

**AGENDA of the
Portfolio Committee: Investment & Infrastructure
2 November 2022
(Also the agenda for the Mayoral Committee Meeting: 16 November 2022)**

8.

**IN PRINCIPLE APPROVAL FOR THE DIRECT ALIENATION OF A PORTION OF
REMAINDER ERF 5504 KLEINMOND, ADJACENT TO ERF 4711 KLEINMOND,
SITUATED IN LOWER BEACH ROAD (PORTION OF PUBLIC OPEN SPACE),
KLEINMOND, TO EILEEN THORN FAMILY TRUST**

7/2/3/2

A Le Roux

Manager: Property Administration

27 September 2022

(028) 316 - 5623

1. Executive Summary

To obtain approval in principle for the direct alienation of a portion of Remainder Erf 5504 Kleinmond ($\pm 65\text{m}^2$ in extent) adjacent to Erf 4711 Kleinmond, situated in Lower Beach Road, Kleinmond, to the owner of the adjoining property, Erf 4711 Kleinmond, being Eileen Thorn Family Trust. 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 Eileen Thorn Family Trust, hereafter referred to as “the Applicant”, for the purchase of a portion of Remainder Erf 5504 Kleinmond ($\pm 65\text{m}^2$ in extent) adjacent to Erf 4711 Kleinmond situated in Lower Beach Road, Kleinmond, hereafter referred to as “the Property”.

When the Applicant purchased Erf 4711 Kleinmond, they were under the impression from the original plans, that there would be sufficient off-street parking on the right-hand side of the house, leading to what used to be a single garage. After the purchase, they discovered that the alley is too narrow for even a small car to access the driveway.

Although the area in front of the house offers enough space for off-street parking, and as this was the second consideration for a parking area, there are a number of reasons why they would prefer a secure parking area next to the house, being:

- There is a septic tank installed in the 51m^2 area in front of the house, on which they are hesitant to drive or place any load.
- Aesthetically parking cars in this area would be an eyesore for both the Applicant as well as the neighbours and pedestrians.
- The Property would only be used for parking purposes. The Applicant would like to purchase the Property as they are keen to erect a carport. The Applicant desires secure or covered off-street parking, and their property offers no other parking alternatives.
- The Applicant was hoping to one day erect a wooden deck in the area in front of the house, from which to better appreciate the amazing views. This would cover the unsightly septic tank and add value to the property, as well as those surrounding it. This is the main outside area of the house, and this would then provide direct access to the house when using this area for parking purposes.
- Since the Applicant owned the house, the Applicant has been using the public blind alley for parking, which restricts and inconveniences other vehicles wishing to use this space to turn.

The Applicant currently has a lease agreement for a portion of Erf 5504, adjacent to Erf 4711 Kleinmond ($\pm 24\text{m}^2$ in extent) for a short-term period of 3 (THREE) years that expires on 30 September 2023 and therefore applied to purchase the Property, with a bigger size as the lease area, for parking purpose and to consolidate the Property with their own property.

The application was originally for either 24m^2 or $\pm 100\text{m}^2$ portion, however the Applicant changed the size applied for to $\pm 65\text{m}^2$ in extent.

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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 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 thereon. Thus, the Applicant will not be able to erect a carport 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 open space, 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 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 subject 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 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

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- 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 indicate that the subject portion of municipal property is not needed for the provision of municipal services.
- (b) HCB Property Valuations determined the market related value on 1 August 2022 at an amount of R2,000.00/m² (TWO THOUSAND 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 open space, 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.

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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 exist 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.

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.

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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 open space, 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 R2,000.00/m² (TWO THOUSAND RAND) (PER SQUARE METRE) (VAT excluded).

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

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

“The portion of Erf 5504 (±65m² in extent) Kleinmond, adjacent to Erf 4711 Kleinmond and situated at Lower Beach Road, Kleinmond, is reflected in the fixed asset register for HA: Land as part of the overall Erf 5504 at a value of R1’122’535-10 as at 30 June 2022. As soon as the proposed alienation has been concluded the portion of the erf 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 the portion of an asset.

There is no objection against the proposed alienation as the application complies with the Administration of Immovable Property Policy.”

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

“I support the application, subject to full compliance with all relevant legislation and no adverse interference with established municipal services laid over the subject property.”

Manager: Engineering Services: Mr R Andrew – (028) 312 5073

“The application is conditionally supported:

- a) The Property may only be used for parking purposes. It may be paved.*
- b) No structure may be erected apart from a boundary wall or fence.*
- c) The Applicant will seek the advice or support of the Senior Operational Manager: Kleinmond with regard to location and safeguarding of the water pipeline present.”*

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

“The application size of $\pm 100\text{m}^2$ in extent is better to resolve the building line and parking issues pertaining to the Property. The Erf 5504 is zoned Public Open Space and subject to the EMOZ and HPOZ that needs to be addressed. An application for a possible closure of a public open space may be applicable, rezoning, subdivision and consolidation. The one aspect that needs to be verified, is whether there is a title deed restriction applicable on the erven. The Applicant will have to verify with the DEAP whether an EIA will be necessary.”

