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## 5. Legal Requirements

- Local Government: Municipal Financial Management Act (Act 56 of 2003) (“MFMA”)
- Municipal Asset Transfer Regulations (R. 878 of 2008)
- Administration of Immovable Property Policy of the Overstrand Municipality, as amended

## 6. Background/Discussion/Evaluation/Conclusion

### Background/Discussion

#### APPLICANT A: G NEGUS

G Negus (hereinafter referred to as “Applicant A”) is the owner of Erf 2521 Onrustrivier which is situated at 23 Demper Street, Onrustrivier. Applicant A currently has an encroachment on a portion of Farm 581 Caledon Regional District, which encroachment is currently enclosed and includes a structure (“wendy house”) and caravan. The said Applicant applied to retain the encroachment of approximately 250m<sup>2</sup> in extent on a portion of Farm 581 Caledon Regional District, hereinafter referred to as “Encroachment A”.



The matter was investigated, and it was found that:

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- (a) Applicant A had encroachment agreements for the periods 2007 – 2012 and 2012-2017 for the extension of the western boundary of Erf 2521 for gardening purposes on Encroachment A, which was not an enclosed encroachment. An annual encroachment fee was levied on the municipal account as there were only the annual fee payable pre 2012, irrespective of the type of encroachment.
- (b) The initial encroachment was approved under the Municipal Ordinance 20 of 1974 which dealt with, amongst others, encroachments. The second agreement was done under the 2004 Municipal Asset Management Policy. Whether the processes prescribed were followed can not be confirmed, but agreements were entered into.
- (c) No mention was made in the two agreements of a portion of the structure as well as the enclosure of Encroachment A with a vibracrete wall and fence. One can only accept that this was an error on the side of the municipality.
- (d) Applicant A is also storing a caravan on Encroachment A.
- (e) The previous owner of Erf 2521 Onrustvriër had an agreement dated 14 August 1985 for what seems to be a wall as a letter was issued to him in July 1986 where the Council acknowledged the existence of the wall. This wall is also indicated on approved building plans dated June 1986. The wendy house is also included on the building plan, but on the Erf 2521 and not within Encroachment A. It seems as if extensions were made to the wendy house with the effect that it is encroaching onto municipal property.
- (f) That the wall and part of the wendy house has been in Encroachment A since as early as 1986.
- (g) The Encroachment A is  $\pm 253\text{m}^2$  in extent and currently as follows:

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Applicant A indicated that is considering purchasing the following portion of Remainder Farm 581, adjacent to his property, which includes Encroachment A, depending on the outcome of the investigation and costs involved. Until then he wishes to retain Encroachment A as an archaic encroachment.



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Based on Applicant A's interest as indicated above, the application was circulated on the 16 November 2022 to obtain the necessary comments from the relevant officials in respect to Option 1: Sale/Alienation, Option 2: Lease Agreement or Option 3: Encroachment Agreement, which will be discussed in more detail below.

**APPLICANT B: RADYN'S GEBOU BK**

Radyn's Gebou BK (hereinafter referred to as "Applicant B") is the owner of Erf 2519 Onrustrivier which is situated at 26 Molteno Street, Onrustrivier. Applicant B currently has an enclosed encroachment (for a cement brick boundary wall and gardening purposes) on a portion of Farm 581 Caledon Regional District. The said Applicant applied to retain the encroachment of approximately 270m<sup>2</sup> in extent on a portion of Farm 581 Caledon Regional District, hereinafter referred to as "Encroachment B".



The matter was investigated, and it was found that:

- (a) Applicant B bought Erf 2519 Onrustrivier in 1993. At the time of purchase, there were already fences erected at the front in Roos Street, as well as at the back adjoining Erf 2521 Onrustrivier.
- (b) The encroachment was first by means of a fence erected by the previous owner of Erf 2519 Onrustrivier and thereafter replaced with a small cement brick boundary wall. Although the fence is indicated on the Erf 2519, it was erected on municipal land.

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- (c) Although Applicant B has been paying an annual encroachment fee, no encroachment permit for this encroachment can be found. There is only a letter from the Municipality dated 15 October 2007 where Applicant B was informed of the encroachment and requested to apply for an encroachment permit, an application was never received. It is accepted that this encroachment fee relates to the encroachment of the building in Molteno Street, which was addressed by means of a consent.
- (d) The Building Control Division confirmed that the encroachment of the cement brick wall does not have approved building plans, however the Building Plan (dated 10 February 1964) further shows that approval was granted for a fence. Applicant B later replaced a portion of the fence with a small cement brick boundary wall for which there is currently no approval, and should approval be granted it must be subject to the approval of building plans.
- (e) The small cement brick boundary wall has replaced a portion of the approved fenced, mentioned in the building plan (dated 10 February 1964), and been on the Property since 1993 and there have been encroachment fees levied placed on the municipal account for this encroachment. The encroachment does not prevent or interfere with any municipal services. The fence and the small cement boundary wall and the house on Erf 2519 Onrustrivier have recently been painted and renovated and is in a well-kept condition. The cement brick wall is only a small portion of the encroachment area, and the rest is a well-kept fence and garden and for this reason the encroachment can be considered on condition that the necessary Building Control Minor Works SANS 10400 – A: 2010 Edition 3 application processes be followed for the small cement brick boundary wall and the fence.

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**APPLICANT C: RUDOLF DE VILLIERS TRUST**

Rudolf De Villiers Trust (hereinafter referred to as “Applicant C”) is the owner of Erf 4181 Onrustrivier which is situated at 25 Chiappini Street, Onrustrivier. Applicant C currently has an encroachment which consists out of a portion of the house. ( $\pm 25\text{m}^2$  in extent) which encroaches on a portion of Farm 581 Caledon Regional District. The said Applicant applied to retain the encroachment of approximately  $25\text{m}^2$  in extent on a portion of Farm 581 Caledon Regional District, hereinafter referred to as “Encroachment C”.



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The matter was investigated, and it was found that:

- (a) Historical information shows previous encroachment agreements between previous owners of Erf 2645 and Erf 2647 now consolidated as Erf 4181 Onrustvriër as per Surveyor General Diagram number S.G. No 6913/1997. George Henry Le Roux, the previous owner of Erf 4181 Onrustvriër, had an encroachment agreement dated 26 July 1977 for a portion of the kitchen that was built on municipal land. Thereafter another agreement was entered into for the encroachment consisting of the extension of the eastern boundary wall of Erf 4181 Onrustvriër and for gardening purposes which was valid for 5 (FIVE) years from 1 November 2007 and expired on the 31 October 2012.
- (b) AP Le Roux became the owner of Erf 4181 on 10 February 2022 and during his ownership he paid an annual encroachment fee, but there is no formal agreement in place for the encroachment. The encroachment fee was automatically transferred to AP Le Roux's municipal account when he took transfer of the property. A consent letter was issued to AP Le Roux on 19 December 2022 for Encroachment C. No agreement was entered into for the enclosed encroachment as AP Le Roux was of opinion that the Municipality built the wall, amongst others. AP Le Roux sold the property to Rudolf De Villiers Trust who wishes to retain the encroachments.
- (c) Considering, the above the Building Control Department also found that the owners of Erf 4181 Onrustvriër indicated a portion of the municipal property as part of Erf 4181, but the building plans did not indicate the correct Erf boundaries. See the building plans attached hereto marked "Annexures A1-A5".

Applicant C has also applied to rather lease a portion of Farm 581 Caledon Regional District, as this area is enclosed for safety reasons, which is currently in process of evaluation. The estimated size is 310m<sup>2</sup> in extent.

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**APPLICANT D: SC SOLOMON**

SC Solomon (hereafter referred to as “Applicant D”), is the new owner of Erf 91 Sandbaai, situated at 52 Kus Road, Sandbaai. Applicant D currently has an encroachment of  $\pm 256\text{m}^2$  in extent which consists of a retaining wall, driveway and gardening (hereinafter referred to as “Encroachment D”) on portion of Erf 1289 Sandbaai, which represents unbuilt public road.



