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Dear Dr van Breda

APPEAL LODGED IN TERMS OF SECTION 43 OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 AGAINST THE PARTIAL ENVIRONMENTAL AUTHORISATION GRANTED FOR THE PROPOSED DEVELOPMENT OF THE OUTENIKUASBOSCH SAFARI PARK ON FARM OUTENIKUASBOSCH NO. 149 AND FARM HARTENBOSCH 217, HARTENBOS

Your appeal lodged on behalf of your client, Meros (Pty) Ltd, against the partial Environmental Authorisation ("EA") granted on 8 October 2013, refers.

After careful consideration of the appeal and supporting documentation received, I have decided to uphold the appeal and vary the abovementioned decision of the competent authority. The abovementioned EA and the conditions under which the authorisation was granted must be complied with.

Conditions E2 and E3 and section F APPEALS are excluded from this appeal authorisation.

The following are substituted and must be complied with:

a: **List of activities authorised**

The following activity contained in Government Notice No. R. 546 of 18 June 2010 which was erroneously omitted in the EA is also authorised:

Activity 6: The construction of resorts, lodges or other tourism accommodation facilities that sleep 15 people or more.

(d) In Western Cape;

i. In an estuary;

ii. All areas outside urban areas;

iii. In urban areas:

(aa) Areas seawards of the development setback line or within 1 kilometre from the high-water mark of the sea if no such development setback line is determined;

(bb) Areas on the watercourse side of the development setback line or within 100 metres from the edge of a watercourse where no such setback line has been determined.

The Partially Approved Development is substituted to authorize the entire preferred Alternative D (outlined in the Final EIA Report dated May 2013) whose activities entail the establishment of:

- 53 Resort units ($\pm 350\text{m}^2$ per erf);
- 372 Single residential erven;
- 97 Medium density group housing ($\pm 400\text{m}^2$ per erf);
- 18 Medium density farm worker accommodation ($\pm 400\text{m}^2$ per erf);
- 1 Hotel and conference facilities;
- 2 local businesses;
- 1 Institution (education) facility;
- Private open space; and
- Private roads.

b. **Annexure 1: Reasons for the decision**

The following reasons below outlined under Annexure 1 on pages 16 – 22 of the EA granted on 8 October 2013 are substituted as detailed in the reasons for this appeal decision:

- Alternative D (The preferred alternative);
- Regional/Planning context;
- Biodiversity;
- Visual/Sense of Place; and
- National Environmental Management Act Principles.

c. **Conditions of authorisation** (Conditions E1, E6, E7 and E17)

Condition E1:

"This environmental authorisation is valid for a period of five years from the date of this appeal decision. The holder must commence with all the listed activities within the said period or this environmental authorisation lapses and a new application for environmental authorisation must be submitted to the competent authority, unless the holder has lodged a valid application for the amendment of the validity period of this environmental authorisation (i.e. the amendment application must be submitted to the Ministry responsible for environmental affairs in the Western Cape Province), before the expiry of this environmental authorisation. In such instances, the validity period will be automatically extended ("the period of administrative extension") from the day before this environmental authorisation would otherwise have lapsed, until the amendment application for the extension of the validity period is decided. The listed activities, including site preparation, may not commence during the period of administrative extension."

Condition E6:

6. The applicant must amend the lay-out plan in accordance with the description of the development approved by the competent authority under Section B of the appeal environmental authorisation. This must be submitted to the competent authority and approved at least 3 weeks, prior to the commencement of construction activities.

Condition E7:

7. The applicant must further furnish the competent authority with a revised Game Management Plan, which prevents access of wild animals/game to the residential portion of the development. Game proof fencing must be erected by the applicant to ensure that residents and properties are protected from wild animals. The aforementioned revised Game Management Plan must be submitted to the competent authority and approved at least 3 weeks prior to the commencement of construction activities.

Condition E17:

17. The applicant must submit an application for amendment of the environmental authorisation to the competent authority where any detail with respect to the environmental authorisation must be amended, added, substituted, corrected, removed or updated. Save that such application for amendment shall not include the personal details of the holder of the environmental authorisation (Where any of the applicant's contact details change, the physical or postal address and/ or telephonic details, the applicant must notify the Ministry in writing as soon as the new details become known to the applicant).

