

**AGENDA of the  
Portfolio Committee : Infrastructure and Planning  
17 November 2015  
(Also the agenda for the Mayoral Committee Meeting : 25 November 2015)**

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11.

**ERF 1447, SANDBAAI : OVERSTRAND MUNICIPAL AREA : PROPOSED REZONING, SUBDIVISION, CONSENT USE AND AMENDMENT OF THE SPATIAL DEVELOPMENT FRAMEWORK : MESSRS OVERPLAN & ASSOCIATES ON BEHALF OF MESSRS ZAMAR INVESTMENTS (PTY) LTD**

**1447 HSB (1214)**

**H Olivier**

**12 October 2015**

**(028) 313 8900**

**Hermanus Administration**

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## **1. Executive Summary**

The original land use application was submitted on 18 December 2008 by 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 use to accommodate a community shopping mall on Erf 1447, Sandbaai.

The Title Deed 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 the application.

A planning report was drafted for consideration by the Executive Mayor, to only make a recommendation to the Western Cape Government: Environmental Affairs and Development Planning (EADP). The Amendment of the Structure Plan was at that stage still a Provincial function, and for that reason only a recommendation was made to EADP.

The application served before the Executive Mayor on 25 April 2012, and it was resolved that the application not be recommended for approval to EADP. The recommendation not to support the Amendment of the Structure Plan was also tabled and adopted by Council on 25 April 2012.

The recommendation by Council was forwarded to EADP on 14 May 2012, for a final decision.

In a later letter dated 31 July 2014 from EADP (see Annexure S) said Department indicated that due to a Constitutional Court judgment on 4 April 2014, the Municipality now has the authority to take a final decision on the application. That Department however did provide a Technical Planning Comment on the application, which was attached to their letter dated 31 July 2014 (See Annexure S3/3).

A Locality Plan of the property concerned is attached as Annexure A. The proposed Site Development Plan is attached as Annexure B, while the motivational report for the proposal is attached as Annexure C.

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**2. Service Delivery and Budget Implementation Plan - IGNITE**

Infrastructure and Planning  
Town- and Spatial Planning

**3. Compliance with Strategic Priority**

Provision of democratic, accountable and ethical governance

**4. Delegated Authority**

Executive Mayor

**5. Legal Requirements**

- Sections 17 and 24 of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985)
- Section 2.2 of the Overstrand Zoning Scheme Regulations

**6. Background/Discussion/Evaluation**

**Background/Discussion**

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 development consists of the following development parameters:

Business Zone I : 3,6195 ha

A centre of 20 000m<sup>2</sup>, which includes:

- 3 major anchor shops
- a food court
- an undisclosed amount of line shops
- parking: basement and surface parking to the amount of 1200 bays
- consent use: supermarket, bottle store and place of entertainment

Transport Zone I : 0,63 ha

Open Space Zone II : 0,62 ha

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The Title Deed also contains restrictive conditions with regard to the selling of liquor 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. Thus the application for consent for a bottle store cannot be considered part of this application, and it will also impact on selling of liquor in shops and restaurants.

It is to be noted that the Greater Hermanus Spatial Development Framework, 2000 lapsed in July 2012.

It is to be noted that the application was advertised in the local newspaper, Government Gazette and registered notices were served on all the potentially affected property owners.

It must be noted that eight letters of objection were received against the application (Attached per Annexure D). The applicant's response to the objections is attached per Annexure E.

The objections/concerns and the applicant's response thereon can be summarised as follows:

- Is there a need for additional shops?

Applicant's response

*The Overstrand Spatial Development Framework indicates the whole of Erf 1447 as commercial. With the increase in population the demand will be there for the increase of services and goods.*

- The effect of a bottle store and place of entertainment are as follows:
  - High noise levels.
  - Adversely affect the crime rate.
  - Sufficient bottle stores in the vicinity of Sandbaai and may attract undesirable characters.

Applicant's response

*The place of entertainment is under consideration by the developers, but can be accommodated in future should there be a demand.*

*The bottle store is to cater for spirits, etc. which cannot be sold in the supermarket. There will be security in the vicinity to control any misbehaving in the area of the bottle store.*

- The area is predominantly a densely built up residential area and a shopping mall will impact adversely on the residential atmosphere. The

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loading bays at the back of the main buildings, thus adjacent residential developments, are a concern.

Applicant's response

*The site has been designed to take into consideration the loading bays (service delivery goods). This will take place in the basement and assigned allocated bays in the parking area. The buffer on the southern and western boundaries will screen the less desirable uses from the residential areas.*

- The Traffic Impact Assessment (TIA) study done is totally inadequate. It was done in mid-winter at the Sandbaai Main Road and the R43 Provincial Road and not at the intersection of Main Road and Bergsig Street, where congestion is prevalent during peak hours. The study excludes traffic generated during holidays and summer.

Applicant's response

*The intention in the traffic planning proposals is to service the development with a slip on and off facility on the R43 District Road. It should be noted that protracted consultation with the Municipality has taken place and should it become necessary that Church and Bergsig Streets needs to be upgraded that proposed traffic proposals in terms of the TIA will be to the benefit to the whole Sandbaai.*

- Will the existing engineering capacity be sufficient for such a development, including storm water capacity in Bergsig Street?

Applicant's response

*The civil engineering report indicates that there is sufficient capacity to accommodate the additional sewerage and storm water.*

- It is unclear whether the rights applied for are for a regional or a community shopping mall.

