

MINUTES OF THE MAYORAL COMMITTEE MEETING25 APRIL 2012

7.

**PORTION 1 OF THE FARM HOEK VAN DIE BERG NR 572, CALEDON DISTRICT, OVERSTRAND MUNICIPAL AREA : PROPOSED REZONING, CONSENT USE AND AMENDMENT OF THE GREATER HERMANUS AND OVERSTRAND MUNICIPAL WIDE SPATIAL DEVELOPMENT FRAMEWORKS : WEKITA ONE (PTY) LTD**

**Ptn 1 of Farm 572 (982)**

**H Olivier**

**(028) 313 8179**

**Hermanus Administration**

**16 January 2012**

**EXECUTIVE SUMMARY**

An application has been received from Messrs. Plan Active on behalf of Messrs. Wekita One (Pty) Ltd for the Amendment of the Greater Hermanus Spatial Development Framework (Structure Plan) and the Overstrand Municipal Wide Spatial Development Framework, Rezoning and Consent Uses to accommodate a regional shopping centre on Portion 1 of Farm Hoek van die Berg No. 572, Caledon District.

The Title Deed also contains restrictive conditions with regard to the selling of liquor from the property and also with regard to servitudes registered in favour of the Municipality. These conditions can be dealt with by obtaining consent from the existing land owner of the Remainder and Municipality. Consent was provided from the existing land owner of the Remainder to sell liquor and the Municipality is also requested to allow for the relaxation of the servitudes.

**RESOLVED**

1. that in terms of Section 16 of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985) application for the rezoning of Portion 1 of the Farm "Hoek van die Berg" No. 572 from Undetermined Zone to Business Zone I, **be recommended for approval by the Department of Environmental Affairs and Development Planning**, subject to the following conditions:
  - (a) that a positive EIA Record of Decision be obtained from the Department of Environmental Affairs and Development Planning;
  - (b) that planning approval be obtained on a portion of Erf 170, Hawston (municipal land) and a portion of Portion 8 of farm Hoek van die Berg No. 572, Caledon District to accommodate the additional access road from Harbour Road in Hawston to the property;
  - (c) that approval be obtained from Heritage Western Cape;

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- (d) that the main entrance/egress road to the property directly off the R43 be amended on the Site Development Plan not to encroach onto the Remainder of Farm Hoek van die Berg No. 572, or alternatively a planning application be submitted to consider such application;
- (e) that an amended Site Development Plan be submitted for approval at the Municipality with all amendments, as required by the Municipality and State Departments;
- (f) that Phase I of the development may only provide for a mall of 30 000m<sup>2</sup> GLA and that any future phases be in line with time frames indicated in the Retail Study performed by Douglas Parker or any further retail studies as may be required by Council for such phasing
- (g) that this approval does not absolve the applicant/owner from compliance with any other relevant legislation;
- (h) that all other development parameters as prescribed in the Zoning Scheme be retained;
- (i) that a minimum of six (6) parking bays for every 100m<sup>2</sup> gross leasable area be provided;
- (j) that a Landscape Plan be submitted for consideration by the Municipality for the development and that the Municipality reserves the right to impose conditions upon approval of this plan;
- (k) that internal services remains the responsibility of the developer/owner or his/her successor in title;
- (l) that all conditions imposed by Eskom in their letter dated 19 June 2009 (attached as Annexure H) be complied with;
- (m) that all conditions imposed by the Department of Water Affairs and Forestry in their letter dated 1 December 2009 (attached as Annexure J), be complied with;
- (n) that all conditions imposed by the Department of Agriculture : Western Cape in their letter dated 15 June 2009 (attached as Annexure K), be complied with;

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- (o) that all conditions imposed by the Department of Agriculture : National in their letter dated 18 December 2009 (attached as Annexure L), be complied with;
  - (p) that all conditions imposed by Telkom in their letter dated 14 August 2009 (attached as Annexure M), be complied with;
  - (q) that all conditions imposed by District Health in their letter dated 24 June 2009 (attached as Annexure N), be complied with;
  - (r) that the conditions imposed by the Department of Transport and Public Works in their letter dated 21 January 2010 (attached as Annexure O), be complied with, with exception of the condition not supported by the Municipal Engineering Branch as indicated in the Services Report, and that the matter be resolved to the satisfaction of the Department of Transport and Public Works and the Municipal Director : Infrastructure and Planning;
  - (s) that all conditions imposed in the Services Report be complied with;
  - (t) that fire safety must comply with amended SANS 10400 regulations Section S, T, W and the Overstrand Municipality Community Fire Safety By-Laws, read in conjunction with SANS 10400, and
  - (u) that the refuse area must be built according to municipal specifications and an area for recyclable products must also be provided.
2. that in terms of Clause 4.7 of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985), a consent use to establish a supermarket, bottle store and place of entertainment on the property, **be approved**, subject to the approvals of Points 1 by the Department of Environmental Affairs and Development Planning, and
3. that subject to the approval of Points 1 and 2 above by the Department of Environmental Affairs and Development Planning, that the relaxation of Conditions C (1), (2) and (3) from Title Deed T7630/1999, be recommended **for approval** by the Department of Environmental Affairs and Development Planning.

