

OVERSTRAND MUNICIPALITY



Administration of Immovable Property Policy

This policy was drawn up in terms of:

LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT ACT, 2003
MUNICIPAL ASSET TRANSFER REGULATIONS
("The Regulations")

*Approved by Council
27 May 2009*

TABLE OF CONTENTS

1	DEFINITIONS
2	APPLICATION
3	INTRODUCTION
4 - 19	GENERAL PRINCIPLES
20 - 26	CONDITIONS OF SALE
27 - 42	CONDITIONS OF LEASE
43 - 50	OUT OF HAND SALE AND LETTING
51 - 52	PROJECTIONS, PROJECTING STRUCTURES AND ENCROACHMENTS
53	SHORT TITLE AND COMMENCEMENT
	ANNEXURE A: ENCROACHMENT PERMIT

Definitions

1. In this Policy a word or expression to which a meaning has been assigned in the Local Government: Municipal Finance Management Act, 2003 has the same meaning as in the Act, and means:

“Accounting Officer”

The Municipal Manager appointed in terms of Section 82 of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998) and being the Head of Administration and Accounting Officer in terms of Section 55 of the Local Government: Municipal Systems Act, 2000 (Act 32 of 2000) and includes any person:

- (a) acting in such position, and
- (b) to whom the Municipal Manager has delegated a power, function or duty in respect of such a delegated power, function or duty.

“basic municipal service”

The amount or level of any municipal service that is necessary to ensure an acceptable and reasonable quality of life and which, if not provided, would endanger public health or safety of the environment and for the purposes of this Policy includes but is not restricted to electricity, refuse collection, sanitation, local roads, stormwater drainage, fire services and water services.

“bid adjudication committee”

A committee composing of the Chief Financial Officer or a manager reporting directly to the Chief Financial Officer, all the Directors or a manager reporting directly to the Director, The Manager: Supply Chain Unit in his/her absence an official nominated by the Chief Financial Officer and the Head Management Services which considers reports and recommendations of the bid evaluation committee and, depending on its delegations, make a final award or a recommendation to the Accounting Officer to make the final award; or make another recommendation to the Accounting Officer how to proceed with the relevant bid; or take a decision that the tender not be awarded for the reasons presented.

“Chief Financial Officer”

An officer of the Municipality appointed as the Head of the Finance Department and includes any person:

- (a) acting in such position, and
- (b) to whom the Chief Financial Officer has delegated a power, function or duty in respect of such a delegated power, function or duty.

“community value”

The extent of benefit or gain generated when resources, input, processes or policies are combined to improve the lives of individuals or society as a whole.

“the Constitution”

The Constitution of the Republic of South Africa, 1996.

“cost”

The amount of cash or cash equivalents paid or the fair market value of the other consideration paid to acquire an asset at the time of its acquisition or construction.

“Council” or “municipal council”

A municipal council referred to in Section 18 of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998) and for the purpose of this Policy, the municipal council of the Overstrand Municipality including its nominee.

“immovable asset”

Immovable property such as land, property or buildings owned or under administration of the Overstrand Municipality.

“MFMA”

The Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003).

“municipality”

The Overstrand Local Municipality.

“National Treasury’s Guidelines”

The official guidelines on supply chain management issued by the Minister in terms of Section 168 of the MFMA.

“notice boards”

The official notice boards at the municipal offices and libraries of the Municipality.

“the Ordinance”

The Local Government: Municipal Ordinance, 1974 (Ordinance 20 of 1974).

“public facilities”

Facilities providing services to the community which cannot be supplied directly to the individual residential dwelling unit satisfying specific individual and community needs including safety; security; communication, recreation; sport; education; health; public administration; cultural and social needs generally regarded as the responsibility of the Government but also provided privately when it is perceived that the government provided services are inadequate.

“the Regulations”

Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003) Municipal Asset Transfer Regulations.

“social care”

Services provided by registered welfare, charitable and non-profitable organisations and amateur sporting, cultural or recreational organisations.

“Structures Act”

The Local Government: Municipal Structures Act, 1998 (Act 117 of 1998).

“Supply Chain Management Policy”

The Supply Chain Management Policy of the Overstrand Municipality approved and adopted by Council on 25 June 2008.

