



BABOON POINT  
ERVEN 65, 66 & Ptn 4 OF VERLORENVLEI  
FARM No 8  
ELANDS BAY

*New Development Proposals: Heritage  
Impact Assessment  
Stage 2*

*June 2012*

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Stage 2*

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## *Executive Summary*

This document constitutes a Heritage Impact Assessment (HIA) addressing new development proposals for Baboon Point, Elands Bay. These proposals are for certain key properties at Baboon Point owned by Midnight Storm. Baboon Point is a provincial heritage site of very high archaeological, historical and landmark significance: indeed, the only provincial heritage site to have been formally declared in the Western Cape since the new National Heritage Resources Act (NHRA) became effective in early 2000.

The new proposals were developed after HWC's decision not to approve Midnight Storm's previous proposals for the site. The previous proposals were the subject of an earlier HIA by this author dated October 2009, and involved the same properties. The decision not to approve the previous development proposals was upheld after unsuccessful appeals by Midnight Storm to both HWC's Appeals Committee and, subsequently, the Provincial Minister of the Department of Cultural Affairs and Sport. As a result, Midnight Storm has now commissioned new development proposals that are substantially in accordance with the zoning scheme, given that it is now the owner's explicit intention to develop the properties 'as of right'.

This report assesses a single development alternative spread over six sites, all located on Baboon Point within the declared Baboon Point Provincial Heritage Site Area. This assessment has therefore been undertaken in terms of Section 27 of the NHRA, although it is also intended to be in accordance with the requirements of Section 38 of this Act. One of the key sites, Erf 65, owned by Midnight Storm has a valid Industrial zoning, while the other sites have agricultural zonings. This means that the no-development option cannot be realistically considered without addressing the issue of compensation should the owner be prevented from exercising the land use rights entrenched in these properties.

This report concludes that only two of the proposed six development sites within the Baboon Point Provincial Heritage Site, i.e. Sites 1 and 6, are considered reasonable prospects for development in terms of the property's heritage-related constraints. It therefore recommends, subject to conditions, that the development proposals for Sites 1 and 6, as depicted in the current architectural proposals for these properties, be approved in principle subject to mitigation, while recognizing that this approval would prevent the landowners from fully exercising their development rights and that therefore, an alternative arrangement to address this shortcoming would most likely need to be agreed on between the owner and HWC. It further notes that should HWC not support the recommendation for development on Site 6 in particular, there would be even greater pressure to compensate for the inability of the developer to exercise the industrial development rights for this property.

# BABOON POINT ERVEN 65, 66 & Ptn 4 OF VERLORENVLEI FARM No 8, ELANDS BAY

## *New Development Proposals: Heritage Impact Assessment Stage 2*

### *1 Introduction & Background.*

This document constitutes a Heritage Impact Assessment (HIA) assessing new development proposals for Baboon Point on key properties owned by Midnight Storm. These new proposals follow the decision not to approve Midnight Storm's previous proposals as assessed in a Stage 2 HIA in October 2009. The decision not to approve the previous development proposals was upheld after unsuccessful appeals by Midnight Storm to both HWC's Appeals Committee and, subsequently, the Provincial Minister of the Department of Cultural Affairs and Sport. A comprehensive timeline of the events leading up to this current application is provided in **Section 3** of this report.

Portion 4 of Verlorenvlei Farm No8, Rem erf 66 and 65 Elands Bay contain the landmark Baboon Point, situated on the western end of Elands Bay. This property contains a number of sites of recognized regional significance as well as, possibly, some national and even some international significance. They include a number of highly significant archaeological and botanical sites with a derelict Second World War radar station of considerable, more recent historical significance on the immediately adjacent erf owned by the Department of Public Works. These sites are identified and their significance addressed in the Stage 1 HIA report of June 2007, copies of which will be on file at Heritage Western Cape (HWC).

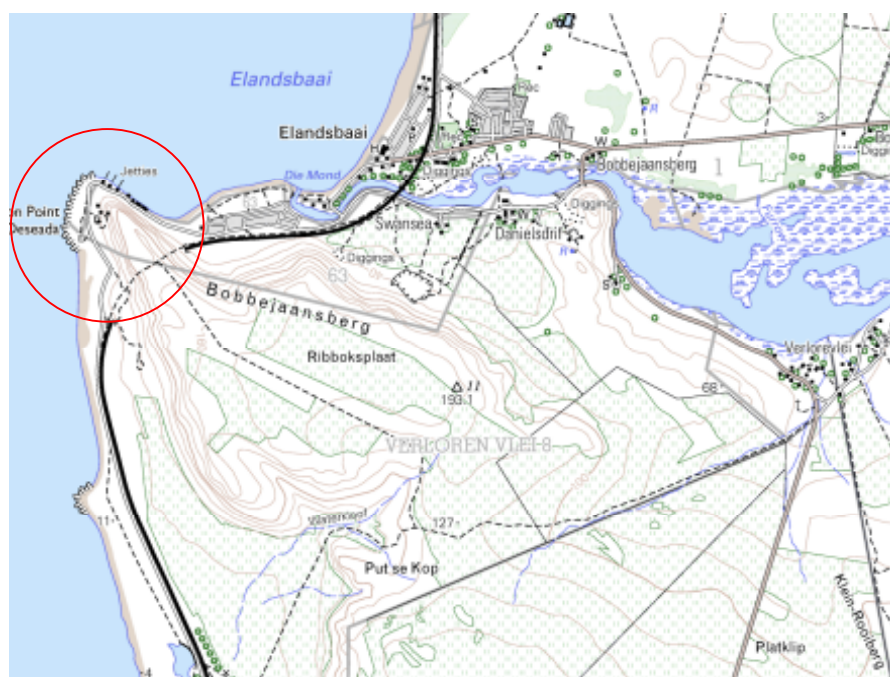


FIGURE 1: Location of Baboon Point, Elands Bay

The property comprises just less than 21 Ha of land upon which three development nodes (Sites A, B & C) were initially identified for residential development and a private nature reserve in the 2009 report. The current proposals are now considerably reduced, largely exercising the property's existing development rights. These proposals will therefore not require rezoning as was the case with the 2009 proposals.

The proposals initially triggered Sections 35 (archaeological & palaeontological sites) and 38(8) (heritage impact assessment) of the National Heritage Resources Act. Heritage Western Cape duly called for a comprehensive Heritage Impact Assessment of the development in response to a NID<sup>1</sup> prepared by ARCON Architects & Heritage Consultants (Graham Jacobs). Subsequent to that submission, the property was formally declared a Provincial Heritage Site (PHS). The result is that development proposals falling within the PHS declaration area now require approval in terms of Section 27 (Provincial Heritage Sites) of the NHRA. As with Midnight Storm's previous development proposals, the current proposals fall within this area.

This report therefore constitutes a new HIA in order to assess the current development proposals, albeit carried out in terms of Section 27 of the NHRA. Note that given the previous history of applications for the site, this report assesses just this one new development alternative. The no-go / no-development areas as identified in the previous HIA report remain relevant for this new report.

This report is underpinned by the same Stage 1 Heritage Statement and Design Informant yardsticks as used in the 2009 HIA, although the Archaeological Impact Assessment (AIA) has been revised by ACRM to take into account the new sites in the current proposals. A copy of the new AIA, dated February 2012, is attached as **Annexure 1** of this document.

## *2 Assumptions & Limitations*

### 2.1 Statement of Heritage Significance (Heritage Statement)

Given the multi-faceted and dynamic interpretation of cultural significance with the passing of time and constantly changing values and interest groups, it is not possible to make a definitive statement of heritage significance. This HIA nevertheless seeks to obtain as clear an idea of heritage resources within the study area as is practically possible, informed by the Provincial Heritage Site nomination and the archaeological impact assessment.

### 2.2 Reference Material

Because archaeological investigations at Baboon Point have been very well documented and summarized in the Provincial Heritage Site nomination form (Jerardino et al, 2006), as well as in other reports ranging from the Phase 1 AIA (ACRM: April 2009) and attached supplementary AIA (ACRM: February 2012) to work by Halkett (2005), Jerardino (1996), Kaplan (1993) and Parkington (1981), it is assumed that there is no need to refer to additional archaeological reference material. More detailed confirmation of archaeological resources will naturally require verification on site. The recommendations contained in the AIA reports by ACRM are assumed to be accurate and appropriate given that this author is not an expert in that field. Information on the radar station is sourced from a book that is the most (if not only) authoritative publication on South African radar during World War II (Brain, 1993) and the Draft CMP v2 prepared by the UCT Archaeology Contracts Office (ACO: July 2011). Spatial baseline information relies to a large extent on Google

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<sup>1</sup> Notice of Intent to Develop application in terms of Section 38 of the National Heritage Resources Act 25:1999)

Earth in conjunction with the 1942 Surveyor General aerial survey of Elands Bay (the earliest undertaken of the area), and additional topographical and cadastral information provided by BKS Engineering & Management. There has been no need to revise the visual impact assessment (VIA) report (Oberholzer, June 2007 – as amended in September 2008) given that this study already addresses more extensive development than now proposed. A copy of this VIA will be on file at HWC as part of the previous HIA submission.

