

a roof height of 8m and a parking area coverage of 5,6ha having a total of 1 745 parking units.

#### "No-go" alternative

The no-go alternative was also considered, but was not considered to be feasible by the applicant as the site would remain vacant and undeveloped.

#### Authorised Alternative

**Environmental Authorisation is only granted in respect of part of what was applied for.** Therefore, Environmental Authorisation is granted for an alternative – the "Authorised Alternative":

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.

#### **Motivation for the Authorised Alternative**

The Department approves the reduced 10,000m<sup>2</sup> GLA retail facility, because the Department:

1. considered the cumulative impacts of the proposed retail facility in relation to the various other proposed and existing business and retail facilities within the region;
2. followed a precautionary approach with regards to the proposed retail facility on Portion 1 of the Farm No. 572, Hawston, thus resulting in an approval for a reduced scale with regards to the GLA and the total development footprint in general;
3. sought to reduce the impact of the retail facility on the ecological corridors that currently exist in the area;
4. considered the location of the large Milkwood trees on the site; and
5. sought to minimise the visual impact of the retail facility on its surroundings;

### 3. Impacts, assessment and mitigation measures

#### 3.1. Activity Need and Desirability

In the National Framework for Sustainable Development (2008) ("NFSD") it states that "[T]he achievement of sustainable development is not a once-off occurrence and its objectives cannot be achieved by a single action or decision. It is an ongoing process that requires a particular set of values and attitudes in which economic, social and environmental assets that society has at its disposal, are managed in a manner that sustains human well-being without compromising the ability of future generations to meet their own needs." The National Spatial Development Perspective ("NSDP") (2006) emphasizes that the goal of sustainable growth, including the creation of long-term job opportunities, can only be achieved if budget allocations and spending is focused on economic infrastructure in "priority areas with potential for economic development ..." that will "... serve the broader societies' needs equitably". Thus, any "triple bottom-line" argument must be considered in a balanced manner and within its regional context. If not considered in a balanced manner and if not evaluated within its regional or strategic context, it will result in significant cumulative negative environmental impacts and ultimately in unsustainable development. Any development proposal must therefore be considered within the character, environmental attributes and identity of this context.

Therefore, to evaluate the environmental impact of the proposed retail facility and specifically its need and desirability, it is important to contextualise the setting within which the application must be considered. As a broad principle, need and desirability must be consistent with the principles of sustainability as contained in Section 2 of the National Environmental Management Act No. 107 of 1998 ("NEMA"). In this context, EIAs play an important role by evaluating the need and desirability of development proposals and the appropriateness of the identified alternatives, as well as regional and local planning concerns. These aspects are integrally linked and must be informed by the strategic environmental context within which the site/ development proposal is situated.

In view of the above, when addressing questions of land use and location with regards to the proposed retail facility, the property is to be rezoned to Business Zone 1 as per the recommendations of the Mayoral Committee, Hermanus Administration. With its close proximity and by being located directly adjacent to the Hawston urban area, it indicates that the proposed retail facility is seen as not being significantly "out-of-place" in terms of location. In addition, when addressing the question of the needs of the community with

regards to this proposed development, it is clear that the retail facility will benefit both the strategic commercial needs of the area and the need for employment opportunities.

However, based on existing and proposed retail facilities in the area, it is apparent that the requirement for retail space at the present time within the study area does not justify the proposed size of 3.489 ha for a regional type retail facility. Furthermore, this Department has already authorised the construction of a 15ha mixed use development (consisting of amongst others business, industrial and retail erven) less than two kilometres north of this retail facility adjacent to the town of Hawston, i.e. at Portion 6 of Farm Afdakrivier No. 575, Caledon. Thus, in terms of the retail facility being proposed for Portion 1 of Farm No. 572, Hawston, it is apparent that a reduced retail area is required for the Hawston community, and hence this approval. It is for these reasons that this Department limits the GLA to 10,000 m<sup>2</sup> for the proposed retail facility.

Finally, the proposed retail facility will incorporate a contemporary design so as to minimise the visual impacts on the surrounding areas. In addition, concerns of unacceptable opportunity costs and unacceptable cumulative impacts are minimised when one considers the longer-term outcomes for the area in question, i.e. the possibility of other socially important developments taking place in the future in proximity to the proposed retail facility.

### 3.2. Services/ Bulk Infrastructure

#### Water and Sanitation

According to the August 2009 response and correspondence received on 18 December 2013 from the Overstrand Municipality: Hermanus Administration, sufficient bulk infrastructure with regards to water and sanitation is available to accommodate the the proposed development. The developer will however be required to install all link services required to connect the development to the municipal bulk supplies.

#### Stormwater capacity

According to the August 2009 response and correspondence received on 18 December 2013 from the Overstrand Municipality: Hermanus Administration, the municipal stormwater system can accommodate the stormwater run-off from the development for the 1:2 year flood recurrence period. The developer will however be required to install retention ponds on site to deal with the 1:50 year run-off, as well as installing the infrastructure required to link the development with the municipal system. The developer will be required to pay the development contribution for roads and stormwater services in accordance to the Council Development Contribution Policy.

#### Solid Waste

The municipality confirmed that sufficient capacity is available at the Gansbaai Landfill Site to accommodate solid waste generated by the proposed development. In future, the waste from the development will go to the planned new waste cell at Karwyderskraal Waste Disposal Facility. Waste generated during the construction phase will have to be delivered to the disposal site by the developer. Waste generated during the operational phase will be collected on a weekly basis by the Municipality.

#### Electricity

The municipality confirmed that sufficient capacity can be made available at the Hawston Sub-Station for the development. However, the developer has indicated that he will connect directly to the Eskom network because the development falls within the Eskom distribution area.

