

**PORTFOLIO COMMITTEE :
INFRASTRUCTURE & PLANNING**

**This item was considered
during the Portfolio Committee
meeting of 22 June 2021**

Refer to Page 113a

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
22 June 2021
(Also the agenda for the Mayoral Committee Meeting : 30 June 2021)**

**7.
ENCROACHMENT ON A PORTION OF MUNICIPAL PROPERTY, A PORTION OF
ERF 1199 ZWELIHLE (PUBLIC PLACE, BEACH CLUB): MR HRA LUBBE**

7/2/5

**A Le Roux
17 May 2021**

Manager: Property Administration

(028) 316-3724

1. Executive Summary

To obtain approval to enter into an encroachment agreement with Mr HRA Lubbe, hereinafter referred to as “the Applicant”, who applied to encroachment on municipal property being a portion of Erf 1199 Zwelihle ($\pm 38\text{m}^2$ in extent), adjoining Erf 1248 Zwelihle, situated in Beach Club, hereinafter referred to as “the Property”, for a period of 5 (FIVE) years for the purpose of building a retaining wall.

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 owner of Erf 1248 Zwelihle situated in Beach Club.

During the night of 13 July 2020 Hermanus had a storm with associated high swells and waves which caused severe damage to the Applicant’s house.

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The Applicant applied to erect a retaining wall of approximately 2,5 metre long in front of his property which will be 800mm high which will prevent further damage to his property especially with the winter months ahead. Kindly see locality plan attached as "Annexure A" and the proposed plan attached as "Annexure B".

Discussion

The portion of the Property on which the encroachment will be situated on is a public place situated directly below Beach Club with access from Beach Club. The encroachment will only be for a portion of the Property, approximately 38m² in extent, and will not prohibit anyone's access to Erf 1199 Zwelihle.

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 placed in The Village News of 12 May 2021 for a 30 (THIRTY) day objection/comment period and the Applicant paid the advertisement cost. The closure date for comments is 11 June 2021 and it is proposed that the approval be subject thereto that no objections are received. Should valid objections be received during the public participation process the matter will be referred back to the Executive Mayor.

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

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The approved tariffs for 2020/2021 for the enclosure or exclusive use of portions of the Commonage, Public Open Spaces etc. is R13.91/m² (THIRTEEN RAND AND NINETY ONE CENTS PER SQUARE METRE) (VAT excluded) per month which will amount to a total monthly rental of R528.58 (FIVE HUNDRED AND TWENTY EIGHT RAND AND FIFTY EIGHT CENTS) (VAT excluded) per month.

B. Advertisement/Notification

An advertisement for the encroachment on a portion of Erf 1199 Zwelihle was placed in The Village News of 12 May 2021 for a 30 (THIRTY) day objection/comment period. No objections/comments were received yet.

Conclusion

With reference to the above discussion it is recommended that the encroachment to the Applicant be approved for a period of 5 (FIVE) years at a rental amount of R528.58 (FIVE HUNDRED AND TWENTY EIGHT RAND AND FIFTY EIGHT CENTS) (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 R528.58 (FIVE HUNDRED AND TWENTY EIGHT RAND AND FIFTY EIGHT CENTS) (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 2021. 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
Annexure B: Plan for Encroachment area

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Portfolio Committee : Infrastructure & Planning
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(Also the agenda for the Mayoral Committee Meeting : 30 June 2021)**

RECOMMENDATION:

1. that the encroachment on municipal property, being a portion of Erf 1199 Zwelihle ($\pm 38\text{m}^2$ in extent), adjacent to Erf 1248 Zwelihle, to Mr Henry Richard Adriaan Lubbe at an amount of R528.58 (FIVE HUNDRED AND TWENTY EIGHT RAND AND FIFTY EIGHT CENTS) (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**;
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 2021; and
3. that the approval in 1 above be subject thereto that, should any objections be received against the proposed encroachment, the matter be referred back to the Executive Mayor for consideration.

RESPONSIBLE OFFICIAL :	M ERASMUS
TARGET DATE FOR IMPLEMENTATION :	30 JULY 2021
TARGET DATE TO INFORM APPLICANT :	15 JULY 2021
TARGET DATE TO INFORM OBJECTOR :	N/A

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7/2/5

**A Le Roux
17 May 2021**

Manager: Property Administration

(028) 316-3724

**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON
22 JUNE 2021, WHICH COMMITTEE SUPPORTED THE RECOMMENDATION**

RESPONSIBLE OFFICIAL :

M ERASMUS

TARGET DATE FOR IMPLEMENTATION :

27 SEPTEMBER 2021

TARGET DATE TO INFORM APPLICANT :

11 SEPTEMBER 2021

TARGET DATE TO INFORM OBJECTOR :

N/A

ANNEXURE B

SOUTH ELEVATION
SCALE 1:100

SOUTH ELEVATION (BOUNDARY WALL)
SCALE 1:100

TYPICAL SECTION
SCALE 1:20

SITE PLAN
SCALE 1:100

PLEASE NOTE
NEEM, LASSELIE, KENNIS

1. MUNICIPAL REQUIREMENTS AND THOSE OF OTHER AUTHORITIES REQUIRED FOR THIS PROJECT TO BE COMPLIED WITH.
2. ALL DIMENSIONS AND LEVELS TO BE SHOWN ON THIS DRAWING TO BE COMPLIED WITH.
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WYSIYGINGS/REVISIONS

NO.	DATE	REVISION	APPROVED

DEVELOPMENT DATA

design ESTABLISHMENT
www.designestablishment.co.za

UNIT 11, 143 MAIN ROAD
SOMERSET WEST
7130

PROJECT NO: D13655

HOUSE LUBBE

PROPOSED ADDITIONS AND ALTERATIONS ON ERF 11 BEACH CLUB HERMANUS

APPROVED BY CEMET / CONCRETE: [Signature]

ELEVATIONS

SCALE: 1:100

DATE: 10/09/2020

PROJECT NO: D13655

PROJECT NO: LUBBE-100-00