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The matter was investigated, and it was found that:

- (a) NA & ED Matodes, the previous property owners of Erf 91 Sandbaai, had an encroachment agreement for driveway and gardening purposes, which agreement expired in 2017.
- (b) The Municipality at a later stage, after expiry of the encroachment agreement, gave further approval for the driveway and garden, with the proviso that all walls and structures must be removed (see “Annexure B”). This was as an internal comment received indicated that it is envisaged that the road will be built in the future.
- (c) The previous owners did not remove the following wall (or portion thereof encroaching onto the road) and thus the approval given could not be transferred to the Applicant D.



- (d) According to the Building Control Division it will not be advisable to remove the one wall next to the stairs leading up to the house because this wall acts as a retaining wall as the property slopes heavily towards the sea. The Property Administration Division did a site visit inspection and came to the same conclusion, however, should it be that the Municipality start the process to build the road through Encroachment D, the retaining wall of Applicant D must be removed and for this reason a

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condition will be placed into the consent to this effect. At this stage there are no plans to extent Kus Road in this section and in our opinion, it will entail considerable capital funding to level the area to extent the road to link up as indicated below:



- (e) Due to services located within Encroachment D as well as the indication that the road might be built in the future, a possible sale of the portion of municipal land affected cannot be considered.

**APPLICANT E: JL COCKWELL**

JL Cockwell (hereafter referred to as "Applicant E"), is the owner of Erf 357 and Erf 366 Hermanus, situated at 15 & 17 Westcliff Road, Hermanus. Applicant E currently has an encroachment of  $\pm 225\text{m}^2$  in extent which is for gardening purposes, a fieldstone paved terrace and also contains a boundary wall (hereinafter referred to as "Encroachment E") on portion of Erf 243 Hermanus. Encroachment E is within a Public Open Space Zone1: Nature Reserve zoned area.

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The matter was investigated, and it was found that:

- (a) Applicant E had an encroachment agreement / indemnity dated 21 December 1984 stipulating that the encroachment is for gardening on commonage adjacent to Erf 357 Hermanus, however this agreement did not include the field stone paved terrace and the boundary wall behind Erven 357 and 366 Hermanus nor the garden adjacent to Erf 366 Hermanus.
- (b) Erf 357 Hermanus was purchased by the Cockwell family during 1982 and years thereafter they also purchased Erf 366 Hermanus. At that time the encroachment of the boundary wall already existed on Erf 243 Hermanus adjacent to both Erven 357 and 366 Hermanus. The wall is a double stone wall and is 80cm high at its highest point and 25cm high at its lowest point (see photo below indicating the type of wall). Applicant E's house is basically built on the erf boundary and this led to Encroachment E. Over the years there has been numerous break-ins at Applicant E's property and thieves have stepped over the wall and due to this intrusion, Applicant E erected a palisade fence on top of the stone wall for security purposes.

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- (c) There are no approved building plans for the old wall. The Heritage Committee however provided the following information:
- *“The earliest municipal archive record is 1946 when the house was altered.*
  - *1950-1960 Aerial photo’s on record shows the house with encroaching terrace and ‘werf’ walls.*
  - *It is a reasonable assumption that the house was built between WW1 and WW2 – ie. Circa 1920’s (confirmed by the simplified ‘Arts and Craft’s detailing.*
  - *The current house has been minimally altered.*
  - *The fieldstone paved terrace and attendant ‘werf’ walls are likely original and consistent with the original architectural expression.*
  - *The encroaching terrace and ‘werf’ walls trigger the Heritage Act by being older than 60 years.”*

The above information provided by the Overstrand Heritage Committee therefore indicate that the wall is indeed of archaic / heritage nature and that especially the fieldstone paved terrace and the boundary wall is older than 60 years and for this reason it would not be reasonable for the encroachment to be removed or to rehabilitate the municipal property affected.

- (d) Encroachment E is located in the Fernkloof Nature Reserve, a NEMPAA (Act 57 of 2003) protected area. The vegetation type is Overberg Sandstone Fynbos (critically endangered), and the property falls within the 100m of the high-water mark, falls within the Coastal Protection Zone (EMOZ), and has a sewer main pipeline. These were the main reasons as to why Applicant E’s application to purchase the affected portion of Erf 243 Hermanus was not approved.
- (e) As the wall cannot be removed, a lease will not address the encroachment adequately as it is temporary in nature.

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**APPLICANT F: AB & L KRIEGLER**

AB & L Kriegler (hereafter referred to as “Applicant F”), are the owners of Erf 1756 Vermont, situated at 10 Sepia Avenue, Vermont. Applicant E currently has an encroachment of  $\pm 50\text{m}^2$  in extent which is for a wooden owl house structure, concrete slabs and bricks ground layout and gardening purposes (hereinafter referred to as “Encroachment F”) on portion of Erf 915 Vermont.



The matter was investigated, and it was found that:

- (a) Applicant F had an encroachment agreement for gardening purposes which expired in 2012. Numerous requests were sent to the Applicant with regards to the renewal of the agreement or for a new agreement (after expiry thereof). Applicant F informed the Municipality that they are pensioners and do not have the financial means to enter into an encroachment agreement with the Municipality, that includes the applicable application fees, advertisement costs and annual encroachment levies, however they wish to retain the encroachment, with specific reference to the owl house structure.
- (b) Applicant F described that the encroachment consists of a small concrete slab layout with bricks and a garden that consist of grass, 2 (TWO) fruit trees and an owl house which is beneficial to the environment and request that the Municipality consider that a consent be provided for the

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encroachment to remain. Applicant F has kept Encroachment F clean, and no public complaints regarding the use have been received.

- (c) A site visit was conducted by the Property Management Division which confirmed the existence of the encroachment as per the following photos taken:



- (d) The boundary wall, that can be noticed on these site visit pictures, belongs to the neighbours of the Applicant F, known as HW Heard & KL O'Reilly, who currently has a lease agreement for the boundary wall encroachment.

### **Evaluation**

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

The following conditions of the said Policy will apply for the various archaic encroachments as follow:

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***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.” Should the encroachment be approved, Applicant A will have to complete the formal application form and make payment of the application fee.***

Applicant A: BG Negus: The Applicant must still pay the application fee for a consent if the recommendation is approved.

Applicant B: Radyn’s Gebou BK: The Applicant must still pay the application fee for a consent if the recommendation is approved.

Applicant C: Rudolf De Villiers Trust: The previous owner paid the application fee and sold the property before the process was finalised. No new application fee is payable by Applicant C.

Applicant D: SC Solomon: The previous owner paid the application fee; thus, no new application fee is payable.

Applicant E. JL Cockwell: The Applicant must still pay the application fee for a consent if the recommendation is approved.

Applicant F: AB & L Kriegler: The Applicants have requested to be exempted from paying the application fee as they are not able to afford same.

***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.”***

If the recommendations are approved, no costs as mentioned above will be payable.

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**Paragraph 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 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;**
  - (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.**

Applicant F: AB & L Kriegler: The Applicants have requested to be exempted from following the above costly process as they are pensioners and cannot afford the advertisement, application fee and annual encroachment fee. The encroachment has been there for several years, and the owl house is supported by the Environmental Management Division. The encroachment is not enclosed and cannot be extended due to the services located there.

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**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."**

**APPLICANT A: BG NEGUS:**

This is an enclosed encroachment of an area zoned Transport Zone 2: Road and Parking although not used as such. The Applicant requests a deviation from this process as he wishes to follow an alienation process which will also entail a public participation process. He has also requested to continue paying the annual encroachment fee which was levied in terms of the original encroachment agreement. Thus, that this be dealt with as an archaic encroachment.

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APPLICANT B: RADYN'S GEBOU BK:

This is an enclosed encroachment of an area zoned Transport Zone 2: Road and Parking although not used as such. The Applicant requests a deviation from this process due to the encroachment being archaic in nature. He has also requested to continue paying the annual encroachment fee which was levied in terms of the original encroachment agreement. Thus, that this be dealt with as an archaic encroachment.

