

- 34 500m² of GLA by 2019
- 38 900m² of GLA by 2024

To develop the entire development in a single phase would have unacceptable socio-economic impacts which would be experienced by existing business in the area. The phasing will thus ensure that the development is of an appropriate scale. To restrict the GLA of the mall to 27 800m² as per the Environmental Authorisation is fully supported.

2. Conclusion

- 2.1. The sub-directorate agrees with the municipal planner's interpretation of the local plans and policies for the area as well as the recommendation made by the municipal planner. It is, however, recommended that the GLA of the mall be scaled down to 27 800m² as motivated in paragraph above.
- 2.2. The objections were adequately addressed by the applicant as well as the municipal planner.
- 2.3. The proposal is in line with the criteria as stipulated in the Study for Classification and Hierarchy of Retail Facilities in South Africa by Dr. Dirk A. Prinsloo and also the recommendation made in the Overstrand Retail Study by Douglas Parker.
- 2.4. The Retail Study indicated that a regional shopping centre should be located near the Hermanus CBD to ensure a core shopping area in the region. In addition, the Retail Study indicates that Zwelihle, Mount Pleasant and Hermanus CBD have the highest population densities and that retail opportunities need to be created in close proximity to the residents of those areas.
- 2.5. The proposed development's location and size would limit its impact on the Hermanus CBD. The location is ideal next to a regional road and the site is also very accessible from four possible access/egress points.
- 2.6. The proposed mall would ensure that Council will obtain additional revenue from taxes and rates. This would ensure a substantial financial injection, which would have a positive socio-economic impact on the Greater Hermanus area.
- 2.7. With the relevant mitigation measures, the impact of the development on the immediate area can be limited.
- 2.8. The application is considered to be desirable in terms of the criteria to determine desirability in terms of Section 36 of LUPO.

3. Further relevant considerations in assessing the Municipality's effectiveness in making the LUPO decision

- (i) Were all relevant factors/information considered by the Municipal Council?
- (ii) Were any irrelevant factors/information considered by the Municipal Council ?

YES x	NO
YES	NO x

(iii) Was section 36(1) of LUPO considered?

YES x

NO

4. Recommendation

In the light of the above motivation it is recommended that:

- 4.1. The application for the rezoning (and consolidation) in terms of section 16 of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985) of erven 1449, 1450, 1452 and 1734 Sandbaai from Agricultural Zone I and Institutional Zone I to Business Zone I **be supported for approval by the Municipality.**
- 4.2. The approvals must be made subject to the conditions of the Municipality and also the Environmental Authorisation that was issued by this Department on 6 January 2014.

493



mm
Smulder
TP - Rina

Reference: 15/2

CIRCULAR 14/2012

FILE NO:	21
SCAN NO:	
COLLABORATOR NO:	376009

TO ALL MAYORS, MUNICIPAL MANAGERS AND CHIEF TOWN PLANNERS

1. EXTENSION OF VALIDITY OF STRUCTURE PLANS APPROVED IN TERMS OF SECTION 4(6) OF THE LAND USE PLANNING ORDINANCE, 1985 (ORDONANCE 15 OF 1985)
2. EXTENSION AND RECONSIDERATION OF GENERAL STRUCTURE PLAN
3. WITHDRAWAL OF URBAN AND REGIONAL STRUCTURE PLANS (FORMER GUIDE PLANS)

1 This Department recently followed a public participation process in order to consider the possible extension of the validity period of the more than 150 Structure Plans, including the General Structure Plan, approved in terms of Section 4(6) of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985)(LUPO) in July 2002. Simultaneously the withdrawal of the remaining seven (7) Urban and Regional Structure Plans (Former Guide Plans) were considered in the light of the Knysna, Wilderness and Plettenberg Bay Guide Plan having been declared unconstitutional by the High Court earlier this year. All these aspects are addressed below.

2 Extension of validity of Structure Plans approved in terms of Section 4(6) of the LUPO

2.1 During 2011 and 2012 the Department engaged with all municipalities regarding the lapsing/renewal of structure plans which were valid until 5 July 2012. Three circulars in this regard were distributed:

- a) Circular 14/2011, dated 21 October 2011;
- b) Circular 3/2012, dated 23 February 2012, and
- c) Circular 10/2012, dated 4 June 2012 (this circular was accompanied by a notice in the press as well as in the Provincial Gazette).

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Private Bag X9086, Cape Town, 8000
www.westerncape.gov.za/eadp

- 2.2 Based on the assessment from the different municipalities, as well as the Department's evaluation of these structure plans, the Minister of Local Government, Environmental Affairs and Development Planning, on 4 July 2012, approved the extension of the expiry period of the following structure plans with a further period of 5 years in terms of Section 4(8) of the LUPO:
- a) Western Cape Government
General Structure Plan (applicable to all the municipalities within the Western Cape)
 - b) Langeberg Municipality
Montagu Structure Plan
 - c) Breede Valley Municipality
Brandwacht and Environs Local Structure Plan
Brandvlei / Kwaggaskloof Structure Plan
 - d) George Municipality
George CBD Structure Plan
Wilderness Local Structure Plan
 - e) City of Cape Town
Simon's Town Structure Plan
 - f) Kannaland Municipality
Calitzdorp Urban Structure Plan
- 2.3 All other structure plans, which were approved prior to 5 July 2002, in terms of Section 4(6) of the LUPO, of which the expiry period was extended in 2002 by means of Circular 12/2002, have thus lapsed on 5 July 2012 and are no longer in force.
- 2.4 It should be noted that the structure plans referred to under paragraph 2.2 have been renewed for a period of five (5) years only. Municipalities are encouraged to incorporate the provisions of these structure plans where appropriate, into the Spatial Development Frameworks (SDF) of the relevant municipalities as soon as possible.
- 3 General Structure Plan**
- 3.1 The validity of the General Structure Plan, referred to in paragraph 2.1 has been extended without amendment to ensure that the delegations to municipalities to rezone land remains in place.
- 3.2 Although the General Structure Plan was also renewed for a period 5 years, such a step should be considered of temporary nature only. In this regard it should be noted
-

that the Department is in the process of amending the General Structure Plan in accordance with the constitutional division of powers between provincial and municipal spheres of government. A public participation process will commence shortly, inviting comment on the suggested amendments to the General Structure Plan.

4 Withdrawal of Urban and Regional Structure Plans (Former Guide Plans)

4.1 On 15 May 2012 the Minister approved a procedure for the amendment or withdrawal of the remaining regional and urban structure plans which were originally approved as guide plans in terms of the Physical Planning Act, 1967 (Act 88 of 1967):

- a) Atlantis and Environs (1981)
- b) George and Environs (1982)
- c) Oudtshoorn and Environs (1985)
- d) Cape Metropole Volume 2: Stellenbosch (1988)
- e) Worcester and Environs (1990)
- f) Cape Metropole Volume 4: Paarl / Wellington (1991)
- g) Mossel Bay / Riversdale (1994)

4.2 The proposed amendment or withdrawal was advertised as follows:

- a) Circular 9/2012 was sent to all mayors, municipal managers and chief town planners at all the municipalities in the province, as well as to all professionals on the departmental database which are involved with planning and environmental matters.
- b) A notice was published in the Provincial Gazette, P.N. 6997 of 25 May 2012.
- c) A notice was published in all regional and local newspapers where these plans were applicable.

4.3 After the due processes were followed, the Minister of Local Government, Environmental Affairs and Development Planning, on 4 July 2012 approved the withdrawal of all regional and urban structure plans (former guide plans) listed in paragraph 4.1 above, approved in terms of both the Physical Planning Act, 1991 (Act 125 of 1991) and LUPO. In this regard it should be noted that the Knysna, Wilderness Plettenberg Bay Guide Plan was declared unconstitutional by the High Court earlier in this year and is therefore not applicable anymore. Furthermore, the Minister when approving the SDF of the City of Cape Town withdrew the Guide Plans for Cape Town and the Hottentots Holland area and the relevant portion of the Atlantis Plan which fell in the jurisdiction area of the City of Cape Town.