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**RECOMMENDATION TO THE COUNCIL**

1. 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 Portion 1 of the Farm "Hoek van die Berg" No. 572 from Primary Natural Area to Commercial Node, to accommodate a Regional Shopping Centre, **be recommended for approval by the Department of Environmental Affairs and Development Planning, and**
2. that in terms of Section 34 of the Local Government Municipal Systems Act 32 of 2000, the application for the Amendment of the Overstrand Municipal Spatial Development Framework in order to change the reservation of Portion 1 of the Farm "Hoek van die Berg" No. 572 from Natural Open Space and Residential to Commercial, to accommodate a Regional Shopping Mall, **be approved.**

**RESPONSIBLE OFFICIAL : H OLIVIER**

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

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

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

**5.6**

**PORTION 1 OF THE FARM HOEK VAN DIE BERG NR 572, CALEDON DISTRICT, OVERSTRAND MUNICIPAL AREA : PROPOSED REZONING, CONSENT USE AND AMENDMENT OF THE GREATER HERMANUS AND OVERSTRAND MUNICIPAL WIDE SPATIAL DEVELOPMENT FRAMEWORKS : WEKITA ONE (PTY) LTD**

**(ITEM 7, PAGE 543 : INFRASTRUCTURE & PLANNING PORTFOLIO : MAYORAL COMMITTEE 25 APRIL 2012)**

**RESOLVED (UNANIMOUSLY)**

1. 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 Portion 1 of the Farm "Hoek van die Berg" No. 572 from Primary Natural Area to Commercial Node, to accommodate a Regional Shopping Centre, **be recommended for approval by the Department of Environmental Affairs and Development Planning, and**
2. that in terms of Section 34 of the Local Government Municipal Systems Act 32 of 2000, the application for the Amendment of the Overstrand Municipal Spatial Development Framework in order to change the reservation of Portion 1 of the Farm "Hoek van die Berg" No. 572 from Natural Open Space and Residential to Commercial, to accommodate a Regional Shopping Mall, **be approved.**

**RESPONSIBLE OFFICIAL :****H OLIVIER****TARGET DATE FOR IMPLEMENTATION : 4 MAY 2012****TARGET DATE TO INFORM APPLICANT : 11 MAY 2012****TARGET DATE TO INFORM OBJECTORS : 11 MAY 2012**



**Western Cape  
Government:**  
Environmental Affairs and  
Development Planning

FILE NO: Ptn/572	DIRECTORATE: LAND MANAGEMENT (REGION 2)
OPERATOR NO: 652669	

TP - A Theart

Garon.Campbell@westerncape.gov.za  
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1 Dorp Street, Cape Town, 8000  
[www.westerncape.gov.za/eadp](http://www.westerncape.gov.za/eadp)

REFERENCE: 15/3/1/2/1/E2/T3/Portion 1 of Farm 572, Hawston  
ENQUIRIES: G. Campbell

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



### OVERSTRAND MUNICIPALITY: REZONING OF PORTION 1 OF FARM 572, HAWSTON

1. Your letter with reference *Ptn 1 of Farm 572 (982)* 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.
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. It is agreed that the Municipal planner's interpretation of the local plans for the area, namely the Greater Hermanus Sub-regional SDF, Overstrand Municipal Wide SDF and the Overstrand Municipal Growth Management Strategy are correct. All these plans call for the property to be used as natural open space with a small component for development. In addition, the plans indicate that the Hermanus CBD is the area with the greatest population and where the largest economic growth is expected. The subject property is also earmarked as an area where small scale development can occur given its proximity to the nature reserve which acts as a link between the mountain and the sea. We do not consider the proposed development to be a small scale development.
2. The Overstrand Growth Management Strategy, 2010 also indicates that only small scale retail activities should occur within the Hawston area. The proposed development would represent a large scale development, which would not be consistent with the plan. In addition, the plan identifies the section of the R43, which runs along Hawston, to be a visually sensitive road.
3. In terms of the objections raised, the most important of these relate to the application not being consistent with the forward planning documents, that there are sufficient shopping opportunities in Hawston/Vermont to cater for community needs, and concerns over the close proximity of the proposed development to the nature reserve. It is noted that Cape Nature has indicated that the buffer from the subject property to the nature reserve is currently sufficient. It is agreed that the proposed development is not consistent with the local plans for the area and it is felt that although a regional shopping mall in the area can be justified, however, the current location is not appropriate for a regional shopping mall.
4. The Municipal planner has indicated that the proposed development will not have access to an electricity supply for at least the next 3 to 5 years. In addition to this, it must be noted that there are currently several applications for shopping malls in the Greater Hermanus area and that they need to be considered collectively to ensure that the sustainability of the Hermanus CBD is maintained and that the specific location of a regional shopping mall will not have an adverse impact on the traffic flow in the area, especially if shopping malls are approved on an ad hoc basis.

