

**AGENDA of the
Portfolio Committee : Investment and Infrastructure
7 June 2023
(Also the agenda for the Mayoral Committee Meeting : 12 June 2023)**

3.

A PORTION OF ERF 3222 ONRUSTRIVIER (PUBLIC OPEN SPACE), ADJACENT TO ERF 3221 ONRUSTRIVIER (16 LAGOON DRIVE, ONRUSTRIVIER): LEASE OF MUNICIPAL PROPERTY TO THE OWNERS OF ERF 3221 ONRUSTRIVIER

**A Le Roux
20 December 2022**

Manager: Property Administration

(028) 316 5623

1. Executive Summary

To obtain approval to enter into a lease agreement with the owners of Erf 3221 Onrustrivier, hereinafter referred to as “the Applicants”, in respect of municipal property being a portion of Erf 3222 Onrustrivier ($\pm 330\text{m}^2$ in extent) (Public Open Space) situated behind 16 Lagoon Drive, Onrustrivier, hereinafter referred to as “the Property”, for a period of 9 (NINE) years and 11 (ELEVEN) months for the purpose of gardening, a cement braai structure and a boundary wall/fence. The locality maps are attached hereto as Annexure “A”.

2. Service Delivery and Budget Implementation Plan - IGNITE

Infrastructure and Planning
Property Administration

3. Compliance with Strategic Priority/ies

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

6. Background/Discussion/Evaluation/Conclusion

Background/Discussion

The Applicants are the owners of Erf 3221 Onrustrivier, adjacent to a portion of Erf 3222 Onrustrivier and applied to lease the Property for a period of

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9 (NINE) years and 11 (ELEVEN) months for the purpose of gardening, a cement braai structure and a boundary wall/fence.

The Applicants first applied to purchase the Property and after the necessary process was followed the application served before Council. Council, on 27 June 2022, resolved that the alienation of a portion of Erf 3222 Onrustrivier ($\pm 356\text{m}^2$ in extent) not be approved as the Property falls within the Coastal Protection Zone EMOZ and can therefore not be alienated. Subsequently the Applicants applied to rather lease a smaller size of the Property ($\pm 330\text{m}^2$ in extent) for a period of 9 (NINE) years and 11 (ELEVEN) months for the purpose of gardening, a cement braai structure and a boundary wall/fence.

The Applicants explained that Erf 3221 Onrustrivier was registered in their name in February 2014 after purchasing the property. At the time of the purchase from the previous owner, it was pointed out to the Applicants that the enclosed property included municipal land and that the enclosure stemmed from an earlier consent given by the Municipality to previous owner Mr Engelbrecht: The following is pertinent to the situation:

1. According to an affidavit, dated 8 November 2013, by Mr van der Merwe, Mr Engelbrecht, the previous owner of Erf 3221 Onrustrivier, to his knowledge obtained permission to exceed the boundary to include the milkwood trees. According to the letter Mr van der Merwe was a councillor during 1987 and was present when the encroachment was granted. According to him consent was also granted to build a braai structure under the trees. The braai was built in the form of a big, open, round brick wall with cement flooring. See the Affidavit attached hereto marked as Annexure "D7/9".
2. The following photographs (a-c) were taken by the Applicants on 28 October 2018 (see Annexure "D6/9):
 - a) The Western wall erected by Mr Engelbrecht at the time of constructing the house in 1987. (Fig.1)



Fig 1. West wall

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- b) The corner of the Western wall and Northern fence along a line between the Milkwood trees, erected in the 1980s by Mr Engelbrecht. (Fig.2)



Fig 2 Corner west wall and north fence

- c) The Eastern and Southern fence (Fig.3), erected at a later date than those mentioned in the above points a) and b).



Fig 3 East fence, also wrapping south

3. At the time of purchasing Erf 3221 Onrustrivier, the Applicants could not find any records for the relaxation of the building line on the Western side of Erf 3221 Onrustrivier in favour of the previous owner Mr Engelbrecht, however the Applicants could not find any reason to doubt that the Municipality granted Mr Engelbrecht consent, judging from (a) the prominent boundary wall of the same brickwork as the house located on Erf 3221 Onrustrivier, constructed on the western side and (b) the affidavit by Mr van der Merwe.

Upon investigation, a letter dated 23 October 1987 addressed to Mr. Engelbrecht was found as evidence that the Municipality granted approval for the encroachment adjacent to Erf 3221 Onrustrivier for gardening purposes. See the Municipal letter attached hereto marked as Annexure "D9/9".

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The Applicants used the Property as the previous owners have done for the purpose of the boundary wall, the beta fence, cement braai structure and the garden and applied to lease the Property for the same purpose as any agreement/consent between the Municipality and the previous owner expired.

There are currently no building plan approvals for the encroachment on the Property, however, should approval be granted for the lease, the Applicants will submit building plans and gain approval thereof in respect of the braai structure and the fence/boundary wall on the Property.

The Property Administration Department also conducted a first site visit on or about 18 November 2020 and found that the Property is fenced at the front with a brick wall, and along the side with wiring and behind the house it is fenced with the well-known iron type 'beta fence'. Within this fenced Property there is a braai structure, indigenous plants planted up to the fence as well as 3 milkwood trees. As there are no visible boundaries, it is not possible to say with 100% accuracy whether all 3 milkwood trees are on municipal land, but it appears that it is more on the municipal land than on Erf 3221 Onrustvriër. Except for the cement braai structure and fence, there are no other structures on the Property. The rest of the municipal land is all covered with plant growth. The Property is well maintained. The site visit photos are attached as Annexure "B".

The Property is indicated in the Surveyor General's diagram as a public place and although the Property is not registered in the name of the Municipality, the Property vest in the Municipality in terms of legislation.

Evaluation

A. Administration of Immoveable Property Policy of the Overstrand Municipality

The following conditions of said policy apply:

Paragraph 4: "No application for the purchase, lease of or encroachment on immovable property (save for the instances mentioned in paragraphs 58 to 62 and 64.1 below) shall be processed unless the prescribed application fee as per tariff approved in the annual budget for that financial year has been paid, nor shall any proposed lease or encroachment (save for the instances mentioned in paragraphs 58 to 62 and 64.1 below) be advertised unless the applicant has confirmed, in writing, that he/she will bear all costs involved in such transaction including – but not limited to – legal, survey, re-zoning, sub-division, consolidations, advertisement, relocation or provision of services

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and, where applicable, a deposit as per prescribed rate to cover incidental costs has been paid.

The Applicants completed the formal application form and paid the application fee.

Paragraph 17: “Taking into consideration the nature and duration of the lease to be entered into, the leasing of immovable property may be affected by means of either:

- 17.1 a competitive process, which may include a closed or public tender or proposal call, specifically in circumstances listed in paragraph 18 below; or**
- 17.2 a direct lease”.**

Paragraph 18: “A competitive process must at all times be followed in circumstances where:

- 18.1 the lease is for a long term with an income value in excess of R10 million;**
- 18.2 the lease is for a formal business premises with a market related rental;**
- 18.3 more than one party, in discretion of the municipality, is interested in the lease of the subject property; and/or**
- 18.4 by discretion of the municipality, a competitive process will best serve the interests of the community”.**

The Property adjoins the property of the Applicants and can thus not separately be of any practical use to anyone else who do not own adjoining property for the purpose applied for. Except for the Applicants there is only one other adjoining property owner who confirmed that they have an objection to the Property being leased to the Applicants (for reasons explained below). The encroachment has already been on the Property for decades and therefore taking into consideration all the above information a direct lease for a long-term period is proposed.

Paragraph 20.1: “The Municipality may grant a long term lease of municipal immovable property with an income value of less than R10 million only after:

- a) The Accounting Officer has approved the lease in principle;**
- b) In the case of a direct lease, the proposed lease was advertised in terms of paragraph 10.1 and 10.2 above to invite the local community and other interested parties to submit comments or representations; and**
- c) The Executive Mayor, as delegated authority, has approved that the right may be granted.”**

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The Accounting Officer (Municipal Manager) approved in principle the lease of the Property to the Applicants on condition that the public participation process is followed and further subject to the approval from the Executive Mayor as delegated authority.

The lease agreement between the Municipality and the Applicant was entered into for administration purposes and signed on 13 December 2022 with the following suspensive conditions in the agreement: 1) that the Applicant submit and obtain building plan approval in respect to the braai structure and boundary wall/fence on the Property, 2) that an advertisement be published in the local newspaper to invite the local community to submit comments, and 3) the Executive Mayor approves the long term lease.

The proposed lease was advertised in The Village News on 7 October 2022 for a 30 (THIRTY) day comment/objection period. One objection was received that will be discussed in detail below.

The Executive Mayor's approval for the long-term lease is hereby sought.

Paragraph 24: “The fair market value for the alienation of, the rental for the leasing or compensation payable for a servitude over municipal immovable 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 (in the case of a direct sale) or lessee (in the case of a direct lease)/servitude holder (in the case of a servitude).”

HCB Property Valuations on 1 August 2022 determined the market related monthly rental at an amount of R3.33/m² (THREE RAND AND THIRTY-THREE CENTS PER SQUARE METRE) (VAT Excluded) per month. The valuation was done taking into consideration the size, shape, locality, zoning and proposed use of the Property. As the Property is ±330m² in extent the total rent will be approximately R1.098.90 (ONE THOUSAND AND NINETY-EIGHT RAND AND NINETY CENTS) (VAT excluded) per month.

Paragraph 36: “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.”

The Applicants paid all costs relating to the advertisement and valuation. No survey was done and therefore no costs were incurred in this regard.

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Paragraph 47: “Subject to paragraph 46 above, immovable property 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.”

The Property will be inspected by the Property Administration Department at least once a year.

It is further confirmed that the other Conditions of Lease as stipulated in paragraph 36 – 50 of the said policy will be included in the lease agreement.

B. Advertisement/Notification

An advertisement for the lease of the Property was published in The Village News on 7 October 2022 for a 30 (THIRTY) day objection/comment period.

Objection received:

One objection was received from Ms Grime, on behalf of West Trust, owner of adjoining property Erf 3220 Onrustrivier, hereinafter referred to as the “Objector”, before the closing time of the advertisement. See the detailed 12 (TWELVE) page objections/comments attached per Annexure “C”. The resolution providing Ms Grime with power of attorney to undertake an objection on behalf of West Trust was provided to the Municipality. No clear details were given though as to whom the trustees are as no master’s letter was attached.

The gist of the objection is summarised on various pages which reads as follows:

- *“The fact that a landowner who shares 20.35 meters of West Trusts entire 54.31m north facing erf boundary (on the street side of the West Trust’s structure) is repeatedly transgressing municipal by-laws and regulations, while installing unsightly materials for whatever reason and has done so for the past 8 years to the detriment of the aesthetic value of West Trust’s property. The point that West Trust wish to make without any prejudice to their rights, is that these persistent transgressions **impact negatively on the aesthetic** of a multi-million rand investment made by West Trust in the Overstrand Area.*
- *The illegal wooden deck located in the rear building line of Erf 3221 afforded the Applicant unobstructed views directly into the bedroom*

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and lounge area on the ground floor of a newly constructed building on Erf 3220. Furthermore, both the water tank and the raised platform are directly in the sight lines from the primary view corridor on the ground floor of the structure belonging to West Trust on Erf 3220”.