- 4.4 The fact that these urban or regional structure plans have now been withdrawn has the following implications:
- a) No new applications for amendments will be accepted by the Department.
 - b) All pending applications for amendments will not be processed any further by the Department and the applicants will be informed accordingly. Applicants can therefore proceed with the subsequent stages in the development process as the case may be.
 - c) Despite the fact that these plans are no longer in force, municipalities during the preparation of their own SDFs, must consider whether any of the relevant principles of the plans should be incorporated in their SDFs.
- 4.5 Cognisance should also be taken of the implications of the withdrawal of the urban or regional structure plans on areas subject to the Subdivision of Agricultural Land Act, 1970 (Act 70 of 1970). Under the urban or regional structure plans areas earmarked for purposes other than agriculture were excluded from the definition of "agricultural land" and therefore were exempted from the provisions of the Act 70 of 1970. This exemption no longer applies with the withdrawal of these plans and approvals in terms of Act 70 of 1970 will again be required for newly created land portions in areas defined as "agricultural land" in terms of Act 70 of 1970.
- 5 Any queries with regard to these arrangements can be directed to Chris Rabie at 021-483 4796.

for HEAD OF DEPARTMENT

Date: 01 August 2012

Postscript: The previous Circular 13/2012: SPATIAL PLANNING AND LAND USE MANAGEMENT BILL [B14-2012], was sent out to all Mayors, Municipal Managers and Chief Town Planners.



Reference: E17/2/2/2/AS21/Erven 1449, 1734, 1452 and remainder Erf 1450, Sandbaai

~~Walkers Attorneys
P.O. Box 254
CAPE TOWN
8000~~

BY HAND

Sir

**AN APPLICATION IN TERMS OF THE REMOVAL OF RESTRICTIONS ACT, 1967 (ACT 84 OF 1967):
ERVEN 1449, 1734, 1452 AND REMAINDER 1450, SANDBAAI**

1. The above application has reference.
2. The Competent Authority for the administration of the Removal of Restrictions Act, 1967 (Act 84 of 1967) has decided on 7 August 2014 that the application for the removal of condition B. (1) as contained in Deeds of Transfer No. T. 13420 of 2009, T. 13421 of 2009, T. 7054 of 2009, T. 57508 of 2013 applicable to Erven 1449, 1452, 1734 and Remainder Erf 1450, Sandbaai, **should be approved**, in terms of section 4(2) of the Act.
3. Attached find a copy of Provincial Notice No. 292 of 31 October 2014.
4. The original Deeds of Transfer Nos. T. 13420 of 2009, T. 13421 of 2009, T. 7054 of 2009 and T. 57508 of 2013, duly endorsed by the Registrar of Deeds, is returned herewith.

Yours faithfully


HEAD OF DEPARTMENT

DATE: 2015-04-22

31 October 2014

Province of the Western Cape: Provincial Gazette 7324

P.N. 291/2014

31 October 2014

CITY OF CAPE TOWN (SOUTHERN DISTRICT)**REMOVAL OF RESTRICTIONS ACT, 1967
(ACT 84 OF 1967)**

Notice is hereby given that the Minister of Local Government, Environmental Affairs and Development Planning, properly designated as Competent Authority in terms of paragraph (a) of State President Proclamation No. 160 of 31 October 1994, in terms of section 2(1) of the Removal of Restrictions Act, 1967 (Act 84 of 1967), and on application by the owner of Erf 12534, Fish Hoek, remove conditions A.(e), B.4.(c) and B.4.(d) and amend condition B.4.(b) contained in Deed of Transfer No. T. 62424 of 2012, to read as follows:

B.4.(b) "it shall be used only for the purpose of erecting thereon one dwelling (and a second dwelling as defined in terms of the Zoning Scheme Regulations) together with such outbuildings as are ordinarily required to be used therewith."

P.N. 292/2014

31 October 2014

OVERSTRAND MUNICIPALITY**REMOVAL OF RESTRICTIONS ACT, 1967
(ACT 84 OF 1967)**

Notice is given that the Minister for Local Government, Environmental Affairs and Development Planning, properly designated as competent authority in terms of paragraph (a) of State President Proclamation No. 160 of 31 October 1994, in terms of section 2(1) of the Removal of Restrictions Act, 1967 (Act 84 of 1967), and on application by the owners of Erven 1449, 1452, 1734, and Remainder Erf 1450, Sandbaai, removes condition B.(1) contained in Deeds of Transfer No. T. 13420 of 2009, T. 13421 of 2009, T. 7054 of 2009, T. 57508 of 2013.

P.N. 293/2014

31 October 2014

CITY OF CAPE TOWN (HELDERBERG DISTRICT)**REMOVAL OF RESTRICTIONS ACT, 1967
(ACT 84 OF 1967)**

Notice is hereby given that the Minister for Local Government, Environmental Affairs and Development Planning properly designated as the Competent Authority in terms of paragraph (a) of State President Proclamation No. 160 of 31 October 1994, in terms of section 2(1) of the Removal of Restrictions Act, 1967 (Act 84 of 1967), and on application by the owners of Erven 1379 to 1383 and Erf 1384, Gordon's Bay, approved the application submitted in terms of section 3(6) of the Removal of Restrictions Act, 1967 (Act 84 of 1967), as amended, for the removal of restrictive title conditions I.C.(a) and I.C.(c) and 5.C.(a) and 5.C.(c), relating to Erven 1379 to 1383, Gordon's Bay and contained in Deed of Transfer No. T. 67464 of 2011, and conditions C.(a), C(c), and C(d) relating to Erf 1384, Gordon's Bay and contained in Deed of Transfer No. T. 37395 of 2011.

P.N. 294/2014

31 October 2014

CITY OF CAPE TOWN (BLAAUWBERG DISTRICT)**REMOVAL OF RESTRICTIONS ACT, 1967
(ACT 84 OF 1967): ERF 3810, MILNERTON****RECTIFICATION NOTICE**

Notice is hereby given that the Minister of Local Government, Environmental Affairs and Development Planning, properly designated as competent authority in terms of paragraph (a) of State President Proclamation No. 160 of 31 October 1994, in terms of section 2(1) of the Removal of Restrictions Act, 1967 (Act 84 of 1967), and on application by the owner of Erf 3810, Milnerton, removes conditions B.1.(b); B.1.(c) and B.1.(d) and amends conditions B.1.(a), contained in Deed of Transfer No. T.4068 of 2013 to read as follows:

Condition B.1.(a) "That this erf be used for residential and/or offices purposes only, provided that, after having first obtained written consent of the Local Authority, such use shall not exclude the erf being used for any other purpose that is permissible on the erf in terms of the applicable zoning scheme."

Provincial Notice P.N 232/2014 dated 29 August 2014 is hereby cancelled.

P.K. 291/2014

04 DEC 2014

31 Oktober 2014

STAD KAAPSTAD (SUDELIKE DISTRIK)**WET OP OPHEFFING VAN BEPERKINGS, 1967
(WET 84 VAN 1967)**

Kennis geskied hiermee dat die Minister van Plaaslike Regering, Omgewingsake en Ontwikkelingsbeplanning, behoorlik aangewys as die Bevoegde Gesag ingevolge paragraaf (a) van Staatspresident Proklamasie Nr. 160 van 31 Oktober 1994, kragtens artikel 2(1) van die Wet op Opheffing van Beperkings, 1967 (Wet 84 van 1967), en op aansoek van die eienaar van Erf 12534, Fish Hoek, hef voorwaardes A.(e), B.4.(c) en B.4.(d) op en wysig voorwaarde B.4.(b) soos vervat in Transportakte Nr. T. 62424 van 2012, om soos volg te lees:

B.4.(b) "it shall be used only for the purpose of erecting thereon one dwelling (and a second dwelling as defined in terms of the Zoning Scheme Regulations) together with such outbuildings as are ordinarily required to be used therewith."

P.K. 292/2014

31 Oktober 2014

OVERSTRAND MUNISIPALITEIT**WET OP OPHEFFING VAN BEPERKINGS, 1967
(WET 84 VAN 1967)**

Kennis geskied dat die Minister van Plaaslike Regering, Omgewingsake en Ontwikkelingsbeplanning, behoorlik aangewys as bevoegde gesag ingevolge paragraaf (a) van Staatspresident Proklamasie Nr. 160 van 31 Oktober 1994, kragtens artikel 2(1) van die Wet op Opheffing van Beperkings, 1967 (Wet 84 van 1967), en op aansoek van die eienaars van Erwe 1449, 1452, 1734 en Restant Erf 1450, Sandbaai, hef voorwaarde B.(1) soos vervat in Transportaktes Nr. T. 13420 van 2009, T. 13421 van 2009, T. 7054 van 2009, T. 57508 van 2013, op.

