

**AGENDA of the
Portfolio Committee: Infrastructure & Planning
17 November 2020
(Also the agenda for the Mayoral Committee Meeting: 25 November 2020)**

5.

**A PORTION OF REMAINDER ERF 243 HERMANUS (ROTARY DRIVE):
RESCISSION OF COUNCIL'S IN PRINCIPLE APPROVAL FOR THE LEASE OF
MUNICIPAL PROPERTY TO THE HERMANUS ASTRONOMY CLUB**

7/2/3/1

A Le Roux

Manager: Property Administration

13 October 2020

(028) 316-5623

1. Executive Summary

To obtain approval for the rescission of Council's in principle approval dated 1 September 2009 for the lease of a portion of Remainder Erf 243 Hermanus (Rotary Drive), ±5,700m² in extent, hereafter referred to as "the Property", for a period of 9 years and 11 months to the Hermanus Astronomy Club, hereafter referred to as "the Club". See the locality plan attached hereto marked Annexure "A."

2. Service Delivery and Budget Implementation Plan - IGNITE

Infrastructure and Planning
Property Administration

3. Compliance with Strategic Priorities

Provision of democratic, accountable and ethical governance
Promotion of tourism, economic and social development

4. Delegated Authority

None.

5. Legal Requirements

- Municipal Asset Transfer Regulations (R. 878 of 2008)
- Administration of Immovable Property Policy of the Overstrand Municipality (2015)

6. Background/Discussion/Evaluation/Conclusion

Background/Discussion

After the Club applied to lease the Property for the purpose of developing an Astronomy Centre, a report served before the Council on 1 September 2009 and Council resolved as follows:

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- “1. *that the out of hand lease of the subject portion of Erf 243, Rotary Drive, Hermanus, ±5,700m² in extent, for a period of 9 years and 11 months from 1 October 2020 to the Hermanus Astronomy Club at R100 per month (VAT included) in terms of the Asset Management Policy, **be approved in principle**, subject to successful application in terms of the National Environmental Management Act, 1998,*
2. *that the rental amount mentioned in 1. above **escalate** annually in accordance with paragraph 32 of the Asset Management Policy;*
3. *that, since the provision of services to the property provides significant financial and technical constraints the club install a solar system to generate electricity, a rain water storage tank for toilets and washing up, a conservancy tank for waste water and purchase bottled water for consumption in accordance with their proposal;*
4. *That a **restrictive condition be inserted** in the lease agreement to the effect that should the club for any reason not need the property any longer or not use it for the intended purpose or not erect a building with a minimum value of at least R400,000 (FOUR HUNDRED THOUSAND RAND) on the subject property within a period of two years the agreement will be cancelled with immediate effect, and*
5. *That the lease agreement with specific reference to the lease amount be reviewed every three years to ensure compliance with the imposed terms and conditions.*

A lease agreement was not entered into because the final approval for the long term lease was not received yet as it was subject to the conditions as described above.

The Club proceeded with the consent use application in order to build an Astronomy Education Centre and Amphitheatre on the Property.

Subsequently the Executive Mayoral Committee at a meeting dated 27 November 2019 resolved as follows:

- “1. *that, in terms of Section 2.2 of the Section 9 Zoning Scheme Regulations of the land Use Planning Ordinance, 1985 (Ordinance 15 of 1985), the application for a consent use on Erf 243, Hermanus in order to build new astronomy and educational centre facilities on the property concerned, **not be approved**, due to the following reasons:*
 - (a) *the non-compliance with the NEM: PAA Act;*

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- (b) *the necessary due diligence in the context of Fernkloof Nature Reserve has not been done;*
 - (c) *impact on the road and parking facilities have not been adequately addressed;*
 - (d) *the operational and maintenance and the financial means to enable the execution of the aforementioned have not been addressed;*
 - (e) *safety and security of the facility on an ongoing basis has not been addressed; and*
 - (f) *impact on the surrounding area adjacent to the facility has not been factored in, in the motivation of the application.*
2. *that the applicant be notified of their right of appeal in terms of Section 62 of the Local Government: Municipal Systems Act No 32 of 2000 with regard to the above conditions of approval.*

No appeal was received against the above decision.

Conclusion

As the consent use application was not approved and the suspensive conditions contained in the Council resolution dated 1 September 2009 were not met, it is proposed that the decision dated 1 September 2009 be rescinded.

