

**AGENDA of the
Portfolio Committee : Investment & Infrastructure
2 February 2022
(Also the agenda for the Mayoral Committee Meeting : 21 February 2022)**

**3.
ENCROACHMENT ON A PORTION OF MUNICIPAL PROPERTY, A PORTION OF
ERF 1619 HERMANUS (ROAD RESERVE IN FRONT OF 29 CROSS STREET): DJ
TRUST**

7/2/5

A Le Roux

Manager: Property Administration

28 October 2021

(028) 316-3724

1. Executive Summary

To obtain approval to enter into an encroachment agreement with DJ Trust, hereinafter referred to as “the Applicant”, who applied to retain two encroachments on municipal property, being a portion of Erf 1619 Hermanus (combinedly ±40m² in extent), adjoining Erf 6879 Hermanus, situated at 29 Cross Street Hermanus, hereinafter referred to as “the Property”, for a period of 5 (FIVE) years for the purpose of a fenced grass area as well as an access gate and support columns.

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

Executive Mayor

5. Legal Requirements

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

6. Background/Discussion/Evaluation/Conclusion

Background

The Applicant is the new owner of Erf 6879 Hermanus situated at 29 Cross Street in Eastcliff.

**AGENDA of the
Portfolio Committee : Investment & Infrastructure
2 February 2022
(Also the agenda for the Mayoral Committee Meeting : 21 February 2022)**

According to the Applicant, when they purchased Erf 6879 Hermanus, the previous owners did not inform them of the two portions encroaching onto municipal property. Portion "A" is a grassed garden area of approximately 19m² in extent and portion "B" is an access gate and support columns of approximately 19.3m² in extent. A locality map is attached as "Annexure A".

Discussion

The Property on which the encroachments are situated on is a road reserve and the encroachments are existing encroachments which will not have any further effect on the municipal property as the Applicant will not be allowed to extend the encroachment areas.

Evaluation

A. Administration of Immovable Property Policy of the Overstrand Municipality

The following conditions of said policy apply:

Paragraph 4: "No application for the purchase, lease of or encroachment on immovable property (save for the instances mentioned in paragraphs 58 to 62 and 64.1 below) shall be processed unless the prescribed application fee as per tariff approved in the annual budget for that financial year has been paid, nor shall any proposed lease or encroachment (save for the instances mentioned in paragraphs 58 to 62 and 64.1 below) be advertised unless the applicant has confirmed, in writing, that he/she will bear all costs involved in such transaction including – but not limited to – legal, survey, re-zoning, sub-division, consolidations, advertisement, relocation or provision of services and, where applicable, a deposit as per prescribed rate to cover incidental costs has been paid."

The Applicant already paid the application fee.

Paragraph 63: "All costs pertaining to an encroachment shall be borne by the encroacher, 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. Where necessary, a deposit to cover the costs may be required."

In this regard, the only other costs involved is for the advertisement, which the Applicant has already paid.

**AGENDA of the
Portfolio Committee : Investment & Infrastructure
2 February 2022
(Also the agenda for the Mayoral Committee Meeting : 21 February 2022)**

Paragraph 64: “The Municipality may, subject to such conditions as it may deem fit” –

Paragraph 64.4: “permit the enclosure or exclusive use of portions of the commonage, public open spaces, public thoroughfares or any municipal owned immovable property for gardening purposes, provided inter alia that:

- (a) written applications accompanied with proof of payment of the application fee shall be submitted to the Municipality;**
- (b) the delegated authority, through the Property Administration Department, shall:**
 - (i) obtain the comments of the relevant municipal directorate/departments;**
 - (ii) cause the said application to be advertised in terms of paragraph 10.1 of this policy;**
 - (iii) where objections against the said application are received, submit it to the applicant for his/her comment;**
 - (iv) submit the application and all relevant documents to the Executive Mayor for approval;**
 - (v) notify the applicant of the Executive Mayor’s decision and where applicable furnish him/her with a copy of any conditions imposed by the Council or its nominee; and**
 - (vi) issue a permit (to the successful applicant to give effect to the approval of the application;**
- (c) the planting of trees, shrubs and alien lawn or the erection of seating, statuary or other similar objects, are not permitted.**
- (d) a monthly encroachment fee, determined by council, be levied on successful applicants municipal account for the right obtained to encroach.**

The formal written application was received, and the application fee paid.

