

## F. APPEALS

Appeals must comply with the provisions contained in Chapter 7 of the NEMA EIA Regulations.

1. An appellant must –
  - 1.1. submit a notice of intention to appeal to the Minister, within 20 (twenty) calendar days of the date of the decision;
  - 1.2. submit the appeal within 30 (thirty) calendar days after the lapsing of the 20 (twenty) calendar days contemplated in regulation 60(1), for the submission of the notice of intention to appeal; and
  - 1.3. within 10 (ten) calendar days of having lodged the notice of intention to appeal, provide each person and organ of state registered as an interested and affected party in respect of the application, or the applicant, with –
    - 1.3.1. a copy of the notice of intention to appeal form; and
    - 1.3.2. a notice indicating where and for what period the appeal submission will be made available for inspection by such person, organ of state, or applicant, on the day of lodging it with the Minister, and that a responding statement may be made on the appeal within 30 (thirty) calendar days from the date the appeal submission was lodged with the Minister.
2. A person, organ of state or applicant who submits a responding or answering statement in terms of regulation 63 must within 10 (ten) calendar days of having submitted the responding or answering statement, serve a copy of the statement on the other party.
3. If the person, organ of state or applicant fails to meet a timeframe with respect to the requirements as detailed above, the person, organ of state or applicant must immediately submit a written explanation to the Ministry providing a concise explanation for the non-compliance.
4. All notice of intention to appeal and appeal forms must be submitted by means of one of the following methods:
  - By post: Western Cape Ministry of Local Government, Environmental Affairs and Development Planning  
Private Bag X9186  
CAPE TOWN  
8000
  - By facsimile: (021) 483 4174; or
  - By hand: Attention: Mr J. de Villiers  
Room 305 A

3rd Floor Leeusig Building (Entrance at: Utilitas Building, 1 Dorp Street, Cape Town, 8001)

5. A prescribed notice of intention to appeal form and appeal form as well as assistance regarding the appeal processes is obtainable from the office of the Minister at: Tel. (021) 483 3721, E-mail [Jaap.deVilliers@pgwc.gov.za](mailto:Jaap.deVilliers@pgwc.gov.za) or URL <http://www.westerncape.gov.za/eadp>.

#### G. DISCLAIMER

The Western Cape Government, the Local Authority, committees or any other public authority or organisation appointed in terms of the conditions of this environmental authorisation shall not be responsible for any damages or losses suffered by the holder, developer or his/her successor in any instance where construction or operation subsequent to construction is temporarily or permanently stopped for reasons of non-compliance with the conditions as set out herein or any other subsequent document or legal action emanating from this decision.

Your interest in the future of our environment is appreciated.

Yours faithfully



MR. ZAAHIR TOEFY  
DIRECTOR: LAND MANAGEMENT (REGION 2)

DATE OF DECISION: 20 | 05 | 2013

Copied to: (1) S Durandt/D Jeffery  
(2) H Boschhoff/S van der Merwe

(DJEC)  
(Overstrand Municipality)

Fax: (021) 875 5515  
Fax: (028) 384 0241

#### FOR OFFICIAL USE ONLY

EIA REFERENCE NUMBER

E12/2/3/1-E2/29-0105/09

NEAS EIA REFERENCE NUMBER

WCP/EIA/6281/2009

## ANNEXURE 1: REASONS FOR THE DECISION

In reaching its decision, the competent authority, *inter alia*, considered the following:

- a) The information contained in the Application Form and the BAR for the above-mentioned development dated November 2010 that was received by this Department on 13 June 2011, the EMP submitted together with the BAR, and the additional information received by the competent authority on 3 October 2011 and 12 April 2013;
- b) Relevant information contained in the Departmental information base, including, the Guidelines on Public Participation, Alternatives and Exemptions (dated October 2011);
- c) The objectives and requirements of relevant legislation, policies and guidelines, including section 2 of the National Environmental Management Act, 1998 (Act No. 107 of 1998);
- d) The comments received from interested and affected parties and the responses provided thereon, as included in the abovementioned BAR;
- e) This application was submitted in terms of the previous NEMA EIA Regulations, and was pending at the time of the promulgation of the Environmental Impact Assessment Amendment Regulations, 2010. Some of the listed activities herein authorised may not have been listed under the previous NEMA EIA Regulations, but are now listed in terms of the Environmental Impact Assessment Amendment Regulations, 2010. In accordance with regulation 76(3) of GN No. R. 543, these activities may be authorised as if applied for; and
- f) The site visit conducted