APPLICANT C: RUDOLF DE VILLIERS TRUST:

This is an enclosed encroachment of an area zoned Transport Zone 2: Road and Parking although not used as such. The Applicant requests a deviation from this process due to the encroachment being archaic in nature and as it cannot be determined with certainty whether the wall in front was erected by the Municipality or the initial owners of the property. He has also requested to continue paying the annual encroachment fee which was levied in terms of the original encroachment agreement. Thus, that this be dealt with as an archaic encroachment.

APPLICANT D: SC SOLOMON:

Under normal circumstances a consent could be given for the encroachment of Applicant D. However, this is a partially enclosed encroachment of an area zoned Transport Zone 2: Road and Parking although not used as such. The Applicant has partially enclosed the portion of road, but the majority enclosure is natural. As the wall is only a small portion of the encroachment, this matter should rather be addressed under paragraph 64.1 of the policy with the deviation from 64.1(c) as to the partial enclosure. Paragraph 64.1(c) makes provision that the Municipality may:

*“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 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*

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- 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”*

Although it indicates that no consent is needed, a formal consent will be issued, specifically to make provision for the instance when and if the road is built and formalised. An example of such a consent is attached hereto marked Annexure B.

**APPLICANT E: JL COCKWELL:**

This is an enclosed encroachment of an area zoned Open Space Zone 1: Nature Reserve. The Applicant requests a deviation from this process due to the encroachment being archaic in nature, as the wall cannot be removed and as the Municipality cannot sell the portion to him. He has also requested to continue paying the annual encroachment fee which was levied in terms of the original encroachment agreement. Thus, that this be dealt with as an archaic encroachment.

**Conclusion**

Taking the above into consideration it is recommended that the following encroachments be approved:

- A: BG Negus (Erf 2521 Onrustrivier): Portion of the wendy house, garden and boundary wall ( $\pm 253\text{m}^2$  in extent) on a portion of Remainder Farm 581 Caledon Regional District in Onrustrivier for as long as the encroachment exists, at payment of the annual tariff S34C2 as approved by Council, which amount will escalate every year until 1 July;
- B: Radyn's Gebou BK (Erf 2519 Onrustrivier): Portion of boundary wall and garden ( $\pm 270\text{m}^2$  in extent) on a portion of Remainder Farm 581 Caledon Regional District in Onrustrivier for as long as the encroachment exists,

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at payment of the annual tariff S34C2 as approved by Council, which amount will escalate every year until 1 July;

- C. Rudolf De Villiers Trust (Erf 4181 Onrustrivier): Portion of the house, garden and fence ( $\pm 310\text{m}^2$  in extent) on a portion of Remainder Farm 581 Caledon Regional District in Onrustrivier for as long as the encroachment exists, at payment of the annual tariff S34C2 as approved by Council, which amount will escalate every year until 1 July;
- D. SC Solomon (Erf 91 Sandbaai): Garden, retaining wall, and driveway ( $\pm 256\text{m}^2$  in extent) on a portion of Erf 1289 Sandbaai for which only a consent will be issued;
- E. JL Cockwell (Erf 357 and Erf 366 Hermanus): Garden, fieldstone paved terrace and boundary wall ( $\pm 225\text{m}^2$  in extent) on a portion of Remainder Erf 243 Hermanus for as long as the encroachment exists, at payment of the annual tariff S34C2 as approved by Council, which amount will escalate every year until 1 July; and
- F. AB & L Kriegler (Erf 1756 Vermont): Wooden owl house structure, garden and concrete slabs and bricks layout ( $\pm 50\text{m}^2$  in extent) on a portion of Erf 915 Vermont for which only a consent will be issued.

## 7. Financial Implications

The following tariffs are applicable to these types of encroachments:

Code	Description	VAT excl	VAT incl
S34C2	Encroachments onto municipal land where a lease is not applicable (per annum)	586.09	674.00
S34C3	Enclosure or exclusive use of portions of Commonage, Public Open Spaces, Road Reserves or Public Thoroughfares for gardening purposes where a lease is not applicable (per $\text{m}^2$ per month)	5.61	3.00

### APPLICANT A: G NEGUS

The municipality will not receive a monthly income for the enclosed encroachment of  $\pm 253\text{m}^2$  in extent, calculated at R2.61/ $\text{m}^2$  (TWO RAND AND SIXTY-ONE CENTS PER SQUARE METRE) (VAT excluded) per month which amounts to approximately R660.33 (SIX HUNDRED AND SIXTY RAND AND THIRTY-THREE CENTS) (VAT excluded) per month. Instead, the Municipality will receive an annual fee of R586.09 (FIVE HUNDRED AND EIGHTY-SIX RAND AND NINE CENTS) (VAT excluded) for the 2024/2025 financial year.

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APPLICANT B: RADYN'S GEBOU BK

The municipality will not receive a monthly income for the enclosed encroachment  $\pm 270\text{m}^2$  in extent, calculated at R2.61/m<sup>2</sup> (TWO RAND AND SIXTY-ONE CENTS PER SQUARE METRE) (VAT excluded) per month which amounts to approximately R704.70 (SEVEN HUNDRED AND FOUR RAND AND SEVENTY CENTS) (VAT excluded) per month. Instead, the Municipality will receive an annual fee of R586.09 (FIVE HUNDRED AND EIGHTY-SIX RAND AND NINE CENTS) (VAT excluded) for the 2024/2025 financial year.

APPLICANT C: RUDOLF DE VILLIERS TRUST

The municipality will not receive a monthly income for the enclosed encroachment  $\pm 310\text{m}^2$  in extent, calculated at R2.61/m<sup>2</sup> (TWO RAND AND SIXTY-ONE CENTS PER SQUARE METRE) (VAT excluded) per month which amounts to approximately R809.10 (EIGHT HUNDRED AND NINE RAND AND TEN CENTS) (VAT excluded) per month. Instead, the Municipality will receive an annual fee of R586.09 (FIVE HUNDRED AND EIGHTY-SIX RAND AND NINE CENTS) (VAT excluded) for the 2024/2025 financial year.

APPLICANT D: SC SOLOMON

The municipality will not receive an income from the this encroachment as only a consent will be issued.

APPLICANT E: JL COCKWELL

The municipality will not receive a monthly income for the enclosed encroachment  $\pm 225\text{m}^2$  in extent, calculated at R2.61/m<sup>2</sup> (TWO RAND AND SIXTY-ONE CENTS PER SQUARE METRE) (VAT excluded) per month which amounts to approximately R587.25 (FIVE HUNDRED AND EIGHTY-SEVEN RAND AND TWENTY-FIVE CENTS) (VAT excluded) per month. Instead, the Municipality will receive an annual fee of R586.09 (FIVE HUNDRED AND EIGHTY-SIX RAND AND NINE CENTS) (VAT excluded) for the 2024/2025 financial year.

APPLICANT F: AB & L KRIEGLER

The municipality will not receive the annual encroachment fee in the amount of R586.09 (FIVE HUNDRED AND EIGHTY-SIX RAND AND NINE CENTS) (VAT excluded) for the 2024/2025 financial year for the open encroachment of  $\pm 50\text{m}^2$  in extent.

