

**AGENDA of the
Portfolio Committee : Infrastructure & Planning
18 February 2020
(Also the agenda for the Mayoral Committee Meeting : 26 February 2020)**

**10.
ENCROACHMENT ON A PORTION OF MUNICIPAL PROPERTY, A PORTION OF
REMAINDER FARM 581 ONRUSTRIVIER: PN DE WAAL**

7/2/5

A le Roux

Manager: Property Administration

3 January 2020

(028) 316-3724

1. Executive Summary

To obtain approval to enter into an encroachment agreement with Mr Pieter Nicolaas De Waal who applied for an encroachment agreement on municipal property being a portion of the remainder of Farm 581 Onrustrivier ($\pm 167\text{m}^2$ in extent), adjoining Erf 2918 Onrustrivier, for a period of 5 (FIVE) years for gardening purposes.

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

6. Background/Discussion/Evaluation/Conclusion

Background

An encroachment agreement was entered into in 2007 with the owner, at that stage, of Erf 2918 Onrustrivier for gardening purposes. The agreement has since expired and an application was received from the Le Morné Family Trust, who was the owner of Erf 2918 Onrustrivier at that stage, for a further agreement. While still busy with the application process for the encroachment

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the property was sold again and Mr PN De Waal, the current owner of Erf 2918 Onrustrivier, confirmed that he wishes to continue with the application for the encroachment.

Discussion

The encroachment is an existing garden adjoining the eastern boundary of Erf 2918 Onrustrivier which contributes to the beautifying of the specific area.

The portion of the remainder of Erf 581 Onrustrivier on which the encroachment is situated is an extension of, and part of an undeveloped portion of Protea Street which is not used for vehicle access. The portion is only used by pedestrians to walk towards the ocean and Atlantic Street. The encroachment does not hamper the free movement of pedestrians in that area.

According to the approved tariffs for 2019/2020, the prescribed tariff for the use of municipal land for encroachment onto commonage, public open spaces or conservation areas is R531.00 (FIVE HUNDRED AND THIRTY ONE RAND) (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.”

The applicant will pay all costs relating to the encroachment agreement which in this case so far is only 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;**

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- (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 submitted and the application fee was 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 on 16 October 2019 for a 30 (THIRTY) day objection/comment period and Mr PN De Waal paid the advertisement cost. No objections were received.

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

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According to the approved tariffs for 2019/2020, the prescribed tariff for the use of Municipal land for encroachment onto commonage, public open spaces or conservation areas is R531.00 (FIVE HUNDRED AND THIRTY ONE RAND) (VAT excluded) per annum.

B. Advertisement/Notification

An advertisement for the encroachment on a portion of the remainder of Farm 581 Onrustrivier was placed in The Village News on 16 October 2019 for a 30 (THIRTY) day objection/comment period. No objections/comments were received.

Conclusion

With reference to the above discussion it is recommended that the encroachment agreement with Mr PN De Waal be approved for a period of 5 (FIVE) years at a rental amount of R531.00 (FIVE HUNDRED AND THIRTY ONE RAND) (VAT excluded) per annum, which is the amount approved in the budget for the 2019/2020 financial year.

7. Financial Implications

The Municipality stands to gain an amount of R531.00 (FIVE HUNDRED AND THIRTY ONE RAND) (VAT excluded) for the 2019/2020 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 2020. All expenses pertaining to the proposed encroachment will be borne by Mr PN De Waal.

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.”

Acting Senior Manager: Hermanus Administration: Mr A Wyngaard – (028) 313 8921

“I have no objection to this, provided that the encroachment conditions, that the area may not be fenced and that pedestrian flow may not be prevented,

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etc. remain standing. If valid complaints are received, we must be able to cancel the encroachment.”

A standard condition in the encroachment agreement of these types of encroachments is that the encroachment area may not partially or wholly enclosed or fenced by any means whatsoever, permanently or otherwise, for the exclusive use of the adjacent property owner. This condition will be included in the agreement with the Applicant.

Principle Technician: Building Control: Mr G Coetzee – (028) 313 8085

“I have no objection.”

Manager: Environmental Management Section: Ms P Aplon – (028) 313 3724

“No objection to proposed renewal. However, the area must be accessible to pedestrians who must use the area as a passageway. “

A standard condition in the encroachment agreement of these types of encroachments is that the encroachment area may not partially or wholly enclosed or fenced by any means whatsoever, permanently or otherwise, for the exclusive use of the adjacent property owner. This condition will be included in the agreement with the Applicant.

Acting Manager: Operational Services, Mr P Burger – (028) 313 8902

No objection.

10. Annexures

Annexure A: Locality Plan

Annexure B: Photograph of Encroachment area

RECOMMENDATION:

1. that the encroachment on municipal property being a portion of the remainder of Farm 581 Onrustrivier ($\pm 167\text{m}^2$ in extent), adjacent to Erf 2918 Onrustrivier, to Mr Pieter Nicolaas de Waal at an amount of R531.00 (FIVE HUNDRED AND THIRTY ONE RAND) (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 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 2020.

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RESPONSIBLE OFFICIAL :	W MURTZ
TARGET DATE FOR IMPLEMENTATION :	27 MARCH 2020
TARGET DATE TO INFORM APPLICANT :	13 MARCH 2020
TARGET DATE TO INFORM OBJECTOR :	N/A

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**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON
18 FEBRUARY 2020, WHICH COMMITTEE SUPPORTED THE RECOMMENDATION**

RESPONSIBLE OFFICIAL :

W MURTZ

TARGET DATE FOR IMPLEMENTATION :

27 MARCH 2020

TARGET DATE TO INFORM APPLICANT :

13 MARCH 2020

TARGET DATE TO INFORM OBJECTOR :

N/A



ANNEXURE B