### 3.3. Biophysical Impacts

The proposed site is located directly south of the village of Hawston, between the village and the Hoek van de Berg Private Nature Reserve. The latter private nature reserve is not a formal protected area and thus has not been set aside for in-perpetuity conservation. The site is located on a coastal plain at the foot of the Onrus Mountain, which rises to 481m above sea level to the east. Sections of the property are characterised by elevated sandy dunes. The site itself is largely covered by woody aliens and grasses, dirt tracks, a few derelict dwellings and foundation structures. The southern half of the property is largely covered by dense stands of alien vegetation e.g. sweet hakea, port jackson, rooikrans and Australian myrtle.

The site occurs in a typical Strandveld environment, with the presence of several Milkwood trees as well as other characteristic species. According to the new Vegetation Map of South Africa, the site is classified as Overberg Dune Strandveld. It also shows floristic affinity with the adjacent sand and sandstone fynbos, which is found to the north-east of the site. Other vegetation types found in the area include Overberg Sandstone Fynbos and Hangklip Sand Fynbos.

According to the Overstrand Spatial Development Framework ("SDF") for Hawston/Fisherhaven, the applicant's preferred alternative will cut through/sever two Ecological/Open Space Corridors in terms of the Overstrand SDF. These corridors are important as they are the identified link between the Onrus mountains and the coastal environment as well as the link between the existing natural open spaces and freshwater

systems that run all the way from the Bot River Vlei to the Paddavlei in Hawston and the Vermont Soutpan. This emphasises the need to limit the development footprint of the proposed retail facility in such a way as to maximize the width of the mountain to sea ecological corridor as indicated in the Overstrand SDF and preserve the open space/freshwater corridor linkage that runs along the southern boundary of the property. The retail facility must also be placed adjacent to the R43 (excluding the minimum 30m corridor along the R43, see below) and as close to the existing urban fabric as possible.

Furthermore, as a mitigation measure, 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. Only locally indigenous vegetation will be used and/or planted for the landscape surrounding the proposed retail facility.

In addition, stormwater is to be collected and treated before being allowed to infiltrate the substrata and thus not disturb any possible groundwater dynamics. Finally, 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.

#### 3.4. Visual / Sense of Place / Aesthetic

According to the applicant, the proposed design should not detract from the visual character but rather improve it. The architectural style will be complimentary, sympathetic and functional with no unobtrusive features. The height will be restricted to a single storey retail building which will lie at a lower level below the bypassing R43. The minimum 30m wide landscaped fynbos corridor/buffer alongside the R43 in conjunction with the planting of trees in and around the main parking area will reduce the visual impact to surrounding areas.

#### 3.5. Traffic

The TIA was received by this Department and has been assessed and considered. Amongst other data, it provides information on the traffic conditions (May 2009) and the projected traffic impacts assuming a fully developed retail facility in 2014. The results include recommendations for 10 intersection improvements along the R43.

### 3.6. Heritage

Comment was supplied by the Heritage Western Cape (Archaeology, Paleontology and Meteorites Permit Committee) dated 6 October 2009 and did not object against the proposed development. No comment was obtained from Built Environment and Landscape Committee ("BELCOM") in terms of Section 38 of the National Heritage Resources Act, 1999 (Act No. 25 of 1999).

### 3.7. Socio-economic

The proposed development will have positive impacts on the Hawston local economy, especially in relation to job creation. When considering the region as a whole, the positive socio-economic opportunities and impacts of a retail facility at this location must be realized. This is true when considering the town's traditional association with the fishing industry and the fact that it can supply only limited fishing opportunities and that the fishing industry in general is facing hardships. Furthermore, due to the poor quality soil conditions, agriculture as an economic activity and possible source of supply of jobs is very limited within a 3km radius of the proposed site.

## **National Environmental Management Act Principles**

The National Environmental Management Act Principles set out in section 2 of the NEMA, which apply to the actions of all organs of state, serve as guidelines by reference to which any organ of state must exercise any function when taking any decision, and which must guide the interpretation, administration and implementation of any other law concerned with the protection or management of the environment), *inter alia*, provides for:

- the effects of decisions on all aspects of the environment to be taken into account;
- the consideration, assessment and evaluation of the social, economic and environmental impacts of activities (disadvantages and benefits), and for decisions to be appropriate in the light of such consideration and assessment;
- the co-ordination and harmonisation of policies, legislation and actions relating to the environment;
- the resolving of actual or potential conflicts of interest between organs of state through conflict resolution procedures; and
- the selection of the best practicable environmental option.

In view of the above and the NEMA principles, the competent authority is satisfied that the proposed listed activities as authorised will not conflict with the general objectives of integrated environmental management stipulated in Chapter 5 of the National Environmental Management

Act, 1998 (Act No. 107 of 1998) and that any potentially detrimental environmental impacts resulting from the listed activities as authorised can be mitigated to acceptable levels.

----- END -----



MINISTRY OF LOCAL GOVERNMENT,  
ENVIRONMENTAL AFFAIRS AND  
DEVELOPMENT PLANNING

M 3/6/5

DATE OF ISSUE **10 DEC 2015**

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Wekita One (Pty) Ltd  
Postnet Suite 1  
Private Bag X22  
**TYGER VALLEY**  
7536

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

Dear Mr van Zyl

**APPEALS ENVIRONMENTAL AUTHORISATION FOR THE ESTABLISHMENT OF A RETAIL FACILITY AND ASSOCIATED INFRASTRUCTURE ON PORTION 1 OF THE FARM NO. 572, HAWSTON**

The appeals against the environmental authorisation ("EA") for the above proposed development refer.

In terms of section 43 of the National Environmental Management Act, 1998 (Act No. 107 of 1998) ("NEMA") and the Environmental Impact Assessment ("EIA") Amendment Regulations (Government Notice ("GN") No. R. 543 of 18 June 2010) of NEMA, I have decided to set aside the decision granted on 3 January 2014 by the Department of Environmental Affairs and Development Planning ("Department") in terms of the EIA Amendment Regulations, 2010.