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**8. Staff Implications**

None

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

APPLICANT A: G NEGUS

**Environmental Officer – Ms H Fortune**

*“This office has no objection to the 3 options proposed for the property, a portion of Remainder Farm 581 RCAL adjacent to Erf 2521 Onrus.”*

**Town Planner - Mr H Olivier**

*“Town Planning previously made recommendations with regards to the non-used road reserve portion between Roos Street and Chiappini Street in Onrus. There is existing storm water piping and possibly other services that must be considered. However, if there are then still useable portions it could then be closed, rezoned, and sold off to adjacent landowners and consolidated with such properties.”*

**Assistant Chief: Fire, Health and Safety – Mr E Solomons**

*“The Fire Department has no objections subject to compliance with the provisions of SANS 10400-A:2016, 10400-T:2020 and the By Law relating fire safety.”*

**Divisional Manager: Building Control - Mr L Coetzee**

*“Building Control recommends option 1: sale/alienation. A building plan application is required to regularise encroachment onto municipal property.”*

**Building Inspector - Ms L Lubbe**

*“The plan you sent is the only plan we have on file. There was a letter attached, see attached (2521 HON) “Annexure B” indicating that approval had been given for the wall or that it was in process.*

*The Erf in 1918 changed from lot 9 on the General plan to Erf 2521, HON, see attached diagram 2521 HON Diagram “Annexure B6”. You will see the diagram indicates that the length of the street boundary (line A-D) is 50 Cape Feet – this is equivalent to 15.74m. Then if you look at the plan, you will see that same boundary is indicated as 22.83m. I went and measured it on our GIS (2521 HON GIS area of plan) – the blue block on the “Annexure B5”, and the black block is more or less where they have added the new Wendy House on the plan*

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*“Annexure B5”. I suspect on the building plan- the yellow dotted line that they indicate is where the erf boundary should actually be “Annexure B2”.*

*Unfortunately, I cannot determine with the aerial photos on “google earth” when the house was originally built no, since the aerial photos only go back to 1985 and it is very unclear.*

*My conclusions are therefore that the plan was submitted with the wrong plot size, the Wendy House was approved, but there is no further approval anywhere for the part that was added and now stands on municipal land. The addition must have taken place after the plan approval in 1986”.*

**Senior Superintendent: Traffic Operations – Mr P De Gruchy**

*“There are no objections towards the lease or purchase of proposed erf as per application from Applicant.”*

**Principal Technologist: Civil – Mr T Marx**

*“The Department Operational Services, Hermanus do not have any objection with regards to this application.*

*“The stormwater furrow will not be affected, so purchase can proceed.”*

**Principal Technologist: Development Control – Mr R Andrews**

*“The purposed land purchase is not supported. The proposal will interfere with the stormwater flow. This will potentially put other properties in the street at risk with an increased risk of flooding.”*

**APPLICANT B: RADYN'S GEBOU BK**

**Divisional Manager: Building Control - Mr L Coetzee**

*“No objection. A building plan application (minor works) to be submitted for the existing (“cement”) boundary wall and any other proposed structure.”*

**Assistant Chief: Fire, Health and Safety – Mr E Solomons**

*“The fire safety department has no objection”.*

**Senior Superintendent: Traffic Operations – Mr P De Gruchy**

*“The Traffic Department has no objection towards this application, as no vehicular or pedestrian traffic will be effected by the lease of land”.*

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**Principal Technologist: Civil – Mr T Marx**

*“The Department: Civil Services, Hermanus do not have any objection with regards to this application”.*

**Environmental Officer – Ms H Fortune**

*“This office has no objection to this application”.*

**Town Planner - Mr H Olivier**

*“The portion of land is zoned Transport Zone 2 and is for public road. The portion is not used for road purposes but there is a municipal stormwater pipe in this area. If the Operational Division support the application Town Planning has no objection against the application, but only to accommodate existing structures.”*

**APPLICANT C: RUDOLF DE VILLIERS TRUST**

**Divisional Manager: Building Control - Mr L Coetzee**

*“I suspect that Erf 2645 is now Erf 4181. Municipal plot (581/0) has no diagram on GIS. Attached Site Plans show that part of the existing house is indeed on municipal property. However, it is smaller than what appears on the aerial photograph. Second, although these 2 plans are on record, there are no municipal approval stamps on them. My opinion is that there are no approval for this, but that there was no dishonest action (no ill intent) because the plans on record do show that there are encroachments, but therefore never approved.*

*Option 1: “As built” Building plan application to be submitted and Lease Agreement attached to that application.*

*Option 2: “As built” Building plan application to be submitted after sale and consolidation of erven.”*

**Building Inspector - Ms L Lubbe**

*“Erf 1414 HON was a consolidation of Erf 2647 and 2645. This consolidation was done in 1997. The SG diagram does not indicate any encroachment, but I am sure the encroachment was already there if I look at the older building plans.*

*There is a plan for an extension of a store and a garage which was approved on the 22 May 1974 which shows that the building (kitchen) encroaches over the Erf boundary. On 15 July 1974 a further plan was approved for the extension of a store and the extension of the kitchen, but on this plan the*

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*house shows within the Erf boundaries, as I can derive from the plan, they have indicated the open space (F581/0) as part of their Erf. You will see on our GIS aerial photograph that there is a fence strung between Erf 2141 and 2640 within F581/0, and this is more or less in line with the building plan of 15 July 1974.”*

*In 1983, a building plan was again approved for the extension of toilet facilities and storage space, and again the incorrectly indicated that the building stood within the Erf.*

*I don't get the original approval when the house was built. My conclusion is therefore that the plans of the house did not indicate the Erf correctly and therefore we approved further additions. If the Erf boundaries was indicated correctly, I doubt whether approval would have been given.”*

**Town Planner: Mr H Olivier**

*“The alley is zoned Transportation Zone Two: Public Road. We are aware that there is Municipal services in this alley. There are also other buildings on adjacent erven that traverse onto this alley.*

*It is recommended that the future of this whole alley be investigated and the needs of the Operational Branch on how much area is required for the existing services. The rest of the land can then possibly be sold to adjacent neighbours.*

*We support option 2 the alienation of the land. In considering the size of the land alienated, the use of the structures considered to be habitable areas should at least be situated 1 metre from property boundaries.*

*To alienate the land the road portion will have to be closed, subdivided, rezoned to Residential Zone 1 and consolidated with erf 4181.”*

**APPLICANT D: SC SOLOMON**

The following comments were received when the application of the previous owner was circulated:

**Senior Superintendent: Traffic Operations – Mr P De Gruchy**

*“Traffic Department has no objection towards this application.”*

**Principal Technologist: Development Control – Mr R Andrews**

*“The application for renewal is not supported by the Engineering Services Department:*

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1. *It's envisaged that the road will be build within the short-to-medium term.*
2. *The erection of concrete/masonry structures within the road reserve is a serious concern and in breach of the original encroachment agreement."*

Property Management: The concerns of Mr Andrews were addressed in the report. The portion of the retaining wall encroaching on municipal land cannot be removed as per advice from the Building Control Division. The approval will make provision further deliberations with Applicant D if the road is built in the future.

APPLICANT E: JL COCKWELL

**(Previous) Manager Biodiversity Conservation - Mr. T Dry**

*"I have been unable, on historical aerial photos (1962/3, 1973 and 1989), to determine the approximate age of the boundary wall. ("Number 15 Westcliff Road was purchased in 1979/80 and at that time the wall on the municipal land already existed across the two properties. The wall is a double stone wall and is 80cm high at its highest point and 25cm high at its lowest point. The property is virtually on the boundary. I presume for this reason the person who erected the wall obtained permission from the municipality. Hence the encroachment levy being debited to both Municipal Accounts of number 15 and 17.") As such is not possible for our department to establish whether the wall has heritage status. Should the wall have such status then it would be unreasonable to request for the removal and rehabilitation.*

*The sale of the portion of Erf 243 is not supported by the environmental section as this is a NEMPAA protected area".*

Property Management Comments: The above information provided by the Environmental Department indicate that should it be established that the encroachment has a heritage nature it would not be suitable to remove the boundary wall or to rehabilitate the Property. Based on these comments, the Overstrand Heritage Commission was requested to provide heritage information on the boundary wall encroachment located. The following comments were received:

**Overstrand Heritage Comments - Ms. N Lloyd**

*"The earliest municipal archive record is 1946 when the house was altered. 1950-1960 Aerial photos on record shows the house with encroaching terrace and 'werf' walls. It is a reasonable assumption that the house was built between WW1 and WW2 – ie. Circa 1920's (confirmed by the simplified 'Arts and Craft's detailing. The current house has been minimally altered. The fieldstone paved terrace and attendant 'werf' walls are likely original and*

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*consistent with the original architectural expression. The encroaching terrace and 'werf' walls trigger the Heritage Act by being older than 60 years."*