5. The secondary access road off the R43 is also not supported by the Municipal Engineering Branch, whilst the Department of Transport made it a requirement. This places uncertainty with regard to the viability of the application with regards to accessibility.
6. As a matter of public policy, planning should be done to cater for the most disenfranchised/poor members of society. Higher income households have greater choice in terms of transport and therefore amenities should be located in close proximity to low income households or near public transport as lower income households tend to have fewer choices in terms of their mobility.
7. The Retail Study indicated that a regional shopping centre should be located near the Hermanus CBD to ensure a core shopping area in the region. In addition, the Retail Study indicates that Zwelihle, Mount Pleasant and Hermanus CBD have the highest population densities and that retail opportunities need to be created in close proximity to the residents of those areas. The location of the proposed development is at least 5km away from those areas. The proposed development is, therefore, not consistent with the findings of the Retail Study.
8. Section 36 of the Land Use Planning Ordinance, 1985 (No 15 of 1985) indicates that an application can be denied solely on the basis of a lack of desirability or its impact on existing rights. It is felt that the current application is undesirable in that the Municipality does not have sufficient electricity to support the development as the Municipality has already earmarked the available electrical supply in the area for low cost housing and a light industrial development. In addition, a regional shopping mall is not desirable near such a critical ecological link between the mountain and the sea, due to the scale thereof. The location of the proposed development is in conflict with all of the the publically endorsed forward planning documents for the area.
9. It must be noted that the Municipal planner motivated extensively why the application for a regional shopping mall is not regarded as desirable and why it should not be supported. The Council, however, decided to support the application without providing any motivation for their contradictory decision.
10. Based on existing and proposed retail facilities in the Hermanus area, e.g. the Retail Africa Regional Mall on erven 1449, 1450, 1452 and 1734, Sandbaai, the appropriate scale of the Hawston Mall had to be assessed and determined. This was based on market feasibility studies that were undertaken. Should the maximum GLA for the Hermanus area be

exceeded it would have unacceptable socio-economic impacts which would be experienced by existing business in the area as well as the CBD.

11. In light of the aforementioned and the fact that it has been determined that the location of the proposed retail facility on erven 1449, 1450, 1452 and 1734, Sandbaai is better suited for a regional shopping mall, it is clear that a reduced retail area is required for the Hawston community. It is felt that the GLA of the proposed development should not exceed 10 000m<sup>2</sup> if approved.



DIRECTORATE: LAND MANAGEMENT  
REGION 2

TP

EIA REFERENCE NUMBER: E12/2/3/1-E4/5-0016/09  
ENQUIRIES: Adrian Pietersen  
DATE OF ISSUE: 2014-01-06

The Board of Directors  
Wekita One (Pty) Ltd  
Postnet Suite 1  
Private Bag X22  
TYGER VALLEY  
7536

FILE NO:	EL
	Ph 1 / 572
SCAN NO:	
COLLABORATOR NO:	579783

Attention: Mr. Lambertus van Zyl

Tel.: (021) 914 6444  
Fax: (021) 914 6247

Dear Sir

**APPLICATION FOR ENVIRONMENTAL AUTHORISATION IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) AND THE ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, 2010: THE PROPOSED RETAIL FACILITY ON PORTION 1 OF THE FARM NO. 572, HAWSTON**

With reference to your application for the abovementioned, find below the outcome with respect to this application.

**ENVIRONMENTAL AUTHORISATION**

**DECISION**

By virtue of the powers conferred on it by the National Environmental Management Act, 1998 (Act No. 107 of 1998) ("NEMA") and the Environmental Impact Assessment ("EIA") Regulations of 2006 and the EIA Regulations of 2010, the competent authority herewith **grants partial environmental authorisation** to the applicant to undertake the list of activities specified in section B below with respect to the "Authorised Alternative" (See Annexure 1, Section 2).

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tel: +27 483 8377 fax: +27 21 483 4372

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

TP 06 JAN 2014

**A. DETAILS OF THE APPLICANT**

Wekita One (Pty) Ltd  
% Mr. Lambertus van Zyl  
Postnet Suite 1  
Private Bag X22  
**TYGER VALLEY**  
7536

Tel.: (021) 914 6444  
Fax: (021) 914 6247

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

**B. LIST OF ACTIVITIES AUTHORISED**

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

**Item 1 (k)** "The construction of facilities or infrastructure, including associated structures or infrastructure, for the bulk transportation of sewage and water, including storm water, in pipelines with –

- (i) an internal diameter of 0,36 metres or more; or
- (ii) a peak throughput of 120 litres per second or more."

**Item 1(v)** "The construction of facilities or infrastructure, including associated structures or infrastructure, for advertisements as defined in classes 1(a), 1 (b), 1 (c), 3 (a), 3 (b), 3 (l) of the South African Manual for Outdoor Advertising Control."

**Item 15** "The construction of a road that is wider than 4 metres or that has a road reserve wider than 6 metres, excluding roads that fall within the ambit of another listed activity or which are access roads of less than 30 meters long."

**Item 16** "The transformation of undeveloped, vacant or derelict land to –

- (a) establish infill development covering an area of 5 hectares or more, but less than 20 hectares; or
- (b) residential, mixed, retail, commercial, industrial or institutional use where such development does not constitute infill and where the total area to be transformed is bigger than 1 hectare."

**Item 18** "The subdivision of portions of land 9 hectares or larger into portions of 5 hectares or less."

Government Notice No. R. 544 of 18 June 2010, being:

**Activity No. 9**

"The construction of facilities or infrastructure exceeding 1000 metres in length for the bulk transportation of water, sewage or storm water -

- (i) with an internal diameter of 0,36 metres or more; or
- (ii) with a peak throughput of 120 litres per second or more,

excluding where:

- a. such facilities or infrastructure are for bulk transportation of water, sewage or storm water or storm water drainage inside a road reserve; or
- b. Where such construction will occur within urban areas but further than 32 metres from a watercourse, measured from the edge of the watercourse."