- *The illegal wooden deck located in the rear building line on Erf 3221 afforded the Applicants unobstructed views directly into the bedroom and lounge area on the ground floor of a newly constructed building on Erf 3220. Furthermore, both the water tank and the raised platform are directly in the sight lines from the primary view corridor on the ground floor of the structure belonging to West Trust on Erf 3220.”*

CONCLUSION

- *Perhaps the Overstrand Municipality can explain to West Trust and the public in general how one is possibly expected to make informed comment if there is no application available to “view”?*
- *There is absolutely no information on how the applicant proposes to fence in the area for which application is being made while the current assortment of cheapskate, non-aesthetic materials is unacceptable and impacting on the aesthetic of the natural environment, surrounding neighbours, adjoining neighbours and more importantly has a negative effect on the value of property when it is in another landowner’s direct sight lines and view corridors.*
- *Should the municipality entertain this application, then a precedent is set.*
- *Furthermore, “historic” consents to previous landowners are not considered sufficient motivation to continue honouring enclosures of public open space, thus making these areas inaccessible to the public.*
- *In 2020 the public open space in question was granted EMOZ status and the status of Public Open Space I has changed in sensitivity.*
- *As already mentioned, the Town Planning Head (Mr R Kuchar) has stated to the writer that future applications will not be supported and this begs the question of why one land owner (in this case the owner of Erf 3221) be honoured with the privilege of an enclosed*

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±330m² section of public open space with a beta fence located within the 5m contour line and a mere couple of meters from the high water mark of an estuary?

- *In essence this type of double standard approval of applications by the local authority is considered biased, unfair with only certain individuals being granted approvals thus affording the applicant in this instance to continue enjoying unhindered views of the estuary, while the remainder of landowners around the estuary are forced to place fences on boundaries and ruin their expensive view corridors?*
- *It is this very practise of double standards that causes considerable discord amongst members of the community. West Trust is not the only landowner who is exasperated by this handling of unusual, one-sided applications, but do not wish to get involved in this matter for fear of losing their opportunity to be granted the same rights that the Applicant is currently applying for with their encroachments.*
- *Public open space 1 must be accessible to the public.*
- *No development (erection of fences etc) may occur within the 5m contour line...*

Either the municipality agrees to a collective approval for all riparian landowners to enclose open space via leasing of public land where fences can be erected within the 5m contour line for security and so preserve uninterrupted views of the estuary for which extremely high premiums have been paid for by ALL RIPARIAN LANDOWNERS around the estuary.

Alternatively, if Council cannot agree to the above, then the alternative is that all illegal fences and structures are to be removed where found to be installed around the estuary when encroaching on public open space. Any new security fences and walls are to be erected on the actual erf boundaries via the correct channels and regulations with plans being drawn up for approval by the municipal building department."

The Applicants' response:

The comments to the objection are more specific regarding the substance of the application and are as follows: See the detailed 9-page response to the objection attached per Annexure "D":

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- *“ While the fact that the piece of land had been used by current and previous owners according to an historic arrangement with the previous municipality is not disputed, they do comment that “... ‘historic’ consents to previous landowners are not considered sufficient motivation to continue honouring enclosures of public open space, thus making these areas inaccessible to the public” (par. 7 c)). This is an opinion which does not take into regard the continued use of the piece of land over a long period, nor its terrestrial reality with respect to accessibility and views from the north and south. It is impractical for anyone other than the occupant of Erf 3221 to access and therefore use.*
- *The demarcation of the area under application conforms to the area that had been used over many years - long before West Trust acquired Erf 3220. Yet the trustees of West Trust see it fit to state that “... the applicant’s proposal to submit an application with these lines of delineation for a land grab of POS located behind his view corridors, but directly in front of West Trust is considered confrontational and hostile”. This personalisation and emotive description of an honest attempt to regularise the current position vis-à-vis the piece of land, while unfortunate, does not raise a substantive point.*
- *Much is made by the trustees of West Trust of their fear that the piece of land will be utilised to house unsightly items related to our “... non-aesthetic southern building line of Erf 3221 (which) is filled with washing line, fire wood, hose pipes, plastic refuse bin, an unsightly JoJo Water Tank (illegal) covered by a granadilla shrub, building rubble, gardening equipment, etc.” (par3 l)). While we contend that it is quite normal to store such items at the back of your property, that these are not in an unkempt state and that the trustees greatly exaggerate the state of affairs, they should find comfort rendered by the general oversight of the Municipality and the standard lease agreement that will apply. (Note that the extensive accusations of illegality of structures, and of “dumping builder’s rubble” have been addressed by the Municipality and do not warrant further expansion here. Suffice to point out that the comfort mentioned in this point will extend equally to cover their fear, however remote its likelihood of eventuating. Note, though, that the storing of garden refuse temporarily in green bags is part of a normal gardening activity.)*
- *The trustees of West Trust conflate their “primary view corridor” with their view of the fence of the piece of land near their boundary. While they have a primary view to the north-east over the estuary, this short piece of the fence is clearly not, “... directly in West*

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Trust's primary view corridor across public open space ..." (par 2d)), as can be seen from their Figures 2a, 2b and 3. Even more do we dispute their statement that "both the water tank and the raised platform (their description for our deck) ... directly in the sight lines from the primary view corridor on the ground floor of the structure belonging to West Trust on Erf 3220" (par 1j)).

- *As regards the short piece of fence, referred to in d. above: the old fence, erected many years ago (shown in their Figure 2) was removed illegally in June 2022 (the detail of which is not relevant here) and we were forced to contain the area at short notice with a shade cloth fence. The current situation is shown in their Figure 3. Note that the shade cloth fence follows the line of the previous fence and conforms to the alignment indicated in the application for lease. Trustees of West Trust consider the erection of the fence "a wilful and spiteful deed that is deliberately being undertaken to annoy the beneficiaries of West Trust residing in the premises on Erf 3220" (par 2b)). While an unfortunate viewpoint, it (again) does not address a substantive aspect of our application and does not warrant further elaboration.*
- *The trustees of West Trust question the validity of the "gardening purpose" in our application for continued use of the piece of land, stating too that, "... the vegetation in the 'garden' are certainly not water wise vegetation" (par 6 d)). They also aver, in par. 1 a), that, in 2010, the "garden of Erf 3221 was in a derelict state with an unkempt garden and river embankment area that was overgrown with weeds and uncut grass". Firstly, their undermining of the "gardening", as a purpose for our application, is not supported considering the photographs that accompanied our initial application (see Annexure X), taken on 28-10-2013, i.e. before we purchased the property (not 28-10-2018 as incorrectly indicated in the application,). These show that the owner at the time had kept a tidy garden and even mowed the lawn on the estuary side of the fence. When we took over, the kikuyu lawn inside was replaced, at considerable effort and expense, with a typical fynbos garden. Their intimation that it is not water-wise, and extending it further by labelling our efforts as "self-centred, unnecessary and shows no respect for the global climate change that the world is currently faced with", is plain wrong and demeaning.*

"In conclusion:

- *The trustees of West Trust did not address substantive issues related to the lease application. They did not explain why they now see fit that a land use that has been in existence for more than*

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thirty years suddenly would be a problem to them if continued for a further nine years and eleven months.

- *Their objections are rather based on conjured up concerns that the area to be leased will be used for storing “building rubble” and other envisaged improprieties. These concerns are not substantiated by the past use of the area and the conditions of lease will anyway protect them from such impacts, however remote they might be.*
- *The respondent will not directly, or even indirectly, be negatively affected as (a) the proposed lease area is not bordering directly onto erf 3220 and (b) the area in question is shielded from view from their residence on erf 3220 by existing vegetation - their “primary view corridor” will not be interfered with.*
- *Rather than envisaging negative impacts, I would suggest that the trustees of West Trust consider that the continued use of the area as proposed would be to their benefit, in providing privacy and additional security on their doorstep.”*

Property Administration’s response:

The Property Administration Department is not going to respond fully or at all to the statements and allegations made by the objector (some being slanderous and amounts to defamation) in the objection of the West Trust and this should not be seen as an acknowledgment of them but rather a denial which statements and allegations will be scrutinized should the matter escalate to another forum in relation to the threat of legal action against the Manager: Property Administration and the Overstrand Municipality. Only some points will be addressed by or commented on.

- The current encroachments were on the Applicants’ property well before the Objector developed the neighbouring property. The layout of the Objector’s house on the property was under their control and build in such a way that these objections arouse. The Objector also indicates and confirms that the fence was already on the Property as early as February 2010.
- A beautiful view is regarded as a mere incidental benefit of property ownership, it is not an actionable right. Case law has established that building plans do not have to be rejected even if the proposed buildings or boundary walls obstruct a neighbour's view from his/her property. The Applicants encroachment do not take away from the direct view of Objector as the encroachment is located on the

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Property directly adjacent to the Applicants Erf 3221 Onrustvriër and only the Applicants, who's erf is in alignment with the Property for which is applied for, would benefit from the lease of the property for the applied purpose of the existing garden, braai structure and boundary wall/fence.

- The issuing of a rates clearance certificate to transfer privately owned property cannot be withheld by the Municipality due to possible illegal encroachments or the lack of approved building plans. Legislation is quite clear that it can only be withheld if the municipal account is in arrears, or the conditions of a subdivision have not been met.
- From the photos attached it is clear that it might be difficult and expensive to move the fence to the boundary of the Applicants' property, due to the slope. The Applicants thus submitted the two applications in order to rectify the matter and to obtain the necessary approval to retain the encroachments. They are in fact trying to rectify the matter.
- A complaint was received by Law Enforcement and an inspection was done. Law Enforcement could not find any infringement and subsequently did not issue a fine, thus we do not concur with the Objector's version. Another inspection was done by the Manager: Property Administration. No building rubble or concerns were found (see photos marked Annexure "E"). There were stacked bricks in the area and some kind of wooden "picket fence type" enclosure with what seemed to be barb wire on the other side (objector' side). The Applicants offered to move the bricks to his property, which was done, and indicated that the wooden enclosure will be replaced with a neater fence if the application is approved. If not approved, it will be removed.
- Property Administration received another complaint, this time regarding the wooden enclosure where the complainant asked whether he can remove the wooden enclosure. The complainant (Objector) was informed not to remove anything as it is on municipal property and as there is an application pending. Strange enough, shortly after this phone call, the wooden enclosure was illegally removed. This was addressed with the complainant as only he had access to this area (on his property), who denied that he removed it and indicated that he will provide security footage in this regard (the footage would have indicated that someone trespassed on his property). No security footage was received; however, we were then informed that the security cameras were stolen (in which case the Manager: Property Administration was accused of). The

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Applicants proceeded to enclose again with green shade net as he had family members with a dog who came to visit.