“Systems Act”

The Local Government: Municipal Systems Act, 2000 (Act 32 of 2000).

2. Application of the Policy

This policy applies to;

- (1) the transfer and disposal of immovable assets by the Municipality, and
- (2) the granting by the Municipality of rights to use, control or manage immovable assets.

3. Introduction

WHEREAS the Municipality has the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation, as provided for in Section 151(3) of the Constitution and Section 4(1)(a) of the Systems Act.

AND WHEREAS the Municipality has executive and legislative authority in respect of, and has the right to administer the matters provided for in Sections 156(1) and 229 of the Constitution, Sections 8(1) and 11(1) of the Systems Act and Section 83(1) of the Structures Act.

AND WHEREAS the municipal council makes decisions concerning the exercise of all the powers and the performance of all the functions of the Municipality, save for those matters excluded by legislation in accordance with Section 160(1)(a) of the Constitution;

AND WHEREAS the Municipality has the right to do anything reasonably necessary for, or incidental to, the effective performance of its functions and the exercise of its powers in terms of Section 156(5) of the Constitution and Section 8(2) of the Systems Act;

AND WHEREAS the municipal council, within the Municipality's financial and administrative capacity and having regard to practical considerations, has the duty to use the resources of the Municipality in the best interests of the local community in terms of Section 4(2)(a) of the Systems Act; and

AND WHEREAS there is a need to provide a policy framework for the management of the Municipality's immovable property, to establish criteria for determining various categories of immovable property in order to regulate the use, sale and lease thereof and to establish criteria within which property transactions may be regulated;

NOW THEREFORE this policy provides as follows:

General Principles

4. The Municipality may:

- (1) alienate or let or permit to be built upon, occupied, enclosed or cultivated any immovable property owned by the Municipality;
- (2) grant a servitude, way leave, encroachment or other rights on any land of which the Municipality is the owner
 - (a) subject to this policy document and the provisions of applicable legislation;^{1.)} or

- (b) unless it is precluded from so doing by law or the conditions under which such property was acquired by the Municipality.
5. The Municipality may:
- (1) enter into a contract which will impose financial obligations on the Municipality beyond a financial year, but if the contract will impose financial obligations on the Municipality beyond the three years covered in the annual budget for that financial year, it may only do so in accordance with the provisions of Section 33 of the MFMA, and
 - (2) enter into a public-private partnership agreement, but only in accordance with the provisions of Section 120 of the MFMA.
6. Transfer or disposal of Immovable Assets:
- (1) The Municipality may transfer ownership or otherwise dispose of immovable property only after:
 - (a) a public participation process has been conducted to facilitate the determinations the municipal council must make in terms of sections 14(2)(a) and (b) of the MFMA in the case of disposal of any capital asset with a total value exceeding five percent of the total value of the immovable assets of the Municipality in the financial year; and
 - (b) the municipal council has, in terms of sections 14(2)(a) and (b) of the MFMA,:
 - (i) has decided on reasonable grounds that the asset is not needed to provide the minimum level of basic municipal services;
 - (ii) has considered the fair market value of the asset and the economic and community value to be received in exchange for the asset in accordance with Section 14(2) of the MFMA, and
 - (ii) has as a consequence to 6(1)(b)(i) and (ii) above approved in principle that the capital asset may be transferred or disposed of.
 - (2) The public participation process in terms of paragraph 6(1)(b) may only be authorised by the municipal council. A request to the municipal council for authorisation of a public participation process must be accompanied by:
 - (a) a valuation and the method used to determine the value of the capital asset to be transferred or disposed of;
 - (b) the reasons for the proposed transfer or disposal of the capital asset;
 - (c) any expected benefits to the Municipality as a result of the proposed transfer or disposal;
 - (d) any expected proceeds to be received by the Municipality from the proposed transfer or disposal, and
 - (v) any expected gain or loss to be realised or incurred by the Municipality arising from the proposed transfer or disposal.

1. For example, but not limited to, the Conservation of Agricultural Resources Act, 1983 (Act 43 of 1983) as far as the conservation of the soil, the water sources and the vegetation and the combating of weeds and invader plants are concerned.

