

EIA REFERENCE NUMBER: 16/3/3/2/D6/18/0002/22
NEAS REFERENCE: WCP/EIA/0001157/2022
DATE OF ISSUE: 11 April 2024

REFUSAL OF ENVIRONMENTAL AUTHORISATION

APPLICATION FOR ENVIRONMENTAL AUTHORISATION IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998) AND THE ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, 2014: THE PROPOSED HARTENBOS GARDEN ESTATE ON ERF 3122, HARTENBOS, MOSSEL BAY

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

DECISION

By virtue of the powers conferred on it by the National Environmental Management Act, 1998 (Act No. 107 of 1998) ("NEMA") and the Environmental Impact Assessment ("EIA") Regulations, 2014, the Competent Authority herewith **refuses Environmental Authorisation** to the applicant to undertake the listed activities specified in section B below with respect to Alternative 3 (Preferred Alternative) for the *proposed Hartenbos Gardens Estate on Erf 3122, Hartenbos*, described in the Final Environmental Impact Assessment Report ("FEIAR"), dated 30 November 2023, as prepared and submitted by the appointed environmental assessment practitioner ("EAP"), Mrs Louise-Mari van Zyl of *CAPE EAPRAC (PTY) LTD*.

The applicant for this Environmental Authorisation is required to comply with the conditions set out in Section E below.

A. DETAILS OF THE APPLICANT FOR THIS ENVIRONMENTAL AUTHORISATION

THE DIRECTOR
% MR. A.J. KRUGER
HARTENBOS HILLS PROPCO (PTY) LTD
252 Val de Vie
PAARL
7646
E-mail: ajkcons@gmail.com
Cell: 082 375 9679

The abovementioned applicant is the holder of this Environmental Authorisation (hereinafter referred to as "**the applicant**").

B. LIST OF ACTIVITIES REFUSED

Listed Activities:
Environmental Impact Assessment Regulations Listing Notice 1 of 2014, Government Notice No. 983 of 4 December 2014 (as amended)
<p>Activity Number: 9 <i>Activity Description:</i></p> <p>The development of infrastructure exceeding 1 000 metres in length for the bulk transportation of water or storm water—</p> <ul style="list-style-type: none">(i) with an internal diameter of 0,36 metres or more; or(ii) with a peak throughput of 120 litres per second or more; <p>excluding where—</p> <ul style="list-style-type: none">(a) such infrastructure is for bulk transportation of water or storm water or storm water drainage inside a road reserve or railway line reserve; or(b) where such development will occur within an urban area.
<p>Activity Number: 12 <i>Activity Description:</i></p> <p>The development of—</p> <ul style="list-style-type: none">(i) dams or weirs, where the dam or weir, including infrastructure and water surface area, exceeds 100 square metres; or(ii) infrastructure or structures with a physical footprint of 100 square metres or more; <p>where such development occurs—</p> <ul style="list-style-type: none">(a) within a watercourse;(b) in front of a development setback; or(c) if no development setback exists, within 32 metres of a watercourse, measured from the edge of a watercourse; — <p>excluding—</p> <ul style="list-style-type: none">(aa) the development of infrastructure or structures within existing ports or harbours that will not increase the development footprint of the port or harbour;(bb) where such development activities are related to the development of a port or harbour, in which case activity 26 in Listing Notice 2 of 2014 applies;(cc) activities listed in activity 14 in Listing Notice 2 of 2014 or activity 14 in Listing Notice 3 of 2014, in which case that activity applies;(dd) where such development occurs within an urban area;(ee) where such development occurs within existing roads, road reserves or railway line reserves; or(ff) the development of temporary infrastructure or structures where such infrastructure or structures will be removed within 6 weeks of the commencement of development and where indigenous vegetation will not be cleared.
<p>Activity Number: 19 <i>Activity Description:</i></p>

The infilling or depositing of any material of more than 10 cubic metres into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock of more than 10 cubic metres from a watercourse;

but excluding where such infilling, depositing, dredging, excavation, removal or moving—

- (a) will occur behind a development setback;
- (b) is for maintenance purposes undertaken in accordance with a maintenance management plan;
- (c) falls within the ambit of activity 21 in this Notice, in which case that activity applies;
- (d) occurs within existing ports or harbours that will not increase the development footprint of the port or harbour; or
- (e) where such development is related to the development of a port or harbour, in which case activity 26 in Listing Notice 2 of 2014 applies.

Activity Number: 24

Activity Description:

The development of a road—

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

but excluding a road—

- (a) which is identified and included in activity 27 in Listing Notice 2 of 2014;
- (b) where the entire road falls within an urban area; or
- (c) which is 1 kilometre or shorter.

Activity Number: 28

Activity Description:

Residential, mixed, retail, commercial, industrial or institutional developments where such land was used for agriculture, game farming, equestrian purposes or afforestation on or after 01 April 1998 and where such development:

- (i) will occur inside an urban area, where the total land to be developed is bigger than 5 hectares; or
 - (ii) will occur outside an urban area, where the total land to be developed is bigger than 1 hectare;
- (i) excluding where such land has already been developed for residential, mixed, retail, commercial, industrial or institutional purposes.

**Environmental Impact Assessment Regulations Listing Notice 2 of 2014,
Government Notice No. 984 of 4 December 2014 (as amended)**

Activity Number: 15

Activity Description:

The clearance of an area of 20 hectares or more of indigenous vegetation, excluding where such clearance of indigenous vegetation is required for—

- (i) the undertaking of a linear activity; or
- (ii) maintenance purposes undertaken in accordance with a maintenance management plan.

**Environmental Impact Assessment Regulations Listing Notice 3 of 2014,
Government Notice No. 985 of 4 December 2014 (as amended)**

Activity Number: 2

Activity Description:

The development of reservoirs, excluding dams, with a capacity of more than 250 cubic metres.

i. Western Cape

- i. A protected area identified in terms of NEMPAA, excluding conservancies;
- ii. In areas containing indigenous vegetation; or
- iii. Inside urban areas:
 - (aa) Areas zoned for use as public open space; or
 - (bb) Areas designated for conservation use in Spatial Development Frameworks adopted by the competent authority or zoned for a conservation purpose.

