

**APPEAL SUBMITTED AGAINST THE DECISION TO APPROVE AN APPLICATION IN TERMS OF THE SPATIAL PLANNING AND LAND USE MANAGEMENT (SPLUMA) REGULATIONS AND BY-LAWS: APPLICATION FOR THE REMOVAL OF THE RESTRICTIVE CONDITION 20.2 (A) AND (B) STATED IN THE TOWN PLANNING APPEALS BOARD JUDGEMENT (APPEAL NO. 3038) FOR ERF 353 NEWCASTLE, 60 MURCHISON STREET, CENTRAL BUSINESS DISTRICT BY THE NEWCASTLE MUNICIPAL PLANNING TRIBUNAL (TP13/3/3-353) (JUNE 2016)**

**1. DETERMINATION OF THE APPEAL**

This submission is brought before Appeal Authority in terms of section 51(2) and 30(1) of SPLUMA and Regulations respectively. The Appeal Authority is expected to make a determination on the decision of the Municipal Planning Tribunal (MPT) to approve an application to remove the restrictive conditions as stated above.

**2. POSTPONEMENT OF THE HEARING**

The meeting convened on the 28<sup>th</sup> of June 2016 by the then Newcastle Appeals Authority (the Newcastle Executive Committee). It was then postponed and all the parties involved were notified of the outcome.

Further to the above outcome, a Council resolution (11 October 2016) endorsed that that a delegation of Municipal Officials with technical expertise must serve on the Appeal's Authority. This committee has been assembled to adjudicate on all development/land use appeals brought in terms of the town planning legislation. Flowing from such, all the parties concerned were also notified in writing.

This matter is has been pending for some time and it is therefore put before the appeals authority for final adjudication in so far as it relates to the Municipality. Attached is the appeal pack to be relied upon at the hearing with the necessary documentation. It must be noted that since this is a continuation of the initial meeting, the same documents are served.

Attached : Appeal Pack

  
S CINDI  
REGISTRAR

**Appeal Pack**

APPEAL SUBMITTED AGAINST THE DECISION TO APPROVE AN APPLICATION IN TERMS OF THE SPATIAL PLANNING AND LAND USE MANAGEMENT (SPLUMA) REGULATIONS AND BY-LAWS: APPLICATION FOR THE REMOVAL OF THE RESTRICTIVE CONDITION 20.2 (A) AND (B) STATED IN THE TOWN PLANNING APPEALS BOARD JUDGEMENT (APPEAL NO. 3038) FOR ERF 353 NEWCASTLE, 60 MURCHISON STREET, CENTRAL BUSINESS DISTRICT BY THE NEWCASTLE MUNICIPAL PLANNING TRIBUNAL (TP13/3/3-353) (JUNE 2016)

**1. DETERMINATION OF THE APPEAL**

This submission is brought before the Appeal Authority in terms of section 51(2) and 30(1) of SPLUMA and Regulations respectively. The Appeal Authority is expected to make a determination of whether it upholds the decision of the Municipal Planning Tribunal (MPT) and dismiss the appeal or agree with the appellant and dismiss the decision of the MPT to approve an application to remove the restrictive conditions.

**2. CONDONATION FOR SETTING THE DATE OF THE HEARING LATE**

2.1 Section 10(2)(a), Schedule 10 of the Newcastle SPLUMA bylaw states that within 21 days after receipt by Presiding Officer of the Appeal's Authority (EXCO) must set the date, time and place for the hearing of the appeal, which the date may not be later than 90 days after the date on which the memorandum of appeal was lodged with the Municipal Planning Appeal Authority Registrar or the Municipal Manager (MM);

2.2 Section 10(2)(b) further state that all the parties to the appeal must be notified about the details of the hearing.

2.3 There was a slight deviation from the section 10(2)(a) of Schedule 10 of the same bylaw, since the hearing date was only communicated with the parties on 8 June 2016;

2.4 It is submitted to the Appeal Authority that this was the first appeal which the municipality had to process following SPLUMA implementation in the mid of 2015;

