



PORTION 1 OF THE FARM HERMANUS RIVER NO. 542 AND REMAINDER PORTION 3 (PORTION OF PORTION 2) OF THE FARM HERMANUS RIVER NO. 542, A DIVISION OF CALEDON (ARABELLA COUNTRY ESTATE PHASE 2): APPLICATION FOR THE EXTENSION OF THE PERIOD OF VALIDITY OF AN APPROVAL AND AMENDMENT OF APPROVED SUBDIVISION PLAN: DENNIS MOSS PARTNERSHIP ON BEHALF OF HFP PROPERTIES (PTY) LTD

Notice is hereby given in terms of Section 48 of the Overstrand Municipality Amendment By-Law on Municipal Land Use Planning, 2020 (By-Law) that an application has been received for the following:

- **Extension of the period of validity of an approval** in terms of Section 16(2)(i) of the By-Law, to allow for additional time to comply with existing approval conditions.
- **Amendment of the approved subdivision plan** in terms of Section 16(2)(k) of the By-Law to accommodate small-scale subdivision diagrams for the proposed development.

Full details regarding the proposal are available for inspection during weekdays between 08:00 and 16:30 at the Department: Town Planning, Paterson Street, Hermanus and at the Kleinmond Library, Fifth Avenue, Kleinmond. Any comments must be in writing in accordance with the provisions of Sections 51 and 52 of the By-Law to reach the Municipality (16 Paterson Street, Hermanus / (f) 0283132093 / loretta@overstrand.gov.za) on or before **10 May 2024**, quoting your name, address and contact details, interest in the application and the reasons for comment. Telephonic enquiries can be made to the Town Planner, **Ms. H van der Stoep** at 028-313 8900. The Municipality may refuse to accept comments received after the closing date. Any person who cannot read or write may visit the Town Planning Department where a municipal official will assist them in order to formalize their comment.

GEDEELTE 1 VAN DIE PLAAS HERMANUS RIVIER NR. 542 EN RESTANT GEDEELTE 3 (GEDEELTE VAN GEDEELTE 2) VAN DIE PLAAS HERMANUS RIVIER NR. 542, AFDELING VAN CALEDON (ARABELLA LANDGOED FASE 2): AANSOEK VIR DIE VERLENGING VAN DIE GELDIGHEIDSPERIODE VAN DIE GOEDKEURING EN WYSIGING VAN DIE GOEDGEKEURDE ONDERVERDELINGSPLAN: DENNIS MOSS PARTNERSHIP NAMENS HFP PROPERTIES (PTY) LTD

Kennis word hiermee gegee ingevolge Artikel 48 van die Overstrand Munisipaliteit Wysigingsverordening vir Munisipale Grondgebruikbeplanning, 2020 (Verordening) dat 'n aansoek vir die volgende ontvang is:

- **Verlenging van die geldigheidsperiode van die goedkeuring** ingevolge Artikel 16(2)(i) van die Verordening om addisionele tyd toe te laat om aan die bestaande goedkeuringsvoorwaardes te voldoen.
- **Wysiging van die goedgekeurde onderverdelingsplan** ingevolge Artikel 16(2)(k) van die Verordening om kleinskaalse onderverdelingsdiagramme vir die voorgestelde ontwikkeling te akkommodeer.

Volle besonderhede rakende die voorstel is beskikbaar vir inspeksie gedurende weekdae tussen 08:00 en 16:30 by die Departement: Stadsbeplanning, Patersonstraat 16, Hermanus en by die Kleinmond Biblioteek, Vyfdelaan, Kleinmond. Enige kommentaar op die voorstel moet skriftelik wees ingevolge Artikels 51 en 52 van die Verordening en die Munisipaliteit (Patersonstraat 16, Hermanus / (f) 0283132093 / loretta@overstrand.gov.za) bereik voor of op **10 Mei 2024**, met u naam, adres en kontakbesonderhede, belang in die aansoek sowel as die redes vir kommentaar. Telefoniese navrae kan gerig word aan die Stadsbeplanner, **Me. H van der Stoep** by 028-313 8900. Die Munisipaliteit mag weier om die kommentaar te aanvaar na die sluitingsdatum. Enige persoon wat nie kan lees of skryf nie kan die Departement Stadsbeplanning besoek waar hul deur 'n munisipale amptenaar bygestaan sal word ten einde hul kommentaar te formaliseer.