- (3) Approval in terms of 6(2) may be given subject to any conditions, including:
 - (i) the way in which the capital asset is to be sold or disposed of with reference to the Supply Chain Management Regulations;
 - (ii) a floor price or minimum compensation for the capital asset;
 - (iii) whether the asset may be transferred or disposed of for less than its fair market value, in which case the criteria set out in clause 9. must be considered, and
 - (iv) a framework within which direct negotiations for the transfer or disposal of the capital asset must be conducted with another person, if transfer or disposal is subject to direct negotiations.
 - (4) The Municipality may not transfer ownership as a result of a sale or other transaction or otherwise permanently dispose of immovable property needed to provide the minimum level of basic municipal services in accordance with Section 14(1) of the MFMA.
 - (5) A decision by the municipal council that a specific immovable property is not needed to provide the minimum level of basic municipal services, may not be reversed by the Municipality after that asset has been sold, transferred or otherwise disposed of in accordance with Section 14(3) of the MFMA.
 - (6) Any transfer of ownership of immovable property must be fair, equitable, transparent, competitive and consistent with the supply chain management policy of the Municipality in accordance with Section 14(5) of the MFMA.
 - (7) The Municipality is not obliged to consider an unsolicited bid (private treaty) received outside its normal bidding process.
 - (8) Should the Municipality consider an unsolicited bid outside of its normal bidding process, it may only do so in accordance with its Supply Chain Management Policy of the Municipality.
7. The Municipality shall not act in terms of paragraphs 6(1), save for the provisions mentioned in paragraphs 39 and 40, unless it has:
- (1) advertised its intention so to act by causing a notice to that effect to be:
 - (a) affixed to the public notice boards of the Municipality;
 - (b) published in a newspaper that is circulated within the area of the town where the relevant property is situated;
 - (c) published on the official website of the Municipality, and
 - (d) in the case of property valued at R2,5 million or higher, published in regional newspapers that are circulated within the province of the town where the relevant property is situated unless a property valued less than R2,5 million at the sole discretion of the Municipality warrants publication in these newspapers,

in accordance with Section 21A of the Systems Act, in which any person who wishes to object to the exercise of any such intention, is called upon to lodge his/her comments, objection or representations in respect of such intention in writing with the Municipal Manager within a period of not less than thirty days from the date of the publication of the notice in the newspaper;

- (2) considered the objections (if any) lodged in accordance with the advertisement contemplated by paragraph 7(1), and
 - (3) if the municipal council has in terms of paragraph 6(2) authorised the conduct of a public participation process for the proposed transfer or disposal of a any immovable asset with a total value exceeding five percent of the total value of the immovable assets of the Municipality in the financial year, the accounting officers must at least 60 days before the meeting of the council at which the determinations referred to in 6(1)(b) are to be considered:
 - (a) in accordance with section 21A of the Municipal Systems Act:
 - (i) make public the proposal to transfer or dispose of the immovable asset together with the information statement referred to in paragraph 6(2), and
 - (ii) invite the local community and other interesting persons to submit to the Municipality comments or representations in respect of the proposed transfer or disposal of the capital asset, and
 - (b) solicit the views and recommendations of the National Treasury and the relevant provincial treasury in the matter.
8. Paragraphs 6 and 7(1) and 7(2) do not apply to the transfer of immovable property to another municipality or to a national or provincial organ of state.
 9. The community value to be received in exchange for an asset shall be applicable and taken into consideration in accordance with Section 14(2)(b) of the MFMA:
 - (1) in the case of sales to registered social care organisations / institutions in which case the purchase price of such immovable property shall be fixed at a minimum of 50% of the fair market value except in cases where the Municipality taking into account the economic and community value received in return for the asset decides otherwise. Such sales shall be subject to:
 - (a) each case being considered on its own merit;
 - (b) a reversionary clause being included in the relevant deed of sale;
 - (c) Council's pre-emptive right being registered in the relevant title deed;
 - (d) the calling of tenders in those cases where there are more than one applicant interested in acquiring land for a specific use;
 - (e) a successful application in this regard to the National Treasury in terms of Section 170 of the MFMA, and
 - (2) in the case of immovable properties referred to in the Housing Act, 1997 (Act 107 of 1997), or any ensuing act, in which case such properties shall be sold/let as provided for in that act.
 10. Alienation or leasing must be effected by means of public competition, except in the instances detailed in paragraphs 9 and 41 - 50.
 11. The Municipality, as a rule, bearing in mind the provisions of paragraph 12 and save for those cases mentioned in paragraphs 9 and 42, shall not:
 - (1) let immovable property at a lower rental than the rental determined;