- 2.5 The municipality needed to ensure that all processes as specified by legislation will be complied with without any error or omission;
- 2.6 The appeal was also complex in nature; the background to the application to set aside the restrictive conditions convoluted the matter hence the municipality has been meticulous in ensuring that all processes are followed correctly. The applicant and the objector had been before the High Court about the same matter. The final court decision which has been appended to the responding memorandum of the Municipal Planning Tribunal states that the High Court ordered both litigants to await the final outcome of the application from the municipality;
- 2.7 It is brought before the Appeal Authority that soon after the date of the hearing was set down, all parties to the appeal were notified in writing and were given an opportunity to lodge any additional papers they wish to rely on during proceedings of the hearing;
- 2.8 However, since there was a delay in transmitting the letter informing the parties of the cut-off date (7 June 2016) to file additional information, an extension of time was granted to the 13 of June 2016. All communication was transmitted to the parties by email on the 8<sup>th</sup> of June 2016;
- 2.9 An extension of time had to be given to allow the parties enough time for consideration of the matter and ensure that none is prejudiced by the internal municipal systems;
- 2.10 I, therefore, submit as the Municipal Manager that all processes to this appeal against the decision of the MPT to approve the removal of restrictive conditions were above board and followed without any prejudice;
- 2.11 To this end the prehearing process has been concluded as follows:
- a. That a site inspection will not be held;
  - b. All documentation relating to the hearing have been submitted to the office of the municipal manager;
  - c. All documents pertaining to the appeal have been collated and will be published in the municipal website for parties to the appeal to access the appeal papers;
  - d. No order relating to finance is expected to be made by the Appeal Authority;



- e. The hearing will be heard by way of oral representation by parties to the appeal being the representative/s of the MPT and the appellant;
- f. The applicant may observe the proceedings of the hearing;
- g. No application has been received either from the MPT nor the appellant to be absent during the hearing set down;

2.12 The favourable consideration by the Appeal's Authority for condonation for setting down the appeal hearing date will ensure that this matter is finally laid to rest in so far as it relates to municipal planning.

List of Appendix:

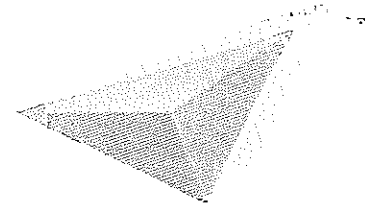
- Appendix 1 : Memorandum of Appeal by Gildenhuis Malatji Attorneys
- Appendix 2 : Responding memorandum to the appeal by the MPT



B.E. MSWANE

**MUNICIPAL MANAGER**

**APPENDIX 1:**  
**MEMORANDUM OF APPEAL BY GILDENHUYS MALATJI ATTORNEYS**



GILDENHUYS MALATJI  
A T T O R N E Y S

31 March 2016

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Sir

**MEMORANDUM OF APPEAL: ERF 353, 60 MURCHISON STREET**

1. We refer to the record of decision as emailed to our offices by your Mr. Sphephelo Cindi on 2 March 2016 at 16:09 pm.
2. We confirm that we act on behalf of the following objectors/appellants herein:
  - 2.1 Lavasco Trading 1002 (Pty) Ltd t/a Engen Wimpy Waterside;
  - 2.2 LMD Africa Forensics (Pty) Ltd t/a Ayliff Garage;
  - 2.3 Move On Up 1074 CC t/a SSS Motors;
  - 2.4 NCL Moolas (Pty) Ltd t/a Newcastle Pitstop;
  - 2.5 Kwikcorp 1 CC t/a Leon Motors; and
  - 2.6 We-Two investments CC t/a Auto City.
3. We enclose herewith the objectors/appellants memorandum of appeal.
4. Kindly acknowledge receipt hereof.

**Yours faithfully**

**GILDENHUYS MALATJI INC**

**Per: Ms. Neetu Dawlal**

**[Electronically transmitted therefore unsigned]**

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UMTHA RAVNATH (HUMAN RESOURCES)  
INNO THIBE (OFFICE)

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**MEMORANDUM OF APPEAL**  
**(ERF 353, 60 MURCHISON STREET, NEWCASTLE)**

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**INTRODUCTION**

1. At a meeting held on 25 February 2016, the Newcastle Municipal Planning Tribunal ("MPT") approved the removal of restrictive conditions in respect of Erf 353, 60 Murchison Street, Newcastle.
2. The record of decision was transmitted via email on 2 March 2016 at 16:09 by Mr. Sphephelo Cindi to the Appellant's legal representatives herein.
3. This is a memorandum of appeal in respect of the aforementioned record of decision.