**Activity No. 22**

"The construction of a road, outside urban areas,

- (i) with a reserve wider than 13,5 meters or,
- (ii) where no reserve exists where the road is wider than 8 metres, or
- (iii) for which an environmental authorisation was obtained for the route determination in terms of activity 5 in Government Notice 387 of 2006 or activity 18 in Notice 545 of 2010."

**Activity No. 23**

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

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

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

except where such transformation takes place -

(i) for linear activities; or

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

**Activity No. 47**

"The widening of a road by more than 6 metres, or the lengthening of a road by more than 1 kilometre -

- (i) where the existing reserve is wider than 13,5 meters; or
  - (ii) where no reserve exists, where the existing road is wider than 8 metres –
- excluding widening or lengthening occurring inside urban areas."

Government Notice No. R. 546 of 18 June 2010, being:

**Activity No. 4**

"The construction of a road wider than 4 metres with a reserve less than 13,5 metres.  
In Western Cape:

- i. In an estuary;
- ii. All areas outside urban areas;
- iii. In urban areas:
  - (aa) Areas zoned for use as public open space within urban areas; and
  - (bb) Areas designated for conservation use in Spatial Development Frameworks adopted by the competent authority, or zoned for a conservation purpose."

**Activity No. 12:**

"The clearance of an area of 300 square metres or more of vegetation where 75% or more of the vegetative cover constitutes indigenous vegetation.

- (a) Within any critically endangered or endangered ecosystem listed in terms of section 52 of the NEMBA or prior to the publication of such a list, within an area that has been identified as critically endangered in the National Spatial Biodiversity Assessment 2004;
- (b) Within critical biodiversity areas identified in bioregional plans;
- (c) Within the littoral active zone or 100 metres inland from high water mark of the sea or an estuary, whichever distance is the greater, excluding where such removal will occur behind the development setback line on erven in urban areas."

**Activity No. 13:**

"The clearance of an area of 1 hectare or more of vegetation where 75% or more of the vegetative cover constitutes indigenous vegetation, except where such removal of vegetation is required for:

- (1) the undertaking of a process or activity included in the list of waste management activities published in terms of section 19 of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008), in which case the activity is regarded to be excluded from this list.
- (2) the undertaking of a linear activity falling below the thresholds mentioned in Listing Notice 1 in terms of GN No. 544 of 2010.

(c) In the Western Cape:

- i. In an estuary;
- ii. Outside urban areas, the following:
  - (aa) A protected area identified in terms of NEMPAA, excluding conservancies;
  - (bb) National Protected Area Expansion Strategy Focus areas;
  - (cc) Sensitive areas as identified in an environmental management framework as contemplated in chapter 5 of the Act and as adopted by the competent authority;
  - (dd) Sites or areas identified in terms of an International Convention;
  - (ee) Core areas in biosphere reserves;
  - (ff) Areas within 10 kilometres from national parks or world heritage sites or 5 kilometres from any other protected area identified in terms of NEMPAA or from the core area of a biosphere reserve;
  - (gg) Areas seawards of the development setback line or within 1 kilometre from the high-water mark of the sea if no such development setback line is determined.
- iii. In urban areas, the following:
  - (aa) Areas zoned for use as public open space;
  - (bb) Areas designated for conservation use in Spatial Development Frameworks adopted by the competent authority or zoned for a conservation purpose;
  - (cc) Areas seawards of the development setback line;
  - (dd) Areas on the watercourse side of the development setback line or within 100 metres from the edge of a watercourse where no such setback line has been determined."

**Activity No. 19**

"The widening of a road by more than 4 metres, or the lengthening of a road by more than 1 kilometre.

In Western Cape:

- i. In an estuary;
- ii. All areas outside urban areas;
- iii. In urban areas:
  - (aa) Areas zoned for use as public open space within urban areas;
  - (bb) Areas designated for conservation use in Spatial Development Frameworks adopted by the competent authority, or zoned for a conservation purpose, within urban areas."

The abovementioned list is hereinafter referred to as "the listed activity/ies".

**Environmental Authorisation is only granted in respect of part of what was applied for.** The applicant is herein authorised to undertake the following alternative (the "Authorised Alternative") related to the listed activities:

The development involves the proposal for a retail facility and associated infrastructure on the property. Additional infrastructure includes access roads off the R43 main road, an internal road network, parking areas and a stormwater drainage system. The Gross Leasable Area ("GLA") of the shopping centre must be limited to 10,000 m<sup>2</sup>.

A minimum 30m wide landscaped fynbos corridor along the R43 and the protection of all large Milkwood trees on site, will be incorporated into the layout. The contemporary design of the shopping centre is intended to minimise the visual impacts on the surrounding areas.

The 10,000 m<sup>2</sup> GLA and associated infrastructure must be placed on the property in such a way as to maximize the width of the mountain to sea ecological corridor as indicated in the Overstrand Spatial Development Framework (October 2006) and must be placed adjacent to the R43 and as close to the existing urban fabric as possible.

