



TENDER NO.: SC1685/2016

**LEASE AND DEVELOPMENT OF A PORTION OF ERF 243 HERMANUS (FICK'S
POOL) FOR RESTAURANT PURPOSES**

PROCUREMENT DOCUMENT

NAME OF TENDERER:	
Total Bid Price (Inclusive of VAT) (refer to page 67):	

SEPTEMBER 2016

PREPARED AND ISSUED BY:

Directorate: Finance:
Supply Chain Management Unit
Overstrand Municipality
PO Box 20, Hermanus, 7200

**CONTACT FOR ENQUIRIES
REGARDING SPECIFICATIONS:**

Riaan Kuchar
Senior Manager: Town Planning
Tel. Number: **028 313 8900**

KLEINMOND Private Bag X3 Kleinmond; 7195 Tel: 028 271 8100 Fax: 028 271 4678	HERMANUS PO Box 20 Hermanus; 7200 Tel: 028 313 8000 Fax: 028 313 8048	STANFORD PO Box 84 Stanford; 7210 Tel: 028 341 0640 Fax: 028 341 0445	GANSBAAI PO Box 26 Gansbaai; 7220 Tel: 028 384 0111 Fax: 028 384 0241
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TENDER DETAILS						
TENDER NUMBER:	SC1685/2016					
TENDER TITLE:	LEASE AND DEVELOPMENT OF A PORTION OF ERF 243 HERMANUS (FICK'S POOL) FOR RESTAURANT PURPOSES					
CLOSING DATE:	2016/11/04		CLOSING TIME:	12H00		
SITE MEETING:	DATE:	N/A	TIME:	N/A	COMPULSORY:	N/A
SITE MEETING ADDRESS:	N/A					
CIDB GRADING REQUIRED:	NO	LEVEL AND CATEGORY:	N/A			
BID BOX NO:	1	SITUATED AT: Overstrand Municipal Building, Magnolia Avenue, Hermanus. The bid box is generally open 24 hours a day, 7 days a week.				
OFFER TO BE VALID FOR:	90	DAYS FROM THE CLOSING DATE OF BID.				

TENDERER DETAILS (Please indicate postal address for all correspondence relevant to this specific tender)			
NAME OF TENDERER:			
NAME OF CONTACT PERSON:			
PHYSICAL ADDRESS:		POSTAL ADDRESS:	
TELEPHONE #:		FAX NO.	
E-MAIL ADDRESS:			

DATE:	
SIGNATURE OF TENDERER:	
CAPACITY UNDER WHICH THIS BID IS SIGNED:	

PLEASE NOTE:
1. Tenders that are deposited in the incorrect box will not be considered.
2. Tender box deposit slot is 28cm x 2.5cm.
3. Mailed, telegraphic or faxed tenders will not be accepted.
4. If the bid is late, it will not be accepted for consideration.
5. Bids may only be submitted on the Bid Documentation provided by the Municipality.

ENQUIRIES MAY BE DIRECTED TO:	CONTACT PERSON	TEL. NUMBER
1. TECHNICAL ENQUIRIES	R Kuchar	028 313 8900
2. ENQUIRIES REGARDING BID PROCEDURES & COMPLETION OF BID DOCUMENTS	A Moore	028 313 8974
	L du Preez	028 313 8147

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**PART A – ADMINISTRATIVE REQUIREMENTS IN
TERMS OF THE SUPPLY CHAIN MANAGEMENT POLICY**

1. CHECKLIST

PLEASE ENSURE THAT THE FOLLOWING FORMS HAVE BEEN DULY COMPLETED AND SIGNED AND THAT ALL DOCUMENTS AS REQUESTED, ARE ATTACHED TO THE TENDER DOCUMENT:

Certificate of Clarification Meeting Attendance Is the form duly completed and signed by both tenderer and agent of the Overstrand Municipality?	Yes	No	
Authority to Sign a Bid Is the form duly completed and is a certified copy of the resolution attached?	Yes	No	
Joint Venture (Is the form duly completed)	Yes	No	
Tax Clearance Certificate Is an ORIGINAL and VALID Tax Clearance Certificate attached?	Yes	No	
MBD 4 (Declaration of Interest) Is the form duly completed and signed?	Yes	No	
MBD 8 (Declaration of Past Supply Chain Practices) Is the form duly completed and signed?	Yes	No	
MBD 9 (Certificate of Independent Bid Determination) Is the form duly completed and signed?	Yes	No	
MBD 15 (Certificate of Payment of Municipal Accounts) Is the form duly completed and signed? Are the Identity numbers, residential addresses and municipal account numbers of ALL members, partners, directors, etc. provided on the form as requested?	Yes	No	
Specifications Is the form duly completed and signed?	Yes	No	
Form of Offer Is the form duly completed and signed?	Yes	No	

SIGNATURE		NAME (PRINT)	
CAPACITY		DATE	
NAME OF FIRM			

2. TENDER NOTICE & INVITATION TO TENDER
TENDER NO. SC 1685/2016
LEASE AND DEVELOPMENT OF A PORTION OF ERF 243 HERMANUS (FICK'S POOL) FOR RESTAURANT PURPOSES

Tenders are hereby invited for the **Lease And Development of a Portion of Erf 243 Hermanus (Fick's Pool) for Restaurant Purposes.**

Tender documents, in English, are obtainable from **Friday, 30 September 2016**, at the offices of the Supply Chain Management Unit, Overstrand Municipality, Magnolia Avenue, Hermanus; from Ms Rita Neethling Tel. 028 313 8064 between 08h30 and 15h30 upon payment of a tender participation fee of **R167-00** per set. Alternatively the document may be downloaded free of charge from the website: www.overstrand.gov.za .

Sealed tenders, with: "**Tender No.:SC1685/2016:Lease And Development of a Portion of Erf 243 Hermanus (Fick's Pool) for Restaurant Purposes.**" clearly endorsed on the envelope, must be deposited in **Tender Box No. 1** at the offices of the Overstrand Municipality, Magnolia Avenue, Hermanus. Bids may only be submitted on the bid documentation issued by Overstrand Municipality.

The closing date and time of the tender is on **04 November 2016 at 12h00** and tenders will be opened in public immediately thereafter in the Supply Chain Management Committee Room, Hermanus Administration.

Tenders must be valid for a period of **90 days** after the closing date. Tenders shall be evaluated in terms of the Preferential Procurement Regulations, 2011.

The Overstrand Municipality does not bind itself to accept the highest or any tender and reserves the right to accept any or none of the tenders submitted, as it may deem expedient. Tenders are subject to the Supply Chain Management Policy and the Administration of Immovable Property Policy of the Overstrand Municipality.

Please refer enquiries to **Riaan Kuchar** at telephone number: **028 313 8900**.



3. AUTHORITY TO SIGN A BID

1. SOLE PROPRIETOR (SINGLE OWNER BUSINESS) AND NATURAL PERSON

1.1. I, _____, the undersigned, hereby confirm that I am the sole owner of the business trading as _____.

OR

1.2. I, _____, the undersigned, hereby confirm that I am submitting this tender in my capacity as natural person.

SIGNATURE:		DATE:	
PRINT NAME:			
WITNESS 1:		WITNESS 2:	

2. COMPANIES AND CLOSE CORPORATIONS

2.1. **If a Bidder is a COMPANY, a certified copy of the resolution by the board of directors**, duly signed, authorising the person who signs this bid to do so, as well as to sign any contract resulting from this bid and any other documents and correspondence in connection with this bid and/or contract on behalf of the company **must be submitted with this bid**, that is, before the closing time and date of the bid

2.2. In the case of a **CLOSE CORPORATION (CC)** submitting a bid, **a resolution by its members**, authorizing a member or other official of the corporation to sign the documents on their behalf, **shall be included with the bid**.

PARTICULARS OF RESOLUTION BY BOARD OF DIRECTORS OF THE COMPANY/MEMBERS OF THE CC

Date Resolution was taken	
Resolution signed by (name and surname)	
Capacity	
Name and surname of delegated Authorised Signatory	
Capacity	
Specimen Signature	

Full name and surname of ALL Director(s) / Member (s)			
1.		2.	
3.		4.	
5.		6.	
7.		8.	
9.		10.	
Is a CERTIFIED COPY of the resolution attached?		YES	NO

SIGNED ON BEHALF OF COMPANY / CC:		DATE:	
PRINT NAME:			
WITNESS 1:		WITNESS 2:	



3. PARTNERSHIP/TRUST

We, the undersigned partners in the business trading as _____ hereby authorize Mr/Ms _____ to sign this bid as well as any contract resulting from the bid and any other documents and correspondence in connection with this bid and /or contract for and on behalf of the abovementioned partnership.

The following particulars in respect of every partner must be furnished and signed by every partner:

Full name of partner		Signature	
SIGNED ON BEHALF OF PARTNERSHIP:		DATE:	
PRINT NAME:			
WITNESS 1:		WITNESS 2:	

4. CONSORTIUM

We, the undersigned consortium partners, hereby authorize _____ (Name of entity) to act as lead consortium partner and further authorize Mr./Ms. _____ To sign this offer as well as any contract resulting from this tender and any other documents and correspondence in connection with this tender and / or contract for and on behalf of the consortium.

The following particulars in respect of each consortium member must be provided and signed by each member:

Full Name of Consortium Member	Role of Consortium Member	% Participation	Signature
SIGNED ON BEHALF OF PARTNERSHIP:		DATE:	
PRINT NAME:			
WITNESS 1:		WITNESS 2:	



4. CERTIFICATE OF AUTHORITY FOR JOINT VENTURES

This returnable schedule is to be completed by JOINT VENTURES

We, the undersigned, are submitting this tender offer in joint venture and hereby authorize Mr./Ms. _____

 authorized signatory of the Company/Close Corporation/Partnership (name) _____
 _____, acting in the capacity of lead partner, to
 sign all documents in connection with the tender offer and any contract resulting from it on our behalf.

1. Name of firm (Lead partner)			
Address			
		Tel. No.	
Signature		Designation	

2. Name of firm			
Address			
		Tel. No.	
Signature		Designation	

3. Name of firm			
Address:			
		Tel. No.	
Signature		Designation	

4. Name of firm			
Address			
		Tel. No.	
Signature		Designation	

NOTE: A copy of the Joint Venture Agreement showing clearly the percentage contribution of each partner to the Joint Venture, shall be appended to this Schedule.

5. GENERAL CONDITIONS OF TENDER

1. Sealed tenders, with the “**Tender Number and Title**” clearly endorsed on the envelope, must be deposited in the **tender box indicated** at the offices of the Overstrand Municipality, Magnolia Avenue, Hermanus.
2. The tender must be lodged by the Tenderer in the tender box in the Main Cash Hall, Hermanus Municipal Offices, Magnolia Avenue, Hermanus
3. **PLEASE NOTE:**
 - 3.1. Tenders that are deposited in the incorrect box will not be considered.
 - 3.2. Tender box deposit slot is 28cm x 2.5cm.
 - 3.3. Mailed, telegraphic or faxed tenders will not be accepted.
 - 3.4. Documents may only be completed in black ink.
 - 3.5. The use of correction fluid/tape is not allowed.
 - 3.6. In the event of a mistake having been made, it shall be crossed out in ink and be accompanied by an initial at each and every alteration.
 - 3.7. Alterations or deletions not signed by the Tenderer may render the tender invalid.
 - 3.8. All bids must be submitted in writing on the official forms supplied (not to be re-typed)
 - 3.9. All prices shall be quoted in South African currency and be **EXCLUSIVE of VAT**.
4. Any Tender received after the appointed time for the closing of Tenders shall not be considered but shall be filed unopened with the other Tenders received or may be returned to the Tenderer at his request.
5. Tenders may not be telefaxed to the Municipality and therefore any tenders received by fax will **not** be considered.
6. A separate Tender box is provided for the reception of Tenders and no Tender will be considered which, subsequent to the closing hour for Tenders, may be found in another box.
7. Tenders shall be opened in public at the Hermanus Municipal Offices as soon as possible after the closing time for the receipt of tenders.
8. The Municipality shall have the right to summarily disqualify any Tenderer who, either at the date of submission of this tender or at the date of its award, is indebted to the Municipality in respect of any rental, levies, rates and/or service charges; ALTERNATIVELY;
 - 8.1. That an agreement be signed whereby the Tenderer agrees that a percentage or fixed amount at the discretion of the Municipality, be deducted from payments due to him for this tender, until the debt is paid in full.
 - 8.2. The tenderer shall declare **all** the Municipal account numbers in the Overstrand Area for which the enterprise or the proprietors or directors in their personal capacity is/ are responsible or co-responsible.
9. This bid will be evaluated and adjudicated according to the following criteria:
 - 9.1. Relevant specifications
 - 9.2. Financial means and expertise
 - 9.3. Capability to perform in terms of the contract
10. The following terms shall be interpreted as indicated:
 - 10.1. “*Closing time*” means the date and hour specified in the bidding documents for the receipt of bids.
 - 10.2. “*Corrupt practice*” means the offering, giving, receiving, or soliciting of anything of value to influence the action of a public official in the procurement process or in contract execution.

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- 10.3. “Day” means calendar day.
- 10.4. “Fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.
- 10.5. “Written” or “in writing” means handwritten in ink or any form of electronic or mechanical writing.
- 10.6. Unless otherwise indicated in the bidding documents, the Municipality shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.
- 10.7. Invitations to bid are usually published in locally distributed news media and on the municipality’s website.

6. MBD 2 – TAX CLEARANCE CERTIFICATE REQUIREMENTS

It is a condition of bid that the taxes of the successful bidder **must** be in order, or that satisfactory arrangements have been made with South African Revenue Services (SARS) to meet the bidder's tax obligations.

1. In order to meet this requirement, bidders are required to complete in full the TCC 0001 form, "Application for a Tax Clearance Certificate" and submit it to any SARS branch office nationally. The Tax Clearance Certificate Requirements are also applicable to foreign bidders / individuals who wish to submit bids.
2. SARS will then furnish the bidder with a Tax Clearance Certificate that will be valid for a period of 1 (one) year from the date of approval.
3. The original Tax Clearance Certificate must be submitted together with the bid. Failure to submit the original and valid Tax Clearance Certificate will result in the invalidation of the bid. Certified copies of the Tax Clearance Certificate will not be accepted.
4. In bids where Consortia / Joint Ventures / Sub-Contractors are involved, each party must submit a separate Tax Clearance Certificate.
5. Copies of the TCC 001 "Application for a Tax Clearance Certificate" form are available from any SARS branch office nationally or on the website www.sars.gov.za
6. Applications for the Tax Clearance Certificates may also be made via e-Filing. In order to use this provision, taxpayers will need to register with SARS as e-Fileers through the website www.sars.gov.za



7. MBD 4 – DECLARATION OF INTEREST

1. No bid will be accepted from persons in the service of the state¹.
2. Any person, having a kinship with persons in the service of the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid. In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons connected with or related to persons in service of the state, it is required that the bidder or their authorised representative declare their position in relation to the evaluating/adjudicating authority and/or take an oath declaring his/her interest.
3. In order to give effect to the above, the following questionnaire must be completed and submitted with the bid:

3.1.	Full Name of bidder or his or her representative																			
3.2.	Identity Number																			
3.3.	Position occupied in the Company (director, shareholder ² etc.)																			
3.4.	Company Registration Number																			
3.5.	Tax Reference Number																			
3.6.	VAT Registration Number																			
3.7.	Are you presently in the service of the state?	YES		NO																
3.7.1.	If so, furnish particulars:																			
3.8.	Have you been in the service of the state for the past twelve months?	YES		NO																
3.8.1.	If so, furnish particulars:																			

¹ MSCM Regulations: "in the service of the state" means to be –

1. a member of –
 - i. any municipal council;
 - ii. any provincial legislature; or
 - iii. the National Assembly or the National Council of Provinces;
2. a member of the board of directors of any municipal entity;
3. an official of any municipality or municipal entity;
4. an employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No.1 of 1999);
5. a member of the accounting authority of any national or provincial public entity; or
6. an employee of Parliament or a provincial legislature.

² "Shareholder" means a person who owns shares in the company and is actively involved in the management of the company or business and exercises control over the company.



