

MUNISIPALITEIT BERGRIVIER MUNICIPALITY



APPEAL REPORT

**APPLICATION TYPE: CONSOLIDATION, REZONING AND DEPARTURE: ERVEN 151, 152 & 153
DWARSKERSBOS MUNICIIPALITY PLANNING TRIBUNAL RESOLUTION No. PTN007/07/2022 OF 1
JULY 2022.**

Appeal reference number	D. 151-153		Appeal report date:	24/10/2022	
Application reference number	N/A	Application submission date	13/04/2022	Application decision date	01/07/2022

Was the original application processed correctly (if no, elaborate below): Y N

PART A: AUTHOR DETAILS

First name(s)	Keenin Alveno				
Surname	Abrahams				
Job title	Town and Regional Planner (East)				

PART B: APPLICANT DETAILS

First name(s)	Jody				
Surname	Frances				
Company name	JFC Consulting				
SACPLAN registration number	A/1363/2010				
Registered owner(s)	AJF Eigelaar & Sons (Pty) Ltd				
Is the applicant the appellant	<input checked="" type="checkbox"/> Y	<input type="checkbox"/> N	Is the appeal valid	<input checked="" type="checkbox"/> Y	<input type="checkbox"/> N/A

PART C: APPELLANT(S) DETAILS

First name(s)	Surname	Property description	Physical address	Valid/invalid
Kersbosstrand HOA C/O THE		All properties in Kersbos Strand		Valid

Management Agent OSRO CC				
Sandra	Erasmus	681, Dwarskersbos		Valid
Mynhardt Daniel	Erasmus	741, Dwarskersbos		Valid
Daniel Jacobus Christoffel	Putter	Unknown	13 Slakkepas	Valid
Bernike	Pienaar	841, Dwarskersbos		Valid
Heidi	Kritzinger	330, Dwarskersbos		Valid
Catharina Magdalene o/b/o Jacobus Theunis Briers Brink	Brink	115, Dwarskersbos		Valid
Albé	Truter	320, Dwarskersbos		Valid
Elfriede & Des	Flannagan	685, Dwarskersbos		Valid
Ninette	Hofmeyer	687, Dwarskersbos		Valid
Clifford Tolmay (Bosspruit Filling Station Pty Ltd)	Ferreira	136 & 137 Dwarskersbos		Valid
Bartholomeus Jacobus o/o/o C Smith	Goodwin	3310, Laaiplek		Valid
Anna JF	Visagie	242, Dwarskersbos		Valid
Total valid appeals	13			

PART D: APPLICATION PROPERTY DETAILS

Property description (in accordance with Title Deed)	Erf 151, Dwarskersbos Erf 152, Dwarskersbos Erf 153, Dwarskersbos				
Physical address	Main Road 535, Dwarskersbos		Town/City	Dwarskersbos	
Current zoning	Business Zone 1	Extent (m ² /ha)	Erf 151-446m ² Erf 152-446m ² Erf 153-446m ²	Are there existing buildings on the property	N

Applicable zoning scheme	Bergrivier Municipal Integrated Zoning Scheme By-law						
Current land use	Vacant			Title Deed number & date	T39577/1984 T49346/2012		
Any unauthorised land use/building work	Y	N	If Yes, explain				
PART E: SUMMARY OF PUBLIC PARTICIPATION							
Total valid comments	80 objections			Total invalid comments and petitions	N/A		
Valid petition(s)	Y	N	If yes, number of signatures	n/a			
Community organisation(s) response	Y	N	N/A	Ward councillor response	Y	N	N/A
Ward Councillor response	No comment was received.						
Total letters of support	None						
Was public participation undertaken in accordance with section 45- 49 of the By-law on Municipal Land Use Planning	Y	N					
If the Provincial Minister commented on the application, was he/she afforded the opportunity to comment on the appeal?	Y	N/A					
If the proposal triggered an application for land development in terms of section 10 of the Western Cape Land Use Planning Regulations, 2015, was the Provincial Minister afforded the opportunity to comment on the appeal?	Y	N/A					
PART F: SUMMARY OF COMMENTS DURING PUBLIC PARTICIPATION							
<p>This is the summary from the objections contained in the land use planning report to Municipal Planning Tribunal :</p> <ul style="list-style-type: none"> • <i>"The proposed development will lead to increased traffic to and from the property, and will require more road infrastructure maintenance.</i> • <i>The development will encourage heavy vehicles (trucks) to travel through Dwarskersbos.</i> 							

- Activities coinciding with the proposed service station will result in noise and adversely affect the tranquil character of the town.
- The position of the proposed service near a school is unsafe and undesirable.
- The need for a filling station is questioned as there are filling stations in Laaiplek and Velddrif about 10km from Dwarskersbos.
- There will be an influx of unwanted elements that could negatively affect the safety and security of residents.
- The value of residential properties will decrease.
- On-site parking would be insufficient.
- The development should not cause any pollution, be it noise, soil pollution, air pollution or pollution of the character of the environment.
- Dwarskersbos does not have an active unskilled/low skill labour force, and therefore workers would have to be transported from elsewhere, making the proposed development unsustainable.
- It is unclear where staff will be accommodated in town.
- The nearest police station in Laaiplek will not have the capacity to be able to cope with the influx of criminal elements and their response time will be inadequate.
- Dwarskersbos is approximately 10km away from the nearest police station, and the criminal elements associated with service stations could make reaction times too slow.
- The additional volume of vehicles expected, places an additional risk to pedestrians.
- The business will be operated 24 hours a day, 7 days a week, and will consequently have an adverse effect on the tranquillity of the area, with noise and gasses causing pollution and affecting the health of residents.
- The development will be a fire hazard.
- A shop with the service station will adversely affect the market share of existing businesses.
- Crime will increase.
- The lack of business development of this nature gives Dwarskersbos its tranquil identity, and is the reason why people choose to reside in Dwarskersbos.
- Travelling to and from Laaiplek/Velddrif is one of the factors residents have taken into consideration when choosing to stay in Dwarskersbos. Development of this nature would be more appropriate and advantageous to Velddrif and Laaiplek, where employment opportunities may be created.
- The proposed filling station would undermine the viability/feasibility of existing filling stations in Velddrif and Laaiplek, and would cost at least as many jobs as it creates. Existing service stations in Velddrif/Laaiplek have for the past 5 years seen in consistent decline in fuel sale volumes. The proposed service station will further divide the market for existing fuel retailers and put the jobs of people employed at existing service stations at risk.
- It is questioned whether the developer has considered the long term sustainability of the service station proposed, or whether the application is merely a tactic to delay or prevent another developer from developing a service station.