### 2.3 Impact on Surviving Early Fabric

While this report is based on a reasonably clear idea of the age, location and significance of known heritage resources within the affected sites, it is very possible that unknown/undiscovered resources may also exist within these areas, particularly with regard to archaeological material and human burials. The author of this study cannot, therefore, guarantee that the identification of ‘no-go’ areas for possible future development as indicated in **Diagram 4** of the Stage 1 HIA report, is comprehensive, though it is as accurate as possible using the reference material referred to in Section 2.2 above. More detailed confirmation of archaeological resources would require monitoring and verification on site, as allowed for in the attached Archaeological Impact Assessment (AIA) of February 2012.

### 2.4 Plotting of 1:4 Slope Contour line & Extremities of Archaeological Areas

In terms of the provincial guideline for management of development on mountains, hills and ridges of the Western Cape, development on slopes exceeding 1:4 is discouraged. The 1:4 ‘slope contour’ on the property is, therefore, regarded as a development constraint. Lines and edges defining archaeologically sensitive areas are also identified as development constraints (refer to the Stage 1 HIA report). The extent of these areas, as shown on **Figure 4** of the 2009 HIA document, are diagrammatical, though fixed in terms of GPS reference points provided by the consultant archaeologist and land surveyor. This data is assumed to be correct for the purposes of this report.

### 2.5 Input/Feedback from Interested and Affected Parties

This process is being dealt with by Withers Environmental Consultants (WEC), in terms of which a comprehensive issues trail covering feedback from interested and affected parties (IAP’s) has been obtained in response to these new proposals. This feedback augments the extensive public feedback record obtained in response to the 2009 development proposals. This HIA therefore takes into account the responses from IAP’s to these new proposals.

### 2.6 Servicing within and from beyond the Site

This report does not address heritage impacts resulting from the potential laying of pipeline services, electrical and/or other related infrastructure between the proposed residential sites and elsewhere. In the absence of more detailed reticulation drawings, it will be assumed that residential services will, wherever possible, be contained within each development site and where this is not possible, then run from each individual site along roadways indicated on the proposed Site Development Plan. The underlying purpose is obviously to avoid archaeologically sensitive areas.

In the case of the proposed industrial site, it is assumed that the services will either be contained within Erf 65 or, where this is not possible, then linked to existing services serving the adjacent fish factories. It is assumed that the path of these services will be confirmed only after further site investigations and archaeological monitoring.

Similarly, it is assumed that locations of deeper excavations, such as for conservancy tanks and industrial waste collectors, will be subject to prior specialist archaeological investigation – no doubt in conjunction with archaeological monitoring by specialists from HWC.

## 2.7 Road Widening & Additional Infrastructure

This report assumes that there will no longer be road widening of the coastal road past the fishing factories, and that the requirement for additional large plant/installations such as substations and common conservancy tanks, will fall away given the significantly reduced size of the revised development proposals.

The underlying intent of the landscape design, as made manifest in the landscaping proposals associated with the 2009 proposals will be assumed to apply to instances where detailed design has, as yet, not been completed for obvious reasons.

## *3 Summary of Process & Key Developments to Date.*

**November 2005:** The first public engagement meeting (under the auspices of Envirodinamik) is held to obtain public comment on the proposals. Feedback includes concerns that Baboon Point is an unspoiled natural landmark; that it will substantially change the development character of the area (Elands Bay) and that, consequently, a Visual Impact assessment is required. Concerns were also expressed that the mountain ‘flows’ into the sea at this point, meaning that proposed development would intrude into this spiritual area.

In a meeting with officials from DEAT at the offices of BKS in the same month, any development on the vegetated beach foredunes, or extending to the high water mark, is opposed on the basis of both erosion potential and aesthetic character.

**2 June 2006:** Erven 64, 65, 66 & 67 Baboon Point Elands Bay, which includes the property in question, is provisionally declared a Provincial Heritage Site by HWC (Government Gazette 6362, Notice 193).

**7 May 2007:** A Notification of Intent to Develop (NID) application is submitted to Heritage Western Cape in terms of Section 38 of the National Heritage Resources Act, and tabled at its Built Environment and Landscape Committee (BELCOM) on 14 May 2007. The NID recommends that an HIA report be prepared for the site focusing on:

- i Visual impact with particular attention to:
  - Views of Site A from Elands Bay with particular attention to visibility and impact on the Bobbejaansberg mountain backdrop;
  - The contextual and environmental appropriateness of the location of Site B in particular;
  - Impacts on the landmark nature of Bobbejaansberg with particular reference to Sites B and C as viewed from the sea and coastal road, including from the south; and
  - Impacts from the proposed new housing units, with particular attention to overall roof shape, landscaping, scale and massing.
- ii The integration of landscaping (including road surfaces, boundary definition, security and lighting) into the proposed development in order to mitigate negative visual impacts from surrounding areas.
- iii Addressing potential archaeological impact by incorporating the findings of the archaeological studies referred to as part of the nomination of the area as a Provincial Heritage Site.



In response, BELCOM endorses these recommendations and requests that a comprehensive HIA of the site be undertaken satisfying the conditions of Section 38(3) of the National Heritage Resources Act (NHRA). It does, however, expand on the above recommendations by calling for the following requirements to be satisfied:

- iv That a range of subdivision and development options (including a no-build option) be considered and assessed.
- v That the contextual and environmental appropriateness of each of the development sites be assessed;
- vi That attention be given to assessing impacts from development on the landmark, even iconic quality of the Bobbejaansberg when viewed from all sides including the sea.
- vii That the many impacts of the proposal and alternatives on the highly significant archaeological resources and any other heritage resources and their meaning be addressed, assessed, and, if possible, mitigated; and
- viii That the impacts of the proposed development (and any alternatives) on the significance of the heritage resources listed in the motivation for the nomination as a PHS be carefully assessed and any adverse impacts mitigated.

In a separate response dated 15 June 2007, HWC's Archaeology, Palaeontology and Meteorites Committee (APM) notes the NID's recommendation that an HIA be conducted for the property with an archaeological Impact Assessment forming part of this report<sup>2</sup>.

**29 June 2007:** The Stage 1 HIA report is submitted to HWC and tabled at its BEL Committee (BELCOM) on 5 July 2007. The report is positively received by BELCOM members in terms of its spatial analysis and identification of heritage sites, but it is decided that HWC will withhold comment pending scrutiny of the report by the APM Committee and Heritage Western Cape's Declaration Review (Nominations) Committee for Provincial Heritage Sites.

**November 2007:** An Archaeology Scoping Report is submitted to HWC's APM Committee by ACRM. The APM appears to mistake this for a Phase 1 Archaeological Impact Assessment (no doubt because it follows close after the Stage 1 HIA report) although ACRM (re: Kaplan) explains that it is simply to outline the archaeological constraints, opportunities and challenges for the site.

**14 April 2008:** A meeting is convened by HWC at Elands Bay Hotel to discuss the implications of formally declaring Baboon Point, including the site in question, a Provincial Heritage Site. Representatives of HWC, SAHRA, various IAP's, and the property owner, Midnight Storm, attend the meeting. The meeting is followed by a site visit accompanied by officials from HWC and SAHRA, including SAHRA's Dr Jerardino, a former archaeologist at HWC.

**2 June 2008:** The provisional declaration of Erven 64, 65, 66 & 67 Baboon Point Elands Bay lapses.

**28 May 2008:** A written Notice of Intent to formally declare Baboon Point a Provincial Heritage Site is sent by HWC to the owners of the property, Midnight Storm. The owners respond in writing on 23 June 2008 expressing their strong disagreement with the declaration, which it regards as a de-

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<sup>2</sup> For a fuller summary, refer to p6 of the Stage 1 HIA report.

facto expropriation and, therefore, unconstitutional. The owners do, however, state that they would be amenable to having the site declared a Provincial Heritage Site, but on mutually agreed terms.

**20 June 2008:** A Notice of Intent to Submit and Application (NISA) for Baboon Point in terms of NEMA 107:1998 Chapter 5 is lodged with DEADP by Withers Environmental Consultants.

**25 June 2008:** The Phase 1 Archaeological Impact Assessment for the site by ACRM is tabled at Heritage Western Cape's APM Committee meeting after circulation to HWC's Declaration Review Committee. While the report is considered to be a 'significant improvement' over the archaeological scoping report of November 2007, a number of aspects are seen as still needing to be considered. These include the following:

- i The report has not considered 'no-go' areas for development.
- ii The extent of archaeological residues still have to be mapped; and
- iii Previous stipulations made by HWC must be listed and addressed.

In response, ACRM points out that the 'no-go' option can only be regarded as an option when the biophysical, social or archaeological impacts cannot be mitigated. The archaeological impacts can, it is believed, be sufficiently mitigated, as long as the recommendations contained in the AIA are implemented.

With regard to mapping the extent of archaeological residues, ACRM states that it is not possible to accurately plot archaeological site boundaries, as archaeological traces are sometimes spread very thinly and unevenly over the surrounding landscape. It is, therefore, suggested that the only way to acknowledge the full extent of the archaeological sites on the property are through shovel testing, sampling and systematic excavation.

**4 July 2008:** DEADP responds to the Withers NISA application of 20 June 2008, saying that the proposed development at Baboon point will trigger activity 2 of R387 (development footprint exceeds 20ha) and, therefore, a full EIA would be required. Withers Environmental replies on 11 July 2008, pointing out that the proposed development footprint will be less than 20ha, to which DEADP accepts the NISA application and agrees to the submission of a Basic Assessment Report for the project (DEADP letter dated 1 August 2008 to Withers Environmental).