3.9.	Do you have any relationship (family, friend, other) with persons in the service of the state and who may be involved with the evaluation and or adjudication of this bid?	YES		NO	
3.9.1.	If so, furnish particulars:				
3.10.	Are you aware of any relationship (family, friend, other) between a bidder and any persons in the service of the state who may be involved with the evaluation and or adjudication of this bid?	YES		NO	
3.10.1.	If so, furnish particulars:				
3.11.	Are any of the company's directors, managers, principal shareholders or stakeholders in the service of the state?	YES		NO	
3.11.1.	If so, furnish particulars:				
3.12.	Is any spouse, child or parent of the company's directors, managers, principal shareholders or stakeholders in the service of the state?	YES		NO	
3.12.1.	If so, furnish particulars:				
3.13.	Do you or any of the directors, trustees, managers, principal shareholders, or stakeholders of this company have any interest in any other related companies or business whether or not they are bidding for this contract?	YES		NO	
3.13.1.	If so, furnish particulars:				



3.14. Please provide the following information on ALL directors/shareholders/trustees/members below:			
Full Name and Surname	Identity Number	Personal Income Tax Number	Provide State ³ Employee Number

NB:

a) PLEASE ATTACH CERTIFIED COPY(IES) OF ID DOCUMENT(S)

b) PLEASE PROVIDE PERSONAL INCOME TAX NUMBERS FOR ALL DIRECTORS / SHAREHOLDERS / TRUSTEES / MEMBERS, ETC.

4. DECLARATION

I, the undersigned (name) _____, certify that the information furnished in paragraph 3 above is correct.

I accept that the state may act against me should this declaration prove to be false.

SIGNATURE	DATE	
NAME OF SIGNATORY		
POSITION		
NAME OF COMPANY		

³ MSCM Regulations: "in the service of the state" means to be –

1. a member of –
 2. any municipal council;
 3. any provincial legislature; or
 4. the National Assembly or the National Council of Provinces;
5. a member of the board of directors of any municipal entity;
6. an official of any municipality or municipal entity;
7. an employee of any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No.1 of 1999);
8. a member of the accounting authority of any national or provincial public entity; or
9. an employee of Parliament or a provincial legislature.



8. MBD 8 – DECLARATION OF BIDDER’S PAST SUPPLY CHAIN MANAGEMENT PRACTICES

1. This Municipal Bidding Document must form part of all bids invited.
2. It serves as a declaration to be used by municipalities and municipal entities in ensuring that when goods and services are being procured, all reasonable steps are taken to combat the abuse of the supply chain management system.
3. The bid of any bidder may be rejected if that bidder, or any of its directors have:
 - 3.1. abused the municipality’s / municipal entity’s supply chain management system or committed any improper conduct in relation to such system;
 - 3.2. been convicted for fraud or corruption during the past five years;
 - 3.3. willfully neglected, reneged on or failed to comply with any government, municipal or other public sector contract during the past five years; or
 - 3.4. been listed in the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004).
4. In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.

4.1	Is the bidder or any of its directors listed on the National Treasury’s database as a company or person prohibited from doing business with the public sector? <i>(Companies or persons who are listed on this database were informed in writing of this restriction by the National Treasury after the audi alteram partem rule was applied).</i>	Yes	No
4.1.1	If so, furnish particulars:		
4.2	Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)? <i>(To access this Register enter the National Treasury’s website, www.treasury.gov.za, click on the icon “Register for Tender Defaulters” or submit your written request for a hard copy of the Register to facsimile number (012) 3265445).</i>	Yes	No
4.2.1	If so, furnish particulars:		
4.3	Was the bidder or any of its directors convicted by a court of law (including a court of law outside the Republic of South Africa) for fraud or corruption during the past five years?	Yes	No
4.3.1	If so, furnish particulars:		



4.4	Does the bidder or any of its directors owe any municipal rates and taxes or municipal charges to the municipality / municipal entity, or to any other municipality / municipal entity, that is in arrears for more than three months?	Yes	No
4.4.1	If so, furnish particulars:		
4.5	Was any contract between the bidder and the municipality / municipal entity or any other organ of state terminated during the past five years on account of failure to perform on or comply with the contract?	Yes	No
4.5.1	If so, furnish particulars:		

5. CERTIFICATION

I, the undersigned (full name), _____, certify that the information furnished on this declaration form true and correct.

I accept that, in addition to cancellation of a contract, action may be taken against me should this declaration prove to be false.

SIGNATURE:		NAME (PRINT):	
CAPACITY:		DATE:	
NAME OF FIRM:			



9. MBD 9 – CERTIFICATE OF INDEPENDENT BID DETERMINATION

1. This Municipal Bidding Document (MBD) must form part of all bids invited.
2. Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging).⁴ Collusive bidding is a *per se* prohibition meaning that it cannot be justified under any grounds.
3. Municipal Supply Regulation 38 (1) prescribes that a supply chain management policy must provide measures for the combating of abuse of the supply chain management system, and must enable the accounting officer, among others, to:
 - 3.1. take all reasonable steps to prevent such abuse;
 - 3.2. reject the bid of any bidder if that bidder or any of its directors has abused the supply chain management system of the municipality or municipal entity or has committed any improper conduct in relation to such system; and
 - 3.3. cancel a contract awarded to a person if the person committed any corrupt or fraudulent act during the bidding process or the execution of the contract.
4. This MBD serves as a certificate of declaration that would be used by institutions to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid-rigging.
5. In order to give effect to the above, the attached Certificate of Bid Determination (MBD 9) must be completed and submitted with the bid:

CERTIFICATE OF INDEPENDENT BID DETERMINATION:

In response to the invitation for the bid made by:

OVERSTRAND MUNICIPALITY

I, the undersigned, in submitting the accompanying bid, hereby make the following statements that I certify to be true and complete in every respect:

1. I have read and I understand the contents of this Certificate;
2. I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder;
4. Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign, the bid, on behalf of the bidder;
5. For the purposes of this Certificate and the accompanying bid, I understand that the word “competitor” shall include any individual or organization, other than the bidder, whether or not affiliated with the bidder, who:
 - 5.1. has been requested to submit a bid in response to this bid invitation;

⁴ Bid rigging (or collusive bidding) occurs when businesses, that would otherwise be expected to compete, secretly conspire to raise prices or lower the quality of goods and / or services for purchasers who wish to acquire goods and / or services through a bidding process. Bid rigging is, therefore, an agreement between competitors not to compete.



- 5.2. could potentially submit a bid in response to this bid invitation, based on their qualifications, abilities or experience; and
- 5.3. provides the same goods and services as the bidder and/or is in the same line of business as the bidder
- 6. The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium⁵ will not be construed as collusive bidding.
- 7. In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
 - 7.1. prices;
 - 7.2. geographical area where product or service will be rendered (market allocation)
 - 7.3. methods, factors or formulas used to calculate prices;
 - 7.4. the intention or decision to submit or not to submit, a bid;
 - 7.5. the submission of a bid which does not meet the specifications and conditions of the bid; or
 - 7.6. bidding with the intention not to win the bid.
- 8. In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the products or services to which this bid invitation relates.
- 9. The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.
- 10. I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No. 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No. 12 of 2004 or any other applicable legislation.

SIGNATURE		NAME (PRINT)	
CAPACITY		DATE	
NAME OF FIRM			

⁵ Joint venture or Consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.



10. MBD 15 – CERTIFICATE FOR PAYMENT OF MUNICIPAL SERVICES

DECLARATION IN TERMS OF CLAUSE 112(1) OF THE MUNICIPAL FINANCE MANAGEMENT ACT (NO.56 OF 2003) - (To be signed in the presence of a Commissioner of Oaths)

I, _____, _____ (full name and ID no.), hereby acknowledge that according to SCM Regulation 38(1)(d)(i), the Municipality may reject the tender of the tenderer if any municipal rates and taxes or municipal service charges owed by the Tenderer or any of its directors/members/partners to the Overstrand Municipality, or to any other municipality or municipal entity, are in arrears for more than 3 (three) months.

I declare that I am duly authorised to act on behalf of _____ (name of the firm) and hereby declare, that to the best of my personal knowledge, neither the firm nor any director/member/partner of said firm is in arrears on any of its municipal accounts with any municipality in the Republic of South Africa, for a period longer than 3 (three) months.

I further hereby certify that the information set out in this schedule and/or attachment(s) hereto is true and correct. The Tenderer acknowledges that failure to properly and truthfully complete this schedule may result in the tender being disqualified, and/or in the event that the tenderer is successful, the cancellation of the contract.

PHYSICAL BUSINESS ADDRESS(ES) OF THE TENDERER	MUNICIPAL ACCOUNT NUMBER

FURTHER DETAILS OF THE BIDDER'S Director / Shareholder / Partners, etc.:

Director / Shareholder / partner	Physical address of the Business	Municipal Account number(s)	Physical residential address of the Director / shareholder / partner	Municipal Account number(s)

NB: Please attach certified copy(ies) of ID document(s)
If the entity or any of its Directors/Shareholders/Partners, etc. rents/leases premises, a copy of the rental/lease agreement must be submitted with this tender.

Signature	Position	Date

<p style="text-align: center;">COMMISSIONER OF OATHS</p> <p>Signed and sworn to before me at _____, on this _____ day of _____ 20__</p> <p>by the Deponent, who has acknowledged that he/she knows and understands the contents of this Affidavit, it is true and correct to the best of his/her knowledge and that he/she has no objection to taking the prescribed oath, and that the prescribed oath will be binding on his/her conscience.</p> <p>COMMISSIONER OF OATHS:-</p> <p>Position: _____</p> <p>Address: _____</p> <p>Tel: _____</p>	<p>Apply official stamp of authority on this page:</p>
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PART B – SPECIFICATIONS AND PRICING SCHEDULE

11. SPECIFICATIONS

SCOPE OF TENDER

1. INTRODUCTION

- 1.1. The Overstrand Municipality has decided to call for tenders for the lease and development of a portion of Erf 243, Hermanus ($\pm 5300\text{m}^2$ in extent) also known as “Fick’s Pool” for the specific purpose of developing and operating a restaurant and maintaining the natural pool and the ablution facilities on the property for a period of 20 years with a possible extension
- 1.2. The Overstrand Municipality is keen to enter into a lease agreement with a developer that is financially sound and environmentally sensitive to the area with a proven record of proven expertise to establish, manage and maintain a restaurant in an ecologically sensitive area.
- 1.3. The document is self-explanatory and interested parties are encouraged to read through it carefully, so as to familiarise themselves with both the overall intent of Council, as well as with the procedures for the award.
- 1.4. The tender is subject to the conditions as set out in the tender documents and to the most recent Supply Chain Management Policy and the Administration of Immovable Property Policy of the Overstrand Municipality, as amended, approved and adopted by Council.

2. THE TENDER PROCESS

The process to be followed in this proposal shall be as follows:

- 2.1. The submission of a tender price as well as information regarding the source of funds and the financial offer made must be clearly set out in the bidder’s submission as per the requirements set out in **Paragraph 8 – Submission Requirements and Evaluation**, of this document.
- 2.2. The submissions will be evaluated and adjudicated by a duly constituted Bid Evaluation and Bid Adjudication committee.
- 2.3. Overstrand Municipality does not bind itself to accept the highest or any tender and reserves the right to accept any tenders submitted, as it may deem expedient. Furthermore the Municipality reserves the right to award to any bidder of the Municipality’s choice to ensure a fair and equitable distribution of the Municipality’s property to all people of the Western Cape Province in particular, and RSA in general.
- 2.4. The decision of the Municipality will be final.
- 2.5. The Municipality may wish to interview prospective organisations or individuals prior to awarding the tender to any bidder.
- 2.6. A Lease Agreement, similar to the draft agreement attached hereto marked Annexure “E”, will be entered into with the successful bidder as soon as possible after the tender has been awarded. Should the successful bidder fail or neglect to conclude the Lease Agreement with the Municipality within the time period specified by the Municipality in writing, the terms and conditions of this tender and the policies referred to in this agreement shall be binding on both parties and enforceable by them.
- 2.7. Payment of an amount equal to the monthly lease amount tendered is payable as a lease deposit on date of signature of the lease agreement.
- 2.8. The lease of the property to the successful bidder will proceed after the tender has been awarded and the approval of the Delegated authority is obtained.

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3. ROLE OF THE PROPERTY IN TERMS OF ITS LOCALITY:

- 3.1. The property is located on the fringe of the Hermanus Central Business District, south of Marine Drive on a portion of Erf 243, also known as Fick's Pool. (See locality map attached per **Annexure "A"**). Given its proximity to the sea and the tidal pool, the area is ideally located within an existing tourist area related to accommodation and whale watching.
- 3.2. The property may only be used for the purpose of developing and managing a restaurant.
- 3.3. The Title Deed of the property does not have any restrictive conditions that would prevent the proposed restaurant.

4. PROPERTY DESCRIPTION AND DEVELOPMENT:

4.1 Erf no. and size of portion

The subject portion of Erf 243 Hermanus is $\pm 5300\text{m}^2$ in extent of which the restaurant and associated infrastructure is restricted to 331m^2 . See the Site Plan attached per **Annexure "B"**.

4.2 Zoning status

The current zoning is Local Business, with specific restrictions thereto.

4.3 The surrounding land uses

Vary and include single residential dwellings, guest houses and high density residential developments.

4.4 Aesthetics

The proposed development must be in line with the visual harmony with the surrounding built and sensitive environment. To ensure this, the development will be subject to the Overstrand Heritage Committee and Heritage Western Cape recommendations and approval. The prospective developers must take due cognisance of the existing environment and development parameters of the Overstrand Municipality Zoning Scheme Regulations in relation to the economic viability of the proposed development. The proposed development must be in line with the approvals granted by the Municipality and the Department of Environmental Affairs and Development Planning, attached as **Annexure "C"**.

4.5 Spatial planning

The application is in line with the Overstrand Growth Management Strategy that clearly stipulates that any development in the sensitive coastal zone should be taking due cognisance in terms of aesthetics and the natural environment. In terms of the Spatial Development Framework, guidelines indicate that public investment should focus on the link between the proposed development and the town in terms of economic viability, especially related to tourism. The focus is to upgrade and uplift an area and simultaneously provide work opportunities and this proposal falls within the ambit of the guidelines.

5. DEVELOPMENT PARAMETERS

5.1 Development Directives

The property may be developed as a restaurant with a footprint of 331m^2 in extent and in accordance with the conditions contained in the Record of Decision attached hereto marked **Annexure "C"**.

5.2 Accesses and Road provision

The property is situated on Marine Drive, Hermanus. Access to the property will be from Marine Drive.

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5.3 Height Restrictions

The development is restricted to a single storey building in accordance with the Conditions as per the Record of Decision attached hereto marked **Annexure “C”**.

5.4 Parking

All the required parking must be provided as per Site Plan attached hereto marked **Annexure “B”**.

5.5 Coverage:

The development is restricted to the area as per the site plan and the Record of Decision.

5.6 Additional Conditions:

The upgrading and maintenance of Fick’s Pool’s area, including the existing ablution facilities and maintenance of the pathways will be the responsibility of the successful bidder.

6. INFRASTRUCTURE

6.1. The bidder and/or his appointed developer must submit an engineering services report with reference to the services required and the capacity thereof for approval thereof by the Director: Infrastructure and Planning of the Overstrand Municipality before commencement of the development. Any required upgrades will be for the account of the bidder. A service agreement for all the services, including water, sewerage, electricity, roads, storm water and refuse removal services will be finalised with the Manager: Engineering Services. The bidder must enter into service agreements with the Overstrand Municipality for all the services, including water, sewerage, electricity, storm water and refuse removal before the commencement of the development.

6.2. The bidder shall be responsible for bulk infrastructure and internal municipal services.

6.3. Bulk services levies will be payable by the bidder according to prescribed levies as contained in Council’s budget, which may vary from year to year. See **Annexure “D”**.

7. ENVIRONMENTAL RECORD OF DECISION:

Compliance to the Record of Decision, attached as **Annexure “C”**, is the responsibility of the successful bidder. All conditions must be complied with, especially with any reference to the heading “Fick’s Pool (preferred alternative)” which consists of the following activities:

- Construction of new and kitchen facilities which will measure approximately 266sqm
- Outdoor terraces and decks which will measure approximately 65sqm
- Utility services, such as toilet facilities which will measure approximately 28sqm
- The existing underground sewage area will be upgraded and will measure approximately 20sqm
- Parking areas and associated facilities which will measure approximately 8000sqm

The ROD and the conditions are also contained in the Lease Agreement.

