

**AGENDA of the  
Portfolio Committee: Infrastructure & Planning  
17 August 2021  
(Also the agenda for the Mayoral Committee Meeting: 24 August 2021)**

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**4.  
APPLICATION TO PURCHASE: A PORTION OF ERF 7238 KLEINMOND, A  
PORTION OF ERF 7442 KLEINMOND, AS WELL AS A PORTION OF REMAINDER  
ERF 5462 KLEINMOND – WC JANUARY & SC ONCHER**

**7/2/3/2**

**A Le Roux**

**Manager: Property Administration**

**14 June 2021**

**(028) 316 - 5623**

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**1. Executive Summary**

To consider the application received from WC January and SC Oncher (the owners of Erf 7441 Kleinmond) for the direct alienation of a portion of Erf 7238 Kleinmond ( $\pm 17\text{m}^2$  in extent), a portion of Erf 7442 Kleinmond ( $\pm 78\text{m}^2$  in extent), as well as a portion of Remainder Erf 5462 Kleinmond ( $\pm 54\text{m}^2$  in extent), adjacent to Erf 7441 Kleinmond, situated at 9 GM Siyoni Street, Kleinmond in Overhills. 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 WC January and SC Oncher, hereafter referred to as “the Applicants”, to purchase portions of municipal properties as the Applicants are encroaching onto these municipal properties.

The Applicants’ property, Erf 7441 Kleinmond, situated at 9 GM Siyoni Street, Kleinmond in Overhills is located in a previous low-cost housing development North and adjacent to the Main Road (R44). The Applicants are encroaching onto various adjoining municipal properties as described below.

The application to purchase the municipal properties on which there are encroaching is motivated as follows (A-C):

**A. Municipal Property: a portion of Erf 7238 Kleinmond (±17m<sup>2</sup> in extent)**

A section of the garage was built across the property boundary within the road reserve of GM Siyoni Street (Erf 7238 Kleinmond). The encroachment is ±17m<sup>2</sup> in extent and forms part of the physical building.

**B. Municipal Property: a portion of Erf 7442 Kleinmond (±78m<sup>2</sup> in extent)**

A portion of the driveway is located on a portion of Erf 7442 Kleinmond, which property is leased by the Municipality to an ECD. Without the driveway, the Applicants have no access to the garage as the entrance to the garage is not directly from GM Siyoni Street but on the side of the property adjoining Erf 7442 Kleinmond. The rest of this portion is also used to park their boats. This encroachment is ±78m<sup>2</sup> in extent.

**C. Municipal Property: a portion of Remainder Erf 5462 Kleinmond (±54m<sup>2</sup> in extent)**

A section of a room was built across the Southern boundary of Erf 4771 onto Erf 5462 Kleinmond, a section of the road reserve of Main Street. The encroachment area is ±37m<sup>2</sup> in extent. With reference to recent town planning decisions, habitable rooms may not be built on erf boundaries and the Applicants proposed that an area of ±17m<sup>2</sup> be included in the area applied for to provide for a 1.5m building line between the proposed newly created erf boundary and the building. The total area applied for is therefore ±54m<sup>2</sup> in extent and also forms part of the physical building.

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**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.” The properties 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 internal departments (included under point 9 of this report) indicated that the properties are in fact needed for the provision of municipal services.

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**A. Municipal Property: a portion of Erf 7238 Kleinmond ( $\pm 17\text{m}^2$  in extent)**

The property cannot be considered for alienation as this portion of municipal property contains important sewer link lines to the bulk sewer line in Main Road.

**B. Municipal Property: a portion of Erf 7442 Kleinmond ( $\pm 78\text{m}^2$  in extent)**

This property cannot be considered for alienation as this portion of municipal property also contains important sewer link lines to the bulk sewer line in Main Road. The property should further remain municipal property for community purposes and should the existing Early Childhood Development Centre (ECD Centre) on Erf 4772 Kleinmond need to expand.

**C. Municipal Property: a portion of Remainder Erf 5462 Kleinmond ( $\pm 54\text{m}^2$  in extent)**

The property cannot be considered for alienation as there is a gravity sewer line and also a pressure sewer rising main from the pump station running in that location and the portion is further intended for a future fibre-optic services and future planning of the road.

- (b) No valuation will be done as the alienation of the properties is not supported.
- (c) The recommendation is that the application to purchase not be approved due to the reasons provided.

