

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

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**2.  
IN PRINCIPLE APPROVAL FOR THE DIRECT ALIENATION OF A PORTION OF  
THE REMAINDER ERF 1178 DE KELDERS (ROAD RESERVE), ADJACENT TO  
ERF 43 DE KELDERS SITUATED AT 1 DE VILLIERS STREET, DE KELDERS TO  
CFP JORDAAN**

**7/2/3/2**

**R Marinus**

**Acting Manager: Property Administration**

**23 August 2021**

**(028) 316 - 5609**

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**1. Executive Summary**

To obtain approval in principle for the direct alienation of a portion of the Remainder Erf 1178 De Kelders ( $\pm 165\text{m}^2$  in extent), adjacent to Erf 43 De Kelders, situated at 1 De Villiers Street, De Kelders, to the owner of Erf 43 De Kelders, being CFP Jordaan. 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) ("MATR")
- 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 CFP Jordaan, hereafter referred to as “the Applicant”, to purchase a portion of Remainder Erf 1178 De Kelders ( $\pm 165\text{m}^2$  in extent), adjacent to Erf 43 De Kelders, situated in De Villiers Street, hereafter referred to as “the Property”.

The Applicant, as the owner of Erf 43 De Kelders, wishes to consolidate the Property with his own and enclose it with a boundary wall. If approved, the Property acquired from the municipality will then be used as the new access to the consolidated property as well as for gardening purposes. Although no buildings will be constructed on the Property, the new driveway over the Property may be paved.

The Applicant explained that except for the benefit that he will derive from the purchase and consolidation, a problem that has been existing for a while on the Property will also be resolved. Vehicles, sometimes during night, illegally crosses the Property through the fence into the neighboring property to gain access from there to Die Plaat.

Due to the locality, shape, intended use and size of the Property applied for, 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.

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 and this condition will be registered against the title deed of the Property.

### **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.”***

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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 owners for usage in conjunction with the said owners property.” The Property can be classified as a non-viable immovable property due to the location, shape, size and proposed use thereof.

**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 owners(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 (included under point 9 of this report) indicated that the Property is not needed for the provision of municipal services.
- (b) Boland Valuers determined the market related value in July 2021 at an amount of R240.00/m<sup>2</sup> (TWO HUNDRED AND FORTY 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.
- (c) The reasons why a direct sale is preferred 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.”**

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The Applicant will be liable for the costs of the transaction which will include, but is not limited to, the application fee, valuation, land use application, rezoning, subdivision and consolidation, Section 14 advertisement 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 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 and the title deed of the “to be” consolidated property.

**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**

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*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 approval. The Applicant will be liable for the costs of the Section 14 advertisement.

**Conclusion**

Taking the comments of the internal departments (point 9 hereunder), as well as the above discussion into consideration, 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 effect transfer of the Property in the deeds office. Subsequently the costs will entail the application fee, valuation costs, land use application, rezoning, subdivision and consolidation, Section 14 advertisement and the transfer costs.

**7. Financial Implications**

The Municipality stands to gain a market related purchase price of R240.00/m<sup>2</sup> (TWO HUNDRED AND FORTY RAND PER SQUARE METRE) (VAT excluded).

**8. Staff Implications**

None

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

**Senior Manager: Gansbaai/Stanford Administration: Mr F Myburgh – (028) 384 8365**

*“I support the favourable consideration of the application as the land in question is not needed for municipal services.”*

**Senior Manager: Electrotechnical Services (Gansbaai): Mr D Maree – (028) 384 8311**

*“We have no objection. Kindly note that access to our services on the sidewalk should be available at all times.”*

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**Town Planner: Mr P Roux – (028) 313 8983**

*“The portion of Erf 1178 GDK is zoned for Transport Zone 2: Road and Parking (Public Road). The subject portion forms part of a large portion of the road reserve and it is currently undeveloped. Should the offer to purchase the subject portion be considered favourably then the property owner will have to apply for a land use approval:*

*Current cost of land use application (Rezoning – R7387.00, Subdivision – R6263.00, Consolidation of land – R3212.00, Closure of a public place or part thereof – R7387.00, Local Newspaper – R4496.00.*