Applicant's response

*The application was deemed compliant in terms of the Land Use Ordinance, 1985 regulations. Whether it is described as a community or regional mall is irrelevant. What is important is that it entails a retail floor area of 20 000m<sup>2</sup>.*

- Specialist reports have not been done e.g. heritage, noise and visual impact, etc.

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Applicant's response

*The required detail specialist studies were conducted during the compilation of the Overstrand Spatial Development Framework, 2005. The application did serve before the Local Heritage Committee. The R43 District Road creates more noise than the underground parking of the proposed development.*

- The TIA indicates that the road infrastructure will only be able to support a mall of 16 500m<sup>2</sup> and not 20 000m<sup>2</sup> as per the LUPO application.

Applicant's response

*The TIA did make provision for 16 000m<sup>2</sup>, but protracted consultation with the Municipality did indicate that a traffic circle will be able to easily handle 20 000m<sup>2</sup> retail floor area. This conclusion was reached by the TIA Report, which the Municipality accepted.*

- Insufficient independent market researched was done and the applicant relied on the research of others, and the preferred alternative has not been fully motivated.

Applicant's response

*The Overstrand Spatial Development Framework earmarked Erf 1447, Sandbaai as the most desirable area for a commercial node and was accepted by Council.*

It is to be noted that the applicant's consultant, Messrs Overplan & Associates, did provide an additional motivation on the application on 10 June 2015 (see Annexure W). Due to the fact that this motivation was submitted after the public participation process the content will only be discussed under a separate heading as the last point under the Evaluation.

**Applicant's Motivation (Attached as Annexure C)**

The following is a brief summary of the applicant's motivation:

The Central Business District (CBD) of Hermanus has over the years developed as the hub for commercial, social and community services. The smaller independent towns are dependent on Hermanus and regions outside of Hermanus to cater for their needs.

However, the continued growth of the Overstrand region and the rising increase in popularity of Hermanus as a retirement, holiday and tourist destination, various problems arose such as traffic congestion and parking which impacts

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greatly on the community. The growth has given rise to goods and services presently not catered for in the Hermanus area.

The applicant recognized this trend of development and taking due cognisance of the various planning policies applicable in the Overstrand municipal area, lodged an application in line with the advocated policies. These policies clearly stated and strengthen the need for commercial growth towards the west of Hermanus. The erf applicable in the policy documents clearly indicates that Erf 1447, Sandbaai is the most desirable location for such a commercial development.

In these policies it is clear that a hierarchy of commercial nodes need to be identified and developed. The development must not be to the detriment of the CBD, but strengthen the economic function of the town centre. A development of this nature should be able to put pedestrian and the elderly on the forefront in designing the building. Informal trading areas must be identified and the aesthetic standards of the whole development must be in line with the existing developments surrounding the application property.

The CBD of Hermanus is not able to cater for large chain stores with their associated extensive parking areas. A report prepared by Fernbridge Consulting was based on a survey of the whole of the greater Hermanus region and covered aspects as "Target Market Growth" including net monthly HSE income, Retail potential Estimate 2007. Hermanus CBD has a total retail floor space of 44 000m<sup>2</sup> of which 12 000m<sup>2</sup> comprises of restaurants.

The report makes the assumption of a potential of 140 000m<sup>2</sup> of retail space with 100% occupancy. A more realistic potential retail estimate would be 112 000m<sup>2</sup>.

In the motivation report three alternatives were provided, however the preferred option is Alternative 1, which will be discussed. The land uses will be a Business Zone I of 3,62 ha, Transport Zone I of 0,63 ha and Open Space Zone II of 0,6146 ha. The Open Space Zone will be a buffer between the existing residential developments and the proposed development. Most of the parking will be located in the basement with street level parking. A number of 1200 bays are proposed, which is more than needed for the development. This alternative proposes three anchor shops and the remainder consist of line shops.

### **Town Planning Evaluation**

The evaluation is done in terms of Planning Legislation (Land Use Planning Ordinance, 1985), the applicable Zoning Scheme Regulations, the existing Policy Documents, Overstrand Retail Study by Douglas Parker Associates (Business Development and Research Consultants) dated 13 September 2011

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and Classification and Hierarchy of Retail Facilities in South Africa by Dr Dirk A Prinsloo dated September 2010:

Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985) and Section 8 Zoning Regulations

In terms of the Zoning Scheme, the application site, Erf 1447, Sandbaai, is zoned Agriculture Zone I.

The application therefore includes the rezoning of the abovementioned erf to Business Zone 1, Transport Zone 1 and Open Space Zone III, and also for the following consent uses namely a supermarket, bottle store, place of entertainment, place of assembly, place of instruction and service trade. The consent uses mentioned are associated with a community centre. However, there is a restriction condition that prohibits the sale of liquor. The application for consent use for a bottle store cannot be considered.

The application was advertised in terms of the requirements of the relevant legislation.

The application will therefore be considered in terms of the criteria to determine desirability in terms of Section 36 of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1986).

Environmental Legislation (NEMA)

The applicant did submit a Basic Assessment Report (BAR) in 2008, but with the promulgation of the 2009 Regulations, the activities listed under 2008 regulations fell away and therefore the development is not subject to a BAR.

