

**AGENDA of the  
Portfolio Committee : Investment & Infrastructure  
6 April 2022  
(Also the agenda for the Mayoral Committee Meeting : 25 April 2022)**

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**2.  
DEVIATION FROM PARAGRAPH 64.3 OF THE ADMINISTRATION OF  
IMMOVABLE PROPERTY POLICY (2015) AND APPROVAL THAT THE  
APPLICATION MAY BE DEALT WITH IN TERMS OF PARAGRAPH 64.1 OF SAID  
POLICY ALLOWING THE MUNICIPALITY TO PROVIDE A CONSENT LETTER FOR  
THE BEAUTIFICATION OF MUNICIPAL PROPERTY, A PORTION OF ERF 1289  
SANDBAAI (PUBLIC PLACE): MS KARELIEN KRIEL**

7/2/5

A Le Roux

Manager: Property Administration

9 March 2022

(028) 316-3724

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**1. Executive Summary**

To obtain approval for the deviation from paragraph 64.3 of the Administration of Immovable Property Policy (2015) and approval that the application may be dealt with in terms of paragraph 64.1 of said policy allowing the Municipality to provide Ms Kriel with a consent letter for the beautification of a portion of Erf 1289 Sandbaai.

**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**

None

**5. Legal Requirements**

- Administration of Immovable Property Policy of the Overstrand Municipality, as amended
- Municipal Asset Transfer Regulations (R. 878 of 2008)

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

### **Background/Discussion**

Ms Kriel resides on Erf 456, being 6 Kiewiet Crescent, Sandbaai. There is a public place across the street in the middle of the crescent. The locality map is attached as "Annexure A".

The bushes on the public place were very overgrown and homeless people illegally slept behind/under the bushes on the property. In the last couple of months there have been a few burglaries in the vicinity and even 2 at the applicant's house.

The bushes directly across the applicant's house was recently thinned out and the area was cleaned up by the Municipality. The applicant started a succulent garden on the portion across from her erf to beautify the area and it was later brought to her attention that she should first request permission from the Municipality.

The applicant confirmed that once the garden is established, she will take responsibility for the upkeep of the garden. As succulents were planted there will be no need for additional water connections to the area as they use very little water.

Enough space is left on the sidewalk for pedestrians.

A memorandum with request from the applicant was submitted to the Municipal Manager and Executive Mayor who both supported the application.

### **Evaluation**

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

The following conditions of said policy apply:

***"64. The Municipality may, subject to such conditions as it may deem fit***

***64.3 permit encroachments onto commonage, public open spaces or conservation areas 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:***

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- (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”*

As Erf 1289 Sandbaai is a public open space the above formal process needs to be followed.

The Municipality encourages the beautifying of communal areas and especially when it will be up kept by the community. In most circumstances the applications we receive for the beautification of municipal property, it is adjoining the applicant's property, being road reserves or public thoroughfares. In these circumstances the following paragraph of the Administration of Immovable Property Policy is applicable.

***“64. The Municipality may, subject to such conditions as it may deem fit***

***64.1 permit encroachments on road reserves and public thoroughfares in order to encourage adjoining owners to maintain the road reserves adjoining their properties provided inter alia that:***

- (a) the planting of trees, shrubs and alien lawn or the erection of seating, statuary or other similar objects*

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- within 1,5 metres measured from the tarred or gravel surface of the road, are not permitted;*
- (b) *the 1,5 meter area referred to in paragraph 64.1(a) may be planted with lawn of a type approved by the relevant directorate of the Municipality or paved at own costs to the satisfaction of the Municipality and subject to the owner of the adjoining property allowing at all times the free movement of pedestrians in those encroached areas;***
  - (c) *no such encroachment shall be partially or wholly enclosed or fenced by any means whatsoever, permanently or otherwise, for the exclusive use of the encroacher; and***
  - (d) *no encroachment fee shall be charged by the Municipality and no formal agreement need to be entered into in respect of the above encroachment; and***
  - (e) *the Municipality shall have the right of free access to the encroachment at all times for inspection, maintenance and repair of any services which may traverse the encroachment or to install such services in which case the Municipality shall not be liable for any damage to the encroachment which may arise from such inspection, maintenance, repair or installation.***

In these cases, the comments from the internal departments are requested and should no objection be received a consent letter is issued to the applicant with the necessary conditions. There is no formal agreement entered into and no encroachment fee payable.

