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**DEA&DP Reference Number:** E12/2/3/2-B4/37-0707/08

Attention: Mr Ouinton Terhoven

Dear Sir

**COMMENTS AND OBJECTIONS: PROPOSED DE ZALZE WINELANDS GOLF ESTATE SOUTHERN EXTENSION DEVELOPMENT; ERF 4 OF DE ZALZE AND A PORTION OF FARM 502/10, STELLENBOSCH**

Jan Hanekom Partnership on behalf of De Zalze Winelands Golf Estate Home Owners Association herewith provides you with comments on the proposed De Zalze Winelands Golf Estate Southern Extension Development; Erf 4 of De Zalze and a Portion of Farm 502/10, Stellenbosch. Attached please find Power of Attorney.

During the scoping phase of the Environmental Impact Assessment of the above mentioned application, the De Zalze Winelands Golf Estate Home Owners Association registered as an interested and affected party and raised concern about a number of issues pertaining to the proposed new development. During correspondence and several meetings held between the De Zalze Winelands Golf Estate Home Owners Association and the developer, Messrs De Zalze Development (Pty) Ltd, the developer undertook to address these concerns and

act in a transparent fashion with regards to the proposed new development. From the recent Environmental Impact Report made available by DJ Environmental Consultants dated April 2010, it became evident that the applicant/developer has shown disregard for the rights of the De Zalze Winelands Golf Estate Home Owners Association and the stipulations of the Articles of Association of the De Zalze Winelands Golf Estate Home Owners Association. The De Zalze Winelands Golf Estate Home Owners Association as interested and affected party and custodian of the interest of its members, therefore has to raise the following objections:

## **1. OBJECTION TO THE USE OF THE “DE ZALZE WINELANDS GOLF ESTATE” NAME**

The proposed development on Erf 4, De Zalze and Farm 502/10, Stellenbosch, was advertised as “De Zalze Winelands Golf Estate Southern Extension” and is referred to as such in the Environmental Impact Report, April 2010. This creates the impression that the proposed new development forms part of or will in future form part of the existing De Zalze Winelands Golf Estate. This is both untrue and misleading.

During the public participation process of the scoping period of this application, several of the interested and affected parties, including the De Zalze Winelands Golf Estate Home Owners Association, A.W. Withers of Aubrey Withers Environmental Consultants and Mr Kobus Basson of Kleine Zalze brought it to the attention of the applicant and its consultants that the use of name “De Zalze Winelands Golf Estate Southern Extension” creates a misperception that the new development forms part of the existing estate.

In its response included in the Environmental Impact Report of April 2010 on the proposed development, DJ Environmental Consultants state that “The proponent also indicated that the HOA Constitution specifically envisages the extension under the same name”. In this regard, please be advised of the following:

- i. The De Zalze Winelands Golf Estate Home Owners Association is governed in terms of Articles of Association which clearly states that during the development period, the developer has the right at any time to extend or alter the area or composition of the development requiring the Association to incorporate into the development any additional property from time to time which the developer shall be entitled to develop

as it may deem fit. **However, the Articles of Association are also clearly states that the developer shall be deemed to have abandoned rights conferred upon it during the development period, at the end of the development period.**

Legal opinion was acquired by the De Zalze Winelands Golf Estate Home Owners Association which confirms that the development period has expired. The applicant, Messrs. De Zalze Development (Pty) Ltd. therefore no longer holds the rights bestowed upon it during the development period and may therefore not extend the De Zalze Winelands Golf Estate or apply for change land use on Erf 4, De Zalze, without prior written consent of the De Zalze Winelands Golf Estate Home Owners Association.

Subsequent to the public participation meetings and before the release of the Environmental Impact Report this issue was again raised in discussions between the developer and the Board of Directors of the De Zalze Winelands Golf Estate during which the Board of Directors made it clear that any reference to the proposed development as being “Phase 2” or an “Extension” of the De Zalze Winelands Golf Estate could not be supported as it wrongfully gives the impression that the proposed development forms part of the existing golf estate, which it does not.

The De Zalze Winelands Golf Estate Home Owners Association **objects to the use of the name of “De Zalze Winelands Golf Estate Southern Extension”** in the advertisement and Environmental Impact Report of the proposed new development, and any reference to the proposed development forming part of the De Zalze Winelands Golf Estate, for it is viewed as being intentionally misleading based on the following:

- i. The developer was aware that the proposed new development does not form part of the De Zalze Winelands Golf Estate;
- ii. The developer was aware of that advertising the proposed development as the “Southern Extension of De Zalze Winelands Golf Estate”, would be misleading.