The proposed development infrastructure will, *inter alia*, include the following:

- Access points off the R43 main road and parking areas will be constructed to meet municipal standards utilising concrete kerbs, crushed stone layer works and asphalt surfacing. The parking area will be restricted to the size required for a 10 000m<sup>2</sup> shopping centre.
- The stormwater system design will incorporate, amongst others, one of the following or a combination thereof. An on-site bulk system consisting of swales and unlined channels

to allow collected stormwater to be treated/ polished and to soak away in the underlying sandy substrata. Excess runoff will be collected and detained in four retention ponds that are to be constructed in the corners of the site. An estimated 1600m<sup>3</sup> storage is required for this purpose. In addition, porous asphalt with underlying stone beds can be constructed. Stormwater that will drain through the asphalt, is held in the stone bed, and infiltrates slowly into the underlying soil. Where necessary, an internal stormwater pipe system will be provided to intercept the two-year storm flows from the surfaced roads and parking areas. All roads and parking areas will be kerbed and surfaced, and be provided with catch pits using kerb inlets to collect the runoff. Larger flows will be accommodated via the roads and parking areas to the open channels.

- Water supply to the development will be provided from existing municipal sources in the vicinity. There is currently adequate capacity in the Hawston reservoir and municipal reticulation network.
- The development will be connected to the existing municipal sewer network. This connection will be 900m long with a 160mm radius gravity main along Kopje Street and a pump station and a 380m long connection with a 110mm radius rising main to Vlei Road. Sufficient capacity currently exists in the bulk municipal sewer system to accommodate the development.

### C. PROPERTY DESCRIPTION AND LOCATION

The listed activities are proposed to take place on Portion 1 of the Farm No. 572, Hawston. The site is directly south-east of Hawston, next to the R43 main road to Hermanus.

The SG 21 digit code is: C01300120000057200001  
Co-ordinates: 34° 23' 55" South  
19° 08' 05" East

hereinafter referred to as "the site".

### D. DETAILS OF THE ENVIRONMENTAL ASSESSMENT PRACTITIONER

Mark Berry Environmental Consultants  
% Mr. Mark Berry  
P. O. Box 1456  
**GORDON'S BAY**  
7151

Tel./Fax: (021) 856 1148

## E. CONDITIONS OF AUTHORISATION

1. This environmental authorisation is valid for a period of **five years** from the date of issue. The holder must start with the listed activities within the said period or this environmental authorisation lapses and a new application for environmental authorisation must be submitted to the competent authority, unless the holder has lodged a valid application for the amendment of the validity period of this environmental authorisation, before the expiry of this environmental authorisation. In such instances, the validity period will be automatically extended ("the period of administrative extension") from the day before this environmental authorisation would otherwise have lapsed, until the amendment application for the extension of the validity period is decided. The listed activities, including site preparation, may not commence during the period of administrative extension.
2. The listed activities, including site preparation, may not commence within 20 (twenty) calendar days of the date of issue of this environmental authorisation. In the event that an appeal notice and subsequent appeal is lodged with the competent authority, the effect of this environmental authorisation may be suspended until such time as the appeal is decided.
3. The applicant must in writing, within 12 (twelve) calendar days of the date of this decision and in accordance with Regulation 10(2)–
  - 3.1 notify all registered Interested and Affected Parties of –
    - 3.1.1 the outcome of the application;
    - 3.1.2 the reasons for the decision as included in Annexure 1;
    - 3.1.3 the date of the decision; and
    - 3.1.4 the date of issue of the decision;
  - 3.2 draw the attention of all registered Interested and Affected Parties to the fact that an appeal may be lodged against the decision in terms of Chapter 7 of the Environmental Impact Assessment Amendment Regulations, 2010 detailed in section F below;
  - 3.3 draw the attention of all registered Interested and Affected Parties to the manner in which they may access the decision; and

- 3.4 publish a notice in the newspapers contemplated in Regulation 54(2)(c) and (d), and which newspaper was used for the placing of advertisements as part of the Public Participation Process, that –
  - 3.4.1 informs all Interested and Affected Parties of the decision;
  - 3.4.2 informs all Interested and Affected Parties where the decision can be accessed; and
  - 3.4.3 informs all Interested and Affected Parties that an appeal may be lodged against the decision in terms of Chapter 7 of the Regulations
4. Seven calendar days' notice, in writing, must be given to the competent authority before commencement of construction activities.
  - 4.1 The notice must make clear reference to the site details and EIA Reference number given above.
  - 4.2 The notice must also include proof of compliance with the following conditions described herein:  
Conditions: 2, 3, 12, 20, 24, 28 and 32
5. The holder of the environmental authorisation is responsible for ensuring compliance with the conditions by any person acting on his/her behalf, including an agent, sub-contractor, employee or any person rendering a service to the holder.
6. Any changes to, or deviations from the scope of the description set out in section B above must be accepted or approved, in writing, by the competent authority before such changes or deviations may be implemented. In assessing whether to grant such acceptance/approval or not, the competent authority may request such information as it deems necessary to evaluate the significance and impacts of such changes or deviations and it may be necessary for the holder to apply for further authorisation in terms of the applicable legislation.
7. The applicant must notify the competent authority in writing, within 24 hours thereof if any condition herein stipulated is not being complied with.
8. The Construction Phase Environmental Management Plan ("EMP") submitted as Appendix K of the application for environmental authorisation is herewith accepted and must be implemented. An application for an amendment to the EMP must be submitted to the competent authority if any amendments are to be made to the EMP, and these amendments may only be implemented once the amended EMP has been authorised by the competent authority. The EMP must be included in all contract documentation for all phases of implementation.