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

17.1 The applicant must submit an originally signed and dated application for amendment of the environmental authorisation to the competent authority stating that he wishes the rights and obligations contained herein to be transferred, and including (a) confirmation that the environmental authorisation is still in force (i.e. that the validity period has not yet expired or the activities were lawfully commenced with); (b) the contact details of the person who will be the new holder; (c) the reasons for the transfer; (d) an originally signed letter from the proposed new holder acknowledging the rights and obligations contained in the environmental authorisation and indicating that he has the ability to implement the mitigation and management measures and to comply with the stipulated conditions.

17.2 The competent authority will issue an amendment to the new holder either by way of a new environmental authorisation or an addendum to the existing environmental authorisation if the transfer is found to be appropriate.

REASONS FOR THIS APPEAL DECISION

The reasons for upholding your appeal and varying the aforementioned decision of the competent authority are contained in the aforementioned EA issued on 8 October 2013 and below find further reasons for upholding your appeal and varying the decision of the competent authority:

1 Alternatives

- 1.1 Alternative B was not considered a preferred (i.e. reasonable and feasible) alternative of the EIA due to:
 - 1.1.1 The Ridgeline Study which required all urban development to be restricted to a line 7m below the prominent ridgeline. As a result, 35 single residential erven were omitted due to the determination of the edge of urban development (ridgeline).
 - 1.1.1 The concerns raised by CapeNature regarding fynbos fire management resulted in the omission of one resort node (consisting of 15 units).
- 1.2 Alternative C was an amended version of Alternative B but was still not considered a preferred (reasonable and feasible) alternative due to not accommodating a high school needed in the Mossel Bay area.
- 1.3 Alternative D is the modification of Alternative C to include an erf with an Institutional Zoning to allow for a school in the future. This alternative is preferred due to the following:

- 1.3.1 The development is planned outside of areas with environmental conservation status/potential.
- 1.3.2 The development is proposed within already disturbed areas used for existing grazing purposes.
- 1.3.3 The urban developments are restricted within the areas included inside the proposed urban edge of Hartenbos, whereas the resort components are proposed outside the urban edge.
- 1.4 The fencing off of the urban component from the proposed development has the effect of game being prevented from accessing favourite and high carrying capacity grazing areas to the south of the Departmental "cut off" line. This measure is in conflict with the Game Management Plan that was submitted with the final EIA report and which was developed with a working knowledge of the game management of the farm developed over the last 20 years. The game will be prevented from accessing the grazing area which is under irrigation and which is critically important under drought conditions.

2. Activity need and desirability

- 2.1 The EA adequately considered that the proposed development will provide various socio-economic benefits for the community including the conference and hotel facilities, skills development, employment opportunities and on-site staff housing.
- 2.2 The Mossel Bay Municipality's Integrated Development Plan 2012/2013 – 2016/2017 states that the municipality has to capitalise off the forecasted increase in world tourism as the international economy emerges out of recession in the medium term. Tourism is one of Mossel Bay's main economic activities including agriculture (aloes, cattle, citrus, dairy, ostriches, sheep, timber, vegetables and wine), fishing, light industry and petrochemicals.
- 2.3 The proposed residential development falls within the approved urban edge of the 2010 Mossel Bay Spatial Development Framework ("SDF"). The area outside this urban edge is not proposed as residential, but as a resort, which is compatible with the SDF. The Guide Plan was amended on 10 November 2008 to include the proposed site. Although the Guide Plan Amendment is no longer required, it was confirmed that the layout complies with the requirements that were imposed through that process.
- 2.4 The position of the urban component was confirmed by the Department, during the Guide Plan Amendment Application as being along the ridgeline north of Monte Christo with a 7m offset below the ridgeline and a height restriction of the final row of houses to ensure that the skyline is not compromised.
- 2.5 In terms of the Southern Cape Sub-Regional Plan, 1997 resorts could be allowed in agricultural/rural areas and the following guidelines for resorts were prescribed: the property must have a source of recreation i.e. an attribute which makes it unique and serves as a reason for people to stay at this source; density of the proposed resort should be assessed together with the carrying capacity of the site; a maximum floor area of 175m² should be proposed for resort units; and the location of units in holiday units should be more concentrated instead of being widely spread over a property. The proposed resort will have several unique attractions which include:
 - 2.5.1 The existing game on the farm- game drives, nature walks and mountain biking;
 - 2.5.2 Approximately 2.8km of river frontage along the Brandwag River and wide flood plain that is a huge attraction for bird watching (± 40ha). At certain areas, the river bed (flood plain area) is more than 800m wide and contains pristine bird life;
 - 2.5.3 The approximate size of the nature area and resort area is approximately 265ha in extent. The natural area contains large biodiversity areas that are

not present on any of the surrounding properties. No development is proposed in these areas. Five veld types within one hour's walk (e.g. Acacia; Valley Bushveld; Renosterveld; Wetland and Fynbos) are visible. By retaining and protecting these areas in an earmarked natural area, biodiversity goals are achieved, and the fynbos could be protected in perpetuity.

