

6.

IN PRINCIPLE AND TRANSFER APPROVAL FOR DIRECT ALIENATION OF A PORTION OF REMAINDER ERF 2825 SANDBAAI (SITUATED IN LONG STREET, SANDBAAI) TO THE WESTERN CAPE GOVERNMENT VIA ITS DEPARTMENT OF TRANSPORT AND PUBLIC WORKS (DEPARTMENT OF EDUCATION) FOR THE CONSTRUCTION OF A NEW TECHNICAL SCHOOL

7/2/3/2

A Le Roux

Manager : Property Administration

28 July 2020

(028) 316 - 3724

1. Executive Summary

To obtain in principle approval for the direct alienation as well as transfer of a portion of the Remainder Erf 2825 Sandbaai ($\pm 2,6$ ha in extent) (hereinafter called the "property"), situated in Long Street, Sandbaai, to the Western Cape Government via its Department of Transport and Public Works (on behalf of the Department of Education), herein after referred to as "the Department" for the purpose of constructing and establishing a new technical school. 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 Finance Management Act (Act 56 of 2003) ("MFMA")
- Municipal Asset Transfer Regulations (R. 878 of 2008) ("MATR")
- Administration of Immovable Property Policy of the Overstrand Municipality, as amended

6. Background/Discussion/Evaluation/Conclusion

Background/Discussion

The Department submitted an application on 3 June 2020 to purchase a portion of Remainder Erf 2825 Sandbaai from the Municipality for the construction and establishment of a new technical school. This school is needed to accommodate the growth in student numbers in the Overstrand and mainly to meet the growing demand for skills in the country overall.

Initially it was considered to motivate a donation of the property to the Department, but as indicated by the Department, it is easier legislative wise for them to motivate a purchase at a nominal purchase price than to motivate a donation.

This request to purchase the property at a nominal amount was discussed and was positively considered subject to the Department being liable for the costs related to the transaction and subject to Council approval. A formal letter was sent to the Department on 12 June 2020 indicating the Municipality's intention to request Council to sell the property to the Department at a nominal amount subject thereto that the Department bears all the costs involved with the transaction. Subsequently to this letter, the Department has further requested the following for consideration, which will be addressed in this report by the relevant departments:

- "1. *That the Municipality provide the estimated costs of advertising the proposed "sale"/alienation for the province to consider accordingly as requested.*" It is not necessary for the sale to be advertised, but should the Department request that it be done, the estimated costs will be provided and are we in the process of obtaining an estimate.
- "2. *That the municipality make available the necessary services in order to ensure connectivity of the school to municipal services.*" This will be discussed with the Operational Services Department and the Electrical Department to provide comments in this report.
- "3. *That the issue around development contributions be dealt with during the building plan phase of the project, and be negotiated with the municipality at the time of development. (if possible the Municipality and Council can consider to Waive off the DCs).*" The Engineering Services Department will comment on this in the report.
- "4. *If possible the Municipality can assist with the Sub-division at the expense of the DTPW and to be included on the Purchase Price and the Deed of Sale, to avoid delays on the Project.*" The Department has subsequently indicated that we need not to include the costs in the Deed of Sale, but can provide them with an invoice for all costs. This is provided that the Municipality attends to the subdivision internally.
- "5. *Alternatively the Municipality can consider Sub-division application to be exempted from DTPW if possible.*" In this regard the Department will attend to the subdivision, but requests that the exemption process is

followed and all application costs (currently R6,263.00) and related costs be waived.

The Department has also indicated that they will have no use for the small portion of Remainder Erf 2825 Sandbaai situated between erven 2820 and 2857 Sandbaai, hence the request for a subdivision.

It must be noted as a point of consideration that during the President's address in February 2020 it was stated that:

"In line with our Framework for Skills for a Changing World, we are expanding the training of both educators and learners to respond to emerging technologies, including the internet of things, robotics and artificial intelligence.

Several new technology subjects and specialisations will be introduced, including technical mathematics and technical sciences, maritime sciences, aviation studies, mining sciences, and aquaponics.

To expand participation in the technical streams, several ordinary public schools will be transformed into technical high schools."

The Minister of Basic Education, Ms Angie Motshekga, confirmed this and said that government plans to have a technical high school in each regional school circuit. Overstrand falls under the Overberg Education District. In this regard Overstrand, and particularly Sandbaai, was identified as a suitable area to rather construct and establish a new technical school

Subsequent costs

The Department will be held liable for the costs of the transaction, which will include, but not limited to, the subdivision and related cost, the registration of the transfer of the property in the Deeds Office, the latter to be attended to by the State Attorneys, and possibly the costs for the public participation should they request that it be advertised.

