



MEETING OF THE MUNICIPAL PLANNING TRIBUNAL (MPT)

A G E N D A

**THIS MEETING HAS BEEN MOVED TO TUESDAY,
1 APRIL 2025 AT 10:00**

DATE:	27 MARCH 2025 1 APRIL 2025
VENUE:	TOWN PLANNING COMMITTEE ROOM
TIME:	10:00

OVERSTRAND MUNICIPALITY

Office of the Chairperson: MPT
Civic Centre
HERMANUS
7200

20 March 2025

TO : THE MEMBERS OF THE MUNICIPAL PLANNING TRIBUNAL

CONVENING NOTICE : SESSION OF THE MUNICIPAL PLANNING TRIBUNAL (MPT)

NOTICE IS HEREBY GIVEN that the **Municipal Planning Tribunal (MPT)** will go into session in the **Town Planning Committee Room** on **Tuesday, 1 April 2025** at **10:00** to consider the attached agenda.

H JANSER (MS)
CHAIRPERSON : MUNICIPAL PLANNING TRIBUNAL

Distribution:

1. Ms H Janser (Chairperson)
2. Mr S Müller (Vice Chairperson)
3. Mr H Blignaut (Member)
4. Ms R Louw (Member)
5. Mr R Kuchar (Authorised Official)
6. Mr S van der Merwe (Senior Town Planner)
7. Ms H van der Stoep (Senior Town Planner)
8. Mr H Olivier (Town Planner)
9. Mr P Roux (Town Planner)
10. Secretariat

MUNICIPAL PLANNING TRIBUNAL (MPT)

27 March 2025

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- 1. OPENING**

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 - 3.1 Minutes of a Municipal Planning Tribunal Meeting held on 27 February 2025**

 - 3.2 Minutes of a Special Municipal Planning Tribunal Meeting held on 13 March 2025**

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 - 4.1 PORTION 94 OF THE FARM HEMEL EN AARDE NO. 587, DIVISION OF CALEDON, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR DEPARTURE, AMENDMENT OF AN APPROVED SITE DEVELOPMENT PLAN, AMENDMENT OF CONDITIONS OF APPROVAL AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: WRAP PROJECT OFFICE ON BEHALF OF HAYGROVE HEAVEN (PTY) LTD**

Report attached

 - 4.2 ERVEN 2350 & 2352, AUVERGNE RESIDENTIAL ESTATE, VERMONT, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR SUBDIVISION, REZONING, CLOSURE OF A PUBLIC PLACE AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: PLAN ACTIVE TOWN AND REGIONAL PLANNERS ON BEHALF OF OVERSTRAND MUNICIPALITY AND THE AUVERGNE HOMEOWNERS' ASSOCIATION**

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 - 4.3 ERF 101, 13 HOTEL CRESCENT, ROOI ELS AND A PORTION OF ERF 323, HOTEL CRESCENT, ROOI-ELS, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR SUBDIVISION, REZONING, CONSOLIDATION AND CLOSURE OF A PUBLIC PLACE: PLAN ACTIVE TOWN & REGIONAL PLANNERS ON BEHALF OF JA BAIGRIE AND OVERSTRAND MUNICIPALITY**

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- 4.4 ERF 189, 26 BEZUIDENHOUT STREET AND ERF 3118, 7 QUEEN VICTORIA STREET, STANFORD: APPLICATION FOR SUBDIVISION, REZONING, CONSOLIDATION AND CONSENT USE: MESSRS PLAN ACTIVE TOWN & REGIONAL PLANNERS ON BEHALF OF HA NADEL AND THE BREADMILL CC**

Report attached

4.1

PORTION 94 OF THE FARM HEMEL EN AARDE NO. 587, DIVISION OF CALEDON, OVERSTRAND MUNICIPAL AREA: APPLICATION FOR DEPARTURE, AMENDMENT OF AN APPROVED SITE DEVELOPMENT PLAN, AMENDMENT OF CONDITIONS OF APPROVAL AND DETERMINATION OF AN ADMINISTRATIVE PENALTY: WRAP PROJECT OFFICE ON BEHALF OF HAYGROVE HEAVEN (PTY) LTD

RCAL 94/587 (4456/2024)

H Olivier

21 February 2025

(028) 313 8900

Hermanus Administration

1. EXECUTIVE SUMMARY

An application has been received on 16 August 2023 from WRAP Project Office on behalf of Haygrove Heaven (Pty) Ltd on Portion 94 of Farm 587, Hemel-en-Aarde Valley in terms of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) for the following:

- ❖ **Departure** in terms of Section 16(2)(b) of the By-Law to relax the eastern 30m building line to 12,04m to accommodate the proposed expansion of the existing pack shed; and to relax the same building line to 6,44m to accommodate the existing covered pergola.
- ❖ **Departure** in terms of Section 16(2)(b) of the By-Law to relax the northern 30m building line to 9m, the Western 30m building line to 9m, the southern 30m building line to 5m and the eastern 30m building line to 3m to accommodate the existing intensive horticulture tunnels.
- ❖ **Departure** in terms of Section 16(2)(b) of the By-Law to relax the northern 30m building line to 11m, 12m and 20m respectively, the western 30m building line to 10m, 12m, 13,5m, 14m, 14,5m and 15,5m respectively, the southern 30m building line to 7,3m, 8m, 23,7m and 23,8m respectively, the south-eastern 30m building line to 19m and 24,5m respectively and the eastern 30m building line to 3m, 3,3m and 5,5m respectively to accommodate proposed new intensive horticulture tunnels.
- ❖ **Departure** in terms of Section 16(2)(b) of the By-Law to exceed the maximum allowable floor space from 6,1707ha to 22,2431ha to accommodate proposed new intensive horticulture tunnels and other extension.
- ❖ **Amendment of the existing approved site development plan** in terms of Section 16(2)(l) of the By-Law to accommodate the proposed expansion of the tunnels, the existing enclosed berry fields on the property and the larger agricultural industry footprint.
- ❖ **Amendment of conditions of approval** in terms of Section 16(2)(h) of the By-Law for the amendment of condition 1(c) in approval letter dated 13 July 2012 to accommodate the expansion of the footprint of the existing agricultural industry, and condition 3. (a) in approval letter dated 9 February 2016 to accommodate the proposed expansion of the tunnels on the property.
- ❖ **Determination of an administrative penalty** in terms of Section 16(2)(q) of the By-Law for the unauthorised construction of intensive horticulture tunnels on the property and covered pergola.

A Locality Plan of the property concerned is attached as Annexure A. The Motivation Report from the applicant in support of the proposal is attached as Annexure B, while the proposed Site Development Plan is attached as Annexure C.

2. DECISION AUTHORITY

Municipal Planning Tribunal

3. BACKGROUND / SITE HISTORY

The farm measures 71,5045ha in extent and is zoned Agriculture Zone I.

The farm is a productive farm that is already being farmed with intensive horticulture berry farming (Haygrove Heaven). The Municipality approved a rezoning to Agricultural Industry on a portion of the farm to accommodate a farm pack store in 2012, and then also approved a consent use in early 2016 for intensive horticulture on other portions of the farm with intensive horticulture tunnels.

This application is then to amend some of the conditions in such approvals, amend the site development plan for the farm, allows for some departures of building lines and to relax the allowable floor space to accommodate existing tunnels and some new tunnels and extension to the farm packing facilities (agricultural industry) footprint.

Application is also made for an administrative penalty fee for the unauthorized construction of intensive horticulture tunnels on the property.

4. SUMMARY OF APPLICANT'S MOTIVATION

THE MOTIVATION CAN BE SUMMARIZED AS FOLLOWS:

- ❖ The farm is being utilized growing raspberries, blackberries and blueberries.
- ❖ Haygrove Hermanus employs 400 people permanently and up to an additional 1800 seasonal and fixed term workers in peak season.
- ❖ The expansion of the horticulture tunnels will create an additional 6 permanent jobs and 100 seasonal jobs (for a minimum 18-week period).
- ❖ The application is to cover uncovered intensive horticulture fields, this due the increasing erratic rainfall creating significant crop losses.
- ❖ The tunnels are an integral part of the agricultural nature of the valley and are not expected to detract from the overall visitor experience.
- ❖ The tunnels are designated and positioned in a manner that ensures they blend harmoniously with the surrounding landscape, although there will always be a visual impact. The visual impact has been taken into consideration during the planning and design process.
- ❖ The application is for the approval of existing and proposed horticulture tunnels.

- ❖ The consent use approval in 2016 stipulated a condition that horticulture tunnels area approved in terms of an existing plan proposal “and application will have to be made for any possible future tunnels”. The tunnels approved in 2016 were 5,8727ha in extent. New proposed intensive horticulture tunnels applied for is approximately 7,746ha and existing horticulture tunnels that was constructed but not approved is approximately 8,337ha in extent. This makes for a total of 21,9557ha horticulture tunnels in extent. The total area of the farm covered with berry fields is 33ha.
- ❖ Intensive horticulture tunnels generate higher yields, optimal use of resources and increased financial returns. It is also more efficient requiring lower water use, less pesticide and fewer losses to adverse weather.
- ❖ Application is also made for departures of building lines to accommodate some existing and new intensive horticulture tunnels over building lines. Since 35% of the farm is sensitive mountain wetland or biodiversity rich areas, such areas cannot be utilized for farming, and tunnels must be constructed closer to boundary lines. The encroachments will not create disturbances to adjacent property owners.
- ❖ Worker’s time spend in the tunnels is minimal, reducing the likely wood of noise impact on neighbours. The rights enjoyed by adjacent property owners will not be infringed on.
- ❖ The rezoning approval in 2012 also limited a condition that the farm pack shed (agricultural Industry) be limited to 809m². The owner now intends to increase the footprint of the existing pack shed to 1018m² and utilize the existing farm store of 617m² for agricultural industry purposes. The agricultural industry footprint will be 1635m² in total.
- ❖ The pack shed is used for the processing of two farms produce, and the farm store will be used to store packing materials for the pack shed.
- ❖ A pergola was also constructed next to the pack shed to create some shade over the crates. It encroaches the building line and is being applied for. The extensions to the pack shed will also be over the 30m building line, and application is made for a departure.
- ❖ Application is made to relax the allowable floor space from the existing 5,8727ha to 22,2431ha to accommodate extensions to the pack shed and additional intensive horticulture tunnels. It is not predicted to have any negative impact on any surrounding property owners as the property is zoned for agricultural purposes.
- ❖ The application also includes the amendment of the existing Site Development Plan to accommodate all above-mentioned extensions.

DETERMINATION OF ADMINISTRATIVE PENALTY

(a) nature, duration, gravity and extent of the contravention

A consent use was approved on the property for intensive horticulture; the contravention is only for the encroachment over building lines of the intensive horticulture tunnels and pergola, which was illegally constructed over building lines. The illegal tunnels that were constructed are 8,337ha in extent. The tunnels encroach the various building lines as indicated in the report and approximately 9000m² of the tunnels encroach building lines.

Approximately 50m² of the covered pergola encroach the building line.

(b) the conduct of the person (allegedly) involved in the contravention

Haygrove constructed the tunnels to increase the viability of the agricultural enterprise. The tunnels were never driven by any malicious intent.

(c) *whether the unlawful conduct was stopped*

The structure has already been constructed.

(d) *a report by a quantity surveyor in matters of unauthorised building/construction*

A quotation was obtained from the sister company of Haygrove who supplies the tunnels to the property owner. The total cost of tunnels is approximately R479 000-00 per ha.

(e) *whether the person allegedly involved in the contravention has previously contravened this by-law or a previous planning law*

To the knowledge of the office, the property owners have not previously contravened the By-law on the subject property.

It is requested that due to the fact that no complaints have been lodged regarding these specific tunnels and their usage is consistent with the prevailing practices in the area, that a more lenient administrative penalty be imposed.

SERVICES

❖ Water

There are sufficient water rights on the subject property and the additional tunnels will not require the extraction of additional water, it would rather help conserve water. Irrigation methods and drip irrigation ensures good water use.

❖ Sewerage

There is sufficient sewerage capacity on the property. The number of toilettes is increased in season to cater for increased worker numbers.

❖ Solid waste

Solid waste is taken to the waste transfer site in Hermanus.

❖ Electricity

Electricity is provided by Eskom, and a solar installation is planned to reduce reliance on Eskom.

❖ Access / egress

Existing access road is off Minor Road number OP04012, and it will not be altered. The road is tarred.

The egress is over portion 11 over a servitude road that leads to the R320. Due to complaints about dust the owner of Haygrove scrape this road at his expense. Current traffic includes 2 pack house trucks, 9 busses for staff transport and 18 cars and bakkies for management. Only the busses will be increased to 11 for seasonal workers, and the pack house trucks will make more frequent trips.

NEED AND DESIRABILITY OF THE APPLICATION❖ Socio-economic impact

It will create additional 6 permanent jobs and 100 seasonal jobs (for a minimum 18-week period). It will stimulate economic growth in the local area as goods and services will be sourced from local businesses and service providers. The farmers and farm workers will generate more income. A wider range of crops will lead to market expansion and trade opportunities. It helps with community development and increase living standards. Increased food production will contribute to food security.

❖ Compatibility with surrounding land uses

Intensive horticulture tunnels align with the existing agricultural landscape and practices in the area, it optimizes land utilization and increase agricultural productivity within a limited space, ensures higher yields which means more employment opportunities are generated, it has environmental benefits by minimizing water use and reducing the need for chemicals, and it helps with food security.

❖ Impact on safety, health and wellbeing of the surrounding community

Reduction in use of chemicals minimizes health risks, help improve air quality with less dust and pollen in air, noise mitigation as intensive horticulture tunnels farming produce low noise level, help improve quality controls to enhance food safety and the neat, organized appearance contribute to aesthetic appeal with a positive influence on the wellbeing of residents I the vicinity.

❖ Impact on Heritage

No impact.

❖ Impact on Biophysical environment

Intensive horticulture tunnels have a positive impact in that it helps with land conservation as less land is required for farming, the farming method is water efficient, it promotes soil health, helps with energy savings and it helps with waste management in the form of composting.

❖ Traffic impacts, parking, access and other transport related considerations

It may have some implications, but it is not predicted to influence the surrounding area. Any potential traffic impact can be mitigated with good management.

❖ Impact on views, sunlight and character of the area

Most surrounding properties in the area are utilized for agricultural purposes, with only some properties in the area zoned for resort purposes. Intensive horticulture tunnels align with uses allowed in terms of the land sue scheme. The visual impact of the tunnels can be mitigated through appropriate design and landscaping measures. The coastal beefwood trees strategically incorporated by Haygrove as windbreaks also functions as visual barriers. The netting layer over the tunnels reduces production, but it reduces visual impact and any potential glare. A visual impact assessment was done by a landscape architect.

It found that from a visual perspective, the proposal should be endorsed as it will result in a moderate to moderate-low visual impact, on condition that the visual impact follows the mitigation measures and recommendations. The owner will comply with such measures.

POLICIES AND REGULATIONS

- ❖ The proposed tunnels are not situated in an Environmental Protection Overlay Zone (EMOZ) or Heritage Protection Overlay Zone (HPOZ).
- ❖ In line with PSDF by prioritizing rural development and investment in agriculture, expansion and diversifying agriculture, etc.
- ❖ In line with the Overstrand Municipality's SDF in that it will develop and maintain a strong local economic base in the rural area, protect agricultural resource, etc.

PLANNING PRINCIPLES

Spatial Justice

Will provide opportunity to the disadvantaged communities and individuals to participate in agricultural activities.

Spatial Sustainability & Efficiency

The application will maximize the land productivity within a very small footprint.

Spatial Resilience

It is in line with spatial planning policies as it would optimize existing resources and infrastructure.

Good Administration

The Municipality follow a good public participation process.

5. ADMINISTRATIVE COMPLIANCE

Methods of advertising		Date published	Closing date for comments
E-mail notices & on-site notice	Yes	11 March 2024	19 April 2024
Internal departments	Yes	11 March 2024	19 April 2024
Ward councillor	Yes	11 March 2024	19 April 2024
Total comments	FIVE (5)		
Total letters of support	NONE		
Was public participation undertaken in accordance with Section 46 - 50 of the By-law on Municipal Land Use Planning?			Yes
Was the application processed correctly (if no, elaborate below):			Yes
Is the proposal consistent with the principles referred to in Chapter 2 of SPLUMA and Chapter VI of LUPA? (can be elaborated further below)			Yes

6. SUMMARY OF COMMENTS FROM ORGANS OF STATE AND/OR MUNICIPAL DEPARTMENTS

Name	Date received	Summary of comments.
Environmental Department	02/05/2024	No objection.
Building Control	11/03/2024	No objection.
Fire Department	27/05/2024	No objection.
Heritage Western Cape	<i>No comments received.</i>	
Eskom	<i>No comments received.</i>	
Western Cape Government: EADP(Environmental)	24/06/2024 & 04/11/2024	Annexure F.
Western Cape Government: EADP (Planning)	17/04/2024	Annexure G.
Western Cape Government: Agriculture	23/04/2024	Annexure H.
Western Cape Government: Department of Infrastructure (Road Planning)	10/05/2024	Annexure I.
Telkom	20/04/2024	Annexure J.
BGCMA	21/08/2024	Annexure K.
Engineering Services	13/03/2024	Annexure L.
Cape Nature	12/05/2024	Annexure M.

7. SUMMARY OF COMMENTS RECEIVED DURING PUBLIC PARTICIPATION

Notices were sent out to surrounding property owners in March 2024 and a notice board was placed on the site.

Five (5) letters of objection were received, but one (1) was withdrawn. The applicant was provided with the opportunity to respond to the objection. (See Annexure D and E attached to this report).

- M Farr
- Nicholas Smith Attorneys Environmental Law Specialists
- Hemel en Aarde Conservancy
- Hemel-en-Aarde Winegrowers Association (HAWA)
- Hemel en Aarde Rural Safety Association (Farm Watch) - **withdrawn**

The objections, the applicant's reply and the Municipal Town Planners response thereon can be summarized as follows:

OBJECTION 1 – IMPACT ON AREA (CHARACTER)

- ***Hard to believe the 22ha tunnels will not impact tourism and the overall visitor experience.***
- ***Lack of adequate research and assessment to measure impact on rural character.***
- ***The tunnels are not in harmony with the valleys natural surroundings, and they fundamentally detract from the overall character of the region.***
- ***This industrial horticulture impacts the natural environment and other established businesses.***
- ***The motivation to proof compatibility is speculative.***
- ***Development on the farm should be within the existing development parameters and building lines to limit impact on a surrounding area, and approval of such departures would be to the detriment of many others.***

APPLICANT'S RESPONSE

"The objections and comments are noted. The statements made throughout the submitted application, asserting that the tunnels and their existence are not expected to detract from the tourism character of the valley, are based on the findings of the independent Visual Impact Assessment (VIA) and the recent success of wine farms in the valley. To ensure that the motivation behind the statements (suggesting that the tunnels are not expected to have a negative impact on the surrounding area), is backed by an independent expert opinion.

Some objectors continue to state that the intensive horticulture tunnels are only covered by white plastic. This is however untrue, as Haygrove continues to strive and comply with the previous approval obtained to cover the tunnels with non-reflective shade cloth.

It is important to note that the tunnels constitute only a few components, of which the two key ones are, (1) steel tubes and hoops, and (2) white plastic ("skins"). The skins are not erected permanently and removed for large parts of the year when the fields are not populated with plants. This entails removing the white plastic, and sometimes the shade cloth as well. Maintenance on tunnels and/or shade cloth does also require some movement and opening up, depending on the nature of such maintenance.

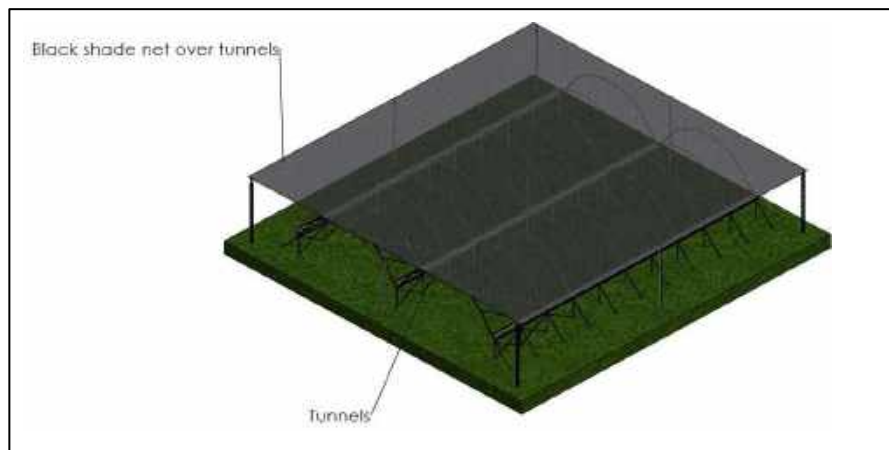


Figure1

The objectors make incorrect assertions that the proposed intensive horticulture and agricultural industry is not in line with the surrounding area. However, this is factually incorrect as every wine cellar should have consent for agricultural industry use, as required by the local municipality.

Nowhere did the motivation indicate that the tunnels are considered a tourist attraction.

The opinion remains that the intensive horticulture tunnels are aligned with the agricultural nature of the surrounding area.”

TOWN PLANNER’S RESPONSE

More than one objector indicated that the illegal land use is still continuous. The comments are duly noted.

The greatest concern to the objectors is the horticulture tunnels and the perceived negative visual impact it has on the character of the area. The tunnels are not considered “industrial”, only the pack shed is considered an agricultural industry. The applicant is correct to say that all wine cellars in the region are also agricultural industries, and had to apply for consent uses for such land uses.

The comment by the applicant is noted that the plastic covering and netting is removed at times for maintenance, and therefore during such maintenance period white plastic will be visible for short periods. This is however only over shorter periods.

The ultimate question is, is intensive horticulture tunnels out of line with the character of this area? It has mountain areas with high environmental sensitivity and a valley where different forms and intensity of farming take place, resort developments and tourist facilities and accommodation. Considering afore said a berry farm is not out of line with the character of an agricultural area. The only real concern is then the visual impact of the horticulture tunnels, which will be discussed in more detail later in this report.

OBJECTION 2 – VISUAL IMPACT

- ***The existing has and the new ones will be a significant eyesore and will destroy the beauty of the valley.***
- ***No winery in proximity of plastic tunnels would be considered for Worlds best vineyards award.***
- ***Smutches of white polytunnels, glaring on the slopes of the iconic Babilonstoring has a visual impact.***
- ***Research show that the property owner has also been in controversy in the UK putting up tunnels in areas of outstanding beauty.***

APPLICANT'S RESPONSE

“The property owners appointed a landscape architect firm to conduct a VIA, and their findings were open for scrutiny by the public. See extract from the VIA *“The visual impact significance rating is assessed as moderate and moderate-low if all mitigation measures are implemented.”*

The mitigation measures require additional tree planting between tunnels to reduce visual impacts of large farming blocks. Darker colours should be used for the tunnels. This is being achieved by the addition of shade cloth above the tunnels. The last proposed mitigation measure is that there should be no lights in or around the tunnels, which is already being adhered to.

It is also important to note that there is no inherent right to a view under South African law. The protection of views from properties is not considered an inherent entitlement arising from land ownership. Rather, views are categorised as a "source of delight" and are not inherently protected as part of an owner's right of ownership.

Furthermore, South African courts have consistently held that purely aesthetic considerations, including views, are not relevant in the context of neighbours and nuisance. The case law cited indicates that courts should not venture into the area of aesthetics, as they are subjective and personal in nature.

Therefore, the argument that the view of the tunnels would have a negative impact on the entire valley is not supported by South African law. As there is no inherent right to a view, and aesthetic considerations are not relevant in legal disputes regarding neighbours and nuisance. That said the property owner is open to constructively engage with neighbours to ensure a harmonious neighbourly environment, without compromising its operational requirements and financial sustainability.”

TOWN PLANNER'S RESPONSE

A visual impact assessment (VIA) was done by a visual impact specialist ARLA Consulting Landscape Architects.

The specialist found that “the ability of the receiving environment to visually absorb this development is assessed as high, as it is well screened with existing vegetation, windbreaks and established trees resulting in limited mitigation strategies.”

It is also stated that the intensity or the degree to which the proposed development will impact views, and scenic or cultural resources will be **medium- low**; visual and scenic resources will be affected to a limited extent". In the description of measuring intensity low means, "where visual and scenic resources are not affected", and medium means "where visual and scenic resources are affected to a limited extent".

It is further indicated that "the significance rating is assessed as moderate-**low significance**." In terms of the measuring criteria of significance low means "where it will not have an influence on the decision" and medium means "where it should have an influence on the decision unless it is mitigated". This means the visual impact can be mitigated with minimal mitigation measures.

The VIA was prepared by a professional in the field, and therefore the findings in the assessment is considered as the best opinion the Municipality can use to evaluate the visual impact of the development.

OBJECTION 3 – SEASONAL JOBS

Where will the seasonal workers stay and work after the season is over.

APPLICANT'S RESPONSE

"The owners open the applications to any person residing in the Overberg region. No people are brought into the area to work. Haygrove appoints seasonal workers based on seasonal requirements. This is often variable, and the duration of seasonal roles are typically three to six months. Agriculture is an inherently seasonal sector.

Haygrove does however attempt to alleviate the seasonality of employee income by annually sending South African staff (combined, from all Haygrove South Africa farms), to their other group farm(s) in the UK. The number of employees that will be sent this year is 312, of which the vast majority are seasonal workers. This provides for ongoing income through longer periods of employment, international experience gained and allows workers to earn foreign currency and prosper."

TOWN PLANNER'S RESPONSE

The seasonal workers do not stay on the farm and is transported to the farm every day. This is clearly indicated in the applicant's motivation report

The Hemel-en-Aarde Valley is a wine region, and the wine farms also make use of seasonal workers during harvesting.

It should be noted that there is no restriction on the number of workers on a farm on a seasonal, temporary or permanent basis. The arrangement and workers contract are between the employer and the employee and is confidential.

OBJECTION 4 – COMPLIANCE WITH THE BY-LAW

APPLICANT'S RESPONSE

"Concerns were raised regarding the owners' compliance with local by-laws and regulations, encompassing building codes, safety standards, and environmental regulations. These comments are noted, and the application was submitted to address these concerns and ensure full compliance with all relevant regulations."

TOWN PLANNER'S RESPONSE

The applicant's professional team were in consultation with the Municipality in an attempt to address any non-compliance with by-laws, regulations etc., and the submission of this application is part of the attempt to regularize activities and structures on the property.

OBJECTION 5 – TRAFFIC

- ***Will create increase in traffic.***
- ***The moving of 1800 seasonal workers and 400 permanent staff in a small farming area, raises legitimate concerns about road safety issues.***

APPLICANT'S RESPONSE

"Section 10 of the application outlines the approach to access and egress. It's noted that only two additional buses are required during peak harvesting periods, with no anticipation of any additional traffic.

It's important to emphasise that the proposal solely pertains to covering existing berry fields with tunnels, without any plans for expansion into new fields. This ensures that there will be no increase in the overall cultivated area, thereby mitigating potential strain on local roads and infrastructure.

Additionally, the farm includes separate access and egress points, which helps to distribute traffic flow and alleviate congestion on any single road. This strategic design element further addresses concern related to traffic management."

TOWN PLANNER'S RESPONSE

In the motivation it is indicated that current traffic includes 2 pack house trucks, 9 busses for staff transport and 18 cars and bakkies for management. Only the busses will be increased to 11 for seasonal workers (in peak harvesting periods), and the pack house trucks will make more frequent trips. There will therefore be a slight increase in traffic.

It is also motivated by the applicant that the access egress is a one-way route to ensure minimal impact on surrounding property owners.

The application was sent to Municipal Engineering Services, who indicated that the Provincial Engineer should comment on the application.

The application was sent to Western Cape Government: Department of Infrastructure (Road Planning), who indicated that they have no objection against the application.

This is also a farming area and traffic associated with farming activities is therefore expected. Any possible traffic impact on non-agricultural land uses in a farming area should have been expected and should not be allowed to limit farming activities.

Considering the above, the additional traffic impact is considered acceptable.

OBJECTION 6 – CONCERNS REGARDING WATER MANAGEMENT

APPLICANT'S RESPONSE

“Section 10 of the application outlines the methods how water is being managed on the farm and the sources of the water. It is also important to note that the application was circulated to the water management agency in the area, Breede-Olifants Catchment Management Agency (BOCMA). Any water related issues will be directly addressed by the agency as the relevant regulatory authority.

It is also important to note that the fruit tonnage output for water consumed ratio is improved by 21% when the fruit are grown in an intensive horticulture tunnel.”

TOWN PLANNER'S RESPONSE

In the circulation process Breede-Olifants Catchment Management Agency (BOCMA) did request additional information from the applicant with regards to water use and management. The applicant did provide it to BOCMA, and they indicated that they have no objection against the application.

BOCMA is the relevant regulatory authority on any water related matters. That Department indicated that they have no objection against the application.

OBJECTION 7 – ENVIRONMENTAL IMPACT

- ***A comprehensive EIA must be done to address the potential impact on biodiversity in the Valley.***
- ***Research to be done on impact of water quality, soil health and ecosystem balance.***
- ***Risk of erosion, chemical contamination and fertilizer residues must be considered.***
- ***This 22ha is an addition to the 60ha on farm 587/11 and the 40ha next to Karwyderskraal, and the impact on water quality, soil health and biodiversity have not been assessed.***
- ***No EIA was done; a scientific based study would be expected.***
- ***The windbreaks are alien trees, and further expansion will negatively impact biodiversity.***

APPLICANT'S RESPONSE

“The objectors express concerns about the perceived intensification and expansion of operations. However, it is important to clarify that the application aims solely to cover existing berry fields with tunnels, with no plans for expanding into new fields. This ensures that there will be no increase in the overall cultivated area, thereby mitigating potential environmental impact. By maintaining the current footprint of farming activities, the environmental impact is minimised.

Haygrove is allowed to have their fields within the building line as there are no structures involved in the process. However, if they were to propose covering them with tunnels, the requirement of a departure from the building line is triggered.

Furthermore, one objector incorrectly stated that Haygrove has over 80 hectares of intensive horticulture tunnels in the Hemel-en-Aarde Valley. The actual total is approximately 32 hectares, comprising roughly 14 hectares on Portion 94 of the Farm Hemel-En-Aarde Valley 587 and 18.5 hectares on the neighbouring Portion 11 of the Farm Hemel-En-Aarde Valley 587. The proposed addition of 7.7 hectares on Portion 94 of the Farm Hemel-En-Aarde Valley 587 accounts for the incremental increase.

Tunnels serve as an effective mechanical and structural solution for managing key progressive plant diseases such as botrytis and mould, as they provide protection to crops from exposure to rain. This directly reduces the need for spraying and minimises the quantity of sprays required. Consequently, a reduction in spray requirements facilitates a more biological approach to pest and disease control, which is not only safer for bees and natural predators but also promotes overall environmental sustainability.

In essence, the implementation of tunnels enables Haygrove to produce more fruit with fewer inputs and minimal adverse interventions. This approach leads to more sustainable outcomes, both economically and environmentally, aligning with Haygrove's commitment to responsible and increasingly eco-friendly agricultural practices.

In addition to reduced sprays, Haygrove hasn't used any herbicides on the farm in 2 years as they focus on a more biological approach and indigenous plants.

Soil Health

Haygrove farms utilise substrate methods (pots above ground, devoid of soil), enabling precision fertigation, monitoring of run-offs, and optimised water consumption. These systems are meticulously controlled and managed to ensure optimal soil health below the pots. In addition to run-off monitoring, cover crops play a vital role in maintaining and enhancing soil health and the surrounding ecosystem.

Furthermore, Haygrove undergoes regular independent audits conducted by leading retailers such as Woolworths (Farming For the Future), M&S (M&S Select) and Tesco. These audits include soil sample evaluations through frequent lab testing to track soil health trends, water sample assessments to monitor for contamination, as well as evaluations of various health and safety protocols, staff welfare, social responsibility initiatives, and food safety standards. Notably, Haygrove holds gold status for Farming for the Future and is GlobalGAP certified.

Water use and erosion

Water quality on the farm is excellent and as such, no additional treatments that may cause contamination or adverse build-ups are required.

Erosion is controlled through cover crops, cut-off trenches and contours, continuous fynbos rehabilitation and beautification with indigenous plants. Haygrove actively propagates indigenous plants, including, for rehabilitation of areas, soil health management and beautification.”

TOWN PLANNER'S RESPONSE

The applicant did address the concerns regarding methods ensuring soil health and water use and erosion.

The concerns regarding the environmental impact and the opinions that an Environmental Impact Assessment has to be done for the development is noted. The application was circulated to the Municipal Environmental Division and Department of Environmental Affairs and Development Planning Western Cape (DEAPD). DEADP is the authority on determining if developments trigger Environmental Impact Assessments (EIA). DEADP indicated that no EIA is triggered by the application.

The concerns regarding the impact on biodiversity are noted. The applicant indicated that no additional land will be cleared, and only existing berry fields will be covered with horticulture tunnels.

It is to be noted that the application was also circulated to Cape Nature for comments. Cape Nature evaluates the impact of applications in terms of biodiversity. Cape Nature has no objection against the application.

OBJECTION 8 – ECONOMIC IMPACT

- ***There must be more detail about social and economic implications of the development, including increased crime and impacts on local communities and informal settlements.***
- ***Request Haygrove's financial data to substantiate claims about economic benefits and employment.***
- ***The beauty of the valley is the natural area and wine farms, not polytunnels which will kill tourism.***

APPLICANT'S RESPONSE

“The application clearly outlines several aspects of how Haygrove has a positive socio-economic impact, as detailed in Section 11 of the motivation. Currently, the Haygrove group in South Africa employs 700 workers permanently and up to an additional 3000 seasonal and fixed-term workers during peak season. Specifically, in the Hermanus area, Haygrove employs 400 people permanently and up to 1,800 in peak season, arguably making it the largest private employer in the greater Hermanus area. Furthermore, Haygrove invests in the communities where it farms, supporting health and education initiatives, providing schooling bursaries, and making donations (in kind and financial) to various organisations in the surrounding community.

If the application is approved to allow the erection of the tunnels, up to 100 additional seasonal jobs will be created (with seasonal jobs entailing a minimum of 3 – 6 months of employment). Additionally, 6 additional permanent workers will be employed to assist with tunnel maintenance.

The key point made in the application is that despite the existence of Haygrove and its tunnels, the perception of HAWA and its wines, have flourished. There is no objective support to disprove this, although there is much objective support to corroborate this statement.

There has also been continued investment and expansion of vineyards in the valley despite Haygrove's existence, further supporting the positive sentiment of the valley and its characteristics.

Both entities have achieved significant milestones, as mentioned in HAWA's objection. Similarly, Haygrove has become the largest private employer in the Overstrand region. Therefore, it seems feasible for both parties to continue their operations harmoniously, contributing to the economic prosperity of the region.”

TOWN PLANNER'S RESPONSE

The applicant did indicate that 100 new seasonal jobs will be created and 6 additional permanent jobs. It can therefore not be debated that the development will have a positive economic impact.

The perceived negative economic impact Haygrove has on the wine industry and tourism is also not backed up with a documented survey. The applicant's viewpoint, that tourist facilities and the development of more wineries and wine farms is however clear to see in the Hemel & Aarde Valley, can however not be debated. The perceived negative impact of Haygrove on existing wine farms is therefore speculative.

Hemel & Aarde Valley does not have the distinction of only being earmarked for wine farms and vineyards. The area is zoned Agriculture and residential living; tourism etc. is subservient to agricultural practices.

OBJECTION 9 – STAKEHOLDER ENGAGEMENT

- ***Meaningful engagement with stakeholders must take place to ensure their concerns and perspective is considered in decision making.***
- ***Request an extension of the deadline to respond to engage more with our members.***

APPLICANT'S RESPONSE

“The application has followed the normal public participation process and the objectors' submitted comments indicate that there was adequate engagement. Every individual or entity identified as an interested or affected party received notification of the submitted application. There is no obligation to hold additional engagement meetings or extend the comment period, as the public participation process allows sufficient time for scrutiny of the application. Haygrove however is open to any engagement and any of the objectors are welcome to request a meeting.”

TOWN PLANNER'S RESPONSE

The applicant's comments are supported. The Municipality followed the public participation process as stipulated in the Planning By-law, in the same format as all applications on properties in the Hemel & Aarde Valley.

The public participation process has been finalized, and no extension of the public participation period can be allowed.

OBJECTION 10 – GENERAL ASSUMPTION

- ***The applicant make the assumption Creation wines won an international title even though horticulture tunnels are existing in the H&A Valley, and it does not impact tourism. This is a blatant mistruth as the character of the area and environment is extremely important. Creation is not close to the tunnels, and thereby not impacted that much.***
- ***The owner also owns a company that supply the tunnel systems and is therefore pro polytunnels. This shows the owners lack of maintaining the scenic beauty of the area.***
- ***Berries are a luxury food and only the effluent that can afford or it is exported overseas, it does not contribute to regional or national food security.***

APPLICANT'S RESPONSE

"Regarding the issue of food security and the market for Haygrove berries, the objector's perspective is appreciated. However, this extremely narrow perspective is limited to the berries produced by Haygrove.

Firstly, there are highly valuable skills developed at and taught by Haygrove to its staff, and particularly its growers, through on the job experience and its successful graduate grower programme. The skills required to grow berries are of an exceptionally high standard given that it is a complex crop. Many of our former growers and graduates now work in and contribute to other crops or parts of the food supply chain, and in many parts of the world. These highly sought after skills contribute significantly to overall local and global food security.

Secondly, the focus on growing raspberries, blueberries, and blackberries under tunnels in the Hemel-en-Aarde Valley contributes to both local and international markets. While a portion of the berries is indeed exported, Haygrove also supply a significant portion to customers within South Africa, including retailers like Woolworths. Haygrove's fresh fruit will also indirectly find its way to the shelves of Checkers, Food Lovers, Spar and others. Lastly (and while by no means an exhaustive list), Haygrove's fruit is also used in food industry (hotels, guest houses, restaurants nationally and internationally), in yoghurts and drinks produced by major dairy and other businesses, smoothies, ice creams, juices and multiple other highly nutritious products.

While it's an opinion that berries may be considered a luxury food item for some, it's important to recognise that access to a diverse range of nutritious foods, including berries, as well as the development of skills to cultivate various foods, is essential for overall food security.

Additionally, Haygrove's operations provide employment opportunities and support economic growth within the local community, contributing to broader social and economic stability. Haygrove remains committed to exploring ways to enhance food security and promote equitable access to nutritious foods within South Africa."

TOWN PLANNER'S RESPONSE

The applicant sufficiently addressed the objection regarding food security.

It must also be acknowledged that the berry farms had a major impact on families in terms of employment opportunities and the associated social upliftment of families and communities in Overstrand.

The comments regarding the fact that the property owner owns a poly tunnel business and therefore not concerned about maintaining the scenic beauty of the valley, is the objector's opinion but speculative.

The objector's comments regarding Creation Wines are noted. The impact of Haygrove on the wine industry and tourism has been discussed under objection 8. It is not clear what kind of criteria international wine awards use to evaluate wine farms, and therefore difficult to determine if the objector's opinion is valid.

OBJECTION 11 – VISUAL IMPACT ASSESSMENT

- ***A more accurate and unbiased visual impact assessment must be done.***
- ***Disagree with the conclusion, as it cannot be viewed as independent.***
- ***Not in line with pattern of land uses in the area of opens air growing.***
- ***None of the surrounding property owners or businesses, etc. were consulted in preparation of the Visual Impact Assessment (VIA).***
- ***The findings in the VIA are baseless and unfairly in favour of the applicant.***
- ***Mitigation measures are supported but not planting of more alien trees.***
- ***A new VIA addressing all issues should be submitted.***
- ***There are 27 residential homes, 20 houses and 2 residential development zoned resort etc. in the area, which need to live in the area with the visual impact.***
- ***The accuracy and supporting images are questioned.***

APPLICANT'S RESPONSE

"Independence of the Report:

While acknowledging the objector's concerns about the independence of the report, it's important to clarify that the report was commissioned by the applicant at the request of the Municipality to assess the visual impact of the proposed development. However, the findings and conclusions of the report were based on objective assessments conducted by qualified professional in accordance with industry standards. The report was not influenced by the applicant to skew the results in their favour. If the objector feels a secondary report is required, they are allowed to appoint a professional to do so.

Accuracy of Supporting Images:

The images included in the report were intended to accurately depict the proposed visual impact of the project. It will be remiss of Haygrove to speculate on its accuracy as it will undermine the integrity of the VIA professional. However, if the objector believes that certain images are misleading or fail to accurately represent the visual impact, they are allowed to commission an additional report.

Growing Practices and Land Use Patterns:

The perspective of the objector is noted; however, while it's true that the growing practices may differ, it is believed that there is room for diverse agricultural practices within the region. There has been significant evolution of farming practices over the centuries. A modern evolution is precision farming, which includes the utilization of polytunnels for its various, well documented benefits. The only negative impact of tunnels is the subjective point around visual impact. The proposed development aims to contribute to the agricultural diversity of the area while ensuring compliance with relevant regulations and minimizing negative impacts on surrounding properties.

Consultation Process:

A VIA is not open for consultation and is not influenced by subjective statements; factual evidence needs to be taken to prepare the VIA.

Recommendations and Concerns:

The recommendations of the VIA will be taken into account. Haygrove is open to discussing alternative, constructive mitigation measures that align with conservation and biodiversity goals.

Resubmission of VIA:

The comment requesting that the VIA should be resubmitted is noted; however, it is believed that the VIA sufficiently addresses the concern raised.”

TOWN PLANNER'S RESPONSE

The Visual Impact Assessment VIA was prepared by an independent professional. The objection that the findings were baseless and in favour of the applicant is speculative, as the objector is a specialist in visual impact assessments. No new VIA will thus be requested from the applicant.

The visual makeup of the surrounding area was considered and its impact rated as moderate-low significance. Mitigation measures were inserted in the conclusion to help minimize any impact on the surrounding area. The comments that no alien trees must be used as wind breaks are noted, but it was not made a requirement from the Municipal Environmental Branch, Cape Nature or DEADP: Western Cape.

The concerns that no stakeholder participation took place in the preparation of the VIA is noted. As indicated by the applicant, a VIA is not open for consultation and the consultant only considered factual evidence.

The applicant responded separately to the objections submitted by Nicholas Smith Attorneys, who represents a group of surrounding property owners. For ease of reference, it will be discussed under the headings as prepared by the applicant.

OBJECTION 12 – DEFECTIVE COMPANY RESOLUTION*(PARAGRAPH 5-13 IN OBJECTION LETTER)*

- *The company resolution never included the administrative penalty application.*
- *The power of attorney is defective for purpose of progressing with the administrative penalty application.*
- *The application for administrative penalty must be submitted afresh and finalized prior to any other applications can be submitted.*
- *It would be irregular for the Municipality to consider the administrative penalty and other land use applications simultaneously.*
- *It is premature for Haygrove to submit applications for future uses.*

APPLICANT'S RESPONSE

"The company resolution and power of attorney have been duly amended to include the determination of an administrative penalty. This oversight has been rectified to ensure compliance with all necessary legal requirements.

It's important to emphasise that this omission does not have any affect the application or its contents. The focus of the application remains on the proposed land use changes and associated considerations. The addition of the administrative penalty aspect aligns with the broader objective of ensuring regulatory compliance and accountability.

Furthermore, the amendment to include the administrative penalty demonstrates Haygrove's commitment to addressing any past transgressions transparently and responsibly. Haygrove acknowledges the importance of regulatory compliance and is fully committed to co-operating with the Municipality to resolve any outstanding matters.

This clarification underscores Haygrove's dedication to upholding the integrity of the application process and working constructively with relevant authorities to achieve mutually beneficial outcomes."

TOWN PLANNER'S RESPONSE

WRAP did provide an amended company resolution and power of attorney. The applicant's opinion that omission does not affect the application, or its contents, is supported.

The objections relating to the processing of the application for administrative penalty and the application for additional land use rights at the same time, is addressed under objections 13 and 14.

OBJECTION 13 – POINT IN LIMINE: HAYGROVE'S APPLICATIONS FOR ENHANCED LAND USE RIGHTS (PERMANENT DEPARTURES AND AMENDMENTS TO HAYGROVE'S SITE DEVELOPMENT PLAN (SDP) AND VARIOUS CURRENTLY APPLICABLE CONDITIONS MUNICIPAL APPROVAL) ARE PREMATURE INSOFAR AS THEY ARE INCLUDED TOGETHER WITH HAYGROVE'S APPLICATION FOR AN ADMINISTRATIVE PENALTY (WHICH SHOULD BE DETERMINED AND FINALIZED FIRST, AND SEPARATELY FROM THE LAND USE APPLICATION).

(PARAGRAPHS 14-32 IN OBJECTION LETTER)

- ***It is premature for Haygrove to submit applications for future uses.***
- ***The illegal construction of 8,337ha of horticulture tunnels must firstly be dealt with.***
- ***The municipality should also have regard to the offences and penalties set out in section 84 of the Planning By-Law.***
- ***The approved tunnels are 5,8ha and 8,3ha of tunnels were constructed in contravention of the Planning By-Law and Hargrove's conditions of approval, and now they want to construct an additional 7,746ha. The illegal land uses must therefore firstly be regularized and administrative penalty paid, prior to application for additional tunnels.***

APPLICANT'S RESPONSE

"The structure of the motivation was crafted to ensure full compliance with the requirements outlined in the Overstrand Municipality (OM) By-law (Overstrand Municipality Amendment By-Law on Municipal Land Use Planning Act, 2020). It's crucial to clarify that the procedural approach taken in the application aligns with the regulatory framework set forth by the municipality.

The objection raised implies a contention with the procedural aspects of the application. However, it's important to emphasize that the OM By-law necessitates that the application addresses both current non-compliance issues and proposed future developments.

Therefore, the inclusion of the administrative penalty application alongside the land use proposals is in accordance with the prescribed procedure outlined by the municipality.

Furthermore, it's imperative to emphasise that there is no requirement to finalise the administrative penalty determination before considering the proposed land use applications. Both aspects are intended to be dealt with simultaneously by the decision-making authority, ensuring a comprehensive and holistic review of all relevant factors.

Addressing the specific concerns raised by the objector, it's evident that the motivation prioritises compliance with regulatory requirements and seeks to rectify any past transgressions transparently and responsibly. The inclusion of the administrative penalty application underscores Haygrove's commitment to addressing historical non-compliance issues and ensuring regulatory adherence moving forward."

TOWN PLANNER'S RESPONSE

The objections raised by Nicholas Smith Attorney on behalf of the objectors, and specifically their voluminous criticism of the fact that the Applicant was permitted by the Overstrand Municipality (OM) to apply for an administrative penalty simultaneously with an application for additional rights instead of first applying for said penalty and after having paid it or a determination having been made, to then bring another separate or new application for additional rights.

In support of their argument the objectors contend that because the City of Cape Town (COCT) requires of an Applicant to first pay the administrative penalty and to then bring another application for whatever it wants to apply for, that the Overstrand municipality must do the same.

In this regard the position of the OM is as follows:

(1) the Constitution of South Africa

- (a) section 151(2) determines that the executive and legislative authority of a municipality is vested in its Municipal Council.
- (b) section 154 enables municipalities "...to manage their own affairs, to exercise their powers and to perform their functions."
- (c) section 156(1) – "a municipality has executive authority...and the right to administer –
 - (a) local government matters listed in Part B of Schedule 4: "Municipal Planning".
- (d) section 156(2) determines that "A municipality may make and administer by-laws for the effective administration of the matters which it has a right to administer".
- (e) section 156(3) in effect determines that a municipal by-law that conflicts with national or provincial legislation is invalid.

What the above extracts from the Constitution means is that every municipality is constitutionally permitted to make and administer its own By-Laws, provided said By-Laws are not in conflict with National or Provincial legislation, with no mention of other Municipality's legislation. In other words, municipality A's By-Laws may validly be in conflict with Municipality B's By-Laws with no consequences flowing from such a conflict.

In the matter at hand OM's By-Law *per* Section 16 and specifically Section 16(q), read with Section 90, makes provision for bringing an application for additional rights and an application for an administrative penalty [Section 16(q)] in one land use application, and will the application be perfectly valid and legal and will remain so, until having been declared invalid by the High Court or the Supreme Court of Appeal or the Constitutional Court or having been amended by the OM and approved by its Council. The fact that the OM's By-Law might be in conflict with COCT's By-Law is therefore irrelevant, as the OM is not subservient to and/or bound by the COCT Municipality, its processes, and By-Laws.

The objectors contend that it will be premature to apply for future uses if the illegality is not first dealt with and finalised, in other words, they contend that the application for an administrative penalty must be a "stand-alone" application and must be dealt with first and completed. They seem to contend that the Applicant regard the determination of an administrative penalty by the OM as a "*fait accompli*" in the sense that consideration of the application for additional rights will follow automatically irrespective of whether a penalty is or has been imposed or not, and if imposed, has been paid or not.

They even contend that the OM will make itself guilty of an irregularity, but this contention is incorrect because in terms of the OM's By-Law, an Applicant for additional rights will only be able to exercise his/her additional rights applied for and granted when the administrative penalty has been paid within 30 days of the effective date of the decision or within such further period as may be decided by the Authorised Official, the MPT or the Appeal Authority. In other words, the final approval letter to act on the rights granted will not be furnished to the Applicant until the penalty has been paid. Please refer to section 90(7) of the OM by-law.

OBJECTION 14 – AN ADMINISTRATIVE PENALTY MUST BE FINALIZED BEFORE THE APPLICANT CAN APPLY FOR ADDITIONAL AND ENHANCED LAND USE RIGHTS
(PARAGRAPHS 33-48 IN OBJECTION LETTER)

- ***An administrative penalty application must be considered independently and as a matter of law, as a stand-alone application.***
- ***It is a matter of logic that contraventions should be remedied before application for additional rights.***
- ***It appears that the applicant regards the determination of the administrative penalty and municipality's decision as a "fait accompli", but the applicant and/or objectors can still appeal against the decision to the Executive Mayor as appeal authority.***
- ***We will address the necessary legal submissions on this aspect if the MPT inclines to grant our request for an audience, and the right to deliver oral submissions, when the application is tabled before the MPT.***
- ***The present format of the application is a fundamental error and would be fatal before the MPT as decision maker, the Executive Mayor as appeal authority or the Western Cape High Court in review under the Promotion of Administrative Justice Act.***

APPLICANT'S RESPONSE

"The objector's repetitious emphasis on finalising the administrative application before considering any other applications is noted. However, it's essential to highlight Section 61 of the by-law, which states:

"The Authorised Official or the Municipal Planning Tribunal may in respect of any application contemplated in Section 16(2)—

- (a) approve, in whole or in part, or refuse any application referred to it in accordance with this By-law;*
- (b) on the approval of any application, impose any reasonable conditions, including conditions related to the provision of engineering services and the payment of any development charges;"*

Section 61(a) grants the decision-making authority the discretion to decide either in whole or in part, signifying that each application can be individually considered, and recommendations made accordingly. It's crucial to recognise that this provision applies equally to the handling of submitted applications."

Furthermore, Section 61(b) stipulates that the decision-making authority is empowered to impose reasonable conditions, including the determination of the amount payable to the municipality upon the conclusion of the administrative penalty.

It's essential to note that no further consideration of building plans or other applications will occur until this condition is fulfilled. Therefore, settling the administrative penalty is a prerequisite for adhering to the conditions of land use approvals.

Additionally, it is unclear why the objector is of the opinion that Section 90(1) of the by-law requires a "stand alone application"?

"90. Application for administrative penalty

- (1) A person who is in contravention of this By-Law, and submits an application to rectify the contravention, must apply to the Municipality for the determination of an administrative penalty, provided that the Municipality has not obtained and issued a demolition directive in terms of Section 85 in respect of the land or building or part thereof concerned."*

Haygrove is complying with the requirements of Section 90(1) as the application, as submitted, addresses and attempts to rectify the contraventions that occurred.

Haygrove respects the regulatory framework and is committed to abiding by the decision-making process outlined by the Municipality. The inclusion of the administrative penalty application alongside other land use applications does not diminish the importance or independence of each component. Instead, it reflects a comprehensive approach to addressing past contraventions while simultaneously seeking approvals for future land use.

If an appeal is submitted in terms of Section 78, the entire decision will be suspended pending the outcome thereof. No decision favourable or unfavourable will be able to commence if an appeal is in process.

It's also essential to note that Municipal Planning Tribunal hearings only permit observers to attend, and representatives are not allowed to make oral representations on behalf of the parties involved. If the objector is afforded the opportunity to represent their parties, it is requested that WRAP Project Office also be afforded the opportunity to attend the meeting. This however remains the decision of the municipality and the decision-making authority."

TOWN PLANNER'S RESPONSE

The objector's opinion that the administrative penalty must be considered prior to considering additional land use right was addressed in the Town Planners response under objection 13 above.

The request for a hearing is noted. The Municipal Planning Tribunal (MPT) provide objectors and applicants the opportunity to attend (or virtually) the MPT meetings. The rules do not make provision for oral representation. The objector and applicant were however informed to consult directly with the Chairman of the MPT on such matter.

OBJECTION 15 – THE REQUIREMENTS OF SECTION 90 OF THE PLANNING BY-LAW PERTAINING TO APPLICATIONS FOR THE DETERMINATION OF AN ADMINISTRATIVE PENALTY

(PARAGRAPHS 39-49 IN OBJECTION LETTER)

- *The current motivation for the application for administrative penalty fee is insufficient.*
- *No indication is provided as to the duration of the contraventions or its gravity.*
- *There is no clear explanation of Haygrove's conduct.*
- *Cannot claim the construction of 8,337ha of horticulture tunnels "was never by any malicious intent", as in previous historic approvals stipulated restrictions.*
- *A new administrative penalty application should be submitted addressing all breaches of various conditions in Haygrove's previous approvals.*
- *City of Cape Town obliges the completion of the administrative penalty fee process as a stand-alone application. It must be completed before any applications for additional rights can be considered.*

APPLICANT'S RESPONSE

The objector's arguments that the motivation does not contain all relevant information are unfounded.

(a) *The nature, gravity, and extent of the contravention;*

The nature, gravity, and extent were adequately addressed in both Sections 5.4 and 5.19. The duration is clearly indicated as occurring between the last approval in 2016 and the submission date of the application.

(b) *The conduct of the person (allegedly) involved in the contravention;*

Haygrove's conduct was explained in detail, as referenced in Sections 5.4 and 5.19.

(c) *A report by a quantity surveyor in matters of unauthorised building/construction;*

The OM's budget allows the municipality to request the average of two formal quotes for non-habitable structures. The tunnels were installed by Haygrove's sister company, Haygrove Tunnels South Africa. The value represents the actual cost of the tunnels used, which is more accurate than averaging two quotes or based on calculations made on assumptions by a quantity surveyor.

(d) *Whether the unlawful conduct was stopped; and*

The tunnels have been erected and are in use. Their use was historically approved, as explained in Section 5.19 of the motivation.

(e) *Whether the person allegedly involved in the contravention has previously contravened this By-Law or a previous planning law.*

Refer to Section 5.19. To the knowledge of this office, the property owners have not previously contravened the By-Law on the subject property.

It is important to note that while the Spatial Planning and Land Use Management Act (SPLUMA) provides guidelines on how municipal by-laws should be executed, each municipality is allowed to operate under its own procedures and methods. Simply comparing two municipalities because they use the similar wording cannot be considered sufficient motivation to follow their procedures. If this were the case, objectors in the City of Cape Town could also claim that administrative penalties need to be submitted in one application with other land use proposals because the OM allows it.

Haygrove's proactive approach to addressing the matter demonstrates a commitment to rectifying the situation and complying with regulatory requirements. Any suggestion that their actions are driven solely by the expectation of future approvals oversimplifies the situation. Instead, Haygrove's actions should be viewed as part of a broader strategy to ensure compliance and uphold the integrity of their operations.

TOWN PLANNER'S RESPONSE

The objector's opinion is that the application was not sufficiently motivated in terms of the criteria of section 90(3), is noted. The objector again provided the information as was submitted with the original motivation, showing compliance. Some of the detail will be elaborated on under objection 16.

The comments regarding compliance with previous approvals are noted and will be discussed in more detail under objection 16.

The objector motivates that the City of Cape Town deals with their administrative penalty applications in a stand-alone format, prior to considering additional rights. This matter has already been addressed under objection 13.

OBJECTION 16 – INSUFFICIENT AND/OR INADEQUATE INFORMATION INCLUDED IN THE PRESENT ADMINISTRATIVE PENALTY APPLICATION (PARAGRAPHS 50-64 IN OBJECTION LETTER)

- ***No quantity Surveyors report for the cost of the illegal structures were submitted, which is a requirement in terms of the By-Law, this is a material omission.***
- ***The illegal use has not stopped as the tunnels are being used.***
- ***The comment that the property owners have not previously contravened the Planning By-law is questioned considering that is not clear if the conditions of approval in the 13 July 2012 municipal approval have been complied with the requirements of condition 1(f). Condition 3(a) in the 2016 municipal approval breached.***
- ***Not clear if building plans were submitted for approval as required in condition 3(b) of the 2016 municipal approval.***
- ***In many cases condition 3(i) in the 2016 Municipal Approval in also not complied with, as the tunnels must be covered with non-reflective netting.***
- ***The information provided by WRAP is inaccurate, false and misleading.***

APPLICANT'S RESPONSE

"The objector raised several points that warrant clarification and response:

- **Quantity Surveyor's Report:** The absence of a quantity surveyor's report is noted, and the municipality accepted the information Haygrove's sister company submitted as indicated above. It's important to highlight that the cost of the tunnels, provided in the application, reflects the replacement cost of the tunnels. This figure is based on the cost of the tunnels if it to be installed by Haygrove's sister company, which inherently provides an accurate and detailed breakdown of the construction expenses.
- **Compliance with Section 90(3) of the Planning By-law:** WRAP's assertion that the information provided meets the requirements of Section 90(3) is grounded in the comprehensive details included in the application. The total cost of the tunnels, although not specifically broken down in a quantity surveyor's report, is accurately represented and substantiated by a major supplier of these specialized structures in Southern Africa.
- **Duration of Unlawful Conduct:** It is and was acknowledged that the tunnels are currently in use, which implies that the unlawful conduct has not ceased which is a matter of fact and was disclosed in the motivation. However, the application aims to rectify this by addressing the administrative penalty and committing to compliance with regulatory requirements going forward.
- **Previous Contraventions:** While it's claimed that Haygrove breached certain conditions of previous approvals, it's important to recognise that the application serves as method to ensure that the previous approval's condition is amended accordingly.
- **Submission of Detailed Building Plans:** The building plans have been approved and condition 3(b) is being complied with.
- **Non-reflective netting:** As mentioned above, Haygrove continues to strive and comply with the previous approval obtained to cover the tunnels with a non-reflective shade cloth. It is important to note that the tunnel plastic is not erected permanently and are taken down in for large parts of the year when berries do not grow. This entails removing the white plastic, and sometimes the shade cloth as well. Maintenance on tunnels and/or shade cloth does also require some movement and opening up, depending on the nature of the maintenance. Therefore, there are certain periods when only the plastic is visible. However, significant efforts are made to limit this at great expense to Haygrove. Furthermore, a practical reality is that the plastic often needs to be erected before the shade cloth cover can be erected; and the shade cloth retracted to remove or clean the plastic.
- It is important to emphasise that the shade cloth is also detrimental to berry growth when erected over tunnels, and Haygrove estimates production loss at 15% owing to lower levels of light (lower photosynthetic potential) and higher levels of dust build-up on the plastic. However, the shade cloth is erected at significant cost to Haygrove solely to reduce the visual impact for the surrounding farms. The cost of keeping surrounding farms' visual impact limited is many millions to Haygrove annually in opportunity loss and the direct cost of maintenance and replacement of shade cloth.

- **Separate Application for Administrative Penalty:** While the objector's preference for a separate application for the administrative penalty is noted, it's essential to ensure that all relevant information is considered comprehensively. The integration of the administrative penalty determination within the broader land use application process allows for a holistic assessment of the situation and facilitates efficient resolution and complies with the procedures of the OM."

TOWN PLANNER'S RESPONSE

Another point of criticism raised by the objectors concerns the non-appointment by the Applicant of a Quantity Surveyor (QS) to determine the cost of the unauthorised structures and to file a report as required by section 90(3)(c) of the by-law, and the Applicant acknowledges this, but motivates its decision by stating that it obtained a quote from Haygrove's sister company, apparently a major supplier of horticultural tunnels, which provides an accurate and comprehensively detailed breakdown of the actual construction costs of said tunnels.

In terms of the approved municipal budget the penalty that may be charged for "habitable buildings" is R20 253/m² and for "non-habitable buildings" the average of 2 (two) quotations. The tunnels in question are "non-habitable" and are considered "minor structures". In this regard it is the OM's contention that the most accurate way of determining a suitable penalty will be the obtaining of the actual construction costs from a company that installs such structures instead of averaging at least 2 (two) quotes which might amount to less than the actual costs.

That said the suggested administrative penalty for a "minor construction" will still be substantial.

Be that as it may section 90(6) of the by-law determines that the MPT may request additional information should it be of the opinion that the information furnished is insufficient for it to determine an appropriate administrative penalty. The Applicant seems to acknowledge this where it states that:

"...the application aims to rectify this (the duration of the unlawful conduct) by addressing the administrative penalty and committing to compliance with regulatory requirements going forward".

The objector questions if the conditions of approval in the 2012 and 2016 land use approvals have been complied with.

The objector refers to a condition (f) in the 2012 approval, which refers to the submission of an environmental management plan. The old municipal records were scrutinized, and it was found that an environmental management plan was submitted.