- (2) sell, alienate or dispose of immovable property, grant a servitude or alienate a right at a lower amount than the amount at which it has been valued;
- (3) exchange immovable property for other property if the amount at which the other property has been valued is lower than the amount at which the immovable property which the Municipality wishes to exchange, has been valued;

except in cases when the public interest or the plight of the poor demands otherwise taking into account the provisions of Regulation 13(2) of the Local Government: Municipal Finance Management Act, 2003 - Municipal Asset Transfer Regulations and subject to a successful application in this regard to the National Treasury in terms of Section 170 of the MFMA.

12. The upset price for property to be disposed of or leased by way of a competitive process will be determined in such a way that it corresponds with a fair market value and must include the recoverable development costs such as municipal services, advertising and survey costs. The fair market value or the rental amount of property shall be determined by an independent professional valuer or professional associated valuer registered in terms of the Property Valuers Profession Act, 2000 (Act 47 of 2000), or any ensuing act at the cost of the purchaser.
13. In assessing tenders, the Municipality will take cognisance of the total cash value of the packages offered by the tenderers, where such packages are permissible in terms of the conditions of tender. In other words, where the actual amounts tendered are roughly similar, but a particular tenderer, for example, also offers to make improvements to the property, the cash value of such improvements, which proposed improvements may not be deviated from, may also be taken into consideration to determine the highest tender.
14. Where immovable property is alienated or leased for a specific type of development project, including a business project, and the specific type of development which the Municipality is prepared to allow is of importance, the Municipality may call for development proposals, which may include a monetary offer. In such a case, the price offered for the immovable property by the developer will only form part of the total package.
15. Should the Municipality consider it desirable not to accept the highest tender or offer or decide to accept a particular development proposal in which the amount tendered is not the highest offer, the reasons for this decision must be fully set out and recorded in the minutes of the bid adjudication committee meeting in question and if applicable the minutes of the appeal tribunal.
16. In cases where tenders are according to the findings of the bid adjudication committee identical and the provisions of paragraphs 14 and 15 are not applicable, the successful tenderer may be determined by the drawing of lots in the presence of the involved parties.
17. Immovable property sold or let by the Municipality shall be inspected at least once a year by the Municipality to ensure compliance with the terms and conditions of the agreement of sale or lease.
18. The Municipal Council must, when considering any proposed transfer or disposal of a capital asset, take into account the aspects listed in Regulation 7 of the Local Government: Municipal Finance Management Act, 2003 - Municipal Asset Transfer Regulations.

19. The Municipality shall at all times when considering the alienation of its immovable assets, take into consideration the Municipality's obligation to, as part of its process of integrated development planning, take all reasonable and necessary steps within the framework of national and provincial housing legislation and policy to identify and designate land for housing development in terms of the Housing Act, 1997 (Act 107 of 1997).

Conditions of Sale

20. All costs pertaining to a transaction shall be borne by the buyer, 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.
21. Should existing services need to be relocated or secured by means of the registration of a servitude in favour of the Municipality as a result of the sale of an immovable asset all related costs shall be for the account of the purchaser.
22. Small areas of land such as closed roads or portions of public place sold to an adjacent owner must be consolidated with the existing property of the adjacent owner, unless circumstances exist which, in the opinion of the Municipality, make such consolidation undesirable.
23. Where immovable property is sold for development, a condition must be included in the Deed of Sale stipulating that such development must be completed within two years from date of registration. Likewise a condition must be included in the agreement to provide for forfeiture in the event that the development has not been completed within the required time period, unless an extension has been granted by the Municipality.
24. Save with prior approval, the property alienated may only be used for the purpose for which it was originally sold and purposes permitted by town planning scheme regulations pertaining to such purposes.
25. The agreement of sale shall be finalised and concluded within 60 days from the date of the Municipality's official written request and registration must be effected within 60 days of signature of the agreement by both parties; failure to comply shall cause the sale to lapse.
26. The agreement must contain a suspensive condition in respect of property which is sold subject to approval in terms of land use planning legislation.