*The above information provided by the Overstrand Heritage Commission therefore indicate that the encroachment is indeed of archaic / heritage nature and that especially the fieldstone paved terrace and the boundary wall is older than 60 years on the Property and for this reason it would not be reasonable for the encroachment to be removed or to rehabilitate the Property.*

*The Applicant did apply to purchase or to lease the Property however the internal comments from municipal departments did not support the purchase since the Property is a NEMPAA protected area. The lease was supported; however, the encroachment is of an archaic / heritage nature and more than 60 years on the Property and thus should be handled as other similar archaic encroachment matters.*

*The Building Control Department also provided the Building Plans on record for Erven 357 and 366 Hermanus and these plans indicate the following information on the boundary wall encroachment:*

*As can be seen on the building plan from 1953 on erf 356 Hermanus is that the French drain's drain portion encroaches on municipal property erf 243 Hermanus. The plan for the boundary wall dated 1980 has side notes that read as follows "The figure DCGH represents an encroachment on the Commonage" and this indicates that there was already an encroachment in 1980 – it can also be seen on that plan that there a wall was drawn on the adjoining plot 367 above the plot border.*

*As can be seen on the building plans of Erf 357 Hermanus the plan dated 1951 there is an approval condition on the plan that reads "Plan passed subject to fence encroachment being removed". But then on the plan of 1999 a wall was approved a little beyond the end of the building on lot 366 Hermanus - if you look at the GIS it can also be seen that the lot is not the same size as the plan indicates.*

*Nothing has been approved on plot 357 Hermanus - the condition of 1951 is clear that reads "Plan passed subject to fence encroachment being removed". Erf 366 Hermanus can be argued, at that time the municipality did not have access to the SG diagrams and even less aerial photos, and so it can be assumed that the person who drew the plans did it correctly. The plan of 1999 creates a false impression that we can*

*The plan also indicates that the wall falls within the boundaries of Erf 366, and I will therefore also say that the wall encroachment on municipal property does not have approval."*

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APPLICANT F: AB & L KRIEGLER

**(Previous) Manager Biodiversity Conservation: Hermanus - Mr. T Dry**

*“Erf 915 is zoned as Open Space Zone 2 – Public Open Space Erf 915 is Hangklip Sandstone Fynbos – Listed as Endangered under the SANBI threated ecosystems Erf 915 is further protected under the Environmental*

*Overly Zones under the following categories:*

*Ecological Corridor Process*

*Conservation Worthy area on Municipal Land*

*Urban Conservation Overlay Zone*

*Category “A” under Urban Conservation – Land managed by Area Management with inputs from Environmental Management Services.*

*An encroachment of 61m<sup>2</sup> currently exists on Erf 915 from Erf 1756 Vermont and encroachment is limited by a stormwater drain.*

*The application is supported on the condition that the encroachment does not extend past the storm water drain.”*

**10. Annexures**

Annexures A1 – A5: Building plans – Applicant C

Annexure B: Consent letter

**RECOMMENDATION TO THE COUNCIL:**

1. that the archaic encroachment on municipal property, being a portion of Remainder Farm 581 Caledon Regional District (±253m<sup>2</sup> in extent), adjacent to Erf 2521 Onrustrivier, by BG Negus, at the payment of an annual fee of R586.09 (FIVE HUNDRED AND EIGHTY-SIX RAND AND NINE CENTS) (VAT excluded) for the 2024/2025 financial year for the purpose of an enclosed encroachment for gardening purposes (which also includes a wendy house) in terms of the Administration of Immovable Property Policy of the Overstrand Municipality, **be approved**;
2. that the archaic encroachment on municipal property, being a portion of Remainder Farm 581 Caledon Regional District (±270m<sup>2</sup> in extent), adjacent to Erf 2519 Onrustrivier, by Radyns Gebou BK, at the payment of an annual fee of R586.09 (FIVE HUNDRED AND EIGHTY-SIX RAND AND NINE CENTS) (VAT excluded) for the 2024/2025 financial year for the purpose of an enclosed encroachment for gardening and parking purposes (in terms of the Administration of Immovable Property Policy of the Overstrand Municipality, **be approved**;

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3. that the archaic encroachment on municipal property, being a portion of Remainder Farm 581 Caledon Regional District ( $\pm 310\text{m}^2$  in extent), adjacent to Erf 4181 Onrustrivier, by Rudolf De Villiers Trust, at the payment of an annual fee of R586.09 (FIVE HUNDRED AND EIGHTY-SIX RAND AND NINE CENTS) (VAT excluded) for the 2024/2025 financial year for the purpose of an enclosed encroachment for gardening purposes in terms of the Administration of Immovable Property Policy of the Overstrand Municipality, **be approved**;
4. that the encroachment on municipal property, being a portion of Remainder Erf 1289 Sandbaai ( $\pm 274\text{m}^2$  in extent), adjacent to Erf 91 Sandbaai, by SC Solomon, for the purpose of an encroachment for gardening and parking purposes (which also includes a portion of a retaining wall), at no fee payable, in terms of the Administration of Immovable Property Policy of the Overstrand Municipality, **be approved**;
5. that the archaic encroachment on municipal property, being a portion of Remainder Erf 243 Hermanus ( $\pm 225\text{m}^2$  in extent), adjacent to Erf 357 Hermanus and Erf 366 Hermanus, by JL Cockwell, at the payment of an annual fee of R586.09 (FIVE HUNDRED AND EIGHTY-SIX RAND AND NINE CENTS) (VAT excluded) for the 2024/2025 financial year for the purpose of an enclosed encroachment for gardening purposes in terms of the Administration of Immovable Property Policy of the Overstrand Municipality, **be approved**;
6. that the encroachment on municipal property, being a portion of Erf 915 Vermont ( $\pm 50\text{m}^2$  in extent), adjacent to Erf 1756 Vermont, by AB & L Kriegler, for the purpose of an encroachment of bricks, a wooden owl house and concrete slabs, at no fee payable, in terms of the Administration of Immovable Property Policy of the Overstrand Municipality, **be approved**;
7. that the prescribed tariff mentioned in 1 – 3 & 5 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 2025;
8. that the application fee payable by AB & L Kriegler for the consent to encroach be waived;
9. that where applicable and as discussed in the report, the process for an enclosed encroachment as contained in the Administration of Immovable Property Policy be deviated from in order to enter into the encroachment agreements / issue the necessary consents;
10. that the encroachment agreement/consent to be issued not be linked to a time frame but to the period the encroachment exists; and

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11. that following specific conditions be imposed in the agreement/consent:
- 11.1 The encroacher will and must at all times well and sufficiently indemnify the Municipality and keep the Municipality indemnified against all liability howsoever caused or arising that may be direct or indirect result of the use of the encroachment area in question, and against all actions, suits, proceedings, claims, demands, costs and expenses whatsoever which may be taken or made against the Municipality or incurred or become payable by the Municipality at the suit of any person which may be direct or indirect result of the use of the encroachment area in question
  - 11.2 The encroacher shall not at any time, or under any circumstances have any claim against the Municipality for improvements effected to or on the encroachment area.
  - 11.3 The encroacher shall be responsible for the maintenance and upkeep of the premises and to ensure that the premises is safe at all times during the period of this consent.
  - 11.4 This approval shall under no circumstances be deemed to confer any real right or servitude of any kind in favour of the encroacher.
  - 11.5 The encroacher will not obtain any vested and/or prescriptive rights on the encroachment area due to the Municipality's knowledge of the said encroachment nor any right or lawful claim to a grant of the encroachment area.
  - 11.6 The encroacher may not erect any new buildings and/or further structures within the encroachment area and where it is an open encroachment, may not enclose the approve encroachment.
  - 11.7 The encroacher may not extend the size of the encroachment area beyond the area applied for and subsequently approved.

