

**AGENDA of the
Portfolio Committee: Investment & Infrastructure
6 April 2022
(Also the agenda for the Mayoral Committee Meeting: 25 April 2022)**

**8.
FERNKLOOF BOTANICAL GARDEN**

17/6/R

S Muller

23 March 2022

Director : Infrastructure and Planning

(028) 313 8019

1. Executive Summary

This report is to table the draft Co-Management Agreement with the Hermanus Botanical Society for the development of the Fernkloof Botanical Garden in the municipality's Fernkloof Nature Reserve, Hermanus.

2. Service Delivery and Budget Implementation Plan - IGNITE

Infrastructure and Planning
Environmental Management Services

3. Compliance with Strategic Priorities

Provision of democratic, accountable and ethical governance
Provision and maintenance of municipal services
Creation and maintenance of a safe and healthy environment

4. Delegated Authority

Executive Mayor

5. Legal Requirements

National Environmental Management Protected Areas Act

6. Background/Discussion/Evaluation/Conclusion

Background

The Fernkloof Nature Reserve (FNR) is a declared Protected Area in terms of the National Environmental Management Protected Areas Act (NEM:PAA). The Overstrand Municipality (OSM) is the designated Management Authority of the FNR and the owner of the land on which the FNR is established.

Within the OSM, the Environmental Management Services Department (EMS) is responsible for, inter alia, the effective management of Municipal Nature Reserves.

**AGENDA of the
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NEM:PAA allow Management Authorities of Protected Areas to enter into Co-Management Agreements with another organs of state, local communities, individuals or other parties for the co-management, or the regulation of human activities that effect the environment in the area. This principal is also taken up in the FNR Protected Area Management Plan (PAMP). The PAMP encourages involvement of the local and the broader community in the affairs of the FNR.

The Hermanus Botanical Society (HBS) was formed in 1960 with the purpose of protecting the fauna and flora of the FNR. HBS assisted with designing and producing hiking maps, signage and points of interest management, alien vegetation clearing, establishing, colour coding and maintaining hiking trails as well as recording the plant species in the FNR. The herbarium established by HBS is recognised internationally. The HBS has recruited and housed many under-graduate, graduate and post-graduate students to undertake scientific research that has benefited FNR.

In 1977 the HBS applied to the Municipality for the lease of a portion of FNR for the purpose of managing, supervising and maintaining the Fernkloof Gardens. The original lease was renewed several times, and the final lease expired on 31 July 2020.

In 2017 the Hermanus Botanical Society entered into a Co-Management Agreement with the Municipality to assist with infrastructure and vegetation maintenance on the reserve where they felt they could make a contribution.

Discussion

In discussions regarding the renewal of the lease, the HBS indicated they would like to establish a Botanical Garden on the same land as the existing FNR Gardens. The position and the extent of the land are indicated on the map in Appendix A. The municipality supports the proposal.

It was also agreed that the new relationship between the OM and HBS should be in the form of a Co-Management Agreement, as contemplated by NEM:PAA and the FNR PAMP.

The purpose of the Co-Management Agreement is to allow the HBS to:

- manage, operate and maintain the existing Fernkloof Gardens in the FNR,
- to establish a registered Botanical Garden on the same land, and
- once the Fernkloof Botanical Garden (FBG) is established, HBS will manage, operate and maintain the FBG.

**AGENDA of the
Portfolio Committee: Investment & Infrastructure
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This Agreement will commence with the signing of the agreement and shall remain in force for 40 years, unless terminated in terms of the provisions of the agreement.

This agreement will be reviewed after two years and thereafter every five years. This agreement can be reviewed more frequently if agreed by OM an HBS.

7. Financial Implications

None

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

None

10. Annexures

Annexure A: Location and extent of the Fernkloof Gardens and proposed Fernkloof Botanical Garden.

Annexure B: Draft Co-Management Agreement for the Fernkloof Botanical Garden.

RECOMMENDATION:

that the draft Co-Management Agreement for the Fernkloof Botanical Garden between the Municipality and the Hermanus Botanical Society **be approved**.

