



**Western Cape
Government**

Environmental Affairs and
Development Planning

Directorate: Development Management
(Region 1)

REFERENCE: 16/3/3/1/E2/40/1031/18
ENQUIRIES: BERNADETTE OSBORNE
DATE OF ISSUE: 2018-10-12

Mr Huw Jones
Henque 3030 CC
Suite 56
Private Bag X15
HERMANUS
7200

Cell: 082 245 6556
Fax: (086) 585 2461

Dear Sir

**APPLICATION IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998
(ACT 107 OF 1998) THE ENVIRONMENTAL IMPACT ASSESSMENT ("EIA") REGULATIONS,
2014: THE PROPOSED RESIDENTIAL DEVELOPMENT ON ERF NO. 1447, VERMONT.**

1. With reference to the above application, the Department hereby notifies you of its decision to **grant** Environmental Authorisation, attached herewith, together with the reasons for the decision.
2. In terms of Regulation 4 of the EIA Regulations, 2014, you are instructed to ensure, within 14 days of the date of the Environmental Authorisation, that all registered interested and affected parties ("I&APs") are provided with access to and reasons for the decision, and that all registered I&APs are notified of their right to appeal.
3. Your attention is drawn to Chapter 2 of the Appeal Regulations, 2014, which prescribes the appeal procedure to be followed. This procedure is summarised in the attached Environmental Authorisation.

Yours faithfully

**DIRECTOR: DEVELOPMENT MANAGEMENT (REGION 1)
DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING**

CC: (1) Michelle Naylor (Lornay Environmental Consulting)
(2) Liesl de Villiers / Penelope Aplon (Overstrand Municipality)

Fax: (021) 866 1523
Fax: (028) 316 4953



REFERENCE: 16/3/3/1/E2/40/1031/18
NEAS REFERENCE: WCP/EIA/0000420/2018
ENQUIRIES: Bernadette Osborne
DATE OF ISSUE: 2018 -10- 12

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 RESIDENTIAL DEVELOPMENT ON ERF NO. 1447, VERMONT.

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 (as amended), the Competent Authority herewith **grants Environmental Authorisation** to the applicant to undertake the listed activities specified in section B below with respect to Alternative 3 described in the Basic Assessment Report ("BAR"), dated July 2018.

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

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c/o Mr Huw Jones
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Private Bag X15
HERMANUS
7200

Cell: (082) 245 6556
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6th Floor, 1 Dorp Street, Cape Town, 8001
Tel: +27 21 483 3679 Fax: +27 21 483 3098
E-mail: Bernadette.Osborne@westerncape.gov.za

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

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

B. LIST OF ACTIVITIES AUTHORISED

Listed Activities	Project Description
<p>Listing Notice 1 – Activity Number: 27 <i>The clearance of an area of 1 hectares or more, but less than 20 hectares of indigenous vegetation, except where such clearance if indigenous vegetation is required for –</i></p> <ul style="list-style-type: none"> (i) <i>The undertaking of linear activity; or</i> (ii) <i>Maintenance purposes undertaken in accordance with a maintenance management plan.</i> 	<p>1ha of indigenous vegetation will be cleared for the development.</p>
<p>Listing Notice 3 – Activity Number: 12 <i>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></p> <p>(i) Western Cape:</p> <ul style="list-style-type: none"> i. <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;</i> ii. <i>Within critical biodiversity areas identified in bioregional plans;</i> iii. <i>Within the littoral active zone or 100 metres inland from the 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;</i> iv. <i>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</i> v. <i>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.</i> 	<p>A cluster of Milkwood trees is located on the southern border of the site and single trees and clusters also occur sporadically across the site. Western Cape Milkwood Forest is classified as an endangered ecosystem in terms of Section 52 of the Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004).</p>

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

The holder is herein authorised to undertake the following alternative that includes the listed activities related to the development:

This alternative entails a residential development on Erf No. 1447 in Vermont consisting of the following:

- 17 Single Residential erven of approximately 600m² each.
- 13 Town Housing erven of approximately 350m² each.
- 2 Public Open Space erven (1018m²).
- Internal roads and parking (3941m²).

C. SITE DESCRIPTION AND LOCATION

The site where the authorised listed activities will be undertaken on Erf No. 1447 in Vermont and has the following co-ordinates:

	Latitude (S)	Longitude (E)
Coordinates	34° 24' 44.13" South	19° 08' 51.36" East

The SG digit code is: C01300230000144700000

Refer to Annexure 1: Locality Plan and Annexure 2: Site Plan.