ISIAHLULO 1 SEFARM HERMANUS RIVER NO. 542 KUNYE NENTSALELA YESIAHLULO 3 (ISIAHLULO SESIAHLULO 2), ISIAHLULO SASECALEDON (ARABELLA COUNTRY ESTATE PHASE 2): ISICelo SOKWANDISWA KWEXESHA LOKUBA SEMTHETHWENI KWEMVUME KUNYE NOLUNGISO OLUVUNYIWEYO LWESICWANGCISO SOKWAHLULWA-HLULWA: DENNIS MOSS PARTNERSHIP EGAMENI LE-HFP PROPERTIES (PTY) LTD

Isaziso sinikwa ngokweMiqathango yeCandelo lama-48 loMthetho kaMasipala oLungisiweyo woMasipala wase-Overstrand ongoCwangciso lokuSetyenziswa koMhlaba kaMasipala, 2020 (uMthetho kaMasipala) sokokuba isicelo sifunyenwe sokulandelayo:

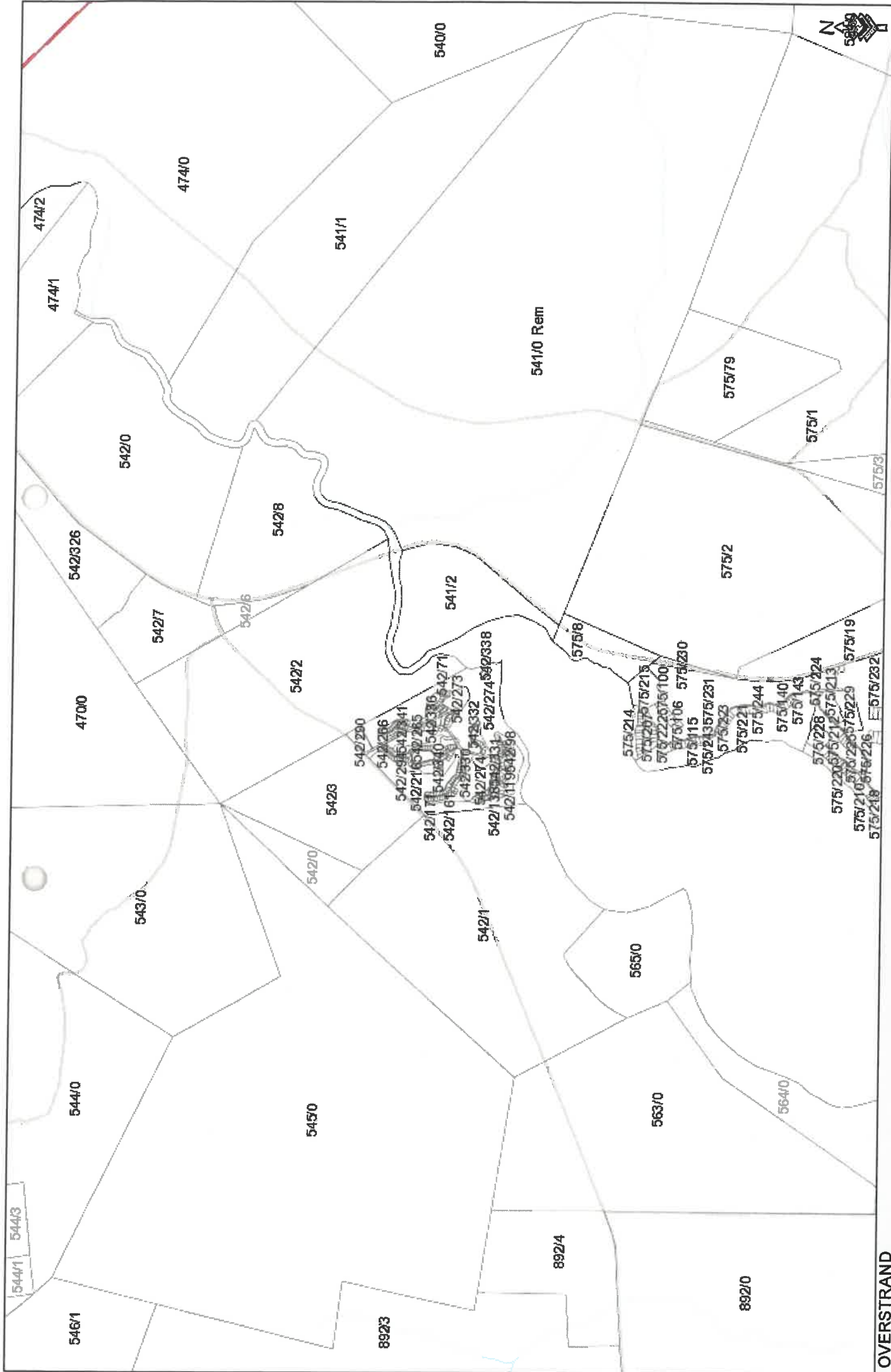
- **Ukwandiswa kwexesha lokuba semthethweni sokuvunywa** ngokwemiqathango yeCandelo 16(2)(i) loMthetho kaMasipala, ukuvumela ixesha elangezelelweyo lokuhambelana nemiqathango ekhoyo evunyiweyo.
- **Isilungiso sesicwangciso solwahlulwa-hlulo oluvunyiweyo** ngokwemiqathango yeCandelo 16(2)(k) loMthetho kaMasipala ukulungiselela ukwenziwa kwemizobo yolwahlulwa-hlulo olukwinqanaba eliphantsi lophuhliso olucetywayo.