FIGURE 2: Proposed Urban edge (in light brown) as currently determined by CK Rumboll & Pnrs, consultants to the Cederberg Municipality. Baboon Point is on the upper left hand corner of the image.

**28 November 2008:** HWC is informed by Withers Environmental Consultants of the intention of the local authority (Cederberg Municipality) to support their planning consultant's recommendation that the whole of Erf 65 and the eastern portion of Erf 66 be included in the Urban Edge of St Helena Bay (western portion of Erf 66 and Ptn 4 of the Farm Verlorenvlei No 8 are excluded). The letter also reminds HWC that the activities triggered by the development call for a Basic Assessment Report, and not a full Environmental Impact Assessment.

**22 January 2009:** Withers Environmental advertises for public comment as part of the statutory EIA public engagement process. This includes the distribution of background information documents and the Draft Basic Assessment Report (DBAR). The process includes an Open Day and meeting on 12 February 2009. An Issues Trail is prepared, the heritage-related aspects of which are addressed in this report.

**March 2009:** (exact date subject to confirmation by HWC). The UCT Archaeological Contracts Office is engaged by HWC to prepare a Conservation Management Plan for Baboon Point.

**9 April 2009:** Baboon Point (Cape Deseada) is officially declared a Provincial Heritage Site (Provincial Gazette 6621, Notice 4618). (This is the first Provincial Heritage Site declared in the Western Cape since the National Heritage Resources Act 25:1999 has come into force). The legality of this declaration is questioned by the owners on grounds of process, and reserve their rights accordingly. The implication of this declaration is that HWC is no longer a commenting body in terms of Section 38(8) of the NHRA, but now an approving body in terms of Section 27 of this Act (refer to 'Statutory Aspects' in Section 4.1 of this report).

**May 2009:** Revisions are made to the Stage 1 AIA (April 2009). Various modifications are also made to the proposals in response to concerns and comments expressed by IAP's, and as informed by more detailed site surveys of archaeological heritage resources and the Stage 1 HIA design informants. (The Stage 2 HIA of October 2009 assesses these revised proposals which include landscaping plans, new site development proposals and revised architectural and landscape design guidelines).

**21 October 2009:** The Stage 2 HIA report is finalized and submitted to HWC after further adjustments to the development proposals.

**29 October 2009:** The Stage 2 HIA, incorporating an archaeological impact assessment by ACRM, is tabled at HWC's BELCOM (which is attended by representatives of HWC's Archaeology, Palaeontology and Meteorites [APM] Committee) and endorsed by BELCOM, together with the development proposals. (Approval, with certain conditions, is subsequently formalized by HWC's 'Record of Decision' dated 23 November 2009. These conditions are that building plans be re-submitted to HWC for approval, and that the case be referred to HWC's APM Committee (APM) to address conservation management issues. The decision is subject to the standard appeal period of 14 working days).

**3 November 2009:** The Stage 2 HIA is tabled at HWC's APM where this committee decides not to approve the HIA (and therefore the development proposals), notwithstanding that representatives of this committee had been present at the BELCOM meeting of a few days earlier. APM's decision is rejected by Midnight Storm on the grounds that a decision by BELCOM, exercising its properly delegated powers, has already been made on behalf of HWC.

**14 January 2010:** The HWC Appeals Committee convenes to consider an appeal by the Elands Bay Development Action Group (EBEDAG) against BELCOM's decision of 23 November 2009

approving the development proposals; and Midnight Storm's appeal against APM's decision not to approve the same development proposals. The Appeals Committee decides to set aside both BELCOM and APM decisions and refers the matter back for consideration to BELCOM.

**18 February 2010:** The application is tabled at a joint meeting of HWC's BELCOM and APM. A few days earlier, Midnight Storm had placed on record that it did not recognize the authority of this joint meeting, as HWC was *functus officio*, now that its Appeals Committee had acted, and that it could therefore not hear the application afresh (*de novo*). Midnight Storm consequently decides to attend this meeting as an observer only. The meeting decides not to approve the application. This decision is confirmed in writing in a new 'ROD' dated 2 March 2010.

**8 March 2010:** An appeal by Midnight Storm is lodged with the Provincial Minister of Cultural Affairs and Sport against the decision of HWC's Appeals Committee to refer the application back to HWC's APM and BELCOM, or, alternatively, against the subsequent decision of the Joint Meeting of APM and BELCOM to consider Midnight Storm's application *de novo* and deciding not to approve the application.

**13 May 2010:** A tribunal appointed by the Provincial Minister of Cultural Affairs and Sport is convened to review the appeal. Heads of Argument for and against the appeal are submitted by Senior Counsel representing Midnight Storm and HWC respectively. The tribunal announces that its decision will be made known within 21 days.

**3 June 2010:** A scheduled visit by the tribunal to Baboon Point is cancelled due to the non-availability of most of the tribunal members. (Baboon point is, to the author's knowledge, therefore never visited by the tribunal members).

**11 August 2010:** The Tribunal's decision (dated 10 August 2010) dismissing Midnight Storm's appeal is eventually made known after 89 days. It finds that BELCOM and APM were created by HWC with distinct functions, namely BELCOM to assess cultural and historical significance within the built environment and landscape arena, and the APM to assess archaeological and palaeontological aspects, as well as meteorites in determining the significance of a heritage site. Consequently, BELCOM cannot assess and make a decision regarding a Provincial Heritage Site with predominantly archaeological significance. Accordingly, it finds that HWC's Appeal Committee decision was just and fair administrative procedure and practice, while the Joint Meeting of BELCOM and APM afforded these committees the opportunity to unite in their respective areas of expertise and thereby make a proper evaluation of all relevant aspects relating to the cultural significance of the site. (No mention is made in the Tribunal's decision of the landowner's development rights: more specifically, the fact that Erf 65, within which most of the proposed development was to be situated, has valid industrial development rights).

**15 November 2010:** DEADP issues its Record of Decision refusing authorization for the activities as listed in the Basic Assessment Report prepared by Withers Environmental Consultants in terms of NEMA. The refusal to grant authorization is based, amongst others, on HWC's ROD of 2 March 2010, and the decision of the Ministerial Tribunal dated 10 August 2010. In addition, DEADP finds that the proposed development is inconsistent with the current needs of Elands Bay. It also finds that the proposals do not meet the concept of desirability in that it would compromise the integrity of the existing approved municipal Integrated Development Plan and Spatial Development Framework. Furthermore, it finds that all development alternatives proposed will have the same negative environmental and planning impacts as the preferred option. (Again, no mention is made of the fact that Erf 65 has valid industrial development rights).

**24 May 2011:** A new application for the development of 5 residential units and one industrial facility on the property (Erven 65 and 66) is made by Withers Environmental Consultants on behalf of Midnight Storm. This consists of:

- two residential units (primary and secondary) on Ptn 4 of of Farm Verlorenvlei No 8 in accordance with its Agricultural Zone 1 zoning;
- three residential units (one primary house and one secondary house, and one tertiary house, the latter in terms of a “Consent Use” with respect to the Section 8 Scheme Regulations of the LUPO in accordance with its Agricultural Zone I zoning on Remainder of Farm 66; and
- One light industrial facility on Rem Erf 65 in accordance with its Industrial 1 zoning.

**26 July 2011:** The Baboon Point Draft Conservation Management Plan commissioned in March 2009 by HWC is released for comment. This draft is strongly criticised from many quarters, including this author (and, notably, also parties from within HWC itself) for not being much more than an expanded heritage statement, and not addressing at all the central challenge facing Baboon Point, which is sustainable management. Other significant omissions include:

- the absence of any guidance as to how affected property owners, other than the Department of Public Works, should be engaged with regard to the future management of the site – a serious omission considering the substantial development rights attached to portions of the land owned by Midnight Storm: most notably the industrial zoned Erf 65;
- the lack of discussion relating to budgetary and funding implications, not even in broad terms;
- the lack of any distinction in management strategy for the various portions of the site, including in spatial terms, and, therefore, the absence of any attempt to address possible development trade-offs involving other portions of land within the Baboon Point Provincial Heritage area;
- no exploration of the development/redevelopment potential of the adjacent fish factories which may have the potential to be part of the solution;
- nor the possibility of engaging in a possible land swap for alternative developable coastal property that may be owned by the Western Cape Province.

**3 August 2011:** HWC convenes a Council meeting to decide on the way forward with regard to the draft Conservation Management Plan Document. It decides not to approve the document in its current form.

**8 August 2011:** A meeting is called by the CEO of HWC, Mr Andrew Hall, in response to Midnight Storm’s new application of 24 May 2011. It is attended by Mr Hall and Midnight Storm’s representative, Mr Brett Bailey with Aubrey Withers of Withers Environmental Consultants. At this meeting, Mr Hall points out that the application is incomplete. Mr Withers responds that he is aware of this but wishes to test whether HWC would be prepared to entertain such an application before committing the developer to the additional expense of appointing a new round of consultants and becoming involved in another expensive public participation process.

Mr Hall is recorded by Mr Withers as pointing out that it is highly unlikely that HWC will permit any development within the viewshed of Elands Cave and on Erf 65 which is zoned for Industrial use, but may agree to a compromise development on the eastern portion of Rem Farm 66 away from Hailstorm Midden.