## **2. OBJECTION TO THE PROPOSED DEVELOPMENT FORMING PART OF THE EXISTING DE ZALZE WINELANDS GOLF ESTATE**

In the Environmental Impact Report, April 2010, the proposed new development is described as a residential development on Erf 4, De Zalze, and a portion of Farm 502/10 “that will serve as the Phase 2 extension to the exiting De Zalze Winelands Golf Estate, located in the Municipality of Stellenbosch”.

Subsequent to the public participation process during the Scoping Phase of the environmental impact process, the Board of Directors of the De Zalze Winelands Golf Estate Home Owners Association was approached by the developer requesting their support and permission to advertise the proposed development as forming part of the existing De Zalze Winelands Golf Estate, in order to simplify the application process, since the De Zalze Winelands Golf Estate falls within the urban edge and Farm 502/10, Stellenbosch, on which most of the proposed development is situated, falls outside of the urban edge.

After careful consideration the Estate Manager, Mr Patrick Holden, of behalf of the Board of Directors of the De Zalze Winelands Golf Estate Home Owners Association informed the developer that because of the potential impact on the individual rights of the home owners, the Board of Directors of the De Zalze Winelands Golf Estate are unable to take position regarding this request without obtaining a mandate from the home owners in this regard.

According to the Articles of Association of the De Zalze Winelands Golf Estate Home Owners Association, the proper processes needed to be followed and the developer was informed that a Special General Meeting would be called by end of May 2010 for the purpose of discussing the proposal with the members of the De Zalze Winelands Golf Estate Home Owners Association and obtaining a mandate from members to act on their behalf in this matter. The developer in turn informed the Estate Manager of De Zalze Winelands Golf Estate of its intention to go ahead with the advertising of the proposed development for the public participation process.

The De Zalze Winelands Golf Estate Home Owners Association **objects to the proposed development being part of the existing De Zalze Winelands Golf Estate**, because of the following reasons:

- i. The developer was aware that the proposed development does not form part of the De Zalze Winelands Golf Estate before the release of the Environmental Impact Report;
- ii. The developer was aware that the Board of Directors of the De Zalze Winelands Golf Estate could and did not give permission for either the use of the name of the De Zalze Winelands Estate or the inclusion of the proposed development into the existing De Zalze Winelands Golf Estate.

### **3. OBJECTION TO THE DEVELOPER'S CLAIM TO HAVING DEVELOPMENT RIGHTS ON DE ZALZE WINELANDS GOLF ESTATE**

In the Environmental Impact Report, April 2010, it is stated that during the scoping process further alternatives were identified by interested and affected parties including “a proposal that the site be developed separate from the existing De Zalze Winelands Golf Estate with its own entrance, name and associated infrastructure” to which the applicant/proponent responded as follows:

“The developer has the legal right to extend the existing estate and to incorporate such extension into and as part of the estate”.

In terms of the Articles of Association of De Zalze Winelands Golf Estate Home Owners Association, **during the development period** the developer has the right at any time to extend or alter the area or composition of the development requiring the Association to incorporate into the development any additional property from time to time which the developer shall be entitled to develop as it may deem fit. **However**, the Articles of Association also states that the developer shall be deemed to have abandoned rights conferred upon it during the development period, at the end of the development period.

The development period is defined as the period commencing on the incorporation of the Association and ending when the developer has effected transfer of the last erf owned by it or upon the expiration of a period of 5 years from the date that the developer effects transfer of the first erf owned by it, whichever event occurs first in time.

Since more than 5 years have lapsed since the transfer of the first erf on De Zalze Winelands Golf Estate, the development period has expired. In light of this the developer, Messrs. De Zalze Development (Pty) Ltd., no longer has the rights to extend the existing estate and to incorporate such extension into and as part of the estate. The Association has obtained a legal opinion supporting this.

The De Zalze Winelands Golf Estate Home Owners Association **therefore objects to the developer's claim that it has the legal right to extend the existing estate and to incorporate such extension into and as part of the estate.**

#### **4. OBJECTION TO INCLUSION OF ERF 4, DE ZALZE, INTO THE PROPOSED DEVELOPMENT, WITHOUT PRIOR WRITTEN CONSENT FROM THE DE ZALZE WINELANDS GOLF ESTATE HOME OWNERS ASSOCIATION**

Approximately 10 ha of Erf 4, De Zalze, are included into the proposed new development. Erf 4, De Zalze, falls within the boundaries of the existing De Zalze Winelands Golf Estate, Stellenbosch, which is managed under the regulations of the Articles of Association of the De Zalze Winelands Golf Estate Home Owners Association as approved by the Stellenbosch Municipality.

The Articles of Association determine that no unit shall be subdivided, rezoned or consolidated without prior written consent of the developer during the development period, or without the prior written consent of the De Zalze Winelands Golf Estate Home Owners Association after the termination of the development period.