- With the inevitable growth of Dwarskersbos, it is questioned whether the proposed development would have the capacity to accommodate such growth in terms of scope and scale.
- It will be in the interest of residents of Dwarskersbos to have the opportunity to consider the proposals of the applicant and another potential service station developer.
- As business in the area increase, safety decreases. Supermarkets, petrol stations and furniture stores to stay 11km away.
- Location – There are 2 filling stations with 11km (Velddrif / Laaiplek) which is busy during the holidays and easter weekend. A third will withdraw from their business and workers will retire.
- Environmental Factor – Rise in fuel prices means less drivers, not only to save money but to combat global warming.
- Potential ground water pollution due to leaking fuel tanks. Dwarskersbos is depended on underground septic tanks.
- If filling station is unsuccessful, will developer be held responsible for maintenance or demolition? The land must be rehabilitated so they do not become shelters for the homeless.
- A gas station will make the aesthetic value and character disappear.
- Traffic – Highway is already busy. Influx of vehicles and trucks will pose greater danger to pedestrians. Plans of pedestrian safety?
- Predicted volumes for the proposed station do not comply with current trends within the area.
- Filling station is a source of pollution as petrol is considered to be volatile compound, which have impacts on residents if located close to residential properties.
- Impacts on visual character. Located on topographical incline and thus will be noticeable to surrounding residential properties.
- Exercising the constitutional right in terms of Section 24. Everyone has the right to an environment that is not harmful to their health or wellbeing; an environment that is protected, for the benefit of present and future generations - by preventing pollution and ecological degradation; promote conservation; secure ecologically sustainable development and use of natural resources.
- Protection against explosions, armed robberies, and groundwater pollution? Dwarskersbos has no hospital, fire department, or police station which means increased response times to emergencies.
- Laaiplek and Velddrif is close enough for any refuelling of any vehicle.
- Dwarskersbos is a retirement and holiday village and does not require mainstream industrial and economic opportunities.
- Traffic is above average high – more traffic on / off main road 535. Exit has no orderly traffic signs.
- Safety and noise pollution.
- Movement of heavy vehicles through the town puts pressure on existing infrastructure as well as structural damage.
- High risk fire hazard especially for surrounding thatched roofs.

- *Negatively change existing character due to increase traffic volume, more movement, noise pollution.*
- *Deviation of street building line indicates too little space for station.*
- *Evidence for the level of soil shows it won't work.*
- *Unhealthy development adjacent to the primary school.*
- *Filling stations attract undesirable individuals, litter, pollution, etc.*
- *Filling station will lead to job loss and current volumes are based on local commuters to and from work.*
- *24/7 trading times brings negative impact on the tranquillity of the environment.*
- *Negative impact on the value of property for surrounding plots.*
- *Crime will skyrocket - Prostitution, handling of drugs, hijacking, and robberies.*
- *High fire risk affecting property insurance.*
- *Affects water pressure.*
- *Wildlife protection (birds, and especially tortoises) is of importance.*
- *Main road cannot carry the weight of 10ton fuel trucks carrying a 30 000-litre load.*
- *The use of staff? No public transport between Dwarskersbos and Velddrif / Laaiplek.*
- *No pavement along main road means children and elderly movement is dangerous along the main road.*
- *No EIA was provided? Has it been done?*
- *Negative effect on the current shops in the town as it won't only be a filling station?*
- *Was a feasibility study performed? Regarding the environment.*
- *Sewer systems is insufficient for more extensions.*
- *Existing water distribution system has insufficient capacity to supply future water demands.*
- *Close proximity to residential area exposes diseases that affects the brain, lungs, and kidneys. Has an impact study been done?*
- *Biophysical aspects should be taken in consideration and protected. "*

PART G: SUMMARY OF MUNICIPAL EVALUATION ON ORIGINAL APPLICATION

"The properties are located among other business properties, along the main road passing through Dwarskersbos, where mixed uses are advocated in terms of the BMSDF.

The proposed service station applied for is considered compatible with the land uses in the area and favourably located for such purposes along Main Road 535.

The proposed development will provide job opportunities in Dwarskersbos and this in turn will contribute to the social well-being of those employed and their families. Even if the job opportunities is not taken up by local residence, it is not uncommon for employees to travel long distances to reach employment opportunities.

The development of the existing vacant business properties in Dwarskersbos facilitates efficient use of land and infrastructure resources.

Section 65(1)(s) of the Bergrivier Municipality By-Law on Municipal Land Use Planning requires that the Municipality must have regard to the relevant provisions of the zoning scheme when considering an application. Apart from the 5m street building, the proposed develop complies with the development parameters applicable to Business Zone 6 in terms of the Bergrivier Municipality: Integrated Zoning Scheme By-Law. The existing Business Zone 1 properties have 0m street building lines applicable, and may therefore be developed up to the street boundaries thereof. In the case of a service station however, a 5m street building line is required. The physical street (Main Road) is approximately 40m from the street boundary of the subject properties. The reason for this is due to the extra wide road reserve allowed for at that time when these properties were surveyed during 1966. On the Surveyor-General Diagrams, the road reserve in from of the subject properties is labelled as a "plein". The road reserve is currently zoned as Transport Zone 2 (Public road) used for parking and access to the business properties, with a surveyed road of 12.5m wide around the business properties. To require a 5m street building line in the context of these properties would serve no purpose, and the application for departure thereof to 0m is supported.

At present access over the road reserve/"plein" is not formalised. If this application is supported, it is recommended that a condition be imposed that requires the formalisation of access to the subject property in accordance with the road access design plan referenced 10028/004. The access route from the Main Road would need to be surfaced to the satisfaction of the Municipality's Directorate Technical Services to reduce the generating of dust and soil erosion.

The development parameters (e.g. coverage, height etc.) applicable to Business Zone 6 are more restrictive than the development parameters applicable to Business Zone 1. The development proposed is for three fuel pumps, office space and toilets, within a structure of ±55m² representing a coverage of less than 5% on the consolidated property. The proposed development would therefore be of a small scale, appropriate for the rural character of the receiving environment."

The full land use planning report submitted to the Municipality Planning Tribunal is hereby attached as **ANNEXURE A**, which includes the Municipal departmental evaluation of the application.

PART H: DECISION ON APPLICATION

Bergrivier Municipal Planning Tribunal considered and conditionally approved the application on 01 July 2022 via Decision No. PTN007/07/2022. The decision is attached as **ANNEXURE B**.

PART I: TYPE OF APPEAL

First name(s)	Surname	Type of appeal
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Part C of this report include the 13 appellants details.	Appealing the decision	Y	
	Appealing the failure of the decision maker to make a decision within the period permitted	Y	N
	Appealing a condition(s) of approval	Y	N
	Appealing the process followed	Y	N
	Appealing the conclusion of the decision maker regarding the merits of the land development application	Y	

PART J: APPEAL(S) MOTIVATION (APPEAL BY OR ON BEHALF OF OBJECTOR(S))

The 13 appeals are summarised as follow:

- Bergrivier Municipality did not apply its mind, because the same reasons for resolution were provided with the current decision by the Municipal Planning Tribunal.
- The conditions laid down in the approval lacks due diligence, research without conducting or requesting for Environmental Impact Assessment to be conducted by law.
- An Environmental Impact Assessment needs to be conducted by the competent authority which is Bergrivier Municipality.
- Bergrivier Municipality didn't consider nor conduct the necessary assessment for starter a condition was imposed that trucks with a loaded weight of more than 10tons may not make use of the proposed fuel station, the main road (R399) was never constructed to cater for trucks with a weight load of 10 tons or less.
- Movement of heavy vehicles through the town puts pressure on existing infrastructure as well as structural damage
- The trucks will be avoiding the weight bridges on the other planned routes by making use of the R399.
- No consideration has been given to wild life of the R399, Dwarskersbos is well known for its turtles wondering the roads, how would a truck with 10 tons loading weight and on this narrow road avoid running them over.
- The Petroleum Products Act, 1977 (PPA) as amended in 2006, also controls the number of filling stations to make sure the optimal number in the area is not exceeded because this will subsequently lead to a high negative economic impacts on other filling stations.
- The filling station must be less than 100m from the nearest residential dwelling house. The 100m radius was not taken into consideration, because the nearest dwelling house is less than 46m radius from the proposed filling station.
- A new filling station will generally not be approved where they will be within a 100m of residential properties, schools, hospitals. The filling station is considered socially and culturally sensitive adjacent to a primary school and elderly residents.