**15 August 2011:** The new Midnight Storm application is formally discussed at HWC's Baboon Point Committee (BPCom), a sub-committee created by a newly constituted BELCOM to deal with development applications relating to Baboon Point. The points raised at the meeting of 8 August are reiterated, including the possibility of a compromise development on Rem Farm 66. The Chair of this sub-committee does, however, emphasise that such a development node should not be regarded as a *fait accompli* and that the formal application would have to follow the normal application process, including a new application to DEADP in terms of NEMA.

The legal representative of EBEDAG who is present at this meeting, suggests that HWC expropriate the land owned by Midnight Storm, to which the CEO of HWC indicates that HWC does not have the funds to do so. In fact HWC does not even have sufficient funds to appoint heritage consultants to revise the Baboon Point Draft Conservation Management Plan (thereby acknowledging the inadequacy of that draft plan).

**18 August 2011:** HWC addresses a letter to Midnight Storm in formal response to the new development application in which it reminds that the application is incomplete, does not contain the relevant specialist studies, and that HWC would therefore not process the application as it stands. It confirms that a new application including all relevant information that has been through a public engagement process would need to be resubmitted to HWC.

**14 September 2011:** In a written response to this letter, Withers Environmental on behalf of Midnight Storm, strongly queries the necessity of having to go through the process of preparing yet another full development application and heritage assessment when HWC has already indicated at its meetings with Midnight Storm of 8 August 2011 and 15 August 2011 that it would not entertain any development within the Baboon Point Provincial Heritage Site (apart from a possible small compromise development node on Rem 66 away from Hailstorm Midden).

The letter again requests a straight answer from HWC as to whether the owners, Midnight Storm, will be permitted to develop their land in accordance with the current zonings of the property, and reminds that should no development be permitted in accordance with the zoning rights of the property, that that may amount to an arbitrary deprivation of the owner's land use rights which would be contrary to Section 25 of the Constitution, thereby giving rise to a claim for compensation.

**29 September 2011:** HWC responds in writing to the letter of 14 September 2011, repeating that it will not be in a position to process an incomplete application by Midnight Storm as was made very clear at the BPCom meeting of 15 August 2011. It reminds that any application on the Baboon Point properties will be controversial – in particular, proposals on the western and southern parts of the Provincial Heritage Site, but emphasises that HWC has not decided that it would not entertain any development within the viewshed of Elands Cave as a decision in this regard can only be made in response to a complete application. The letter reiterates that HWC's approach has been to provide advice with a view to ensuring that Midnight Storm does not waste resources on an application that has little chance of success.

Midnight Storm decides to proceed in commissioning more comprehensive development proposal documentation together with a new HIA by the author (ARCON) incorporating an Archaeological Impact Assessment (AIA) by ACRM addressing the new proposals.

**February 2012:** An AIA responding to the new development proposals for Baboon Point is prepared by ACRM for comment by interested and affected parties.

**23 March 2012:** A draft new Stage 2 HIA report responding to the new development proposals for Baboon Point is prepared by ARCON for comment by interested and affected parties.

**30 April 2012:** Notice is given to registered IAP's by Withers Environmental Consultants of the new proposals, and the new Stage 2 HIA and the AIA are made available for comment. The notice period runs from 30 April 2012 to 4 June 2012.

**21 June 2012:** This HIA report is finalized for submission to HWC after taking the IAPs' comments into account.

## *4 The Stage 2 HIA Brief.*

### 4.1. Statutory Aspects

The brief as outlined in Section 2.2 of the Stage 1 HIA document, is primarily to fulfil the statutory requirements of Section 27 (Provincial Heritage Sites) of the NHRA (Act 25:1999). Section 38(8) of the NHRA (heritage impact assessment forming part of an EIA) is no longer applicable as the current proposals fall within the Provincial Heritage Site area. However, NHRA Section 27 still covers those aspects otherwise addressed in terms of NHRA Section 34 (structures older than 60 years); Section 35 (archaeology and palaeontology); Section 36 (burial grounds and graves) and Section 38 (Heritage Impact Assessments), i.e. where heritage resources are not located within a Provincial Heritage Site.

The brief for this report is essentially defined in terms of HWC's response to the NID application by ARCON Architects & Heritage Consultants as referred to in Section 3 of this document (see under 7 May 2007). Note however, that that response called for an HIA of the study area forming part of an EIA process, with DEADP as the party responsible for issuing the Record of Decision (ROD). However, because the property has since been declared a Provincial Heritage Site, this ROD cannot be issued without the approval of HWC in terms of Section 27 of the NHRA. (In terms of the NEMA regulations, the EIA process requires the submission of a Basic Assessment Report and not a full Environmental Impact Assessment, given the limited size of the development proposed).

The ROD to be issued by DEADP (subject to approval by HWC) will be used to inform the local authority's decision for the granting of a consent use for a proposed third (tertiary) dwelling on Rem Farm 66. Such a consent use will need to be in accordance with any special conditions required by HWC in terms of Section 27 of the NHRA. The development proposals do not require any rezoning applications.

### 4.2. Assessment in terms of the Stage 1 HIA

As in the case of the previous development alternatives, the current revised development proposals are measured against the recommendations and heritage-related design informants contained in Section 8 of the Stage 1 HIA report.

The Stage 1 HIA report supports the principle of developing limited portions of Baboon Point for residential purposes, while ensuring that such development remains sensitive to the spatial character of the property and its highly significant archaeological and botanical resources. However, based on what appears to be a strong reluctance on the part of HWC to seriously entertain the

possibility of any development to the west and south of the Baboon Point koppie<sup>3</sup> (notwithstanding that the present zoning of these properties does not preclude development), it is possible that there will be differences with HWC as to what would constitute development remaining sensitive to the spatial character of Baboon Point and its highly significant archaeological and botanical resources. This is exacerbated by the fact that there is, as yet, still no adequate Conservation Management Plan to provide guidance for future development on the property.

Support for the principle of developing portions of Baboon Point for residential purposes is based on the following prospects:

- New development creates an opportunity to conserve and control access to archaeologically sensitive sites currently under threat from unconstrained public use and abuse;
- New development promises economic benefits within an economically depressed region suffering from the continuing decline of the local fishing industry, notwithstanding that the extent of these economic benefits is debatable; and
- New development creates the opportunity for establishing the balance of the area as a nature reserve with the possibility of the adjacent historically significant radar station buildings and/or even the adjacent fish factories (of which a number are not in use) being refurbished as part of a center or retreat providing accommodation, while interpreting Baboon Point's pre-colonial, military (and other) history, and its environmental and archaeological assets.

Support for the principle of developing a portion of Erf 65 for industrial purposes is based solely on recognizing, in the absence of a suitable alternative agreement, that this property *has a valid industrial zoning*.

#### 4.3 Key Priorities for New Development

In order to sensitively introduce new development into the area, the Stage I HIA identified the following priorities which are considered in the course of assessing proposals. These are:

**Priority 1:** Ensuring development that has appropriate densities and a scale responding directly to the spatial and topographical characteristics, of what is a semi-wilderness landscape;

**Priority 2:** Introducing architecture that is informed directly by the exposed, open nature of the surrounding landscape, vegetation, land forms, micro-climatic conditions and natural colours, rather than by stylistically-driven informants per se.

**Priority 3:** Integrating landscaping and architectural patterns, with particular attention to roof canopies, wall colours and textures, choice and placement of vegetation, road surfacing, placement of cut and fill (where at all acceptable), as well as nature and location of services.

**Priority 4:** Introducing new development that strengthens or consolidates existing signature alignments, gateway spaces and axial relationships in the vicinity of the fish factory;

**Priority 5:** Recognizing the importance of balancing existing development rights with a need to act responsibly in introducing new development into an area of at least great regional cultural significance; and:

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<sup>3</sup> based on the author's own experiences of the events surrounding HWC's consideration of the previous development alternatives.



**Priority 6:** Introducing development that avoids, or at least minimizes disruption to archaeological and botanically noteworthy sites.

These priorities fundamentally underpin the Design Informants for future development as set out in Section 8 of the Stage I HIA report.

## *5 The Development Proposals* (Re: Annexure 3)

### 5.1 Introduction

This report assesses a single development alternative prepared by JB Architecture, dated 24 February 2012. It includes drawings and 3D photomontages for Baboon Point on Sheets numbered B01 – B32. These development proposals are substantially in accordance with the zonings<sup>4</sup> for the various land portions owned by Midnight Storm, given that this owner intends to exercise the development rights accommodated in terms of these land use categories.



FIGURE 3: Location of proposed new residential units (Sites 1-5) and industrial unit (Site 6). Refer to **Annexure 3** for a larger copy of this site diagram.

### 5.2 The No-Development Alternative

Given that the zonings of the property permit limited development, the No-Development Alternative cannot be exercised without that impacting negatively on the owner's land use rights as

<sup>4</sup> One of the proposed dwellings will require the granting of a Consent Use application.

entrenched in Section 25 of the Constitution, thereby giving rise to a claim for compensation. Such an alternative would under current circumstances appear to be unrealistic, although a compensation agreement cannot be discounted, in which case the No-Development Alternative could obviously be revisited.

Note, however, that the no-go areas for development as indicated in Design Informants **Diagram 4** of the Stage 1 HIA report remain applicable with regard to this assessment.

