



*Department of Environmental Affairs & Development Planning  
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- 9 The recommendations of the EAP as detailed in the Basic Assessment Report ("BAR") dated 30 September 2009 as well as the mitigation and rehabilitation measures detailed in the Construction Environmental Management Plan ("CEMP") and Operational Environmental Management Plan ("OEMP") dated February 2009 must be implemented.
- 10 The applicant must appoint a suitably experienced Environmental Control Officer ("ECO") before commencing with construction activities at the proposed site to ensure that the mitigation/rehabilitation measures and recommendations referred to in this environmental authorisation are implemented and to ensure compliance with the provisions of the CEMP
- 11 No surface or groundwater may be polluted due to any activity on the property/site. The relevant requirements of the National Water Act, 1998 (Act No. 36 of 1998) must be complied with at all times.
- 12 Should any heritage remains be exposed during excavations, these must immediately be reported to Heritage Western Cape. Heritage remains uncovered or disturbed during earthworks must not be disturbed further until the necessary approval has been obtained from Heritage Western Cape.
  - 12.1 If any archaeological remains (including but not limited to 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) are discovered during construction they must immediately be reported to Heritage Western Cape and must not be disturbed further until the necessary approval has been obtained from Heritage Western Cape.
  - 12.2 If any graves or unmarked human burials are discovered, they must be treated with respect and the South African Heritage Resources Agency ("SAHRA") must be notified immediately and they must not be disturbed further until the necessary approval has been obtained from SAHRA. An archaeologist must be contracted to remove the remains at the expense of the developer.
- 13 The applicant must, in writing, within 10 (ten) calendar days of receiving notice of the Department's decision to authorise the activity -
  - 13.1 Notify all registered Interested and Affected Parties ("I&APs) of the outcome of the application and the reasons for the decision; and
  - 13.2 Specify the date on which the authorisation was issued;
  - 13.3 Inform all registered I&APs of the appeal procedure provided for in Chapter 7 of the Regulations; and;
  - 13.4 Advise all registered I&APs that, should they wish to appeal that they 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 available to registered interested and affected parties is deemed to only start 10 calendar days after the date of issue of the Department's decision) and must submit their appeal within 30 days of the lodging of their notice of intention to appeal.
  - 13.5 Inform every I&AP that a prescribed Notice of Intention to Appeal form and Appeal form is obtainable from the Minister's office at tel (021) 483 3721, email jedevill@pgwc.gov.za or URL <http://www.capegateway.gov.za/eadp>.

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- 13.6 Inform all I&APs that should they wish to appeal, the appellant must serve on the applicant, on the same day that the notice of intent is lodged with the Minister, a copy of the notice of intention to appeal form 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.
- 13.7 If the applicant decides to appeal, the applicant must –
- 13.71 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);
  - 13.72 submit the appeal within 30 days of the lodging of the notice of intention to appeal; and
  - 13.73 serve a copy of the notice of intention to appeal, on the same date that the notice of intent is lodged with the Minister, on all registered I&APs 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.
- 14 The holder of the authorisation shall be responsible for ensuring compliance with the conditions by any person acting on his behalf, including but not limited to, an agent, sub-contractor, employee or any person rendering a service to the holder of the authorisation.
- 15 Any changes to, or deviations from, the project description set out in this environmental authorisation must be approved, in writing, by the Department before such changes or deviations may be effected. In assessing whether to grant such approval or not, the Department 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 of the authorisation to apply for further authorisation in terms of the Regulations.
- 16 The holder of the authorisation must submit an Environmental Audit Report, ("audit report") to this Directorate within one (1) year after construction has been completed and also after all disturbed areas have been rehabilitated.
- 16.1 The audit report must indicate the date on which construction was completed, and detail compliance with the conditions of this authorisation and the status of the rehabilitation programme.
  - 16.2 This Directorate may require remedial action should the audit report reflect that rehabilitation is inadequate.
  - 16.3 If the audit report is not submitted, this Directorate may give 30 days written notice and may have such an audit undertaken at the expense of the applicant and may authorise any person to take such measures necessary for this purpose.
- 15 The holder of this environmental authorisation must notify this Directorate and any other relevant authority, in writing, within 24 hours thereof if any condition of this authorisation is not adhered to.



