

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

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**8.  
ENCROACHMENT ON A PORTION OF MUNICIPAL PROPERTY, A PORTION OF  
ERF 389 HAWSTON, ADJACENT TO ERF 226 HAWSTON, SITUATED AT 226  
MARINE DRIVE, HAWSTON: DC HARTFORD**

**7/2/5**

**A Le Roux**

**Manager: Property Administration**

**14 December 2021**

**(028) 316-3724**

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**1. Executive Summary**

To obtain approval to enter into an encroachment agreement with DC Hartford, hereinafter referred to as “the Applicant”, who applied to retain an encroachment on municipal property being a portion of Erf 389 Hawston ( $\pm 217\text{m}^2$  in extent), adjoining Erf 226 Hawston, situated at 226 Marine Drive, Hawston, hereinafter referred to as “the Property”, for a period of 5 (FIVE) years for gardening purposes. 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  
The encouragement of structured community participation in the matters of the municipality  
Promotion of tourism, economic and social development

**4. Delegated Authority**

Executive Mayor

**5. Legal Requirements**

- Administration of Immovable Property Policy of the Overstrand Municipality, as amended

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## **6. Background/Discussion/Evaluation/Conclusion**

### **Background**

The Applicant is the owner of Erf 226 Hawston, situated at 226 Marine Drive, Hawston, and an encroachment agreement was entered into in 2009 with the Applicant for the encroachment on the Property for gardening purposes. The agreement has since expired and an application was received from the Applicant for a new agreement to retain the encroachment of the existing garden situated on a portion of the public open space  $\pm 7$  metre in width along the length of the boundary of Erf 226 Hawston bordering Erf 389 Hawston with a total size of  $\pm 217\text{m}^2$  in extent.

### **Discussion**

The encroachment is an existing garden adjoining Erf 226 Hawston which contributes to the beautification of the specific area.

The Property on which the encroachment is situated on is zoned Open Space Zone 2: Public Open Space and this portion is only used by pedestrians. The encroachment does not hamper the free movement of pedestrians in the area and is an existing encroachment which will not have a further effect on the Property as the Applicant will not be allowed to extend the encroachment area.

According to the approved tariffs for 2021/2022, the prescribed tariff for the use of municipal land for encroachment onto commonage, public open spaces or conservation areas is R499.50 (FOUR HUNDRED AND NINETY NINE RAND AND FIFTY CENTS) (VAT excluded) per annum.

### **Evaluation**

#### **A. Administration of Immovable Property Policy of the Overstrand Municipality**

The following conditions of said policy apply:

**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.”**

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The Applicant will pay all costs relating to the encroachment agreement which in this case so far is only the application fee and the advertisement costs.

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

**Paragraph 64.3: “permit encroachments onto commonage, public open spaces or conservation areas provided inter alia that:**

- (a) written application 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 directorates/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 Executive Mayor;**
  - (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) no such encroachment shall be partially or wholly enclosed or fenced by any means whatsoever, permanently or otherwise, for the exclusive use of the adjacent property owner; and**
- (e) an annual 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.

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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 published in The Village News on 15 October 2021 for a 30 (THIRTY) day objection/comment period and the Applicant paid the advertisement cost. No objections were received.

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

According to the approved tariffs for 2021/2022, the prescribed tariff for the use of Municipal land for encroachment onto commonage, public open spaces or conservation areas is R499.50 (FOUR HUNDRED AND NINETY NINE RAND AND FIFTY CENTS) (VAT excluded) per annum.

**B. Advertisement/Notification**

An advertisement for the encroachment on a portion of Erf 389 Hawston was published in The Village News on 15 October 2021 for a 30 (THIRTY) day objection/comment period. No objections/comments were received.

**Conclusion**

Considering the above discussion, it is recommended that the encroachment to the Applicant on the Property be approved for a period of 5 (FIVE) years at a rental amount of R499.50 (FOUR HUNDRED AND NINETY NINE RAND AND FIFTY CENTS) (VAT excluded) per annum, which is the amount approved in the budget for the 2021/2022 financial year.

**7. Financial Implications**

The Municipality stands to gain an amount of R499.50 (FOUR HUNDRED AND NINETY NINE RAND AND FIFTY CENTS) (VAT excluded) per annum the 2021/2022 financial year where after the encroachment fee will escalate every year on the 1<sup>st</sup> 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 Mr DC Hartford.

**8. Staff Implications**

None

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**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.”*

**Town Planner: Mr H Olivier– (028) 313 8900**

*“Erf 389 is zoned Open Space Zone 2: Public Open Space.*

*It appears that the property owner has sufficient space on his property for parking, it is therefore not clear why such a large portion of land should be leased out. There is also Municipal Services on this portion, which should not be included in such a lease portion.*

*The leasing of a smaller long strip of land for gardening purposes only, to ensure the existing garden can be maintained, can be supported.”*

Property Administration comments: The existing garden encroachment on the Property is ±217m<sup>2</sup> in extent which is the size the previous agreement was approved for. The main purpose of the agreement is for the beautification of the area by means of a garden.

**Senior Manager: Operational Services, Mr T Marx – (028) 313 8092**

*“The Department Operational Services Hermanus do not have any objection to this application. I can confirm that there are no municipal services on the portion of Erf 389 where the owner of Erf 266 is encroaching.”*

**Principle Technician: Building Control: Mr L Coetzee – (028) 313 8091**

*“Building Control has no objection.”*

**Senior Superintendent: Operations: Traffic Services: Mr P De Gruchy – (028) 313 8000**

*“There are no objections towards this proposal due to the fact that there are no obstructions for road traffic or pedestrians. Furthermore, there was a previous agreement that was granted towards the applicant.”*

A standard condition in the encroachment agreement of these types of encroachments is that the encroachment area may not partially or wholly be enclosed or fenced by any means whatsoever, permanently or otherwise, for

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the exclusive use of the adjacent property owner. This condition will be included in the agreement with the Applicant.

**10. Annexures**

Annexure A: Locality Plan

Annexure B: Photograph of Encroachment area

**RECOMMENDATION:**

1. that the encroachment on municipal property being a portion of Erf 389 Hawston ( $\pm 217\text{m}^2$  in extent), adjacent to Erf 226 Hawston, to DC Hartford at an amount of R499.50 (FOUR HUNDRED AND NINETY NINE RAND AND FIFTY CENTS) (VAT excluded) per annum 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 encroachment fee 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.

<b>RESPONSIBLE OFFICIAL :</b>	<b>W MURTZ</b>
<b>TARGET DATE FOR IMPLEMENTATION :</b>	<b>25 MARCH 2022</b>
<b>TARGET DATE TO INFORM APPLICANT :</b>	<b>11 MARCH 2022</b>
<b>TARGET DATE TO INFORM OBJECTOR :</b>	<b>N/A</b>

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**A Le Roux**

**Manager: Property Administration**

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

**RESPONSIBLE OFFICIAL :**

**W MURTZ**

**TARGET DATE FOR IMPLEMENTATION :**

**25 MARCH 2022**

**TARGET DATE TO INFORM APPLICANT :**

**11 MARCH 2022**

**TARGET DATE TO INFORM OBJECTOR :**

**N/A**