<b>RESPONSIBLE OFFICIAL :</b>	<b>V OCTOBER</b>
<b>TARGET DATE FOR IMPLEMENTATION :</b>	<b>31 JULY 2025</b>
<b>TARGET DATE TO INFORM APPLICANT :</b>	<b>15 JULY 2025</b>

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**6.  
VARIOUS ARCHAIC ENCROACHMENTS ON MUNICIPAL PROPERTIES**

**A Le Roux  
30 April 2025**

**Divisional Manager: Property Management**

**(028) 316 - 5623**

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**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON  
4 JUNE 2025, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:**

**RECOMMENDATION TO THE COUNCIL:**

1. that the archaic encroachment on municipal property, being a portion of Remainder Farm 581 Caledon Regional District ( $\pm 253\text{m}^2$  in extent), adjacent to Erf 2521 Onrustrivier, by BG Negus, at the payment of an annual fee of R586.09 (FIVE HUNDRED AND EIGHTY-SIX RAND AND NINE CENTS) (VAT excluded) for the 2024/2025 financial year for the purpose of an enclosed encroachment for gardening purposes (which also includes a wendy house) in terms of the Administration of Immovable Property Policy of the Overstrand Municipality, **be approved**;
2. that the archaic encroachment on municipal property, being a portion of Remainder Farm 581 Caledon Regional District ( $\pm 270\text{m}^2$  in extent), adjacent to Erf 2519 Onrustrivier, by Radyns Gebou BK, at the payment of an annual fee of R586.09 (FIVE HUNDRED AND EIGHTY-SIX RAND AND NINE CENTS) (VAT excluded) for the 2024/2025 financial year for the purpose of an enclosed encroachment for gardening and parking purposes (in terms of the Administration of Immovable Property Policy of the Overstrand Municipality, **be approved**;
3. that the archaic encroachment on municipal property, being a portion of Remainder Farm 581 Caledon Regional District ( $\pm 310\text{m}^2$  in extent), adjacent to Erf 4181 Onrustrivier, by Rudolf De Villiers Trust, at the payment of an annual fee of R586.09 (FIVE HUNDRED AND EIGHTY-SIX RAND AND NINE CENTS) (VAT excluded) for the 2024/2025 financial year for the purpose of an enclosed encroachment for gardening purposes in terms of the Administration of Immovable Property Policy of the Overstrand Municipality, **be approved**;
4. that the encroachment on municipal property, being a portion of Remainder Erf 1289 Sandbaai ( $\pm 274\text{m}^2$  in extent), adjacent to Erf 91 Sandbaai, by SC Solomon, for the purpose of an encroachment for gardening and parking purposes (which also includes a portion of a retaining wall), at no fee payable, in terms of the Administration of Immovable Property Policy of the Overstrand Municipality, **be approved**;

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5. that the archaic encroachment on municipal property, being a portion of Remainder Erf 243 Hermanus ( $\pm 225\text{m}^2$  in extent), adjacent to Erf 357 Hermanus and Erf 366 Hermanus, by JL Cockwell, at the payment of an annual fee of R586.09 (FIVE HUNDRED AND EIGHTY-SIX RAND AND NINE CENTS) (VAT excluded) for the 2024/2025 financial year for the purpose of an enclosed encroachment for gardening purposes in terms of the Administration of Immovable Property Policy of the Overstrand Municipality, **be approved**;
6. that the encroachment on municipal property, being a portion of Erf 915 Vermont ( $\pm 50\text{m}^2$  in extent), adjacent to Erf 1756 Vermont, by AB & L Kriegler, for the purpose of an encroachment of bricks, a wooden owl house and concrete slabs, at no fee payable, in terms of the Administration of Immovable Property Policy of the Overstrand Municipality, **be approved**;
7. that the prescribed tariff mentioned in 1 – 3 & 5 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 2025;
8. that the application fee payable by AB & L Kriegler for the consent to encroach be waived;
9. that where applicable and as discussed in the report, the process for an enclosed encroachment as contained in the Administration of Immovable Property Policy be deviated from in order to enter into the encroachment agreements / issue the necessary consents;
10. that the encroachment agreement/consent to be issued not be linked to a time frame but to the period the encroachment exists; and
11. that following specific conditions be imposed in the agreement/consent:
  - 11.1 The encroacher will and must at all times well and sufficiently indemnify the Municipality and keep the Municipality indemnified against all liability howsoever caused or arising that may be direct or indirect result of the use of the encroachment area in question, and against all actions, suits, proceedings, claims, demands, costs and expenses whatsoever which may be taken or made against the Municipality or incurred or become payable by the Municipality at the suit of any person which may be direct or indirect result of the use of the encroachment area in question
  - 11.2 The encroacher shall not at any time, or under any circumstances have any claim against the Municipality for improvements effected to or on the encroachment area.

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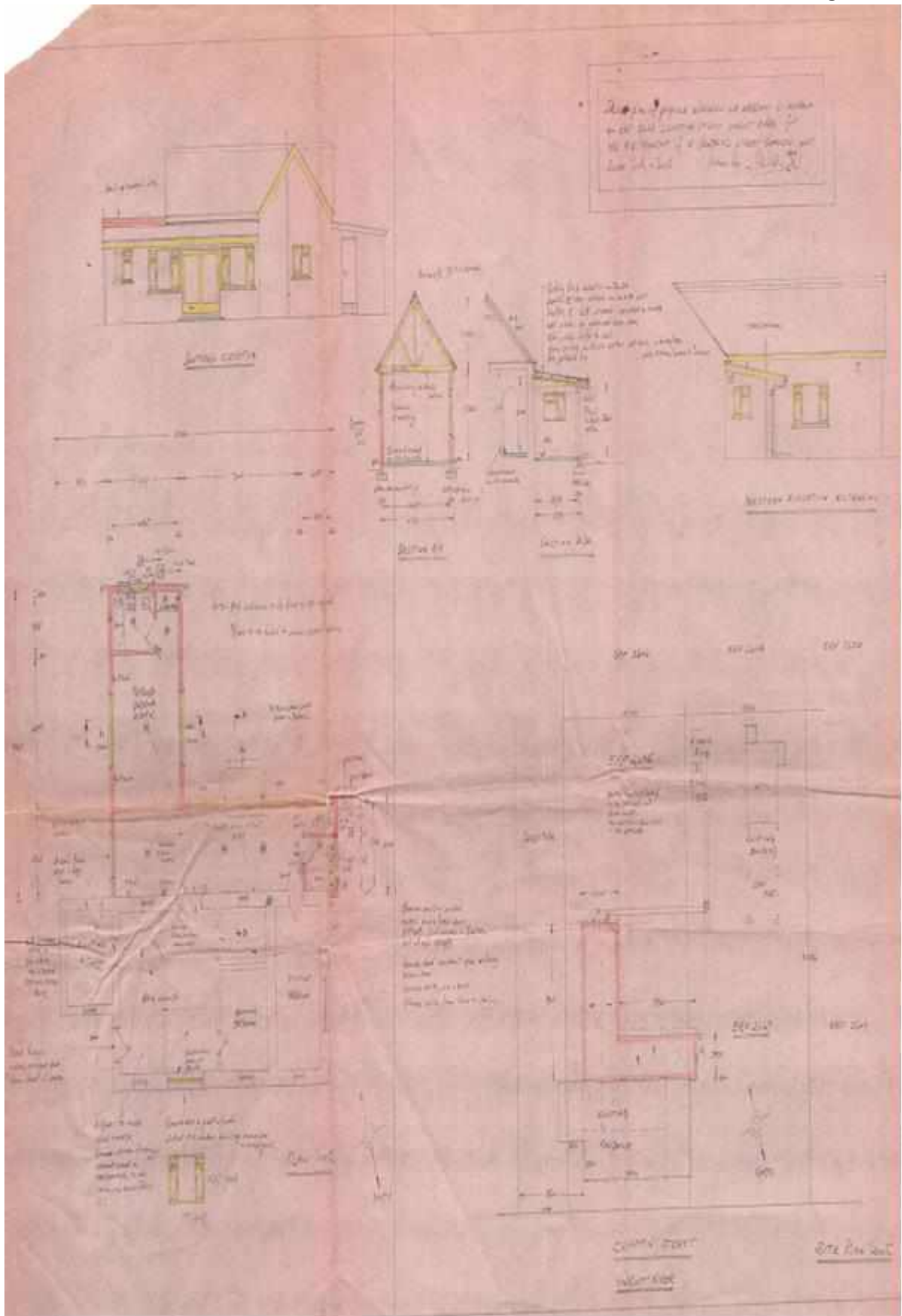
- 11.3 The encroacher shall be responsible for the maintenance and upkeep of the premises and to ensure that the premises is safe at all times during the period of this consent.
- 11.4 This approval shall under no circumstances be deemed to confer any real right or servitude of any kind in favour of the encroacher.
- 11.5 The encroacher will not obtain any vested and/or prescriptive rights on the encroachment area due to the Municipality's knowledge of the said encroachment nor any right or lawful claim to a grant of the encroachment area.
- 11.6 The encroacher may not erect any new buildings and/or further structures within the encroachment area and where it is an open encroachment, may not enclose the approve encroachment.
- 11.7 The encroacher may not extend the size of the encroachment area beyond the area applied for and subsequently approved.

