

**PORTFOLIO COMMITTEE :
INFRASTRUCTURE & PLANNING**

Chairperson :

Cllr D Botha

Committee Members :

**Cllrs G Cohen, F Krige,
S Tebele & V Pungupungu**

**PORTEFEULJEKOMITEE :
INFRASTRUKTUUR & BEPLANNING**

Voorsitter :

Rdl D Botha

Komiteelede :

**Rdle G Cohen, F Krige,
S Tebele & V Pungupungu**

INFRASTRUCTURE & PLANNING PORTFOLIO COMMITTEE
INFRASTRUKTUUR & BEPLANNING PORTEFEULJEKOMITEE

22 August 2017

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(Also the agenda for the Mayoral Committee Meeting: 30 August 2017)**

**1.
HERMANUS, A PORTION OF ERF 1253 HERMANUS ADJACENT TO ERF 5792
HERMANUS: ROOIBULT TRUST: APPLICATION FOR THE RENEWAL OF
ENCROACHMENT AGREEMENT.**

7/2/5

N LIEBENBERG

(028) 316-3724

Hermanus Administration

22 May 2017

1. Executive Summary

To deny approval to enter into a further encroach agreement with Rooibult Trust in respect of Municipal Property, being a portion of Erf 1253 Hermanus, adjacent to Erf 5792 Hermanus ($\pm 330\text{m}^2$ in extent).

2. Service Delivery and Budget Implementation Plan - IGNITE

Infrastructure and Planning;
Property Administration

3. Compliance with Strategic Priority

Provision of democratic, accountable and ethical governance

4. Delegated Authority

Executive Mayor

5. Legal Requirements

- Administration of Immovable Property Policy of the Overstrand Municipality (2015)

6. Background/Discussion/Evaluation/Conclusion

Background

Rooibult Trust has been encroaching on the said portion of Municipal property, being a portion of Erf 1253 Hermanus, adjacent to Erf 5792 Hermanus, since December 2007 for the gardening purposes in terms of an encroachment agreement.

The last agreement was for a period of 5 (FIVE) years which will expire on 30 November 2017.

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The locality and layout of the proposed encroachment area are indicated on the locality plan attached per “Annexure A”.

Discussion

Rooibult Trust has been utilising the said Municipal property since 2007 for gardening purposes and have applied for a further encroachment agreement of 5 (FIVE) years.

Rooibult Trust is the owners of Erf 5792 Hermanus, adjacent to the said portion of municipal property. The current encroachment agreement, which commenced on 1 December 2012, indicates the size of the encroachment to be approximately 135m² but according to the locality map, as attached, it seems that the said encroachment has now expanded to approximately 330m² without any notice to the Property Administration Department or the necessary consent to extent the encroachment area. Thus the Encroacher illegally expanded the encroachment area with approximately 195m² in size. The said encroachment area falls within the Fernkloof Nature Reserve.

Evaluation

A. Administration of Immovable Property Policy of the Overstrand Municipality

The following conditions of said policy apply:

Paragraph 64.3: “permit encroachments onto commonage, public open spaces or conservation areas provided inter alia that:

(c) the planting of trees, shrubs and alien lawn or the erection of seating, statuary or other similar objects, are not permitted:”

The said encroachment is within the Fernkloof Nature Reserve, which is a declared conservation area

“(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;”

Currently the extended encroachment on the said Municipal property is fenced with wire fencing and is directly in contradiction to the said paragraph and clauses 4.1 and 12.6 of the encroachment agreement.

B. Encroachment Permit: Overstrand Municipality/ Rooibult Trust

Paragrap 12: “SPECIAL CONDITIONS

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12.1 the planting of trees and shrubs and the erection of any objects within one comma five meters measured from the tarred or gravel surface of the road, is not permitted;

12.3 the growth of fynbos must be encouraged and only plants indigenous to this area may be used;

12.4 the planting of invasive vegetation (kikuyu) is not permitted.”

12.6 enclosure of the encroachment area by any means, permanent or otherwise, for exclusive use of the owner of the adjacent property is not permitted.”

It can clearly be seen on the locality map, as attached, that the encroachment represents a huge lawn. There is no indication that the growth of fynbos is encouraged on the encroached area.

The Encroacher has not only exceeded the area of encroachment by more than double but has also fenced the area for their exclusive use.

Conclusion

With reference to the above discussion and below comments from the internal departments it is recommended that the further encroachment agreement with Rooibult Trust for a period of 5 (FIVE) not be approved on the following reasons:

1. The said portion of property forms part of the Fernkloof Nature Reserve and is zoned Public Open Space and should thus be open to the public and not for exclusive use of the adjoining owner.
2. The reserve Manager is required by law to create fire breaks on the boundary of the reserve and the extended encroachment area falls within the required fire break area.
3. There is a main waterline situated within the extended encroachment area and the operational Departments need to have access the water meter at all times.
4. The encroachment by means of a fence and the lack of fynbos is in contradiction to the Administration of Immovable Property Policy.
5. The Encroacher acted illegally and in contradiction to the conditions as stipulated by the Encroachment Agreement. The Encroacher is thus in breach of its current agreement by not adhering to the conditions as set out in the agreement.

