

**AGENDA of the
Portfolio Committee: Planning & Development
19 August 2025
(Also the agenda for the Mayoral Committee Meeting: 26 August 2025)**

3.

APPLICATION TO ENCROACH: A PORTION OF REMAINDER ERF 1178 DE KELDERS (ROAD RESERVE), ADJACENT TO ERF 825 DE KELDERS (133 MAIN ROAD, DE KELDERS) – LP WHITEMAN

**A Le Roux
24 June 2025**

Divisional Manager: Property Management

(028) 316 - 5623

1. Executive Summary

To obtain approval to enter into an encroachment agreement with Ms LP Whiteman, the owner of Erf 825 De Kelders, to retain an encroachment on a portion of Remainder Erf 1178 De Kelders ($\pm 30\text{m}^2$ in extent) (road reserve), adjacent to Erf 825 De Kelders, situated at 133 Main Road, De Kelders for the purpose of gardening and a wooden fence (enclosure). See the locality plans attached hereto marked "Annexures A1 & 2".

2. Service Delivery and Budget Implementation Plan - IGNITE

Planning and Development
Property Management

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 (2015)
- Municipal Asset Transfer Regulations (R. 878 of 2008)

6. Background/Discussion/Evaluation/Conclusion

Background

Ms LP Whiteman, the owner of Erf 825 De Kelders, hereafter referred to as "the Applicant", has been encroaching illegally on municipal property being a

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portion of Remainder Erf 1178 De Kelders ($\pm 30\text{m}^2$ in extent) adjacent to Erf 825 De Kelders, hereafter referred to as “the Property”, by beautifying the area and a wooden fence providing one of the sectional title units on Erf 825 De Kelders with a secure and private partitioned area in front of their door as well as their own entrance to the garden. See the encroachment photographs attached hereto marked “Annexure B”.

The Applicant first applied to purchase the Property in May 2019, the application was circulated and discussed internally. The result of the internal comments and discussions was that the application was not supported due to municipal services located on the Property. The Applicant was notified of the outcome in October 2019.

The Applicant again applied to purchase the Property with the notion that the services are situated adjacent to the area applied as it was indicated that the Property has been earmarked for the future installation of telecommunication infrastructure. The Civil Engineering Services Division further confirmed that they stand by their previous comments indicating that there are municipal water pipelines in close proximity to the western as well as northern boundary of the Property. It was further confirmed that the Property must be reserved for current as well as future municipal services. Considering the above it is important to consider that in terms of the MFMA and the MATR, the Municipality may not sell any property that might be needed in the future for basic municipal services and therefore the application to purchase the Property was not approved.

Discussion

Following the above, the Applicant subsequently applied for the approval of an enclosed encroachment to retain the wooden fence and garden that encroaches on a small portion of the road reserve on the corner of Cove and Main Road. The fence, standing at 1.73 meters high, is already in place and serves to enhance the privacy and security of Apartment No. 8 in the Walkerview Apartments Complex on the Applicant’s property. This apartment, situated directly adjacent to Main Road, has its front door and windows close to the sidewalk, exposing it to daily pedestrian activity and potential unauthorized access. The fence significantly improves these conditions by providing privacy and a sense of security, while also complementing the aesthetic of the surrounding garden with its quality materials and craftsmanship, which have received positive feedback from the community.

The Applicant motivated that Cove Street is a well-trafficked entrance connecting Main Road to De Kelders and Perlemoenbaai, with consistent pedestrian activity. Importantly, the fence does not obstruct pedestrian use of the sidewalk

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The Applicant notes that no underground electrical cables are present on the specific portion of the Property. She emphasises that her application affects only a small section of the road reserve and does not render the area inaccessible to the public.

The Electrical Services Division has confirmed that there are currently electrical cables present on a portion of the Property applied for, however the fence encroachment does not interfere with their access to the electrical services. Furthermore, the Electrical Services Division does not have any objection to the encroachment of the fence since open access to municipal services is available to the Municipality, provided that no concrete is cast and no physical structures are erected on the Property.