- The Property Administration Department followed the administration process applicable to a long-term lease application, as stipulated in Paragraph 20 of the Administration of Immovable Property Policy (2015) of the Municipality, as has been done with similar applications in the past.
- As to the application to purchase. This never followed a public participation process, thus not application was made available to the public to peruse. This is as the application was not approved.
- As to the application to lease. A meeting was held on 19 October 2022 between the West Trust representative and officials from the Property Administration Department, where the Applicants' application was explained in detail including the following: the size of the Property ($\pm 330\text{m}^2$ in extent) applied for and the proposed use of the Property for the purpose of a fence/boundary, gardening and braai structure. The locality map and the final size of the area was shown and later emailed to West Trust, on the same date, for them to have a clear indication of the area applied for. The reasons for the in-principle approval granted by the Municipal Manager was also explained as this is one of the steps to start the long term lease application process as required by Paragraph 20 of the Administration of Immovable Property Policy (2015). The Objector thus did have an opportunity to peruse the application to lease. The Objector was however not permitted to take photos of the applications or to request a copy thereof.
- Should approval be granted by the Executive Mayor for the lease, the condition to the lease would be that the Applicant apply for building plan approvals for the fence/boundary wall to be installed. The Applicants will have the right to install a fence/boundary wall around the Property.
- The encroachment has been on the Property for decades already and the previous owners of Erf 3221 Onrustrivier obtained approval from the Municipality for the encroachments, the lease has been supported by internal municipal departments on condition that the encroachment should stay as is and no further development should take place and that a similar fence as the one at the back of the Property should be erected, the boundary wall however was not supported by the Environmental Department and this should be taken into consideration.

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- The Environmental Department have no objection to the lease, on condition that the encroachment should stay as is and that no further development should take place and that the proposed area fencing should remain as is, if in future the fence should be replaced a similar fence should be erected to accommodate the water level rises due to storm events, as the Property falls within the Coastal Protection Zone (EMOZ).
- The Application was circulated via the Environmental Department to the Onrus Estuary Forum (OREF) since the Property is located adjacent to the Onrus Estuary and this Forum had no objection to the lease of the Property.
- The Objector is welcome to submit an application to lease a portion of the area as indicated in purple on the locality map attached marked Annexure "F". This will then ensure that the areas do not overlap and the area directly adjoining to Erf 3221 is not leased to property owner who is not directly adjoining. This will follow the same process as above.
- Considering the above, there is no substantial reason not to approve the lease.

Conclusion

Considering the above discussion and the fact that there is no substantial objection to the process nor use of the Property, it is recommended that the lease of the Property to the Applicants be approved for a period of 9 (NINE) years and 11 (ELEVEN) months at a rental amount of R3.33/m² (THREE RAND AND THIRTY-THREE CENTS PER SQUARE METRE) (VAT Excluded) per month.

7. Financial Implications

The Municipality stands to gain rental in the amount of R3.33/m² (THREE RAND AND THIRTY-THREE CENTS PER SQUARE METRE) (VAT excluded) per month, such rental to escalate every year on the 1st of July in accordance with the consumer price index (all items).

8. Staff Implications

None

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9. Comments from other Departments, Divisions and Administrations

Senior Manager: Expenditure & Assets: Hermanus: J Vorster

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

Senior Manager: Building Control: Mr L Coetzee

“Building Control has no objection. If the applicant constructed the boundary wall/fence and braai on municipal property, a building plan application with a consent letter by Property Administration Department must be submitted to our office by the Applicants. Any new structures will also require the consent of Property Administration Department and a building plan application must be submitted.”

Environmental Audit Officer: Ms H Fortune

“The Environmental Management Section has the following comments on the above-mentioned application after a site visit was conducted on 2 June 2021.

Environmental Management Overlay Zone:

- *In August 2020, the municipality gazetted Environmental Overlay Zone regulations. Erf 3222 Onrustrivier is located within the Coastal Protection Environmental Management Overlay Zone (EMOZ). The purpose of the EMOZ is managing the integrity of coastal ecosystems, ecosystems services, coastal dynamic processes, and biodiversity within Coastal Reserves.*

Estuarine Risk Areas:

- *Fencing must preferably be permeable to accommodate storm events and limit structural damage and associated negative impacts on the environment.*
- *Existing coastal processes and indigenous vegetation within the estuarine functional zone must be maintained.*

Additional Comments:

- *The application was distributed to the Onrus Estuary Forum (OREF) since the application is located adjacent to the Onrus estuary. The following comments were received from Hennie Greeff OREF member and representative of the Onrus Rate Payers Association: “I have no objection to, or comment on, the application referred to in this email.”*
- *The application was also sent to Mr Theodore Martin (Professional Officer: Coastal and Catchment) and Ms Rulien Volschenk*

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(Environmental Management Officer) of the Overberg District Municipality, but no comments were received.”

Conclusion:

- *The application to purchase the portion of Erf 3222 is not supported by the environmental section as this fall within the Coastal Protection Zone (EMOZ).*
- *Leasing the portion of Erf 3222 is supported however, no further development is supported as this fall within the Coastal Protection Zone (EMOZ).*
- *The proposed area fencing should remain as is, if in future the fence should be replaced a similar fence should be erected to accommodate water level rises due to storm events. The building of a boundary wall is not supported.”*

Town Planner: Henk Olivier

“Erf 3222 Onrustrivier is a wetland area and zoned Open Space I: Public Open Space. It is also indicated as a Public Place on the Survey Diagram. This area must therefore be accessible to the general public, which appear not to be the case. The relevant portion of land is also under the setback line (5cm contour line) where no development should take place. The portion also falls in a HPOZ and EMOZ sensitive area.”

10. Annexures

- Annexure A: Locality maps
- Annexure B: Property Administration: Site Visit photos: 18 November 2021
- Annexure C: West Trust Objection Letter
- Annexure D: Applicants' reply to the objection
- Annexure E: Property Administration: Inspection photos after complaint
- Annexure F: Locality map with proposal

RECOMMENDATION:

1. that the objection against the lease received from the West Trust **be dismissed**;
2. that the lease of municipal property, being a portion of Erf 3222 Onrustrivier ($\pm 330\text{m}^2$ in extent), to the owners of Erf 3221 Onrustrivier for the purpose of gardening, a cement *braai* structure and a boundary wall/fence at the rental amount of R3.33/m² (THREE RAND AND THIRTY-THREE CENTS PER SQUARE METRE) (VAT excluded) per month for a period of 9 (NINE) years and 11 (ELEVEN) months in terms of the Administration of Immoveable Property Policy of the Overstrand Municipality, **be approved**; and

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3. that the rental amount mentioned in 1 above escalate every year on the 1st of July in accordance with the consumer price index (all items), the next escalation to be on 1 July 2023.

RESPONSIBLE OFFICIAL :	W MURTZ
TARGET DATE FOR IMPLEMENTATION :	28 JULY 2023
TARGET DATE TO INFORM APPLICANT :	14 JULY 2023
TARGET DATE TO INFORM OBJECTOR :	14 JULY 2023

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3.

**A PORTION OF ERF 3222 ONRUSTRIVIER (PUBLIC OPEN SPACE), ADJACENT TO
ERF 3221 ONRUSTRIVIER (16 LAGOON DRIVE, ONRUSTRIVIER): LEASE OF
MUNICIPAL PROPERTY TO THE OWNERS OF ERF 3221 ONRUSTRIVIER**

**A Le Roux
20 December 2022**

Manager: Property Administration

(028) 316 5623

**THIS MATTER SERVED BEFORE THE INVESTMENT & INFRASTRUCTURE
PORTFOLIO COMMITTEE ON 7 JUNE 2023, WHICH COMMITTEE SUPPORTED THE
RECOMMENDATION**

RESPONSIBLE OFFICIAL :

W MURTZ

TARGET DATE FOR IMPLEMENTATION :

28 JULY 2023

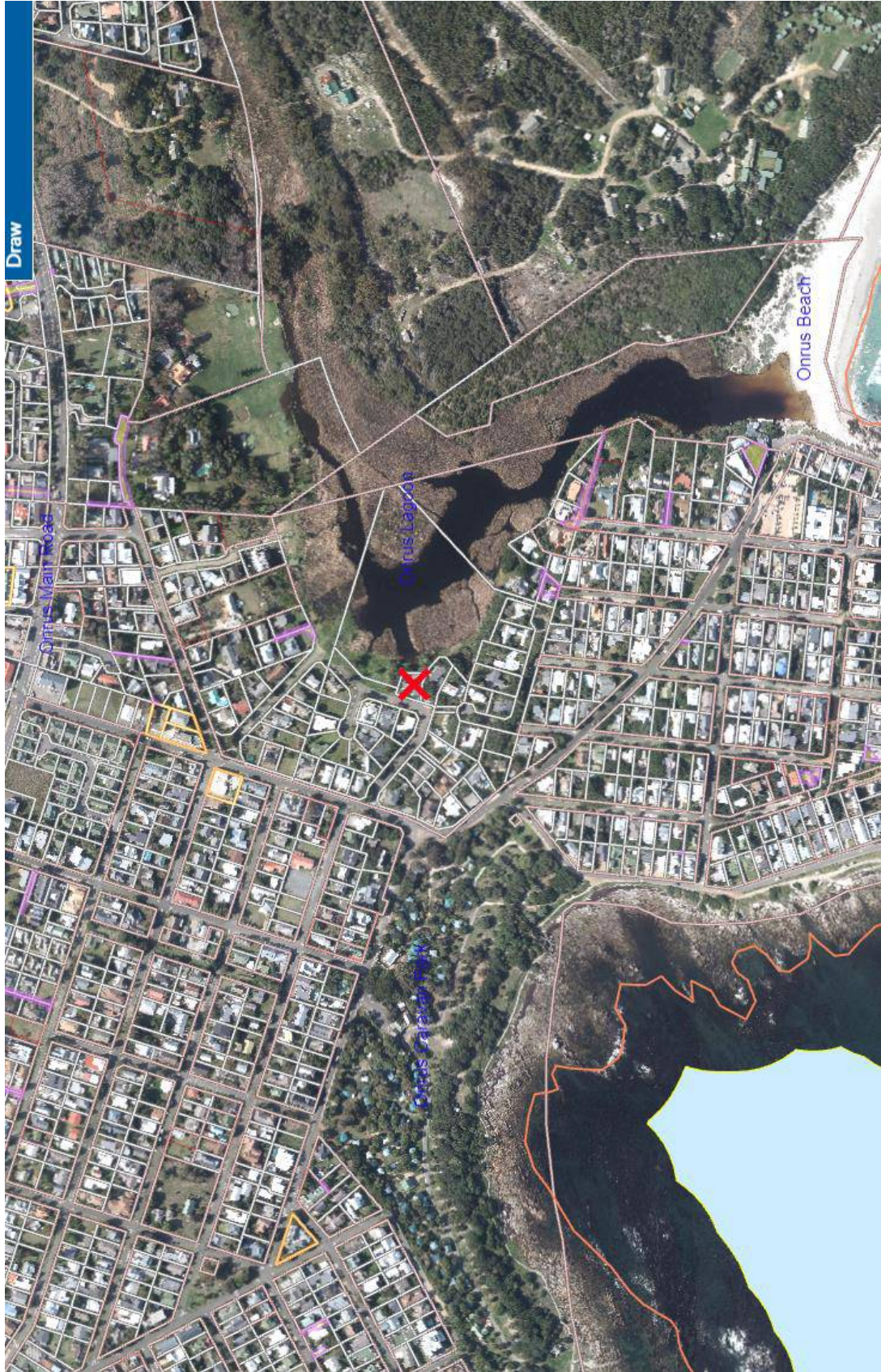
TARGET DATE TO INFORM APPLICANT :

14 JULY 2023

TARGET DATE TO INFORM OBJECTOR :

14 JULY 2023





R Marinus

From: R Marinus
Sent: 18 November 2020 03:12 PM
To: N Liebenberg
Subject: Erf 3221 - Inspeksie

Beste Nicolene,

Ek het op inspeksie gegaan by erf 3221 Onrus. Die munisipale eiendom wat aangrensend is aan erf 3321 is omhein aan die voorkant met n baksteen muur, langs die kant met bedrading en agter die huis is dit omhein met die bekende yster tipe 'beta fence'.