Restrictive Title Deed Conditions

The following restrictive condition in Title Deed T059454/2002, Condition B needs to be addressed – re hotels and liquor licenses:

*“GEREGTIG op die voordeel van die voorwaarde waarna verwys word in die serwituutendossement gedateer 12 Maart 1940 aangebring op TransportakteNr. T11466/1929, welke Endossement sooss volg lui:-*

REMAINDER

REGISTRATION OF SERVITUDE

*By Transfers Nos 2253, 2254, 2255, 2256, 2257 and 2258 all dated 12.3.1940; 4309 dd. 8.5.1940; 4310 dd. 8.5.1940; 8177 dd. 21/8/1940; 9521 dd. 26/9/1940; 10090 dd. 14/10/1940; 11915 dd. 4/12/1940; 11916 dd. 4/12/1940; 1540 dd. 27/2/1941 dd. 17/3/1941; 2927 dd. 2/4/1941; 3378 dd. 18/4/1941;*

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4104 dd. 6/5/1941; 4728 dd. 26/5/1941; 4729 dd. 26/5/1941; 6270 dd. 1/7/1941; 11384 dd. 31/10/1941; 13096 dd. 10/12/1941; 13358 dd. 18/12/1941; 2799 dd. 17/3/1942; 9492/42 dd. 20/8/1942; 10634 dd. 11/9/1942 and 10635 dd. 11/9/1942; 11767 dd. 8/10/1942; 14522/1942 and 14523/1942; 651/1943; 2152/1943; 2914/5/6/7/1943; 3961 dd. 8/4/1943; 5116 dd. 4/5/1943; 5462/1943; 6098/1943; 7070/1943; 8611/1943; 10641/1943; 10627/1943; 10685/1943; 11468/1943; 12263/1943; 14717/1943; 15283/1943; 15445/1943; 609/1944; 1012/1944; 1984/1944; 2131/1944; 4177/1944; 7124/1944 and 9334/1944.

*The owner of the remainder of the within property and the owners of erven transferred or to be transferred in the Sand Baai Township shall have the benefit of the following conditions relating to:-*

- (1) *restriction re hotel and liquor licences;*
- (2) *reservation of lots on sea front;*
- (3) *restriction re buildings and approval of plans;*
- (4) *right to carry electric or telephone wires.”*

No application has been submitted in terms of the Removal of Restrictions Act, 1984 to remove the restrictive condition. The consent use application for liquor trading can only be considered once the condition has been removed.

#### Overstrand Retail Study

According to the Retail Study by Dough Parker:

*“The Overstrand Municipal Area has a total of some 161 000m<sup>2</sup> of retail space at the present time, generating retail sales of R2,3 billion per annum. With population projected to grow at 4,7% per annum over the next ten years, the supply of retail space could be expected to increase at a similar pace, representing some 75 000m<sup>2</sup> per year or about 69 000m<sup>2</sup> net over the next ten years after allowing for 20 000m<sup>2</sup> that is presently vacant.”* (Parker – 2011)

The study was extended to include the Theewaterskloof and Agulhas areas; the amount of retail space is 209 000m<sup>2</sup> with a 9% vacancy. The study did indicate that most of the retail space is for consumer goods and very little space is taken by clothing, footwear, furniture and appliances. Hermanus is by far the biggest town within the greater study area.

The study did indicate that a substantial flow of retail spending is lost within the region due to that none of the towns are large enough to accommodate major retail chains. Hermanus is the biggest retail centre within the study region and should a retail facility be established in Hermanus it would serve the whole region and reduce much of the outflow to Somerset Mall and Cape Town.

It was found that Hermanus can accommodate a centre of 28 000m<sup>2</sup> by 2013 and has the potential to increase to 34 000m<sup>2</sup> by 2019 with an additional

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increase to about 39 000m<sup>2</sup> by 2024.

However, the following must be taken into account that a regional retail facility typically focuses on fashion retailing and in this respect the CBD would be affected and can lose a substantial amount of clothing shops. It is not foreseen that the specialized shops would be affected and that the restaurants will benefit due to an increased visitors or shoppers from the region.

One retail product which is undersupplied, is in the area of electronics and electrical goods, which will and can be catered for in such a retail centre.

The recommendation to minimize the impact on the Hermanus CBD is as follows:

- That the tenant mix concentrates on chain stores and limited specialized 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 what is not in Hermanus.
- The proposed mall should be located in close proximity to the CBD in order to have a single core of shopping facilities.
- One-stop facility.

In terms of the above mentioned study, Erf 1447, Sandbaai will compete directly with the retail in Hermanus CBD and is too small to cater for the required tenant mix in terms of chain stores and thus will only be able to cater for similar retail as is already available in Hermanus. The study clearly indicates that should chain stores be accommodated, the centre must be at least 30 000 m<sup>2</sup>. The proposed development is only 20 000m<sup>2</sup> in extent and therefore cannot be classified as a one-stop facility to stop the outflow of buyers to Somerset Mall.

It should also be noted that the Council granted approval for a regional shopping centre of 30 000m<sup>2</sup> GLA on Erven 1449, 1450, 1452 and 1734, Sandbaai in June 2015. The demand for a large retail facility in the larger Hermanus area has therefore already been saturated.

Classification and Hierarchy of Retail Facilities in South Africa

In terms of the abovementioned study the application can be classified as follows:

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Community Centre

The role and function is to satisfy the need for shopping facilities between the scale of a neighbourhood centre and a small regional centre. These centres have transport/taxi orientated facilities to cater for public without own transport, and such centres should be in walking distance of the majority of residents. These centres offer a wider tenant mix, but are not large enough to offer a full range of comparative tenants. These centres are difficult to develop because of the nature being between the neighbourhood centre and a small regional centre. The proposed centre will then also be difficult to develop considering its close proximity to an existing neighbourhood centre e.g. Gateway Centre, the proposed small regional centre (Whale Coast Mall) and the existing convenience centre at the Sandbaai node and Engen development. A community centre should serve an area with a radius of 2,5km to 3km. The subject property is within a 2km radius of the above-mentioned retail concerns, thus competing directly with these centres.