Activity Number: 12

Activity Description:

The clearance of an area of 300 square metres or more of indigenous vegetation except where such clearance of indigenous vegetation is required for maintenance purposes undertaken in accordance with a maintenance management plan.

i. Western Cape

- (i) Within any critically endangered or endangered ecosystem listed in terms of section 52 of the NEMBA or prior to the publication of such a list, within an area that has been identified as critically endangered in the National Spatial Biodiversity Assessment 2004
- (ii) Within critical biodiversity areas identified in bioregional plans;
- (iii) Within the littoral active zone or 100 metres inland from high water mark of the sea or an estuarine functional zone, whichever distance is the greater, excluding where such removal will occur behind the development setback line on erven in urban areas;
- (iv) On land, where, at the time of the coming into effect of this Notice or thereafter such land was zoned open space, conservation or had an equivalent zoning; or
- (v) On land designated for protection or conservation purposes in an Environmental Management Framework adopted in the prescribed manner, or a Spatial Development Framework adopted by the MEC or Minister.

The abovementioned list is hereinafter referred to as "**the listed activities**".

The applicant is herein **refused environmental authorisation** to undertake the following alternative that includes the listed activities as it relates to the development:

The proposal entails the development Hartenbos Garden Estate on Erf 3122 Hartenbos (situated in the Mossel Bay Municipal administrative area).

The application involves the rezoning and subdivision of the property to establish "Hartenbos Garden Estate" for the following:

- ± 258 Single Residential Zone erven varying in size from 200m² to 747m² in extent.
- ± 54 apartments varying from 1 bedroom to 3 bedrooms
- Communal facilities
- Private Open Space
- Retirement Resort with associated uses such as:
 - Clubhouse
 - Recreation centre
 - Village Apartments (8 double storey buildings - ±152 apartments))

- Health Care facilities
- Parking area
- Private Roads
- Bulk services infrastructure

The site development plan (SDP) Plan No. H 10-113 SUB 1-REV 14-1 appended to the FEIAR as Appendix B depicts the spatial context of the listed activities in relation to the property.

C. SITE DESCRIPTION AND LOCATION

The listed activities were to take place on Erf 3122, Hartenbos ("the property"). The property represents the Township Extension 4 of Hartenbos Heuwels as per the General Plan. It is situated west of the N2 freeway and approximately 2.5km from the central business district of Hartenbos, within the Mossel Bay Municipal area.

Coordinates of the site:

Latitude (S)		Longitude (E)		
34°	07'	42.99"	22°	05' 07.16"

SG digit code of the proposed site: C05100040000312200000

Refer to Annexure 1 of this Environmental Authorisation for the Locality Plan.

The above is hereinafter referred to as "**the site**".

D. DETAILS OF THE ENVIRONMENTAL ASSESSMENT PRACTITIONER (EAP)

Mrs. Louise-Mari van Zyl
 EAPASA registration no. 2019/1444
 E-mail: louise@cape-eaprac.co.za

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E. LEGISLATIVE REQUIREMENTS

1. In accordance with regulation 46 of the NEMA EIA Regulations, 2014, an applicant may not submit an application which is substantially similar to a previous application that has been refused, unless any appeals on that refusal have been finalised or the time period for the submission of an appeal has lapsed.
2. The applicant must in writing, within 14 (fourteen) calendar days of the date of this decision–
 - 2.1. notify all registered Interested and Affected Parties ("I&APs") of –
 - 2.1.1. the outcome of the application;
 - 2.1.2. the reasons for the decision as included in Annexure 3;

- 2.1.3. the date of the decision; and
 - 2.1.4. the date when the decision was issued.
- 2.2. draw the attention of all registered I&APs to the fact that an appeal may be lodged against the decision in terms of National Appeals Regulations, 2014 detailed in Section F below;
- 2.3. draw the attention of all registered I&APs to the manner in which they may access the decision;
- 2.4. provide the registered I&APs with:
- 2.4.1. the name of the holder (entity) of this Environmental Authorisation,
 - 2.4.2. name of the responsible person for this Environmental Authorisation,
 - 2.4.3. postal address of the holder,
 - 2.4.4. telephonic and fax details of the holder,
 - 2.4.5. e-mail address, if any, of the holder,
 - 2.4.6. the contact details (postal and/or physical address, contact number, facsimile and e-mail address) of the decision-maker and all registered I&APs in the event that an appeal is lodged in terms of the 2014 National Appeals Regulations.

F. APPEALS

1. An appellant (if the holder of the decision) must, within 20 (twenty) calendar days from the date the notification of the decision was sent to the holder by the Competent Authority –
 - 1.1. Submit an appeal in accordance with Regulation 4 of the National Appeal Regulations 2014 (as amended) to the Appeal Administrator;
 - 1.2. Submit a copy of the appeal to any registered I&APs, any Organ of State with interest in the matter and the decision-maker i.e. the Competent Authority that issued the decision; and
 - 1.3. Submit a copy of the appeal to the decision-maker (i.e. the Competent Authority that issued the decision) at:
 - Danie.Swanepoel@westerncape.gov.za;
 - Gavin.Benjamin@westerncape.gov.za; and copied to
 - DEADPEIAAdmin.George@westerncape.gov.za

2. An appellant (if NOT the holder of the decision) must, within 20 (twenty) calendar days from the date the holder of the decision sent notification of the decision to the registered I&APs–
 - 2.1. Submit an appeal in accordance with Regulation 4 of the National Appeal Regulations 2014 (as amended) to the Appeal Administrator; and
 - 2.2. Submit a copy of the appeal to the holder of the decision, any registered I&AP, any Organ of State with interest in the matter and the decision-maker i.e. the Competent Authority that issued the decision.
 - 2.3. Submit a copy of the appeal to the decision-maker (i.e. the Competent Authority that issued the decision) at:
 - Danie.Swanepoel@westerncape.gov.za;
 - Gavin.Benjamin@westerncape.gov.za; and copied to
 - DEADPEIAAdmin.George@westerncape.gov.za

3. The holder of the decision (if not the appellant), the decision-maker that issued the decision, the registered I&AP and the Organ of State must submit their responding statements, if any, to the appeal authority and the appellant within 20 (twenty) calendar days from the date of receipt of the appeal submission.

4. The appeal and the responding statement must be submitted to the Appeal Administrator at the address listed below:

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

By facsimile: (021) 483 4174; or

By hand: Appeal Administrator
Attention: Mr Marius Venter (Tel: 021 483 3721)
Room 809
8th Floor Utilitas Building, 1 Dorp Street, Cape Town, 8001

Note: For purposes of electronic database management, you are also requested to submit electronic copies (Microsoft Word format) of the appeal, responding statement and any supporting documents to the Appeal Authority to the address listed above and/ or via e-mail to DEADP.Appeals@westerncape.gov.za.

5. A prescribed appeal form as well as assistance regarding the appeal processes is obtainable from the Appeal Administrator at: Tel. (021) 483 3721, E-mail DEADP.Appeals@westerncape.gov.za or URL <http://www.westerncape.gov.za/eadp>.

