

**AGENDA of the
Portfolio Committee: Investment, Infrastructure and Tourism
7 February 2024
(Also the agenda for the Mayoral Committee Meeting: 13 February 2024)**

8.

**APPLICATION TO PURCHASE: A PORTION OF ERF 4721 KLEINMOND
SITUATED IN THIRTEENTH AVENUE, KLEINMOND (ROAD RESERVE) – I KOEN**

**A Le Roux
17 November 2023**

Manager: Property Administration

(028) 316 - 5623

1. Executive Summary

To consider the application received from Mr I Koen (the owner of Erf 6032 Kleinmond) to purchase municipal property, being a portion of Erf 4721 Kleinmond ($\pm 90\text{m}^2$ in extent), adjacent to Erf 6032 Kleinmond, situated at 50 Thirteenth Avenue, Kleinmond, to retain an enclosure erected on municipal property. 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 Priority

Provision of democratic, accountable and ethical governance

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

6. Background/Discussion/Evaluation/Conclusion

Background/Discussion

An application was received from Mr I Koen, the owner of Erf 6032 Kleinmond, hereafter referred to as "the Applicant", to purchase a portion of Erf 4721 Kleinmond ($\pm 90\text{m}^2$ in extent), adjacent to Erf 6032 Kleinmond,

**AGENDA of the
Portfolio Committee: Investment, Infrastructure and Tourism
7 February 2024
(Also the agenda for the Mayoral Committee Meeting: 13 February 2024)**

hereinafter referred to as “the Property”, to retain the enclosure erected, for gardening purposes and the use of the established driveway.

The Applicant erected a PVC type fence on the Property, that is currently illegally encroaching on the Property. After a notice was issued to him, he originally applied to lease or purchase the Property to keep the fence and to rectify the matter. He indicated in his application the following (*our translation*):

“We recently put up a fence on two sides of our property. We were told that there would be no need to submit building plans as no foundations would be poured. We then looked at the other houses on our street as well as the adjoining street and then worked on that line according to how far from the road they put up their fences and gates. We were under the impression that it would be fine as some of their walls are built walls with foundations, as well as gates on foundations and we would not need foundations. We also set up the fence so that there is more than enough access to the municipal electricity box and that it has open access from the street.

We had no intention of acting illegally and if we did act illegally, it was out of sheer ignorance. The fence was very expensive and cost us around R200,000.00. If the fence must be moved, the entire structure will have to be changed. This is going to cause quite high costs. We would like to get permission for an allowance to keep the fence as it currently is. If this is not possible, we would appreciate suggestions for an amicable solution to the situation.”

The Applicant’s photographs of the fence are attached hereto and marked “Annexure B”.

The application was circulated to the relevant internal departments, who did not support the application due to the following reasons:

- There are electrical services located on the Property and the Applicant’s fence is already too close to the electrical mini substation, hindering the municipality from having easy access to the infrastructure for maintenance duties.
- The property is zoned as Transport Zone 2: Road and Parking and the SG diagram indicates that the splay on the Property is further required at the road crossing for distance of sight.

The Accounting Officer, as the delegated authority, did not approve the lease application due to the reasons provided in the internal comments. The Applicant was informed on 19 October 2023 that the lease was not approved, and a 21 (TWENTY-ONE) day Section 62 appeal period was provided. The Applicant did not submit an appeal to this outcome. As the decision was

**AGENDA of the
Portfolio Committee: Investment, Infrastructure and Tourism
7 February 2024
(Also the agenda for the Mayoral Committee Meeting: 13 February 2024)**

already made and communicated to the Applicant, the matter is *functus officio* (the principle in terms of which administrative decisions of officials are deemed to be final and binding once they are made and communicated.) The decision cannot, once made, be revoked by the delegated authority, thus the application to lease cannot be considered further.

The application for the purchase of the Property can however only be approved/denied by Council, therefore this report is submitted to Council for consideration.

Evaluation

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

The following conditions of the said Policy will apply:

Paragraph 5: “The Municipality may not transfer ownership as a result of a sale or other transaction or otherwise permanently dispose of a municipal immovable property needed to provide the minimum level of basic services, save where the transfer is to another organ of state, as provided for in section 14(6) of the MFMA read with Regulation 24 in Chapter 3 of the MATR.”

From the comments received from internal departments it is clear that the Property is used for current electrical services and earmarked for municipal infrastructure. This strip of land was specifically created and retained for the installation and retention of basic municipal services. With any services, the Municipality needs approximately 1m (one metre) to each side of the line for maintenance and access purposes. The fence is already located within this “no go” area.

Paragraph 7: “The transfer of ownership of immovable property must be fair, equitable, transparent, competitive (unless it is not applicable to 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.” Although the Property can in all intents and purposes be classified as non-viable property, the subdivision of the Property in the requested shape and

**AGENDA of the
Portfolio Committee: Investment, Infrastructure and Tourism
7 February 2024
(Also the agenda for the Mayoral Committee Meeting: 13 February 2024)**

locality is not desirable for the area, especially since the splay of the Property is required for the road crossing.

