

**AGENDA of the  
Portfolio Committee: Investment, Infrastructure and Tourism  
8 November 2023  
(Also the agenda for the Mayoral Committee Meeting: 15 November 2023)**

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19.

**IN PRINCIPLE APPROVAL FOR THE DIRECT ALIENATION OF A PORTION OF  
REMAINDER ERF 1916 PEARLY BEACH, ADJACENT TO ERF 559 PEARLY  
BEACH, SITUATED ON THE CORNER OF SHORT- AND RIDGE STREET (ROAD  
RESERVE), PEARLY BEACH, TO MS MELANIE SWANEPOEL**

**A Le Roux  
10 October 2023**

**Manager: Property Administration**

**(028) 316 - 5623**

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**1. Executive Summary**

To obtain in principle approval for the direct alienation of a portion of Remainder Erf 1916 Pearly Beach ( $\pm 250\text{m}^2$  in extent) adjacent to Erf 559 Pearly Beach, situated on the corner of Short and Ridge Street, Pearly Beach, to the owner of the adjoining property, Erf 559 Pearly Beach, being Ms Melanie Swanepoel, to retain the existing partial enclosure. See the locality plans attached hereto marked Annexure "A1" And "A2".

**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

**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 Ms Melanie Swanepoel, hereafter referred to as “the Applicant”, to purchase a portion of Remainder Erf 1916 Pearly Beach ( $\pm 250\text{m}^2$  in extent), adjacent to Erf 559 Pearly Beach, situated on the corner of Short and Ridge Street, Pearly Beach, hereafter referred to as “the Property”.

When the Applicant purchased Erf 559 Pearly Beach, she was placed under the impression by the previous owners that the entire property indicated was privately owned. Recently, in order to make renovations and extend their existing house, the Applicant engaged a professional Land Surveyor to assess the property boundaries. It was discovered during the survey that a section of the property previously indicated is in fact situated on municipal ground. It is evident that the previous owners failed to disclose this critical information to the Applicant during the purchase of Erf 559 Pearly Beach. This omission put the Applicant in a difficult position as the Applicant had no knowledge of the encroachment at the time of acquisition. It is the Applicant’s sincere desire to resolve this matter ensuring that the property boundaries align with the legal requirements and regulations set forth by the Municipality.

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

### Subsequent costs

The Applicant will be liable for the costs of the transaction which include, but not limited to, the application costs, valuation costs, closure of public place (road), rezoning, subdivision 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.

### **Evaluation**

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

The following conditions of the said Policy will 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,**

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*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.”*

The Applicant already paid the application fee.

**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 is a portion of road reserve and 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.

**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,*

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***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.
- (b) HCB Property Valuations determined the market related value on 1 September 2023 at an amount of R150.00/m<sup>2</sup> (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 (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 be limited to, the application fee, valuation costs, removal of restrictive conditions (if any), rezoning and consolidation, closure of public place (road), 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 will be liable for all cost in this regard should it be necessary. From the comments received, no services will be affected.

**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***

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***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.*”**

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, amongst others, the application costs, valuation costs, closure of public place (road), rezoning, subdivision and consolidation, Section 14 advertisement, and the transfer costs.

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**7. Financial Implications**

The Municipality stands to gain a market related purchase price of R150.00/m<sup>2</sup> (ONE HUNDRED AND FIFTY RAND PER SQUARE METRE) (VAT excluded).

**8. Staff Implications**

None

**9. Comments from other Departments, Divisions and Administrations**

**Acting Senior Manager: Gansbaai Administration: Mr Tiaan Marx**

*"I don't have any objection with regards to this application."*

**Principal Technician: Operational Services: Mr Willem Germishuys**

*"With regard to the application for the sale/alienation of the relevant Portion of Erf 1916 Pearly Beach, the Department: Operational Services has no objections to the application...."*

**Senior Town Planner: Town Planning Department: Mr Schalk van der Merwe**

*"Erf 1916 Pearly Beach is zoned Transport Zone 2: Public Road. No objection, subject to the Applicant at their cost appoint a professional town planner to obtain the necessary approvals for subdivision of a portion of Erf 1916, rezoning to Residential Zone 1, closure of Public Place and consolidation with Erf 559 Pearly Beach. A conveyancing certificate should be submitted by the Applicant confirming that there are no title deed restrictions registered against Erf 1916 triggered by the application. Should there be any structures within the building lines, a departure application may also be necessary."*