**THE APPELLANTS**

4. The First Appellant is Lavasco Trading 1002 (Pty) Ltd t/a Engen Wimpy Waterside, an Engen fuel site situated on the N11.
5. The Second Appellant is LMD Africa Forensics (Pty) Ltd t/a Ayliff Garage, a Caltex fuel site situated at 16 Ayliff Street, Newcastle.
6. The Third Appellant is Move On Up 1074 CC t/a SSS Motors, a BP fuel site situated at 34 Kirkland Street, Newcastle.
7. The Fourth Appellant is NCL Moolas (Pty) Ltd t/a Newcastle Pitstop, an Engen fuel site situated on 68 Allen Street, Newcastle.
8. The Fifth Appellant is Kwikcorp 1 CC t/a Leon Motors, a Shell fuel site situated at 73 Allen Street, Newcastle.

9. The Sixth Appellant is We-Two investments CC t/a Auto City, a Shell fuel site situated at 15 Murchison Street, Newcastle.
10. The Appellants formed part of the group of objectors to the application for the removal of the restrictive conditions.

#### BACKGROUND TO MATTER

11. The Appellants have submitted the detailed background to the matter including no less than 19 (nineteen) supporting annexures as per its notice of objection dated 11 December 2015 and request that same be incorporated herein so as to avoid volumnosity and/or duplication.
12. Without derogating from the above and in a nutshell, Mr Rahim Abdool Kader ("Mr Kader") operates an Engen fuel site at 22 Terminus Street and, a recently established, Total fuel site at 60 Murchison Street.
13. On 23 May 2006, the Town Planning Appeals Board [Annexure "B" to the notice of objection] dated 23 June 2006 held that the Total fuel site is subject to the conditions that one Mr Kader furnishes the Municipality with a written undertaking in terms of which he:

*"a) agrees to cease operating the petrol filling station on the site from which he present carries on such operations [i.e. Engen fuel site at 22 Terminus Street]; and*

*b) abandons all rights pursuant to which he operates the petrol filling station on such site.*

*For the purposes of this condition, the date upon which the appellant shall cease to operate his existing petrol filling station and abandons any right to do so in the future shall be the last day of the month during which the new filling station on the appeal site [i.e. Total fuel site at 60 Murchison Street] commences operations. A certificate from the Newcastle Municipality shall*

specify the date upon which the new filling station on the appeal site commences operation.”

14. Mr Kader duly submitted his undertaking and agreed that to the aforementioned conditions [Annexure “D” to the notice of objection]. It should be noted from the outset that the restrictive condition was volunteered by Mr Kader at the appeal hearing of the then Town Planning Appeals Board [paragraphs 18 and 19 of Annexure “B” to the notice of objection].
15. The Total site commenced operation on 10 September 2015 however Mr Kader refused to cease operation of the Engen site despite the conditions imposed and his undertakings to do so.
16. The Second to Sixth Appellants’ secured an urgent interdict at High Court, Pietermaritzburg under case number 14322/2015 whereby the Engen and Total fuel sites were interdicted from concurrently operating.
17. Mr Kader submitted an application for removal of the restrictive conditions which was approved by the MPT and it is against this decision that the memorandum of appeal is lodged.

#### POINTS IN LIMINE

18. Prior to dealing with the specific grounds of appeal against the approval of the removal of the restrictive conditions herein, the Appellants herewith raise the following points *in limine* herein:
  - 18.1 Appointment and constitution of members of the MPT
    - 18.1.1 In terms of section 14 of the Newcastle Municipality Spatial Planning and Land Use Management By-Law, 2015 (“the by-law”):

*"Notice of the appointment of members to a Municipal Planning Tribunal must be published in the Gazette or in newspaper(s) circulating in its area of jurisdiction announcing –*

*(a) that it has established a Municipal Planning Tribunal;*

*(b) the names of the persons that it has appointed to a Municipal Planning Tribunal, including the Chairperson and Deputy Chairperson;*

*..."*

18.1.2 It is submitted that such notification has neither been published in the Kwa-Zulu Natal Provincial Gazette nor any local newspaper.