Conditions of Lease

27. All costs pertaining to a transaction, e.g. survey, advertisements, valuation, relocation or provision of services where necessary, shall be borne by the Lessee. The Municipality may, however, waive its right to claim all or any portion of the costs. Where necessary a deposit to cover the costs may be required.
28. The Municipality may:
 - (1) enter into a contract which will impose financial obligations on the Municipality beyond a financial year, but if the contract will impose financial obligations on the Municipality beyond the three years covered in the annual budget for that financial year, it may only do so in accordance with the provisions of Section 33 of the MFMA, and

- (2) enter into a public-private partnership agreement, but only in accordance with the provisions of Section 120 of the MFMA.
29. An agreement for the lease of municipal fixed property shall be in writing stipulating the terms and conditions of the contract or agreement, which shall include provisions providing for:
 - (1) the termination of the contract or agreement in the case of non- or underperformance;
 - (2) dispute resolution mechanisms to settle disputes between the parties;
 - (3) a periodic review of the contract or agreement once every three years in the case of a contract or agreement for longer than three years;
 - (4) any other matters that may be prescribed, and
 - (5) escalation in terms of paragraph 31 of this policy.
30. No immovable property shall be sub-let and no lease may be ceded or assigned without the prior written approval of the Municipality.
31. An owner of immovable property who leases adjoining municipal property may be substituted by his successor in title for the duration of the remainder of the lease term.
32. Rental, except where it is decided otherwise by the Municipality shall escalate annually by a percentage fixed in accordance with the prevailing consumer price index (all items).
33. The lessee shall, as a rule, be liable for the payment of rates and service charges in respect of the properties listed in the current valuation role. In the case of leases to certain social care users at rentals lower than market value the Municipality may consider granting a rebate on rates in accordance with the rates policy of the Municipality.
34. The letting of lanes, public open spaces, road reserves and the like shall be subject to the following:
 - (1) closing off/securing by the lessee of the leased area to the satisfaction and discretion of the Municipality;
 - (2) the lessee shall be responsible for the cost of relocation or installation of services where required and for the securing of servitudes, and
 - (c) the closure of the lanes, public open spaces and road in terms of the Ordinance shall be done at the cost of the lessee.
35. The lessee shall indemnify the Municipality against any possible claims arising from the lease or use of the immovable property.
36. Where land is leased for development, a condition shall be included in the lease agreement stipulating that such development shall be completed within two years from date of conclusion of the lease agreement. Likewise a suspensive condition shall be included in the lease agreement to provide for cancellation in the event that the development has not been completed.
37. Save with prior written approval of the Municipality the property may only be used for the purpose for which it was let.
38. The Municipality shall at all reasonable times be entitled to enter and inspect the immovable property.

39. The lessee shall be responsible for maintaining the leased property including all improvements thereon to the satisfaction of the Municipality.
40. Improvements provided by the lessee and which the Council wishes to retain, shall revert, free of charge, to the Municipality once the lease period has terminated and/or in the event the agreement, due to breach of conditions, has been cancelled. Alternatively, agreement may be reached to the effect that the lessee may remove any improvements erected from its own funds within three months of termination of the lease agreement, failing which such improvements shall revert to the Municipality free of charge without damage and if provided for in the agreement. The lessee shall be liable for the cost involved in the removal of such improvements not required by the Municipality.
41. Lease agreements for a term up to 3 years entered into under this policy may be renewed without applying the provisions of paragraph 7(1) and 7(2) but not exceeding 3 years in total.
42. Immovable property let for short-term periods up to 12 months without the option of renewal need not be advertised in terms of paragraph 7(1) and 7(2) but shall be subject to *inter alia* the following:
 - (1) the lessee shall be responsible for all costs regarding services, ablution facilities, etc. if required;
 - (2) the Municipality shall determine the rental;
 - (3) the lessee shall undertake in writing to compensate the Municipality for damages caused to the property for whatever reason.
 - (4) the lessee shall indemnify the Municipality against any claims.