Binne hierdie omheinde munisipale grond wat aangrensend erf 3221 is, is daar 'n braai struktuur area, inheemse plante wat geplant is agter hulle erf tot by die heining asook 3 melkhoutbome. Oor daar nie sigbare grense is nie, is dit nie moontlik om met 100% akkuraathed te sê of al 3 melkhoutbome op die munisipale grond is nie, maar dit blyk dat dit meer op munisipale grond is as op erf 3221. Ek het probeer om dit aan te dui op 'n liggingsplan wat in die sakkie is.

Behalwe vir die braai area en heining is daar geen ander strukture op die munisipale grond nie. Die res van die munisipale grond is alles bedek met plantegroei.

Die Fotos wat ek geneem het is gelaai op Alta-TP onder Encroachments → HON3221 – Hardus Engelbrecht Eiendomme. Die is die mees toepaslike folder vir hierdie aansoek wat ek kon kry.

Laat weet my indien enige iets onduidelik is.

Vriendelike groete,

Riaan Marinus
Chief Administrator: Contracts, Tenders and Projects, Infrastructure and Planning Directorate







WEST TRUST

MOBILE: [REDACTED]

**ONRUS
7201**DISPATCHED BY EMAIL & DELIVERED BY HAND

4 November 2022

TO: Miss Willmary Murtz
Overstrand Municipality
Property Administration

**REFERENCE: LEASE OF MUNICIPAL PROPERTY, A PORTION OF ERF 3222
ONRUSRIVIER, NOTICE NR: 122/2022, APPLICANT PH VAN NIEKERK**

Dear Madam,

Please find herewith an objection by the owner of Erf 3220 Onrusrivier (West Trust), hereinafter referred to as West Trust, to the proposed lease of approximately 330m² of municipal property/ public open space I situated behind and alongside 16 Lagoon Drive Onrusrivier to PH Van Niekerk, hereinafter referred to as "the applicant".

Firstly, West Trust wish to place on record that this objection is not based on a "neighbourly feud" as the Head of Property Administration Me A Le Roux repeatedly refers to in her correspondence with West Trust. **Rather, it is the fact that a landowner who shares 20.35 meters of West Trusts entire 54.31m north facing erf boundary (on the street side of the West Trust's structure) is repeatedly transgressing municipal by laws and regulations**, while installing unsightly materials for whatever reason and has done so for the past 8 years to the detriment of the aesthetic value of West Trust's property. The point that West Trust wish to make without any prejudice to their rights, is that these persistent transgressions impact negatively on the aesthetic of a multi-million rand investment made by West Trust in the Overstrand Municipal Area. West Trust are not transgressing the by-laws or the building regulations, yet are repeatedly being censured as the purported "problem child". Any municipal official worth their salt will agree that it is totally unacceptable that a landowner (in this case the applicant) goes about his property doing as he wishes with a list of illegal structures and installations that negatively impact on an adjoining landowner and in this instance is unfortunately the "neighbouring property owner" of West Trust. West Trust wish to add that should this application be entertained without any discussion and compromise around alignments of enclosure of POS, West Trust, without may seek intervention through the legal courts against Me A Le Roux and a possible interdict to halt any leasing of EMOZ land within Public Open Space I around the Onrus Estuary.

1. INTRODUCTION

- a) West Trust purchased Erf 3220 in February of 2010
- b) At the time, the property and garden of Erf 3221 was in a derelict state with an unkempt garden and river embankment area that was overgrown with weeds and uncut grass.
- c) A fence had been installed on the riverine side to the rear of the property and approximately 1 meter from the high water mark of the Onrus Estuary. It was noted that the fence was erected a considerable distance from the actual rear boundary of Erf 3221.
- d) Historic enquiries with the local authorities indicated that permission had been granted to the then owner to "encroach" on the public land to accommodate a braai structure and the fence.
- e) The applicant purchased Erf 3221 in 2014 and proceeded to carry out renovations.
- f) During this time West Trust was finalizing construction plans for a residence on Erf 3220, which construction began in February of 2015.
- g) **Owing to the great expense incurred in purchasing the property and the building costs associated with Erf 3220 Onrusrivier, the design of the main structure was cantilevered on the property and placed in a manner so as to overlook the public open space with uninterrupted views of natural**

vegetation only and to avoid having any visual access from West Trust's primary entertainment areas into the rear of the structure located on Erf 3221 (the applicant's property).

- h) For medical reasons, the design and construction on Erf 3220 for West Trust was carried out by a team of professionals that included master builders and project managed by a team of architects **who were required to oversee all aspects of the construction.**
- i) When the beneficiary of West Trust was finally fit enough to attend site meeting in 2015 & 2016, it was noted that all manner of irregularities, encroachments and illegal structures had been installed by the applicant on Erf 3221 without any permission being obtained (either from West Trust or the local authorities) i.e unsightly water tank in the lateral building line on a shared boundary with the applicant, built up platforms at the rear of the applicant's property (both merely two meters from the legal ground floor deck on Erf 3220), unsightly wooden balustrades sourced from an original balcony at Erf 3221 being installed on the shared boundary wall between Erf 3221 & 3220.
- j) The illegal wooden deck located in the rear building line on Erf 3221 afforded the applicant unobstructed views directly into the bedroom and lounge area on the ground floor of a newly constructed building on Erf 3220. Furthermore, both the water tank and the raised platform are directly in the sight lines from the primary view corridor on the ground floor of the structure belonging to West Trust on Erf 3220.
- k) There have been ongoing queries in 2016 - 2019 (Ingrid Jones, Mr Coetzee) at the building department, email queries directed to Henk Olivier in February 2021 (unanswered), i.e queries directed to numerous municipal departments at Overstrand Municipality over the years by West Trust and which have been met with unreserved indifference.
- l) During construction, West Trust were then forced to erect screens to the value of R80,000.00 in an attempt to block out all the unsightly clutter of fire wood, washing lines, a JOJO water tank etc in the lateral boundary between Erven 3221 & 3220.
- m) Finally in February 2022, after West Trust sent in a lengthy communication revealing numerous transgressions and irregularities including complaint forms to the town planning department, site inspections were finally held by town planning and building officials and the applicant jumped into action and started applying to formalize encroachments and irregularities by appointed legal representation to tackle the illegal transgressions which included the water tank and raised wooden platforms installed illegally within lateral and rear building lines on Erf 3221.
- n) At this juncture: when transfer of Erf 3221 to the applicant took place in 2014, **West Trust fail to ascertain how the Overstrand Municipality granted clearance as is legally required with the encroachments on public land and the walls and fences that were installed around Erf 3221 (for which there are no building plan approvals or agreements) to enclose public open space and subsequently increase the area of Erf 3221 by nearly ±50%.**
- o) **Based on aerial photography supplied by the municipality (Figure 4) - the bulk of the structure on Erf 3221 Onrusrivier visually appears to exceed the permissible 50% for single residential erven of 700m²?**
- p) **Furthermore: when the renovations were completed at Erf 3221, how was an occupancy certificate issued when there were incomplete building plans and no approvals for structures located within boundary lines?**
- q) **The applicant has never had (and still does not have) any legal rights or approvals for the enclosure of public open space, gardening on public open space (which he still continues with) or encroachments on public land, yet this was merely ignored by the Overstrand Property Administration for 8 years.**

Based on the above, one may be forgiven for pointing out what is clearly a very unprofessional attitude by the municipality with extremely poor administration of transgressions by certain land owners, while the applicant shows an overwhelming, historic tendency to conduct himself in an illegal manner with the numerous transgressions that have occurred on and around Erf 3221 on public land and within the estuary ever since he moved into the premises at Erf 3221 Onrusrivier. Furthermore, based on the fact that the applicant is the OREF Chairman (Onrus River Estuary Forum) leaves plenty of room for any member of public to speculate whether the applicant uses his political connections as the Chair of an NGO to consistently circumnavigate any reproach for ongoing transgressions with no penalties or intervention from municipal departments?

Basis for this last comment is that another OREF & ORHA member (previously residing on the southern boundary of Erf 3220) conducted himself in a similar manner by merely going ahead and installing irrigation systems and planting rose bushes on the estuary embankment (Public Open Space) without any approval from Council - a practicing, legal Senior Council member no less! It begs the question of who these individuals think they are and what grants them this right of attitude to self-entitlement and merely ignore by-laws and regulations, simply doing as they wish even if it involves land to which they have no rights or approvals? Suffice to say, this individual has moved out of the area and the illegal rose bushes were removed from the embankment. Once again an NGO member transgressing. This very same individual put West Trust under immense pressure by threatening legal steps to obtain

West Trust's building plans from the town planning department which he did via Mrs Van Graan (his soon to be wife) and the owner of Erf 3219. Mr Kuchar (Head of Town Planning) can attest to the fact that himself and Henk Olivier informed West Trust of the situation and in order to avoid a protracted and uncomfortable situation for Messrs Kuchar and Olivier (based on their comment to West Trust of receiving considerable "political pressure from the top" and they are going to summons you in any event under PAIA to release your plans), West Trust graciously conceded and allowed Mr Kuchar to take the plans and sit with Mrs Van Graan & Co to explain that there were no contraventions or indiscretions being carried out in respect of the project on Erf 3220/West Trust and indeed everything was being done by the book. The OREF member was behind these shenanigans and given the chummy relationship with the applicant probably also did this to antagonise the West Trust owners. Based on discussions with Mr Henk Olivier by West Trust it became obvious that a couple of these ORHA members were behind this demand for West Trust's house plans and this begs the question of what they were looking for or what information they hoped to glean from the plans, other than to gain security detail and invade our privacy.

