

*Department of Environmental Affairs & Development Planning  
Directorate: Integrated Environmental Management (Region B)*

**J. APPEAL:**

Appeals must comply with the provisions as outlined in Chapter 7 of the Regulations.

If the applicant decides to appeal, the applicant must lodge a Notice of Intention to Appeal with the Minister, within 10 days of being notified of this decision (the date of "being notified" deemed to be the date the notice of the Department's decision was sent, i.e. the date of issue) and must serve a copy of the Notice of Intent to Appeal, on the same day that the Notice of Intent is lodged with the Minister, on all registered I&APs. The said Notice of Intent must be accompanied by a notice indicating the place where the appeal submission will be available for inspection for a period of 30 days, which must either start on or before the date that the appeal is submitted to the Minister.

Should any other person decide to appeal, the person must lodge a Notice of Intention to Appeal with the Minister, within 10 days of being notified of the Department's decision (the 10 day period is deemed to start 10 days after the date of issue of the Department's decision), and serve a copy of the Notice of Intention to Appeal, on the applicant as well as a notice indicating that the appeal submission will be available for inspection for a period of 30 days, that must either start on or before the date the appeal is submitted to the Minister, and also indicate where the appeal submission will be available for inspection

By post: Western Cape Minister of Local Government, Environmental Affairs and Development Planning,  
Private Bag X9186  
CAPE TOWN  
8000

By facsimile: (021) 483 4174; or

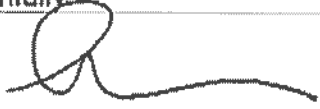
By hand: Mr. Jaap de Villiers  
9<sup>th</sup> Floor Utilitas Building  
No. 1 Dorp Street  
CAPE TOWN  
8000

A prescribed Notice of Intention to Appeal Form and Appeal Form is obtainable from the Minister's office at tel. (021) 483 3721, e-mail [jedevill@pgwc.gov.za](mailto:jedevill@pgwc.gov.za) or URL <http://www.capegateway.gov.za/eadp>.

Provincial Government, Local Authority or committees appointed in terms of the conditions of the application or any other public authority or organisation shall not be held responsible for any damages or losses suffered by the developer or his successor in title in any instance where construction or operation subsequent to construction be temporarily or permanently stopped for reasons of non-compliance by the developer with the conditions of authorisation as set out in this document or any other subsequent document emanating from these conditions of authorisation.

*Department of Environmental Affairs & Development Planning*  
*Directorate: Integrated Environmental Management (Region B)*

Yours faithfully



Anthony Barnes  
**DIRECTOR: INTEGRATED ENVIRONMENTAL MANAGEMENT (REGION B)**

DATE OF DECISION: 25-11-2009

Copies to:

(1) R. Kuchar (Overstrand Municipality)  
(2) K. Stead (OverPlan)  
(3) P. Slabbert (PHS Consulting)

Fax: (028) 313 8128  
Fax: (028) 316 1743  
Fax: (028) 313 2554

6.

ERF 1447, SANDBAAI, CALEDON DISTRICT : OVERSTRAND MUNICIPAL AREA: PROPOSED REZONING, SUBDIVISION, CONSENT USE AND AMENDMENT OF STRUCTURE PLAN AND SPATIAL DEVELOPMENT FRAMEWORK : ZAMAR INVESTMENTS (PTY) LTD

1447, HSB (1214)

H van der Stoep

(028) 313 8179

Hermanus Administration

16 January 2012

### EXECUTIVE SUMMARY

An application has been received from Messrs. Overplan & Associates on behalf of Messrs. Zamar (Pty) Ltd for the Amendment of the Greater Hermanus Spatial Development Framework (Structure Plan), Rezoning, Subdivision and Consent Uses to accommodate a Community Shopping Mall on Erf 1447, Sandbaai.

The Title Deed also contains restrictive conditions with regard to the selling of alcohol from the property. This will entail an application in terms of the Removal of Restrictions Act, 1967, which has not been addressed in this application.

### RESOLVED

1. that in terms of Sections 17 and 24 of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985) application for the subdivision of Erf 1447, Sandbaai into three portions and the rezoning of the proposed three portions from Agriculture Zone I to Business Zone I, Transport Zone I and Open Space Zone III respectively in order to create a shopping centre on the property, **not be recommended for approval to the Department of Environmental Affairs and Development Planning;**
2. that in terms of Section 4(7) of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985), application for a consent use to allow a supermarket, bottle store and place of entertainment on the property, **not be recommended for approval to the Department of Environmental Affairs and Development Planning** due to the following reasons:
  - (a) the proposed development is in direct competition with the existing CBD of Hermanus;
  - (b) the access on the R43 Provincial Road is not finalized and needs to be addressed, as it will have a major impact on the traffic flow in Sandbaai Main Road and financial implications for the Municipality;

- (c) the extent of the proposed development is not in line with the Overstrand Retail Study;
- (d) the removal of restrictive conditions has not been applied for, this renders the application for consent use for the selling of liquor invalid. The proposed development is thus further restricted in terms of retail density as proposed by the Parker Study and will not comply with the recommendations for a regional centre;
- (e) the Retail Study clearly indicates that should any big commercial development be considered with a minimum extent of 25 000m<sup>2</sup> in order to access the secondary buying power needed for a successful venture, and
- (f) that stormwater will firstly have to be dealt with in a detailed investigation, due to the extent of the problem.