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8. SUBMISSION REQUIREMENTS AND EVALUATION

Evaluation requirements:

8.1. Technical requirements:

Minimum Requirements:		Please indicate with an "X" whether the offer complies with the requirements.			Reference (Supporting documents attached)
		YES	NO	Comment	
8.1.1	Submissions are invited from all parties with a minimum of five (5) years' experience to submit a proposal for the development and lease of the property as a restaurant for a 20 year period with a possibility of a renewal. In this regard a proposal for development and lease must be submitted. (A CV with proof be submitted.)				
8.1.2	The bidders are required to submit a tender deposit of five thousand rand (R5,000.00) on submission of the tender. This amount must be in the form of a bank guaranteed payment (only guaranteed by a registered financial institution) or cheque in favour of the Overstrand Municipality and valid for 90 days from the date of the closure of the tender or paid into the Municipality's bank account. This guarantee/cheque will be returned to the unsuccessful bidders after the awarding process has been completed. The tender deposit will be forfeited by a bidder should he cancel/withdraw his tender at any time after the closing date of the tender.				

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8.2. Functionality Criteria:

To qualify a minimum of 38 points must be scored out of a total of 57. Tenderers who do not obtain this minimum score will not be evaluated further. The tender will be scored as follow:

	EVALUATION	CRITERIA	MAXIMUM POINTS ATTAINABLE	MINIMUM POINTS TO BE ACHIEVED	POINTS AWARDED
8.2.1.1.	<p>Site Development Plan as per Section 5 of tender</p> <p>(a) Parameter 1 : Restaurant and kitchen facilities of a approximately 266m². (b) Parameter 2 : Outdoor terraces / decks of approximately 65m². (c) Parameter 3 : Utility services, such as toilet/ablution facilities of approximately 28m². (d) Parameter 4 : Upgrade of existing sewage area of approximately 20sq meters (e) Parameter 4 : Parking of approximately 8000m². (f) Parameter 5 : Access for the disabled to the restaurant</p>	2 points for each parameter	12	12	
8.2.1.2.	<p>Design of restaurant taking aesthetics / heritage and environmental issues into consideration as per approvals.</p> <p>(a) Directive 1 : Visual Harmony with built environment and sensitive environment as per 4.4. (b) Directive 2 : Due cognizance of the sensitive coastal zone as per 4.5. (c) Directive 3 : Development parameters as per site plan, with specific reference to height. As per 5.</p>	5 points for each directive as per tender Section 4.	15	10	
8.2.1.3.	<p>Upliftment of area and work opportunities generated. Scoring will be per directive and or an accumulation thereof</p> <p>(a) Directive 1 : Skills development to be on black employees, including women. (b) Directive 2 : The extent to which suppliers are empowered. (c) Directive 3 : Local supply. (d) Directive 4 : Job creation. (e) Directive 5 : Service industry.</p>	Full points will be awarded if tenderer indicate any reasons towards any of the 5 directives	10	6	
8.2.1.4.	<p>Development Plans Directive 1 : Management Plan :</p> <p>(a) Addressing how ablution facilities and Fick's Pool will be incorporated into development, maintained and made accessible to the public. (b) Address accessibility and maintenance of pathways. Directive 2 :Landscaping Plan (incorporating the area surrounding the restaurant)</p>	10 points for each directive	20	10	

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11. LEASE “VOETSTOOTS” AND SUBJECT TO CONDITIONS:

The property is leased as it stands, "voetstoots", and the Municipality shall not be responsible for any defects in the property either patent or latent. The property is moreover leased subject to all conditions and servitudes mentioned or referred to in the current and/or prior title deeds of the property and to all such other conditions and servitudes which may exist in regard thereto. The Municipality shall not be required to point out the boundary beacons of the property and shall not be liable for any deficiency in the extent of the property which may be revealed on any survey or re-survey, and shall not benefit by any excess.

10. GENERAL

- 10.1 The successful bidder will be responsible for the upkeep and cleaning of the tidal pool and ablution facilities on the property.
- 10.2 The ablution facilities (toilets, showers, etc.) must be made available to the general public. The successful bidder shall be obliged at all times, at its own cost, to keep the said ablution facilities clean and properly supplied with toilet paper.
- 10.3 The business may not be open during the hours of 24:00 until 06:00, unless the prior written consent of the Municipality is obtained.
- 10.4 The grant of the lease shall under no circumstances be deemed to confer any real right or servitude of any kind in favour of the bidder. Upon a demand made by the Municipality, in terms of this lease to be concluded, for quiet possession of the property, the bidder shall be bound to give such possession without any right to compensation, whether for useful, necessary expenses or other improvements.

11. Minimum Requirements:

The bidder is strongly advised in submitting the proposal to address the following:

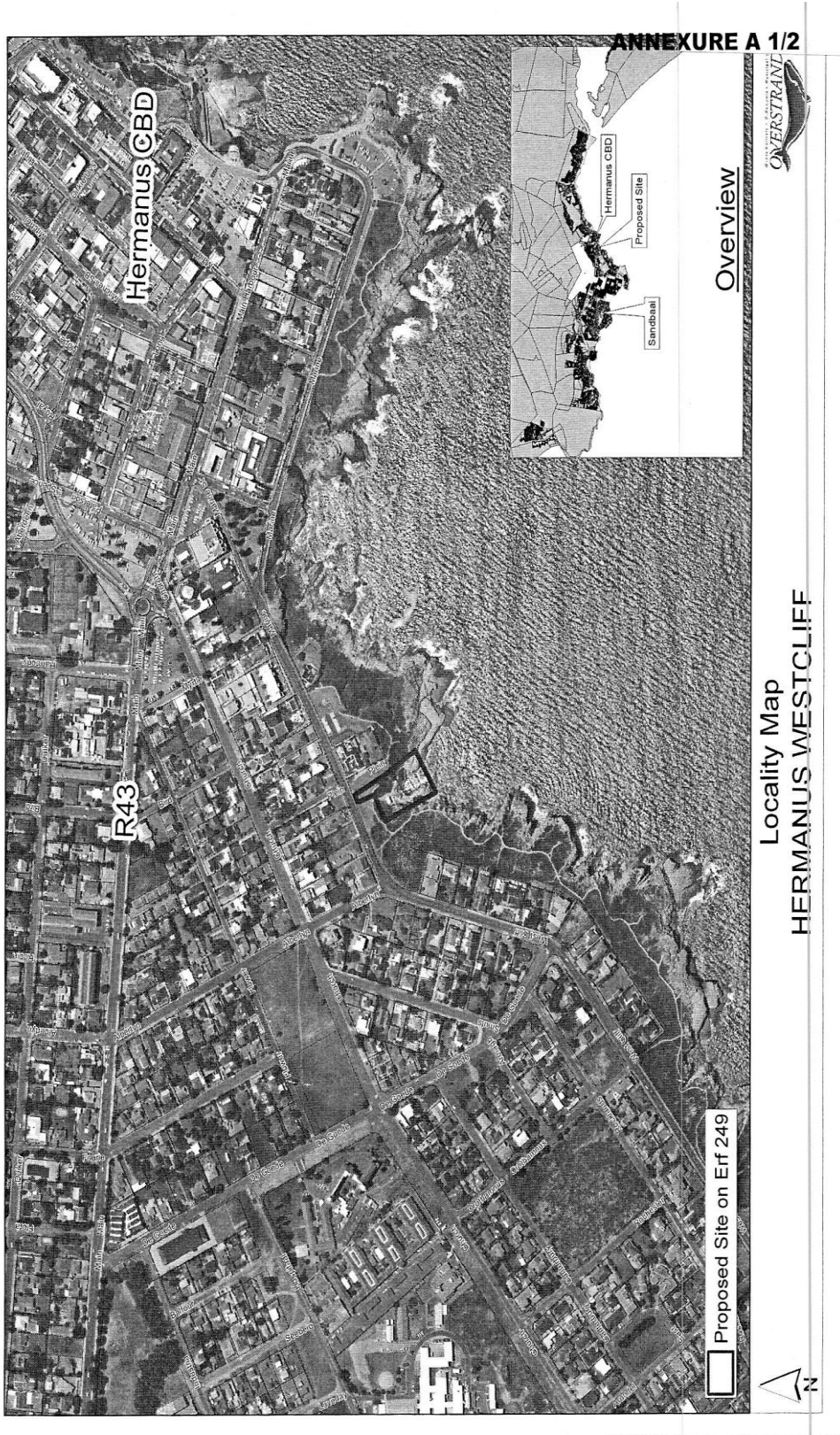
- (a) A period of lease of 20 years, with possibility of an extension for a further period subject to obtaining the necessary approval.
- (b) Lease amount offered per month (including VAT);
- (c) Financial model for the development and subsequent costs (Provide financial analysis and economic modelling and the bidder's ability to mobilize the resources and to finance the project within a particular time frame);
- (d) Fulfil the requirements of the tender as per section 8 of the tender.

12. ACCEPTANCE

The tender shall remain irrevocably open for acceptance by the Municipality for a period of 90 days calculated from the date of the closing of tenders.

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ANNEXURE A – LOCALITY MAP



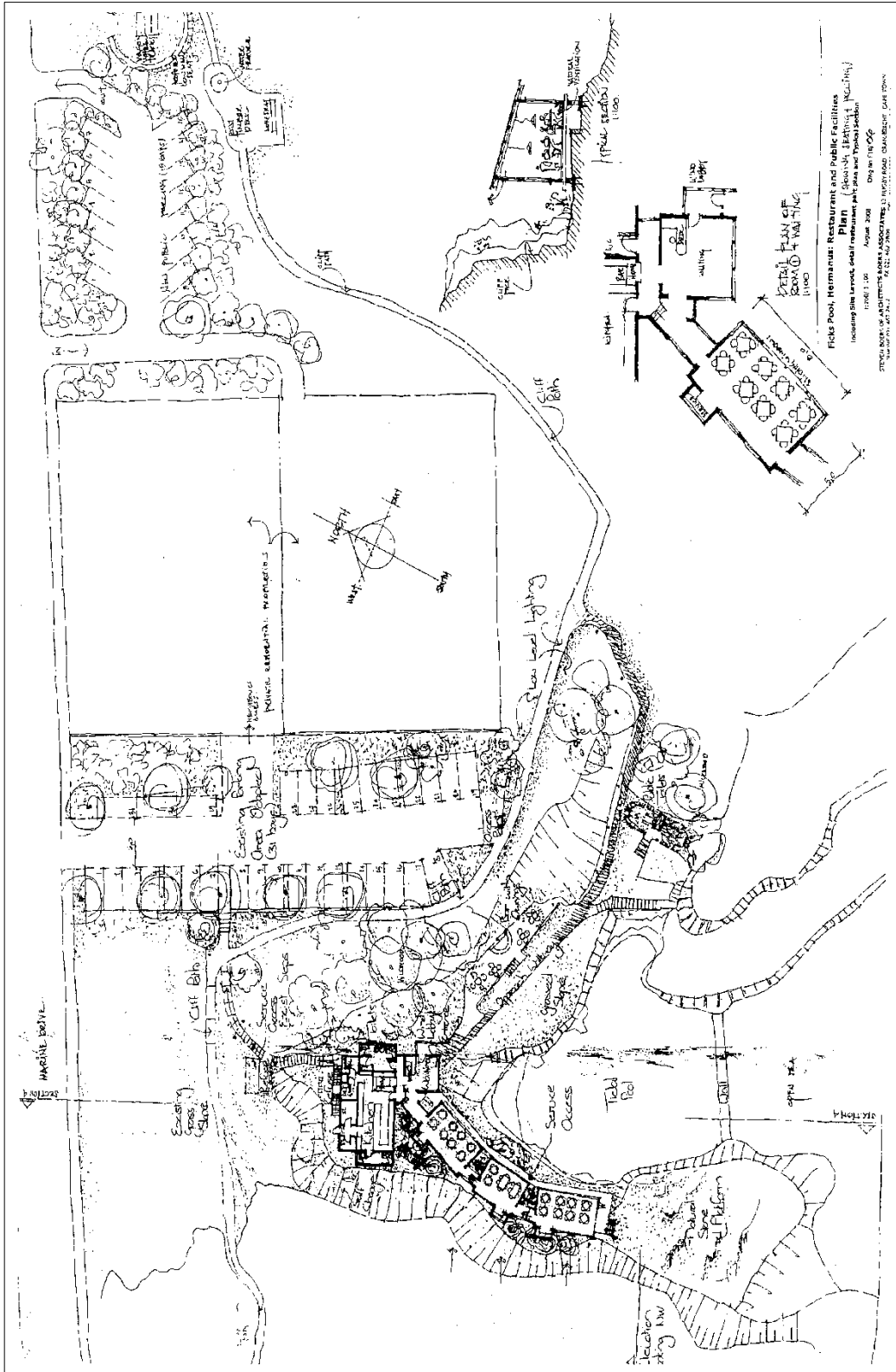
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NAME OF FIRM			

ANNEXURE A 2/2



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CAPACITY		DATE	
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ANNEXURE B – SITE DEVELOPMENT PLAN



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ANNEXURE C – RECORD OF DECISION

ANNEXURE C 1/18



Navrae:
Enquiries: Ms. H. van der Stoep (Senior Town Planner)

Lêerverwysing:
File Reference: Ptn of Erf 243, Hermanus (904)

Datum:
Date: 17 January ~~2011~~ ²⁰¹²

Hermanus Administrasie
Hermanus Administration

REGISTERED POST

Dear Madam

PORTION OF ERF 243, (FICK'S POOL), HERMANUS, OVERSTRAND
MUNICIPAL AREA : PROPOSED REZONING AND CLOSURE OF A PUBLIC
PLACE : OVERSTRAND MUNICIPALITY

Kindly ignore our previous letter in this regard dated 10 June 2011.

It is hereby confirmed that the matter was considered by the Mayoral Committee during a meeting held on 30 November 2011, and that it was resolved as follows:

RESOLVED

- "1. that in terms of Section 16 of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985) application for the rezoning of a Portion of Erf 243, Hermanus (Fick's Pool) from Open Space Zone I to Local Business Zone in order to develop and operate a restaurant on the property concerned, **be approved;**
2. that in terms of Section 137(1) of the Municipal Ordinance, 1974 (Ordinance 20 of 1974) closure of a portion of a public place on a Portion of Erf 243, Hermanus (Fick's Pool) in order to develop and operate a restaurant on the property concerned, **be approved;**
 subject to the following conditions:
 - (a) that the restaurant be restricted to 331m² and associated infrastructure;
 - (b) that parking be provided as per Site Plan F10/06;
 - (c) that all conditions in the Record of Decision (ROD) from the Department of Environmental Affairs and Development Planning dated 18 January 2010 be complied with;
 - (d) that a CES Report be obtained in order to finalize the Engineering Services Report;
 - (e) that all conditions imposed by the Local Health Department be complied with;

Tel: 028 3138900
 Fax: 028 3132076
 Email: info@overstrand.gov.za

PO Box 20 / Postbus 20
 HERMANUS
 7200

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- (f) that all conditions imposed by the Local Heritage Committee be complied with;
- (g) that all conditions imposed by the Waste Department be complied with;
- (h) that the approval does not absolve the applicant from compliance with any other relevant legislation, and
- (i) that all other development parameters as prescribed in the relevant Zoning Scheme be complied with."

Should you not be satisfied with the abovementioned decision, your attention is invited to your right of appeal to the Provincial Administration in terms of Section 44 of the Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985). Any such appeal should be served on the Director: Integrated Environmental Management, Department of Environmental Affairs & Development Planning, Western Cape Provincial Government (Private Bag X9086, Cape Town, 8000) or if hand delivered to the Utilitas Building, 1 Dorp Street, Cape Town **within 21 days** of date of registration at the Post Office of this letter (with such registration day not included in the appeal period), provided where the last day of lodging an appeal falls either on a weekend or public holiday, it shall be deemed to be next working day thereafter. A copy of the appeal should simultaneously be served on the Municipality.