2. CURRENT SITUATION

- a) Furthermore, the applicant provocatively has and continues to use any manner of non-aesthetic, cheap or scrap material to fence off a section of public open space located a mere 2 meters from a primary ground floor deck (legal deck) on West Trusts property and directly in the primary view corridor towards the estuary. See figures 2 & 3



- b) It is the writer's opinion that this persistent use of unsightly materials by the applicant would more likely be found in a shack dweller's back yard or a camp site. However, West Trust's property is not located within an informal settlement nor a campsite yet West Trust are forced to continuously put up with this unsightly, slapdash, non-aesthetic waste material placed by the applicant directly in front of a primary view corridor located 2 meters from the ground floor deck and downstairs living, entertainment and home office areas of West Trust. Together with all the other historic, unlawful irregularities that the applicant gets away with, this installation of unsightly material directly in front of our property is considered a wilful and spiteful deed that is deliberately being undertaken to annoy the beneficiaries of West Trust residing in the premises on Erf 3220. West Trust is not the party or person with the illegal structures and we may all agree that since we are the whistle blowers who laid a formal complaint in February 2022 against these irregularities and transgressions of by-laws, there is no other plausible reason (other than malice) for allowing public open space to look like a dump directly adjacent to another land owner other than for vindictive reasons.

This unsightly material has a negative impact on the value and aesthetic of Erf 3220 and forms no cohesion with the natural surroundings or other materials used for built walls on the applicant's Erf 3221.

- c) As indicated on Figure 3 (see red line), there is a built section of boundary wall (approximately 1.5 meters in length) on the riverine boundary of Erf 3221. **The applicant is notorious for using this area as a dumping ground for building rubble (see red encircled area on Figure 3).** In what is considered additional antagonistic behaviour the applicant also dumps plastic rubbish bags filled with garden refuse in this area where he does not have to see it, but West Trust, their visitors and clients have to look directly into the mess!
- d) Again this is directly in **West Trust's primary view corridor across public open space and impacts negatively on the overall aesthetic of the natural view towards the estuary.**
- e) West Trust called Overstrand Law Enforcement on 22 June 2022 (T. Cekiso attended to the site inspection of the illegal dumping on POS – video evidence available if requested). West Trust were advised to provide a statement and they would issue the applicant with a fine of R3500.00. The statement was completed on 22 June 2022, however the applicant who was in residence at the time did not respond to Law Enforcement's ringing his doorbell. **As such it begs the question of what happened to the fine that was to be have been issued to the applicant.**
- f) The Property Administration Manager Ms A Le Roux was obliged to get the applicant to move the dumped building rubble onto his own property until such time as a decision had been made regarding his application for purchase of public land. The building rubble is now loosely stacked (**illegally**) on top of the 1.5m long rear boundary wall of Erf 3221 and the remainder on the applicant's property.
- g) Given the negative impacts associated with this use of these materials by the applicant at this position as indicated on Figures 2 & 3, West Trust wish to point out that **there is absolutely no sound reason why this enclosure of public open space has to be "in the face" of an adjacent land owner. Why is the shade netting not lined up with the end of the built wall indicated on Figure 3 as "A" where it has the least impact on West Trust and it certainly has no impact on the owner of Erf 3221.**
- h) **This proposed alignment ensures that the non-aesthetic enclosure materials are obscured by trees and vegetation which are located on public open space.**
- i) If this current alignment of shade cloth is going to remain, **and while it is noted that shrubs have since been planted by the applicant in this area of public open space (for which the applicant still has no permission),** begs the question of whether the historical, wilful behaviour of using this area as dumping ground by the applicant is going to be rekindled **and West Trust are guaranteed of having absolutely no recourse in the event that the municipality entertains this application.**

3. APPLICANT'S PROPOSAL AS PRESENTED FROM PORTFOLIO AND MAYORAL COMMITTEE MEETINGS AVAILABLE FOR PUBLIC PERUSAL ON THE INTERNET (OVERSTRAND MUNICIPAL WEB SITE) FOR PURCHASE OF PUBLIC LAND

- a) West Trust are unable to locate any formal application setting out the motivation for purchasing of public land on the Overstrand Municipal website.
- b) There are no mitigating factors for the purchase of the Property in question, other than to state (from what appears to be minutes of meetings: **that these illegal encroachments are existing and that the applicant wishes to buy the land so that the illegal encroachments can be used for the same purpose).** Or rather, one may conclude, so that the applicant can avoid having to remove and demolish illegal structures, walls and fences.
- c) In August 2020, the municipality gazetted Environmental Overlay Zone regulations. Erf 3222 Onnrustriever is located within the Coastal Protection Environmental Management Overlay Zone (EMOZ). The purpose of the

EMOZ is managing the integrity of coastal ecosystems, ecosystems services, coastal dynamic processes, and biodiversity within Coastal Reserves.

- d) In other words, the dynamic of the river embankment or public open space around the estuarine area has changed and due to the sensitivity of the estuary certain concessions are no longer going to be granted. **The Town Planning Head has stated verbally during a site meeting with the writer that future applications of this nature will not be supported.**
- e) On the basis of point d) above, the municipal decision was taken to **not approve the ALIENATION of a portion of Erf 3222 Onrustivier to the adjoining landowner of Erf 3221 as the property fell within the Coastal Protection Zone (EMOZ).**
- f) Based on Annexure A1 (or **Figure 4 below**) of the documents available on the internet pertaining to this application, **the fact that there is no formal application to peruse and given the extent of enclosure currently in place, West Trust will assume that the applicant is intending to formally fence in the entire section of the Property/Erf 3222 (or public open space within a Coastal Protection Zone) to the extent that the proposed enclosure impacts negatively on West Trust. Annexure A1 of the municipal documents indicate an enclosure that ABUTS THE ERF BOUNDARY OF ERF 3220 WITH PUBLIC OPEN SPACE FOR APPROXIMATELY 5 METERS DIRECTLY ACROSS THE PRIMARY VIEW CORRIDOR OF WEST TRUST. See arrows on Figure 4 below**



Figure 4

- g) In effect, this fencing would mean that on the basis of the photographic demonstration in Figure 5, West Trust would have been subjected to a fence directly across their primary view corridor and directly on an erf boundary abutting public open space **and not the applicant's property. Frankly, this is an outright provocation by the applicant and clearly displays the impudent attitude of an individual who only cares about his personal comfort in all his actions, irrespective of the negative impacts that his actions have on other land owners. WHY THE NECESSITY FOR THIS PROVOCATION? THIS IS NOT HOW THE ELIGNMENT OF ENCLOSURE HAS BEEN IN THE PAST!**
- h) West trust purchased this erf based on the cadastral lines with open space to the north and there was never any indication that West Trust would be subjected to this invasive type of proposal for public open space I within an estuarine area being sold off or leased to an adjoining land owner. The trustees will fight this proposal in the courts if need be as this type of application was not volunteered as a potential scenario in the future after millions of rands had been spent of this development of a residential dwelling on Erf 3220 Onrustivier.**
- i) **The fact that the proposal submitted to the Property Administration is supported by Ms A Le Roux who informed West Trust verbally that she would be recommending the application to Council for**

consideration raises questions around her capabilities to assess applications in a fair and unbiased manner. The latter statement is based on the potential negative impact that such an extensive section of West Trust's boundary with public open space would have been interfered with by the applicants proposed land purchase. There can be no doubt that the intention of the applicant is to entirely fence in the area as delineated on the Annexure A1 contained in the notes on the Overstrand Municipal website and irrespective of the use of material, be it Beta Fence, green shade cloth or old dilapidated wooden planks, Figure 5 below clearly illustrates the obtrusive impact that this enclosure would have had on the visual aesthetic between Erf 3220/ West Trust and a public open space.



Figure 5

- j) Furthermore, **while we were overseas** the material as depicted in Figures 2a and 2b was removed and we received a Whatsapp voice note from Ms Le Roux advising us to replace the wooden plank fence **THAT WE HAD REMOVED. By all accounts this audio recording and repeated instruction to replace the materials "WE HAD REMOVED" (WHILE WE HAPPENED TO BE IN EUROPE) is nothing short of an outright, unsubstantiated allegation by a senior official of the Overstrand Municipality of accusing a landowner of THEFT!** Mrs Le Roux was immediately informed that we were not in the country to have stolen anything that she wants us to replace. We then received a bad-tempered, sarcastic message to please find out who had removed the "fence", whilst sitting 12000km away!
- k) On our return from overseas, the entire front of our property at 14 Lagoon Drive had been vandalized and West Trust was clearly the victim of a theft. Security lights and sensors, security cameras and garden lights had been ripped off walls and out of flower beds on the street side of the West Trust property. This was reported to SAPS and a case was opened. **Ms Le Roux's allegation of us stealing a wooden scrap located on public open space was also included in the docket (her Whatsapp voice note was played to the SAPS Captain) as it occurred at the same time that the theft of items from West Trust occurred and may have been related.** West Trust will refrain from repeating what the Captain who handled the case had to say about the stolen "fence" from public open space as depicted in Figures 2a and b, save to say he did burst into raucous laughter when he saw the pictures of what was being referred to as a so-called "fence". In light of what transpired as set out in points i) and j), one has to wonder what exactly is going on in this area and municipal jurisdiction with theft the order of the day and senior, municipal officials (purportedly a qualified lawyer no less - as Ms Le Roux was at pains to point out in her communications) making unsubstantiated accusations to West Trust of stealing.
- l) In addition, to the above and more specifically the lines indicated on Annexure A1 (that traverse an entire 5 meters of West Trust's primary view corridor and directly in front of the main dwelling on Erf 3220) included in

the documents from the portfolio and mayoral meetings along with comments contained under the paragraph relating to "Evaluation":

"The Property can be classified as a non-viable immovable property due to the location, shape, size, proposed use thereof and due to the Applicants being the only direct neighbour that can use the Property for the purpose of gardening, a cement braai structure and a boundary wall" is considered partisan, misleading and a fabrication of the facts. In light of the fact that the applicant's proposal included hindering a 5m section of West Trust's boundary along open space then West Trust put the following proposal to the portfolio and mayoral committees:

As indicated on Figure 6, **West Trust propose that they are equally at rights to purchase/ lease a section of Public Open Space I as indicated in yellow lines on Figure 6 for gardening purposes considering that there should be no room for partisan decisions and favouritism if there is merit for wanting to clear an embankment riddled with alien vegetation under which vagrants sleep, urinate, defecate, drink alcohol and smoke cigarettes, which area can then be gardened and maintained.** The embankment as indicated is a major security risk to residents in the area and which is not maintained at all by the local authority. West Trust will gladly tend to the gardening of the area as shown and as such the municipalities claim that that **"the applicant being the only direct neighbour that can use the Property for the purpose of gardening"** is refuted in its entirety as there is a contentious section of POS that overlaps where one can argue West Trust is also entitled to garden (see area demarcated with a



on Figure 6). This area is merely a continuation of the lateral, southern building line of Erf 3221 and has indeed ends with a built wall on the applicant's boundary. However, suffice it to say, the non-aesthetic southern building line of Erf 3221 is filled with washing line, fire wood, hose pipes, plastic refuse bin, an unsightly JoJo Water Tank (illegal) covered by a granadilla shrub, building rubble, gardening equipment, etc. As already pointed out, the applicant continued with this mess by placing it in the POS behind a 1.5m wall. All in all one will agree a downright situation of self-entitlement that the local authority's Property Administration are more than willing to have Council consider and **West Trust fail to understand why the local authority is entertaining these type of antagonistic applications as it merely adds fuel to the fire with the discord amongst residents around the estuary.**



Figure 6

The proposal as depicted in yellow lines on Figure 6 does not have to be entirely fenced in. This area can then be assigned to West Trust via an application for leasing of POS for gardening purposes. Traditionally the area

demarcated in yellow lines on Figure 6 is an embankment that was historically built up out of river stone in order to protect hotel annexures and stables originally located on Erven 3219 and 3220 in the early 1900's.