### 5.3 The Development Proposals

The proposals include a new residence to the east of Hailstorm Midden (Sheet B10: Site 1); a loose group of 4 additional residences in the vicinity of the southern coastal boundary of Baboon Point (Sheet B10: Sites 2-5); and an industrial building to the south of the existing fishing factory buildings (Sheet B10: Site 6). Refer **Figure 3** on the previous page.

The footprint area for each residential unit will be between 450 and 500 sq m, with access roads and parking areas amounting to an approximate extra 500 sq m. Services (pipelines and power lines) are to be laid underground. Conservancy tanks for each unit will also be required (septic tanks and soak a-ways will almost certainly be disallowed for environmental reasons). The pathways and locations for these services will be finalized only after further detailed site investigations have been conducted to minimise archaeological impacts.

The footprint for the industrial facility will be about 950 sq m. The rest of the property is given over to public open space and nature reserve.

The breakdown of development in relation to the zonings of the property, is as follows (refer **Figure 3**):

- *Remainder of Erf 66 (Sites 1, 2 & 3)*: three residential units (one primary house and one secondary house, and one tertiary house, the latter in terms of a “Consent Use” with respect to the Section 8 Scheme Regulations of the LUPO in accordance with its Agricultural Zone I zoning;
- *Ptn 4 of Farm Verlorenvlei No 8 (Sites 4 & 5)*: two residential units (primary and secondary) in accordance with its Agricultural Zone 1 zoning; and
- *Rem Erf 65 (Site 6)*: One light industrial facility in accordance with its Industrial 1 zoning.

## 6 Assessment of Impacts

### 6.1 Documentation Informing this Assessment:

ACO	<i>Baboon Point Provincial Heritage Site Conservation Management Plan</i> . Final Draft. July 2011(v2).
ACRM	<i>Phase 1 Archaeological Impact Assessment</i> : Proposed Development Baboon Point Elands Bay. April 2009
	<i>Archaeological Impact Assessment</i> : Proposed Development of five Residential Units and One Industrial Facility on Erf 65, Remainder of Erf 66, and Portion 4 of Farm Verlorenvlei No. 8 Elands Bay, Western Cape. February 2012.

ARCON	<i>Stage 1 Heritage Impact Assessment: Baboon Point Erven 65, 66 &amp; Ptn 4 of Verlorenvlei Farm No 8 Elands Bay, June 2007.</i>
BOLA	<i>Phase 2 Visual Impact Assessment, June 2007; amended September 2008.</i> <i>Photomontages by Artgun as revised and incorporated into the architectural and landscape design guidelines by EBESA Architects in September 2009.</i>
EBESA Architects:	<i>Baboon Point, Elands Bay: Architectural (and Landscape) Draft Design Guideline, 16 September 2009.</i>
Helme, Nick: Botanical Surveys:	<i>Botanical Assessment of Erven 64-67, Elands Bay, 11 May 2005.</i>
JB Architecture	<i>Development on Remainder of Erf 65 and 66, Elands Bay. Architectural drawings and photomontages: Sheets B01-B32. 24 February 2012.</i>

## 6.2 Assessment Criteria

### 6.2.1. *Assessment Structure and Approach:*

This assessment is structured to meet the requirements of Section 38 (heritage impact assessments) of the NHRA, although prepared in terms of Section 27 (Provincial Heritage Sites) of the NHRA. In other words, it is underpinned by the Heritage Statement and Design Informants in the Stage 1 HIA report of June 2007. It is also informed by the specialist reports and architectural proposals listed in Section 6.1: most notably the Phase 1 AIA of April 2009; and the more recent AIA of February 2012.

In the absence of detailed criteria for assessing heritage impacts (i.e. apart from the broad assessment criteria in Section 38 (3) of the NHRA), this assessment employs criteria consistent with the previous Stage 2 HIA report of October 2009, and the standard requirements for Environmental Impact Assessments as used in meeting the requirements of NEMA. This addresses:

- Nature of Impact
- Measurement & Duration of Impacts
- Significance of Impacts (unmitigated)
- Mitigation and
- Confidence of Assessment.

A full description of the assessment criteria upon which attached assessment Tables 1A-1C are based, is contained in **Annexure 4** of this report.

Assessments are arranged in tabular form for brevity (**Tables 1A-1C**). General observations, conclusions and recommendations generated by the assessment Tables 1A-1C are contained in **Section 6.3** of this chapter.

### 6.2.2. *Development/Design Informants*

The lack of an approved conservation management plan (CMP) for Baboon Point means that the only documentation available for guiding development within the PHS, are the Draft CMP (albeit flawed, as argued to in **Section 3** p9: under ‘26 July 2011’), the PHS Site Nomination (October & December 2006) and the Design Informants of the Stage 1 HIA (June 2007). In fact, the latter currently remains the only clear spatialised indicator for new development (and also addressing no-go areas for development) within the PHS. These design informants therefore remain key yardsticks for this assessment. For clarity, the following diagrams have therefore been reproduced from the Stage 1 HIA and are attached for easier reference at the end of this assessment document. These are:

- Diagram 2: Baboon Point Elands Bay: Identification of Components and Elements;
- Diagram 3: Baboon Point Elands Bay: Significant Sites and Spatial Relationships; and
- Diagram 4: Baboon Point Elands Bay: Design Informants: Constraints and Opportunities.

Diagram 3 essentially spatialises the Stage 1 heritage statement, identifying significant structures, landmarks, areas, significant spatial relationships and, by implication, sensitivity. Diagram 4 is informed by Diagram 3. It identifies areas of various degrees of sensitivity (to development), and spatial cues to be taken into account in the course of considering the location of new development.

### 6.3 General Observations relating to Assessments in Tables 1A-1C

#### 6.3.1. *Site 1: (Remainder of Erf 66): Key Site-related Impacts*

- *Key point 1:* This residential site is the least contentious of the proposed development areas in the sense that it is furthest from the Bobbejaansberg headland and closest to existing suburban development.

- *Key point 2:* The proposed residence may, however, exceed the maximum (300 – 350 sq m) footprint size recommended in the AIA. Provided that the maximum recommended development footprint is not exceeded, impacts relating to this site are rated *Low to Medium*.

Photomontages prepared as part of the previous development proposals for the then Site A, located in the same area as this site, have already illustrated that even a cluster of dwellings in this location would not have a major visual impact on the surrounding area with mitigation. This is illustrated in the Stage 2 HIA (October 2009): Figures 6 & 7. Strangely, the single large dwelling now proposed for this area appears oddly overwhelmed by the wider, largely open setting. As a single dwelling in this area, it is arguably anomalous in relation to the nearby residential cluster on the opposite side of the Baboon Point approach road. In other words, and in principle, a small carefully designed residential cluster would not be regarded by the author as out of place in this context. (Refer to Annexure 3: Photomontages B12 and B13: Viewpoints 1&2 of the current development proposals).

Site 1 falls within an area identified as being of moderate botanical significance. It is, however, located not far to the east of Hailstorm Midden.

#### 6.3.2. *Sites 2, 3, 4 & 5: (Remainder of Erf 66 & Ptn 4 of of Farm Verlorenvlei No 8): Key Site-related Impacts.*

- Sites 2-4:

- *Key point:* These four residential sites (with Site 5), are situated within one of the most contentious portions of the property. In fact the Stage 1 HIA design informants indicate that Sites 2,

3, and 4 *would be within no-go areas for future development*. Impacts relating to these sites are rated *High to Very High*. Consequently, this study re-iterates that no new development be considered on these sites.

High impacts are partly because the area is identified as having high botanical significance, and because the area falls within the most remote part of the property, with the exception of the Bobbejaansberg summit. It was concerns around potential impacts on the remote qualities of the southern parts of Baboon Point, and negative impacts on the viewshed from Elands Cave, that initially caused the developers to put on hold, their earlier development proposals for this area. The sensitivity of this area is effectively summarised in a joint statement prepared by archaeologists and academics during a forum for providing input into the CMP. Part of this statement reads as follows:

*“Eland’s Bay Cave has a vista down south - undeveloped/unpopulated. This contributes significantly to the place as it allows visitors to connect to the past. It is important to recall the historic sea view, the vista of Baboon Point as viewed by the early Portuguese explorers. There is a sense of remoteness, no significant made-made structures are visible from Eland’s Bay Cave except for the abandoned radar station. The quietness and sense of desolation contributes a powerful sense of history.”* (Draft CMP, p.22).

This vista will clearly be affected by these development proposals. The proposed development footprint for each site is 450-500 sq m.

- Site 5:

- *Key point*: Development on this site is considered unacceptable because of potentially high archaeological impacts on the Cape Deseada megamidden, as well as for reasons of spatial impact as referred to above. Archaeological impacts relating to this site are rated *Very High*. Consequently, this study re-iterates that no new development be considered on this site.

Note that although Site 5 falls within an area identified in Diagram 4 for ‘possible very sparse low-scale development’, this recommendation was made before more detailed archaeological study. In any event, that recommended design indicator would not have been applicable to the large (450-500 sq m) residential development footprint now proposed. In fact, given the nature of the heritage statement since prepared as part of the draft CMP document (even though not approved by HWC) the likelihood of *any* development being permitted in this area is very low. Also, the AIA of February 2012 confirms that the construction of a building on the sea side of the gravel road would not be supported because of severe archaeological impacts.