Comments from Property Administration: No restriction could be found in the Title Deed. The Applicant wishes to only purchase $\pm 65\text{m}^2$.

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

“The Environmental Management Section (EMS) has no objection to this application to purchase either Option 1 (24m^2) or Option 2 (100m^2) portion of Erf 5504.

- 1. Zoning: Open Space 2: Public Open Space within the Overstrand Municipality Urban Edge.*
- 2. Environmental Management Overlay Zones: Coastal Protection & Protected Area Buffer Zones:*

The proposed area of purchase will not limit access to coastal public property. The purchaser must be aware that the coastal access pathway adjacent to the proposed purchase area will continue to be used by the public.

Vegetation outside of the proposed purchase area may not be removed and/or trimmed/managed for safety/security purposes by the purchaser. The EMS may however conduct Alien Invasive Vegetation clearing at the discretion of the EMS and in line with the National Environmental Management: Biodiversity Act. and/or other applicable legislation, regulations and/or bylaws on Erf 5504.

*Should protected tree species such as Milkwood (*Sideroxylon inerme*) require pruning and/or removal on the proposed portion for purchase, a permit from the Department of Forestry Fisheries and the Environment (DFFE) will be required.*

As per the 2020 EMOZ Regulations, Schedule A properties within this zone are not permitted to harbour or plant declared Alien Invasive plant, declared or locally important emerging weed species. The proposed buyer should inform themselves of the EMOZ Regulations and the Schedules attached thereto.

Discharge of grey water into these EMOZ is prohibited.

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There should be no impact to the remaining portion of Erf 5504 during construction on and/or encroachment from Erf 4711.”

Senior Manager: Building Services: Mr L Coetzee – (028) 313 8091

“Building Control has no objection. The future proposed wooden deck will require a building plan application that must comply with all applicable law including the Land Use Zoning Scheme and Fire Safety distances in terms of the National Building Regulations.”

Comments from Property Administration: The carport or wooden structure cannot be erected on the Property, only a boundary wall or fence may be erected, and this condition will be incorporated into the deed of sale as special conditions to the transaction.

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

“The kVA available is 13.8 single phase.”

10. Annexures

Annexure A1 & A2: Locality Map

RECOMMENDATION TO THE COUNCIL:

1. that the direct alienation of a portion of Remainder Erf 5504 Kleinmond (adjacent to Erf 4711 Kleinmond) situated at 30 Lower Beach Road, Kleinmond ($\pm 65\text{m}^2$ in extent), to the owner of the adjoining Erf 4711 Kleinmond, Eileen Thorn Family Trust, at an amount of R2,000.00/m² (TWO THOUSAND 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 Remainder Erf 554 Kleinmond 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 Remainder Erf 5504 Kleinmond must be consolidated with the adjoining property of Eileen Thorn Family Trust, being Erf 4711 Kleinmond;

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5. that no structures of any kind (excluding a boundary wall or fence) may be erected on the said portion of Remainder Erf 5504 Kleinmond, which condition must be registered against the title deed of the consolidated property;
- 6 that the alienation of said portion of Remainder Erf 5504 Kleinmond be subject to a suspensive condition that the applicant/purchaser obtains approval for all the required land use rights, which may include, the closure of public open space, rezoning, subdivision and consolidation;
7. 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, Eileen Thorn Family Trust; 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).

RESPONSIBLE OFFICIAL:	W MURTZ
TARGET DATE FOR IMPLEMENTATION:	15 DECEMBER 2022
TARGET DATE TO INFORM APPLICANT:	30 DECEMBER 2022
TARGET DATE TO INFORM OBJECTOR:	N/A

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REMAINDER ERF 5504 KLEINMOND, ADJACENT TO ERF 4711 KLEINMOND,
SITUATED IN LOWER BEACH ROAD (PORTION OF PUBLIC OPEN SPACE),
KLEINMOND, TO EILEEN THORN FAMILY TRUST**

7/2/3/2

A Le Roux

Manager: Property Administration

27 September 2022

(028) 316 - 5623

**THIS MATTER SERVED BEFORE THE INVESTMENT & INFRASTRUCTURE
PORTFOLIO COMMITTEE ON 2 NOVEMBER 2022, 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 554 Kleinmond 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 Remainder Erf 5504 Kleinmond must be consolidated with the adjoining property of Eileen Thorn Family Trust, being Erf 4711 Kleinmond;
5. that no structures of any kind (excluding a boundary wall or fence) may be erected on the said portion of Remainder Erf 5504 Kleinmond, which condition must be registered against the title deed of the consolidated property;
6. that the alienation of said portion of Remainder Erf 5504 Kleinmond be subject to a suspensive condition that the applicant/purchaser obtains approval for all the required land use rights, which may include, the closure of public open space, rezoning, subdivision and consolidation;
7. 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, Eileen Thorn Family Trust; 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).

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