This demarcated area as indicated with the red star will not be tolerated by West Trust for appropriation by the applicant for purchase or rent as it provides the applicant with additional space to further add more rubbish and garbage that line up with the untidy and southern boundary of Erf 3221. **In other words it is merely an extension of a southern boundary that has no visual impacts for the applicant but is right in the face of West Trust.** Again there is no need for this extension of the applicant's "backyard" into Public Open Space and purely a provocation which should not have to be endured by the trustees of West Trust.

4. CHANGE OF PROPOSAL TO LEASE OF LAND AND AMENDMENT TO SCOPE AND SIZE OF AREA, INCLUDING BOUNDARY DEMARCATATION.

- a) An advertisement was subsequently placed in the local newspaper regarding the application to **lease** the land to the owner of erf 3221 Onrustrivier announcing that **"the application can be viewed"**
- b) At a meeting held with municipal officials on 19 October 2022, West Trust was informed that the Council had taken a decision **NOT TO SUPPORT THE APPLICATION TO PURCHASE THE PUBLIC OPEN SPACE BY THE APPLICANT.**
- c) However mention was made that the application had been changed to **lease** the Property for a period of 9 years and 11 months. Furthermore, West Trust was informed that **there was no documentation available to "view"**:
 - a. NO UPDATED APPLICATION WAS PROVIDED FOR A LEASE AGREEMENT
 - b. NO UPDATED COMMENT FROM INTERNAL DEPARTMENTS IS AVAILABLE ON THE INTERNET REGARDING THE **LEASE** OF THE LAND IN QUESTION
 - c. NO UPDATED MITIGATING FACTORS FOR THE LEASE OF THE LAND FOR A PERIOD OF 9 YEARS AND 11 MONTHS WAS PROVIDED
 - d. THE OFFICIALS STATED THAT THE INFORMATION ON THE INTERNET (MUNICIPAL WEBSITE) "HAS NOT CHANGED", IT'S JUST A CASE OF THE LAND NOW BEING LEASED AND NOT SOLD.
 - e. NOWHERE IS THERE A WRITTEN CONFIRMATION/ INDICATION OF COUNCIL APPROVING THE LEASE OF THE PROPERTY IN QUESTION TO THE APPLICANT.
- d) **Irrespective of whether the Property (now reduced in extent to ±330m²) is sold or leased to the applicant, the fact remains that the property still falls within the Coastal Protection Zone (EMOZ).**
- e) **Based on d) above, West Trust challenges the municipality to explain how leasing the land versus the sale of the land will possibly have less impacts on the enclosure of the public open space in question. Frankly the difference in circumstances between a lengthy lease period of 9 years and 11 months or the sale of the property is negligible.**
- f) During the meeting of 19 October 2022, the municipal official tasked with handling this application sketched up a new plan demarcating the portion of the Property to be leased, **on which the official drew in red lines on aerial photography during the meeting to indicate the lease area and size of the Property in question – see Figure 7**



Figure 7

- g) **NOTE:** This sketch with red lines was then sent to West Trust by the official via email on 19 October 2022 and
- **did not form part of an amended application,**
 - **is not included in the public information available on the internet for the application to purchase the property by the Applicant**
 - **As such one may conclude that this Figure 6 has not been circulated for comment to the internal, municipal departments.**
 - The red arrow in Figure 6 depicts the current alignment of the existing, unsightly material located directly "in the face" of West Trust whose property abuts the public open space at this point (as depicted on Figures 2a & b & 3).
 - **No mention is made of whether this material is to be formalized and there is absolutely NO communication with West Trust in finding an alternative alignment (than what currently exists) that will not negatively impact on a multi-million rand property. Again indicative of the municipal and applicants extremely discriminatory and unfair approach with this application.**

As such West Trust object to the proposed lease of the Property for reasons already provided in this document along these delineating lines in Figure 7.

5. LACK OF MITIGATING FACTORS FOR PROPOSED LEASE OF LAND

- a) Important to note is the comment from the Town Planning Department of the Overstrand Municipality where the following comment was provided:-

"Erf 3222 Onrustrivier is a wetland area and zoned Open Space I: Public Open Space. It is also indicated as a Public Place on the Survey Diagram. This area must therefore be accessible to the general public, which appear not to be the case.

The relevant portion of land is also under the setback line (5m contour line) where no development should take place. The portion also falls in a HPOZ and EMOZ sensitive area."

- b) In light of this comment in a) one can conclude that from a town planning perspective any proposal, be it purchase or lease of public open space and more specifically where such open space falls within an HPOZ and/or EMOZ sensitive area, the Overstrand Town Planning Department do not support such applications and certainly do not support the applicant's request for the purchase/lease of a $\pm 330\text{m}^2$ portion of sensitive open space area since this open space MUST be accessible to the general public and NO DEVELOPMENT should take place within the 5m contour line.

6. GENERAL COMMENT AROUND THE PROPOSED LEASE OF LAND

- a) One can conclude, (just as West Trust do not want a fence directly across a 5 meter portion or the entire north eastern boundary which will obstruct the primary view corridor – Figure 5), **the applicant does not wish to install a fence on his riverine boundary either. The latter would mean that this fence would be located a mere 3 meters from his residence and obstruct his view corridor.** Hence the reason for not wanting a fence on the applicants boundary is blatantly obvious...**It is obstructive** and as such will impede his views towards the open space from his illegal deck within a building line.
- b) The current illegal fence on the riverine boundary affords the applicant **with one thing only** and that is **unobstructed views towards the estuary!** This is the only feasible mitigating factor for wanting to "use the existing facilities as the previous owner did". **West Trust argue that the applicant's proposal to submit an application with these lines of delineation for a land grab of POS located behind his view corridors, but directly in front of West Trust is considered confrontational and hostile.** The fact that the Property Administrative department cannot read between the lines is considered extremely short sighted and biased.
- c) The writer contends that there is no other plausible reason for wanting to increase an existing property (Erf 3221) by $\pm 330\text{m}^2$ or an additional 50% through appropriating public open space through purchase/lease.
- d) More specifically the applicant wanting to self-appropriate (through purchase and fencing in) riverine embankment to maintain the rear of Erf 3221 for "purported" gardening purposes becomes even more questionable given the massive portion of land and square meterage earmarked for said "gardening". As can be seen from the photos in the documents placed on the Overstrand Website, the vegetation in the "garden" are certainly not water wise vegetation. **When environmental consideration is given to the current global warming and the ongoing water shortages in Southern Africa, no environmentally sensitive individual would need an additional 150m^2 of riverine embankment to maintain a garden that**

requires watering. This is considered self-centred, unnecessary and shows no respect for the global climate change that the world is currently faced with.

- e) One can argue that this is more a self-righteous desire by the applicant to not be inconvenienced by demolishing structures, walls etc and having to install a fence on the applicant's actual erf boundary which is visually obstructive.
- f) Should Council not consider the consequences of the points raised in this communication particularly relating to selective approvals to specific individuals, then one can accept that this application, if approved, has been pushed through not on the merits of the application but rather on the basis of political interference. The latter, a repugnant action that seems to rear its ugly head regularly in various arenas within the Overstrand Municipality based on past and personal experience (i.e the reed removal within the Onrus Estuary where Rupertism is more important than the natural environment).
- g) Similarly, other land owners around the estuary were finally instructed to remove rose bushes and irrigations systems from the riverine embankment on the public open space. This continued municipal double standard of having one set of rules and regulations applicable to certain land owners and another set of rules for others is totally unacceptable.

Given the EMOZ status of the open space around the estuary and climate change along with water shortages, West Trust objects to the proposed lease of public open space to a single land owner for gardening purposes.

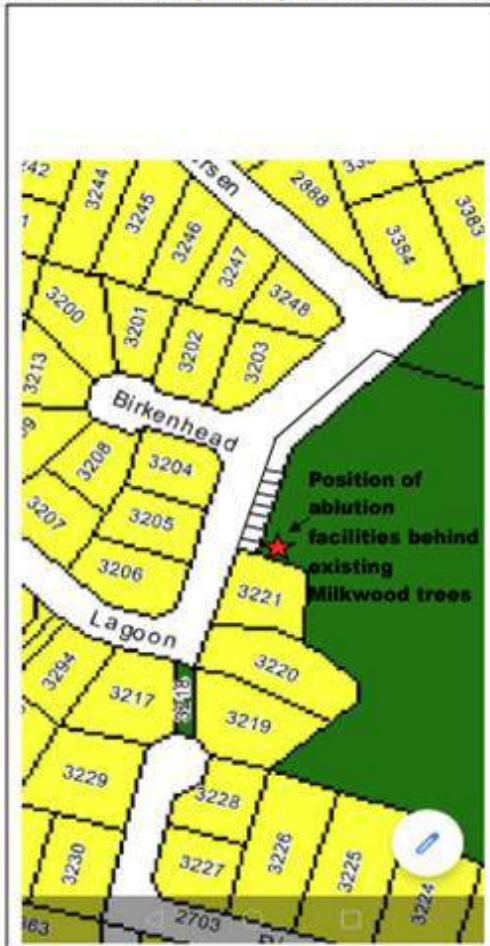
7. CONCLUSION

- a) Perhaps the Overstrand Municipality can explain to West Trust and the public in general how one is possibly expected to make informed comment if there is no application available to "view"?
- b) There is absolutely no information on how the applicant proposes to fence in the area for which application is being made while the current assortment of cheapskate, non-aesthetic materials is unacceptable and impacting on the aesthetic of the natural environment, surrounding neighbours, adjoining neighbours and more importantly has a negative effect on the value of property when it is in another landowner's direct sight lines and view corridors.
- c) Should the municipality entertain this application, then a precedent is set.
- d) Furthermore, "historic" consents to previous land owners are not considered sufficient motivation to continue honouring enclosures of public open space, thus making these areas inaccessible to the public.
- e) In 2020 the public open space in question was granted EMOZ status and the status of Public Open Space I has changed in sensitivity.
- f) As already mentioned, the Town Planning Head (Mr R Kuchar) has stated to the writer that future applications will not be supported and this begs the question of why one land owner (in this case the owner of Erf 3221) be honoured with the privilege of an enclosed ±330m² section of public open space with a beta fence located within the 5m contour line and a mere couple of meters from the high water mark of an estuary?
- g) In essence this type of double standard approval of applications by the local authority is considered biased, unfair with only certain individuals being granted approvals thus affording the applicant in this instance to continue enjoying unhindered views of the estuary, while the remainder of land owners around the estuary are forced to place fences on boundaries and ruin their expensive view corridors?
- h) It is this very practise of double standards that causes considerable discord amongst members of the community. West Trust is not the only land owner who is exasperated by this handling of unusual, one-sided applications, but do not wish to get involved in this matter for fear of losing their opportunity to be granted the same rights that the applicant is currently applying for with their encroachments.
- i) Public open space 1 must be accessible to the public.
- j) No development (erection of fences etc) may occur within the 5m contour line

As it currently stands, the security of many of the land owners around the estuary is compromised with exposed riverine boundaries that are not fenced in. The latter security issues have been compounded by the extreme eradication of reeds within the estuary that has seen an increased number of vagrants and unknown individuals, dawdling around the riverside boundaries of properties and using the bushes and shrubs on the embankment to defecate, urinate and loiter under bushes and imbibe alcohol.