9. The applicant must submit an application for amendment of the environmental authorisation to the competent authority where any detail with respect to the environmental authorisation must be amended, added, substituted, corrected, removed or updated. Further, the rights granted by this environmental authorisation are personal rights (i.e. not attached to a property, but granted to a natural or juristic person). As such, only the holder may undertake the activities authorised by the competent authority. Permission to transfer the rights and obligations contained herein must be applied for in the following manner:
- 9.1 The applicant must submit an originally signed and dated application for amendment of the environmental authorisation to the competent authority stating that he/she wishes the rights and obligations contained herein to be transferred, and including (a) confirmation that the environmental authorisation is still in force (i.e. that the validity period has not yet expired or the activities were lawfully commenced with); (b) the contact details of the person who will be the new holder; (c) the reasons for the transfer; (d) an originally signed letter from the proposed new holder acknowledging the rights and obligations contained in the environmental authorisation and indicating that he has the ability to implement the mitigation and management measures and to comply with the stipulated conditions.
- 9.2 The competent authority will issue an amendment to the new holder either by way of a new environmental authorisation or an addendum to the existing environmental authorisation if the transfer is found to be appropriate.
10. A copy of the environmental authorisation and the EMP must be kept at the site where the listed activities will be undertaken. Access to the site referred to in section C above must be granted and, the environmental authorisation and EMP must be produced to any authorised official representing the competent authority who requests to see it for the purposes of assessing and/or monitoring compliance with the conditions contained herein. The environmental authorisation and EMP must also be made available for inspection by any employee or agent of the applicant who works or undertakes work at the site.
11. Non-compliance with a condition of this environmental authorisation or EMP may result in suspension of this environmental authorisation and may render the holder liable for criminal prosecution.

12. The holder must appoint a suitably experienced Environment Control Officer ("ECO"), or site agent where appropriate, for the construction phase of implementation before commencement of any land clearing or construction activities to ensure compliance with the EMP and the conditions contained herein.
13. Notwithstanding this environmental authorisation, the holder must comply with any other statutory requirements that may be applicable to the undertaking of the listed activities.
14. Should any heritage remains be exposed during excavations or any actions on the site, these must immediately be reported to the Provincial Heritage Resources Authority of the Western Cape, Heritage Western Cape (in accordance with the applicable legislation). Heritage remains uncovered or disturbed during earthworks must not be further disturbed until the necessary approval has been obtained from Heritage Western Cape. Heritage remains include: archaeological remains (including fossil bones and fossil shells); coins; indigenous and/or colonial ceramics; any articles of value or antiquity; marine shell heaps; stone artifacts and bone remains; structures and other built features; rock art and rock engravings; shipwrecks; and graves or unmarked human burials
15. A qualified archaeologist must be contracted where necessary (at the expense of the applicant and in consultation with the relevant authority) to remove any human remains in accordance with the requirements of the relevant authority.
16. An integrated waste management approach, which is based on waste minimisation and incorporates reduction, recycling, re-use and disposal, where appropriate, must be employed. Any solid waste must be disposed of at a waste disposal facility licensed in terms of the applicable legislation.
17. No surface or ground water may be polluted due to any actions on the site. The applicable requirements with respect to relevant legislation pertaining to water must be met.
18. The applicable requirements with respect to relevant legislation pertaining to occupational health and safety must be adhered to.
19. The ECO must, at all times, ensure that the construction activities comply with the Noise Regulations in terms of the relevant legislation.

20. A landscape plan must be prepared by a qualified landscape architect for the entire site. The plan must take cognizance of Condition 21 below and must be submitted and approved by the competent authority prior to the commencement of construction activities. Only locally indigenous vegetation must be used and/or planted for the landscape surrounding the proposed retail facility.
21. All stormwater runoff must be retained on site to first be treated/polished before it is allowed to soak away into the substrata so as to maintain any possible existing groundwater flow dynamics and/or feed into the Paddavlei. Retention ponds must be designed to handle the 1:50 year run-off. Oil/fuel traps must be installed as part of this stormwater drainage system.
22. The Applicant will be required to upgrade the bulk water infrastructure to service the proposed development with potable water.
23. The Applicant will be required to install the infrastructure between the proposed development and the waste water treatment works i.e. the sewer network.
24. All large Milkwood (*Sideroxylon inerme*) trees (>10m crown ø) must be accommodated in the development layout and must not be removed. Approval must be obtained from the Department of Agriculture, Forestry and Fisheries prior to any possible pruning of any large Milkwood trees.
25. Approval must be obtained from the Department of Agriculture, Forestry and Fisheries with regards to all of the smaller Milkwood trees and other indigenous plants that are to be rescued and transplanted to suitable landscaping areas or taken to a nursery for later transplantation (as per Section 2.3.12 Search and Rescue, in the EMP). Smaller Milkwood trees must not be pruned.
26. A minimum 30m wide buffer zone/fynbos corridor adjacent to the R43 must be established and incorporated into the layout and must furthermore be regularly maintained throughout the operational phase of the development.
27. All of the EAP's recommended conditions and mitigation measures (as per Section 13 of the Final BAR) that are of relevance to the newly approved and revised plan/layout (as per Condition 28 below) must be implemented.
28. A newly revised plan/layout (which is limited to a 10,000 m<sup>2</sup> GLA and allows for the mountain-to-coast ecological corridor as well as the minimum 30m wide landscaped fynbos corridor along the R43) for the proposed retail facility must be prepared and submitted for approval by the competent authority prior to the commencement of