linkcukacha ezipheleleyo malunga nesi sindululo ziyafumaneka ukuze zihlolwe ngeentsuku zomsebenzi phakathi kwentsimbi yesi-08:00 naye-16:30 kwiSebe: UCwangciso lweDolophu, Paterson Street, eHermanus, nakwiThala leeNcwadi laseKleinmond, Fifth Avenue, Kleinmond. Naziphi na izimvo mazibhalwe phantsi ngokungqinelana nezibonelelo zeCandelo lama-51 kunye nelama-52 oMthetho kaMasipala ukuze zifike kuMasipala (16 Paterson Street, Hermanus / (f) 0283132093 / loretta@overstrand.gov.za) ngomhla okanye ngaphambi komhla wama-10 uMeyi 2024, unike igama lakho, idilesi kunye neenkukacha zoqhagamshelwano, umdla wakho kwisicelo kunye nezizathu zokunikezela izimvo. Imibuzo ngomnxeba ingathunyelwa kuCwangciso lweDolophu, uNksk. **H van der Stoep** kule nombolo 028-313 8900. UMasipala unokwala ukwamkela izimvo ezifunyenwe emva komhla wokuvula. Nabani na ongakwaziyo ukufunda okanye ukubhala angandwendwela iSebe loCwangciso lweDolophu apho igosa likamasipala liya kuthi limncedise ukuze abhale ngokusesikweni izimvo zakhe.

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Portion 1 & Remainder of Portion 3 of Farm 542, Arabella Phase 2



DENNIS MOSS PARTNERSHIP

INTERDISCIPLINARY SUSTAINABILITY CONSULTANTS

Architects • Urban & Regional Planners • Landscape Architects
Environmental Planners • Urban Designers

Our Ref: G3228
Date: 16 October 2023

The Municipal Manager
The Director: Department of Planning and Environment
Overstrand Municipality
PO Box 20
HERMANUS 7200

Dear Sir/Madam,

APPLICATION FOR THE EXTENSION OF VALIDITY PERIOD AND AMENDMENT OF APPROVED SUBDIVISION PLAN: PORTION 1 AND THE REMAINDER OF PORTION 3 (A PORTION OF PORTION 2) OF THE FARM HERMANUS RIVER NO 542, A DIVISION OF CALEDON (ARABELLA COUNTRY ESTATE PHASE 2)

The approvals issued by the Overstrand Municipality for the proposed phase 2 extension to the Arabella Country Estate on the above-mentioned property refers.

