

**AGENDA of the
Portfolio Committee: Investment & Infrastructure
7 June 2023
(Also the agenda for the Mayoral Committee Meeting: 12 June 2023)**

**6.
APPLICATION TO PURCHASE: VARIOUS PORTIONS OF ERF 5462 KLEINMOND
– MR B APRIL ON BEHALF OF VARIOUS ADJACENT PROPERTY OWNERS**

**A Le Roux
3 May 2023**

Manager: Property Administration

(028) 316 - 5623

1. Executive Summary

To consider the application received from Mr B April, the registered owner of Erf 6800 Kleinmond, on behalf of himself and the owners of Erven 6796, 6797, 6801, 6802, 6803, 6804, 6805, 6806, 6807, 6808 Kleinmond (hereinafter collectively referred to as “the adjacent owners”), situated in Maroela Avenue, Proteadorp, Kleinmond, for the purchase (or lease to buy) of various portions of Erf 5462 Kleinmond to consolidate with their respective properties. It should be declared that one of the applicants is the spouse of Councillor Williams. 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

Mr April states in his application that the adjacent owners wish to purchase the portions of Erf 5462 Kleinmond adjacent to their respective properties for safety and security and conservation purposes.

Behind the erven of these property owners there is a mountain and two footpaths that are used by the community to walk from one area to another. These paths are important as they are used by many people, including children from Overhills and the informal settlement area that need to reach the Kleinmond Primary School.

Please see the locality map attached as Annexure A that depicts the area applied for, the footpaths in existence and the adjacent properties.

Two of the adjacent properties are municipal owned, namely Erf 6798 and Erf 6809 (which is a public open space) and although included in the locality map, it will not be applicable to this application.

The adjacent owners want to purchase the land to prevent people walking next to their properties, minimise break ins and thefts and to curb the likelihood of illegal land grabs as the informal settlement area of Kleinmond is coming closer to their properties. It is not sure how the increase in size of their properties would enhance conservation.

The adjacent owners would ideally wish to lease the property and then buy it. The Municipality does not have any lease to buy arrangements in place as the Municipal Asset Transfer Regulations do not make provision for this option and accordingly, they could either have to purchase or lease the land (if either is approved).

In 2020 our office received a very similar application but from Councillor Williams before he was elected as a Councillor. The application was investigated and discussed at internal meeting but was not supported. After that application was discussed at the said meeting, a site visit was held where it was looked at whether Area Management or Environmental could attend to closing the path off as an alternative mechanism. The current application is materially similar to that application.

Given the material similarity between applications, officials were requested to confirm whether their comment on the previous application remains the same for this application.

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Since the initial application and the current application, a consulting firm, Messrs Neil Lyners and Associates (Pty) Ltd, was appointed as project managers to conduct an investigation into land availability and developable land in Kleinmond with the objective to identify land for development for the broader spectrum of needs in Kleinmond and to provide proposals for the upgrading of the Overhills informal settlement in Kleinmond. The project team consisted of Civil Engineers, Urban Designers and Environmental Specialists.

The investigation was done on a large scale and extensive public participation was involved, with two public open days held on 24 and 25 February 2021 and a public participation comment period that ended 19 March 2021 for final input.

On 28 October 2021, Council approved the outcome of the report as a guiding document regarding housing development in the area.

At the time the report served before Council, the following extract bears reference in relation to a portion of Erf 5462 Kleinmond:

“Identified sites:

Nineteen (19) sites were identified which relate to approximately 1 040 affordable housing opportunities. The quick win sites relate to minor upgrading of infrastructure and little environmental constraints.

The quick win sites are as follows:

Site 2 (Erf 5462): The ownership vests with the Municipality. The property is located along the boundary above Proteadorp. Engineering upgrades need to be done as well as an Environmental Impact Assessment (EIA). The proposed housing model is BNG and GAP housing.”

An extract of the Land Availability Report is attached hereto as Annexure B.

From the comments of the Manager: Housing Planning & Project Management, it appears that the Municipality is pursuing funding for the Property for the purposes of developing housing opportunities thus it is not recommended that the Property be alienated at this stage.

Evaluation

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

The following conditions of the said Policy will apply:

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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 cannot be classified as a non-viable immovable property as the in-depth investigation by the Messrs Neil Lyners and Associates (Pty) Ltd, which investigation was accepted by Council, identifies the Property as forming part of possible housing opportunities.

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 departments indicate that the Property is not needed for the provision of basic municipal services. However, it is clear that the Property may be needed for the provision of housing opportunities.
- (b) No valuation will be done at this stage as the alienation of the Property is not supported.
- (d) The request will be not to approve in principle the alienation of the Property for the reasons provided.

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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 applicants, being the adjacent owners, not be approved.

7. Financial Implications

None

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Manager: Housing Planning & Project Management - Ms A Jacobs

“The subject portion as indicated on your locality plan forms part of the available developable land identified for future housing development as part of the Kleinmond Land Investigation. The report served before Council during last year. A pre-planning funding application (copy attached), which included this portion, was also submitted to Province last year and it was supported. We are awaiting the formal funding approval.

The subject portion of land forms part of this housing project in Kleinmond and is therefore not available.”