In terms of section 43 of the NEMA, this environmental authorisation is granted to the Applicant to undertake the activities listed in section B, on Farm No. 572, Hermanus as specified in section C of this decision, which are subject to compliance with the conditions set out in section F, as set out herein below.

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

**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 even 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."

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

### C. DESCRIPTION OF THE DEVELOPMENT

The development involves a regional shopping centre with a Gross Lettable Area ("GLA") of 30 000m<sup>2</sup> 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 incorporated into the layout. The contemporary design of the shopping centre is intended to minimise the visual impacts on the surrounding areas.

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 30 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.

#### D. 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  
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 7151

Tel./Fax: (021) 856 1148

## E. SITE VISIT

An appeal site visit was conducted by the Environmental Appeals Management Unit of the Department of Environmental Affairs and Development Planning in January 2015.

## E. CONDITIONS OF AUTHORISATION

1. This authorisation is valid for a period of **five years** from the date of issue of this decision. The holder must commence with the listed activities within the said period or this authorisation lapses and a new application for authorisation must be submitted to the competent authority, unless the holder has lodged a valid application for the amendment of the validity period of this authorisation (*i.e. the application must be submitted to the Ministry of Local Government, Environmental Affairs and Development Planning ("Minister")*), before the expiry of this authorisation. In such instances, the validity period will be automatically extended ("the period of administrative extension") from the day before this authorisation would otherwise have lapsed, until the amendment application for the extension of the validity period is decided. The listed activity, including site preparation, may not commence during the period of administrative extension.
2. The applicant must, within 12 (twelve) calendar days of the date of the appeal decision, place an advertisement in one local newspaper informing interested and affected parties of the appeal decision, the date on which the authorisation was granted and indicate where the decision can be accessed.
3. Seven calendar days' notice, in writing, must be given to the competent authority before commencement of construction activities.
  - 3.1 The notice must make clear reference to the site details and EIA Reference number given above.
  - 3.2 The notice must also include proof of compliance with the following conditions described herein:  
Conditions: 11, 18, 22, 26 and 30
4. 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.

5. Any changes to, or deviations from the scope of the description set out in section B above must be accepted or approved, in writing, by the competent authority before such changes or deviations may be implemented. In assessing whether to grant such acceptance/approval or not, the competent authority may request such information as it deems necessary to evaluate the significance and impacts of such changes or deviations and it may be necessary for the holder to apply for further authorisation in terms of the applicable legislation.
6. The applicant must notify the competent authority in writing, within 24 hours thereof if any condition herein stipulated is not being complied with.
7. 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. Save that such application for amendment shall not include the personal details of the holder of the environmental authorisation (Where any of the applicant's contact details change, the physical or postal address and/ or telephonic details, the applicant must notify the Ministry in writing as soon as the new details become known to the applicant).

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

- 7.1 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.

7.2 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.

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. 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.
10. Non-compliance with a condition of this environmental authorisation or EMP may result in suspension of this environmental authorisation and may render the holder liable for criminal prosecution.
11. 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.
12. Notwithstanding this environmental authorisation, the holder must comply with any other statutory requirements that may be applicable to the undertaking of the listed activities.

13. Should any heritage remains be exposed during excavations or any actions on the site, these must immediately be reported to the Provincial Heritage Resources Authority of the Western Cape, Heritage Western Cape (in accordance with the applicable legislation). Heritage remains uncovered or disturbed during earthworks must not be further disturbed until the necessary approval has been obtained from Heritage Western Cape. Heritage remains include: archaeological remains (including fossil bones and fossil shells); coins; indigenous and/or colonial ceramics; any articles of value or antiquity; marine shell heaps; stone artifacts and bone remains; structures and other built features; rock art and rock engravings; shipwrecks; and graves or unmarked human burials

A qualified archaeologist must be contracted where necessary (at the expense of the applicant and in consultation with the relevant authority) to remove any human remains in accordance with the requirements of the relevant authority.

14. 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.
15. The applicable requirements with respect to relevant legislation pertaining to water must be met.
16. The applicable requirements with respect to relevant legislation pertaining to occupational health and safety must be adhered to.
17. The ECO must, at all times, ensure that the construction activities comply with the Noise Regulations in terms of the relevant legislation.
18. A landscape plan must be prepared by a qualified landscape architect for the entire site. The plan must take cognizance of Condition 19 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.
19. 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 Paddasvlei. 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.

20. The Applicant must upgrade the bulk water infrastructure to service the proposed development with potable water.
21. The Applicant must install the infrastructure between the proposed development and the waste water treatment works i.e. the sewer network.
22. 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. A copy of this approval must be submitted to the Department.
23. 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. Smaller Milkwood trees must not be pruned.
24. A 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.
25. 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 27) must be implemented.
26. A newly revised plan/layout (which allows for the mountain-to-coast ecological corridor as well as the 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 30 000m<sup>2</sup>.
27. 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.

28. 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.
29. As per Condition 26 above, the 30,000 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 30m fynbos corridor) and as close to the existing urban fabric as possible.
30. 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.
31. The proposed development must incorporate water and energy saving technologies. This must include, but not be limited to, the following:
- 31.1 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).
  - 31.2 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.
  - 31.3 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.
32. The following measures related to the visual impact must be adopted and implemented:
- 32.1 The architectural style of the buildings must avoid high-rise structures which would be out of scale with the existing built environment/fabric.
  - 32.1 Local architectural styles must be adopted as far as possible.