When are the ablution facilities - basic facilities required by visitors in Onrus - going to be provided by the municipality for all the paddle boarders and recreating visitors that come to the estuary ("the jewel of Onrus") at the end of Lagoon Drive and who use the estuary for daily excursions? Perhaps the toilets can be placed on the northern boundary of Erf 3221 as the main sewer line is located here for ease of connection (alternative positions will require pump station which as we all know cause immense pollution and problems at the estuary). Where is the formalized

parking that has been provided for in the road reserve as indicated on the zoning plan (hereunder)? Or shall one conclude that this is not acceptable for the applicant who has a gate on his north western corner of his property that provides him access from his property onto road reserve. The Milkwood Trees that seem to be cause of some consternation as the municipality cannot determine whether they are on POS 1 or the applicants land will offer more than sufficient cover so that ablution facilities cannot be seen by the applicant. With due respect, perhaps the Municipality can apply their resources to more appropriate basic public needs by all members of the community versus entertaining these one sided applications that make no town planning, urban design or land ownership sense when evaluated from the impacts they have within an EMOZ and on surrounding land owners.



Either the **municipality** agrees to a collective approval for all riparian landowners to enclose open space via leasing of public land where fences can be erected within the 5m contour line for security and so preserve uninterrupted views of the estuary for which extremely high premiums have been paid for by **ALL RIPARIAN LAND OWNERS** around the estuary.

Alternatively, if Council cannot agree to the above, then the alternative is that all illegal fences and structures are to be removed where found to be installed around the estuary when encroaching on public open space. Any new security fences and walls are to be erected on the actual erf boundaries via the correct channels and regulations with plans being drawn up for approval by the municipal building department.

Should Council not consider the consequences of the points raised in this communication particularly relating to selective approvals to specific individuals, then one can accept that this application, if approved, has been **pushed**

through not on the merits of the application but rather on the basis of political interference where officials have clearly not applied their minds to impacts of this proposed application. The latter, a repugnant action that seems to rear its ugly head regularly in various arenas within the Overstrand Municipality based discussions with officials and personal experience. Other land owners not being afforded the same rights and privileges as certain individual land owners around the estuary is totally unacceptable and prejudiced.

Historic concessions from decades ago is not considered sufficient motivation for the enclosure and lease of such a large portion of public land given that the public open space now has environmentally sensitive status. The need and desirability for appropriated public open space I and enclosing it which makes it "private open space" and inaccessible to the general public, has not been addressed.

On the basis of the points set out in this document and as a directly affected land owner who is being negatively impacted on by the proposed lease of Public Open Space I within an EMOZ to a single land owner, West Trust object in the strongest terms to this application which is being endorsed by the Property Administration of the Overstrand Municipality.

Should you have any queries, please contact the writer.

Yours sincerely
Michelle Grime
For West Trust: Owner Erf 3220 Onrusrivier

Copies to Trustees, Attorneys & Municipal Officials:

1. Chris van Oudtshoorn - VGV Attorneys
2. C2M Financial Services and Auditors
3. Hendrik Kotze - Werksmans Attorneys
4. Clinton Lerm - Overstrand Municipality - Mayco Member Investment & Infrastructure
5. DGI O'Neill - Overstrand Municipal Manager
6. Riaan Kuchar - Overstrand Municipality Town Planning Department
7. Henk Olivier - Overstrand Municipality Town Planning Department
8. Liezi de Villiers - Overstrand Municipality Environmental Department

HON 3222- PH VAN NIEKERK - NOTICE NR: 122/2022 - OBJECTION BY WEST TRUST (OWNER ERF 3220 ONRUSRIVIER) AGAINST THE PROPOSED LEASE OF A PORTION OF ERF 3222 (PUBLIC OPEN SPACE I [EMOZ]) ONRUSRIVIER TO THE OWNER OF ERF 3221 ONRUSRIVIER: RESPONSE BY PH VAN NIEKERK

Background

1. On 3 November 2020, I, Dr Peter H van Niekerk, requested the Overstrand Municipality (see Annexure X) to assist me in obtaining clarity regarding the earlier permission granted by the Onrus River Municipality to the original owner of erf 3221 to use a piece of municipal land (portion of Erf 3222). If that was not possible, the request was to purchase or lease the land in question.
2. The motivation for the application was that:
 - a. The use of the piece of land by the owners of Erf 3221, as originally permitted, had continued since 1987 – thirty-three years at the time of application.
 - b. The use was, and still is, one of low impact; using a braai facility (built with the original permission) and for gardening. With the advice of the Botanical Society's Fernkloof Nursery, we removed the kikuyu lawn, and replaced it with indigenous vegetation suitable for the area.
 - c. The land in question is separated by dense vegetation from the public recreational lawn to the north. To the south, where it adjoins Erf 3220, it is shielded from views and access. To the east the steep incline makes it impractical for recreational use.
 - d. We (my wife and I) wished to have comfort that our low impact use of the area could continue.
3. The Overstrand Municipality proceeded to consider the application to either purchase or lease the piece of public land in question.
4. While the purchase of the land was not supported, the leasing was approved in principle following which the Overstrand Municipality placed an advert in The Village News on 7 October 2022, notifying the public of the application to lease the property.
5. On 7 November 2022 the Overstrand Municipality provided me with the objection, dated 4 November 2022, by the trustees of West Trust represented by Ms M Grime (the wife of Mr F du Toit, also trustee), and invited me to respond.

Objection by West Trust

6. The objection of West Trust constitutes 12 pages and covers a wide range of issues, large parts of which are not directly related to the application in question. I will refer to these later, but first need to address points made which are specific to the substance of the application. These are the following:
 - a. While the fact that the piece of land had been used by current and previous owners according to an historic arrangement with the previous municipality is not disputed, they do comment that "... 'historic' consents to previous land owners are not considered sufficient motivation to continue honouring enclosures of public open space, thus making these areas inaccessible to the public" (par. 7 c)). This is an opinion which does not take into regard the continued use of the piece of land over a long period, nor its terrestrial reality with respect to accessibility and views from the north and south. It is impractical for anyone other than the occupant of Erf 3221 to access and therefore use.

- b. The demarcation of the area under application conforms to the area that had been used over many years - long before West Trust acquired Erf 3220. Yet the trustees of West Trust see it fit to state that "... the applicant's proposal to submit an application with these lines of delineation for a land grab of POS located behind his view corridors, but directly in front of West Trust is considered confrontational and hostile". This personalisation and emotive description of an honest attempt to regularise the current position vis-à-vis the piece of land, while unfortunate, does not raise a substantive point.
- c. Much is made by the trustees of West Trust of their fear that the piece of land will be utilised to house unsightly items related to our "... non-aesthetic southern building line of Erf 3221 (which) is filled with washing line, firewood, hose pipes, plastic refuse bin, an unsightly JoJo Water Tank (illegal) covered by a granadilla shrub, building rubble, gardening equipment, etc." (par3 l)). While we contend that it is quite normal to store such items at the back of your property, that these are not in an unkempt state and that the trustees greatly exaggerate the state of affairs, they should find comfort rendered by the general oversight of the Municipality and the standard lease agreement that will apply. (Note that the extensive accusations of illegality of structures, and of "dumping builder's rubble" have been addressed by the Municipality and do not warrant further expansion here. Suffice to point out that the comfort mentioned in this point will extend equally to cover their fear, however remote its likelihood of eventuating. Note, though, that the storing of garden refuse temporarily in green bags is part of a normal gardening activity.)
- d. The trustees of West Trust conflate their "primary view corridor" with their view of the fence of the piece of land near their boundary. While they have a primary view to the north-east over the estuary, this short piece of the fence is clearly not, "... directly in West Trust's primary view corridor across public open space ..." (par 2d)), as can be seen from their Figures 2a, 2b and 3. Even more do we dispute their statement that "both the water tank and the raised platform (*their description for our deck*) ... directly in the sight lines from the primary view corridor on the ground floor of the structure belonging to West Trust on Erf 3220" (par 1j)).
- e. As regards the short piece of fence, referred to in d. above: the old fence, erected many years ago (shown in their Figure 2) was removed illegally in June 2022 (the detail of which is not relevant here) and we were forced to contain the area at short notice with a shade cloth fence. The current situation is shown in their Figure 3. Note that the shade cloth fence follows the line of the previous fence and conforms to the alignment indicated in the application for lease. Trustees of West Trust consider the erection of the fence "a wilful and spiteful deed that is deliberately being undertaken to annoy the beneficiaries of West Trust residing in the premises on Erf 3220" (par 2b)). While an unfortunate viewpoint, it (again) does not address a substantive aspect of our application and does not warrant further elaboration.
- f. The trustees of West Trust question the validity of the "gardening purpose" in our application for continued use of the piece of land, stating too that, "... the vegetation in the 'garden' are certainly not water wise vegetation" (par 6 d)). They also aver, in par. 1 a), that, in 2010, the "garden of Erf 3221 was in a derelict state with an unkempt garden and river embankment area that was overgrown with weeds and uncut grass". Firstly, their undermining of the "gardening", as a purpose for our application, is not supported considering the photographs that accompanied our initial application (see Annexure X), taken on 28-10-2013, i.e. before we purchased

the property (not 28-10-2018 as incorrectly indicated in the application,). These show that the owner at the time had kept a tidy garden and even mowed the lawn on the estuary side of the fence. When we took over, the kikuyu lawn inside was replaced, at considerable effort and expense, with a typical fynbos garden. Their intimation that it is not water-wise, and extending it further by labelling our efforts as "self-centred, unnecessary and shows no respect for the global climate change that the world is currently faced with", is plain wrong and demeaning.

7. The trustees of West Trust spent considerable effort on matters not relevant to the application:
 - a. Instead of focussing on the documentation that they were invited to view at the offices of the municipality as per the advert, their section 3 is spent on documentation sourced from the municipal website. Here it should be pointed out that an incorrect southern alignment of our application was earlier tabled in the municipality, but it was later corrected to coincide with the alignment requested in our original application (see Annexure A of Annexure X of this document). The latter, corrected, alignment was the one available for viewing.
 - b. Despite having learnt from the municipality that the alignment had been corrected, the Trustees chose to lodge a tirade against the application based on the incorrect alignment, even stating, "Frankly, this is an outright provocation by the applicant and clearly displays the impudent (*sic*) attitude of an individual who only cares about his personal comfort in all his actions, irrespective of the negative impacts that his actions have on other land owners. WHY THE NECESSITY FOR THIS PROVOCATION? THIS IS NOT HOW THE ELIGNMENT (*sic*) OF ENCLOSURE HAS BEEN IN THE PAST!"
 - c. Instead of having been comforted that the area under consideration does indeed follow the area as had been used in the past, they used emotive and maligning terms to discredit and demean the applicant. (This is the case in many parts of their document but nowhere does it reach further depths of malevolence than in their page 7.)
 - d. We would argue that Section 3 of West Trust's objection does not warrant further comment as it does not speak to the application.
8. The trustees of West Trust criticize the administrative process followed, the decision-making to this point and even intimate bias on the part of certain officials. They furthermore conclude, *a priori*, that a decision that would favour the applicant is likely to be for reasons political, and not based on the merits of the application. They also warn of possible legal action that may follow.