Yours faithfully



 S MÜLLER
 DIRECTOR: INFRASTRUCTURE AND PLANNING

Tel: 028 3132900
 Fax: 028 3132093
 E-mail: www@overstrand.gov.za

PO Box 20 / Postbus 20
 HERMANUS
 7200

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ANNEXURE C 3/18

Verwysing Reference Isalathiso E12/2/3/1-E2/15-0251/07

Navrae Enquiries Imibuzo NATASHA BIEDING

Datum Date Umhla 2018-01-13 Of Issue



TP
 Departement van Omgewingsake en Ontwikkelingsbeplanning
 Department of Environmental Affairs and Development Planning
 ISebe leMicimbi yeNdalo esiNgqongileyo noCwanciso loPhuhliso

The Municipal Manager
 Overstrand Municipality
 P O Box 20
 HERMANUS
 7200

Attention: Mr R Kuchar

FILE NO:	15/1/3/3/2/8
SCAN NO:	
COLLABORATOR NO:	129511

Tel: (028) 313 8087
 Fax: (028) 313 8128

APPLICATION: THE PROPOSED UPGRADE AND DEVELOPMENT OF FICK'S POOL AND HERMANUS PIETERSFONTEIN, A PORTION OF ERF 243, HERMANUS.

With reference to your application, find below the environmental authorisation in respect of this application.

ENVIRONMENTAL AUTHORISATION

A. DESCRIPTION OF ACTIVITY:

The proposed activity entails the upgrade of an existing public recreational facility consisting of two components.

Component 1: Upgrade of the Hermanus Pietersfontein area comprising of the following:

- existing decking and heritage site will be retained, but will be provided and surrounded by a hard cover (consisting of paving, compacted natural stone and gravel) of approximately 100m²;
- construction of low walls in a circular form around the heritage site, which will have an approximate diameter of 30m;
- construction of gravel surfaced pathways which will measure approximately 500m²;
- construction of an electrical substation which will measure approximately 6 m²;
- hard landscaping (external walls and paving); and
- indigenous soft landscaping including tree planting, which will measure approximately 8000m².

Utilitasgebou, Dorpsstraat 1
 Private Bag X9086 Kaapstad 8000

Utilitas Building, 1 Dorp Street
 Private Bag X9086 Cape Town 8000

Tel No.: 021-483 5833/3185
 Fax No.: 021-483 4372
 E-mail: nbieding@pgwc.gov.za

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ANNEXURE C 4/18

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

Component 2: Upgrade of the Fick’s Pool area comprising of the following:

- construction of a new restaurant and kitchen facilities which will measure approximately 266m²;
- outdoor terraces and decks which will measure approximately 65m²;
- utility services, such as toilet facilities which will measure approximately 28m²;
- the existing sewage connections at Fick’s pool will be upgraded and connected into the restaurant ablution and public ablution facilities next to Fick’s Pool (the underground sewage tank, pumps and pipelines measures approximately 20m² and is already linked with the municipal system); and
- parking facilities which will measure approximately 8000m².

These are activities identified in Government Notice No. R. 386 of 21 April 2006, being:

Item Number 2: *“Construction or earth moving activities in the sea or within 100 metres inland of the high-water mark of the sea, in respect of –*
(a) facilities for the storage of material and the maintenance of vessels;
(b) fixed or floating jetties and slipways;
(c) tidal pools;
(d) embankments;
(e) stabilising walls;
(f) buildings; or
(g) infrastructure”.

Item Number 5: *“The removal or damaging of indigenous vegetation of more than 10 square metres within a distance of 100 metres inland of the high-water mark of the sea”.*

Item Number 6: *“The excavation, moving, removal, depositing or compacting of soil, sand, rock or rubble covering an area exceeding 10 square metres in the sea or within a distance of 100 metres inland of the high-water mark of the sea”.*

Item Number 20: *“The transformation of an area zoned for use as public open space or for a conservation purpose to another use”.*

hereinafter referred to as “the activities”.

B. LOCATION:

The proposed development will be located on a portion of Erf 243, Hermanus. This property borders the Atlantic Ocean and Marine Drive and is closely situated to the local Central Business District (Hermanus) (“CBD”).

Co-ordinates:

Latitude: 34° 25' 21.47" S
Longitude: 19° 14' 08.27" E

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

The SG 21 Digit code for the site is C01300113000002430000

hereinafter referred to as "the property".

C. APPLICANT:

Overstrand Municipality
 % R Kuchar
 P O Box 20
 HERMANUS
 7200

Tel: (028) 313 8087
 Fax: (028) 313 8128

D. ENVIRONMENTAL ASSESSMENT PRACTITIONER:

PHS Consulting
 % Paul Slabbert
 P O Box 1752
 HERMANUS
 7200

Tel: (028) 312 1734
 Fax: (028) 312 2554

E. SITE VISIT(S):

No site visits were conducted.

F. DECISION:

The Department is satisfied, on the basis of information available to it and subject to compliance with the conditions of this environmental authorisation, that the applicant should be authorised to undertake the activities specified above.

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 Regulations, 2006 ("EIA") the competent authority hereby authorises the activities described above.

The granting of this environmental authorisation is subject to the conditions set out below.

G. CONDITIONS OF AUTHORISATION:

1. The activity, including site preparation, may not commence within 20 (twenty) days after receipt 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 will be suspended until such time as the appeal is decided.

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

2. One week's notice, in writing, must be given to the Directorate: Integrated Environmental Management (Region B), (hereinafter referred to as "this Directorate"), before commencement of construction activities.
 - 2.1 Such notice shall make clear reference to the site location details and reference number given above.
 - 2.2 The said notice must also include proof of compliance with the following conditions described herein:
Conditions: 1, 14 and 15.
3. An integrated waste management approach must be implemented that is based on waste minimisation and must incorporate reduction, recycling, re-use and disposal where appropriate. The following solid waste management provisions must be implemented:
 - 3.1 Green or organic wastes must be separated and placed in a composting facility or be collected by a suitable service provider, e.g. composting plant.
 - 3.2 Any solid waste that cannot be recycled or re-used, must be disposed off at a licensed waste disposal facility. The Department's "Waste Minimisation Guideline Document for Environmental Impacts Assessment Reviews" (May 2003, available on request from the Department) must be taken into account.
4. No surface or ground water may be polluted due to any activity on the property/site. The relevant requirements of the National Water Act, 1998 (Act No. 36 of 1998) must be complied with at all times.
5. All public access, including footpaths to the Fick's Pool and its continuity as a pedestrian walkway area, must be retained to allow for free movement to and around the pool.
6. The terms of the lease-agreement between the restaurant operator and the Overstrand Municipality must specify that free access will be maintained to Fick's Pool and a public ablution facility.
7. Local labour, especially consisting of previously disadvantaged individuals, must (as far as possible) be employed during the construction and operational phases of the proposed development.
8. The development must incorporate water and energy saving technologies. This must include, but not be limited to, the following:
 - 8.1 Low-energy lighting must be installed on the grounds of the proposed development. Replacement bulbs must also be low-energy.
 - 8.2 External lighting must be kept to a minimum to reduce energy wastage. All external lighting must be switched off during the day.
 - 8.3 Waterwise landscaping must be done. Indigenous plants and plants that require very little water must be used. The use of kikuyu grass must be prohibited. Non-invasive, low-water use grass must be used for lawns.
 - 8.4 All toilets installed on the property must be dual-flush toilets.

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- 8.5 All shower heads must be fitted with water-saving devices, i.e. low-flow showerheads. Tap aerators and/or flow restrictors must also be installed on all taps.
- 8.6 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.
- 8.7 All fitted appliances must have an energy rating and only the most efficient models must be used.
- 8.9 An automatic drip irrigation system must be installed and must be adjusted to reduce water application during cooler and wetter months.
9. The Environmental Management Plan ("EMP") submitted as part of the application for environmental authorisation is accepted and must be implemented.
10. The recommendations as detailed in the BAR dated May 2008 compiled by Paul Slabbert of PHS Consulting must be adopted and implemented (refer to Appendix A).
11. The recommendations as detailed in the Visual and Heritage Impact Assessment dated August 2008 compiled by Paul Slabbert of PHS Consulting must be adopted and implemented (refer to Appendix B).
12. The necessary licence must be obtained from the Department of Agriculture, Forestry and Fisheries should any Milkwood trees be pruned, trimmed, cut or removed.
13. Should any heritage remains be exposed during excavations, these must immediately be reported to the Provincial Heritage Resources Authority of the Western Cape, Heritage Western Cape (in terms of the National Heritage Resources Act, 1999 [Act No. 25 of 1999]). Heritage remains uncovered or disturbed during earthworks must not be disturbed further until the necessary approval has been obtained from Heritage Western Cape:
 - 13.1 If any archaeological remains (including but not limited to fossil bones and fossil shells, coins, indigenous and/or colonial ceramics, any articles of value or antiquity, marine shell heaps, stone artefacts and bone remains, structures and other built features, rock art and rock engravings) are discovered during construction they must immediately be reported to Heritage Western Cape and must not be disturbed further until the necessary approval has been obtained from Heritage Western Cape.
 - 13.2 If any graves or unmarked human burials are discovered, they must be treated with respect and South African Heritage Resource Agency ("SAHRA") must be notified immediately and the burials must not be disturbed further until the necessary approval has been obtained from SAHRA. An archaeologist must be contracted to remove the remains at the expense of the developer.

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Directorate: Integrated Environmental Management (Region B)*

14. The holder of the authorisation must appoint a suitably experienced Environment Control Officer ("ECO") (or Site Agent where appropriate) for the construction phase of the development before commencement of any land clearing or construction activities to ensure compliance with the provisions of the CEMP.
15. The applicant must, in writing, **within 10 (ten) calendar days** of being notified of the Department's decision to authorise the activity (the date of "being notified" is deemed to be the date the notice of the Department's decision was sent) –
 - 15.1 Notify all registered Interested and Affected Parties ("I&APs") of the outcome of the application and the reasons for the decision; and -
 - 15.2 Specify the date on which the authorisation was issued.
 - 15.3 Inform all registered I&APs of the appeal procedure provided for in Chapter 7 of the NEMA Regulations.
 - 15.4 Advise all registered I&APs that, should they wish to appeal that they must lodge a Notice of Intention to Appeal with the Minister, within 10 days of being notified of the Department's decision (the 10 day period available to registered I&APs is deemed to only start 10 calendar days after the date of issue of the Department's decision) and must submit their appeal within 30 days of the lodging of their Notice of Intention to appeal.
 - 15.5 Inform every I&AP that a prescribed Notice of Intention to Appeal form and Appeal form are obtainable from the Minister's office at tel (021) 483 3721, email jedevill@pgwc.gov.za or URL <http://www.capegateway.gov.za/eadp>.
 - 15.6 Inform all I&APs that should they wish to appeal, the appellant must serve on the applicant, on the same day that the notice of Intent is lodged with the Minister, a copy of the Notice of Intention to Appeal form as well as a notice indicating that the appeal submission will be available for inspection for a period of 30 days, that must either start on or before the date the appeal is submitted to the Minister, and also indicate where the appeal submission will be available for inspection.
 - 15.7 If the applicant should decide to appeal, the applicant must –
 - lodge a Notice of Intention to Appeal with the Minister, within 10 days of being notified of this decision (the date of "being notified" deemed to be the date the notice of the Department's decision was sent);
 - submit the appeal within 30 days of the lodging of the Notice of Intention to Appeal; and
 - serve a copy of the Notice of Intention to Appeal, on the same day that the Notice of Intent is lodged with the Minister, on all registered I&APs as well as a notice indicating that the appeal submission will be available for inspection for a period of 30 days, that must either start on or before the date the appeal is submitted to the Minister, and also indicate where the appeal submission will be available for inspection.

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16. The holder of the authorisation shall be responsible for ensuring compliance with the conditions by any person acting on his behalf, including but not limited to, an agent, sub-contractor, employee or any person rendering a service to the holder of the authorisation.
17. Any changes to, or deviations from, the project description set out in this authorisation must be approved, in writing, by the Department before such changes or deviations may be effected. In assessing whether to grant such approval or not, the Department may request such information as it deems necessary to evaluate the significance and impacts of such changes or deviations and it may be necessary for the holder of the authorisation to apply for further authorisation in terms of the regulations.
18. The holder of the authorisation must notify this Directorate and any other relevant authority, in writing, within 24 hours thereof if any condition of this authorisation is not adhered to.
19. A copy of this authorisation must be kept at the property where the activities will be undertaken. The authorisation must be produced to any authorised official of the Department who requests to see it and must be made available for inspection by any employee or agent of the holder of the authorisation who works or undertakes work at the property.
20. Where any of the applicant's contact details change, including the name of the responsible person, the physical or postal address and/ or telephonic details, the applicant must notify the Department as soon as the new details become known to the applicant.
21. Non-compliance with a condition of this authorisation may result in the withdrawal of the authorisation and may render the holder liable for criminal prosecution.
22. This Department must be notified, within 30 days thereof, of any change of ownership and/or project developer. Conditions imposed in this authorisation must be made known to the new owner and/or developer and are binding on the new owner and/or developer.
23. Departmental officials shall be given access to the property referred to in B above for the purpose of assessing and/or monitoring compliance with the conditions contained in this environmental authorisation, at all reasonable times.
24. The activities which are authorised may only be carried out at the property indicated above.
25. Notwithstanding this authorisation, the holder of the authorisation must still comply with any other statutory requirements that may be applicable to the undertaking of the activity.
26. The activities must commence within a period of 3 (three) years from the date of issue. If commencement of the activities does not occur within that period, the authorisation lapses and a new application for environmental authorisation must be made in order for the activity to be undertaken.

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H. RECOMMENDATIONS:

This Directorate recommends that the following should be considered in planning the development:

- Pathways should be upgraded for differently abled access. Similarly, at least the portion of the steps allowing access to the restaurant (and preferably all the way to the pool) should be equipped with ramps that allow for handicap access.
- The proposed restaurant should be developed as a concession, with the term and allocation of the costs of construction of the restaurant and associated capital improvements being part of the concession agreement.
- Public ownership of the site should be retained in spite of the outcome of rezoning activities.
- An agreement to operate and maintain the steps and the restrooms should be included in the terms of lease for the restaurant facility.
- With the proposed development's aim to reconstruct the area to promote tourism some investments to accommodate the second economy should be facilitated. This might be a relatively small alteration of the plans to include a trading area as part of the parking lot, the Hermanus Pietersfontein look out area, or some part of the restaurant footprint. A small "living craft" (bead-work, carving etc) might also prove attractive.

I. REASONS FOR THE DECISION:

In reaching its decision, the Department took, *inter alia*, the following into consideration -

- (a) The information contained in the Application Form and BAR as received on 19 July 2009, compiled by Paul Slabbert of PHS Consulting;
- (b) The architectural sketches compiled by Steven Boers of Boers Associates Architects;
- (c) The illustrative material and Planning Motivation Report compiled by Wright Approach (WRAP) Consultancy;
- (d) The correspondence from HWC dated 7 October 2008, 13 and 18 March 2009.
- (e) The correspondence from the Department of Water Affairs and Forestry dated 24 March 2009;
- (f) The correspondence from Overstrand Municipality dated 3 June 2008;
- (g) The additional information as received on 6 October 2009;
- (h) Relevant information contained in the Departmental information base; and
- (i) The objectives and requirements of relevant legislation, policies and guidelines, including Section 2 of the NEMA.

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

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Environment

The proposed site comprises of indigenous vegetation, bare soil, buildings/other structures and paved tarred surface. It can be expected that little/no biodiversity impacts will occur since the proposed development aims to upgrade the aesthetic, quality and recreation/tourism facilities of the area.

Heritage

The Hermanus Pietersfontein is a local heritage site which is currently used for parking and sightseeing with a view deck and memorial area. The area is part of a scenic shoreline landscape with historic settlement and event value. No building of heritage significance exists however on the site. The site is furthermore modified and disturbed with rehabilitation potential to establish a recognised degree of historical significance.

The Fick's Pool area was established in 1920 for the use as a recreation, bathing and social place. All of its historic building was demolished in the past; only a new face brick ablution block exists on site.