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

D. DETAILS OF THE ENVIRONMENTAL ASSESSMENT PRACTITIONER

Lornay Environmental Consulting
c/o Ms Michelle Naylor
PO Box 1990
HERMANUS
7200

Cell: (083) 245 6556

E-mail: michelle@lornay.co.za

E. CONDITIONS OF AUTHORISATION

Scope of authorisation

1. The holder is authorised to undertake the listed activities specified in Section B above in accordance with and restricted to Alternative 3 described in the BAR dated July 2018 on the site as described in Section C above.
2. The Environmental Authorisation is valid for a period of **five years** from the date of issue within which commencement must occur.
3. The development must be concluded within **ten years** from the date of commencement of the first listed activity.

4. The holder shall be responsible for ensuring compliance with the conditions by any person acting on his/her behalf, including an agent, sub-contractor, employee or any person rendering a service to the holder.
5. Any changes to, or deviations from the scope of the alternative described in section B above must be accepted or approved, in writing, by the Competent Authority before such changes or deviations may be implemented. In assessing whether to grant such acceptance/approval or not, the Competent Authority may request information in order to evaluate the significance and impacts of such changes or deviations, and it may be necessary for the holder to apply for further authorisation in terms of the applicable legislation.

Written notice to the Competent Authority

6. Seven calendar days' notice, in writing, must be given to the Competent Authority before commencement of construction activities.
 - 6.1 The notice must make clear reference to the site details and EIA Reference number given above.
 - 6.2 The notice must also include proof of compliance with the following conditions described herein:

Conditions: 7, 8, 11, 17 and 18

Notification and administration of appeal

7. The holder must in writing, within 14 (fourteen) calendar days of the date of this decision–
 - 7.1 notify all registered Interested and Affected Parties ("I&APs") of –
 - 7.1.1 the outcome of the application;
 - 7.1.2 the reasons for the decision as included in Annexure 3;
 - 7.1.3 the date of the decision; and
 - 7.1.4 the date when the decision was issued.
 - 7.2 draw the attention of all registered I&APs to the fact that an appeal may be lodged against the decision in terms of the National Appeals Regulations, 2014 detailed in Section F below;
 - 7.3 draw the attention of all registered I&APs to the manner in which they may access the decision;
 - 7.4 provide the registered I&APs with:
 - 7.4.1 the name of the holder (entity) of this Environmental Authorisation,
 - 7.4.2 name of the responsible person for this Environmental Authorisation,
 - 7.4.3 postal address of the holder,
 - 7.4.4 telephonic and fax details of the holder,
 - 7.4.5 e-mail address, if any, of the holder,
 - 7.4.6 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.

8. The listed activities, including site preparation, may not commence within 20 (twenty) calendar days from the date of issue of this Environmental Authorisation. In the event that an appeal is lodged with the Appeal Authority, the effect of this Environmental Authorisation is suspended until the appeal is decided.

Management of activity

9. The draft or Environmental Management Programme ("EMPr") submitted as part of the application for Environmental Authorisation is hereby approved and must be implemented.
10. The EMPr must be included in all contract documentation for all phases of implementation.

Monitoring

11. The holder must appoint a suitably experienced environmental control officer ("ECO"), or site agent where appropriate, before commencement of any land clearing or construction activities to ensure compliance with the provisions of the EMPr and the conditions contained herein.
12. A copy of the Environmental Authorisation, EMPr, audit reports and compliance monitoring reports must be kept at the site of the authorised activities, and must be made available to anyone on request, including a publicly accessible website.
13. Access to the site referred to in Section C above must be granted, and the environmental reports mentioned above must be produced, to any authorised official representing the Competent Authority who requests to see it for the purposes of assessing and/or monitoring compliance with the conditions contained herein.

Auditing

14. In terms of Regulation 34 of the NEMA EIA Regulations, 2014 (as amended), the holder must conduct environmental audits to determine compliance with the conditions of the Environmental Authorisation, the EMPr and submit Environmental Audit Reports to the Competent Authority. The Environmental Audit Report must be prepared by an independent person and must contain all the information required in Appendix 7 of the NEMA EIA Regulations, 2014 (as amended).

The holder must undertake an environmental audit quarterly for the duration of the construction phase and submit Environmental Audit Reports to the Competent Authority once every six months during the construction phase. The final Environmental Audit Report must be submitted to the Competent Authority six months after operation commenced.

