

**AGENDA of the
Portfolio Committee: Infrastructure & Planning
23 March 2021
(Also the agenda for the Mayoral Committee Meeting: 31 March 2021)**

2.

APPLICATION TO PURCHASE: A PORTION OF REMAINDER ERF 1178 DE KELDERS (ROAD RESERVE), ADJACENT TO ERF 825 DE KELDERS (133 MAIN ROAD, DE KELDERS) – JJK & LP WHITEMAN

7/2/3/2

A Le Roux

Manager: Property Administration

10 February 2021

(028) 316 - 5623

1. Executive Summary

To consider the application received from Mr JJK & Ms LP Whiteman (the owner of Erf 825 De Kelders) for the direct alienation of a portion of Remainder Erf 1178 De Kelders ($\pm 30\text{m}^2$ in extent) (road reserve) adjacent to Erf 825 De Kelders, situated at 133 Main Road, De Kelders. 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 Mr JJK & Ms LP Whiteman, hereafter referred to as “the Applicants”, for the purchase of a portion of Remainder Erf 1178 De Kelders ($\pm 30\text{m}^2$ in extent) (hereinafter referred to as “the Property”), adjacent to Erf 825 De Kelders, for the purposes to erect a wooden/similar fence, to beautify the area and to extend one of the sectional title units on Erf 825 De Kelders, in order for the occupier to have her own entrance and garden.

The original application was received in May 2019, circulated and discussed internally. The result of the internal comments and discussions was that the application was not supported due to municipal services located on the Property. The Applicant was notified of the outcome in October 2019.

In July 2020 the Applicant applied once again to purchase the Property with the notion that there are no electrical services present on the Property. The Electrical Department was asked to comment once again and confirmed, after a site inspection, that there were in fact no electrical cables on the specific portion of the Property. However, it was mentioned that the Property has been identified to be used for the installation of telecommunication services. The Operational Department further confirmed that they stand by their previous comments indicating that there are municipal water pipelines in close proximity to the western as well as northern boundary of the Property. It was further confirmed that the Property must be reserved for current as well as future municipal services. In terms of the MFMA and MATR, the Municipality may not sell any property that might be needed in the future for basic municipal services.

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,

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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 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 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 indicated that the Property is in fact needed for the provision of municipal services.
- (b) No valuation will be done as the alienation of the Property is not supported.
- (c) The request will be not to approve the alienation in principle on the reasons provided.

Conclusion

Taking the comments of the internal departments, as well as the above discussion, into consideration, it is recommended that the direct alienation of a portion of Remainder Erf 1178 De Kelders ($\pm 30\text{m}^2$ in extent), adjacent to Erf 825 De Kelders, to the owners of Erf 825 De Kelders, being JJK & LP Whiteman, 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: Gansbaai/Stanford Administration: Mr F Myburgh – (028) 384 8365

“The relevant portion of the property is currently used by the applicant for gardening purposes and I am of the view that the application to buy it from the Municipality NOT be supported because it is either used or may be needed for the installation of municipal services.”

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

Comment on first application: *“We have existing electrical services on this portion. We cannot support this application”*

Amended comment after site inspection: *“Ons het weer ondersoek gaan doen op die perseel. Ons kon geen kables in die driehoek gedeelte vind wat Mnr Whiteman wil aankoop nie en trek dus ons beswaar terug. Indien ons egter op enige stadium in die toekoms kables daar vind, sal dit op sy kostes verskuif moet word.”*

Translated: *“We did another investigation on the property. We could not find any cables in the triangle area Mr Whiteman wants to purchase and thus withdraw our objection. Should we however find any cable there in the future, it will have to be moved at his cost.”*

Town Planner: Mr P Roux – (028) 313 8900

“It is stated that the applicant wishes to utilize the proposed extension in order to beautify and extend his property. However, it is noted that the proposed portion of Erf 1178 is already being utilized for gardening purposes. Further note certain agreements were reached in 2008, and which could mean that the reason to acquire the additional portion (for beautification) does not have weight.

Regarding the proposal, and should Council decide to sell the portion, the following land use application (to the cost of the applicant) will be required:

- *subdivision of the proposed portion,*
- *closure of public place,*
- *rezoning of subdivided portion,*

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- *consolidation of the portion with Erf 825,*
- *additional requirements may be set once all information is received i.e. title deed, ownership details....*

Merits and desirability of such an application will be considered when a formal land use application is submitted.”

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

“Fire Department have no objection to the application.”

Deputy Director: Operational Services: Mr T Steenberg – (028) 312 8982

“There are two municipal water lines in close proximity to the proposed area on the western as well as the northern boundary. The operational department would therefore not support the application.”

After the initial comments were obtained and the matter with the electrical cables were resolved, it was mentioned that the Property is earmarked for future services and for possible fibre optics cables. Mr Steenberg was asked to comment on this matter and provided the following comment with regards to the application:

“My previous comments with regards to ERF 1178 stands. There are waterlines on the area in question and it will be reserved for current and future municipal services and if need be, telecommunication services.”

Building Inspector: Mr R Dickson – (028) 384 8319

“Overstrand Building Department does not have any objection to the purchase of a portion of Erf 1178 De Kelders next to Erf 825”

(Previous) Senior Superintendent: Operations – Traffic: Mr X Titus – (028) 312 5033

“Inspection has been done at locality as indicated. Traffic do not have any objections to the application. Please keep in mind that this should not cause any obstruction of any matter to motorists.”

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

“The Engineering Services Department is not supporting the application:

1. *The portion of land under consideration has been zoned as Transport 2: Public Roads and Parking.*

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2. *The area is still developing and the sale of this portion of land may prevent the possible future duelling of Cove Street and/or limit the provision/construction of on-street parking.*

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

“The Environmental Management Section does not have any comments to the above-mentioned application.”

10. Annexures

Annexure A: Locality Map

RECOMMENDATION TO THE COUNCIL:

that the direct alienation of a portion of Remainder Erf 1178 De Kelders ($\pm 30\text{m}^2$ in extent), adjacent to Erf 825 De Kelders, to the owners of the adjoining Erf 825 De Kelders, JJK & LP Whiteman, **not be approved** as the property must be reserved for current as well as future municipal services.

RESPONSIBLE OFFICIAL:	N LIEBENBERG
TARGET DATE FOR IMPLEMENTATION:	16 APRIL 2021
TARGET DATE TO INFORM APPLICANT:	30 APRIL 2021
TARGET DATE TO INFORM OBJECTOR:	N/A

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A Le Roux

Manager: Property Administration

10 February 2021

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THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON 23 MARCH 2021, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:

RECOMMENDATION TO THE COUNCIL:

that the direct alienation of a portion of Remainder Erf 1178 De Kelders ($\pm 30\text{m}^2$ in extent), adjacent to Erf 825 De Kelders, to the owners of the adjoining Erf 825 De Kelders, JJK & LP Whiteman, **not be approved** as the property must be reserved for current as well as future municipal services.

RESPONSIBLE OFFICIAL:

N LIEBENBERG

TARGET DATE FOR IMPLEMENTATION:

16 APRIL 2021

TARGET DATE TO INFORM APPLICANT:

30 APRIL 2021

TARGET DATE TO INFORM OBJECTOR:

N/A

ANNEXURE A