The Civil Engineering Services Division has confirmed that municipal services, including water mainlines and stormwater pipes, are located around the Property but do not cross over it. There are no sewer mains in the area, as conservancy tanks are used. Furthermore, there are currently no telecommunication infrastructure crossing the Property.

The Applicant views the removal of the existing fence as a last resort and respectfully seek approval to maintain the structure. The Applicant further believes the fence addresses critical privacy and security issues, enhances the aesthetic value of her property, and creates a more practical boundary, without significantly impacting public use of the area.

The Property is zoned as Transport Zone 2: Road and Parking (public road) and the wooden fence effectively extends the exclusive use of the Property to the benefit of a sectional title unit situated on Erf 825 De Kelders. The Town and Spatial Planning Division did receive an application from the Applicant for consent use, departure, amendment of the site development plan in respect to the illegal structures attached to the building on Erf 825 De Kelders, an outcome has not yet been determined for this application.

According to the approved tariffs for the 2025/2026 financial year, the prescribed tariff for the use of the municipal land for encroachment for the enclosure or exclusive use of portions of the Commonage, Public Open Spaces etc. is R2.78/m² (TWO RAND AND SEVENTY-EIGHT CENTS PER SQUARE METRE) (VAT excluded) per month which will amount to a total monthly fee of R83.40 (EIGHTY-THREE RAND AND FORTY CENTS) (VAT excluded) per month.

Evaluation

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

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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.”

The Applicant completed the formal application form and made payment of 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.”

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 64.4: “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 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;***

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- (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) 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 submitted and application fee paid.

The majority of the comments received from the relevant internal departments indicate that the services are located in the vicinity of the Property, however, should approval be granted the encroachment would not negatively affect these services especially if the encroachment is of a temporary nature.

The advertisement for the encroachment on the Property was published in The Village News on 6 June 2025 for a 30 (THIRTY) day objection/comment period and the Applicant paid the advertisement cost. No objections were received.

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

The purpose of this report is to request that the Executive Mayor approves the enclosed encroachment on the Property.

The approved tariffs for 2025/2026 for the enclosure or exclusive use of portions of the Commonage, Public Open Spaces etc. is R2.78/m² (TWO RAND AND SEVENTY-EIGHT CENTS PER SQUARE METRE) (VAT excluded) per month which will amount to a total monthly fee of R83.40 (EIGHTY-THREE RAND AND FORTY CENTS) (VAT excluded) per month, should the application be approved.

B. Advertisement/Notification

An advertisement for the encroachment on the Property was published in The Village News on 6 June 2025 for a 30 (THIRTY) day objection/comment period. No objections/comments were received.

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Conclusion

Taking the comments of the internal departments, as well as the above discussion, into consideration, it is recommended that the enclosed encroachment of a garden and fence on the Property for a period of 5 (FIVE) years at an encroachment amount of R83.40 (EIGHTY-THREE RAND AND FORTY CENTS) (VAT excluded) per month be approved.

7. Financial Implications

The Municipality stands to gain the monthly encroachment fee of R2.78/m² (TWO RAND AND SEVENTY-EIGHT CENTS PER SQUARE METRE) (VAT excluded) per month which will amount to a total monthly fee of R83.40 (EIGHTY-THREE RAND AND FORTY CENTS) (VAT excluded) per month 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 2026. 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

Divisional Manager: Expenditure, Fleet & Asset Management - Mr J Vorster

“As this is a revenue generating proposal, with no intention to dispose of the asset, there is no objection.”

Town Planner - Mr P Roux

“I do not support the application for encroachment. The application is to retain the existing illegal wooden fence. As stated by the Applicants the fenced area will be used for exclusive use area for a sectional title unit on the property. The sectional unit was developed illegally without prior approval from the Municipality, although application is made to legalize this unit the outcome is still pending. The exclusive use area cannot be accommodated on public land, further the zoning of the proportion does not accommodate an exclusive use area. The portion identified is zoned for Transport Zone 2: Road and Parking (public road).”