P.K. 293/2014

31 Oktober 2014

STAD KAAPSTAD (HELDERBERG-DISTRIK)**WET OP OPHEFFING VAN BEPERKINGS, 1967
(WET 84 VAN 1967)**

Kennis geskied hiermee dat die Minister van Plaaslike Bestuur, Omgewingsake en Ontwikkelingsbeplanning, behoorlik aangewys as die Bevoegde Gesag ingevolge paragraaf (a) van Staatspresident Proklamasie Nr. 160 van 31 Oktober 1994, kragtens artikel 2(1) van die Wet op Opheffing van Beperkings, 1967 (Wet 84 van 1967), en op aansoek van die eienaars van Erwe 1379 tot 1383, Gordonsbaai en Erf 1384, Gordonsbaai het in terme van die Wet op Opheffing van Beperkings, 1967 (Wet 84 van 1967) die opheffing van voorwaardes I.C.(a) en I.C.(c) en 5.C.(a) en 5.C.(c) met betrekking tot Erwe 1379 en 1383, Gordonsbaai vervat in Transportakte Nr. T. 67464 van 2011, en voorwaardes C.(a), en C(c), en C(d) vervat in Transportakte Nr. T. 37395 van 2011 en van toepassing op Erf 1384, Gordonsbaai, opgehef.

P.K. 294/2014

31 Oktober 2014

STAD KAAPSTAD (BLAAUWBERG-DISTRIK)**WET OP OPHEFFING VAN BEPERKINGS, 1967
(WET 84 VAN 1967): ERF 3810, MILNERTON****REGSTELLELENDE KENNISGEWING**

Kennis geskied hiermee dat die Minister van Plaaslike Regering, Omgewingsake en Ontwikkelingsbeplanning, behoorlik aangewys as die bevoegde gesag ingevolge paragraaf (a) van Staatspresident Proklamasie Nr. 160 van 31 Oktober 1994, kragtens artikel 2(1) van die Wet op Opheffing van Beperkings, 1967 (Wet 84 van 1967), en op aansoek van die eienaar van Erf 3810, Milnerton, hef voorwaardes B.1.(b); B.1.(c) en B.1.(d), op, en wysig voorwaarde B.1.(a), soos vervat in Transportakte Nr. T. 4068 van 2013 om soos volg te lees:

Condition B.1.(a) "That this erf be used for residential and/or offices purposes only, provided that, after having first obtained written consent of the Local Authority, such use shall not exclude the erf being used for any other purpose that is permissible on the erf in terms of the applicable zoning scheme."

Provinsiale Kennisgewing P.K 232/2014 gedateer 29 Augustus 2014 word hiermee gekanselleer.



Town Pl. - RK

M 3/6/5

DATE OF ISSUE: - 5 MAY 2015



TP - Ring

Ms C Freebury
Retail Africa (Pty) Ltd
P O Box 562
STELLENBOSCH
7599

FILE NO:	Erven 1449, 1450 1452, 1734
SCAN NO:	47
COLLABORATOR NO:	781699

fax: (021) 833 2640

Dear Ms Freebury

APPEAL ENVIRONMENTAL AUTHORISATION FOR THE ESTABLISHMENT OF A RETAIL FACILITY AND ASSOCIATED INFRASTRUCTURE ON ERVEN 1449, 1450, 1452, 1734 AND THE REMAINDER OF ERF 243, HERMANUS.

The appeals against the above proposed development refer.

I have decided, in terms of section 43 of the National Environmental Management Act, 1998 (Act No. 107 of 1998) ("NEMA") and the Environmental Impact Assessment ("EIA") Amendment Regulations, to dismiss the appeals and to vary the decision issued on 6 January 2015 by the Director: Integrated Environmental Management (Region B) of the Department of Environmental Affairs and Development Planning ("Department") taken in terms of the EIA Amendment Regulations, 2010.

In terms of section 43 of the NEMA, authorisation is granted to the Applicant to undertake the activities listed in section B, on Erven 1449, 1450, 1452, 1734 and the Remainder of Erf 243, Hermanus as specified in section C of this decision, which are subject to compliance with the conditions set out in section G, as set out herein below.

The reasons for this decision are set out in Annexure 1.

A. DETAILS OF THE APPLICANT FOR THIS ENVIRONMENTAL AUTHORISATION

Retail Africa (Pty) Ltd
c/o Carianne Freebury
P O Box 562
STELLENBOSCH
7599

Tel : 021 833 2600
 Fax: (021) 833 2640

e-mail : jannie@dorpstraat.net

The abovementioned company is the holder of this environmental authorisation and is hereinafter referred to as "the applicant".

B. LIST OF ACTIVITIES AUTHORISED

Government Notice No. R. 386 of 21 April 2006, being:

Activity Number: 1 (k)

Activity Description:

"The construction of facilities or infrastructure, including associated structures or infrastructure for the bulk transportation of sewage and water, including storm water, in pipelines or channels with -

- (a) An internal diameter of 0,36 meters or more; or*
- (b) A peak throughput of 120 liters per second or more".*

Activity Number: 4

Activity Description

"The dredging, excavation, infilling, removal or moving of soil, sand or rock exceeding 5 cubic meters from a river, tidal lagoon, tidal river, lake, in-stream dam, floodplain or wetland".

Activity Number: 15

Activity Description

"The construction of a road that is wider than 4 meters or that has a reserve wider than 6 meters, excluding roads that fall within the ambit of another listed activity or which are access roads of less than 30 meters long".

Activity Number: 16

Activity Description

"The transformation of undeveloped, vacant or derelict land to --

- (b) residential, mixed, retail, commercial, industrial or institutional use where such development does not constitute infill and where the total area to be transformed is bigger than 1 hectare".*

Government Notice No. R544 of 18 June 2010, being:

Activity Number: 11

Activity Description

"The construction of:

- (i) canals;*
- (ii) channels;*
- (iii) bridges;*
- (iv) dams;*
- (v) weirs;*
- (vi) bulk storm water outlet structures;*
- (vii) marinas;*

- (viii) jetties exceeding 50 square meters in size;
- (ix) slipways exceeding 50 square meters in size;
- (x) buildings exceeding 50 square meters in size; or
- (xi) infrastructure or structures covering 50 square meters or more

where such construction occurs within a watercourse or within 32 meters of a watercourse, measured from the edge of a watercourse, excluding where such construction will occur behind the development setback line".

Activity Number: 18

Activity Description

"The infilling or depositing of any material of more than 5 cubic meters into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock or more than 5 cubic meters from:

- (i) a watercourse;
- (ii) the sea;
- (iii) the seashore;
- (iv) the littoral active zone, an estuary or a distance of 100 meters inland of the high-water mark of the sea or an estuary, whichever distance is the greater-

but excluding where such infilling, depositing, dredging, excavation, removal or moving;

- (a) is for maintenance purposes undertaken in accordance with a management plan agreed to by the relevant environmental authority; or
- (b) occurs behind the development setback line".

Activity Number: 23

Activity Description

"The transformation of undeveloped, vacant or derelict land to –

- (i) residential, retail, commercial, recreational, industrial or institutional use, inside an urban area, and where the total area to be transformed is 5 hectares or more, but less than 20 hectares, or
- (ii) residential, retail, commercial, recreational, industrial or institutional use, outside an urban area and where the total area to be transformed is bigger than 1 hectare but less than 20 hectares; -

except where such transformation takes place –

- (i) for linear activities; or
- (ii) for purposes of agriculture or afforestation, in which case Activity 16 of Notice No. R. 545 applies".