The holder must, within 7 days of the submission of each of the above-mentioned reports to the Competent Authority, notify all potential and registered I&APs of the submission and make the report available to anyone on request and on a publicly accessible website (if applicable).

Specific Conditions

15. Should any heritage remains be exposed during excavations or any other actions on the site, these must immediately be reported to the Provincial Heritage Resources Authority of the

Western Cape, Heritage Western Cape. Heritage remains uncovered or disturbed during earthworks must not be further disturbed until the necessary approval has been obtained from Heritage Western Cape.

Heritage remains include: meteorites, archaeological and/or palaeontological remains (including fossil shells and trace fossils); coins; indigenous and/or colonial ceramics; any articles of value or antiquity; marine shell heaps; stone artifacts and bone remains; structures and other built features with heritage significance; rock art and rock engravings; and/or graves or unmarked human burials including grave goods and/or associated burial material.

16. A qualified archaeologist and/or palaeontologist must be contracted where necessary (at the expense of the holder) to remove any heritage remains. Heritage remains can only be disturbed by a suitably qualified heritage specialist working under a directive from the relevant heritage resources authority.
17. Only the Milkwood trees numbered 6, 7, 26, 27, 30, 38, 39, 40, 47, 49, 54, 60 and 61 that were specified by the planning consultant in their correspondence dated 15 May 2018, referenced: 17/097, must be clearly identified for removal prior to the commencement of construction activities. No other Milkwood trees identified during this assessment may be removed.
18. A copy of the permit for the removal of Milkwood trees from the National Department of Agriculture, Forestry and Fisheries must be submitted to the Department for record purposes prior to the commencement of construction activities or removal of trees, whichever occur first.

F. GENERAL MATTERS

1. Notwithstanding this Environmental Authorisation, the holder must comply with any other statutory requirements that may be applicable when undertaking the listed activities.
2. Non-compliance with a condition of this Environmental Authorisation or EMPr may render the holder liable to criminal prosecution.
3. If the holder does not commence with a listed activity within the period referred to in Condition 2, this Environmental Authorisation shall lapse for that activity, and a new application for Environmental Authorisation must be submitted to the Competent Authority. If the holder wishes to extend the validity period of the Environmental Authorisation, an application for amendment in this regard must be made to the Competent Authority prior to the expiry date of the Environmental Authorisation.
4. The holder must submit an application for amendment of the Environmental Authorisation to the Competent Authority where any detail with respect to the Environmental Authorisation must be amended, added, substituted, corrected, removed or updated. If a new holder is proposed, an application for Amendment in terms of Part 1 of the EIA Regulations, 2014 (as amended) must be submitted.

Please note that an amendment is not required if there is a change in the contact details of the holder. In this case, the Competent Authority must only be notified of such changes.

5. The manner and frequency for updating the EMPr is as follows:

Amendments to the EMPr, must be done in accordance with Regulations 35 to 37 of the EIA Regulations 2014 (as amended) or any relevant legislation that may be applicable at the time.

G. APPEALS

Appeals must comply with the provisions contained in the National Appeal Regulations 2014 (as amended).

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; and
 - 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. -
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.
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 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: Attention: Mr Jaap de Villiers (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 Jaap.DeVilliers@westerncape.gov.za.


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

H. DISCLAIMER

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

Your interest in the future of our environment is appreciated.