Divisional Manager: Building Control - Mr L Coetzee

“No objection. A building plan application, if required, must comply with all

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applicable law.”

GIS Administrator: Electrical Services – Ms M Radyn

“The Property is situated at the corner of Cove and Main Road. Electrical Services has existing services in the vicinity of the fence. We have no objection to the encroachment, as long as access is available should services need to be repaired in the future.

The electrical services depicted on the GIS Layout is a graphic indication of the cables present on that portion of Erf 1178. The exact position of the cables may vary.

The fencing that has been erected does not currently interfere with any services and we have open access to our services should it be needed. As long as there is no concrete cast or physical buildings erected and we have access, we do not have an objection.”

The layout of the electrical cables as indicated on GIS is attached hereto marked “Annexure C”.

Principal Technologist Civil: Gansbaai & Stanford – Mr J Solomons

“Please find the GIS areal photo with services around the specific portion: The blue line indicates the water mains, and the yellow line indicates the stormwater pipes. There are no sewer mains in that area as the properties are serviced by conservancy tanks. The specific portion does not have any services crossing it. There are no telecommunication services crossing the specific portion.”

The layout of the of water and storm water infrastructure as indicated on GIS is attached hereto marked “Annexure D”.

Principal Technologist: Development Control - Mr R Andrew

“The application is not supported. There are 2 municipal water lines running in that vicinity. The area is on the approach towards the Main Road. The space should be preserved for road purposes such as turning lanes, upgrading to traffic circle, pedestrian space, municipal services, etc. According to the Overstrand GIS system, the area under consideration contains stormwater and water infrastructure.”

Assistant Environmental Officer – Mr C Arendse

“With this, please find attached comments from the Environmental Management & Conservation Division who has no objection towards this

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application. Conditions to this application are:

- *The upkeep and maintenance of this section will rest on the Applicants.*
- *The planting of declared invasive plants or weeds are prohibited.”*

Chief: Fire, Rescue and Disaster Management – Mr L Smith

“The Fire Department has no objection subject to compliance with the provisions of SANS 10400 A:2016, 10400-T:2024 and the By-Law relating Fire Safety.”

Senior Superintendent: Traffic Operations - Mr P de Gruchy

“The traffic department has no objection towards this application, as long as no pedestrian or vehicular traffic is obstructed.”

Property Management Comments:

The Property forms part of a municipal road reserve zoned as Transport Zone 2: Road and Parking. The Applicant applied in terms of Paragraph 64.4 of the Administration of Immovable Property Policy for a 5 (FIVE) year encroachment agreement to retain an existing, but illegal, wooden fence that encloses the area adjacent to Erf 825 De Kelders.

After reviewing internal departmental comments and considering the context of the encroachment, the following is noted:

No interference with municipal infrastructure: The Electrical Services Division, Civil Engineering Services Division, and GIS Section confirmed that although there is municipal infrastructure in the encroachment area, the existing fence does not obstruct or interfere with access to the services. No objections were raised by these departments, on the condition that access remains available at all times and no permanent structures or concrete slabs are constructed.

Temporary and Revocable in Nature: The encroachment agreement will be limited to a period of 5 (FIVE) years, strictly for the existing wooden fence and garden. The agreement can be cancelled on notice, and no ownership or permanent land rights will be transferred. This approach allows the Municipality to reclaim the Property should it be required for future municipal or public purposes.

Visual and Safety Benefits: The fence provides increased privacy and security for the adjacent sectional title unit and is well-integrated into the surrounding garden area. No negative feedback from the surrounding community has been received during the advertisement period of the application nor since the fence was erected.