Government Notice No. R983 of 08 December 2014, being:

Activity Number: 12

Activity Description

The development of-

- "(i) canals exceeding 100 square metres in size;
- (ii) channels exceeding 100 square metres in size;
- (iii) bridges exceeding 100 square metres in size;
- (iv) dams, where the dam, including infrastructure and water surface area, exceeds 100 square metres in size;
- (v) weirs, where the weir, including infrastructure and water surface area, exceeds 100

square metres in size;

- (vi) bulk storm water outlet structures exceeding 100 square metres in size;
- (vii) marinas exceeding 100 square metres in size;
- (viii) jetties exceeding 100 square metres in size;
- (ix) slipways exceeding 100 square metres in size;
- (x) buildings exceeding 100 square metres in size;
- (xi) boardwalks exceeding 100 square metres in size; or
- (xii) infrastructure or structures with a physical footprint of 100 square metres or more;

where such development occurs-

- (a) within a watercourse;
- (b) in front of a development setback; or
- (c) if no development setback exists, within 32 metres of a watercourse, measured from the edge of a watercourse; -

excluding-

- (aa) the development of infrastructure or structures within existing ports or harbours that will not increase the development footprint of the port or harbour;
- (bb) where such development activities are related to the development of a port or harbour, in which case activity 26 in Listing Notice 2 of 2014 applies;
- (cc) activities listed in activity 14 in Listing Notice 2 of 2014 or activity 14 in Listing Notice 3 of 2014, in which case that activity applies;
- (dd) where such development occurs within an urban area; or
- (ee) where such development occurs within existing roads or road reserves."

Activity Number: 18

Activity Description

"The infilling or depositing of any material of more than 5 cubic meters into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock or more than 5 cubic meters from:

- (i) a watercourse;
- (ii) the seashore;
- (iii) the littoral active zone, an estuary or a distance of 100 meters inland of the high-water mark of the sea or an estuary, whichever distance is the greater-

but excluding where such infilling, depositing, dredging, excavation, removal or moving;

- (a) occurs behind the development setback line; or
- (b) is for maintenance purposes undertaken in accordance with a management plan
- (c) falls within the ambit of activity 21 in this Notice, in which case that activity applies."

The abovementioned list is hereinafter referred to as "the listed activities".

C. DESCRIPTION OF THE DEVELOPMENT

The applicant is herein authorised to undertake the following alternative related to the listed activities:

The development entails the construction of a retail facility that has a total Gross Leasable Area ("GLA") of 38 900m². The retail facility will be developed in the following phases:

- 27 800m² of GLA by (Phase 1)
- 31 100m² of GLA by (Phase 2)
- 34 500m² of GLA by (Phase 3); and
- 38 900m² of GLA by (Phase 4).

The remainder of the development site will comprise, *inter alia*:

- parking bays;
- access roads and planned access points as per the access arrangements approved by the Roads Engineer of the Overstrand Municipality; and
- associated landscaping and open space.

The internal stormwater will consist of a series of grid and kerb inlets, which will be drained to attenuation ponds, located at various positions on the site, including at the low point of the site. From the last attenuation pond, the stormwater will be connected to the municipal system.

The sewer system will comprise of a gravity flow piped system. An internal sewer network will consist of 110mm and 160mm diameter uPVC Class 34 heavy-duty drain pipes with manholes at a maximum spacing of 80m. The sewer system will tie into the municipality's sewer line.

The water reticulation system will comprise of a high pressure internal pipe network, which will include 110mm and 160mm diameter uPVC Class 9 pressure pipes. A separate facility with booster pumps will be supplied for the fire sprinkler system.

All bulk infrastructure services constructed for the proposed development must be funded by the developer. Any excess in capacity provided in the bulk infrastructure services constructed, must be deductible from the Bulk Infrastructure Contribution Levies.

The Electrical Supply to the above mentioned development will be supplied from the Overstrand Municipality's new 66kV Substation on Cnr Swartdam Rd & Mimosa St, Hermanus.

A new 11kV Medium Voltage (MV) cable, approximately 2km long, will have to be installed underground by the developer for his own cost from this new 66kV Substation to the development including all related MV Switchgear. Over and above this infrastructure related cost Overstrand Municipality will also charge the developer a Bulk Contribution Charge, based on a Rand per kVA value on the size of the applied for Electrical Supply.

D. PROPERTY DESCRIPTION AND LOCATION

The proposed development is to be located on Erven 1149, 1450, 1452, 1734 and the Remainder of Erf 243, Hermanus and situated immediately to the south of the R43 between Main Street and Skulphoek Street.

The SG 21 digit codes are:

Erf 1449	C01300130000144900000
Erf 1450	C01300130000145000000
Erf 1452	C01300130000145200000
Erf 1734	C01300130000173400000

Remainder of Erf 243

C01300130000024300000

hereinafter referred to as "the site".

E. DETAILS OF THE ENVIRONMENTAL ASSESSMENT PRACTITIONER

Sillito Environmental Consulting cc (SEC)
 c/o Adrian Sillito / Colleen McCreadie
 P.O Box 30134
 TOKAI
 7966
 Tel: (021) 712 5060
 Fax: (021) 712 5061

F. SITE VISITS

EIA Application:

1. A site visit was conducted on 06 October 2010 by Zaahir Toefy, Anthony Barnes and Tammy Christie of the Department.
2. An additional site visit was conducted on 12 July 2011 by Natasha Bieding and Tinyiko Marilele of the Department.

Appeal:

An appeal site visit was conducted by Mr Anton Bredell, Minister of Local Government, Environmental Affairs and Development Planning in April 2015.

G. CONDITIONS OF AUTHORISATION

1. This authorisation is valid for a period of **five years** from the date of issue of this appeal decision. The holder must commence with the listed activities within the said period or this authorisation lapses and a new application for authorisation must be submitted to the competent authority, unless the holder has lodged a valid application for the amendment of the validity period of this authorisation (*i.e. the application must be submitted to the Ministry responsible for environmental affairs in the Western Cape Province*), before the expiry of this authorisation. In such instances, the validity period will be automatically extended ("the period of administrative extension") from the day before this authorisation would otherwise have lapsed, until the amendment application for the extension of the validity period is decided. The listed activity, including site preparation, may not commence during the period of administrative extension.
2. The applicant must within 12 (twelve) calendar days of the date of issue of this decision place an advertisement in one local newspaper informing interested and affected parties of the appeal decision, the date on which this appeal authorisation was granted and indicate where the decision can be accessed.

3. Seven calendar days notice, in writing, must be given to the competent authority before commencement of construction activities.

3.1 The notice must make clear reference to the site details and EIA Reference number given above.

3.2 The notice must also include proof of compliance with the following conditions described herein:

Conditions: 2 and 13

4. The holder of the Environmental Authorisation ("EA") is responsible for ensuring compliance with the conditions by any person acting on her behalf, including an agent, sub-contractor, employee or any person rendering a service to the holder.
5. Any changes to, or deviations from the scope of the description set out in section B above must be accepted or approved, in writing, by the competent authority before such changes or deviations may be implemented. In assessing whether to grant such acceptance/approval or not, the competent authority may request such information as it deems necessary to evaluate the significance and impacts of such changes or deviations and it may be necessary for the holder to apply for further authorisation in terms of the applicable legislation.
6. The holder of the EA must notify the competent authority in writing, within 24 hours thereof if any condition herein stipulated is not being complied with.
7. The draft Environmental Management Plan ("EMP") dated September 2012 and submitted as part of the application for environmental authorisation is hereby approved and must be implemented.

An application for amendment of the EMP must be submitted to the competent authority if any amendments are to be made to the EMP, and these amendments may only be implemented once the amended EMP has been authorised by the competent authority.

The EMP must be included in all contract documentation for all phases of implementation.

8. A copy of the environmental authorisation and the EMP must be kept at the site where the listed activities will be undertaken. Access to the site referred to in section C above must be granted and, the environmental authorisation and EMP must be produced to any authorised official representing the competent authority who requests to see it for the purposes of assessing and/or monitoring compliance with the conditions contained herein. The environmental authorisation and EMP must also be made available for inspection by any employee or agent of the applicant who works or undertakes work at the site.
9. The holder of the EA must submit an application for amendment of the environmental authorisation to the competent authority where any detail with respect to the

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environmental authorisation must be amended, added, substituted, corrected, removed or updated. Save that such application for amendment shall not include the personal details of the holder of the environmental authorisation (Where any of the applicant's contact details change, the physical or postal address and/ or telephonic details, the applicant must notify the competent authority in writing as soon as the new details become known to the applicant).