It is expected that little or no heritage related impacts will occur since the proposed development for both the Hermanus Pietersfontein and Fick's Pool area aims to enhance the heritage and aesthetic quality of the aforementioned sites.

Heritage Western Cape provided comments on the design of the proposed development and it was with their guidance (amongst others) that the preferred alternative (alternative 4) was developed.

Visual

The Fick's Pool area is located in a natural sandstone cove at 7 metres above sea level and 10 metres below Marine Drive. The cove is protected and set back approximately 45 metres from the high water mark of the sea and is lined with Overberg sandstone fynbos, wild olive and milkwood. The cove has seaviews primarily towards the south east, south and south west with limited views towards the north. The area furthermore has a series of level terraces covered in grass and cement. These terraced area range from 9 metres to 3 meters above sea level.

The backdrop of sandstone cliffs mean that the site is visually screened from the road and some neighbouring properties. The area is only visible from the coastal walkway/cliff paths and possibly from viewpoints within 50 metres of the Fick's Pool site. However, given the fact the Fick's Pool area is 5 to 11 metres below the cliff path(s), the proposed infrastructure will not protrude above the view line of its immediate receptors. Similarly, the site is not visible from any scenic route or from the surrounding mountains. The viewshed is therefore highly localised and limited to the immediate residences and the parking above the public pool.

The Hermanus Pietersfontein area is located to the east of Fick's Pool on the cliff tops with its level grassed area being the same height as Marine Drive, i.e. 17 metres. Panoramic views of the coastline are possible except to the west where the site is bounded by two residences which breaks the visual link between this area and Fick's Pool. The surrounding mountains are visible to the north. Although the site is highly visible from Marine Drive and from the immediate surrounds it is not visible from the Hermanus Main road/scenic route. No infrastructure is proposed

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that will be higher than 1 metre and is limited to a low werf wall bench around the oxwagon tracks. The proposed upgrade will also cover a small area around the existing cemented ox wagon wheels.

The visual impact of the proposed development can be categorised as low to moderate for both the Fick's Pool and Hermanus Pietersfontein. The proposed development at the Hermanus Pietersfontein will enhance the heritage and visual quality of the area, while the proposed development at the Fick's Pool area will only be visible within 50 metres from the site and be visually screened via the natural vegetation and local topography.

Socio-economic

Hermanus is a major tourist attraction and whale watching destination. The site is situated in an area with existing tourist activities available to the public and tourists and is within close proximity to the CBD. The proposed development aims to upgrade the general aesthetic quality and recreation/tourism facilities for both the locals and visitors/tourists to the area.

Policy: Regional/planning context

The proposed site (including both Hermanus Pietersfontein and Fick's Pool) is currently zoned 'Open Space'. A rezoning application is to be lodged in order to rezone a Portion of Erf 243 to 'General Business Spot Zone' in terms of the Land Use Planning Ordinance, 1985 (Ordinance No. 15 of 1985) ("LUPO"). The site falls within the local urban edge and will form part of the existing urban fabric consisting of a tourism node which is located close to the CBD.

NEMA Principles

The Environmental Management 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 in terms of the said Act. This Department adopted an integrated approach during its decision-making by taking cognisance of the three pillars (biophysical, social and economic) of sustainable development.

AlternativesSite alternative

Only one site alternative was assessed, i.e. a portion of Erf 243, Hermanus on which the proposed development will take place.

Activity AlternativesActivity Alternative 1

This alternative proposes to use light materials such as wood and canvas on the elevated decks of the proposed restaurant. Double volume pitched roof lined with bright colours are also proposed. The total restaurant floor area amounts to 200m² excluding the decks and outdoor landscaped areas.

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Activity Alternative 2

This alternative developed after issues of visual intrusion were revealed during the Public Participation Process ("PPP"). This alternative incorporates the landscaping of the Hermanus Pietersfontein area and changes to the restaurant. The buildings are mainly cement and concrete works, incorporating softer elements like wood finishes and green roofs.

This alternative was further developed to include the following two components:

Component 1: Upgrade of the Fick's Pool area comprising of the following:

- restaurant and kitchen facilities which will measure approximately 248m²;
- outdoor terraces and decks which will measure approximately 59m²;
- recycling and refuse storage area which will measure approximately 30m²;
- utility structures (public toilets alongside the public pool) which will measure approximately 23m²;
- existing sewage treatment; and
- parking areas and associated facilities which will measure approximately 468m².

Component 2: Upgrade of the Hermanus Pietersfontein area comprising of the following:

- hard landscaping (external walls, fences, paving) which will measure approximately 100m²;
- parking facilities and areas which will measure approximately 206m²;
- a new electrical substation which will measure approximately 6m²; and
- indigenous soft landscaping, including tree planting which will measure approximately 50m².

This alternative was rejected as the baseline Visual Impact study concluded design and landscaping recommendations which needed to be adopted in the preferred alternative design and site plan which did not form part of this alternative.

Activity Alternative 3

This alternative developed by incorporating the mitigating measures that were proposed in the baseline Visual Impact study. This alternative moreover adopted a more open landscape around the Hermanus Pietersfontein memorial area, with less shrubs and fynbos. Only the parking area and the area close to the residential houses were defined with newly planted vegetation, while the remainder of the site remains "uitspan" and open grass. Only a low circular seating (werf) wall around the track will be built from natural stone with a loping outside face for plaques.

The restaurant at Fick's Pool will be on the ground floor and the structure will be built from natural material resembling the "driftwood" aesthetic. Most of the structures will be prefabricated, in natural tones, which will then be assembled on site to ensure minimal environmental impact. The existing pool will be open to the general public.

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This alternative was further developed to include the following two components:

Component 1: Upgrade of the Fick's Pool area comprising of the following:

- restaurant and kitchen facilities which will measure approximately 266m²;
- outdoor terraces and decks which will measure approximately 65m²;
- recycling and refuse storage area which will measure approximately 30m²;
- utility structures (public toilets) which will measure approximately 28m²;
- underground sewage treatment which will measure approximately 20m²; and
- parking areas and associated facilities which will measure approximately 800m².

Component 2: Upgrade of the Hermanus Pietersfontein area comprising of the following:

- hard landscaping (external walls and paving);
- existing decking and heritage site hard cover areas which will measure approximately 100m²;
- low walls (circular) which will measure approximately 30m in diameter;
- gravel surfaced pathways which will measure approximately 500m²;
- a new electrical substation which will measure approximately 6m²; and
- indigenous soft landscaping, including tree planting which will measure approximately 3000m².

Activity Alternative 4 (preferred alternative)

This alternative remains the same as activity alternative 3, except for changes which have been made to the restaurant layout to accommodate the existing steps down from the parking area to allow for better pedestrian and visual flow. A recycling and refuse storage area will form part of a new storeroom. The existing pool will remain open to the general public.

This alternative was further developed to include the following two components:

Component 1: Upgrade of the Hermanus Pietersfontein area comprising of the following:

- existing decking and heritage site hard cover which will measure approximately 100m²;
- construction of low walls approximately 30m in diameter;
- construction of gravel surfaced pathways which will measure approximately 500m²;
- construction of an electrical substation which will measure approximately 6 m²;
- hard landscaping (external walls and paving); and
- indigenous soft landscaping including tree planting which will measure approximately 8000m².

Component 2: Upgrade of the Fick's Pool area comprising of the following:

- construction of a new restaurant and kitchen facilities which will measure approximately 266m²;
- outdoor terraces and decks which will measure approximately 65m²;

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- utility services, such as toilet facilities which will measure approximately 28m²;
- the existing underground sewage area will be upgraded and will measure approximately 20m²; and
- parking areas and associated facilities which will measure approximately 8000m².

Other Alternatives

The alternatives were primarily informed by the need as identified by the Overstrand Municipality, comments received during the Public Participation Process ("PPP") and from the Overstrand Heritage Aesthetics Committee.

Layout Alternative 1

This alternative was based on light materials such as wood and canvas on elevated decks. Pitched roof lines with bright colours were also proposed. Other options for the deck terraces were also assessed to determine the best fit options for the restaurant operations, cliff path flow and sun angles.

Layout Alternative 2

This alternative was based after the PPP revealed issues of visual intrusion. This alternative included landscaping activities for the Hermanus Pietersfontein area. The following principles which were identified in the Visual Impact Assessment as mitigation to ensure the protection, improvement and enhancement of the historical and natural environment:

- attributes of the historical site must be protected;
- environmental assets of the site are preserved and rehabilitated, where required;
- view lines and specific view points be secured for residents; and
- aesthetic aspects of the proposed development are controlled to limit visual impact.

Layout Alternative 3

This alternative adopted a more open landscape around the Hermanus Pietersfontein memorial with less shrubs and fynbos. Only the parking area and the area close to the residential houses were defined with newly planted vegetation, the remainder of the site remains "uitspan" and open grass, which means less disturbance. The extra platform and two benches to the south east of the oxwagon were omitted. Only a low circular seating (werf) wall around the track built from natural stone with a sloping outside face for plaques are proposed. No new light or services are proposed as part of this alternative.

The restaurant at Fick's Pool will be on natural ground. The structure will be light, from natural material resembling a "driftwood" aesthetic. Most of the structures will be prefabricate with natural tones and assembled on site to ensure the least environmental impact. Charcoal colour, single pitch roofs that echo the cliff face are also proposed. Large windows on both sides of the building will ensure a transparent feel between the pool and the cliff faces. Large decks were omitted and the use of outdoor terraces was also recommended to form part of this alternative. The cliff path flow is unobstructed, and the refuse area is moved to a more hidden

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location. The existing steps will become the staff access, while a new set of steps will allow the general public access.

Layout Alternative 4 (preferred alternative)

The comment from the HWC informed the layout of this layout. Both the proposal for the Hermanus Pietersfontein area and the proposed mitigation measures as discussed in the previous layout alternatives remains the same for this layout alternative. This alternative therefore also adopted a more open landscape around Hermanus Pietersfontein memorial with less shrubs and fynbos. Only the parking area and area close to the residential houses was defined with newly planted vegetation, the remainder of the site remains "uitspan" and open grass, which means fewer disturbances. The extra platform and two benches to the south east of the oxwagon tracks were also omitted. Only a low circular seating (werf) wall around the track built from natural stone with a sloping outside face for plaques are proposed. No new light or services will be developed. The only change is that the existing steps from the parking area will be retained as a second public access was and to maintain the visual connectivity between the sea and the mountains.

The restaurant at Fick's Pool will be on the natural ground floor only making optimal use of natural terraces. The structure will be light, from natural material resembling a "driftwood" aesthetic. Most of the structures will be prefabricated with natural tones and assembled on site to ensure the least environmental impact. Charcoal colour, single pitch roofs that echo the cliff face are proposed for the carriages and main kitchen. Flat roofs consisting of waterproofing and board with stone chip on top will be provided for all other areas. Large windows on both sides of the building will ensure a transparent feel between the pool and cliff faces. Large decks were omitted and the use of outdoor terraces was also recommended to form part of this alternative. The reception area will include a bar area where people can sit. The existing steps will be retained and will be re-routed in one place only (next to the service door on the side). Refuse bins will be placed next to the cold store.

No-go option

This alternative implies that the *status quo* will be maintained. This implies that the Hermanus Pietersfontein will continue to be used for *ad hoc* parking area while the Fick's Pool area will not receive the necessary upgrade aimed at restoring public amenities and general use of the area.

Public Participation

The Public Participation undertaken consisted, *inter alia*, of the following:

- site notices (i.e. two English and two Afrikaans notices);
- notification of the land owners and occupiers of land within 100m of the boundary of the site;
- relevant organs of state and stakeholders who may have a direct interest(s) in the project being notified;
- advertisements being placed in the Hermanus Times publication on 7 September 2007 thereby giving members of the public an opportunity to register as I&APs and/or comment on the Draft BAR; and
- circulation of the Background Information Document to all the relevant I&APs and organs of state.

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The application process also included a second round of Public Participation which consisted of the following:

- posted and electronic notices were sent to notify registered I&APs of the amendments which were requested and thereby providing them with an opportunity to comment.

At the end of the commenting periods, as mentioned above, members of the public as well as organs of state delivered comment. The comments were adequately addressed by the Environmental Assessment Practitioner.

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

J. APPEAL:

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

If the applicant should decide to appeal, the applicant must lodge a Notice of Intention to Appeal with the Minister, within 10 days of being notified of this decision (the date of "being notified" deemed to be the date the notice of the Department's decision was sent, i.e. the date of issue), and serve a copy of the Notice of Intention to Appeal, on the same day that the Notice of Intent is lodged with the Minister, on all registered interested and affected parties as well as a notice indicating that the appeal submission will be available for inspection for a period of 30 days, that must either start on or before the date the appeal is submitted to the Minister, and also indicate where the appeal submission will be available for inspection.

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

All appeals must be submitted, within 30 days of the lodging of the Notice of Intention to Appeal, by means of one of the following methods:

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By post: The Provincial Minister for Local Government, Environmental Affairs
 and Development Planning
 Private Bag X9186
 Cape Town
 8000

By facsimile: (021) 483 4174; or

By hand: Attention: Mr Jaap de Villiers
 9th floor Utilitas Building
 1 Dorp Street
 Cape Town
 8001

A prescribed Notice of Intent to Appeal form and Appeal form is obtainable from the Minister's office at tel (021) 483 3721, email jedevill@pgwc.gov.za or URL <http://www.capegateway.gov.za/eadp>.

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

Your interest in the future of our environment is greatly appreciated.

Yours faithfully



ANTHONY BARNES
DIRECTOR: INTEGRATED ENVIRONMENTAL MANAGEMENT (REGION B)

DATE OF DECISION: 18/1/2010

CC: (1) P Slabbert (PHS Consulting)

Fax: (028) 313 2554/086 508 3249

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ANNEXURE D – SERVICES REPORT

ANNEXURE D 1/5

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
 APPLICATION FOR REZONING AND CLOSURE OF PUBLIC AREA PORTION
 OF ERF 243, HERMANUS**

Water	:	According to CES Report
Sewer	:	According to CES Report
Roads and traffic	:	According to TIS Report
Stormwater	:	According to the storm water masterplan
Electricity	:	In Order

Conditions:

1. That a Bulk Services Contribution Levy (BICL) be paid by the developer to supplement municipal services and amenities in accordance with the relevant legislation and as determined by the Council. The BICL tariff is adjusted by Council annually. The total BICL payable will be the amount as determined by the BICL Policy and tariff at the date of **actual payment**. BICL amounts quoted in any document will normally be applicable to the particular year in which the document was compiled and Council will not be bound by the quoted amounts.
 - 1.1 **Developments containing Sectional Title Units/ Commercial Buildings** (non-free standing properties – property is not to be subdivided)

The BICLs are to be paid in full **prior** to submission of the building plans. Building Plans will not be accepted unless the BICL is paid in full.
 - 1.2 **Developments with free standing properties** (property that is subdivided and plots to be sold individually).