Senior Town Planner - Ms H van der Stoep

2020 comment:

“The property is zoned Special and is part of the investigation for housing development. Kleinmond does not have land available for housing development and that is why all land available for possible development with the least Environmental and Engineering constraints needs to be protected for future development. The application portion is one of the identified sites. The request cannot be recommended for approval.”

2022 comment:

“The application is still not supported, since the area is identified for housing possibilities. The acquisition of the portion as depicted on the map provided will have no purpose, since a new road will be created further disturbing the area. I do realise the security risk the owners face due to constant movement, but an added sqm will have no impact. The owners must safeguard their

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properties as per the Overstrand Land Use Scheme and National building Regulations.

The informal road must be closed by the Municipality to ensure that vehicle movement is restricted.”

Comments from Property Administration: The path is not being used by and it is not possible to be used by vehicles. It is a footpath capable of foot traffic only.

Following the above comment, an updated comment was also received in 2022 as follows:

“My apologies, I have spoken to the people, and it seems that this request has a history. The property owners along that stretch of land does have major security problems in as far as that the present boundary is close to their homes and they are regularly targets in situations of unrest. The extra land will enable them to secure the erven with a fence and plant material so that there is more land between the present erf boundaries and their dwellings. The safety of their children in these times also is a concern. Should the properties acquire the application area, it may not be built on and only be used for gardening purposes. People will still be able to use a pedestrian pathway a bit further from the applicant’s erf boundaries, thus still accessible for pedestrians to enable free movement.

The planning procedure will require a subdivision, consolidation and rezoning in terms of the Overstrand land Use Scheme.”

Environmental Officer - Ms T Zweig

The initial comment in 2020 comment was:

“The Overstrand Municipality Environmental Management Services have no objection to the sale of a portion of Erf 5462 provided no encroachment onto the Public Open Space and Open Space 1 Nature Reserve north of the sale area occurs as a result.”

For the new application the above is included and the following was added:

“The portion proposed for sale is within the Urban Conservation EMOZ: Category D. Private Property. The EMS therefore requests that should the application for purchase be approved, the EMOZ Regulations, including the Schedules attached to these regulations be adhered to by the buyers.””

The following Departments had no objections: Area Management, Operational Services, Electrical and Engineering.

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10. Annexures

Annexure A1 & A2: Locality Maps
Annexure B: Land Availability Report Extract

RECOMMENDATION TO THE COUNCIL:

that the direct alienation of various portions of Erf 5462 Kleinmond, adjacent to Erf 6796 Kleinmond up to and including Erf 6809 Kleinmond, to the relevant adjacent owners, **not be approved** as the property is being pursued for the provision of housing opportunities in the Kleinmond area.

RESPONSIBLE OFFICIAL:	R MARINUS
TARGET DATE FOR IMPLEMENTATION:	12 JULY 2023
TARGET DATE TO INFORM APPLICANT:	7 JULY 2023
TARGET DATE TO INFORM OBJECTOR:	N/A

ANNEXURE A1 – LOCALITY MAP 1



ANNEXURE A2 – LOCALITY MAP 2



ANNEXURE B - EXTRACT OF THE LAND AVAILABILITY REPORT

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6.2 Site 2: Portion of Erf 5462

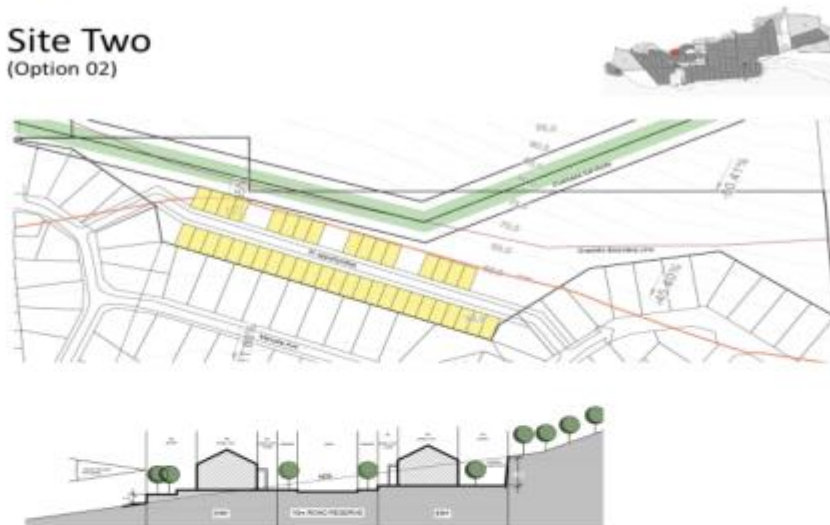
Site 2 is located in the undeveloped but partially occupied land directly north of Proteadorp and below the escarpment. It has limited development opportunities. Two options were developed as indicated below:

Site Two (Option 01)



Option 1 provides for the back to back development with the last row of erven in Proteadorp as indicated above. A new access road will be required. This option accommodates approximately 25 development opportunities.

Site Two (Option 02)



Option 2 provides for the development as in Option 1, but additional limited development in the steep section of the site as indicated below. A retaining wall will be required at the back of the additional erven. This option accommodates approximately 41 development opportunities.