A community centre size is between 12 000m<sup>2</sup> and 25 000m<sup>2</sup> Gross Leasable Area (GLA), therefore it is classified as a community centre and cannot accommodate the tenant mix as required to be able to be classified as a small regional mall. This is confirmed by the Retail Study by Douglas Parker.

The proposed application cannot be upgraded to be reclassified as a regional facility due to the direct adjacent existing residential developments. The extension of the proposed community centre will thus not be able to expand to cater for future needs.

**Direct Infrastructure impact on Overstrand**

Road Infrastructure

In terms of the study (Classification and Hierarchy of Retail Facilities in South Africa), one key aspect is the accessibility to a major arterial route for a successful community centre. Although the application site is located adjacent to a major route (R43 District Road) it will not be fully accessible, since the Department of Transport only approved a left in left out from the arterial route, Trunk Road 28. In terms of the Transport Impact Assessment (TIA), it clearly indicates that access on Sandbaai Main Road can cater for 16 000m<sup>2</sup>. The assessment did indicate that with a roundabout the proposed 20 000m<sup>2</sup> can be accommodated. The proposed roundabout is located opposite the existing access of Timbali Village, which is also one of the exit points of Engen, Super Plants and the Kaap Agri. The access and the ability of the proposed access to accommodate free flowing traffic in terms of heavy articulated truck movement used for deliveries and shoppers is of concern.

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The Department of Transport supported ICE Group's Conceptual Proposed Layout and additional conditions were made applicable namely, that the Sandbaai Main Road be de-proclaimed and that the existing access off the R4008 District Road (Sandbaai Main Road) to Engen and Super Plants be closed by the Municipality. This access was previously approved by the Provincial Roads Engineer.

The one above-mentioned condition by the Provincial Roads Engineer that the one existing access/egress from the Sandbaai Main Road to Engen and Super Plants be closed off by the Municipality have major implications to surrounding land owners and the Municipality.

It is the opinion that should the above-mentioned road be closed off, it would have a major impact on the amount of traffic that will be driving through the existing Engen garage and Kaap Agri sites.

The Traffic Impact Assessment (TIA) dated 16 July 2009 prepared by Messrs ICE Group (Pty) Ltd was scrutinized (See Annexure O). In the conclusion of this report it is indicated that a single lane roundabout at the Timbali Village entrance will be sufficient to deal with the increase in traffic. The following statements were also made:

- "that with the closure of the Engen filling station access or the change thereof to a left in/left out only access, the roundabout should be changed to a two-lane roundabout"
- "that information with regard to the planned development to the east of Sandbaai Main Road opposite the proposed Southern Cross Mall development was obtained from EFG Engineers and that this was taken into consideration in the layout of the proposed roundabout"
- "that a concern is that the filling station access be closed (no left in/left out access) the layout received from EFG Engineers is such that the fuel truck to the filling station will not be able to exit and that the filling station access should, for this reason, be retained as a left in/left out access in order to accommodate this movement"
- "that the proximity of the proposed building (as obtained from EFG Engineers) to the sidewalk at the roundabout should be noted and considered by the local authority"

In the recommendation of the TIA the following statements are made:

- "that the conditions as contained in the Provincial Road's Engineer with reference 13/3/5/1-21/73 (JOB 17207) dated 10 June 2009 be implemented by the Local Authority"

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- “that the existing access to the Engen filling station should, in future when the mentioned section of the Sandbaai Main Road is upgraded to a dual carriageway be changed to a left in / left out access”

In the approval of the Provincial Roads Engineer (Annexure L) it appears that the access/egress to Engen must be fully closed, but in the TIA it appears that the full closure is not recommended.

The TIA was prepared in June 2009, but the Kaap Agri Development was only approved at the end of 2009. The stacking distance at the Timbali Village/Kaap Agri access/egress where the roundabout is now proposed, have got limited stacking distance, and there is also now an existing building with external loading which will have to be closed due to the proposed roundabout. It is also not clear if the impact on the loading bay have been considered.

It is also not clear if the full impact of the additional traffic that will be created on the Sandbaai Main Road, with traffic to the recently approved Whale Coast Mall to the east of the site, have been considered in this application.

Considering the above, it is the opinion that the changing of the environment of Sandbaai over the last five (5) to six (6) years was not duly considered or addressed in the TIA prepared in 2009. The information provided in the TIA is old and outdated and not relevant any more. The information is therefore not sufficient for the Municipality to take an informed decision.

The access/egress at Engen is registered in the format of Road Servitudes over Erven 2064 (Engen) and 2152 (Super Plants). (See Annexure X.) This served as an alternative entrance to Engen and Super Plants, and also as the only egress for these two properties prior to the development of Kaap Agri (Erf 1545). A further Road Servitude was then also registered over Erf 1545 to provide an alternative access/egress point to Engen and Kaap Agri over the Kaap Agri (Erf 1545) site. (See Annexure Y.)

Should the mentioned access/egress to Super Plants and Engen have to be closed, it could have a negative effect on the accessibility of Engen, Super Plants and Kaap Agri, and even impact on Timbali Village whom also access over the Kaap Agri site. By closing of the access/egress existing rights could be impacted on, and could also lead to possible litigation against the Municipality. The acceptance by the Municipality of the condition that Sandbaai Main Road be de-proclaimed to a Municipal Road, will then also mean that the Council will be responsible for any implications from a litigation process.