The Articles of Association also determines that after the development period, should the developer still own property on the De Zalze Winelands Golf Estate, it would have the same rights as any ordinary member of the Home Owners Association. The developer is therefore bound by the regulations of the Articles of Association to obtain prior written consent from the De Zalze Winelands Golf Estate Home Owners Association for any proposed changes in land use on the estate.

The developer of the proposed new development went ahead with the application process and releasing the Environmental Impact Report without prior written consent from the De

Zalze Winelands Golf Estate Home Owners Association. The Home Owners Association therefore **objects to the proposed new development on Erf 4, De Zalze, as the developer thereof did not obtain prior written consent of the Home Owners Association to apply for the development and substantive change in land use on Erf 4, De Zalze.**

#### **5. OBJECTION TO THE PROPOSED SUBDIVISION OF ERF 4, DE ZALZE, WITHOUT APPROVAL FROM THE DE ZALZE WINELANDS GOLF ESTATE HOME OWNERS ASSOCIATION**

In order for a portion of Erf 4, De Zalze Winelands Golf Estate, Stellenbosch, to be included into the proposed new development, Erf 4, De Zalze, will need to be subdivided to create the portion that will form part of the proposed new development. Article 33.8 of the Articles of Association of the De Zalze Winelands Golf Estate Home Owners Association provides that no erf shall be subdivided or rezoned without the approval of the Association.

The Home Owners Association therefore **objects to the subdivision of Erf 4, De Zalze, without the approval of the De Zalze Winelands Golf Estate Home Owners Association.**

#### **6. OBJECTION TO THE PROPOSED LINK AND ENTRANCE TO OR ACCESS OF ANY NATURE (WHETHER BY FOOT OR PER BICYCLE OR OTHERWISE) FOR OCCUPANTS OF THE NEW DEVELOPMENT BETWEEN THE PROPOSED NEW DEVELOPMENT AND THE EXISTING DE ZALZE WINELANDS GOLF ESTATE**

On the plans for the proposed new development included in the Environmental Impact Report, April 2010, the proposed development is linked by road with the existing De Zalze Winelands Golf Estate. This visually creates a misleading impression that the new development forms part of or will in future be linked to De Zalze Winelands Golf Estate.

During a meeting earlier this year before the release of the Environmental Impact Report of April 2010, the Board of Directors of the Zalze Winelands Golf Estate Home Owners Association informed the developer that it is bound by the regulations of the Articles of Association to act in the best interest of its members and could not allow the developer's

request of linking the two estates without following the prescribed procedure and obtaining a mandate from its members to do so. The developer was informed that the procedural restrictions of the Articles of Association of the De Zalze Winelands Golf Estate Home Owners Association would allow for a Special General Meeting to be called at the earliest by the end of May 2010 and that, without such a mandate, the Board of Directors could not reach any agreement with the developer.

In spite of the developer being aware of the De Zalze Winelands Golf Estate Home Owners Association's concern and objection against this road link, the plans were not changed to reflect otherwise and the roads as described in the Environmental Impact Assessment would be linked with the existing road system of De Zalze Winelands Golf Estate.

The De Zalze Winelands Golf Estate Home Owners Association **objects to the road link and entrance to or access of any nature (whether by foot or per bicycle or otherwise) for occupants of the new development** between the new development and De Zalze Winelands Golf Estate, because:

- The estates are two separate entities and no agreement exists for linking the two entities.
- Allowing for access to the proposed new development through De Zalze Winelands Golf Estate will increase traffic volumes through De Zalze Winelands Golf Estate which will lead to higher cost in road maintenance for the De Zalze Winelands Golf Estate Home Owners Association, and an increased risk to security on the estate

## **7. OBJECTION TO THE USE OF THE EXISTING ROADS ON THE DE ZALZE WINELANDS GOLF ESTATE**

In the Environmental Impact Report, April 2010, for the proposed development it is stated that "The site will be developed separately from the existing estate, Phase 1, in the sense that a separate access will be established for construction vehicles. The construction of services and buildings in Phase 2 will be constructed and linked with the current Phase 1 road system, only after the services for Phase 2 had been installed".

It is also stated that "Primary access to the extension will be provided by the existing road network of the estate (via the Grootte Zalze Farmstead). The main access road to the



estate is via the gatehouse alongside the R44". From the application it is also evident that the alternative access from the Annandale Road will serve mainly as an access road during the construction phase of the proposed development.

The Traffic Impact Assessment for the proposed development has also been prepared for the De Zalze Winelands Golf Estate as a whole, without the support of the De Zalze Winelands Golf Estate Home Owners Association in this regard.