Out of Hand Sale and Letting

43. Whenever a number of comparable immovable properties are offered for sale or lease by public competition and there being any remaining immovable property unsold or not being leased after such public competition such remaining properties may be sold, subject to the provisions of paragraph 6.1(b), or leased out of hand by the Municipality at the average realised price obtained for properties sold or leased in accordance with the public competition process. Such price shall be valid for a maximum period of 12 months calculated from the date of the adjudication of the relevant public competition process.
44. In the case of the out-of-hand lease of immovable property to registered social care organisations/institutions, the rental shall be determined by the Municipality.
45. Closed streets and lanes, public open spaces and odd lots of land which can be of no practical use to any other person may be sold/leased out of hand to adjoining property owners, provided that -
 - (1) written notice have been served on all adjoining property owners; and
 - (2) the selling price/rental shall be at fair market value, provided that the Municipality shall determine the rental of land for garden purposes.
46. Immovable property may be sold/leased out of hand to other spheres of government and other municipalities. All such immovable property transactions shall be considered at a fair market value basis, except in the following cases:

- (1) where immovable property was acquired for the development of a less formal township and such township is to be transferred to the Municipality at a later stage;
 - (2) where the property will be used for projects with a view to social and economic upliftment of a previously disadvantaged group.
47. Immovable properties may be sold out of hand to existing tenants who have leased such premises for five years or longer on condition that the immovable property is sold at fair market value.
 48. Immovable property may be sold/leased out of hand in exceptional cases where the Municipality is of the opinion that public competition would not serve a useful purpose or that it is in the interest of the community and the Municipality, and where none of the conditions as set out in this policy document provides for such exception is permitted, and where they are not in conflict with any provision of this policy document. In such cases the full reasons for the Municipality preferring such out-of-hand sales or leases shall be recorded in the minutes of the council meeting concerned.
 49. Odd lots of land which can be of no practical use to any other person may be sold, out of hand subject to the provisions of paragraph 7(1) and 7(2) or leased out of hand to the owner of an adjoining property.
 50. Immovable property acquired by a municipality for public purposes or in the community's interest, may be leased out of hand to any applicant for temporary use until such time as the property is required for development.
 51. Houses may be leased out of hand to employees of the Municipality, on condition that rentals comply with the relevant policy laid down.
 52. Municipal houses may be sold out of hand to employees of the Municipality, on condition that the prior written approval of National Treasury has been obtained in terms of Section 170 of the MFMA and those selling prices are market related.

Projections, Projecting Structures and Encroachments

53. The Municipality may, subject to such conditions as it may deem fit –
 - (1) permit the erection or retention of a veranda, balcony, sign, sign-board or similar structure, device or contrivance which projects or extends into, under or over any public place or public street (hereinafter referred to as a “projection”) provided inter alia that:
 - (a) the erection or retention of such a projection shall not be permitted on the level of more than one floor;
 - (b) no such projection shall be wholly enclosed to a height of more than 1,5 metres measured from the floor level thereof; and
 - (c) no such projection shall be partially enclosed to a height of more than 1,5 metres measured from the floor level thereof except with the prior written approval of the council and subject to such conditions as it may impose, or
 - (2) 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 5.1(2)(b) may be planted with lawn of a type approved by the relevant directorate 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 adjacent property owner; 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, or
- (3) permit encroachments of garden areas onto commonage, public open spaces or conservation areas, save for the area mentioned in paragraph 52, provided inter alia that:
- (a) written applications accompanied with an application fee tantamount to council's fee in respect of applications for departure, for such encroachments shall be submitted to the Municipality;
 - (b) the Manager: Town Planning or his duly authorised nominee shall:
 - (i) cause the said application to be advertised^{2.)} in terms of paragraph 7.1 of this policy;
 - (ii) where objections against the said application are received, submit it to the applicant for his/her comment;
 - (iii) obtain the comment of the relevant municipal directorate;
 - (iv) submit the application and all relevant documents to Council or its nominee for approval;
 - (v) notify the applicant of the Council's or its nominee'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 (annexed as Annexure A to this policy document) 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