- construction. The development footprint of the associated infrastructure, for example the parking area, must be restricted to the minimum required for a shopping centre of 10 000m<sup>2</sup>.
29. An Operational Phase Environmental Management Programme must be prepared and submitted for approval by the competent authority prior to the commencement of the operational phase of the proposed activity.
  30. The ten intersection improvements recommended for the adjacent R43 as contained in the Traffic Impact Assessment Report ("TIA") dated June 2009, must be implemented before operation of the retail facility commences.
  31. As per Condition 28 above, the 10,000 m<sup>2</sup> GLA and associated infrastructure must be placed on the property in such a way as to maximize the width of the mountain to sea ecological corridor as indicated in the Overstrand Spatial Development Framework (October 2006) and must be placed adjacent to the R43 (excluding the minimum 30m fynbos corridor) and as close to the existing urban fabric as possible.
  32. A search-and-rescue operation must be done prior to the commencement of construction whereby all conservation-worthy and indigenous vegetation must be removed and retained for replanting upon completion of the construction phase. All of the 'rescued' vegetation must be removed to a nursery and maintained until it can be safely replanted.
  33. The proposed development must incorporate water and energy saving technologies. This must include, but not be limited to, the following:
    - 33.1 Energy saving technologies such as compact florescent light bulbs (CFL's) and Light Emitting Diodes (LED's) and other appropriate energy efficient lighting alternatives must be used in the development (as far as practicably possible).
    - 33.2 Water saving technologies such as rainwater harvesting technologies, drip irrigation technologies for all landscaped areas, auto-stop taps, dual flush cisterns, waterless urinals and aerated taps must be implemented.
    - 33.3 All installed geysers must be covered with geyser "blankets" to improve the efficiency of the geyser. All electric geyser thermostats must be set at the most optimal temperature.

## F. APPEALS

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

1. An appellant must –

1.1. submit a notice of intention to appeal to the Minister, within 20 (twenty) calendar days of the date of the decision;

1.2. submit the appeal within 30 (thirty) calendar days after the lapsing of the 20 (twenty) calendar days contemplated in Regulation 60(1), for the submission of the notice of intention to appeal; and

1.3. within 10 (ten) calendar days of having lodged the notice of intention to appeal, provide each person and organ of state registered as an interested and affected party in respect of the application, or the applicant, with –

1.3.1. a copy of the notice of intention to appeal form; and

1.3.2. a notice indicating where and for what period the appeal submission will be made available for inspection by such person, organ of state, or applicant, on the day of lodging it with the Minister, and that a responding statement may be made on the appeal within 30 (thirty) calendar days from the date the appeal submission was lodged with the Minister.

2. A person, organ of state or applicant who submits a responding or answering statement in terms of Regulation 63 must within 10 (ten) calendar days of having submitted the responding or answering statement, serve a copy of the statement on the other party.

3. If the person, organ of state or applicant fails to meet a timeframe with respect to the requirements as detailed above, the person, organ of state or applicant must immediately submit a written explanation to the Ministry providing a concise explanation for the non-compliance.

4. All notice of intention to appeal and appeal forms must be submitted by means of one of the following methods:

By post: Western Cape Ministry of Local Government, Environmental Affairs  
and Development Planning  
Private Bag X9186  
Cape Town  
8000

or

By facsimile: (021) 483 4174

or

By hand: Attention: Mr Jaap de Villiers (Tel: 021-483 3721)  
Room 809  
8<sup>th</sup> Floor Utilitas Building, 1 Dorp Street, Cape Town, 8001

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

**G. DISCLAIMER**

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

Your interest in the future of our environment is appreciated.

Yours faithfully



**MR. ZAAHIR TOEFY**

**DIRECTOR: LAND MANAGEMENT (REGION 2)**

DATE OF DECISION: 03/01/2014

- |   |                           |                     |
|---|---------------------------|---------------------|
| Copied to: (1) Mr. Mark Berry             | (EAP)                     | Fax: (021) 856 1148 |
| (2) Mr. Henk Olivier                      | (Overstrand Municipality) | Fax: (028) 313 2093 |
| (3) Mr. Riaan Kuchar / Mr. Stephen Muller | (Overstrand Municipality) | Fax: (028) 313 1894 |