Date: 19 July 2012

Attended by: Natasha Bieding (DEA&DP: Land Management Region 2), Washield Anthony (DEA&DP: Land Management Region 2), Zaahir Toefy (DEA&DP: Land Management Region 2), Neil Muller (DEA&DP: Land Management Region 2), Sagwata Manyike (DEA&DP: Land Management Region 2), Schalk van der Merwe (Overstrand Municipality) and Helgaardt Boshoff (Overstrand Municipality).

All information presented to the competent authority was taken into account in the consideration of the application for environmental authorisation. A summary of the issues which, according to the competent authority, were the most significant reasons for the decision is set out below.

### 1. Public Participation

The public participation process included:

- identification of and engagement with interested and affected parties;
- fixing a notice board at the site and any alternative site where the listed activities are to be undertaken on 2 August 2010;
- giving written notice to the owners and occupiers of land adjacent to the site and any alternative site where the listed activities are to be undertaken, the

- municipality and ward councillor, and the various organs of state having jurisdiction in respect of any aspect of the listed activities on; and
- the placing of a newspaper advertisement in the 'Hermanus Times' on 5 August 2010.

During the public participation process a state department, an organ of state, the municipality and members of the public submitted comments. This can be summarised as follows:

An inquiry was received with respect to what the exact methodology was for the determination of the proposed setbackline. It was also mentioned that the property appears to be closer than 100m from the high tide over the top of a secondary sand dune.

A few recommendations were proposed which included: groundwater levels should be monitored, vegetation in the setbackline / bufferzone must be monitored, the need to include all of the proposed monitoring requirements in the Title Deed of the property or as part of the conditions of authorisation. The development should also make use of methods to allow for resource efficiency, only use indigenous vegetation, the site not be mechanically cleared, heights of buildings be restricted and not be closed off or be gated.

Regarding the service requirements, it was mentioned that should the municipality not be able to provide the removal of sewage service, then alternative options must be provided. In addition, it was requested that proof be obtained that the municipality has agreed to provide the necessary bulk supply services.

In terms of biophysical, it was highlighted that a strip of Dune Strandveld occurring on the property is located within a Critical Biodiversity Area. Another comment pointed out that the said property is adjacent to, but not inside a Critical Biodiversity Area. It was also mentioned that a survey of possible geophytes that occur on site was not conducted and that the survival of local Milkwoods due to relocation according to the Botanical Report is unknown. However, CapeNature highlighted that Overberg Strandveld is described as "least threatened" by the National Spatial Biodiversity Assessment (2004) and much of its original extent remains intact. In addition, although the habitat is in good condition, species diversity is low, while no threatened listed red data book species were found on site, with the exception of *Solanum africanum* which is of 'least concern'. As such, the loss of habitat was deemed to be of low significance.

A comment highlighted that a red data specie, *Solanum africanum* occurs on Erf 332, and that the said property occurs in a prestigious area which is important in terms of conservation and ecotourism benefits.

Aspects regarding the local dunes included the need to conduct geological assessments and soil suitability tests.

With respect to the alternatives that were assessed, it was expressed that the preferred residential development would have similar impacts, in terms of traffic, social and environment similar to the proposed hotel (non-preferred alternative).

Concerns were expressed with regard to the traffic, light pollution and visual impacts of the residential development on the surrounding properties.

General objections were also received for the residential development mostly based on the reason that the natural and quiet environment of the area will be negatively affected. As such, the no development option is preferred.

The EAP responded to the abovementioned comments and concerns as follows:

Regarding the issue of the determination of the proposed setbackline reference was made to the setbackline report that was included in the draft BAR.

It was agreed that the recommendations made during the PPP which includes the monitoring of groundwater levels, the monitoring of vegetation in the buffer zone and the inclusion of such recommendations in the EMP and Title Deeds of the property will be carried out accordingly.

The local municipality indicated that it had the capacity to provide the necessary services, as required. However, alternatives with respect to the wastewater treatment were not deemed viable.

