

**AGENDA of the
Portfolio Committee: Planning & Development
18 November 2025
(Also the agenda for the Mayoral Committee Meeting: 28 November 2025)**

building plans for Erf 5908 Hermanus, it was discovered that the boundary wall on the western side (Francolin Close) encroaches on municipal property, being a portion of Erf 6257 Hermanus, by approximately 20cm wide and 30m in length (hereinafter referred to as the "Property"). According to the oldest building plans registered at the Municipality, as approved on 11 February 2000, the boundary wall precedes the house. This means that the boundary wall was already built and existing pre the year 2000 (thus older than 25 years).

The Applicants request a consent to retain the boundary wall as it is, as the cost of demolishing, removing, rebuilding, plastering and moving the wall inside the boundary line, which is only a few centimetres away, would be very expensive [estimated at approximately R140,000.00 (ONE HUNDRED AND FORTY THOUSAND RAND)].

Discussion

Due to minor encroachment of the boundary wall, the building plans submitted by the Applicants for improvements to their property cannot be approved. From the Municipality's side there are five options available to the Applicants, being:

1. Demolish the 30m boundary wall and rebuilt it on the property boundary;
2. Purchase $\pm 6\text{m}^2$ of the Property from the Municipality;
3. Lease $\pm 6\text{m}^2$ of the Property from the Municipality (maximum 9 years 11 months as to not burden the Property with notarial endorsements);
4. Enter into an enclosed encroachment agreement with the Municipality (only valid for 5 years);
5. Leave the encroachments as is (archaic matter) as was done with similar situations in Onrustrivier.

Option 1 is not a financially viable option for the Applicants as the cost of relocating the wall to the property boundary is estimated at R140,000.00 (HUNDRED AND FOURTY THOUSAND RAND) as was determined by a building contractor.

Option 2 is a possibility but entails a costly and lengthy process. This process will also not be a financially sensible option as the costs to obtain a registerable property will be far more than the purchase price the Municipality will receive. It is even not viable and practical to create an erf of $\pm 6\text{m}^2$. Such a subdivision will most probably not even be supported or approved. To buy the $\pm 6\text{m}^2$ the Applicants will incur the following estimated costs:

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- Property Management:
 - Administrative costs in terms of the approved tariffs: R3,340.00 (2025/2026 financial year)
 - Expenses: Valuation: Can be between R2,500.00 to R4,500.00.
 - Expenses: Advertisement: Can be between R4,500.00 to R6,500.00.
 - Expenses: Transfer and consolidation costs: This will depend on the purchase price and attorney fees.
 - Purchase price: Will depend on the valuation obtained from a registered valuer, but will most probably not be more than R6,000.00.
- Town and Spatial Planning:
 - Administrative costs in terms of the approved tariffs: (estimated) R20,279.00
 - Costs of consultant to attend to the land use planning application, including the preparation and registration of the diagrams: Will depend on the consultant appointed.

With this option, the Applicants will in effect be penalised as they will incur additional costs in a matter that was not disclosed when the property was purchased.

Options 3 and 4 are obviously not viable and financially sensible options as both are of a temporary nature. Once the building plan is approved, the boundary wall will be given the status of a permanent right. For an enclosed encroachment, the monthly income to be received will be a mere R19.20 (NINETEEN RAND TWENTY CENTS) (VAT included). A rental amount will in effect be lesser.

Option 5 will be a more suited option as the encroachment has been there for more than 25 years. It is thus a recommended that a normal consent be issued where the Municipality acknowledges the encroachment.

Evaluation

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

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

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,

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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.

The Applicants completed and submitted the formal application form and paid 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.”*

There are no additional costs payable.

Paragraph 64: *“The Municipality may, subject to such conditions as it may deem fit –*

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*

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- 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.”*

This seems to be a type of enclosed encroachment of an area zoned Transport Zone 2: Road and Parking although not used as such. The Applicants only gained $\pm 6\text{m}^2$ which consists of wall (20cm wide). The Applicants request a deviation from this process and monthly fees payable due to the encroachment being archaic in nature and any other process not being financially viable and sensible to rectify the matter.

Thus, that this be dealt with as an archaic encroachment and that the Applicants be provided with a consent letter for the archaic encroachment.

Conclusion

Taking the above into consideration it is recommended that consent is given for the archaic encroachment on the Property as the Encroachment is so small, has been there for so many years without bothering any one and the cost of moving the wall is exceptionally high. It is further recommended that the deviation from the process stipulated in paragraph 64.3 of the Administration of Immovable Property Policy (2015) as well as the required payment of a monthly fee.