- Filling station will significantly impact on the visual character of the surrounding neighborhood.
- Filling stations are considered to be a point source of pollutions as petrol is considered a volatile compound, which could potentially have a significant impact on the residents in close proximity thereto.
- Incompatibility in terms of the Development Facilitation Act 67 of 1995. The promotion of optimum use of existing resources on Municipal transport is compromised in terms of section 3(c)(iv).
- There are several filling stations within less than 25km.
- Section 24(a) of the Constitution guarantees the fundamental rights of everyone "to an environment that is not harmful to their health or well-being." to realise this right, s 24(b) imposes positive obligation on the state to protect the environment to protect the environment "through reasonable legislative and other measures that prevent pollution...while promoting justifiable economic and social development.'
- Notices was not provided on site and not enough was done to communicate to all residents. (Public meeting was not conducted).
- Appellants want to know what franchise will be providing the petrol station with petrol and diesel.
- This application for filling station repeated itself more than once and still the processes are being repeated.
- To which road is the 5m street building line applicable as the property border three roads?
- The paragraph stating the cut of date for appeals to be within 21 days of notification of the decision is not clear, is it 21 days after we were notified or 21 days after the letter to confirm the decision was written?
- High fire risk especially for surrounding thatched roofs in Slakkepas, which may increase insurance premiums as a result of the filling stations close proximity ($\pm 65m$).
- Is fire and disaster management services equipped and trained for petroleum based fires, thatch roof and what will they be timeously available?
- Elderly, sick and disabled residents cannot move fast and find it harder to evacuate if a disaster should occur.
- The proposed development will pollute existing boreholes and unground water sources should leakage occur on the property.
- Crime will increase as a result of the petrol station and truck drivers sleeping over, it will cause more harm than good.
- How will the conditions be controlled/monitored and what is the consequence of non-compliance?
- The proposed development will negatively impact on property values for residents of Dwarskersbos.

- The Business Zone 1 caters for a variety of land uses, but so does the erf next to it. The town is too small to cater for another supermarket, etc. The public interest must be taken into account when deciding on a land use application.
- The reasons supplied in the decision states the potential impact to residents will be marginal, how was this determined and evaluated?
- The development caters for office space and toilets, this puts more strain on an already over worked sewerage and fresh water system.
- The application is in conflict with the MSDF considering the biophysical strategies, which states “protect the unique visual scenery and sense of place that the coast and coastal road northwards provides.”; Further encroachments of the CBA and ESA natural system should not be permitted, how does a filling station positively contribute to the existing rural ambience.
- The proposed filling station will negatively impact on the commercial/retail node for Dwarskersbos which is clearly in conflict with the MSDF.
- Socio Economic: Balance the real need versus feasibility of new economic development in town, the first objective in the process is to obtain site and retail licenses from the Department of energy.
- Compliance with other legislation is still necessary.
- The northern section of the informal road just west of Erf 136 (incorrectly labeled as 138 on the diagram) and Erf 137 (both belonging to Bosspruit) crosses a section of Remainder Erf 154 ($\pm 1260\text{m}^2$) in extent, with reserved SG number 1104), which Bosspruit is in process of acquiring from Bergrivier Municipality in terms of a tender, is busy with the necessary subdivision and rezoning application for Erf 136 and 137, Dwarskersbos for service station among other, and if this development is approved it may potentially have a direct impact on this property owners.

The 13 appeals received are attached as **ANNEXURE C**.

PART K: COMMENT ON APPEAL (UNDERMENTIONED IS A SUMMARY FROM THE APPLICANTS FULL RESPONSE ON APPEAL)

The applicant's responses to appeals received are as follows **ANNEXURE D**:

1. Kerbosstrand HOA c/o the Managing Agents OSRO CC

The proposed development and use of the subject property with a low-key service station is not associated with a traffic generating use, and save for local residents, the proposed service station will seek only to tap into existing passing traffic – there will be no attraction of heavy-duty vehicles to the subject property.

With regard to the policing of the imposed conditions of approval, the said conditions as imposed by the MPT require that the appropriate signage be put in place to inform passing traffic that vehicles of a certain mass may not access the service station. If this is not adhered to by passing traffic, then the operator of the service station, at the risk of potentially losing the land use right concerned will have to act in accordance with the applicable condition. In the above regard, it is clear that the mechanisms to deal with non-compliance of conditions of approval are in place in terms of the by-law's enforcement powers.

With regard to the concerns raised about the potential environmental impacts, and as has been submitted to the Municipality, an Applicability Checklist Application to the Provincial Department of Environmental Affairs and Development Planning, was undertaken to test whether the application / development concerned triggered the need for Environmental Authorisation – in this regard the said Department qualified in their letter dated 14th December 2020 that 'An environmental authorisation from the competent authority would not be required for the proposed development'.

2. Sandra Erasmus

The proposed development of a service station will definitely create a number of additional employment opportunities during the associated construction period, with permanent employment opportunities created in the management and operation of the service station. The issue of impact studies has been dealt with in the previous response above, with regard to the undertaking of an Applicability Checklist Application to the Provincial Department of Environmental Affairs and Development Planning.

With regard to the argument that the circulation of the application was insufficient - based on the response received to the circulation of the application, it seems evident that the awareness of the application was very well and very widely communicated. Also, based on the nature of the feedback received, it is evident that the technical nature of the application was understood. In addition to the Municipality's' circulation of the application, the Applicant of his own volition approached the Chairperson of Dwarskersbos Community Committee (Mr. F. Labuschagne) and his community-based organization, and offered an opportunity for direct consultation, in the form of either a direct written response to questions that they had, or alternatively to arrange a meeting with representatives of the organisation to discuss the mentioned application. All of the above serves to confirm that the affected community was indeed very well informed of and about the land use application concerned - the letters of objection received as well as by the canvassed petitions that were signed attest to the above.

3. Mynhardt Daniel Erasmus

Also, the issue of impact studies has been dealt with in the previous responses above, with regard to the undertaking of an Applicability Checklist Application to the Provincial Department of Environmental Affairs and Development Planning.

4. Daniel Jacobus Christoffel Putter

As pointed out by the MPT in Reason 4, the development proposal creates employment opportunities, this creation of employment opportunities implies a greater physical presence at the property which in turn results in improved surveillance and monitoring for the surrounding community, this will ultimately result in residents (both young and old) feeling more at ease when moving to and from the local shops.

The Appellant in this appeal raises concerns which have already been raised in the comment / objection period which have been responded to and which have been dealt with by the MPT in the reasons provided for their decision, and thus does not warrant a repeat.

5. Bernike Pienaar

In terms of the grounds raised by this Appellant in support of the appeal, the Applicant is of the considered opinion that the argument put forward by the Appellant does not succeed in challenging any of the as put forward by the MPT in support of their decision.

The grounds in support of the Appellants appeal, also does not acknowledge Conditions 1(d) and Condition 1(k), which regulate the hours of operation, as well as which prohibit any form of overnighting or accommodation being provided or allowed at the property.

In this regard, the MPT has been thorough in the nature of the conditions imposed on the land use application to mitigate any impact.