Your interest in the future of our environment is appreciated.

Yours faithfully

**ACTING DIRECTOR: DEVELOPMENT MANAGEMENT REGION 3
DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING**

DATE OF DECISION: 11 APRIL 2024

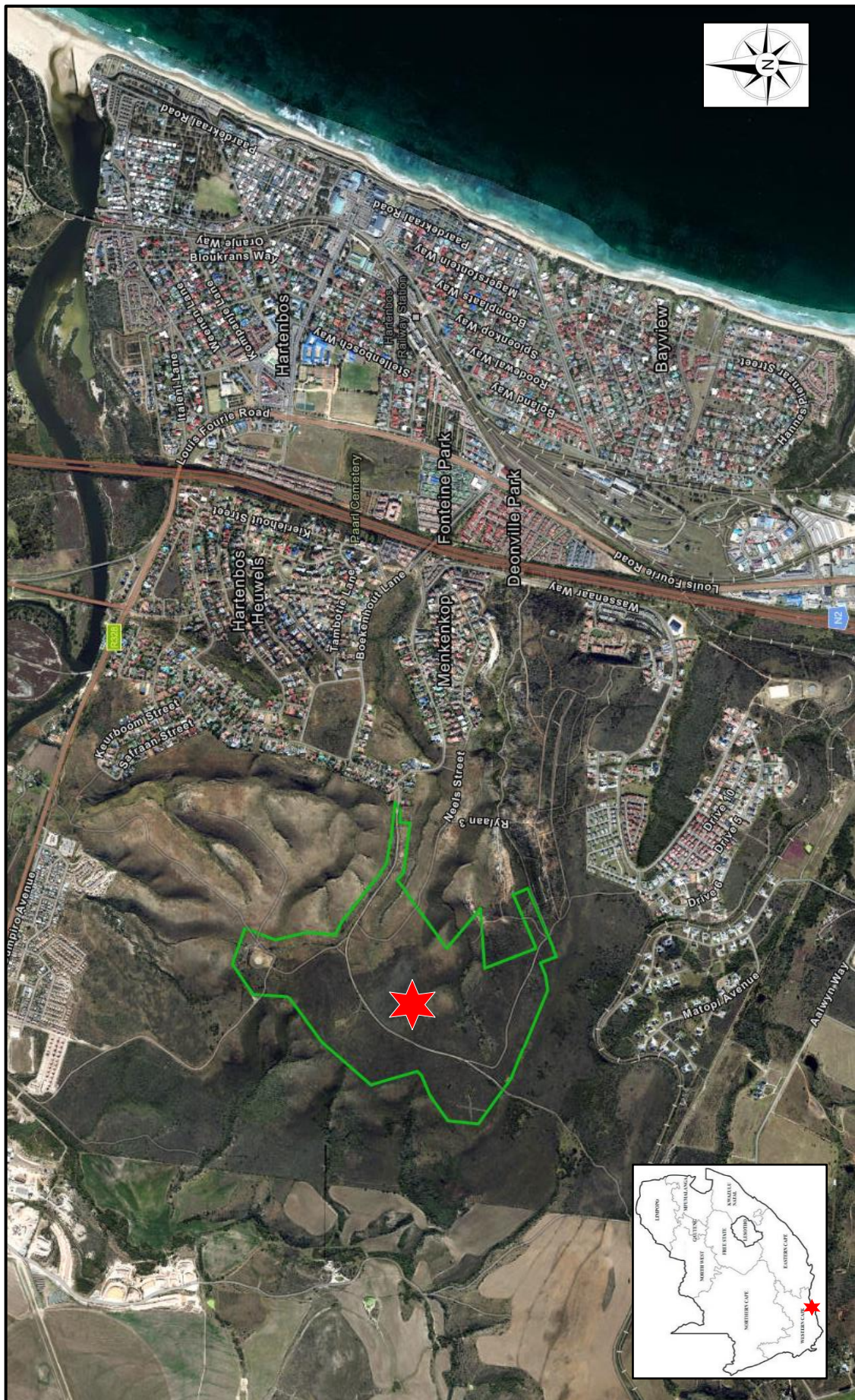
FOR OFFICIAL USE ONLY:

EIA REFERENCE NUMBER: 16/3/3/2/D6/18/0002/22

NEAS REFERENCE: WCP/EIA/0001157/2022

ANNEXURE 1: LOCALITY MAP

(ERF 3122, HARTENBOS HEUWELS, MOSSEL BAY)



ANNEXURE 3: REASONS FOR THE DECISION

In reaching its decision, the Competent Authority considered, inter alia, the following:

- a) The information contained in the Application Form dated 25 August 2022, as received by this Department on 25 August 2022; the Final Scoping Report ("FSR"), accepted on 11 November 2022, and the Final Environmental Impact Assessment Report ("FEIAR") received on 30 November 2023 together with the Environmental Management Programme ("EMPr).
- b) The agreement reached between the applicant and this Directorate in terms of Regulation 3(7) for an extension to submit the FEIAR.
- c) Relevant information contained in the Departmental information base.
- d) The comments received from I&APs and responses to these, included in the FEIAR submitted on 30 November 2023.
- e) The balancing of negative and positive impacts and proposed mitigation measures; and
- f) Appropriate information was made available in the report to understand the environmental and spatial context.
- g) The objectives and requirements of relevant legislation, policies and guidelines, including section 2 of the National Environmental Management Act, 1998 (Act No. 107 of 1998).
- h) The site inspection undertaken on 6 May 2022, by Ms Jessica Christie, Mr. Francois Naudé and Mr. Danie Swanepoel (Directorate: Development Management) and 15 November 2023 by Ms Jessica Christie and Ms Megan Simons (CapeNature)

All information presented to the Competent Authority was taken into account in the consideration of the application for Environmental Authorisation. A summary of the issues that were considered to be the most significant for the decision is set out below.

1. Public Participation

The public participation process included:

- identification of and engagement with interested and affected parties (I&APs) including organs of state which have jurisdiction in respect of the activity to which the application relates;
- fixing notice boards at the entrance to the site;
- giving written notice to the owners and occupiers of land adjacent to the site and any alternative site where the listed activities are to be undertaken on 2 September 2022,
- giving written notice to the municipality and ward councillor, and the various organs of state having jurisdiction in respect of any aspect of the listed activities on 2 September 2022;
- the placing of an advertisement in the local newspaper, the Mossel Bay Advertiser on 21 January 2022; and
- making the Draft Scoping Report available to I&APs for public review and comment from 2 September 2022 until 3 October 2022;
- making the Draft Environmental Impact Assessment Report available to I&APs for public review and comment from 23 January 2023 until 21 February 2023.
- making the Revised Environmental Impact Assessment Report available to I&APs for public review and comment from 19 October 2023 until 17 November 2023.