- 32.2 The physical structures must be painted in suitable colours in the medium tone range so as to blend in with the surroundings.
- 32.3 Subtle lighting that is not in conflict with the surrounding residential areas must be implemented. Excessive flood lighting must be avoided.
- 32.4 The overall heights of the building(s) must be kept as low hung as possible.

**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.

Yours faithfully



**ANTON BREDELL**  
**MINISTER OF LOCAL GOVERNMENT,**  
**ENVIRONMENTAL AFFAIRS AND DEVELOPEMNT PLANNING**

DATE 9/12/2015.

cc. Mr C Groenewald (Overstrand Municipality)  
Mr Z Toefy (DEADP)

Fax: (086 ) 568 9726  
Zahir.Toefy@westerncape.gov.za

## ANNEXURE 1: REASONS FOR THE DECISION

In reaching my decision, I *inter alia*, considered the following:

- The information contained in the Application Form and Basic Assessment Report ("BAR") dated 1 February 2010;
- The comments received from I&APs as included in the BAR;
- The comment received from CapeNature dated 19 June 2009 and 24 December 2009;
- The comment received from the Department of Agriculture, Forestry and Fisheries dated 18 December 2009;
- The comment received from the Department of Transport & Public Works dated 13 January 2010;
- The comment received from Heritage Western Cape (Archaeology, Paleontology & Meteorites Committee) dated 6 October 2009;
- The Comment received from the Department of Water Affairs dated 1 December 2009;
- The comment received from the Overstrand Municipality dated 3 July 2009, 26 August 2009, 4 December 2009 and 18 December 2013;
- All the specialist studies and input contained within the BAR;
- Femridge Consulting's *Proposed Shopping Centre Feasibility Study* (March 2009).
- The Construction Phase Environmental Management Programme ("CEMP") dated December 2009;
- 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);
- The objectives and requirements of relevant legislation, policies and guidelines, including Section 2 of the NEMA;
- The recommendations (including reference to the *Overstrand Retail Study, 2011*) of the Portfolio Committee: Infrastructure & Planning, Hermanus Administration dated 17 April 2012;
- The minutes, the issues resolved and the recommendations of the Mayoral Committee meeting, Hermanus Administration dated 25 April 2012;
- A site visit was conducted by the Environmental Appeals Management Unit of the Department of Environmental Affairs and Development Planning

- The appeals lodged by Du Plessis Hofmeyer Malan Attorneys on behalf of Wekita One (Pty) Ltd and Werksman Attorneys on behalf of the Sandbaai Development Trust against the EA; and
- The responding statement provided Du Plessis Hofmeyer Malan Attorneys on behalf of Wekita One (Pty) Ltd and Werksman Attorneys on behalf of the Sandbaai Development Trust.

#### A. LEGISLATIVE MANDATE

1. In terms of the relevant legislation, the decision-making powers afforded to the appellate authority are such that the Appeal constitutes a "wide" appeal when classified in administrative law. The appellate authority may, therefore, *"confirm, set aside or vary the decision, provision, condition or directive or make any other appropriate decision"*. The assessment of appeals raises substantive and policy-laden issues and a determination of whether the proposed application will result in a development that is sustainable, those avoids detrimental impacts on the environment, or where it cannot be avoided, ensure mitigation and management of impacts to acceptable levels, and to optimise positive environmental impacts.
2. Section 24 of the Constitution of the Republic of South Africa, 1996 ('the Constitution'), provides:
 

*"24 Environment*

*Everyone has the right-*

  - (a) to an environment that is not harmful to their health or well-being; and*
  - (b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that-*
    - (i) prevent pollution and ecological degradation;*
    - (ii) promote conservation; and*
    - (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development."*
3. The power of the National Environmental Minister or a provincial MEC to regulate environmental matters is now under the NEMA (a law enacted after the Constitution to give effect to the environmental right in section 24 of the Constitution):
  - 3.1 Section 2 of NEMA lays down certain generally-applicable principles of environmental management which must be applied by persons when deciding whether or not to grant authorisations under section 22 of the ECA. See sections 2(1)(c) and (e) of NEMA, which provide that the NEMA principles:

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

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

- 3.2.1 EIA Regulations, 2006 as promulgated in terms of the NEMA.
- 3.2.2 EIA Amendment Regulations, 2010 as promulgated in terms of the NEMA.
- 3.2.3 National Forest Act, 1998 (Act No. 84 of 1998).
- 3.2.4 National Heritage Resources Act, 1999 (Act No. 25 of 1999).
- 3.2.5 National Water Act, 1998 (Act No. 36 of 1998).

## **B. APPEAL REVIEW**

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

1. Perpetuation of apartheid spatial planning legacy/ Compromising municipal executive authority.
2. Unfair administrative process/Mistakes and technical errors.
3. The non-compliance of Wekita's environmental impact assessment ("EIA") process with the peremptory requirements under NEMA, read with the NEMA EIA Regulations.
4. Power Supply
5. The Environmental Assessment Practitioner ("EAP")
6. Activity Need and Desirability including Market constraints and selection of the preferred location for a regional retail centre.
7. Biodiversity constraints.
8. Spatial Planning Constraints.

The appeal issues were considered and assessed as follow:

1. Perpetuation of apartheid spatial planning legacy/ Disregard of functional framework/ Compromising municipal executive authority:

As stated by the appellant, the Department is required by law to consider the triple bottom line of any application. Officials employed at the Department have no vested interest in the outcome of applications and are bound by the NEMA principles and the EIA Regulations.