It is the opinion that the Municipality cannot provide a commitment to close the existing access/egress to Super Plants and Engen, as it could impede an existing right of land owners and also have a cost implication for the Municipality and lead to litigation between owners, tenants and Overstrand Municipality.

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Stormwater

In the report of ICE Group Consulting Engineers it is indicated that stormwater management will be dealt in two ways. Runoff water will be discharged into the stormwater pipe culvert situated within the R43 road reserve and an attenuation facility will also be created.

The Municipal Department: Engineering Services support the findings in the report by ICE Group Consulting Engineers, and requested that a stormwater management plan be submitted showing compliance with all requirements.

The service contribution, for roads and stormwater, amounts to R513 500-00 (calculated as per the original shopping centre application of 20 000m<sup>2</sup> GLA as in terms of the existing budget year).

Water

The existing reservoir has sufficient capacity to serve the development. Any upgrade and or connections are for the developer's account. The bulk service contribution would amount to R1 963 229-00 (calculated as per the original shopping centre application of 20 000m<sup>2</sup> GLA as in terms of the existing budget year).

Sewerage

The development be connected as per Messrs GLS's report. The report did indicate that sufficient capacity is available on the existing system. The bulk service contribution would amount to R1 575 665-00 (calculated as per the original shopping centre application of 20 000m<sup>2</sup> GLA as in terms of the existing budget year).

Electricity

According to the latest application received the owner of Stand 1447 required a demand of 800 kVA. The electrical network in Sandbaai has sufficient capacity to supply the total demand of 800 kVA to Stand 1447.

The installation of a new 11 kV Bulk Metering/RMU and HV cables to accommodate the new demand will be for the cost of the owner.

The cost of the extra bulk contributions on the stand will be calculated according to the municipal tariffs applicable and will be for the account of the owner.

The bulk service contribution would amount to R1 426 194-90 (calculated as per the original shopping centre application of 20 000m<sup>2</sup> GLA as in terms of the existing budget year).

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Socio Economic

The retail study clearly indicates that employment opportunities will benefit the area as whole, especially during the construction phase and as permanent employees in the operational phase of the development. The site is ideally located in close vicinity of Zwelihle and Mount Pleasant, areas which have a high unemployment rate. The proposed development will generate an income to the Municipality in terms of rates and taxes, which can be used for the social upliftment of the residents of the Overstrand.

In terms of the Parker Study - "Overstrand Retail Study" - the ratio for retail employment in Hermanus is one employment opportunity for every 48m<sup>2</sup> retail space. If the same ratio is applied to the proposed development, new employment opportunities of ±245 jobs will be created. It should be noted that the abovementioned figure excludes employment generated for the construction period.

The proposed development is however targeting the more local residents due to its tenant mix and the spin off effect of shoppers and the drawing of shoppers from the extended region will not be gained. The other negative point is that the proposed development is similar to the retail facilities in the Hermanus CBD and Gateway Centre. The overprovision of retail facilities could entail that the expected job creation not be achieved as this would be shared with other centres.

**Policy Documents**

Greater Hermanus Sub Regional Spatial Development Framework, 2000

The Policy Document has lapsed on 5 July 2012 and is not applicable to the Evaluation of this application anymore.

Overstrand Municipal Wide Spatial Development Framework, 2006

The erf is earmarked as Commercial and is located on the western corner of the R43 District Road and Sandbaai Main Road.

The Sandbaai/R43 crossing was identified as a business node in terms of the former "Greater Hermanus Sub Regional Development Framework, 2000". The business node was concentrated west of the Sandbaai Main Road (including a portion of Erf 1447) up to Bergsig Street, and also on the other three corners of the Bergsig Street/Sandbaai Main Road crossing.

Most of this earmarked area has now been developed with high density residential developments. This includes Protea Park Complex north west of the Bergsig Street/Sandbaai Main Road crossing, Bergzicht Complex on the north western corner of the same crossing, Hessie's Haven, Villa Anadia, Green

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Mountain Villas and Green Mountain Estate south west of the crossing, and Monte Marie east of the crossing.

When the Municipal Wide SDF, 2006 was approved, only Erf 1447 of the previously identified business node sites was still available for business purposes. A portion of land (Erven 1545, 2064, 2152 and former Erf 2161) on the south eastern corner of the R43/Sandbaai Main Road crossing and a portion (Erven 1734 and 1450) west of the Sandbaai Industrial Area was then also earmarked for business purposes. The identified business site on the south eastern corner of the Sandbaai crossing has since been developed with a nursery (Super Plants), garage (Engen) with line shops, and town houses (Timbali Village). The Hemel-en-Aarde Road is also partially upgraded, and traffic has increased significantly at the R43/Sandbaai Main Road crossing. There are already traffic problems being experienced at the crossing from the existing businesses on the south-eastern corner, and there are concerns regarding the accessibility of Erf 1447, Sandbaai for business purposes. It must also be considered that when the Overstrand SDF earmarked Erf 1447 for commercial the traffic flow was not a major factor, but since 2006 increased significantly. Thus the vision that was previously reflected in the SDF would have allowed a substantial business node (regional node). The remainder property does not allow for that.