#### 6.3.3. Site 6 (Rem Erf 65): Key Site-related Impacts

- *Key point 1*: Development on this site is considered to be at least potentially problematic with regard to spatial impacts on views from the remote southern parts of the property, mainly. In addition, views from Elands Cave would also be affected, albeit not to a major degree. Impacts relating to this site are rated *Medium to High*, but could possibly be mitigated to *Medium* levels.

- *Key point 2*: The proposed development on this site is in accordance with its Industrial 1 zoning, and therefore in accordance with the property owner’s development rights.

- *Key point 3*: The AIA makes no recommendation either for or against development on this site. It does note, however, that at least some archaeological material remains in a subsurface context, even though the footprint area for the proposed industrial building has been severely degraded and transformed. A portion of the eastern side of Erf 65 includes known areas of high archaeological significance associated with Elands Bay Open archaeological site, although the proposed development would avoid these areas.

- *Key point 4:* The abovementioned factors indicate this site (with Site 1) as being the sites around which most negotiation will need to take place between the developers and HWC concerning the realistic prospects of new development at Baboon Point.

This site is located on the Bobbejaansberg headland close to the existing fish factory buildings. Development on Erf 65 will be contentious, although in the opinion of the author, to a considerably lesser degree than Sites 2, 3, 4 & 5. This is because of the site's proximity to existing development (the fish factories), and being located on the headland, i.e. removed from the remote southern portions of the property. Diagram 4 identifies this site as a possible area for low-scale development subject to a VIA.

In order to exercise their Industrial Zone 1 development rights for the property, the owners propose constructing a relatively substantial (950 sq m) new industrial building here. Given that this portion of the property has been associated historically with the fishing industry, and given that Erf 65 has, in the past, been developed as an industrial labour compound (now demolished), the landowner's proposals present, at least in principle, a strong case for at least some substantial development. As the draft CMP points out (Section 7.2 p74), an application for re-use of this site for activities related to fishing would be "more sympathetic with the history and established use and identity of the area" (although compared to what, is not clear). However, the draft CMP goes on to suggest that given the high value placed by the findings of the MEC's tribunal on the spatial context and aesthetic qualities of the area, *any* development activity that would fundamentally change the appearance of the place would be considered undesirable.

The above statement can quite reasonably be interpreted to mean, in practice, that almost any new building on Erf 65 would therefore be considered undesirable, given that the construction of even a building of modest size cannot but 'fundamentally change the current appearance of the place', taking into account the wide open spatial context of the headland to the south of the fishing factories. Should HWC agree with the view expressed in the draft CMP that new development on the site would indeed be undesirable to the point of being unacceptable, the fundamental issue of valid industrial development rights for Erf 65 would have to be addressed.

#### 6.3.4. *Landscape/Landscaping Impacts in General*

- *Key point:* landscaping proposals are generally in line with the 2009 Architectural (and Landscape) Draft Guideline, apart from certain specific aspects. These aspects relate to the proposed industrial development on Erf 65, where impacts from security fencing and lighting could be *High* without mitigation. All other landscaping impacts are rated *Low to Medium*.

The assessment of landscaping impacts is informed by the landscaping guidelines prepared for the previous 2009 development proposals. No specific landscape plans have been developed at this stage, although the development proposals prepared by JB Architecture illustrate the landscaping design intent clearly. Landscaping impacts on Sites 2-5 are not assessed, given that these sites are screened out from further consideration due to their unacceptably high spatial and archaeological impacts.

#### 6.3.5. *Architectural Impacts*

- *Key point:* the architectural proposals are generally in line with the 2009 Architectural (and Landscape) Draft Guideline, apart from certain specific aspects. These aspects relate to the proposed industrial development on Erf 65, where possible impacts relating to architectural scale, massing, and

architectural integration with the landscape are rated *Medium to High*. All other architectural impacts (residential in particular) are rated *Low to Medium*.

The assessment of architectural impacts is informed by the guidelines prepared for the previous 2009 development proposals. Architectural impacts on Sites 2-5 are not assessed, given that these sites are screened out from further consideration due to their unacceptably high spatial and archaeological impacts.

## 7 *Additional Considerations*

### 7.1. Archaeological Impacts

Archaeological impacts on the property are addressed in the Archaeological Impact Assessment by ACRM dated February 2012. (**Annexure 1**). The brief for this report was specifically to identify potential footprints where the proposed construction of the residential units could possibly take place. The assessment included a 2-day field study.

*Site 1:* The AIA identifies a site on the lower slopes of the area alongside the gravel road (Erf 66 north) suitable for the construction of a building of 300 to 350 sq m. In this area, surface shellfish is sporadic and even absent in places.

*Sites 2 to 4:* The report confirms that construction on Sites 2 and 3 (Erf 66 south) will not have a significant impact on archaeological remains although possibly impacting negatively on potentially important sub-surface deposits.

*Site 5:* The report concludes that development on Site 5 cannot be supported, and that it would be possible for a single residential unit of 450-500 sq m on Site 4 to be built or, alternatively, two units with much smaller footprints (300 – 350 sq m) alongside the gravel road where archaeological deposits are thinly dispersed.

*Site 6:* Erf 65 in the vicinity of the proposed industrial building development footprint is identified as severely degraded and transformed. Although transformation includes remnants of previous foundations, open pits, and septic tanks, it is cautioned that development could nonetheless impact negatively on remaining subsurface archaeological deposits. No mention is made as to whether the proposed industrial development on this site would be acceptable or not. However, given that the proposal is not specifically excluded (as is the case with Site 5), it is assumed that this proposal would be acceptable in archaeological terms.

The AIA therefore appears to conclude that development on all sites would be acceptable (subject to conditions), apart from Site 5, where development would not be supported. A call for the reduction of development footprints from approximately 475sq m to 350 sq m including stoep area, is made. No recommendations are made with regard to development on Site 6.

This report assumes that the same 2009 AIA mitigation measures<sup>5</sup> for the previous development proposals would apply to Sites 1 and 6.

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<sup>5</sup> These measures include a 10 m buffer (or development set back line) drawn around Hailstorm Midden and Elands Bay Open. No development would be permitted inside these buffers, which are effectively declared No-Go development areas. Trial excavations over the remainder of the site prior to construction will also have to be undertaken, supplemented by archaeological monitoring during the construction phase, including for all bulk earthworks.



## 7.2. Impacts Measured against Socio-economic Benefits: Section 38(3)(d) NHRA

This issue is not addressed further, given that the Provincial Tribunal response to the 2009 applications was that no substantial evidence existed that the development, as then proposed, would result in socio-economic benefits. In the absence of further evidence supporting socio-economic benefits, it nonetheless follows that the current proposals, being significantly smaller than the 2009 proposals, would result in a considerably lower probability of socio-economic benefits. It is also important to remind that it is a fact that the region suffers from severe unemployment due to the collapse of the fishing industry, with a lack of infrastructure and service providers being a major constraint to growth industries such as tourism.

The current proposals will most likely not be sufficiently viable to finance the training and employment of members of the local community as custodians and tour guides as was previously proposed, although more detailed evidence to this effect has yet to be provided.

## 7.3. Existing Development Rights and Relationship to the Urban Edge

In its ROD of 15 November 2010 (Section 1.1.1), DEADP quotes Erven 65 and 66 being outside the urban edge for Elands Bay as one of its reasons for not authorizing the 2009 development proposals. In other words, DEADP has not accepted the proposals contained in the Elands Bay Draft Spatial Development Framework that the proposed development areas on Erf 65 and part of Erf 66 be included within the urban edge. However, regardless of the location of the urban edge, Erf 65 (formerly Site B – now Site 6) is zoned for industrial use, while the property immediately to the north on the Baboon Point headland already contains a number of fish factories. None of these factors is addressed in DEADP's ROD.

This assessment report therefore must take these development rights into account. Prevention of the owners exercising these development rights would, in the absence of an alternative agreement, probably result in a claim for compensation which neither HWC nor the provincial finance ministry are likely to be able/willing to meet. It is therefore not unreasonable to conclude that a no-development option for the site is not likely to be a practical proposition on these grounds alone.

## 7.4. Architectural and Landscaping Guidelines for the Project

The current development proposals include architectural drawings prepared for all sites. However, the underlying intentions of the owner is that the architectural and landscape design guidelines prepared for the 2009 proposals remain valid with regard to the current proposals where not readily apparent in the drawings of February 2012. These design guidelines are regarded as a sound basis for informing development at Baboon Point subject to the recommendations contained in Sections 7.5.1 and 7.5.2 of the 2009 HIA report. These conditions are reproduced in **Annexure 5**.

## 7.5. Engagement with Interested and Affected parties

In April 2012, a background information report was both emailed and posted by Withers Environmental Consultants to all registered IAP's inviting comment on the current development proposals. At the same time, the final draft of this Stage 2 HIA report and the archaeological impact assessment were uploaded onto Withers Environmental's website for access by IAP's. A notice period extending from 30 April 2012 to 4 June 2012 was given to IAP's to respond. The responses were then captured and arranged in tabular form by Withers Environmental. A copy of this Comments and Response table, together with replies from the relevant consultants to IAP issues



raised, plus copies of all individual IAP responses received, is contained in **Annexure 2** of this report.