The BICLs are payable **prior** to clearance being issued by the Income Department of the Municipality.
2. that the developer at his cost constructs the internal municipal civil and electrical services for the development as well as any link or bulk municipal services that need to be provided;
 - 2.1 the Director: Infrastructure and Planning may require the developer to construct internal, link, and/or bulk municipal services to a higher capacity than warranted by the development for purposes of allowing other existing or future developments to also utilise such services, provided:
 - 2.2 the rates and prices of such work be established in terms of a system which is fair, equitable, transparent and cost effective;

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- 2.3 if link municipal services have already been provided, the developer to contribute towards the cost thereof, the Director: Infrastructure and Planning to determine the amount of such contribution in terms of a system which is fair and equitable;
3. that the developer indemnifies and keep the Council indemnified against all actions, proceedings, claims and demands, costs, damages and expenses arising out of the establishment of the development, the provision of services to the development or the use of servitude areas or municipal property:
- 3.1 for a period which shall commence on the date that the installation of the services to the township are commenced with and shall expire after completion of the maintenance period;
- 3.2 the developer to submit an acceptable public liability insurance policy to the Council and to pay the premium in advance for the period as set out above before any work concerned may commence;
- 3.3 the insurance to be to an amount which shall not be less than that required by the SAACE;
- 3.4 such indemnification against loss, claims or damages, to include claims pertaining to consequential damages by third parties and whether as a result of the damage to or interruption of or interference with the Council's services or apparatus or otherwise;
4. that a plan of all existing services be submitted to the Director: Infrastructure and Planning, by the developer and that any of the services that need to be relocated, be done by the developer at his cost to the satisfaction of the Director: Infrastructure and Planning:
- 4.1 way-leaves must be obtained from the Operational Manager;
- 4.2 such way-leaves to be obtained prior to any excavation on public property or property where existing services are located;
5. that the developer may enter into an agreement with the Council to install or upgrade bulk and/or link municipal services and amenities at an agreed cost, subject to the following:
- 5.1 such costs to be established in accordance with a system which is fair, equitable, transparent, competitive and cost effective;
- 5.2 such costs shall be set-off against (part or full) development contributions payable in respect of engineering services;
- 5.3 to the extent that such costs exceed the development contributions payable, the Council will refund the developer the difference with interest calculated at the prime rate, when funds are available;

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6. that plans of all the internal municipal civil and electrical (high and low voltage supply) services and such link services as required by the Director: Infrastructure and Planning, prepared by an ECSA registered professional engineer/technologist, be submitted to the Director: Infrastructure and Planning for his prior approval;
7. the "Guidelines for the Provision of Engineering Services in Residential Townships" (Blue Book), SABS 1200 specifications and the Design and Construction Standards for civil and electrical services of the Council to be used as the standard design and construction criteria with which such plans must comply;
8. the Director: Infrastructure and Planning to be notified in writing of all deviations from the Standard Design and Construction Criteria when plans are submitted for his approval and such deviations to be separately approved in writing by the Director: Infrastructure and Planning;
9. the successful completion of such works to be supervised and certified by an independent professional civil engineer/technologist i.e. a professional civil engineer/technologist who has no direct financial interest in the development, other than payment as standard professional fees for the work concerned; and
10. such independent professional civil engineer/technologist to furnish the Director: Infrastructure and Planning with satisfactory proof of his professional indemnity insurance to an amount which shall not be less than that required by the SAACE and which insurance shall be valid for the relevant contract and maintenance period;
11. that all municipal civil and electrical services installed or constructed by the developer, be maintained after completion thereof for a maintenance period, as described in the General Condition of Contract for works of Civil Engineering Construction – 2004, of 12 months, and
12. that a Certificate of Completion together with as-built services plans be provided by the independent professional engineer/technologist to the Overstrand Municipality. As-built plans to be on quality paper, together with a DXF file thereof;
13. that an approved refuse collection area/room to sufficiently accommodate the refuse generated by the development and which is to be proved with the following:
 - 13.1 properly ventilated;
 - 13.2 a cement floor;
 - 13.3 a tap and running water, as well as a drainage point which is connected to the sewer network;

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ANNEXURE D 4/5

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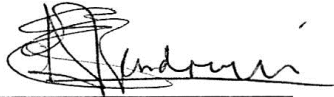
- 13.4 is a position nearest to an access road for the development and be accessible for the refuse truck at all times, to the satisfaction of the Director: Infrastructure and Planning;
- 14. that the refuse room be completed prior to occupation of the first unit, to the satisfaction of the Director: Infrastructure and Planning;
- 15. that a stormwater management plan, which may include attenuation facilities to ensure that the pre-development run-off is not exceeded and that erosion and pollution is minimised, be submitted to the Director: Infrastructure and Planning for approval and that the approved management plan be implemented by the developer at his cost to the satisfaction of the Director: Infrastructure and Planning;
- 16. that the above stormwater management plan include the following:
 - 16.1. pre-development run-off from the catchment area;
 - 16.2. post-development run-off from catchment area;
 - 16.3. existing stormwater reticulation system and the capacity thereof;
 - 16.4. connection of internal stormwater reticulation system; overland escape routes;
- 17. that the connection to the stormwater reticulation system be provided according to the stormwater management plan, by the developer and approved by Overstrand Municipality;
- 18. that only a 60 amp single phase electricity connection will be available for the development and that, should additional capacity be required, an investigation be conducted, with regard to the capacity required and that available, at the developer's cost;
- 19. that the developer will be responsible for the payment of electricity bulk services levies, as determined by the Electricity Department;
- 20. that the developer apply for a temporary water connection at Overstrand Municipality's Finance Department, before commencement of construction;
- 21. that the developer apply for a bulk water connection on the prescribed application form, at Overstrand Municipality's Finance Department and that the installation of the bulk water meter, by the developer, be done under the supervision of the Operational Manager, Hermanus;
- 22. that the connection to the main water line will only be done by the Operational Department after payment of the connection fee, by the developer;

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ANNEXURE D 5/5

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- 23. that damage to the existing roads, used as routes for access to the development, for the provision of services, be repaired by the developer at his cost;
- 24. that no off-street parking be allowed;



DENNIS HENDRIKS
MANAGER: PROJECT MANAGEMENT
& DEVELOPMENT CONTROL

14 / 04 / 2011
DATE

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ANNEXURE E – DRAFT LEASE AGREEMENT

**LEASE AGREEMENT FOR THE DEVELOPMENT OF
A PORTION OF ERF 243 HERMANUS
ALSO KNOWN AS 'FICK'S POOL'
(±5300m² in extent)**

entered into between

OVERSTRAND MUNICIPALITY

herein represented by _____
in his capacity as Municipal Manager

(hereinafter called the **LESSOR**)

and

OF _____

(hereinafter called the **LESSEE**)

WHEREAS the **LESSOR** called for tenders for the developing and leasing of Municipal Property, being a portion of Erf 243 Hermanus (±5300m² in extent) (hereinafter referred to as "the land"), situated in Marine Drive also known as "Fick's Pool" and shown on the plan attached hereto (marked "Annexure B") for the **purpose of developing and operating a restaurant and maintaining the natural pool and the ablution facilities on the property;**

AND WHEREAS the tender was awarded to the **LESSEE** on xxx as per the minutes attached marked "Annexure C";

NOW THEREFORE THE PARTIES AGREE that the **LESSOR**, pursuant to the authority conferred upon it by the Administration of Immovable Property Policy of the Overstrand Municipality hereby agrees to lease to the **LESSEE** and the **LESSEE** hereby agrees to hire from the **LESSOR** the land, subject to the following terms and conditions:

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1. LEASE PERIOD

- 1.1. Notwithstanding the date of signature hereof, this lease shall endure for a period of 20 (TWENTY) years and commences on XXXXX and expires on XXXX.
- 1.2. The LESSOR may consider an extension of the lease agreement provided that:
- The LESSEE is not in arrears with payment of the municipal account;
 - The LESSEE is not in default in terms of this agreement in any way;
 - The LESSEE has applied for a renewal at least 6 months before expiry of this agreement;
 - The intent to extend the lease period is advertised at the cost of the LESSEE (public participation); and
 - The LESSOR, after the public participation process, through its delegated authority, approved the extended period.
- 1.3. After the expiry period referred to in clause 1.1 above the LESSEE shall have no legitimate expectation that a further lease period may be agreed to by the LESSOR

2. RENTAL

- 2.1. The LESSEE shall pay to the LESSOR rental in the amount of RXXXX (_ RAND) per month (VAT included), in respect of the land, such rental to escalate every year on the 1st of July by a percentage equal to the prevailing consumer price index (all items) in terms of the Municipality's Administration of Immovable Property Policy, as amended from time to time, payable monthly in advance at the municipal cashiers, Overstrand Municipality, Hermanus.
- 2.2. On signature of this agreement, the LESSEE shall complete a service agreement form at the Overstrand Municipal Office for the creation of a Municipal Account (for the levying of the lease amount, rates and taxes, municipal services and other costs in terms of this agreement) in the name of the LESSEE as described in this agreement and provide the Property Administration Department with such account number within 3 (THREE) business days from signing of this agreement.

3. DEPOSIT

- 3.1. On signature of this lease, the LESSEE shall pay the LESSOR a deposit in the amount of RXXXX (XXX RAND) (VAT excluded), which is an amount equal to 1 (ONE) month of the rental.
- 3.2. The LESSOR may apply the above amount, in whole or part, in meeting any payment due by the LESSEE to the LESSOR at any time during the lease period or after the termination of the lease.
- 3.3. Whenever during the lease period the deposit is so applied in whole or part, the LESSEE shall on demand reinstate the deposit to its original amount.
- 3.4. The deposit payable in terms of clause 3.1 above shall annually escalate at the rate equal to which the monthly rent is escalated in terms of clause 2.1 above. Such increase in the deposit shall be payable by the LESSEE to the LESSOR on demand.
- 3.5. As soon as all the obligations of the LESSEE to the LESSOR have been discharged following the termination of this lease, the LESSOR shall refund to the LESSEE, free of interest, so much of the deposit as has not been applied in terms of the above provisions.

4. SUBJECTION OF LEASE

- 4.1. This lease shall be subject in all respects to the provisions of the Administration of Immovable Property Policy of the Overstrand Municipality, as amended from time to time, with regard to the Management and Administration of Immovable Property adopted by the Council of the Municipality.
- 4.2. This lease shall be subject to all servitudes and conditions, if any, binding on the Council in respect of the land hereby leased.

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5. UTILISATION

- 5.1. The said land, together with the existing building and other structures thereon as well as such buildings and other structures as may be erected in accordance with the provisions of this agreement, shall be used exclusively for the purpose of:
- 5.1.1. developing and operating a restaurant;
 - 5.1.2. maintaining the natural pool and the ablution facilities on the property; and
 - 5.1.3. such other purpose as may be approved by the Municipality in writing in advance
- and no other activities will be allowed on the land except for any other purpose as may be approved by the Municipality.
- 5.2. Access to the land by the LESSEE or persons using the same with its authority shall be had by means only of Marine Drive, Hermanus.

6. LEASE AREA

- 6.1. It is recorded that the lease area, as shown on the plan attached hereto as "Annexure ___", includes the following:
- 6.1.1. The ablution facilities,
 - 6.1.2. The tidal pool,
 - 6.1.3. The parking area,
 - 6.1.4. The undeveloped land area.
- 6.2. The LESSEE shall only occupy and use the above stipulated areas in accordance with the provisions of this agreement

7. DUTIES OF THE LESSEE

- 7.1. The LESSEE shall not erect or cause or permit to be erected any buildings and/or structures on the land without the prior written consent of the LESSOR given under the hand of the Municipal Manager, nor shall the LESSEE effect any improvements or additions to any building and/or structures presently erected or to be erected on the land in terms of this lease, nor make any substantial variations or alterations on the land without the prior written consent of the LESSOR given under the hand of the Municipal Manager and after the mentioned approval, until such time as the plans therefore has been approved by the Manager: Building Control of the Overstrand Municipality.
- 7.2. The LESSEE shall not at any time, or under any circumstances, have any claim against the LESSOR for improvements effected to the leased land or the building.
- 7.3. The LESSEE shall enclose and keep enclosed the whole of the land hereby leased with suitable fences to the approval of the LESSOR, only if requested to in writing by the LESSOR.
- 7.4. The LESSEE shall not assign its rights under this agreement in whole or in part, except with the prior written consent of the LESSOR, given under the hand of the delegated authority, nor shall it sublet it.
- 7.5. The LESSEE shall not use or cause or permit to be used any fence, building and/or structure which is or which may hereafter be erected on the land for the display of advertisements of any description whatsoever.
- 7.6. The LESSEE shall be responsible at all times for the maintenance of good order, behaviour and government on the land and within any buildings and/or structures thereon and shall not allow the same to be frequented by persons of ill repute or bad character.
- 7.7. The LESSEE shall not allow any person to reside overnight on the land.

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- 7.8. The LESSEE undertakes for the currency of this lease to insure and keep insured against damage or loss by fire the buildings and structures presently erected or to be erected upon the land in terms of the lease for such sum or sums as the LESSOR may from time to time require, and the LESSEE shall forward the annual renewal receipts as proof of insurance to the Property Administration Department on or before due date each year.
- 7.9. The LESSEE shall during the currency of this lease be responsible for all insurance against loss by theft, loss or damage of movable goods within the land by, rain, wind, hail, lightning, fire, riots, strikes, activities of states enemies or any cause and also against loss of income.
- 7.10. The LESSEE shall, during the term of this lease agreement, insure against public liability in respect of any incident arising out of the exercise of any of its rights under this lease or in respect of its use on the land authorised by this agreement. The LESSEE shall indemnify the LESSOR against any claim arising from any such event, except to the extent that such claim has arisen as a result of the LESSOR'S wilful default.
- 7.11. The LESSEE shall at his/its own expense prior to commencing trading procure all licences and permits necessary to exercise his/its rights in terms of this agreement and shall comply with all the requirements of the LESSOR in this regard.
- 7.12. The LESSEE in his use of the land, shall
 - 7.12.1. conform with all laws and statutory, municipal and other by-laws and regulations relating to lessees or occupiers of the land;
 - 7.12.2. not knowingly nor negligently cause nor allow to be caused any blockage or failure in any sewerage pipes, water pipes, drains and other supply equipment and installations serving the land; and
 - 7.12.3. not do, nor permit to be done, any act, matter or thing which may render the LESSOR'S insurance of the land and/or the property against risk of loss or damage attributable to any of the causes insured against from time to time, either void or voidable, or which may increase the rate of premiums payable by the LESSOR in respect of the land with regard to such insurance.
- 7.13. The LESSEE shall be responsible for any service connections and/or availability fees payable for the provision of services to the land.

8. MAINTENANCE

- 8.1. No trees growing on the land shall be cut down or interfered with without the prior written consent of the LESSOR, given under the hand of the Municipal Manager.
- 8.2. The LESSEE shall not remove or cause or permit to be removed from the land any soil, clay, gravel, sand or other matter upon or below the surface of the land without the prior written consent of the LESSOR, given under the hand of the Municipal Manager.
- 8.3. The LESSEE shall at all times keep the land inside and outside in a clean and tidy condition and free from all rubbish, litter or other accumulation of dirt to the satisfaction of the LESSOR.
- 8.4. The LESSEE shall at all times keep and maintain the inside and outside of the land and buildings/structures thereon, as well as any buildings and/or structures to be erected on the land, in good and effective order and condition, and without limiting the LESSEE'S obligations thereto, all locks, keys, inside water pipes, water taps, window panes and water and electrical fixtures, fittings and appliances and hot water cylinders, in good and substantial repair and upon termination of the tenancy shall deliver the same in such good and substantial repair. The LESSEE shall during the tenancy, at his own cost and expense, provide its own electric bulbs and fluorescent tubes for use in the leased land.
- 8.5. Without restricting the generality of the provisions under this clause, the LESSEE undertakes to exercise all reasonably possible care in respect of carpeting/wooden floors (laminated or ordinary) and/or tiling in the land (if any) and agrees to be responsible for all cost incurred in remedying any stains, burns or other forms of damage caused thereto during the lease including

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the cost of replacing any such portion thereof as may be necessitated by any such stains, burns or other forms of damage.