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- g) The letter dated 31 July 2009 in which the Overstrand Municipality confirmed that it has adequate water sewer services and solid waste disposal capacity for the proposed project;
- h) Relevant information contained in the Departmental information base including – the Guidelines on Public Participation, Alternatives and Exemption applications (dated May 2009); and
- i) The objectives and requirements of relevant legislation, policies and guidelines, including Section 2 of the NEMA.

All information presented to the Department was taken into account in the Department's consideration of the application. A summary of the issues which, in the Department's view, were the most significant is set out below.

#### **Exemption**

The applicant has applied for and is granted exemption from having to fulfil the requirements of the following provisions of the PPP:

- Regulation 56(2)(c)(ii) – *“placing an advertisement in any official gazette that is published specifically for the purpose of providing public notice of applications or other submissions made in terms of the Regulations”.*
- Regulation 56(2)(d) – *“placing an advertisement in at least one provincial or national newspaper, if the activity has or may have an impact that extends beyond the boundaries of the metropolitan or local municipality in which it is or will be undertaken”.*

The exemption from having to comply with Regulation 56(2)(c)(ii) is granted, as an official gazette that is published for providing public notice of applications or other submissions does not yet exist. The exemption from having to comply with Regulation 56(2)(d) is granted as the appointed EAP indicated in the letter dated 17 November 2009 that the Hermanus Times newspaper in which this application was advertised is circulated in a much wider area than just the town of Hermanus.

#### **Environment**

The proposed site, Erf 1447, Sandbaal is situated within an urbanised area. The vegetation on the property is therefore isolated and cannot serve as an important biodiversity corridor. Furthermore, the on-site vegetation has already undergone significant transformation, as it is dominated by alien plant species. CapeNature in the letter dated 18 September 2009 confirms the above assertions.

Construction work at the proposed site will be limited to between 07h00 and 18h00 as per Condition 7 of this environmental authorisation. Heritage Western Cape in its RoD dated 18 February 2009 indicated that it has no objection regarding the proposed project and indicated some requirements that it would like the applicant to comply with. The applicant will have to comply with these requirements which are included in Condition 12 of this environmental authorisation to help prevent any heritage resources being destroyed at the project site.

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The construction phase of this development will have to be carried out in line with the CEMP dated February 2009 that was compiled by the appointed EAP as per Condition 9 and under the guidance of an experienced ECO as per Condition 10 of this environmental authorisation. Owing to all the abovementioned points, the construction phase of the proposed project is not expected to have significant environmental impacts.

In line with Condition 6 of this environmental authorisation, the applicant is required to have the storm water retention system that has been proposed for this development approved by the relevant section of the Overstrand Municipality before construction work at the proposed site may begin. This will help prevent the municipal storm water disposal system from being overwhelmed owing to this development.

The TIA Report dated 16 July 2009 that was compiled by ICE GROUPTy Ltd and appended to the BAR indicates that this development has little likelihood of causing significant impacts on traffic in the surrounding area. The Overstrand Municipality has indicated in its letter dated 31 July 2009 that it has adequate capacity to meet the potable water as well as waste water and solid waste disposal needs of this development. The waste water and solid waste generated by the proposed development will therefore be disposed of in an acceptable manner. The municipality also indicated requirements concerning electricity consumption and storm water disposal that the development must meet. The development is not expected to have significant visual impacts either, as the site is bordered by high density developments in the south and west. In addition to this, the mall will have an architectural style that is similar to that of the Hemel and Aarde Village Commercial Centre which is just across the R43 from the project site. In addition to all the above, the OEMP dated February 2009 that was compiled by the appointed EAP will have to be adhered to as per Condition 9 of this environmental authorisation. Owing to the above, it is not expected that the operational phase of this development will introduce significant environmental impacts in the area.