18.1.3 The only notification within the Appellants' knowledge is that published in the local newspaper of 5 February 2016 (Notice No. CS07/2016) relating to a *"replacement of members"*. However, to the Appellants' knowledge no initial and/or formal notice was published as to the appointment, composition and names of persons appointed to the MPT which is a peremptory requirement in terms of section 14 of the by-law.

18.1.4 It is accordingly submitted that there is/was no proper appointment and/or composition of the MPT and, as such, the record of decision is actually null and void and/or irregular and/or invalid.

18.2 Refusal and/or failure to avail documentation to the Appellants'

18.2.1 The Appellants' were invited to a meeting by Mr. Sphephelo Cindi which was chaired by Ms. Ntsiki Khathide in her capacity as Director: Town Planning, which meeting was held on Friday, 19 February 2016. At the near conclusion of this meeting, the Appellants' representative was handed an [incomplete] copy of Mr Kader's response to the Appellants' notice of objection. The Appellants' were afforded an opportunity to reply thereto by Tuesday, 23 February 2016.

- 18.2.2 The Appellants' legal representative called upon the Municipality *qua* Mr. Sphephelo Cindi, Ms. Ntsiki Khathide as well as Mr. Qiniso Zwane for the complete copy of the response, more specifically some of the missing annexures thereto, which the Municipality has up to date failed to provide. Copies of the thread of communiqué in this regard are attached hereto as Annexure "AA".
- 18.2.3 It is accordingly submitted that the record of decision is improper and/or invalid, as such decision was reached in the absence of the Appellants' reply which was afforded to the Appellants and which the Appellants' were unable to finalise in light of the Municipality's failure to avail the complete documentation.
- 18.3 Record of decision
- 18.3.1 Section 16(5) of the by-law provides that the "*Presiding Officer must sign the decision of the Municipal Planning Tribunal*".
- 18.3.2 It is submitted that the record of decision is improper and/or invalid and/or procedurally incorrect as same is signed by one, NP Khathide, in the capacity of "*Director: Town Planning, Authorised Planning Official*".
- 18.3.3 There is no indication whether NP Khathide is/was indeed the appointed Presiding Officer of the MPT and whom has authority to sign the record of decision.
19. In light of the aforementioned points *in limine*, it is submitted that in terms of section 79(4) of the by-law, the Municipal Planning Appeal Authority set aside the record of decision or remit the matter for re-consideration in light of the aforementioned points *in limine*.



### GROUNDS FOR APPEAL

20. In the event that Municipal Planning Appeal Authority does not uphold the Appellants' points *in limine*, the Appellants' herewith submit its grounds for appeal.
21. It is submitted that the MPT respectfully erred in rejecting the Appellants' grounds for objection and approving the removal of the restrictive conditions.
22. The MPT erred by not considering [alternatively not properly considering] that the restrictive conditions were in fact self-imposed by Mr Kader. Mr Kader was the one who volunteered to make the undertaking [just so that the special consent could be granted] and further undertook to close the Engen site [just so that he can successfully obtain site and retail licenses for the Total site from the Department of Energy]. This cannot now belatedly be set aside to suit, amongst others, Mr Kader's commercial interests.
23. The MPT seems to place reliance on section 153 of the Constitution of Republic of South Africa pertaining to an obligation on local government to promote the social and economic development of the community however the Municipality *qua* the MPT fails to promote the social and economic development of the Appellants' when it approved the removal of the restrictive conditions.
24. The MPT erred in finding that "*the current establishment provides employment to families, whom if the business ceases to operate may need to look for alternative employment, at worse remain unemployed.*" It is clear that the MPT failed to take into consideration, in this regard, that Mr Kader made an undertaking that the staff from the Engen site "*will be relocated*" to the Total site [paragraph 7 of Annexure "Q" to the notice of objection]. Accordingly, there can be no issue of any loss of employment.