#### 7.5.1. *IAP Concerns*

Various concerns were expressed by IAP's, particularly with regard to visibility/visual impact, economic impact and viability, impact on archaeological heritage resources, impact on sense of place, and perceived vested interests (and consequently, bias in favour of the developer) on the part of the heritage consultant. These concerns are responded to in the Comments and Response table in **Annexure 2**. Key aspects relating to these concerns are highlighted below:

i) *Visual Impact/ Visibility & Sense of Place Issues*: Notwithstanding some IAP concerns that at least parts of the proposed development would be highly visible from Elands Bay, photomontages of the previous larger development proposals shown in Figures 6, 7 & 8 of the previous (October 2009) HIA report demonstrate that this will not to be the case, particularly with mitigation. It is, however, possible that part of the roofline of the proposed industrial facility on the headland may be visible from Elands Bay, although if so, this would be viewed against the roof profiles of the existing fish factories. IAP concerns regarding impacts on sense of place, particularly from the southern wilderness approach, are shared by this author. Partly for this reason, development on sites 2, 3, 4 & 5 is therefore not supported on spatial/visual impact grounds. It is clear that views from the sea and from outside Elands Cave will be impacted on by the proposed industrial facility on Site 6, as is already the case with the existing fish factory buildings. Consequently, the high value placed by the findings of the MEC's tribunal on spatial context and aesthetic qualities of this area will have to be weighed up against the industrial development rights for this site, even though the tribunal has failed to do so.

ii) *Economic and Viability Issues*: General concerns have been expressed by IAP's regarding the viability of the proposed industrial facility in particular. This of course presupposes that this facility would be used for fishing-related activities, which would not necessarily be the case. It is reminded that the developer's earlier preference was for residential development on Erf 65. After this was refused, and because a rezoning would have been required from Industrial to Residential use, the developer has decided to exercise the site's industrial development rights, even though this would not necessarily be the most viable alternative. It is also reminded that the developers have openly expressed that they are not necessarily averse to the idea of expropriation, provided that this involves fair compensation.

iii) *Archaeological Concerns*: There are IAP concerns that the proposed development, even in its reduced form (compared to the October 2009 proposals) will negatively impact on the area's archaeological resources. It is important to stress that these concerns are also shared by the specialist consultants, as is their concern that the lack of a proper conservation strategy and funding for its implementation, will result in ongoing irreversible damage to these resources. The consultant archaeologist has re-iterated that the sites where he is willing to support development, i.e. Sites 1; Sites 2, 3, 4 & 5 *above* the gravel road; and Site 6 are not highly sensitive, and that potential negative impacts can be acceptably mitigated through controlled excavation and careful recording. This therefore needs to be weighed against ongoing negative impacts resulting from uncontrolled access and impacts to the site. (It is re-iterated that notwithstanding the support for development on Sites 2-5 on archaeological grounds, development on Sites 2-5 is not supported on spatial grounds).

iv) *Vested Interests on the part of the Heritage Consultant*: An IAP has made the accusation that this heritage consultant has a vested interest in the project. This accusation appears to be based on a misreading of the Assumptions and Limitations statement in Section 2 of this report, and the author's alleged greater concern for "...promoting the development rights of the proponent than

assessing the heritage aspect.” The fact remains that however unpalatable the prospects of development rights on this property may be to certain IAP’s, they cannot be wished away, particularly as denial of exercising these rights would have constitutional implications. The author reiterates that he has no vested interest in the development and would clearly not be able to consider any architectural appointments relating to this project either, as that would indeed amount to a conflict of interests.

#### 7.5.2. LAP Support

IAP support for the proposals was received on grounds of job creation and tourism opportunities quoting the West Coast Fossil Park as a positive example. The proposed industrial facility, in particular, is supported in terms of the potential for promoting job creation amongst one of the poorest communities along the West Coast. Other grounds for supporting the development include concern that large scale degradation is occurring on the site due to illegal camping and uncontrolled access by bikers and 4x4 drivers. Concern is also expressed that the current lack of security has already resulted in the deterioration of Elands Cave. The motives of objectors are questioned and allegations made that the environment is being used as a pretext for disregarding the needs of the local poor. While the author and archaeology consultant share the concerns regarding deterioration of the area due to a lack of security and unauthorized entry, it must also be stated that community empowerment resulting from this project is likely to be limited due to the reduced size of the development, albeit including an industrial component. Also, a development of this size is most unlikely to generate sufficient funds for the proper management and interpretation of the heritage resources in the area.

## 8. Conclusions

These conclusions are to be read in conjunction with Assessment Tables 1A, 1B & 1C, as well as Section 7 of this report.

### 8.1 Cumulative Impacts.

The cumulative impacts for the site are measured against their conformity with the Key Design Informant Priorities as already endorsed by HWC, and as set out in Section 8.2. of the Stage 1 HIA report of June 2007. Sites 2-5 are not considered, given that they have been screened out from further evaluation due to their unacceptably high heritage impacts, and being located within development No-Go areas as identified in the Stage 1 HIA Design Informants.

Impacts are rated as follows:

#### *Key Priority 1*

*Ensuring development that has appropriate densities and a scale responding directly to the spatial and topographical characteristics, of what is a semi-wilderness landscape.*

**High Conformity** with regard to the architectural proposals for Site 1.

**Low-Medium Conformity** with regard to the architectural proposals for Site 6.

*Consequence with mitigation:*

<p><b>Low Significant Impact</b> for Site 1;  <b>Moderate Significant Impact</b> for Site 6.</p>
<p><i>Key Priority 2</i>  <i>Introducing architecture that is informed directly by the exposed, open nature of the surrounding landscape, vegetation, land forms, micro-climatic conditions and natural colours, rather than by stylistically-driven informants per se.</i></p>
<p><b>Medium-High Conformity</b> with regard to the architectural proposals for Site 1.  <b>Low-Medium Conformity</b> with regard to the architectural proposals for Site 6.</p> <p><i>Consequence:</i>  <b>Low Significant Impact</b> for Site 1;  <b>Moderate Significant Impact</b> for Site 6.</p>
<p><i>Key Priority 3</i>  <i>Integrating landscaping and architectural patterns, with particular attention to roof canopies, wall colouring, choice and placement of vegetation, road surfacing, placement of cut and fill (where at all acceptable), as well as nature and location of services.</i></p>
<p><b>High Conformity</b> with regard to the proposals for Site 1.  <b>Low-Medium Conformity</b> with regard to the proposals for Site 6.</p> <p>As underpinned by the architectural and landscape design guidelines of September 2009.</p> <p><i>Consequence:</i>  <b>Low Significant Impact</b> for Site 1 but  <b>Medium – High Significant Impact</b> for Site 6</p>
<p><i>Key Priority 4</i>  <i>Introducing new development that strengthens or consolidates existing signature alignments, gateway spaces and axial relationships in the vicinity of the fish factory.</i></p>
<p><i>Not applicable with regard to Site 1</i>  <b>Medium-High Conformity</b> with regard to the proposals for Site 6.</p> <p><i>Consequence:</i>  <b>Low-Moderate Significant Impact</b></p>
<p><i>Key Priority 5</i></p>

*Recognizing the importance of balancing existing development rights with a need to act responsibly in introducing new development into an area of great regional cultural significance.*

**Medium-High Conformity** for both Sites 1 and 6.

Consequence:

**Low-Moderate Significant Impact.**

*Key Priority 6*

*Introducing development that avoids, or at least minimizes disruption to archaeological and botanically noteworthy sites.*

**High Conformity** with regard to botanical and known archaeological sites (subject to further testing and monitoring during construction)

Consequence with mitigation:

**Low Significant Impact.**

## 8.2 Overall Conclusions

8.2.1. Only a few sites within the Baboon Point Provincial Heritage Site are considered viable for Development in terms of the property's heritage-related constraints, namely Sites 1 and 6. The exclusion of Sites 2-5 means that the property owner, Midnight Storm, will not be able to exercise full development rights for Erf 66 (given exclusion of Sites 2 & 3), and will not be able to exercise any development rights for Ptn 4 of Farm Verlorenvlei No 8 (given exclusion of Sites 4 & 5), unless a suitable alternative arrangement can be reached between the owner and HWC.

If HWC concurs with this conclusion, a number of possible alternatives present themselves in order for the owner to be able to exercise the relevant development rights, namely:

- i) Permitting further development on Erf 66, i.e. in addition to, and probably in the vicinity of Site 1 (subject to archaeological endorsement);
- ii) Permitting other development on Erf 65 – not necessarily of an industrial nature. This may however require a rezoning;
- iii) Entering into a land swap with the Province Government for alternative land elsewhere; or
- iv) Entering into an agreement with HWC and the local authority for the acquisition of at least part of the adjacent fish factory property with a view to its modest redevelopment, given that two of these factories are understood to be currently standing vacant. The feasibility of such an agreement will, however, still need to be investigated.

8.2.2. Given that there is a strong opinion within certain quarters that no development on Erf 65 should take place (as, for example, reflected in the Draft CMP document); this would place even

stronger pressure on arriving at a solution acceptable to both HWC and the landowner. Apart from the alternatives suggested in 8.2.1, the only other likely alternative would be a claim for monetary compensation instituted by the landowner, which HWC by its own admission, is most probably not in a position to meet.

8.2.3. The industrial development rights attached to Erf 65 are a reality that cannot be ignored without having to address the issue of compensation for the owners, should they be prevented from exercising these rights. Even if funds were to be made available for supporting a no-development option at Baboon Point, there would still be no guarantee that the proper controls would be put in place to prevent further damage to its heritage resources. Given these factors, controlled development on the property is considered preferable to persisting with the status quo.