#### **Regional planning context**

The proposed site, Erf 1447, Sandbaai is situated within an urban area, but has Agriculture I zoning. An application will be submitted in terms of the Land Use Planning Ordinance, 1985 (Ordinance No. 15 of 1985) ("LUPO") for the property to be rezoned in the following manner:

- i. Business Zone I portion of 3.1695ha
- ii. Transport Zone I portion of 0.6285ha
- iii. Open Space II Zone portion of 0.3164ha

#### **Socio-economic**

This project will yield socio-economic benefits by injecting approximately R300 000 000 into the local economy and providing the local people with an estimated 300 jobs during the construction phase. It is estimated that 70% of these jobs will be taken up by Previously Disadvantaged Individuals. The operational phase of the project is expected to provide 600 permanent jobs, 70% of which are expected to be taken up by Previously Disadvantaged Individuals.

#### **NEMA Principles**

The National Environmental Management principles set out in Section 2 of the NEMA apply to the actions of all organs of state and serve as guidelines by reference to which all organs of state must exercise any function when taking decisions in terms of the said Act.

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The Department applied the said principles by adopting a holistic interpretation of the term "environment" in the identification and assessment of potential impacts during the EIA process and by taking cognisance of the three pillars (biophysical, social and economic) of sustainable development.

### **Alternatives**

Three alternatives for the proposed activity were considered and they are described below.

#### **Alternative 1**

This alternative involves the rezoning of Erf 1447, Sandbaai from Agriculture Zone I to Business Zone I, Transport Zone I and Open Space Zone II portions.

The Business Zone I portion will be approximately 3.6195ha in size and will have a shopping mall constructed on it that has approximately 2ha of floor area that can be rented out for usage as shops. The maximum roof height of the mall on the northern side will be approximately 10m from the ground as opposed to 15m in the south. The mall will have a total of approximately 1200 parking spaces, of which approximately 750 will be situated at basement level. The remainder of approximately 350 parking spaces will be situated at ground level on the sides of the mall that face the R43 and Sandbaai Main Road and three of them will be set aside for public transport purposes.

The 0.6285ha Transport Zone I portion of the development consists of a left turning road from the R43 that will be constructed to enable motorists to drive to the mall from the R43 and vice versa. This access road will be located approximately 220m west of the intersection of the R43 and Sandbaai Roads. Another access road will be constructed to enable motorists to drive from Sandbaai Main Road to the mall and vice versa. An internal road will be constructed to link the access roads with the basement as well as ground level parking areas. Delivery vehicles will gain access to the loading zones by means of the road that will be constructed on the south-facing side of the mall. Pedestrian sidewalks will be constructed along the whole length of the western side of Erf 1447, Sandbaai to link the three public transport parking spaces with the mall.

The 0.3164ha Open Space II Zone together with the 12m road reserve will form a 27m wide green buffer between the development and the residential properties situated in the south and west of the Erf 1447, Sandbaai.

Storm water from the development will be transmitted through pipelines with a maximum diameter of 300mm as well as open channels of approximately 250mmx450mm into a 2000m<sup>3</sup> storm water attenuation pond that will be provided in the south-western corner of the project site. A 300mm pipe will be provided to transmit storm water collected in the attenuation pond southwards into an existing pipeline of 600mm in diameter storm water pipeline on Bergsig Street. Waste water produced by the development will be transmitted through pipelines into the municipal sewerage system and solid waste will be disposed of at a municipal landfill site.

This is the alternative that the applicant prefers.

#### **Alternative 2**

This alternative involves the rezoning of Erf 1447, Sandbaai from Agriculture Zone I to Business Zone I, Transport Zone I, Open Space Zone II, Residential Zone III and Authority Zone portions.