Regarding the 2016 approval, the applicant did respond and indicated that condition 3(b) in the 2016 application has been complied with, and the necessary building plans submitted and approved.

The objector showed concern that condition 3(i) in the 2016 Municipal Approval was also not complied with, as the tunnels is not all covered with non-reflective netting. The applicant did explain that during periods of maintenance the covering netting, and sometimes the netting and the plastic tunnels are removed to do maintenance. It is however replaced after maintenance has been done. This is a practical requirement of farming with polytunnels and considered a reasonable explanation on the point of concern.

OBJECTION 17 – OUTSTANDING/INCOMPLETE INFORMATION PERTAINING TO HAYGROVE’S COMPLIANCE WITH HISTORIC APPROVALS
(PARAGRAPHS 65-68 IN OBJECTION LETTER)

See amendment of a condition 3(a) in the municipal approval in 2016, but no confirmation was provided if building plans was submitted to comply with condition 3(b) in the 2016 municipal approval.

APPLICANT’S RESPONSE

“The objections raised several points that require clarification and response:

- **Intention to Seek Amendment of Conditions:** The intention to seek an amendment to condition 3(a) of the approval granted on February 9, 2016, is acknowledged. It's crucial to emphasise that this application is not premature but rather a part of the broader process of seeking compliance and rectifying any outstanding issues. Each aspect of the application is being addressed in due course, ensuring a comprehensive and systematic approach to regulatory compliance.
- **Confirmation of Compliance with Conditions:** While the application does not explicitly confirm compliance with condition 3(b), it's essential to recognise that the application would not have been processed if Haygrove had not complied with the previous conditions. The Municipality has the authority to investigate this matter further and request any necessary documentation to confirm compliance as part of the application process for new land use rights.”

TOWN PLANNER’S RESPONSE

The relevant building plans have been submitted and the condition 3(b) in the 2016 municipal approval complied with.

OBJECTION 18 – HAYGROVE’S CONTINUED AND WILFUL NON-COMPLIANCE WITH CONDITION 3(I) OF THE 2016 APPROVAL
(PARAGRAPHS 69-71 IN OBJECTION LETTER)

- ***Non-compliance with condition 3(i) in the 2016 approval, many of the tunnels is not covered with non-reflective material.***
- ***The breaches must be rectified before a new planning application can be submitted.***

APPLICANT'S RESPONSE

"The objection regarding Haygrove's alleged non-compliance with condition 3(i) of the 2016 approval is unfounded and based on erroneous assumptions.

1. **Existence of Approved Building Plans:** Contrary to the objection's claim, there are indeed approved building plans for the tunnels erected by Haygrove. These plans adhere to the specifications outlined in the 2016 approval, including the requirement for non-reflective material or non-reflective netting.
2. **Efforts to Comply:** Haygrove remains committed to complying with the conditions of the 2016 approval. Efforts have been consistently made to ensure that the tunnels are covered with a non-reflective shade cloth, as mandated by condition 3(i). It's crucial to understand the seasonal nature of horticulture operations. During the growing season, the shade cloth and plastic are in place to provide the necessary protection for the crops. However, during the off-season when berries are not growing, the tunnels' plastic is removed. This may include the removal of the shade cloth. This temporary absence of shade cloth may give the appearance of non-compliance, but the sequencing of events is a practical reality of the regular operational cycle of the farm.

In light of these clarifications, it's evident that Haygrove is diligently working to adhere to the conditions set forth in the 2016 approval at a significant cost to itself, as previously explained. Any perceived discrepancies are largely attributable to the practicalities of agricultural operations and seasonal variations rather than wilful non-compliance. Therefore, the objection's insistence on rectifying alleged breaches before considering further applications is unwarranted. Haygrove remains committed to fulfilling its obligations and ensuring compliance with all relevant regulations."

TOWN PLANNER'S RESPONSE

The applicant sufficiently addressed the points of objection.

OBJECTION 19 – SUBSTANTIVE OBJECTIONS REGARDING THE (LACK OF) MERIT IN THE LAND USE APPLICATIONS

(PARAGRAPHS 72-74 IN OBJECTION LETTER)

- ***The application for further land use rights has a lack any substantive merit.***
- ***Additional comments will be provided when they apply afresh for enhanced land use rights.***

APPLICANT'S RESPONSE

"It's important to address the objections regarding the substantive merit of the land use applications for future and enhanced land use rights, as outlined in Chapter VI of the Planning By-law.

1. **Evaluation of Land Use Applications:** The objector seems to challenge the substantive merit of the proposed land use applications described in detail in the applicant's motivation. No detail is however provided on the reason the merit is being challenged. It is however crucial to note that these applications have been meticulously prepared in accordance with the relevant provisions of the Planning By-law. Each application has been tailored to meet the requirements and guidelines stipulated by the municipal regulations.
2. **Compliance with Planning By-law Criteria:** The objector raises concerns regarding the adherence to the general criteria outlined in section 66 of the Planning By-law, particularly emphasising the desirability of the proposed land utilisation. The desirability was categorised and addressed in Section 11 of the motivation. It's important to reiterate that all proposed land uses have been carefully evaluated against these criteria to ensure alignment with the By-law's provisions. Additionally, any guidelines issued by the Provincial Minister regarding proposed land uses have been duly considered and integrated into the applications where applicable.
3. **Future Considerations:** While the objector express reservations about the substantive merit of the land use applications, we are of opinion that the applications have been prepared with due diligence and consideration of all relevant factors.
4. In conclusion, Haygrove affirms their commitment to compliance with all regulatory requirements and guidelines governing land use applications. The application submitted on behalf of Haygrove adheres to the highest standards of planning and development principles.”

TOWN PLANNER'S RESPONSE

The comments are noted. The objector did not provide any detail as to the opinion that the application has no substantive merit. The comments of non-compliance with the general criteria outlined in section 66 of the Planning By-law, is noted. The concerns have however been addressed in this report and there is sufficient information to make an informed recommendation on the application.

The objectors' comments that he will comment on a new land use planning application, is noted. The application will however be dealt with at the same time as the administrative penalty application in terms of the procedure followed in terms of the Planning By-Law, as previously explained.

OBJECTION 20 – SUBMISSIONS AS TO WHY THE LAND USE APPLICATIONS ARE, OBJECTIVELY VIEWED, UNDESIRABLE AND MUST THEREFORE BE REFUSED BY THE MUNICIPALITY ON THEIR LACK OF OBJECTIVE MERIT.

(PARAGRAPHS 75-80 IN OBJECTION LETTER)

- ***The land use applications have been summarised somewhat superficially, and there is also no specific indication that the applicant seeks permanent departures.***
- ***The scale of the unauthorized activities is plain to see, and the fact that administrative penalty procedure will not resolve the matter satisfactorily.***

- *The applicant in his motivation highlights the importance to prioritise compliance, the applicant is obliged by law to regularise its unauthorised unlawful land use before additional land use approvals.*
- *The applicant's consideration of the criteria to consider an administrative penalty fee process is superficial and insufficient.*
- *The applicant submits the tunnels enhance the viability of the agricultural enterprise, but Haygrove cannot be permitted to do so by the municipality in a manner adversely impacting the rights of surrounding landowners.*

APPLICANT'S RESPONSE

"The majority of these concerns have been addressed throughout the responses above.

1. **Summarisation of Applications:** The objector suggests that the summary of the land use planning approvals in the Municipality's notice lacks specificity regarding the permanent departures sought by the applicant. This however important to clarify that the applications explicitly outline the nature of the departures sought, as detailed in paragraphs 5.1 to 5.19 of the motivation. Any ambiguity should be clarified through the contents of the motivation.
2. **Priority of Administrative Penalty Determination:** The objector emphasises the scale of the contravening land use that was detailed in the motivation and argues that determining the administrative penalty should precede any consideration of additional land use approvals. As mentioned previously, the application was submitted as required in alignment with the procedures of the OM. However, it's essential to ensure due process and consider each application on its merits, with the administrative penalty being only one aspect in the overall process.
3. **Obligation to Regularise Unlawful Land Uses:** The objector contends that the applicant is legally obligated to regularise its unauthorised land uses before seeking additional approvals. While the applicant acknowledges the need for compliance, it's crucial to address all aspects of the application comprehensively, including rectifying any non-compliance issues alongside seeking additional approvals.
4. **Superficiality of Applicant's Submissions:** The objection criticises the applicant's submissions regarding the nature and extent of the contravention as superficial and insufficient. The applicant's submissions however aim to provide a comprehensive overview of the situation, including efforts to rectify non-compliance issues and ensure adherence to applicable regulations.
5. **Impact on Surrounding Landowners:** Lastly, the objector raises concerns about the impact of the tunnels on surrounding landowners' rights. A professional person was appointed to conduct a VIA as discussed throughout the responses above and the mitigation measures were also highlighted and Haygrove is committed to adhere thereto."

TOWN PLANNER'S RESPONSE

The objectors and applicants' response are noted.

The objector's opinion that it is not clearly indicated in the notice that application is made for Permanent Departures, are noted. The detail is however in the motivation, and by inserting the wording departure or permanent departure can both be accepted, as long as the relevant section of the By-Law is stipulated. A permanent departure is made in terms of section 16(2)(b) of the Planning By-law, whilst a temporary departure is applied for in terms of section 16(2)(c). It is clearly indicated in the notice what section is being applied for.

The objectors' comments regarding compliance and regularizing unauthorized land uses, and the superficial and insufficient administrative penalty application is noted. These points have previously been addressed in this report.

The opinion of the objector that the municipality may not positively consider an application that adversely impact the rights of surrounding property owners, are noted.

The applicant indicated a VIA was prepared by a professional person to consider the impact on surrounding property owners, and mitigations measures.

The question that must be asked is what are reasonable expectations of the various types of property owners in the Hemel & Aarde Valley. The residents in the resort developments possibly want a surrounding area with minimal impact on their views, limited noise and limited activity in the area. The property owners with wine estates and tourist facilities probably want views over other properties and do want more visitors to the area to support their wine cellars, tourist facilities and accommodation. The farmer wants to farm the land to its maximum potential with minimum influence on him utilizing his/her property to its maximum potential.

Considering the above, there will always be challenges to group all these land uses together in one area and keep all property owners satisfied. All the criteria to determine desirability will be duly considered in this application, and the visual impact will also be considered in such evaluation.

Ultimately it must be considered what developments in agricultural areas can be considered as reasonable expected land uses, and what are additional uses in agricultural areas. This will provide a better indication of what rights surrounding property owners could reasonably expect.

OBJECTION 21 – SUBSTANTIVE OBJECTION TO THE PROPOSED PERMANENT DEPARTURES, THE APPLICATION TO AMEND THE SDP, AND THE APPLICATION TO AMEND AN EXISTING CONDITION OF APPROVAL.

(PARAGRAPHS 81-82 IN OBJECTION LETTER)

- ***The motivation is self-serving, superficial and in certain instance, simply wrong on the facts presented.***
- ***The applicant motivates that the growing of raspberries, blackberries and blueberries under intensive horticulture tunnels are congruent with other agricultural activities in the Hemel & Aarde Valley. Permanent departures to construct tunnels over 3 building lines are excessive in the circumstances.***

APPLICANT'S RESPONSE

1. **“Critique of WRAP's Motivation:** It's crucial to recognise that WRAP's motivation seeks to provide a comprehensive rationale for the proposed land use applications. While there may be disagreements regarding specific points, WRAP's motivation aims to present a balanced and well-reasoned motivation.
2. **Congruence with Agricultural Activities:** The objector questions the merit-worthiness of the land use applications based on WRAP's assertion that the proposed activities align with other agricultural practices in the Hemel-en-aarde valley. The objection contends that the permanent departures sought from various building lines are excessive. It's important to note some of these departures are located next to the other property owned by Haygrove meaning they are their own neighbour. It's important to consider the broader context of agricultural activities in the area and evaluate the proposed departures based on their individual merits and potential impacts. Additionally, discussions with relevant experts were made that provided valuable insights into the appropriateness of the proposed departures, these include VIA specialists.”

TOWN PLANNER'S RESPONSE

The objector's opinion is that the motivation for the land use application is superficial and self-serving. No detailed facts were provided in support of the opinion.

The objectors' comment to accommodate so many departures over building lines does sound excessive. The applicant did indicate that some of these departures is over building line of Hargrove's other property. This matter will be evaluated in more detail in the Evaluation section of this application.

OBJECTION 22 – CRITIQUE OF AND OBJECTIONS TO WRAP'S ASSERTIONS REGARDING COMPATIBILITY WITH SURROUNDING LAND USES

(PARAGRAPHS 83-89 IN OBJECTION LETTER)

- ***The suggestion that 22ha of horticulture tunnels contributes in any way to the preservation of (the valley) rich farming traditions is not supported, the development of horticulture tunnels on that scale in fact offends against those traditions.***
- ***The permanent departure must be assessed objectively with reference to the rights to use and enjoy their properties undisturbed.***
- ***The permanent departure and amendment of conditions of approval and the site development plan do not pass muster with reference to Section 66(1)(c) of the Planning By-Law and is not desirable.***
- ***The sheer scale and intrusive character of the intensive horticulture tunnels is an undesirable proposed and actual use of land.***
- ***The purpose of the 30m building line is to prevent unreasonable intrusion of physical infrastructure, and to protect the surrounding property owner's right to reasonable enjoyment.***

APPLICANT'S RESPONSE

“WRAP's assertion regarding the compatibility of the proposed land use with surrounding activities is based on a careful consideration of the broader agricultural context of the Hemel- en-Aarde valley. The integration of horticulture tunnels is seen as an extension of the area's agricultural identity, contributing to its rich farming traditions. While the objector may contest this viewpoint, it's essential to recognise the diverse perspectives regarding modern farming practices, particularly as polytunnels constitute a relatively modern tool for improving and mitigating many agricultural challenges.

The objector argues that the proposed development of horticulture tunnels contradicts the valley's farming traditions. However, it's worth noting that farming practices evolve over time, and modern methods, including the use of tunnels, can be compatible with traditional agricultural activities. Moreover, the proposed tunnels aim to enhance agricultural productivity while minimising environmental impact, aligning with broader sustainability goals.

Regarding the applications for permanent departures, it's important to assess them objectively, weighing the potential benefits against any impacts on neighbouring properties, one of which is owned by Haygrove themselves. While the objector emphasises the potential infringement on surrounding landowners' rights, it's essential to consider the broader community's interests, including economic development and agricultural sustainability.

Ultimately, the decision on these applications should be guided by a comprehensive evaluation of their merits, considering both the immediate concerns of neighbouring landowners and the long-term benefits for the community as a whole.”

TOWN PLANNER'S RESPONSE

When considering the compatibility of an application with an area it must firstly be considered what the original purpose of the land in the area was. It is clear in this case, agricultural land. The planting of vines for wine making only started in the valley in the 1970's, as the one objector indicated. At that stage the new wineries and later the tourist facilities were also established in the H & A Valley, this all being new to the landscape in the Hemel & Aarde Valley, also with its own impacts.

The applicant is correct in that polytunnels is a modern farming method that helps increase yield and thereby farming can be done on smaller portions of land. It is also a fact that large scale polytunnel farming cannot be accommodated in any other areas, other than agricultural areas.

The concern of the direct impact of the horticulture tunnels on directly surrounding property owners are noted, but is the impact any more than a visual impact? A farmer can farm his property right up to the farm fence, meaning livestock can move their, berry fields can be planted, and farming vehicles and equipment can traverse this area. Would this not already impact the perceived rights of surrounding property owners and their reasonable enjoyment of their properties? Once again, it is difficult to grasp how the tunnels would impact the surrounding area other than with its visual presence. The berry fields are already being farmed, and any increase in the yield would not create a much bigger impact on surrounding property owners.

The scale of the tunnels over building lines will be discussed in detail under the evaluation part of this application.

OBJECTION 23 – CRITIQUE OF AND OBJECTIONS TO WRAP’S ASSERTIONS REGARDING POSITIVE SOCIO-ECONOMIC IMPACT

(PARAGRAPHS 90-91 IN OBJECTION LETTER)

- ***This was only motivated from the applicant’s perspective.***
- ***The argument that there will be a positive economic impact must be proofed with provision of specific and detailed information in support of the assertion.***

APPLICANT’S RESPONSE

“While it's understandable that the objector seeks detailed information regarding the asserted positive socio-economic impacts of the proposed land use, it's important to recognise that predicting exact figures at this stage may be speculative. WRAP's motivation highlights the potential for increased employment opportunities and poverty reduction as a result of the proposed development. In fact, specific figures regarding employment opportunities were provided in Section 11, page 22 of the motivation. It states that 100 additional seasonal jobs will be added for 3 – 6 months, along with 6 permanent jobs, which numbers may have been missed by the objector.

While specific numbers and wage details are indeed valuable, they may not be readily available until the project progresses further. It's worth noting that the socio-economic benefits of agricultural development often extend beyond direct employment figures. Projects like this can stimulate local economies, create upstream and downstream job opportunities in related industries, and enhance community infrastructure and services. While these broader impacts may be challenging to quantify at this early stage, they should not be discounted.

As the project advances, more detailed assessments of its economic impacts can be conducted, incorporating input from relevant stakeholders and experts. In the meantime, it's essential to recognise the potential positive contributions that projects like this can make to local communities, even if precise figures are not yet available. Haygrove has many decades worth of proven experience from which to draw to justify the investment.

In terms of the seasonal workers, Haygrove does attempt to alleviate some of the seasonality of the agricultural activities on the farm by sending upwards of 250 seasonal staff (combined, from all Haygrove South Africa farms), which would otherwise be unemployed in South Africa, to the UK on an annual basis to have longer periods of employment, earn foreign currency and prosper. Haygrove is also audited by SIZA for all aspects of employment compliance and labour practices and currently holds gold status with SIZA.

On another note, Haygrove operates and funds an accredited and certified on-site clinic on each of its larger farms, staffed by a full-time clinical nurse. The clinic oversees all aspects of primary healthcare on the farm, including family planning, dispensing chronic medication, first aid, and many other healthcare services. This initiative significantly alleviates pressure on governmental clinics in the Overstrand region and ensures that staff can access their medication and advice in a safe and professional environment while maintaining productivity throughout the day without loss of income to the employee.”

TOWN PLANNER’S RESPONSE

The comments are noted.

The applicant did indicate that 100 new seasonal jobs will be created and 6 additional permanent jobs. It can therefore not be debated that the development will have some form of positive economic impact.

The applicant also did provide some examples of the positive social impact Haygrove has, especially with regards to their staff.

Considering the above, it cannot be debated that the development will not have a positive socio-economic impact.

OBJECTION 24 – CRITIQUE OF AND OBJECTIONS TO WRAP’S SUBMISSIONS REGARDING NO OR LIMITED IMPACT ON NEIGHBOURS AND THE SURROUNDING COMMUNITY

(PARAGRAPHS 92-95 IN OBJECTION LETTER)

- ***No information was provided to the municipality about the likely significant increase in noise emissions, including machinery-generated noise and transport generated noise.***
- ***No information was provided on odours omitted from crop spraying, vehicle use and toilets for seasonal workers.***
- ***Seasonal workers trespass the properties and there have been the presence of snares catching domestic animals.***
- ***The visual impact of 22ha of plastic-covered tunnels is not described in sufficient particularity to place the Municipality in a position to make a properly informed and objective decision.***
- ***It is incorrect to make the assumption that the tunnels are considered in harmony with the character of the valley and will not detract from the overall visitor experience (tourists).***
- ***It is unreasonable to expect directly adjacent neighbours to suffer the imposition and intrusion of the horticulture tunnels over the 30m building lines.***

APPLICANT’S RESPONSE

"These objections raise concerns about the potential impacts of the proposal on the surrounding neighbouring properties. Several of which have been addressed in the motivation, but it appears that further detail is needed to fully understand and address these concerns.

Regarding noise emissions, it's crucial to reiterate the fact that only one, perhaps two additional busses are required to transport the additional workers an exact number is yet to be confirmed. It is a fact that less spraying activity is required when using intensive horticulture tunnels as discussed previously, which reduces the overall noise levels. Open fields are often blow-dried when fruit is rained on, and this is done mechanically with tractors and large fans connected to its PTO. This happens at any time, including over weekends. Where polytunnels are used, this requirement is eliminated, as well as the overall noise levels. This may not be appreciated by, although is of particular interest to, those close the boundaries of the surrounding properties.

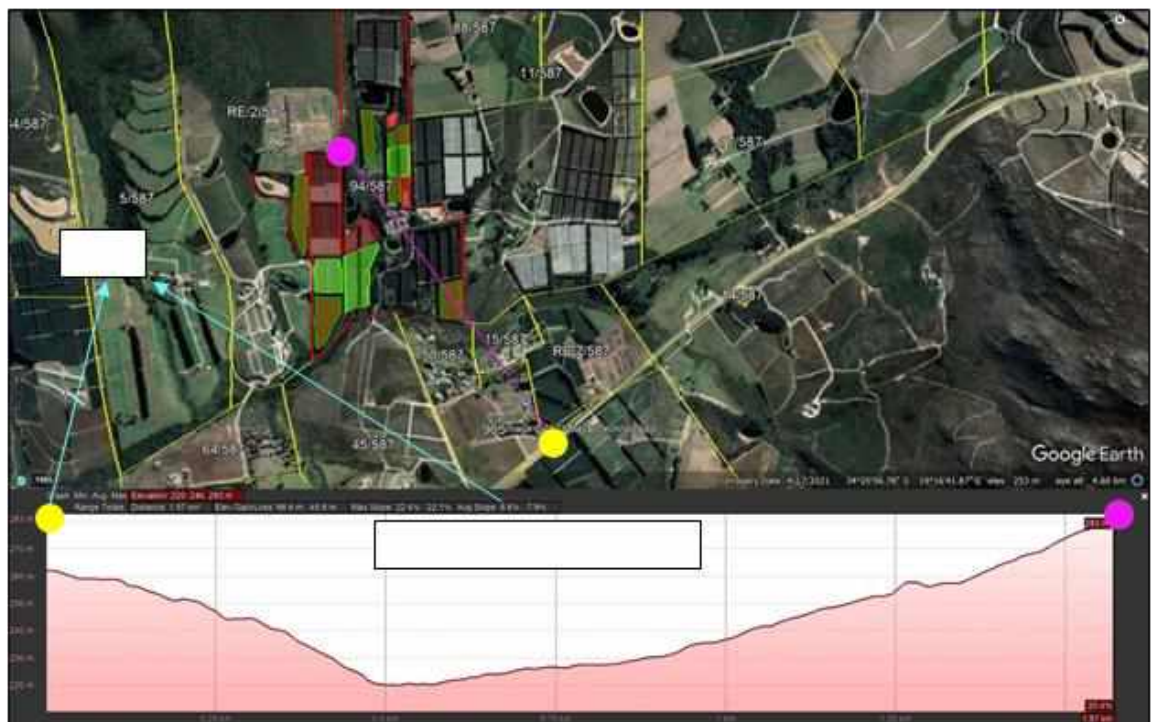
The fields already exist; therefore the absolute overall noise can and will only reduce if tunnels are erected. In addition, Haygrove implemented a one-way route through their two farms to mitigate any adverse impact traffic may have on the surrounding area. There is only a single access road into the property, with the access road leading through Portion 94 of the Farm Hemel-En-Aarde Valley 587 and across the neighbouring property, Portion 11 of the Farm Hemel-En-Aarde Valley 587, to allow egress via a proclaimed provincial road. This was implemented at a cost to Haygrove at the request of neighbours to accommodate their needs.



Figure 2: Access and Egress



Figure 3: Surrounding Area Terrain



Elevation Profile of Pink Line

Figure 4: Elevation Profile from the R320 to edge of the subject property (PINK LINE)

Portion 15 & 50 of Farm 587, Caledon, contains 8 of the 12 objectors represented by Nicholas Smith Attorneys. These objectors are located at the lowest point along the Onrustvrievr, meaning their impact is reduced. This reduction is due to several mitigation measures used by Haygrove, including screening trees, which significantly reduces the impact.

It's also essential to address concerns about trespassing and other negative behaviours associated with seasonal contract workers. As mentioned in the application, Haygrove employs Boland Toilet Services to attend to the sewage disposal on the property which will avert seasonal workers relieving themselves in surrounding properties.

The concern regarding allegations of trespassing can be resolved through discussions between the objectors and Haygrove. These trespassers will be dealt with appropriately, but if Haygrove is not made aware of the situation, they cannot address it accordingly. Nicholas Smith Attorneys continually asserts that WRAP's statements are mere bald statements. The same can be said in this instance, as no proof of any kind is provided, and neither context nor timeframes are provided. It should also be noted that the same objection was made some 4 years ago, and no new complaints are being presented, indicating that the problems have been addressed and is no longer occurring."

TOWN PLANNER'S RESPONSE

The objections and applicants' response are noted.

As indicated by the applicant, not a lot of additional traffic will be generated, and the one-way route helps mitigate any additional traffic and noise from vehicles.

The tunnels will also ensure less spraying of crops and requiring less machinery (tractors with fans) to blow dry open berry fields impacted by rainstorms. This will lead to a reduction in noise and odours.

A company has also been contracted to place mobile toilettes on-site to cater for staff. The company also maintain these toilettes, which should limit odours.

The matters regarding trespassing were addressed by the applicant.

The visual impact was already discussed under objection 11. In the visual impact it is indicated that the visual impact from surrounding properties is considered moderate to low prior to applying mitigating factors. This is due to the structures being low in height, and the windbreaks limiting the visual impact.

The applicant did not comment on the impact of the horticulture tunnels over the 30m building lines. This will be discussed in more detail under the evaluation heading.

OBJECTION 25 – CRITIQUE OF AND OBJECTIONS TO WRAP'S SUBMISSIONS REGARDING IMPACT ON VIEWS, SUNLIGHT AND CHARACTER OF THE AREA (PARAGRAPHS 96-98 IN OBJECTION LETTER)

- ***Wrap's assertion that the tunnels will not have a significant visual impact is fallacious. The height of the tunnels is also not clearly indicated; therefore, it is assumed it will be to the maximum height.***
- ***It is a wholesale fallacy that the visual diversity the tunnels create is a drawback for tourists. It is not an objectively motivated criterion.***

- ***A proper visual impact assessment must be done by an appropriately qualified visual impact specialist before any decision is made on the application. The visual impact statement submitted is incomplete, selective on true facts, misleading and insufficient. The new visual impact assessment should be circulated to all parties with an interest and objectors.***

APPLICANT'S RESPONSE

"The objector has clearly not evaluated the application properly. Refer to figure 3 that provide clear dimensions of the tunnels:

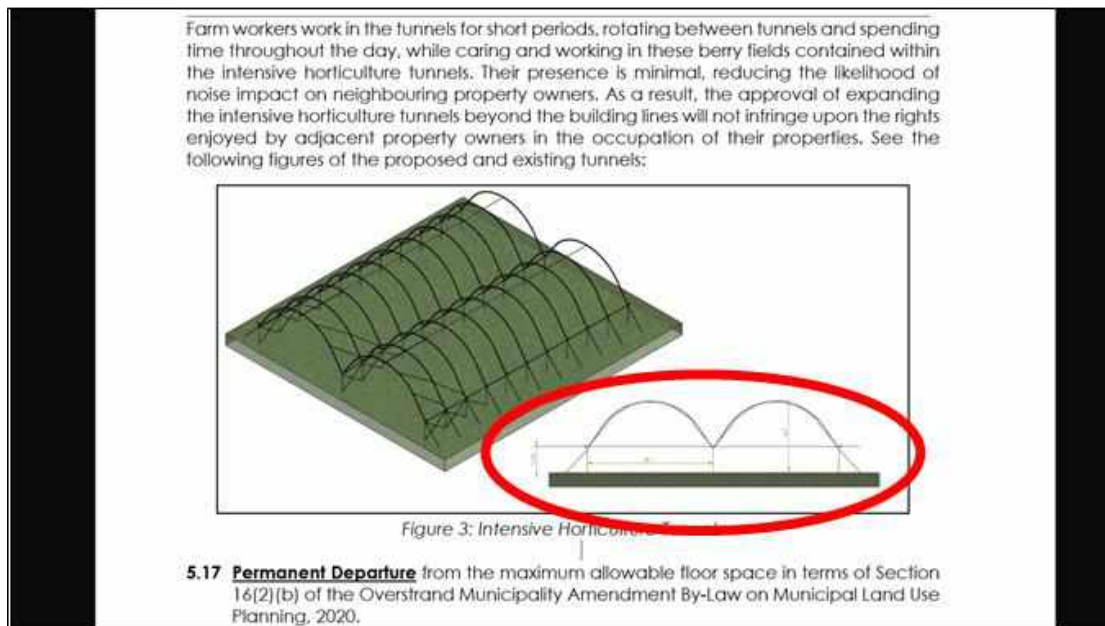


Figure 5: Extract of page 10 from the motivation.

The objector makes false statements that the maximum height will be exceeded, which is not the case. It is clear that the maximum height of these tunnels will be lower than the allowable height of an agricultural building on an agriculturally zoned property. The proposal is to allow the tunnels to be either 4m or 4.7m, which aligns with the approved building plans. It is, however, important to note that tunnel height can vary as a result of the natural slope and elevation of the property.

While concerns about visual impact are valid, it's also plausible that the tunnels could contribute positively to the landscape, such as by providing unique features or enhancing agricultural diversity. It was never stated that the tunnels will actively attract tourists, it was only stated that the tunnels, will increase colour diversity that will not harm the existing tourism aspects of the Hemel-en-Aarde Valley.

Finally, the objector suggests that a detailed visual impact assessment, conducted by a qualified specialist should precede the land use application process. It is unclear why the objector would make this statement, as a visual impact assessment was indeed conducted by a qualified specialist. The assessment was attached to the application and made available for public comment at the municipal offices. The objector claims it is incomplete, selective in presenting the true facts, misleading, and insufficient. However, the objector fails to provide any specific examples to support these assertions. This lack of evidence suggests that the objection is based on false and frivolous claims. It is also not clear if the objector is qualified in this field?"

TOWN PLANNER'S RESPONSE

The polytunnel heights was indicated in the motivation, and its impact was dealt with in the VIA.

The applicant's opinion is supported regarding the status of the VIA. The document was prepared by an independent professional, and the objectors' negative comments regarding the VIA is not supported with any substantial proof that the findings are wrong.

The applicant indicated that "it was never stated that the tunnels will actively attract tourists, it was only stated that the tunnels will increase colour diversity that will not harm the existing tourism aspects". Any comments regarding the visual impact on tourism will always be speculative, until proven with a specific documented survey.

OBJECTION 26 – ANOTHER PRINCIPAL REASON FOR THE LAND USE APPLICATION'S WHOLESAL LACK OF DESIRABILITY: IT IS PER SE UNDESIRABLE UNTIL AND UNLESS PREVIOUS LAND USE CONTRAVENTIONS HAVE FIRST BEEN SATISFACTORILY RECTIFIED BY HAYGROVE.

(PARAGRAPHS 99-101 IN OBJECTION LETTER)

- ***The desirability for new land use rights cannot be considered by the Municipality, until the existing illegal land uses have been dealt with in the form of a separate application for administrative penalty.***
- ***It is undesirable for Haygrove and WRAP to expect the Municipality to deal with Haygrove's wilful and largely unexplained contraventions.***

APPLICANT'S RESPONSE

"It's essential to clarify that Haygrove has actively engaged in rectifying any non-compliance issues. The application for future land use rights, including the proposed permanent departures and amendments to existing approvals, is part of this effort. It's important to note that while there have been past breaches, Haygrove is committed to addressing these issues proactively. Also, the clear desirability of the proposal was indicated throughout the motivation.

The objection suggests that the administrative penalty must be resolved before considering further land use applications. Haygrove's intention is however to address both the administrative penalty and the application for future land use rights concurrently demonstrates a commitment to compliance and responsible land management. Moreover, any penalties incurred would not impede Haygrove's ability to contribute positively to the community through its proposed agricultural activities. Haygrove is also committed to pay the penalty for the contravention.

Furthermore, the objector emphasises the importance of adhering to planning legislation and existing approvals. While acknowledging past breaches, it's crucial to recognise Haygrove's efforts to rectify these issues and ensure compliance moving forward. By engaging in constructive dialogue with the Municipality and relevant stakeholders, Haygrove aims to address concerns, rectify past non-compliance, and contribute positively to the community while pursuing its proposed agricultural activities.”

TOWN PLANNER'S RESPONSE

The objector's opinion that the administrative penalty should not be considered with the application for additional land use rights was already discussed under objection 13.

OBJECTION 27 – REQUEST FOR A SITE VISIT BY MUNICIPALITY (IN TERMS OF SECTION 60 OF THE PLANNING BY-LAW) BEFORE DECIDING THE APPLICATION FOR THE DETERMINATION OF AN ADMINISTRATIVE PENALTY ON ITS MERITS (PARAGRAPHS 102-105 IN OBJECTION LETTER)

- ***It is requested that the Municipal officials and the chairperson and members of the Municipal Planning Tribunal should undertake a site visit to appraise themselves with the current intensive agriculture operations, and the nature and extent of the unlawful activities, also the significant impact on neighbours and other proximate landowners in the Hemel & Aarde Valley.***
- ***The applicant already has enough horticulture tunnels, and most of them were constructed in contravention of the Planning By-Law.***
- ***The illegal land use should be dealt with prior to applying for any new land use rights.***
- ***At such site visit the Municipality must also satisfy itself that the conditions in the 2016 approval, conditions 3(b) regarding the submission of building plans, and condition 3(i) requiring non-reflective netting over the tunnels, has been complied with.***
- ***The Haygrove personnel can reasonably be expected to produce the relevant documentary information pertaining to water rights, including storage and abstraction rights.***

APPLICANT'S RESPONSE

"To address the concerns raised regarding the need for a site visit, Haygrove welcomes the opportunity for the Municipality's officials and members of the Municipal Planning Tribunal to visit the subject-property and its surroundings. Such a visit would provide a comprehensive understanding of the existing agricultural operations, a comprehensive business overview, the nature of the proposal, and any supposed impacts on neighbouring properties. Haygrove is committed to transparency and ensuring that decision-makers have all relevant information to make informed judgments for the benefit of the greater Overstrand community.

Regarding the assertion that Haygrove already has enough horticulture tunnels on the subject-property, it's important to clarify that Haygrove acknowledges past non-compliance and is actively working to rectify any unlawful activities. The proposed development is part of this effort to bring existing operations into compliance and enhance land use rights responsibly.

During the site visit, the municipal decision-makers can verify Haygrove's compliance with the conditions of previous approvals, including the submission of detailed building plans and adherence to material specifications for the tunnels. Haygrove is committed to fulfilling all regulatory requirements and will provide the necessary documentation to support its compliance efforts.

Additionally, concerns about water use rights and the impact on water resources will be addressed transparently during the site visit. Haygrove will provide relevant information on water usage, storage, and abstraction rights to ensure that decision-makers have a complete understanding of the proposed development's implications.

Overall, Haygrove values constructive dialogue and welcomes the opportunity for thorough site inspections to address any concerns and ensure that the proposed development aligns with regulatory requirements and community interests."

TOWN PLANNER'S RESPONSE

The Town Planner did visit the site and will recommend to the MPT members to visit the site prior to making a decision.

It was previously indicated in this report that building plans was approved for the horticulture tunnels approved in 2016. The applicant also did indicate some horticulture tunnels are not covered at times for maintenance reasons.

The Town Planner did visit the site and during his site visit the tunnels as approved in 2016 was covered with non-reflective netting.

It was also previously indicated in this report that BOCMA is the authorized authority on water use and management.

OBJECTION 28 – REQUEST FOR A HEARING BEFORE A DECISION IS MADE ON THE MERITS OF THE APPLICATION

(PARAGRAPHS 106-107 IN OBJECTION LETTER)

- ***The objectors or their nominated professional representatives are entitled to attend on that meeting and to deliver whatsoever oral representations may be necessary and relevant in the circumstances.***
- ***The municipality must grant an audience to the objectors and the applicant when it comes to their decision of first instance in order to ensure that the party's rights to administrative action that is lawful, reasonable and procedurally fair is fully given effect to.***

APPLICANT'S RESPONSE

"This is a comment that needs to be addressed by the Municipality and decision-making authority."

TOWN PLANNER'S RESPONSE

The request for a hearing is noted. The Municipal Planning Tribunal (MPT) provide objectors and applicants the opportunity to attend (or virtually) the MPT meetings. The rules do not make provision for oral representation; the objector and applicant were however informed to consult directly with the chairperson of the MPT on such matter.

OBJECTION 29 – CONCLUDING SUBMISSIONS, RELIEF SOUGHT BY THE OBJECTORS (PARAGRAPHS 108-109 IN OBJECTION LETTER)

- ***The application is fundamentally undesirable in terms of requirements of section 66 of the Planning By-Law.***
- ***The administrative penalty application and application for additional land use rights is substantially deficient and cannot be approved.***
- ***Application for additional land use rights can only be considered once a suitably supplemented administrative penalty application has been finalized.***

APPLICANT'S RESPONSE

"The objections were noted. The conclusion is however respectfully disagreed with that the application is fundamentally undesirable and does not meet the applicable jurisdictional requirements. It is believed that the application complies with the relevant provisions outlined in section 66 of the Planning By-law and the general criteria for the Municipality's consideration of applications.

Regarding the objector's assertion that Haygrove's application to determine an administrative penalty is substantively deficient, we are of opinion that the application is based on accurate and comprehensive information. These applications have been submitted in accordance with the appropriate procedures and guidelines. It is recommended that each application be assessed on its own merits."

TOWN PLANNER'S RESPONSE

The objector and applicants' comments are noted. The objectors' comments were addressed, and it is now for the deciding authority to decide if the application is in line with Section 66 of the Planning By-law.

8. SUMMARY OF APPLICANT'S REPLY TO COMMENTS

See Paragraph 7 above.

9. MUNICIPAL ASSESSMENT OF COMMENTS

All Municipal Branches and other institutions support the application.

10. MUNICIPAL PLANNING EVALUATION (REFER TO RELEVANT CONSIDERATIONS GUIDELINE)**10.1 Background**

N/A

10.2 (In)consistency with the Spatial Planning and Land Use Management Act, 2013 (Act 16 of 2013)

The application is in line with the planning objectives applicable to this application.

The objectives relating to:

Spatial Justice

The development does provide work for seasonal and permanent workers, and therefore definitely provide opportunity to the different working classes in the area.

Spatial sustainability

The land is already utilized for agriculture, and this will only ensure farmland is farmed more productively. The horticulture tunnels are also not proposed on environmentally sensitive land.

Efficiency

Putting up horticulture tunnels will produce more yield and is therefore a more efficient way to farm.

Spatial Resilience

The larger the productions, the more variety berries, the more markets can be targeted to ensure that during economic downturn a wider clientele base have been created.

Good administration

Good procedure was followed and with a good public participation process.

10.3 (In)consistency with the principles referred to in Chapter VI of the Land Use Planning Act, 2014 (Act 3 of 2014)

Same as Point 10.2 above.

10.4 (In)consistency with the IDP/Various levels of SDF's/Applicable policies

The SDF, 2020 indicates the area for agricultural purposes. The property falls within an agricultural resource area and is also situated close to a scenic corridor. In the SDF it is further recommended development be informed by EA&DP's development guidelines.

The proposed expansion of the horticulture tunnels is considered in line with the policy. The property is situated close to a scenic corridor, but horticulture tunnels are part of the agricultural fabric, and the EA&DP: planning branch had no objection to the application. It is interpreted that the application is in line with the aims of the policy.

10.5 (In)consistency with guidelines prepared by the Provincial Minister

It is the opinion that the proposal is in line with the Provincial Rural Guidelines, as the application was circulated to DEA&DP: Planning branch, who is the relevant department dealing with the Guidelines. They indicated they have no objection against the application.

10.6 Impact on Municipal engineering services

No impact.

10.7 Outcomes of investigations/applications i.t.o other legislation

N/A

10.8 Existing and proposed zoning comparisons and considerations

The property is zoned Agriculture Zone I. A small portion was rezoned to Agriculture Zone 2 purposes in 2012 to be utilized for the farm pack stores. With the approval of the new Overstrand Municipality zoning scheme and regulations in 2013, the Agriculture Zone 2 zone was removed from the regulations and agricultural Industry allowed in terms of a Consent Use under the Agriculture Zone I zone.

There are other farms in the Hemel & Aarde Valley where additional uses such as tourist facilities, wineries (agricultural Industry), etc. were approved, also horticulture tunnels.

11. ADDITIONAL PLANNING EVALUATION FOR REMOVAL OF RESTRICTIONS

N/A

12. THE DESIRABILITY OF THE PROPOSAL

Portion 94 of farm Hemel-en-Aarde 587 is zoned Agriculture Zone I. Haygrove Heaven (Pty) Ltd owns the farm on Portion 94 of Farm 587 and established a berry farm with farm pack stores on the property.

Portion 94 of Farm 587, measures 71,5045ha. The farm is mostly utilized for berry farming, but there is also a pack shed, offices and other agricultural buildings on the property. At this stage there are 5,8727ha of berry fields legally covered by horticulture tunnels, 8,337ha berry fields illegally covered by berry fields and being applied for, and application is also made for an additional 7,746ha of horticulture tunnels. This will provide for a total sum of 21,9557ha horticulture tunnels on the farm with approximately 33ha of berry fields. There is still also some vegetation areas open on the land.

The approved horticulture tunnels are situated on the southern and south-western part of the property.

The application includes the relaxation of the 30m building lines, to relax the maximum 5000m² footprint for buildings allowed on a farm, the amendment of the Site Development Plan and some conditions of approval limiting the horticulture tunnel footprint area and the footprint of the agricultural industry (pack shed).

Application is also made for Determination of an Administration Penalty to legalize some horticulture tunnels illegally constructed and a covered pergola and some tunnels that were constructed over building lines.

The application has been circulated to all relevant municipal and state departments and institutions, and no objections were received from such departments/institutions.

In the public participation process (5) letters of objection were received. One (1) objection letter was withdrawn. One letter was from a representative of owners of De Werf, Coch-y-Bundu and surrounding farms and another from the Hemel-en-Aarde Winegrowers Association (HAWA).

The objections were very substantial, and the applicant was also provided with an opportunity to respond to the objections. The objections were also discussed in detail by the municipal planner in this report.

Discussion of objections

Although the points of objection were already discussed in this report, to apply our minds, the most significant objections will again be discussed, to enable the determination of desirability of the application.

One of the major concerns of the objectors is the impact of the development on the area and the compatibility with the surrounding area.

It is to be noted that this farm and Portion 11 of Farm 587 is already farmed with berry fields, and that it is the property owners' right to utilize this agricultural land for farming. The property owner has the right to develop intensive horticulture. Due to a restrictive condition in the previous approval and floor space restriction in the land use scheme, the applicant does have to apply to construct additional horticulture tunnels. These restrictions were never imposed to stop polytunnel farming, but to consider its impact and control the impact with mitigation measures.

Farming activities will not increase drastically and should the horticulture tunnels increase yield and require additional staff at times so would the maintenance of the berry fields (including spraying), as less pesticides will be required and less removal of rotten fruits and plants due to heavy rains.

The concerns of the impact on the character of the area and compatibility with surrounding properties are noted, and the concerns about impact on the tourism industry in the area. As discussed previously in this report, the impact will not be more than farming with open berry fields. Most of the concerns relate more to the visual impact the horticulture tunnels have, and additional horticulture tunnels will have on the surrounding properties and the Hemel & Aarde Valley.

It is also to be noted that it is not a unique situation that complaints are received in agricultural areas about farming methods and practises. More and more people are creating tourist facilities or additional dwelling units in farm areas, and their expectations of what can happen in such areas differ from farmers that must work the land. An example in this area is the De Werf and Coch-Y-Bundu resort developments that were approved on former agricultural land, just to the south of Portion 94 of Farm 587.

It must however be noted, the area is firstly an agricultural area, and therefore berry farming is in line with the uses allowed in agricultural areas. The existing and new horticulture tunnels will be covered with netting to reduce any glare. The fact is the property owner, and objectors will both have their opinion about what is "objectively viewed" in terms of this application. As indicated in this report, Western Cape Government: Environmental Affairs and Development Planning, Cape Nature and the Municipal Environmental Management Division support this application, and not one of these departments had any concerns about the visual impact.

The municipality did however request that Haygrove submit a Visual Impact Assessment (VIA), to address this major concern. The VIA was prepared by an independent professional specialist, and the finding was that "the significance rating is assessed as a **moderate-low significance**." In terms of the measuring criteria of significance low means "where it will not have an influence on the decision" and medium means "where it should have an influence on the decision, unless it is mitigated". This means the visual impact can be mitigated with minimal mitigation measures.

Objectors also criticised the VIA and indicated surrounding property owners or stakeholders in the Hemel & Aarde Valley were not consulted in the process of preparing the VIA. No public participation process is required in the preparation of a VIA, and it is a report by a professional specialist.

The objections are noted, but the VIA was prepared by an independent professional in the field, and therefore the findings in the assessment is considered as the best opinion the Municipality can use to evaluate the visual impact of the development. Considering the findings of the VIA, the impact is limited, but mitigation measures such as additional tree planting between the tunnels, muted matt finished materials with dark colours must be used on the infrastructure, and no lights should be installed with the proposed infrastructure.

The visual impact of the development is therefore acceptable, subject to the mitigation measures being complied with.

The concerns about impact on water resources and water management was discussed in this report. As indicated, BOCMA did request additional information from the applicant, which was provided to BOCMA. BOCMA, who is the water authority in the region, indicated that they have no objection against the application, and also the municipal engineering division, and therefore water resources and management are considered acceptable.

The concerns regarding traffic impact are noted. The application will not lead to a drastic increase in traffic. Existing roads will be used. The Municipal Engineering Division and Western Cape: Department of Infrastructure: Road Planning, indicated that they have no objection against the application.

The objections regarding socio-economic impact, or rather the lack of any positive socio-economic impact is noted. It can however not be debated that certain facilities (clinic) are provided on-site for staff, which helps improving their social needs. It is also not debatable that additional jobs will be created, with some positive economic impact.

The objections regarding the possible impact on the wine farms and tourism are noted. There is however no formal survey provided to proof the statements, and it is therefore only speculation.

Objections were received about the possible environmental impact and impact on biodiversity.

The application was circulated to the Municipal Environmental Division and Department of Environmental Affairs and Development Planning Western Cape (DEADP). DEADP is the authority on determining if developments trigger applications for Environmental Impact Assessments (EIA). DEADP indicated that no EIA is triggered by the application.

No additional land will be cleared, and only existing berry fields will be covered with horticulture tunnels. Cape Nature evaluates the impact of applications in terms of biodiversity. Cape Nature indicated they have no objections against the application.

Objections were received regarding compliance with some conditions in planning approval in 2012 and 2016. The conditions have been addressed in this report.

The concern about compliance with the 2016 conditions that the horticulture tunnels must be covered with netting can again be highlighted. The reason why the netting over the horticulture tunnels and even the horticulture tunnels are removed at times, is for maintenance purposes. This is part of normal farming with horticulture infrastructure.

The one objector also is of the opinion that the application is defective. The one reason being, that the company resolution and power of attorney that were submitted did not include the administrative penalty application. The second reason that the administrative penalty application had to be considered and finalized before an application for additional land uses can be considered.

As indicated by the applicant, an error was made in the company resolution and power of attorney, but it was rectified, and the amended documents were since provided to the municipality.

A detailed response was provided under Objection point 13 in response to the objector's opinion that the administrative penalty application had to be considered and finalized before an application for additional land uses can be considered.

In the matter at hand OM's by-law *per* section 16 and specifically section 16(q) read with section 90 make provision for bringing an application for additional rights and an application for an administrative penalty [section 16(q)] in one land use application and will the application be perfectly valid and legal and will remain so until having been declared invalid by the High Court or the Supreme Court of Appeal or the Constitutional Court or having been amended by the OM and approved by its Council. The fact that the OM's by-law might be in conflict with City of Cape Town (COCT's) by-law is therefore irrelevant as the OM is not subservient to and/or bound by the COCT municipality, its processes, and by-laws.

The objectors contend that it will be premature to apply for future uses if the illegality is not first dealt with and finalised, in other words, they contend that the application for an administrative penalty must be a "stand-alone" application and must be dealt with first and completed. They seem to contend that the Applicant regards the determination of an administrative penalty by the OM as a "*fait accompli*" in the sense that consideration of the application for additional rights will follow automatically irrespective of whether a penalty is or has been imposed or not and if imposed, has been paid or not. They even contend that the OM will make itself guilty of an irregularity. This contention is incorrect because in terms of the OM's by-law, an Applicant for additional rights will only be able to exercise his/her additional rights applied for and granted when the administrative penalty has been paid within 30 days of the effective date of the decision or within such further period as may be decided by the Authorised Official, the MPT or the Appeal Authority, in other words, the final approval letter to act on the rights granted will not be furnished to the Applicant until the penalty has been paid. Please refer to section 90(7) of the OM By-Law.

The one objector requests that the MPT members visit the site prior to making the decision on the application and requested the opportunity to attend the MPT meeting and provide additional oral representation at such meeting.

As indicated in the report, the Town Planner recommends that the MPT committee visit the site before making a decision.

The Municipal Planning Tribunal (MPT) provide objectors and applicants the opportunity to attend (or virtually) the MPT meetings. The rules do not make provision for oral representation; the objector and applicant were however informed to consult directly with the chairperson of the MPT on such matter.

The one objection is that the application for administrative penalty does not comply with the requirements of Section 90 of the By-Law, and that the information is insufficient to consider the application.

ADMINISTRATIVE PENALTY

The application for administrative penalty will now be considered in terms of the stipulated criteria, to determine if sufficient information was submitted.

a) *Nature, duration, gravity, and extent of the contravention*

8,337ha of horticulture tunnels were constructed illegally and in conflict with a condition of approval and above the maximum floor space of 5000m² allowed for all buildings on farms. Various portions of horticulture tunnels were constructed over the 30m building lines 9m from the western boundary, 9m from the northern boundary, 5m from the southern boundary and 3m from the eastern boundary, with a total area of encroachment of 9000m².

The applicant indicated the construction of the horticulture tunnels took place between 2016 and the date of submission of this application.

A covered pergola of 50m² in extend was constructed over the 30m eastern building line up to 6,44m from the property boundary with Hargrove's second farm.

(b) *The conduct of the person (allegedly) involved in the contravention*

Haygrove constructed the structures.

c) *Report by a quantity surveyor in matters of unauthorised building/construction*

No report was provided from a quantity surveyor.

A quotation was provided from Haygrove's sister company who supply the tunnels. The average cost of the tunnels is R490 663-00 per hectare.

No quotation was provided for the covered pergola.

d) *Whether the unlawful conduct was stopped*

The tunnels have been erected and are in use.

e) *Whether the person allegedly involved in the contravention has previously contravened this By-Law or a previous planning law*

The applicant indicated to their knowledge; the property owners have not previously contravened the By-Law on the subject property.

It can be confirmed that one conditions in the 2016 land use approval on the property, requiring that building plans be submitted to the Building Branch was not originally complied with prior to construction, but building plans were since submitted and approved.

A point of criticism raised by the objectors concerns the non-appointment by the Applicant of a Quantity Surveyor (QS) to determine the cost of the unauthorised structures and to file a report as required by section 90(3)(c) of the by-law, and the Applicant acknowledges this, but motivates its decision by stating that it obtained a quote from Haygrove's sister company, apparently a major supplier of horticultural tunnels, which provides an accurate and comprehensively detailed breakdown of the actual construction costs of said tunnels.

In terms of the approved municipal budget the penalty that may be charged for "habitable buildings" is R20 253-00/m² and for "non-habitable buildings" the average of 2 (two) quotations. The tunnels in question are "non-habitable" and are considered "minor structures". In this regard it is the OM's contention that the most accurate way of determining a suitable penalty will be the obtaining of the actual construction costs from a company that installs such structures instead of averaging at least 2 (two) quotes which might amount to less than the actual costs.

That said, the suggested administrative penalty for a "minor construction" will still be substantial.

Be that as it may section 90.(6) of the by-law determines that the MPT may request additional information should it be of the opinion that the information furnished is insufficient for it to determine an appropriate administrative penalty. The Applicant seems to acknowledge this where it states that:

"...the application aims to rectify this (the duration of the unlawful conduct) by addressing the administrative penalty and committing to compliance with regulatory requirements going forward"

No quotation of has been provided for the building cost of the covered pergola. The Municipal tariff in terms of the budget of R20 253-00 (building cost/m²) will therefore have to be applied to the covered pergola.

The Municipal Planning Tribunal has the authority in terms of Section 90(6) of the planning by-law to request that a Quantity Surveyor report be submitted to comply with the requirements of Section 90(3)(c) in the By-Law.

It is also clear from the above-mentioned information that the existing property owners are responsible for the illegal construction work, and it is recommended that a penalty fee be imposed.

The illegal horticulture tunnels were constructed from approximately 2016, but the property owners already applied to legalize some horticulture tunnels in 2019, but the planning application was unsuccessful.

This is illegal structures and not an illegal land use, as the property already has intensive horticulture land use rights. The duration of the activity is therefore not relevant in the determination of the administrative penalty.

The intensive horticulture tunnels of 8,337ha was erected and partially erected over building lines. It is recommended that 5% administrative penalty fee be imposed.

THE ADMINISTRATIVE PENALTY CALCULATION IS THUS AS FOLLOWS:

- R490 663 (cost per ha polytunnels) x 8,337ha equals R 4 090 661
- R 4 090 661 divided by 100 multiplied by 5 equals R 204 533 (5%)
- R20 253 (cost/m² municipal building cost for covered pergola) multiplied by 50m² equals R1 012 650.
- R1 012 650 divided by 100 multiplied with 5 equals R50 633-00.

Total Administrative Penalty fee to be imposed is **R255 216-00**.

DEPARTURE OF BUILDING LINES

Application is made for relaxation of various building lines. Some building lines relates to existing illegal horticulture tunnels, some to proposed new horticulture tunnels, one to the illegal covered pergola that has been constructed and one for the proposed extension to the farm pack store.

The covered pergola is situated 6,44m from the eastern boundary. The property to the east Portion 11 of Farm 587 is the second berry farm of Haygrove. The structure has no negative impact on the adjacent property.

The proposal also includes the proposed extension of the farm pack store over the 30m eastern building line up to 12m. This would be in line with the existing farm pack building and would be an extension of approximately 10m long. The property to the east Portion 11 of Farm 587 is the second berry farm of Haygrove. The structure will have no negative impact on the adjacent property and is situated too far away from any other properties to have a further impact.

Application is also made to legalize the existing horticulture tunnels that were constructed over building lines.

THE ENCROACHMENTS ARE AS FOLLOWS:

Northern building line from 30m to 9m

The area adjacent to this area is a neighbour's farm and paddock. There are no buildings in this area that is impacted. The tunnels are also blocked off with wind break trees. This encroachment would have a low impact on the adjacent property owner.

Western 30m building line to 9m

The area adjacent to this area is a neighbour's farm and paddock. There are no buildings in this area that is impacted. The tunnels are also blocked off with wind break trees. This encroachment would have a low impact on the adjacent property owner.

Southern 30m building line to 5m

The adjacent property is a neighbour's farm and what appears to be an area where the farm owner store building materials. The tunnels are also blocked off with wind break trees. This encroachment has a low impact on the adjacent property.

Eastern 30m building line to 3m

This area is adjacent to Haygrove's second berry farm. It has no impact on the adjacent property.

Considering the encroachments of the existing illegal horticulture tunnels, these encroachments can be supported.

The applicant then also proposes additional horticulture tunnels, and the proposal is that it be constructed over various building lines. Four (4) berry fields will be covered, each with various encroachments.

The four (4) berry fields will be discussed separately for ease of reference, as follows:

Berry field on the north-western side of the property.

It is proposed that the northern 30m building line be relaxed to 11m, the western building line to 15,5m and 12m and the southern building line to 5m. The adjacent property is used as paddocks and an area where the owner store building materials. There is wind break trees on the whole common boundary of this berry field, and therefore any impact on the adjacent property will be minimal.

Berry field in the southwestern corner of the property.

It is proposed that the 30m western building line be relaxed to 10m and the south-eastern building line to 19m. On the western side the adjacent farm has existing paddocks, and there is a river on the south-eastern side. Wind Break trees align the full extent of these boundaries. The proposed encroachment would have a low impact on surrounding properties.

Berry fields in the south-eastern corner of the property.

It is proposed that the 30m southern building line be relaxed up to 7.3m and 8m and the eastern building line up to 5,5m and 3,3m. The Coch-Y-Bundhu and the de Werf resort development are situated to the south and southwest of the area proposed to be covered, and Haygrove's second farm to its west. The proposed tunnels will be situated 100m from the river to the south, and more than 200m from any of the units in the two resort developments to the south. The area is also blocked from direct view by wind break trees. The direct impact of farming activity or visual impact should therefore be limited.

Berry field on the northern portion of the property.

It is proposed that the 30m building line be relaxed to 3m for new proposed horticulture tunnels. The encroachment will be next to the second farm of Haygrove and will not impact such farm. There are also existing wind break trees that would block the visual impact. This encroachment can be supported.

The objectors are of the opinion that the information provided to evaluate the building line departures is not sufficient. The motivation report includes a detailed plan showing all existing and new structures, and the proposed encroachments. Inset plans were even provided for the new proposed horticulture tunnel encroachments, which clearly show the proposed encroachments.

The objectors are of the opinion that the encroachments being applied for are excessive and will impact surrounding property owners. Considering the above the direct impact is mitigated with wind break trees and long distances between the horticulture tunnels and other surrounding farm buildings or units used for accommodation purposes.

The structures are also relatively low, and between 4m to 5m in height, which includes the non-reflective netting. The applicant indicated some tunnels may be slightly higher, but this would only be due to the lay of the land. It is still not foreseen that such tunnels would protrude above the tree line.

Considering the above, the departures for relaxation of building in desirable.

The building line relaxations were scrutinized in terms of the Haygrove Fire Management Plan. The plan requires set back lines around the full area of Portion 94 and Portions 11 of the Farm 587.

The following was established:

BOUNDARY LINES	REQUESTED	FIRE PLAN / FIRE BREAKS
North-western	9m	5m
Western	Minimum 5m	3m
Southern	Minimum 7,3m	3m and 1,5m

It must be noted that the above information was in report format and is indicated as interpreted from the Fire Management Plan.

DEPARTURE FROM THE FLOOR SPACE

Application is made to depart from the (5000m²) allowable floor space on farms, which was to limit formal buildings on farms. It is the interpretation it was never included into the Land Use Scheme to limit intensive horticulture tunnels, which are minor structures used for farming purposes.

However, to ensure that there are no interpretation problems, application was made to relax the floor space from the existing 6.1707ha to 22,2431ha. It is to be noted that the total footprint of all building without the horticulture tunnels will only be 2874m², which is still under the 5000m² floor space.

Considering the above evaluation, the application for additional rights is considered desirable, and therefore this part of the application can be supported.

AMENDMENT OF CONDITIONS OF APPROVAL

A condition of approval was inserted in the 13 July 2012 rezoning approval for Agricultural Industry, that only the farm pack shed of 809m² in extend be utilized for such purposes.

The application is to extend the farm pack shed to 1018m², and use the farm shed of 617m² for Agricultural Industry purposes. The farm pack shed is used to cooling, sorting and packing both Haygrove properties produce, and thus the reason that the expansion to the farm pack shed is required. The proposal is to then also open some space in the farm pack shed by storing the packing materials used in the farm pack shed in the farm shed. This means an increase of 826m² Agricultural Industry space, with a total of 1635m².

The application will only require the expansion of the footprint of the existing farm pack shed building with 209m². It would have no real impact on surrounding properties as it is visually blocked by trees and vegetation and situated a fair distance from farmsteads and accommodation units.

In the report the expected increase in labour and traffic was discussed in detail. The application was also circulated to BOCMA, who indicated that they had no objections against the additional rights. No further information was requested from BOCMA, and it is therefore the opinion that water resources are suffice for the expansion of the Agricultural Industrial footprint.

It not foreseen that this slight increase in footprint would negatively affect the surrounding area. This part of the application would rather allow for a more productive operation of mostly existing infrastructure.

A condition was also inserted in the 9 February 2016 approval for Consent Use to establish intensive horticulture, stipulating that horticulture tunnels be limited to a footprint of 5,8727ha. This was inserted to mitigate the visual impact of horticulture tunnels on the surrounding area. The proposal is to extend the horticulture tunnels to 21,9557ha. The possible visual impact of the horticulture tunnels was discussed in detail in this report, and a VIA was also prepared which indicate the impact would be moderate/low. The amendment of this condition is recommended for approval.

AMENDMENT OF SITE DEVELOPMENT PLAN

Application is for the Amendment of the approved Site Development Plan to accommodate the proposed expansion of the horticulture tunnels and some existing berry fields covered with horticulture tunnels on the property, and the proposed larger agricultural industry footprint.

This can be supported.

Considering the above, the application can be supported, subject to conditions mitigating the visual impact of the development.