Further, the rights granted by this environmental authorisation are personal rights (i.e. not attached to a property, but granted to a natural or juristic person). As such, only the holder may undertake the activities authorised by the competent authority. Permission to transfer the rights and obligations contained herein must be applied for in the following manner:

- 9.1. The applicant must submit an originally signed and dated application for amendment of the environmental authorisation to the competent authority stating that she wishes the rights and obligations contained herein to be transferred, and including (a) confirmation that the environmental authorisation is still in force (i.e. that the validity period has not yet expired or the activities were lawfully commenced with); (b) the contact details of the person who will be the new holder; (c) the reasons for the transfer; (d) an originally signed letter from the proposed new holder acknowledging the rights and obligations contained in the environmental authorisation and indicating that she has the ability to implement the mitigation and management measures and to comply with the stipulated conditions.
- 9.2. The competent authority will issue an amendment to the new holder either by way of a new environmental authorisation or an addendum to the existing environmental authorisation if the transfer is found to be appropriate.
10. Non-compliance with a condition of this environmental authorisation or EMP may result in suspension of this environmental authorisation and may render the holder liable for criminal prosecution.
11. Notwithstanding this environmental authorisation, the holder must comply with any other statutory requirements that may be applicable to the undertaking of the listed activities.
12. The holder must appoint a suitably experienced environmental control officer ("ECO"), or site agent where appropriate, for the construction phase/ all phases/ of implementation before commencement of any land clearing or construction activities to ensure compliance with the EMP and the conditions contained herein.
13. An integrated waste management approach, which is based on waste minimisation and incorporates reduction, recycling, re-use and disposal, where appropriate, must be employed. Any solid waste must be disposed of at a landfill licensed in terms of the applicable legislation.
14. No surface or ground water may be polluted due to any actions on the site. The applicable requirements with respect to relevant legislation pertaining to water must be met.

15. The applicable requirements with respect to relevant legislation pertaining to cutting, damaging, disturbing or destroying protected trees or trees from a natural forest must be adhered to.
16. The applicable requirements with respect to relevant legislation pertaining to occupational health and safety must be adhered to.
17. Should any heritage remains be exposed during excavations or any actions on the site, these must immediately be reported to the Provincial Heritage Resources Authority of the Western Cape, Heritage Western Cape (in accordance with the applicable legislation). Heritage remains uncovered or disturbed during earthworks must not be further disturbed until the necessary approval has been obtained from Heritage Western Cape. Heritage remains include: archaeological remains (including fossil bones and fossil shells); coins; indigenous and/or colonial ceramics; any articles of value or antiquity; marine shell heaps; stone artifacts and bone remains; structures and other built features; rock art and rock engravings; shipwrecks; and graves or unmarked human burials.

A qualified archaeologist must be contracted where necessary (at the expense of the applicant and in consultation with the relevant authority) to remove any human remains in accordance with the requirements of the relevant authority.
18. The development must incorporate water and energy saving technologies. This must include, but not be limited to, the following:
 - 18.1. Energy saving technologies such as compact florescent light bulbs (CFL's) and Light Emitting Diodes (LED's) and other appropriate energy efficient lighting alternatives must be used in the development (as far as practicably possible).
 - 18.2. Water saving technologies such as rainwater harvesting technologies, drip irrigation technologies for all landscaped areas, auto-stop taps, dual flush cisterns, waterless urinals and aerated taps must be implemented.
 - 18.3. All installed geysers must be covered with geyser "blankets" to improve the efficiency of the geyser. All electric geyser thermostats must be set at the most optimal temperature. The installation of solar water heaters or heat pump systems and solar photovoltaic panels for the generation of electricity must be considered.
19. The following recommendations adapted from the Visual Assessment dated 25 February 2009 and revised in June 2012 compiled by New World View Associates must be adopted and implemented:
 - 19.1. The architectural style of the buildings must avoid high-rise structures which would be out of scale with the existing built environment/fabric.
 - 19.2. Local architectural styles must be adopted as far as possible. It is recommended that the following should be considered in the design of the development:
 - urban design and landscaping features that would symbolize the retail facility as a space for public/communal enjoyment, e.g. green open spaces with hard landscaping (benches), pedestrian friendliness, outside fountain areas, etc.

should be implemented.

- 19.3. The physical structures must be painted in suitable colours in the medium tone range so as to blend in with the surroundings.
 - 19.4. Subtle lighting that is not in conflict with the surrounding residential areas must be implemented. Excessive flood lighting must be avoided.
 - 19.5. The overall heights of the building(s) must be kept as low hung as possible.
20. The following recommendations adapted from the Geotechnical Investigation Report dated 7 October 2008 compiled by John Brown of SRK Consulting Ltd must be adopted and implemented:
- 20.1. The installation of a cut-off subsoil drain along the northern boundary of the site must be implemented.
 - 20.2. The area to be filled, as well as the area where *in situ* sand is present at the proposed platform level, must be compacted *in situ* (after the removal of the thin organic topsoil layer), using a heavy vibratory roller.
 - 20.3. Sand fill derived from cut (surface to about 1.0m) must be placed beneath the building footprint and compacted in 200mm layers to 100% mod AASHTO compaction.
 - 20.4. The clayey sand occurring at a depth below 1.5m should be used to fill beneath the parking areas rather than the buildings due to the poorer quality.
21. The following recommendations adapted from the Noise Assessment dated 2 June 2012, compiled by Mackenzie Hoy and Associates Consulting Acoustic Engineers must be adopted and implemented:
- 21.1. Absorptive noise barriers in the form of landscaping berms must be implemented along the boundaries of the development, or where deemed appropriate.
 - 21.2. Roads must be surfaced with low noise 'porous tar', as far as possible, to reduce the noise of the tyre/road interactions when vehicles are travelling along such roads.
22. The following mitigation measures adapted from the Wetland Delineation and Impact Assessment dated May 2012, compiled by Wetland Consulting Services (Pty.) Ltd. must be adopted and implemented:
- 22.1. Runoff from the R43 must be intercepted in a rock filled trench with a surface swale to convey excess runoff.
 - 22.2. Water intercepted off the R43 must be redistributed in a subsurface distribution system beneath the parking lot.
 - 22.3. Runoff from impervious surfaces must be intercepted and diverted into bio-swales.
 - 22.4. Runoff from the retail complex must be intercepted in an unlined wet retention / attenuation pond that include infiltration trenches.
 - 22.5. Trees must be planted in an around the site to encourage evaporative water loss.

H. 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



ANTON BREDELL
MINISTER OF LOCAL GOVERNMENT,
ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING

DATE: 5/5/2015

CC: Mr C Groenewald (Overstrand Municipality)

Fax: (086) 568 9726

REASONS FOR THE APPEAL DECISION

In reaching my decision, I considered the following:

- a) The information contained in the BAR and Application Form which was received on 11 December 2009, the draft BAR and Application form which was received on 27 September 2009, the amended BAR and Application Form which was received on 21 October 2010 and the additional information which was received on 18 July 2012, 6 September 2012, 4 and 24 October 2012;
- 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 NEMA;
- d) The comments received from interested and affected parties ("IAPs") and the responses provided thereon, as included in the abovementioned reports;
- e) The meetings which took place on 24 June 2011 attended by Etienne Eygenberger (Retail Africa (Pty) Ltd), Adrian Sillito (SEC), Carianne Freebury (Retail Africa (Pty) Ltd), Janine Krüger (Retail Africa (Pty) Ltd), Neil Muller from the Department of Environmental Affairs and Development Planning ("DEA&DP"), Zaahir Toefy (DEA&DP), Eldon van Boom (DEA&DP) and Zaidah Toefy (DEA&DP) as well as on 14 February 2012 attended by Eldon van Boom (DEA&DP), Sagwata Manyike (DEA&DP), Neil Muller (DEA&DP), Adrian Sillito (SEC), Carianne Freebury (Retail Africa (Pty) Ltd) and Douglas Parker (Independent consultant);
- f) The appeals lodged by Du Plessis Hofmeyr Malan Attorneys on behalf of Wekita One (Pty) Ltd, Chennels Albertyn Attorneys on behalf of the Hermanus Business Chamber and Zamar Investments, the Hermanus Ratepayers, Rob Fryer (IAP) and Overplan & Associates against the EA;
- g) The responding statement provided by Werksmans Attorneys on behalf of the applicant;
- h) The answering statement received from Chennels Albertyn Attorneys on behalf of the Hermanus Business Chamber and Zamar Investments; and
- i) 'The Overstrand Retail Study' dated 13 September 2011 compiled by Douglas Parker Associates (Pty) Ltd.