**FOR OFFICIAL USE ONLY:**

<b>EIA REFERENCE NUMBER:</b>	<b>E12/2/3/1-E4/5-0016/09</b>
<b>NEAS EIA REFERENCE NUMBER:</b>	<b>WCP EIA \3468\2009</b>

## ANNEXURE 1: REASONS FOR THE DECISION

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

- a) The information contained in the Application Form and Basic Assessment Report ("BAR") dated 1 February 2010;
- b) The comments received from I&APs as included in the BAR;
- c) The comment received from CapeNature dated 19 June 2009 and 24 December 2009;
- d) The comment received from the Department of Agriculture, Forestry and Fisheries dated 18 December 2009;
- e) The comment received from the Department of Transport & Public Works dated 13 January 2010;
- f) The comment received from Heritage Western Cape (Archaeology, Paleontology & Meteorites Committee) dated 6 October 2009;
- g) The Comment received from the Department of Water Affairs dated 1 December 2009;
- h) The comment received from the Overstrand Municipality dated 3 July 2009, 26 August 2009, 4 December 2009 and 18 December 2013;
- i) All the specialist studies and input contained within the BAR;
- j) Fernridge Consulting's *Proposed Shopping Centre Feasibility Study* (March 2009).
- k) The Construction Phase Environmental Management Programme ("CEMP") dated December 2009;
- l) Relevant information contained in the Departmental information base including the –
  - i. Greater Hermanus Subregional Spatial Development Framework (2000);
  - ii. Subregional Structure Plan: The Southern Cape Coastal Area: Macassar to Gourits River;
  - iii. Western Cape Provincial Spatial Development Framework (2005); and
  - iv. The Overstrand Municipal Wide Spatial Development Framework (2006);
- m) The objectives and requirements of relevant legislation, policies and guidelines, including Section 2 of the NEMA;
- n) The recommendations (including reference to the *Overstrand Retail Study, 2011*) of the Portfolio Committee: Infrastructure & Planning, Hermanus Administration dated 17 April 2012;
- o) The minutes, the issues resolved and the recommendations of the Mayoral Committee meeting, Hermanus Administration dated 25 April 2012;
- p) The three site visits conducted:
 

<u>Date:</u>	4 May 2010
<u>Attended by:</u>	Ms. Kayleen Fester, Mrs. Zaidah Toefy and Mr. Zaahir Toefy (all attendees from DEA&DP);
<u>Date:</u>	6 October 2010

Attended by: Ms. Tammy Christie, Mr. Zaahir Toefy and Mr. Anthony Barnes (all attendees from DEA&DP);

Date: 28 March 2013

Attended by: Mr. Adrian Pietersen, Ms. Natasha Bieding and Mr. Eldon van Boom (all attendees from DEA&DP).

The application was submitted in terms of the NEMA EIA Regulations of 2006 and was pending at the time of the promulgation of the NEMA EIA Regulations of 2010. Some of the activities herein authorised, may not have been listed under the NEMA EIA Regulations of 2006, but are now listed in terms of the NEMA EIA Regulations of 2010. In accordance with Regulation 76(3) of GN No. R. 543, these activities may be authorised as if they were applied for.

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

## 1. Public Participation

The public participation process was initiated on 22 May 2009 with the placement of an EIA advertisement in the Hermanus Times. Two sets of English and Afrikaans notice boards were also erected at visible positions near the northern corner and on the north-eastern side of the property.

A total of approximately 45 neighbours within 100m of the property boundary and along Marine Road and Church Street were notified by letter drop-off and e-mail. In addition the Overstrand Municipality, Ward councillor, CapeNature, the Department of Water Affairs and the Hermanus Business Chamber were also notified about the proposed development.

A public information meeting was held on 28 May 2009 at the Thusong Community Hall in Hawston. Interested and Affected Parties ("I&APs") were informed about the project at this meeting. The comments received from I&APs led to the preferred layout plan being amended. The BAR and relevant documentation were updated and again presented to all registered I&APs on 4 November 2009. The registered I&APs were requested to submit final comments by 4 December 2009.

Written comments were received from, *inter alia*, the following organisations: Overstrand Municipality, CapeNature, Department of Water Affairs, Heritage Western Cape, the Department of Agriculture, Forestry and Fisheries, the Department of Transport and Public Works and six local interested groups. All registered I&APs were provided with a copy of the

final BAR as submitted to this Department. A number of issues were raised and a response was provided for each issue raised by the I&APs in the comments and responses report.

The Department is satisfied that an adequate public participation process was followed and that it met the necessary minimum legal requirements in terms of the NEMA and the EIA Regulations.

## 2. Alternatives

Three layout alternatives and the "no-go" option were considered by the applicant. No site alternatives and no activity alternatives were considered.

### Site alternative

Portion 1 of the Farm No. 572, Hawston, is the preferred and only site proposed and it is located directly south of the village of Hawston, west of the R43 main road to Hermanus and north of the Hoek van de Berg Private Nature Reserve. The site is currently vacant.

### Layout alternative 1 (Applicant's preferred alternative)

The development involves the proposal for a regional shopping centre and associated infrastructure on the property. Additional infrastructure includes access roads off the R43 main road, an internal road network, parking areas and a stormwater drainage system. The footprint of the shopping centre will be 3,489 ha with a roof height of 8m. A parking area for 1814 cars will be established between the shopping centre and the R43. A 30m wide landscaped fynbos corridor along the R43 and the protection of all large Milkwood trees on site will be included in the layout. The contemporary design of the shopping centre is proposed to minimise the visual impacts on the surrounding areas.

### Layout alternative 2

The second layout alternative is slightly larger than the preferred alternative and the landscaped fynbos corridor along the north-eastern boundary is shared with the adjacent road reserve. The footprint of the shopping centre is proposed to be 3,809ha with a roof height of 8m and a parking area coverage of 5,69ha. The number of parking bays for this alternative is 2032.

### Layout alternative 3

The third layout alternative did not consider the presence of the Milkwood trees on site as well as the fynbos corridor next to the R43. There is only one access point proposed from the R43 for this alternative. The footprint of the shopping centre for this alternative is 2,770ha with