Yours faithfully



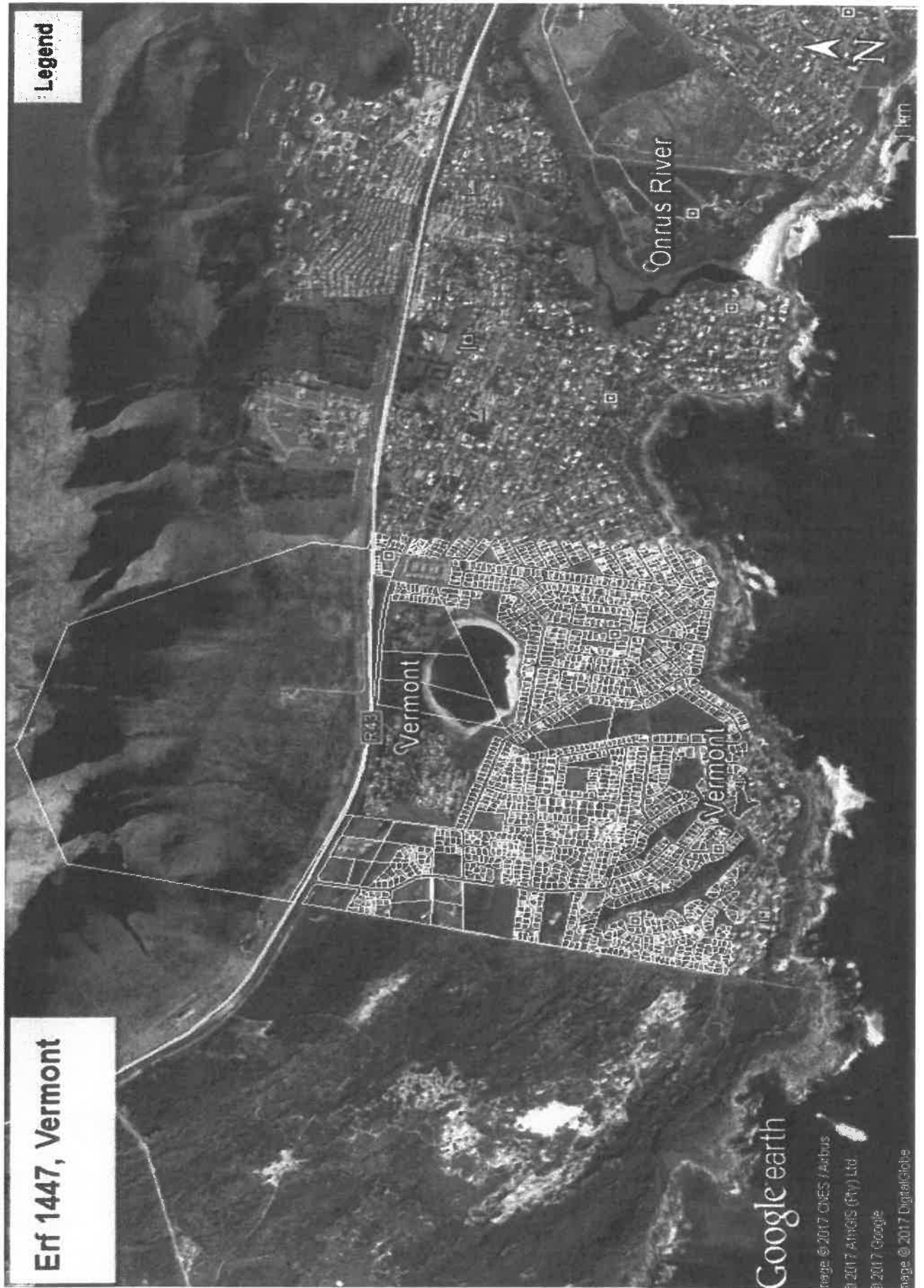
MR. ZAAHIR TOEFY
DIRECTOR: DEVELOPMENT MANAGEMENT (REGION 1)
DATE OF DECISION: 12/10/2018

CC: (1) Michelle Naylor (Lornay Environmental Consulting)
(2) Liesl de Villiers / Penelope Apton (Overstrand Municipality)