A. LEGISLATIVE MANDATE

1. In terms of the relevant legislation, the decision-making powers afforded to the appellate authority are such that the Appeal constitutes a "wide" appeal when classified in administrative law. The appellate authority may, therefore, "confirm, set aside or vary the decision, provision, condition or directive or make any other appropriate decision". The assessment of appeals raises substantive and policy-laden issues and a determination of whether the proposed application will result in a development that is sustainable, those avoids detrimental impacts on the environment, or where it

cannot be avoided, ensure mitigation and management of impacts to acceptable levels, and to optimise positive environmental impacts.

2. Section 24 of the Constitution of the Republic of South Africa, 1996 ('the Constitution'), provides:

"24 Environment

Everyone has the right-

- (a) to an environment that is not harmful to their health or well-being; and*
- (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that-*
 - (i) prevent pollution and ecological degradation;*
 - (ii) promote conservation; and*
 - (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development."*

3. The power of the National Environmental Minister or a provincial MEC to regulate environmental matters is now under the NEMA (a law enacted after the Constitution to give effect to the environmental right in section 24 of the Constitution):

- 3.1 Section 2 of NEMA lays down certain generally-applicable principles of environmental management which must be applied by persons when deciding whether or not to grant authorisations under section 22 of the ECA. See sections 2(1)(c) and (e) of NEMA, which provide that the NEMA principles:

- 3.1.1 'serve as guidelines by reference to which any organ of state must exercise any function when taking any decision in terms of this Act or any statutory provision concerning the protection of the environment' (s 2(1)(c)); and
- 3.1.2 'guide the interpretation, administration and implementation of this Act, and any other law concerned with the protection or management of the environment'(s 2(1)(e)).
- 3.1.3 The NEMA principles include the following:
- 3.1.4 Environmental management must place people and their needs at the forefront of its concern, and serve their physical, psychological, developmental, cultural and social interests equitably' (s 2(2));
- 3.1.5 'Development must be socially, environmentally and economically sustainable' (s 2(3));
- 3.1.6 sustainable development – a term defined in section 1 of the NEMA as meaning – 'the integration of social, economic and environmental factors into planning, implementation and decision-making so as to ensure that development serves present and future generations' – 'requires the consideration of all relevant factors . . .' in environmental decision-making (s 2(4)(a));
- 3.1.7 'Environmental management must be integrated, acknowledging that all elements of the environment are linked and interrelated, and it must take into account the effects of decisions on all aspects of the environment and all people in the environment by pursuing the selection of the best practicable environmental option' (s 2(4)(b)); and
- 3.1.8 'the social, economic and environmental impacts of activities, including disadvantages and benefits, must be considered, assessed and evaluated, and decisions must be appropriate in the light of such consideration and assessment' (s 2(4)(i)).

3.2 The key legislation that provided the framework and guidelines for undertaking the EIA process includes:

- 3.2.1 EIA Regulations, 2006 as promulgated in terms of the NEMA.
- 3.2.2 EIA Regulations, 2010 as promulgated in terms of the NEMA.
- 3.2.3 National Heritage Resources Act, 1999 (Act No. 25 of 1999).

B. APPEAL REVIEW

The following issues were raised in the appeals against the EA granted on 3 January 2014: (numbering)

1. Holder of the EA;
2. EIA Consideration;
3. Need and Desirability;
4. Integrator role of the development;
5. Socio-economics of the development;
6. Impact of the proposed development on tourism;
7. Planning Framework;
8. Alternatives;
9. Access/Traffic Impacts.

The appeal issues were considered and assessed as follows:

1. Holder of the EA in terms of the issue related to:

This issue is summarised as follows:

It is only proper that the appeal proceed once the holder of the authorisation has applied for the transfer of rights and obligations to the land-owners in accordance with condition E10 of the authorization granted on 3 January 2014 and this application has been approved on appeal.

In relation to this issue, provisions are made in the of EIA Regulations, 2010 in terms of regulation 15, which regulates activities on land owned by a person other than the applicant.

Regulation 15 states-

"Activity on land owned by person other than applicant

(1) If the applicant is not the owner or person in control of the land on which the activity is to be undertaken, the applicant must give written notice of the proposed activity to the owner or person in control of the land on which the activity is to be undertaken, and inform such person that he may participate in the public participation process as contemplated in regulation 54.

2) In circumstances where a notice as contemplated in subregulation (1) will not serve the purpose of notifying the owner or person in control of the land as that person is unable to understand the content of the notice due to-

(i) illiteracy;

(ii) disability; or

(iii) any other disadvantage, alternative means of notifying the owner or person in control of the land must be agreed to with the competent authority and a record of such agreement as well as proof of compliance with the requirement to give notice must be provided.

- 3) Proof of the notice contemplated in subregulation (1) must be submitted with the application form as contemplated in regulation 12(2).
- (4) The format of a notice contemplated in subregulation (1) or (2) may be determined by the competent authority and proof of service of such notice must be submitted to the competent authority.

Thus, any person may apply for an Environmental Authorisation and the transfer of rights is not prerequisite.

Condition E10 of the 3 January 2014 EA stated:

"10. The holder of the EA must submit an application for amendment of the environmental authorisation to the competent authority where any detail with respect to the environmental authorisation must be amended, added, substituted, corrected, removed or updated. Further, the rights granted by this environmental authorisation are personal rights (i.e. not attached to a property, but granted to a natural or juristic person). As such, only the holder may undertake the activities authorised by the competent authority. Permission to transfer the rights and obligations contained herein must be applied for in the following manner:

10.1 The applicant must submit an originally signed and dated application for amendment of the environmental authorisation to the competent authority stating that she wishes the rights and obligations contained herein to be transferred, and including (a) confirmation that the environmental authorisation is still in force (i.e. that the validity period has not yet expired or the activities were lawfully commenced with); (b) the contact details of the person who will be the new holder; (c) the reasons for the transfer; (d) an originally signed letter from the proposed new holder acknowledging the rights and obligations contained in the environmental authorisation and indicating that she has the ability to implement the mitigation and management measures and to comply with the stipulated conditions.

10.2 The competent authority will issue an amendment to the new holder either by way of a new environmental authorisation or an addendum to the existing environmental authorisation if the transfer is found to be appropriate."

This condition specifically related to the amendment of an EA and does not preclude the appeal consideration and adjudication from going ahead.

2. EIA Consideration in terms of the issues related to:

(i) Unfair administrative process-

Both the decisions appealed against were taken by the same person on the very same date, namely 3 January 2014. He limited the Gross Leasable Area ("GLA") for the Hawston project to 10 000m², whilst approving a total GLA of 27 800 m² (almost three times the size of the Hawston approval) for the Sandbaai project.

The delegated competent authority applied his mind to each application in terms of-

- The legislated process as stipulated in section 24 of NEMA and sections 3 and 4 of the Promotion of Administrative Justice Act, Act 3 of 2000;
- the general objective of integrated environmental management is to -

- "(b) identify, predict and evaluate the actual and potential impact on the environment, socio-economic conditions and cultural heritage, the risks and consequences and alternatives and options for mitigation of activities, with a view to minimising negative impacts, maximizing benefits, and promoting compliance with the principles of environmental management set out in section 2;
- (c) ensure that the effects of activities on the environment receive adequate consideration before actions are taken in connection with them:";
- The information contained in the respective BA reports and appendices.

The delegated competent authority issued both applications simultaneously based on the following:

- Both applications proposed a 'regional retail facility' within the same municipal area.
- The sites for the retail facilities are approximately 3km apart along the R43.
- Both applications aim to serve the same catchment area.
- Both applications fall within the same geographical region in the Department for which the delegated competent authority is Mr Zaahir Toefy.
- The EIA application form for the retail facility at Sandbaai, Hermanus, was submitted on 11 December 2009 and the EIA application form for the retail facility at Hawston was submitted on 02 February 2010 and the EA for both EIA applications were granted on 3 January 2014 and issued on 06 January 2014. Thus, the EIA processes were undertaken at the same time.

Based on the aforementioned, I am satisfied that the delegated competent authority adhered to the legislated requirements and the principles of procedurally fair administrative actions.

(ii) Procedural irregularities and unfairness-

Reference is made to, and reliance is placed on, the "Hermanus Regional Analysis Report by Urban Studies 2010". The appellants have not been able to obtain access to, or even view, that document, despite submitting a request for that record as I&APs.