Evaluation

A: Administration of Immovable Property Policy of the Overstrand Municipality:

The following conditions of the said Policy apply:

Paragraph 4: "No application for the purchase, lease of or encroachment on immovable property (save for the instances mentioned in paragraphs 58 to 62 and 64.1 below) shall be processed unless the prescribed application fee as per tariff approved in the annual budget for that financial year has been paid, nor shall any proposed lease or encroachment (save for the instances mentioned in paragraphs 58 to 62 and 64.1 below) be advertised unless the applicant has confirmed, in writing, that

he/she will bear all costs involved in such transaction including - but not limited to - legal, survey, re-zoning, sub-division, consolidations, advertisement, relocation or provision of services and, where applicable, a deposit as per prescribed rate to cover incidental costs has been paid.”

Organs of state are exempted from paying the application fee. As to the rest of the costs, the Department will be held liable and will be requested to confirm same in writing before any deed of sale is signed.

Paragraph 5: “*The Municipality may not transfer ownership as a result of a sale or other transaction or otherwise permanently dispose of a municipal immovable property needed to provide the minimum level of basic services, save where the transfer is to another organ of state, as provided for in section 14(6) of the MFMA read with Regulation 24 in Chapter 3 of the MATR.*”

The property to be alienated is not needed to provide basic services and alienating the property to the Department will be of a great benefit to the Overstrand overall.

Paragraph 12.1: “*Paragraphs 7 and 10 above do not apply to the transfer of immovable property to another municipality or to a municipal entity or to a national or provincial organ of state in circumstances and in respect of categories of assets approved by the National Treasury in Regulation 20 of the MATR, provided that such transfers are in accordance with a prescribed framework contained in Chapter 3 of the MATR.*”

Regulation 20 determines, amongst others that,

“Section 14(1) to (5) of the Act does not apply if a municipality or municipal entity transfers a capital asset to an organ of state in any of the following circumstances:(f) any other circumstance not provided in paragraph (a) to (e), provided that –

- (i) the capital asset to be transferred is determined by Council to be not needed for the provision of the minimum level of basic municipal services and to be surplus to the requirements of the municipality; and*
- (ii) if the capital asset is to be transferred for less than fair market value, the municipality takes into account-*
 - (aa) whether the capital asset may be required for the municipality or a minimum entity under the municipality’s sole or shared control at a later date;*

The property will be developed specifically to accommodate a technical school, the latter being a Provincial mandated function. It is not envisaged that Municipality will require any control or shared control over the property and function anytime in the near future.

(bb) the expected loss or gain that is expected to result from the proposed transfer;

The whole of Remainder Erf 2825 Sandbaai is currently reflected in the Municipality's Fixed asset register (Investment Property) at a value of R5,850 000,00 (FIVE MILLION EIGHT HUNDRED AND FIFTY THOUSAND RAND) (VAT included) as on 30 June 2020.

The eventual alienation of a portion of Remainder Erf 2825 Sandbai will have to be accounted for order to remove it from the Fixed Asset Register and to account for the gain / (loss). The calculated value for the property as on 30 June 2020 for Asset Register purposes is R3,463,844.28 (THREE MILLION FOUR HUNDRED AND SIXTY TRHEE EIGHT HUNDRED AND FORTY FOUR RAND AND TWENTY EIGHT CENTS) (VAT included) on an estimated size of 2.6 hectares.

(cc) the extent to which any compensation to be received in respect of the proposed transfer will result in a significant economic or financial cost or benefit to the municipality;

A nominal purchase price of R1.00 (ONE RAND)(VAT included) is proposed. Although a nominal purchase price will be received, the establishment of the new technical school will be to the benefit of the Overstrand community.

(dd) the risks and rewards associated with the operation or control of the capital asset that is to be transferred in relation to the interests of the municipality or municipal entity;

All risks and rewards related to the property will be taken over by the Department on date of registration of the sale in the Deeds Office or any earlier date as agreed upon between the parties.

(ee) the effect that the proposed transfer will have on the ability of the municipality or municipal entity to raise long-term or short-term borrowings in the future;

The value of the property is well below 1% of the total value of all the land and buildings of the Municipality. The alienation and transfer of the property will therefore have no effect on the ability of the Municipality to raise long term of short term borrowings in the future.

(ff) any limitation or conditions attached to the capital asset or the transfer of the asset, and the consequences of an potential non-compliance with those conditions;

The property may only be used for educational purposes, i.e. the establishment of a technical school. No other uses will be allowed and this will be registered against the title deed of the property.

(gg) the estimated cost of the proposed transfer;

There will be no cost for the Municipality as all costs of transfer will be borne by the Department. In this regard the transfer will be attended to by the State Attorneys.