Overstrand Municipal Spatial Growth Management Strategy, 2010

In terms of this policy document Erf 1447, Sandbaai is only partially identified for local economic purposes, whilst the remainder of the site is earmarked for residential development up to twenty (20) dwelling units/ha. Erf 1450 and portions of Erven 1449 and 1734 situated south of the R43 road and east of Super Plants were additionally identified for local economic purposes. The strategy advocates a more mix land use character for Erf 1447. One of the main reasons why a smaller area was earmarked for commercial purposes was due to the concerns with regard to the accessibility the site. Access possibilities are limited from the Sandbaai Main Road and the R43, with no access possibilities from Bergsig Street or any other major road. The fact that the other identified commercial properties have been developed for residential, the remainder area earmarked for commercial can no longer accommodate a business node of considerable size. Traffic flow pass the site also changed the accessibility to the site as it stand today, due to an even greater increase in traffic flow after 2010.

The site can therefore partially be developed for commercial purposes, but only to a scale that can be accommodated by the surrounding road network. Further subject that access to the existing businesses not being affected.

It is the opinion that the proposed application is therefore only partially in line with the aims of this policy plan, however the situation has changed dramatically as developments have been approved and commercial demand

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has been addressed.

**Additional relevant information received after Executive Mayor's Recommendation**

**Comments from Western Cape Government**

In a letter dated 31 July 2014 received from the Western Cape Government : Environmental Affairs and Development Planning a planning comment was also provided by that Department on this application. (See Annexure S.)

In Point 4 of the comments the following statement was made:

*“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 that of a regional shopping 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 access is supported and seems reasonable factors for them not to approve the application.”*

**Comments from the Applicant**

The applicant did request a meeting with representatives of the Town Planning Department on 8 April 2015, and also requested to provide additional information that would indicate that certain critical information were not taken into consideration with the application. A report to such effect was submitted (see Annexure W) to the Town Planning Department on 10 June 2015. The points of concern are dealt with as follows:

- *The reduced scale of the application to a 12 000m<sup>2</sup> (Phase 1 – 7 000m<sup>2</sup> and Phase 2 – 5 000m<sup>2</sup>) neighbourhood centre (in line with Prinsloo Classification Report) will not negatively impact on the CBD or Gateway Centre. It will also be in line with the Parker Retail Study and the size can be limited with a condition by Council.*

The applicant indicated that a revised application was submitted on 12 April 2012. This was however a revision of the application and this would have meant that the application again had to be circulated for comments, and advertised to the public. The application was therefore dealt with in the format it was submitted in December 2008.

- The applicant's proposal to change the proposed shopping centre from a 20,000m<sup>2</sup> community centre to a 12,000m<sup>2</sup> neighbourhood.

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As previously mentioned in this report in Douglas Parker's Overstrand Retail Study dated September 2011 it is indicated that 69 000m<sup>2</sup> retail space will be required in the Overstrand Municipal Area over the next ten (10) years. It was also recommended that if a shopping centre is developed in Hermanus it be limited to 28 000m<sup>2</sup> GLA in 2013, 34 000m<sup>2</sup> GLA in 2019 and 39 000m<sup>2</sup> in 2024.

In the Retail Study it is also emphasized that a regional shopping centre close to the Hermanus CBD with a minimum size of 30 000m<sup>2</sup> could be considered in Hermanus. This would create a secondary catchment area and should not adversely affect the CBD.

The original proposal by the applicant of a centre of 20 000m<sup>2</sup> GLA, and even the new proposed centre of 12 000m<sup>2</sup> (in two phases) will not comply with the Retail Study, as such a centre would be in direct competition with the Hermanus CBD, as it would not target any secondary markets.

The applicant's opinion that a neighbourhood centre (of 12 000m<sup>2</sup> GLA) would be desirable on Erf 1447, Sandbaai, is also debatable. In terms of the report by Dr Dirk Prinsloo – "Classification and Hierarchy of Retail Facilities in South Africa", various types of retail centres is discussed. In the report it is stated that a neighbourhood centre usually services the surrounding neighbourhood within a 2km range, but can also play an intercepting role for passing traffic to the suburbs. The proposed centre will be a mere 250m from the recently approved Whale Coast Mall (Regional Shopping Centre) and the Gateway Centre (Neighbourhood Centre) situated approximately 1900m from the subject site.

Considering the fact that a neighbourhood centre service an area with a radius of 1,5 to 2km, it would overlap with the service area of an existing neighbourhood centre (Gateway Centre) for a large portion of its target market. The Gateway Centre and even the proposed Whale Coast Mall will also both have an intercepting role from the R43 for passing traffic from and to the CBD, and will compete for the same market.

Considering the above, it is the opinion that a centre to the scale of a neighbourhood centre of 7 000m<sup>2</sup> to 12 000m<sup>2</sup> GLA is not warranted in the subject area.

- *The Western Cape Government : Transport and Public Works had no objection to the application, and further designs were prepared which will exceed the traffic requirements of the proposed shopping centre.*

The comments are duly noted. The concerns with regard to traffic requirements were previously addressed in this report.

In summary, the cumulative impact of higher density residential developments in Sandbaai do create concerns that, especially the portion of Sandbaai Main Road between the R43 and Bergsig Street, will be highly congested in future.

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The other concern is that the condition by the Department of Transport, which stipulated that the existing access/egress to Engen and Super Plants be closed off by the Municipality, is problematic. As previously indicated in this report, the closing of this access/egress could have an impact on traffic flow over the properties where Engen, Super Plants, Kaap Agri and even Timbali Village are situated, and therefore impact on existing property rights. This could result in possible litigation against the Municipality.