The following State Departments / Organs of State were notified and provided an opportunity to comment on the proposal. (*) indicates that written comment was provided:

- Western Cape Government: Department of Environmental Affairs & Development Planning:
 - ❖ Directorate: Development Management (Region 3) (*)
- Southern Cape Fire Protection Agency (*)
- Department of Forestry, Fisheries and the Environment (DFFE – Forestry section) (*)
- Department of Water and Sanitation (Water Use License Authorisation)
- Breede-Gouritz Catchment Management Agency (“BOCMA”) (*)
The BOCMA provided comment on the Draft EIAR and informed the EAP that the proposed development was subject to the National Water Act, 1998 and a water use licence application ('WULA') was required. A general authorisation and a WUL was issued by the Department of Water and Sanitation.
- CapeNature (*)
- Heritage Western Cape (*)
- Garden Route District Municipality (Municipal Manager (*)
- Mossel Bay Local Municipality:
 - ❖ Directorate Planning and Economic Development (*) - written comment on the availability of engineering services provided on 10 August 2023);
 - ❖ Directorate Infrastructure Services - confirmation of bulk services (*).

Although the register of I&APs does not comply with the information requirements / minimum contact details as detailed in Regulation 42, comment on the proposal was registered in the FEIAR from I&APs.

A summary of the pertinent issues raised by the registered I&APs during the public participation process, to which the Applicant responded, was provided in the FEIAR. The most pertinent issues raised by the I&APs, include *inter alia*:

- (a) The Alternatives presented did not take ecological corridors into consideration and not all ecological aspects were adequately addressed.
- (b) Species diversity and the impact of historic cultivation of part of the site more than 60 years ago.
- (c) Biophysical Aspects
- (d) Impact on “Sense of Place”
- (e) Need and Desirability

The comments and issues raised by the respective *Organs of State* and *Interested and Affected Parties (I&APs)* that were captured in the FEIAR were responded to by the EAP. The Competent Authority has considered these responses but is not satisfied with all the responses provided by the EAP to those I&APs and organs of state.

2. Alternatives

As an introduction to the consideration of alternatives, the historic context regarding the application for development is provided below:

The landowner (ATKV) had previously applied for environmental authorisation for the development of a similar nature on this property. This application was not successful as environmental authorisation was refused (16/3/1/2/D6/18/0007/13). No appeal was lodged with the relevant authority against that decision.

The "ATKV" who is still the landowner of this property has an "Offer to Purchase Agreement" with the applicant dependent on the outcome of the Environmental Impact Assessment process.

The applicant's preferred layout as presented in this application and assessed in the EIA process, does not materially differ from the previous application's SDP as seen below.