Reference was made to the comments which were obtained from CapeNature which points to the fact that the site lies outside the Critical Biodiversity Area and that the red data listed specie *Solanum africanum* is of 'least concern'. No threatened geophytes were also recorded during the survey conducted as part of the Basic Assessment process. It was also confirmed that no milkwoods will be damaged or relocated.

It was mentioned that the dune area will be protected by means of the proposed setbackline, while a geotechnical survey will be conducted prior to construction to ensure that all foundations meets the engineering requirements.

Attention was drawn to the fact that a hotel was already approved in Birkenhead which will totally saturate the market. It was also specified that the hotel will have more impacts than the residential development, in terms of traffic and visual. Regarding visual, most mitigation measures for lighting will aim to maintain the quality of the night sky.

This Directorate is satisfied with the public participation process followed and that it met the necessary legal requirements. All the concerns raised by interested and affected parties were responded to and adequately addressed during the public participation process. Specific management and mitigation measures have been considered in this environmental authorisation and in the EMP to adequately address the concerns raised.

## 2. Alternatives

### Alternative 1 (Preferred alternative and herewith also authorised)

This entails the construction of 14 residential erven, which will measure approximately 600m<sup>2</sup> each in size. The residential units will have maximum height of approximately 7.5m above natural ground level. The units will be strategically located in order to conserve the existing milkwood trees and to protect the interface between the Erf and the beachfront.

Access to the development will be provided for by means of an approximate 8m road that will gain access from Esplanade Street.

A single pedestrian walkway will provide a controlled access to the beach for residents.

The development will be connected to an existing 100mm diameter water pipe. A bulk water meter will be provided at the entrance to the development.

A central conservancy tank will be provided. An internal pipe network will collect the effluent from each erf, which will then be discharged into the conservancy tank.

A refuse room will be provided at the entrance gate.

A formal boardwalk will be constructed to provide access to the sea.

The development will only cover 50% of the site.

This is the applicant's preferred alternative based on the following reasons:

- the subject property is located in an area mainly comprising of single residential which borders the beach;
- the development will complement the low density, village type character of the built environment of Pearly Beach;
- the hotel development and its associated impacts will negatively impact upon the character of the town;
- the development will protect existing milkwood trees;
- the development will have minimum earth moving and excavation;
- the development will adhere to setbacklines;
- the development will have low frequency of pedestrian movement to the beach;
- the development will have controlled access to the beach;
- the development will be of low bulk and height; and
- the development will have low trip generation and traffic impact.

#### Alternative 2 (Rejected alternative)

The construction of a hotel which will be developed in accordance with the applicable Zoning Scheme Regulations and Title Deed Restrictions. The Title Deed Restrictions specifies that the hotel could have a coverage of 75% of the said property with a maximum height of 9m.

The said hotel will include: roads, formal boardwalk(s) and / or pedestrian walkway(s) will provide controlled means of access to the beach and associated infrastructure, viz. refuse room(s), conservancy tanks and internal pipe networks.

This is the applicant's rejected alternative, based on the following reasons:

- the milkwood trees will have to be removed;
- the hotel will result in medium to high negative impacts which would change the sense of place of the town
- the hotel will have a greater visual impact than the residential development; and
- the economic viability of the hotel cannot be guaranteed.

### "No-Go" Alternative

The "no-go" alternative entails leaving the site *in-situ* with no development. This alternative was deemed unfeasible as it was estimated that the property will eventually be developed given its location inside the urban edge and its existing rights to develop.

## **3. Impacts, assessment and mitigation measures**

### **3.1. Activity Need and Desirability**

The area within which the subject property is located mainly comprises of single residential development. This is the typical urban context of Pearly Beach which is known as a town with low density and village type character. It is in this regard that the development aims to compliment and strengthen this existing built environment and urban character by means of the low-density and small scale nature of the development.

### **3.2. Regional/ Planning Context**

The site is zoned as Central Business Zone. An application will be submitted in terms of the Land Use Planning Ordinance, 1985 (Ordinance No. 15 of 1985) ("LUPO") for consent use and /or rezoning the site to permit the development.

The development site is located inside an established urban edge and is surrounded by existing residential development.

The Overstrand Spatial Development Framework (2006) designates the property for commercial purposes.

In terms of the Greater Gansbaai Spatial Plan (2002) the subject property is located in an area referred to as "conservation network", which links conservation areas like the coastline with the urban development inland.