- *The Municipality should have made the applicant aware that a Removal of Restriction application was required. It is also debatable if the condition for the selling of liquor inserted in favour of the Sandbaai Township Body has not already been transferred to the Local Authority.*

It is the responsibility of the applicant to peruse the Title Deed of a property to see if there are any restrictive conditions that would be in conflict with an application in terms of LUPO. The Municipality was at that time also not the decision maker on removal of restriction applications, and in the case of this application was only going to make a recommendation to the Provincial Department due to the Amendment of the Structure Plan application, which has now lapsed.

It has to be noted that for similar applications for the selling of liquor in Sandbaai, applications were submitted to remove the relevant conditions.

- *A detailed stormwater investigation was initiated by the consulting civil engineers, which was supported by the Town Engineer and submitted to the Town Planning Department.*

The comments from the applicant, his engineer and Town Engineer are duly noted.

- *The regional mall (Whale Coast Mall) which was approved will duplicate land uses in the CBD, and impact on the revitalization of the CBD*

This comment does not have any relevance with regard to the desirability of the application submitted, but is directed at other retail applications approved by the Municipality.

In response to this point, it must be acknowledged that a Retail Study was done for the area, which concentrated on the most desirable scale for a retail concern for Hermanus area, and also the location of such retail concern.

The applicant is aware of the Retail Study and its recommendation. The study found that a regional mall of approximately 30 000m<sup>2</sup> GLA close to the CBD would have the least impact on the CBD. This report was done by a specialist in retail studies.

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The comments that the regional centre would negatively impact on the revitalization of the CBD is speculative, and the revitalization project is still proceeding.

A regional mall might have some negative impacts on retail concerns in Hermanus, but the positive impact of a regional mall out ways the negatives. The regional mall will provide the opportunity for Big Box retailers to establish in Hermanus, as the CBD does not have sufficient open land. The regional mall will also draw additional retailers from a secondary market, and will ensure that local shoppers have to make less trips to the retail centres in Somerset West and Cape Town.

- *The Parker Retail Study does not apply to the application as it focus on secondary trade only. The Council was therefore not in a position to take an informed decision on a phased development with an eventual maximum 12 000m<sup>2</sup> retail floor space*

The Retail Study did consider the retail demand for the Hermanus area, and made recommendations as to what the best type of retail development would be to limit impact on existing retail concerns. The application submitted is for additional retail area, and the viability partially assessed in terms of findings in the Retail Study.

It was not the aim in the Retail Study to focus on smaller retail concerns and the viability thereof, as only three mall applications of significant scale (20 000m<sup>2</sup> and larger) were submitted to the Municipality for consideration.

To make an assumption that the regional mall will concentrate on the secondary market and therefore will not impact on a proposed neighbourhood centre of 12 000m<sup>2</sup>, is not supported. Even a regional mall will draw clients from the primary market.

The applicant wants to change the application from a 20 000m<sup>2</sup> centre to a 12 000m<sup>2</sup> centre developed in two phases. No further market related research was provided by the applicant on what the impact of such a centre will be on the existing retail concerns. Even if the applicant has his own views on the approved regional mall, it was approved by the Council and the impact on the applicant's application must be considered.

It is the opinion that no counter arguments were made to prove the market demand of the retail study wrong.

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### **Conclusion**

The application is not recommended for approval. The reasons are as follows:

- the removal of restrictive conditions has not been applied for, this renders the application for consent use for the selling of liquor invalid. This only impacts on the bottle store application and selling of liquor in the shops and possible restaurants;
- the proposed development is not in line with the Overstrand Retail Study. The Retail Study clearly indicates that should any big commercial development be considered, it must have a minimum extent of 30,000m<sup>2</sup> in order to access the secondary buying power needed for a successful venture. A community centre of 20,000m<sup>2</sup> in extend or a neighbourhood centre of 7,000m<sup>2</sup> to 12,000m<sup>2</sup> in extend will not satisfy the demand as identified in the Retail Study;
- in terms of Dr Prinsloo's report on Classification and Hierarchy of Retail Facilities in South Africa, a neighbourhood centre should cover a radius of 2km. This radius is already covered by Gateway Centre and the approved regional centre, and therefore saturation will be applicable because of the different supermarket groups competing in the same area.
- there are concern with regard to the immediate and long term impact of the proposed development on the road infrastructure and traffic flow. The area has seen an increase in traffic and the information in the TIA is outdated and no further new traffic information was provided to consider the traffic impact. The information provided is therefore insufficient to take an informed decision.
- the closing off of existing servitude access ways by the Municipality to properties will have an impact on traffic flow on such sites, road widening will impact on such sites and therefore impact on property rights. There will be a financial burden on the Municipality for possible litigation for the closing the access roads, due to the fact that the Sandbaai Main Road will become a municipal road.

### **7. Financial Implications**

None

### **8. Staff Implications**

None

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**9. Comments from other Departments, Divisions and Administrations**

**Engineering Services Department**

See Annexure M.

**Building Control Department**

See Heritage Minutes (attached as Annexure N)

**Traffic Department**

No objection.

**Electrical Department**

*“According to the latest application received the owner of Stand 1447 required a demand of 800 kVA. The electrical network in Sandbaai has sufficient capacity to supply the total demand of 800 kVA to Stand 1447.*

*The installation of a new 11 kV Bulk Metering/RMU and HV cables to accommodate the new demand will be for the cost of the owner.*

*The cost of the extra bulk contributions on the stand will be calculated according to the municipal tariffs applicable and will be for the account of the owner.”*

**Waste Management**

Big enough refuse area to be built according to municipal regulations.