The internal comments were requested from the relevant municipal departments and no objections to the encroachment were received.

The advertisement for the encroachment on the Property was placed in The Village News of 15 October 2021 for a 30 (THIRTY) day objection/comment period and the Applicant paid the advertisement cost. No objections or comments were received.

The conditions as per (c) and (d) above will be included in the encroachment agreement.

The approved tariffs for 2021/2022 for the enclosure or exclusive use of portions of the Commonage, Public Open Spaces etc. is R14.40/m² (FOURTEEN RAND AND FORTY CENTS PER SQUARE METRE) (VAT

**AGENDA of the
Portfolio Committee : Investment & Infrastructure
2 February 2022
(Also the agenda for the Mayoral Committee Meeting : 21 February 2022)**

excluded) per month which will amount to a total monthly fee of R576.00 (FIVE HUNDRED AND SEVENTY-SIX RAND) (VAT excluded) per month.

B. Advertisement/Notification

An advertisement for the encroachments on the Property was published in The Village News of 15 October 2021 for a 30 (THIRTY) day objection/comment period. No objections/comments were received.

Conclusion

With reference to the above, it is recommended that the two encroachments of the Applicant be approved for a period of 5 (FIVE) years at an encroachment fee of R576.00 (FIVE HUNDRED AND SEVENTY-SIX RAND) (VAT excluded) per month, which is the amount approved in the budget for the 2020/2021 financial year.

7. Financial Implications

The Municipality stands to gain an amount of R576.00 (FIVE HUNDRED AND SEVENTY-SIX RAND) (VAT excluded) per month for the 2020/2021 financial year where after the encroachment fee will escalate every year on the 1st of July in accordance with the tariffs stipulated in the Annual Budget as approved by Council, the next escalation to be on 1 July 2022. All expenses pertaining to the proposed encroachment will be borne by the Applicant.

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

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

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

10. Annexures

Annexure A: Locality Plan

**AGENDA of the
Portfolio Committee : Investment & Infrastructure
2 February 2022
(Also the agenda for the Mayoral Committee Meeting : 21 February 2022)**

RECOMMENDATION:

1. that the two encroachments on municipal property, being portions of Erf 1619 Hermanus (combinedly $\pm 40\text{m}^2$ in extent), adjacent to Erf 6879 Hermanus, to DJ Trust at an amount of R576.00 (FIVE HUNDRED AND SEVENTY-SIX RAND) (VAT excluded) per month for a period of 5 (FIVE) years in terms of the Administration of Immovable Property Policy of the Overstrand Municipality, **be approved**; and
2. that the prescribed tariff mentioned in 1 above escalate every year on the 1st of July in accordance with the tariffs stipulated in the Annual Budget as approved by Council, the next escalation to be on 1 July 2022.

RESPONSIBLE OFFICIAL :	M ERASMUS
TARGET DATE FOR IMPLEMENTATION :	30 MARCH 2022
TARGET DATE TO INFORM APPLICANT :	15 MARCH 2022
TARGET DATE TO INFORM OBJECTOR :	N/A

**AGENDA of the
Portfolio Committee : Investment & Infrastructure
2 February 2022
(Also the agenda for the Mayoral Committee Meeting : 21 February 2022)**

**3.
ENCROACHMENT ON A PORTION OF MUNICIPAL PROPERTY, A PORTION OF
ERF 1619 HERMANUS (ROAD RESERVE IN FRONT OF 29 CROSS STREET): DJ
TRUST**

7/2/5

A Le Roux

Manager: Property Administration

28 October 2021

(028) 316-3724

**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON
2 FEBRUARY 2022, WHICH COMMITTEE SUPPORTED THE RECOMMENDATION**

RESPONSIBLE OFFICIAL :

M ERASMUS

TARGET DATE FOR IMPLEMENTATION :

30 MARCH 2022

TARGET DATE TO INFORM APPLICANT :

15 MARCH 2022

TARGET DATE TO INFORM OBJECTOR :

N/A