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The Business Zone I portion will be approximately 2.582ha in size and will have a shopping mall constructed on it that has approximately 2ha of floor area that can be rented out for usage as shops. The maximum roof height of the mall on the northern side will be approximately 15m from the ground as opposed to 10m in the south. The mall will have a total of approximately 1200 parking spaces, of which approximately 750 will be situated at basement level. The remainder of approximately 350 parking spaces will be situated at ground level on the sides of the mall that face the R43 and Sandbaai Main Road and three of them will be set aside for public transport purposes.

The 1.1994ha Transport Zone I portion of the development consists of a left turning road from the R43 that will be constructed to enable motorists to drive to the mall from the R43 and vice versa. This access road will be located approximately 220m west of the intersection of the R43 and Sandbaai Roads. Another access road will be constructed to enable motorists to drive from Sandbaai Main Road to the mall and vice versa. An internal road will be constructed to link the access roads with the basement as well as ground level parking areas. Delivery vehicles will gain access to the loading zones by means of the road that will be constructed on the south-facing side of the mall. Pedestrian sidewalks will be constructed along the whole length of the western side of Erf 1447, Sandbaai to link the three public transport parking spaces with the mall.

The Residential Zone III portion of the development consists of a 38m wide row of houses that together cover approximately 0.9566ha along the southern and western border of the project site. This residential portion of the development incorporates an 8m wide road that will provide access to the houses.

The Open Space Zone II portion of the development will cover an area that is approximately 0.1070ha in size. One of the open spaces will be situated in the south-eastern corner project site and the other two will be situated towards the north-western part of the project site.

The Authority zone portion of the development will cover 0.0176ha and will be used as an electrical substation.

Storm water from the development will be transmitted through a pipeline of approximately 825mm in diameter into an open channel of approximately 250mmx450mm into a 2000m<sup>3</sup> storm water attenuation pond that will be provided in the south-western corner of the project site. A pipeline of approximately 525mm in diameter will be provided to transmit storm water collected in the attenuation pond southwards into an existing storm water pipeline of approximately 600mm in diameter on Bergsig Street. Waste water produced by the development will be transmitted through pipelines into the municipal sewerage system and solid waste will be disposed of at a municipal landfill site.

### **Alternative 3**

This alternative involves the rezoning of Erf 1447, Sandbaai from Agriculture Zone I to Business Zone I, Transport Zone I, Open Space Zone II, Residential Zone III and Authority Zone portions.

The Business Zone I portion will be approximately 2.6417ha in size and will have a shopping mall constructed on it that has approximately 2ha of floor area that can be rented out for usage as shops. The maximum roof height of the mall on the northern side will be approximately 15m from the ground as opposed to 10m in the south.

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The mall will have a total of approximately 1200 parking spaces, of which approximately 750 will be situated at basement level. The remainder of approximately 350 parking spaces will be situated at ground level on the sides of the mall that face the R43 and Sandbaai Main Road and three of them will be set aside for public transport purposes.

The 0.9347ha Transport Zone I portion of the development consists of a left turning road from the R43 that will be constructed to enable motorists to drive to the mall from the R43 and vice versa. This access road will be located approximately 220m west of the intersection of the R43 and Sandbaai Roads. Another access road will be constructed to enable motorists to drive from Sandbaai Main Road to the mall and vice versa. An internal road will be constructed to link the access roads with the basement as well as ground level parking areas. Delivery vehicles will gain access to the loading zones by means of the road that will be constructed on the south-facing side of the mall. Pedestrian sidewalks will be constructed along the whole length of the western side of Erf 1447, Sandbaai to link the three public transport parking spaces with the mall.

The Residential Zone III portion of the development covers approximately 0.9003ha. It consists of two rows of houses along the southern and western borders of the project site. The two rows of houses will have road of approximately 8m in width passing in between.

The Open Space Zone II portion of the development will cover an area that is approximately 0.3679ha in size. One of the open spaces will form a buffer between the mall and the residential houses, whereas two small open spaces will be located on the verge of the R43 and two small others will be located on the verge of Bergsig Street.