6. Heidi Kritzinger

The Appellant in this appeal raises concerns which have already been raised in the comment / objection period. These comments have been responded to by the Applicant, they have also been considered and assessed by the Municipality in the drafting of their evaluation report and they have been considered by the MPT in the formulating of their decision on the application.

In terms of the above, the Applicant does not consider it necessary to repeat the previously provided responses, especially as these already form part of the record of the application.

7. Catharina Magdalene Brink o/b/o Jacobus Theunis Briers Brink

The concerns with regard to the enforcement of the condition of approval have been previously dealt with, and as a result will not be repeated here, suffice to say that the imposition of limitations / conditions on approvals as issue by the MPT in terms of the Planning By-Law has been identified as being a means by which the potentially adverse impacts of a proposed land use can be mitigated.

The imposition of conditions to the end occurs with almost every land use approved by the MPT, therefore, its enforcement is similarly central to the system which the by-law sees as being able to control and regulate land use activity.

Non-compliance of a land use with the by-law is subject to the Enforcement protocols of the By-law, which could result in criminal sanction.

Arguments pertaining to the circulation of the application have been dealt with above, the Applicant does not consider it necessary to repeat the previously provided responses.

8. Albe Truter

The Appellant in his representation raises numerous questions with regard to the proposed use, all of which have been addressed in either the Applicant's Motivation Report, the previous objections and the Applicants Response thereto, the Department of Environmental Affairs and Development Planning's Letter of 14th December 2020, the Municipality's Evaluation report or MPT's reasons for their decision. Collectively, the above sources adequately respond to the questions raised, with the result that there isn't any one question in particular that requires a response, or that challenges the decision of the MPT, or the reasons provided in support thereof.

In addition to the above, the Applicant notes that many of the Appellants raise the concern of fire with regard to the application concerned. To this end, it would be worth reflecting on the number of incidents in which service stations have had fires breakout on site which have led to the damage of abutting properties. The Applicant suspects that not many can be recalled, which is due to there not being many such incidents. This is due to the additional safety precautions that are required at service stations.

9. Elfriede & Des Flannagan

The submission by the Appellant does not serve to challenge any aspect of the decision or the reasons given by the MPT, with the result that there isn't any argument for the Applicant to comment on.

Instead, the Appellant provides a list of random statements none of which in the Applicants assessment constitutes a challenge of the merits of the application which in terms of the decision and reasons of the MPT have twice been found to be desirable.

10. Ninette Hofmeyer

The Appellant in this appeal raises concerns which have already been raised in the comment / objection period. These comments have been responded to by the Applicant, they have also been considered and assessed by the Municipality in the drafting of their evaluation

report and they have been considered by the MPT in the formulating of their decision on the application.

11. Clifford Tolmay Ferreira (Bosspruit Filling Station Pty Ltd)

The appeal submitted by the Appellant, in addition to attaching a previous letter of objection argues that, *inter alia*, the Tribunal did not consider the Appeal Authority's comments before they made their decision.

In terms of the above, it is acknowledged that the public participation process as conducted by the municipality was carried out in accordance with the requirements of the by-law, and thus there is no review of the decision by the MPT being made on the basis of the administrative action was defective. Rather the argument is that the procedural action was not as exhaustive as it could have been. In this regard, the Applicant acknowledges the reason the Appeal Authority provided for the previous revocation of the decision by the MPT to approve the application, which was due to the limitations which the then COVID lockdown restrictions had on an effective public participation process. In the processing of the resubmission of the previously approved application, and with the knowledge of the reason which the Appeal Authority previously provided for the revocation, both the Berg River Municipality as well as the Municipal Planning Tribunal did not consider it necessary for additional public notice of this application, due to concerns of the notice in accordance with Section 45 or 46 being ineffective. This position by the Municipality and the MPT was validated by the coherent response received to the public participation process associated with the application concerned.

In addition to the above, the Applicant, of his own volition approached the Chairperson of Dwarskersbos Community Committee (Mr. F. Labuschagne) and offered his community-based organisation an opportunity for direct consultation, in the form of either a direct written response to questions that they had, or alternatively to arrange a meeting with representatives of the organisation to discuss the mentioned application. This offer was conveyed in an email dated 5th May 2022. In a responding email on 5th May 2022, Mr. Labuschagne advised that the offer of the Applicant had been forwarded to the rest of the committee for their comment. On 25th May 2022, the Applicant followed up with the Chairperson, Mr. Labuschagne, on whether the community organization sought to engage directly with the Applicant regarding the application made. In a responding email from Mr. Labuschagne, received on 26th May 2022, the Chairperson of the Dwarskersbos Community Committee advised as below:

"At this stage we do not require any additional information or clarification with regard this application. Thank you for your offer to assist us should we need any further assistance. "

In terms of the above, the Applicant had sought to act in direct response to the reason for the revocation by the Appeal Authority in seeking to engage directly with the affected community via the community organisation concerned. The Municipality was copied into the

communications with the Dwarskersbos Community Committee and were aware of the offer made by the Applicant to provide the additional public engagement via the said committee, and would have seen the response by the chairperson, that no additional information was required at the time.

The issue of access which the Appellant raises in his letter, has been dealt with by the authority responsible for the road concerned, being the Provincial Department of Transport and Public Works, who in their letter dated 23rd February 2021, confirmed that:

This Branch is satisfied that the above erven will obtain access from the formalised municipal street system as detailed in the plan referenced in paragraph 1.4 above.

It is to be noted, that access can only be considered and planned in terms of the current cadastral of the surrounding properties, and not in terms of what could be. The said provincial department applied its mind to the application based on the current registered arrangement of erven and provided its supportive comment in this context.

12. Bartholomeus Jacobus Goodwin o/b/o C. Smith

The reason provided by the MPT in support of their decision speaks directly to the grounds for the appeal as raised by the Consultants on behalf of Ms. C. Smith.

With regard to arguments of biophysical impact, here it must be remembered that the subject properties are already zoned for business development and could be developed with a much greater development footprint versus that proposed by the Applicant, and that such development could proceed without any consultation with surrounding properties. To argue against the development of the property is to assume that it has no development rights at the moment, which would not be accurate, rather the formulation of an argument in support of any appeal ought to acknowledge the current development rights and permitted development envelope and to contrast that with the application concerned and based on the difference to argue the aggravated impact. However, in this case and as has been acknowledge by the MPT:

Due to the small scale of the proposed service station (55m² building with three pumps, an office and toilets), with a coverage of less than 5% of the consolidated property, and it being set back approximately 65m from the nearest residential properties opposite the main road, the potential impact on the public interest would be marginal. In comparison, the existing development rights afforded to the subject properties could potentially have a much greater adverse impact on the public interest.

As correctly noted by the Appellant, application for a Site and Retail License must be made to the Department of Minerals and Energy. This application follows the land use application process. The processing and determination of a land use application in terms of the municipal

planning by-law, for a service station does not require the submission of feasibility studies. Such studies are typically required to be submitted to the Department of Minerals and Energy. When that stage in this process is arrived at, the necessary studies will be commissioned by the Applicant.

It is also evident that this appeal is motivated on the ground of trade competition, in that the Appellant is concerned that the proposed service station may potentially cannibalise volumes from their existing service station. This ignores the benefits for local residents having easier access to such facility, versus having to spend the additional time and cost of getting to another facility 10km away. This represents not only a loss of revenue to local residents and businesses, but also loss of potentially productive time. As conveyed by the MPT:

The development of a service station could be beneficial to residents, visitors to the town and tourist passing through Dwarskersbos, not having to travel to and from Velddrif/Laaipek for fuel.