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7. Financial Implications

None

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

Mr Don Kearney – Area Manager

I do not support any encroachments into conservation areas at all. Most of these encroachments become problematic because the applicants fail to comply with the conditions and furthermore it incites other adjoining owners to encroach as well, often without the required permission. By the time an official discovers any irregularity, the damage has been done and it takes legal steps to rectify/restore the situation.

In my opinion, the property owner has the right to develop his property at his own leisure. I fail to see why any encroachment should be allowed onto Municipal land. If the applicant wishes to do something constructive, he should offer his assistance to the relevant dept.

I do not support the application.

Manager Operational Services (Hermanus): Mr De Wet Nel – (028) 313 8117

No objection on proposal. There is a main waterline running from the reservoir through the property with a bulk water meter sitting inside the piece that they renting. We need to have access to the water meter at all times. To date we did not have had a problem to gain access to the meter that is sitting inside the area.

Town Planner: Mr P Roux – (028) 313 8983

The proposed application is not supported due to the following reasons:

- The proposed portion of Erf 1253 adjacent to Erf 5792 Hermanus Heights forms part of the Fernkloof Nature Reserve.
- The proposed portion is situated outside of the urban edge.
- The proposed area already illegally exceeds the previous lease agreement.
- Erf 1253 is zoned for public open space and should be open to the public.

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- This comment will be valid for future applications on the adjacent properties.

Manager: Building Services: Mr J Simson – (028) 313 8091

There are no buildings hence no comment from building services. However this area falls under Fernkloof and no one should be leased any land that they treat as their garden therefore not supported.

Chief: Fire And Disaster Management & Security Services: Mr L Smith – (028) 313 5041

The specific section of the property encroaches into the nature reserve which could become a problem should a bush and mountain fire occur in the area therefore, the applicant must be aware of the requirements of the fire hazards and associated risks that must be managed in terms of the municipal policy regarding the Clearing and Maintenance of Vegetation Creating Fire Hazards read with the requirements of the Community Fire Safety By-law P.N. 6454 of 2007.

Environmental Officer (Hermanus): Mrs P Aplon – (028) 316 3724

This section has the following comments regarding this application:

- The applicant did not adhere to the original encroachment agreement and illegally claimed an additional 195 square meters of municipal land.
- The applicant must be cognisant of the fact that the property is directly adjacent to Fernkloof Nature Reserve.
- Reserve Management is required by law to create fire breaks on the boundary of the reserve to provide access in the event of a fire and to prevent the spread of fires, where possible.
- This office approves the proposed application, however reserve staff will monitor the site closely to ensure that no further illegal extensions takes place.

10. Annexures

Annexure A: Locality Plan

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RECOMMENDATION:

1. that the renewal of the encroachment agreement on Municipal Property, being a portion of Erf 1253 Hermanus, adjacent to Erf 5792 Hermanus ($\pm 330\text{m}^2$ in extent) to Rooibult Trust for the purpose of gardening for a further period of 5 (FIVE) years in terms of the Administration of Immovable Property Policy of the Overstrand Municipality, **not be approved**; and
2. that the Encroacher be informed that upon expiry of the existing agreement the property must be reinstated to the satisfaction of the Overstrand Municipality.

RESPONSIBLE OFFICIAL:	N LIEBENBERG
TARGET DATE FOR IMPLEMENTATION:	01 DECEMBER 2017
TARGET DATE TO INFORM APPLICANT:	31 OCTOBER 2017
TARGET DATE TO INFORM OBJECTOR:	N/A

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**1.
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7/2/5

**N Liebenberg
22 May 2017**

(028) 316-3724

Hermanus Administration

**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON
22 AUGUST 2017, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:**

RECOMMENDATION:

1. that the renewal of the encroachment agreement on Municipal Property, being a portion of Erf 1253 Hermanus, adjacent to Erf 5792 Hermanus to Rooibult Trust for the purpose of gardening for a further period of 5 (FIVE) years in terms of the Administration of Immovable Property Policy of the Overstrand Municipality, **not be approved**; and
2. that Rooibult Trust be informed that, upon expiry of the existing agreement, the property, including the legal encroachment portion, must be reinstated to the satisfaction of the Overstrand Municipality.

RESPONSIBLE OFFICIAL:

N LIEBENBERG

TARGET DATE FOR IMPLEMENTATION:

01 DECEMBER 2017

TARGET DATE TO INFORM APPLICANT:

31 OCTOBER 2017

TARGET DATE TO INFORM OBJECTOR:

N/A

ANNEXURE A