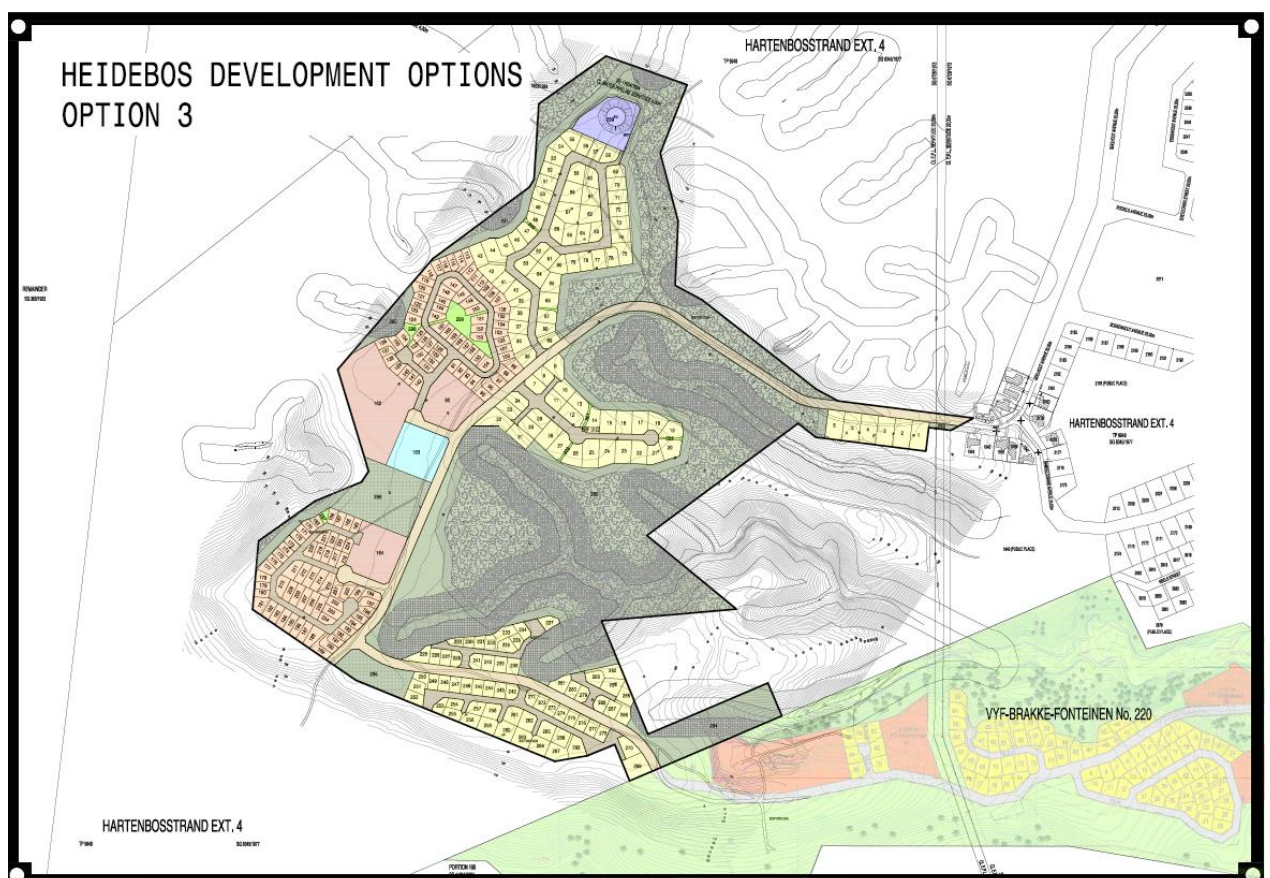
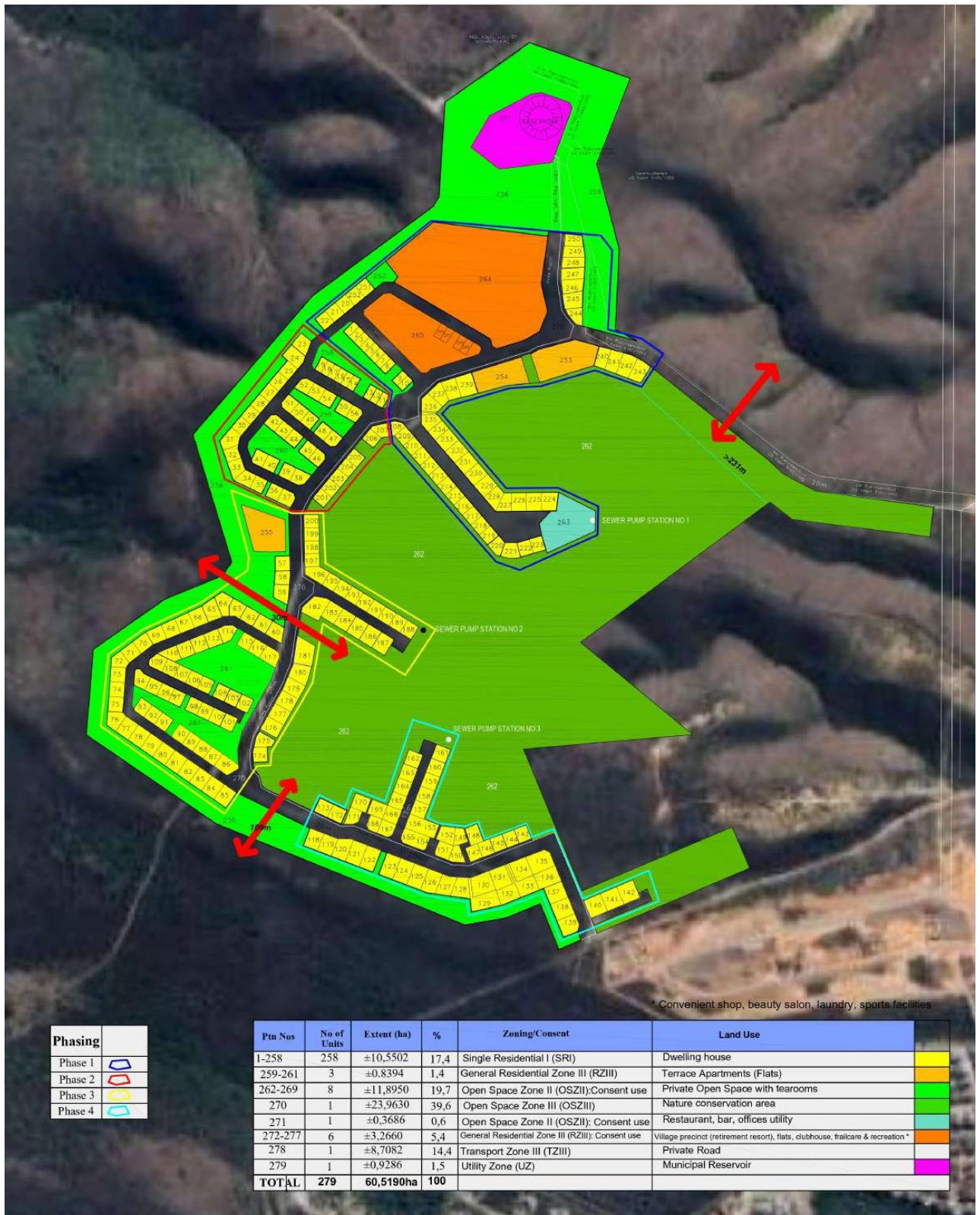


Figure 1. The SDP as presented in a previous application environmental authorisation which was subsequently refused.



P-J le Roux
 Stads- en Streekbeplanners/
 Town and Regional Planners
 Hoofstraat 262 Main Road Paarl
 (Ph) 021-8722499 (Cell) 076 031 7607
 (email) pj@pjleroux.co.za

Project:
**Application for
 Rezoning &
 Subdivision: Erf
 3122
 Hartenbos**

Description:
Subdivision Plan

HARTENBOS
 Garden Estate
 Natuur-landgoed

Skaal: NTS Loer nr. H 10-113
 Tekon: PJLR Datum: OCTOBER 2023
 Keur: PJLR Tekening nr. H 10-113 SUB 1-REV 14-1

Figure 2. Current preferred SDP presented by the applicant for environmental authorisation.

No location alternatives were described in the Final Scoping Report to be assessed. Layout alternatives of the proposed development within the site were however described and assessed in the FEIAR. It is noted that the applicant is not the landowner; however, the necessary consent to submit an application for environmental authorisation to conduct listed activities on the property was obtained beforehand.

Alternative 2: (Alternative eliminated by the EAP/Applicant)

The site development proposal presented in the Final Scoping Report. This alternative was the preferred alternative at the time of the Scoping process and was largely similar to the applicants current preferred layout, and included the following:

- ± 280 Single Residential Zone erven.
- ± 54 apartments
- Communal facilities
- Private Open Space & Conservation Area
- Retirement Resort with associated uses such as:
 - Clubhouse
 - Recreation centre
 - Village Apartments (5 three storey buildings - ±144 apartments))
 - Health Care facilities
 - Parking area
- Private Roads
- Bulk services infrastructure

This alternative was not comparatively assessed in the Environmental Impact Report as it is not the Applicant's preferred alternative.

Activity Alternative 3: (Applicant's Preferred Alternative)

The application involves the rezoning and subdivision of the property to establish "Hartenbos Garden Estate" for the following:

- ± 258 Single Residential Zone erven varying in size from 200m² to 747m² in extent.
- ± 54 apartments varying from 1 bedroom to 3 bedrooms
- Communal facilities
- Private Open Space
- Retirement Resort with associated uses such as:
 - Clubhouse
 - Recreation centre
 - Village Apartments (8 double storey buildings - ±152 apartments))
 - Health Care facilities
 - Parking area
- Private Roads
- Bulk services infrastructure

The site development plan (SDP) Plan No. H 10-113 SUB 1-REV 14-1 appended to the FEIAR as Appendix B depicts the spatial context of the listed activities in relation to the property. It is important to note that this plan was not subjected to further public participation as it was developed in response to inputs received during previous participation processes.

