

**AGENDA of the
Portfolio Committee: Planning & Development
7 August 2024
(Also the agenda for the Mayoral Committee Meeting: 14 August 2024)**

8.

**A PORTION OF REMAINDER OF FARM NR 562 SITUATED OUTSIDE KLEINMOND:
SERVITUDE RIGHT OF WAY IN FAVOUR OF THE OWNER OF PORTION 126 OF
FARM NR 559 SITUATED OUTSIDE KLEINMOND**

**A Le Roux
5 July 2024**

Divisional Manager: Property Management

(028) 316 - 5623

1. Executive Summary

To obtain approval for a servitude right of way over municipal property, being a portion of Remainder Farm Nr 562 situated outside Kleinmond (hereinafter referred to as “the Property”) in favour of the owner of Portion 126 of Farm Nr 559 situated outside Kleinmond being Mr GF Fourie. The locality maps are attached hereto as “Annexure A1 & A2”.

2. Service Delivery and Budget Implementation Plan - IGNITE

Planning and Development
Property Management

3. Compliance with Strategic Priorities

Provision of democratic, accountable and ethical governance

4. Delegated Authority

None

5. Legal Requirements

- Municipal Asset Transfer Regulations (R. 878 of 2008)
- Administration of Immovable Property Policy of the Overstrand Municipality (2015)

6. Background/Discussion/Evaluation/Conclusion

Background/Discussion

Mr GF Fourie, hereinafter referred to as “the Applicant”, is the owner of Portion 126 of Farm Nr 559 outside Kleinmond, situated off the R44 close to the Sewerage Works.

The Applicant intends to build a house on the old quarry on his property as it will have the least impact on the environment and further as it will not be as

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visible from the R44. The Applicant applied for a servitude right of way over the Property (a portion of Remainder Farm Nr 562) for the purpose of vehicular access to his property as it was indicated that access to the Applicant's property from the R44 would not be approved by the relevant Western Cape Provincial Department.

The Applicant appointed Nick Helme Botanical Surveys to look at the various options and positions to build his house that will have the least impact on the environment, and it was proposed that the house be built on the quarry. The various routes were further investigated, and the one applied for also has the least environmental impact as it was indicated that there are wetlands situated on the Property.

A request was sent to determine whether the following route can be considered as it seems to have less of an impact on the Property:



The following response was received:

“Apart from Nick's concerns, our intention for the property is to do as little damage as possible to the fynbos. This is why we are choosing to build in a quarry and our plan is to have a house that is as inconspicuous as possible to passers by.

Your proposal requires a road of 430m on your land across areas of wetland and then a further 500m across portion 126 to get to the quarry.

Nick's proposal of an access to the quarry would cause around 700m less road damage to the environment.

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If your proposed access was approved, it would probably not be feasible to build in the quarry and a new house site closer to the R44 (on previously undisturbed land) would most likely be chosen. This would not only have more of a negative impact on the environment but also be less aesthetic to people driving on the R44.

An example of this is the very visible house and roads on portion 123 compared to the new inconspicuous house recently built on the neighbouring property to its west.

Both Nick and I were also wondering why a jeep track of 220m would cause sterilisation of your land. If the municipality ever wanted to use this land they would have to put in some form of road infrastructure and from an ecological point, the route Nick proposes across your land is probably the most practical.”

Evaluation

A. Administration of Immoveable Property Policy of the Overstrand Municipality

The following conditions of said policy apply:

Paragraph 54: “A servitude can be defined as a right which one person has over the immovable asset of another and includes instances in which the Municipality grants a party a right over a municipal owned immovable property. Servitudes result in a burden on the immovable property for extensive periods of time, sometimes permanently. It is for this reason that servitudes should only be granted after careful assessment of the impact of the proposed servitude on the immovable asset”.

This application is for a right of way servitude across municipal property.

Paragraph 55: “If the proposed servitude will result in the immovable property, in discretion of the municipality, being negatively affected, including the impairment of the ability to productively enjoy, utilise, permanently dispose or otherwise deal with the immovable asset, then such servitude might not be granted”.

The comments do not indicate that the Property will be negatively affected by the proposed servitude. The route was determined to have the least possible effect on the municipal property and the environment.

Paragraph 56: “Subject to paragraph 55 above, servitudes may be granted to any person (private or state organ) subject to payment of

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an appropriate market related compensation by such person provided that in certain circumstances, e.g. where another organ of state requires a servitude for the benefit of the general public or in cases of so called "land locked" property, and subject to the necessary authority having been obtained, the payment to the granting of the servitude, may be waived."

HCB Property Valuations determined the market value for the servitude at an amount of R30.00/m² (THIRTY RAND PER SQUARE METRE) (VAT excluded). Should the servitude be 660m² (SIX HUNDRED AND SIXTY SQUARE METRES) as proposed, the amount payable to the Municipality will be R19,800.00 (NINETEEN THOUSAND EIGHT HUNDRED RAND) (VAT excluded).

Paragraph 57: "The party requiring the servitude on municipal immovable property is responsible for all costs relating to the granting and registration of the servitude".

The Applicant will be responsible for all costs. Currently, no application fee has been approved in the budget for the type of application. The Applicant paid for the valuation and will indeed have to pay for the servitude registration costs.

For the registration of the servitude, a servitude diagram must be prepared and approved by the Surveyor-General for inclusion in the servitude agreement. The latter must be registered against the Title Deed of the municipal property. This will be at the cost of the Applicant.

Conclusion

With reference to the above discussion, it is recommended that a servitude right of way over the Property in favour of the Applicant be approved at a market related price for the servitude.

7. Financial Implications

The Municipality stands to gain an amount of R30.00/m² (THIRTY RAND PER SQUARE METRE) (VAT excluded) for the right of way servitude.

8. Staff Implications

None

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9. Comments from other Departments, Divisions and Administrations

Senior Town Planner, Hermanus – Ms H van der Stoep

“No objection to the newly proposed route as per Botanical survey.”

Principal Technologist: Development Control- Mr R Andrew

“The Engineering Services Department has no comment.”

Divisional Manager: Expenditure, Fleet and Asset Management - Mr J Vorster

“As this is a revenue generating proposal with no intention to dispose of the asset, there is no objection”.

10. Annexures

Annexure A1 & A2: Locality maps

RECOMMENDATION TO THE COUNCIL:

that a servitude right of way over Municipal property, being a portion of Remainder Farm Nr 562, situated outside Kleinmond in favour of the owners of portion 126 of Farm Nr 559, situated outside Kleinmond on the R44 provincial road, at a market related price of R30.00/m² (THIRTY RAND PER SQUARE METRE), **be approved.**

RESPONSIBLE OFFICIAL :	M ERASMUS
TARGET DATE FOR IMPLEMENTATION :	17 SEPTEMBER 2024
TARGET DATE TO INFORM APPLICANT :	17 SEPTEMBER 2024
TARGET DATE TO INFORM OBJECTOR :	N/A

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**A Le Roux
5 July 2024**

Divisional Manager: Property Management

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**THIS MATTER SERVED BEFORE THE PLANNING & DEVELOPMENT PORTFOLIO
COMMITTEE ON 7 AUGUST 2024, WHICH COMMITTEE RECOMMENDED AS
FOLLOWS:**

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