13. Anna JF Visagie

The Appellant in this appeal raises concerns which have already been raised in the comment / objection period. These comments have been responded to by the Applicant, they have also been considered and assessed by the Municipality in the drafting of their evaluation report and they have been considered by the MPT in formulating their decision on the application.

The reasons as provided for the decision taken by the MPT address the issues raised by the Appellant, in confirming that the impact will be marginal, especially when compared with that which could otherwise be developed, based on the existing business rights, rights which include:

a shop, big box retail, supermarket, restaurant, sale of alcoholic beverages, two electronic or mechanical playing devices, plant nursery, office, funeral parlour, financial institution and building for similar uses, place of assembly, institution, hotel, hospital, conference facility, rooftop base telecommunication station and multiple parking garage; and the following land uses above ground floor: flats, caretaker's quarters, backpackers lodge, youth hostel, as well as boarding houses.

PART L: PROVINCIAL MINISTER'S COMMENT ON THE APPEAL (IF REQUIRED)

No comments were received from the Provincial Minister on the appeal.

PART M: THE MUNICIPAL ASSESSMENT OF COMMENTS (APPEAL PROCESS)

Complying with other requirements in terms of other parallel legislation

In terms of section 42 (2) of the Spatial Planning and Land Use Management Act, "when considering an application affecting the environment, a Municipal Planning Tribunal must ensure compliance with environmental legislation. The application was circulated for comment to the competent authority (Department of Environmental Affairs and Development Planning) for environmental consideration in terms of the National Environmental Management Act, which submits the following in their letter referenced 16/3/3/6/1/F1/4/2180/20 dated 14 December 2020 **"This Department has reviewed your correspondence and is of the opinion that the proposal to develop a fuel station with tanks containing 69m³ of fuel on Erven 151, 152, and 153, Dwarskersbos does not fall within the ambit of the following listed activity: Item 14 of GN No. R. 983 (as amended).**

This Department is further of the opinion that the proposed fuel station does not constitute any other listed activities as defined in the EIA regulations, 2014 (as amended).

An environmental authorisation from the competent authority would not be required the proposed development."

Considerations in terms of the Petroleum Products Act is not a pre-requisite for land use application in terms of section 38 of Bergrivier Municipal By-Law on Municipal Land Use Planning or section 42 of The Spatial Planning and Land Use Management Act, 2013 and therefore the decision makers can't take into account these aspects.

Section 40(7) of the Western Cape Land Use Planning Act, 2014 (Act 3 of 2014) states "A municipality may not approve a land use application subject to a condition that approval in terms of other legislation is required." Approval in terms of one law does not exempt the owner(s)/applicant from complying with the requirements of any other legislation e.g. Petroleum Products Act. It is submitted that the wording of section 40(7) mentioned above does not make a land use planning application subject to approval in terms of other legislation, but merely state that the applicant is not exempted from complying with other requirements in terms of other parallel legislation.

Municipal Planning and Petroleum Products, EIA applications must each be subjected to the process set out in terms of their respective legislation and each much be considered on the relevant considerations stipulated in that legislation. The applicable legislation does not provide for the process in terms of the one act to be delayed because of another process required by another act. Neither does the legislation provide for one authority to wait for the other authority's decision to be issued.

The Petroleum Products Act (the "PPA") and the, National Environmental Management Act ("NEMA") are distinct and separate from the applicable planning legislation (i.e. LUPA and SPLUMA). Each of the authorities concerned have their own functional terrain.

Marked economy

Section 152(1) (c) of the Constitution of the Republic of South Africa, 1996 lists the promotion of social and **economic development** as an object of local government. Section 196(1)(d) of the Constitution states that services must be provided impartially, fairly, equitably and without bias. Any act/comment/objection amounting to an attempt to establish a monopoly, reduction of competition or restriction of competition in the market of any particular goods or any particular service cannot be viewed as a negative impact, of a proposed development, on property rights or economic impact.

Value of land or property will be affected

As provided in the reasons for resolution by the MPT " Section 59 (1) (f) of the Land Use Planning Act, Act 3 of 2014 (LUPA), states competent authority may not be impeded or restricted in the exercise of its discretion solely on the ground that the value of land or property will be affected by the outcome of an application. This aspect can therefore not serve as a reason for refusal of an application.

Non-compliance with conditions of approval

Bergrivier Municipality By-law on Municipality Land Use Planning determine:

"Enforcement

85. (1) The Municipality must comply and enforce compliance with—

(a) the provisions of this By-law;

(b) the provisions of a zoning scheme;

(c) conditions imposed in terms of this By-law or any law repealed by the Land Use Planning Act."

The offences and Penalties, as a result of non-compliance is addressed in terms of section 86 of Bergrivier Municipality By-law on Municipal Land Use Planning.

Additionally to aforesaid compliance with conditions imposed is also scrutinized during building plan submission.

Public Participation Process

The public participation pertaining to this application was done in accordance section 45 & 46 of Bergrivier Municipality By-Law on Municipal Land Use Planning and included:

- a) notice of the application to surrounding affected property owners by registered mail and mail;
- b) notice of the application placed on the Municipal Website as well as notice boards (throughout the public participation period);
- c) advertisements in a local newspaper (Die Weslander); and
- d) Provincial Gazette.

In addition to aforesaid, on 5 May 2022, the applicant approached the chairman of the Dwarskersbos Community Committee, Mr Frans Labuschagne to offer his organisation the opportunity for direct consultation, in the form of a direct written response to questions that they may have or to alternatively meet in person to discuss the application. Mr Labuschagne responded on the same day to confirm that the application has been forwarded to the committee for their inputs. The applicant followed up with Mr Labuschagne on 25/05/2022 to confirm whether the committee require any additional information or clarification with regard to the application. Mr Labuschagne responded by stating that they do not require any additional information or clarification with regard the application

The public participation process required in terms of Bergrivier Municipal By-Law on Municipal Land Use Planning, is considered procedurally fair and provided adequate opportunity to enable the public and community to provide meaningful representations on the proposed application.

Reasons for Resolution by the Municipal Planning Tribunal

In terms of Bergrivier Municipality Integrated Zoning Scheme-By-law : Service Station means.

"service station" Land use description: "service station" means property for the retail supply of fuel, and-

(a) include uses such as washing of vehicles, a convenience shop and a restaurant; and

(b) does not include spray-painting, panel beating, motor repair garage, open air motor vehicle display or truck stop.

The amount of land uses allowed under abovementioned land use description are less than those allowed as primary land use right on the property. The scale of proposed development is ±55m² building with three pumps which represents 5% of the consolidated property, but if current primary land uses is developed under Business Zone 1, it could be developed to 100% of each property in the absence of a consolidation application. Primary land use development parameters under Business Zone 1, include among other 15meter height restriction, 100% coverage, maximum floor factor of 3 etc.

The existing zoning of the property allows a variety of land use as primary land use right, stated in the reasons for resolution by the Municipal Planning Tribunal, which can be more adverse if developed to its full capacity, than the proposed application for services station. The proposed development is setback approximately 65m from the nearest residential properties opposite the main road.