*It is also noted that the applicant proposed that a second dwelling will be developed on the consolidated property. The title deed of Erf 43 contains a title deed restriction which restricts the use of the property to a single dwelling and therefore a removal of the title deed restriction is required.*

*Current cost of removal of the title deed restriction (Local Newspaper & Provincial Gazette – R8991.00, Placing of Final Notice – R1271.00, Deletion of restrictive conditions – R4548.00.)*

*Lastly it is noted that the proposed portion is situated adjacent to Farm 712/2 where on it is proposed to develop the Khoisan Bay Development. One of the proposed entrances to the development will be at the intersection of Eden, De Villiers and Normandie Street. The proposed portion is situated at approximately 20m from the intersection. Should a land use application be received then the application will be circulated to the Municipality's Traffic Department and Engineering Department.”*

Comments from Property Administration: Should the direct alienation be considered, the Applicant will be held responsible for the necessary processes to obtain approval from the Town Planning Department for the consolidation, subdivision, rezoning and closure of a public place. The Traffic Department had no objection against the direct alienation, because there are no obstructions to road users or pedestrians and the piece of road that is spoken about that leads to Die Plaat is not a serviced roadway.

**Assistant Chief Fire Safety & Health and Safety: Mr E Solomons – (028) 312 8978**

*“The Fire Department have no objection.”*

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**Senior Manager: Operational Services (Gansbaai): Mr W Germishuys – (028) 384 8312**

**“2. RECOMMENDATION**

- 2.1. *With regard to the application for the sale / alienation of the relevant Portion of Erf 1178, Gansbaai, the Department: Operational Services has no objections to the application, subject to the following conditions:*
- 2.1.1. *That, as no municipal water-and sewerage services will be rendered to the relevant Portion of Erf 1178, the applicant is responsible for the provision of any water supply and sewerage services to the development on the relevant Portion of Erf 1178.*
- 2.1.2 *That the developer investigate and determine the limitations of the site in terms of sewer drainage, subject to the minimum requirements of SANS 10400 – P:2010: Drainage.*
- 2.1.3 *That on-site parking facilities be provided as per the Planning Schedule, and to the satisfaction of the Department: Operational Services.*
- 2.1.4 *That any additional and / or extended vehicle entrances will be for the owner’s account.*
- 2.1.5 *That the Electrical- and Traffic Departments, as well as Telkom and any other relevant authorities and service providers not have any objections to the application.”*

**Building Inspector: Mr G Coetzee – (028) 384 8085**

*“No objection from the building department.”*

**Assistant Chief: Traffic Operations, Admin, Logistics & Fines: Mr P De Gruchy – (028) 384 8085**

*“I hereby confirm that there are no objections towards the purchasing of the adjacent piece of land. There are no obstructions to road users or pedestrians. The piece of road that is spoken about that leads to Die Plaat is not a serviced roadway.”*

**Manager: Solid Waste: Planning: Mr C Mitchell – (028) 313 5045**

*“No objection to the proposed sale from Solid Waste Planning.”*

**Manager: Engineering Services: Mr R Andrew – (028) 312 8972**

*“The Engineering Services Department has no comment.”*

**Environmental Officer: Mr B Kondokter – (028) 384 8320**

*“The above mentioned application does not have any implications on the NEMA Regulations and Overstrand Draft Environmental Management Overlay*

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*Zone (EMOZ) but the Environmental Section want to comment the following:*

- *This portion of Erf 1178 is vacant form part of the bigger Erf 1178 that has biodiverse values (Urban conservation EMOZ) but this portion of erf 1178 has not been incorporate into the urban conservation EMOZ because of the low biodiverse values and is surrounded by infrastructure in the urban edge.*

*Therefore this department does not have any objection to this application.”*

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

*“Remainder Erf 1178 (adjacent to Erf 43) De Kelders is reflected in the Fixed Asset Register for PPE Land at a total value of R40’500,00 (FOURTY THOUSAND FIVE HUNDRED RAND) (VAT included) as on 30 June 2021. The eventual disposal of the portion of Remainder Erf 1178 (adjacent to Erf 43) De Kelders situated in De Villiers Street, ±165m<sup>2</sup> in extent, 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.”*