"No-Go" Alternative (Alternative 1):

According to the FEIAR this alternative implies that the status quo is retained and the land-use as an Agricultural Zone I is maintained. The EAP motivates in the application that the no-go option is not the preferred option due to lack of agricultural resources such as drinking water for livestock, transportation challenges to bring and remove livestock through established residential areas and lack of appropriate fencing etc.

An alternative that is in line with the objective of Critical Biodiversity Areas (CBA) or even Ecological Support Area (ESA) as contained in the Biodiversity Spatial Plan (BSCP) has not been assessed.

3. Key Factors affecting the decision:

A summary of the key issues, in the Department's view, which were the most significance is set out below:

● *Biophysical Aspects*

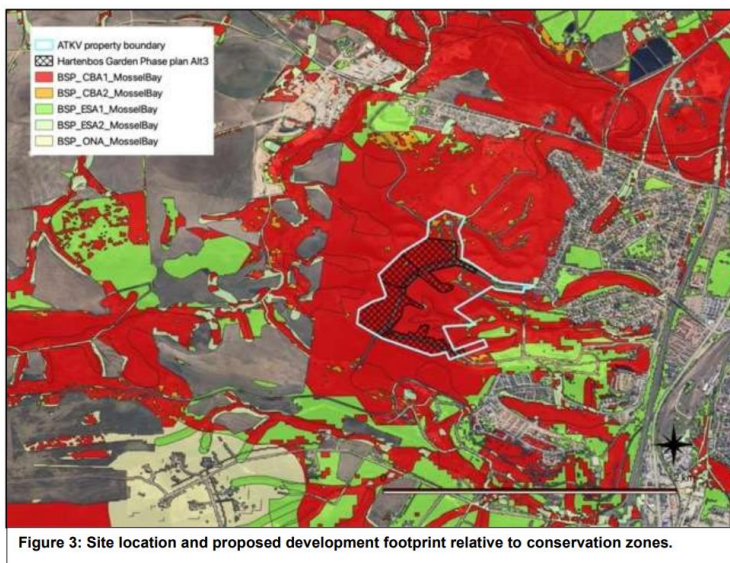
The vegetation classified on the Erf 3122 is mapped as Critically Endangered (CE): *Mossel Bay Shale Renosterveld*. This is one of the seven (7) high risk vegetation types according to the National Biodiversity Assessment 2018 synthesis document and the conservation target is 27% of which 0% is currently under formal protection.

Furthermore, Erf 3122 has been mapped as a terrestrial Critical Biodiversity Area ("CBA") and has an aquatic CBA area. It was made clear through comment from CapeNature that CBA's are mapped not only due to the vegetation type of the site but other aspects such as faunal corridors, sensitive ecosystems, climate change adaptations etc. The objective of a CBA is to:

- Maintain the area in a natural or near-natural state with no further loss of natural habitat,
- Degraded areas should be rehabilitated; and
- Only low-impact, biodiversity-sensitive land uses are appropriate.

A Botanical Impact Assessment of the proposed development on Erf 3211, Mossel Bay has been conducted by Dr David McDonald and this was peer reviewed by Dr David Hoare. The vegetation on the site is described as primarily Renosterveld, but with a mosaic of other influences (e.g. Renosterveld-Fynbos Mosaic). The upper flatter part of the site is described as secondary Renosterveld vegetation, due to the fact that it was ploughed more than 60 years ago. The slopes consist of grassy fynbos in an unaltered state. The Site Ecological Importance (SEI) of the grassy Fynbos/mosaic within a critically endangered ecosystem was found to be VERY HIGH. The Site Ecological Importance of the Renosterveld was found to be low, but Dr Hoare adds, "However, the value of these areas in terms of supporting ecological functioning within surrounding natural areas (CBA1 and Critically Endangered Ecosystem) is more important than this "low SEI score suggests". Dr McDonald is of the view that the renosterveld area should be mapped as ESA1 (Ecological Support Area) and not CBA1 or CBA2. The botanical specialist and the EAP have been made aware that Biodiversity Spatial Plan ("BSP") Map status of a site (CBA or ESA) cannot be decided on an unofficial basis, nor can it be determined on a site by site basis unless it has been reported to CapeNature for verification by qualified scientists. Furthermore, the Western Cape Biodiversity Spatial Plan Verification Protocol states that the status of an area is determined by using a systematic biodiversity planning methodology that considers not only the province as a whole, but amount of each biodiversity feature that remains intact (or restorable) relative to pre-determined targets for biodiversity representation and persistence. In addition to this, it is further stated that the change in the status of an area therefore affects the status of other areas and areas that are in a degraded condition or in an isolated location may still be required for meeting targets, hence their classification as critical.

On the landscape level, Dr Hoare describes the impacts as follows: The current development proposal is to develop the areas that have been identified as previously cultivated. This places the development within those parts of the site that have the lower absolute biodiversity value at a local scale. This makes sense at a site scale but the development will have an effect at the landscape scale that is potentially damaging due to the placement of the development almost in the centre of the CBA1 area that defines this general locality (see Figure 3 below). This will result in the creation of a new urban zone distinct from existing urban areas, i.e., not on the margins of existing development, but within a new (although nearby) natural area. Following landscape ecological principles, ecological functionality at a landscape level requires connectivity between similar ecosystems in a landscape. Ecosystems become threatened not only due to direct loss of ecosystem area, but also due to fragmentation and isolation of remaining patches. This is because loss of coherence at a landscape level results in collapse of ecological processes at a landscape level. This is one of the factors that have led to the listing of Mossel Bay Shale Renosterveld as Critically Endangered. At a landscape level, the proposed development will result in partial fragmentation of the landscape, reduced landscape coherence, and introduction of new urban edges. In addition to the landscape-level factors, it is also observed that the development footprint affects almost the entire upland plateau of this general location (all the flat areas on the summit of these hills). The surrounding parts of the CBA1 all slope downwards from the footprint area, and do so in all directions. However, this flat area is an ecological connection between different physical components of the landscape - aspect and slope inclination influence physical conditions resulting in the sloping / valley areas each having their own ecological characteristics.



The review specialist Dr. D. Hoare noted that the Terrestrial Biodiversity Assessment did not consider in detail the landscape-effects of the development on the CBA area, in which the entire development would be located. Dr Hoare concluded on this point: "A preliminary assessment in this review suggests that the landscape level impact of the proposed development may be of at least Medium negative significance for which no feasible mitigation measures that can be suggested".

