

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

**11.
APPLICATION TO ENCROACH: A PORTION OF ERF 915 VERMONT (PUBLIC
OPEN SPACE) ADJACENT TO ERF 607 VERMONT (19 MALMOK CRESCENT,
VERMONT) – MC LOXTON**

7/2/3/2

A Le Roux

Manager: Property Administration

13 May 2022

(028) 316 - 5623

1. Executive Summary

To consider the application received from Ms MC Loxton (the owner of Erf 607 Vermont) to retain an encroachment of $\pm 200\text{m}^2$ in extent on a portion of Erf 915 Vermont (Public Open Space) adjacent to Erf 607 Vermont, situated at 19 Malmok Crescent, Vermont for gardening purposes and a wooden tool-shed structure. See the locality plans attached hereto marked "Annexures A1&2".

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
Promotion of tourism, economic and social development

4. Delegated Authority

Executive Mayor

5. Legal Requirements

- Local Government: Municipal Financial Management Act (Act 56 of 2003) ("MFMA")
- Municipal Asset Transfer Regulations (R. 878 of 2008) ("MATR")
- Administration of Immovable Property Policy of the Overstrand Municipality, as amended

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6. Background/Discussion/Evaluation/Conclusion

Background/Discussion

Ms MC Loxton, hereafter referred to as “the Applicant”, applied to retain an encroachment on a portion of Erf 915 Vermont ($\pm 200\text{m}^2$ in extent), hereafter referred to as “the Property”, for gardening purposes and a wooden tool-shed structure.

The Applicant had an encroachment agreement with the municipality for the purpose of a garden, which expired on 31 October 2017. There is currently no formal agreement in place, however correspondence between the Municipality and the Applicant relating to the encroachment date back to 2003. The annual encroachment levy was debited on the Applicant’s municipal account until 2017.

The Property Administration Department also conducted a site visit and found that the encroachment of the Applicant’s garden and a portion of the tool-shed is still on the Property. See the site visit photographs attached hereto marked as “Annexure B”.

The Applicant wishes to retain the current encroachment and applied for a new agreement. The Applicant is also willing to remove the tool-shed from the Property should the Municipality not approve the current location of the tool shed.

Evaluation

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

The following conditions of the said Policy will 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, consolidation, advertisement, relocation or provision of services and, where applicable, a deposit as per prescribed rate to cover incidental costs has been paid.”

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Should the encroachment be approved, the Applicant will have to complete the formal application form and make payment of the application fee.

The request will be not to approve the encroachment on the Property.

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.”

Should the encroachment be approved, the Applicant will pay all costs relating to the encroachment agreement which in this case so far is only the advertisement costs.

The request will be not to approve the encroachment on the Property.

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;**

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- (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 submitted. The required application fee is not paid yet pending the outcome of the application.

The comments received from the relevant internal departments indicated that the Property must remain municipal property as the Property falls within the Vermont greenbelts and these greenbelts are the last pockets left of the specific vegetation type found on the greenbelts and the continued encroachments threaten the biodiversity of the area.

The advertisement for the encroachment on the Property will not be published in the local newspaper as the encroachment on the Property is not supported.

The request will be not to approve the encroachment on the Property.

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 excluded) per month which will amount to a total monthly fee of R2,880.00 (TWO THOUSAND EIGHT HUNDRED AND EIGHTY-EIGHT RAND) (VAT excluded) per month, should the application be approved.

Conclusion

Taking the comments of the internal departments, as well as the above discussion, into consideration, it is recommended that the encroachment on the Property not be approved.

7. Financial Implications

None

8. Staff Implications

None

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9. Comments from other Departments, Divisions and Administrations

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

“The area is zoned Public Open Space. From aerial photos it appears that there are various properties next to Erf 915 which encroach onto the Public Open Space. It is not clear if they all have or had encroachment approvals. It is important that this be established and also what the Environmental Branche’s opinion is on the matter.

If other properties have done the same without approval and we approve this encroachment again, it will create a precedent and other property owners will apply for the same. This could have a detrimental impact on this green space.”

In light of the above comment received from the Town Planner, it must be noted that the previous property owner of the adjoining Erf 1485 Vermont did have an encroachment agreement for the purpose of a garden on the Property. The current owner of Erf 1485 Vermont does not have an encroachment agreement and the investigation into this encroachment has been commenced with.

Manager: Biodiversity Conservation: Hermanus: Mr T Dry (028) 316 5610

“Unfortunately, the application is not supported. We are in the process of discussing and rectifying as many of these encroachments as possible. I am aware of additional encroachments that do not protrude into the natural vegetation and we will look at these in a different light as they pose low to no risk to the natural area.

The Vermont greenbelts are the last pockets left of this vegetation type and is under increasing pressure by development, illegal dumping, “garden escapees” (plants from gardens), alien vegetation and encroachments. These areas are very sensitive and continued encroachments threaten the biodiversity of the area.

To the west of the greenbelts, there is a drainage ditch that serve as barriers for further encroachments of the greenbelt and as such there is not many concerns for applications from this side. However, the eastern side of the greenbelt, where the application is for, there is no such barrier and people are encroaching more and more in this area with illegal paths and gardening. These areas will have to be rehabilitated to their natural state and as such we cannot support any further applications.”