While the detail of these criticisms falls outside the scope for the applicant to comment on, I do feel uncomfortable with the intimidatory style taken and the influence that it may have on the process of decision-making that has to follow.

9. The trustees of West Trust deny that their objection is based on a "neighbourly feud". Semantically they are correct, as a "feud" implies aggressivity from both parties. This is not the case here; there is a record of aggressive behaviour by Mr Du Tolt and Ms Grime against us, escalating over the last number of years. It seems the source of the problem lies with their frustration with the reed removal project and the role they feel I have played as chairman of the Onrus River Estuary Forum (OREF), as they obliquely make mention of in their document. Our response to the allegations was always factual and measured. At a point we did propose a mediation process to see if the conflict could be reduced/laid to rest. This proposal was rejected out of hand, but we remain available for reopening that avenue.

10. In conclusion:

- a. The trustees of West Trust did not address substantive issues related to the lease application. They did not explain why they now see fit that a land use that has been in existence for more than thirty years suddenly would be a problem to them if continued for a further nine years and eleven months.
- b. Their objections are rather based on conjured up concerns that the area to be leased will be used for storing "building rubble" and other envisaged improprieties. These concerns are not substantiated by the past use of the area and the conditions of lease will anyway protect them from such impacts, however remote they might be.
- c. The respondent will not directly, or even indirectly, be negatively affected as (a) the proposed lease area is not bordering directly onto erf 3220 and (b) the area in question is shielded from view from their residence on erf 3220 by existing vegetation - their "primary view corridor" will not be interfered with.
- d. Rather than envisaging negative impacts, I would suggest that the trustees of West Trust consider that the continued use of the area as proposed would be to their benefit, in providing privacy and additional security on their doorstep.

ANNEXURE X: ORIGINAL APPLICATION

3 November, 2020

Manager: Property Administration (by e-mail: anjaleroux@overstrand.gov.za),

Overstrand Municipality,

Hermanus

Dear Ms le Roux

ERF 3221, ONRUS RIVER: REQUEST FOR ASSISTANCE IN LOCATING EXISTING PERMISSION TO USE MUNICIPAL LAND, ALTERNATIVELY APPLICATION TO PURCHASE OR LEASE LAND IN QUESTION

The above property was registered in my name on 4 February 2014. At the time of purchase from the previous owner, Dr D Brom, it was pointed out to me that the enclosed property actually included public land, but that it stemmed from an earlier consent by the Municipality of Onrus River.

The following is pertinent to the situation:

1. An affidavit of Mr GR van der Merwe, dated 8 November 2013, that the original owner of the property, Mr GJ Engelbrecht, to his knowledge obtained permission to exceed the boundary to include certain Milkwood trees and erect a braai facility. (Annexure A)
2. The attached plan (Annexure B) shows the measurements of the area, estimated at 320 sq metres, enclosed when purchased. If required, a survey of the area, still unchanged, can be arranged.
3. The attached photographs, taken on 28-10-2018, showing the following:
 - a. The western wall erected by Mr Engelbrecht at the time of constructing the house circa 1987. (Fig. 1)
 - b. The corner of the western wall and northern fence along a line between the Milkwood trees, probably also erected in the 1980s/1990s by Mr Engelbrecht. (Fig. 2)
 - c. The eastern and southern fence, possibly erected at a later date by Dr Brom. (Fig. 3)
4. At the time of purchase I examined the file of the property at the Overstrand Municipality for documentation related to a relaxation in favour of Mr Engelbrecht, but could not find anything relevant. The Overstrand Municipality took over the administration of the Onrus Municipality earlier and it seems that the file was also incomplete in other respects, e.g. regarding the permission for Mr Engelbrecht to exceed the building line on the western side.
5. I had no reason to doubt that the Onrus River Municipality had granted Mr Engelbrecht his wish at the time, judging from (a) the prominent boundary wall of the same brickwork as the house, constructed on the western side and (b) the affidavit by Mr GR van der Merwe.
6. I continued utilising the area and, with the advice of the Botanical Society's Fernkloof Nursery, removed the kikuyu lawn, and replaced it with indigenous vegetation suitable for the area.

My wish now is to obtain comfort about our continued low impact use on the land in question. I therefore kindly request your office for your assistance in locating any documentation regarding the relaxation from the Onrus River Municipality to Mr Engelbrecht at the time. Failing locating and gaining comfort from such documentation, I wish to apply for the purchase of the land in question or, if that is not feasible, a lease of the area as enclosed.

Regards,



Dr Peter (PH) van Niekerk
Email: caroline@mvweb.co.za

16 Lagoon Drive, Onrus River
Cell: +27 82 807 4981



Fig 1. West wall

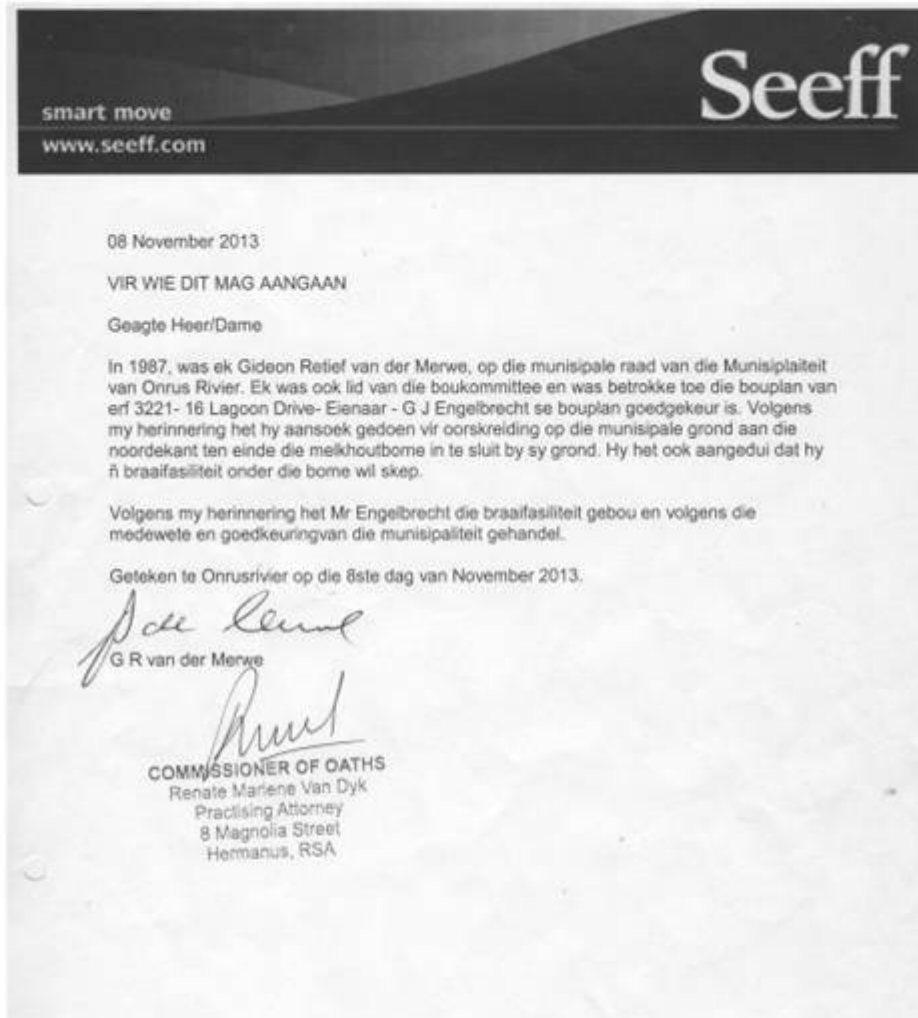


Fig 2 Corner west wall and north fence

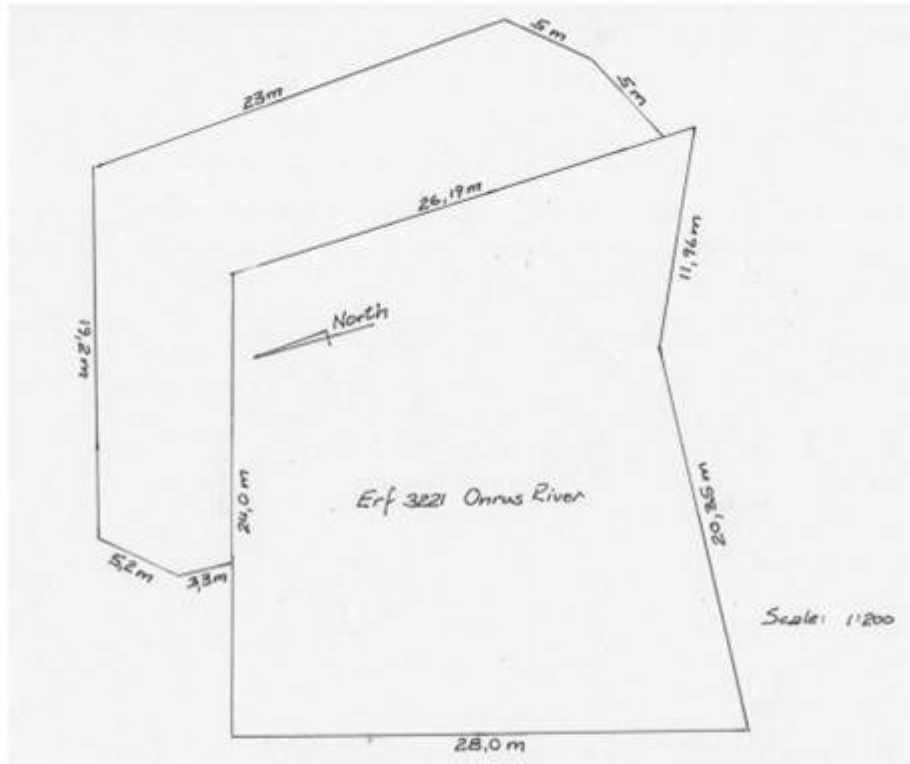


Fig 3 East fence, also wrapping south

ANNEXURE A



ANNEXURE B



**ANNEXURE E1/3
INSPECTION 28 JUNE 2022**



Municipal property



Applicant's property

**ANNEXURE E2/3
AFTER INSPECTION 1 JULY 2022**



**ANNEXURE E3/3
REMOVED WOODEN ENCLOSURE**