**RECOMMENDATION TO THE COUNCIL**

that in terms of Section 4(7) of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985) the application for the amendment of the Greater Hermanus Spatial Development Framework in order to change the reservation of a portion of Erf 1447, Sandbaai from Agriculture to Commercial Node, to accommodate a community shopping centre, **not be recommended for approval to the Department of Environmental Affairs and Development Planning.**

**RESPONSIBLE OFFICIAL : H VAN DER STOEP**

**TARGET DATE FOR IMPLEMENTATION : 4 MAY 2012**

**TARGET DATE TO INFORM APPLICANT : 11 MAY 2012**

**TARGET DATE TO INFORM OBJECTORS : 11 MAY 2012**



## DIRECTORATE: LAND MANAGEMENT (REGION 2)

Garron.Campbell@westerncape.gov.za  
 Tel: +27 21 483 5834 Fax: +27 21 483 3098  
 1 Dorp Street, Cape Town, 8000  
[www.westerncape.gov.za/eacdp](http://www.westerncape.gov.za/eacdp)

REFERENCE: 15/3/1/2/1/E2/34/Erf 1447, Sandbaai  
 ENQUIRIES: G. Campbell



The Director: Infrastructure and Planning  
 Overstrand Municipality  
 P.O Box 20  
 HERMANUS  
 7200

TP- A Theart

**OVERSTRAND MUNICIPALITY: PROPOSED REZONING, SUBDIVISION AND AMENDMENT OF SPATIAL DEVELOPMENT FRAMEWORK: ERF 1447, SANDBAAI**

1. Your letter with reference 1447 HSB (1214) dated 14 May 2012 refers.
2. Recent Western Cape High Court and Constitutional Court judgments involving Provincial and Municipal competencies in relation to land use and planning competencies have relevance. Furthermore, it is important to note that Provincial Circular No. 7 (of 6 August 2013) amended the General Structure Plan to ensure that all rezoning and subdivisional decision-making functions in terms of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985) (LUPO) are delegated to the Municipal level in an attempt to prevent the possibility of any unconstitutional planning decisions being issued by the Provincial Government.
3. Given the most recent Constitutional Court judgment on 4 April 2014 which has confirmed such decisions are an exclusive Municipal competency, any decisions which may have been pending with the Department will be returned to the Municipality and the relevant applicants and Municipalities shall be advised accordingly.
4. It is confirmed that the amendment of the General Structure Plan and applicable Zoning Scheme Regulations that was previously referred to in paragraph 9.3 of Provincial Circular No. 8 (of 28 August 2013) is still applicable and that all previously non-delegated applications relating to land use and planning vest in the Municipalities as a Constitutional function and are also not appealable in terms of section 44 of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985) (LUPO) after the Constitutional Court judgment in this regard.

FILE NO:	EL 1447-SB
SCAN NO:	
COLLABORATOR NO:	652672

5. This Department will endeavour to provide a professional planning comment on applications as part of our new constitutionally-mandated support function, if required in future.
6. Prior to the Constitutional Court judgment, this Department was in the process of finalising this application and a technical planning comment has already been compiled. However as this is now a Municipal competency the decision now vests with your Municipality and in the spirit of co-operative governance, this Department's technical planning comment on the application is provided for your consideration as **Annexure A**, attached to this letter.
7. Any queries regarding the contents of this letter can be directed to Zaahir Toefy (021 483 2700), Henri Fortuin (021 483 5842) or Kobus Munro (021 483 0764).



^ HEAD OF DEPARTMENT

DATE:

31 JUL 2014

**ANNEXURE A: DEA&DP Technical Planning Comment**

1. Hermanus and the surrounding developed area, of which Sandbaai is, are unique in terms of the physical lay-out of the urban landscape. This is largely due to the fact that it is located between the mountains to the north and the ocean to the south and these geographical obstacles, in a way, leads to a forced linear development module.
2. This kind of linear development contributes towards physical and cost efficient service delivery restrictions for the area. This specific scenario is worsened by the fact that a through road also needs to be accommodated between these geographical obstacles in order to serve other towns such as Stanford and Gansbaai further to the east. These factors are relevant in the way that the application should be evaluated.
3. One of the consequences of a linear development module is that the town's CBD is inherently much more sensitive to competition from commercial nodes lying along the linear axis. This basically means that if a comparable service is provided to a possible customer outside the CBD, he or she is more likely not to make the trip into the CBD because of the associated problems that linear development entails such as a longer trip time (physically as well as due to congestion), lack of adequate parking etc.
4. The Municipality, in an attempt to preserve the vibrancy of the CBD, is correctly concerned that a development which provides the same services as those in the CBD, will lead to its weakening. The fact that the scale of the centre will be that of a local shopping centre and not of a regional shopping centre (and does not have the capacity to be enlarged to become a regional centre at a later stage) does warrant concern since the kind of services will negatively affect the sustainability of the current CBD. The fact that the Municipality also foresee problems pertaining to the access is supported and seems reasonable factors for them not to approve the application.
5. The Municipality's concern regarding the well-being of the existing CBD of Hermanus is supported and the balance, which must be held between providing adequate commercial nodes in the surrounding areas outside the CBD and the CBD itself, is understood. It is a fine balancing act which must constantly be evaluated because if there are too few local shopping centres, unnecessary trips to the CBD will be the result and the traffic situation will deteriorate. This is important since the same roads that your visitors use to get to the CBD are also used as a thoroughfare to access other towns to the east and affect the regional flow of traffic. On the other hand, if too many local shopping centres are allowed, it will destroy the vibrancy of the CBD.