1 INTRODUCTION AND BACKGROUND

- 1.1 During 2003, Arabella South Africa Holding (Pty) Ltd. (previously Arabella Country Estate [Pty] Ltd.) initiated a process to develop the second phase of the Arabella Country Estate on Portion 1 and the Remainder of Portion 3 (a portion of Portion 2) of the Farm Hermanus River No. 542, Caledon.
- 1.2 During June 2003, a Scoping process commenced, in terms of the Environmental Impact Assessment Regulations promulgated under the Environment Conservation Act, 73 of 1989 (ECA). The scoping process was followed by an impact assessment phase and resulted in the publication of an Environmental Impact Assessment report in November 2004.
- 1.3 During January 2006, the Director: Integrated Environmental Management of the Department of Environmental Affairs and Development Planning turned down the application. Arabella submitted an appeal to the Minister of Local Government,



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Dennis Moss Planners & Architects (Pty) Ltd. Reg. No. 2003/007711/07

Directors: DF Moss, URP (SA) BA M (URP) M SAPI • GC de Klerk, URP (SA) B Econ M (URP) M SAPI • M Le Roux-Cloete, Pr Arch, BAS, B Arch (UCT), MIArch, CIA
SW vd Merwe, Pr Sci Nat, NHD (Nature Conservation) SACNASP • JMH Lackay, Pr S Arch, T MIArch • PJ Niemann, Pr Arch, B Arch (UFS) MIArch, CIA
Associate Landscape Architect: WJ Tjmens, Ing (NED) FILASA

Environmental Affairs and Development Planning and on 10 December 2007 the Minister upheld the appeal and granted Arabella a positive Record of Decision (ROD).

- 1.4 Based on the ROD, a rezoning and subdivision application was prepared, in terms of the former Land Use Planning Ordinance, 15 of 1985 and submitted to Overstrand Municipality in December 2007. The land-use planning application was subsequently approved by the Overstrand Municipal Council.
- 1.5 Following a prolonged appeal process on the ROD, the Minister of Local Government, Environmental Affairs and Development Planning on 2 March 2015, decided to uphold the appeals submitted against the decision issued on 26 January 2006.
- 1.6 The decision allowed the Overstrand Municipality to consider an amended application for the Phase 2 extension and on 25 February 2014, the Mayoral Committee resolved to approve the application as submitted.

2 ENVIRONMENTAL AUTHORIZATION

- 2.1 The Minister of Local Government, Environmental Affairs and Development Planning, on 2 March 2015, granted authorization in terms of Section 35(4) of the ECA and Section 43 of the National Environmental Management Act, 107 of 1998 to undertake the Arabella Country Estate Phase 2 development. The authorization was to make provision for the following activities:
 - 352 Single residential erven with associated infrastructure;
 - A 9-hole executive (mashie) golf course;
 - Long-drive driving range;
 - Golf academy;
 - Clubhouse, pro-shop and the Home Owners' Association offices;
 - Restaurant and winery;
 - Archery range;
 - Sports field;
 - Public gathering site in the form of a boma;
 - A more extensive range of recreational trails within the development footprint and into the adjoining nature areas.
- 2.2 In accordance with the conditions of authorization, the activities had to commence within a period of five (5) years from the date of issue – effectively by 2 March 2020. However, on 8 October 2019, the Minister, on request by the applicant, decided to amend Condition 1 of the environmental authorization. In doing so, the validity period of the authorization was extended by another 5 years until 1 March 2025. The holder of the environmental authorization must therefore commence with all listed activities within the said period, or the authorization will lapse and a new application for environmental authorization would have to be submitted.

3 LAND USE PLANNING PROCESS

- 3.1 As mentioned above, the Council and the Mayoral Committee of the Overstrand Municipality, on two occasions, was asked to consider the land use planning application for

the proposed Phase 2 extension to the Arabella Country Estate. On both occasions the Mayoral Committee found in favour of the extension.