**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 a portion of Erf 7238 Kleinmond ( $\pm 17\text{m}^2$  in extent), a portion of Erf 7442 Kleinmond ( $\pm 78\text{m}^2$  in extent), as well as a portion of Remainder Erf 5462 Kleinmond ( $\pm 54\text{m}^2$  in extent), adjacent to Erf 7441 Kleinmond, to the Applicants not be approved.

**7. Financial Implications**

None

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**8. Staff Implications**

None

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

**Senior Manager: Kleinmond Administration: Mr D Lakey – (028) 271 8413**

*“Having reconsidered my approval of this application after discussions with other departments, I decided to not support this application anymore.”*

**Senior Superintendent: Metering and Distribution: Electrotechnical Services: Kleinmond: Mr R Buckle – (028) 271 8484**

*“Concerning Erf 7441 Kleinmond, the Electrical Department Overstrand has no comment.”*

**Senior Town Planner: Ms H Van Der Stoep – (028) 313 8900**

*“Portion A, the garage is transgressing onto the GM Siyoni Street, which is zoned Transport Zone 2. The street has an extensive road reserve and can the transgression be accommodated, however the applicant will have to break down part of the structure to ensure access from GM Siyoni Street onto his erf. The application is partially supported subject to the access be from GM Siyoni Street directly onto the applicant’s erf.*

*Portion B, access and storage of boats onto a portion of erf 7442, which is zoned Public Space Zone 2. The erf is utilized by an ECD Center. The loss of 78sq is detrimental to the optimal use of the erf for community purposes. The applicant will have to look for alternative storage of the two boats. The application to buy the 78sq of public open space is not supported due to the following reasons. Public Open Spaces which are developed and use for the community should be safeguard, should the ECD Center intend to expand and land is needed for either building and or play area, the 78sq will be crucial for the aforementioned. It is imperative to note that the present COVID situation has highlighted the importance of open spaces for socialization and movement in a high density area.*

*Portion C, the room on erf 5462, which is zoned Transport Zone 2 and serves as the road reserve of the R44. The latter the competency of the Department of Transport. The transgression is over the 5m provincial building line and the 4m zoning scheme building line. The encroachment can only be allowed if the both the Department of Transport and the Municipality give consent. It is correct that the Zoning Scheme does not allow habitable spaces on a 0m building line. The building will have to be demolished and an application for a departure of the street building line to accommodate a portion of the building*

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*within the street building line may be considered. However, if the room size does not comply with the Building Regulations, the applicant must consider a double storey building within the building lines as per the Zoning Scheme.*

*In conclusion, the transgressions requested is quite extensive and does impede on an existing community facility and cannot be considered positively. The building was done without approved building plans, land use applications and results into illegal occupation of land to the benefit of the owners and not the community.”*

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

*“The Fire Department has no objection.”*

**Senior Operational Manager: Kleinmond: Mr D van Rhodie – (028) 271 8431**

*“Operational Services Kleinmond is not in support of the application due to the same reasons as the Engineering department. **Portions A and B** contain important sewer link lines to the bulk sewer line in Main Road. **Portion C** (Main Road) is part of the Provincial Trunk Road and the statutory width (as legislated) need to be maintained and protected where possible. There is a gravity sewer line and also a pressure sewer rising main from the pump station running in that location.”*

In light of the abovementioned comments received for municipal property being a portion of Erf 5462 Kleinmond (54m2 in extent) the following comment was received from Department of Transport and Public Works:

**For Deputy Director-General Roads: SW Carstens – (021) 483 4669**

*“ERF 7441 AND 5462 KLEINMOND: TRUNK ROAD 27 SECTION 1:  
APPLICATION TO PURCHASE A PORTION OF ROAD RESERVE*

1. *Your Memorandum dated 11 February refers.*
2. *It is understood that the owners of Erf 7441, Kleinmond, has built illegally in the road reserve of Trunk Road 27, Section 1.*
3. *The extent of the transgression is shown on drawing number: kleinm7441.drg dated November 2020. (See Annexure B attached)*
4. *The Applicant now wishes to purchase a portion of the Trunk Road reserve measuring 54m2 in order to obtain approval from the Municipality for the structures.*
5. *The Trunk Road in this location has a Class 2 Rural cross-section which in the future may be changed to a municipal cross-section in order to accommodate pedestrian needs and possibly on-street parking.*
6. *The affected portion of the road reserve has two sewer lines in that*

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*location and it is also the intended location of a future fibre-optic service.*

7. *This Branch cannot approve the purchase of the proposed portion of the road reserve of Trunk Road 27, Section 1, as it will compromise the existing and future services as well as future planning of the road."*

**Manager: Building Control: Mr L Coetzee – (028) 384 8091**

*"Building Control supports this application. A Building Plan application is required. Building Control cannot approve an application for a structure (dwelling house in this instance) that straddles multiple erven: the application will have to consolidate all erven for the Building Plan application."*

In addition to the above, there is currently no approved building plans for the the section of the garage built across the property boundary within the road reserve of GM Siyoni Street (Erf 7238 Kleinmond) and there is no approved building plans for the section of a room built across the Southern boundary of Erf 4771 onto Erf 5462 Kleinmond.