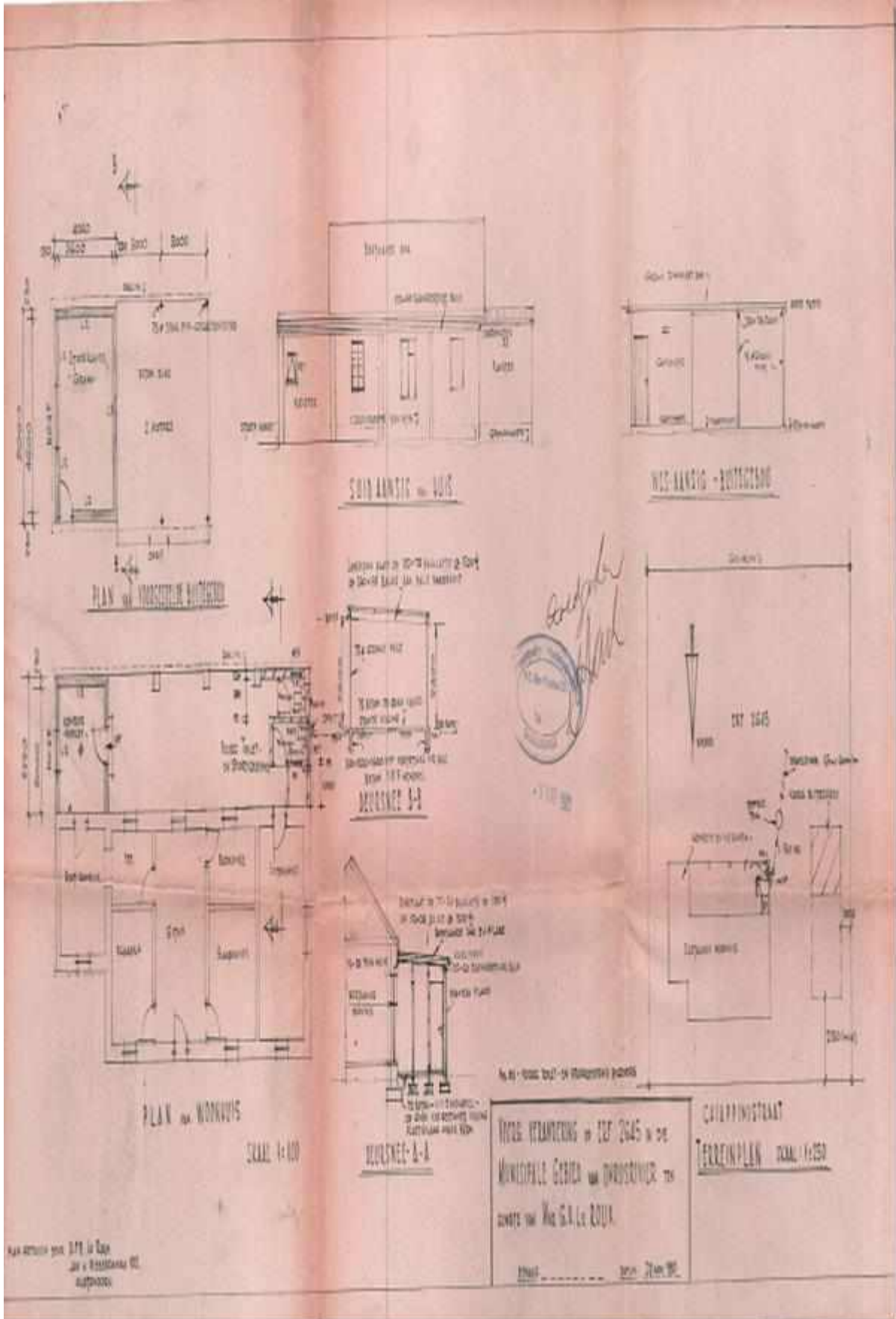
**RESPONSIBLE OFFICIAL :** **V OCTOBER**

**TARGET DATE FOR IMPLEMENTATION :** **31 JULY 2025**

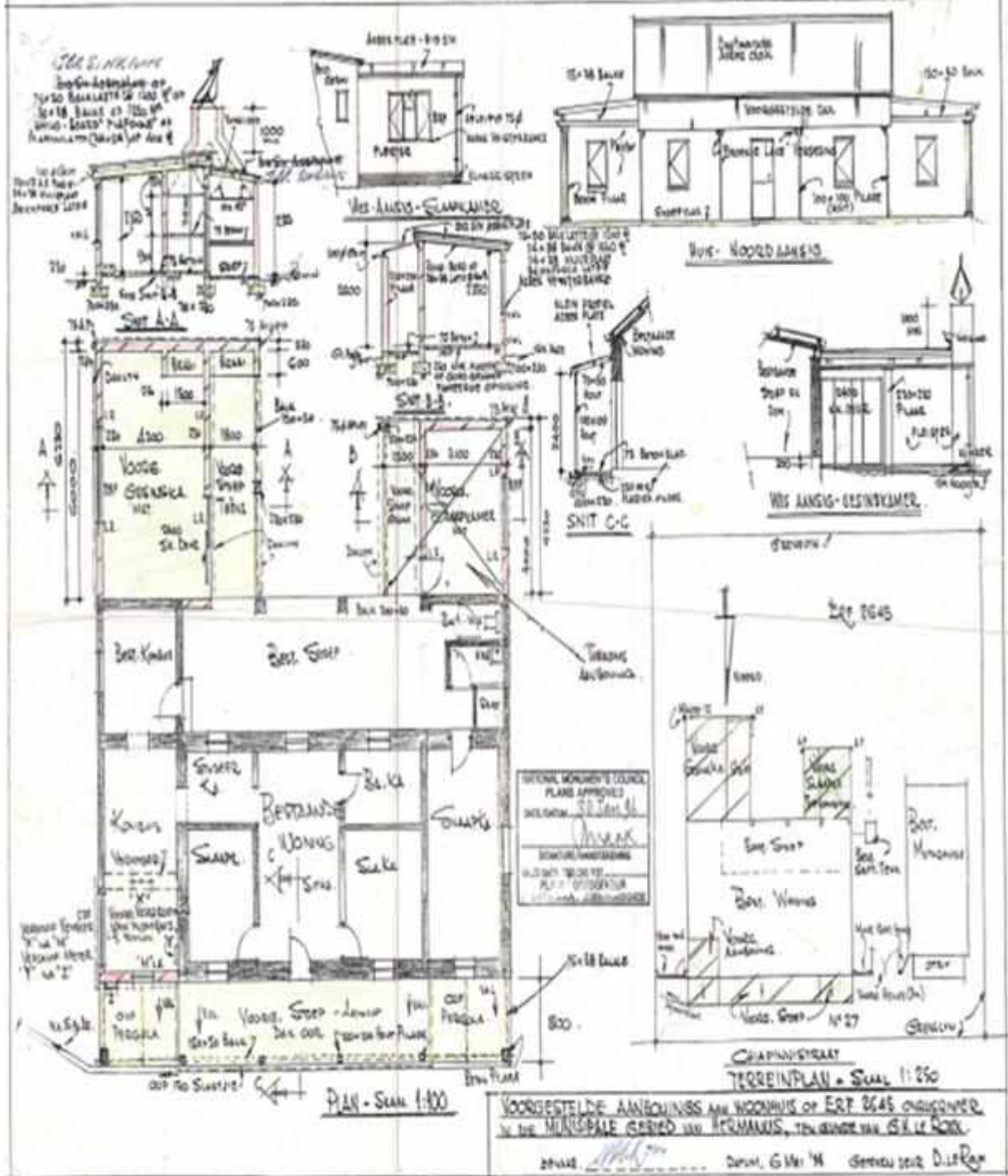
**TARGET DATE TO INFORM APPLICANT :** **15 JULY 2025**