13. RECOMMENDATION

1. that the application in terms of Section 16(2)(h) of the Overstrand Municipal Amendment By-Law on Municipal Land Use Planning, 2020 on Portion 94 of Farm 587 Hemel-en-Aarde Valley to amend condition 1.(c) of the approval in the letter dated 13 July 2012 to allow for the expansion of the agricultural industry, **be approved** in terms of the provisions of Section 61 of the By-Law and that the condition now reads as follows:

“1. (c) that the approval only has reference to the agricultural industry of 1635m²”.
2. that the application in terms of Section 16(2)(h) of the Overstrand Municipal Amendment By-Law on Municipal Land Use Planning, 2020 on Portion 94 of Farm 587 Hemel-en-Aarde Valley to amend conditions of approval in the letter dated 9 February 2016 to allow for the expansion of the horticulture tunnels from 5,8727ha to 21,9557ha, **be approved** in terms of the provisions of Section 61 of the By-Law and that the condition now reads as follows:

“3. (a) that the placement of the intensive horticulture tunnels be in line and limited to the tunnels indicated on the Site Development Plan, submitted with the application, and an application will have to be made for any possible future tunnels”.
3. that the application in terms of Section 16(2)(l) of the Overstrand Municipal Amendment By-Law on Municipal Land Use Planning, 2020 on Portion 94 of Farm 587 Hemel-en-Aarde Valley for the Amendment of the approved Site Development Plan to accommodate the proposed expansion of the horticulture tunnels and some existing berry fields covered with horticulture tunnels on the property, and a proposed larger agricultural industry footprint, **be approved**, in terms of the provisions of Section 61 of the By-Law.

4. that the applications in terms of Section 16(2)(b) in terms of the Overstrand Municipal Amendment By-Law on Municipal Land Use Planning, 2020 on Portion 94 of Farm 587 Hemel-en-Aarde Valley for the following departures:
- eastern building line from 30m to 12,04 to accommodate the proposed expansion of the existing pack shed, and to relax the same building line to 6,44m to accommodate the existing covered pergola.
 - northern building line from 30m to 9m, the western 30m building line to 9m, the southern building line to 5m and the eastern 30m building line to 3m to accommodate the existing intensive horticulture tunnels;
 - northern building line from 30m to 11m, 12m and 20m respectively, the western 30m building line to 10m, 12m, 13,5m, 14m, 14,5m and 15,5m respectively, the southern 30m building line to 7,3m, 8m, 23,7m and 23,8m respectively, the south-eastern 30m building line to 19m and 24,5m respectively and the eastern 30m building line to 3m, 3,3m and 5,5m respectively, to accommodate proposed new intensive horticulture tunnels, and
 - departure from the maximum 5000m² allowable floor space for all buildings on the land unit to allow floor space of 22,2431ha to accommodate additional intensive horticulture tunnels and the expansion of the agricultural industry;

be approved in terms of the provisions of Section 61 of the By-Law.

5. that the approvals in 1-4 above be subject to the following conditions in terms of Section 61 of the By-Law:
- (a) that all development be in line with the new Site Development Plan for the property (attached as Annexure B);
 - (b) that detailed building plans be submitted to the Building Control Division for approval for all existing structures to be legalized for approval;
 - (c) that this approval does not absolve the applicant/owner from compliance with any relevant legislation;
 - (d) that all the conditions in the Services Report (attached as Annexure L), be complied with; and
 - (e) that the mitigation measures as stipulated in the Visual Impact Assessment (attached as Annexure O), be complied with, and that the Visual Impact Practitioner provide confirmation in writing that latter has been implemented.

6. that the following comments be noted:
- DEADP: Environmental (attached as Annexure F);
 - Western Cape Government: Agriculture (attached as Annexure H);
 - Department of Infrastructure: Road Planning (attached as Annexure I);
 - Telkom (attached as Annexure J);
 - BOCMA (attached as Annexure K), and
 - Cape Nature (attached as Annexure M).
7. that the determination of an administrative penalty in terms of Section 90.(4) of the Overstrand Municipality Amendment By-Law Land Use Planning, 2020 on Portion 94 of Farm 587 Hemel-en-Aarde Valley, to accommodate the illegally constructed horticulture tunnels and a covered pergola on the property, was considered and that an administrative penalty of **R255 216-00, be imposed** which penalty must be paid within ninety (90) days from the final date of the decision of the application.
8. that the applicant and objectors be notified of their right of appeal in terms of Section 78 of the Overstrand Municipality Amendment By-Law on Land Use Planning, 2020 with regard to the above decision.

14. REASONS FOR RECOMMENDATION

POINTS 1 - 5

- ❖ The proposed horticulture tunnels and extension of the agricultural Industry area form part of the fabric of agricultural areas, and the objections regarding visual impact, impact on the character of the area is not supported, as a Visual Impact Assessment found the significance of the impact as moderate to low (with mitigation measures), and all relevant state and municipal departments, including EA&DP: Planning Directorate, EA&DP: Environmental Branch, Cape Nature and the Municipal Environmental Branch supports the application.
- ❖ The existing mitigation measures and proposed measures including covering of the polytunnels with netting to reduce glare, planting of more wind break trees to function as a visual block and now fitting of lighting at the new horticulture tunnels, will help limit impact on the surrounding area and property owners.
- ❖ The application is supported by DEADP: Environmental Branch, Cape Nature and Overstrand Municipal Environmental Division, and it is not foreseen that it will have a negative impact on the natural environment.
- ❖ The new proposed horticulture tunnels will help improve yield and would help reduce crop spraying.
- ❖ The expansion of the agricultural industry would help improve the productivity of the farm pack store.
- ❖ The concerns regarding additional water use and increase in traffic impact does not prove the application to be undesirable, as the relevant municipal and state departments who specialise in these fields, being BOCMA and the municipal Engineering Division support the application and consider the foreseen impact to be acceptable.

- ❖ The Hemel-en-Aarde Valley is an agricultural area with environmentally sensitive areas on the mountain side. Although this area is a tourist area, the main use is still agricultural; and therefore, application to improve agricultural productivity should receive priority. The comments that the development is not compatible with surrounding properties and would lead to a loss of right of enjoyment of surrounding property owners, is not supported, as the proposed activity fits in with the main function of the valley, being agricultural.
- ❖ The horticulture tunnels will increase food security.
- ❖ The application went through a good public participation process and sufficient information was provided to consider the application.
- ❖ The building line relaxations are supported due to the fact that it complies with the Fire Management Plan, it is not situated close to farmsteads or accommodation units and the polytunnels is relatively low structures over the covered berry fields and will visually be blocked by wind break trees from the directly adjacent neighbours.

POINT 6

- ❖ The existing property owner constructed horticulture tunnels in conflict with a previous condition of approval and over building lines, and a covered pergola over building lines. The applicant acknowledged that the property owner was responsible for the illegal structures. An administrative penalty fee is therefore imposed.

15. ANNEXURES

Annexure A:	Locality Plan
Annexure B:	Site Development Plan
Annexure C:	Motivation Report
Annexure D:	Objections received
Annexure E:	Applicant's response on objections received
Annexure F:	Comment: Western Cape Government: DEA&DP: Environmental
Annexure G:	Comment: Western Cape Government: DEA&DP: Planning
Annexure H:	Comment: Western Cape Government: Department of Agriculture
Annexure I:	Comment: Western Cape Government: Department of Road Planning (Road Planning)
Annexure J:	Comment: Telkom
Annexure K:	Comment: BOCMA
Annexure L:	Services Report
Annexure M:	Comment: Cape Nature
Annexure N:	Revised Power of Attorney and Company Resolution
Annexure O:	Visual Impact Assessment dated October 2023
Annexure P:	Quotation for horticulture tunnels dated 31 October 2023

SIGNATURES**AUTHOR:**

Name:

HENK OLIVIER

SACPLAN Reg No:

B/8128/2004

Signature: _____

Date: _____

REGISTERED PLANNER

Name:

H VAN DER STOEP

SACPLAN Reg No:

A/1708/2013

Signature: _____

Date: _____

1. Locality Plan

Portion 94 of the Farm Hemel-en-Aarde 587, Caledon

 Subject property

Plan prepared by: Thian Jansen

Tel: 028 313 1411

Email: admin@wrapgroup.co.za

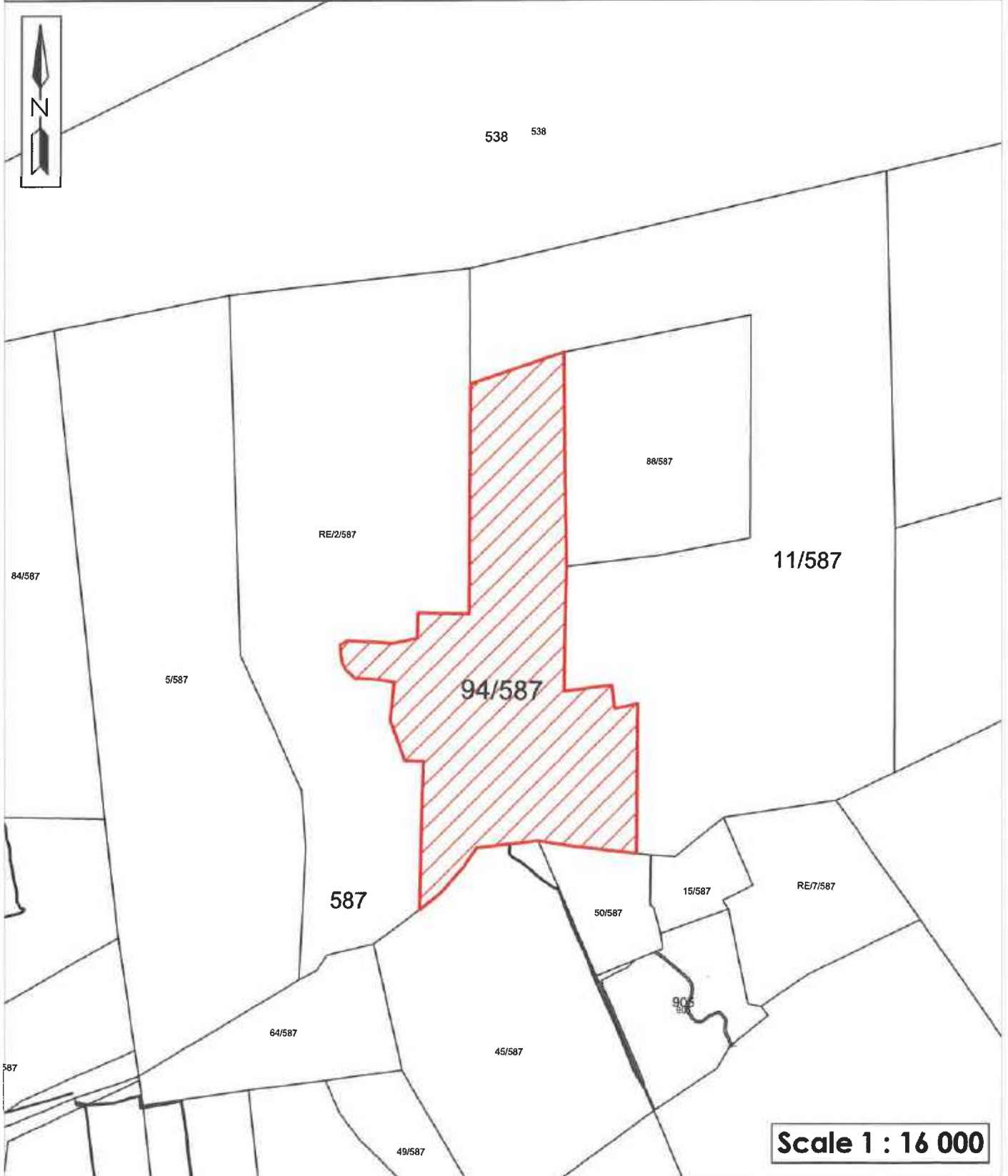
Unit B, Standard House,
Corner of Royal and Dirkie Uys
Street Hermanus, 7200



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Scale 1 : 16 000

3. Aerial Plan
 Portion 94 of the Farm
 Hemel-en-Aarde 587, Caledon



Plan prepared by: Thian Jansen

All distances are approximate and subject to a survey

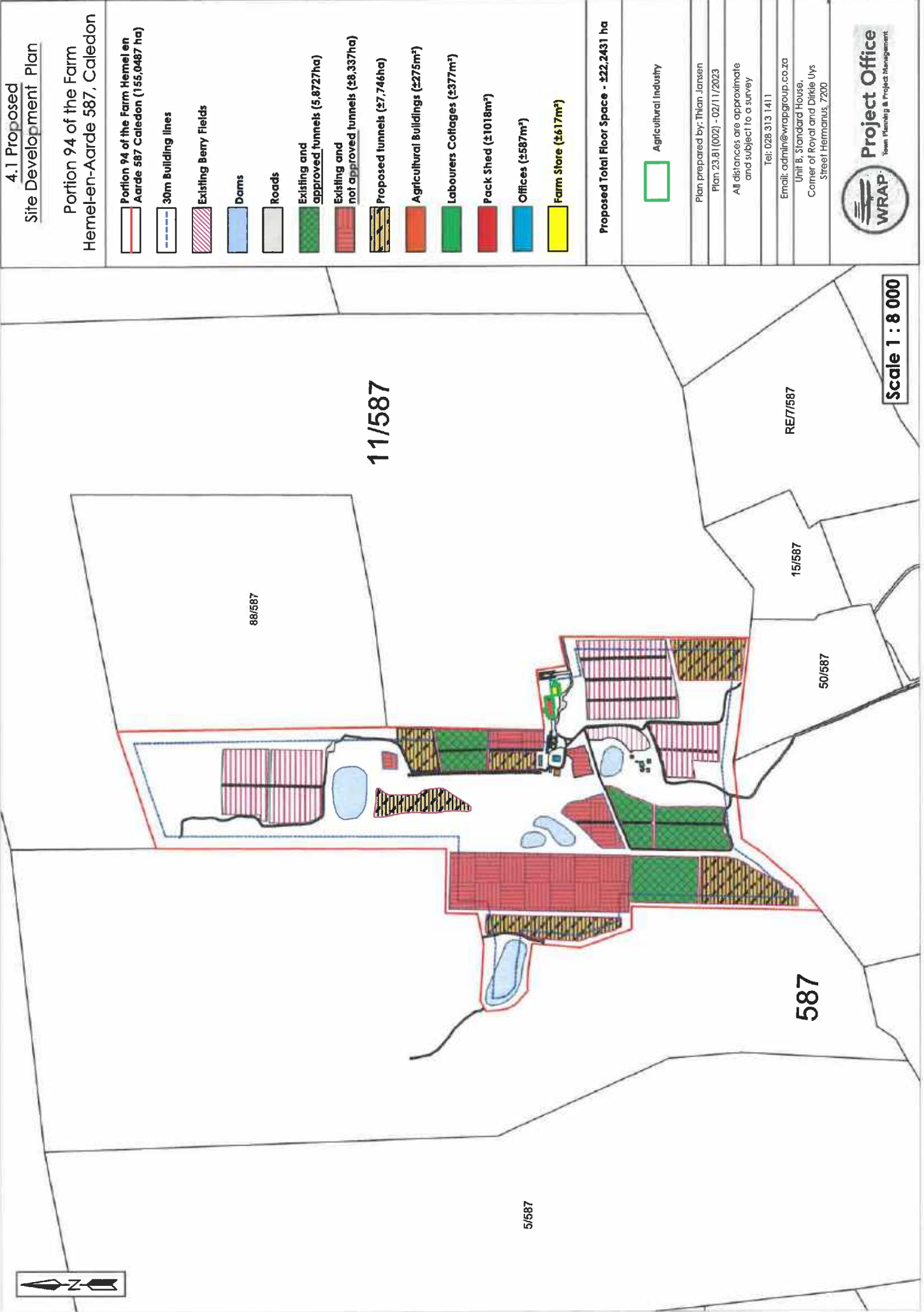
Tel: 028 313 1411

Email: admin@wrapgroup.co.za

Unit B, Standard House,
 Corner of Royal and Dirkie Uys
 Street Hermanus, 7200














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4.2 Inset Plan -
Proposed Site Development Plan

Portion 94 of the Farm
Hemel-en-Aarde 587, Caledon

-  Existing Berry Fields
-  Dams
-  Roads
-  Existing and approved tunnels (5,8727ha)
-  Existing and not approved tunnels (±8,337ha)
-  Proposed tunnels (±7,746ha)
-  Agricultural Buildings (±275m²)
-  Labourers Cottages (±377m²)
-  Pack Shed (±1018m²)
-  Offices (±587m²)
-  Farm Store (±617m²)

Proposed Total Floor Space - ±22,2431 ha



Agricultural Industry

Plan prepared by: Thian Jansen

Plan 23.81(002) - 02/11/2023

All distances are approximate
and subject to a survey

Tel: 028 313 1411

Email: admin@wrapgroup.co.za

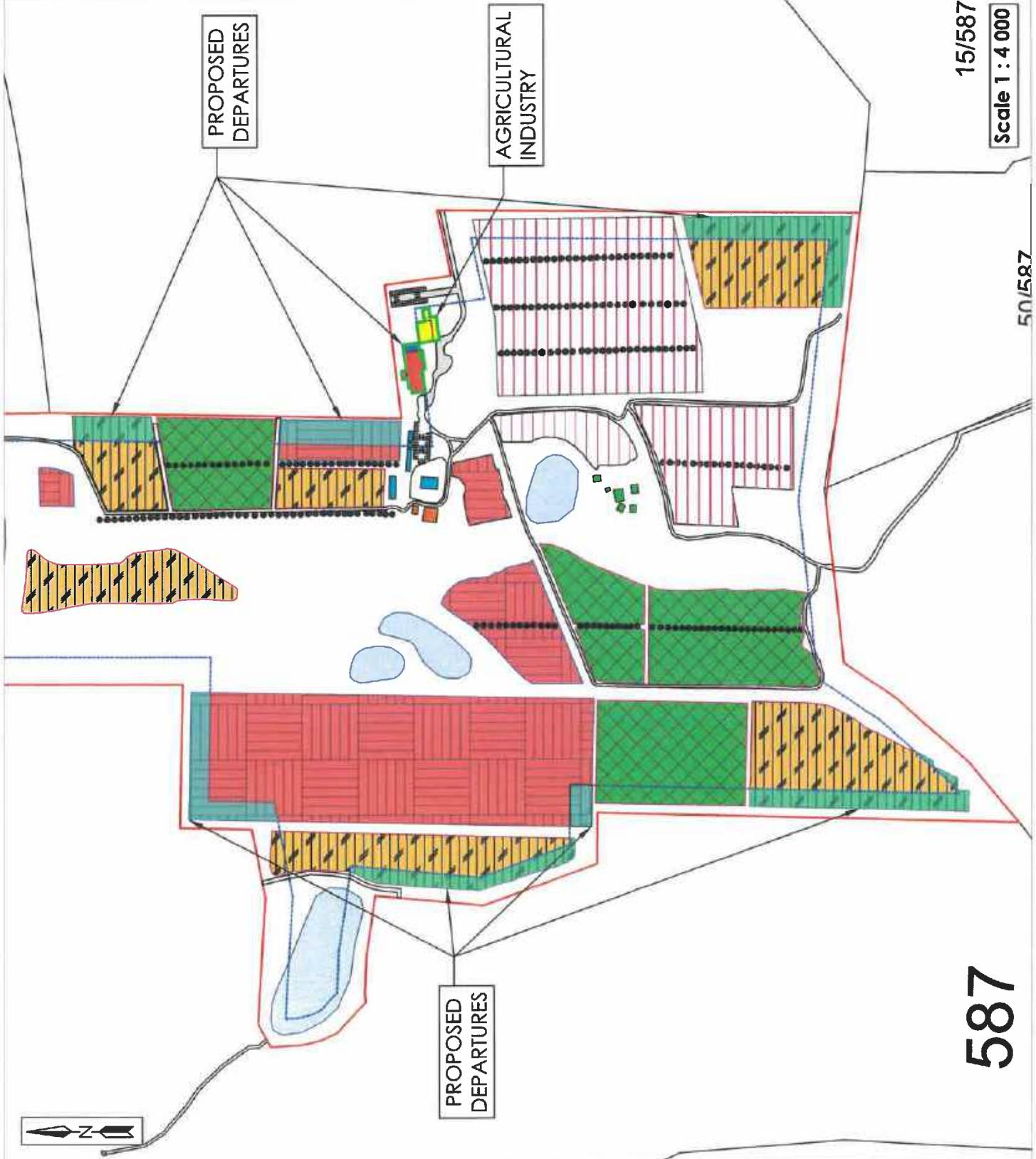
Unit B, Standard House,

Corner of Royal and Dikie Uys

Street Heerminus, 7200














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4.2 Inset Plan -
Proposed Site Development Plan

Portion 94 of the Farm
Hemel-en-Aarde 587, Caledon

-  Existing Bery Fields
-  Dams
-  Roads
-  Existing and approved tunnels (5,872ha)
-  Existing and not approved tunnels (±8,337ha)
-  Proposed tunnels (±7,746ha)
-  Agricultural Buildings (±275m²)
-  Labourers Cottages (±377m²)
-  Pack Shed (±1018m²)
-  Offices (±587m²)
-  Farm Store (±617m²)

Proposed Total Floor Space - ±22,2431 ha

 Agricultural Industry

Plan prepared by: Thiam Jansen

Plan 23.81(002) - 02/11/2023

All distances are approximate and subject to a survey

Tel: 028 313 1411

Email: admin@wrapgroup.co.za

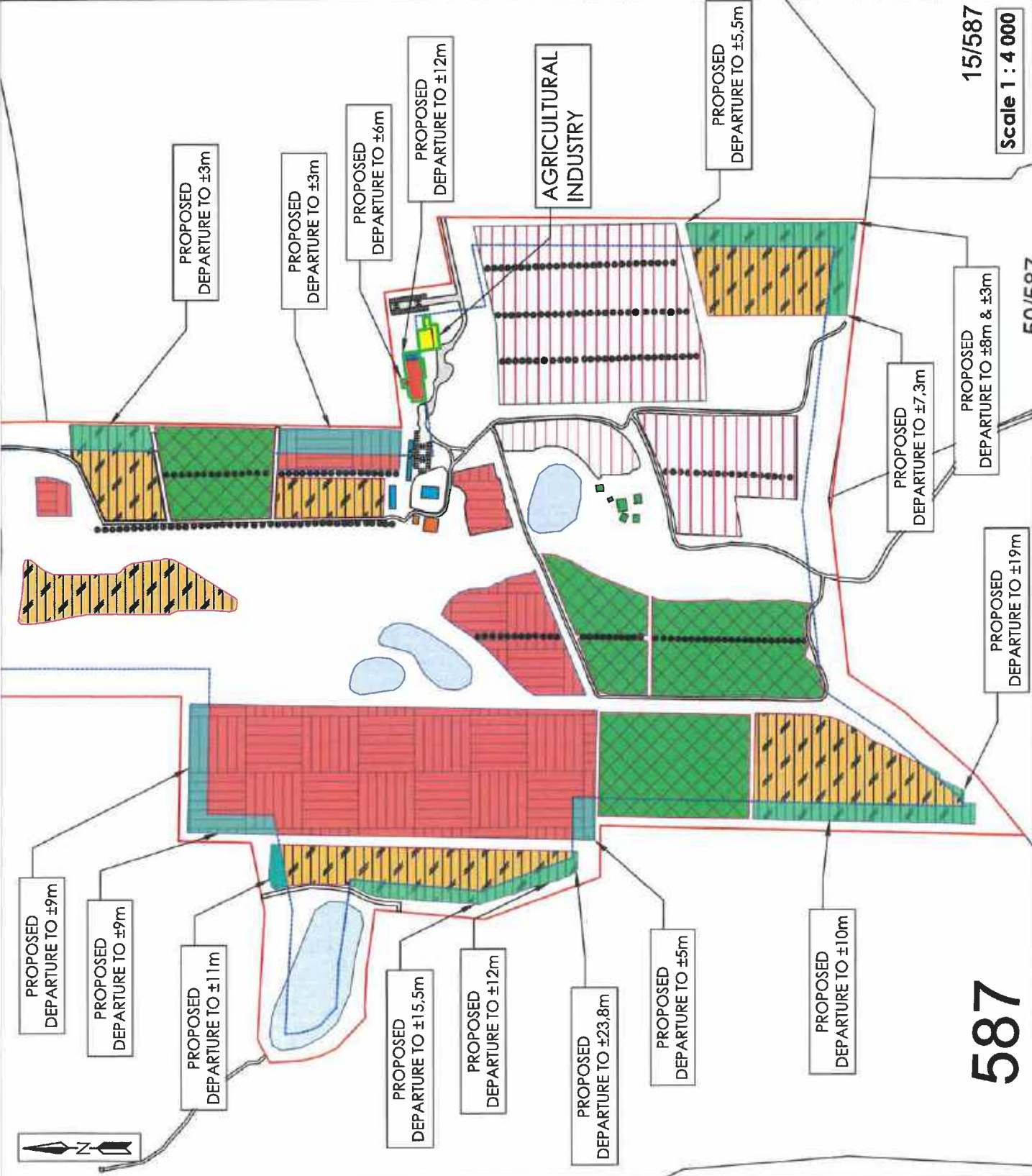
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Street, Hermanus, 7200



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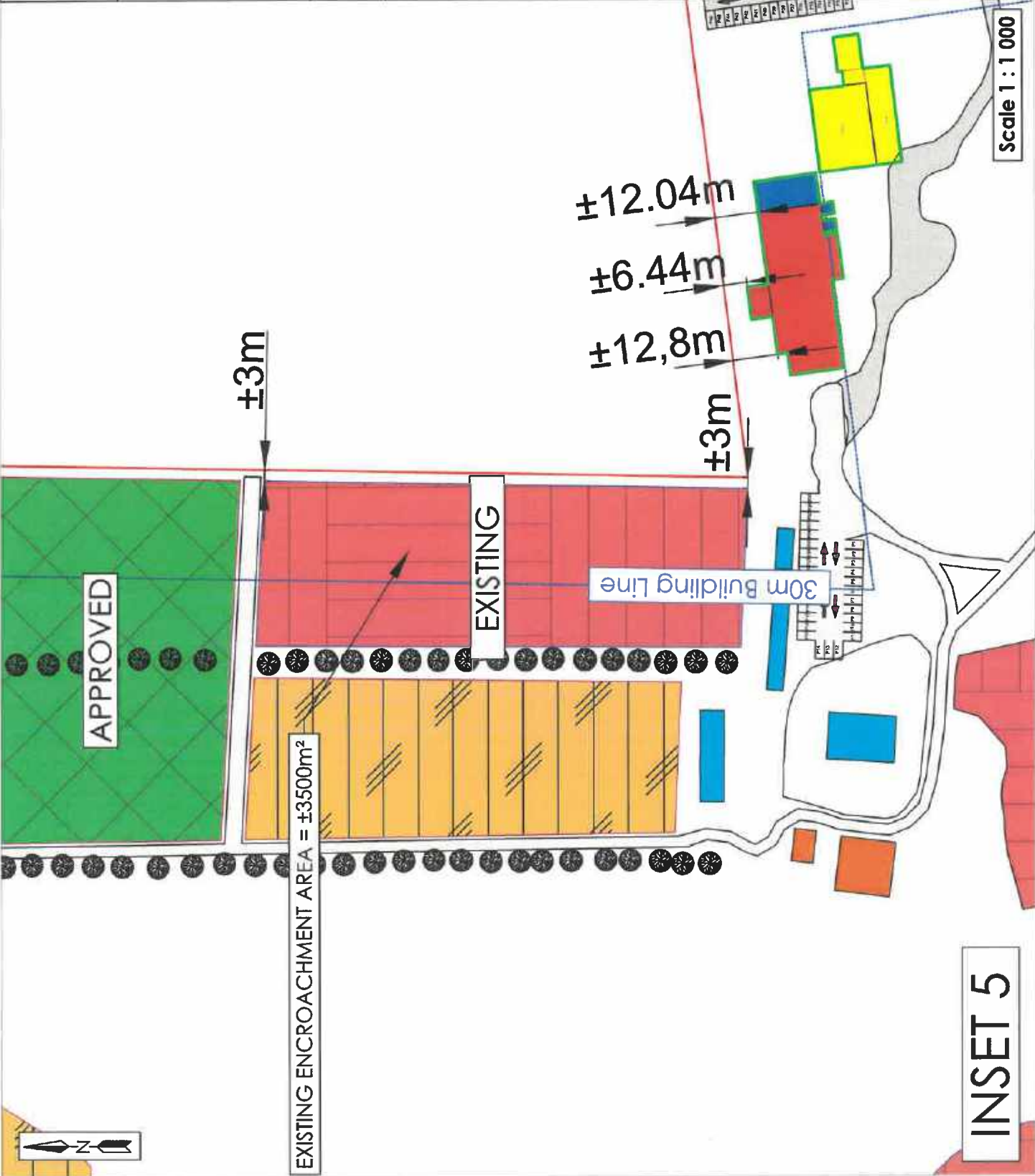
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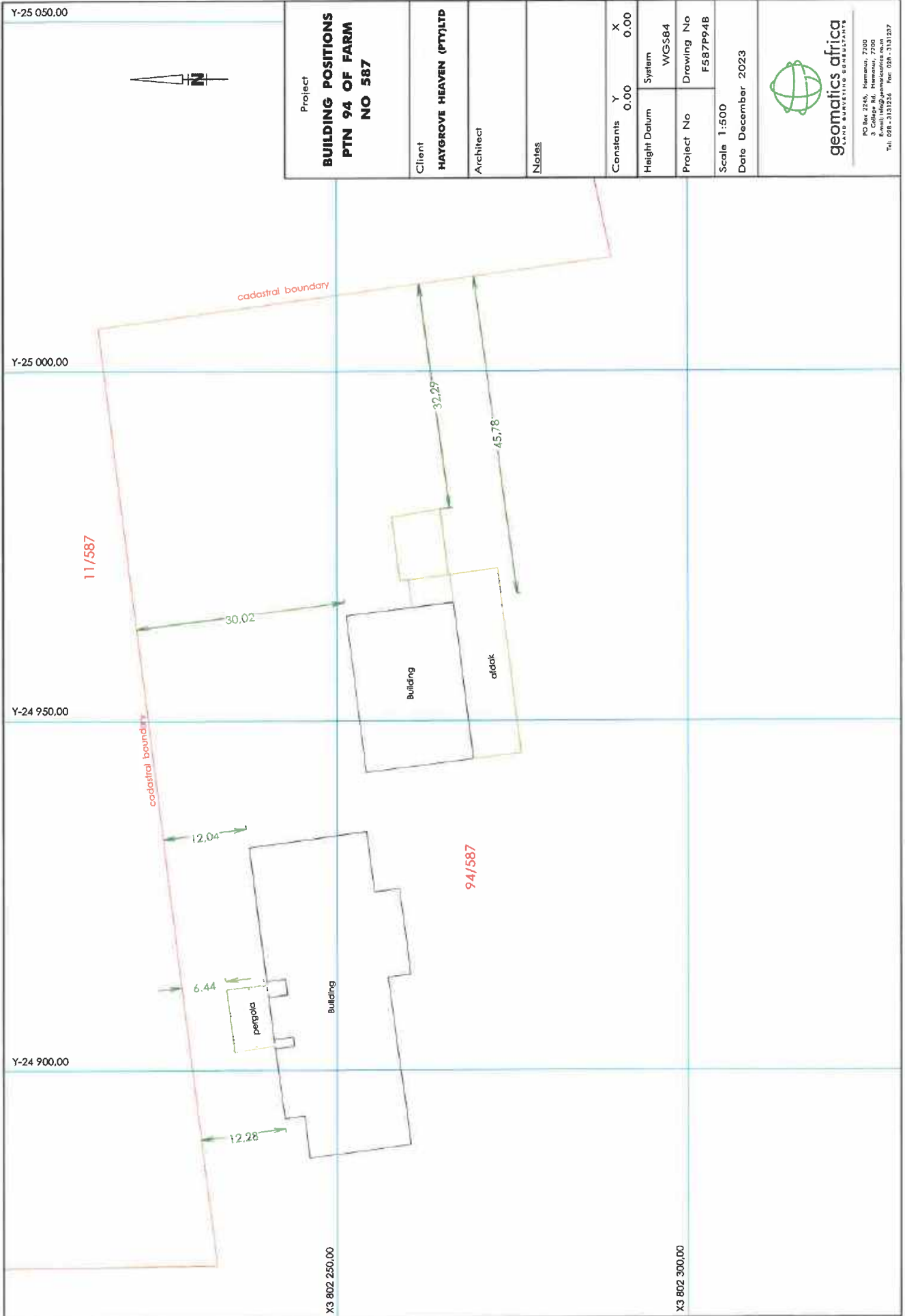
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<p>5. Proposed Departure Plan <u>INSET5</u></p> <p>Portion 94 of the Farm Hemel-en-Aarde 587, Caledon</p>	<p>Proposed Departures</p> <ul style="list-style-type: none"> Existing Tunnels from the Eastern 30m Building Line to $\pm 3m$; Existing Pergola from the Northern 30m Building Line to 6.44m; and Proposed Addition to the packedshed from the Northern 30m Building Line to 12.04m. 	<p>Agricultural Industry</p> 	<p>Plan prepared by: Thion Jansen</p> <p>All distances are approximate and subject to a survey</p> <p>Tel: 028 313 1411</p> <p>Email: admin@wrapgroup.co.za</p> <p>Unit B, Standard House, Corner of Royal and Dikie Uys Street, Hermanus, 7200</p>  <p>Project Office Town Planning & Project Management</p>
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Project BUILDING POSITIONS PTN 94 OF FARM NO 587	
Client	HAYGROVE HEAVEN (PTY) LTD
Architect	
Notes	
Constants	Y 0.00 X 0.00
Height Datum	System WGS84
Project No	Drawing No F587P94B
Scale	1:500
Date	December 2023
 geomatrics africa LAND SURVEYING CONSULTANTS <small>PO Box 2245, Hermanus, 7200 South Africa Email: info@geomatrics.co.za Tel: 028-3132256 Fax: 028-3131237</small>	



MOTIVATION

1. ABBREVIATIONS

OM	Overstrand Municipality
OMLUS	Overstrand Municipality Land Use Scheme, 2020
BY-LAW	Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020
PSDF	Western Cape Provincial Spatial Development Framework, 2014
LUPA	Western Cape Land Use Planning Act, 2014.
MSDF	Overstrand Spatial Development Framework, 2020

2. PROPERTY DETAILS

Subject Property	Portion 94 of the Farm Hemel en Aarde Valley 587, Caledon
Extent	71,5045 ha
Zoning	Agricultural Zone 1: Agriculture

3. BACKGROUND AND INTENT

Situated in the Hemel en Aarde Valley, the subject property is Portion 94 of Farm Hemel en Aarde Valley 587, Caledon, as indicated in **Plan 1 - Locality**. Haygrove Heaven (Pty) Ltd owned the farm since 2007 but have operated on the farm since 2002. Haygrove Heaven (Haygrove) appointed WRAP Project Office to prepare this land use application on their behalf (refer **Annexure A – Power of Attorney and Company Resolution**).

Haygrove is a specialist horticulture business, producing the full berry basket. This includes strawberries, raspberries, blackberries and blueberries. On the farm in the Hemel-en-Aarde Valley, Haygrove produces raspberries, blackberries and blueberries.

Haygrove identified the Hemel-en-Aarde Valley as a perfect match with the appropriate climate to produce berries in the Southern Hemisphere for the Northern Hemisphere's berry demand. Haygrove set up its domestic head office within the Hemel-en-Aarde Valley in 2002. Haygrove was the first international producer of raspberries for the United Kingdom's winter.

Fast forward a few years, Haygrove now produces berries across its farms in South Africa for domestic sale (40%) and export (60%). The Hemel en Aarde's microclimate, as well as its proximity to distribution centres and Cape Town Airport is ideal for satisfying customer demand domestically and internationally and in the process creating economic prosperity for the surrounding community, upstream and downstream service providers and suppliers, and the country at large.

Haygrove employs 800 people permanently and up to an additional 2,500 seasonal and fixed term workers in peak season. In the Hermanus area specifically, Haygrove employs 400 people permanently and up to 1,800 in peak season making it arguably that largest private employer in the greater Hermanus area. Haygrove also invests in the communities it farms, through health and education initiatives, to schooling bursaries and donations to various organisations in the surrounding community. Should the proposal be approved to allow the expansion of the intensive horticulture tunnels an additional 100 seasonal

File 23/46

PORTION 94 OF THE FARM HEMEL EN AARDE VALLEY 587, CALEDON

AUG 2023 & AMENDED FEB 2024

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MOTIVATION

jobs will be created (Seasonal jobs are a minimum of 18 weeks of employment). In addition, 6 additional permanent workers will be employed to assist with the maintenance of the tunnels.

The company measures its success and impact through a triple bottom line approach: Planet, People and Profit. Investments in carbon footprint reduction, biodiversity enhancement and ensuring thriving areas in which it farms are key to Haygrove. Investing in people, their health and education are critically important for the prosperity of the communities where we operate, and both of these bottom lines are dependent on the third – the business’ ability to be profitable.

In terms of this application, Haygrove simply seeks to further cover its existing uncovered intensive horticulture raspberry fields with tunnels. The tunnels are an international norm for the economical farming of raspberries, which are highly susceptible to weather variation. The tunnels also allow for increased yield (or production per hectare of land), as well as stability in volumes and fulfilment of sales programmes, creating and sustaining employment. As demonstrated in the below graph of 6 years’ rain data from the subject property, weather patterns have become increasingly erratic and excessive rainfall has led to significant crop losses. This, together with continued cost inflation pressures have rendered uncovered raspberry production uneconomical and unprofitable.

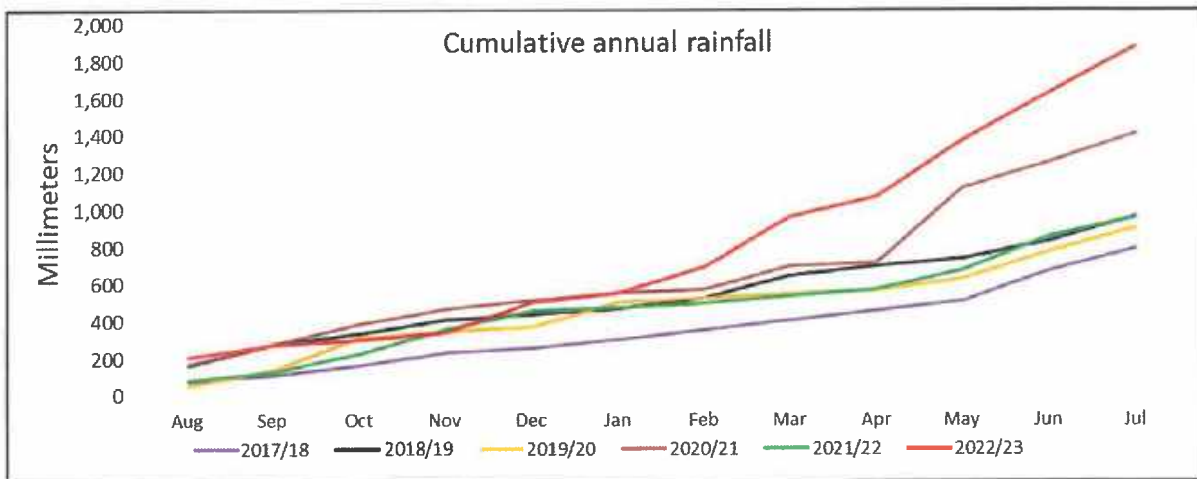


Figure 1

Haygrove understands the importance of ecotourism in the Hemel en Aarde Valley, which is globally renowned for its wine production, agricultural heritage and picturesque landscapes. The presence of farms, vineyards, and agricultural activities adds to the unique appeal of the area. The surrounding area and specific farms for example Creation has been awarded with one of the best wine farms in the world, which was awarded in July 2023, all with the existence of the tunnels on the subject property. Meaning with the existence of the tunnels the surrounding area is still considered as a tourist attraction. The tunnels are an integral part of the agricultural nature of the valley and are not expected to detract from the overall visitor experience. On the contrary, they can provide an opportunity for tourists to witness and learn about modern farming practices and the cultivation of crops in a controlled environment.



MOTIVATION

Moreover, the Hemel en Aarde Valley is renowned for its wine production and agricultural heritage. Many visitors are attracted to the valley to explore its vineyards, taste local wines, and immerse themselves in the agricultural lifestyle. The addition of tunnels aligns with the valley's identity as an agricultural destination and contributes to the preservation of its rich farming traditions.

It is important to note that the tunnels are designed and positioned in a manner that ensures they blend harmoniously with the surrounding landscape although there will always be a visual impact. The visual impact has been taken into consideration during the planning and design process to minimize any potential disruption to the aesthetic appeal of the valley. Haygrove is committed to maintaining the scenic beauty of the area while simultaneously enhancing the agricultural productivity of the property. More motivation is provided throughout the report below.

To be able to obtain municipal approval for both the existing and proposed horticulture tunnels the following applications need to be submitted and approved in terms of the OMLUS:

- Departure from the 30m building lines;
- Departure from the maximum allowable floor space;
- Amendment of conditions of approval; and
- Amendment of an approved site development plan.



MOTIVATION

4. HISTORIC APPLICATIONS AND APPROVALS

Since 2012, WRAP Project Office has been a land use consultant to Haygrove, facilitating the necessary land use approvals for their agricultural operations. The initial approval granted in 2012 permitted the establishment of a pack shed on the property, enabling Haygrove to efficiently pack their produce for both domestic and international markets. Subsequently, in 2016, a second land use application was successfully approved by the OM.

This consent use approval allowed Haygrove to utilise the farm for intensive horticulture and allowing encroachment on certain building lines to build tunnels that assist with the growing of the soft fruits as identified above. For further details, please refer to **Annexure C**, which includes the historic letter of approval outlining the relevant conditions associated with this application. The collaboration between WRAP Project Office and Haygrove has been instrumental in navigating the necessary regulatory processes, ensuring compliance with land use regulations, and facilitating the growth and expansion of Haygrove's agricultural operations. The mentioned approval includes:

- “1. that in terms of Clause 2.2 of the Overstrand Municipality Zoning Scheme Regulations the application for a consent use on Remainder Portion 94 of Farm Hemel en Aarde No.587 to accommodate intensive horticulture (tunnels) on the property be approved;
2. that in terms of Section 15 of LUPO the application for departure to relax the western lateral building line from 30m to 10m and the 30m eastern building line to 3m to accommodate portions of the tunnels, be approved;
3. That 1 and 2 above be approved subject to the following conditions:
 - (a) That the placement of the intensive horticulture tunnels be in line and limited to the tunnels indicated on the Site Development Plan 14/073/01 submitted with the application **and application will have to be made for any possible future tunnels:**
 - (b) That detailed building plans be submitted to the Building Department for approval;
 - (c) That this approval does not absolve the applicant/owner from compliance with any other relevant legislation;
 - (d) That all the other development parameters as prescribed in the Zoning Scheme Regulations be retained; ...”

The tunnels measuring 5,8727ha approved in 2016 have been built on the subject property. The property owner wants to increase the number of tunnels. This would require condition of approval 3. (a) to be amended to increase the number of tunnels allowed on the subject property.

The OMLUS defines intensive horticulture as follow: **“intensive horticulture”** means the cultivation of plants and indigenous flora on an intensive scale, where plants are cultivated under a roof or on open land or in greenhouse(s) and includes the sale of self-produced plants from the land;”

Details of the extension being proposed will be shared throughout Section 5 of this motivational report.



MOTIVATION

5. PROCEDURE TO ACHIEVE THE PROPERTY OWNER'S INTENT

5.1 Amendment of condition of approval 1(c) dated 13 July 2012 to allow the proposed expansions of the agricultural industry in terms of Section 16(2)(h) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning Act, 2020.

As aforementioned, Haygrove obtained approval in 2012 to allow them to establish a pack shed which is considered as an agricultural industry. The agricultural industry was limited to the specific size of the pack shed. The intention is to convert and renovate several areas of the pack shed to be more efficient and be able to accommodate the future growth of the business. While also allowing an existing farm shed to be used for agricultural industry purposes. In essence expanding the agricultural industry and the allowable extent. The condition stated that the agricultural industry be limited to only 809m², with the proposed increases in the business and proposed future expansions the proposal is required to amend this condition and allow them to extend the area of the agricultural industry as per the table below:

Agricultural industry extent on Portion 94 of the Farm Hemel en Aarde Valley 587	
Approved agricultural industry extent (2012)	Approved extent of pack shed (2012) – 809m ²
Proposed agricultural industry extent (2023)	Proposed extent of pack shed (2023) – ±1018m ² Existing farm shed – ±617m ² Total Extent of agricultural industry – ±1635m ²
<i>Refer to Plan 5.5 that illustrates the proposed pack shed extension.</i>	

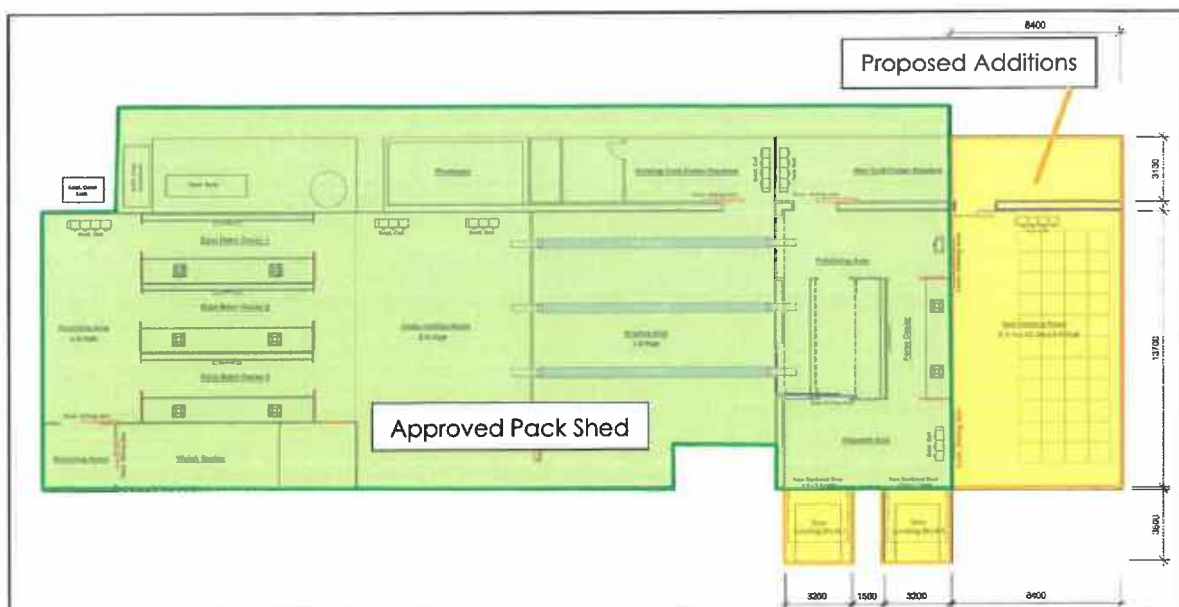


Figure 2: Proposed additions to the pack shed



MOTIVATION

It should be noted that the pack shed currently accommodates both the produce of the subject property and that of the neighbouring property, which is also owned and operated by Haygrove. The pack shed is used for cooling, sorting, and packing the fresh produce destined for end-users who purchase the product.

On the other hand, the existing farm shed's use is proposed to be altered, the proposal to use areas in the structure for storing the packing materials utilised in the pack shed. This means that no actual produce is handled in the existing farm shed; however, to free up space in the pack shed this associated use is proposed to be relocated to the farm shed, as this use falls within the scope of the agricultural industry it is required to include.

The pack shed was historically allowed to depart from the 30m building line between two properties owned by Haygrove, because of the extension consent of the municipality needs to be obtained as the extension will also encroach on the 30m building line.

In addition to the proposed extension of the pack shed, the owners have erected a pergola at the back of the shed which covers a yard which is used for temporary storage of the crates which the produce is received from the farm. As a result of it encroaching the building line it is required to be included into the application to obtain consent for its position.

The following application will be required to allow the extension of the pack shed:

- 5.2 Permanent Departure** from the eastern 30m building line to 12.04m to allow the proposed extension of the pack shed in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.
- 5.3 Permanent Departure** from the eastern 30m building line to 6.44m to allow the existing pergola in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.



MOTIVATION

5.4 Amendment of condition of approval 3(a) dated 9 February 2016 to allow the proposed expansions of the tunnels in terms of Section 16(2)(h) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning Act, 2020.

As mentioned above Haygrove has the intention to obtain approval to increase and expand on their approved intensive horticulture tunnels. The approval of 2016 allowed for the erection of 5,8727ha of tunnels, which have subsequently been expanded upon and the proposal is to apply for both the contravening tunnels as well as new tunnels.

Intensive Horticulture Tunnels on Portion 94 of the Farm Hemel en Aarde Valley 587	
Existing approved intensive horticulture tunnels (2016)	5,8727 ha
New proposed intensive horticulture tunnels	±7,746 ha
Existing and not approved intensive horticulture tunnels	±8,337 ha
Total intensive horticulture tunnels	21,9557 ha
<i>Refer to Plan 4.1 and 4.2 that illustrates the proposed intensive horticulture tunnels.</i>	

The farm currently encompasses approximately 33 hectares of intensive horticulture berry fields, catering to both local and international markets. Out of this total area, approximately 14.2097 hectares are currently enclosed within tunnels. The proposed expansion aims to increase the tunnel-enclosed area to 21.9557 hectares by adding an additional 7.746 hectares to the existing farm.

Intensive horticulture tunnels offer several advantages over traditional berry farming, making it a more efficient. Firstly, intensive horticulture tunnels generate higher yields per square meter of cultivated land compared to traditional farming methods. The focused cultivation techniques, optimized resource utilization, and higher crop yields contribute to increased financial returns for Haygrove which is used to fund both expansion projects that in turn allows Haygrove to employ more workers and have a positive impact on the surrounding area.

In addition to profitability, intensive horticulture tunnels also boast higher crop output per square meter. By utilizing advanced cultivation practices, such as controlled environments, precision irrigation, and tailored nutrition, Haygrove can achieve greater productivity from limited land resources. This increased output helps meet growing market demands and ensures a steady supply of fresh produce.

Furthermore, intensive horticulture tunnels require less resources compared to traditional agriculture, making the overall process more efficient. These tunnels provide a controlled environment that minimizes water usage, reduces pesticide application, and protects crops from adverse weather conditions. By optimizing resource allocation, farmers can achieve higher yields with reduced environmental impact.



MOTIVATION

Another advantage of intensive horticulture tunnels is the ability to cultivate a wider variety of crops. Unlike traditional farming, where soil and weather conditions can limit crop choices, tunnels enable farmers to grow diverse plant species throughout the year. This flexibility allows them to cater to market preferences, meet specific consumer demands, and take advantage of niche markets.

By approving this proposal, the owner of the subject property will be able to harness the benefits offered by intensive agriculture tunnels. The exponential growth of the agricultural enterprise on the property has exceeded initial projections, resulting in demand surpassing supply. This application seeks to obtain appropriate land use rights for the planned expansions of intensive horticulture tunnels. It is indicative of a larger trend among farmers in the surrounding area, where an increasing number are embracing tunnels meet market demands. This trend is beneficial as it maximizes agricultural output, enhances regional and national food security, and contributes to South Africa's position as an exporter of agricultural produce.

The approval and implementation of this proposal will not only enable the subject farm to generate higher income but also address the escalating demand for agricultural products. By embracing intensive horticulture tunnels, the farm can meet market demands more efficiently and contribute to the overall growth and sustainability of the agricultural sector.

It is important to emphasize that the proposed increase in intensive horticulture tunnels does not signify a change in the operational nature of the farm. While the number of tunnels is set to expand, the farm will continue to operate as an agricultural enterprise. The addition of more tunnels is intended to enhance and optimize the existing agricultural activities rather than introduce a different operational framework. The focus remains on the cultivation and production of crops within the farm's established agricultural framework.

To allow the establishment of the additional intensive horticulture tunnels, the following application will also be required:

Refer to Plan 5.1 – Inset 1 of Departure Plan - Plan 5:

- 5.5 Permanent Departure** from the northern 30m building line to 9m to allow the existing intensive horticulture tunnels in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020;
- 5.6 Permanent Departure** from the western 30m building line to 9m to allow the existing intensive horticulture tunnels in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020;
- 5.7 Permanent Departure** from the northern 30m building line to 11m, 12m & 20m to allow the proposed intensive horticulture tunnels in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

Refer to Plan 5.2 – Inset 2 of Departure Plan - Plan 5:

- 5.8 Permanent Departure** from the western 30m building line to 12m, 13,5m, 14m, 14,5m & 15,5m to allow the proposed intensive horticulture tunnels in terms of Section



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16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020;

- 5.9 Permanent Departure** from the southern 30m building line to 23,7m & 23,8m to allow the proposed intensive horticulture tunnels in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020;
- 5.10 Permanent Departure** from the southern 30m building line to 5m to allow the existing intensive horticulture tunnels in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

Refer to Plan 5.3 – Inset 3 of Departure Plan - Plan 5:

- 5.11 Permanent Departure** from the western 30m building line to 10m to allow the proposed intensive horticulture tunnels in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020;
- 5.12 Permanent Departure** from the southeastern 30m building line to 19m & 24,5m to allow the proposed intensive horticulture tunnels in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

Refer to Plan 5.4 – Inset 4 of Departure Plan - Plan 5:

- 5.13 Permanent Departure** from the southern 30m building line to 7,3m & 8m to allow the proposed intensive horticulture tunnels in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020;
- 5.14 Permanent Departure** from the eastern 30m building line to 3,3m & 5,5m to allow the proposed intensive horticulture tunnels in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

Refer to Plan 5.5 – Inset 5 of Departure Plan - Plan 5:

- 5.15 Permanent Departure** from the eastern 30m building line to 3m to allow the existing intensive horticulture tunnels in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

Refer to Plan 5.6 – Inset 6 of Departure Plan - Plan 5:

- 5.16 Permanent Departure** from the eastern 30m building line to 3m to allow the proposed intensive horticulture tunnels in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

The subject farm encompasses various natural features, including a mountain, wetland, and critical biodiversity areas, which collectively make up approximately 35% of the total land area. These areas are considered environmentally sensitive and limit the available land for the expansion of intensive horticulture tunnels. It is important to note that the proposed expansions are not planned on any environmentally sensitive land.

The crops cultivated on the subject property does not emit offensive smells or fumes that could negatively impact the neighbouring properties. The proposal to locate the intensive horticulture tunnels encroaching on the building lines, are not predicted to cause any disturbances to adjacent property owners.



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Farm workers work in the tunnels for short periods, rotating between tunnels and spending time throughout the day, while caring and working in these berry fields contained within the intensive horticulture tunnels. Their presence is minimal, reducing the likelihood of noise impact on neighbouring property owners. As a result, the approval of expanding the intensive horticulture tunnels beyond the building lines will not infringe upon the rights enjoyed by adjacent property owners in the occupation of their properties. See the following figures of the proposed and existing tunnels:

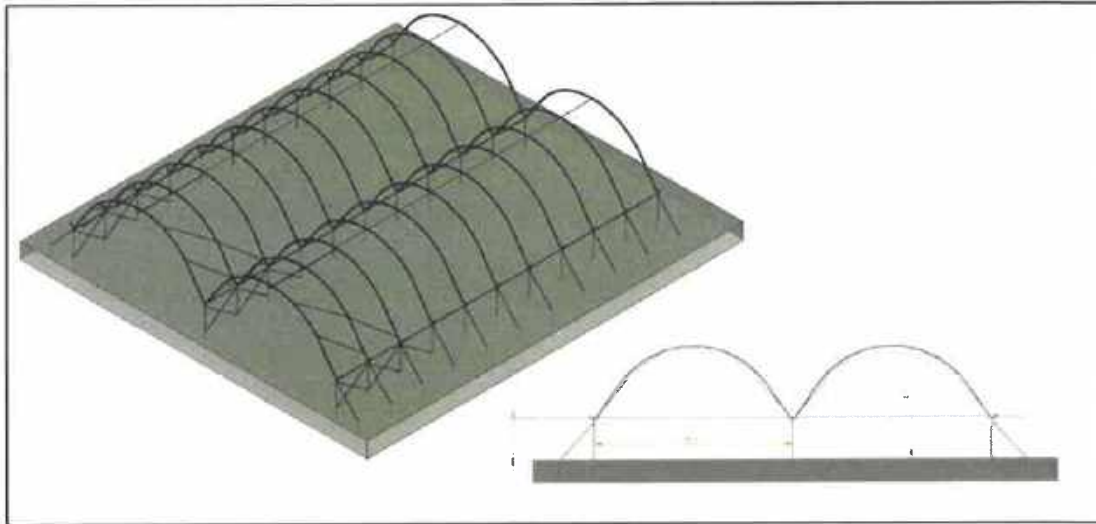


Figure 3: Intensive Horticulture Tunnels

5.17 Permanent Departure from the maximum allowable floor space in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

As mentioned previously throughout the history of Haygrove owning the subject property there have been historical land use applications and specific reference is being made to the 2016 land use approval Annexed as **Annexure C – Historic Approval**.

The approval allowed the accommodation of intensive horticulture tunnels and departure from building lines. A condition of the approval (Condition 3(a)) linked the Site Development Plan 14/073/01/P11 to the approval. The approval allowed for 5,8727 ha of intensive horticulture tunnels with the remaining extent divided between the existing agricultural buildings, offices, pack shed, and labourer's cottages for a total allowable floor space of 6,1707 ha (2016).

The proposal to allow all of the existing intensive horticulture tunnels including the existing tunnels within floor space requires the consent of the OM is required as the current floor space is exceeding the allowable 5000m² as determined by the OMLUS. After internal discussions, the OM's town planning department indicated that intensive horticulture tunnels must be considered as part of a farm's floor space. As a result, a departure from the allowable floor space is being applied for as the proposal is to increase the floor space by approximately 16,083ha which will be the footprint of the intensive horticulture tunnels as illustrated and depicted in the site development plan.



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Proposed Floor Space Departure		
Existing and approved intensive horticulture tunnels	5,8727 ha	
Proposed intensive horticulture tunnels	±7,746 ha	±16,083 ha
Existing and not approved intensive horticulture tunnels	±8,337 ha	
Other structures extent (2023) •Agricultural Buildings (±275m ²) •Labourers Cottages (±377m ²) •Pack Shed (±1018m ²) •Offices (±587m ²) •Farm Store (±617m ²)	±0.2874 ha	
Proposed Floor Space (2023)	22,2431 ha	
	(5,8727 ha + 16,083 ha + 0.2874 ha)	

The departure is required to allow the proposed horticulture tunnels to be established. As motivated in Section 5.1, the tunnels are not predicted to have any negative impact on any surrounding property owners as the property is zoned for agricultural purposes and the property owners are attempting to increase and secure future demands.

5.18 Amendment of an approved site development plan in terms of Section 16(2)(L) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

The current SDP was approved in 2016 (14/073/01), which SDP is attached together with the historical approval Annexed as **Annexure C**. With the proposal to add more intensive horticulture tunnels to the subject property, the SDP requires amendment. Refer **Plan 4.1 and 4.2** which is proposed to replace the existing approved site development. The alterations required include the proposal to enclose existing berry fields as has been motivated in Section 5.4 & 5.17 of this report. As well as the expansion of the agricultural industry which will add a small section as has been motivated in Section 5.1 of this report.

5.19 Determination of an administrative penalty in terms of Section 90(5) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

Over the past few years, Haygrove has made additions to the property by implementing intensive horticulture tunnels. While some of these tunnels have not yet received formal approval from the municipality, it is essential to prioritize compliance with the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020. In line with this objective, it is crucial to include the determination of an administrative penalty within this application. By addressing this matter proactively, Haygrove aims to rectify any potential non-compliance issues and ensure adherence to the applicable regulations and by-laws governing land use planning. Haygrove has identified the areas where approvals have not yet been obtained (Refer to **Plan 4.1** and **Plan 4.2**).



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Section 90(3) of the By-law requires the following information:

The nature, duration, gravity and extent of the contravention

The tunnels are clearly illustrated on the SDP provided in Plan 4.1 and Plan 4.2. It should be noted that in terms of land use, the approval for intensive horticulture has been received. Meaning only the encroachment of building lines and increasing the maximum allowable floor space are being contravened from a land use perspective. The tunnels however have also been erected without prior municipal consent. This application serves as a testament to the proactive measures taken by the property owners to rectify any contravention of the By-law. Considering that no complaints have been lodged regarding these specific tunnels depicted in the aforementioned plans and their usage is consistent with the prevailing practices in the area, it is requested that a more lenient administrative penalty be imposed. This acknowledgment underscores the property owners' commitment to compliance and the absence of any unusual circumstances warranting severe penalties.

Contravening tunnels built without prior approval	
Existing and not approved intensive horticulture tunnels	±8,337 ha

Of the ±8,337ha tunnels built without prior approval approximately 9000m² was built across the building lines, refer to the table below:

Contravening tunnels encroaching on the building lines	
Plan 5.1 – Inset 1 of Departure Plan - Plan 5	4400m ² of tunnels encroaching on the side building line (refer section 5.2, 5.3 & 5.4)
Plan 5.2 – Inset 2 of Departure Plan - Plan 5	1100m ² of tunnels encroaching on the side building line (refer section 5.7)
Plan 5.5 – Inset 5 of Departure Plan - Plan 5	3500m ² of tunnels encroaching on the side building line (refer section 5.12)

In addition to the above, the pergola at the rear of the pack shed was also constructed without prior municipal approval, although the building line being encroached upon is connected to boundary being shared by the second farm owned by Haygrove, approval was still required to erect the structures.

Contravening pergola	
Pergola Extent	50m ²

The conduct of the person (allegedly) involved in the contravention.

Haygrove's intention was always to operate in accordance with the By-Law and not to contravene any regulations. The introduction of tunnels on the property was motivated by the need to enhance the viability of the agricultural enterprise and provide protection for crops against adverse climate conditions, among other benefits previously discussed. It is important to note that Haygrove's decision to add the tunnels was never driven by any malicious intent.