8.2.4. Given the considerably reduced size of the current development proposals compared to the earlier alternatives of October 2009, it is not clear to what extent the property would enjoy protection against further degradation through unauthorized public access and vandalism. This issue is regarded as particularly relevant seeing as it would most likely be some form of controlled development that would be the source of the funding required for the ongoing management of Baboon Point.

8.2.5. IAP response to the draft version of this report reflects a high degree of concern and resistance to the new proposals, although little in the way of constructive suggestions for addressing the issue of development rights, or development alternatives.

8.2.6. Taking all of the above factors into account, the overall conclusion of this report is, therefore, that proposed development on Sites 1 & 6 are supported, (Site 6 in principle) while development on Sites 2-5 cannot be supported. More specifically:

- i) *Site 1*: Impacts from the proposed development on Site 1 can be kept within acceptable limits. Indeed, more development within acceptable impact limits is seen as possible provided that massing and roofscape remain substantially in accordance with the design guidelines by EBESA Architects dated 2009, and subject to the provisions in **Annexure 5** of this report.
- ii) *Sites 2-5*: Impacts from development on these sites fall within an area identified as a no-go zone for future development and therefore cannot be supported.
- iii) *Site 6*: Impacts from development on this site can be kept within acceptable limits through manipulation of scale and massing, but only if one accepts that there will be a fundamental change to the character of this site which is currently undeveloped. Mitigation would include testing to ensure that the roof profile of the industrial building does not intrude into the skyline as viewed from the south, nor constitute a disruption to the existing developed (fish factory) skyline as viewed from Elands Bay. This may involve reconfiguration of the roof of this building and an overall reduction in height. The building should also be located as close as possible to the road on the northern edge of Erf 65 opposite the fish factories so as to cluster with these buildings, thereby maximizing the unobstructed open space on the south side of this site.

## *9 Recommendations*

This report, consequently recommends that the development proposals for Sites 1 and 6, as depicted in the architectural drawings and photomontages: Sheets B01-B13, and B20-B22 read in conjunction with drawings B24-B32: all by JB Architecture, dated 24 February 2012, be approved in principle subject to the mitigation measures described in Section 8.2.6 i) & iii), and Tables 1A-1C,

while recognizing that this approval would prevent the landowners from fully exercising their development rights and that therefore, an alternative arrangement in order to address this shortcoming would have to be agreed to between the affected parties. Note that should HWC not support the recommendation for development on Site 6, even with mitigation, there would be even greater pressure to come to a mutual agreement to compensate for the inability of the developer to exercise the industrial development rights for this property (Erf 65).

This recommendation for approval is subject to the following conditions:

9.1 The drawing up of a Site Development Plan indicating landscaping treatments around all proposed new buildings, and treatments of buffer areas around archaeological sites: all to the approval of HWC, once agreement is reached with the landowner as to the exact extents and locations of the proposed new developments at Baboon Point;

9.2. That the proposed residential development footprint for Site 1 be reduced to 350 sq m (including verandah space) as required by the AIA of February 2012 read in conjunction with the recommendations of the AIA dated April 2009, and that should any further development be considered in this area as suggested in Section 8.2.6 i) of this report, that the location(s) of such further development first be carefully checked with regard to archaeological potential;

9.3 That residential units, where approved, be placed as close as possible to existing roads;

9.4 That the residential architectural proposals be amended to remove the unnecessary and inappropriate ridge caps on the hipped ends of the thatch roofs in accordance with the recommendations contained in Assessment Table 1A of this report;

9.5. That the architecture of the proposed new developments be directly informed by the Architectural and Landscape Design Guidelines (16 September 2009: as amended according to Sections 7.5.1 & 7.5.2 of the HIA Phase 2 report dated October 2009) where not readily apparent on the architectural drawings and photomontages;

9.6 That all landscaping be substantially in accordance with the underlying intentions of the Architectural and Landscape Design Guidelines (16 September 2009: as amended);

9.7 That, where security perimeters are not identified, (as in the case of the proposed industrial facility) such perimeters be secured with grey-coated wire mesh/ timber post or propriety Betafence (or equal approved) fencing to the approval of HWC;

9.8 That sampling and dating, by way of test excavations of archaeological deposits in the proposed footprint areas be undertaken prior to any construction activities commencing: all in accordance with the recommendations of the AIA of February 2012 (Recommendation 9.4);

9.9 That monitoring of bulk earthworks (including excavations for all services) be carried out by a professional archaeologist: all in accordance with the recommendations of the AIA of February 2012 (Recommendation 9.5); and

9.10 That should any unmarked human remains be disturbed, exposed or uncovered during the excavations and earthworks, these be immediately reported to the author of the AIA (ACRM: Jonathan Kaplan), or case archaeologist at HWC.

GRAHAM JACOBS

22 June 2012

## 10. Annexures

Annexure 1: Copies of the Phase 1 AIA for Baboon Point (April 2009 & February 2012)  
 Annexure 2: IAP Comments and Response Table  
 Annexure 3: Development Proposals (JB Architecture: February 2012)  
 Annexure 4: Impact Assessment Criteria  
 Annexure 5: Architectural and Landscape Guidelines (EBESA Architects: September 2009) with recommended amendments.

## 11. References

### ACRM

*Phase 1 Archaeological Impact Assessment*. Proposed Residential Development on Erf 65 and 66, Baboon Point, Elands Bay. Unpublished. April 2009. (Refer Annexure 2).

*Archaeological Impact Assessment*. Proposed Development of Five Residential Units and One Industrial Facility on Erf 65, Rem Erf 66 and Portion 4 of Farm Verlorenvlei No 8, Elands Bay. Western Cape. Unpublished. February 2012. (Refer Annexure 2).

### ACO (Archaeology Contracts Office, UCT)

*Baboon Point Provincial Heritage Site Conservation Management Plan*. Unpublished Final Draft. July 2011(v2).

### ARCON Architects & Heritage Consultants

*Heritage Impact Assessment Stage 1*: Baboon Point Erven 65, 66 & Ptn 4 of Verlorenvlei Farm No 8, Elands Bay, June 2007. Unpublished.

*Heritage Impact Assessment Stage 2*: Baboon Point Erven 65, 66 & Ptn 4 of Verlorenvlei Farm No 8, Elands Bay. October 2009. Unpublished. (Refer Annexure 1).

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*South African Radar in World War II*, SSS Radar Book Group, 1993. Reprinted 1994. Newset, 18 Osborne St Durban ph 3082600. ISBN 0-620-17890-6

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*Verlorenvlei Local Structure Plan*, Unpublished. February 1996.

### DEADP (Department of Environment Affairs & Development Planning, Western Cape)

*Guideline for Management of Development on Mountains, Hills and Ridges of the Western Cape*. April 2002.

*Environmental Authorization*. Application: The Construction of the baboon Point Residential and Resort Development and Associated Infrastructure on the Remainder of Erf 65 and 66 and portion 4 of the Farm Verlorenvlei No 8, elands Bay. Record of Decision. 15 November 2010.

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*A Heritage Scoping Study for Erven 58, 64, 65, 66, 67 & 596, Elands, Bay.* Unpublished report prepared by the Archaeological Contracts Office, University of Cape Town, March 2005.

**Helme, Nick**

*Botanical Assessment of Erven 64-67, Elands Bay.* Unpublished report compiled for BKS. May 2005.

**Jerardino, Antonieta; Sarah Winter & Antonia Malan**

*Proposed Provincial Heritage Site: Baboon Point, Elands Bay,* Provincial Heritage Site nomination to Heritage Western Cape APM Committee (7 October 2006) & BEL Committee (7 December 2006).

**Oberholzer, Bernard (BOLA)**

*Phase 2 Visual Impact Assessment,* Proposed Rezoning and Subdivision for Residential development Erven 65, 66 and Portion 4 of Farm Verlorenvlei No.8, Elands Bay. Unpublished report prepared for BKS (PTY) Ltd on behalf of Midnight Storm investments 170 (Pty) Ltd. June 2007. Amended September 2008.

**Rumboll, CK & Partners**

*Elands Bay Draft Spatial Development Framework.* Unpublished report prepared for Cederberg Municipality, 2007.

## SURVEYS & DIAGRAMS

**BKS (PTY) Ltd**

Krimpsiektebos Forest Survey, Bobbejaanskop Elands Bay: Dwg H4141-34-942-003-e-00 Issued 01/01

**Google Earth**

Aerial Images of St Elands Bay: latest update: 2006.

**Surveyor General**

Chief Directorate Surveys and Mapping  
Aerial Survey of Baboon Point, 1942

**Vroom & Associates**

Site Survey Erf 64, 65, 66 & 67 Elands Bay



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This document has been prepared for Midnight Storm Investments 170 (PTY) Ltd.

The Stage 1 HIA dated June 2007, a revised archaeological impact assessment by ACRM and a public engagement process report conducted by Withers Environmental Consultants, inform this report. Copies of the AIA and public engagement reports are attached to this document.

Cover: Photomontage by JB Architecture of the proposed industrial facility for Site 6, Erf 65, Baboon Point.

*Graham Jacobs*  
*ARCON Architects & Heritage Consultants,*  
*21 June 2012*

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