RESPONSIBLE OFFICIAL :

S MULLER

TARGET DATE FOR IMPLEMENTATION :

N/A



CO-MANAGEMENT AGREEMENT

FOR THE ESTABLISHMENT, MANAGEMENT, OPERATION AND MAINTENANCE
OF A BOTANICAL GARDEN AT THE FERNKLOOF NATURE RESERVE

between

OVERSTRAND MUNICIPALITY

Represented by

(hereinafter referred to as "**OM**")

And

THE HERMANUS BOTANICAL SOCIETY

Represented by.....

(hereinafter referred to as "**HBS**")

1. PREAMBLE

The Fernkloof Nature Reserve (FNR) is a declared Protected Area in terms of the National Environmental Management Protected Areas Act (NEM:PAA). The OM is the designated Management Authority of the FNR and the owner of the land on which the FNR is established. Within the OM, the Environmental Management Services Department (EMS) is responsible for, *inter alia*, the effective management of Municipal Nature Reserves.

NEM:PAA allows Management Authorities of a protected area to enter into Co-Management Agreements with another organs of state, local communities, individuals or other parties for the co-management of the area, or the regulation of human activities that effect the environment in the area. This principal is also taken up in the FNR Protected Area Management Plan (PAMP). The PAMP encourages involvement of the local and broader community in the affairs of the FNR.

The Hermanus Botanical Society (HBS) was formed in 1960 with the purpose of protecting the fauna and flora of the FNR. HBS has assisted with designing and producing hiking maps, signage and points of interest management, alien vegetation clearing, establishing, colour coding and maintaining hiking trails as well as recording the plant species in the FNR. The Herbarium established by HBS is recognised internationally. The HBS has recruited and housed many under-graduate, graduates and post-graduate students to undertake scientific research that has benefited FNR.

In 1977 the HBS applied to the Municipality for the lease of a portion of FNR for the purpose of managing, supervising, and maintaining the Fernkloof Gardens. The original lease was renewed several times, and the final lease expired on 31 July 2020.

In 2017 the Hermanus Botanical Society entered into a Co-Management Agreement with the municipality to assist with infrastructure and vegetation maintenance on the reserve where they felt they could make a contribution.

In terms of the new order national environmental legislative (NEM:PAA) and the FNR PAMP, the OM and HBS agreed to enter into a co-management agreement for the establishment, management, operation and maintenance of a Botanical Garden on the same land as the existing FNR Gardens. The position and the extend of the land is indicated on the map in Appendix A.

2. PURPOSE

To establish a co-management agreement between the OM and HBS, as contemplated in NEM:PAA and the FNR PAMP, with the aims of:

- a) Managing, operating and maintaining the existing Gardens in the FNR,
- b) Establishing a registered Botanical Garden in the Fernkloof Nature Reserve, and
- c) Once the Fernkloof Botanical Garden (FBG) is established, to managing, operation and maintain the FBG.

2.1. MANAGING, OPERATING, AND MAINTAINING THE GARDENS IN THE FNR

This co-management agreement will enable the HBS to continue with the management, operation and maintenance of the existing FNR Gardens, on the existing footprint, with the same conditions as the last lease agreement between the OM and HBS.

2.2. ESTABLISHING A REGISTERED BOTANICAL GARDEN IN THE FERNKLOOF NATURE RESERVE

- i) The HBS will develop a Business Plan for the development of the FBG.
- ii) The Business Plan must:
 - (1) demonstrate the desirability and feasibility of a Botanical Garden in FNR.
 - (2) contain a Development Plan, including timelines, for the establishment of the FBG.
 - (3) contain a Financial Plan, including costing and funding sources.
 - (4) contain a Management and Operational Plan for the FBG.
 - (5) comply with all applicable legislation.
 - (6) be aligned with the FNR PAMP.
- iii) The Business Plan must be submitted to the OM for approval.
- iv) On approval, the HBS will commence with the establishment of the FBG.
- v) The HBS will be responsible for all the costs associated with the planning and establishing of the FBG.

2.3. MANAGE, OPERATE AND MAINTAIN THE FBG.

Once the Fernkloof Botanical Garden is established, the HBS will managing, operation and maintain the FBG in accordance with the approved Business Plan and all applicable legislation. The HBS will take full responsibility for the property and all the activities taking place on the property.

The HBS will report annually to the OM on progress with the implementation of the approved Business Plan.

The HBS will be responsible for all the costs associated with the management, operation and maintenance of the FBG.