The abovementioned planning aspects will be dealt with in terms of the relevant municipal planning legislation.

### **3.3. Services/ Bulk Infrastructure**

Solid Waste will be removed and disposed of at a waste disposal facility.

Pearly Beach has no underground sewage system. Effluent will therefore be discharged into a conservancy tank which is normally serviced by the local authority at a fixed rate. An internal pipe network will collect the effluent which will then be discharged into a conservancy tank. Sewage from the Pearly Beach area is conveyed to the Gansbaai Waste Water Treatment Works by means of tankers.

Water and electricity will be supplied by the Municipality. In terms of electricity, the upgrade of existing infrastructure, such as substation(s) will be required. New reticulation for water transportation and water meters will also be constructed and installed. The development will incorporate water and energy saving technologies to increase resource efficiency.

### 3.4. Biophysical Impacts

The site has a slope gradient of a 1:10 – 1:5 ratio with the local landscape comprising of dunes, a seafront and residential units. The dune comprises of calcareous sands of the Quaternary Strandveld Formation. The geology can be described as semi-consolidated Aeolian sand with comminuted shell and calcrete lenses.

The site is situated adjacent to, but outside a Critical Biodiversity Area.

Botanically, the site has indigenous vegetation with scattered aliens. More specifically, the indigenous vegetation comprises Overberg Dune Strandveld which is categorised as 'least threatened'. The Strandveld consists of a mosaic of areas of dense thicket to areas that are fairly open with the thicket shrubs being sparse or absent.

Milkwood trees are concentrated in the south-eastern corner of the site. The preferred alternative will protect the existing milkwood trees.

There are relatively few alien invasive woody shrubs in the central part of the site, which includes *Acacia Cyclops*. Only one red data listed specie *Solanum africanum*, which was classified by CapeNature as 'least concern', can be found on the site.

The direct impacts will include the loss of vegetation and habitat as well as loss of ecological processes. However, the significance of the impact of the removal of the vegetation will be low negative with or without mitigation given the regional status, i.e. Overberg Dune Strandveld being categorised as 'least threatened'.

An overarching indirect impact is the disruption of the dune system at Pearly Beach which forms part of the ecological gradient from the seashore (littoral zone) inland. Although the site is located on a frontal dune area, Pearly Beach is protected by a rocky coastline on the eastern side and rocky outcrops on the western side. A development setbackline was determined based on *inter alia* the physical processes and coastal management principles. Aerial photographs of the site and immediate area were also assessed to determine whether any long-term erosion or accretion trend has taken place. This process revealed that rehabilitation took place in the form of the dunes being vegetated and stabilized to make the dune and beach area of the study area less sensitive against erosion. The area is sensitive to serious erosion events and the effects of sea level rise. Therefore, the implementation of a 70m wide vegetated buffer / setbackline will be adequate to cope with flooding due to storm wave action during elevated water-levels. The setbackline will also make provision for preservation of a local foredune ridge which is well vegetated.

Additional measures to help mitigate the impacts on the dune system includes: the inclusion of open space in the overall development layout in order to preserve some ecological processes such as pollination and faunal activity, the provision of formal accessways to the beach to avoid trampling which will cause long-term sediment damage and the use of indigenous vegetation for all landscaping purposes.

### 3.5. Visual / Sense of Place

The visual experience of Pearly Beach is known for its relative undeveloped nature and rural sense of place. There are no specific landmarks or features but it's rather the overall impression of openness and space in a natural setting which sets the visual tone.

The natural topography of the area and the relatively low elevation of the development (as it lies adjacent to the coast) mean that the main viewshed will be relatively restricted and confined to an area slightly larger than Pearly Beach itself. A secondary viewshed line connects the various koppies to the north and northeast of the site. Although views of the development from these elevated areas may be possible, at a distance of 5 kilometres or more from the site, they are not expected to be significantly visually affected. In addition, from these viewpoints any physical development will be seen within the context of the other development in Pearly Beach. As such, the visual effect will be that an additional area within the confines of the town will have been 'filled in'.

### 3.6. Traffic

The traffic to be generated by the development is expected to be low, given the development comprising of 14 residential units. As such, it is expected that the existing road infrastructure have sufficient capacity to accommodate the additional traffic to be generated by the development. It is also for this reason that a road for internal circulation and to provide additional means of access forms part of the overall layout of the development.