The existing Main Road 535 already generate noise and disturbances from passing vehicles. The proposed development of a service station will have a less intensive impact on rural character of Dwarskersbos, considering the small scale thereof. The proposed development will be beneficial to passing traffic, visitor, tourist and residents of Dwarskersbos, not having to travel to and from Velddrif/Laaipek.

Dwarskersbos has predominately been residential development, with very little business development, the residents have grown accustomed to the current status quo, despite business opportunities being available on existing vacant business zoned properties.

Traffic, particularly heavy vehicles and speeding, through Dwarskersbos is a constant complaint from residents. The reality is that the traffic through Dwarskersbos is inevitable due to the Main Road 535 passing through Dwarskersbos. Additional traffic may still be created by business utilisation on other properties in line with primary land use rights, which will be beyond the control of the applicant or residents.

Section 65(1)(s) of the Bergrivier Municipality By-Law On Municipal Land Use Planning requires that the Municipality must have regard to the relevant provisions of the zoning scheme when considering an application. The proposed development complies with the development parameters applicable to Business Zone 6, despite the 5meter street building line departure in terms of the Bergrivier Municipality: Integrated Zoning Scheme By-Law. The existing Business Zone 1 properties have 0m street building lines applicable, and may therefore be developed up to the street boundaries. In the case of a service station however, a 5m street building line is required.

The Municipal Planning Tribunal in reaching its decision took into account, among other, the Spatial Development Framework (SDF) which is one of the core components of an Integrated Development Plan (IDP). A SDF must include the provision of basic guidelines for a land use management system for the municipality. Section 35 (2) of the MSA determines that the IDP binds the municipality in the exercise of its executive authority, except to the extent of any inconsistency between a municipality's integrated development plan and national or provincial legislation, in which case such legislation prevails. In terms Section 21.(d) of the Spatial Planning and Land Use Management Act, 2013 (SPLUMA) a Municipal SDF must, among other, identify current and future significant structuring and restructuring elements of the spatial form of the municipality, including development corridors, activity spines and economic nodes where public and private investment will be prioritised and facilitated.

The Bergrivier Municipality Spatial Development Framework (BMSDF) 2019-2024 identifies the area in which the subject properties are located in the Central Business District and commercial/retail node of Dwarskersbos. The subject properties are earmarked for mixed use opportunities within the retail precinct in terms of the BMSDF.

Fire safety aspects has been addressed by means of conditions of approval by the Municipal Planning Tribunal, and is considered sufficient to address the problem aspects foreseen.

The competent road authorities further did not object to the application under consideration, and therefore conditions of approval were considered to address the problem aspects foreseen.

It is submitted that all relevant matters were dealt and considered adequately by the Municipal Planning Tribunal and that specific matters relevant to the reasoning on the land use planning application were answered providing an adequate statement of reasons which enabled informed land use planning decision making as required in terms of the Promotion of Administrative Justice Act. The evaluation of the appeal and comment thereon, do not result in an alternative conclusion than the reasons provided in the reasons for resolution of the Municipality Planning Tribunal.

PART N: MUNICIPAL PLANNING EVALUATION ON APPEAL

Is the proposal consistent with the principles referred to in chapter 2 of SPLUMA and Chapter VI of LUPA? (can be elaborated further below)	Y	N
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(In)consistency with the Spatial Planning and Western Cape Land Use Management Act, 2013 (Act 16 of 2013)

The Spatial Planning and Land Use Management (SPLUMA), Act 13 of 2013 provides spatial planning and land use management on a national level. It therefore proposes specific developments principles for spatial planning, which can be summarized in five main points, namely: the principle of (a) spatial justice, (b) spatial sustainability, (c) efficiency, (d) spatial resilience, and (e) good administration. The application under consideration supports the principles as follows:

The proposed development of Erf 151, 152 and 153 Dwarskersbos will expand additional small scale economic activity on and along a Central Business/retail node.

The proposal facilitates development which promote a more integrated and sustainable business node in Dwarskersbos. Limited employment opportunities will be created by the small scale service station, but will enable passing vehicles, residents of Dwarskersbos and tourist to have access to the retail supply of fuel in town, without having to travel to Velddrif/Laaipelek.

The proposed development promotes sustainable and efficient development by making optimal use of underutilized properties within the urban edge and effective use of existing

infrastructure rather than expanding on the outskirts of town placing pressure on agricultural resources and necessitating expansion of infrastructure networks. Existing service infrastructure will be utilised, thus contributing to spatial efficiency and sustainability.

Erf 151,152 and 153 Dwarskersbos is vacant. The opportunity presented through redevelopment promotes desirable spatial form and reflects the resilience of the property within a changing environment in line with current norms (MSDF).

Broadening the scope of service suppliers in town will create limited job opportunities considering the scale of the services station, but will contribute to the social wellbeing of those families employed.

The opportunity to influence land use within the Municipality is given through public participation processes during the compilation/review of the Municipal IDP, Municipal SDF, the Municipal Zoning Scheme as well as when land use planning applications are received. The properties are identified in the Municipal SDF as part of the envisaged Central Business District and commercial/retail node of Dwarskersbos. The subject properties are earmarked for mixed use opportunities within the identified retail precinct in terms of the BMSDF. The proposal is therefore in line with the relevant policy framework.

The application was advertised and processed in accordance with the regulations and principles prescribed in terms of the Bergrivier Municipal By-Law on Municipal Land Use Planning. The required public consultation process was conducted and relevant departments and institutions were given the opportunity to provide input before consideration of the application.

The application in terms of the aforesaid are regarded to be consistent with relevant development principles of SPLUMA and LUPA in the context of the properties specific circumstances.

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

Consistency with the land use planning principles referred to in section 59 of LUPA, were determined. The grounds of appeal do not compel additional deliberation of these principles.

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

The Bergrivier Municipality Spatial Development Framework (BMSDF) 2019-2024 identifies the area in which the subject properties are located as a Central Business focus area and commercial/retail node. The subject properties are earmarked for mixed use node / retail precinct in terms of the BMSDF.

The area is included identified as strategic site for strategic projects and mixed use opportunities in terms of the BMSDF with the following project description:

Provide diverse and flexible spaces for community services to support permanent residents and also allow for short term activities during peak seasons. Include a primary school, public square and old age facility.

It is submitted that the MSDF found that there is room for further business and mixed use opportunities. Based on the aforementioned principle the MSDF did not place restrictions on what mixed land uses may be establish in Dwarskersbos nor how many of one sort of development may establish in proximity to one another.

The appeals does not compel additional deliberation of the consistency with the SDF's as provided in **ANNEXURE A**, which has already been established.

(In)consistency with guidelines prepared by the Provincial Minister

N/A

Impact on Municipal engineering services

The conditions of approval are considered adequate to address the availability of engineering services and access/entrance road standards.

Outcomes of investigations/applications i.t.o other laws

N/A

Existing and proposed zoning comparisons and considerations

A comparison between the existing and proposed zoning was done as part of the Land Use Planning report, hereby attached as **ANNEXURE A**.

The desirability of the proposal

Desirability is determined based on the current land use application in relation to its surroundings from a land use planning perspective. The properties are located among other business properties, along the main road passing through Dwarskersbos, where mixed uses and are advocated in terms of the BMSDF. The properties are also located along the earmarked Central Business focus area and commercial/retail node.

The proposed scale of the development is compatible with the land uses in the area and favorably located for such purposes along Main Road 535, which is also earmarked as retail/Central business node in terms of the MSDF.