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

*"No objection from a Solid Waste Planning point of view."*

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

*"The application is not supported by the Engineering Services Department.*

***Portions A and B** contain important sewer link lines to the bulk sewer line in Main Road.*

***Portion C** (Main Road) is part of the Provincial Trunk Road and the statutory width (as legislated) need to be maintained and protected where possible."*

**Environmental Officer: Ms T Zweig – (028) 271 8420**

*"The Environmental Management Section has no objection to the abovementioned application."*

## **10. Annexures**

Annexure A: Locality Map

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

that the direct alienation of a portion of Erf 7238 Kleinmond ( $\pm 17\text{m}^2$  in extent), a portion of Erf 7442 Kleinmond ( $\pm 78\text{m}^2$  in extent), as well as a portion of Remainder Erf 5462 Kleinmond ( $\pm 54\text{m}^2$  in extent), adjacent to Erf 7441 Kleinmond, to the owners, WC January and SC Oncher, **not be approved** on the following reasons:

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- (a) A portion of Erf 7238 Kleinmond ( $\pm 17\text{m}^2$  in extent) contains important sewer link lines to the bulk sewer line in Main Road;
- (b) A portion of Erf 7442 Kleinmond ( $\pm 78\text{m}^2$  in extent) contains important sewer link lines to the bulk sewer line in Main Road. The property should further remain municipal property for community purposes and should the existing Early Childhood Development Centre (ECD) on Erf 4772 Kleinmond need to expand; and
- (c) A portion of Remainder Erf 5462 Kleinmond ( $\pm 54\text{m}^2$  in extent) contains a gravity sewer line and also a pressure sewer rising main from the pump station running in that location and the portion is further intended for a future fibre-optic services and future planning of the road.

<b>RESPONSIBLE OFFICIAL:</b>	<b>W MURTZ</b>
<b>TARGET DATE FOR IMPLEMENTATION:</b>	<b>17 SEPTEMBER 2021</b>
<b>TARGET DATE TO INFORM APPLICANT:</b>	<b>30 SEPTEMBER 2021</b>
<b>TARGET DATE TO INFORM OBJECTOR:</b>	<b>N/A</b>

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4.

**APPLICATION TO PURCHASE: A PORTION OF ERF 7238 KLEINMOND, A PORTION OF ERF 7442 KLEINMOND, AS WELL AS A PORTION OF REMAINDER ERF 5462 KLEINMOND – WC JANUARY & SC ONCHER**

7/2/3/2

A Le Roux

Manager: Property Administration

14 June 2021

(028) 316 - 5623

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**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON 17 AUGUST 2021, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:**

**RECOMMENDATION TO THE COUNCIL:**

that the direct alienation of a portion of Erf 7238 Kleinmond ( $\pm 17\text{m}^2$  in extent), a portion of Erf 7442 Kleinmond ( $\pm 78\text{m}^2$  in extent), as well as a portion of Remainder Erf 5462 Kleinmond ( $\pm 54\text{m}^2$  in extent), adjacent to Erf 7441 Kleinmond, to the owners, WC January and SC Oncher, **not be approved** on the following reasons:

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- (b) A portion of Erf 7442 Kleinmond ( $\pm 78\text{m}^2$  in extent) contains important sewer link lines to the bulk sewer line in Main Road. The property should further remain municipal property for community purposes and should the existing Early Childhood Development Centre (ECD) on Erf 4772 Kleinmond need to expand; and
- (c) A portion of Remainder Erf 5462 Kleinmond ( $\pm 54\text{m}^2$  in extent) contains a gravity sewer line and also a pressure sewer rising main from the pump station running in that location and the portion is further intended for a future fibre-optic services and future planning of the road.

**RESPONSIBLE OFFICIAL:**

**W MURTZ**

**TARGET DATE FOR IMPLEMENTATION:**

**17 SEPTEMBER 2021**

**TARGET DATE TO INFORM APPLICANT:**

**30 SEPTEMBER 2021**

**TARGET DATE TO INFORM OBJECTOR:**

**N/A**