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A report by a quantity surveyor in matters of unauthorised building/construction

Due to the nature of the structures and the structures being non-habitable the company which supplies the tunnels to the property owner is its sister company a quote was provided for the ±8,337ha of contravening tunnels. The total cost of tunnels is proximately R479 000 per hectare. The pergola is such a small encroachment, it was not included in the calculation.

Whether the unlawful conduct was stopped

The tunnels have been erected and are in use. They have been unskinned meaning the plastic covering has been removed to prevent damage from adverse weather conditions.

Whether the person allegedly involved in the contravention has previously contravened this By-Law or a previous planning law.

To the knowledge of this office, the property owners have not previously contravened the By-Law on the subject property.



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6. APPLICATION

Considering the above, application is made for the following:

- 6.1 **Amendment of condition of approval** 1(c) dated 13 July 2012 to allow the proposed expansions of the agricultural industry in terms of Section 16(2)(h) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning Act, 2020.
- 6.2 **Permanent Departure** from the eastern 30m building line to 12,04m to allow the proposed extension of the pack shed in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.
- 6.3 **Permanent Departure** from the eastern 30m building line to 6,44m to allow the existing pergola in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.
- 6.4 **Amendment of condition of approval** 3(a) contained in letter of approval dated 9 February 2016 to allow the proposed expansions of the tunnels in terms of Section 16(2)(h) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning Act, 2020;
- 6.5 **Permanent Departure** from the northern 30m building line to 9m to allow the existing intensive horticulture tunnels in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020;
- 6.6 **Permanent Departure** from the western 30m building line to 9m to allow the existing intensive horticulture tunnels in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020;
- 6.7 **Permanent Departure** from the northern 30m building line to 11m, 12m & 20m to allow the proposed intensive horticulture tunnels in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020;
- 6.8 **Permanent Departure** from the western 30m building line to 12m, 13,5m, 14m, 14,5m & 15,5m to allow the proposed intensive horticulture tunnels in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020;
- 6.9 **Permanent Departure** from the southern 30m building line to 23,7m & 23,8m to allow the proposed intensive horticulture tunnels in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020;
- 6.10 **Permanent Departure** from the southern 30m building line to 5m to allow the existing intensive horticulture tunnels in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020;
- 6.11 **Permanent Departure** from the western 30m building line to 10m to allow the proposed intensive horticulture tunnels in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020;

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- 6.12 Permanent Departure** from the southeastern 30m building line to 19m & 24,5m to allow the proposed intensive horticulture tunnels in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020;
- 6.13 Permanent Departure** from the southern 30m building line to 7,3m & 8m to allow the proposed intensive horticulture tunnels in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020;
- 6.14 Permanent Departure** from the eastern 30m building line to 3,3m & 5,5m to allow the proposed intensive horticulture tunnels in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020;
- 6.15 Permanent Departure** from the eastern 30m building line to 3m to allow the existing intensive horticulture tunnels in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020;
- 6.16 Permanent Departure** from the eastern 30m building line to 3m to allow the proposed intensive horticulture tunnels in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020;
- 6.17 Permanent Departure** from the allowable floor space in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020;
- 6.18 Amendment of an approved site development plan** in terms of Section 16(2)(L) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020; and
- 6.19 Determination of an administrative penalty** in terms of Section 90(5) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

7. LAND USE ENVIRONMENT

The subject property is situated in the Hemel en Aarde Valley, located between a mixture of agricultural and resort properties. The surrounding properties are used for agricultural, residential, and tourism-related purposes. This makes the intensive horticulture tunnels part of the agricultural experience and not considered out of the ordinary. The surrounding properties have different land uses, and their zonings are depicted in **Plan 2**, which illustrates the zoning in the area.

The proposed expansion of intensive horticulture tunnels on the property is unlikely to offend the tourists who visit the Hemel en Aarde Valley. The visual impact of the tunnels is considered to be in harmony with the valley's agricultural character and natural surroundings. As an agricultural area, the presence of horticulture tunnels is expected and contributes to the overall character of the region.

Tourists who visit the Hemel en Aarde Valley are often drawn to its rural and picturesque landscape. The presence of farms, vineyards, and agricultural activities adds to the unique appeal of the area. The proposed tunnels, being an integral part of the



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agricultural nature of the valley, are not expected to detract from the overall visitor experience. On the contrary, they can provide an opportunity for tourists to witness and learn about modern farming practices and the cultivation of crops in a controlled environment.

As previously mentioned, the Hemel en Aarde Valley is renowned for its wine production and agricultural heritage. Many visitors are attracted to the valley to explore its vineyards, taste local wines, and immerse themselves in the agricultural lifestyle. The expansion of horticulture tunnels aligns with the valley's identity as an agricultural destination and contributes to the preservation of its rich farming traditions.

It is important to note that the proposed tunnels are designed and positioned in a manner that ensures they blend harmoniously with the surrounding landscape although there will always be a visual impact. The visual impact has been taken into consideration during the planning and design process to minimize any potential disruption to the aesthetic appeal of the valley. The farm owner is committed to maintaining the scenic beauty of the area while simultaneously enhancing the agricultural productivity of the property.

8. TITLE DEED

Title deed T97282/2007 (refer **Annexure B – Title Deed**) was perused and there are no restrictive conditions that prohibits the proposed development on the subject property.

9. ZONING

The following zoning parameters were assessed in conjunction with the OMLUS zoning as this is a relevant consideration in terms of Section 66 (1) (q) of the OM By-Law:



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AGRICULTURE ZONE 1: AGRICULTURE (AGR1)						
Land Use Restrictions						
	Parameters	Proposal				
Primary use	Agriculture , Crèche, Dwelling House, Guest Rooms and Home Occupation.	Agriculture				
Consent uses that may be applied for	Additional Dwelling Units, Agricultural Industry, Animal Care Centre, Aquaculture, Day Care Centre, Farm Shop/Stall, Fertiliser Plant, Guest House, Hotel, Institution, Intensive Animal Farming, Intensive Horticulture , Lodge, Mining, Place of Assembly, Place of Entertainment, Place of Instruction, Plant Nursery, Riding Stables, Service Trade, Tourist Accommodation, Tourist Facilities, Transmission Apparatus, Utility Services, Wellness Centre And 4x4 Trail.	Intensive horticulture (tunnels) expansion				
Floor Space	The total floor space of all buildings on the land unit may not exceed 5000m ² , provided that the Municipality may relax this requirement if it is satisfied that such buildings are required for bona fide farming activities on the land unit.	<p><u>Proposal Floor Space Departure</u></p> <table border="1"> <tr> <td>Approved horticulture tunnels (2016) – 5,8727 ha</td> </tr> <tr> <td>Proposed horticulture tunnels – ±16,083 ha</td> </tr> <tr> <td>Other Structures - ±0.2874 ha</td> </tr> <tr> <td>Proposed Floor Space (2023) – ±22,2537 ha</td> </tr> </table>	Approved horticulture tunnels (2016) – 5,8727 ha	Proposed horticulture tunnels – ±16,083 ha	Other Structures - ±0.2874 ha	Proposed Floor Space (2023) – ±22,2537 ha
Approved horticulture tunnels (2016) – 5,8727 ha						
Proposed horticulture tunnels – ±16,083 ha						
Other Structures - ±0.2874 ha						
Proposed Floor Space (2023) – ±22,2537 ha						
Building Lines	The street and common boundary building lines are determined in accordance with the area of the land unit as specified in the table below. Greater than 10 ha: Street boundary building lines = 30m Common boundary building lines = 30m	<p>The 2016 approval allowed:</p> <p>Departure of the:</p> <ul style="list-style-type: none"> Western lateral building line from 30m to 10m; Eastern lateral building line from 30m to 3m. <p>Current Proposal:</p> <ul style="list-style-type: none"> Departure from the eastern 30m building line to 12,04m to allow the proposed extension of the pack shed in terms; 				



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	<ul style="list-style-type: none"> • Departure from the eastern 30m building line to 6,44m to allow the existing pergola; • Departure from the northern 30m building line to 9m to allow the existing intensive horticulture tunnels; • Departure from the western 30m building line to 9m to allow the existing intensive horticulture tunnels; • Departure from the northern 30m building line to 11m, 12m & 20m to allow the proposed intensive horticulture tunnels; • Departure from the western 30m building line to 12m, 13,5m, 14m, 14,5m & 15,5m to allow the proposed intensive horticulture tunnels; • Departure from the southern 30m building line to 23,7m & 23,8m to allow the proposed intensive horticulture tunnels; • Departure from the southern 30m building line to 5m to allow the existing intensive horticulture tunnels; • Departure from the western 30m building line to 10m to allow the proposed intensive horticulture tunnels; • Departure from the southeastern 30m building line to 19m & 24,5m to allow the proposed intensive horticulture tunnels; • Departure from the southern 30m building line to 7,3m & 8m to allow the proposed intensive horticulture tunnels;
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		<ul style="list-style-type: none"> • Departure from the eastern 30m building line to 3,3m & 5,5m to allow the proposed intensive horticulture tunnels; • Departure from the eastern 30m building line to 3m to allow the proposed intensive horticulture tunnels; and • Departure from the eastern 30m building line to 3m to allow the proposed intensive horticulture tunnels. 	
<p>Height</p>	<p>The maximum height of a building, measured from the base level to the top of the structure, is 8,0 m, provided that agricultural buildings other than dwelling units shall not exceed a height of 12,0 m, measured from the base level to the top of the structure, and where the Municipality is satisfied that a greater height is necessary for the agricultural function of the building, it may permit such greater height.</p>	<p>Buildings which are not related to agriculture are not higher than 8m.</p> <p>The existing and proposed intensive horticulture building do not and will not exceed the 12m height restriction</p>	Comply
<p>Parking</p>	<p>Parking and access shall be provided on the land unit in accordance with 17.1.</p> <p>Office 6 bays per 100m² GLA</p> <p>Storage 2 bays per 100m² GLA</p> <p>Loading bays 1 bay per 500m² for the first 1 000 m² of GLA, thereafter 1 bay per 1 000 m².</p> <p>There are no parking requirements for intensive horticulture tunnels.</p>	<p>The office is 587m² and require 35,36 parking bays;</p> <p>Storage/pack shed is 1018m² and requires 20,36 parking bays.</p> <p>There are 57 parking bays required and 62 parking bays are provided.</p> <p>The GLA is 1701 m² and there are 4 loading bays required which are provided.</p>	Comply



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10. SERVICES

The availability of services is a relevant consideration in terms of Section 42(1)(c)(v) of SPLUMA and is herewith illustrated.

Water

There are historic water rights which exist on the subject property. The proposed tunnel expansion is aligned with the existing water rights capacity. The existing intensive horticulture fields is being proposed to be covered by the tunnels there will be no expansion of the number of extents of agricultural fields on the farm. This will ensure that the extraction of water does not exceed existing capacities.

Additionally, it is expected that with the inclusion of more tunnels, the water requirements are lower. Intensive horticulture tunnels play a significant role in water conservation within agricultural practices. Through controlled irrigation systems, water usage is optimized as water is delivered precisely to the plant's root zone, minimizing evaporation and runoff. The enclosed environment of the tunnels further reduces water loss by limiting exposure to external elements such as wind and excessive heat, thus minimizing evapotranspiration.

In addition to precise irrigation, water recycling and conservation methods are often implemented in intensive horticulture tunnel systems. Runoff water and condensation can be collected and reused for irrigation purposes, reducing the reliance on fresh water sources. This proactive approach to water management helps maximize water efficiency and minimize wastage.

Furthermore, the use of efficient water distribution systems, such as drip irrigation or micro-sprinklers, ensures that water is evenly and directly applied to the plants. This targeted approach reduces water loss due to overspray or inefficient distribution, allowing for more effective water usage and conservation.

Within intensive horticulture tunnels, farmers also have greater control over crop-specific water requirements. By tailoring irrigation schedules and amounts based on the specific needs of each crop, water can be allocated in the most efficient manner. This precise water management approach prevents overwatering and ensures that plants receive the necessary amount of water for optimal growth, minimizing water wastage.

Overall, intensive horticulture tunnels offer an innovative and sustainable solution for water-saving in agriculture. By optimizing irrigation, recycling water, improving distribution, and tailoring water management to specific crops, these tunnels significantly reduce water consumption compared to traditional open-field farming methods. This not only benefits the environment by conserving a precious resource but also contributes to the long-term viability and sustainability of agricultural practices.

Sewage

"Boland Toilets" provides toilets and pumping services for the agricultural fields and tunnels. The sewage services have been installed in accordance with the prescripts of audits which have been done on the property and the capacity thereof can be regarded as sufficient.



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As the season workers increase so do the number of toilets that are being provided on the farm. Boland Toilers are a registered company that are required to adhere to all regulation and standards.

The packhouse and offices have conservancy tanks which are emptied by the Overstrand Municipality.

Solid Waste

Solid waste is collected and kept on-site and taken to the waste transfer station in Hermanus. The area where the waste is kept complies with the regulations set out by the OMLUS.

Electricity

Electricity is provided by Eskom and there is a separate proposal submitted to reduce the reliance on the electricity producer and become more sustainable by Haygrove to construct a solar installation that will be able to adequately run the daily operation of both farms during loadshedding.

Access and egress

Access to the subject property is currently gained from Minor Road number OP04012 from km marker 0,991. The approval and implementation of this proposal will not alter this.

Egress is obtained through an internal road running from the subject property to Portion 11 (adjacent farm) also in ownership of Haygrove. The internal road connects to a servitude road that leads toward the R320. There have been past concerns with reference to dust and the property owner took it upon themselves to maintain the egress road and keep dust low by scraping the road at their own expense. The access road is tarred.

The table below shows the amount of traffic being generated currently and how the proposal will impact the traffic:

Vehicle type	Current	Expected with tunnels	Increase
Packhouse cold truck (fruit transport)	2	2	No additional trucks will be required; however, the frequency of the trips may increase depending on volume profile.
Buses (staff transport)	9	11	The increase will a result of the additional seasonal workers.
Cars and bakkies (management)	18	18	No change



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11. NEED AND DESIRABILITY

The need and desirability of the approval and implementation of this proposal in accordance with Section 66 (1) (c) of the OM By-Law can be illustrated as follow:

Need and desirability

<p>Socio-economic impact</p>	<p>The introduction of new intensive horticulture tunnels brings about several positive socio-economic impacts:</p> <ul style="list-style-type: none"> • Job Creation: The expansion of intensive horticulture tunnels requires additional labour for tasks such as planting, monitoring, and harvesting crops. This leads to the creation of new employment opportunities, both temporary and permanent, within the local community. The availability of jobs contributes to reducing unemployment rates and improving the socio-economic well-being of individuals and families. <p>Haygrove currently employs 800 workers permanently and up to an additional 2,500 seasonal and fixed term workers in peak season. In the Hermanus area specifically, Haygrove employs 400 people permanently and up to 1,800 in peak season making it arguably that largest private employer in the greater Hermanus area. Haygrove also invests in the communities it farms, through health and education initiatives, to schooling bursaries and donations to various organisations in the surrounding community.</p> <p>Should the application be approved to allow the expansion of the tunnels an additional 100 seasonal jobs will be created (Seasonal jobs are a minimum of 18 weeks of employment). In addition, 6 additional permanent workers will be employed to assist with the maintenance of the tunnels.</p> <ul style="list-style-type: none"> • Local Economic Growth: The establishment of intensive horticulture tunnels stimulates economic growth at the local level. As the agricultural enterprise becomes more viable, there is an increased demand for various goods and services, such as equipment, supplies, transportation, packaging, and marketing.
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	<p>Local businesses and service providers benefit from this increased demand, leading to increased revenue, tax contributions, and overall economic activity in the area.</p> <ul style="list-style-type: none"> • Income Generation: Intensive horticulture tunnels enhance the income potential for farmers and farm workers. With increased productivity and higher yields per square meter, Haygrove can generate more income from their agricultural operations. This improved financial standing not only benefits Haygrove themselves but also contributes to the stability and prosperity of the local economy. • Market Expansion and Trade Opportunities: The availability of a wider range of crops from intensive horticulture tunnels allows farmers to meet diverse market demands. By supplying both local and international markets with fresh and high-quality produce, Haygrove can continue into new market segments and potentially increase export opportunities. This expansion of market reach contributes to the growth of the agricultural sector and strengthens the region's position as a reliable supplier of agricultural products. • Community Development: The establishment of intensive horticulture tunnels encourages community development in various ways. The increased economic activity and job creation lead to improved living standards and enhanced access to services and infrastructure within the community. Additionally, Haygrove invests into community initiatives, sponsor local events, or participate in cooperative efforts, fostering a sense of community engagement and cohesion. • Food Security and Sustainability: Intensive horticulture tunnels contribute to food security by increasing local food production. With higher crop yields, farmers can meet the growing demand for fresh and nutritious food within the community. This reduces reliance on imported produce and enhances the region's self-sufficiency in food production. Moreover, the adoption of sustainable farming practices within
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	<p>the tunnels promotes environmental stewardship and ensures the long-term viability of agricultural activities.</p> <p>Overall, the new intensive horticulture tunnels positively impact the socio-economic landscape by creating employment opportunities, driving local economic growth, generating income, expanding markets, fostering community development, and contributing to food security and sustainability. These socio-economic benefits contribute to the overall well-being and prosperity of the local community.</p>
<p>Compatibility with surrounding uses</p>	<p>Intensive horticulture tunnels are not considered out of the ordinary in an area primarily characterized by agricultural properties and residential properties, even though the area is predominantly zoned for agriculture. There are several compelling reasons to support this perspective:</p> <ul style="list-style-type: none"> • Compatibility with the Surrounding Environment: Intensive horticulture tunnels align with the existing agricultural landscape and practices within the area. As neighbouring properties predominantly engage in agricultural activities, the expansion of intensive horticulture tunnels maintains consistency with the agricultural zoning and reinforces the agricultural character of the region. • Efficient Land Utilisation: Intensive horticulture tunnels enable farmers to optimize land utilisation and increase agricultural productivity within limited spaces. Given the zoning primarily focused on agriculture, it is essential to encourage efficient and sustainable farming practices that maximize yield per hectare. Intensive horticulture tunnels facilitate such practices, allowing farmers to cultivate a diverse range of crops and meet market demands without encroaching on larger land areas. • Economic Benefits: By supporting the expansion of intensive horticulture tunnels, the local economy stands to gain significant advantages. The increased agricultural output resulting from these tunnels translates into higher yields, which in turn generate employment opportunities and stimulate economic growth. Moreover, the production of quality agricultural produce can



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	<p>boost local trade, attract buyers, and contribute to the area's reputation as a reliable supplier of fresh, high-value products.</p> <ul style="list-style-type: none"> • Environmental Considerations: Intensive horticulture tunnels offer potential environmental benefits. They promote efficient resource utilization by minimizing water consumption and reducing the need for chemical inputs. The controlled environment provided by the tunnels also helps protect crops from adverse weather conditions, decreasing the reliance on pesticides and fostering more sustainable farming practices. • Support for Food Security: Encouraging intensive horticulture in an agriculturally zoned area contributes to regional and national food security. The increased production capacity enabled by the tunnels helps meet the growing demand for fresh and nutritious food, both locally and beyond. This aligns with the agricultural zoning's primary goal of supporting food production and self-sufficiency. <p>In summary, considering the predominant agricultural zoning, the expansion of intensive horticulture tunnels in an area of agricultural and residential properties is justified by their compatibility with the existing landscape, efficient land utilization, economic benefits, environmental considerations, and support for food security. Embracing innovative and sustainable farming practices, such as intensive horticulture, can enhance the agricultural sector, promote local economies, and foster a thriving farming community.</p>
Impact on the external engineering services	Refer Section 9.
Impact on safety, health and wellbeing of the surrounding community	<p>The presence of intensive horticulture tunnels can have positive impacts on the safety, health, and overall well-being of the surrounding community in several ways:</p> <ul style="list-style-type: none"> • Reduced Use of Chemicals: Intensive horticulture often utilizes integrated pest management (IPM) practices, which minimize the use of chemical pesticides. This approach prioritizes the use of natural pest control methods, such as beneficial insects or organic



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	<p>sprays, resulting in reduced chemical exposure for both the workers on the subject property and the surrounding community. This promotes a healthier environment and minimizes any potential health risks.</p> <ul style="list-style-type: none"> • Improved Air Quality: Intensive horticulture tunnels provide a controlled environment for crop cultivation, reducing the dispersion of dust, pollen, and other airborne particles. This improves air quality in the vicinity of the tunnels. Reduced air pollution can alleviate allergies and create a safer and more pleasant living environment. • Noise Mitigation: Unlike some agricultural practices involving livestock or machinery, intensive horticulture tunnels produce minimal noise. The absence of loud machinery or animal noises minimizes noise pollution, allowing for a quieter and more peaceful community environment. This can positively impact the well-being and quality of life for nearby residents. • Enhanced Food Safety: Intensive horticulture tunnels enable farmers to implement strict quality control measures and hygienic practices during the cultivation and handling of crops. This ensures that the produce meets high food safety standards, reducing the risk of contamination and related health hazards. The availability of safe and fresh produce from the tunnels contributes to the well-being and peace of mind of the surrounding community. • Intensive horticulture tunnels often present a neat and organized appearance, contributing to the aesthetic appeal of the surrounding area. Well-maintained and visually pleasing agricultural landscapes can enhance community pride and create a positive ambiance. This can positively influence the overall well-being and satisfaction of residents in the vicinity.
Impact on heritage	The subject property is not listed in the OM Heritage Register.
Impact on the biophysical environment	The establishment of intensive horticulture tunnels has several positive impacts on the biophysical environment:



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	<ul style="list-style-type: none"> • Land Conservation: Intensive horticulture tunnels allow for higher crop yields per square meter, reducing the need for land conversion. This helps preserve natural habitats, ecosystems, and valuable agricultural land. • Water Efficiency: The use of efficient irrigation systems, such as drip irrigation, in intensive horticulture tunnels minimizes water wastage. Precise water delivery directly to the plant roots conserves water resources and reduces water runoff. • Soil Health: Proper soil management practices in intensive horticulture tunnels, such as the use of organic fertilizers and crop rotation, promote soil fertility and structure. This helps maintain soil health and reduces the risk of erosion. • Energy Savings: Intensive horticulture tunnels provide a controlled environment, reducing the need for excessive heating or cooling. The enclosed space can help save energy, especially when combined with energy-efficient technologies or the use of renewable energy sources. • Waste Management: Implementing effective waste management practices, such as composting, within intensive horticulture tunnels reduces organic waste and reliance on synthetic fertilizers. This promotes sustainable nutrient cycling and minimizes pollution risks. <p>Overall, intensive horticulture tunnels contribute to land conservation, water efficiency, soil health, energy savings, and effective waste management practices. These positive impacts help promote environmental sustainability within the agricultural sector.</p>
<p>Traffic impacts, parking, access and other transport related considerations</p>	<p>While the establishment of intensive horticulture tunnels may have some implications for traffic, it is not predicted to have an effect on the surrounding area. The property is being utilised for agricultural and farming purposes, and the promotion of sustainable transport practices can help manage and mitigate any potential impacts of the traffic. Haygrove has a communal bus system that transports the workers to and from Hermanus. By</p>



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	considering these factors, the overall transport-related impacts can be minimized, contributing to the smooth functioning and sustainability of the agricultural operations.
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The property owners have tasked WRAP Project Office with submitting this application to ensure the proposed development aligns with policies, legislation, and title deed conditions, in pursuit of their vision.

Impact on views, sunlight and character of the area

The visual impact of the intensive horticulture tunnels on the surrounding area is an acknowledged consideration. It is important to note that the area surrounding the Hemel and Aarde Valley, where the subject property is located, is characterized by a mix of natural vegetation and various agricultural activities, particularly vineyards. The presence of agricultural enterprises, including intensive horticulture tunnels, is not uncommon in this region, and they are widely utilized throughout the Western Cape. Given that the entire area is predominantly zoned for agricultural purposes, the establishment of intensive horticulture tunnels aligns with the existing land use regulations. The zoning regulations allow for a range of agricultural activities aimed at maximizing agricultural productivity and economic viability in the region. It is worth noting that the only exception to the agricultural zoning is a property that is specifically zoned as a resort, highlighting the predominantly agricultural nature of the area.

Considering the agricultural character of the region and the prevalence of similar farming practices, the introduction of intensive horticulture tunnels on the subject property is in line with the existing land use patterns. The visual impact of the tunnels can be mitigated through appropriate design and landscaping measures, ensuring they harmonize with the surrounding natural environment and agricultural landscape.

Furthermore, the use of intensive horticulture tunnels in the region has been proven to be a successful and efficient method of crop production. They provide opportunities for increased yield, better crop protection, and improved resource utilization. These factors contribute to the overall sustainability and economic viability of agricultural operations in the area.

In its efforts to address potential visual impacts, Haygrove strategically incorporates coastal beefwoods as windbreaks, serving the dual purpose of mitigating wind effects and providing visual barriers. These well-placed trees help to blend in the horticulture tunnels harmoniously into the natural surroundings. Additionally, Haygrove incorporates an additional layer of shade netting above the tunnels, this layer reduces the effectiveness of the tunnels, however, it reduces the visual impact of the tunnels and any potential glare. Haygrove would ideally want to remove this layer however as they are being reasonable neighbours, they added this layer after comments were received during previous applications.

Furthermore, Haygrove demonstrates its commitment to environmental stewardship by investing in alien clearing initiatives. By actively clearing invasive species, particularly in the areas of natural fynbos, Haygrove ensures the preservation of the native ecosystem and promotes the ecological integrity of the region. Through these practices, Haygrove



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exemplifies its dedication to maintaining a balance between agricultural productivity and environmental conservation.

Figure 2 and 3 illustrates the terrain and elevation of the surrounding area from the R320:

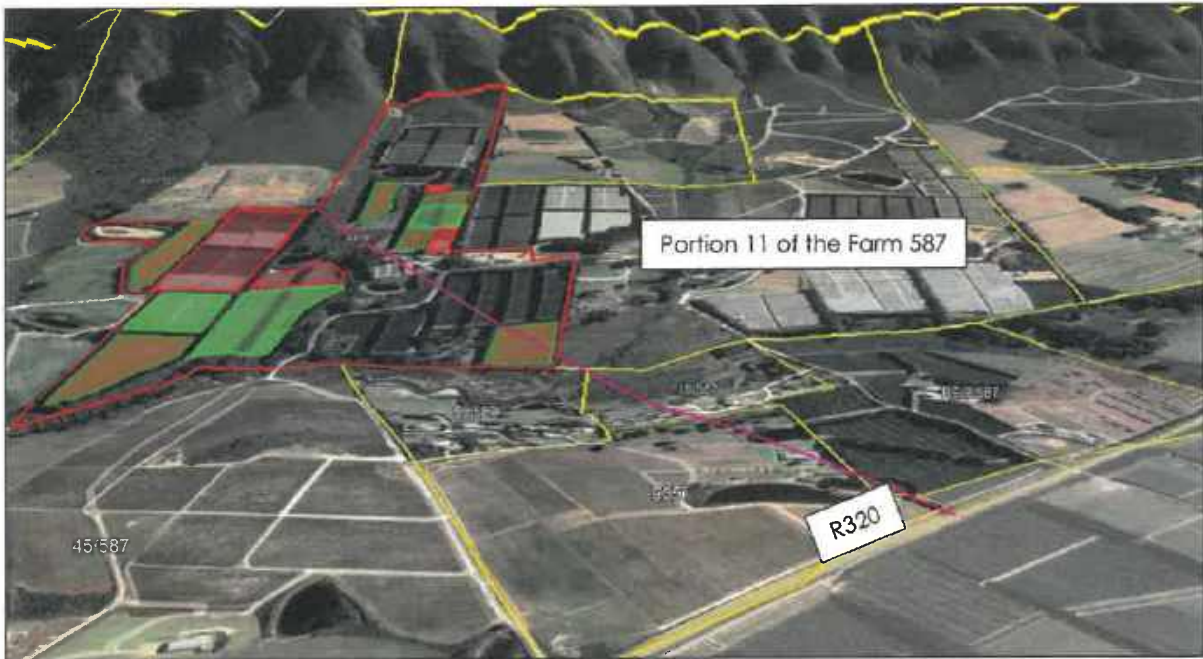


Figure 4: Surrounding Area Terrain

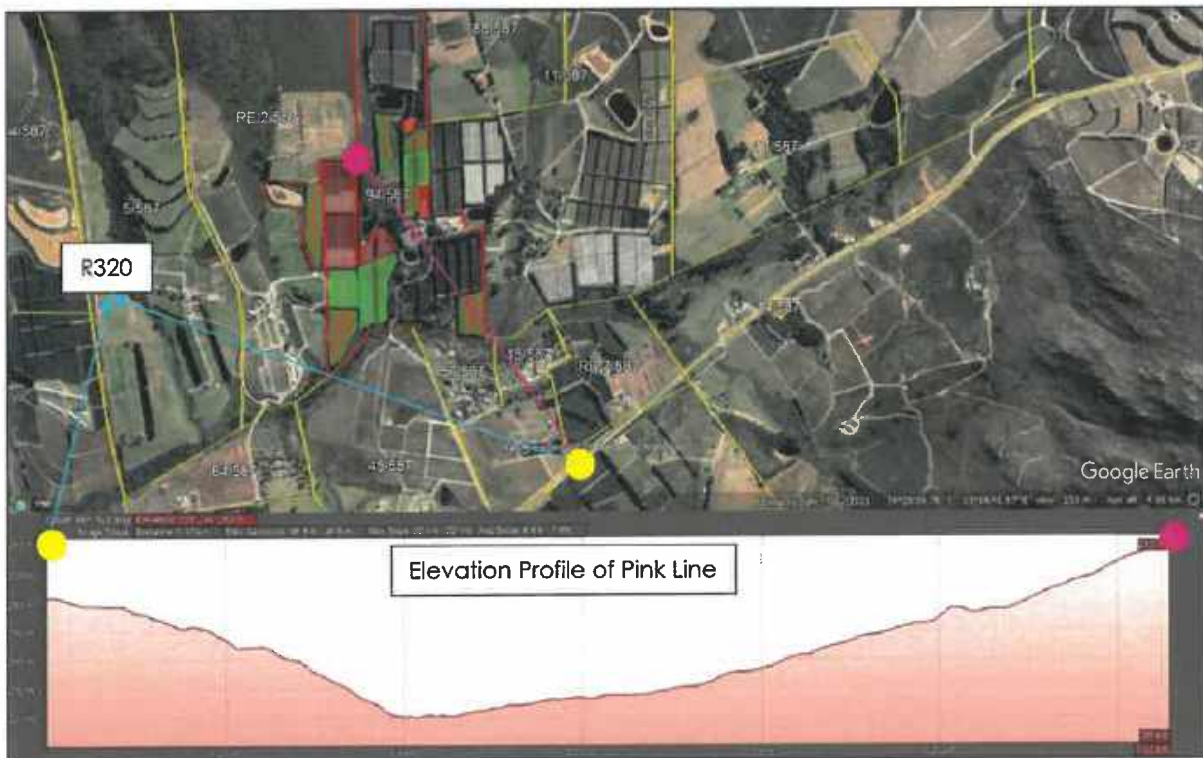


Figure 5: Elevation Profile from the R320 to edge of the subject property (PINK LINE)



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To indicate the property owners are committed they appointed a professional landscape architect to conduct a visual impact assessment (VIA) refer **Annexure D**. The VIA indicated that from a visual perspective, the proposal should be endorsed as it will result in a moderate to moderate-low visual impact on the condition that the visual impact follows the mitigation measures and recommendations set out in **Annexure D**. The property owners intend to follow the mitigation measure as required within the VIA.

Economic impact

1. **Increased Agricultural Output:** The expansion of intensive horticulture tunnels allows for greater crop production on the subject property. This leads to increased agricultural output, resulting in higher yields and a greater supply of fresh produce. The availability of a larger quantity of crops can meet the growing demand from local and international markets, potentially leading to increased revenue for the farm.
2. **Job Creation and Employment Opportunities:** The expansion of intensive horticulture tunnels requires additional labour for tasks such as planting, harvesting, and maintenance. This creates employment opportunities, particularly for the surrounding community. The hiring of local workers can contribute to reducing unemployment rates, improving livelihoods, and enhancing socio-economic well-being in the area.

As mentioned previously Haygrove employs 800 people permanently and up to an additional 2,500 seasonal and fixed term workers in peak season. In the Hermanus area specifically, Haygrove employs 400 people permanently and up to 1,800 in peak season making it arguably that largest private employer in the greater Hermanus area. Haygrove Heaven also invests in the communities it farms, through health and education initiatives, to schooling bursaries and donations to various organisations in the surrounding community. The company's commitment to its workforce is evident through the substantial wages it has paid, amounting to more than R100 million in the past financial year alone. These salaries and wages have a direct and positive impact on the local economy, as they circulate within the surrounding area, supporting local businesses and contributing to the overall prosperity of the community. By generating employment opportunities and injecting substantial funds into the region, Haygrove plays a crucial role in promoting economic growth and stability in the area.

3. **Revenue Generation and Export Potential:** With a larger production capacity enabled by the expanded tunnels, the farm can generate increased revenue through the sale of fresh produce. The surplus crops can be exported to international markets, further contributing to the farm's profitability. Exporting agricultural products can enhance foreign exchange earnings for the region and contribute to the overall economic growth and development.
4. **Value Addition and Market Competitiveness:** Intensive horticulture tunnels allows for the cultivation of a wide variety of crops, including high value produce such as berries, which are in high demand both domestically and internationally. By diversifying the farm's product range, the proposal enhances its market competitiveness and potential for value addition. This can lead to higher profit margins and economic sustainability.



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5. Economic Resilience and Diversification: Intensive horticulture tunnels offer a means of diversifying agricultural activities and income sources. By expanding the intensive horticulture tunnels, the farm can reduce its reliance on a single crop or farming method, thereby enhancing its resilience to market fluctuations and environmental challenges. This diversification contributes to the long-term sustainability of the agricultural sector in the region.

12. POLICIES AND REGULATIONS

12.1 Overstrand Municipality Environmental Protection Overlay Zone (EMOZ)

A portion of subject property is located in the "Mountain Catchment EMOZ" and "Protected Area Buffer EMOZ".

The purpose of the "Mountain Catchment EMOZ" is to protect and conserve the ecology and water provision functions of priority unprotected mountain catchments, to ensure optimal water security for the Overstrand communities and to preserve the significant eco-cultural tourism value of the Overstrand's natural mountain landscape character. The purpose of the "Protected Area Buffer EMOZ" is to protect the integrity of National, Provincial and Municipal Nature Reserves from negative external pressures/impacts while reducing pressure on core areas and to assist in preserving their value to the eco-cultural tourism economy of the Overstrand through alignment of appropriate land use and regulation.

These proposed tunnels are not located in the EMOZ, and it is not predicted to have an effect on the EMOZ.

12.2 Overstrand Municipality Heritage Protection Overlay Zone (HPOZ)

The top portion of the subject property is located in the "Landscapes HPOZ" and its purpose is to protect and enhance landscapes identified as having high natural, scenic and heritage significance and which contribute to the character and sense of place in the Overstrand and its economic base.

These proposed tunnels are not located in this HPOZ, and it is not predicted to have an effect on the HPOZ.

12.3 Spatial Planning Policies

WCLPGRA

The policy promotes appropriate growth of the rural economy in appropriate locations. Policy proposals in the WCLPGRA pertinent to this proposal are recorded as below:

Enhancing the Economic Viability of Farms through Intensification: The aim of intensification on farms is to boost economic viability by increasing capital investment and labour to achieve higher yields and output. In line with the WCLPGRA, this application seeks to grant the property owner the appropriate land use rights to implement agricultural intensification, thereby enhancing the farm's economic sustainability.

Preserving Agricultural Landscapes and Minimizing Fragmentation: Agricultural fragmentation occurs when farms are subdivided into smaller units, compromising their



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agricultural viability. This proposal is not synonymous with fragmentation. On the contrary, it enables the property owner to increase agricultural output, aligning with the objectives outlined in the WCLPGRA to discourage fragmentation and promote the consolidation of agricultural land.

Maintaining Consistency and Scale within the Farm Precinct: The proposed tunnels conform to the prescribed height restriction of 12 meters, ensuring that they remain consistent with the scale and structures found on neighbouring farms. By reflecting similar characteristics and adhering to the appropriate scale, the proposal aligns with the desired farm precinct environment as outlined by the WCLPGRA.

PSDF

The PSDF is a product of a provincial inter-departmental and inter-governmental collaboration under the guidance of the inter-departmental steering committee in collaboration with the private sector, academia, and non-governmental organisations. This broad participatory process has created a shared spatial vision that is intended to inform spatial development patterns in urban and rural areas in the province.

Consistency with the PSDF

Promoting Rural Development and Agricultural Investment: The primary objective of this proposal is to prioritize rural development by increasing investment in agricultural activities on the subject property, aligning with the goals set forth by the PSDF. By directing resources and efforts towards agricultural development in the Hemel en Aarde rural area, this proposal aims to stimulate inclusive economic growth, create employment opportunities, and uplift the local community.

Enhancing Agricultural Expansion and Diversification: The implementation of this proposal will lead to increased agricultural output, enabling the farm owner to expand and diversify their crop production. By introducing intensive horticulture tunnels, a wider range of fruits and crops can be cultivated, thereby promoting the diversification of agricultural activities in the region. This diversification not only strengthens the resilience of the agricultural sector but also opens up new markets and revenue streams for the farm.

Leveraging Comparative Strengths of the Western Cape: The Hemel en Aarde area has been recognized for its comparative strengths in terms of high agricultural output and performance. This proposal seeks to capitalize on these strengths by further enhancing the agricultural sector's productivity and economic contribution. By maximizing the potential of the rural area's agricultural resources and expertise, the proposal aims to bolster the Western Cape's position as a leading agricultural region, attracting investment, and fostering sustainable growth.

Promoting Regional Cooperation and Collaboration: The proposed expansion of intensive horticulture tunnels encourages collaboration and knowledge-sharing among farmers and agricultural stakeholders in the Hemel en Aarde Valley. Through cooperative efforts, such as sharing best practices, accessing resources, and jointly marketing agricultural products, the proposal fosters a supportive and interconnected agricultural community. This cooperation not only enhances the overall productivity and



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competitiveness of the region but also strengthens social and economic ties within the local farming network.

Strengthening Food Security and Sustainable Agriculture: The expansion of agricultural activities through intensive horticulture tunnels contributes to strengthening food security in the region. By increasing crop yields and diversifying the range of produce, the proposal enhances the availability and accessibility of fresh, locally grown food. Moreover, the sustainable practices employed in intensive horticulture tunnels, such as efficient water usage and reduced chemical inputs, promote environmentally friendly and resource-efficient farming methods, ensuring the long-term sustainability of agricultural production in the Hemel en Aarde Valley.

MSDF

The MSDF plays a crucial role in identifying areas for growth and implementing policies that benefit the residents of the OM. The SDF contains various policy proposals, and the ones relevant to this proposal are outlined below:

Development of Strong Local Economy in Rural Areas: The Hemel en Aarde region already possesses a relatively robust economic base. The approval and implementation of this proposal will further strengthen the economic foundation in the rural area. By promoting agricultural activities and investment, the proposal aligns with the SDF's objective of supporting and enhancing the local economy.

Protection of Agricultural Resources: This proposal not only safeguards the existing agricultural resource base but also aims to increase the agricultural output on the subject farm, in line with the goals set by the SDF. The expansion of intensive horticulture tunnels will contribute to the preservation and sustainable use of agricultural resources, ensuring their long-term viability and productivity.

Spatial Proposal Plan: The subject property is designated as a core agricultural area within the SDF's spatial proposal plan. The proposed implementation of intensive horticulture tunnels aligns harmoniously with this land use designation. It supports the strategic vision of utilizing the area for agricultural purposes and emphasizes the importance of agricultural activities within the designated core agricultural zone.



13. PLANNING PRINCIPLES

Chapter 2 of SPLUMA contains 5 uncompromisable planning principles by which each development application must be guided. Policy proposals in SPLUMA which are pertinent to this proposal are recorded below:

Spatial justice

The proposal contributes to spatial justice by promoting improved access to and use of land. By implementing additional horticulture tunnels, Haygrove aims to redress past spatial imbalances and provide opportunities for disadvantaged communities and individuals to participate in agricultural activities. The tunnels enable the cultivation of high-value crops, creating employment and economic opportunities for local residents, including those in informal settlements and areas affected by poverty.

Spatial sustainability and efficiency

The proposal prioritizes spatial sustainability by optimizing land use and resource efficiency. The horticulture tunnels allow for the intensive cultivation of crops within a relatively small footprint, maximizing land productivity. This approach minimizes the need for large expanses of land while ensuring a high agricultural output. Additionally, Haygrove considers the protection of prime agricultural land and strive to minimize negative environmental impacts through sustainable farming practices.

Spatial resilience

The proposal embraces efficiency by optimizing existing resources and infrastructure. The horticulture tunnels utilize advanced irrigation systems, precision farming techniques, and climate control technologies to maximize crop yields while minimizing water and energy consumption.

Good administration

The Overstrand Municipality has demonstrated a solid history of effectively incorporating public participation into its administrative processes. Public participation is a crucial aspect of the land use planning process.

This process allows individuals who may be impacted by the proposal to provide feedback and raise any concerns or make suggestions that may lead to a more favourable outcome for all parties involved. All comments received will be carefully reviewed and taken into consideration before being addressed appropriately.



14. EVALUATION

The proposal for the expansion of intensive horticulture tunnels on the property holds significant benefits and justifications for its approval. It should be reiterated, no additional agricultural fields are being proposed, only the existing field are proposed to be enclosed by the intensive horticulture tunnels. The application aligns with various planning principles, including promoting rural development, economic growth, and the protection of agricultural resources. Moreover, it adheres to the guidelines set forth by the Spatial Planning and Land Use Management Act and the Overstrand Municipality's By-Laws. By considering the positive socio-economic impacts, environmental sustainability, and the compatibility of the proposal with the existing agricultural landscape, it becomes evident that allowing the additional horticulture tunnels is a prudent decision.

Firstly, approving the expansion of intensive horticulture tunnels will enhance the economic viability of the farm and contribute to rural development. The increased investment in agricultural activities will lead to improved productivity, income generation, and employment opportunities within the Hemel en Aarde Valley and Hermanus area. This aligns with the overarching goal of promoting inclusive economic growth and ensuring a strong local economic base. Furthermore, the expansion of horticulture tunnels on the property capitalizes on the comparative strengths of the Western Cape, particularly the high agricultural output of the Hemel en Aarde Valley. By maximizing the agricultural potential of the region, this proposal reinforces the significance of the area as a valuable agricultural hub, contributing to the overall prosperity and food security of the region.

From an environmental standpoint, the proposal demonstrates a commitment to sustainable practices. Intensive horticulture tunnels are known for their water-saving capabilities, efficient resource utilisation, and reduced pesticide application. These factors contribute to the conservation of water resources, minimized environmental impact, and overall ecological sustainability.

Lastly, the proposal aligns with the principles of spatial planning and land use management, as outlined in SPLUMA. It adheres to the principle of spatial justice by addressing past imbalances, promoting inclusion, and redressing access to land. The application also adheres to the principle of spatial sustainability, ensuring that land development is within fiscal means, protects prime agricultural land, and considers environmental and social costs.

In conclusion, the expansion of intensive horticulture tunnels on the property offers numerous benefits and aligns with various planning principles. By promoting rural development, economic growth, and environmental sustainability, this proposal will strengthen the agricultural enterprise, contribute to food security, and enhance the overall well-being of the community. Granting approval for the expansion of horticulture tunnels on the property is a decision that will yield positive outcomes for both the farm owners and the surrounding region.



RECOMMENDATION

15. RECOMMENDATION

Based on the abovementioned motivation, it is recommended that the following be approved:

- 15.1 Amendment of condition of approval 1(c) dated 13 July 2012 to allow the proposed expansions of the agricultural industry in terms of Section 16(2)(h) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning Act, 2020.
- 15.2 Permanent Departure from the eastern 30m building line to 12,04m to allow the proposed extension of the pack shed in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.
- 15.3 Permanent Departure from the eastern 30m building line to 6,44m to allow the existing pergola in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.
- 15.4 Amendment of condition of approval 3(a) contained in letter of approval dated 9 February 2016 to allow the proposed expansions of the tunnels in terms of Section 16(2)(h) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning Act, 2020;
- 15.5 Permanent Departure from the northern 30m building line to 9m to allow the existing intensive horticulture tunnels in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020;
- 15.6 Permanent Departure from the western 30m building line to 9m to allow the existing intensive horticulture tunnels in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020;
- 15.7 Permanent Departure from the northern 30m building line to 11m, 12m & 20m to allow the proposed intensive horticulture tunnels in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020;
- 15.8 Permanent Departure from the western 30m building line to 12m, 13,5m, 14m, 14,5m & 15,5m to allow the proposed intensive horticulture tunnels in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020;
- 15.9 Permanent Departure from the southern 30m building line to 23,7m & 23,8m to allow the proposed intensive horticulture tunnels in terms of Section 16(2)(b) of

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PORTION 94 OF THE FARM HEMEL EN AARDE VALLEY 587, CALEDON
AUG 2023 & AMENDED FEB 2024

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RECOMMENDATION

the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020;

- 15.10** Permanent Departure from the southern 30m building line to 5m to allow the existing intensive horticulture tunnels in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020;
- 15.11** Permanent Departure from the western 30m building line to 10m to allow the proposed intensive horticulture tunnels in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020;
- 15.12** Permanent Departure from the southeastern 30m building line to 19m & 24,5m to allow the proposed intensive horticulture tunnels in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020;
- 15.13** Permanent Departure from the southern 30m building line to 7,3m & 8m to allow the proposed intensive horticulture tunnels in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020;
- 15.14** Permanent Departure from the eastern 30m building line to 3,3m & 5,5m to allow the proposed intensive horticulture tunnels in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020;
- 15.15** Permanent Departure from the eastern 30m building line to 3m to allow the existing intensive horticulture tunnels in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020;
- 15.16** Permanent Departure from the eastern 30m building line to 3m to allow the proposed intensive horticulture tunnels in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020;
- 15.17** Permanent Departure from the allowable floor space in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020;
- 15.18** Amendment of an approved site development plan in terms of Section 16(2)(L) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020; and

**RECOMMENDATION**

- 15.19** Determination of an administrative penalty in terms of Section 90(5) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

RCAL 94/587

Annexure D 1/69

Loretta Gillion

From: michael farr < >
 Sent: Wednesday, 10 April 2024 16:21
 To: Loretta Gillion
 Subject: Haygrove Farm TP. N. Aheal (H. Olivia)

OVERSTRAND MUNISIPALITEIT
REKORDBEHEER
11 APR 2024
DOCUMENT CONTROL
OVERSTRAND MUNICIPALITY

Dear Loretta

I am writing to express my unhappiness about what appears to be unfettered developments from Haygrove farm to the detriment of the Hemel-en-Aarde valley. I have noted that several contraventions have been listed:

1. The encroachment of building lines and increasing the maximum allowable floor space are being contravened from a land use perspective.
2. The tunnels have been erected without prior approval and municipal consent.
3. The contravening tunnels are encroaching on the building lines.
4. Of the 8.337 ha tunnels built without prior approval, approximately 9000m2 was built across the building lines.
5. The tunnels are/will be a significant eyesore and will destroy the beauty of the valley.

I am also astounded by the seasonal jobs of only temporary employment. My concern is that after this period, where will the seasonal workers return to, if they are without employment. Would Haygrove simply terminate them without any further obligation?

Further, I note that Haygrove claims that with the existence of the expanded tunnels, "the surrounding area is still considered a tourist attraction and will not detract from the overall visitor experience." This is hard to believe with some 22,000 hectares of tunnels!

I would hope that Haygrove farm would be amenable to addressing the issues that I have highlighted. I have no objections to the berry farms and I acknowledge that Haygrove has made a significant success of its business operations. I am sure that a solution in the general interests of the affected community in this particular area can be found.

Yours sincerely
Michael Farr

FILE NO. PIN 94/587
Hemel & Aarde
SCAN NO.
COLLABORATOR NO.
2029369

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TP-N. Olivier
(H. Olivier)

2/69



NICHOLAS SMITH ATTORNEYS
ENVIRONMENTAL LAW SPECIALISTS

OVERSTRAND MUNISIPALITEIT
REKORDBEHEER
22 APR 2024
DOCUMENT CONTROL
OVERSTRAND MUNICIPALITY

FILE NO. <u>PN94/587 ✓</u>
<u>Hemel & Aarde</u>
SCAN NO.
<u>PTN 94</u>
COLLABORATOR NO.
<u>2034911</u>

Overstrand Municipality
16 Paterson Street
Hermanus
7200

Our ref: NDS/sg/R39-001
Your ref: Loretta Gillion

Attention: Ms. Loretta Gillion // Mr. Henk Olivier
By email: loretta@overstrand.gov.za; holivier@overstrand.gov.za

19 April 2024

Dear Ms. Gillion and Mr. Olivier

RE: OBJECTIONS TO LAND USE APPLICATIONS DELIVERED IN TERMS OF THE OVERSTRAND MUNICIPALITY AMENDMENT BY-LAW ON LAND USE PLANNING, 2020: IN RE: PORTION 94 OF THE FARM HEMEL-EN-AARDE NO. 587, DIVISION OF CALEDON: APPLICATION FOR FIFTEEN (15) PERMANENT DEPARTURES; AMENDMENT OF APPROVED SITE DEVELOPMENT PLAN, AMENDMENT OF CONDITIONS OF APPROVAL, AND DETERMINATION OF AN ADMINISTRATIVE PENALTY

Introduction and procedural aspects

1. We act for the objectors described in annexure "A" hereto.
2. Our clients' properties are proximate to *Portion 94 of Farm Hemel-en-Aarde No. 587 Caledon* (referred to herein as "the subject-property"). As such, our clients are directly and adversely affected by the land use applications at issue in this matter.
3. The stipulated closing date for objections to the present application is referred to in the municipal public notification of the application and in the municipal "Notification to potentially affected property owner" dated 11 March 2024. They both refer to the deadline for the delivery of objections by 19 April 2024.
4. These objections on behalf of our clients have been delivered in compliance with the Municipality's procedural stipulations.

Defective company resolution

5. There is no reference to an application for the determination of an administrative penalty in the company resolution signed by the directors of Haygrove Heaven (Pty) Ltd ("Haygrove") on 1 June 2023 authorising Mr. S. Tager "... in his capacity as a

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Nicholas Smith - BA (Hons) LLB ADL LLM (Marine & Environmental Law)



director to act on behalf of the company regarding the applications for the following applications: **DEPARTURE, AMENDMENT OF AN APPROVED SITE DEVELOPMENT PLAN AND AMENDMENT OF CONDITIONS OF APPROVAL**.¹ (Bold text and capitals as in the original.)

6. It is indisputable that Haygrove's company resolution does not presently include any directors' resolution authorising the present application to include the application for an administrative penalty.
7. The power of attorney signed the same day by Haygrove's Mr. Tager and authorising WRAP Project Office (Pty) Ltd ("WRAP") to make application for "*departure, amendment of an approved site development plan, and amendment of conditions of approval*" is also defective for purposes of progressing the administrative penalty application in the present proceedings.
8. If Haygrove is minded to pursue its application for an administrative penalty, as it must be in the circumstances, then a suitably worded company resolution must be effected afresh by Haygrove's directors. The same applies to the required power of attorney.
9. We submit that the process of Haygrove applying for the penalty must commence afresh, and must be finalised before there can be any consideration of Haygrove's applications for additional, and enhanced land use rights. We make the submission that the former application must precede the latter applications for the patently obvious principal reason that Haygrove cannot reasonably expect the Municipality to decide the land use applications for *future* land uses on their merits in the absence of the municipal determination of an appropriate administrative penalty for Haygrove's significant past and *prima facie* willful transgressions.
10. WRAP acknowledges in terms the nature, extent and duration of Haygrove's breaches of the *Overstrand Municipality Amendment By-law on Municipal Land Use Planning, 2020* (the "Planning By-law"), the municipal land use scheme, and some of the conditions of approval set out in the municipal approvals granted to Haygrove in July 2012 and February 2016 (both of which form part of annexure "C" to WRAP's motivation report, which is titled "*Historic Approval*").
11. For the reasons we advance below, and in our preliminary point in these objections, we submit that it is not legally defensible for Haygrove to deliver a composite application, as it has purported to do in this instance.
12. It would be irregular for the Municipality to purport to decide the applicant's present application for the determination of an administrative penalty simultaneously with or after deciding the other land use applications at issue.²
13. We deal with the administrative penalty aspect of the present application in more detail under the next four headings below. We set out our submissions regarding the prematurity of Haygrove's applications for future land uses in a situation where Haygrove must first get its house in order regarding significant past contraventions of

¹ Annexure "A" to WRAP's motivation report. Haygrove's resolution that accompanies the land use application is dated 1 June 2023.

² The administrative penalty application is currently framed as the 19th and final application in the sequence set out in WRAP's motivation report (see paragraphs 5.1 to 5.19; paragraphs 6.1 to 6.19; and 15.1 to 15.19 of that report, where the various applications are described).



the Planning By-law, the land use scheme and various conditions in the approvals granted by the Municipality to Haygrove in the past.

Point in limine: Haygrove's applications for enhanced land use rights (permanent departures, and amendments to Haygrove's site development plan ("SDP") and various currently applicable conditions of municipal approval) are premature insofar as they are included together with Haygrove's application for an administrative penalty (which should be determined and finalised first, and separately from the land use applications)

14. In these objections we distinguish between the prospective land use applications on the one hand, and the application for the determination of an administrative penalty on the other. The latter application is for historic contraventions by Haygrove of the municipal land use scheme and the Planning By-law. Specifically, the historic contraventions pertain to Haygrove unlawfully erecting some 8,337 hectares' of horticulture tunnels on the subject-property.
15. We submit that Haygrove's 18 applications for future land uses (including fifteen permanent departures; an amendment to SDP; and amendment to previous conditions of approval) are all premature in the particular circumstances of Haygrove's admitted unlawful conduct to date.
16. We submit furthermore that the application for the determination of the appropriate administrative penalty in this instance, for Haygrove's unauthorised construction of over eight hectares of intensive horticulture tunnels must be determined, and finalised, first.
17. It is only once Haygrove can approach the Municipality with clean hands, having first regularised its admitted unlawful conduct and paid the administrative penalty determined for those contraventions that it can reasonably expect to approach the Municipality to determine the merits of its land use applications, which entail applications for additional or enhanced future land uses.
18. In any event and as already pointed out and as matters stand, the administrative penalty application is not presently authorised by any company resolution by Haygrove or a suitably worded power of attorney and is thus fatally deficient. To the extent that Haygrove intends resolving to apply for the determination of an appropriate administrative penalty, it should commence that (stand-alone) application afresh. The submissions in support of this principal proposition are set out below.
19. The present application includes, almost as an afterthought (insofar as it is the last of the 19 discrete applications³ described in WRAP's motivation), an application for "***the determination of an administrative penalty in terms of section 16(2)(q) of the By-law for the unauthorised construction of intensive horticulture tunnels on the property.***"⁴ (My underlining and bold text.) WRAP will no doubt submit that in including the administrative penalty application as the last in the sequence of applications it is merely following the statutory framework.⁵ The reason that an application for the determination of an administrative penalty is included last among the applications described in

³ See paragraphs 6.1 to 6.19 of the motivation report prepared by WRAP dated August 2023 (and amended in February 2024).

⁴ See the municipal notification of the present application.

⁵ With particular reference to section 16(2)(a)-(q) which lists an application to determine an administrative penalty as the last category of application that can be sought under that provision.



section 16(2)(a)-(q) of the Planning By-law is because that category of application was added to section 16(2) when the relevant amendments to the Planning By-law took effect.

20. WRAP's description of Haygrove's unauthorised construction of structures on over eight hectares of the subject-property amounts to an indication of *prima facie* unlawful conduct in terms of the Planning By-law. As part of its determination of Haygrove's future application for an administrative penalty the Municipality should also have regard to the offences and penalties set out in section 84 of the Planning By-Law.
21. The Planning By-law also regulates the consequences of such conduct, and its rectification. Section 16(2)(q) of the Planning By-law provides as follows:

"The owner or a person authorised by the owner may apply in terms of Chapters IV and V to the Municipality for the following in relation to development of the land concerned:

...

(q) determination of an administrative penalty."
22. The term "administrative penalty" in the Planning By-law⁶ stipulates that it "is implemented when a person transgresses the land use scheme and provisions including a failure to comply with a duty or requirement in terms of the provisions of Section 84 of the By-Law;".
23. In this instance WRAP's motivation admits Haygrove's unauthorised conduct. WRAP does so in a manner directed at downplaying or minimising the extent of Haygrove's historical transgressions: "Over the past few years, Haygrove has made additions to the property by implementing intensive horticulture tunnels. While some of these tunnels have not yet received formal approval from the municipality, it is essential to prioritise compliance with the By-Law." This is very bland language when used to describe significant and long-extant breaches of the Planning By-law, the land use scheme, and various conditions of Haygrove's 2012 and 2016 municipal approvals.
24. Whilst we agree with WRAP that prioritising compliance is the immediate imperative, it is not correct for WRAP to state so glibly that "some of these tunnels" are not approved, as if they feature as a minority. The incontestable fact is that the majority of the existing horticulture tunnels on the subject-property are not approved. This is shown with reference to the extracts from WRAP's report cited directly below.
25. WRAP states the following in this context: "As mentioned above Haygrove has the intention to obtain approval to increase and expand on their approved intensive horticulture tunnels. The approval of 2016 allowed for the erection of 5,8727ha of tunnels, which have subsequently been expanded upon [without any requisite approval i.e. unlawfully]."⁷
26. Under the *verbatim* extract above and in the table that follows in WRAP's motivation report, WRAP confirms that Haygrove obtained approval, in February 2016, to erect tunnels covering a surface area of some 5,8727 hectares on the subject-property.

⁶ See the definitions section of the Planning By-law (section 1).

⁷ Second unnumbered paragraph under paragraph 5.4 on page 7 of WRAP's motivation report.



27. In the same table WRAP acknowledges that Haygrove also erected what WRAP refers to as "existing and not approved intensive horticulture tunnels" occupying a further 8,337 hectares of the subject-property. (My underlining.)
28. In terms of future proposed operations, Haygrove intends erecting further tunnels, if its land use applications succeed in the fullness of time, comprising an additional 7,746 hectares. Those are proposed in addition to the already approved tunnels occupying some 5,8 hectares and the 8,3 hectares of tunnels constructed in contravention of the Planning By-law and Haygrove's conditions of approval.
29. In our submission, Haygrove's "*proposal ... to apply for both the contravening tunnels as well as the new tunnels*" simultaneously in the present application is untenable on the facts and circumstances of the matter. That is with particular reference to Haygrove's previous unlawful conduct, which must be rectified before Haygrove can reasonably expect the Municipality to consider the grant of enhanced land use rights.
30. We reiterate that Haygrove's conduct in contravention of the By-law must be regularised by the municipal determination of the administrative penalty and by Haygrove's payment of that penalty, before any land use application for additional tunnels' construction can be considered on its merits by the Municipality.
31. The fact of the matter is that the applicant previously obtained land use planning approval for 5,872 hectares' surface area for tunnels. In addition to developing those it unlawfully built significantly more tunnels. The tunnels built in contravention of the Planning By-Law occupy some 8,337 hectares (i.e. a larger total surface area than that occupied by the tunnels authorised by the Municipality in 2016).
32. We submit it is only because Haygrove now seeks municipal approval to permit more tunnels (occupying a further 7,746 hectares), all within the existing building lines, that it belatedly seeks now to regularise the unlawful historic expansion that occurred after the 2016 municipal approval.

An administrative penalty must be finalised before the applicant can apply for additional and enhanced land use rights

33. Section 90 of the Planning By-law makes clear the "*stand-alone*" nature of an application for an administrative penalty. The particular substantive requirements relevant to the information that the applicant for such a penalty must furnish to the Municipality illustrate this submission.
34. Section 90(1) of the Planning By-law makes plain that a person in contravention of the By-law must submit "an application to rectify the contravention ...".
35. On a proper contextual, textual and purposive interpretation of section 90(1) it is clear that an application for an administrative penalty which relates to a person being "*... in contravention of this By-law...*" must be determined independently and as a matter of law, as a stand-alone application.
36. It is also as a matter of logic that any such historic and long-running contravention must be remedied before an application for additional or enhanced land uses can be sensibly entertained by the Municipality. The rectification of Haygrove's substantial historically unlawful land uses must, in accordance with the requirements of the rule of law, be regularised before a new application can be embarked upon for additional land



uses. Put at its simplest, Haygrove cannot apply for further enhanced land use rights until it has atoned for its previous contraventions, by properly initiating, and having the Municipality finalise, an application for the determination of the administrative penalty appropriate in this instance.