According to the National Biodiversity Offset Guideline (2023) "a biodiversity offset is required when a proposed listed or specified activity, or activities is/are likely to have residual negative impacts on biodiversity of medium or high significance. These negative impacts could affect biodiversity patterns (e.g., threatened ecosystems, species, or special habitats), ecological

processes (e.g., migration patterns, climate change corridors enabling shifts in species distributions over time, wetland function), ecosystem services or a combination of all three." During the process CapeNature held the opinion that the application might require a biodiversity offset. In response to this comment, the EAP noted that the National Biodiversity Offset Guidelines came into effect on 23 June 2023 and should not be reasonably be applied retrospectively to an application process that is ongoing, (i.e., not considered for authorisation yet). Since the application for environmental authorisation was still ongoing at the time that the guidelines were gazetted, the EAP was granted an extension in time in order to submit the FEIAR and still having a revised EIAR go out for public comment, while having a peer reviewer appointed to review the specialists reports before the guidelines were published. Notwithstanding the publication of the National Biodiversity Offset Guidelines which came into effect on 23 June 2023, the principle of considering a biodiversity offset is not a new concept, and this approach to environmental impact assessment and dealing with significant residual impacts form part of the draft guideline on biodiversity offsets prepared in the Western Cape in 2005, revised in 2007 and published as an Information Document in 2011. *The Western Cape Guideline on Biodiversity Offsets. Prepared by Susie Brownlie and Mark Botha for DEA&DP, Cape Town (Revised Draft 2015)* was the latest document and revised and updated the Information Document published by this Department in 2011. The onus is on the EAP and specialist, appointed in terms of the EIA Regulations, 2014 to have the necessary expertise and knowledge of any guidelines that have relevance to the proposed activity.

The botanist's response to CapeNature's comment regarding the offset, was that the vegetation is secondary renosterveld and "as such even if the medium rating is applied, would not qualify for an offset." The landscape effects of the proposed development on CBA area, in which the entire proposed development is located, has not been adequately considered; CapeNature objected against the loss of biodiversity and also highlighted that the reports underestimate the biodiversity sensitivity of the site. The failure of considering a biodiversity offset is regarded to be a key aspect in this decision.

In terms of Species of Conservation Concern ("SCCs") the review specialist noted that the Terrestrial Plant Species Assessment report did not specifically analyse the potential occurrence of the SCCs nor undertook targeted surveys as required. CapeNature requested a more exhaustive species list specifically to determine whether any threatened species are found on the property. The amended Botanical Impact Assessment report includes a species list and it appears that a number of threatened plant species and SCC's are found on or near the proposed development area.

The Animals Species Assessment mentioned that the Denham's Bustard was found on the site, this was a species flagged by the Screening Tool Report, but also the presence of a Black Harrier (species not flagged by the Screening Tool Report – IUCN List: Endangered) was found. The upper renosterveld plateaux area (that is proposed for development) is given a sensitivity of MEDIUM due to the confirmed presence of Denham's Bustard, and a part of the site has HIGH sensitivity due to the confirmed presence of Black Harrier. A butterfly species of concern was identified on the site by Dr Dave Edge on the plateaux area close to the municipal reservoir. It was recommended that this "butterfly reserve" must be excluded from the Estate fencing and included to link to the surrounding and remaining natural areas and act as an ecological corridor with the Municipal Conservation area. Dr Edge stipulated that the existing gravel road leading to the reservoir must not be tarred (as this will impact on the symbiotic ant species) and burning of the reserve in the long-term will be critical to ensure survival of the species.

Renosterveld, which is a component of the Fynbos Biome, is both fire-prone and fire-dependent. Dr Hoare explains these concepts as follows: In terms of being fire-prone, this means that it is flammable and can burn relatively easily, especially when it hasn't burnt for a long period of time, which results in flammable material building up in the vegetation. In terms of being fire-dependent, fire plays an important role by creating space for new plants to grow, as well as ensuring species that grow more vigorously do not outcompete others, thus maintaining levels of species richness. Additionally, some species are dependent on the fire and/or smoke to enable the germination of their seeds. Fire management is therefore critically important both in terms of risk mitigation and in terms of maintaining biodiversity and ecosystem functioning. The proposed footprint of the proposed is surrounded by Renosterveld, and as such will require controlled burning. A fire management plan (dated 20 February 2023) was submitted with the FEIAR, however there is no confirmation from CapeNature, the South Cape Fire Protection Agency and Mossel Bay Municipality's Fire, Rescue and Disaster Management Services that the fire management plan is feasible and can be implemented. The comment obtained by the SCFPA is generic in nature and does not specifically address the Fire Management Plan that was compiled. The same applies to the comment obtained by the Mossel Bay Municipality's Fire, Rescue and Disaster Management Services. It is not clear if these organs of state were specifically requested to provide comment on the fire management plan.

Freshwater considerations: The hillside seeps and watercourses in the area are largely natural with limited invasion of alien vegetation. These habitats are rated as having a high Aquatic Ecological Importance and Sensitivity. The ephemeral seeps and watercourses within and surrounding the study area are particularly vulnerable to water quality and quantity changes associated with catchment hardening.

It is noted that the proposed layout plan included in the final EIR has been amended subsequent to being made available in the revised draft EIR to enlarge the proposed "corridors" to 109m wide on the southern boundary, and 231m on the northern boundary. It is further noted that security fencing will be around the residential nodes only so that the two "corridors" remain open. The smaller east-west corridor of 30m will be fenced in, but will be fitted with "critter gates every 10m to allow for movement of small mammals and reptiles. The effectiveness of these proposed measures is questioned, especially in light of the fact that these so-called corridors will be traversed by roads (despite proposed mitigation measures such as mountable curbs, speed reducing measures, lighting, etc.) This must also be considered with the landscape level processes and ecosystem functioning as described above in mind. In this regard consideration of the mitigation hierarchy is appropriate, which requires that disturbance to ecosystems is avoided, and only where it cannot altogether be avoided, are minimised and remedied.

● *Visual Intrusion / "Sense of Place"*

According to the Visual Impact Assessment (Bapela Cave Klapwijk, January 2023 and updated in November 2023), the proposed development site is situated on the top of a remnant of the coastal terrace that has been formed by head-ward erosion from seaward and landward sides. The proposed development will be situated on the top of the highest landform of Hartenbos. As a result of the scale of the proposed development, the development (particularly around the edge) will be prominently visible from middle distance views.

According to the report, the houses on the edge will form the skyline in all views of the development. Furthermore, the findings of the visual assessment have stated that the visual intrusion of the development on the setting in the context of existing surrounding land uses is rated as a medium significance. The change in the sense of place also has a significance rating of medium. The impact of the prominence of the buildings in the landscape setting as well as the

landform changes is considered low significance. The impact on the night scene is regarded as having a medium significance, however.