2. "advertise" in this context has the same meaning as the definition of same provided for in the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985), s 2(i)

- (e) an annual encroachment fee, determined by council, be levied/proportionally levied on successful applicants for the right obtained to encroach.
- (4) permit the enclosure or exclusive use of portions of the commonage or public open spaces for gardening purposes, provided inter alia that:
- (a) the provisions of paragraphs 4, 6.1(b), 6.(3) – 6(7), 7(1), 7(2), 8 – 18, 26 - 40 of this policy shall apply;
- (b) the Manager: Town Planning or his duly authorised nominee shall also obtain the comment of the relevant municipal directorate in respect of each such application in order to submit same to council or its nominee for consideration, and
- (c) the planting of trees, shrubs and alien lawn or the erection of seating, statuary or other similar objects, are not permitted.
- (5) permit the use of municipal land for outdoor seating adjoining a restaurant, provided inter alia that:
- (a) the provisions of paragraphs 4, 6.1(b), 6.(3) – 6(7), 7(1), 7(2), 8 – 18, 26 - 40 of this policy shall apply; and
- (b) the safe movement of pedestrians is not hampered.
54. The Municipality may reduce the extent of a public place or public street which is encroached upon by the extent of the encroachment or by such greater extent as may, in its opinion, be desirable.

Short Title and Commencement

55. This policy is called the **ADMINISTRATION OF IMMOVABLE PROPERTY POLICY**.

POLICY SECTION:	TOWN PLANNING & PROPERTY MANAGEMENT
CURRENT UPDATE:	27 MAY 2009
PREVIOUS REVIEW:	27 AUGUST 2008
APPROVAL BY COUNCIL:	1 NOVEMBER 2004

ANNEXURE A**ENCROACHMENT PERMIT**

granted by the

OVERSTRAND MUNICIPALITYof *Magnolia Street, Hermanus, 7200*

herein represented by _____ (Full Names)

duly authorised thereto in his/her capacity as _____

(hereinafter referred to as the "**Overstrand Municipality**")

to _____, of

Physical Address

herein represented by _____ (Full Names)

in his/her capacity as _____

(and hereinafter referred to as the "**Encroacher**")

Description of Encroachment: _____

Description of Municipal Property: _____

(hereinafter referred to as the "**Encroachment**")

Permission is hereby granted by the Overstrand Municipality to the Encroacher being the registered owner of Erf _____ to retain the encroachment on the property of the Overstrand Municipality as described above and shown lettered on Plan No _____, a copy of which is annexed, measuring in extent approximately _____ square meters, subject to the following conditions:

1. DURATION OF THIS PERMIT

This Permit shall endure for a period of **five (5) years** reckoned from _____, subject to the Overstrand Municipality's right of earlier termination as set out in the clauses below.

2. ENCROACHMENT FEE

2.1 The **ENCROACHER** shall pay to the Municipality an encroachment fee as annually determined by the Council of the Municipality payable upon signature of this Permit and annually in advance thereafter.

2.2 Where applicable VAT shall be charged at the rate applicable from time to time.

3. RATES AND TAXES

The Encroacher shall be responsible for the payment of rates and taxes in respect of the encroachment area and if required, shall refund to the Overstrand Municipality any costs in obtaining a valuation for rating purposes.

4. USE OF THE ENCROACHMENT

4.1 The Encroachment shall be used only for the purpose for which the permit is issued and it shall not be altered or extended, nor shall any further building or structure be erected thereon.

ANNEXURE A

- 4.2 The Encroacher shall ensure that the encroachment is kept in a neat and tidy condition to the satisfaction of the Overstrand Municipality. The Encroacher shall, when notified by the Overstrand Municipality, within a period of thirty days of such notice at his/her/its own expense, trim or remove any vegetation which in the opinion of the Overstrand Municipality is or threatens to become unsightly or dangerous, failing which the Overstrand Municipality may cause such vegetation to be trimmed or removed at the Encroacher's expense.
- 4.3 The Encroacher agrees that in the event of the whole or portion of his/her/its property abutting the encroachment being disposed of whilst the encroachment is still in existence, it shall be a condition of such disposal that the person acquiring the said property or portion thereof shall before transfer is passed, enter into an agreement with the Overstrand Municipality acknowledging and accepting in all respects the terms of this Permit as applying to him/her/it and that transfer will not be given or taken until such agreement by the person acquiring the property has been entered into or alternatively, the encroachment has been removed and the area encroached upon re-instated to the satisfaction of the Overstrand Municipality.
- 4.4 No trees growing on the Property shall be pruned or removed without the prior written approval of the Overstrand Municipality. Specific conditions may be imposed regarding the vegetation on the encroached area.