3.2 During December 2007 this office submitted an application for the rezoning and subdivision and related aspects of the subject property in order to make provision for the phase 2 extension. The application also included the amendment of the applicable forward planning documents to enable the development. At the time, the application was to make provision for the following:

- 350 residential erven,
- an 18-hole championship golf course,
- a driving range,
- clubhouse,
- golf academy,
- pro-shop,
- halfway house,
- water sports club facility,
- an environmental centre, and
- private nature reserve.

3.3 The application followed on the Record of Decision (ROD) issued by the Minister of Local Government, Environmental Affairs and Development Planning on 10 September 2007 for the *'Proposed Construction of Arabella Country Estate, Hermanus: Phase 2 on Portion 1 and Remainder of Portion 3 of Caledon Farm No. 542: Hermanus River, Kleinmond'*.

3.4 On 29 October 2008, the Overstrand Municipality Council resolved to approve all activities for which it had the delegated authority and recommended that all other activities be approved by the Provincial Government of the Western Cape.

3.5 The Hangklip/Pringle Bay Rate Payers' Association instituted proceedings for judicial review of the ROD. On 1 October 2009 the Western Cape High Court upheld the application and ordered that the appeal/s against the Director's decision are referred back to the Minister of Local Government, Environmental Affairs and Development Planning for reconsideration.

3.6 The legal proceedings resulted in the formulation of a new development alternative. The new alternative was based on consultation with the Minister and inputs from all specialists. The alternative was also significantly more conservative with regard to the use of land. The application submitted to the Overstrand Municipality therefore only included the uses described in paragraph 2.1 above.

3.7 On 3 March 2014 the Mayoral Committee of the Overstrand Municipality resolved as follows:

- a) *That the amendment of the Hangklip-Kleinmond Spatial Development Framework in terms of Section 4(6) of the Land Use Planning Ordinance 1985 (Ordinance 15 of 1985), to change the reservation of Portion 1 and the Remainder of Portion 3 (a portion of Portion 2) of the Farm Hermanus River No. 542, a division of Caledon, Kleinmond, from Private Conservation Area (SPC B.b), Rehabilitation Area (SPC B.d) and Intensive Agriculture (SPC C.b) to Other Urban Related Uses (SPC D.i) and Private Conservation Area (SPC B.b), as illustrated in Plan No. G3228/P003, be recommended*

for approval by the Development of Environmental Affairs and Development Planning;

- b) that the rezoning of Portion 1 and the Remainder of Portion 3 (a portion of Portion 2) of the Farm Hermanus River No. 542, a division of Caledon, Kleinmond, in terms of Section 17 of the Land Use Planning Ordinance 1985 (Ordinance 15 of 1985), from Agricultural Zone I to Subdivisional Area, As illustrated on Plan No. G3228/P001, be approved;
- c) that the amended Site Development Plan No. G3228/UD001 dated 8 April 2013 be approved;
- d) that the subdivision of the Subdivisional Area (Plan No. G3228/P001) in terms of Section 24 of the Land Use Planning Ordinance 1985 (Ordinance 15 of 1985), be approved, in order to create:
 - 352 x Residential Zone II erven;
 - 15 x Open Space Zone II erven (Private Parks);
 - 3 x Open Space Zone II erven (Private Roads);
 - 1 x Open Space Zone II erf (Amphibian reserve, Winery & Restaurant);
 - 1 x Open Space Zone II erf (9-hole mashie golf course, golf clubhouse, golf academy, long-drive driving range, archery range, sporting oval, boma);
 - 1 x Open Space Zone II erf (Parking, Water purification works);
 - 2 x Open Space Zone III erven (Private nature reserve, electrical substation).
- e) that the registration of a legally instituted Home Owners' Association in terms of Section 29 of the Land Use Planning Ordinance 1985 (Ordinance 15 of 1985), be approved;
- f) that the registration of certain servitudes in terms of Section 24 of the Land Use Planning Ordinance 1985 (Ordinance 15 of 1985) in favour of the Home Owners' Association and Eskom, in order to create access roads on Portions 369 and 374 and to allow an area for the proposed electrical substation on Portion 374, be approved.