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10. Annexures

Annexures A1 & 2: Locality Maps
Annexure B: Property Administration: Site Visit Photographs

RECOMMENDATION:

1. that the application for an encroachment on a portion of Erf 915 Vermont ($\pm 200\text{m}^2$ in extent) by the owner of the adjoining Erf 607 Vermont, Ms MC Loxton, not be approved as the encroachment area falls within the Vermont greenbelts area; and
2. that the portion of Erf 915 Vermont on which the encroachment is located on be rehabilitated to its natural state within a period of 6 (six) months from date of notification of the outcome of the application.

RESPONSIBLE OFFICIAL:	W MURTZ
TARGET DATE FOR IMPLEMENTATION:	14 AUGUST 2022
TARGET DATE TO INFORM APPLICANT:	27 AUGUST 2022
TARGET DATE TO INFORM OBJECTOR:	N/A

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

RESPONSIBLE OFFICIAL:

W MURTZ

TARGET DATE FOR IMPLEMENTATION:

14 AUGUST 2022

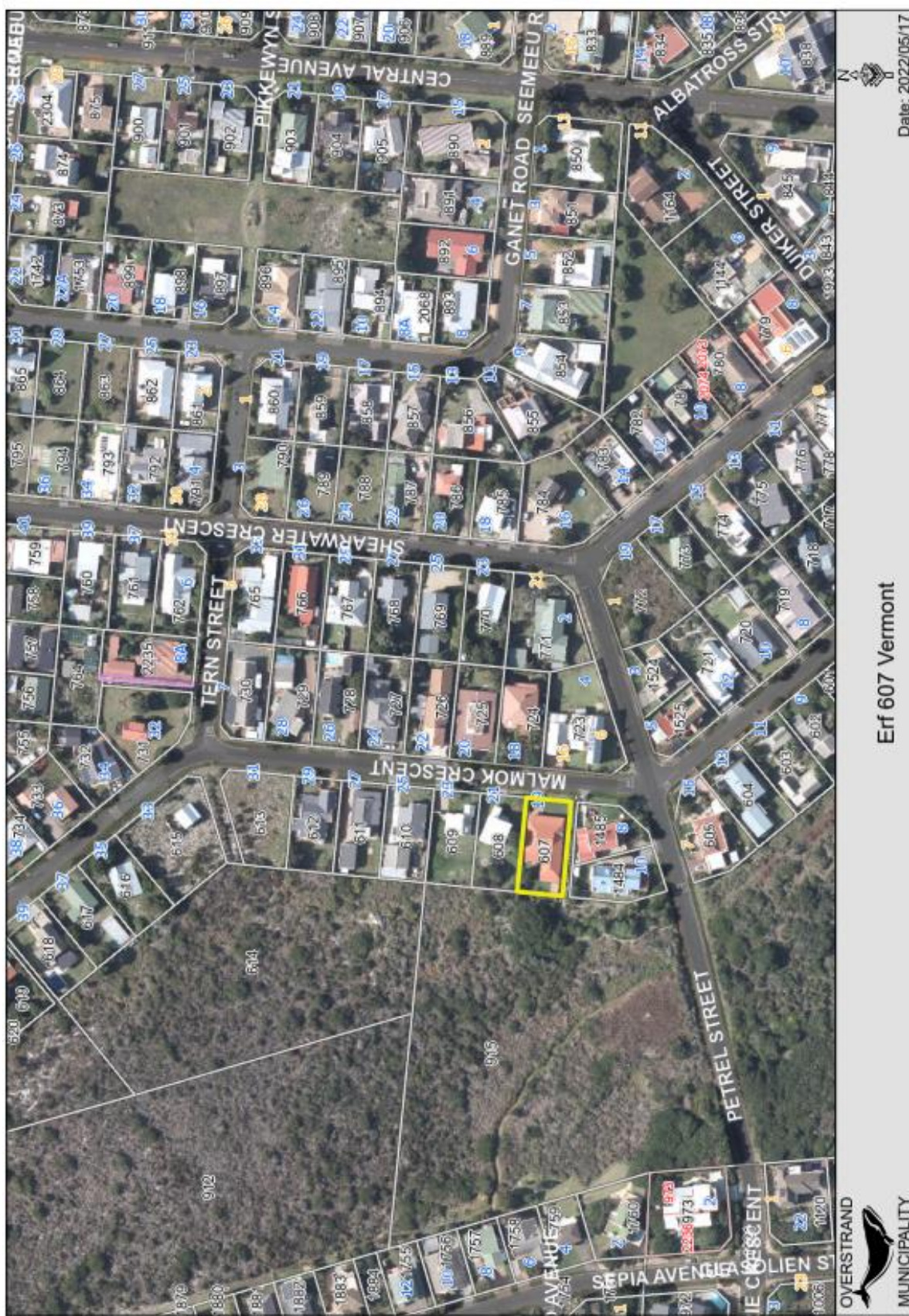
TARGET DATE TO INFORM APPLICANT:

27 AUGUST 2022

TARGET DATE TO INFORM OBJECTOR:

N/A





Erf 607 Vermont



ANNEXURE B