- 8.6. Should any structure, garden, fence, etc. or portion thereof on the land be damaged due to any act or negligence of the LESSEE or person who acquired occupancy through him/her, he shall be held liable for the payment of the total cost of any such repair work.
- 8.7. Any damage caused to the land as a result of any dismantling or removal of equipment or as a result of the LESSEE'S failure to maintain the land in such good order and condition, shall be made good by the LESSEE at the LESSEE'S own cost and expenses within 30 (THIRTY) days after written notice have been sent to the LESSEE.
- 8.8. The LESSOR may at all convenient times through its officers and servants enter upon the land or any buildings or structures erected thereon and inspect the same, and may make an inventory of all defects or matters calling for repair found thereon or therein for which the LESSEE is responsible as herein provided and within 10 (TEN) business days of the receipt of a notice in writing from the Municipal Manager calling upon it so to do, the LESSEE shall make good any defects or matters requiring repair as aforesaid and if the LESSEE shall fail to do so the LESSOR may enter upon the land, buildings and structures aforesaid and remedy such defects or make and effect the repairs aforesaid and recover the cost from the LESSEE.
- 8.9. The LESSOR reserves the right of free access, without notice, to the land hereby leased for as many of its officers and servants as may be necessary for the purpose of inspection, maintenance, renewal, cleansing, repairs and reconstruction of, or in connection with, existing foul sewers, rising mains, storm water drains, water mains, electric cables, or any works appurtenant thereto, or in regard to any such or other municipal services which the LESSOR may in future lay in or across the land, the LESSOR reserving to itself the right to establish such services without notice. The LESSEE shall not build over, alter, or in any manner disturb such services except under the express permission in writing of the Director of Infrastructure and Planning or his authorised representative in respect of the service concerned, and upon due compliance with any specified precautionary measures.
- 8.10. Should work involving maintenance, clearing, construction, reconstruction or repairs become necessary at any time the LESSOR shall, in performing such work cause as little inconvenience as possible to the LESSEE, regard being had to the nature of the work performed, and the LESSOR shall reinstate as nearly as reasonably possible in its original condition the surface of any ground disturbed, provided that the LESSOR shall not be liable for any damage whatsoever which may be sustained by the LESSEE or any other person or body of persons as a result of the performance by the LESSOR of the work aforesaid.
- 8.11. The LESSEE may not and will not allow for any changes to be made to the electrical installation of the land without the prior written consent of the LESSOR, given under the hand of the Municipal Manager. In the event of the LESSOR giving his consent, any changes must still be effected strictly in accordance with the regulations of the local authorities, as well as the suppliers of electricity.
- 8.12. The LESSEE shall comply in all aspects to the requirements of the LESSOR and Health Inspector as may be conveyed to him/it from time to time.

9. RISK OF CONTENTS

- 9.1. All goods, property and effects of whatsoever nature owned by the LESSEE or any other person which at any time might be in/on/at the said land shall be there at the sole risk of the LESSEE and the LESSOR shall not be liable to make good any loss or damage to such goods from any cause whatsoever.

10. BREACH

- 10.1. The LESSEE hereby covenants with the LESSOR that the LESSEE will pay the rent as herein before-mentioned and agrees also faithfully to observe and fulfil each and all the conditions of this lease.

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10.2. In the event of:

- 10.2.1 the rental not being paid within 30 (THIRTY) days from the date when the same becomes due and payable; or
- 10.2.2 the said land, fence, buildings, and structures aforesaid not being kept and maintained in an efficient state of repair and in good structural condition; or
- 10.2.3 any or all of the conditions of this lease not being duly observed and fulfilled in accordance with the true intent and meaning thereof, and after the LESSEE has been given 30 (THIRTY) days' notice by registered mail, e-mail, fax or hand,

the LESSOR shall be entitled to cancel and terminate this lease and to re-enter upon and resume possession of the land, fence, buildings and structures aforesaid and any other improvements effected thereto or thereon without prejudice to the right of recovery of any rent due, and to recover from the LESSEE such amount in respect of loss or damage as the LESSOR may have sustained or expenses which may be entailed upon the LESSOR by reason of the failure of the LESSEE to observe and fulfil the conditions of this lease. In such event the LESSEE shall not have the right to remove any building and/or structures which may have been erected from its own funds on the premises in terms of the lease.

- 10.3 The LESSEE undertakes to pay all attorney- and own client costs plus VAT, collection commission and tracing costs plus VAT which the LESSOR may incur in collecting any amount owing in terms of this agreement by the LESSEE and which is not paid on the due date thereof, including interest on such amount at the maximum rate allowed from the date such amount becomes due, until receipt of final payment
- 10.4 In the event of this agreement for any reason being cancelled, the LESSEE shall immediately vacate the land if it is in occupation and the LESSOR shall not be liable for any compensation for any improvements made to the land by the LESSEE or by any other person.
- 10.5 Where the LESSOR selects to cancel the agreement in terms of paragraph 10.2 above, the LESSOR may decide to impose a restriction penalty on the LESSEE by prohibiting such LESSEE from doing business with the public sector for a period not exceeding 10 (TEN) years.
- 10.6 If a LESSOR intends imposing a restriction on a LESSEE or any person associated with the LESSEE, the LESSEE will be allowed a time period of not more than 14 (FOURTEEN) days to provide reasons why the envisaged restriction should not be imposed. Should the LESSEE fail to respond within the stipulated 14 (FOURTEEN) days, the LESSOR may regard the LESSEE as having no objection and proceed with the restriction.
- 10.7 Any restriction imposed on any person by the LESSOR will, at the discretion of the LESSOR, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first-mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of the lease actively associated.
- 10.8 If a restriction is imposed, the LESSOR must, within 5 (FIVE) working days of such imposition, furnish the National Treasury, with the following information:
 - 10.8.1 the name and address of the LESSEE and/or person restricted by the LESSOR;
 - 10.8.2 the date of commencement of the restriction;
 - 10.8.3 the period of restriction; and
 - 10.8.4 the reasons for the restriction.

These details will be loaded in the National Treasury's central database of suppliers or persons prohibited from doing business with the public sector.
- 10.9 If a court of law convicts a person of an offence as contemplated in sections 12 or 13 of the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004, the court may also rule that such person's name be endorsed on the Register for Tender Defaulters. When a person's name has been endorsed on the Register, the person will be prohibited from doing business with the

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public sector for a period not less than 5 (FIVE) years and not more than 10 (TEN) years. The National Treasury is empowered to determine the period of restriction and each case will be dealt with on its own merits. According to section 32 of the Act the Register must be open to the public. The Register can be perused on the National Treasury website.

- 10.10 The LESSEE agrees to the jurisdiction of the Magistrate's Court for the recovery of any amount due in terms hereof or any other matter/dispute which might arise from this agreement. This provision shall however not be construed so as to oust the jurisdiction of the High Court and the LESSOR shall at all times be entitled to approach any Court of competent jurisdiction.

11. SETTLEMENT OF DISPUTES

- 11.1. If any dispute or difference of any kind whatsoever arises between the LESSOR and the LESSEE in connection with or arising out of this agreement, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.
- 11.2. If, after 30 (THIRTY) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the LESSOR or the LESSEE may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.
- 11.3. Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.
- 11.4. Notwithstanding any reference to mediation and/or court proceedings herein,
- 11.4.1. the parties shall continue to perform their respective obligations under the agreement unless they otherwise agree; and
- 11.4.2. the LESSEE shall pay the LESSOR any monies due according to the prescripts of this agreement.

12. TERMINATION AND CANCELLATION

- 12.1. In the event of the following occurring:
- 12.1.1. The LESSEE dissolving or ceasing to exist;
- 12.1.2. The LESSEE not use the land as described above at any time within the period of this lease;
- 12.1.3. The LESSEE or where the LESSEE is a partnership, in the case of any of the partners:
- being sequestrated, whether provisionally or finally or where any application is made to Court in such respect, or
 - making an application for the surrender of his estate, or
 - entering into or purporting to enter into any composition or arrangement of whatsoever nature for the benefit of one or more of his/its creditors, or
 - not satisfying any judgment against him/them within 10 (TEN) days of the date of such judgement being granted or failing to make an Appeal or Review proceedings against the judgment within the 10 (TEN) day period aforesaid; or
- 12.1.4 The LESSEE being an company or close corporation is:
- being liquidated, whether provisionally or finally, or where any application is made to Court in such respect, or
 - being wound-up;
 - entering into or purporting to enter into any composition or arrangement of whatsoever nature for the benefit of one or more of his/its creditors,

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(d) not satisfying any judgment against him/them within 10 (TEN) days of the date of such judgement being granted or failing to make an Appeal or Review proceedings against the judgment within the 10 (TEN) day period aforesaid;

then in any or more of such events, the LESSOR shall be entitled to terminate this lease immediately, without payment of any compensation whatsoever to the LESSEE and without prejudice to any of the LESSOR's other rights against the LESSEE including the right to claim damages from the LESSEE. In this event or at the expiration of this lease, the land shall revert to and vest in the LESSOR. The LESSEE shall be permitted to remove any structures, non-permanent in nature, which may have been erected by it from its own funds on the land in terms of this lease within a period of 48 (FOURTY EIGHT) hours of such termination or expiration on condition that any damage to the land in the removal thereof will be compensated by the LESSEE. Any structures not so removed shall vest in the LESSOR free of compensation. The LESSEE shall also be permitted to remove any material, furniture or equipment belonging to him/her/it from the land within 48 (FOURTY EIGHT) hours of such termination or expiration of this lease. Any material, furniture or equipment not so removed shall vest in the LESSOR free of compensation.

- 12.2 The LESSEE shall at the expiration of this lease restore and deliver up to the LESSOR the said land in a condition satisfactory to the LESSOR. The LESSEE shall compensate the LESSOR for any damages caused to the land for whatever reason.
- 12.3 Notwithstanding anything in this agreement contained, whether in the instance of the Council needing the land leased or any portion thereof for own use, the LESSOR may resume possession of the whole or any portion of the land at any time on giving 3 (THREE) month's written notice to that effect and may cancel or amend the lease accordingly.

13. GENERAL

- 13.1. The LESSEE undertakes that it will be responsible for payment at the normal rates, taxes and tariffs for any municipal services provided to the land hereby leased, whether at the request of the LESSEE or not.
- 13.2. The LESSEE shall not install or permit anybody to install inside or outside the land any vending or games machines, whether operated mechanically or by electronic devices.
- 13.3. The LESSEE shall sell no commodity from the land in glass containers or bottles for consumption on or near the rocks or tidal pools and adjoining areas.
- 13.4. The LESSEE shall at all times well and sufficiently indemnify the LESSOR and keep the LESSOR indemnified against all liability howsoever caused or arising that may be the direct or indirect result of the use of the land in question, and against all actions, suits, proceedings, claims, demands, costs and expenses whatsoever which may be taken or made against the LESSOR or incurred or become payable by the LESSOR at the suit of any person.
- 13.5. Neither the LESSEE nor any other person shall acquire or hold any licence for the sale of intoxicating liquor upon the land or in or from any buildings or structures thereon without the prior written consent of the LESSOR, given under the hand of the Municipal Manager. Should the necessary consent be granted, the LESSEE shall not do, permit or allow or suffer any person to do anything on the land, buildings or structures thereon which would be an infringement of the law for the time being regulating the sale, supply and/or delivery of intoxicating liquor. The LESSEE shall not sell or serve intoxicating liquor upon the land or in or from any buildings/structures thereon before the necessary licences have been obtained.
- 13.6. No agreement at variance with the terms and conditions of this agreement shall be binding on the parties unless contained in writing by the parties hereto and any indulgence which the LESSOR in accepting any payments after due date or in accepting a lesser sum than the amount due, shall not in any way prejudice his rights or be construed as a waiver of same by the LESSOR.

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- 13.7. The parties hereto acknowledge that this agreement constitutes the entire contract between them and that no other conditions, stipulations, warranties or representations whatsoever have been made by or on behalf of either party other than such as are included herein.
- 13.8. The LESSEE will not carry on such business in a manner which creates a nuisance, is a threat or danger to the public health and safety, or damages or defaces any Municipal property.
- 13.9. No dogs, except dogs assisting the visually impaired, or any other animals shall be allowed in the main restaurant building and no animals whatsoever shall be allowed in the kitchen area. Dogs will however be permitted on the outside deck areas if not prohibited by any other by-law or rules for the area.
- 13.10. The grant of the lease hereby constituted, shall under no circumstances be deemed to confer any real right or servitude of any kind in favour of the LESSEE. Upon a demand made by the LESSOR, in terms of this lease, for quiet possession of the land, the LESSEE shall be bound to give such possession without any right to compensation, whether for useful, necessary expenses or other improvements.
- 13.11. It shall at no time be considered that the LESSEE has by virtue of this Agreement of Lease acquired any right or lawful claim to a grant of the land.
- 13.12. All improvements made on or to the Land shall belong to the LESSOR and may not be removed from the Land at any time. The LESSEE shall not, whatever the circumstances, have any claim against the LESSOR for compensation for any improvement or repair to the Land, nor shall the LESSEE have a right to retention in respect of any improvements in terms hereof.
- 13.13. The Land is leased as it stands, "voetstoots", and the LESSOR shall not be responsible for any defects in the Land either patent or latent. The Land is moreover leased subject to all conditions and servitudes mentioned or referred to in the current and/or prior title deeds of the Land and to all such other conditions and servitudes which may exist in regard thereto. The LESSOR shall not be required to point out the boundary beacons of the Land and shall not be liable for any deficiency in the extent of the Land which may be revealed on any survey or re-survey, and shall not benefit by any excess.

14. DOMICILIUM CITANDI ET EXECUTANDI

- 14.1. The LESSEE and the LESSOR hereby appoints and choose their respective addresses as set out in Schedule 1 of this agreement for all purposes of and connected with this lease to be their domicilium citandi et executandi, at which addresses all notices and legal process in relation to this agreement or any action arising therefrom may be delivered and/or served.
- 14.2. Either party shall be entitled from time to time, by written notice to the other, to change its address as set out in Schedule 1 of this agreement; the LESSEE specifically to the LESSOR via its Property Administration Department, to vary its domicilium address to any other address within the Republic of South Africa, which is not a post office box.
- 14.3. All notices, communications or processes in terms of this agreement shall be in writing.
- 14.4. Any notice, communication or any process addressed by one of the parties to the other, shall be deemed to have been sufficiently served and/ or delivered upon the LESSEE:-
- 14.4.1. By registered mail on the 5th (FIFTH) business day after posting;
- 14.4.2. By fax or electronic mail on the 1st (FIRST) business day after the date of transmission thereof;
- 14.4.3. By hand during normal business hours at the time of delivery.
- 14.5. The above clauses will not be so construed as to oust the service procedures, specifically those of personal service as depicted in any applicable legislation of the Republic of South Africa.

SIGNATURE		NAME (PRINT)	
CAPACITY		DATE	
NAME OF FIRM			

15. REPRESENTATION ON AUTHORITY OF PARTIES

- 15.1. The signatories (whether it may be one person or more than one person) of the LESSEE confirm by signing this agreement, that:
 - 15.1.1. In terms of the entity's constitution, trust deed, memorandum of incorporation, members' agreement or any similar document, whichever case may be applicable, the entity may conclude and enter into this agreement.
 - 15.1.2. The necessary procedures and responsibilities were followed and conformed to in respect of the authorisation to conclude and enter into this agreement and that the signatories of this agreement are mandated thereto in terms of a resolution by such entity.
 - 15.1.3. The signatories represent and warrant that he/she/they are duly authorised thereto and has the legal capacity to sign and enter into this agreement.
 - 15.1.4. The signatories confirm that the signing of and entering into the agreement and the performance of the obligations in terms of this agreement have been duly authorised and that the agreement is a valid and legal agreement binding on the LESSEE and enforceable in accordance with its terms and conditions.
- 15.2. In the event that the signatories should no longer be involved with the business of the LESSEE, the onus will rest upon that particular signatory to inform the LESSOR, through its Property Administration Department, in writing, within 1 (ONE) month that they have resigned and have denounced all rights and obligations as previously held. It should also be conveyed in writing who their successor will be. Such successor will also be held bound in terms of the terms and conditions of this agreement as if he/she signed this agreement originally, but only to the extent that actual liability will arise from date of notification to the LESSOR. Should no such notice be given to the LESSOR, the signatories will remain bound in terms of the terms and conditions of this agreement.
- 15.3. The LESSOR, through the signatories, shall, on date of signature of this agreement with the LESSOR furnish the LESSOR in writing with the names and addresses of its leaders/trustees/directors/members/ any such other entire person in control whichever case may be applicable.

16. DESTRUCTION OR DAMAGE

- 16.1. Should the land at any time or times during the currency of this lease be damaged or destroyed by fire, riots, force majeure or any other cause whatsoever so as to render them wholly untenable, then the LESSEE shall be entitled to cancel this lease by notice to the LESSOR given in writing within 60 (SIXTY) days after the date of destruction of the land. If no such notice is given then this lease shall not be terminated and the LESSEE shall be liable for payment of rent.

17. HOLDING OVER

- 17.1. In the event of the LESSOR cancelling this lease and the LESSEE disputing its right to cancel and remaining in occupation of the land the LESSEE shall, pending the determination of such dispute by litigation or otherwise, continue to pay to the LESSOR an amount equivalent to the monthly rental and or other sums payable hereunder on the date or dates upon which such sum would have been due but for the cancellation, and the LESSOR shall be entitled to accept and recover such payments. The acceptance thereof shall be without prejudice to and shall not in any way whatsoever effect the LESSOR'S cancellation then in dispute. Should the dispute be determined in favour of the LESSOR, the payments made and received in terms of this clause shall be deemed to be amounts paid by the LESSEE on account of damages suffered by the LESSOR by reason of the cancellation of the lease and/or the unlawful holding over by the LESSEE.

