

**AGENDA of the
Portfolio Committee : Investment & Infrastructure
2 June 2022
(Also the agenda for the Mayoral Committee Meeting : 27 June 2022)**

**2.
ENCROACHMENT ON MUNICIPAL PROPERTIES, PORTIONS OF ERVEN 912, 915
AND 1884 VERMONT (PUBLIC OPEN SPACES): HW HEARD & KL O'REILLY**

7/2/5

**A Le Roux
3 May 2022**

Manager: Property Administration

(028) 316-3724

1. Executive Summary

To obtain approval to enter into an encroachment agreement with HW Heard & KL O'Reilly, hereinafter referred to as "the Applicants", who applied to encroach on municipal properties, being portions of Erven 912, 915 and 1884 Vermont (jointly ±111m² in extent), adjoining Erf 1755 Vermont, situated at 12 Sepia Avenue, Vermont, (see locality map attached marked Annexure "A") hereinafter referred to as "the Property", for a period of 5 (FIVE) years for the purpose of the enclosure of the Property for gardening purposes.

2. Service Delivery and Budget Implementation Plan - IGNITE

Infrastructure and Planning
Property Administration

3. Compliance with Strategic Priority/ies

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/Discussion

The Applicants are the owners of Erf 1755 Vermont situated at 12 Sepia Avenue, Vermont.

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The Applicants erected a boundary fence on the Property in terms of a lease agreement which were issued to them years ago in 2002. This said lease agreement, in terms of which they paid rental in the amount of R100.00 per year, expired with no request from the Applicants to renew same. As the lease agreement expired a new application had to be submitted by the Applicants to continue with the use of the Property. The use of the Property will now dealt with as an encroachment in terms of Paragraph 64.4 of the Administration of Immovable Property Policy. The rental is still being levied, pending the outcome of the application for the enclosed encroachment.

The Applicants have kept the Property neat and no complaints regarding the use of the Property by the Applicants have been received from the public.

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.

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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 published in The Village News of 7 April 2022 for a 30 (THIRTY) day objection/comment period and the Applicant paid the advertisement cost. No objections 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

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excluded) per month which will amount to a total monthly encroachment fee of R1,598.40 (ONE THOUSAND FIVE HUNDRED AND NINETY-EIGHT RAND AND FORTY CENTS) (VAT excluded) per month.

B. Advertisement/Notification

An advertisement for the encroachment was published in The Village News of 7 April 2022 for a 30 (THIRTY) day objection/comment period. No objections/comments were received.

Conclusion

Considering the above it is recommended that the encroachment of the Applicants by means of an enclosed garden be approved for a period of 5 (FIVE) years at a rental amount of R1,598.40 (ONE THOUSAND FIVE HUNDRED AND NINETY-EIGHT RAND AND FORTY CENTS) per month, 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 R1,598.40 (ONE THOUSAND FIVE HUNDRED AND NINETY-EIGHT RAND AND FORTY CENTS) per month for the 2021/2022 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 A1&2

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RECOMMENDATION:

1. that the encroachment on municipal property, being portions of Erven 912, 915 and 1884 Vermont ($\pm 111\text{m}^2$ in extent), adjacent to Erf 1755 Vermont, by HW Heard & KL O'Reilly at a rental amount of R1,598.40 (ONE THOUSAND FIVE HUNDRED AND NINETY-EIGHT RAND AND FORTY CENTS) per month for a period of 5 (FIVE) years for the purpose of erecting a fence 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 JULY 2021
TARGET DATE TO INFORM APPLICANT :	20 JULY 2021
TARGET DATE TO INFORM OBJECTOR :	N/A

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**A Le Roux
3 May 2022**

Manager: Property Administration

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

RESPONSIBLE OFFICIAL :	M ERASMUS
TARGET DATE FOR IMPLEMENTATION :	30 JULY 2021
TARGET DATE TO INFORM APPLICANT :	20 JULY 2021
TARGET DATE TO INFORM OBJECTOR :	N/A

ANNEXURE A1