- 3.8 Following an application for the extension of the validity period, approval of a phasing plan and amendment of the approved subdivision plan, the Authorised Official, on 23 October 2019, in terms of Section 62 of the Overstrand By-Law on Municipal Land Use Planning, 2015 resolved to approval all items applied for. This approval, *inter alia*, resulted in the extension of the validity period until 25 February 2024.

4 APPLICATION ITEMS

- 4.1 The approval of the Authorised Official was issued in terms of the Overstrand By-Law on Municipal Land Use Planning, 2015. Section 19(1) of the By-Law states that: *A rezoning approval lapses after a period of 5 years, or a shorter period as the Municipality may determine, from the date of approval or the date that the approval comes into operation if, within that 5 year period or shorter period—*

- (a) the zoning is not utilised in accordance with the approval thereof; or
- (b) the following requirements are not met:
 - (i) the approval by the Municipality of a building plan envisaged for the utilisation of the approved use right; and
 - (ii) commencement with the construction of the building contemplated in subparagraph (i).

4.2 In addition, the original approval also included the subdivision of the property and in terms of Section 22 of the Overstrand Amendment By-Law on Municipal Land Use Planning, 2022 it states as follows:

- (5) *If the Municipality approves a subdivision, the applicant must **within a period of ten years** or the shorter period as the Municipality may determine, from the date of approval of the subdivision or the date that the approval comes into operation, comply with the following requirements:*
- (a) *the approval by the Surveyor-General of the general plan or diagram contemplated in Subsection (4);*
 - (b) *completion of the installation of engineering services in accordance with the conditions contemplated in Subsection (3) or other applicable legislation;*
 - (c) *proof to the satisfaction of the Municipality that all relevant conditions contemplated in section 67 for the approved subdivision in respect of the area shown on the general plan or diagram and that must be complied with before compliance with paragraph (d) have been met; and*
 - (d) *effect the registration of transfer of a land unit or land units as indicated on the registration diagram / diagrams, or, General Plan; by obtaining of a Certificate of Registered or Consolidated Title.*

4.3 In terms of Section 19(3) of the Amendment By-Law on Municipal Land Use Planning, the Municipality may grant extensions to the periods contemplated in Paragraph 4.1 above. However, the validity period together with any extensions that the Municipality grants, may not exceed 10 years.

4.4 Similarly, section 24 of the Amendment By-Law states as follows:

- (2) *An applicant may apply for an extension of the period to comply with Section 22(5) or must comply with Subsection (5).*
- (3) *An extension contemplated in Subsection (2) may be granted for a period not exceeding 10 years and if after the expiry of the extended period the requirements of Section 22(5) has not been complied with, the subdivision lapses and Subsection (6) applies.*
- (4) *The Municipality may grant extensions to the period contemplated in Subsection (2), which period together with any extensions that the Municipality grants, may not exceed 10 years.*

4.5 The approvals, as issued by the Authorised Official, will therefore lapse on 25 February 2024 unless at least one land unit arising from the subdivision is registered in the Deeds Office.

4.6 Having regard for the approvals issued, application is herewith made for a special condonation, in terms of Section 16(2)(i) of the Overstrand Amendment By-Law on Municipal Land Use Planning, 2020 for an extension of the validity period of the approval issued by the Municipality on 31 October 2019.

4.7 At the same time, application is also herewith made in terms of the Overstrand Amendment By-Law on Municipal Land Use Planning, 2020 for an amendment of the approved subdivision plan to accommodate the small-scale diagrams for the Phase 2 extension.

The motivation for the application items mentioned above is set out in the paragraphs below.

5 PROGRESS WITH CONDITIONS OF APPROVAL

- 5.1 The approvals as issued by the Minister in terms of the Environment Conservation Act, 73 of 1989 and the Overstrand Municipality in terms of LUPO was subject to strict conditions which had to be complied with either before commencement of the construction activities or prior to the operational phase of the project.
- 5.2 As reported previously, our client has commenced with addressing the various conditions of approval. Several specialist consultants were appointed to prepare the required documentation and plans in response to these conditions. The actions that require approval from competent authorities before commencement of the construction phase are listed in the table below. Also indicated in the table is the status of the action plans and the authority to approve the same.