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 for municipal services and the splay is required for sight distance at the road crossing.
- (b) No valuation will be done as the alienation of the Property is not supported.
- (c) The recommendation is that the application is not approved.

Conclusion

Taking the comments of the internal departments, as well as the above discussion, into consideration, it is recommended that the alienation of the Property not be approved.

7. Financial Implications

None

8. Staff Implications

None

**AGENDA of the
Portfolio Committee: Investment, Infrastructure and Tourism
7 February 2024
(Also the agenda for the Mayoral Committee Meeting: 13 February 2024)**

9. Comments from other Departments, Divisions and Administrations

Senior Town Planner - Ms H van der Stoep

“The application is not recommended for approval. The SG Diagram clearly indicates a splay for sight distance in that crossing. On 13th Street, various portions of land including the Applicant’s has been set aside for road widening, which will not be possible if the application is approved.”

Manager: Building Control - Mr L Coetzee

“No objection. A minor works application is required for the fence.”

Senior Superintendent: Metering & Distribution – R Buckle

“Concerning Erf 4721 Kleinmond, electrical services are located in the area. The fence is also too close to the mini substation, hindering work. It will not be possible from Electrical Department’s opinion so sell the property. For it will make access to electrical infrastructure difficult.”

Senior Manager: Operational Services: Kleinmond - Mr D van Rhodie

“Operational Services, Kleinmond do not support the application. Municipal road reserve is designated for municipal services/infrastructure. The fence is not in line with immediate neighbouring properties as claimed by Applicant. Electrical substation should have also given an indication where the municipal property is.”

Manager: Engineering Services - Mr R Andrews

“The Engineering Services Department have the following conditions/comments:

- a) No structures may be erected apart from a boundary wall or fence.*
- b) The land will only be utilised for gardening purposes and a boundary wall.*
- c) Municipal officials and contractors will have reasonable access to the Property for inspection and maintenance purposes.”*

Environmental Officer: Kleinmond - Ms T Zweig

“The EMS has no objection to this application. Erf 6032 Kleinmond is zoned as Urban Conservation: Private Property. Mr. Koen can view/download the Environmental Management Overlay Zone (EMOZ) Regulations here: Overstrand Municipality Amendment By-Law on Municipal Land Use Planning 2020. The EMS has no objection to this application. Erf 6032 Kleinmond is zoned as Urban Conservation: Private Property. Mr. Koen can view/download

**AGENDA of the
Portfolio Committee: Investment, Infrastructure and Tourism
7 February 2024
(Also the agenda for the Mayoral Committee Meeting: 13 February 2024)**

the Environmental Management Overlay Zone (EMOZ) Regulations in this link:<https://www.overstrand.gov.za/en/documents/town-planning/by-laws/overstrand-municipality-amendment-by-law-on-municipal-land-use-planning-2020>.”

10. Annexures

Annexure A: Locality Map
Annexures B: Applicant's photographs

RECOMMENDATION TO THE COUNCIL:

that the application to purchase a portion of Erf 4721 Kleinmond, ($\pm 90\text{m}^2$ in extent) adjacent to Erf 6032 Kleinmond, by the owner of the adjoining Erf 6032 Kleinmond, Mr I Koen, **not be approved** as the Property is used and further needed for municipal services.

RESPONSIBLE OFFICIAL:	W MURTZ
TARGET DATE FOR IMPLEMENTATION:	29 MARCH 2024
TARGET DATE TO INFORM APPLICANT:	15 MARCH 2024
TARGET DATE TO INFORM OBJECTOR:	N/A

**AGENDA of the
Portfolio Committee : Investment, Infrastructure & Tourism
7 February 2024
(Also the Agenda for the Mayoral Committee Meeting : 13 February 2024)**

8.

**APPLICATION TO PURCHASE: A PORTION OF ERF 4721 KLEINMOND SITUATED
IN THIRTEENTH AVENUE, KLEINMOND (ROAD RESERVE) – I KOEN**

**A Le Roux
17 November 2023**

Manager: Property Administration

(028) 316 - 5623

**THIS MATTER SERVED BEFORE THE INVESTMENT & INFRASTRUCTURE
PORTFOLIO COMMITTEE ON 7 FEBRUARY 2024, WHICH COMMITTEE
RECOMMENDED AS FOLLOWS:**

RECOMMENDATION TO THE COUNCIL:

that the application to purchase a portion of Erf 4721 Kleinmond, ($\pm 90\text{m}^2$ in extent) adjacent to Erf 6032 Kleinmond, by the owner of the adjoining Erf 6032 Kleinmond, Mr I Koen, **not be approved** as the Property is used and further needed for municipal services.

RESPONSIBLE OFFICIAL:

W MURTZ

TARGET DATE FOR IMPLEMENTATION:

29 MARCH 2024

TARGET DATE TO INFORM APPLICANT:

15 MARCH 2024

TARGET DATE TO INFORM OBJECTOR:

N/A



ANNEXURE B