- 2.6 The Guidelines for Resort Developments in the Western Cape ("Resort Guidelines") applies to the proposed resort development even though they were adopted by the Department after this particular development application was lodged with the relevant authorities. However, The Resort Guidelines, proposes, *inter alia*, that there should be a unique natural source of recreation on each property; the density of resorts outside urban edges should be restricted to a density of 1 unit/10ha; maximum size of units outside urban edges should be restricted to 120m² and that only 50% of resort units maybe alienated. The only discrepancy between the proposed resort and the Resort Guidelines are the size of units (175m² vs. 120m²) and the alienation of units. However, the South African courts stated that a decision-maker may not implement a guideline in a rigid and inflexible manner (*MEC for Agriculture, Conservation and Environment v Sasol Oil (Pty) Ltd and Another (SCA Case No: 368/04 2005)*) and a decision-maker is entitled to refuse an application if it conflicts with pre-determined policy (*MEC for Environmental Affairs and Development Planning v Clairson's CC (Case No: 408/2012)*). As the courts require the application of discretion on the cases, the proposed resort component is generally considered consistent with the Resort Guidelines since it proposed to alienate some of the units to generate an income to develop the entire resort and to lease other units (hotel component) on a short term basis. The resort component will benefit from the open spaces on the entire development area hence the proposal of 53 units on 526ha is not out of line with these guidelines. The proposed development is also considered consistent with the Western Cape Provincial Spatial Development Framework ("PSDF") since it complies with the requirements of the Resort Guidelines echoed in the PSDF.
- 2.7 The proposed development is in keeping with the neighbouring Monte Christo Estate and the residential component of the proposed development can exceed the extent of the Monte Christo Estate as the site of the residential component will affect biodiversity areas.
- 2.8 Taking into account the sizes of the other hotel developments in the Garden Route area, it is not inconsistent to approve the entire preferred Alternative D taking into consideration the actual trends in hotel development in the Southern Cape and earlier approvals.

3. Biodiversity

- 3.1 Historically the vegetation on the site would have consisted of a renosterveld thicket mosaic, with closed thicket in the valleys and a more open renosterveld along the ridgelines, the north western corner of the property consists of a valuable floodplain and associated wetland vegetation. According to the Gourits Initiative fine scale mapping, the site consists of the Herbertsdale Renoster Thicket and Floodplain/ Estuary. These are listed as Endangered and Critically Endangered respectively. The National Biodiversity Assessment mapping classifies the area as falling within the Endangered Groot Brak Dune Strandveld and its various variants.
- 3.2 The majority of the natural vegetation that occurs on this site falls within the Gourits Initiative fine scale mapping rating of Endangered vegetation while the areas on the site that have historically been transformed and used for grazing domestic livestock have a low conservation value. Large proportions of the property, mainly the middle and southern areas have been modified in species composition as a result of the management for grazing lands (this was previously pastures used for domestic grazing and now is used as grazing for game. The areas covered by the indigenous vegetation area therefore restricted to the non-agricultural portions and development does not encroach into these areas. There has been systematic removal of alien vegetation by the land owner over the

years and replanting of indigenous trees into the scrub forest clusters (thicket patches). In excess of 5000 trees have been planted by the land owner as part of their restoration and land management effort. In addition, all alien invasive *Acacia Cyclops* have been removed from the property over the last 30 years of management.

- 3.3 The development has been specifically restricted to the areas of existing and previous disturbance where transformation has already altered the vegetation of the site. Specific care was taken to allow for sufficient corridors and buffer zones to allow for the continuation of the required pattern and process for the ecological functioning of the remaining areas of natural vegetation. All noted endangered vegetation is contained within these areas of open space as proposed in the development layout plan.
- 3.4 The grazing management of the property has been informed by a Game Management Plan. CapeNature is the authority that approved the plan. The EIA report specifically stated that the game will be managed in accordance with the carrying capacity of the land and there is no need to exclude units within the proposed layout in order to maintain a continuous grazing area for game in the northern section of the development.
- 3.5 In relation to the justification that the exclusion is for the endangered Groot Brak Dune Strandveld, the vegetation assessment and the EIA report clearly indicate that the development is restricted to areas already transformed and as such there will be no loss of an endangered ecosystem.
- 3.6 The Game Management Plan and the Risk Assessment have been approved by the competent authority. It is the free roaming game, lower density and use of wide buffers and ecological corridors that is the very nature of the concept of the development. Game management has been planned to make use of the entire property, including the irrigated grazing provided on the agricultural lands within the "smell zone" in the south around the sewage treatment works and any changes to keep the game away from these areas will affect the economic viability of the game farming component of the development.