In reaching its decision, the Department considered the following:

- The information contained in the Application Form and BAR dated 1 February 2010;
- The comments received from I&APs as included in the BAR;
- The comment received from CapeNature dated 19 June 2009 and 24 December 2009;
- The comment received from the Department of Agriculture, Forestry and Fisheries dated 18 December 2009;
- The comment received from the Department of Transport & Public Works dated 13 January 2010;
- The comment received from Heritage Western Cape (Archaeology, Paleontology & Meteorites Committee) dated 6 October 2009;
- The Comment received from the Department of Water Affairs dated 1 December 2009;
- The comment received from the Overstrand Municipality dated 3 July 2009, 26 August 2009, 4 December 2009 and 18 December 2013;
- All the specialist studies and input contained within the BAR;
- Femridge Consulting's *Proposed Shopping Centre Feasibility Study* (March 2009).
- The CEMP dated December 2009;
- Relevant information contained in the Departmental information base including the –
  - Greater Hermanus Sub-regional Spatial Development Framework (2000);
  - Sub-regional Structure Plan: The Southern Cape Coastal Area: Macassar to Gourits River;

- Western Cape Provincial Spatial Development Framework (2005); and
- The Overstrand Municipal Wide Spatial Development Framework (2006);
- The objectives and requirements of all the relevant legislation, policies and guidelines, including section 2 of the NEMA;
- The recommendations (including reference to the *Overstrand Retail Study, 2011*) of the Portfolio Committee: Infrastructure & Planning, Hermanus Administration dated 17 April 2012;
- The minutes, the issues resolved and the recommendations of the Mayoral Committee meeting, Hermanus Administration dated 25 April 2012.

The proposed development was thus considered based on the applicable legislation and the information submitted. I am satisfied that the Department was not bias during the adjudication of the application for the proposed development.

The EIA process undertaken for the proposed retail facility was governed by NEMA, the EIA Regulations, 2010 and the triple bottom line, i.e. environment, social and economic spheres. The purpose of the EIA Regulations is-

*"to regulate the procedure and criteria as contemplated in Chapter 5 of the Act relating to the submission, processing and consideration of, and decision on, applications for environmental authorisations for the commencement of activities in order to avoid detrimental impacts on the environment, or where it cannot be avoided, ensure mitigation and management of impacts to acceptable levels, and to optimise positive environmental impacts, and for matters pertaining thereto."*

The motivation for the authorisation of the 10 000m<sup>2</sup> GLA retail facility is based on:

- the cumulative impacts of the proposed retail facility in relation to the various other proposed and existing business and retail facilities within the region;
- followed a precautionary approach with regards to the proposed retail facility on Portion 1 of the Farm No. 572, Hawston, thus resulting in an approval for a reduced scale with regards to the GLA and the total development footprint in general;
- sought to reduce the impact of the retail facility on the ecological corridors that currently exist in the area;
- considered the location of the large Milkwood trees on the site; and
- sought to minimise the visual impact of the retail facility on its surroundings.

As the Constitutional Court notes:

- (1) *"The constitution, ECA and NEMA do no protect the existing developments at the expense of future developments. What section 24 requires, and what NEMA give effect to, it that socio-*

*economic development must be justifiable in the light of the need to protect the environment. The Constitution and environmental legislation introduce a new criterion for considering future developments. Pure economic factors are no longer decisive. The need for the development must now be determined by its impacts in the environment, sustainable development and social and economic interests. The duty of environmental authorities is to integrate these factors into decision-making and make decisions that are informed by these considerations. This process requires a decision-maker to consider the impact of the proposed development on the environment and socio-economic conditions.*

- (2) *The objective of EIA's, as NEMA makes it plain, is both to identify and predict the actual or potential impact on socio-economic conditions and consider ways of minimising negative impact while maximising benefit. Were it to be otherwise, the earth would be a graveyard for commercially failed developments. And this in itself poses a potential threat to the environment."*

The EA forms part of the suite of approvals required for developments. Decisions are informed by the information included with the application and is based on its own merits within the legislative framework. Decisions are often issued sequentially and very often one decision informs the other and is not intended to supersede or curtail the powers of other legislation.

Thus the assertion by the appellant that the Department "focused mainly on planning issues rather than on the environmental considerations contemplated in the empowering legislation" and "the Department saw fit to venture into the field of municipal planning and to use the power to grant or refuse environmental legislation to effectively take a municipal planning decision" is incorrect.

The review of the EIA application, BAR and all associated information in association with the comment dated 25 April 2012 received from the mayoral committee of the Overstrand Municipality, sufficient motivation exist to support an increase the GLA from 10 000m<sup>2</sup> to 30 000m<sup>2</sup> for the proposed retail facility. The motivating factors include, but not limited to:

- Sufficient space is available to accommodate a 30 000m<sup>2</sup> retail facility;
- The site is heavily degraded and unlikely to contribute to biodiversity pattern targets. The loss is considered to be of medium negative significance and can be mitigated to some degree by allowing for ecological corridors and landscaping with indigenous vegetation (CapeNature). Ecological corridors have been incorporated into the design of the retail facility;
- In terms of the Paddasvlei Soutpan, the geo-hydrological investigation indicated that the vlei is mainly fed by the deeper lying Table Mountain Group Aquifer thus the impact on the soutpan is anticipated to be negligible;

- The aquatic statement indicated that the Vermont Pan is unlikely to be influenced by any activities on the proposed retail facility site.
- The property is to be rezoned to Business Zone 1 as per the recommendations of the Mayoral Committee, Hermanus Administration.
- Its close proximity and by being located directly adjacent to the Hawston urban area will assist the retail facility blending in with Hawston and it will not be seen as being "out-of-place" in terms of location.
- The retail facility will benefit both the strategic commercial needs of the area and the need for employment opportunities.