Ms Kriel is applying to beautify the area which will still be open to the public as the portion will not be enclosed nor will it be for exclusive use but for the enjoyment of the community. Ms Kriel further confirmed that she will upkeep the garden at her own cost with no cost implication for the Municipality. The purpose and use of the property is therefore similar to other applications for beautification in terms of paragraph 64.1 with the only difference that the garden will be on a public open space across from the applicant's property and not adjoining the property. Should the formal process in terms of paragraph 64.3 be followed the cost for the application and public participation process can amount to approximately R10,000.00. All other costs have already been incurred by Ms Kriel for the cleaning of the area, the creation of the garden, all the plants and the watering of the garden for the beautification of a municipal asset.

**B. Advertisement/Notification**

Should the deviation as requested be approved no advertisement will be published.

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### **Conclusion**

Considering the above it is recommended that Council approve the deviation from paragraph 64.3 of the Administration of Immovable Property Policy and approve that the application may be dealt with in terms of paragraph 64.1 allowing the Municipality to provide Ms Kriel with a consent letter for the beautification of the area as the type of application is the same as others dealt with in terms of paragraph 64.1 and further as Ms Kriel will be enhancing the enjoyment and appearance of a municipal asset at no cost to the Municipality.

### **7. Financial Implications**

None.

### **8. Staff Implications**

None

### **9. Comments from other Departments, Divisions and Administrations**

#### **Town Planner, Mr H Boshoff – (028) 313 8900**

*“No objection to the property being used for gardening purposes provided that no structures be constructed on the property without the prior written approval of the Municipality.”*

#### **Senior Manager : Fire And Emergency Services, Disaster Management & Security Services, Mr L Smith – (028) 313 5041**

*“No comments from Fire Services.”*

#### **Building Control Officer, Mr L Coetzee – (028) 313 8085**

*“No objection from the Building department.”*

#### **Senior Superintendent (Projects), Mr J Klem – (028) 316 5625**

*“No comments from Electrical Services.”*

#### **Senior Manager (Hermanus Administration), Mr A Wyngaard – (028) 313 8112**

*“I have no objection.”*

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**Horticulturist: Lauren Rainbird– (028) 313 8923**

*“The area is established with indigenous plants and will be good if we could restrict the applicant to only planting indigenous flora and to make sure there are no invasive alien plants.”*

**Senior Manager: Expenditure and Assets, Mr J Vorster – (028) 313 8046**

*“As this beautification proposal, with no intention of selling the asset, there is no objection against the application.”*

**10. Annexures**

Annexure A: Locality Map

**RECOMMENDATION TO THE COUNCIL:**

that the deviation from paragraph 64.3 of the Administration of Immovable Property Policy and that the application may be dealt with in terms of paragraph 64.1 allowing the Municipality to provide Ms Kriel with a consent letter for the beautification of a portion of Erf 1289 Sandbaai as the type of application is the same as others dealt with in terms of paragraph 64.1 and further as Ms Kriel will be enhancing the enjoyment and appearance of a municipal asset at no cost to the Municipality, **be approved.**

<b>RESPONSIBLE OFFICIAL :</b>	<b>M ERASMUS</b>
<b>TARGET DATE FOR IMPLEMENTATION :</b>	<b>30 MARCH 2021</b>
<b>TARGET DATE TO INFORM APPLICANT :</b>	<b>15 MARCH 2021</b>
<b>TARGET DATE TO INFORM OBJECTOR :</b>	<b>N/A</b>

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**7/2/5**

**A Le Roux  
9 March 2022**

**Manager: Property Administration**

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**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON 6 APRIL 2022, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:**

**RECOMMENDATION TO THE COUNCIL:**

that the deviation from paragraph 64.3 of the Administration of Immovable Property Policy and that the application may be dealt with in terms of paragraph 64.1 allowing the Municipality to provide Ms Kriel with a consent letter for the beautification of a portion of Erf 1289 Sandbaai as the type of application is the same as others dealt with in terms of paragraph 64.1 and further as Ms Kriel will be enhancing the enjoyment and appearance of a municipal asset at no cost to the Municipality, **be approved.**

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