37. The practical reason why the application for the determination of the administrative penalty must be decided first, and entirely separately from the other land use applications is this: By the applicant purporting to deliver and have determined a composite application, the applicant's representatives appear to regard the determination of the administrative penalty, and the conclusion of that process by the date of the Municipality's decision, as a *fait accompli*. In other words, the applicant clearly anticipates the decision to determine the administrative penalty as a foregone conclusion. As such, the applicant does not appear to anticipate that the determination of the administrative penalty might be challenged in subsequent administrative appeal proceedings or in judicial review proceedings that might follow. (I submit in this regard that it is indisputable that a decision of first instance pertaining to the determination of an administrative penalty can be the subject of an appeal. This is manifestly clear from the provisions of section 78 of the Planning By-law which makes provision for the identification of the Executive Mayor as appeal authority in respect of decisions contemplated *inter alia* in section 61 of the Planning By-law. Section 61 pertains to decisions regarding "any application contemplated in section 16(2) of which an application for the determination of an administrative penalty is one category".⁸ The determination of the amount of the administrative penalty might be challenged by the applicant if its representatives deem the penalty amount, as calculated by the Municipality in terms of section 90(5) of the Planning By-law, to be excessively punitive. On the other hand the Municipality's decision determining the penalty amount might be appealed by the objectors if they deem the *quantum* of that penalty insufficient in the circumstances.)
38. The point to be underscored is that the final determination of the administrative penalty that the applicant has acknowledged must be paid by virtue of Haygrove's representatives' unauthorised construction of horticulture tunnels on a surface area of some 8,337 hectares of the subject-property, must be effected fully and finally before the new land use applications can be determined on their merits. We will address the necessary legal submissions on this aspect in the event that the MPT inclines to grant our request for an audience, and the right to deliver oral submissions, when the present application is tabled before the MPT. We make the latter submission on the assumption that Haygrove persists with the application in its present form, which as we have shown would be a fundamental error. We submit that error would be fatal to the present application's ultimate prospects of success, whether before the MPT as decision-maker of first instance; the executive mayor in any subsequent administrative appeal; or the Western Cape High Court in judicial review proceedings under the Promotion of Administrative Justice Act. Our clients' rights are and remain reserved in this regard.

The requirements of section 90 of the Planning By-Law pertaining to applications for the determination of an administrative penalty

39. As part of rectifying its construction of tunnels across some 8,7 hectares of the subject-property in contravention of the Planning By-law, Haygrove must apply for the

⁸ This is with particular reference to the provisions of section 16(2)(q) pertaining to applications for the determination of an administrative penalty.



- determination of administrative penalty. The Municipality must then decide that application on its merits.
40. The requirements for applications for administrative penalties are set out in section 90 of the Planning By-law.
 41. As required by section 90(1) of the Planning By-law, the applicant, who is a person in contravention of the By-law and who has submitted an application to rectify the contravention, must make formal application for the determination of the administrative penalty.
 42. The procedural requirements and administrative aspects as well as the substantive requirements are set out in section 90(2). They include paying the prescribed fee and providing the information contemplated in section 90(3).
 43. The applicant bears the onus of providing the information set out under section 90(3) of the Planning By-law.
 44. The report regarding the administrative penalty must then be considered, in this instance, by the Municipal Planning Tribunal or "MPT".
 45. We submit, with particular reference to the detailed procedural and substantive requirements in section 90 of the Planning By-law that it forms a particular category of application insofar as it pertains to the *ex post facto* regularisation of unlawful conduct, including by the determination and payment of an administrative penalty. As such, this comprises the retrospective aspect of any land use historically and unlawfully undertaken. As such, there is a dichotomy between that type of land use and prospective land uses, such as those that comprise the balance of the present application.
 46. We suggest that for present purposes and in the context of the applicant providing all relevant information in support of Haygrove's application for the determination of administrative penalty, that the present purported motivation by WRAP is insufficient. WRAP pays lip service to the substantive requirements of section 90(3). While it is clear from the information provided by WRAP that the contraventions extend over 8,337 hectares, WRAP provides no information as to the duration of the contravention, nor its gravity. The same deficiency permeates the second jurisdictional requirement in section 90(3) which pertains to the conduct of the person allegedly involved in the contravention. Other than a reference to its profit motive, there is no explanation of Haygrove's conduct. What is clear from the superficial explanation provided is that it gives the lie to Haygrove's lofty statements under the heading "*Background and intent*" and with particular reference to how Haygrove "*measures its success and impact through a triple bottom line approach: Planet, People and Profit*".
 47. It is untenable for WRAP to assert that Haygrove's contravention of the Planning By-law "... was never driven by any malicious intent".⁹ Any suggestion that unauthorised construction of intensive horticulture tunnels totalling some 8,337 hectares on the subject-property not being done willfully, given the explicit and unequivocal proscription in paragraph 3(a) of the historic approval must be regarded as an aggravating factor in the Municipality's determination of the administrative penalty. WRAP's suggestion that

⁹ Page 12 of WRAP's motivation under the heading "*The conduct of the person (allegedly) involved in the contravention*".



Haygrove did so with no intention of breaching the municipal requirements is not sustainable on the facts. In this context, the applicant is not so much "*addressing this matter proactively*" as the applicant would have it¹⁰ but is doing so with the expectation that the prospective applications will be approved by the Municipality. That assumption is fundamentally incorrect. This aspect also goes to the reasons why the determination of the administrative penalty should be fully and finally completed by the Municipality before its officials can give any substantive attention to the prospective applications.

48. It follows, in conclusion on this preliminary point that the Municipality should direct that the applicant should proceed first and exclusively with the application for the determination of the appropriate administrative penalty for Haygrove's various infractions, which process should be fully and finally concluded before the other applications can be formally instituted. Those infractions are not limited to the erection of structures in contravention of the applicable land use scheme and the Planning By-law, but included breaches of various conditions of Haygrove's previous municipal approvals.
49. We point out for the sake of completeness that as a matter of administrative procedure, and in respect of administrative penalty provisions that in many instances are worded exactly the same as in the Planning By-law, the City of Cape Town obliges the completion of the administrative penalty process as a stand-alone application. The latter application must be duly completed before any application for enhanced rights can be pursued. In this regard we also point out that the provisions of s129(8)(a) to (d) of the City of Cape Town's Municipal By-law (most recently amended in 2019) are echoed almost word-for-word in four of the substantive requirements set out in the Municipality's Planning By-law as amended in 2020.¹¹

Insufficient and/or inadequate information included in the present administrative penalty application

50. Section 90(3) of the Planning By-law obliges an applicant for an administrative penalty (in peremptory terms, and to the satisfaction of the Municipality) to provide certain information. The obliged information includes "... a report by a quantity surveyor in matters of unauthorised building/construction;...".¹²
51. No such quantity surveyor's report accompanies the application delivered by WRAP on behalf of Haygrove. In the circumstances, and with particular reference to the information in the quantity surveyor's report informing the determination of the amount of the penalty payable, this is a material omission.
52. I submit in the circumstances that when Haygrove delivers its stand-alone administrative penalty application in terms of section 16(2)(q) read with section 90 of the Planning By-law, it must ensure the inclusion of the obliged quantity surveyor's report.
53. We submit that it is insufficient for WRAP to suggest that the information contained on paragraph 13 of its motivation is sufficient for purposes of compliance with the

¹⁰ Page 11 of the motivation report.

¹¹ That is with particular reference to sections 90(3)(a), (b), (d) and (e) of the Planning By-law under which the present application for the determination of an administrative penalty was delivered.

¹² Section 90(3)(c) of the Planning By-law.



substantive stipulation in section 90(3) of the Planning By-law. No objectively verifiable information is provided in respect of the asserted “*total cost of tunnels*” that comprise the “*+/- 8,337ha of contravening tunnels*”.

54. It is also noteworthy that Haygrove concedes that the tunnels “... *are in use*” and as such, that the unlawful conduct has not stopped.
55. WRAP’s assertion that the property owners have not previously contravened the Planning By-law on the subject-property does not stand objective scrutiny on a consideration of the facts of the present application. Haygrove has breached certain of the conditions of the rezoning approval granted to it on 13 July 2012. For example, condition 1(b) to the effect that the rezoning was approved “... *subject to the following conditions: ... (b) that all other development parameters, as prescribed in the relevant Zoning Scheme, be complied with.*” Furthermore, there is no indication that Haygrove has complied with the requirements of condition 1(f).
56. It is also incontrovertible that Haygrove is currently in breach of the condition set out in paragraph 3(a) of the Municipality’s record of decision dated 9 February 2016. Haygrove did not comply with the requirement to place the tunnels as indicated on the site development plan at issue. Nor did Haygrove apply for possible future tunnels. It simply constructed them without approval.
57. On an objective interpretation, it is clear that condition 3(a) in the 2016 municipal approval envisages discrete obligations. The first of those obligations is that the tunnels approved in 2016 were limited to those indicated on the approved site development plan¹³ submitted with the application. It is common cause that Haygrove has breached this obligation. In WRAP’s motivation report it is made clear that Haygrove has erected and developed significantly more unapproved tunnels since 2016 than those that were approved then. That amounts to a flagrant and inexplicable breach of the first obligation articulated in condition 3(a) of the 2016 municipal approval.
58. The second obligation in condition 3(a) is that Haygrove was obliged to apply “*for any possible future tunnels*” when the 2016 approval was granted. On the facts, it is indisputable that Haygrove breached that obligation in condition 3(a) too.
59. The consequence is that these breaches also constitute contraventions of the land use scheme read with the Planning By-law.
60. It follows in our respectful submission that when the stand-alone application for an administrative penalty is delivered by WRAP in the future, together with the appropriate company resolution by Haygrove and a suitably worded directors resolution, that all relevant contraventions should form the subject-matter of the stand-alone application for the determination of an administrative penalty.
61. It is also not clear whether detailed building plans were ever submitted to the Municipality’s building department for approval, as required by condition 3(b). Haygrove is also, on WRAP’s version in breach of the condition at paragraph 3(d) to the effect “... *that all the other development parameters as prescribed in the Zoning Scheme Regulations be retained.*” The tunnels’ covering is in many instances also

¹³ 14/0731/01.



non-compliant with the requirements of condition 3(i), to the effect that "... *the tunnels either be of a non-reflective material or covered by non-reflective netting*".

62. In the circumstances, and for WRAP to assert that "*to the knowledge of [WRAP's] office, the property owners have not previously contravened the By-law on the subject-property*"¹⁴ is at best superficial and at worst misleading.
63. The duties of the applicant include that it must ensure that all information furnished to the Municipality is accurate; and that no misrepresentations are made. The provision of inaccurate, false or misleading information is a statutory offence.¹⁵ We suggest that WRAP has not complied with its statutory obligations in the context of the information placed before the Municipality, purportedly in support of the application for the determination of administrative penalty.
64. As already pointed out, the application for the determination of an administrative penalty must in our submission be determined before the other land use applications can be considered on their merits. As such, the latter applications should form a discrete (i.e. separate) application to the application for the determination of the administrative penalty. This submission is based on a contextual, textual and purposive interpretation of the relevant provisions of the Planning By-law as well as the Municipality's records of decision of the land use approvals that already regulate the approved land uses at the subject-property.

Outstanding/incomplete information pertaining to Haygrove's compliance with historic approvals

65. The present application makes plain the applicant's intention to seek the amendment of condition 3(a) of the approval granted to it by the Municipality on 9 February 2016 (which forms part of annexure "C" to WRAP's motivation report).
66. As we have already explained, that application, like the applications for permanent departure is premature in light of the applicant's obligation to apply for an administrative penalty and to ensure the completion of that process before an application for new land use rights can be obtained from the Municipality.
67. The present application makes no reference to the condition recorded at paragraph 3(b) to the effect "... *that detailed building plans be submitted to the Building Department for approval; ...*".
68. This is a matter of fact: either the applicant has complied with the requirement to submit building plans in order to put the Municipality in a position to authorise such plans in terms of the National Building Regulations and Building Standards Act; or the applicant has not done so. Needless to say, the applicant includes no confirmation of its compliance with the requirement in condition 3(b). This aspect can be suitably investigated by the Municipality and reported upon by the applicant as and when it delivers its application for land use rights pertaining to permanent departures, amendment of condition 3(a) and the like, and after the final conclusion of the process pertaining to the administrative penalty application, which must be made first and stand-alone.

¹⁴ Page 15 of the motivation report.

¹⁵ As contemplated in section 84(1)(e).



Haygrove's continued and willful non-compliance with condition 3(i) of the 2016 approval

69. In addition to the applicant's obligation to submit detailed building plans to the municipal building department for approval (which appears not to have been done to date) the 2016 approval included a condition to the effect "... *that the tunnels either be of non-reflective material or covered by non-reflective netting*".
70. Our instructions are that in many instances, this condition has been observed only in the breach: in other words, there are significant portions of the horticulture tunnels which are clad only in white plastic and are not covered by any form of non-reflective material.
71. We submit that to the extent that the applicant is or might be in breach of conditions 3(a) and/or 3(i) that those breaches must be rectified before the application can proceed afresh with its proposed applications for permanent departures, amendment of conditions of approval and the like. Again, we underscore that the latter applications can be made only once the administrative penalty application has been finally determined on its merits as a preceding and stand-alone application.

Substantive objections regarding the (lack of) merit in the land use applications

72. Chapter VI of the Planning By-law sets out the substantive general criteria for decision making.
73. In an abundance of caution, and in addition to the preliminary point set out above, this objection deals, to the extent strictly necessary at this juncture, and in the particular facts and circumstances of the present matter, with the wholesale lack of any substantive merit in the land use applications for future and enhanced land use rights. The aforesaid land use applications are described in paragraphs 6.1 to 6.18 of the applicant's motivation against the general criteria set out in section 66 of the Planning By-law. We specifically reserve our clients' rights to supplement their substantive objections in due course, and if/when Haygrove sees fit to apply afresh for enhanced land use rights after the Municipality's determination of the administrative penalty application first, and as a stand-alone application.
74. Of principal relevance in this instance is the requirement in section 66(1)(c) of the Planning By-law which obliges the municipal decision-maker, when considering an application, to have regard to "*the desirability of the proposed utilisation of land and any guidelines issued by the Provincial Minister regarding proposed land uses; ...*".

Submissions as to why the land use applications are, objectively viewed, undesirable and must therefore be refused by the Municipality on their lack of objective merit

Introduction

75. By way of introduction, we submit that the applications for land use planning approvals have been summarised somewhat superficially in the Municipality's notice of the application. Although there is a reference to the various departures, there is no specific indication that what the applicant seeks is permanent departures. One has to have regard to the provisions of the Planning By-law in order to establish that permanent departures are sought. When the various categories of land use planning activities (including, as the last application, the determination of the administrative penalty) is



considered against the detail set out under paragraphs 5.1 to 5.19 of the applicant's planner's report.¹⁶

76. The first point to be made here is that the applicant, on its own version has developed some 8,337 hectares of the subject-property with what it describes as “*existing and not approved intensive horticulture tunnels*”. The scale of the unauthorised land use is thus plain to see. What is also plain is that the determination of an appropriate administrative penalty will neither be a mechanistic procedure, nor one that necessarily resolves satisfactorily at the level of the decision of first instance. This is yet further evidence in support of the proposition that the applicant's administrative penalty should be determined first, and entirely separate from the other land use applications envisaged and described in paragraphs 5.1 to 5.18. The latter applications should follow only upon the final determination of the administrative penalty.
77. The submission directly above is directly supported by representations made on behalf of the applicant. At paragraph 5.19 of the motivation¹⁷ the applicant states as follows: “*While some of these tunnels have not yet received formal approval from the municipality, it is essential to **prioritise compliance with the Overstrand Municipality Amendment By-law on Municipal Land Use Planning, 2020**. In line with this objective it is crucial to include the determination of an administrative penalty within this application. By addressing this matter proactively, Haygrove aims to rectify any potential non-compliance issues and ensure adherence to the applicable regulations and by-laws governing land use planning.*” (My bold text and underlining.)
78. We submit on behalf of the objectors that the applicant is obliged by law to regularise its unauthorised and thus unlawful land uses (i.e. get its house in order before it can seek additional land use approvals).
79. We submit furthermore that on a proper consideration of the applicant's submissions pertaining to the nature, duration, gravity and extent of the contravention; as well as the description of the conduct of the “*person (allegedly) involved in the contravention*” that the applicant's submissions are superficial and insufficient in the circumstances. For example, the issue of whether complaints have been lodged regarding the encroaching tunnels is irrelevant to the fact of the applicant's willful breach of the applicable legislation by erecting tunnels covering some 8,337 hectares of the subject-property without land use planning approval.
80. To the extent that the applicant submits that the introduction of the tunnels on the property was motivated by the need to enhance the viability of the agricultural enterprise, we submit that Haygrove cannot be permitted to do so by the Municipality in a manner that adversely impacts on the rights of surrounding landowners.

Substantive objection to the proposed permanent departures, the application to amend the SDP, and the application to amend an existing condition of approval

81. As a general proposition, WRAP's purported motivation is self-serving, superficial and in certain instances, simply wrong on the facts presented.

¹⁶ With particular reference to paragraphs 5.1 to 5.19 on pages 6-13 (as summarised at paragraphs 6.1 to 6.19 on pages 14-15 of the motivation), the staggering scale of the proposed additions to the hardened infrastructure on the subject-property and the significant, adverse and entirely undesirable impact that that will have on neighbouring landowners becomes immediately apparent.

¹⁷ On page 11.



82. WRAP states as a general motivating factor that the land use applications are merit-worthy because the proposed activities of growing raspberries, blackberries and blueberries under the cover of intensive horticulture tunnels are congruent with other agricultural activities in the Hemel-en-Aarde valley. We submit that the permanent departures sought respectively from the eastern 30m building line; the northern 30m building line; the southern 30m building line; and the western 30m building line¹⁸ are excessive in the circumstances.

Critique of and objections to WRAP's assertions regarding compatibility with surrounding land uses

83. The first motivating factor described by WRAP and regarding the alleged desirability of the land use application is the application's asserted compatibility with surrounding land uses. In this regard WRAP states the following: *"The tunnels are an integral part of the agricultural nature of the valley and are not expected to detract from the overall visitor experience. On the contrary, they can provide an opportunity for tourists to witness and learn about modern farming practices and the cultivation of crops in a controlled environment."*¹⁹
84. On page 3 of WRAP's motivation the following is stated regarding compatibility of land uses: *"The addition of tunnels aligns with the valley's identity as an agricultural destination and contributes to the preservation of its rich farming traditions."* We submit that the latter statement would be laughable but for the seriousness of the situation. It beggars belief that WRAP can suggest that almost 22 hectares of horticulture tunnels contributes in any way to *"the preservation of [the valley's] rich farming traditions"*. In fact, we submit on behalf of our clients that the proposed development of horticulture tunnels on that scale in fact offends against those traditions.
85. Even though the achievement of the proposed permanent departures would present the easiest solution for Haygrove, that fact must be assessed objectively against the significant adverse impacts that will be foisted upon Haygrove's neighbours with particular reference to the rights to use and enjoy their properties undisturbed.
86. So viewed, it is indisputable that the applications for 15 proposed permanent departures; the proposed amendment of the existing approved site development plan; and the proposed amendment of condition 1(c) of the municipal approval dated 31 July 2012 and 3(a) of the municipal approval dated 9 February 2016 should be refused by the Municipality. We submit that they do not pass muster with reference to the principal general substantive criterion, in section 66(1)(c) of the Planning By-law. Section 66(1)(c) pertains to the desirability of the proposed utilisation of the land identified (in this instance within the 30-metre building lines, by way of permanent departures from those stipulations). For the reasons set out in these submissions, the proposed land use is not desirable.
87. In the circumstances we respectfully suggest that it would be commercially prudent of Haygrove to initiate an application for amendment penalty, duly authorised in order to

¹⁸ Summarised by WRAP respectively at paragraphs 6.2, 6.3; and 6.5 to 6.17.

¹⁹ At the bottom of page 2 of WRAP's motivation report.



give effect to its planning consultancy's stated assertions regarding Haygrove's *bona fides*.²⁰

88. We submit that in any event the applicant has not established any objectively defensible basis, when considered against the criteria set out in section 66 of the Planning By-law, for the Municipality's favourable consideration of its applications for permanent departure. With reference to the sheer scale and intrusive character of the intensive horticulture tunnels we submit that they are, objectively viewed an undesirable proposed and actual use of land.
89. In addition, the application for the 15 permanent departures sought, on each of the subject-property's building lines constitute an unreasonable infringement on the surrounding property owners' right to reasonably enjoy their properties. The very purpose of the 30m building line in relation to agricultural properties such as the subject-property is to prevent unreasonable intrusion of physical infrastructure.

Critique of and objections to WRAP's assertions regarding positive socio-economic impact

90. As regards asserted positive socio-economic impacts described by WRAP in purported motivation of the application²¹ we point out on behalf of our clients that this has been motivated exclusively (albeit entirely superficially) from the applicant's perspective only.
91. In order to sustain an argument that there will be a positive economic impact, the applicant is obliged to provide more information than a mere bald statement to the effect that the approval and implementation of the application will substantially increase the number of people employed on the subject-farm, thereby reducing poverty in the area. Without the provision of specific and detailed information regarding (at the very least) the number of likely future employees; an indication of the wages that those prospective employees will earn, and all and any other relevant detail in support of the assertion that the applicant will contribute to the reduction of poverty, this so-called motivating factor cannot be sustained. There is no evidence to support it.

²⁰ See for example what WRAP states regarding Haygrove's intentions, at paragraph 5.19 on page 11 of WRAP's motivation: "*It is essential to prioritise compliance with the [Planning By-law]. In line with this objective, it is crucial to include the determination of an administrative penalty within this application. By addressing this matter proactively, Haygrove aims to rectify any potential non-compliance issues and ensure adherence to the applicable regulations and by-laws governing land use planning.*" (We point out that we beg to differ with WRAP as to "potential non-compliance issues" when those have actually occurred and are admitted, on the facts and circumstances set out in the motivation report. See also the unnumbered first paragraph under the heading at the top of page 12 of WRAP's motivation report where WRAP records the following: "*The tunnels however have also been erected without prior municipal consent. This application serves as a testament to the proactive measures taken by the property owners to rectify any contravention of the By-law...*". We also point out for the sake of completeness that it is not correct that there have been no complaints regarding the specific tunnels – the objections to Haygrove's previous application for permanent departures and related land use approvals on the subject-property was refused on appeal by the Municipality's appeal authority. The same fate befell Haygrove's application for permanent departures on its neighbouring property (*Portion 11 of Farm 587, Hemel-en-Aarde Valley*). The Mayor's records of decision refusing the previous land use applications, both dated 26 August 2022 are appended to this objection marked "B1" and "B2". For the sake of good order and administration, we respectfully submit that the municipal files pertaining to each of the abovementioned records of decision and including all information that served before the Municipality, the MPT and the Executive Mayor, should be made available to the MPT in the context of the present application. WRAP goes on to say that Haygrove's "*acknowledgment underscores the property owner's commitment to compliance and the absence of any unusual circumstances warranting severe penalties.*")

²¹ Pages 22 to 24 of WRAP's motivation report.



Critique of and objections to WRAP's submissions regarding no or limited impact on neighbours and the surrounding community

92. WRAP has not placed a full and proper picture before the Municipality of the fundamental incompatibility (and therefore, inherent lack of desirability) of the development proposal when considered against existing surrounding land uses. In support of this submission, we point out that WRAP has provided no information to the Municipality regarding the likely significant increase in noise emissions on the subject-property, including machinery-generated noise; and noise generated by the transport used by Haygrove's representatives in order to transport seasonal contract workers to the subject-property. There will also be a likely increase in the odours emitted from the subject-property including emissions from crop spraying, vehicle use, and toilets for seasonal contract workers. We point out that those in the past have proved to be entirely insufficient, and one of our clients' concerns relates to seasonal workers relieving themselves on surrounding properties with no regard to the accompanying health hazard. It must also be noted that our clients regularly find evidence of contract workers trespassing on their properties, including the presence of snares that have caught clients' domestic animals, and human waste as well as litter that is deposited on their properties.
93. The visual impact of permitting a total of nearly 22 hectares of plastic-covered tunnels is not described in sufficient particularity to place the Municipality in a position to make a properly informed and objective decision to approve the land use applications. It is clear that the land use applications and the existing visual impact statement will have to be substantially supplemented and delivered *de novo* by Haygrove's representatives, after the finalisation of the application to determine the appropriate administrative penalty for Haygrove's significant and willful transgressions to date.
94. It is incorrect and disingenuous for WRAP to suggest that the "*visual impact of the tunnels is considered to be in harmony with the valley's agricultural character and natural surroundings ...*".²² To the extent that the applicant acknowledges that tourists who visit the Hemel-en-Aarde valley are often drawn to its rural and picturesque landscape, the suggestion that the existing and proposed tunnels "*... are not expected to detract from the overall visitor experience*" only has to be stated to be rejected. Swathes of blinding white covered tunnels that do not comply with the existing approvals that oblige non-reflective material do not enhance the tourist experience.
95. On an immovable property measuring over 71,5 hectares as the subject-property does, it is unreasonable for Haygrove to expect its directly adjacent neighbours to suffer the imposition and intrusion of horticulture tunnels within the areas that are presently the subject of permanent departures which oblige a 30-metre setback line (but for those approved in 2016).

Critique of and objections to WRAP's submissions regarding impact on views, sunlight and character of the area

96. The applicant's assertion that the proposal to develop intensive horticultural tunnels on a total surface area of some 21,9557ha on the subject-property will not have a significant visual impact is fallacious. WRAP is somewhat coy in describing the likely maximum height of the proposed tunnels. In the absence of a proper description of the

²² Page 15 of the applicant's motivation report.



specific height of the proposed tunnels, we must assume that they will be close to the maximum permissible height (if not at that height).

97. The further suggestion by the applicant that the “*visual colour diversity which the approval and implementation of this proposal will bring about in the Hemel-en-Aarde is desirable and is one of the drawcards which attract tourist[s] to the area*” is also a wholesale fallacy. It only has to be stated to be rejected. The suggestion that visual diversity in the valley will be enhanced by the erection of plastic-covered tunnels and in turn, that this “*diversity*” will draw tourists to the area simply does not stand scrutiny as an objectively motivated criterion. It is, quite simply, preposterous.
98. To the extent that Haygrove elects to pursue the land use application after the administrative penalty application has been decided first, we submit that the Municipality must oblige the applicant first to produce an appropriately detailed visual impact assessment by an appropriately qualified visual impact specialist before the properly supplemented application can proceed to the decision-making stage. The visual impact assessment should also be circulated with all parties with an interest in the matter (including the objectors we represent) so that they are afforded a proper opportunity to review that assessment and to provide their comments in that regard. The visual impact statement provided to date is incomplete, selective on the true facts, misleading, and insufficient.

Another principal reason for the land use application’s wholesale lack of desirability: it is *per se* undesirable until and unless previous land use contraventions have first been satisfactorily rectified by Haygrove

99. Objectively viewed, Haygrove’s application for additional land use rights is undesirable for a separate, but nonetheless principal, reason. That reason is that the land use application for an additional fifteen permanent departures, and amendments to an approved SDP and conditions of approval (both of which approvals Haygrove has willfully breached over many years) is made against the backdrop of manifest breaches of the Municipality’s land use planning laws.
100. There cannot be any suggestion that the desirability of an application for future and enhanced land uses can be meaningfully adjudicated by the Municipality until and unless Haygrove has first wiped the slate clean by paying the administrative penalty levied upon it in due course by the Municipality, when Haygrove delivers its stand-alone application for the determination of that penalty.
101. It is manifestly undesirable for Haygrove and WRAP to expect the Municipality to deal with Haygrove’s willful and largely unexplained contraventions of the applicable planning legislation, land use scheme, and extant approvals, in any other way.

Request for a site visit by the Municipality (in terms of section 60 of the Planning By-law) before deciding the application for the determination of an administrative penalty on its merits

102. On the facts and circumstances of the application, we submit that the Municipality’s officials²³ and the chairperson and members of the Municipal Planning Tribunal should

²³ The Municipal officials’ powers to enter land or a building for purposes of assessing an application made in terms of the Planning By-law, and in order to prepare the written assessment of the application contemplated by section 57 of the By-law, are set out in section 60.



undertake a site visit of the subject-property and its surrounds in order fully to apprise themselves of the current intensive agricultural operations on the subject-property, the nature and extent of the unlawful activities that are the subject of the application for an administrative penalty, and the significant and objectionable impacts that would be caused to the subject-property's neighbours and other proximate landowners in this part of the Hemel-en-Aarde valley if the development proposal envisaged in the application is authorised to proceed by the Municipality.

103. Put simply, the applicant already has enough horticulture tunnels on the subject-property. The applicant concedes that the majority of the tunnels, on the applicant's own admission, were constructed in contravention of the Planning By-law and thus unlawfully. In such circumstances Haygrove is legally obliged to get its house in order by remedying its prior and acknowledged unlawful conduct before it can reasonably seek to achieve any enhanced land use rights.
104. An important aspect of a properly constituted site visit will pertain to the municipal decision-maker satisfying itself as to the applicant's compliance with the stipulations set out in the Municipality's approval granted on 9 February 2016 and pertaining to Haygrove's first application for consent use and departures to accommodate the infrastructure required for "*intensive horticulture (tunnels)*". The same applies to the relevant conditions in the 2016 municipal approval and to the documents referred to in those conditions, as already traversed in these objections and with particular reference to conditions 3(b) (pertaining to Haygrove's obligation to submit "*detailed building plans*" to the Municipality); and 3(i) (regarding Haygrove's obligation to ensure that the tunnels approved in 2016 "... be of a non-reflective material or covered by non-reflective netting."²⁴
105. Particularly in light of WRAP's entirely superficial analysis of water use rights and the likely impact of the proposed expansion of Haygrove's agricultural activities on water resources without a proper analysis of those rights, we submit that it is incumbent upon the municipal decision-maker to establish the relevant facts. That is best done on-site, where Haygrove's personnel can reasonably be expected to produce the relevant documentary information pertaining to water use rights, including storage and abstraction rights.

Request for a hearing before a decision is made on the merits of the application

106. To the extent that the Municipality is minded to convene a meeting of the Municipal Planning Tribunal in order to table the present application we submit that the objectors or their nominated professional representative/s are entitled to attend on that meeting and to deliver whatsoever oral representations may be necessary and relevant in the circumstances and in support of their representations.
107. We submit that it behoves the Municipality to grant an audience to the objectors and the applicant when it considers its decision of first instance in order to ensure that the parties' rights to administrative action that is lawful, reasonable and procedurally fair is

²⁴ By way of other conditions on which the Municipality must satisfy itself regarding Haygrove's compliance with municipal approvals granted to date and still operative, are, for example, condition 3(g) of the February 2016 municipal approval. It states the following: "... (g) that all conditions in the Services Report (attached as Annexure I) be complied with; ...". The Services Report included the following condition: "... 2. That no water service from Overstrand Municipality is available and the developer will be responsible to obtain the necessary approval (sic), licence and permits from the applicable authorities (water affairs, health etc.) for the use of any water resources and the extraction thereof."



fully given effect to, given the facts and circumstances of the application. We look forward to hearing from the Municipality in this regard.

Concluding submissions; relief sought by the objectors

108. For the reasons set out in this objection we submit that the application, objectively viewed, is fundamentally undesirable and as such, does not meet the applicable jurisdictional requirements in section 66 of the Planning By-law, and pertaining to the general criteria for the Municipality's consideration of applications. We make that submission both in respect of Haygrove's application to determine an administrative penalty (as we have pointed out, that application is substantively deficient and cannot be approved on the facts as presented by WRAP); and in respect of the applications for enhanced land use rights, which are prematurely delivered by WRAP and which cannot be determined on their merits until and unless Haygrove's suitably supplemented administrative penalty application has been finalised.
109. It follows in our respectful submission that the present application must be refused on its merits by the Municipality.

Yours faithfully,
NICHOLAS SMITH ATTORNEYS
Per:

NICHOLAS SMITH

Annexure "A"

LIST OF OBJECTORS (IN RE APPLICATION FOR DEPARTURE, AMENDMENT OF APPROVED SDP, AMENDMENT OF CONDITIONS OF APPROVAL, AND DETERMINATION OF AN ADMINISTRATIVE PENALTY (FARM HEMEL-EN-AARDE NO.587, DIVISION OF CALEDON))

No.	Objector's name	Objector's immovable property
1.	Bevan Johnson (Newton Johnson Wines)	Portion 2 of Farm 587 Hemel-en-Aarde Valley
2.	Peter Sham (Peter Sham Vineyards)	Portion 45 of Farm 587 Hemel-en-Aarde Valley
3.	Giancarlo Lanfranchi (De Werf Estate)	Portion 15 of Farm 587 Hemel-en-Aarde Valley
4.	Josh Kumpers (De Werf Estate)	Portion 15 of Farm 587 Hemel-en-Aarde Valley
5.	Angela Field (De Werf Estate)	Portion 15 of Farm 587 Hemel-en-Aarde Valley
6.	Chris Thompson (Coch y Bondhu Estate)	Portion 50 of Farm 587 Hemel-en-Aarde Valley
7.	Ian Tingle (Coch y Bondhu Estate)	Portion 50 of Farm 587 Hemel-en-Aarde Valley
8.	James Smith (Coch y Bondhu Estate)	Portion 50 of Farm 587 Hemel-en-Aarde Valley
9.	Derek Wilson (Coch y Bondhu Estate)	Portion 50 of Farm 587 Hemel-en-Aarde Valley
10.	Diane Foster (Coch y Bondhu Estate)	Portion 50 of Farm 587 Hemel-en-Aarde Valley
11.	Craig Wessels (Restless River Vineyards)	Farm 905, Hemel-en-Aarde Valley
12.	Sybrand Smit (Clouds End Farm)	Portion 7 of Farm 587 Hemel-en-Aarde Valley

21/69

OFFICE OF THE DIRECTOR: INFRASTRUCTURE & PLANNING
TOWN & SPATIAL PLANNING

Munisipaliteit • U-Moselput • Municipality



ENQUIRIES | NAVRAE: Mr. H Olivier (Town Planner)
FILE REF | LEËRVERW: RCAL 94/587
APP ID | AANSOEK ID: 3297/2019
DATE | DATUM: 26 August 2022

REGISTERED MAIL

Nicholas Smith Attorneys

Mr. N Smith

2nd Street

114 Bree Street

CAPE TOWN

8000

"B1"

nicks@nsmithlaw.co.za

Dear Sir

APPEAL DECISION LETTER

PORTION 94 OF FARM 587, HEMEL-EN-AARDE VALLEY, OVERSTRAND MUNICIPAL AREA: PROPOSED DEPARTURES AND AMENDMENT OF CONDITIONS OF APPROVAL: MESSRS WRAP ON BEHALF OF HAYGROVE HEAVEN (PTY) LTD

This Municipality's letter dated 28 January 2022 refers.

The Appeal Authority on 11 August 2022 **upheld** the appeal and **dismissed** the decision of the Municipal Planning Tribunal dated 7 December 2021.

Reasons for the above decision are as follows:

"The appeal was received within the 21-day period and the required fee lodged by the applicant. Thus, the appeal is regarded as valid.

In an appeal against a decision of the Municipal Planning Tribunal (MPT), the onus is on the appellant to show that the members of the MPT erred in reaching their decision and to set out reasons why there is a belief that the MPT erred.

The appeal documentation was scrutinized and after due consideration of the reasons provided by the MPT and the arguments of the appellant, the view is held that the appeal is valid.

The decision is thus that the decision of the MPT dated 7 December 2021, be dismissed."

The matter is now regarded as finalized.

Yours faithfully



S MÜLLER
DIRECTOR: INFRASTRUCTURE & PLANNING

pp

OFFICE OF THE DIRECTOR: INFRASTRUCTURE & PLANNING
TOWN & SPATIAL PLANNING

Munisipaliteit • U-Municipala • Municipality



ENQUIRIES | NAVRAE: Mr. H Olivier (Town Planner)
FILE REF | LEËRVERW: RCAL 11/587
APP ID | AANSOEK ID: 3274/2019
DATE | DATUM: 26 August 2022

REGISTERED MAIL

Nicholas Smith Attorneys

Mr. N Smith

2nd Street

114 Bree Street

CAPE TOWN

8000

nicks@nsmithlaw.co.za

Dear Sir

APPEAL DECISION LETTER

PORTION 11 OF FARM 587, HEMEL-EN-AARDE VALLEY, OVERSTRAND MUNICIPAL AREA: PROPOSED DEPARTURE AND AMENDMENT OF CONDITIONS OF APPROVAL: MESSRS WRAP ON BEHALF OF HAYGROVE HEAVEN (PTY) LTD

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Yours faithfully



PPS MÜLLER
DIRECTOR: INFRASTRUCTURE & PLANNING

OVERSTRAND MUNICIPALITEIT
REKORDBEHEER
19 APR 2024
DOCUMENT CONTROL
OVERSTRAND MUNICIPALITY

Hemel-en-Aarde Valley Winegrowers Association (HAWA)

18 April 2024

Overstrand Municipality
16 Paterson Street
Hermanus
7200

Attention: Ms. Loretta Gillion // Mr. Henk Olivier

By email: loretta@overstrand.gov.za; holivier@overstrand.gov.za

TP. N. Olivier
(H. Olivier)

Re Objection to:

**PORTION 94 OF THE FARM, HEMEL-EN-AARDE VALLEY 587,
CALEDON. APPLICATION FOR DEPARTURE, AMENDMENT OF AN
APPROVED SITE DEVELOPMENT PLAN AND AMENDMENT OF
CONDITIONS OF APPROVAL.**

The Hemel-en-Aarde Valley Winegrowers Association (HAWA) was founded in 2010 and currently represents the interests of the wineries and winegrower in the area.

HAWA VISION

To be recognised as a unique wine destination and premium winegrowing area in South Africa, offering the most superlative product, service and wine experience in the country.

Please see the HAWA Overview document, **Annexure 2**.

Full Members:

1. Southern Right Wines
2. Hamilton Russell Vineyards
3. Bouchard Finlayson
4. La Vierge Wines
5. Bosman Hermanus / De Bos (Bosman Family Vineyards)
6. Hasher Family Estate
7. Cap Maritime
8. Newton Johnson Vineyards
9. Restless River
17. Storm Wines
10. Spookfontein
11. Whalehaven
12. Ataraxia
13. Tesselaarsdal
14. Creation
15. Mount Babylon

FILE NO. P/1094/587 ✓
Hemel & Aarde
SCAN NO.
COLLABORATOR NO.
2034318

The use of "HEA" in this document means Hemel-en-Aarde.

Collectively, members of HAWA have invested more than R2billion into the Hemel-en-Aarde, in the form of land purchases, planning, relevant licenses and approvals, planting of vineyards, construction of wineries, winery equipment, restaurants and tasting facilities, infrastructure and services.

HAWA members are collectively the largest employer of permanent staff in the greater Hermanus area, at over 450 permanent employees working in wineries, restaurants, tasting rooms, vineyards, warehouses, etc.

HAWA members contribute significantly to the local economy via salaries (that get spent in Hermanus), suppliers (that service our 15 wineries); some key examples include construction companies, maintenance, vehicles and implements, food and beverage, security, legal services, medical, transport, planning services.

HAWA members pay excise duties per bottle of wine, supply product nationally and are significant exporters and tax-payers, all contributing to the national output of the agricultural sector.

South African Wine Industry Information & Systems (SAWIS) reported that in 2022, the wine industries contribution was as follow:

Western Cape Economy - Generated R50.9 bn in value-added to GDP
Supported 245,128 jobs

HAWA members actively support the local community through endeavors such as financial commitments to the pre-school on Hamilton Russell on an annual basis, the Pebbles school, and ad hoc support such as supplying land for a rugby field, with posts and rugby clothing, club house and generator to the Black Birds rugby club. Members often donate wine to local charity auction events held by the NSRI, Rotary and various local schools and organisations.

HAWA members have, without any assistance or support from government, self-financed and created what is renowned to be the top performing wine route in South Africa and ranks in the top 20 worldwide. Members are highly invested in and highly committed to the Hemel-en-Aarde.

The survival of the town of Hermanus is driven by tourism. The success of the wine industry in the Hemel-en-Aarde is an important draw card to Hermanus as it funnels tourism and income to the town. The quality of the tourist is also a factor, and the wineries attract higher income tourists that spend money in Hermanus. Traditionally, tourism in Hermanus has been seasonal, the wine route now plays a large role in attracting visitors to the area outside of the seasonal periods. The HEA wine route is a major asset to Hermanus, the Overberg and the Western Cape, and is well documented as such.

The single most important factor that our wineries can compete on, is the beautiful HEA Valley itself. Wine is defined by its place of origin. Consumers make purchasing decisions based on where the wine comes from; how and where the grapes are grown, and the wineries approach to sustainability, biodiversity, culture and heritage are all important factors in success or failure. On the contrary, the consumer

in a supermarket does not base a purchase decision on where an apple or berry was grown. The point is that the **environment** in which wine is made is of critical importance to the modern wine consumer. The HEA ticks many of these boxes and the attractions of the HEA in this regard are so obvious that it needs no further explanation.

The application and subsequent motivation goes to great lengths to mention the wine route and wineries, and the reliance on tourism, and attempt to align itself with this. It uses Creation as an example of a winery that won a large international award. The application glanced over the description of the award when it stated, *“Creation has been awarded with one of the best wine farms in the world...”*

In fact, The World’s Best Vineyards is an annual listing that highlights the best winery destinations and experiences in the world. The prestigious list spans five continents and is created after the nominations of some 500 wine, travel and wine tourism experts have been counted and collated. Voters are asked to nominate the overall experiences they consider to be the best in the world and that they personally would recommend.

Creation Wines has, **for the fourth year**, been placed among the world’s top 50 vineyards and joins a prestigious line-up of **the top five**: Catena Wines, Argentina; Bodegas de los Herederos del Marqués de Riscal, Spain; VIK, Chile; Creation Wines, South Africa and Château Smith Haut Lafitte, France. This is the **fourth** time that Creation has been listed **as the number one estate in South Africa and on the African continent**.

Due to the significance of this on the HEA and South Africa, and how little attention it was given by the applicant, elaboration is required as it pertains to all wineries in the HEA in our quest for excellence and the sustainability of the area and people.

Tim Atkin, leading influencer/champion for SA wine, and UK based wine writer and critique: *“The positive impact this listing has on the estate and our fine wine industry, cannot be underestimated. Creation’s commitment to a sustainable wine and tourism industry has been well documented, and being given a world stage such as this provides further impetus and inspiration.”*

Creation is quoted when responding to the award, *“So many elements need to be brought into harmony to create and enhance our visitor experience. We want to **preserve our natural heritage** for generations to come and this must be at the very core of not only the fine wines we produce, but the fine people we must grow.”*

“We actively encourage every member of our team to be goal oriented and offer them opportunities to advance their skills on many levels. Our training is as diverse as leadership and communication courses to lectures on mental health.” The result is an extremely high retention rate, a supportive and cohesive team and most importantly, a community eager to develop its potential to the highest possible level.

The award further mentions, *“Creation’s people are acutely aware of the responsibility that lies with a farm that borders the Cape Floral Kingdom. All of them*

have become champions of biodiversity and preserving the surrounding natural world of fauna and flora.”

The applicant seeks to motivate that Creation has won these awards ***“all with the existence of the tunnels on the subject property. Meaning with the existence of the tunnels the surrounding area is still considered as a tourist attraction. The tunnels are an integral part of the agricultural nature of the valley and are not expected to detract from the overall visitor experience.”***

Statements like the above are deeply concerning to our members and extremely misaligned with the reality of this award. It seeks to hijack the hard work and vision of not only Creation Wines, but all that our wineries do, to benefit the perception of its own presence. In this context it is not only a blatant mistruth but insulting to all the hard working people in our local wine industry who champion the character and the environment within the HEA for the benefit of all.

The applicant’s statement also indicates a complete lack of or concern for the local wine industry. The following point is of extreme importance in the understanding of the situation created by the continuous expansion of Haygrove in the HEA:

Creation wines are located some 7km from the subject property, separated by a high ridge (geographical watershed). Once the visitor arrives at Creation, there is not a polytunnel, shade cloth or alien windbreak in site. The area has been kept natural, open and pristine – as was the applicant’s property prior to their arrival.

Despite the wineries in the proximity of Haygrove Heaven working to the same standards as Creation, these wineries and any future wineries in that area, experience the expanding polytunnels on the subject property in sight, permanently. All visitors arriving at these wineries ask the same general question, *“What is going on with the white plastic all over the mountain?”*

This is the point: No winery in the proximity of white plastic tunnels would be considered for the World’s Best Vineyards award, not just in the HEA, but anywhere in the world. There is not one famous wine route anywhere in the world that exists within sight of white polytunnels. The consumer and visitor dictates this and the two are in no way compatible as the applicant would have the reader believe.

With this said, we hope the OM will understand to what extent the intensive horticultural operations in the HEA change the narrative of the area and undermine the years of hard work and success of the local wineries and the people.

In 2020 HAWA did invite the then new Municipal Manager and municipal roleplayers to visit some of our wineries to introduce them to our key players and give an overview of our local wine industry within the valley. Unfortunately the Municipality canceled this visit and we have not yet had to opportunity to engage.

We understand that Haygrove has however had this opportunity, and we hope to one day be afforded same.

We need clarity on the how the OM envisages the future of the HEA. It is large areas of intensive horticultural tunnels or wine and tourism. It really is this simple: The former is enhanced by the efforts and investments of the wineries, the latter is hamstrung by the presence and impact of intensive horticultural tunnels.

It is our wish that HAWA and the OM could engage and determine a collective, aligned vision for the future direction of the HEA so that further investment in the HEA by the wine industry is not at risk and we are able to compete on an international level.

The Applicant's Motivations

We understand that objections are being submitted by certain parties that relate to the serial noncompliance with procedural and legal irregularities by the applicant, as admitted in the application, such as the illegal construction of 8,7ha of tunnels and the breach in conditions of current and previous approvals. As other objectors are addressing this, we will therefore focus our objection on the issues that are a threat to the future growth and success of our member wineries and the HEA wine route.

We categorically reject the following statements made in the application, in fact the statements are so misguided they would be laughable were they not so serious:

That the “visual impact of the tunnels is considered to be in harmony with the valley’s agricultural character and natural surroundings ...”.

Swathes of white polytunnels, glaring on the slopes of the iconic Babilonstoring “... are not expected to detract from the overall visitor experience”

“The expansion of horticulture tunnels aligns with the valley's identity.”

The “visual colour diversity which the approval and implementation of this proposal will bring about in the Hemel-en-Aarde is desirable and is one of the drawcards which attract tourist[s] to the area”

“The surrounding properties are used for agricultural, residential, and tourism-related purposes. This makes the intensive horticulture tunnels part of the agricultural experience and not considered out of the ordinary.”

“The proposed expansion of intensive horticulture tunnels on the property is unlikely to offend the tourists who visit the Hemel en Aarde Valley.”

“The visual impact of the tunnels is considered to be in harmony with the valley's agricultural character and natural surroundings.”

“The tunnels are an integral part of the agricultural nature of the valley and are not expected to detract from the overall visitor experience. On the contrary, they can provide an opportunity for tourists to witness and learn about modern farming practices and the cultivation of crops in a controlled environment.”

“The addition of tunnels aligns with the valley's identity...”

“...tunnels are designed and positioned in a manner that ensures they blend harmoniously with the surrounding landscape.”

“It is indicative of a larger trend among farmers in the surrounding area, where an increasing number are embracing tunnels meet market demands.”

“As an agricultural area, the presence of horticulture tunnels is expected and contributes to the overall character of the region.”

“The farm owner is committed to maintaining the scenic beauty of the area.”

In our view, this last quote is such a contradiction with his actions, it cannot go unchallenged.

Research online shows that the owner has a history of controversy with regard to the development and support of polytunnel farms in the UK, particularly in Herefordshire and the Wye Valley, within areas of outstanding natural beauty. Such actions have divided communities between those who profit from his tunnels and those who suffer as a result of them. The owner's company is also a major supplier of the tunnel systems. The owner is therefore understandably pro polytunnels and has the means and resources to lobby decision makers. All this indicates the owner's lack of commitment for maintaining the scenic beauty of the areas in which he operates and profits, the HEA included.

“Encouraging intensive horticulture in an agriculturally zoned area contributes to regional and national food security.”

Haygrove grows raspberries and blueberries/blackberries under tunnels in the HEA. According to the application, 60% of the berries are exported to the UK and therefore do not in any way contribute to food security in South Africa.

Further, of the 40% that is sold to customers in South Africa, the bulk, according to the Haygrove website, is sold to Woolworths. Their berries then retail for R58.99 for a small tub of 200g (**R294.95 per kg** – see https://www.woolworths.co.za/cat/Berries-Cherries/_/N-0Z1camz8w). Berries are a luxury food that only the affluent in South Africa can afford. It is not even remotely fathomable that these berries are purchased in Woolworths by the poor and contribute to food security in South Africa. The reality is that the only time the poor eat these berries is when picking them inside the polytunnels of, in this instance, extremely wealthy businessmen.

It must be noted that although the quotes we have highlighted above purport to speak on behalf of those farming or working in the HEA, not one member of HAWA was interviewed by the applicant for input or comment. In fact, we know of no entity that was interviewed for comment or opinion on these matters.

All feedback from our members indicate the opposite to what is claimed in these statements, i.e. that white polytunnels in the Hemel-en-Aarde Valley are a recent (in the last 20 years) and unwanted part of the agricultural experience. We are not aware of a entity in the area that believes that white polytunnels and thousands planted alien

trees on the slopes of the pristine Babylonstorin Mountains are in “harmony” with the valley’s “natural surroundings”.

The merits of the HEA area are unique, one of a handful of agricultural areas in South Africa possessing the combination of our high levels of biodiversity, sensitive ecology, natural beauty **and** a reliance on tourism. On the fact that not all agricultural areas are the same, it is therefore false to state that, “As an agricultural area, the presence of horticulture tunnels is expected and contributes to the overall character of the region.” **The truth is that white polytunnels are not expected in an area like this, and they fundamentally detract from the overall character of the region.**

These claims do not hold up to any scrutiny and can only be dismissed as speculative, possibly with the intent even to mislead the less informed reader.

Basis for Objection

1. Compatibility

- 1.1. Erecting vast swathes of reflective white plastic tunnels in areas of significant environmental, scenic and tourist importance is not compatible.
- 1.2. This form of industrial horticulture has its place in agriculture but not at the expense of the environment and other established businesses in the area.
- 1.3. The motivations in the application are to convince the reader that all the associated and potential negative impacts are negligible. No detailed reports or statistics are given in this regard and the motivations are all speculative.
- 1.4. The motivation makes claims of economic benefit to the local community, and in particular, employment. No supporting evidence, either from company accountants, a payroll or local employment statistics is submitted in this regard.
- 1.5. The fact is that all businesses in the HEA contribute to employment and the local economy, not just Haygrove.
- 1.6. Our experience is such that the transportation by a single entity of up to 1800 seasonal workers and 400 permanent staff (quoted in the application) in a small farming area, raises legitimate concerns about regular road safety issues that are continuously reported on the Valley’s Whatsapp groups, specifically relating to the busses and taxi’s transporting Haygroves workers.

2. History, Character and Appeal

- 2.1. No one will deny that the valley has a uniquely natural feel and an old world charm. The very name of the area itself speaks volumes.
- 2.2. Farmers and residents alike possess a strong sense of custodianship for nature, biodiversity, sustainability, culture and heritage and this sense is strongly observed by tourists and plays a key role in their attraction to the area.
- 2.3. The valley is now world renowned for its wine and associated tourism.
- 2.4. Vines were 1st planted commercially in 1976 to huge success, 30 years before Haygrove. Mountains, vineyards, apple orchids and fynbos set the tone, and always have. There are no tourists rushing into the area to marvel at and take

photo's of Haygrove Heaven and their polytunnels. This is a fallacy. Kill the character of the valley, and you will kill tourism.

- 2.5. The application acknowledges the area and aims to convince the reader that the covering of 22ha of their property, in some instances to within two meters of an entire boundary, in white plastic tunnels, and the planting of thousands of alien trees, are aligned and in harmony with the general look and feel of the valley.

3. Application for Departures:

- 3.1. The application seeks 14 boundary line departures, in order to fill those spaces with additional polytunnels.
- 3.2. The Historic Approvals in Annexure C of the application indicate that boundary departures on this property have already been granted in the past.
- 3.3. The property is only 71.5ha, closely surrounded by over 25 homes on directly neighbouring properties, some as close as 150m from the boundary.
- 3.4. A motivation given for these fourteen departures is that the company needs to maximize profitability (no financial data supplied) on that portion.
- 3.5. The applicant is a leader in its field of business and as such, is already highly profitable. Profitability in agriculture, and in this particular case within the Hemel-en-Aarde, ought to be possible, within reason of the available resources.
- 3.6. This means that an entity should make ones business plans are viable within the basic land use parameters.
- 3.7. These are parameters that are clearly set out by the relevant governing, bodies (such as Dept. of Agriculture) precisely to protect the land and the community from land use exploitation and the impact thereof.
- 3.8. The approval of these further departures would amount to an exploitation of that portion of land and the natural recourses available, to the detriment of many others.
- 3.9. An alternative solution: Would everyone, including the land itself, not be better served were the applicant to expand development by purchasing/leasing new and appropriate land and work within the footprint of that new property?

4. Environmental Impact

- 4.1. The impact of 22ha of tunnels on the environment, including the visual impact, is a great concern. It must be noted that this expansion to 22ha is **in addition to** the 60ha of polytunnels and shade cloth already erected on their neighboring property (11/587) as well as their 40ha of polytunnels on both sides of the Karwyderskraal road).
- 4.2. It is widely documented that polytunnels, despite claims made by manufacturers and growers, do not adequately assess the net result on water quality, soil health and biodiversity, three subjects key to the sustainability of the Hemel-en-Aarde.
- 4.3. No environmental study is presented in the application. Given the sensitivity of the area, the controversy surrounding polytunnels and the Onrus River bordering the property, directly below the tunnels, **a scientific based study would be expected.**

- 4.4. Conversely, much of the application is generalised, speculative and vague e.g. *“not predicted to have an effect”, “it is not expected that...”*
- 4.5. The applicant plants 1000's of alien trees as windbreaks. Further expansion exacerbates this and the negative impact on biodiversity, water use and seed dispersal into the wetlands and river system. It detracts negatively on the natural beauty of the area. No other farming activities plant windbreaks to this density and in fact, many wine and apple growers are removing existing windbreaks.
- 4.6. An independent environmental impact assessment has not been conducted. This should take all three of the applicants operations in the Hemel-en-Aarde into account as they do not operate individually but as one entity, for example, all three operations make use of the pack shed facilities on portion 94/587, so the impact of these additional operations is greater than the impact of 22ha of tunnels on this property alone would be.

5. Applicants Visual Impact Assessment (VIA), Annexure D

- 5.1. We fundamentally disagree with the conclusions in the report, and argue that the impact is substantially higher in all areas stated.
 - 5.1.1. The report was commissioned and paid for by the applicant.
 - 5.1.2. The report therefore cannot be viewed as independent.
 - 5.1.3. Many of the supporting images fail to accurately depict the real visual impact and are misleading, see **Annexure 1**.
- 5.2. The image of the growing tunnels on the cover page of the applicant's VIA, Annexure D, indicates the following:
 - 5.2.1. The berries are in plastic bags, not planted in the soil.
 - 5.2.2. The soil is completely covered by a plastic 'roof'.
 - 5.2.3. The soil is bare and appears heavily compacted.
 - 5.2.4. The impact on soil health without aeration, rainfall or sunlight is high.
 - 5.2.5. The soil contains no plant life and appears sterile.
 - 5.2.6. There is no biodiversity under the tunnels, of which 22ha is proposed on this property alone, and this is also practiced on the applicant's two neighbouring farms.

The VIA claims, *“the introduction of intensive horticulture tunnels on the subject property is in line with the existing land use patterns.”*

This practice of growing under tunnels is not aligned with the wineries (or apple farms) within the HEA. Wine growers practice an entirely different pattern of land use; open air growing, a dedication to soil health and biodiversity (plants and insects) and farm as close to organic principles as the area allows. The growers are world renowned for this, as awards substantiate, and the wineries do not in any way want to be associated with the land use patterns of the applicant, we are completely opposed to their land use practices.

- 5.3. To the best of our knowledge, not one the following active entities were consulted/interviewed in the VIA process:
- 5.3.1. 25 home owners/residents on directly neighbouring properties (homes that are 150m to 1.2km away from the closest tunnels).
 - 5.3.2. 22 nearby guesthouses.
 - 5.3.3. 20 wine farms
 - 5.3.4. Five neighbouring wineries, two with popular restaurants.
 - 5.3.5. Hemel-en-Aarde Winegrowers Association
 - 5.3.6. Hermanus Tourism
 - 5.3.7. Hermanus Business Chamber
 - 5.3.8. Hemel-en-Aarde Valley Conservancy
 - 5.3.9. Farmers Association
 - 5.3.10. The Hemel-en-Aarde Rural Safety Association
- 5.4. **Annexure 1** contains images and descriptions that contradict the VIA findings, and therefore the resulting conclusions in the VIA are found to be baseless and unfairly in favour of the applicant.
- 5.5. We do agree on recommendations to enforce conditions that mitigate the visual impact, but remain concerned that part of the recommendations are to plant more alien trees.
- 5.6. The VIA should be address the above issues and be resubmitted.

Conclusion

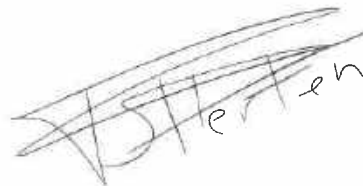
The application does not represent the view of key stakeholders and residents in the area, but rather purports to make assumptions on their behalf and present these assumptions as mitigating motivations. We reject these statements used as motivating factors in the application.

Members of HAWA have, for a number of years, been operating under prejudiced conditions due to the applicant's willful construction/erection of 8.337ha of illegal polytunnels.

We call for this application in its current form to be rejected, and request that prior to any further application for expansion being submitted, the applicant rectifies all current gross breaches/illegalities.

Regarding any future approvals, we request that the OM impose severe and **proven** conditions that mitigate the visual impact of the applicant's intensive horticultural tunnels.

Sincerely,



Frederik Herten
Chairperson
On behalf of the Hemel-en-Aarde Winegrowers Association

Annexure 1

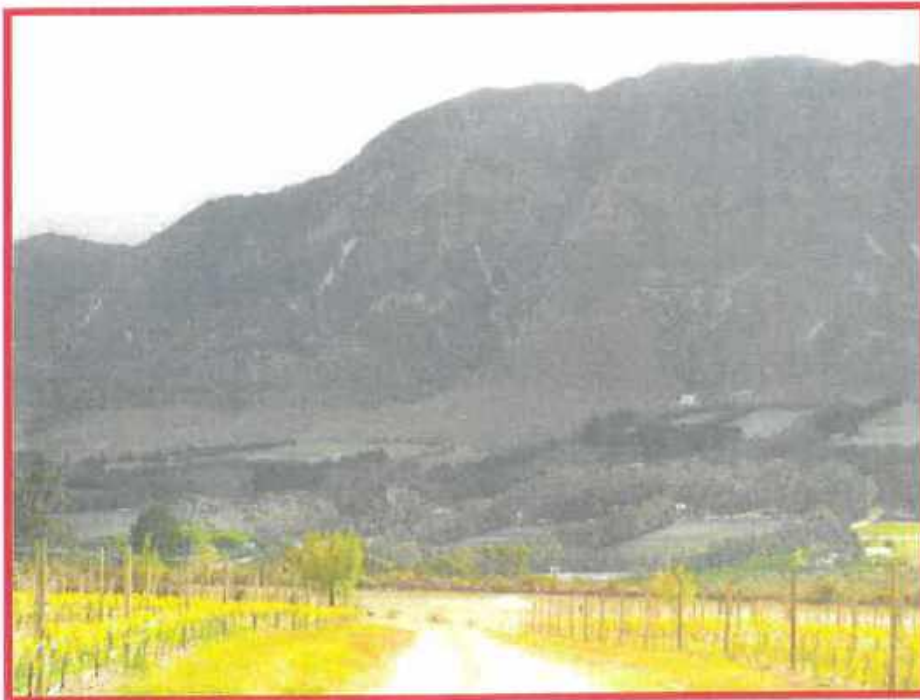
Critique of the Applicant's VIA, submitted as Annexure D.

This document serves to highlight where the VIA is not accurate and why we reject the findings and conclusions contained therein, and therefore object to the application in its entirety. This document will indicate that further expansion of polytunnels will:

- Result in harm and loss to the wine and tourism industries in the HEA
- Make it difficult to compete with other wine routes.
- Discourage future investment in these sectors
- Disadvantage the HEA wine industry from reaching its full potential.

Note:

1. The first part of this document shows images that were supplied in the VIA. For each image supplied, we supply an alternative image of the same location to indicate the inaccuracy in the applicant's assessment with regard to the impact.
2. The images and figures from the VIA are numbered numerically as per the VIA and for clarity, **the images and figures from the VIA have been given red borders.**
3. The images and figures we supply are numbered alphabetically.
4. Comments, as written by the author of the VIA, that to each relevant image/figure in the VIA, appear verbatim and are **in italic type** below the image/figure.
5. Comments pertaining to images we supply in this document are in **regular** type.

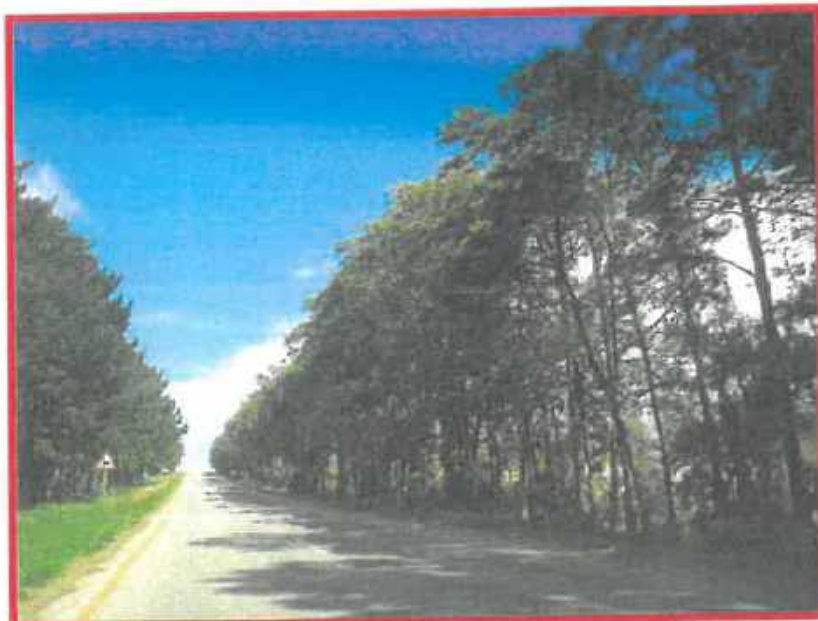


VIA Image 1: A view of the site from the Hemel-en-Aarde Road that shows the extent of existing windbreaks on site. These provide an edge to the farming blocks, to

provide protection from the dominant winds and act as visual barriers to visually sensitive receptors. Source: Leila Bruce



Image A: Compare with Image 1. The same point of view but taken in normal conditions where subject property is not under cloud cover and the image is clear. The image indicates the white glare extending high up the mountain slopes, and the density of the alien trees.



