

**AGENDA of the  
Portfolio Committee: Infrastructure & Planning  
17 November 2020  
(Also the agenda for the Mayoral Committee Meeting: 25 November 2020)**

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**3.**

**A PORTION OF REMAINDER ERF 4771 HERMANUS, ADJACENT TO ERF 7503 HERMANUS (SITUATED NEAR FIRST STREET, VOËLKLIP): RENEWAL OF ENCROACHMENT ONTO MUNICIPAL PROPERTY - SMITH FAMILY TRUST**

**7/2/3/1**

**A Le Roux**

**Manager: Property Administration**

**12 October 2020**

**(028) 316 - 5623**

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**1. Executive Summary**

To consider the application received from the Smith Family Trust (hereinafter referred to as “the Applicant”) for the renewal of an encroachment agreement for a period of 5 (FIVE) years in respect of municipal property, being a portion of Remainder Erf 4771 Hermanus, (±300m<sup>2</sup> in extent) adjacent to Erf 7503 Hermanus (hereinafter referred to as “the Property”), situated near First Street, Voëlklip, for gardening purposes. See the locality plan attached hereto marked Annexure “A”.

**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**

- Municipal Asset Transfer Regulations (R. 878 of 2008)
- Administration of Immovable Property Policy of the Overstrand Municipality (2015)

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

**Background/Discussion**

The Property has been used by the Applicant since 1993 and an encroachment agreement was first entered into with effect from 21 April 1993

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for the purpose of a garden on the open space. The last encroachment agreement was for a period of 5 (FIVE) years, which expired on 30 June 2020. The encroachment fee is still being levied annually.

The Applicant applied for the renewal of the encroachment agreement for another period of 5 (FIVE) years.

A memorandum was circulated to obtain internal comments from the Town Planning Department as well as Environmental Management Department. Both departments were not in favour of the renewal of the encroachment agreement due to the fact that the Property is in the process of being rezoned from Open Space Zone 2: Public Open Space to Open Space Zone 1: Nature Reserve and forms a part of the Fernkloof Nature Reserve. The Environmental Department is in process of rehabilitating all encroachments onto the Fernkloof Nature reserve. The Property further forms part of one of the main firebreaks and the encroachment onto the fire break cannot be supported.

### **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, consolidations, advertisement, relocation or provision of services and, where applicable, a deposit as per prescribed rate to cover incidental costs has been paid.”**

As the application for renewal was received before the expiry of the last agreement there is no need for a formal application form to be completed and no application fee is payable.

**Paragraph 64.3 “The Municipality may, subject to such conditions as it may deem fit –**

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*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:
 
  - (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 the encroachment is on a portion of municipal property that is currently zoned as a public place with a process to rezone it to a nature reserve zoning which is commenced with as it falls within the boundaries of the Fernkloof Nature Reserve, the process as stipulated in paragraph 64.3 must be followed. The Fernkloof Nature Reserve falls under the management of our Environmental Management Services Department and therefore their comments on the encroachment must be given preference. Due to these comments, the application for a renewal of the encroachment agreement cannot be supported from the administration. If the recommendation of the Administration is supported, it will not be necessary to follow the process at the cost of the Applicant as stipulated in this paragraph 64.3.

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**Conclusion**

With reference to the above discussion it is recommended that the encroachment agreement with the Applicant not be approved.

**7. Financial Implications**

None

**8. Staff Implications**

None

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

**Town Planner: Mr P Roux – (028) 313 8900**

*“The portion of Erf 4771 on which the encroachment area is proposed is a part of the Fernkloof Nature Reserve. Careful consideration must be done when considering the uses on this portion as it will have an impact on the Fernkloof Nature Reserve. The zoning is currently Open Space Zone 2: Public Open Space, however the change of the zoning to Open Space Zone 1: Nature Reserve has been advertised as part of the revisions to the zoning scheme and Municipal by-law on land use planning.*

**Manager: Biodiversity Conservation: Mr T Dry – (028 316 5620)**

*“Unfortunately, I cannot accept the request for the extension/renewal of the encroachment as we are in the process of rehabilitating all encroachments. The encroachment area also forms part of one of our main fire breaks. Please note that I will not be in favour of any new encroachments into our natural areas.”*

**10. Annexures**

Annexure A: Locality Map

**RECOMMENDATION:**

1. that the renewal of an encroachment agreement for an encroachment of  $\pm 300\text{m}^2$  in extent onto municipal property, being a portion of Remainder Erf 4771 Hermanus, adjacent to Erf 7503 Hermanus entered into with the Smith Family Trust for the purpose of a garden on the public place **not be approved**; and

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2. that the applicant must rehabilitate the portion of municipal property, as mentioned in 1 above, in accordance to the recommendations and to the satisfaction of the Manager: Biodiversity Conservation, Environmental Management Services: Mr Tarron Dry.

<b>RESPONSIBLE OFFICIAL:</b>	<b>N LIEBENBERG</b>
<b>TARGET DATE FOR IMPLEMENTATION:</b>	<b>18 DECEMBER 2020</b>
<b>TARGET DATE TO INFORM APPLICANT:</b>	<b>9 DECEMBER 2020</b>
<b>TARGET DATE TO INFORM OBJECTOR:</b>	<b>N/A</b>

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**A Le Roux**

**Manager: Property Administration**

**12 October 2020**

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**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON 17 NOVEMBER 2020, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:**

**RECOMMENDATION:**

1. that the renewal of an encroachment agreement for an encroachment of  $\pm 300\text{m}^2$  in extent onto municipal property, being a portion of Remainder Erf 4771 Hermanus, adjacent to Erf 7503 Hermanus entered into with the Smith Family Trust for the purpose of a garden on the public place **not be approved**; and
2. that the applicant must rehabilitate the portion of municipal property, as mentioned in 1 above, within three (3) months in accordance to the recommendations and to the satisfaction of the Manager: Biodiversity Conservation, Environmental Management Services: Mr Tarron Dry.

**RESPONSIBLE OFFICIAL:**

**N LIEBENBERG**

**TARGET DATE FOR IMPLEMENTATION:**

**18 DECEMBER 2020**

**TARGET DATE TO INFORM APPLICANT:**

**9 DECEMBER 2020**

**TARGET DATE TO INFORM OBJECTOR:**

**N/A**

ANNEXURE A