(hh) the transfer of any reserve funds associated with the capital asset;

There are no reserve funds associated with this property.

(ii) the interests of any affected organ of state, the municipality's own strategic, legal and economic interests and the interests of the local community; and

The use of the property for the development of a technical school will be of a far bigger benefit to the community.

(jj) compliance with the legislative regime applicable to the proposed transfer."

The transfer will be in line with all relevant legislation from both a Municipal and Provincial side.

Paragraph 12.2 "Where the requirements stipulated in Chapter 3 of the MATR are met, then notwithstanding fact that the transfer or disposal may be in respect of immovable property which is required to provide the minimum level of basic services, such disposals need not be at market related value and do not require a public participation process described in the MATR in respect of non-exempted disposals."

As the property will be alienated to an organ of state and further as the purpose for which the property will be utilised is of great value and advantage to the community, the property may be alienated and a public participation process need not to be followed. However, should the Department request that the sale be advertised, the cost will be for their account.

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 Department will be held liable for all costs pertaining to this transaction.

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 31: “Where immovable property is alienated for development, a condition, taking into consideration the nature of the development, might be included in the Deed of Sale stipulating that such development must be completed within two years from date of registration. Likewise a condition may be included in the agreement to provide for forfeiture in the event that the development has not been completed within the required time period, unless a written extension has been granted by the Municipality.”

A clause 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 clause to this effect will be included in the deed of sale.

B: Advertisement/Notification

As the property is exempted in terms of Regulation 20 of the MATR and alienated to an organ of state to the advantage of the community, the alienation of the property does not have to follow a public participation process. However, should the public participation process be required, the outcome thereof will be brought to the attention of Council.

Conclusion

It is recommended that the direct alienation as well as transfer of a portion of Remainder Erf 2825 Sandbaai (±2.6ha in extent) situated in Long Street, Sandbaai, to the Western Cape Government via its Department of Transport and Public Works (on behalf of the Department of Education) at a nominal purchase price of R1.00 (ONE RAND)(VAT included) for the purpose of constructing and establishing a new technical school be approved.

7. Financial Implications

Although Remainder Erf 2825 Sandbaai is reflected in the Fixed Asset Register for Investment Property at a value of R5,850 000,00 (FIVE MILLION EIGHT HUNDRED AND FIFTY THOUSAND RAND) (VAT included) as on 30 June 2020, only a portion of thereof (\pm 2.6ha in extent) will be alienated to the Department. A loss will be shown on the register in the financial year the sale is finalised. The amount of this loss can only be determined in the year the registration is finalised as Investment Property is valued every year. The current value of the estimated 2.6ha is R3,463,844.28 (THREE MILLION FOUR HUNDRED AND SIXTY THREE EIGHT HUNDRED AND FORTY FOUR RAND AND TWENTY EIGHT CENTS) (VAT included) which is calculated taking into consideration the size and current value of Remainder Erf 2825 Sandbaai. The value that the establishing a new technical school will bring to the community can however not be expressed in financial value. Similarly further income will be earned on rates, taxes and services charges payable to the Municipality.

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

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

Remainder Erf 2825 Sandbaai is reflected in the Fixed Asset Register for Investment Property at a value of R5,850 000,00 (FIVE MILLION EIGHT HUNDRED AND FIFTY THOUSAND RAND) (VAT included) as on 30 June 2020. The eventual disposal of a portion of Remainder Erf 2825 Sandbaai will have to be accounted for as a disposal in order to remove it from the Fixed Asset Register and to account for the (loss).

There is no objection as the application complies with the Administration of Immoveable Property Policy.

Senior Manager: Hermanus Administration: Mr A Wyngaard - (028) 313 8908

"This application is supported."

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

The Department's request: *"If possible the Municipality can assist with the Sub-division at the expense of the DTPW and to be included on the Purchase Price and the Deed of Sale, to avoid delays on the Project."* The Department has subsequently indicated that we need not to include the costs in the Deed of Sale, but can provide them with an invoice for all costs. This is provided that the Municipality attends to the subdivision internally.

“Alternatively the Municipality can consider Sub-division application to be exempted from DTPW if possible.” In this regard the Department will attend to the subdivision, but requests that the exemption process is followed and all application (currently R6,263.00) and related costs be waived.

Response from Ms H van der Stoep: *“In terms of Section 26(1)(e) of the Overstrand Municipality By-Law on Municipal Land use Planning, 2015 (the By-Law), the proposed subdivision is exempted from the provisions as set out Sections 22 to 25 of the By-Law. The latter also includes the standard application fees. However, hidden costs for any applicant do exist. An administrative fee of R128-00 for the current financial year is payable and proof of such payment must accompany the filled out Town Planning application form together with a cover letter from the applicant, as well as two subdivisional diagrams that need to be properly endorsed by the Planning Department. The latter process is not time consuming.”*

The development parameters and primary uses relevant to the zoning status of the property, being Community Zone 1: as set out in the Zoning Scheme, as amended from time to time, applies.”