**10. Annexures**

Annexure A: Locality Map

**RECOMMENDATION TO THE COUNCIL:**

1. that the direct alienation of a portion of Remainder Erf 1178 (adjacent to Erf 43) De Kelders situated in De Villiers Street, ±165m<sup>2</sup> in extent, to the owner of the adjoining Erf 43 De Kelders, CFP Jordaan, at an amount of R240.00/m<sup>2</sup> (TWO HUNDRED AND FORTY RAND PER SQUARE METRE) (VAT excluded) be **approved in principle**;
2. that it be noted that the direct alienation is possible as the subject portion of Remainder Erf 1178 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 subject portion of Remainder Erf 1178 De Kelders must be consolidated with the adjoining property of CFP Jordaan, being Erf 43 De Kelders;
5. that no structures of any kind (excluding a boundary wall or fence) may be erected on the portion of Remainder Erf 1178 De Kelders, which condition must be registered against the title deed of the consolidated property;

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6. that the alienation of the portion of Remainder Erf 1178 De Kelders be subject to a suspensive condition that the Applicant obtains approval for the subdivision, rezoning, consolidation and any other related town planning applications;
7. that all the costs pertaining to the transaction, e.g. application cost, valuation cost, subdivision, rezoning, consolidation, transfer and related costs, advertisements, etc. be paid by the Applicant, CFP Jordaan; 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).

<b>RESPONSIBLE OFFICIAL:</b>	<b>W MURTZ</b>
<b>TARGET DATE FOR IMPLEMENTATION:</b>	<b>11 NOVEMBER 2021</b>
<b>TARGET DATE TO INFORM APPLICANT:</b>	<b>11 NOVEMBER 2021</b>
<b>TARGET DATE TO INFORM OBJECTOR:</b>	<b>N/A</b>

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**2.**

**IN PRINCIPLE APPROVAL FOR THE DIRECT ALIENATION OF A PORTION OF THE REMAINDER ERF 1178 DE KELDERS (ROAD RESERVE), ADJACENT TO ERF 43 DE KELDERS SITUATED AT 1 DE VILLIERS STREET, DE KELDERS TO CFP JORDAAN**

**7/2/3/2**

**R Marinus**

**Acting Manager: Property Administration**

**23 August 2021**

**(028) 316 - 5609**

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

**RECOMMENDATION TO THE COUNCIL:**

1. that the direct alienation of a portion of Remainder Erf 1178 (adjacent to Erf 43) De Kelders situated in De Villiers Street, ±165m<sup>2</sup> in extent, to the owner of the adjoining Erf 43 De Kelders, CFP Jordaan, at an amount of R240.00/m<sup>2</sup> (TWO HUNDRED AND FORTY RAND PER SQUARE METRE) (VAT excluded) be **approved in principle**;
2. that it be noted that the direct alienation is possible as the subject portion of Remainder Erf 1178 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 subject portion of Remainder Erf 1178 De Kelders must be consolidated with the adjoining property of CFP Jordaan, being Erf 43 De Kelders;
5. that no structures of any kind (excluding a boundary wall or fence) may be erected on the portion of Remainder Erf 1178 De Kelders, which condition must be registered against the title deed of the consolidated property;
6. that the alienation of the portion of Remainder Erf 1178 De Kelders be subject to a suspensive condition that the Applicant obtains approval for the subdivision, rezoning, consolidation and any other related town planning applications;
7. that all the costs pertaining to the transaction, e.g. application cost, valuation cost, subdivision, rezoning, consolidation, transfer and related costs, advertisements, etc. be paid by the Applicant, CFP Jordaan; 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).

**RESPONSIBLE OFFICIAL:**

**W MURTZ**

**TARGET DATE FOR IMPLEMENTATION:**

**11 NOVEMBER 2021**

**TARGET DATE TO INFORM APPLICANT:**

**11 NOVEMBER 2021**

**TARGET DATE TO INFORM OBJECTOR:**

**N/A**