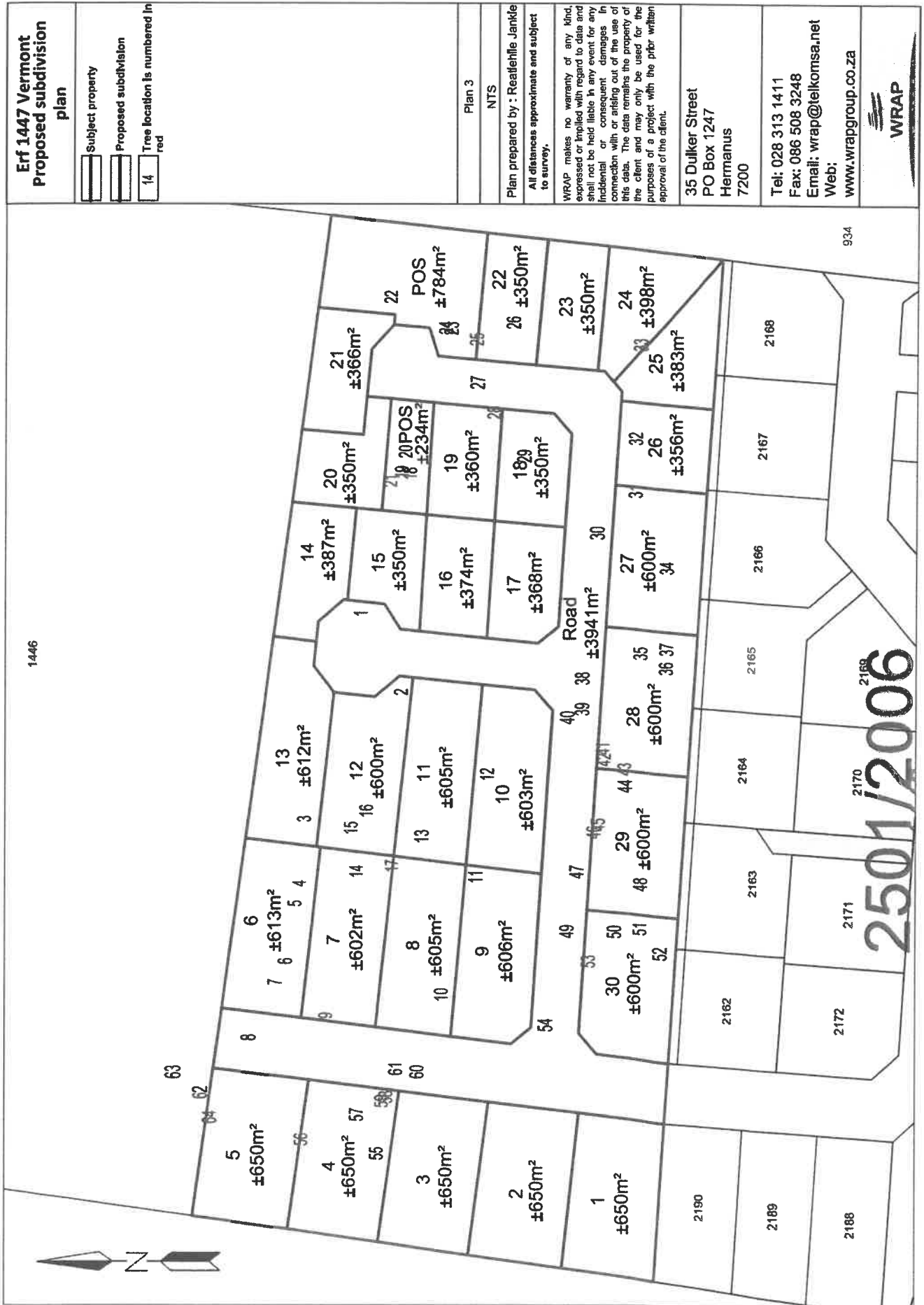
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ANNEXURE 1: LOCALITY MAP



ANNEXURE 2: SITE PLAN



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 24 May 2018, the draft Basic Assessment Report received by the Department on 11 June 2018, and the EMPr submitted together with the final Basic Assessment Report on 31 July 2018;
- b) Relevant information contained in the Departmental information base, including the Guidelines on Public Participation and Alternatives (dated March 2013);
- c) 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);
- d) The comments received from I&APs and responses to these, included in the Basic Assessment Report received on 31 July 2018; and
- e) The balancing of negative and positive impacts and proposed mitigation measures.

No site visits were conducted. The Competent Authority had sufficient information before it to make an informed decision without conducting a site visit.

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 I&APs;
- giving written notice to the owners and occupiers of land adjacent to the site where the listed activities are to be undertaken, the municipality and ward councillor, and the various organs of state having jurisdiction in respect of any aspect of the listed activities on 7 February 2018;
- Notice boards were placed at the site where the listed activities are to be undertaken;
- the placing of a newspaper advertisement in the '*Hermanus Times*' on 8 February 2018;
- making the pre-application draft Basic Assessment Report available to I&APs for public review from 8 February 2018; and
- making the draft Basic Assessment Report available to I&APs for public review from 8 June 2018.

The Department is satisfied that the Public Participation Process that was followed met the minimum legal requirements and all the comments raised and responses thereto were included in the comments and response report.

Specific alternatives, management and mitigation measures have been considered in this Environmental Authorisation and EMPr to adequately address the concerns raised.

2. Alternatives

The following three layout alternatives were considered:

Alternative 1

This alternative consists of the following:

- 16 Single Residential erven (10061m²).
- 13 Town Housing erven (5502m²).
- 2 Public Open Space erven (3582m²).
- Internal roads and parking.

This layout takes access from Francolin Road and includes two cul-de sacs, which was not supported by the Overstrand Municipality.