**Fire Department**

Fire safety must comply with SANS 10400(T) regulations and all requirements of the Community Fire Safety By-Law.

**10. Annexures**

- Annexure A: Locality Plan
- Annexure B: Proposed Site Development Plan Alternative 1
- Annexure C: Motivation Report
- Annexure D: Objections received
- Annexure E: Applicant's comment on objections
- Annexure F: Comments: Department of Economic Development and Tourism
- Annexure G: Comments: Cape Nature
- Annexure H: Comments: Department of Agriculture : Western Cape
- Annexure I: Comments: Department of Agriculture : National

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- Annexure J: Comments: Telkom
- Annexure K: Comments: Heritage Western Cape
- Annexure L: Comments: Department of Transport and Public Works
- Annexure M: Services Report
- Annexure N: Local Heritage Committee comments made on 26 March 2009.
- Annexure O: Traffic Impact Assessment from ICE Group dated 16 July 2009
- Annexure P: Letter confirming approval of upgrade of electrical supply from the Municipality
- Annexure Q: Letters received from the Department of Environmental Affairs and Development Planning dated 25 November 2009 and 26 April 2011
- Annexure R: Executive Mayoral Committee Council Minutes dated 25 April 2012
- Annexure S: Letter from DEADP dated 31 July 2014 (Planning comment)
- Annexure T: Planning Circular 14/2012 from DEADP (Lapsing of Structure Plans)
- Annexure U: Overstrand Retail Study (by Doug Parker)
- Annexure V: Classification of Hierachy of Retail Facilities of South Africa Study (by Dr Dirk A Prinsloo)
- Annexure W: Additional motivation from Overplan & Associates dated 10 June 2015
- Annexure X: Survey Diagrams : Erven 2064 and 2152, Sandbaai
- Annexure Y: Survey Diagram : Erf 1545,Sandbaai

**RECOMMENDATION:**

1. that, in terms of Sections 17 and 24 of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985), the 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 approved**;
2. that, in terms of Section 4(7) of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985), the application for a consent use to allow a supermarket, bottle store and place of entertainment on the property, **not be approved** due to the following reasons:
  - (a) the removal of restrictive conditions has not been applied for, this renders the application for consent use for the selling of liquor invalid. This only impacts on the bottle store application and selling of liquor in the shops and possible restaurants;

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- (b) the proposed development is not in line with the Overstrand Retail Study. The Retail Study clearly indicates that should any big commercial development be considered, it must have a minimum extent of 30,000m<sup>2</sup> in order to access the secondary buying power needed for a successful venture. A community centre of 20,000m<sup>2</sup> in extent or a neighbourhood centre of 7,000m<sup>2</sup> to 12,000m<sup>2</sup> in extent will not satisfy the demand as identified in the Retail Study;
  - (c) in terms of Dr Prinsloo's report on Classification and Hierarchy of Retail Facilities in South Africa, a neighbourhood centre should cover a radius of 2km. This radius is already covered by Gateway Centre and the approved regional centre, and therefore saturation will be applicable because of the different supermarket groups competing in the same area;
  - (d) there are concern with regard to the immediate and long term impact of the proposed development on the road infrastructure and traffic flow. The area has seen an increase in traffic and the information in the TIA is outdated and no further new traffic information was provided to consider the traffic impact. The information provided is therefore insufficient to take an informed decision; and
  - (e) the closing off of existing servitude access ways by the Municipality to properties will have an impact on traffic flow on such sites, road widening will impact on such sites and therefore impact on property rights. There will be a financial burden on the Municipality for possible litigation for the closing the access roads, due to the fact that the Sandbaai Main Road will become a municipal road.
3. that the applicant be notified of its right of appeal in terms of Section 62 of the Local Government : Municipal Systems Act No 32 of 2000 with regard to the above conditions of approval.

<b>RESPONSIBLE OFFICIAL :</b>	<b>H OLIVIER</b>
<b>TARGET DATE FOR IMPLEMENTATION :</b>	<b>9 DECEMBER 2015</b>
<b>TARGET DATE TO INFORM APPLICANT :</b>	<b>9 DECEMBER 2015</b>
<b>TARGET DATE TO INFORM OBJECTOR :</b>	<b>9 DECEMBER 2015</b>

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11.

**ERF 1447, SANDBAAI : OVERSTRAND MUNICIPAL AREA : PROPOSED REZONING, SUBDIVISION, CONSENT USE AND AMENDMENT OF THE SPATIAL DEVELOPMENT FRAMEWORK : MESSRS OVERPLAN & ASSOCIATES ON BEHALF OF MESSRS ZAMAR INVESTMENTS (PTY) LTD**

1447 HSB (1214)

H Olivier

12 October 2015

(028) 313 8900

Hermanus Administration

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**THIS MATTER SERVED BEFORE THE JOINT PORTFOLIO COMMITTEE ON 17 NOVEMBER 2015, WHICH COMMITTEE RECOMMENDED AS FOLLOWS:**

**RECOMMENDATION:**

that the application **be withdrawn** from the agenda at the request of the applicant.

**RESPONSIBLE OFFICIAL :**

**H OLIVIER**

**TARGET DATE FOR IMPLEMENTATION :**

**9 DECEMBER 2015**

**TARGET DATE TO INFORM APPLICANT :**

**9 DECEMBER 2015**

**TARGET DATE TO INFORM OBJECTOR :**

**9 DECEMBER 2015**