf 2674 Betty's Bay, Africa Pro Cure CC, at an amount of R150.00/m² (ONE HUNDRED AND FIFTY RAND PER SQUARE METRE) (VAT excluded) for parking purposes 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 Erf 2423 Betty's Bay is classified as a non-viable property;
3. that it be noted that a condition for the transfer will be that the said portion of Erf 2423 Betty's Bay must be consolidated with the adjoining property of Africa Pro Cure CC, being Erf 2674 Betty's Bay;
4. that a condition be registered against the title deed of the to be consolidated property that no structures, excluding a boundary fence or wall, may be erected thereon;
5. that the transfer of a portion of Erf 2423 Betty's Bay be subject to a suspensive condition that the applicant/purchaser obtains approval for the closure of the portion of public road, subdivision, consolidation and rezoning and all related town planning approvals applicable;
6. that all the costs pertaining to the transaction, e.g. application cost, valuation cost, closure of portion of public road, subdivision, consolidation, rezoning, transfer and related costs, advertisements, etc. be paid by the applicant/purchaser, Africa Pro Cure CC; 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).

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TARGET DATE FOR IMPLEMENTATION:	30 NOVEMBER 2021
TARGET DATE TO INFORM APPLICANT:	19 NOVEMBER 2021
TARGET DATE TO INFORM OBJECTOR:	N/A



MINUTES : ORDINARY MEETING OF THE COUNCIL**27 MAY 2020**

5. CONSIDERATION OF RECOMMENDATIONS MADE BY THE EXECUTIVE MAYOR TO COUNCIL, IN TERMS OF SECTION 160(2) OF THE CONSTITUTION, 1996, AND SECTION 59(1)(a) OF THE LOCAL GOVERNMENT: MUNICIPAL SYSTEMS ACT 2000 (ACT 32 OF 2000)

5.1

IN PRINCIPLE APPROVAL FOR THE DIRECT ALIENATION OF A PORTION OF ERF 2423 BETTY'S BAY ADJACENT TO ERF 2674 BETTY'S BAY (199 PORTER DRIVE, BETTY'S BAY) TO AFRICA PRO CURE CC

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RESOLVED (SUPPORTED BY 24 COUNCILLORS):

1. that the direct alienation of a portion of Erf 2423 Betty's Bay (adjacent to Erf 2674 Betty's Bay), $\pm 53\text{m}^2$ in extent, to the owner of the adjoining Erf 2674 Betty's Bay, Africa Pro Cure CC, at an amount of R150.00/m² (ONE HUNDRED AND FIFTY 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 Erf 2423 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 2423 Betty's Bay must be consolidated with the adjoining property of Africa Pro Cure CC, being Erf 2674 Betty's Bay;
5. that no structures of any kind (excluding a boundary wall or fence) may be erected on the said portion of Erf 2423 Betty's Bay, which condition must be registered against the title deed of the consolidated property;
6. that the alienation of said portion of Erf 2423 Betty's Bay be subject to obtaining the necessary Town Planning approvals;
7. that all the costs pertaining to the transaction, e.g. application cost, valuation cost, closure of a portion of public road, subdivision and consolidation, rezoning, Section 14 advertisement and transfer and related costs (including the transfer of Erf 2423 Betty's Bay to the Overstrand Municipality), etc. be paid by the applicant/purchaser, Africa Pro Cure CC; and

MINUTES : ORDINARY MEETING OF THE COUNCIL**27 MAY 2020**

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:****19 JUNE 2020****TARGET DATE TO INFORM APPLICANT:****30 JUNE 2020****TARGET DATE TO INFORM OBJECTOR:****N/A**