The Authority zone portion of the development will cover 0.0180ha and will be used as an electrical substation.

#### **Alternative 4**

The "no-go" alternative was also considered, i.e. the alternative of not proceeding with the proposed rezoning of Erf 1447, Sandbaai. This would mean that the proposed site would remain vacant and that the environmental impacts associated with the other alternatives would be averted. However, this alternative also means that the socioeconomic benefits that can be expected in Hermanus owing to the other alternatives will not be realised.

#### **Rationale for authorising Alternative 1**

Alternative 1 was deemed to be the most desirable alternative as it is associated with fewer but larger land portions of different zoning on Erf 1447, Sandbaai than Alternative 2 and 3. The larger land portions reduce the likelihood of a cluttered development and the associated congestion that is likely to be experienced by shoppers visiting the mall and the residents living in the houses contemplated in Alternatives 2 and 3. In addition to this, the occupants of the houses forming part of the development in Alternative 2 and 3 are likely to keep being inconvenienced by vehicles delivering goods to the mall as the said vehicles will be using the road passing in front of these houses to reach the loading zones.

Alternative 2 involves fewer residential houses on Erf 1447, Sandbaai than Alternative 3. Alternative 2 is therefore more desirable as its layout is less cluttered. Shoppers visiting the mall as well as the residents of the houses contemplated in these two alternatives are therefore likely to suffer less congestion in the case of Alternative 2 than Alternative 3.

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The "no-go" alternative was deemed to be the least desirable alternative as it means that the proposed development would not provide the people of Hermanus with any socioeconomic benefits, even though there is an opportunity for the said benefits to be realised by authorising either Alternative 1, 2 or 3. The "no-go" alternative is therefore deemed to be out of step with the principles of sustainable development stipulated in Section 2 of the NEMA.

**Public Participation**

The PPP that was undertaken included the following:

- i. Putting up an on-site notice board.
- ii. Giving written notice to the municipality that has jurisdiction in the area.
- iii. Giving written notice to the municipal ward councillor responsible for the area in which the proposed site is situated.
- iv. Giving written notice to the Western Cape Department of Transport, Roads and Public Works.
- v. Giving written notice to the CapeNature.
- vi. Giving written notice to the Western Cape Department of Agriculture.
- vii. Giving written notice to Heritage Western Cape.
- viii. Placing an English and Afrikaans advertisement in a regional newspaper called the Hermanus Times on 28 August 2008.
- ix. Giving written notice to the owners and occupiers of land within 100m of the site where the activity is to be undertaken.
- x. Opening a register of the I&APs that commented on the proposed project and appending a record of their comments to the final BAR.

This Department requested the applicant to submit additional information addressing the comments of I&APs that had not been addressed to the satisfaction of the Department. Heritage Western Cape indicated in its RoD dated 18 February 2009 that it has no objection to the proposed project. The Western Cape Department of Agriculture stated in its letter dated 25 February 2008 that in principle it has no objection to the development proposal. CapeNature stated in its letter dated 18 September 2009 that it has no objection to the development proposal. The Overstrand Municipality as the municipality that has jurisdiction in the area indicated in its letter dated 31 July 2009 that it has adequate capacity to meet the needs of the development in terms of potable water and the disposal of waste water and solid waste. The municipality also indicated requirements that the applicant must meet concerning storm water disposal and electricity consumption. The Western Cape Department of Transport and Public Works indicated in its letter dated 10 June 2009 that it has no objection to the development proposal as long as certain requirements that have been listed in the said letter are met.

In light of the above, this Directorate is satisfied that, subject to compliance with the conditions contained in this environmental authorisation, the proposed activity will not conflict with the general objectives of integrated environmental management laid down in Chapter 5 of the NEMA and that any potentially detrimental environmental impacts resulting from the proposed activity can be mitigated to acceptable levels. The application is accordingly granted.