### 3.7. Heritage / Archaeological / Built Environment

Eight archaeological occurrences were documented on the said property. These occur mostly in the eastern portion of the site. The archaeological sites typically comprise small, mostly very low density scatters of fragmented shellfish. Stone artefact frequencies in the area are also very low, comprising at most one or two quartzite flakes and chunks. These archaeological occurrences have been rated as having low significance and no mitigation action is required. Several dumps of White Mussel and Perlemoen were also found on the site, but these are modern and the result of poaching.

Most of the abovementioned occurrences are confined to the surface of the said property. Non-lithic cultural remains are non-existent. It has been made conditional that an archaeologist be appointed to monitor construction activities (see condition 24) as a precautionary measure.

## National Environmental Management Act Principles

The National Environmental Management Act Principles (set out in section 2 of the NEMA, which apply to the actions of all organs of state, serve as guidelines by reference to which any organ of state must exercise any function when taking any decision, and which must guide the interpretation, administration and implementation of any other law concerned with the protection or management of the environment), *inter alia*, provides for:

- the effects of decisions on all aspects of the environment to be taken into account;
- the consideration, assessment and evaluation of the social, economic and environmental impacts of activities (disadvantages and benefits), and for decisions to be appropriate in the light of such consideration and assessment;
- the co-ordination and harmonisation of policies, legislation and actions relating to the environment;
- the resolving of actual or potential conflicts of interest between organs of state through conflict resolution procedures; and
- the selection of the best practicable environmental option.

In view of the above, the NEMA principles, compliance with the conditions stipulated in this environmental authorisation, and compliance with the EMP, the competent authority is satisfied that the proposed listed activities will not conflict with the general objectives of integrated environmental management stipulated in Chapter 5 of the National Environmental Management Act, 1998 (Act No. 107 of 1998) and that any potentially detrimental environmental impacts resulting from the listed activities can be mitigated to acceptable levels.

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Directorate: Land Management Planning (2)



REFERENCE: E12/2/3/1-E2/29-0105/09  
 ENQUIRIES: N BIEDING  
 DATE: 2013-04-29

The Board of Directors  
 Arawen Properties (Pty) Ltd  
 P O Box 15342  
 PANORAMA  
 7506

FILE NO:	EL 322 PB
SCAN NO:	
COLLABORATOR NO:	487386

(Svd Merwe)  
I le Roux

Attention: Piet Nieman

Tel.: (021) 930 9270  
 Fax: (021) 930 9310

Dear Sir

**ACCEPTANCE OF THE BASIC ASSESSMENT REPORT ("BAR") AND ADDITIONAL INFORMATION FOR THE PROPOSED RESIDENTIAL DEVELOPMENT ASSOCIATED INFRASTRUCTURE ON ERF 322, PEARLY BEACH.**  
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1. The Basic Assessment Report ("BAR") dated November 2010, the correspondence from this Department dated 19 July 2011 and the additional information from received by this Department on 3 October 2011 and 12 April 2013 refers.
2. This letter serves to inform you that the aforementioned document and all of the additional information has been accepted by the Department.
3. The Department will notify you of its decision in respect of the application within the stipulated timeframe.
4. Please note that the activity may not commence prior to an environmental authorisation being granted by the Department. It is an offence in terms of Section 24F of the National Environmental Management Act, 1998 (Act 107 of 1998) ("NEMA") for a person to commence with a listed activity unless the competent authority has granted an environmental authorisation for the undertaking of the activity. Failure to comply with the requirements of Section 24F of the NEMA will result in the matter being referred to the Environmental Governance Directorate of this Department for prosecution. A person convicted of an offence in terms of the above is liable for a fine not exceeding R5 million or to imprisonment for a period not exceeding 10 years, or to both such fine and imprisonment.
5. Kindly quote the abovementioned reference number in any future correspondence in respect of this application.

Yours faithfully

**HEAD OF DEPARTMENT  
 DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING**

Copied to: (1) S Durandt/D Jeffery (DJEC) Fax: (021) 875 5515  
 (2) H Boschhoff/S van der Merwe (Overstrand Municipality) Fax: (028) 384 0241