2. Unfair administrative process/Mistakes and technical errors:

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

- Both applications proposed a 'regional retail facility' within the same municipal area.
- The sites for the retail facilities are approximately 3km apart along the R43.
- Both applications aim to serve the same catchment area.
- Both applications fall within the same geographical region in the Department for the same delegated competent authority.
- The EIA application form for the retail facility at Sandbaai was submitted on 11 December 2009 and the EIA application form for the retail facility at Hawston was submitted on 02 February 2010 and the EA for both EIA applications were issued on 06 January 2014. Thus, the EIA processes were undertaken at the same time.
- The delegated competent authority looked at the proposed applications broadly from a regional perspective and not locally and in isolation of each other.
- Taking the decisions for each application separately could have prejudiced the other application, thus the Department made the decisions simultaneously.

Considering the above, it was prudent of the delegated competent authority to apply his mind to both applications simultaneously in terms of-

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

In the matter of the Fuel Retailers Association v D-G Environmental MGT, Mpumalanga<sup>1</sup>, the Constitutional Court held as follows:

*"The objective of this exercise, as NEMA makes it plain, is both to identify and predict the actual or potential impact of socio-economic conditions and consider ways of minimising negative impact while maximising benefits. Were it to be otherwise, the earth would become a graveyard for commercially failed developments".*

I note and submit that:

The proposed retail facility on portion 1 of the Farm No. 572 was recommended for approval to the Department of Environmental Affairs and Development Planning by the Mayoral Committee and the Overstrand Municipal Council on 25 April 2012 and 11 May 2012 in terms of:

- section 4(7) of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985) ("LUPO") the application for the amendment of the Greater Hermanus Spatial Development Framework in order to change the reservation of portion 1 of the Farm No. 572 from Primary Natural Area to Commercial Node, to accommodate a regional shopping centre;
- section 34 the Local Government Municipal Systems Act, 2000 (Act No. 32 of 2000) MSA, 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.

3. The non-compliance of Wekita's environmental impact assessment ("EIA") process with the peremptory requirements under NEMA, read with the NEMA EIA Regulations:

The specialist studies included in the BAR for the EIA application for the development of a retail facility on portion 1 of the Farm 572, Hawston included the following:

- the Land Use application for the rezoning, consent use and amendment of the structure plan by Planactive;
- the Proposed Shopping Centre Feasibility Study by Fernridge;
- the Services Report by EFG Engineers;
- the Freshwater Statement by The Freshwater Consulting Group;
- the Hydrogeological statement by SRK Consulting;
- the Botanical Assessment by Mark Berry Environmental Services;
- the Archaeological Impact Assessment by The Agency for Cultural Resource Management.

In addition, the application included a CEMP.

<sup>1</sup> 2007 (6) SA 4 (CC) at paragraphs [77] – [80]

The organs of state that commented on the application included:

- CapeNature stated that *"the site is heavily degraded and unlikely to contribute to biodiversity pattern targets; the loss is considered to be of medium negative significance and can be mitigated to some degree by allowing for ecological corridors and landscaping with indigenous vegetation."*
- Department of Transport and Public Works stated that they have no objection to the proposed rezoning to allow a Regional Shopping Centre on the site and made specific recommendations related to size, the number of parking bays, access and infrastructure;
- Department of Agriculture, Forestry and Fisheries stated that they have no objection to the proposed rezoning to Business Zone 1 and Consent Use to accommodate a supermarket, place of entertainment and liquor store;
- Department of Water Affairs stated that based on:
  - Services agreement with Overstrand Municipality;
  - Services report with specific reference to storm water management, detail of storm water management and potential mitigation and a stormwater plan;
  - Wetlands report by Freshwater Consultants, that the Department support the development.
- Heritage Western Cape stated that-  
*"The proposed development is not supported in terms of its high negative impact in a scenic route and landscape of high heritage significance."*

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

- The information contained in the Application Form and BAR dated 1 February 2010;
- The comments received from I&APs as included in the BAR;
- The comment received from CapeNature dated 19 June 2009 and 24 December 2009;
- The comment received from the Department of Agriculture, Forestry and Fisheries dated 18 December 2009;
- The comment received from Heritage Western Cape (Archaeology, Paleontology & Meteorites Committee) dated 6 October 2009;
- The Comment received from the Department of Water Affairs dated 1 December 2009;
- The comment received from the Overstrand Municipality dated 3 July 2009, 26 August 2009, 4 December 2009 and 18 December 2013;
- All the specialist studies and input contained within the BAR;
- Femridge Consulting's *Proposed Shopping Centre Feasibility Study* (March 2009);
- The CEMP dated December 2009;
- 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);
- The objectives and requirements of relevant legislation, policies and guidelines, including Section 2 of the NEMA;
- The recommendations (including reference to the *Overstrand Retail Study, 2011*) of the Portfolio Committee: Infrastructure & Planning, Hermanus Administration dated 17 April 2012;
- The minutes, the issues resolved and the recommendations of the Mayoral Committee meeting, Hermanus Administration dated 25 April 2012.

The public participation process for the proposed development met the minimum legal requirements in terms of NEMA and the EIA regulations and included:

- Letter drop-offs and emails to residents within 100m of the site;
- An advert in the Hermanus Times;
- English and Afrikaans notice boards at visible positions near the northern corner and north-eastern side of the site;
- Notifications of the proposed developments and release of the BAR were sent to state departments, organs of state, the ward councillor, the Overstrand Municipality and Hermanus Business Chamber;
- A public information meeting on 28 May 2009 at the Thusong Community Hall in Hawston.

The delegated competent authority deemed the content of the BAR and additional information sufficient to have made a decision. As stated in the responding statement, registered I&APs were free to request additional information throughout the EIA application process.