Table 1: Actions resulting from the conditions of approval.

	ACTION	STATUS	DECISION MAKING AUTHORITY
a)	Stewardship agreement with CapeNature	Completed	CapeNature
	Stewardship Memorandum of Understanding	Signed	CapeNature
b)	Environmental Rehabilitation Plan	Draft	CapeNature
c)	Landscape Plan	Approved	CapeNature
d)	Stormwater Management Plan	Approved	Overstrand Municipality
e)	Fire Management Plan	Approved	Overstrand Municipality & CapeNature
f)	Water Management Plan	Approved	Overstrand Municipality & CapeNature

- 5.3 From the table above and that which was communicated previously to the municipality, it is evident that our client has made significant strides in obtaining the outstanding approvals.
- 5.4 The progress of compliance with the conditions of approval was dealt a heavy blow in 2020 when our client was forced to cease operations as described below.

6 MOTIVATION FOR EXTENSION OF VALIDITY PERIOD

- 6.1 Hospitality Property Fund (Pty) Ltd. (HPF) (our client) is the current owners of the subject properties. HPF is a real estate investment trust which focuses on the investments in hospitality and leisure sectors through the ownership of hotel and leisure properties. HPF owns hotel and resort properties throughout South Africa. The company was acquired by Southern Sun in 2020 and is now a wholly owned subsidiary of Southern Sun.
- 6.2 The Southern Sun hotel group is Southern Africa's leading hospitality group with over 50 years of experience in the hospitality industry. The group comprise of an extensive collection of hotels and resorts in South Africa and abroad.

6.3 In late March 2020, President Ramaphosa declared a National State of Disaster and imposed concomitant lockdown regulations. This was in response to the World Health Organisation's declaration of Covid-19 as a pandemic. The National lockdown included numerous, very necessary interventions in order to contain the spread of Covid-19 in South Africa. As a group, Southern Sun had always been fully supportive of the President's actions and understood that the pandemic poses a serious public health and economic crisis that requires a decisive and coordinated response from all spheres of society.

6.4 The Covid-19 pandemic had a significant impact on Southern Sun, its employees and the financial results of the last couple of years. It is common knowledge that the hospitality industry was one of sectors that was hardest hit by the pandemic as countries imposed lockdowns and restricted the movement of people. The impact of the pandemic was noted in detail in the group's annual reports since 2020. In the Integrated Annual Report of 2020, the following was stated with regard to the Covid-19 crisis and the impact on the travel and tourism industry:

With the exception of airlines, the hospitality industry was the first to feel the devastating impact of COVID-19. With the acceleration in travel bans imposed by many countries, including South Africa and the other markets in which we operate, the group saw international demand retracting as early as the last week of February 2020. The initial international travel regulations imposed by the President were exacerbated by the ban on interprovincial travel announced on 23 March 2020 as part of the nationwide lockdown. This resulted in a material reduction in revenues for the month of March, which is normally a peak activity month for the group. As a result of the situation, our entire portfolio in South Africa, Africa and the Seychelles was deactivated, with the exception of those hotels designated as quarantine facilities or as accommodation for essential service providers and persons awaiting repatriation.

Our 2020 integrated annual report as a whole reflects our performance for the 2020 financial year. While 2020 was partially impacted by COVID-19, we are very aware that the 2021 financial year will be the most difficult year in our history. Given our knowledge at this stage, we have indicated at appropriate points in this report, that COVID-19 will be a significant consideration in our approach, planning, stress testing, and the like. However, we have not reflected a revised outlook throughout the report as the effects of the pandemic will be dynamic and remain uncertain at the date of approving this report.

6.5 The devastating nature of the Covid-19 pandemic is still being felt by the entire travel and leisure ecosystem. The impact of the pandemic was also still reported on in the group's Integrated Annual Report and Financial Reviews of 2023. These reports noted the uncertainty with which the financial year began. The reports also noted the recovery in trading volumes post the Covid-19 pandemic which first started gaining momentum in FY22 Q3. This recovery was to be undone by the discovery of the Omicron variant and the subsequent red listing of South Africa in FY22 Q4. The 2023 Integrated Annual Report commented as follows:

While the red listing was lifted quite quickly, the damage to that summer season was done. Fortunately, although FY23 Q1 was subdued, the balance of the year resumed the path to recovery and ended up surpassing all expectations, particularly in the second half of the year.