The proposed development will provide limited job opportunities in Dwarskersbos and this in terms will contribute to the social well-being of those employed and their families.

The development of the existing vacant business properties in Dwarskersbos facilitates efficient use of land and infrastructure resources. Having a small service station in Dwarskersbos would be a convenience for residents and visitors, not having to travel to Velddrif/Laaipek for refuel their vehicles.

Objections regarding trade competition is not a criteria of consideration in terms of planning law. Any act amounting to an attempt to establish a monopoly, reduction of competition or restriction of competition in the market of any particular goods or any particular service cannot be viewed as a negative impact, of a proposed rezoning, on property rights.

Traffic, particularly heavy vehicles and speeding, through Dwarskersbos is a constant complaint from residents. The reality is that the traffic through Dwarskersbos is inevitable due to the Main Road 535 passing through Dwarskersbos. Additional traffic may still be created by business utilisation on other properties in line with primary land use rights, which will be beyond the control of the applicant or residents, the scale of the proposed development is not anticipated to result in additional traffic beyond the amount of traffic that can already be generated in terms of the existing use rights.

The application is considered desirable from a planning perspective in terms of the aforesaid and can be supported from a planning perspective subject to conditions.

The development parameters (e.g. coverage, height etc.) applicable to Business Zone 6 are more restrictive than the development parameters applicable to Business Zone 1. The development proposed is for three fuel pumps, office space and toilets, within a structure of $\pm 55\text{m}^2$ representing a coverage of less than 5% on the consolidated property. The proposed development would therefore be of a small scale and visually unobtrusive, appropriate for the rural character of the receiving environment.

PART O: ADDITIONAL PLANNING EVALUATION RESTRICTIVE CONDITIONS (IF APPLICABLE)

N/A

PART P: SUMMARY OF EVALUATION

It is submitted that all relevant matters were dealt and considered adequately by the Municipal Planning Tribunal and that specific matters relevant to the reasoning on the land use planning application were answered providing an adequate statement of reasons which enabled informed land use planning decision making as required in terms of the Promotion of Administrative Justice Act. The evaluation of the appeal and comment thereon, do not result in an alternative conclusion than the reasons provided in the reasons for resolution of the Municipality Planning Tribunal.

PART Q: RECOMMENDATION

The thirteen appeals received, against the Municipal Planning Tribunals decision (Resolution no. PTN007/07/2022 of 1 July 2022) relating to the application for consolidation of Erf 151, 152 & 153, Dwarskersbos, together with the rezoning of the consolidated property from Business Zone 1 to Business Zone 6 to allow the development of a service station and permanent departure of the 5m street building line to 0m to enable the development of a services station on the consolidated land unit, **be dismissed**, in terms of Section 81 of Bergrivier Municipal By-Law on Municipal Land Use Planning, and the Municipal Planning Tribunals Decision **be confirmed** in accordance with Resolution no. PTN007/07/2022 of 1 July 2022, for the reasons provided in the reasons for recommendation.

PART R: REASONS FOR RECOMMENDATION

Complying with other requirements in terms of other parallel legislation

In terms of section 42 (2) of the Spatial Planning and Land Use Management Act, "when considering an application affecting the environment, a Municipal Planning Tribunal must ensure compliance with environmental legislation. The application was circulated for comment to the competent authority (Department of Environmental Affairs and Development Planning) for environmental consideration in terms of the National Environmental Management Act, which submits the following in their letter referenced 16/3/3/6/1/F1/4/2180/20 dated 14 December 2020 **"This Department has reviewed your correspondence and is of the opinion that the proposal to develop a fuel station with tanks containing 69m³ of fuel on Erven 151, 152, and 153, Dwarskersbos does not fall within the ambit of the following listed activity: Item 14 of GN No. R. 983 (as amended).**

This Department is further of the opinion that the proposed fuel station does not constitute any other listed activities as defined in the EIA regulations, 2014 (as amended).

An environmental authorisation from the competent authority would not be required the proposed development."

Considerations in terms of the Petroleum Products Act is not a pre-requisite for land use application in terms of section 38 of Bergvriër Municipal By-Law on Municipal Land Use Planning or section 42 of The Spatial Planning and Land Use Management Act, 2013 and therefore the decision makers can't take into account these aspects.

Section 40(7) of the Western Cape Land Use Planning Act, 2014 (Act 3 of 2014) states "A municipality may not approve a land use application subject to a condition that approval in terms of other legislation is required." Approval in terms of one law does not exempt the owner(s)/applicant from complying with the requirements of any other legislation e.g. Petroleum Products Act. It is submitted that the wording of section 40(7) mentioned above does not make a land use planning application subject to approval in terms of other legislation, but merely state that the applicant is not exempted from complying with other requirements in terms of other parallel legislation.

Municipal Planning and Petroleum Products, EIA applications must each be subjected to the process set out in terms of their respective legislation and each must be considered on the relevant considerations stipulated in that legislation. The applicable legislation does not provide for the process in terms of the one act to be delayed because of another process required by another act. Neither does the legislation provide for one authority to wait for the other authority's decision to be issued.

The Petroleum Products Act (the "PPA") and the, National Environmental Management Act ("NEMA") are distinct and separate from the applicable planning legislation (i.e. LUPA and SPLUMA). Each of the authorities concerned have their own functional terrain.

Marked economy competition

Section 152(1) (c) of the Constitution of the Republic of South Africa, 1996 lists the promotion of social and **economic development** as an object of local government. Section 196(1)(d) of the Constitution states that services must be provided impartially, fairly, equitably and without bias. Any act/comment/objection amounting to an attempt to establish a monopoly, reduction of competition or restriction of competition in the market of any particular goods or any particular service cannot be viewed as a negative impact, of a proposed development, on property rights or economic impact.

Non-compliance with conditions of approval

Bergvriër Municipality By-law on Municipality Land Use Planning determine:

"Enforcement

85. (1) The Municipality must comply and enforce compliance with—

- (a) the provisions of this By-law;
- (b) the provisions of a zoning scheme;
- (c) conditions imposed in terms of this By-law or any law repealed by the Land Use Planning Act."

The offences and Penalties, as a result of non-compliance is addressed in terms of section 86 of Bergrivier Municipality By-law on Municipal Land Use Planning.

Additionally to aforesaid compliance with conditions imposed is also scrutinized during building plan submission.

Public Participation Process

The public participation pertaining to this application was done in accordance section 45 & 46 of Bergrivier Municipality By-Law on Municipal Land Use Planning and included:

- e) *notice of the application to surrounding affected property owners by registered mail and email, where applicable;*
- f) *notice of the application placed on the Municipal Website as well as notice boards (throughout the public participation period);*
- g) *advertisements in a local newspaper (Die Weslander); and*
- h) *Provincial Gazette.*

In addition to aforesaid, on 5 May 2022, the applicant approached the chairman of the Dwarskersbos Community Committee to offer this organization the opportunity for direct consultation, in the form of a direct written response to questions that they may have or to alternatively meet in person to discuss the application, but they did not require additional information/meeting.

The public participation process required in terms of Bergrivier Municipal By-Law on Municipal Land Use Planning, is considered procedurally fair and provided adequate opportunity to enable the public and community to provide meaningful representations on a proposed application.

Evaluation of other aspects raised by appellants

In terms of Bergrivier Municipality Integrated Zoning Scheme-By-law: Service Station means.