5. MUNICIPALITY'S RIGHT OF ACCESS

The Overstrand Municipality shall have the right of free access to the encroachment at all times for inspection of the encroachment and for inspection, maintenance and repair of any services which may traverse the encroachment or to install such services. The Overstrand Municipality shall not be liable for any damage to the encroachment which may arise from such inspection, maintenance, repair or installation.

6. TERMINATION

- 6.1 This Permit may be terminated at the sole discretion of the Overstrand Municipality at any time upon one month's written notice in writing and without payment of any compensation by the Overstrand Municipality. Upon termination of this Permit the Encroacher shall be obligated to remove the encroachment at his/her/its own cost and to re-instate the land encroached upon to the satisfaction of the Overstrand Municipality and shall not be entitled to claim compensation in respect thereof.
- 6.2 Notwithstanding the provisions of Clause 6.1 above, the Encroacher shall remain liable in terms of this permit until a succeeding encroacher has succeeded him/her/it in his obligation under the permit, or the encroachment has been removed. The Encroacher acknowledges that this Permit expires after five (5) years from date of issue. The Overstrand Municipality will consider renewal of the permit at the written request of the applicant received 6 months prior to the expiry date and issue a new permit or terminate such permit at its own discretion. Upon expiry of the Permit the provisions of Clause 6.1 relating to removal of the encroachment shall apply.

7. INDEMNITY

The Encroacher hereby indemnifies and undertakes to keep the Overstrand Municipality indemnified against all liability howsoever caused or whether arising as a direct or indirect result of the existence of the encroachment or use of the area encroached upon and against all actions, suits, proceedings, claims, demands, costs and expenses whatsoever which may be taken or made against the Overstrand Municipality or incurred or become payable by the Overstrand Municipality at the suit of any person.

8. SUBLETTING AND ASSIGNMENT

The Encroacher shall not assign his/her/its rights under this Permit, nor sublet any portion of the encroachment.

ANNEXURE A

9. OWNERSHIP

Notwithstanding the consent granted by the Overstrand Municipality, it shall not be deemed to have relinquished its rights to the ownership of the property or to have waived any of its rights pertaining to the property whether in terms of the current law, regulation or any other legislation to be enacted in future.

10. DOMICILIUM

The Overstrand Municipality and the Encroacher hereby appoint irrevocably for all purposes of and connected with this Permit, the addresses stated in the heading of this Permit, to be their respective domicilium citandi et executandi.

11. BREACH

In the event of the Encroacher breaching any of the conditions of this Permit and failing to remedy such breach within a period of thirty days of dispatch of a notice by the Overstrand Municipality, requiring such breach to be remedied, the Overstrand Municipality may terminate this permit and may at the cost of the Encroacher cause the encroachment to be demolished, removed or filled in and the land to be re-instated to the satisfaction of the Overstrand Municipality with no compensation payable to the Encroacher.

12. SPECIAL CONDITIONS IMPOSED

Signed at **HERMANUS** on this _____ day of _____ .

AS WITNESSES:

1. _____

 For **OVERSTRAND MUNICIPALITY**

2. _____

I/We, the Encroacher, hereby certify that I/we have read and understand the above conditions and regard them as binding upon me/us.

AS WITNESSES:

1. _____

 For **ENCROACHER**

2. _____

POLICY SECTION:	TOWN PLANNING & PROPERTY MANAGEMENT
CURRENT UPDATE:	27 MAY 2009
PREVIOUS REVIEW:	27 AUGUST 2008
APPROVAL BY COUNCIL:	1 NOVEMBER 2004