VIA Image 3: Street view of the Hemel-en-Aarde Road with rows of mature trees lining the edge of the road. Source: Leila Bruce

Image 3 indicates the R320 lined by trees that supposedly screen the tunnels. The point of view is looking in the Hermanus direction, not where the tunnels are located.

On inspection, this is one of only two short section on the R320 in that area that has trees lining the road, and this line of trees is only 600m long. Even if trees lined the entire road, the departures for tunnels are permanent, what happens when/if these trees are cut down as per the recent trends.

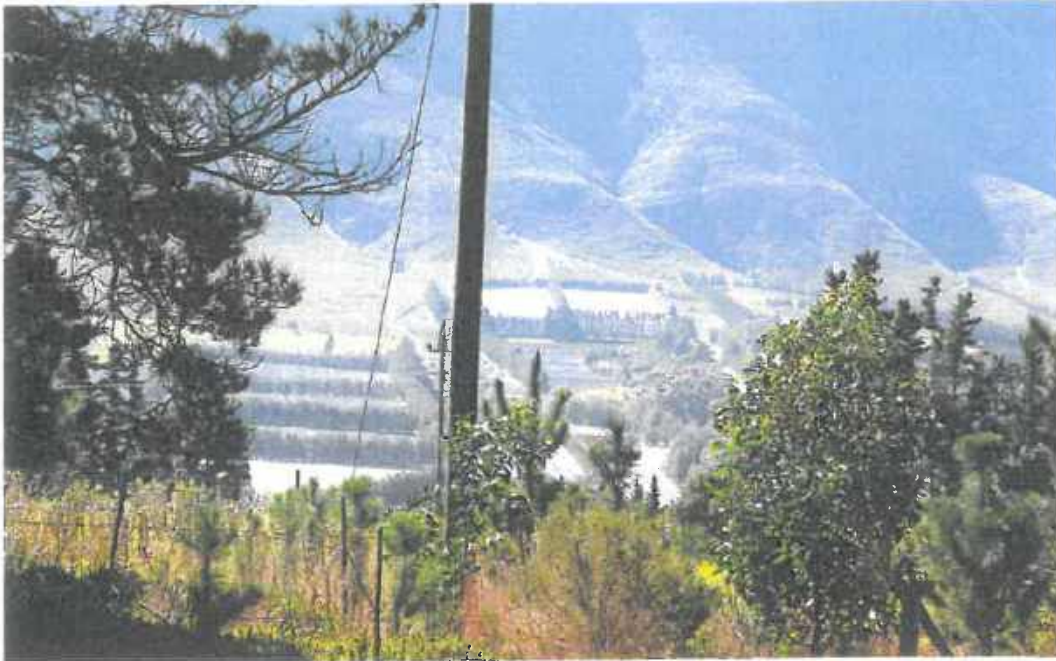
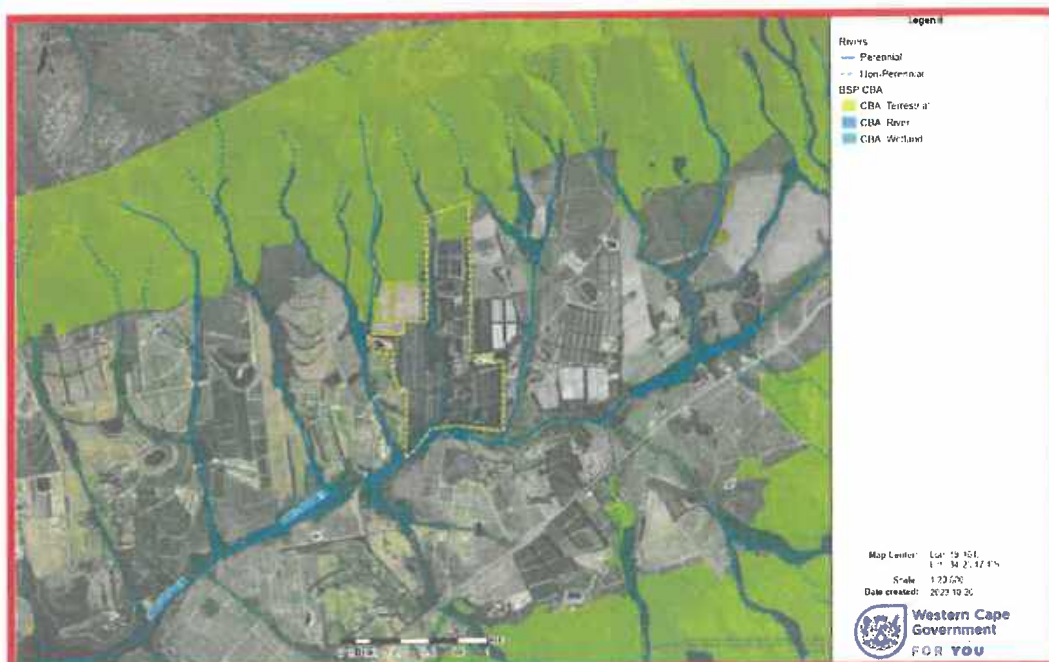
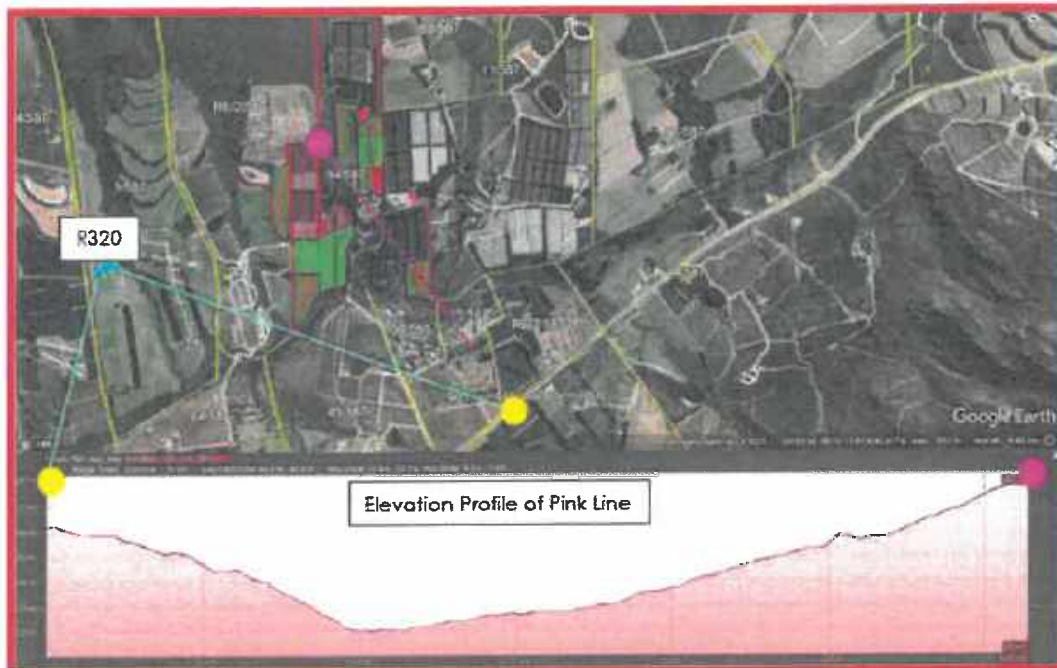


Image B: Compare with Image 3. The same row of trees as per Image 3, but looking towards Haygrove. Image 3 will have one believe that the entire R320 is tree lined and that the trees screen the tunnels from view when driving though the Hemel-en-Aarde, which is not the reality.



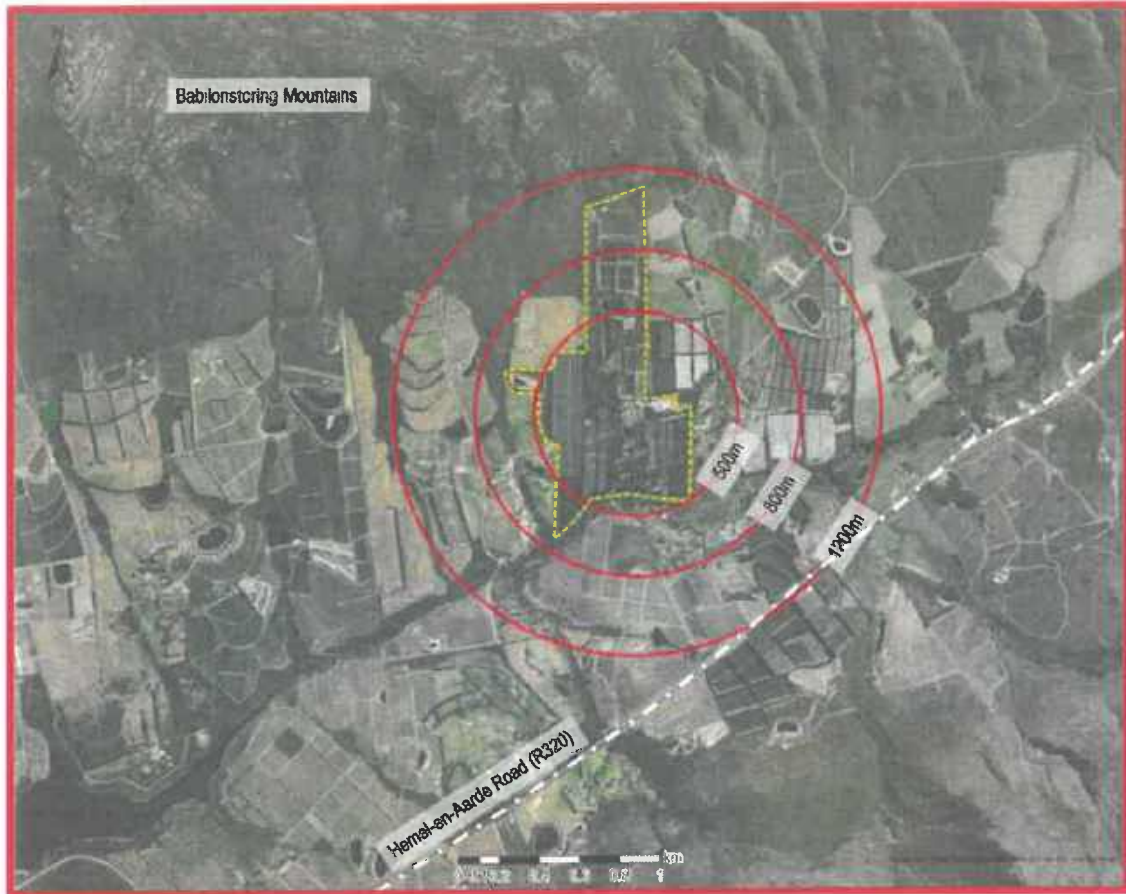
VIA Figure 3: This map shows critical biodiversity areas. Source: Cape Farm Mapper

Figure 3 indicates that the applicant's property, indicated within the dotted yellow line, is surrounded by what is deemed by the authorities to be "Critical Biodiversity Areas". Haygrove's adjacent property with its polytunnels and shade cloth can also be seen. To the north are green areas of critical mountain land, and bordering the property to the south is the Onrus River and critical wetlands. With the property sandwiched between such critical systems, the area is not compatible with plastic tunnels covering 22ha, and reducing the boundary corridors for biodiversity and fire breaks to as little as 2-3m in some areas. The proposed expansion is excessive.



VIA Figure 7: Elevational profile of the topography from the R320 (yellow dot) to the edge of the site (pink dot): Illustrating the landscape character of the surrounding terrain of the site. Source: WRAP Project Office

The elevation profile along the purple line, from the yellow circle to the purple circle is significant yet not quantified in the report. The pink circle is at an elevation of 290m, and the top of the tunnels extent up to 360m. At his altitude, almost all tunnels are visible from all but the most low lying properties opposite. At this altitude, tunnels are highly visible from as far as 5km away in many directions.



VIA Figure 8: This map illustrates the extent of visual impact from the site to $\pm 500\text{m}$, $\pm 800\text{m}$ and $\pm 1200\text{m}$ (1.2km). These intervals meet points of importance, namely, the boundary of the site, the housing estate opposite and the R320 road. Source: Cape Farm Mapper

This is misleading as the distance is measured from the centre of the subject property whereas the tunnels extend beyond the center. So when measuring the proximity to the points of interest, it should be measured from the tunnels on the property located closest to the points of interest as this is the distance that is relevant.



Figure A: Compare to Figure 8. Figure A indicates that the yellow line, i.e. the distance between residential homes and the closest tunnels will be 200m, not “ $\pm 800m$ distance from the holiday accommodation.” as the VIA document indicates.

Note that the area within the purple contains 27 residential homes; 20 houses on two residential developments zoned resort (30 years ago), and two houses on two farms, both zoned agri, the one house having been built 150 years ago. It is not only “*holiday accommodation*” as the VIA states, many are permanent residents who live with the impact of Haygrove on a daily basis.

The area within the red line is common property on the residential developments, is sensitive and indigenous fynbos and wetlands on the northern side of the Onrus River, and contains nature trails. The white tunnels will abut this. The impact will be severe.

Both wine farms in Figure A look directly into the white polytunnels and are even more severely impacted due to their higher altitude. The glare from these tunnels and shade cloth is untenable as will be seen in later images.

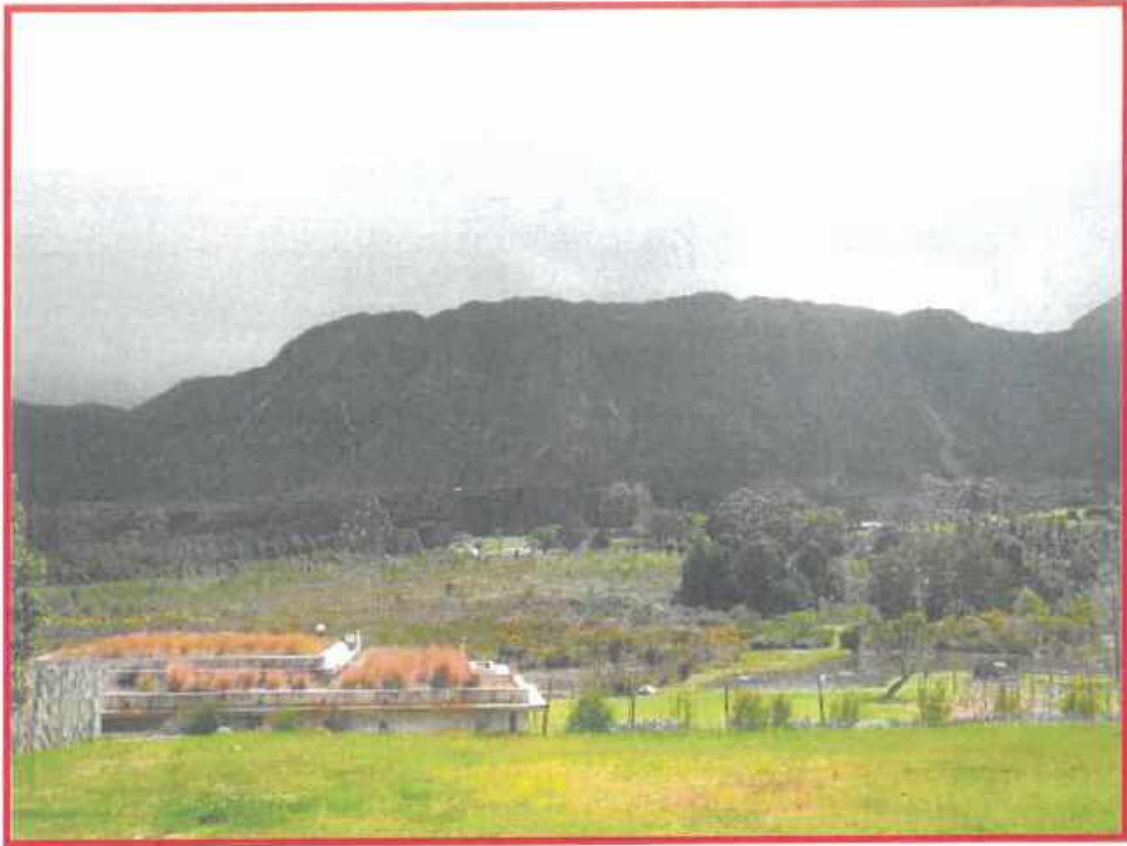


VIA Image 6: This image shows the holiday accommodation units seen from a road on site. In the foreground are existing tunnels that are largely screened by vegetation. Source: Leila Bruce

This is a view from Haygrove looking back towards the neighbouring development (which is not a relevant point of view to assess the impact). It does not indicate the scale of the housing development or the proximity of the houses to the tunnels. It refers to “*holiday accommodation*” when in fact there are a number of permanent residents. Most relevant however is that this image is taken from the neighbouring property (11/587) and not the subject portion 94/587, so any reference here is irrelevant, see Image C below.



Image C: Compare to Image 6. This image illustrates that Image 6 is incorrect. Firstly, Image 6, is taken from the area in proximity of the purple dot. This dot is on farm 11/587, not the property in this application, which is 94/587 to the right of the red line. This photograph also enables the viewer to see that the housing development is not as small as Image 6 would have one believe. In fact there are 25 houses stretching some 600m, as indicated between the yellow lines. It is also possible to see the scale of the polytunnels that Haygrove also farm on their property left of the red line. The impact on the surrounding area is far greater seeing it in context, i.e. both operations.



VIA Image 5: This image shows the site with limited visual impacts of existing tunnels including the large extent of natural windbreaks and established trees seen from the site of the holiday accommodation units opposite. Source: Leila Bruce

This particular home is the lowest lying home on the site and this photograph paints a benign and picturesque image of the applicant's operation. This is far from reality, see Image D below.

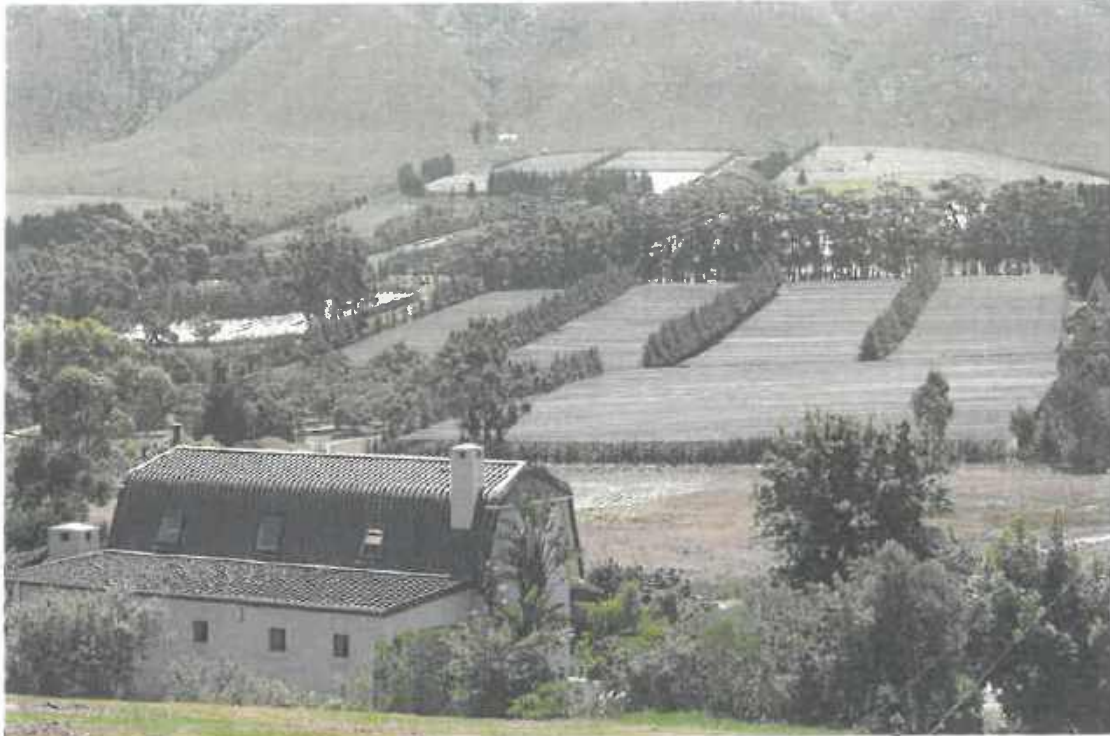


Image D: Compare with Image 5. Directly opposite the tunnels are 25 homes in two developments, with homes as close as 200m from the proposed tunnels. The tunnels appear further away in the photograph, however the impact is instant when sanding on site. Much of this shade cloth is now 8.337ha of illegally erected white polytunnels. This house is only 50m from the house pictured in the VIA's Image 5 above, indicating how misleading to the overall reality of Image 5 actually is.



Image E: Direct view from a neighbouring wine farm into applicant's polytunnels. A condition for approval was that the white plastic is to be covered with shade cloth to

camouflage the tunnels and to minimize glare. The covering is totally inadequate and the visual impact is high.



Image F: View from wine farm opposite the applicant's polytunnels, looking into alien trees and tunnels. Note that tunnels are clearly visible through the trees.

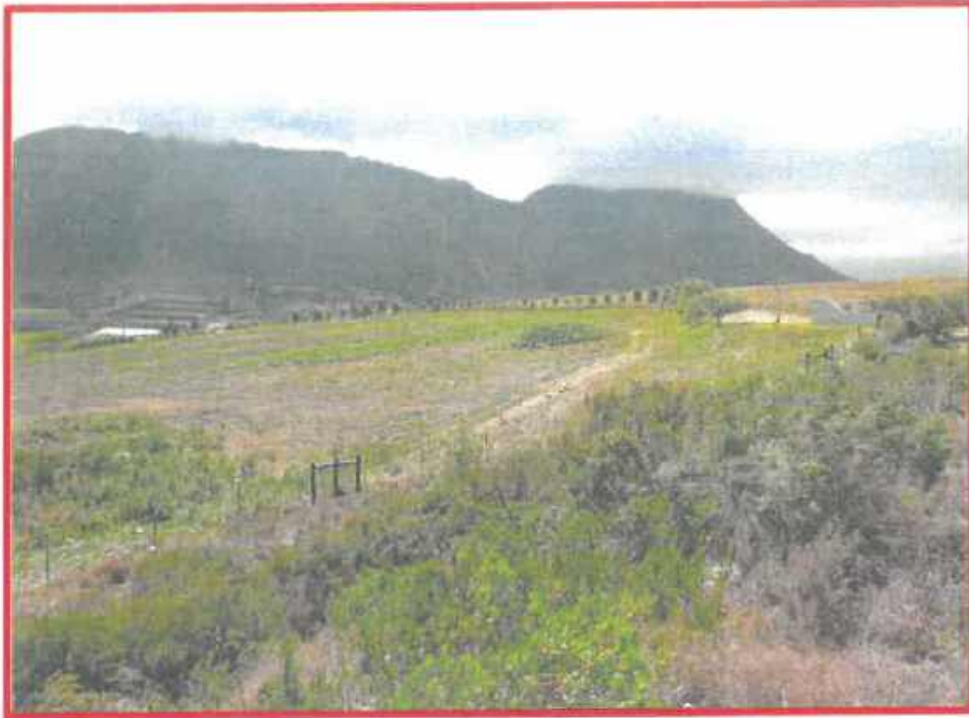


Image 4:

This image shows the undulating topography of the terrain from the R320 road that illustrates natural visual barriers to the site at various points. Source: Leila Bruce

This photograph is taken from a location on the R320 where the road is at its lowest point and a hill conveniently obscures the visual impact of the subject property from the road.

At this point in the document and after presenting the above diagrams and photographs, the VIA states:

“5.2 Visual Exposure

The site is visually enclosed by rows of trees and moderately exposed from higher elevations due to the undulating landform. It is rated as moderately exposed (their underlining) for receptors, namely the holiday accommodation units, neighbouring farms and the Hemel-en-Aarde Road (R320). The site has a high visual absorption capacity (there underlining) as it is effectively screened by vegetation and topography. Particularly along the R320 as there are rows of trees on the road edge and on lower elevations in close proximity to trees on site.”

This is not an accurate assessment as *Image 4* above and *Image G* below illustrate.



Image G: Compare with Image 5. This photograph is taken on the R320, only 150m east of the location of Image 5. This not only illustrates the visual impact of the tunnels and shade cloth, but also the white glare. The glare is so severe in this image that it is indistinguishable as to which surfaces are white plastic tunnels and which are shade cloth. The density of the planted alien trees can also be seen. One will also note that the white plastic tunnels and alien tree windbreaks are in stark contrast to the view of the wide-open space the vineyards in the foreground afford.



Image 7: This image shows the main entrance from the R320 to the site. Source: Antoinette de Beer

VIA

Image 7 is an image taken for the VIA at the turnoff to the road to access the applicant's property. The camera is on a wide lens pushing the tunnels into the distance. The property is also photographed in the shade, minimizing the impact of the white glare and tunnels.



Image H: **Compare with Image 7.** This is the same viewpoint as Image 7, only it is taken 10m away on the opposite side of the R320, and uses a 50mm lens that is the same view as the human eye, i.e. not zoomed in or out. The visual impact from the road is far greater than Image 7 indicates.

The VIA makes the following assessment and uses the images that we have highlighted in this document to support their claims:

“5.4 Compatibility of the Development

*The compatibility of the proposed development and land use with the existing landscape character is assessed as **moderately** compatible; the development of additional horticulture tunnels would fit into the landscape and be partially concealed through established vegetation. It would be partially concealed based on viewpoints from different topographical elevations.*

5.5 Intensity or Magnitude of Visual Impact

*The intensity or the degree to which the proposed development will impact views and scenic or cultural resources will be **medium-low**: visual and scenic resources will be affected to a limited extent.*

HAWA reject these assessments. The VIA has failed to accurately document the visual impact on neighbouring farms. The following sets of images and brief descriptions indicate the severity of the visual impact, on many properties, not indicated in the applicant's VIA.



Image I: Areas in the Hemel-en-Aarde that the tourist come to see; wide open space, mountains, natural vegetation, vineyard and orchards.



Image J: Open space and water in the foreground and the backdrop of alien trees and plastic tunnels that tourists and visitors do not come to the HEA to see.

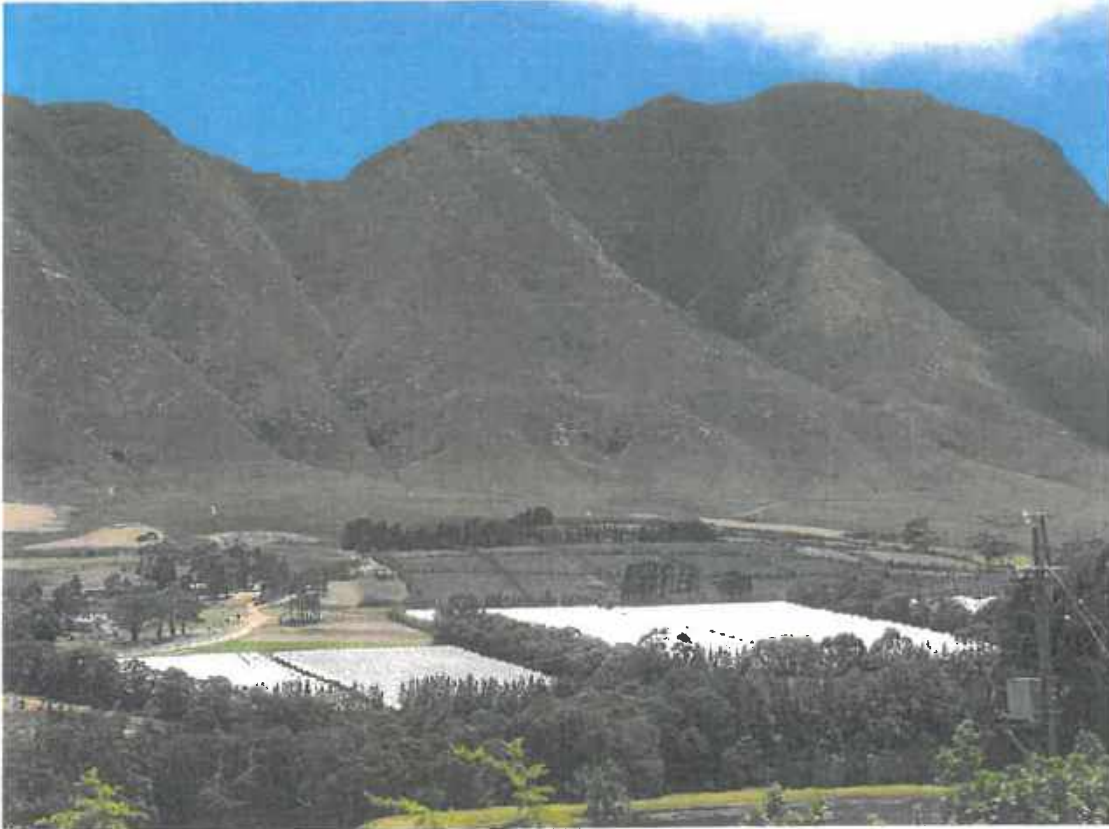


Image K: Properties 1km from the tunnels are heavily impacted. The glare off the tunnels is severe and Haygrove do not fulfill the current Conditions of Approval that require adequate cover these tunnels.



Image L: The picturesque Hemel-en-Aarde looking east with the R320 running through.



Image M: The picturesque Hemel-en-Aarde looking west with the R320 and the Onrus River running through. The lower portion of the applicants property can be seen on the right, vineyards and the two housing developments can be seen on the left of the Onrus River.

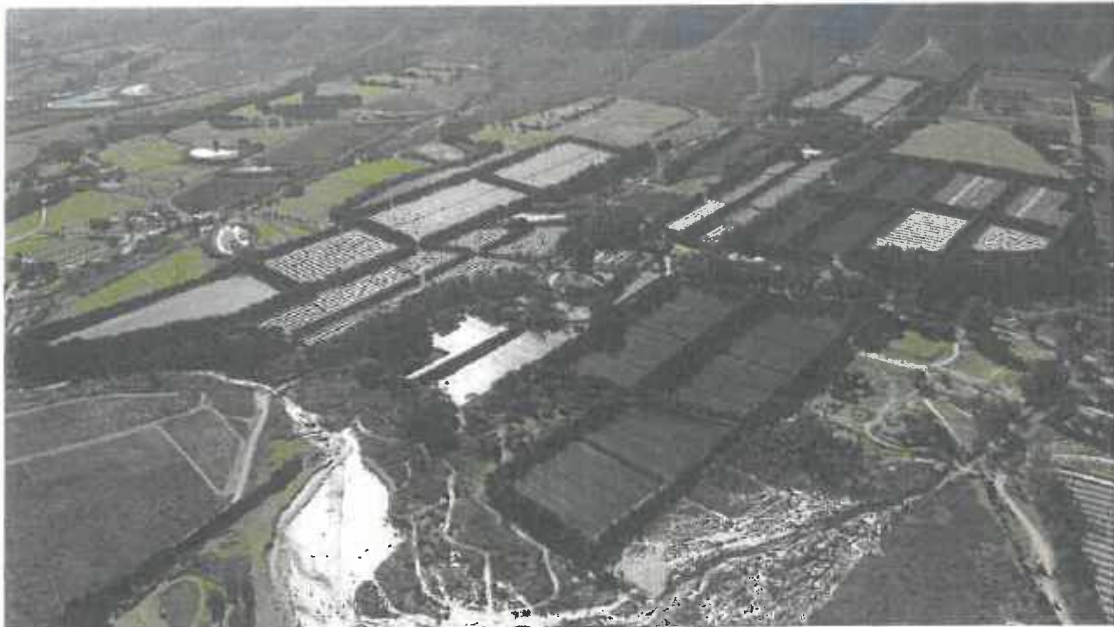


Image N: The extent of the applicants tunnels on the mountain slopes. The application, if successful, will see the black shade cloth sections converted to white polytunnels.

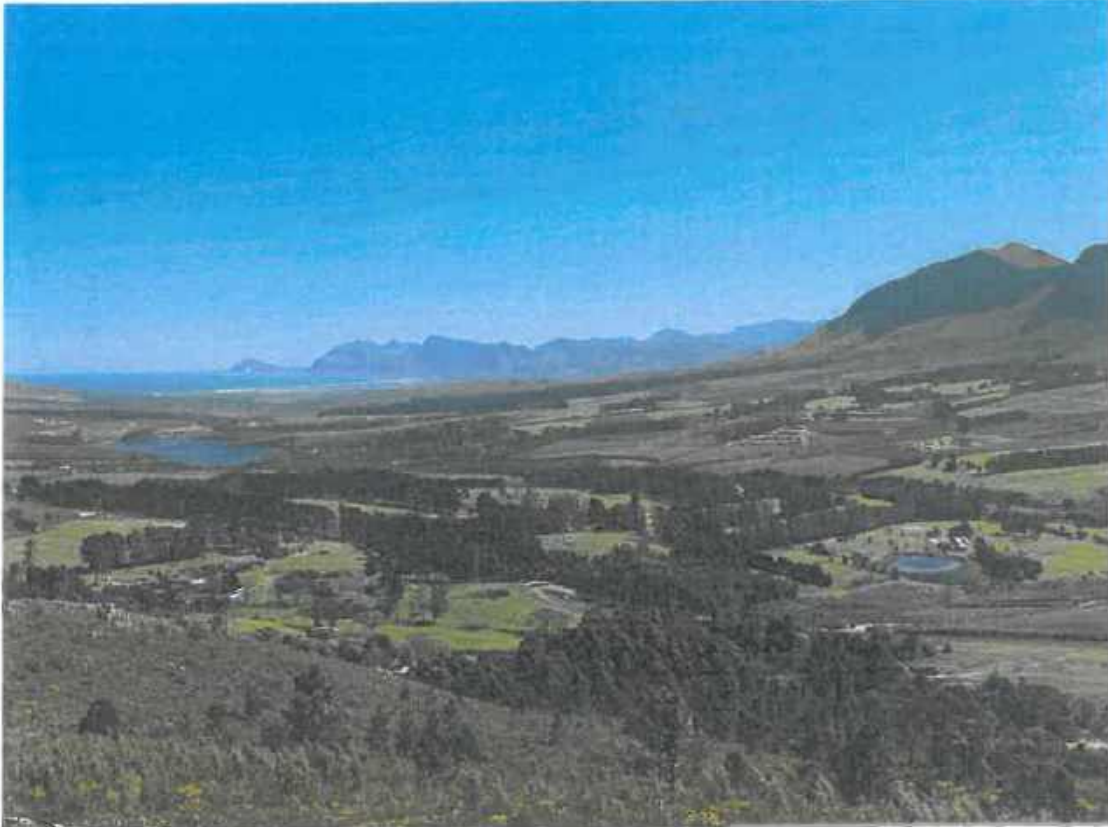


Image O: The views that attract visitors to the area, looking west.

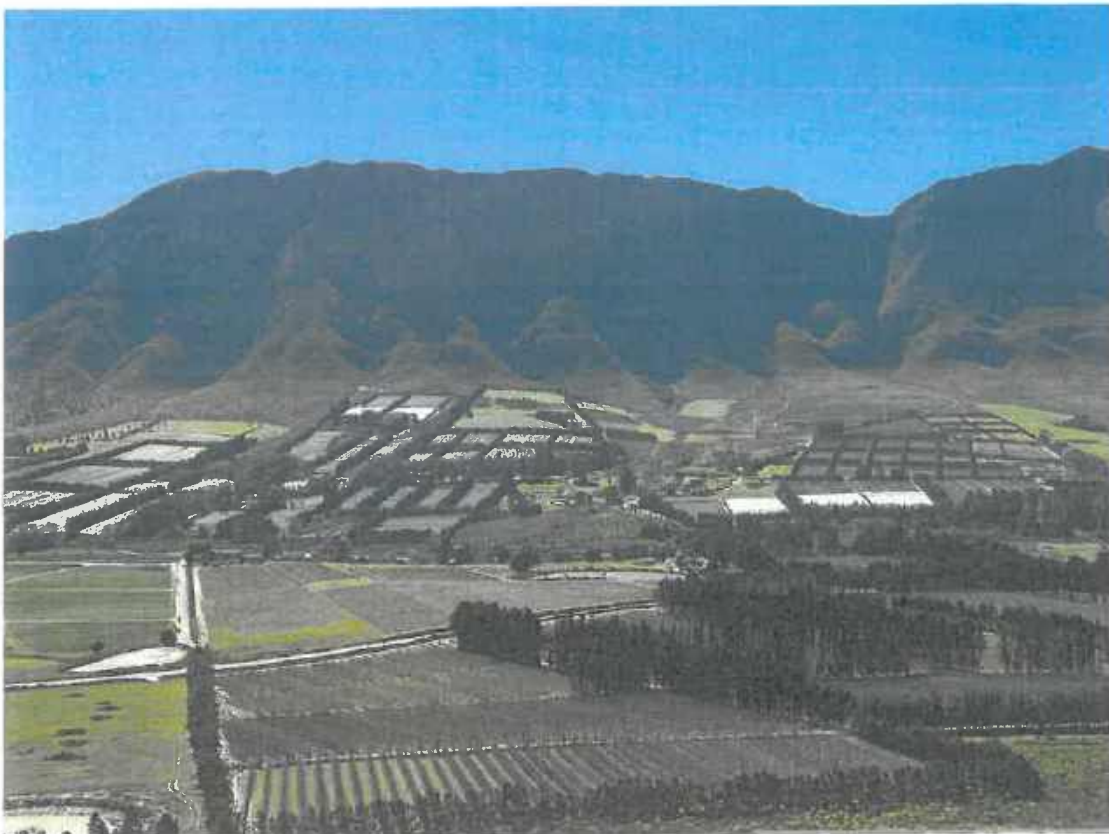


Image P: Taken from the same location as Image H, looking north on Haygrove. The sprawl of these tunnels can be seen stretching 1.5km. In left foreground are vineyards, orchards and natural fynbos. Many windbreaks have been removed from

the orchards in the foreground in line with recent trends to remove alien trees and open up the landscape and views.

The visual impact on the wineries in this area of the Hemel-en-Aarde Valley is far greater than indicated in the VIA. Views are affected and the agricultural and historic character of the area is significantly altered. Images below walk the reader through a 5km stretch of the area, from Hasher Family Vineyards (formerly Sumaridge), to Spookfontein on the eastern ridge.



Image Q. Hasher Family Estate, winery on the right, expansive open space with vineyards and natural open corridors in the foreground. Although 5km from Haygrove, the alien tree windbreaks darken the mountain slope, directly under the iconic, historic Babilonstoring mountains. Reflective white plastic can be seen high up on the mountain slopes on the left. Image taken from the R320 so this view is clearly visible by all road users.



Image R: The tunnels can easily be seen from Newton Johnson Family Vineyards.



Image S: The tunnels can easily be seen from Four Seasons Stud farm. Despite the row of trees screening the tunnels, they are still highly visible through the trees.

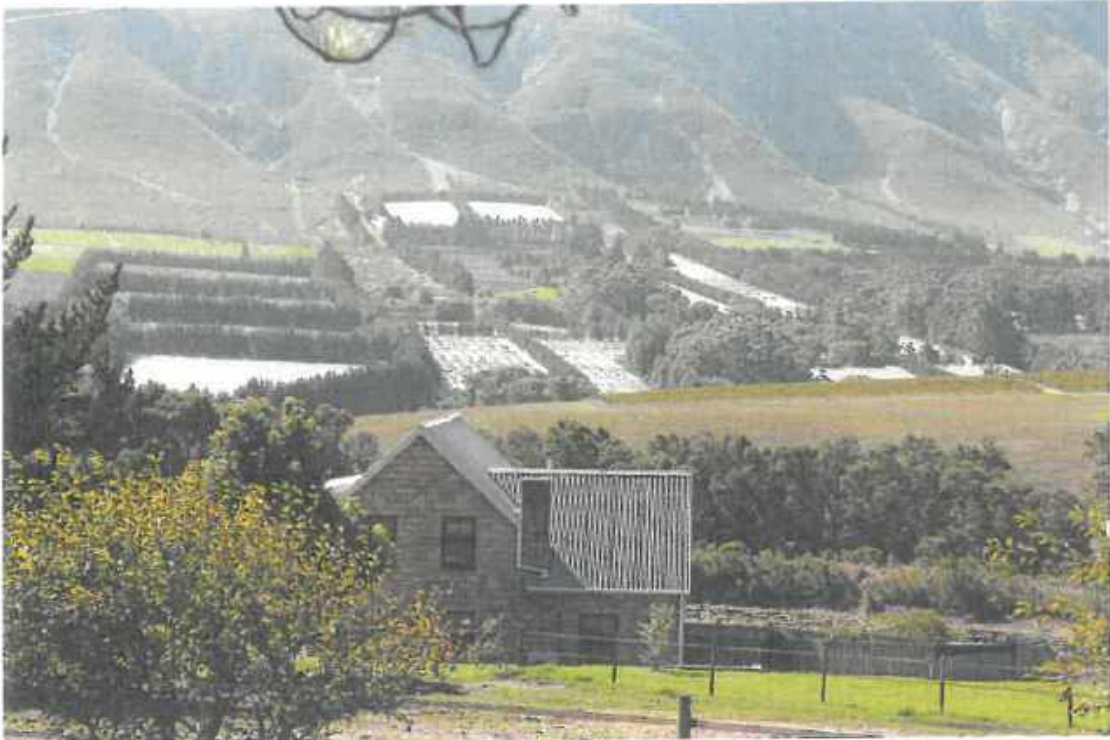


Image T: The tunnels and dense alien windbreaks on Haygrove can easily be seen from Ross Stud Farm. The house looks directly onto the polytunnels.



Image U: Sham Vineyards in the foreground looking onto white polytunnels in the background.



Image V: Sham Vineyards fynbos in the foreground looking onto white polytunnels and alien windbreaks on the mountain. In the distant open space on the left are vineyards farmed by Newton Johnson.



Image W: Restless River Vineyards in the foreground looking onto the Babilonstoring mountains covered in white polytunnels and shade cloth, densely surrounded by alien windbreaks.

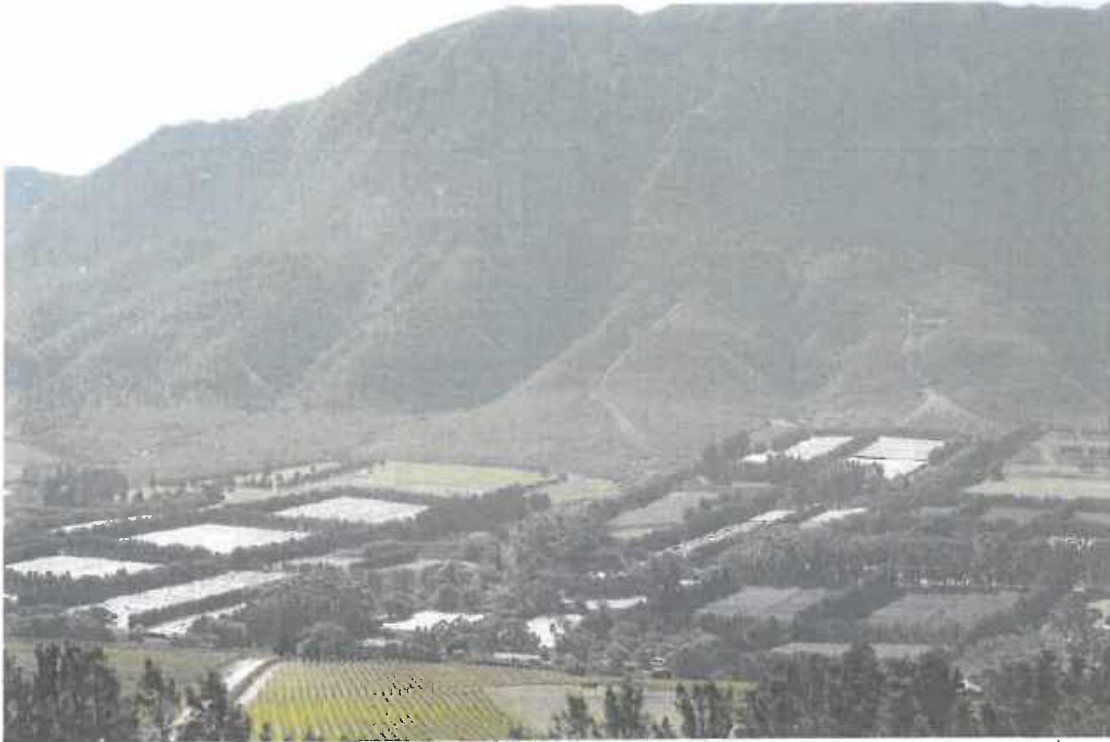


Image X: Clouds End Mountain Vineyards. The visual impact detracts from being a viable location for tasting facilities.



Image Y: Tunnels impact the views from Spookfontein, the view from this location also looks into the Haygrove where the mountain slopes are heavily covered in alien trees that act as windbreaks for the tunnels. The vineyards and fynbos in the foreground create wide-open spaces in character with the area, including the guest cottages. The background tunnels and alien trees are in contrast to this.

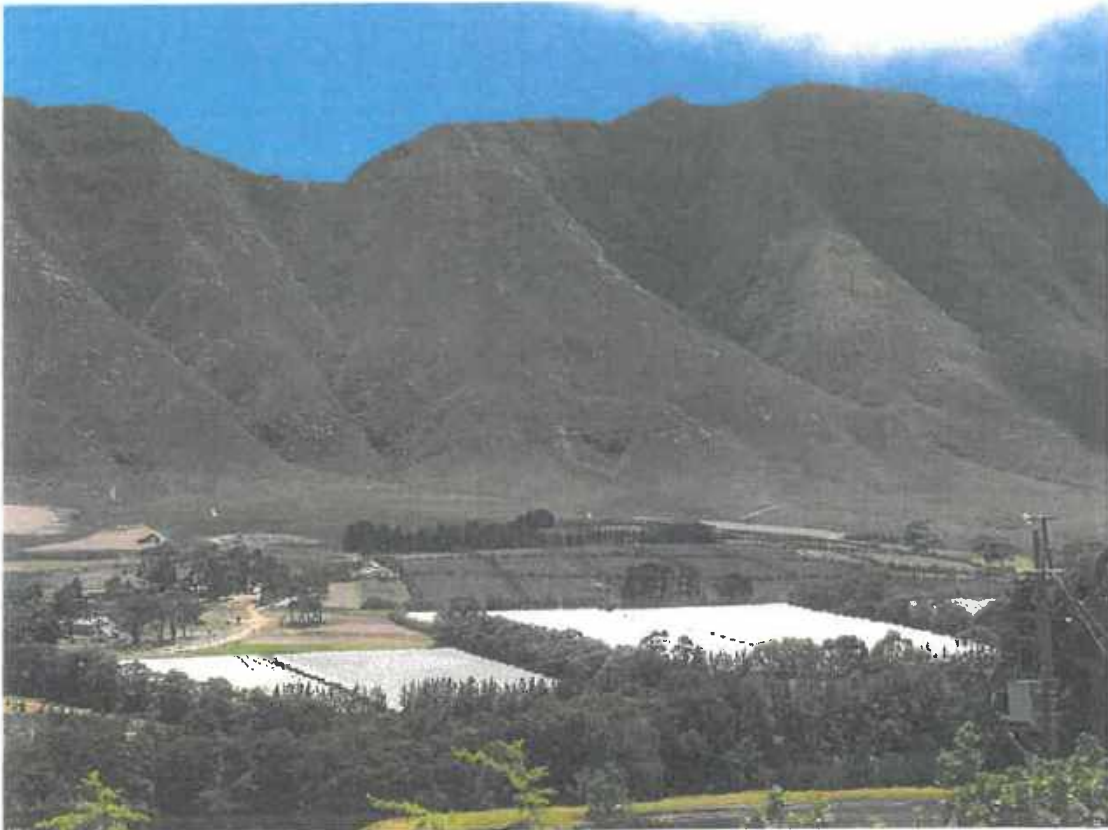


Image Z: Properties 1km from the tunnels are heavily affected. The glare off the tunnels is severe and the applicant has not fulfilled the current Conditions of Approval and adequately cover these tunnels.

End.



59/69

HEMEL -en- AARDE
WINES • HERMANUS

HEMEL-EN-AARDE WINEGROWERS ASSOCIATION
Overview

1. NAME

The name of the association initially was the “The Hermanus Winegrowers’ Association”. Given clarity received from the Wine and Spirits Board on the naming of Ward 3 the name has now been changed to Hemel-en-Aarde Winegrowers’ Association (“HAWA”). Under the auspices of the Hemel-en-Aarde Winegrowers’ Association the Hermanus Wine Route has been established as per **Annexure “A”** hereto.

2. MISSION

To set new standards of wine quality and integrity of origin in South Africa, in terms of the product, the associated service and experience for consumers and visitors, by developing and promoting the people involved in the wine industry of the Hemel-en-Aarde area.

3. VISION

To be recognised as a unique wine destination and premium winegrowing area in South Africa offering the most superlative product, service and wine experience in the country.

4. OBJECTIVES

1. To identify and promote a sustainable identity which is reflective of the group as a whole, which is differentiated from Botriver, Elgin and Stanford area in the context of Walker Bay, and which is aimed at enhancing the competitiveness and brand value of the group and the individual businesses that make up the group.
2. To develop a ‘wine culture’ and ‘regional loyalty’ amongst the people involved in the wine industry of the area, that reflects the identity of the group through the language, behaviour, attitude and service levels utilised by the individuals that make up the group.
3. To develop a Wine Route, targeted at attracting the aspiring wine buyer, the discerning wine

buyer and the connoisseur; made up of members who undertake to uphold and reflect the standard and identity of the area as a whole.

4. To develop an effective external communications programme for the Wine Route, that will provide information about the area in terms of products, services, achievements, developments, the people involved etc., in keeping with the identity of the area within the budget constraints and guidelines set by the board from time to time. Included in this programme will be media releases to appropriate lifestyle journalists, the development and distribution of brochures and maps, the development of a website with links to the various member wineries and a training and information programme for local restaurants, hotels and B&B establishments.
5. To create opportunities targeted at international and local wine writers; discerning wine drinkers, the connoisseurs and the loyal supporters, aimed at promoting the regional identity of the wines grown in the area. Linked to this will be a specific projects management function and media release.
6. To encourage all members to be both progressive in their business practices and compliant with the legislation of the day.
7. To provide a platform for wine businesses of the area to collectively and jointly co-operate and co-ordinate arrangements (through opportunities that arise - activities, events, functions, wine shows) to promote the area.
8. To develop a 'voice' which is representative of the wine businesses of the area and is recognised, credible and acknowledged at municipal, Wine Route Forum, Wines of South Africa, and SAWIS level.
9. To promote collaboration; co-operation and information sharing between members through networking opportunities and hosted tastings, with the view of improving relationships and finding opportunities/synergies/joint projects that will promote cost effectiveness.

5. DEFINED AREA

The HAWA recognises wards 1 (Hemel-en-Aarde Valley), 2 (Upper Hemel-en-Aarde Valley) and 3 (Hemel-en-Aarde Ridge) as demarcated by the Wine and Spirit Board, to be the automatic area of inclusion. Winegrowers outside this core area may, in extraordinary circumstances, be considered on a case-by-case basis according to the outlined procedure. The intention is, however, to rather include people outside the core area as part of the Hermanus Wine Route as set out in **Annexure "A"**.

6. MEMBERSHIP

In terms of this constitution, "Winegrower" is defined as an agricultural business, primarily focussed on producing and selling wine and/or growing and selling grapes for wine making purposes.

A membership structure, together with a classification key has been introduced to categorise members and will be used as the basis for defining rights of membership and the funding of HAWA.

CURRENT MEMBERS FOR 2024 INCLUDE:

Full Members:

1. Southern Right Wines
2. Hamilton Russell Vineyards
3. Bouchard Finlayson
4. La Vierge Wines
5. Bosman Hermanus / De Bos (Bosman Family Vineyards)
6. Hasher Family Estate
7. Cap Maritime
8. Newton Johnson Vineyards
9. Restless River
17. Storm Wines
10. Spookfontein
11. Whalehaven
12. Ataraxia
13. Tesselaarsdal
14. Creation
15. Mount Babylon

Loretta Gillion

From: WeTransfer <noreply@wetransfer.com>
Sent: Friday, 19 April 2024 13:37
To: Loretta Gillion
Subject: frederik@hasherfamilyestate.co.za sent you Portion 94 of Farm Hemel en Aarde 587 - Objection via WeTransfer



frederik@hasherfamilyestate.co.za
sent you **Portion 94 of Farm Hemel en
Aarde 587 – Objection**

3 items, 158 MB in total • Expires on 26 April, 2024

Portion 94 of Farm Hemel en Aarde 587 - Objection Dear Ms
Gillion,
Dear Mr. Olivier,

In my capacity as chairman of the Executive Committee of the Hemel & Aarde Winegrowers' Association, I am contacting you to inform you of our organizations' objection to the application for departure, amendment of an approved site development plan and amendment of conditions for approval in respect of Portion 94 of Farm Hemel en Aarde 587.

In this respect, I send you the following documents via WeTransfer:

HAWA objection 2024

Annexure 1 : Critique of the applicant's VIA, submitted as annexure D

Annexure 2 : HAWA overview

May I kindly ask you to confirm in reply of this email, that these documents were well received?

If possible, I would suggest we set-up a meeting in the next weeks where I would like to discuss the reasons for HAWA to object to this

application.

Please don't hesitate to contact me should you have any questions.

Kind regards,

Get your files

Download link

<https://wetransfer.com/downloads/75e97910157a6e07beaa665447fb514f20240419113003/9d3485c9ee47424ab0cb2c97bb42d04a2024041913022/6fd375>

3 items

Annexure 1.pdf
158 MB

Annexure 2. HAWA Overview.pdf
518 KB

HAWA Objection 2024.pdf
157 KB

To make sure our emails arrive, please add noreply@wetransfer.com to [your contacts](#).

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Loretta Gillion

From: Frederik || Hasher Family Estate <frederik@hasherfamilyestate.co.za>
Sent: Friday, 19 April 2024 13:32
To: Loretta Gillion; Henk Olivier
Cc: JC Martin; Hannes Storm; Emul Ross | Hamilton Russell Vineyards
Subject: Portion 94 of Farm Hemel en Aarde 587 - Objection

Dear Ms Gillion,
Dear Mr. Olivier,

In my capacity as chairman of the Executive Committee of the Hemel & Aarde Winegrowers' Association, I am contacting you to inform you of our organizations' objection to the application for departure, amendment of an approved site development plan and amendment of conditions for approval in respect of Portion 94 of Farm Hemel en Aarde 587.

In this respect, I have sent you the following documents via WeTransfer:

- HAWA objection 2024
- Annexure 1 : Critique of the applicant's VIA, submitted as annexure D
- Annexure 2 : HAWA overview

May I kindly ask you to confirm in reply of this email, that these documents were well received?

If possible, I would suggest we set-up a meeting in the next weeks where I would like to discuss the reasons for HAWA to object to this application.

Please don't hesitate to contact me should you have any questions.

Kind regards,

Frederik Herten

owner

Hasher Family Estate

R320 Hemel & Aarde Valley,
7200 Hermanus, P.O. Box 224

GPS: -34.36688190949651, 19.25553238169907

frederik@hasherfamilyestate.co.za
www.hasherfamilyestate.co.za
+27 (79) 832 3737

Reg. N° 2021/495288/07
VAT n°4760298374

TP - P. A. 172
(M. Olivier)

65/69

Loretta Gillion
OVERSTRAND MUNICIPALITEIT
From: REKORDBEHEER
Sent: 22 APR 2024
To: Loretta Gillion
Subject: DOCUMENT CONTROL
OVERSTRAND MUNICIPALITY

Di Marais <hemelenaardeconservancy@gmail.com>
Friday, 19 April 2024 10:24
Loretta Gillion
Request for Extension and Concerns Regarding Proposed Development on Portion 94 of Farm 587, Hemel-en-Aarde Valley

FILE NO. P/N 94/587
Hemel & Aarde
SCAN NO.
COLLABORATOR NO.
2035042

Dear Overberg Municipality,

I am writing to you on behalf of the Hemel en Aarde Conservancy, representing 6000 hectares of conserved area in the Hemel-en-Aarde Valley.

Our conservancy plays a vital role in stewarding the natural environment and cultural heritage of the valley, and it is with great concern that we address the proposed development on Portion 94 of Farm 587.

Having reviewed the attached application by Haygrove for departure, amendment of an approved site development plan, and amendment of conditions of approval, we have identified several significant issues that raise serious concerns from a conservancy perspective. This letter is to address the following points and raise objections to it:

Environmental Impact:

Biodiversity Preservation:

Emphasize the need for a more comprehensive environmental impact assessment to address the potential impact on the biodiversity of the Hemel-en-Aarde Valley.

Water Quality and Soil Health:

Highlight the necessity for thorough research on the risks to water quality, soil health, and ecosystem balance posed by the proposed development.

Erosion and Contamination:

Stress the importance of addressing the risks of erosion, chemical contamination, and fertilizer residues to ensure the valley's environmental sustainability.

Sustainability and Community Well-being:

Preservation of Rural Character:

Clearly state the objection to the application in its current form due to the lack of adequate research and assessment, and request more comprehensive and convincing research in sensitive areas.

Social and Economic Impact:

Address concerns about the adverse social and economic implications of the development, including increased traffic, crime, and impacts on local communities and informal settlements.

Stakeholder Engagement:

Emphasize the need for meaningful engagement with all stakeholders to ensure their concerns and perspectives are considered in the decision-making process.

Request for Further Assessment:

Independent Environmental Impact Assessment:

Clearly state the objection to the current assessment and request a more accurate and unbiased visual impact assessment that aligns with the conservancy's concerns.

Transparency and Accountability:

19 APR 2024

Request transparency from Haygrove regarding their operations and financial data to substantiate claims about economic benefits and employment.

In conclusion, we respectfully request an extension of the response deadline to allow for more time to inform and engage with Conservancy members, other stakeholders, and the broader community. Our goal is to ensure that all concerns are addressed, and decisions are made in the best interest of the Hemel-en-Aarde Valley and its community. Thank you for your attention to this matter.

We look forward to your favourable consideration of our request and to further collaboration on this important issue.

Sincerely,

--

Hemel-en-Aarde Conservancy Team

Hemel-en-Aarde

P.O. Box 158

Hermanus

7200

South Africa

Di Marais: +27 82 462 3624

Geon Ludick: +27 72 749 8520

E-Mail: hemelenaardeconservancy@gmail.com



Loretta Gillion

From: harsa chairman <harsachairman@gmail.com>
Sent: Monday, 06 May 2024 15:05
To: Loretta Gillion
Cc: Danie van Zyl; Petrus Bothma; harsafarmwatch@gmail.com; Craig Johnson
Subject: Retraction of Previous Correspondence Regarding Land Use Application for Portion 94 of Farm 587 Hemel & Aarde Valley

Dear Mrs Loretta,

I hope this email finds you well. I am writing to formally retract the letter sent on [Date] regarding the land use application for Portion 94 of Farm 587 Hemel & Aarde Valley.

Upon further reflection and consultation with relevant stakeholders, I have determined that it is in the best interest of all parties involved to withdraw the concerns outlined in the previous communication. I apologise for any inconvenience or confusion that this may have caused.

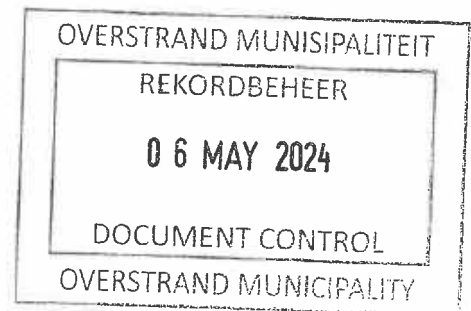
Please consider this email as an official notification of the retraction of the letter. I kindly request that any records of the previous correspondence be updated accordingly.

Thank you for your attention to this matter. Should you require any further clarification or information, please do not hesitate to contact me.

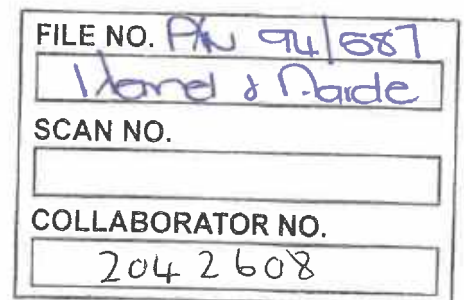
Warm regards,



Geon Ludick
 HARSA Chairman
 Cell: +27 72 749 8520
 E-Mail: harsachairman@gmail.com



*TP - D. Theate
 (H. Olivier)*



FILE NO. PIN 94 587
Hemel & Aarde
SCAN NO
COLLABORATOR NO.
2030687

68/69

Loretta Gillion
 OVERSTRAND MUNICIPALITY
From: REKORDBEHEER
Sent:
To: 15 APR 2024
Subject:
 DOCUMENT CONTROL
 OVERSTRAND MUNICIPALITY

harsa chairman <harsachairman@gmail.com>
 Sunday, 14 April 2024 13:48
 Loretta Gillion
 Concerns Regarding Land Use Application for Portion 94 of Farm 587 Hemel & Aarde Valley

*TP-D. Ineagk
 (A. Olivier)*

Dear Overberg Municipality,

I am writing to express some concerns regarding the land use application for Portion 94 of Farm 587 Hemel & Aarde Valley, which I recently reviewed.