The HBS will at all times allow employees and service provides of the OM, and visitors to the FNR, to access the FNR over the land on which the FBG is established, at the access point approved by the OM.

3. COMMENCEMENT, DURATION AND REVIEW

This Agreement will commence on the date of signature by the party signing last and shall remain in force for 40 years, unless terminated in terms of the provisions of clauses 5, 6 or 7.

This agreement will be reviewed after two years and thereafter every five years. This agreement can be reviewed more frequently if agreed by OM an HBS. Should a review require an amendment of this Agreement, such amendment shall only be valid and binding if reduced to writing and signed by both parties.

4. MUNICIPAL ASSETS

The OM will make available the following municipal assets to the HBS, at no cost, to be used in the pursuit of the purpose of this agreement, for the duration of the agreement:

- a) The land on which the existing gardens have been established, as indicated on the map contained in Annexure A.
- b) The buildings on the land mentioned above, being the hall, office, research and seedbank centre, herbarium, storage garages, kitchen, visitor centre, nursery, house and two ablution buildings. The office currently used by municipal staff will be released to the HBS when suitable alternative accommodation can be provided for them.

The HBS will, at their expense, and without recourse to the OM, at all times, for the duration of the agreement, maintain in good order and condition the municipal assets mentioned above.

5. GENERAL PROVISIONS

- c) This Memorandum and Annexure constitute the sole record of the Purposes in terms of which the parties shall co-manage the Fernkloof Gardens and envisaged Fernkloof Botanical Garden in FNR.
- d) The HBS shall not be entitled to cede and/or assign and/or delegate any of their rights and obligations in terms of this agreement.
- e) The HBS shall not sublet any part of the land/property or building without the written approval of the OM.
- f) The HBS shall at all times well and sufficiently indemnify the Municipality and keep the Municipality indemnified against all liability howsoever caused or arising that may be the direct or indirect result of the use of the property, and against all actions, suits, proceedings, claims, demands, costs and expenses whatsoever which may be taken or made against the municipality or incurred or become payable by the HBS at the suit of any person.
- g) No condonation, relaxation or indulgence afforded by any party to the other will prejudice any of the rights of the other party and the former will not be prohibited from exercising such rights due to its actions.
- h) In the implementation of this agreement and in all dealings with each other the parties undertake to observe good faith and to give full effect to its purposes.
- i) The persons signing this Agreement in a representative capacity warrant that they have been duly authorised to do so.
- j) Any party to this agreement may cancel this agreement at any time by giving the other party twelve months written notice to this effect.

6. BREACH

If either party breaches the terms of this agreement, the aggrieved party shall be entitled to give the defaulting party ten business days written notice to remedy the breach. In the event of the defaulter failing to remedy the breach within the time given, the aggrieved party shall be entitled, without prejudice, to take any measures itself to remedy the breach, or appoint a third party to do so, and recover the cost in doing so from the defaulting party; and/or enforce or cancel the agreement and claim any damages it may be legally entitled to.

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7. DISPUTE RESOLUTION

Should a dispute, disagreement or claim arise between the Parties concerning this agreement, the parties shall try to resolve the dispute amicably by negotiation which shall entail that the one party invites the other in writing to a meeting to attempt to resolve the dispute within seven days from date of the written invitation. If the dispute is not resolved by such negotiation, the parties may submit the dispute to the Arbitration Foundation of Southern Africa (AFSA) for purposes of administered mediation upon the terms and conditions set by the AFSA Secretariat. Failing such a resolution, the dispute, if arbitrable in law, may finally be resolved in accordance with the Rules of the AFSA by an arbitrator or arbitrators appointed by the Foundation.

Should the Parties believe that mediation / arbitration will serve no purpose this Agreement will terminate with immediate effect or on such date as agreed to by the Parties with the proviso that the date agreed upon shall not exceed 6 (six) months from the decision to terminate. No fault shall be ascribed to any Party.

8. DOMICILIA CITANDI ET EXECUTANDI

OM:

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HBS:

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SIGNED AT HERMANUS ON THIS DAY OF.....2022

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for and on behalf of OM

36/6

WITNESSES

1.

2.

SIGNED AT HERMANUS ON THIS DAY OF.....2021

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for and on behalf of HBS

WITNESSES

1.

2.