The information submitted during the EIA application and the appeal process is considered anew during the adjudication of the appeal. The review of the EIA application, BAR and all associated information with regard of the comment dated 25 April 2012 received from the mayoral committee of the Overstrand Municipality, sufficient motivation exist to support an increase the GLA ("GLA") from 10 000m<sup>2</sup> to 30 000m<sup>2</sup> for the proposed retail facility. The motivating factors include, but not limited to:

- Sufficient space is available to accommodate a 30 000m<sup>2</sup> retail facility;
- The site is heavily degraded and unlikely to contribute to biodiversity pattern targets. The loss is considered to be of medium negative significance and can be mitigated to some degree by allowing for ecological corridors and landscaping with indigenous vegetation (CapeNature). Ecological corridors have been incorporated into the design of the retail facility;

- In terms of the Paddasvlei Soutpan, the geo-hydrological investigation indicated that the vlei is mainly fed by the deeper lying Table Mountain Group Aquifer thus the impact on the soutpan is anticipated to be negligible;
- The aquatic statement indicated that the Vermont Pan is unlikely to be influenced by any activities on the proposed retail facility site;
- The property is to be rezoned to Business Zone 1 as per the recommendations of the Mayoral Committee, Hermanus Administration;
- Its close proximity and by being located directly adjacent to the Hawston urban area will assist the retail facility blending in with Hawston and it will not be seen as being "out-of-place" in terms of location;
- The retail facility will benefit both the strategic commercial needs of the area and the need for employment opportunities.

In terms of the assertion made by the appellant in terms of the following:

*"The BAR concedes that the Paddavlei is a wetland but no independent, specialist geo-hydrological report or wetland delineation report is submitted. Considering the relative proximity of the Hawston site to the important Paddavlei freshwater system and the Vermont Soutpan wetland, and the impact that the project will have on drainage channels towards these freshwater systems, not to mention the risk of contamination of this system by stormwater run-off from the project site during the construction and operational phases, a specialist geo-hydrological report which includes a wetland delineation report should have been mandatory."*

The Freshwater Consulting Group on 30 November 2009 stated-

*"Based on a desktop examination it is likely that Paddasvlei is in part fed by sub-surface drainage from this site. Mr. Rosewarne concludes that it is unlikely that Paddasvlei will be impacted by the development, assuming adequate management of stormwater."*

When considering the need and desirability of the proposed retail facility, the following is relevant:

In the NFSD it states that *"[T]he achievement of sustainable development is not a once-off occurrence and its objectives cannot be achieved by a single action or decision. It is an ongoing process that requires a particular set of values and attitudes in which economic, social and environmental assets that society has at its disposal, are managed in a manner that sustains human well-being without compromising the ability of future generations to meet their own needs."*

The National Spatial Development Plan ("NSDP") (2006) emphasizes that the goal of sustainable growth, including the creation of long-term job opportunities, can only be achieved if budget allocations and spending is focused on economic infrastructure in *"priority areas with potential for economic development ..."* that will *"... serve the broader societies' needs equitably"*. Thus, any

"triple bottom-line" argument must be considered in a balanced manner and within its regional context.

The Western Cape Provincial Spatial Development Framework ("WCPSDF") identifies the Hermanus area as a priority fixed investment urban settlement, which means that it shows high economic growth potential with high population thresholds. Towns and settlements with this characteristic in terms of the WCPSDF should be prioritized as locations for fixed infrastructure, which includes urban services and facilities. In this regard, the proposed development will offer some infrastructure upgrades which could benefit the greater Hermanus area. These include the upgrade of an existing 30MVA substation in Hermanus.

The WCPSDF states that Retail is one of the few significant forms of investment occurring in the emerging market' (Urban Landmarket 2013) with 4 million m<sup>2</sup> of new retail space being expected to be added over the next 10-12 years in South Africa.

A strategy of the WCPSDF that the development will strive to meet includes the conservation and strengthening of the sense of place by means of implementing appropriate landscaping and architectural styles that is sensitive to the existing environment while at the same time enhancing it. In the same way the proposal will also strive to meet the strategies of restructuring urban settlements, promoting socio-economic integration, integration of urban activities, promotion of public and non-motorised transport and allocation of public space for public life and be located inside the urban edge. These strategies are achieved in that the development will be in walking distance from Hawston, bringing people closer to possible work and shopping opportunities.

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

- Two major weaknesses are associated with the Hermanus CBD, namely:
  - Inadequate variety of different stores required by a town of the size of Hermanus;
  - Lack of parking which is further exacerbated by the fact that all retail facilities are spread over a wide area and shoppers have to drive from store to store;
  - that there is a substantial residential growth in the area with a major outflow to Cape Town centers.
- 76% of the respondents indicated that they regard Somerset Mall as their most important shopping destination due to the variety of tenants and shops; and for it being a one-stop shopping destination.

The Fernridge Consulting's *Proposed Shopping Centre Feasibility Study* (March 2009) report stated the total estimated retail potential for the Hermanus area, excluding the low income bracket of

R3000/month, is approximately 189 000m<sup>2</sup>; at 7% growth per annum the anticipated retail market in the catchment is anticipated to grow by 13 000m<sup>2</sup> per annum, which is seen as significant growth.

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

Given the proposed function of the development as a retail facility, the following characteristics deem the development to be desirable:

- the development will integrate with Hawston;
- the development will be accessible via an off-route from the R43;
- the development will increase the offer of retail shops in Hermanus and could thereby attract shoppers who would otherwise travel to Cape Town to access retail facilities;
- the development will act as an economic catalyst to the town of Hawston.

In addition, concerns of unacceptable opportunity costs and unacceptable cumulative impacts are minimised when one considers the longer-term outcomes for the area in question, i.e. the possibility of other socially important developments taking place in the future in proximity to the proposed retail facility.

The proposed retail facility on portion 1 of the Farm No. 572 was recommended for approval to the Department of Environmental Affairs and Development Planning by the Mayoral Committee and the Overstrand Municipal Council on 25 April 2012 and 11 May 2012 in terms of:

- section 4(7) of the LUPO 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;
- section 34 of the MSA, 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.