As the Chairman of the Hemel en Aarde Rural Safety Association (Farm Watch), I believe it is essential to ensure that all proposed developments comply with local bylaws and regulations and do not pose any safety or environmental risks.

Based on my review of the application, I have identified several areas of concern that I would like to bring to your attention.

These include:

- 1. Compliance with Regulations:**
 The document mentions that the applicant admits to having constructed new tunnels without obtaining the necessary approvals. However, this does not absolve them from complying with local bylaws and regulations. It is essential to ensure that all developments comply with the law and that penalties are imposed for non-compliance.
- 2. Sound Testing:**
 It is unclear whether a sound testing has been conducted to assess the potential impact of the 24/7 operation on the surrounding neighbors.
- 3. Transportation:**
 The document mentions a limited number of buses, but the number of buses may not be sufficient given the number of people the facility is expected to accommodate.
- 4. Water Management:**
 The document does not provide information on how the facility plans to manage water for the plants, given that they are in pots and not directly in the ground.
- 5. Environmental Impact:**
 The document does not address the potential environmental impact of the proposed facility, including the use of plastic covers and the clearing of alien vegetation.
- 6. Zoning Issues:**
 It is unclear whether the proposed facility complies with the zoning regulations and whether the applicant has sought any zoning variances or rezoning.
- 7. Water Supply:**
 The document does not provide information on the water supply for the proposed facility.
- 8. Waste Management:**
 The document does not mention waste management plans for the proposed facility.
- 9. Fire Safety:** Given the rural location of the property, it is important to ensure that the proposed facility complies with fire safety regulations and has adequate fire prevention measures in place.

10. Access and Emergency Services: The document does not provide details on access to the property and proximity to emergency services.

11. Compliance with Local Bylaws and Regulations:

It is essential to ensure that the proposed facility complies with all local bylaws and regulations, including building codes, safety standards, and environmental regulations.

I would appreciate it if you could provide further information on these concerns and address how the applicant plans to address them. I believe that it is essential to ensure that all proposed developments comply with local bylaws and regulations and do not pose any safety or environmental risks to the surrounding community.

Thank you for your attention to this matter.

Sincerely,



Geon Ludick

HARSA Chairman

Cell: +27 72 749 8520

E-Mail: harsachairman@gmail.com





Project Office

Town Planning & Project Management

Our Reference: 23/81

Your Reference: Ptn 94 of Farm 587, RCAL

27 May 2024

The Municipal Manager Overstrand Municipality P O Box 20

HERMANUS

7200

Attention: Mr Henk Olivier

PORTION 94 OF THE FARM HEMEL-EN-AARDE VALLEY 587, CALEDON: APPLICATION FOR DEPARTURE, AMENDMENT OF AN APPROVED SITE DEVELOPMENT PLAN AND AMENDMENT OF CONDITIONS OF APPROVAL: COMMENT ON OBJECTIONS

Your letter dated 2 May 2024 refers.

The comments and objections received are addressed herein.

Project Planning | Project Feasibility | Land Use Applications | Project Execution Management | Liquor Licensing

Unit B, Standard House,
Cnr Royal and Dirkie Uys Street
Hermanus

PostNet Hermanus Suite 170
Private Bag X16, Hermanus,
7200

Tel: +27 (0)28 313 1411
Email: admin@wrapgroup.co.za
Web: www.wrapgroup.co.za

20 YEARS
EST. 2002

Methodology followed for addressing the comments and objections received:

The three objectors, Michael Farr, Hemel-en-Aarde Conservancy Team and Hemel-en-Aarde Valley Winegrowers Association (HAWA)'s objections were categorised and addressed simultaneously.

Lastly, the objection received from Nicholas Smith Attorneys will be addressed separately.

IMPACT ON THE AREA

Michael Farr
Hemel-en-Aarde Conservancy Team
Hemel-en-Aarde Valley Winegrowers Association (HAWA)

Response:

The objections and comments are noted. The statements made throughout the submitted application, asserting that the tunnels and their existence are not expected to detract from the tourism character of the valley, are based on the findings of the independent Visual Impact Assessment (VIA) and the recent success of wine farms in the valley. To ensure that the motivation behind the statements, suggesting that the tunnels are not expected to have a negative impact on the surrounding area, is backed by an independent expert opinion.

Some objectors continue to state that the intensive horticulture tunnels are only covered by white plastic. This is however untrue, as Haygrove continues to strive and comply with the previous approval obtained to cover the tunnels with non-reflective shade cloth.

It is important to note that the tunnels constitute only a few components, of which the two key ones are, (1) steel tubes and hoops, and (2) white plastic ("skins"). The skins are not erected permanently and removed for large parts of the year when the fields are not populated with plants. This entails removing the white plastic, and sometimes the shade cloth as well. Maintenance on tunnels and/or shade cloth does also require some movement and opening up, depending on the nature of such maintenance.

Refer to the figure below:

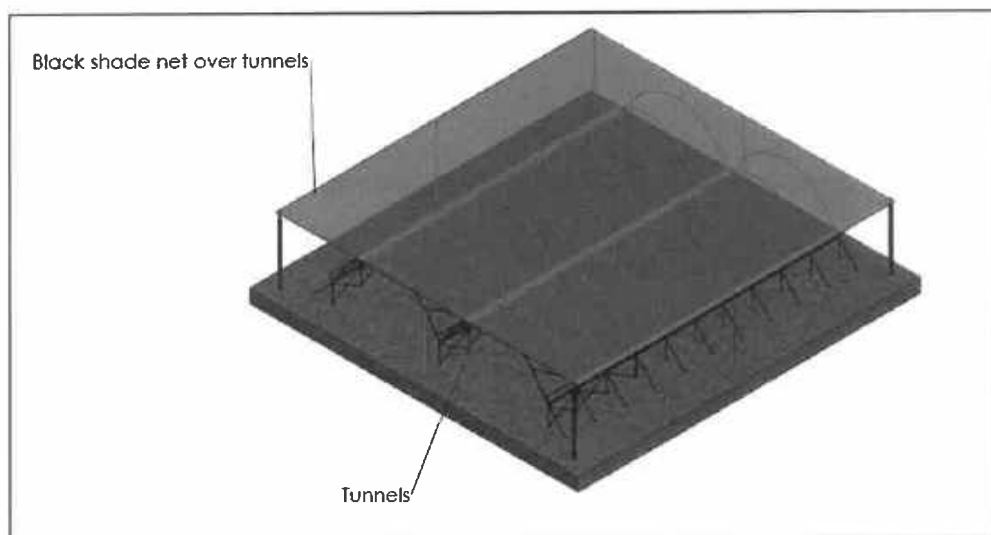


Figure 1

The objectors make incorrect assertions that the proposed intensive horticulture and agricultural industry is not in line with the surrounding area. However, this is factually incorrect as every wine cellar should have consent for agricultural industry use, as required by the local municipality.

Nowhere did the motivation indicate that the tunnels are considered a tourist attraction.

The opinion remains that the intensive horticulture tunnels are aligned with the agricultural nature of the surrounding area.

VISUAL IMPACT

Michael Farr
Hemel-en-Aarde Valley Winegrowers Association (HAWA)

Response:

The property owners appointed a landscape architect firm to conduct a VIA, and their findings were open for scrutiny by the public. See extract from the VIA *"The visual impact significance rating is assessed as moderate and moderate-low if all mitigation measures are implemented."* The mitigation measures require additional tree planting between tunnels to reduce visual impacts of large farming blocks. Darker colours should be used for the tunnels. This is being achieved by the addition of shade cloth above the tunnels. The last proposed mitigation measure is that there should be no lights in or around the tunnels, which is already being adhered to.

It is also important to note that there is no inherent right to a view under South African law. The protection of views from properties is not considered an inherent entitlement arising from land ownership. Rather, views are categorised as a "source of delight" and are not inherently protected as part of an owner's right of ownership.

Furthermore, South African courts have consistently held that purely aesthetic considerations, including views, are not relevant in the context of neighbours and nuisance. The case law cited indicates that courts should not venture into the area of aesthetics, as they are subjective and personal in nature.

Therefore, the argument that the view of the tunnels would have a negative impact on the entire valley is not supported by South African law. As there is no inherent right to a view, and aesthetic considerations are not relevant in legal disputes regarding neighbours and nuisance. That said, the property owner is open to constructively engage with neighbours to ensure a harmonious neighbourly environment, without compromising its operational requirements and financial sustainability.

SEASONAL JOBS

Michael Farr

Response:

The owners open the applications to any person residing in the Overberg region. No people are brought into the area to work. Haygrove appoints seasonal workers based on seasonal requirements. This is often variable, and the duration of seasonal roles are typically three to six months. Agriculture is an inherently seasonal sector.

Haygrove does however attempt to alleviate the seasonality of employee income by annually sending South African staff (combined, from all Haygrove South Africa farms), to their other group farm(s) in the UK. The number of employees that will be sent this year is 312, of which the vast majority are seasonal workers. This provides for ongoing income through longer periods of employment, international experience gained and allows workers to earn foreign currency and prosper.

COMPLIANCE WITH BY-LAW
<p>Hemel-en-Aarde Valley Winegrowers Association (HAWA)</p> <p>Response:</p> <p>Concerns were raised regarding the owners' compliance with local by-laws and regulations, encompassing building codes, safety standards, and environmental regulations. These comments are noted, and the application was submitted to address these concerns and ensure full compliance with all relevant regulations.</p>
TRAFFIC
<p>Hemel-en-Aarde Valley Winegrowers Association (HAWA)</p> <p>Response:</p> <p>Section 10 of the application outlines the approach to access and egress. It's noted that only two additional buses are required during peak harvesting periods, with no anticipation of any additional traffic.</p> <p>It's important to emphasise that the proposal solely pertains to covering existing berry fields with tunnels, without any plans for expansion into new fields. This ensures that there will be no increase in the overall cultivated area, thereby mitigating potential strain on local roads and infrastructure.</p> <p>Additionally, the farm includes separate access and egress points, which helps to distribute traffic flow and alleviate congestion on any single road. This strategic design element further addresses concerns related to traffic management.</p>
WATER MANAGEMENT
<p>Hemel-en-Aarde Conservancy Team</p> <p>Response:</p> <p>Section 10 of the application outlines the methods how water is being managed on the farm and the sources of the water. It is also important to note that the application was circulated to the water management agency in the area, Breede-Olifants Catchment Management Agency (BOCMA). Any water related issues will be directly addressed by the agency as the relevant regulatory authority.</p> <p>It is also important to note that the fruit tonnage output for water consumed ratio is improved by 21% when the fruit are grown in an intensive horticulture tunnel.</p>

ENVIRONMENTAL IMPACT

Hemel-en-Aarde Conservancy Team
Hemel-en-Aarde Valley Winegrowers Association (HAWA)

Response:

The objectors express concerns about the perceived intensification and expansion of operations. However, it is important to clarify that the application aims solely to cover existing berry fields with tunnels, with no plans for expanding into new fields. This ensures that there will be no increase in the overall cultivated area, thereby mitigating potential environmental impact. By maintaining the current footprint of farming activities, the environmental impact is minimised.

Haygrove is allowed to have their fields within the building line as there are no structures involved in the process. However, if they were to propose covering them with tunnels, the requirement of a departure from the building line is triggered.

Furthermore, one objector incorrectly stated that Haygrove has over 80 hectares of intensive horticulture tunnels in the Hemel-en-Aarde Valley. The actual total is approximately 32 hectares, comprising roughly 14 hectares on Portion 94 of the Farm Hemel-En-Aarde Valley 587 and 18.5 hectares on the neighbouring Portion 11 of the Farm Hemel-En-Aarde Valley 587. The proposed addition of 7.7 hectares on Portion 94 of the Farm Hemel-En-Aarde Valley 587 accounts for the incremental increase.

Tunnels serve as an effective mechanical and structural solution for managing key progressive plant diseases such as botrytis and mould, as they provide protection to crops from exposure to rain. This directly reduces the need for spraying and minimises the quantity of sprays required. Consequently, a reduction in spray requirements facilitates a more biological approach to pest and disease control, which is not only safer for bees and natural predators but also promotes overall environmental sustainability.

In essence, the implementation of tunnels enables Haygrove to produce more fruit with fewer inputs and minimal adverse interventions. This approach leads to more sustainable outcomes, both economically and environmentally, aligning with Haygrove's commitment to responsible and increasingly eco-friendly agricultural practices.

In addition to reduced sprays, Haygrove hasn't used any herbicides on the farm in 2 years as they focus on a more biological approach and indigenous plants.

Soil Health

Haygrove farms utilise substrate methods (pots above ground, devoid of soil), enabling precision fertigation, monitoring of run-offs, and optimised water consumption. These systems are meticulously controlled and managed to ensure optimal soil health below the pots. In addition to run-off monitoring, cover crops play a vital role in maintaining and enhancing soil health and the surrounding ecosystem.

Furthermore, Haygrove undergoes regular independent audits conducted by leading retailers such as Woolworths (Farming For the Future), M&S (M&S Select) and Tesco. These audits include soil sample evaluations through frequent lab testing to track soil health trends, water sample assessments to monitor for contamination, as well as evaluations of various health and safety protocols, staff welfare, social responsibility initiatives, and food safety standards. Notably, Haygrove holds gold status for Farming for the Future and is GlobalGAP certified.

Water use and erosion

Water quality on the farm is excellent and as such, no additional treatments that may cause contamination or adverse buildups are required.

Erosion is controlled through cover crops, cut-off trenches and contours, continuous fynbos rehabilitation and beautification with indigenous plants. Haygrove actively propagates indigenous plants, including, for rehabilitation of areas, soil health management and beautification.

ECONOMIC IMPACT

Hemel-en-Aarde Conservancy Team
Hemel-en-Aarde Valley Winegrowers Association (HAWA)

Response:

The application clearly outlines several aspects of how Haygrove has a positive socio-economic impact, as detailed in Section 11 of the motivation. Currently, the Haygrove group in South Africa employs 700 workers permanently and up to an additional 3000 seasonal and fixed-term workers during peak season. Specifically, in the Hermanus area, Haygrove employs 400 people permanently and up to 1,800 in peak season, arguably making it the largest private employer in the greater Hermanus area. Furthermore, Haygrove invests in the communities where it farms, supporting health and education initiatives, providing schooling bursaries, and making donations (in kind and financial) to various organisations in the surrounding community.

If the application is approved to allow the erection of the tunnels, up to 100 additional seasonal jobs will be created (with seasonal jobs entailing a minimum of 3 – 6 months of employment). Additionally, 6 additional permanent workers will be employed to assist with tunnel maintenance.

The key point made in the application is that despite the existence of Haygrove and its tunnels, the perception of HAWA and its wines, have flourished. There is no objective support to disprove this, although there is much objective support to corroborate this statement. There has also been continued investment and expansion of vineyards in the valley despite Haygrove's existence, further supporting the positive sentiment of the valley and its characteristics.

Both entities have achieved significant milestones, as mentioned in HAWA's objection. Similarly, Haygrove has become the largest private employer in the Overstrand region. Therefore, it seems feasible for both parties to continue their operations harmoniously, contributing to the economic prosperity of the region.

STAKEHOLDER ENGAGEMENT

Hemel-en-Aarde Conservancy Team
Hemel-en-Aarde Valley Winegrowers Association (HAWA)

Response:

The application has followed the normal public participation process and the objectors' submitted comments indicates that there was adequate engagement. Every individual or entity identified as an interested or affected party received notification of the submitted application. There is no obligation to hold additional engagement meetings or extend the comment period, as the public participation process allows sufficient time for scrutiny of the application. Haygrove however is open to any engagement and any of the objectors are welcome to request a meeting.

GENERAL ASSUMPTION

Hemel-en-Aarde Valley Winegrowers Association (HAWA)

Response:

Regarding the issue of food security and the market for Haygrove berries, the objector's perspective is appreciated. However, this extremely narrow perspective is limited to the berries produced by Haygrove.

Firstly, there are highly valuable skills developed at and taught by Haygrove to its staff, and particularly its growers, through on the job experience and its successful graduate grower programme. The skills required to grow berries are of an exceptionally high standard given that it is a complex crop. Many of our former growers and graduates now work in and contribute to other crops or parts of the food supply chain, and in many parts of the world. These highly sought after skills contribute significantly to overall local and global food security.

Secondly, the focus on growing raspberries, blueberries, and blackberries under tunnels in the Hemel-en-Aarde Valley contributes to both local and international markets. While a portion of the berries is indeed exported, Haygrove also supply a significant portion to customers within South Africa, including retailers like Woolworths. Haygrove's fresh fruit will also indirectly find its way to the shelves of Checkers, Food Lovers, Spar and others. Lastly (and while by no means an exhaustive list), Haygrove's fruit is also used in food industry (hotels, guest houses, restaurants nationally and internationally), in yoghurts and drinks produced by major dairy and other businesses, smoothies, ice creams, juices and multiple other highly nutritious products.

While it's an opinion that berries may be considered a luxury food item for some, it's important to recognise that access to a diverse range of nutritious foods, including berries, as well as the development of skills to cultivate various foods, is essential for overall food security. Additionally, Haygrove's operations provide employment opportunities and support economic growth within the local community, contributing to broader social and economic stability. Haygrove remains committed to exploring ways to enhance food security and promote equitable access to nutritious foods within South Africa.

Visual Impact assessment

Hemel-en-Aarde Valley Winegrowers Association (HAWA)

Response:

1. **Independence of the Report:** While acknowledging the objector's concerns about the independence of the report, it's important to clarify that the report was commissioned by the applicant at the request of the Municipality to assess the visual impact of the proposed development. However, the findings and conclusions of the report were based on objective assessments conducted by qualified professional in accordance with industry standards. The report was not influenced by the applicant to skew the results in their favour. If the objector feels a secondary report is required, they are allowed to appoint a professional to do so.
2. **Accuracy of Supporting Images:** The images included in the report were intended to accurately depict the proposed visual impact of the project. It will be remiss of Haygrove to speculate on its accuracy as it will undermine the integrity of the VIA professional. However, if the objector believes that certain images are misleading or fail to accurately represent the visual impact, they are allowed to commission an additional report.
3. **Growing Practices and Land Use Patterns:** The perspective of the objector is noted; however, while it's true that the growing practices may differ, it is believed that there is room for diverse

agricultural practices within the region. There has been significant evolution of farming practices over the centuries. A modern evolution is precision farming, which includes the utilization of polytunnels for its various, well documented benefits. The only negative impact of tunnels is the subjective point around visual impact. The proposed development aims to contribute to the agricultural diversity of the area while ensuring compliance with relevant regulations and minimizing negative impacts on surrounding properties.

4. **Consultation Process:** A VIA is not open for consultation and is not influenced by subjective statements; factual evidence needs to be taken to prepare the VIA.
5. **Recommendations and Concerns:** The recommendations of the VIA will be taken into account. Haygrove is open to discussing alternative, constructive mitigation measures that align with conservation and biodiversity goals.
6. **Resubmission of VIA:** The comment requesting that the VIA should be resubmitted is noted; however, it is believed that the VIA sufficiently addresses the concern raised.

NICHOLAS SMITH ATTORNEYS

OBJECTION

Defective company resolution
Paragraphs 5 – 13

RESPONSE

The company resolution and power of attorney have been duly amended to include the determination of an administrative penalty. This oversight has been rectified to ensure compliance with all necessary legal requirements.

It's important to emphasise that this omission does not have any affect the application or its contents. The focus of the application remains on the proposed land use changes and associated considerations. The addition of the administrative penalty aspect aligns with the broader objective of ensuring regulatory compliance and accountability.

Furthermore, the amendment to include the administrative penalty demonstrates Haygrove's commitment to addressing any past transgressions transparently and responsibly. Haygrove acknowledges the importance of regulatory compliance and is fully committed to co-operating with the Municipality to resolve any outstanding matters.

This clarification underscores Haygrove's dedication to upholding the integrity of the application process and working constructively with relevant authorities to achieve mutually beneficial outcomes.

OBJECTION

Point in limine: Haygrove's applications for enhanced land use rights (permanent departures, and amendments to Haygrove's site development plan ("SDP") and various currently applicable conditions of municipal approval) are premature insofar as they are included together with Haygrove's application for an administrative penalty (which should be determined and finalised first, and separately from the land use applications).

Paragraphs 14 – 32

RESPONSE

The structure of the motivation was crafted to ensure full compliance with the requirements outlined in the Overstrand Municipality (OM) By-law (Overstrand Municipality Amendment By-Law on Municipal Land Use Planning Act, 2020). It's crucial to clarify that the procedural approach taken in the application aligns with the regulatory framework set forth by the municipality.

The objection raised implies a contention with the procedural aspects of the application. However, it's important to emphasize that the OM By-law necessitates that the application addresses both current non-compliance issues and proposed future developments.

Therefore, the inclusion of the administrative penalty application alongside the land use proposals is in accordance with the prescribed procedure outlined by the municipality.

Furthermore, it's imperative to emphasise that there is no requirement to finalise the administrative penalty determination before considering the proposed land use applications. Both aspects are intended to be dealt with simultaneously by the decision-making authority, ensuring a comprehensive and holistic review of all relevant factors.

Addressing the specific concerns raised by the objector, it's evident that the motivation prioritises compliance with regulatory requirements and seeks to rectify any past transgressions transparently and responsibly. The inclusion of the administrative penalty application underscores Haygrove's commitment to addressing historical non-compliance issues and ensuring regulatory adherence moving forward.

OBJECTION

An administrative penalty must be finalised before the applicant can apply for additional and enhanced land use rights

Paragraphs 33 - 48

RESPONSE

The objector's repetitious emphasis on finalising the administrative application before considering any other applications is noted. However, it's essential to highlight Section 61 of the by-law, which states:

"The Authorised Official or the Municipal Planning Tribunal may in respect of any application contemplated in Section 16(2)—

- (a) approve, in whole or in part, or refuse any application referred to it in accordance with this By-law;*
- (b) on the approval of any application, impose any reasonable conditions, including conditions related to the provision of engineering services and the payment of any development charges;"*

(c)

Section 61 (a) grants the decision-making authority the discretion to decide either in whole or in part, signifying that each application can be individually considered, and recommendations made accordingly. It's crucial to recognise that this provision applies equally to the handling of submitted applications.

Furthermore, Section 61(b) stipulates that the decision-making authority is empowered to impose reasonable conditions, including the determination of the amount payable to the municipality upon the conclusion of the administrative penalty. It's essential to note that no further consideration of building plans or other applications will occur until this condition is fulfilled. Therefore, settling the administrative penalty is a prerequisite for adhering to the conditions of land use approvals.

Additionally, it is unclear why the objector is of the opinion that Section 90(1) of the by-law requires a "stand alone application"?

"90. Application for administrative penalty

- (1) A person who is in contravention of this By-Law, and submits an application to rectify the contravention, must apply to the Municipality for the determination of an administrative penalty, provided that the Municipality has not obtained and issued a demolition directive in terms of Section 85 in respect of the land or building or part thereof concerned."*

Haygrove is complying with the requirements of Section 90(1) as the application, as submitted, addresses and attempts to rectify the contraventions that occurred.

Haygrove respects the regulatory framework and is committed to abiding by the decision-making process outlined by the Municipality. The inclusion of the administrative penalty application alongside other land use applications does not diminish the importance or independence of each component. Instead, it reflects a comprehensive approach to addressing past contraventions while simultaneously seeking approvals for future land use. If an appeal is submitted in terms of Section 78, the entire decision will be suspended pending the outcome thereof. No decision favourable or unfavourable will be able to commence if an appeal is in process.

It's also essential to note that Municipal Planning Tribunal hearings only permit observers to attend, and representatives are not allowed to make oral representations on behalf of the parties involved. If the objector is afforded the opportunity to represent their parties, it is requested that WRAP Project Office also be afforded the opportunity to attend the meeting. This however remains the decision of the municipality and the decision-making authority.

OBJECTION

The requirements of section 90 of the Planning By-Law pertaining to applications for the determination of an administrative penalty

Paragraphs 39 – 49

RESPONSE

The objector's arguments that the motivation does not contain all relevant information are unfounded.

(a) The nature, gravity, and extent of the contravention;

The nature, gravity, and extent were adequately addressed in both Sections 5.4 and 5.19. The duration is clearly indicated as occurring between the last approval in 2016 and the submission date of the application.

(b) The conduct of the person (allegedly) involved in the contravention;

Haygrove's conduct was explained in detail, as referenced in Sections 5.4 and 5.19.

(c) A report by a quantity surveyor in matters of unauthorised building/construction;

The OM's budget allows the municipality to request the average of two formal quotes for non-habitable structures. The tunnels were installed by Haygrove's sister company, Haygrove Tunnels South Africa. The value represents the actual cost of the tunnels used, which is more accurate than averaging two quotes or based on calculations made on assumptions by a quantity surveyor.

(d) Whether the unlawful conduct was stopped; and

The tunnels have been erected and are in use. Their use was historically approved, as explained in Section 5.19 of the motivation.

(e) Whether the person allegedly involved in the contravention has previously contravened this By-Law or a previous planning law.

Refer to Section 5.19. To the knowledge of this office, the property owners have not previously contravened the By-Law on the subject property.

It is important to note that while the Spatial Planning and Land Use Management Act (SPLUMA) provides guidelines on how municipal by-laws should be executed, each municipality is allowed to operate under its own procedures and methods. Simply comparing two municipalities because they use the similar wording cannot be considered sufficient motivation to follow their procedures. If this were the case, objectors in the City of Cape Town could also claim that administrative penalties need to be submitted in one application with other land use proposals because the OM allows it.

Haygrove's proactive approach to addressing the matter demonstrates a commitment to rectifying the situation and complying with regulatory requirements. Any suggestion that their actions are driven solely by the expectation of future approvals oversimplifies the situation. Instead, Haygrove's actions should be viewed as part of a broader strategy to ensure compliance and uphold the integrity of their operations.

OBJECTION

Insufficient and/or inadequate information included in the present administrative penalty application.

Paragraphs 50 - 64

RESPONSE

The objector raised several points that warrant clarification and response:

- **Quantity Surveyor's Report:** The absence of a quantity surveyor's report is noted and the municipality accepted the information Haygrove's sister company submitted as indicated above. It's important to highlight that the cost of the tunnels, provided in the application, reflects the replacement cost of the tunnels. This figure is based on the cost of the tunnels if it to be installed by Haygrove's sister company, which inherently provides an accurate and detailed breakdown of the construction expenses.
- **Compliance with Section 90(3) of the Planning By-law:** WRAP's assertion that the information provided meets the requirements of Section 90(3) is grounded in the comprehensive details included in the application. The total cost of the tunnels, although not specifically broken down in a quantity surveyor's report, is accurately represented and substantiated by a major supplier of these specialized structures in Southern Africa.
- **Duration of Unlawful Conduct:** It is and was acknowledged that the tunnels are currently in use, which implies that the unlawful conduct has not ceased, which is a matter of fact and was disclosed in the motivation. However, the application aims to rectify this by addressing the administrative penalty and committing to compliance with regulatory requirements going forward.
- **Previous Contraventions:** While it's claimed that Haygrove breached certain conditions of previous approvals, it's important to recognise that the application serves as method to ensure that the previous approval's condition is amended accordingly.
- **Submission of Detailed Building Plans:** The building plans have been approved and condition 3(b) is being complied with.
- **Non-reflective netting:** As mentioned above, Haygrove continues to strive and comply with the previous approval obtained to cover the tunnels with a non-reflective shade cloth. It is important to note that the tunnel plastic is not erected permanently and are taken down in for large parts of the year when berries do not grow. This entails removing the white plastic, and sometimes the shade cloth as well. Maintenance on tunnels and/or shade cloth does also require some movement and opening up, depending on the nature of the maintenance. Therefore, there are certain periods when only the plastic is visible. However, significant efforts are made to limit this at great expense to Haygrove. Furthermore, a practical reality is that the plastic often needs to be erected before the shade cloth cover

can be erected; and the shade cloth retracted to remove or clean the plastic.

- It is important to emphasise that the shade cloth is also detrimental to berry growth when erected over tunnels, and Haygrove estimates production loss at 15% owing to lower levels of light (lower photosynthetic potential) and higher levels of dust build-up on the plastic. However, the shade cloth is erected at significant cost to Haygrove solely to reduce the visual impact for the surrounding farms. The cost of keeping surrounding farms' visual impact limited is many millions to Haygrove annually in opportunity loss and the direct cost of maintenance and replacement of shade cloth.

Refer to the figure 1.

- Separate Application for Administrative Penalty: While the objector's preference for a separate application for the administrative penalty is noted, it's essential to ensure that all relevant information is considered comprehensively. The integration of the administrative penalty determination within the broader land use application process allows for a holistic assessment of the situation and facilitates efficient resolution and complies with the procedures of the OM.

OBJECTION

Outstanding/incomplete information pertaining to Haygrove's compliance with historic approvals

Paragraphs 65 – 68

RESPONSE

The objections raised several points that require clarification and response:

- Intention to Seek Amendment of Conditions: The intention to seek an amendment to condition 3(a) of the approval granted on February 9, 2016, is acknowledged. It's crucial to emphasise that this application is not premature but rather a part of the broader process of seeking compliance and rectifying any outstanding issues. Each aspect of the application is being addressed in due course, ensuring a comprehensive and systematic approach to regulatory compliance.
- Confirmation of Compliance with Conditions: While the application does not explicitly confirm compliance with condition 3(b), it's essential to recognise that the application would not have been processed if Haygrove had not complied with the previous conditions. The Municipality has the authority to investigate this matter further and request any necessary documentation to confirm compliance as part of the application process for new land use rights.

OBJECTION

Haygrove's continued and willful non-compliance with condition 3(i) of the 2016 approval

Paragraphs 69 – 71

RESPONSE

The objection regarding Haygrove's alleged non-compliance with condition 3(i) of the 2016 approval is unfounded and based on erroneous assumptions.

1. **Existence of Approved Building Plans:** Contrary to the objection's claim, there are indeed approved building plans for the tunnels erected by Haygrove. These plans adhere to the specifications outlined in the 2016 approval, including the requirement for non-reflective material or non-reflective netting.
2. **Efforts to Comply:** Haygrove remains committed to complying with the conditions of the 2016 approval. Efforts have been consistently made to ensure that the tunnels are covered with a non-reflective shade cloth, as mandated by condition 3(i). It's crucial to understand the seasonal nature of horticulture operations. During the growing season, the shade cloth and plastic are in place to provide the necessary protection for the crops. However, during the off-season when berries are not growing, the tunnels' plastic is removed. This may include the removal of the shade cloth. This temporary absence of shade cloth may give the appearance of non-compliance, but the sequencing of events is a practical reality of the regular operational cycle of the farm.

In light of these clarifications, it's evident that Haygrove is diligently working to adhere to the conditions set forth in the 2016 approval at a significant cost to itself, as previously explained. Any perceived discrepancies are largely attributable to the practicalities of agricultural operations and seasonal variations rather than wilful non-compliance. Therefore, the objection's insistence on rectifying alleged breaches before considering further applications is unwarranted. Haygrove remains committed to fulfilling its obligations and ensuring compliance with all relevant regulations.

OBJECTION

Substantive objections regarding the (lack of) merit in the land use applications
Paragraphs 72 – 74

RESPONSE

It's important to address the objections regarding the substantive merit of the land use applications for future and enhanced land use rights, as outlined in Chapter VI of the Planning By-law.

1. **Evaluation of Land Use Applications:** The objector seems to challenge the substantive merit of the proposed land use applications described in detail in the applicant's motivation. No detail is however provided on the reason the merit is being challenged. It is however crucial to note that these applications have been meticulously prepared in accordance with the relevant provisions of the Planning By-law. Each application has been tailored to meet the requirements and guidelines stipulated by the municipal regulations.
2. **Compliance with Planning By-law Criteria:** The objector raises concerns regarding the adherence to the general criteria outlined in section 66 of the Planning By-law, particularly emphasising the desirability of the proposed land utilisation. The desirability was categorised and addressed in Section 11 of the motivation. It's important to reiterate that all proposed land uses have been carefully evaluated against these criteria to ensure alignment with the By-law's provisions. Additionally, any guidelines issued by the Provincial Minister regarding proposed land uses have been duly considered and integrated into the applications where applicable.
3. **Future Considerations:** While the objector express reservations about the substantive merit of the land use applications, we are of opinion that the applications have been prepared with due diligence and consideration of all relevant factors.
4. **In conclusion,** Haygrove affirms their commitment to compliance with all regulatory requirements and guidelines governing land use applications. The application submitted on

behalf of Haygrove adhere to the highest standards of planning and development principles.

OBJECTION

Submissions as to why the land use applications are, objectively viewed, undesirable and must therefore be refused by the Municipality on their lack of objective merit.

Paragraphs 75 – 80

RESPONSE

The majority of these concerns have been addressed throughout the responses above.

1. **Summarisation of Applications:** The objector suggests that the summary of the land use planning approvals in the Municipality's notice lacks specificity regarding the permanent departures sought by the applicant. This however important to clarify that the applications explicitly outline the nature of the departures sought, as detailed in paragraphs 5.1 to 5.19 of the motivation. Any ambiguity should be clarified through the contents of the motivation.
2. **Priority of Administrative Penalty Determination:** The objector emphasises the scale of the contravening land use that was detailed in the motivation and argues that determining the administrative penalty should precede any consideration of additional land use approvals. As mentioned previously, the application was submitted as required in alignment with the procedures of the OM. However, it's essential to ensure due process and consider each application on its merits, with the administrative penalty being only one aspect in the overall process.
3. **Obligation to Regularise Unlawful Land Uses:** The objector contends that the applicant is legally obligated to regularise its unauthorised land uses before seeking additional approvals. While the applicant acknowledges the need for compliance, it's crucial to address all aspects of the application comprehensively, including rectifying any non-compliance issues alongside seeking additional approvals.
4. **Superficiality of Applicant's Submissions:** The objection criticises the applicant's submissions regarding the nature and extent of the contravention as superficial and insufficient. The applicant's submissions however aim to provide a comprehensive overview of the situation, including efforts to rectify non-compliance issues and ensure adherence to applicable regulations.
5. **Impact on Surrounding Landowners:** Lastly, the objector raises concerns about the impact of the tunnels on surrounding landowners' rights. A professional person was appointed to conduct a VIA as discussed throughout the responses above and the mitigation measures were also highlighted and Haygrove is committed to adhere thereto.

OBJECTION

Substantive objection to the proposed permanent departures, the application to amend the SDP, and the application to amend an existing condition of approval.

Paragraphs 81 – 82

RESPONSE

1. **Critique of WRAP's Motivation:** It's crucial to recognise that WRAP's motivation seeks to provide a comprehensive rationale for the proposed land use applications. While there may be disagreements regarding specific points, WRAP's motivation aims to present a balanced and well-reasoned motivation.
2. **Congruence with Agricultural Activities:** The objector questions the merit-worthiness of the land use applications based on WRAP's assertion that the proposed activities align with other agricultural practices in the Hemel-en-Aarde valley. The objection contends that the permanent departures sought from various building lines are excessive. It's important to note some of these departures are located next to the other property owned by Haygrove meaning they are their own neighbour. It's important to consider the broader context of agricultural activities in the area and evaluate the proposed departures based on their individual merits and potential impacts. Additionally, discussions with relevant experts were made that provided valuable insights into the appropriateness of the proposed departures, these include VIA specialists.

OBJECTION

Critique of and objections to WRAP's assertions regarding compatibility with surrounding land uses.

Paragraphs 83 - 89

RESPONSE

WRAP's assertion regarding the compatibility of the proposed land use with surrounding activities is based on a careful consideration of the broader agricultural context of the Hemel-en-Aarde valley. The integration of horticulture tunnels is seen as an extension of the area's agricultural identity, contributing to its rich farming traditions. While the objector may contest this viewpoint, it's essential to recognise the diverse perspectives regarding modern farming practices, particularly as polytunnels constitute a relatively modern tool for improving and mitigating many agricultural challenges.

The objector argues that the proposed development of horticulture tunnels contradicts the valley's farming traditions. However, it's worth noting that farming practices evolve over time, and modern methods, including the use of tunnels, can be compatible with traditional agricultural activities. Moreover, the proposed tunnels aim to enhance agricultural productivity while minimising environmental impact, aligning with broader sustainability goals.

Regarding the applications for permanent departures, it's important to assess them objectively, weighing the potential benefits against any impacts on neighbouring properties, one of which is owned by Haygrove themselves. While the objector emphasises the potential infringement on surrounding landowners' rights, it's essential to consider the broader community's interests, including economic development and agricultural sustainability.

Ultimately, the decision on these applications should be guided by a comprehensive evaluation of their merits, considering both the immediate concerns of neighbouring landowners and the long-term benefits for the community as a whole.

OBJECTION

Critique of and objections to WRAP's assertions regarding positive socio-economic impact.

Paragraphs 90 – 91

RESPONSE

While it's understandable that the objector seeks detailed information regarding the asserted positive socio-economic impacts of the proposed land use, it's important to recognise that predicting exact figures at this stage may be speculative. WRAP's motivation highlights the potential for increased employment opportunities and poverty reduction as a result of the proposed development. In fact, specific figures regarding employment opportunities were provided in Section 11, page 22 of the motivation. It states that 100 additional seasonal jobs will be added for 3 – 6 months, along with 6 permanent jobs, which numbers may have been missed by the objector.

While specific numbers and wage details are indeed valuable, they may not be readily available until the project progresses further. It's worth noting that the socio-economic benefits of agricultural development often extend beyond direct employment figures. Projects like this can stimulate local economies, create upstream and downstream job opportunities in related industries, and enhance community infrastructure and services. While these broader impacts may be challenging to quantify at this early stage, they should not be discounted.

As the project advances, more detailed assessments of its economic impacts can be conducted, incorporating input from relevant stakeholders and experts. In the meantime, it's essential to recognise the potential positive contributions that projects like this can make to local communities, even if precise figures are not yet available. Haygrove has many decades worth of proven experience from which to draw to justify the investment.

In terms of the seasonal workers, Haygrove does attempt to alleviate some of the seasonality of the agricultural activities on the farm by sending upwards of 250 seasonal staff (combined, from all Haygrove South Africa farms), which would otherwise be unemployed in South Africa, to the UK on an annual basis to have longer periods of employment, earn foreign currency and prosper. Haygrove is also audited by SIZA for all aspects of employment compliance and labour practices, and currently holds gold status with SIZA.

On another note, Haygrove operates and funds an accredited and certified on-site clinic on each of its larger farms, staffed by a full-time clinical nurse. The clinic oversees all aspects of primary healthcare on the farm, including family planning, dispensing chronic medication, first aid, and many other healthcare services. This initiative significantly alleviates pressure on governmental clinics in the Overstrand region and ensures that staff can access their medication and advice in a safe and professional environment while maintaining productivity throughout the day without loss of income to the employee.

OBJECTION

*Critique of and objections to WRAP's submissions regarding no or limited impact on neighbours and the surrounding community.
Paragraphs 92 - 95*

RESPONSE

These objections raise concerns about the potential impacts of the proposal on the surrounding neighbouring properties. Several of which have been addressed in the motivation, but it appears that further detail is needed to fully understand and address these concerns.

Regarding noise emissions, it's crucial to reiterate the fact that only one, perhaps two additional busses are required to transport the additional workers an exact number is yet to be confirmed. It is a fact that less spraying activity is required when using intensive horticulture tunnels as discussed previously, which reduces the overall noise levels. Open fields are often blow-dried when fruit is rained on, and this is done mechanically with tractors and large fans connected to its PTO. This happens at any time, including over weekends. Where polytunnels are used, this requirement is eliminated, as well as the overall noise levels. This may not be appreciated by, although is of particular interest to, those close the boundaries of the surrounding properties.

The fields already exist, therefore the absolute overall noise can and will only reduce if tunnels are erected. In addition, Haygrove implemented a one-way route through their two farms to mitigate any adverse impact traffic may have on the surrounding area. There is only a single access road into the property, with the access road leading through Portion 94 of the Farm Hemel-En-Aarde Valley 587 and across the neighbouring property, Portion 11 of the Farm Hemel-En-Aarde Valley 587, to allow egress via a proclaimed provincial road. This was implemented at a cost to Haygrove at the request of neighbours to accommodate their needs.



Figure 2: Access and Egress

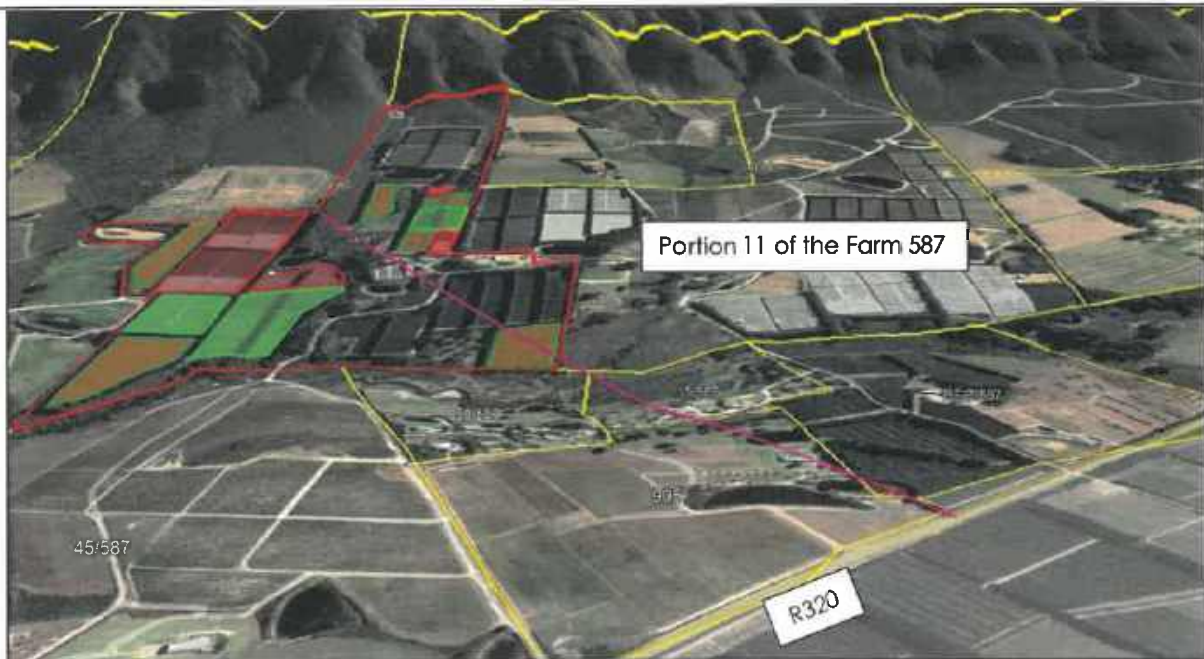


Figure 3: Surrounding Area Terrain

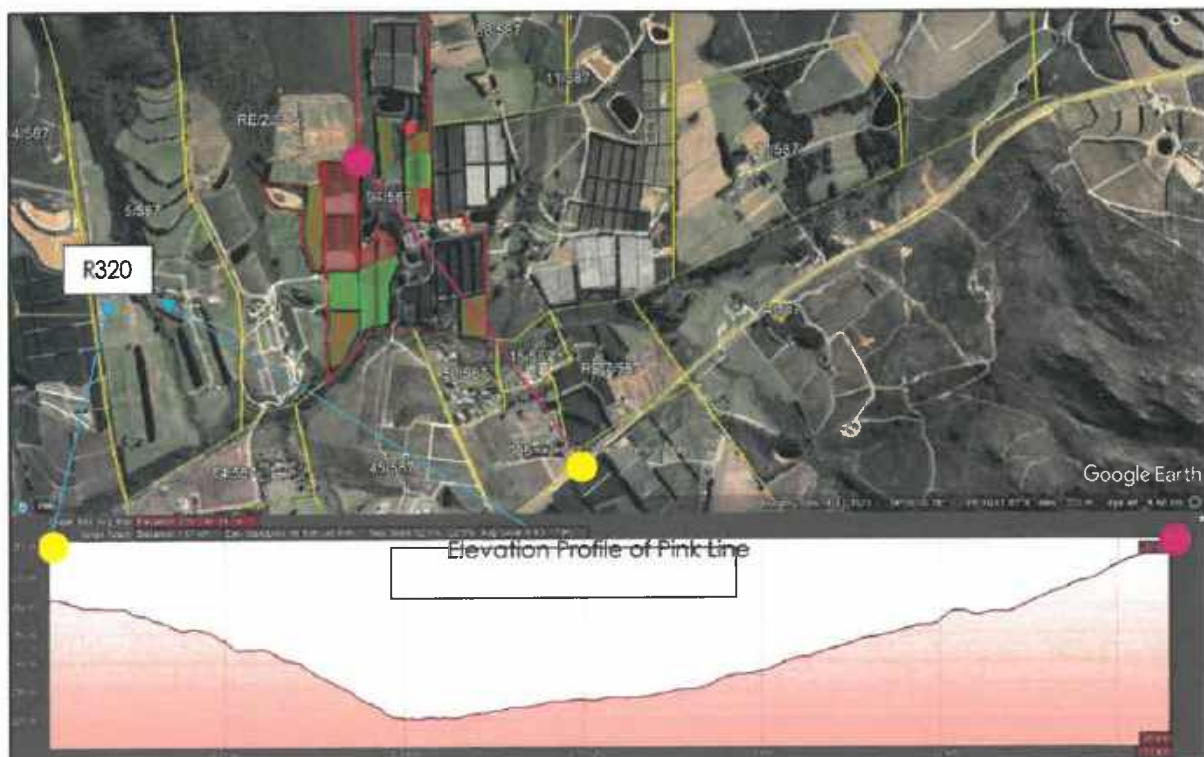


Figure 4: Elevation Profile from the R320 to edge of the subject property (PINK LINE)

Portion 15 & 50 of Farm 587, Caledon, contain 8 of the 12 objectors represented by Nicholas Smith Attorneys. These objectors are located at the lowest point along the Onrustvriev, meaning their impact is reduced. This reduction is due to several mitigation measures used by Haygrove, including screening trees, which significantly reduces the impact.

It's also essential to address concerns about trespassing and other negative behaviours associated with seasonal contract workers. As mentioned in the application, Haygrove employs Boland Toilet Services to attend to the sewage disposal on the property which will avert seasonal workers relieving themselves in surrounding properties.

The concern regarding allegations of trespassing can be resolved through discussions between the objectors and Haygrove. These trespassers will be dealt with appropriately, but if Haygrove is not made aware of the situation, they cannot address it accordingly. Nicholas Smith Attorneys continually asserts that WRAP's statements are mere bald statements. The same can be said in this instance, as no proof of any kind is provided, and neither context nor timeframes are provided. It should also be noted that the same objection was made some 4 years ago, and no new complaints are being presented, indicating that the problems have been addressed and is no longer occurring.

OBJECTION

Critique of and objections to WRAP's submissions regarding impact on views, sunlight and character of the area.

Paragraphs 96 – 98

RESPONSE

The objector has clearly not evaluated the application properly. Refer to figure 3, that provides clear dimensions of the tunnels:

Farm workers work in the tunnels for short periods, rotating between tunnels and spending time throughout the day, while caring and working in these berry fields contained within the intensive horticulture tunnels. Their presence is minimal, reducing the likelihood of noise impact on neighbouring property owners. As a result, the approval of expanding the intensive horticulture tunnels beyond the building lines will not infringe upon the rights enjoyed by adjacent property owners in the occupation of their properties. See the following figures of the proposed and existing tunnels:

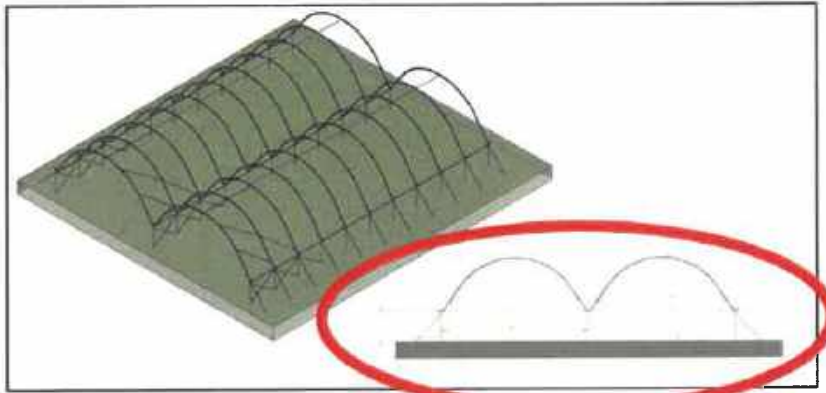


Figure 3: Intensive Horticulture Tunnels

5.17 Permanent Departure from the maximum allowable floor space in terms of Section 16(2)(b) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020.

Figure 5: Extract of page 10 from the motivation.

The objector makes false statements that the maximum height will be exceeded, which is not the case. It is clear that the maximum height of these tunnels will be lower than the allowable height of an agricultural buildings on an agriculturally zoned property. The proposal is to allow the tunnels to be either 4m or 4.7m, which aligns with the approved building plans. It is, however, important to note that tunnel height can vary as a result of the natural slope and elevation of the property.

Refer to the building plans attached, refer to **Annexure A**.

While concerns about visual impact are valid, it's also plausible that the tunnels could contribute positively to the landscape, such as by providing unique features or enhancing agricultural diversity. It was never stated that the tunnels will actively attract tourists, it was only stated that the tunnels, will increase colour diversity that will not harm the existing tourism aspects of the Hemel-en-Aarde Valley.

Finally, the objector suggests that a detailed visual impact assessment, conducted by a qualified specialist should precede the land use application process. It is unclear why the objector would make this statement, as a visual impact assessment was indeed conducted by a qualified specialist. The assessment was attached to the application and made available for public comment at the municipal offices. The objector claims it is incomplete, selective in presenting the true facts, misleading, and insufficient. However, the objector fails to provide any specific examples to support these assertions. This lack of evidence suggests that the objection is based on false and frivolous claims. It is also not clear if the objector is qualified in this field?

OBJECTION

Another principal reason for the land use application's wholesale lack of desirability: it is per se undesirable until and unless previous land use contraventions have first been satisfactorily rectified by Haygrove.

Paragraphs 99 - 101

RESPONSE

It's essential to clarify that Haygrove has actively engaged in rectifying any non-compliance issues. The application for future land use rights, including the proposed permanent departures and amendments to existing approvals, is part of this effort. It's important to note that while there have been past breaches, Haygrove is committed to addressing these issues proactively. Also, the clear desirability of the proposal was indicated throughout the motivation.

The objection suggests that the administrative penalty must be resolved before considering further land use applications. Haygrove's intention is however to address both the administrative penalty and the application for future land use rights concurrently demonstrates a commitment to compliance and responsible land management. Moreover, any penalties incurred would not impede Haygrove's ability to contribute positively to the community through its proposed agricultural activities. Haygrove is also committed to pay the penalty for the contravention.

Furthermore, the objector emphasises the importance of adhering to planning legislation and existing approvals. While acknowledging past breaches, it's crucial to recognise Haygrove's efforts to rectify these issues and ensure compliance moving forward. By engaging in constructive dialogue with the Municipality and relevant stakeholders, Haygrove aims to address concerns, rectify past non-compliance, and contribute positively to the community while pursuing its proposed agricultural activities.

OBJECTION

Request for a site visit by the Municipality (in terms of section 60 of the Planning By-law) before deciding the application for the determination of an administrative penalty on its merits.

Paragraphs 102 - 105

RESPONSE

To address the concerns raised regarding the need for a site visit, Haygrove welcomes the opportunity for the Municipality's officials and members of the Municipal Planning Tribunal to visit the subject-property and its surroundings. Such a visit would provide a comprehensive understanding of the existing agricultural operations, a comprehensive business overview, the nature of the proposal, and any supposed impacts on neighbouring properties. Haygrove is committed to transparency and ensuring that decision-makers have all relevant information to make informed judgments for the benefit of the greater Overstrand community.

Regarding the assertion that Haygrove already has enough horticulture tunnels on the subject-property, it's important to clarify that Haygrove acknowledges past non-compliance and is

actively working to rectify any unlawful activities. The proposed development is part of this effort to bring existing operations into compliance and enhance land use rights responsibly.

During the site visit, the municipal decision-makers can verify Haygrove's compliance with the conditions of previous approvals, including the submission of detailed building plans and adherence to material specifications for the tunnels. Haygrove is committed to fulfilling all regulatory requirements and will provide the necessary documentation to support its compliance efforts.

Additionally, concerns about water use rights and the impact on water resources will be addressed transparently during the site visit. Haygrove will provide relevant information on water usage, storage, and abstraction rights to ensure that decision-makers have a complete understanding of the proposed development's implications.

Overall, Haygrove values constructive dialogue and welcomes the opportunity for thorough site inspections to address any concerns and ensure that the proposed development aligns with regulatory requirements and community interests.

OBJECTION

Request for a hearing before a decision is made on the merits of the application.
Paragraphs 106 - 107

RESPONSE

This is a comment that needs to be addressed by the Municipality and decision-making authority.

OBJECTION

Concluding submissions; relief sought by the objectors.
Paragraphs 108 – 109

RESPONSE

The objections were noted. The conclusion is however respectfully disagreed with that the application is fundamentally undesirable and does not meet the applicable jurisdictional requirements. It is believed that the application complies with the relevant provisions outlined in section 66 of the Planning By-law and the general criteria for the Municipality's consideration of applications.

Regarding the objector's assertion that Haygrove's application to determine an administrative penalty is substantively deficient, we are of opinion that the application is based on accurate and comprehensive information. These applications have been submitted in accordance with the appropriate procedures and guidelines. It is recommended that each application be assessed on its own merits.

Conclusion

In conclusion, the objections have been carefully reviewed and addressed throughout the response, including the concerns regarding the application. The application, as submitted, aligns with the relevant requirements outlined in the By-law, as well as the general criteria for the Municipality's consideration of applications.

22/22

Furthermore, transparency and cooperation remain paramount throughout this process. With the objections duly considered and addressed, the Municipality is respectfully urged to proceed with the evaluation of the application on its merits.

Considering the response, it is recommended that the planning application be approved as submitted.

Yours faithfully



T. Jansen

PROFESSIONAL TOWN PLANNER (A/2858/2019)



**Western Cape
Government**

Department of Environmental Affairs and Development Planning
Ntanganedzeni Mabasa
 Directorate: Development Management, Region 1
 Ntanganedzeni.Mabasa@westerncape.gov.za | Tel: 021 483 2803

REFERENCE: 16/3/3/6/E4/5/1515/24
DATE: 4 November 2024

The Board of Directors
 Wrap Project Office
 Private Bag X16
HERMANUS
 7200

Attention: Ms. Salome Kotze

Dear Madam

FILE NO. Ptn 94/587
Hemel & Aarde
SCAN NO.
COLLABORATOR NO.
2151564

TP - A Theart
(H Olivier)

OVERSTRAND MUNISIPALITEIT

REKORDBEHEER

04 NOV 2024

DOCUMENT CONTROL

OVERSTRAND MUNICIPALITY

Tel.: (028) 313 1411

Email: admin@wrapgroup.co.za

THE APPLICABILITY OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998) ("NEMA") ENVIRONMENTAL IMPACT ASSESSMENT ("EIA") REGULATIONS, 2014 (AS AMENDED) TO THE PROPOSED DEPARTURE AND AMENDMENT OF CONDITIONS OF APPROVAL ON PORTION 94 OF FARM HEMEL AND AARDE NO. 587, CALEDON.

- The correspondence issued by the Directorate: Development Management (Region 1) ("this Directorate") to the WRAP Project Office on 24 June 2024, and the electronic copy of the additional information received from the WRAP Project Office by this Directorate on 3 October 2024, refer.
- This Directorate's aforementioned correspondence highlighted that horticulture tunnels are regarded as infrastructure since it does not have a foundation. In line with the Department of Forestry, Fisheries and the Environment's interpretation, the determining factor for triggering Activity 12 of Listing Notice 1 is the physical footprint of the proposed development, i.e. where it touches the ground. Hence, the physical footprint of the horticulture tunnels would comprise the sum of the area of each individual pole that is anchored into the ground.
- Based on additional information received, the following is noted:
 - The horticulture tunnels only have poles (footings) that are "screwed" up to 1m into the ground, and the diameter of the poles is 50mm.
 - The total development footprint of the poles that will physically touch the ground is approximately 4.9m², which does not exceed the applicable 100m² threshold.
- Based on the additional information provided, Activity 12 of Listing Notice 1 will not be triggered by the proposal. Environmental authorisation is therefore not required from the competent authority prior to the proposed departure and amendment of conditions of approval on Portion 94 of Farm Hemel and Aarde No. 587, Caledon.
- This determination is solely based on the additional information received and should any revision of the proposed development trigger any listed activity(ies) as defined terms of Listing Notice 1, 2 & 3, an application must be submitted and environmental authorisation obtained before such activity(ies) may commence.

6. The applicant is reminded of his/her general duty of care and the remediation of environmental damage, Section 28(1) of NEMA specifically states that – "Every person who causes, has caused or may cause significant pollution or degradation of the environment must take reasonable measures to prevent such pollution or degradation from occurring, continuing or recurring, or, in so far as such harm to the environment is authorised by law or cannot reasonably be avoided or stopped, to minimise and rectify such pollution or degradation of the environment."
7. Please note that the applicant must comply with any other statutory requirements that may be applicable to the undertaking of the activity.
8. This Directorate reserves the right to revise or withdraw its comments and request further information from you based on any new or revised information received.

Yours faithfully

Andrea

Thomas

Digitally signed by
Andrea Thomas
Date: 2024.11.04
08:53:20 +02'00'

pp **HEAD OF COMPONENT**

DIRECTORATE: DEVELOPMENT PLANNING (REGION 1)

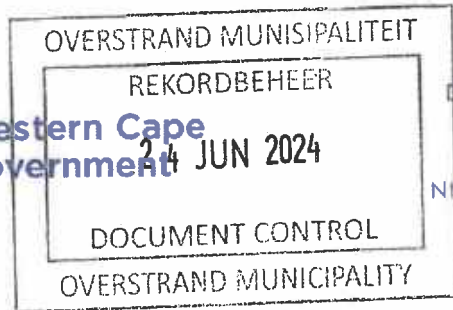
DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING

CC: (1) Ms. Loretta Gillion (Overstrand Municipality)

Email: loretta@overstrand.gov.za



Western Cape
Government



Department of Environmental Affairs and Development Planning
Nlanganedzeni Mabasa
Directorate: Development Management, Region 1
Nlanganedzeni.Mabasa@westerncape.gov.za | Tel: 021 483 2803

REFERENCE: 16/3/3/6/E4/5/1287/24
DATE: 24 June 2024

The Board of Directors
Wrap Project Office
Private Bag X16
HERMANUS
7200

TP. N. Aheath
(H. Olivia)

FILE NO.	PTN 94/587 ✓
	Hemel & Aarde
SCAN NO.	
	PTN 94
COLLABORATOR NO.	
	2067196

Attention: Ms. Salome Kotze

Tel.: (028) 313 1411
Email: admin@wrapgroup.co.za

Dear Madam

THE APPLICABILITY OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998) ("NEMA") ENVIRONMENTAL IMPACT ASSESSMENT ("EIA") REGULATIONS, 2014 (AS AMENDED) TO THE PROPOSED DEPARTURE AND AMENDMENT OF CONDITIONS OF APPROVAL ON PORTION 94 OF FARM HEMEL AND AARDE NO. 587, CALEDON.

- The correspondence issued by the Directorate: Development Management (Region 1) ("this Directorate") to the Overstrand Municipality on 8 May 2024, and the electronic copy of the additional information received from WRAP Project Office by this Directorate on 16 May 2024, refer.
- This Directorate's aforementioned correspondence highlighted that too little information was provided to definitively confirm whether the expanded development footprint will trigger a listed activity. It was highlighted that the development may trigger one or more listed activity(ies) as defined in terms of the EIA Regulations, 2014 (as amended), if the development will be located within 32m of the watercourses traversing the site, and/or will result in the clearance of indigenous vegetation.
- Based on additional information received, the following is noted:
 - No additional infrastructure is being proposed other than the addition of intensive horticulture tunnels. The tunnels are proposed to be placed over the existing berry fields.
 - The total covered area of the tunnels that are located within 32m from the edge of the watercourse is approximately 29 700m². The tunnels do not have any foundations and only have poles (footings) that are "screwed" up to 1m into the ground. The diameter of the poles is 50 mm. The total volume of the poles screwed into the ground is approximately 4.9m³.
 - No extraction or removal of soil is being proposed.
 - No clearing of any area is being proposed, as the areas proposed to be enclosed in the intensive horticulture tunnels are existing berry fields.
- From the information provided it is clear that less than 10m³ of materials will be deposited into a watercourse and that no indigenous vegetation will be cleared.
- Horticulture tunnels are regarded as infrastructure since it does not have a foundation. In line with the Department of Forestry, Fisheries and the Environment's interpretation, the determining factor for

triggering Activity 12 of Listing Notice 1 is the physical footprint of the proposed development, i.e. *where it touches the ground*. Hence, the physical footprint of the horticulture tunnels would comprise the sum of the area of each individual pole that is anchored into the ground. It is not pertinently clear from the information provided whether 100m² or more of the cumulative area of the anchor poles of the proposed horticulture tunnels will be located within 32m of the watercourses present on the site. If applicable, environmental authorisation will be required from the competent authority prior to commencement.