SIGNATURE		NAME (PRINT)	
CAPACITY		DATE	
NAME OF FIRM			

18. TRADING HOURS

- 18.1. The LESSEE shall conduct his business on the land during the hours determined within his own discretion, except during the hours of 24:00 until 06:00 for which the LESSOR'S prior written approval is needed, which may be given subject to such terms and conditions as the LESSOR considers necessary.
- 18.2. The LESSEE shall under no circumstances close the business for a period in excess of four weeks in each and every calendar year and shall, notwithstanding the provisions of clause 18.1 above, be open for not less than 7 (SEVEN) hours per day for 6 (SIX) days of each and every week whilst the business is not closed.

19. ABLUTION FACILITIES

- 19.1. The ablution facilities (toilets, showers, etc.) must be made available to the general public during the hours of 09:00 till 18:00. The LESSEE shall be obliged at all times, at its own cost, to keep the said ablution facilities clean and properly supplied with toilet paper.

20. SECURITY OF THE LAND

- 20.1. The LESSEE shall ensure that the land are properly secured and protected during and after the close of business and shall assure him/itself that no person whatsoever is left on the land at the time of closing. The LESSEE shall be held liable for any damage or loss that may occur from such neglect.

21. LESSEE'S FINANCIAL MANAGEMENT OBLIGATIONS

- 21.1. The Lessor, in terms of the regulations issued in terms of section 168 of the Local Government: Municipal Finance Management Act 56 of 2003, is obliged to monitor the implementation of, and assess the LESSEE'S performance under this agreement and to impose financial management duties on the LESSEE, including transparent processes relating to internal financial control, budgeting, accountability and reporting and in order to fulfil these duties, the LESSOR shall be entitled to expect same duties towards it in this regard, as is expected from the LESSEE by the LESSOR, where applicable.
- 21.2. In order to comply with the above, the LESSOR shall be entitled to, from time to time during the lease period, request information from the LESSEE and or issue directives to the LESSEE in the above regard.
- 21.3. Without limiting the generality of the afore going, the LESSEE must submit annually to the LESSOR, at its Property Administration Department, Municipal Offices, Onrus, within 3 (THREE) months from the LESSEE's financial year end, copies of the LESSEE's approved audited financial statements as well as a report as to the current tenants in the property, as well as a letter from the LESSEE's bank, confirming the LESSEE's financial standing.

22. SURETYSHIP

- 22.1. If a LESSEE enters into this agreement in a representative capacity then such LESSEE binds himself as surety and co-principal debtor on behalf of the represented party for the due performance by his principal of the terms of this agreement by virtue of his signature hereto and by virtue of the deed of suretyship incorporated in this clause. If the person proposing to act in a representative capacity appears not to be in possession of proper written authority by his principal, then and in that instance the person who signed this agreement will, in his personal capacity, be liable for the due fulfilment of all the obligations of the party on whose behalf he proposes to act.

SIGNATURE		NAME (PRINT)	
CAPACITY		DATE	
NAME OF FIRM			

- 22.2. The Sureties by their signatures hereto, renouncing the benefits of excussion and division, the meaning of which they declare themselves to be fully acquainted, hereby bind themselves jointly and severally and in solidum, to the LESSOR and its successors in title, cessionaries or assigns, as sureties for and co-principal debtor with the LESSEE for the due and punctual payment and performance by the LESSEE of all debts and obligations (including but not limited to damages) of whatsoever nature and howsoever arising from this agreement including any amendment to thereto, which the LESSEE may now or in the future owe to the LESSOR – (all of which debts and obligations are hereinafter referred to as "the obligations"). As part of their liability in terms hereof, the Sureties bind themselves as aforesaid to pay the amount of all charges and expenses of whatsoever nature including, but without derogating from the generality of the aforesaid, attorney and own client legal costs (reckoned on the recommended non litigious tariff of the Law Society of the Cape of Good Hope or its successors) and collection commission under this agreement as well as the Sureties obligations hereunder.
- 22.3. Should the LESSEE be a registered company/close corporation it shall prior to concluding this agreement furnish the LESSOR in writing with the names and addresses of all its shareholders and directors or members, and no share or member's interest in the tenant company/close corporation shall be sold, disposed of or alienated nor shall it be permitted to make any change in the composition of its directorate or members without the written approval of the LESSOR, under the hand of the Municipal Manager, which approval will not be unreasonably withheld. Such directors or members referred to shall be obliged to sign a suretyship for the due fulfilment of the obligations of the company/close corporation in terms of this agreement.

23. NOTARIAL EXECUTION AND REGISTRATION

- 23.1. This lease shall be notarially executed and registered in the deeds office as soon as possible after signature of this agreement.
- 23.2. The LESSOR shall attend to the above and the LESSEE shall sign and/or provide all documents required for the aforementioned execution and registration and deliver same to the LESSEE or its agent within 7 (SEVEN) Business Days of being requested to do so.
- 23.3. The LESSEE shall pay all costs of and incidental to said execution and registration, on demand.

24. DEVELOPMENT

- 24.1. The plans for development will be subject to Overstrand Heritage Committee and Heritage Western Cape's recommendations and approval.
- 24.2. The development must be in line with the approvals granted by the Municipality and Department Environmental Affairs and Development Planning as annexed hereto per "Annexure A".
- 24.3. The required parking must be provided as per site plan attached per "Annexure B".
- 24.4. Should the LESSEE not complete the development on the property within a period of 2 (TWO) years from the commencement date, which time period of 2 (TWO) years may on prior written application of the LESSEE to the LESSOR stating the reasons for the request, be extended by consent of the LESSOR given under the hand of the Municipal Manager, which consent will not be withheld unreasonably.

25. INFRASTRUCTURE

- 25.1. The LESSEE and/or his appointed developer must submit an engineering services report with reference to the services required and the capacity thereof for approval thereof by the LESSOR'S Director: Infrastructure and Planning before commencement of the development. Any required upgrades will be for the account of the LESSEE. A service agreement for all the services, including water, sewerage, electricity, roads, storm water and refuse removal services will be finalised with the LESSEE'S Manager: Engineering Services and be entered into before commencement of the development.
- 25.2. The LESSEE shall be responsible for bulk infrastructure and internal municipal services.

SIGNATURE		NAME (PRINT)	
CAPACITY		DATE	
NAME OF FIRM			



25.3. Bulk service levies will be payable by the LESSEE according to prescribed levies as contained in the LESSOR’S Council’s budget, which may vary from year to year.

26. SPECIAL CONDITIONS

- 26.1. The property may only be used for the purpose which complies with the primary uses allowed for in terms of Local Business Zone.
- 26.2. The height of the buildings will be limited to a single store.
- 26.3. The development should comply with the provisions of the appropriate Scheme Regulations as promulgated.
- 26.4. The upgrading and maintenance of Fick’s Pool’s area, including the existing ablution facilities and maintenance of the pathways will be the responsibility of the LESSEE.
- 26.5. The development must comply with the conditions of the Record of Decision, dated 10 January 2010 as per Annexure C1 to 18 and the Service Report, dated 14 April 2014, as per Annexure D1 to 5.

THUS DONE, SIGNED AND AGREED TO AT HERMANUS

on _____.

AS WITNESSES:

- 1. _____
- 2. _____

(LESSOR)
 OVERSTRAND MUNICIPALITY

THUS DONE, SIGNED AND AGREED TO AT _____

on _____.

AS WITNESSES:

- 1. _____
- 2. _____

(LESSEE)

Annexures to be included in Final Agreement.

SIGNATURE		NAME (PRINT)	
CAPACITY		DATE	
NAME OF FIRM			

12. FORM OF OFFER AND ACCEPTANCE

1. OFFER

The Municipality, identified in the Acceptance signature block, has solicited offers to enter into a contract in respect of the following property:

LEASE AND DEVELOPMENT OF A PORTION OF ERF 243, HERMANUS, KNOWN AS “FICK’S POOL”, FOR THE PURPOSE OF DEVELOPING AND OPERATING A RESTAURANT

The bidder, identified in the offer signature block, has examined the documents listed in the tender data and addenda thereto as listed in the returnable schedules and confirms that the tender is subject to the conditions as set out in this tender documentation and the terms of the most recent Supply Chain Management Policy and the Administration of Immovable Property Policy of the Overstrand Municipality as approved and adopted by Council, and by submitting this offer has accepted the conditions of tender and the conditions as set out in the aforesaid policies.

By the representative of the bidder, deemed to be duly authorized, signing this part of this form of offer and acceptance, the bidder offers to perform all of the obligations and liabilities as described in the tender document including compliance with all its terms and conditions according to their true intent and meaning.

THE OFFERED TOTAL OF THE RENTAL <u>INCLUSIVE OF VAT PER MONTH</u> IS:					
Tendered Monthly Lease Amount for a portion of Erf 243 Hermanus (“Fick’s Pool”).	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20%; text-align: center; vertical-align: middle;">R</td> <td style="height: 30px;"></td> </tr> <tr> <td style="text-align: center; vertical-align: middle;"><i>(In words)</i></td> <td style="height: 30px;"></td> </tr> </table>	R		<i>(In words)</i>	
R					
<i>(In words)</i>					

This offer may be accepted by the Municipality by signing the Acceptance part of this Form of Offer and Acceptance and returning one signed copy of this document to the bidder before the end of the period of validity stated in the tender data.

Signature(s)		
Name(s)		
Capacity		
For the bidder:		
Name of witness:	<i>(Insert name and address of organisation)</i>	Date
Signature of witness:		

2. ACCEPTANCE

By signing this part of this Form of Offer and Acceptance, the Municipality identified below, accepts the bidder's offer. Acceptance of the bidder's offer shall form an agreement between the Municipality and the tenderer upon the terms and conditions contained in this agreement, the tender data and specifications, the tender documentation and in the Lease Agreement to be concluded that is the subject of this agreement.

The bidder shall pay an amount equal to the monthly lease amount tendered as a deposit on date of signature of the lease agreement and within two weeks after receiving a completed signed copy of this agreement, including the schedule of deviations (if any), arrange for the delivery of any guarantees, proof of insurance and any other documentation to be provided in terms of the agreement. Failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation of this agreement.

Notwithstanding anything contained herein, this Agreement comes into effect and is binding between the parties on the date of dispatch of one fully completed copy of this document to the bidder, signed by the authorized official of the Overstrand Municipality.

Signature(s):		
Name(s):		
Capacity:		
For the Owner:	Overstrand Municipality, Magnolia Avenue, Hermanus	
Name of witness:		Date:
Signature of witness:		



**PART C – ADMINISTRATION OF IMMOVABLE
PROPERTY POLICY**

**MOST IMPORTANT ASPECTS OF THE ADMINISTRATION OF IMMOVABLE PROPERTY POLICY
OF THE OVERSTRAND MUNICIPALITY**

LEASING OF MUNICIPAL IMMOVABLE PROPERTY

17. Taking into consideration the nature and duration of the lease to be entered into, the leasing of immovable property may be affected by means of either:
- 17.1 a competitive process, which may include a closed or public tender or proposal call, specifically in circumstances listed in paragraph 18 below; or
- 17.2 a direct lease.
18. A competitive process must at all times be followed in circumstances where:
- 18.1 the lease is for a long term with an income value in excess of R10 million;
- 18.2 the lease is for a formal business premises with a market related rental;
- 18.3 more than one party, in discretion of the municipality, is interested in the lease of the subject property; and/or
- 18.4 by discretion of the municipality, a competitive process will best serve the interests of the community.
20. Long term lease of municipal immovable property with an income value less than R10 million:
- 20.1 The Municipality may grant a long term lease of municipal immovable property with an income value of less than R10 million only after:
- (a) the Accounting Officer has approved the lease in principle;
- (b) in the case of a direct lease, the proposed lease was advertised in terms of paragraph 10.1 and 10.2 above to invite the local community and other interested parties to submit comments or representations; and
- (b) the Executive Mayor, as delegated authority, has subsequently approved that the right may be granted.

CONDITIONS OF LEASE

36. All costs pertaining to a transaction, e.g. survey, advertisements, valuation, relocation or provision of services where necessary, shall be borne by the Lessee. The Municipality may, however, waive its right to claim all or any portion of the costs. Where necessary a deposit to cover the costs may be required.
37. An agreement for the lease of municipal immovable property shall be in writing, stipulating the terms and conditions of the contract or agreement, which shall include provisions providing for:
- (a) the termination of the contract or agreement in the case of non- or underperformance;
- (b) dispute resolution mechanisms to settle disputes between the parties;
- (c) a periodic review of the contract or agreement once every three years in the case of a contract or agreement for longer than three years;
- (d) any other matters that may be prescribed, and
- (e) escalation in terms of paragraph 40 of this policy.
38. No immovable property shall be sub-let and no lease may be ceded or assigned without the prior written approval of the Municipality.
40. Rental, except where it is decided otherwise by the Municipality, shall escalate on the 1st of July every year, by a percentage fixed in accordance with the prevailing consumer price index (all items).
41. The lessee shall, as a rule, be liable for the payment of rates, taxes and service charges in respect of the leased property. In the case of leases to certain social care users and sports facilities at rentals lower than market value the Municipality may consider granting a rebate on rates in accordance with the Rates Policy of the Municipality.
43. The lessee shall indemnify the Municipality against any possible claims arising from the lease or use of the immovable property.
44. Where land is leased for development, a condition, taking into consideration the nature of the development, may be included in the lease agreement stipulating that such development must be completed within two years from date of conclusion of the lease agreement. Likewise a suspensive condition may be included in the lease agreement to provide for cancellation in the event that the development has not been completed, unless a written extension has been granted by the Municipality.
45. Save with prior written approval of the Municipality the property may only be used for the purpose for which it was let.
46. The Municipality shall at all reasonable times be entitled to enter and inspect the immovable property.
47. Subject to paragraph 46 above, immovable property let by the Municipality shall be inspected at least once a year by the Municipality to ensure compliance with the terms and conditions of the agreement of sale or lease.
48. The lessee shall be responsible for maintaining the leased property including all improvements thereon to the satisfaction of the Municipality.
49. Improvements provided by the Lessee and which the Council wishes to retain, shall revert, free of charge, to the Municipality once the lease period has terminated and/or in the event the agreement, due to breach of conditions, has been cancelled. Alternatively, agreement may be reached to the effect that the Lessee may remove any improvements erected from its own funds within three months of termination of the lease agreement, failing which such improvements shall revert to the Municipality free of charge without damage and if provided for in the agreement. The Lessee shall be liable for the cost involved in the removal of such improvements not required by the Municipality.
50. The Municipality reserves the right, where necessary, to resume immovable property let, or portion thereof, and to cancel an existing lease in its entirety where such immovable property is required for operational purpose or in the interest of the community or for any reason necessitating the cancellation thereof.

13. DECLARATION BY TENDERER

I / We acknowledge that I / we am / are fully acquainted with the contents of the conditions of tender of this tender document and that I / we accept the conditions in all respects.

I / We agree that the laws of the Republic of South Africa shall be applicable to the contract resulting from the acceptance of *my / our tender and that I / we elect *domicillium citandi et executandi* (physical address at which legal proceedings may be instituted) in the Republic at:

I / We accept full responsibility for the proper execution and fulfillment of all obligations and conditions devolving in me / us under this agreement as the principal liable for the due fulfillment of this contract.

I / We furthermore confirm I / we satisfied myself / ourselves as to the corrections and validity of my / our tender; that the price quoted cover all the work / items specified in the tender documents and that the price(s) cover all my / our obligations under a resulting contract and that I / we accept that any mistake(s) regarding price and calculations will be at my / our risk.

I / We furthermore confirm that my / our offer remains binding upon me / us and open for acceptance by the Purchases / Employer during the validity period indicated and calculated from the closing date of the bid.

SIGNATURE		NAME (PRINT)	
CAPACITY		DATE	
NAME OF FIRM			
WITNESS 1		WITNESS 2	