Comments from the Property Administration Department: It will be recommended that the Municipality attends to the subdivision at the cost of the Department. This will entail the Municipality appointing a surveyor to attend to the subdivision diagram. The Municipality will provide the Department with an invoice for the costs of the Surveyor and related costs mentioned by the Town Planning Department. This will most probably ensure that the process is expedited.

Senior Manager: Electrotechnical Services: Mr JH du Plessis - (028) 316 2630

The Department’s request: *“That the municipality make available the necessary services in order to ensure connectivity of the school to municipal services.”*

Response from Mr JH du Plessis: *“The electricity capacity available on erf 2825 is 3 phase 40 Ampere at approved tariff rates. Should more capacity be required, the Overstrand Electricity department must be contacted.”*

Comments from the Property Administration Department: A locality map indicating the locality of the electrical services is attached hereto marked Annexure B. As discussed with Mr du Plessis, the electricity capacity available will most probably not be sufficient for the development of the technical school and more capacity will most probably be required. This will be additional costs to be addressed in a separate report to Council once it is confirmed and quantified.

Manager: Engineering Services: Mr R Andrew - (028) 313 5073

The Department's request: *"That the issue around development contributions be dealt with during the building plan phase of the project, and be negotiated with the municipality at the time of development. (if possible the Municipality and Council can consider to Waive off the DCs)."*

Response from Mr R Andrew: *"Matters regarding bulk development contributions can be dealt with during the building planning phase."*

The total bulk development contributions are determined by the bulk contribution policy and the relevant tariffs. The current policy makes no provision for the waiving of development contribution levies. The request to waive the Development Charges should be referred to the Municipal Council.

A service agreement shall be required (during the building planning phase) to formalise any of the above arrangements and the outcomes of any possible negotiations/settlements."

Comments from Property Administration Department: It will be recommended that the waiver of bulk development contributions be addressed in a separate report to Council once the contribution can be quantified.

Senior Manager: Operational Services: Mr T Marx - (028) 313 8092

The Department's request: *"That the municipality make available the necessary services in order to ensure connectivity of the school to municipal services."*

Response from Mr T Marx: *"See the attached locality map (Annexure C) attached indicating the water pipeline in blue and the sewerage pipeline in yellow. It should thus be easy to connect the technical school."*

I am not sure how we will address the waiver of connection fees."

Comments from the Property Administration Department: It will be recommended that the waiver of connection fees be addressed in a separate report to Council once it can be quantified.

10. Annexures

- Annexure A: Locality Map indicating the portion applied for
- Annexure B: Locality Map indicating the electrical services
- Annexure C: Locality Map indicating the services (excluding electricity)

RECOMMENDATION TO THE COUNCIL:

1. that the direct alienation of a portion of Remainder Erf 2825 Sandbaai (± 2.6 ha in extent) to the Western Cape Government via its Department of Transport and Public Works (on behalf of the Department of Education) at a nominal purchase price of R1.00 (ONE RAND)(VAT included) for the construction and establishment of a new technical school, **be approved in principle**;
2. that the transfer of a portion of Remainder Erf 2825 Sandbaai (± 2.6 ha in extent) to the Western Cape Government via its Department of Transport and Public Works (on behalf of the Department of Education) at a nominal purchase price of R1.00 (ONE RAND)(VAT included) for the construction and establishment of a new technical school, **be approved**;
3. that it be noted that it is not necessary to follow a competitive process for the alienation and transfer as this transaction is exempted in terms of Regulation 20 of the Municipal Asset Transfer Regulations (R. 878 of 2008);
4. that the alienation of said portion of Remainder Erf 2825 Sandbaai be subject to a suspensive condition that the Department obtains at own cost all required town planning approvals, for which process the Municipality will assist;
5. that all the costs pertaining to the transaction, e.g. subdivision, possible advertisement, transfer and related costs, etc. be paid by the Department;
6. that a condition be registered against the title deed of the property that the property may only be used for educational purposes;
7. that the possible waiver / decrease of the total bulk development contributions, the connection charges for services and the costs for any upgrading/additional services be addressed in a separate report to Council once quantified; and
8. that it be noted that the portion of municipal property herewith alienated and 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:**A LE ROUX****TARGET DATE FOR IMPLEMENTATION:****17 NOVEMBER 2020****TARGET DATE TO INFORM APPLICANT:****14 OCTOBER 2020****TARGET DATE TO INFORM OBJECTOR:****N/A**

ANNEXURE A



ANNEXURE B