In relation to the issue pertaining to access to the "*Hermanus Regional Analysis Report by Urban Studies 2010*", a review of the application form and BA reports revealed that this report formed part of the amended BAR that was made available to IAPs for review and comment from September to October 2010.

I am satisfied that the developer provided sufficient opportunities to IAPs to access and review the information that was submitted to the Department in support of the application.

(iii) Failure by competent authority in relation to the issues-

To apply its mind:

It would appear from the Director's letter to Wekita One that the Department did not weigh the benefits of the proposed development objectively against the perceived disadvantages (if any) as required by law. There is no indication in letter of refusal that any conscious effort has been made to properly weigh the benefits that will arise from the implementation of the Hawston proposal. Clearly insufficient weight was attached to the profoundly positive socio-economic impact that the proposed Hawston development will have on the Hawston and broader communities.

Mistakes and technical errors:

The Department made obvious mistakes and technical errors in evaluating the proposal. It failed to interpret facts correctly and ignores practical realities, important facts and compelling reasons for approving the Hawston application as proposed. In certain instances it shows a clear lack of understanding of practical realities. The Director's decision regarding the Hawston project is entirely premised on the argument that the Hawston community does not need a Mall as big as the one proposed.

The EA that is the subject of the appeal relates to the proposed retail facility and associated infrastructure on erven 1119, 1450, 1452, 1734 and the Remainder of erf 243, Hermanus and not at the Hawston site. The adjudication of the appeals against the EA for the proposed retail facility and associated infrastructure on portion 1 of the Farm 572, Hawston is separate to this appeal process.

The respective EAs for the two proposed developments were informed by the information included with the application forms and based in its own merits, within the legislative framework.

(iv) Public Participation-

The public participation process ("PPP") included:

- Registered letters to all owners/occupiers of land within 100m of the boundary of the site on 14 October 2008;
- An advertisement in the Hermanus Times publication on 17 October 2008 (the catchment area of the Hermanus Times include Fisherhaven, Hawston, Standford; Hermanus area; Kleinmond, Betty's Bay, Grabouw, Pringle Bay, Rooi Els, Gansbaai, Caledon, Napier, and Bredasdorp);
- Notification sent to registered Interested and Affected Parties regarding the availability of the draft BAR and draft EMP;
- Submission of amended BAR to Interested and Affected Parties for comments on 27 September 2010. The draft BAR that was circulated on 27 September 2010 included the "Hermanus Regional Analysis" report compiles by Urban Studies.; and
- Circulating additional information to registered stakeholders on 9 August 2012.

At the end of the commenting period, members of the public, the ward councillor and organs of state provided comments. All the raised comments and responses were included in the BAR.

I concur with the delegated competent authority that the PPP that was followed met the minimum legal requirements. All the raised comments and responses were included in the BAR.

3. Need and Desirability in terms of the issues related:

- (i) Failure by the Department to have regard to relevant considerations, and to assess properly the true need and desirability of the proposed development –
The factors referred to by the Director in the authorisation do not support a conclusion that the proposed development is needed and desirable. In addition, the authorisation has failed to mention factors which point squarely in the opposite direction-

Hermanus is one of the fastest growing coastal towns in South Africa and with the population being anticipated to grow approximately 4.7% per annum over the next 10 years, the supply of retail space could be expected to increase at approximately a similar pace. The area is also a very popular holiday destination.

The Overstrand Retail Study dated September 2011 conducted by Mr Douglas Parker, for the Overstrand Municipality, concluded that the *"Hermanus Central Business District ("CBD") has limited capacity for additional retail facilities, and in peak period the traffic congestion is a serious problem in spite of additional parking facilities that were brought on stream with the Checkers development."* The investigation has shown that the current Hermanus CBD is sufficient for the day to day needs of the locals, there is an outflow to Somerset West for clothing, electronic goods and furniture.

The independent "Hermanus Regional Analysis" study dated July 2010 prepared by Dr Dirk Prinsloo of Urban Studies found that:

- Two major weaknesses are associated with the Hermanus CBD, namely:
 - a) Inadequate variety of different stores required by a town of the size of Hermanus;
 - b) Lack of parking which is further exacerbated by the fact that all retail facilities are spread over a wide area and shoppers have to drive from store to store.
 - c) that there is a substantial residential growth in the area with a major outflow to Cape Town centers.
- 76% of the respondents indicated that they regard Somerset Mall as their most important shopping destination due to the variety of tenants and shops; and for it being a one-stop shopping destination.
- The proposed retail facility is directed to retain the bulk of the disposable income in the area instead of losing it to Somerset Mall. Currently 52% of non-food expenditure is spent at Somerset Mall and elsewhere in the greater Cape Town area.
- The location can absorb and accommodate further economic activity with the establishment of a commercial node (earmarked for commercial activity in the Overstrand Municipal Spatial Growth Management Strategy, 2010 ("OMSGM")).

The proposed retail facility on Erven 1449, 1450, 1452, 1734 and the Remainder of Erf 243 Sandbaai was recommended for approval to the Department of Environmental Affairs and Development Planning by the Mayoral Committee and the Overstrand Municipal Council on 25 April 2012 in terms of:

- The application for the amendment of the Greater Hermanus Spatial Development Framework, 2006 to change the reservation of Erven 1449, 1450, 1452 and 1734, Sandbaai from Urban Area to Commercial Node in terms of Section 4(7) of the Land Use Planning Ordinance, 1985;
 - The application for amendment of the Overstrand Municipal Wide Spatial Development Framework, 2006 to change the reservation of Erven 1449 and 1452, Sandbaai from residential to commercial;
 - In terms of section 16 of the Land Use Planning Ordinance, 1985 application for consolidation of the said Erven and rezoning to Business Zone I purposes; and
 - In terms of section 3(6) of the Removal of Restrictions Act, 1967 (Act 84 of 1967).
- (ii) The desirability of a true regional mall, or a small regional center capable of evolving into one-

What is desirable is a genuine regional shopping mall, or at least a small regional center which is approved at this time must thus have the capacity to grow into a regional shopping mall. The characteristics and location of such a small regional center are therefore crucial. This is all the more so as the Overstrand cannot support two new small regional shopping centers in close proximity at this time, or for the foreseeable future. The approval of a small regional shopping center will effectively preclude another such center until about the middle of the 21st century.

Retail Africa has developed more than 550 000m² of retail space to date. The retail facilities developed by Retail Africa include Melrose Arch in Johannesburg (28 000m²), Eastwood Village in Pretoria (2 000m²), Clearwater Mall in Strubensvalley (62 000m²), West Coast Mall in Vredenburg (30 000m²) and Mountain Mill Mall in Worcester (37 700m²). These retail facilities are all successful.

The site for the proposed retail facility is located along the R43 adjacent to the west of the existing Sandbaai Business Park. This area has established itself as a commercial zone of which the proposed retail facility will form part of. The OMSGM identified Sandbaai from the Main Road/R43 District Road crossing including even south of the R43 and Sandbaai Business Park up to Schulphoek Road as an area for densification and economic growth.

The site for the proposed retail facility comprises of:

- Erf 1449 – 4.4648 ha;
- Erf 1450 – 2.4652 ha;
- Erf 1452 – 3.8914 ha;
- Erf 1734 – 2.0572 ha; and
- Remainder of Erf 243 – 0.88 ha (traffic circles, traffic lights).

The total footprint of the site equals 13.7588 ha with the retail building footprint of approximately 3.8 ha and the remaining 10 ha of the site being set aside for parking, access roads, landscaping and open spaces. Thus, there is sufficient space and capacity available for the proposed retail facility to grow into a regional shopping mall.

Furthermore, this area is located in close proximity and walking distance to Zwelihle and Sandbaai. The primary catchment area for the proposed retail facility includes Voëklip, Hermanus, Zwelihle, Sandbaai, Onrusrivier, Vermont, Hawston, Fisherhaven and Arabella. It is also anticipated to attract residents from the surrounding towns such as Gansbaai, Kleinmond, Botrivier, etc.

(iii) The undesirability of undermining a retail facility at Hawston-

The authorisation effectively ignores and contradicts the report Parker Retail Study, which was commissioned by the Overstrand Municipality in 2011. In addition, the authorisation ignores and runs counter to the shopping center feasibility study by Fernridge Consulting which was commissioned in March 2009 in support of the Hawston Retail Facility referred to above (which report was available to the Director at the time he granted the authorisation).