4. Visual/Sense of Place

- 4.1 The property is located approximately 9km north of the coastal town of Mossel Bay. The closest town to property is Hartenbos which is located to the south-east. The Hartenbos Heuwels Township is located south-east of the proposed development whilst the Sonskyn is Vallei is subsidised housing development is located to the south of the site. The sewer treatment works is located at the current entrance to the property and the recently approved Monte Christo residential development (currently under construction) is situated directly adjacent to the property to the east. The N2, which is the main transport route through the Garden Route area, lies to the east of the property. The R 102 (Main Road) is located to the south-east of the property and would be the primary access road.
- 4.2 The preliminary Visual Impact Assessment found, in terms of visual prominence, that the northern region has a medium visual prominence due to the limited number of viewers in the area; the central region has a very limited visibility due to the undulation of the terrain and the fact that there are no key observation points in this viewshed and the southern region has the highest visual prominence due to close proximity to existing developments and the well utilised infrastructure, the lack of screening potential on the property and the raised prominence of the land. In terms of the sense of place, it was found that the northern region's sense of place is high due to the lack of existing development in a nature related area with a high tourist potential; the central region's modifications would not be very prominent and would be able to carry a high level of contrast but due to the limited visibility, the regional sense of place modification rating would be limited and the southern region has a medium to low sense of place modification rating due to the precedent set by existing development and infrastructure in the area even though this area would be more visible. However, the environmental management programme has included various screening methods and architectural requirements which will be implemented in the development layout in order to minimise the visual impact of the proposed development. With the proposed layout, the sense of place will be retained, as the resort units are sensitively placed to blend in with the landscape and it will have minimal visual impact.

- 4.3 The Ridgeline Study which was undertaken by Marike Vreken Town and Regional Planners (2009) recommended that the architectural design manual for the proposed development should restrict the dwellings in close proximity to the ridge line to a single storey dwelling with loft space. It was further suggested that the edge for the urban development be on a height of 7m below the top of the ridgeline to ensure that no new buildings visually break the ridge line. The amended development proposal (Preferred Alternative D) conforms to the recommendation of the Ridgeline Study and the Guide Plan Amendment (which is currently no longer valid).
- 4.4 The proposal, within the approved urban edge of Mossel Bay, incorporates a development which allows for the very creation and maintenance of ecological buffers and rehabilitation and conservation of areas of ecological importance. The layout as it was proposed will allow for the creation of green spaces and backdrops within what would otherwise become a backdrop of conventional suburban sprawl similar to Monte Casino and Hartenbos Heuwels.

5. 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:

1. the effects of decisions on all aspects of the environment to be taken into account;
2. 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;
3. the co-ordination and harmonisation of policies, legislation and actions relating to the environment;
4. the resolving of actual or potential conflicts of interest between organs of state through conflict resolution procedures; and
5. the selection of the best practicable environmental option.

The development will result in both negative and positive impacts.

Negative Impacts:

The proposal may result in the increase of residential development which will in turn result in the loss of green vistas, which is a characteristic of the Garden Route.

Positive impacts:

The development will create much need job opportunities in the tourism sector with the provision of new conference and hotel facilities.

Conclusion:

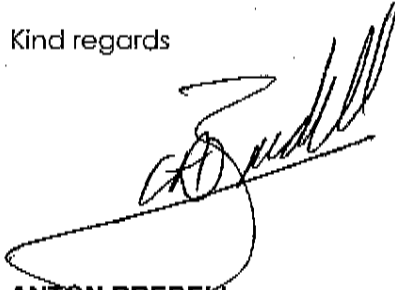
In view of the above, the NEMA principles, compliance with the conditions stipulated in this environmental authorisation, and compliance with the EMP, the appellate authority is satisfied that the proposed listed activities will not conflict with the general objectives of integrated environmental management stipulated in Chapter 5 of the NEMA and that any potentially detrimental environmental impacts resulting from the listed activities can be mitigated to acceptable levels.

Disclaimer:

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 appreciated.

Kind regards

A handwritten signature in black ink, appearing to read 'Anton Brede', written over a horizontal line.

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

DATE: 24/11/2014