**Manager: Building Control: Mr Louis Coetzee**

*"No objection. Any structure on this land requires a building plan application that must comply with all applicable law."*

**Senior Manager: Electrical Department: Mr Danie Maree**

*"No objection from electrical services side."*

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**Manager: Engineering Services: Mr Ricardo Andrew**

*“No comment.”*

**Senior Manager: Fire and Emergency Services: Mr Lester Smith**

*“No objection from Fire Services.”*

**Senior Superintendent: Traffic Department: Mr Phillip de Gruchy**

*“There are no objections towards this application.”*

**Manager: Environmental Management: Ms Penelope Aplon**

*“This office has no objection to this application to sell a portion of Erf 1916 Pearly Beach, adjacent to Erf 559 Pearly Beach.”*

**Senior Manager: Expenditure and Assets: Mr J Vorster**

*“The full extent of Erf 1916 Pearly Beach is currently reflected as Road in the fixed asset register for PPE: Land at a carrying value of R1'910'000-00 as at 30 June 2023. Once the proposed alienation of the ±250m<sup>2</sup> portion has been concluded, it will have to be written out of the fixed asset register at the applicable selling price in order to account for the actual gain / (loss) on the disposal of a portion of an asset.*

*There is no objection against the alienation.”*

## **10. Annexures**

Annexure A1 & A2:                      Locality Map

### **RECOMMENDATION TO THE COUNCIL:**

1. that the direct alienation of a portion of Remainder Erf 1916 Pearly Beach (adjacent to Erf 559 Pearly Beach) situated on the corner of Short and Ridge Street, Pearly Beach (±250m<sup>2</sup> in extent), to the owner of the adjoining Erf 559 Pearly Beach, Ms Melanie Swanepoel, at an amount of R150.00/m<sup>2</sup> (ONE HUNDRED AND FIFTY RAND PER SQUARE METRE) (VAT excluded), to retain the existing partial enclosure, be **approved in principle**;
2. that it be noted that the direct alienation is possible as the said portion of Remainder Erf 1916 Pearly Beach can be classified as a non-viable property;

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3. that it be noted that a condition for the alienation will be that the said portion of Remainder Erf 1916 Pearly Beach must be consolidated with the adjoining property of Ms Melanie Swanepoel, being Erf 559 Pearly Beach;
4. that no structures of any kind (excluding a boundary wall or fence) may be erected on the said portion of Remainder Erf 1916 Pearly Beach, which condition must be registered against the title deed of the consolidated property;
5. that the alienation of said portion of Remainder Erf 1916 Pearly Beach be subject to a suspensive condition that the applicant/purchaser obtains approval for all the required land use rights, which include, the closure of public place (road), rezoning, subdivision and consolidation;
6. that all the costs pertaining to the transaction, e.g. application costs, valuation costs, closure of public open space, rezoning, subdivision and consolidation, advertisement and the related costs, etc. be paid by the Applicant/purchaser, Ms Melanie Swanepoel; and
7. 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).

<b>RESPONSIBLE OFFICIAL:</b>	<b>M BEKKER</b>
<b>TARGET DATE FOR IMPLEMENTATION:</b>	<b>15 DECEMBER 2023</b>
<b>TARGET DATE TO INFORM APPLICANT:</b>	<b>15 DECEMBER 2023</b>
<b>TARGET DATE TO INFORM OBJECTOR:</b>	<b>N/A</b>

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SITUATED ON THE CORNER OF SHORT- AND RIDGE STREET (ROAD RESERVE),  
PEARLY BEACH, TO MS MELANIE SWANEPOEL**

**A Le Roux  
10 October 2023**

**Manager: Property Administration**

**(028) 316 - 5623**

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**THIS MATTER SERVED BEFORE THE INVESTMENT & INFRASTRUCTURE  
PORTFOLIO COMMITTEE ON 8 NOVEMBER 2023, 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 Remainder Erf 1916 Pearly Beach can be classified as a non-viable property;
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6. that all the costs pertaining to the transaction, e.g. application costs, valuation costs, closure of public open space, rezoning, subdivision and consolidation, advertisement and the related costs, etc. be paid by the Applicant/purchaser, Ms Melanie Swanepoel; and

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7. 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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