In terms of location of a retail facility the Retail Study conducted by Mr Douglas Parker stated that the ideal location for a regional retail facility would be in the center of town so that there would be a single core shopping precinct. However, this is not a viable option as there is no land available for a retail facility of the required scale. Three sites have been proposed as locations for a major retail facility in the Overstrand Municipality which are the (A) the Anderson site; (B) the Retail Africa site; and (C) the Hawston site. The Retail Study found that *"the sites selected by Anderson (A) and Retail Africa (B) are well located. They are more central to the residential areas than the CBD itself, have excellent*

visibility, are easily accessible from all areas, form part of the Sandbaai/Hemel en Aarde retail precinct, and are within easy walking distance of the lower income areas. The Hawston site (C) is close to the western extremity of the primary catchment area and would mean the creation of an additional retail precinct. It is a less convenient option for both the primary as well as the secondary catchment areas shoppers."

The Retail Feasibility Study: Hermanus conducted by Fernridge Consulting stated that the Sandbaai site "has a prime location within the primary catchment. This development could create a node together with the showrooms adjacent to the site. It will be a favourable shopping destination for residents in the area given its relative decentralized location."

Thus, this appeal EA is in line with the findings of the Retail Study conducted by Douglas Parker and the Retail Feasibility Study: Hermanus conducted by Fernridge Consulting in terms of siting of regional facility.

4. Integrator role of development in terms of the issue related to-

The argument that the proposed development could perform an integrator role; the really pressing "integration" concern relates to integration of Hawston into the economy.

The statement in the EA relating to 'integrator' is as follows:

"the proposed development may fulfill its role as an integrator where people from different socio-economic backgrounds will interact based on its strategic location between the high-income areas of Hemel-en-Aarde, Westcliff, Fernkloof, Eastcliff and Voëlklip, the middle income areas of Sandbaai and the lower income sectors of Mount Pleasant and Zwelihle".

I agree that this statement specifically relates to the fact that the site for the proposed retail facility is in close proximity to areas such as the high-income areas of Hemel-en-Aarde, Westcliff, Fernkloof, Eastcliff and Voëlklip, the middle income areas of Sandbaai and the lower income sectors of Mount Pleasant and Zwelihle.

5. Socio-Economics of the development in terms of the issues related to-

- (i) Failure to appreciate the disastrous socio-economic consequences of the activities for which authorisation was sought-
- (ii) Risk of retail cannibalization on the CBD-

the Department overstated the positive benefits of the proposed mall on the Retail Africa site, but it has also drastically underestimated the negative consequences of what has been authorized.

The proposed retail facility is directed to retain the bulk of the disposable income in the area instead of losing it to Somerset Mall. Currently 52% of non-food expenditure is spent at Somerset Mall and elsewhere in the greater Cape Town area.

The Hermanus Regional Analysis Study dated July 2010 concluded that 'retail cannibalism' will only be applicable for a duplication of the same stores in the same catchment area, The impact of cannibalisation on the Hermanus CBD is anticipated to be limited to if only new stores not currently represented in Hermanus open in the mall. Retailers will only open a second store once the

performance of the existing store has reached certain levels and where an additional store can be warranted.

The socio-economic impact of the proposed retail facility includes:

- Annually the municipality will benefit from increases in rates and taxes;
- Intergovernmental finances will exponentially increase due to taxes on land transfers, value added tax from individual transactions with the commercial precinct, income taxes from employment created;
- The municipality will also receive 'once-off' income from building plan submissions, approvals and connection fees;
- Tax and rates collection will this be substantial and significant more than would have been to date and will increase annually;
- It is anticipated that the increase in taxes to the municipality, when fully developed, will be significant;
- Retail studies have confirmed that the retail center alone will achieve a turnover of approximately R480 million;
- The proposed retail facility will provide:
 - Approximately 2000 employment opportunities during the construction phase of the retail facility, comprising highly skilled professionals (architects, quantity surveyors, civil engineers) as well as less skilled trades such as bricklaying, tiling, plastering, painting;
 - More than 1000 employment opportunities within the proposed retail facility;
 - Approximately 2 500 employment opportunities as a result of the economic multiplier effect;
- Approximately 15% of business opportunities will be taken up by local entrepreneurs.

The market survey contained in the Hermanus Regional Study indicated that:

- 76% of the respondents indicated that they regard Somerset Mall as their most important shopping destination due to the variety of tenants and shops; and for it being a one-stop shopping destination.
- The Hermanus town centre is not able to fulfil the need of shoppers due to the lack of variety and range by retailers.
- Mobile customers are will to commute to the closest regional shopping centre leading to money being spent outside the Hermanus area.
- Two major weaknesses are associated with the Hermanus CBD, namely:
 - i. Inadequate variety of different stores required by a town of the size of Hermanus;
 - ii. Lack of parking which is further exacerbated by the fact that all retail facilities are spread over a wide area and shoppers have to drive from store to store.

The proposed retail facility is directed to retain the bulk of the disposable income in the area instead of losing it to Somerset Mall. Currently 52% of non-food expenditure is spent at Somerset Mall and elsewhere in the greater Cape Town area.

To help curtail 'retail cannibalism' on the Hermanus CBD the Overstrand Municipality, in the Mayoral Committee meeting dated 25 April 2012, recommended the following:

- The tenant mix concentrates on chain stores and limited specialised line stores;
- That the possibility of a value mart be incorporated into the tenant mix to cater for furniture, which is undersupplied in the region;
- The mall needs to focus on what is not in Hermanus; and

- The proposed mall should be located in close proximity to the Hermanus CBD in order to have a single core of shopping facilities.

The 'IMPACT OF COMMERCIAL AND OFFICE DECENTRALISATION - SPECIALIST STUDY FINDINGS AND EVIDENCE', as discussed in the Western Cape Provincial Spatial Development Framework, 2014 ("WCPSDF") included an *"integrated assessment of the impacts of decentralised commercial and office centres on town centres was undertaken based on the evaluation of 3 case studies, being Vredenburg, Paarl and Hermanus."*

- *"The evidence from the study found that when designed, planned and located appropriately, commercial and office developments will assist in improving the economic performance, usability, attractiveness and experiential quality of the town centre. 'In centre' and 'edge of centre' developments are the recommended location for new large scale commercial/ retail developments having the least negative and most positive impacts to the town centre and town as a whole. They are the most likely development model to lead to significant economic returns as well as being the best suited to positively relate to its context and provide support to the sustainable functioning of the town centre (eg: Hermanus). This development model is not the norm, with most of the new large scale commercial and retail centres in the Western Cape being proposed in decentralized locations."*

Retail is one of the few significant forms of investment occurring in the emerging market' (Urban Landmarket 2013) with 4 million m² of new retail space being expected to be added over the next 10-12 years in South Africa."

The retail facility at the Sandbaai site is in line with the findings of the 'IMPACT OF COMMERCIAL AND OFFICE DECENTRALISATION - SPECIALIST STUDY FINDINGS AND EVIDENCE' study in the WCPSDF.

I am satisfied that the socio-economic impact associated with the proposed retail facility at Sandbaai will be effectively mitigated, in turn, it is anticipated that it will retain retail spending within the municipal area.

- (iii) *"The supposed ability of the proposed retail facility to stem the outflow of business- the authorisation merely permits a minor regional / large community center; not a regional mall as the authorisation assumes."*

A small regional center/large community center is described as a *"retail facility that offers a wide variety of stores and is bigger than a community center, at a better location, with a wider tenant mix but not yet in the category of a regional center."* These centers could be a large community center as per the definition but due to its role and function in the area, often more rural areas, it could be regarded as a small regional center. These type of retail facilities ranges between 25 000 – 50 000m² and accommodate 75 – 150 stores.

The development entails the construction of a retail facility that has a total Gross Leasable Area ("GLA") of 38 900m². The development will be rolled in the following phases:

- 27 800m² of GLA (Phase 1)
- 31 100m² of GLA (Phase 2)
- 34 500m² of GLA (Phase 3); and
- 38 900m² of GLA (Phase 4).

The phasing of the development will be implemented to align with calculated GLA in terms of warranted market demand. This will ensure that the development is of an appropriate scale and will