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Policy provision for regulated encroachments: Paragraph 64.4 of the Administration of Immovable Property Policy permits temporary encroachments that do not impede the land's intended purpose or restrict access to services. Approval of the proposed encroachment under clearly defined and enforceable conditions would demonstrate the Municipality's commitment to applying this policy consistently while avoiding unauthorised or informal occupation of municipal land.

Town Planning Compliance to be a condition: The Town & Spatial Planning Division objected to the application based on the zoning of the Property and the unauthorised development on the adjacent erf. To address this, it is recommended that the approval of the encroachment be subject to the Applicant obtaining the necessary land use rights and building plan approvals for the existing improvements on Erf 825 De Kelders. This ensures alignment with municipal planning procedures and regulatory compliance. If such approvals are not obtained within a specified timeframe, as the illegal use of Erf 825 De Kelders have been addressed with the owner on several occasions, the agreement will lapse, and the encroachment must be removed. This said, the encroached area does also contain a flagpole which was never approved by the Municipality. This must be removed. A separate application will be considered for the canopies and light fixtures which also encroaches over municipal land.

No obstruction to public use or movement: The fenced area is a small, triangular corner piece that does not obstruct pedestrian or vehicular movement, nor does it interfere with the public's general use of the surrounding road reserve. There are no formal pedestrian pathways affected by the current placement of the fence.

Considering the above, Property Management is of the opinion that the application for an encroachment agreement for a period of 5 (FIVE) years may be supported, subject to strict conditions. These include that no new structures may be erected, no cement or other permanent materials may be used, and that the Applicant must provide the Municipality with full access for service repairs. In addition, the agreement must allow for cancellation at any time and must stipulate that the existing improvements on Erf 825 De Kelders obtain the necessary land use regulations and building approvals, as outlined above.

10. Annexures

- Annexures A1 & 2: Locality maps
- Annexure B: Encroachment Photographs
- Annexure C: Electrical Infrastructure: Electrical cables GIS layout
- Annexure D: Water and Stormwater Infrastructure: GIS aerial photo

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RECOMMENDATION:

1. that the enclosed encroachment by means of a garden and fence on municipal property, being a portion of Remainder Erf 1178 De Kelders ($\pm 30\text{m}^2$ in extent) adjacent to Erf 825 De Kelders, to Ms LP Whiteman, at an amount of R83.40 (EIGHTY-THREE RAND AND FORTY 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 encroachment fee mentioned in 1 above escalates 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 2026,
3. that the encroachment agreement allows for cancellation at any time and must stipulate that the existing improvements on Erf 825 De Kelders obtain the necessary land use regulations and building approvals, and
4. that the approval is subject to the Applicant obtaining the necessary land use approvals as discussed in the report.

RESPONSIBLE OFFICIAL:

VANESSA OCTOBER

TARGET DATE FOR IMPLEMENTATION :

12 SEPTEMBER 2025

TARGET DATE TO INFORM APPLICANT:

26 SEPTEMBER 2025

TARGET DATE TO INFORM OBJECTOR :

N/A





ANNEXURE B

Encroachment



ANNEXURE C

ELECTRICAL INFRASTRUCTURE – M RADYN COMMENTS

The electrical services depicted on the GIS layout is a graphic indication of the cables present on that portion of erf 1178. The exact position of the cables may vary. The fencing that has been erected does not currently interfere with any services and we have open access to our services should it be needed. As long as there is no concrete cast or physical building erected and we have access, we do not have an objection.

- Blue - LV Feeders
- Red - MV Feeders
- Green - Consumer Connection Cables
- Yellow - Streetlight feeders.
- Black & White Blocks – Mini substation
- Pink & White Blocks - Distribution Kiosk



ANNEXURE D

WATER & STORMWATER INFRASTRUCTURE – J SOLOMONS COMMENTS

Municipal services around the specific portion: The blue line indicates the water mains, and the yellow line indicates stormwater pipes. There are no sewer mains in that area as the properties are service by conservancy tanks. The specific portion does not have any services crossing it. There are no telecommunication services crossing the specific portion.