The Visual Impact Assessment concludes that the proposed development of Erf 3122, Hartenbos will exert a medium negative significant impact on the affected visual environment, on conditions that the recommended mitigation measures are implemented. Implementing the proposed mitigation measures cannot be guaranteed and enforcing the same may not be feasible. For example, even with a sea view are unlikely to implement the suggested tree planting as it will interfere with their sea views, and enforcing the proposed lighting requirements are difficult to be enforce especially when the holder of an environmental authorisation is no longer involved. This Department does not consider the impacts to be of an acceptable level.

● *Need and Desirability*

The *need* and *desirability* of a proposed development must be consistent with the principles of sustainability as contained in Section 2 of the NEMA. In this context, Environmental Impact Assessments play an important role by evaluating the need and desirability of development proposals, appropriateness of alternatives and cumulative implications. These aspects are integrally linked and must be informed by the strategic context within which the site/development proposal is situated.

NEMA requires that decisions must take into account environmental, social and economic impacts of the activities applied for, including the benefits and disadvantages. The negative impacts are to be minimised and the beneficial impacts are to be maximised. It is evident that a significant imbalance exists with regards to the benefits associated with the proposed development, and the weighing up of the benefits to the applicant versus the costs that would be incurred at the expense of the environment or society. The potential benefits are not justifiable and substantive enough when the potential costs/negative impacts to the receiving environment are considered and therefore the proposed development in its current format is deemed to also be inappropriate based on the "Need and Desirability" aspect of the development.

Although the Erf 3122 falls within the designated urban edge of the Mossel Bay Municipality's Spatial Development Framework (SDF) and that according to the SDF, it is designated for urban expansion of the Hartenbos Heuwels township, it is also an identified as Critical Biodiversity Area, which contains threatened ecosystems and other sensitivities as described above.

Insufficient feasible and reasonable alternatives were considered. It is motivated that the no-go alternative, which is to remain an agricultural zoned property would not be able to be used as township development and by remaining as an agricultural unit would also not be feasible as it has no water rights, yet this was not explored. In this regard, the objective of CBA should be considered, which is to maintain the CBA in a natural or near-natural state, with no further loss of natural habitat; degraded areas should be rehabilitated; and only low-impact, biodiversity-sensitive land uses are appropriate.

When considering the best practicable environmental option, the objective is to provide the most benefit or cause the least damage to the environment. The EAP maintains that if the land were to be used as an agricultural unit, the clearing of invasive alien vegetation, fencing to address security risks and ecological burning of the site are all actions that will indeed improve the site's overall sensitivity, it is stated that these actions will not be done unless it is performed under specific Directives from the various authorities who may instruct landowners to perform these tasks as these tasks are required in terms of applicable legislation. This view is not justified and contrary to a landowner's general duty of care toward the environment and stewardship of their property. The

view is also contrary to what is expected of law-abiding citizens who comply with legislative and constitutional imperatives to prevent ecological degradation and secure ecologically sustainable development and the use of natural resources while promoting justifiable economic and social development. The reasoning is therefore dismissed.

In terms of whether the development will compromise the integrity of approved environmental management priorities in the area, the EAP notes that there would be a compromise to a certain degree if the development is authorised. Besides the fact that the site has been classified as a Critical Biodiversity Areas ("CBA") and the botanical specialist suggests a classification of Ecological Support Area ("ESA"), the land adjacent to, and surrounding Erf 3122 is of very high conservation value and will be managed as a conservation area in accordance with the Conservation Management Plan for Municipal Land on Hartenbos Heuwels. Mossel Bay Municipality and CapeNature have engaged to determine specific management of this area (i.e., in terms of a Stewardship agreement). It is understood from this engagement that it was made clear that any development on the adjacent properties (specifically Erf 3122) would be the biggest threat to ecological corridors. This Department does not agree with the statement made in the FEIAR that this development would not compromise the conservation outcomes of the neighbouring municipal conservation area because it makes allowance for faunal movement through controlled corridors.

According to the EAP, the "next best land use alternative" is the no-go alternative (i.e., maintaining the status quo – no development) and the site remaining vacant. This statement is not supported by this Department. The purpose of the Environmental Impact Assessment Process is to determine the best alternative through the scoping and assessment process. Considering the threat status of Mossel bay Shale Renosterveld and the current protection level of this ecosystem (i.e., zero percent / 0% formally conserved) an alternative should have been developed that takes this into consideration and determining an appropriate design that would include formally protecting at least a reasonable size of the ecosystem remaining.

It is this Department's opinion that no existing rights are prohibited by this refusal and the opportunity is open to find a more appropriate alternative.

In reaching this decision, this Department also took *inter alia* the following into account:

● *National Environmental Management Principles and other relevant legislative considerations:*

The National Environmental Management Principles, set out in section 2 of the National Environmental Management Act, Act 107 of 1998, as amended ("NEMA"), which apply to the actions of all organs of state, serve as guidelines by reference to which any organ of state must exercise any function when taking any decision, and which must guide the interpretation, administration and implementation of any other law concerned with the protection or management of the environment), *inter alia*, provides for:

- Sustainable development requires the consideration of all relevant factors, including the following: That the disturbance of ecosystems and loss of biological biodiversity are avoided, or, where they cannot altogether be avoided, are minimised and remedied;
- the effects of decisions on all aspects of the environment must be taken into account;
- the consideration, assessment and evaluation of the social, economic and environmental impacts of activities (disadvantages and benefits), and for decisions to be appropriate in the light of such consideration and assessment. Whereas development must be socially, environmentally and economically sustainable;

- the co-ordination and harmonisation of policies, legislation and actions relating to the environment;
- the avoidance, minimisation or remediation of the disturbance of landscapes and sites that constitute the nation's cultural heritage and/or National estate;
- specific attention is required in the management and planning procedures relating to sensitive, vulnerable, highly dynamic or stressed ecosystems, such as coastal shores, estuaries, wetlands, and similar systems, especially where they are subject to significant human resource usage and development pressure; and
- the selection of the best practicable environmental option.

4. Conclusion

In view of the above, the competent authority is of the opinion that the proposed development (in its current format) will conflict with the general objectives of integrated environmental management stipulated in Chapter 5 of the NEMA. The competent authority applied a risk-averse and cautious approach with respect to this development proposal and the foreseen impacts (including cumulative impacts) and sustainability of the proposal.

----- **END** -----