"service station" Land use description: "service station" means property for the retail supply of fuel, and-

- (a) *include uses such as washing of vehicles, a convenience shop and a restaurant; and*

(b) does not include spray-painting, panel beating, motor repair garage, open air motor vehicle display or truck stop.

The amount of land uses allowed under abovementioned land use description are less than those allowed as primary land use right on the property. The scale of proposed development is $\pm 55\text{m}^2$ building with three pumps which represents 5% of the consolidated property, but if current primary land uses is developed under Business Zone 1, it could be developed to 100% of each property in the absence of a consolidation application. Primary land use development parameters under Business Zone 1, include among other 15meter height restriction, 100% coverage, maximum floor factor of 3 etc.

The existing zoning of the property allows a variety of land use as primary land use right, stated in the reasons for resolution by the Municipal Planning Tribunal, which can be more adverse if developed to its full capacity, than the proposed application for services station. The proposed development is setback approximately 65m from the nearest residential properties opposite the main road. The existing Main Road 535 already generate noise and disturbances from passing vehicles. The proposed development of a service station will have a less intensive impact on rural character of Dwarskersbos, considering the small scale. The proposed development will be beneficial to passing traffic, visitor, tourist and residents of Dwarskersbos, not having to travel to and from Velddrif/Laaipek.

Dwarskersbos has predominately been residential development, with very little business development, despite business opportunities being available on existing vacant business zoned properties.

Traffic, particularly heavy vehicles and speeding, through Dwarskersbos is a constant complaint from residents. The reality is that the traffic through Dwarskersbos is inevitable due to the Main Road 535 passing through Dwarskersbos. Additional traffic may still be created by business utilisation on other properties in line with primary land use rights, which will be beyond the control of the applicant or residents, the scale of the proposed development is not anticipated to result in additional traffic beyond the amount of traffic that are already generated by the Main Road.

Section 65(1)(s) of the Bergrivier Municipality By-Law on Municipal Land Use Planning requires that the Municipality must have regard to the relevant provisions of the zoning scheme when considering an application. The proposed development complies with the development parameters applicable to Business Zone 6, despite the 5meter street building line departure in terms of the Bergrivier Municipality: Integrated Zoning Scheme By-Law. The existing Business Zone 1 properties have 0m street building lines applicable, and may therefore be developed up to the street boundaries.

The Municipal Planning Tribunal in reaching its decision took into account among other, the Spatial Development Framework (SDF) which is one of the core components of an Integrated

Development Plan (IDP). A SDF must include the provision of basic guidelines for a land use management system for the municipality. Section 35 (2) of the MSA determines that the IDP binds the municipality in the exercise of its executive authority, except to the extent of any inconsistency between a municipality's integrated development plan and national or provincial legislation, in which case such legislation prevails. In terms Section 21.(d) of the Spatial Planning and Land Use Management Act, 2013 (SPLUMA) a Municipal SDF must, among other, identify current and future significant structuring and restructuring elements of the spatial form of the municipality, including development corridors, activity spines and economic nodes where public and private investment will be prioritised and facilitated.

The Bergrivier Municipality Spatial Development Framework (BMSDF) 2019-2024 identifies the area in which the subject properties are located in the Central Business focus area along the commercial/retail node. The subject properties are earmarked for mixed use opportunities within the identified retail precinct in terms of the BMSDF. The area is identified as strategic site for strategic projects and mixed use opportunities in terms of the BMSDF with the following project description:

Provide diverse and flexible spaces for community services to support permanent residents and also allow for short term activities during peak seasons. Include a primary school, public square and old age facility.

It is submitted that the MSDF found that there is room for further business and mixed use opportunities. Based on the aforementioned principle the MSDF did not place restrictions on what mixed land uses may be establish in Dwarskersbos nor how many of one sort of development may establish in proximity to one another.

Fire safety aspects has been addressed by means of conditions of approval by the Municipal Planning Tribunal, and is considered sufficient to address the problem aspects foreseen.

The Spatial Planning and Land Use Management (SPLUMA), Act 13 of 2013 provides spatial planning and land use management on a national level. It therefore proposes specific developments principles for spatial planning, which can be summarized in five main points, namely: the principle of (a) spatial justice, (b) spatial sustainability, (c) efficiency, (d) spatial resilience, and (e) good administration. The application under consideration supports the principles as follows:

The proposed development of Erf 151, 152 and 153 Dwarskersbos will expand additional small scale economic activity on and along a Central Business/retail node.

The proposal facilitates development which promote a more integrated and sustainable business node in Dwarskersbos. Limited employment opportunities will be created by the small scale service station, but will enable passing vehicles, residents of Dwarskersbos and tourist to have access to the retail supply of fuel in town, without having to travel to Velddrif/Laaipek.

The proposed development promotes sustainable and efficient development by making optimal use of underutilized properties within the urban edge and effective use of existing infrastructure rather than expanding on the outskirts of town placing pressure on agricultural resources and necessitating expansion of infrastructure networks. Existing service infrastructure will be utilised, thus contributing to spatial efficiency and sustainability.

Erf 151,152 and 153 Dwarskersbos is vacant. The opportunity presented through redevelopment promotes desirable spatial form and reflects the resilience of the property within a changing environment in line with current norms (MSDF).

Broadening the scope of service suppliers in town will create limited job opportunities considering the scale of the services station, but will contribute to the social wellbeing of those families employed.

The opportunity to influence land use within the Municipality is given through public participation processes during the compilation/review of the Municipal IDP, Municipal SDF, the Municipal Zoning Scheme as well as when land use planning applications are received. The properties are identified in the Municipal SDF as part of the envisaged Central Business District and commercial/retail node of Dwarskersbos. The subject properties are earmarked for mixed use opportunities within the identified retail precinct in terms of the BMSDF. The proposal is therefore in line with the relevant policy framework.

The application was advertised and processed in accordance with the regulations and principles prescribed in terms of the Bergrivier Municipal By-Law On Municipal Land Use Planning. The required public consultation process was conducted and relevant departments and institutions were given the opportunity to provide input before consideration of the application.

The application in terms of the aforesaid are regarded to be consistent with relevant development principles of SPLUMA and LUPA in the context of the properties specific circumstances.

It is submitted that all relevant matters were dealt and considered adequately by the Municipal Planning Tribunal and that specific matters relevant to the reasoning on the land use planning application were answered providing an adequate statement of reasons which enabled informed land use planning decision making as required in terms of the Promotion of Administrative Justice Act. The evaluation of the appeals and comments thereon, does not result in an alternative conclusion than the reasons provided in the reasons for resolution of the Municipality Planning Tribunal.

PART S: ANNEXURES

Annexure A Land use planning report submitted to Municipal Planning Tribunal (MPT)

Annexure B: Municipal Planning Tribunal Decision

Annexure C: Appeals received

Annexure D: Applicants response to appeals

PART T: SIGNATURES

Author name: Keenin Alveno Abrahams

Author signature: 

Date: 03/11/2022

Registered planner name: Werner Wagener

Registered planner signature:  (A/1830/2022)

Date: 03/11/2022

BERGRIVIER MUNICIPALITY APPEAL AUTHORITY

CONFIRM DECISION	VARY DECISION	REVOKE DECISION	PARTIALLY CONFIRM/ UPHELD DECISION
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Decision maker name: _____

Decision maker signature _____

Date: _____