7 MOTIVATION FOR AMENDMENT OF SUBDIVISION PLAN

- 7.1 The requirements for confirmation of subdivision are set out in the Sections 22 and 23 of the Overstrand Amendment By-Law on Municipal Land Use Planning, 2020. Whilst quite onerous in the case of the Arabella Phase 2 extension, the client has made significant strides to comply with the relevant conditions of approval, as referenced above, and the other requirements of the By-Law.
- 7.2 In an effort to reduce the financial impact during the implementation of the project, the client has interrogated the requirements as it relates to Section 22 of the By-Law, particularly the requirements relating to the installation of engineering services and obtaining a certificate of registered title.
- 7.3 The registration of a small-scale subdivision diagram of the respective land use blocks of the proposed development presents an opportunity for the client to systematically implement the project without having the arduous task of servicing every individual erf. The small-scale diagram is to read together with the phasing plan which has previously been approved by the municipality. The small-scale diagram provides for 8 portions. Four of these portions include the residential pockets whilst two further portions are created for the mashie course and associated uses and the water purification works. The final two portions are associated with the nature reserve.
- 7.4 The minimum requirements of Section 22 were also discussed with officials of the Overstrand Municipality during a meeting in September 2022. During said meeting it was requested that clarification be obtained about the following:
- a) Confirmation from the engineering department that said department would accept the small-scale diagram and to determine the minimum requirements for servicing each individual subdivision to enable clearance for each block; and
 - b) Confirmation from a conveyancer that a certificate of registered title can be issued for the respective subdivision blocks in order to comply with Section 22(5)(d).
- 7.5 Further to the above, it is herewith confirmed that the appointed consulting engineers has met with the municipality's engineering department which has confirmed the requirements for servicing each block. Similarly, Eksom has been approached to confirm the same.
- 7.6 The engineering department was supportive of the proposal and has outlined its requirements for each service (i.e. water, sewer, stormwater). The minutes of the meeting with the engineering department is included under Annexure 8.
- 7.7 The Small-Scale Subdivision Plan, drawing No. G3228/P002 is attached herewith under Annexure 2.
- 7.8 Further to the requirements of the municipality, the client discussed the registration of the proposed subdivision blocks with its land surveyor and conveyancer who confirmed that the deeds office will be able to issue a Certificate of Registered Title for each of the subdivision blocks.

8 CONCLUSION

- 8.1 It is contended that the Covid-19 pandemic was a force majeure event, or a common law doctrine known as 'supervening impossibility of performance' which describes an event beyond the control of our client. This event made it impossible for our client to continue with its operations. Under these circumstances it could not have been reasonable to expect our client to expend resources in furtherance of the approval and concomitant conditions of approval.
- 8.2 As mentioned above, the majority of our client's entire portfolio in South Africa, Africa and Seychelles was deactivated and they were therefore deprived of a valuable income stream to fund the project. Moreover, mutually sustainable operations solutions had to be sought with lenders, employees, trading partners, suppliers, tenants and landlords.
- 8.3 Against this background, we herewith request Council to consider this special condonation to extend the validity period of the approvals as issued by the Overstrand Municipality on 3 March 2014 and extended on 31 October 2019.
- 8.4 Furthermore, the approval of the small-scale subdivision diagram would enable the client to systematically implement the project having regard for the financial considerations that accompany large-scale projects such as the proposed.
- 8.5 The Arabella Phase 2 extension presents a significant capital injection for the local area and the region as a whole. The project will also contribute significantly to the creation of employment opportunities. Having regard for the difficult economic climate post Covid-19, it is inconceivable that a project of this nature could become redundant.

We therefore trust that Council will recognise the importance of the project and the impact that the pandemic had on the operations of our client and the livelihood of people in the area and find in favour of the application.

Kind Regards



JL VOLSCHENK
DENNIS MOSS PARTNERSHIP