Alternative 2

This alternative consists of the following:

- 17 Single Residential erven of approximately 600m² each.
- 13 Town Housing erven of approximately 350m² each.
- 2 Public Open Space erven (1018m²).
- Internal roads and parking (3941m²).

This layout was not preferred for the following reasons:

- It does not take into consideration the Milkwood assessment and comments received from CapeNature.
- It does not retain the majority of the Milkwood trees and clusters present on the site.

Alternative 3 (preferred alternative herewith authorised)

This alternative consists of the following:

- 17 Single Residential erven of approximately 600m² each.
- 13 Town Housing erven of approximately 350m² each.
- 2 Public Open Space erven (1018m²).
- Internal roads and parking (3941m²).

This layout is preferred for the following reasons:

- It evolved during the process in response to CapeNature's comments regarding the Milkwood trees on the site. Each Milkwood tree was located and overlaid onto the site plan. From there, the plan was amended to retain as many significant Milkwood trees as practically feasible, in line with CapeNature's recommendations.
- It allows for a balance between the development and the protection of the Milkwood trees.
- It was supported by the Overstrand Municipality and CapeNature.

The No-Go Alternative

This alternative entails the current *status quo*, with no development of the site. This alternative was not preferred since it will not provide housing opportunities in the Hermanus area.

3. Impact Assessment and Mitigation measures

3.1 Activity need and desirability

The site is located within the residential suburb of Vermont. The development is in line with the surrounding land use and is earmarked for residential purposes. The site is one of the last undeveloped erven in the area and there is currently a high demand for housing in Hermanus. The development is in line with the Overstrand Spatial Development Framework, which promotes the

provision of a range of housing types in order to retain the character of Greater Hermanus, while ensuring appropriate growth to address the high demand for housing.

3.2 Biophysical Impacts

No surface water occurs on or adjacent to the site. Indigenous vegetation is present on the site and according to the South African National Biodiversity Institute National Vegetation Map of 2012, Overberg Dune Strandveld vegetation is present on the site, which is classified as least threatened. A cluster of Milkwood trees is located on the southern border of the site and single trees and clusters also occur sporadically across the site. Western Cape Milkwood Forest is classified as an endangered ecosystem in terms of Section 52 of the Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004). The letter from CapeNature dated 6 April 2018 indicated that the Milkwood trees on the site should be retained as far as possible and that the adult Milkwood trees should ideally be incorporated into the development layout. The preferred layout, herewith authorised therefore evolved to address the comments from CapeNature received during the public participation process concerning the Milkwood trees. CapeNature requested that a Milkwood assessment be conducted by a Botanist. The Milkwood assessment dated 12 April 2018 conducted by Amida Johns, included details of age, class, size, etc., of each Milkwood tree. Each Milkwood tree was also mapped so that it could be overlaid on the site plan. CapeNature then assessed each recorded Milkwood tree and recommended Milkwood trees and Clusters which should be retained. The town planning consultant assessed CapeNature's recommendations and incorporated the majority of their requests and a new layout was developed. This layout takes into consideration the distribution of Milkwood trees on the site and only the Milkwood trees numbered 6, 7, 26, 27, 30, 38, 39, 40, 47, 49, 54, 60 and 61 will be removed, as specified by the planning consultant in their correspondence dated 15 May 2018, referenced: 17/097. CapeNature is in support of the revision of the preferred alternative. The protection and maintenance of the Milkwood trees was also addressed in conditions 17 and 18 of this Environmental Authorisation ("EA") and the EMPr accepted in condition 9 of this EA.

The development will result in both negative and positive impacts.

Negative Impacts:

The development will have a negative biophysical impact due to the loss of natural vegetation. This will however be mitigated to an acceptable level through the preferred layout alternative and implementation of the EMPr.

Positive impacts:

The development will provide housing in the area and will retain the majority of the Milkwood trees and clusters present on the site.

4. National Environmental Management Act Principles

The National 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, and which must guide the interpretation, administration and implementation of any other law concerned with the protection or management of the environment), *inter alia*, provides for:

- the effects of decisions on all aspects of the environment to be taken into account;

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

5. Conclusion

In view of the above, the NEMA principles, compliance with the conditions stipulated in this Environmental Authorisation, and compliance with the EMPr, the Competent Authority is satisfied that the proposed listed activities will not conflict with the general objectives of integrated environmental management stipulated in Chapter 5 of the National Environmental Management Act, 1998 (Act No. 107 of 1998) and that any potentially detrimental environmental impacts resulting from the listed activities can be mitigated to acceptable levels.

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