The De Zalze Winelands Golf Estate Home Owners Association therefore **objects to the use of the existing entrance to the De Zalze Winelands Golf Estate as well as the use of the existing internal roads located on De Zalze Winelands Golf Estate**, based on the following:

- The proposed development does not form part of De Zalze Winelands Golf Estate. The Home Owners Association owns the roads on the De Zalze Winelands Golf Estate and is the only entity entitled to grant the use thereof to any entity;
- The De Zalze Winelands Golf Estate Home Owners Association has not granted permission for the use of its roads by the proposed development;
- The De Zalze Winelands Golf Estate Home Owners Association has to uphold the regulations of its Articles of Association and has to act in the best interest of its members and therefore cannot support access through De Zalze Winelands Golf Estate or the use of its roads by a proposed new development, without the mandate from its members to do so;
- Increased traffic volumes generated through De Zalze Winelands Golf Estate will lead to higher cost in road maintenance for the De Zalze Winelands Golf Estate Home Owners Association,
- Increased traffic volumes will lead to an increased security risk on De Zalze Winelands Golf Estate; and
- Increased traffic volumes may disturb the tranquil lifestyle the home owners paid for when they invested on De Zalze Winelands Golf Estate.

## 8. OBJECTION TO USE OF AND CONNECTION TO SERVICES ON THE ESTATE

The De Zalze Winelands Golf Estate Home Owners Association has not granted any consent to the Developer in respect of the use of or connection to any services on the estate and therefore **objects to the use of and connection to services on the De Zalze Winelands Golf Estate.**

## 9. OBJECTION TO PROPOSED NEW DAM ENCROACHING ON THE BOUNDARIES OF DE ZALZE WINELANDS GOLF ESTATE

A large dam is proposed on the boundary between the proposed new development and Erf 4, De Zalze, encroaching on land forming part of the De Zalze Winelands Golf Estate and falling under the control and management of the De Zalze Winelands Golf Estate Home Owners Association.

For the De Zalze Winelands Golf Estate to stay compliant with the stipulations of its own approval conditions, Environmental Management System and legislation pertaining to water use, the Home Owners Association cannot support the development of a new dam that encroaches on its boundaries.

The De Zalze Winelands Golf Estate Home Owners Association therefore **objects to the proposed new dam encroaching on land forming part of the De Zalze Winelands Golf Estate.**

## 10. COMMENTS ON THE PROPOSED NEW DAM

The National Water Act, Act 36 of 1998, requires all users of agricultural water to register water uses, withdrawal from streams and irrigation board schemes and on-farm storage of water with the Department of Water Affairs and Forestry. Although the existing dam is located on Erf 4, De Zalze, the water rights to the that dam are registered in favour of the De Zalze Winelands Golf Estate Home Owners Association (attached please find proof of water registration).

Should the proposed development and dam be approved, the De Zalze Winelands Golf Estate Home Owners Association wishes to have it included as approval conditions that the proposed new dam would never be linked to the existing dam on Erf 4, De Zalze, as linking the dams on two separate estates would complicate the water balance and compliance with approval conditions regarding water rights and water use for De Zalze Winelands Golf Estate.

## **11. OBJECTION TO THE DEVELOPMENT OF A RECREATIONAL FACILITY ON THE EDGE OF THE DAM ON ERF 4, DE ZALZE**

The development of a recreational facility is proposed for the area on the edge of the existing dam located on Erf 4, De Zalze, for the purpose of providing for “the recreational needs of the residents of Phase 2 as well as those in Phase 1”.

The De Zalze Winelands Golf Estate Home Owners Association **objects to the development of a recreational facility on Erf 4, De Zalze**, based on the fact that:

- Allowing for recreational facilities for a proposed new estate to be located on the existing estate, would inevitably indicate the De Zalze Winelands Golf Estate Home Owners Association’s willingness to link the proposed new development with the existing estate which it, in terms of its Articles of Association, is not allowed to do without a mandate of its members.

In conclusion, in the Environmental Impact Report an independent planning view was obtained stating that although the proposed development is located outside of the urban edge, it should be viewed as a special case because of the information made available in the application. In light of the preceding objection to incorrect and misleading information included in the application of Messrs. De Zalze Development (Pty) Ltd., the De Zalze Winelands Golf Estate Home Owners Association urges authorities that the same terms of the Western Cape Spatial Development Framework and Provincial Urban Edge Guidelines should apply to the application for the proposed new development, as would for any other development outside of the urban edge.

It is further suggested that authorities should take cognisance of and consider the stipulations in the Articles of Association of the De Zalze Winelands Golf Estate Home Owners Association which was approved by the Stellenbosch Municipality.

We trust that these comments and objections will be taken into consideration when evaluating the merit of the proposed new development.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Annatjie van der Westhuizen', written in a cursive style.

Annatjie van der Westhuizen