Thus, the proposed development is consistent with the Overstrand Municipality's planning for portion 1 of the Farm No. 572. The Overstrand Municipality also confirmed that sufficient capacity can be made available at the Hawston sub-station for the development. The developer has however indicated that the development will connect directly to the ESKOM grid as it falls within the ESKOM distribution area.

I concur with the delegated competent authority that sufficient information was available on the file to enable a decision.

#### 4. Power Supply

The proposed development is consistent with the Overstrand Municipality's planning for portion 1 of the Farm No. 572. The Overstrand Municipality confirmed that sufficient capacity can be made available at the Hawston sub-station for the development. The developer has however indicated that the development will connect directly to the ESKOM grid as it falls within the ESKOM distribution area.

#### 5. The Environmental Assessment Practitioner ("EAP")

The EAP's professional affiliations include the South African Council for Natural Scientific Professions which have a code of conduct to which their members has to adhere to, failing which they risk losing their membership/registration. To date, the DEADP received 81 EIA applications from the EAP.

In addition, regulation 17 of the EIA regulations highlights the general requirements of EAPs which the delegated competent authority deemed the EAP to comply with.

The EAM concur with the delegated competent authority that the EIA application complied with Regulation 23 of the EIA Regulations, 2006-

#### *"Content of basic assessment reports*

23. (1) *The EAP managing an application to which this Part applies must prepare a basic assessment report in a format published by, or obtainable from, the competent authority.*
- (2) *A basic assessment report must contain all the information that is necessary for the competent authority to consider the application and to reach a decision contemplated in regulation 26, and must include –*
- (a) details of –*
    - i) the (EAP who prepared the report; and*
    - (ii) the expertise of the EAP to carry out basic assessment procedures;*
  - (b) a description of the proposed activity;*
  - (c) a description of the property on which the activity is to be undertaken and the location of the activity on the property, or if it is –*
    - (i) a linear activity, a description of the route of the activity; or*
    - (ii) an ocean-based activity, the coordinates within which the activity is to be undertaken;*

- (d) a description of the environment that may be affected by the proposed activity and the manner in which the geographical, physical, biological, social, economic and cultural aspects of the environment may be affected by the proposed activity;
  - (e) an identification of all legislation and guidelines that have been considered in the preparation of the basic assessment report;
  - (f) details of the public participation process conducted in terms of regulation 22(a) in connection with the application, including-
    - (i) the steps that were taken to notify potentially interested and affected parties of the proposed application;
    - (ii) proof that notice boards, advertisements and notices notifying potentially interested and affected parties of the proposed application have been displayed, placed or given;
    - (iii) a list of all persons, organisations and organs of state that were registered in terms of regulation 57 as interested and affected parties in relation to the application; and
    - (iv) a summary of the issues raised by interested and affected parties, the date of receipt of and the response of the EAP to those issues;
  - (g) a description of the need and desirability of the proposed activity and any identified alternatives to the proposed activity that are feasible and reasonable, including the advantages and disadvantages that the proposed activity or alternatives will have on the environment and on the community that may be affected by the activity;
  - (h) a description and assessment of the significance of any environmental impacts, including cumulative impacts, that may occur as a result of the undertaking of the activity or identified alternatives or as a result of any construction, erection or decommissioning associated with the undertaking of the activity;
    - (i) any environmental management and mitigation measures proposed by the EAP;
    - (j) any inputs made by specialists to the extent that may be necessary; and
    - (k) any specific information required by the competent authority.
- (3) In addition, a basic assessment report must take into account –
- (a) any relevant guidelines; and
  - (b) any practices that have been developed by the competent authority in respect of the kind of activity which is the subject of the application."

6. Activity Need and Desirability including Market constraints and selection of the preferred location for a regional retail centre

In the the National Framework for Sustainable Development (2008) ("NFSD") it states that *"The achievement of sustainable development is not a once-off occurrence and its objectives cannot be achieved by a single action or decision. It is an ongoing process that requires a particular set of values and attitudes in which economic, social and environmental assets that society has at its disposal, are managed in a manner that sustains human well-being without compromising the ability of future generations to meet their own needs."*

The NSDP emphasizes that the goal of sustainable growth, including the creation of long-term job opportunities, can only be achieved if budget allocations and spending is focused on economic infrastructure in *"priority areas with potential for economic development ..."* that will *"... serve the broader societies' needs equitably"*. Thus, any *"triple bottom-line"* argument must be considered in a balanced manner and within its regional context.

When addressing questions of land use and location with regards to the proposed retail facility, the property is to be rezoned to Business Zone 1 as per the recommendations of the Mayoral Committee, Hermanus Administration. With its close proximity and by being located directly adjacent to the Hawston urban area, it indicates that the proposed retail facility is seen as not being significantly *"out-of-place"* in terms of location. In addition, when addressing the question of the needs of the community with regards to this proposed development, it is clear that the retail facility will benefit both the strategic commercial needs of the area and the need for employment opportunities.

The WCPSDF identifies the Hermanus area as a priority fixed investment urban settlement, which means that it shows high economic growth potential with high population thresholds. Towns and settlements with this characteristic in terms of the WCPSDF should be prioritized as locations for fixed infrastructure, which includes urban services and facilities. In this regard, the proposed development will offer some infrastructure upgrades which could benefit the greater Hermanus area. These include the upgrade of an existing 30MVA substation in Hermanus.

The WCPSDF states that Retail is one of the few significant forms of investment occurring in the emerging market' (Urban Landmarket 2013) with 4 million m<sup>2</sup> of new retail space being expected to be added over the next 10-12 years in South Africa.

A strategy of the WCPSDF that the development will strive to meet includes the conservation and strengthening of the sense of place by means of implementing appropriate landscaping and architectural styles that is sensitive to the existing environment while at the same time enhancing it.