7. Financial Implications

None

8. Staff Implications

None

9. Comments from other Departments, Divisions and Administrations

None

10. Annexures

Annexure A: Locality Map

Annexure B: Council resolution dated 1 September 2009

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Annexure C: Executive Mayoral Committee resolution dated 27 November 2019

RECOMMENDATION TO THE COUNCIL:

that the Council resolution dated 1 September 2009 in respect of the in principle approval for the direct lease of a portion of Erf 243 Hermanus (Rotary Drive) for a period of 9 (NINE) years and 11 (ELEVEN) months to the Hermanus Astronomy Club at a rental amount of R100.00 (ONE HUNDRED RAND ALONE) (VAT included) per month, **be rescinded.**

RESPONSIBLE OFFICIAL :	M ERASMUS
TARGET DATE FOR IMPLEMENTATION :	15 DECEMBER 2020
TARGET DATE TO INFORM APPLICANT :	15 DECEMBER 2020
TARGET DATE TO INFORM OBJECTOR :	N/A

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7/2/3/1

A Le Roux

Manager: Property Administration

13 October 2020

(028) 316-5623

**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON
17 NOVEMBER 2020, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:**

RECOMMENDATION TO THE COUNCIL:

that the Council resolution dated 1 September 2009 in respect of the in principle approval for the direct lease of a portion of Erf 243 Hermanus (Rotary Drive) for a period of 9 (NINE) years and 11 (ELEVEN) months to the Hermanus Astronomy Club at a rental amount of R100.00 (ONE HUNDRED RAND ALONE) (VAT included) per month, **be rescinded.**

RESPONSIBLE OFFICIAL :

M ERASMUS

TARGET DATE FOR IMPLEMENTATION :

15 DECEMBER 2020

TARGET DATE TO INFORM APPLICANT :

15 DECEMBER 2020

TARGET DATE TO INFORM OBJECTOR :

N/A



MINUTES OF AN ORDINARY MEETING OF THE COUNCIL 1 SEPTEMBER 2009

5.6

HERMANUS : LEASE OF MUNICIPAL PROPERTY, PORTION OF ERF 243, ROTARY DRIVE, TO THE HERMANUS ASTRONOMY ASSOCIATION

(ITEM 25, PAGE 545 : INFRASTRUCTURE, PLANNING & ECONOMIC DEVELOPMENT PORTFOLIO – MAYORAL COMMITTEE MEETING : 1 SEPTEMBER 2009)

RESOLVED (UNANIMOUSLY)

1. that the out of hand lease of the subject portion of Erf 243, Rotary Drive, Hermanus, ±5700m² in extent, for 9 years and 11 months to the Hermanus Astronomy Club at R100 per month (VAT included) in terms of the Asset Management Policy, **be approved in principle**, subject to successful application in terms of the National Environmental Management Act, 1998,
2. that the rental amount mentioned in 1. above **escalate** annually in accordance with paragraph 32 of the Asset Management Policy;
3. that, since the provision of services to the property provides significant financial and technical constraints, the club install a solar system to generate electricity, a rain water storage tank for toilets and washing up, a conservancy tank for waste water and purchase bottled water for consumption in accordance with their proposal;
4. that a **restrictive condition be inserted** in the lease agreement to the effect that should the club for any reason not need the property any longer or not use it for the intended purpose or not erect a building with a minimum value of at least R400 000 (FOUR HUNDRED THOUSAND RAND) on the subject property within a period of two years, the agreement will be cancelled with immediate effect, and
5. that the lease agreement with specific reference to the lease amount be reviewed every three years to ensure compliance with the imposed terms and conditions.

12.

ERF 243, ROTARY WAY, HERMANUS, OVERSTRAND MUNICIPAL AREA:
PROPOSED CONSENT USE: MESSRS TOWN & COUNTRY CREATIVE LAND
SOLUTIONS ON BEHALF OF OVERSTRAND MUNICIPALITY

243 HNC (3135)

R Kuchar

22 October 2019

Senior Manager: Town & Spatial Planning

(028) 3138900

EXECUTIVE SUMMARY

An application has been received on 18 November 2015 from Town and Country Creative Land Solutions on behalf of the Overstrand Municipality on Erf 243, Hermanus for a consent use in order to build an Astronomy Education Centre and Amphitheatre on the property concerned.

RESOLVED:

1. that, in terms of Section 2.2 of the Section 9 Zoning Scheme Regulations of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985), the application for a consent use on Erf 243, Hermanus in order to build new astronomy and educational centre facilities on the property concerned, **not be approved**, due to the following reasons:
 - (a) the non-compliance with the NEM: PAA Act;
 - (b) the necessary due diligence in the context of Fernkloof Nature Reserve has not been done;
 - (c) impact on the road and parking facilities have not been adequately addressed;
 - (d) the operational and maintenance and the financial means to enable the execution of the aforementioned have not been addressed;
 - (e) safety and security of the facility on an ongoing basis has not been addressed; and
 - (f) impact on the surrounding area adjacent to the facility has not been factored in, in the motivation of the application.
2. that the applicant be notified of their right of appeal in terms of Section 62 of the Local Government: Municipal Systems Act No 32 of 2000 with regard to the above conditions of approval.