7. Financial Implications

The following tariff is applicable to this type of encroachment:

Code	Description	VAT excl	VAT incl
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 m^2 per month)	2.78	3.20

The municipality will not receive a monthly income for the enclosed encroachment of $\pm 6\text{m}^2$ in extent, calculated at R2.78/ m^2 (TWO RAND AND

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SEVENTY-EIGHT CENTS PER SQUARE METRE) (VAT excluded) per month which amounts to approximately R16.68 (SIXTEEN RAND AND SIXTY-EIGHT CENTS) (VAT excluded) per month if the matter is dealt with as an encroachment.

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Assistant Chief: Fire, Rescue & Disaster Management: Mr E Solomon

"The Fire Department has no objection."

Town Planner: Town & Spatial Planning: Mr P Roux

"The Town and Spatial Planning department do not have an objection to the encroachment, subject to a formal agreement being in place with the Municipality and that should the wall be damaged and it be reconstructed, that the wall be reconstructed on the property."

Senior Superintendent: Traffic Operations: Mr P de Gruchy

"Traffic Services have no objection towards this application."

Senior Superintendent: Technical Planning (Network Simulation Optimization): Mr J Klem

"There are no comments on the proposal."

Principal Technologist: Development Control: Mr R Andrew

"The Development Control Service Section has no comment."

Principal Technologist Civil: Mr T Marx

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

Senior Building Control Officer: Building Control: Mr G Coetzee

"No objection from Building Control."

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Manager: Environmental Management & Conservation: Ms P Aplon

“This office has no objection to this application from the property owners of Erf 5908 Hermanus to encroach onto a portion of Remainder Erf 6257 Hermanus.”

10. Annexures

Annexures A1 & A2:	Locality Map
Annexure B:	Building Plan

RECOMMENDATION TO THE COUNCIL:

1. that the archaic encroachment on municipal property, being a portion of Remainder Erf 6257 Hermanus ($\pm 6\text{m}^2$ in extent), adjacent to the Western boundary of Erf 5908 Hermanus, to retain the existing boundary wall, at no fee payable, in terms of the Administration of Immovable Property Policy of the Overstrand Municipality, **be approved**;
2. that as motivated in the report, the deviation from the process for an enclosed encroachment as contained in the Administration of Immovable Property Policy in order to issue the necessary consent, **be approved**; and
3. that the written consent to be issued, of which the conditions must be accepted in writing by the Applicants', not be linked to a time frame but to the period the encroachment exists subject to the following conditions:
 - 3.1 Should the wall be damaged to such a nature that it must be reconstructed, that the wall be reconstructed on the Applicants' own property.
 - 3.2 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, as well as any damages caused to the boundary wall located in the encroachment area.
 - 3.3 The encroacher shall be responsible for the maintenance and upkeep of the encroachment area (wall) and to ensure that the encroachment area is safe at all times during the period of the consent.
 - 3.4 This approval shall under no circumstances be deemed to confer any real right or servitude of any kind in favour of the encroacher.

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- 3.5 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.
- 3.6 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.
- 3.7 The encroacher may not make any alternations or additions to the boundary wall within the encroachment area without the prior written consent of the Municipality.

RESPONSIBLE OFFICIAL:

M BEKKER

TARGET DATE FOR IMPLEMENTATION:

9 DECEMBER 2025

TARGET DATE TO INFORM APPLICANT:

9 DECEMBER 2025

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**3.
ARCHAIC ENCROACHMENT ON MUNICIPAL PROPERTY – LE & J THOMAS – A
PORTION OF REMAINDER ERF 6257 HERMANUS (A PORTION OF ROAD
RESERVE), ADJACENT TO ERF 5908 HERMANUS**

**A Le Roux
20 October 2025**

Divisional Manager: Property Management

(028) 316 - 5623

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

RECOMMENDATION TO THE COUNCIL:

1. that the archaic encroachment on municipal property, being a portion of Remainder Erf 6257 Hermanus ($\pm 6\text{m}^2$ in extent), adjacent to the Western boundary of Erf 5908 Hermanus, to retain the existing boundary wall, at no fee payable, in terms of the Administration of Immovable Property Policy of the Overstrand Municipality, **be approved**;
2. that as motivated in the report, the deviation from the process for an enclosed encroachment as contained in the Administration of Immovable Property Policy in order to issue the necessary consent, **be approved**; and
3. that the written consent to be issued, of which the conditions must be accepted in writing by the Applicants', not be linked to a time frame but to the period the encroachment exists subject to the following conditions:
 - 3.1 Should the wall be damaged to such a nature that it must be reconstructed, that the wall be reconstructed on the Applicants' own property.
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- 3.6 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.
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RESPONSIBLE OFFICIAL:

M BEKKER

TARGET DATE FOR IMPLEMENTATION:

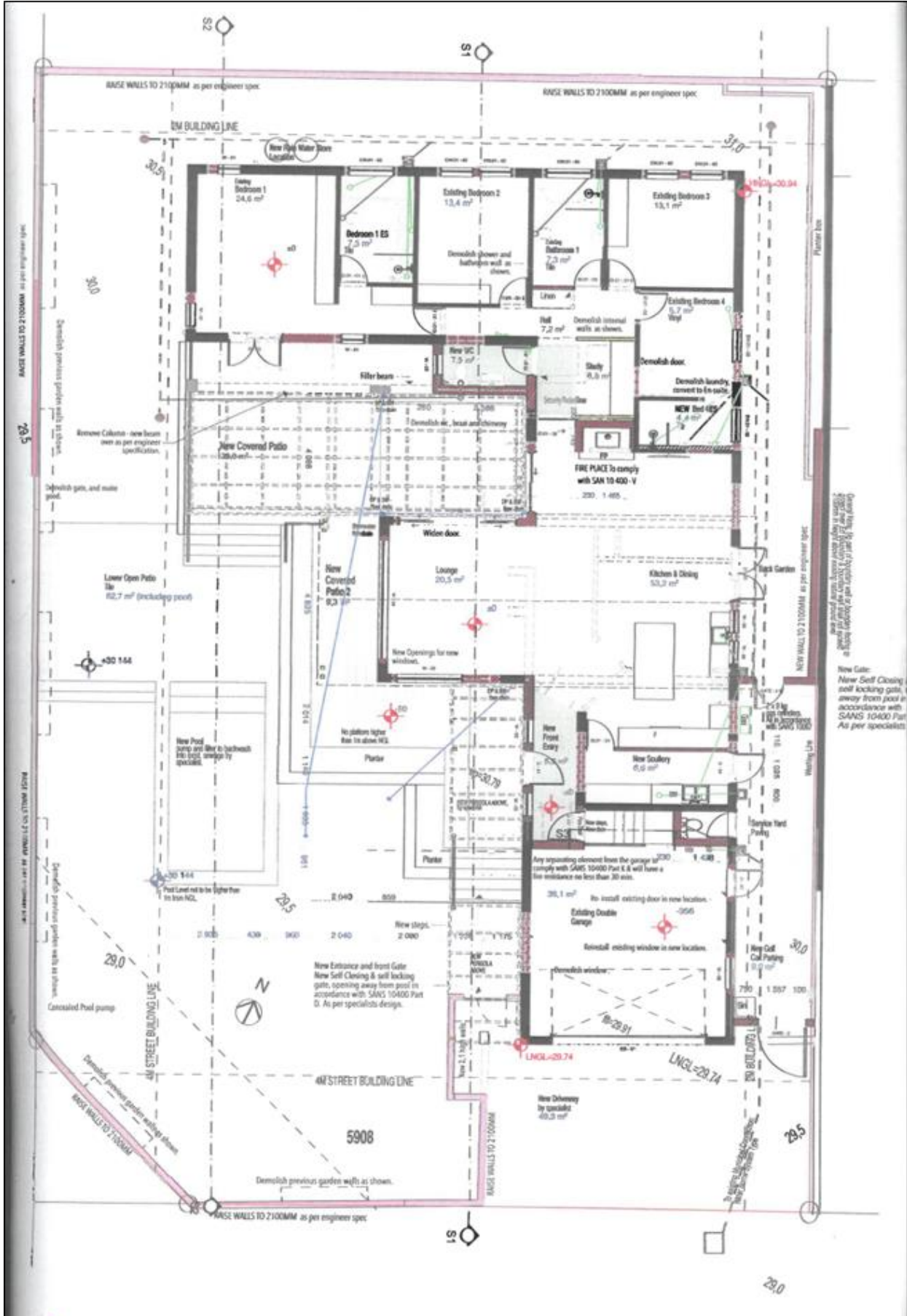
9 DECEMBER 2025

TARGET DATE TO INFORM APPLICANT:

9 DECEMBER 2025







New Gate:
 New Self Closing self locking gate, away from pool in accordance with SANS 10400 Part D. As per specialists.