6. This Directorate reserves the right to revise or withdraw its comments and request further information from you based on any new or revised information received.

Yours faithfully

Andrea

Thomas

pp HEAD OF COMPONENT

DIRECTORATE: DEVELOPMENT PLANNING (REGION 1)

DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING

CC: (1) Ms. Loretta Gillion (Overstrand Municipality)

Digitally signed by Andrea
Thomas
Date: 2024.06.24 10:29:13
+02'00'

Email: loretta@overstrand.gov.za

Loretta Gillion

From: Helene Janser <Helene.Janser@westerncape.gov.za>
Sent: Wednesday, 17 April 2024 09:05
To: Loriaan Isaacs
Cc: Loretta Gillion
Subject: RE: Request for comment: Portion 94 of Farm 587 Hemel & Aarde Valley

Dear Loriaan

Your email requesting comment on the application, dated 11 March 2024, has reference.

From a provincial perspective, the Directorate Land Development Management - Region 2 has no objection to the proposed building line departures and SDP amendment on Portion 94 of the Farm Hemel en Aarde No. 587, Caledon Division, to allow for the expansion of intensive horticultural tunnels and the existing pack shed.

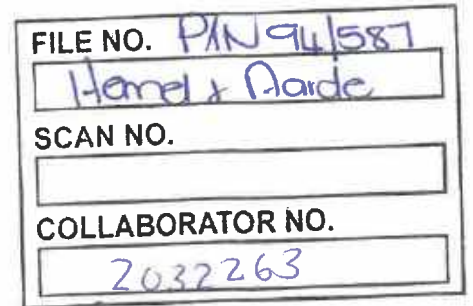
*TP. N. Heat
(H. Olivia)*

Kind Regards

Helene Janser
Chief Town & Regional Planner: Development Management Region 2
 Department of Environmental Affairs and Development Planning
 Western Cape Government

4th Floor, Utilitas Building, 1 Dorp Street, Cape Town, 8000

Tel: +27 (0)21 483 3544
 Cell: +27 (0)84 585 2000
 Email: Helene.Janser@westerncape.gov.za
 Website: www.westerncape.gov.za/eadd



Be 110% Green. Read from the screen.

Should you not be able to contact the numbers above, please call +27 (0)21 483 4091 between 7:30 -16:00.

From: Loriaan Isaacs <loriaanisaacs@overstrand.gov.za>
Sent: Monday, March 11, 2024 12:13 PM
To: Helene Janser <Helene.Janser@westerncape.gov.za>
Cc: Loretta Gillion <loretta@overstrand.gov.za>
Subject: Request for comment: Portion 94 of Farm 587 Hemel & Aarde Valley

TP. 17 APR 2024



Western Cape Government

Cor Van Der Walt
Land Use Management

Email: Cor.VanderWalt@westerncape.gov.za
tel: +27 21 808 5099 fax: +27 21 808 5092

TP- D. Ahegalt
(H. Olivier)

OVERSTRAND MUNISIPALITEIT
REKORDBEHEER
26 APR 2024
DOCUMENT CONTROL
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OUR REFERENCE : 20/9/2/4/2/750
YOUR REFERENCE : Ptn 94 of Farm 587, RCAL
ENQUIRIES : Cor van der Walt

Overstrand Municipality
PO Box 20
HERMANUS
7200

FILE NO. Ptn 94/587
Hemel & Aarde
SCAN NO.
COLLABORATOR NO.
2037638

Att: Mr. H Olivier

**APPLICATION FOR DEPARTURE, AMENDMENT OF AN APPROVED SITE DEVELOPMENT PLAN,
AMENDMENT OF CONDITIONS OF APPROVAL AND DETERMINATION OF AN
ADMINISTRATIVE PENALTY: DIVISION CALEDON
PORTION 94 OF THE FARM HEMEL EN AARDE NO 587**

Your application of 11 March 2024 has reference.

The Western Cape Department of Agriculture: Land Use Management has no objection to the proposed application.

Please note:

- Kindly quote the above-mentioned reference number in any future correspondence in respect of the application.

TP 25 APR 2024

- The Department reserves the right to revise initial comments and request further information based on the information received.

Yours sincerely



Mr. CJ van der Walt

LANDUSE MANAGER: LANDUSE MANAGEMENT

2024-04-23

Copy:

WRAP

Private Bag X16

HERMANUS

7200



Western Cape Government

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206
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13 MAY 2024
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OVERSTRAND MUNICIPALITY

Annexure I 1/3

Department of Infrastructure
Vanessa Stoffels

Chief Directorate: Road Planning

Vanessa.Stoffels@westerncape.gov.za | Tel: 021 483 4669

Ref: TPW/CFS/RP/LUD/REZ/SUB-21/238 (Job 28999-2)

TP-A Theart
(H Olivier)

The Municipal Manager
Overstrand Municipality
PO Box 20
HERMANUS
7200

Attention: Ms L Isaacs

Dear Madam

FILE NO. Ptn 941587
Hemel & Aarde
SCAN NO.
02
COLLABORATOR NO.
2045775

PORTION 94 OF FARM HEMEL EN AARDE VALLEY NO. 587, CALEDON: APPLICATION FOR DEPARTURE, AMENDMENT OF AN APPROVED SITE DEVELOPMENT PLAN, AMENDMENT OF CONDITIONS OF APPROVAL, DETERMINATION OF AN ADMINISTRATIVE PENALTY.

1. Your e-mail to Mrs V Stoffels of this Branch dated 11 March 2024 refers.
2. The subject property is located approximately 14km north-east of Hermanus and takes access off Minor Road 4012.
3. This application is for the following:
 - 3.1. Departure to relax the eastern building line from 30m to 12,04m to accommodate the proposed expansion of the existing pack shed; and to relax from 30m to 6,44 to accommodate the existing pergola.
 - 3.2. Departure to relax the northern building line from 30m to 9m, western building line from 30 to 9m, southern building line from 30m to 5m and eastern building line from 30m to 3m to accommodate the existing intensive horticulture tunnels.
 - 3.3. Departure to relax the northern building line from 30m to 11m, 12m and 20m respectively, the western building line from 30m to 10m, 12m, 13,5m, 14m, 14,5m and 15,5m respectively, the southern building line from 30m to 7,3m, 8m, 23,7m and 23,8m respectively, the south-eastern building line from 30m to 19m and 24,5m respectively and the eastern building line from 30m to 3m, 3,3 and 5,5 respectively to accommodate new intensive horticulture tunnels.
 - 3.4. Amendment of the approved Site Development Plan to accommodate proposed expansion of the tunnels.
 - 3.5. Amendment of conditions of approval to accommodate proposed development.



TPW/CFS/RP/LUD/REZ/SUB-21/238 (Job 28999-2)

- 3.6. Determination of an administrative penalty.
4. This Branch offers no objection to the proposal in terms of the Land Use Planning Act 3 of 2014.

Yours Sincerely



SW CARSTENS

For DEPUTY DIRECTOR-GENERAL: TRANSPORT INFRASTRUCTURE BRANCH

DATE: 10 MAY 2024

ENDORSEMENTS

1. Overstrand Municipality
Attention: L Isaacs (e-mail: loriaanisaacs@overstrand.gov.za)
2. WRAP Project Office
Attention: Mr T Jansen (e-mail: admin@wrapgroup.co.za)
3. District Roads Engineer
Paarl
4. Mr S Bain (e-mail)
5. Ms PZ Govu (e-mail)
6. Mr S Carstens (e-mail)





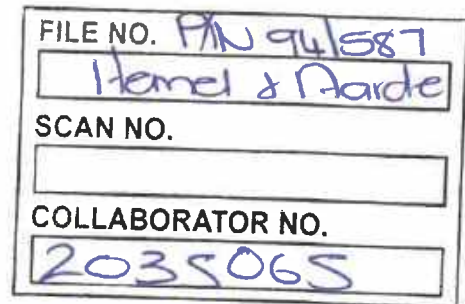
3 Park Lane, North End, East London
East London
5201
Working from Home

Our reference: **WWIP_WONR_1377_24**
Your reference: Portion 94 of Farm 587 Hemel & Aarde Valley
Enquiries: N Mali
Tel : +27 81 436 6290
Email : Ndilekam@Openserve.co.za

TP-N. Aheak
(H. Olivia)

20 April 2024

Overstrand Municipality
P O Box 20
HERMANUS
7200



NOT AFFECTED

WAY LEAVE APPLICATION: PORTION 94 OF THE FARM HEMEL EN AARDE NO 587, DIVISION OF CALEDON: APPLICATION FOR DEPARTURE, AMENDMENT OF AN APPROED SITE DEVELOPMENT PLAN, AMENDMENT OF CONDITIONS OF APPROVAL AND DETERMINATION OF AN ADMISTRATIVE PENALTY: WRAP PROJECT OFFICE ON BEHALF OF HAYGROVE HEAVEN (PTY) LTD.

Dear Ms Loriaan Isaacs

With reference to your letter received 12 April 2024.

As important cables are affected, please contact our representative MELT van AS at telephone number 021 852 1717 / 081 363 7873 / MeltVA@openserve.co.za at least 48 hours prior of commencement on construction work.

I hereby inform you that Open Serve approves the proposed work indicated on your drawing in principle. This approval is valid for **six (06) months** only, after which reapplication must be made if the work has not been completed.

Any changes or deviations from the original planning during or prior to construction must immediately be communicated to this office.

As per supplied sketches it would appear as if Open Serve infrastructure **would not be affected**.

However, care should still be taken should it become evident that there is in fact Open Serve network present at the actual sites. Such lines should be treated in accordance with, and clearances stipulated in the Occupational Health and Safety Act no 85 of 1993, Electrical Machinery Regulations 20 - Crossings, and

TP 22 APR 2024

Electrical Machinery Regulations 15 – Clearances of Power Lines. If the specifications could not be met, all deviation costs will be for the applicant's account. We also refer to Section 25 of the Electronic Communication Act 36 of 2005.

Please notify this office immediately if you locate any Telkom plant not indicated.

It would be appreciated if this office can be notified within 30 days of completion of the construction work. Confirmation is required on completion of construction as per agreed requirements.

Should Open Serve infrastructure be damaged while work is undertaken, kindly contact our representative immediately.

All Open Serve rights remain reserved.

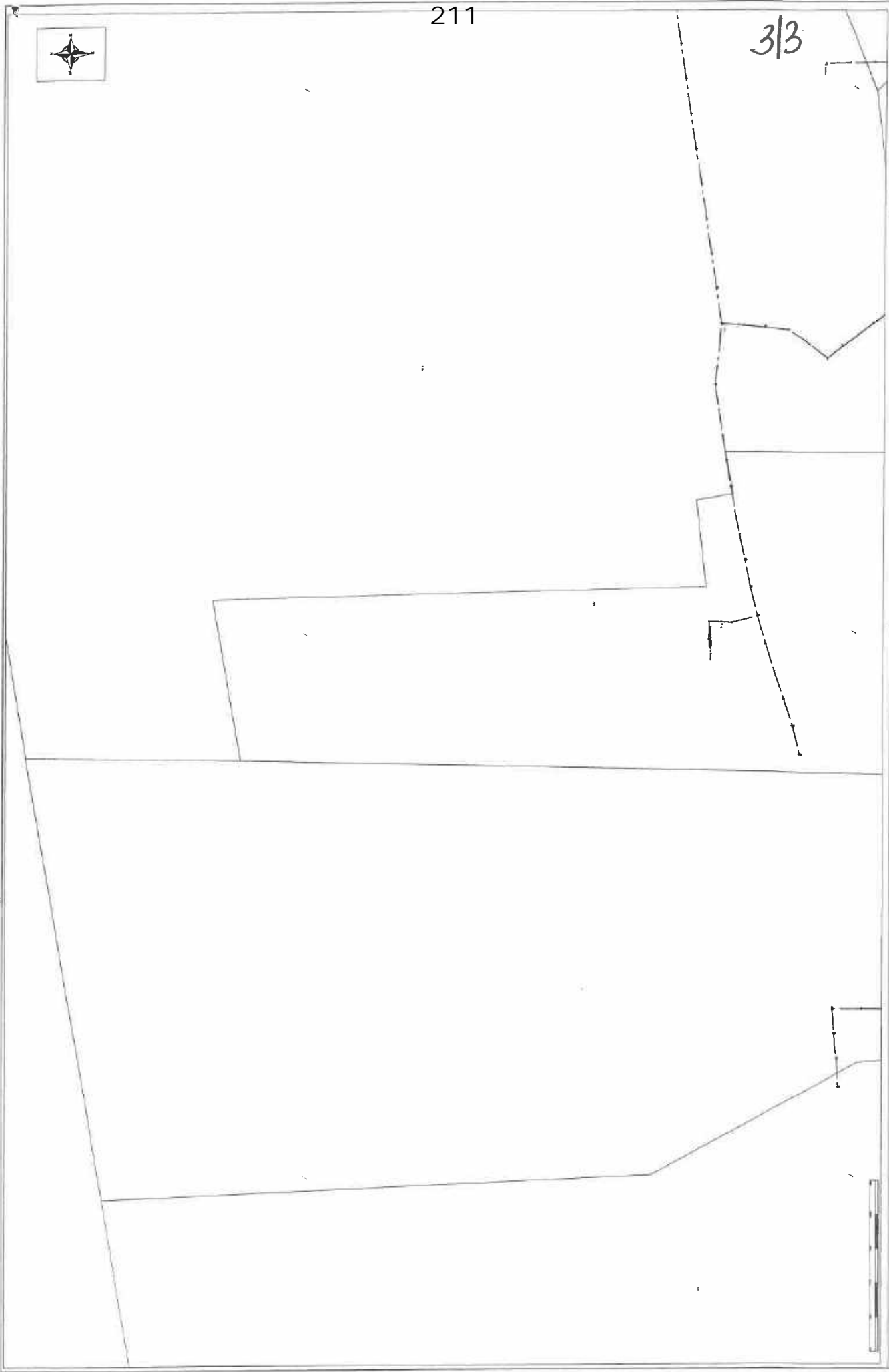
Yours faithfully

S. Maki

For Selwyn Bowers
Operations Manager
Wayleave Management: Western Region

211

3/3



PROJECT INFORMATION Project Name: _____ Client: _____ Date: _____	
LEGEND [Symbol] Existing Building Footprint [Symbol] Proposed Building Footprint [Symbol] Existing Site Boundary [Symbol] Proposed Site Boundary [Symbol] Existing Road Right-of-Way [Symbol] Proposed Road Right-of-Way [Symbol] Existing Utility Lines [Symbol] Proposed Utility Lines [Symbol] Existing Topography [Symbol] Proposed Topography	
NOTES 1. All dimensions are in feet and inches. 2. The proposed building footprint is subject to local zoning regulations. 3. The proposed site boundary is subject to local subdivision regulations. 4. The proposed road right-of-way is subject to local transportation department regulations. 5. The proposed utility lines are subject to local utility regulations. 6. The proposed topography is subject to local environmental regulations.	
SCALE 1" = 100'	
APPENDIX Appendix A: Site Plan Appendix B: Site Plan Appendix C: Site Plan	

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21 AUG 2024
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Annexure K
1/3

TP-A Theart
(H Olivier)



BREED-OLIFANTS

CATCHMENT MANAGEMENT AGENCY

Cnr Mountain Mill & East Lake Road, Worcester 6850, Private Bag X3055 Worcester 6849

Enquiries: Rafeeq Le Roux

Tel: +27 23 346 8000

Fax: +27 23 347 2012

E-mail: rleroux@bocma.co.za

Reference No: 4/10/1/G40H/ HEMEL & AARDE 587/94, HERMANUS

Date: 21st August 2024

Overstrand Municipality
P.O. Box 20
Hermanus
7200
loretta@overstrand.gov.za

Attention: Ms Loretta Gillion

RE: COMMENT ON THE APPLICATION AND REQUEST FOR COMMENT: DEPARTURE, AMENDMENT OF AN APPROVED SITE DEVELOPMENT PLAN, AMENDMENT OF CONDITIONS OF APPROVAL AND DETERMINATION OF AN ADMINISTRATIVE PENALTY – PORTION 94 OF THE FARM HEMEL & AARDE NO 587, CALEDON. HAYGROVE HEAVEN (PTY) LTD.

With reference to the above application received on 16/04/2024, comment dated 31/05/2024 and information received on 18/06/2024, this office, in principle, has no objection to the application, subject to the following conditions:

1. The Water User must submit an annual water balance which shows actual water use for the 12 month period based on actual metered water use. The water balance must be supported by aerial imagery indicating where water is used, what crops are irrigated and the extent of the irrigated area as well as the crop factor.
2. All relevant sections and regulations of the National Water Act, 1998 (Act 36 of 1998) regarding water use must be adhered to.

FILE NO. Ptn 94/587
Hemel & Aarde
SCAN NO.
COLLABORATOR NO.
2105975

21 AUG 2024 TP

3. No use of surface water and/or storage of water is permitted, unless the applicant has formally obtained a license in terms of Section 41 of the National Water Act (Act 36 of 1998) and/or formal authorisation in terms of General Authorisations issued under Section 39 (Government Notice 538 of 2016), and/or if it is authorised under Schedule 1 of the National Water Act, 1998 (Act 36 of 1998) and/or if it is an Existing Lawful Water Use in terms of the National Water Act, 1998 (Act 36 of 1998).
4. No permanent structures maybe constructed within the regulated area of any watercourse (seasonal or permanent river, stream etc.), without firstly obtaining authorization in terms of Section 21 (c) and (i) of the National Water Act, 1998 (Act 36 of 1998).
5. It is the duty of the applicant(s) to ensure that all servitudes of aqueduct, access and storage to give effect to the apportionment of water uses has been agreed upon prior amongst the property owners and formally registered with the Deeds of Office to give affect thereto upon approval of the application.
6. The registration of all water uses as defined in Section 21 of the National Water Act 36 of 1998 that need to be registered. The relevant registration forms may be accessed on the www.breedegouritzcma.co.za website or alternatively this office may be approached for assistance.
7. Where the applicant has an existing lawful registered water use, used for agricultural purposes thus far, application should be made to the Responsible Authority to amend such use proportionally per annual volume for domestic, commercial, industrial and/or agricultural, if this is applicable.
8. No pollution of surface water or ground water resources may occur due to any activity.
9. No stormwater runoff from any premises containing waste, or water containing waste emanating from industrial activities and premises may be discharged into a water resource. Polluted storm water must be contained.
10. All relevant sections and regulations of the National Environmental Management: Waste Act 2008 (Act 59 of 2008) regarding the disposal of solid waste must be adhered to. Solid waste may only be disposed of onto an authorized solid waste facility in terms of abovementioned legislation.
11. The water provided for domestic use must comply with the SANS 241: 2015 guidelines for drinking water (edition 1). Regular monitoring must be done to ensure compliance. If the quality of the water is of such a nature that it is a threat to human health, then this office and the Provincial Department of Health must be informed of the procedures to rectify the problem.

Please be advised that all relevant sections and regulations of the National Water Act, 1998 (Act 36 of 1998) regarding water use must be adhered to. The use of water without the required authorization in terms of the National Water Act, 1998 (Act 36 of 1998) may be regarded as unlawful and a criminal offence.

The onus remains on the registered property owner to confirm adherence to any relevant legislation with regards to the activities which might trigger and/or need authorization for

Please do not hesitate to contact this office if you have any further queries.

Please ensure to quote the above reference in doing so.

Yours Faithfully



MR. JAN VAN STADEN

CHIEF EXECUTIVE OFFICER (ACTING)

**COMMENTS FROM THE ENGINEERING SERVICES DEPARTMENT FOR:
APPLICATION FOR DEPARTURE, AMENDMENT OF AN APPROVED SITE
DEVELOPMENT PLAN, AMENDMENT OF CONDITIONS OF APPROVAL &
DETERMINATION OF AN ADMINISTRATIVE PENALTY: PORTION 94 OF
THE FARM HEMEL EN AARDE NO. 587, CALEDON DIVISION (4456/2023)**

Electricity	:	Eskom Area
Stormwater	:	No services available
Water	:	No services available
Sewer	:	No services available
Roads and traffic	:	No services available

Conditions:

1. that the developer arrange with ESKOM for the provision of electricity and that he complies with all conditions as may be set by ESKOM;
2. that no water from Overstrand Municipality is available and the developer will be responsible to obtain the necessary approval, licence and permits from the applicable authorities (Water and Sanitation, Health, Bocma etc.) for the use of any other water resources and the extraction thereof;
3. that the developer is responsible to provide potable water to the development that complies with SANS0241 standards and that relevant proof be submitted to the Manager: Water Infrastructure & Quality Control, Overstrand Municipality (Tel: 028 313 5046) ;
4. that waste water disposal be done in a safe and healthy manner and that plans thereof be submitted to the Municipality and DWA for approval;
5. that the developer complies to all the conditions set by Department Of Water Affairs & Bocma;
6. that, as no municipal sewerage removal services are rendered in the area, the owner is responsible for removal of all sewerage generated on the property, and disposal thereof at a licenced municipal sewerage treatment facility;
7. that alternatively, sewer treatment facilities that are approved by the Department of Water Affairs may be provided for disposal of sewer from the developments. Written proof of such approval is to be submitted to the Municipality;
8. that the developer must investigate and determine the limitations of the site in terms of sewer drainage, subject to minimum requirements of SANS 140400 – P: 2010: Drainage;

9. that access can be obtain from the entrance located on the eastern side of the property, situated on the Hemel and Aarde Road. The Provincial Engineer must however provide comment in this regard.

p.p. R. Hendriks
DENNIS HENDRIKS
SENIOR MANAGER:
ENGINEERING SERVICES

13/03/2024
DATE



CONSERVATION INTELLIGENCE

postal 16 17th Avenue, Voëklip, Hermanus, 7200
 physical 16 17th Avenue, Voëklip, Hermanus, 7200
 website www.capenature.co.za
 enquiries Rhett Smart
 telephone 087 087 8017
 email rsmart@capenature.co.za
 reference LS14/2/6/1/7/2/587-94_departure_Hemel-en-Aarde
 date 12 May 2024

Overstrand Municipality
 P.O. Box 20
 Hermanus
 7200

TP-A Theart
(H Olivier)

OVERSTRAND MUNISIPALITEIT REKORDBEHEER 13 MAY 2024 DOCUMENT CONTROL OVERSTRAND MUNICIPALITY

Attention: Henk Olivier
 By email: holivier@overstrand.gov.za

Dear Mr Olivier

Application for Departure, Amendment of Spatial Development Plan and Amendment to Conditions of Approval for Portion 94 of Farm Hemel-en-Aarde 587, Haygrove Heaven, Hemel-en-Aarde Valley, Hermanus (Overstrand Municipality ref. no.: Ptn 94 of Farm 587 RCAL, 4456/2023)

CapeNature would like to thank you for the opportunity to comment on the application and would like to make the following comments. Please note that our comments only pertain to the biodiversity related impacts and not to the overall desirability of the application.

The application is for both existing and proposed agricultural tunnels and expansion of a pack shed. The existing and proposed tunnels and packshed were/are all located within an existing footprint of cultivation and agricultural industry. The application did/will therefore not result in the loss of any natural habitat.

The application will also not result in impacts on surface or groundwater features, provided the run-off is managed appropriately. The report states that there are existing water rights and no additional rights are required for the proposal. It is noted that run-off from the tunnels and condensation will be used to supplement irrigation requirements. CapeNature supports this proposal and abstraction requirements from the existing source should be reduced accordingly to alleviate the pressure on the water-stressed Onrus River catchment.

In conclusion, CapeNature does not object to the application. We recommend that the design of the agricultural tunnels should attempt to reduce the risk of crop damage from baboons.

CapeNature reserves the right to revise initial comments and request further information based on any additional information that may be received.

FILE NO. Ptn 94/587
Hemel & Aarde
SCAN NO.
04
COLLABORATOR NO.
2045803

The Western Cape Nature Conservation Board trading as CapeNature

Board Members: Associate Prof Denver Hendricks (Chairperson), Prof Gavin Maneveldt (Vice Chairperson), Ms Margaretha Louboer, Mr Mervyn Burton, Dr Colin Johnson, Prof Aubrey Redlinghuis, Mr Paul Slack

Yours sincerely

A handwritten signature in black ink, appearing to read "Rhett Smart", with a horizontal line underneath.

Rhett Smart
For: Manager (Landscape Conservation Intelligence)

POWER OF ATTORNEY

I the undersigned

NAME: Sean Tager

ID/PASSPORT NUMBER: 740321 5117 085

In my capacity as the authorized representative of **HAYGROVE HEAVEN (PTY) LTD (REG. NO. 1997/001058/07)**, the owner of **PORTION 94 OF THE FARM HEMEL EN AARDE VALLEY 587, CALEDON**, hereby nominate, constitute and appoint WRAP Project Office (Pty) Ltd (Reg No 2022/349604/07), with power of substitution, to be the duly authorised attorney and agent in name, place and stead, which may be necessary in order to sign documents and to perform all such acts which may be necessary in connection with the following applications:

APPLICATION FOR DEPARTURE, AMENDMENT OF AN APPROVED SITE DEVELOPMENT PLAN, AMENDMENT OF CONDITIONS OF APPROVAL AND DETERMINATION OF AN ADMINISTRATIVE PENALTY

and generally for effecting the purposes aforesaid, to do or cause to be done whatever shall be requisite, as fully and effectual, for all intents and purposes as I might or could do if personally present and acting herein – hereby ratifying, allowing, confirming, promising and agreeing to ratify, allow and confirm all and whatsoever my said Agent shall lawfully do, or cause to be done, by virtue of these presents.

SIGNED AT Hermanus ON THIS 1 DAY OF June 2023




WITNESS



WITNESS

COMPANY RESOLUTION

The Directors of **HAYGROVE HEAVEN (PTY) LTD (REG. NO. 1997/001058/07)**, the owner of **PORTION 94 OF THE FARM HEMEL EN AARDE VALLEY 587, CALEDON** authorizes

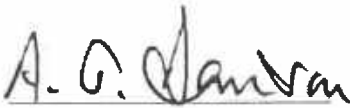
NAME AND SURNAME: Sean Tager

PASSPORT NUMBER: 740321 5117 085

In his capacity as Director to act on behalf of the company regarding the applications for the following applications:

APPLICATION FOR DEPARTURE, AMENDMENT OF AN APPROVED SITE DEVELOPMENT PLAN, AMENDMENT OF CONDITIONS OF APPROVAL AND DETERMINATION OF AN ADMINISTRATIVE PENALTY

SIGNED AT Hermanus **ON THIS** 1 **DAY OF** June **2023**



DIRECTOR
AJ Davison


DIRECTOR
S Tager


WITNESS

VISUAL IMPACT STATEMENT

for the Proposed Expansion of Intensive Horticulture Tunnels

PORTION 94 OF FARM NO. 587, HEMEL-EN-AARDE VALLEY

Overstrand Local Municipality



Client: Haygrove Heaven (Pty) Ltd
Portion 94 of Farm 587, Ertjiesvlei, Hemel & Aarde Valley
Hermanus

Prepared by:



Antoinette de Beer

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Source: Leila Bruce

Image 6: This image shows the holiday accommodation units seen from a road on site. In the foreground are existing tunnels that are largely screened by vegetation.

Source: Leila Bruce

Image 7: This image shows the main entrance from the R320 to the site.

Source: Antoinette de Beer

ADDENDA

Addendum A: Curriculum Vitae A de Beer

Addendum B: Criteria used for the Assessment of Impacts

1.0 INTRODUCTION

1.1 General

This Visual Impact Assessment (VIA) concerns the development of proposed Intensive Horticulture Tunnels on Farm No. 94 of 587. The site is located at the foot of the Babilonstoring mountain range in the Hemel-en-Aarde Valley and accessed from the Hemel-en-Aarde Road. Portion 94 of Farm No. 587 is surrounded by land zoned for agricultural use as well as one portion south of the farm zoned for resort (De Werf Estate).

1.2 Level of Assessment

The DEA+DP 'Guideline for Involving Visual and Aesthetic Specialists in EIA Processes' notes that 'low-key recreation / resort / residential type development, small-scale agriculture / nurseries, narrow roads and small-scale infrastructure' would be considered a category 2 development. A moderate visual impact could be expected within areas of high scenic, cultural, or historical significance.

We recommend a Level 3 assessment, necessitating the following:

- A site visit and fieldwork, a concise description of the receiving environment and the proposed project.
- Establishment of the view catchment area and identification of sensitive receptors.
- Indication of potential visual impacts, and proposed mitigation measures.

1.3 Personnel

The visual statement was compiled by Antoinette de Beer, Landscape Architect, and an independent Visual Impact Assessment practitioner whose detailed CV and Experience is set out in Addendum A. Antoinette was assisted by Candidate Landscape Architect Leila Bruce.

1.4 Declaration of Interest

A de Beer has expertise in conducting the specialist report including knowledge of regulations and any guidelines that have relevance to the proposed activity. A de Beer acts as the independent specialist and will perform the work in an objective manner, even if this results in views and findings that are not favourable to the client.

A de Beer will comply with the Act, regulations and all other applicable legislation and undertakes to disclose to the client and the competent authority all material information in her possession that reasonably has or may have the potential of influencing any decision to be taken with respect to the property by the competent authority; and the objectivity of any report, plan or document to be prepared by her for submission to the competent authority.

A de Beer

30 October 2023



Figure 1: Location of Farm No. 587 Portion 94 within the Hemel-en-Aarde Valley.
Source: Cape Farm Mapper

2.0 SPECIALIST REPORT CONTENT AND METHODOLOGY

2.1 General

This Level 3 Visual Impact Assessment provides an overview of the landscape character of the locality and assess the degree to which the horticulture tunnels would be visually appropriate.

2.2 Methodology

2.2.1 The sequence of work employed in this Study

A desktop survey using 1:50,000 topographical survey maps, Google Earth, and CapeFarmMapper was undertaken. Subsequently the probable extent of the potential visual impact of the intensive horticulture tunnels on this site was established. Adding to the desktop information gathering process, a site visit was undertaken to test the conclusions of the terrain analysis, to identify receptors and appraise the local landscape.

2.2.2 Written and Drawn Material was made available:

- Application for departure, amendment of an approved site development plan and amendment of conditions of approval. Application prepared by WRAP Project Office.
- Proposed site development plan. Prepared by WRAP Project Office.
- Inset Plan – Proposed site development plan. Prepared by WRAP Project Office.

And other drawn and written information received in emails and on site.

2.2.3 Receiving Environment

The receiving site was assessed and areas of the locality from where the horticulture tunnels appeared to be visible including adjacent lands and local roads. The site visit was conducted during 21 September 2023. The weather on the day of the site visit was overcast and open. A photographic survey of the site and surrounding areas was carried out by Antoinette de Beer.

The visual assessment was undertaken using standard quantitative criteria such as geographic view shed and viewing distances as well as qualitative criteria such as compatibility with the existing landscape character and settlement pattern; refer to: *Guideline for involving Visual and Aesthetic Specialists in EIA Processes*, Provincial Government of the Western Cape, DEA+DP, Edition 1, June 2005.

2.3 Assumptions and Limitations

The information and deductions in this report are based on information received from the client, town planning specialist, research, and fieldwork by the landscape architectural specialist.

3.0 SITE AND SETTING

3.1 Site Description

The site: Portion 94 on Farm No. 587, is a farm that utilises intensive horticulture tunnels for protection from wind and heavy rainfall for sensitive farming operations. Increased demand requires improved operating processes resulting in tunnels as a preferred method. Currently, there are existing tunnels, dams, agricultural buildings, labourer cottages and access roads on this site. As mentioned, Portion 94 of Farm No. 587 sits at the foot of the Babilonstoring mountain range, with rows of large, tall established trees that line the edges of the cultivated land. The trees provide protective windbreaks and a visual barrier to adjacent neighbours.

The profile of the land crossing the site from the mountain to the Hemel-en-Aarde Road is undulating with the Onrusrivier at the lowest portion of this profile and the De Werf Estate holiday accommodation units adjacent and opposite the site. The holiday accommodation units would be a visual receptor of the site.

The setting is cultivated land that has been transformed by the cultivation of orchards and vineyards. The settlement pattern relates to farm homesteads and associated buildings within the dominant agricultural landscape.



Figure 2: This figure illustrates the layout and position of the new proposed, existing and not approved and existing and approved tunnels on site.

Source: Cape Farm Mapper



Image 1: A view of the site from the Hemel-en-Aarde Road that shows the extent of existing windbreaks on site. These provide an edge to the farming blocks, to provide protection from the dominant winds and act as visual barriers to visually sensitive receptors.

Source: Leila Bruce



Image 2: Image illustrating the existing windbreaks on site.

Source: Antoinette de Beer

3.2 Land Use and Landform in the wider landscape

The linear arrangement of agricultural land that stretches perpendicularly to the mountain range is seen intermittently along the Hemel-en-Aarde Road (R320) that is often lined on both sides with mature trees. The land use of the wider landscape is predominantly agricultural with an undulating landform between the R320 and the steep mountain scree slopes above the farm. The Onrus River, which forms the southern boundary of the farm runs along the bottom of the valley. Although the wider landscape has been transformed for agricultural purposes there is a natural aesthetic maintained by organised rows of trees, orchards, vineyards, and patches of indigenous vegetation. The areas south of the mountain range is exposed to the south-easterly wind that has resulted in the planting of windbreaks for wind protection.



Image 3: Street view of the Hemel-en-Aarde Road with rows of mature trees lining the edge of the road.

Source: Leila Bruce

3.3 Protected Landscapes and the Bio Region

The site is located within the Fynbos Biome of the Western Cape with Elim Ferricrete Fynbos as the endemic vegetation type. This vegetation type generally consists of low height shrubs and is considered endangered. Surrounding this is Overberg Sandstone Fynbos and is considered least threatened. There are terrestrial Critical Biodiversity Areas including the Babilonstoring mountain range with a nature reserve adjacent to and on the farm as well as aquatic Critical Biodiversity Areas along the Onrus River and drainage lines down the mountain. Critical Biodiversity Areas contributes to the scenic value of an area and this in combination with the dominantly agricultural landscape supports agri-tourism in the valley. In addition, the protection of Critical Biodiversity Areas aims to support the continued functioning of the environment and its associated ecosystems, habitat preservation as well as preservation for cultural needs.



Figure 3: This map shows critical biodiversity areas.
Source: Cape Farm Mapper

3.4 Landscape Character

The rows of trees within the landscape and along the R320 Hemel-en-Aarde Road allows for wind protection but also visually demarcates agricultural blocks and / or property boundaries creating pockets of enclosure within the landscape. This character is seen throughout the valley in addition to the undulating topography from foothills to the valley to the majestic mountain range above.

3.5 Sense of Place

This landscape in the Hemel-en-Aarde Valley is predominantly agricultural used for commercial purposes. Some holiday accommodations have been incorporated on various farms and on the property south of the farm, on the opposite side of Onrus River. This results in an active functioning landscape that serves both commercial production and tourism including the backdrop of a protected mountainous landscape. The sense of place is defined by Agri-tourism providing an attachment to the landscape that is characterised by agriculture and natural features while accessed privately and by the public.

4.0 PROJECT DESCRIPTION

4.1 Project Description

As per the project motivation prepared by WRAP Project Office:

Amendment of condition of approval 3(a) contained in letter of approval dated 9 February 2016 to allow the proposed expansions of the tunnels in terms of Section 16(2)(h) of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning Act, 2020

The total area of the new proposed tunnels will be ±7.746ha.



Figure 4: Proposed Site Development Plan: Illustrating the parameters and extent of new and existing horticulture tunnels and required set back lines.
 Source: WRAP Project Office

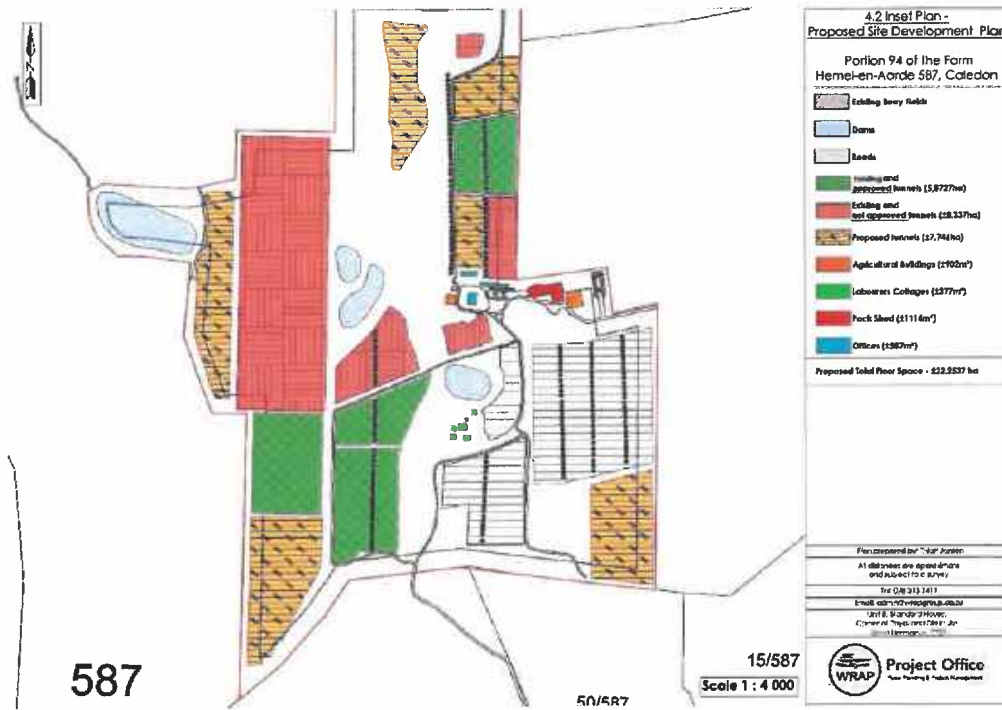


Figure 5: Proposed Site Development Plan: Highlighting the area and extent specifically for new tunnels.
Source: WRAP Project Office

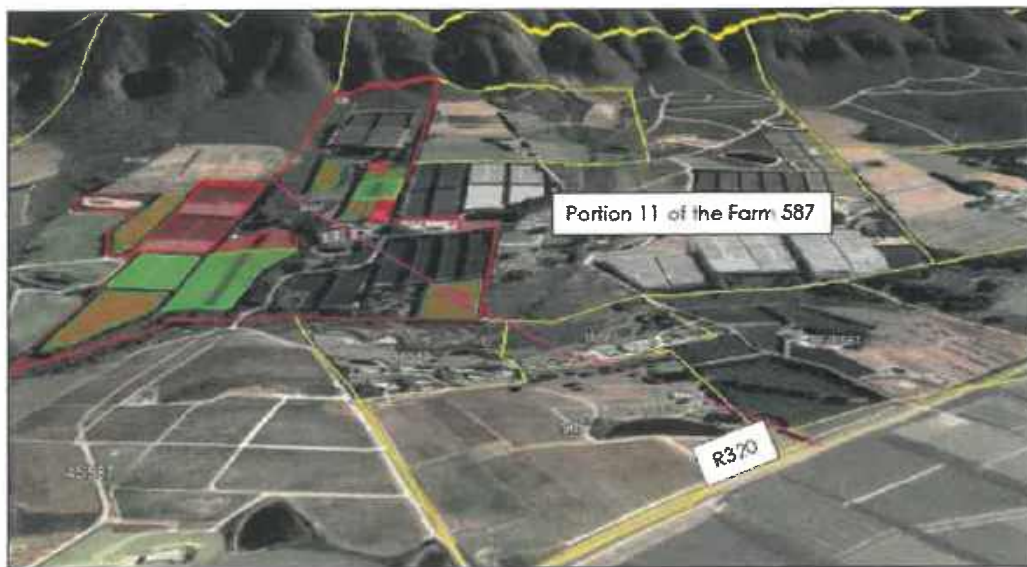


Figure 6: The surrounding terrain of the site that illustrates the undulating landscape.
Source: WRAP Project Office

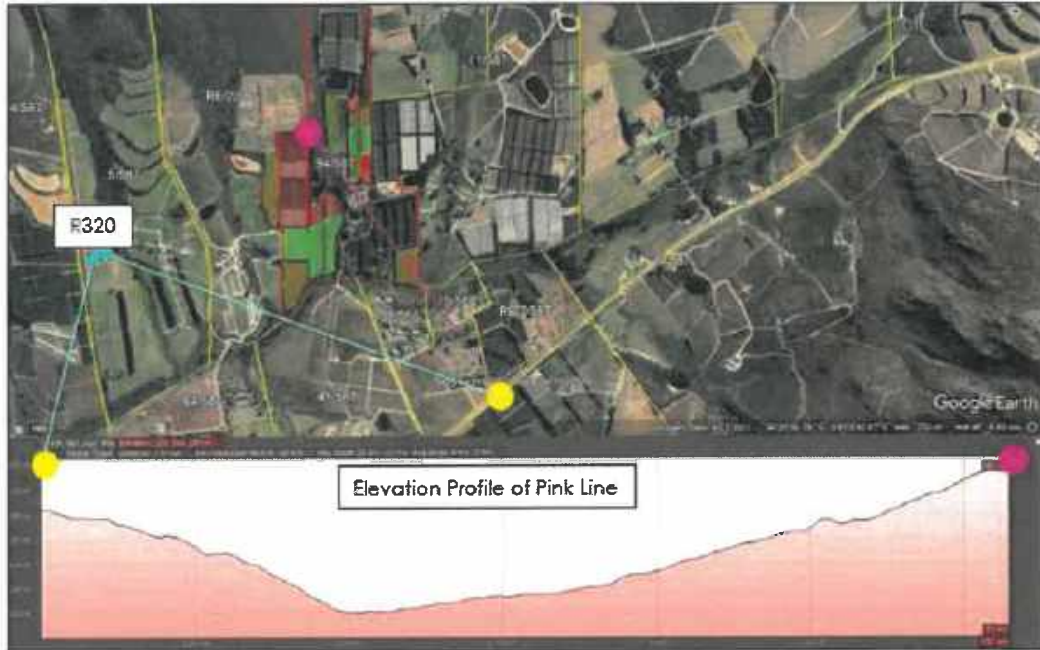


Figure 7: Elevation profile of the topography from the R320 (yellow dot) to the edge of the site (pink dot): Illustrating the landscape character of the surrounding terrain of the site.

Source: WRAP Project Office

5.0 VISUAL ANALYSIS

5.1 Extent of the Impact

The extent of the Visual Impact was assessed and rated as noticeable to the viewer from $\pm 1.2\text{km}$ at the Hemel-en-Aarde road (R320). Including at a $\pm 800\text{m}$ distance from the holiday accommodation units opposite the site. West of the site, the undulating topography is a visual barrier to the site. The horticultural tunnels are approximately 4m high – the height of a small dwelling on sloping topography. However, surrounded by tall established trees these tunnels are not intrusive in close proximity to the site. There is additional shade cloth to prevent glare allowing for improved integration and a sensitivity to surrounding neighbours. The extent of visual impact was based on the nature of the proposed development, (its height and bulk), the receiving environment, and the experience of the specialist.



Figure 8: This map illustrates the extent of visual impact from the site to $\pm 500\text{m}$, $\pm 800\text{m}$ and $\pm 1200\text{m}$ (1.2km). These intervals meet points of importance, namely, the boundary of the site, the housing estate opposite and the R320 road.

Source: Cape Farm Mapper



Image 4: This image shows the undulating topography of the terrain from the R320 road that illustrates natural visual barriers to the site at various points.

Source: Leila Bruce

5.2 Visual Exposure

The site is visually enclosed by rows of trees and moderately exposed from higher elevations due to the undulating landform. It is rated as moderately exposed for receptors, namely the holiday accommodation units, neighbouring farms and the Hemel-en-Aarde Road (R320). The site has a high visual absorption capacity as it is effectively screened by vegetation and topography. Particularly along the R320 as there are rows of trees on the road edge and on lower elevations in close proximity to trees on site.

5.3 Zones of Visibility

The zones of visibility are contained primarily by topography and rows of trees and windbreaks. Due to the enclosed nature of the site on undulating topography, the development would be mostly visible to the south on the higher elevations at a distance from the site, namely from the R320 at a ± 1.2 km distance.

Sensitive areas and receptors include:

- Holiday accommodation units
- Neighbouring farms
- Hemel-en-Aarde Road (R320)

5.3.1 Holiday Accommodation Units

Due to the nature of the topography, windbreaks and rows of established trees, the expansion of intensive horticulture tunnels would be of low visibility to the holiday accommodation opposite the site. The required tunnels act as sustainable farming measures to improve the supply of produce. Overall, there is sufficient screening of tunnels from the housing estate. The tunnels are a low height of $\pm 4\text{m}$ and do not affect the skyline or mountain backdrop.

The visual impact prior to mitigation would be **moderate**.



Image 5: This image shows the site with limited visual impacts of existing tunnels including the large extent of natural windbreaks and established trees seen from the site of the holiday accommodation units opposite.

Source: Leila Bruce



Image 6: This image shows the holiday accommodation units seen from a road on site. In the foreground are existing tunnels that are largely screened by vegetation.
 Source: Leila Bruce

5.3.2 Neighbouring farms

Neighbouring farms have a cultivated character of neat rows of orchard and vineyard farming practices. The intended expansion of intensive horticulture tunnels would blend into this environment with its windbreaks around each farming block.

The visual impact prior to mitigation would be **moderate**.

5.3.3 Hemel-en-Aarde Road (R320)

A large portion of the site is visible from the R320 road. The site, in conjunction with the neighbouring farms along the Babilonstoring mountains, is visually consistent with rows of planted vegetation in this cultivated valley. The site is visible from the R320 as it is at a higher elevation. This road is a scenic route, however, the impact on the scenic route will be limited due to the distance between the road and the proposed development as well as the site's location in relation to the mountain: the often-shaded southern slopes.

It is therefore anticipated that the visual impact prior to mitigation would be **moderate**.



Image 7: This image shows the main entrance from the R320 to the site.
 Source: Antoinette de Beer



Figure 9: This image shows the primary entrance and secondary entrance from the R320 road for reference.
 Source: Cape Farm Mapper

5.4 Compatibility of the Development

The compatibility of the proposed development and land use with the existing landscape character is assessed as **moderately compatible**; the development of additional horticulture tunnels would fit into the landscape and be partially concealed through established vegetation. It would be partially concealed based on viewpoints from different topographical elevations.

5.5 Intensity or Magnitude of Visual Impact

The intensity or the degree to which the proposed development will impact views and scenic or cultural resources will be **medium-low**: visual and scenic resources will be affected to a limited extent. There is a moderate-low degree of change as there are existing horticulture tunnels on site, windbreaks and tall trees that reduces the magnitude of visual impact on surrounding neighbours and scenic resources such as the mountain-scape.

5.6 Duration of Visual Impact

The duration of the impact upon its surroundings of the development is assessed as **permanent**.

5.7 Significance of the Visual Impact

The significance of the visual impact is assessed with a **medium-low** significance rating. As per the motivation by the town planners, the proposed tunnels are not located within the Overstrand Municipality Environmental Protection Overlay Zone and the Overstrand Municipality Heritage Protection Overlay Zone. In conjunction with factors such as being compatible with height restrictions, the use of shade netting to prevent glare, rows of established trees surrounding agricultural plots, additional windbreaks and existing natural vegetation, the development would be partially screened from most directions. In combination with the above factors, the development would have a local impact with medium-low intensity over the permanent term.

5.8 Mitigation of the Impacts

The most significant aspect of the visual impact results from the addition of intensive horticulture tunnels that are 4m in height and cover 7,746ha of land. The needs of the sensitive receptors outlined particularly in paragraph 5.3 must be addressed. The tunnels can blend in using existing measures with additional mitigation measures. The negative visual impacts need to be managed by the implementation of mitigation measures as follows:

5.8.1 View Corridors / Scenic Routes

On the higher elevation of the R320 road, the tunnels with shade netting are visible from the 1.2km distance. Additional tree planting, wherever possible, parallel to the mountain between the rows of horticulture tunnels in addition to the existing trees on the edge of farming blocks would reduce exposure of the covered tunnels from the Hemel-en-Aarde road (R320) and should be considered.

5.8.2 Residential Receptors

The introduction of additional windbreaks and trees on the erf with holiday accommodation units opposite the site of the proposed tunnels would be beneficial to reduce the immediate visual impact for visitors / tourists. This mitigation measure in addition to 5.8.1 would be beneficial as both the proposed tunnel development and holiday accommodation units sit on opposite slopes within a valley.

5.8.3 Protected Areas

Infrastructure that utilises muted, matt finishes for all parts of the proposed development would assist in it becoming visually recessive. Therefore, colours such as dark grey, charcoal, anthrasite, black or navy blue should be considered wherever possible. This mitigation measure is visually sensitive to the natural surrounds and is currently employed.

5.8.4 Lighting

Preferably no additional lights should be installed with the proposed infrastructure to preserve the wilderness quality and reduce exposure to the rest of the valley. Lights that are absolutely necessary should be:

- Aimed down. Full cut-off shielded fixtures that keep light from going up or sideways. Full cut-off fixtures produce minimum direct light. They increase safety because it illuminates people, cars, and terrain.
- Install fixtures with energy-efficient specifications carefully to maximize their effectiveness on the targeted area and minimise their impact elsewhere. Proper aiming of fixtures is crucial. Use a less bright low wattage bulbs or solar charged lights rather than a brighter high-wattage bulb to reduce visual impact from glare.
- If the colour of the lighting is not important, choose energy-efficient fixtures utilising yellowish high-pressure sodium (HPS) bulbs. If "white" light is needed, fixtures using compact fluorescent or metal halide (MH) bulbs are more energy-efficient than those using incandescent, halogen, or mercury vapour bulbs.
- Neon or unshielded bright security lights may not be used.

6.0 CONCLUSIONS and RECOMMENDATIONS

This Visual Impact Assessment (VIA) concerns the development of proposed Intensive Horticulture Tunnels on Farm No. 94 of 587. The site is located at the foot of the Babilonstoring mountain range in the Hemel-en-Aarde Valley and accessed from the Hemel-en-Aarde Road. The farm is surrounded by cultivated land with various waterbodies. Access is currently obtained via two entrances including an asphalt and gravel road off the R320.

The potential ability of the receiving environment to visually absorb this development is assessed as **high** as it is well screened with existing vegetation, windbreaks and established trees resulting in limited mitigation strategies.

The visual impact of the proposed development would primarily affect the local area, which would include the users of the R320, holiday accommodation units and neighbouring farms.

The proposed development / infrastructure is seen as **moderately compatible** with the receiving environment. The intensity or the degree to which the proposed development will impact views and scenic or cultural resources will be **medium-low**: visual and scenic resources will be affected to a limited extent. The duration of the impact upon its surroundings of the development is assessed as **permanent**. The significance rating is assessed as a **moderate-low significance**.

Proposed mitigation measures include:

- Additional tree planting between tunnels to reduce visual impacts of large farming blocks.
- The use of muted and matt finish for all parts of the proposed development / infrastructure to be used whenever possible. Darker colours are visually recessive and therefore colours such as dark grey, etc. should be considered.
- Preferably no lights should be installed with the proposed infrastructure to preserve the wilderness quality and reduce visual impacts for neighbouring properties.

Development of this nature could appear insensitive to the surrounding sensitive receptors, in particular the visitors / tourists opposite to the site and the R320 road users however the visual impact significance rating is assessed as moderate and moderate-low if all mitigation measures are implemented.

From a visual perspective, the development should be endorsed as it will result in a moderate to moderate-low visual impact on the condition that the visual impact follows the mitigation measures and recommendations set out in this document.

REFERENCES

Mucina, L. and Rutherford, M.C. (Eds) 2006. *The vegetation of South Africa, Lesotho and Swaziland*. Pretoria: Strelitzia 19, South African National Biodiversity Institute.

Oberholzer, B. 2005. *Guideline for involving Visual & Aesthetic Specialists in EIA processes*. 1st Ed1. CSIR Report No ENV-S-C 2005 053 F. Republic of South Africa, Provincial Government of the Western Cape, Department of Environmental Affairs & Development Planning, Cape Town.

Oberholzer, B. 2011. *Reading the Landscape*. 2nd Ed. Landscape Notebooks.

Addendum A

CURRICULUM VITAE: ANTOINETTE DE BEER

Antoinette de Beer graduated as a landscape architect from UCT in 2010 and started her own business, ARLA Consulting, in 2012. She aims to design integrated, multi-functional, resilient yet stimulating SPACES for PEOPLE that capture the expression of culture within a community and that celebrate its CONTEXT. To this end she regularly collaborates with, and is inspired by, other professionals, specialists and NPO's. She often teaches on a part-time basis at the Cape Peninsula University of Technology and enjoys mentoring students.

She is a registered professional landscape architect with the South African Council for the Landscape Architectural Profession (SACLAP) and has fifteen (15) years of landscape architectural experience (of which 10-years post-registration experience). She has been a member of the Institute for Landscape Architecture in South Africa (ILASA) from 2010 and elected the president of the institute from 2013 – 2015. During her term as president she represented the institute at the 2nd International Federation of Landscape Architects (IFLA) Africa Symposium in Abuja, Nigeria. She has been a member of the Society for Architects, Planners, Engineers and Surveyors+ (APES+) since 2012 and enjoys the collaborative nature of the association.

PROFESSIONAL QUALIFICATIONS

Certificate Fundamentals of Project Management (UCT), 2011
 Master of Landscape Architecture (UCT), 2010
 Certificate Architectural & Urban Conservation (UCT), 2010
 BL(Hons) Landscape Architecture (UP), 2004
 BTech Environmental Management (CPUT), 2003

REGISTRATION

(SACLAP) South African Council for the Landscape Architectural Profession
 Professional Landscape Architect: No. 20218 (Registration Year: 2012)

EXPERIENCE

2012 – PRESENT Director:
 ARLA Consulting Pty (Ltd): private landscape architectural and environmental planning practice
 2011 -2012
 Candidate Landscape Architect: EPLA Consulting CC: sub-consultant to a landscape architectural and environmental planning practice
 2007 – 2010
 Senior Landscape Architectural Technologist at OvP Associates CC: Architects, Landscape Architects & Environmental Planners
 2005 Junior Landscape Architectural Technologist at De Villiers Turner CC: Landscape Architects

MEMBERSHIP

- Immediate Past President of the ILASA (2015 - 2016)
- President of the ILASA (2013 - 2015) – NEC Chair
- ILASA 2014 Conference LOC Chair – Organising the Bi-annual National Conference (2013 – 2014)
- ILASA President Designate (2012-2013) – NEC Vice-chair
- ILASA Treasurer (2011-2013) - ILASA Financial Management

Antoinette Raimond Landscape Architectural Consulting
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- International Federation of Landscape Architects 2012 World Congress LOC member (2009-2012) – International Liaison
- Member of APES (Architects, Planners, Engineers & Surveyors Society; 2012 - current)
- Member of ILASA (2010 – current)

TEACHING & EXTERNAL EXAMINATION:

Part-time Lecturing at Cape Peninsula University of Technology (CPUT):

External Examiner:	various subjects (1st year to 4th year) from 2014- current.
Second Semester 2018:	Draughting Software and Construction Detailing 2 nd year
Second Semester 2017:	Integrated Design Studio 1 st year
First Semester 2016:	Landscape Technology & Plant Material Studies 3 rd year
Second Semester 2015:	Applied Mathematics & Introduction to Design Foundation Year AutoCAD and Construction Detailing 2 nd year

Mentorship of several 4th year students during the design development stages of their mini-thesis.

Part-time Lecturing at University of Cape Town (UCT):

Second Semester 2013:	Teaching Landscape Design to Landscape Architecture Conversion year students.
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Guest Landscape Architect for MLA Presentations at University of Cape Town (UCT):

Second Semester 2019:	Guest landscape architect for review of MLA work prior to final hand-in.
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OTHER:

Assurance Reviews:	Part of panel that reviews tender documents prepared by the City of Cape Town to ascertain if they are compliant with all legal aspects and professional standards (2020- current)
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Regional Judge for the 2020, 2021 & 2022 SALI Awards of Excellence

Evaluate and adjudicate entries for the annual SALI Awards of Excellence (November 2019, 2020 & 2021).

Adjudicator for the 2017 ILASA Awards of Excellence

Adjudicate entries and select winners for the bi-annual ILASA Awards of Excellence (June 2017).

Adjudicator for the 2016 Concrete Manufacturers Association Awards of Excellence

Adjudicate entries and select winners for the bi-annual Concrete Manufacturers Association's Awards of Excellence (November 2015).

Adjudicator at CPUT: CPUT Landscape Technology Vertical Garden Challenge February 2014

CPUT Landscape Technology Recycled Bench Challenge February 2013

CPUT-Corobrik Landscape Technology Construction Week July 2013

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October 2023

Cape Town World Design Capital: Co-design Workshops:

- 7 November 2014: Participated in workshop as lead designer for the Dunoon cul-de-sacs (Developing a Tree Planting and Infiltration Strategy for the Dunoon cul-de-sacs). Presentation available on request.
- 14 May 2014: Participated in workshop at Rylands Civic Centre as designer. Re-visioning the Gatesville CBD.
- 23 April 2014: Participated in workshop as designer for the Bonteheuwel Civic Precinct Upgrade (as part of the Mayoral Urban Regeneration Programme (MURP)).
- 13 November 2013: Participated in workshop as designer for the Upgrade of Public Open Space at Doordekraal Dam in Welgemoed.

Recent Visual Impact Assessments**VIA's for Mixed-use Developments:**

- VIA for Proposed Mixed Use Development on Remainder of Cape Farms No. 1529 (Imhoff's Gift), Kommetjie
- Confidential VIA for Proposed Mixed Use Development, Durbanville
- VIA for the Proposed Mixed Use Sence de Lieu Development on a portion of Farm No. 845/3, Paarl
- VIA for Proposed De Fortuijn Housing Development and Associated Infrastructure, Somerset West

VIA's for Waste Services:

- VIA for Proposed Amendment of the Worcester WDF Waste Management Permit, Worcester
- VIA for Proposed Amendment to Waste Management License, Vissershok WMF
- VIA for Proposed Amendment to Waste Management License, Tulbagh WDF
- VIA for Proposed Caledon Waste Transfer Station, Caledon
- VIA for Proposed Waste Recovery, Beneficiation and Energy Project, Wellington
- VIA for the Proposed Residential Development on Waterval Farm, Franschoek

VIA's for Residential Developments:

- VIA for the Proposed Die Eike Residential Development on Erf 3476, Franschoek
- VIA for the Proposed Medium Density Drakenzicht Residential Development, Paarl South
- VIA for Proposed Kanonberg Residential Development, Oude Westhof

VIA's for Renewable Energy Projects:

- VIA for Proposed Klipfontein Solar Farm & Energy Storage Facility, Hopefield
- VIA for Proposed Zoutekloof Solar Farm, Hopefield

Other:

- VIA for Proposed Petroport, Wolseley
- VIA for Proposed Van Wyks River Business Park, Paarl

Addendum B

Criteria used for the Assessment of Impacts

The assessment of impacts is based on a synthesis of the following assessment criteria (2005:28):

Nature of the impact –

An appraisal of the visual effect the activity would have on the receiving environment. This description should include visual and scenic resources that are affected, and the manner in which they are affected, (both positive and negative effects).

Extent – the spatial or geographic area of influence of the visual impact, i.e.:

- *site-related*: extending only as far as the activity;
- *local*: limited to the immediate surroundings;
- *regional*: affecting a larger metropolitan or regional area;
- *national*: affecting large parts of the country;
- *international*: affecting areas across international boundaries.

Duration - the predicted life-span of the visual impact:

- *short term*, (e.g. duration of the construction phase);
- *medium term*, (e.g. duration for screening vegetation to mature);
- *long term*, (e.g. lifespan of the project);
- *permanent*, where time will not mitigate the visual impact.

Intensity – the magnitude of the impact on views, scenic or cultural resources.

- *low*, where visual and scenic resources are not affected;
- *medium*, where visual and scenic resources are affected to a limited extent;
- *high*, where scenic and cultural resources are significantly affected.

Probability – the degree of possibility of the visual impact occurring:

- *improbable*, where the possibility of the impact occurring is very low;
- *probable*, where there is a distinct possibility that the impact will occur;
- *highly probable*, where it is most likely that the impact will occur; or
- *definite*, where the impact will occur regardless of any prevention measures.

Significance – The significance of impacts can be determined through a synthesis of the aspects produced in terms of their nature, duration, intensity, extent and probability, and be described as:

- *low*, where it will not have an influence on the decision;
- *medium*, where it should have an influence on the decision unless it is mitigated; or
- *high*, where it would influence the decision regardless of any possible mitigation.

The logo for Haygrove, featuring the word "Haygrove" in a serif font with a stylized arch over the "y".

31 October 2023
Overstrand Municipality
Henk Olivier

Dear Sir

RE: Value of tunnels constructed at certain fields of Haygrove Heaven

We are a commercial poly tunnel manufacturing and distribution company within the global Haygrove Group, and we regularly supply Haygrove Heaven (Pty) Ltd with commercial poly tunnels at market related prices.

We have been requested to submit an indicative value of the +- 8.33 Ha of tunnels situated at certain areas on portion 94 of farm 587 belonging to Haygrove Heaven (Pty) Ltd, as depicted in Annexure A.

The indicative values of these tunnels are as follows:

- 0.38 Ha of small nursery tunnels	R 114,000
- 7.76 Ha of commercial tunnels	R 3,880,000
- Total	R 3,994,000

Should you have any questions about these values, please contact me at 021 859 1026.

Sincerely,



Mark Pritchett
Managing Director
Haygrove Tunnels South Africa

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 Fax: +27 (0) 86 646 3686
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PO Box 498, Grabouw, 7160