22/1/75  
 21/1/75  
 75-13

20  
HERMANUS  
7200

Tel: 028 – 316 8623  
Fax: 028 – 316 3721



Property Administration

e-mail: [wmurtz@overstrand.gov.za](mailto:wmurtz@overstrand.gov.za)  
website: [www.overstrand.gov.za](http://www.overstrand.gov.za)

Enquiries: W Murtz

Our Ref:  
Your Ref:

725 [REDACTED] (H58 1298) Date: 13 July 2021

[REDACTED]

[REDACTED]

Dear [REDACTED]

**RE: CONSENT TO ENCROACH ONTO MUNICIPAL PROPERTY, A PORTION OF ERF 1298 SANDBAAI, FOR DRIVEWAY AND GARDENING PURPOSES (±274M<sup>2</sup> IN EXTENT)**

We refer to the abovementioned matter and in particular to your application dated 3 September 2019.

It is with great pleasure that we herewith inform you that your application to encroach on municipal property, namely a portion of Erf 1298 Sandbaai (±274m<sup>2</sup> in extent) (hereinafter called the 'encroachment area'), adjacent to Erf 91 Sandbaai for driveway and gardening purposes is approved subject to the following conditions:

1. You, as the owner of the adjacent property and encroacher:
  - a) must ensure that any existing municipal services stay intact and not be compromised. If any of the existing services need to be relocated, it will be done by the encroacher at its cost, and to the satisfaction of the Director: Infrastructure and Planning and Senior Manager: Hermanus;
  - b) will have no exclusive right of use of the encroachment area;
  - c) may not affect any further improvements or additions to or place any structures on the encroachment area;
  - d) may not extend the encroachment area beyond the portion applied for;
  - e) may not assign your rights under this consent nor shall you be permitted to sublet the encroachment area in whole or in part;
  - f) will and must at all times well and sufficiently indemnify the Municipality and keep the Municipality indemnified against all liability howsoever arising that may be the direct or indirect result of the use of the encroachment area in question, and against all actions, suits, proceedings, claims, demands, costs and expenses whatsoever which may be taken or made against the Municipality or incurred or become payable by the Municipality at the suit of any person which may be the direct or indirect result of the use of the encroachment area in question;
  - g) shall be responsible for the maintenance and upkeep of the encroachment area and to ensure that the encroachment area is safe at all times;
  - h) shall at all time keep the encroachment area in a clean and tidy condition and free from all rubbish, litter or other accumulation of dirt to the satisfaction of the Municipality.
2. The encroachment area may only be used for a driveway and gardening purposes.
3. The encroachment area may in no way be enclosed, in whole or partially.

PLEASE ADDRESS ALL CORRESPONDENCE TO THE MUNICIPAL MANAGER  
ZONKE IBALUWANO ZINGATHU NEDWA KUMPHATHIWA KAVASPHACA  
RIG ASSEBUYE ALLE KORRESPONDENSIE AAN DIE MUNISIPALE BESTAURDER



4. The current concrete/masonry cement wall structures situated at the southern cadastral boundary of the unbuilt portion of Kusweg Street must be removed/demolished from the encroachment area on or before **12 October 2021** whereafter an inspection will be done at the encroachment area.
5. Any damage caused to the encroachment area and surrounding municipal land as a result of the works to be done or as a result of your failure to maintain the encroachment area in such good order and condition shall be made good by the Municipality at your own cost and expenses within 30 (THIRTY) days after written notice have been sent to you to rectify.
6. This consent may be cancelled with immediate effect should the conditions hereof not be adhered to and you could be requested to restore the encroachment area at your cost.
7. Notwithstanding anything in this consent contained, whether in the instance of the Municipality needing the encroachment area for own use, the Municipality may resume possession thereof at any time on giving 3 (THREE) months written notice to that effect and may cancel this consent accordingly. Upon a demand made by the Municipality, in terms of this consent, for possession of the encroachment area, you will be bound to give such possession without any right to compensation, whether for useful, necessary expenses or other improvements.
8. You take note that should there be a burst pipe below the encroachment area or any work needs to be done on the encroachment area and there are damages to the driveway and/or the garden, the Municipality will have to remove the bricks/pavement, which can cause damage to the driveway and garden, for which damage the Municipality will not be held liable for.
9. The grant of this consent shall under no circumstances be deemed to confer any real right or servitude of any kind in favour of you. Upon a demand made by the Municipality, in terms of this consent, for quiet possession of the encroachment area, you will be bound to give such possession without any right to compensation, whether for useful, necessary expenses or other improvements.
10. It shall at no time be considered that you have by virtue of this consent acquired any right or lawful claim to a grant of the encroachment area.
11. The Municipality reserves the right of free access, without notice, to the encroachment area, for as many of its officers and servants, or any duly appointed agent, as may be necessary for the purpose of inspection, maintenance, renewal, cleansing, repairs and reconstruction of, or in connection with, existing foul sewers, rising mains, storm water drains, water mains, electric cables, or any works appurtenant thereto, or in regard to any such or other municipal services which the Municipality may in future lay in or across municipal property, the Municipality reserving to itself the right to establish such services without notice. The Owner shall not build over, alter, or in any manner disturb such services except under the express permission in writing of the delegated authority or its authorized representative in respect of the service concerned, and upon due compliance with any specified precautionary measures.
12. This consent shall be binding upon and be enforceable by the Heirs, executors, successors or in title or assigns of both the owner of Erf 91 Sandbaai and the Municipality.

## ANNEXURE B3/4



Please note that the Administration of Immovable Property Policy as amended and approved by Council on 25 November 2015 imposes the following additional conditions:

*Paragraph 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 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."*

Your attention is drawn to your right to appeal against the outcome of your application in terms of Section 62 of the Act of Local Government: Municipal Systems Act (Act 32 of 2000) within 21 days of date of this notification.

Should you elect to submit an appeal, a detailed written motivation must be completed and directed to the Municipal Manager and received within the prescribed 21 days of notification, together with proof of payment of the appeal fee (R1,800.00 for the 2021/2022 financial year).

Any appeal motivation must be submitted at the following address:

Physical address: Corner of Molteno and Viljoen Street, Onrustrivier 7201

Postal address: PO Box 20, Hermanus 7200

Email address: [anjaleroux@overstrand.gov.za](mailto:anjaleroux@overstrand.gov.za)

Should you have any queries in this regard please do not hesitate to contact Ms A Le Roux (Manager: Property Administration) at 028 – 316 5623 or electronic mail to [anjaleroux@overstrand.gov.za](mailto:anjaleroux@overstrand.gov.za)

We trust you find the above in order and herewith request your written acceptance of the conditions as imposed by the Overstrand Municipality in consenting to the use of the encroachment area.

Yours sincerely,

ANNEXURE B4/4



I, [REDACTED] (full names) with Identity Number [REDACTED]  
herewith acknowledges that I understand and accept the conditions as stipulated in this  
consent.

[REDACTED]  
Signature

[REDACTED]  
Date

---

I, [REDACTED] (full names) with Identity Number [REDACTED]  
herewith acknowledges that I understand and accept the conditions as stipulated in this  
consent.

[REDACTED]  
Signature

[REDACTED]  
Date  
21/07/2021