25. The MPT further erred in indicating that the *"decommissioning the existing Service Station on Erf 257 Newcastle is likely to negatively impact on the current traffic movements in the immediate vicinity and the CBD in general."* There was no such submission before the MPT and in fact the Municipality itself confirms in its own letter to the Department of Energy dated 6 February 2012 that there the area is over congested. Accordingly, the closure of the Engen site would in fact alleviate the over congestion and in fact ease the flow of traffic.
26. The MPT erred in entering the arena and failing to remain impartial in adjudicating the matter when it indicates that the Engen site *"offers convenience to business owners in the area, particularly the taxi industry who frequents the garage in preparation of different destination points."* In fact this is in complete contradiction of Mr Kader's own submissions [Annexure "Q" to the notice of objection] and the Municipality's own letter to the Department of Energy dated 6 February 2012 where it indicates that, amongst others, this area is dangerous and over congested. Mr Kader in fact confirms [paragraphs E5 and E8 of Annexure "R" to the notice of objection] that *"the taxi rank is further a generally unsafe area and is avoided by motorist...troubled taxi rank area."*
27. The MPT clearly did not consider that Terminus Street is riddled with taxi violence incidents, as confirmed by Mr Kader himself, the Municipality and the Road Traffic Inspectorate.
28. The MPT merely indicates that *"reasons advanced against the removal of restrictive conditions in the objection letters dated 10, 11 and 14 December 2015 respectively, from a town planning point of view to be commercial/trade related."* This is completely incorrect and it is demonstrative that the MPT has in fact not even considered the content of such objections filed. The MPT has not provided any proper explanation and/or details for the rejection of the objections.

29. The MPT erred when it failed to consider that Mr Kader confirms to the Municipality on 28 October 2015 [Annexure "S1" and "S2" to the notice of objection] that "*I had placed this restriction on myself with the appeal board thinking this would make it easier and quicker to setup the new site using the old site paperwork (in essence I had asked that once the new site would trade I would close down the old site)*". This is a clear indication of Mr Kader's *mala fides* however the MPT elected to ignore such conduct to the detriment of the Appellants, residents of the Municipality and in fact the people of the country at large as this leads credence and/or support that one's purported unlawful conduct and *mala fides* can merely be "condoned" and/or accepted.
30. The MPT erred by not considering [alternatively not properly considering] the conduct of Mr Kader relating to use and/or abuse two separate identify numbers and the attempts to shift his business and operations between his corporate entities in seeking to avoid application of the restrictive conditions and his supply agreement with Engen Petroleum Limited, which company is considering taking legal action against Mr Kader.
31. The MPT erred by not considering [alternatively not properly considering] that the Engen site does not in fact have a valid retail license to retail petroleum products in terms of the Petroleum Products Act 120 of 1977 as a result of which, Engen Petroleum Limited has ceased supply of petroleum products to this site in any event.
32. The MPT erred by not considering [alternatively not properly considering] that Mr Kader only agreed to the restrictive conditions before the Town Planning Appeal Board in order for the Town Planning Appeals Board to uphold his appeal. He then made use of this approval to obtain retail and site licenses for the Total site only to now seek to renege on his undertakings now that the Total site is up and running.
33. The MPT failed in considering that the undertaking by Mr Kader in respect of the restrictive conditions was clearly a consideration by the Department of Energy in the granting of the licenses to the Total site.

34. The MPT has erred by not taking into consideration that the approval of the removal of the restrictive conditions shall open the floodgates for parties to merely make baseless undertakings, obtain approvals in order to proceed with commercial ventures and once up and running, seek to remove same.
35. The MPT, by coming to illogical conclusions that it has did, has adversely affected the fairness in determination of the matter to the detriment of the Appellants.

#### INDEPENDANCE OF THE MUNICIPAL PLANNING APPEAL AUTHORITY

36. Section 23(1) of the by-law provides that the Municipal Planning Appeal Authority is the Executive Authority of the Municipality (unless otherwise delegated).
37. Section 32 of the by-law specifically provides that Municipal Planning Appeal Authority must exercise their powers in an independent manner, free from governmental or any other outside interference or influence, and in accordance with the highest standards of integrity, impartiality, objectivity and professional ethics and furthermore that no person may interfere with the functioning of the Municipal Planning Appeal Authority.
38. The Appellants' herewith plead that this matter be adjudicated with impartiality and freedom of any bias.
39. Without respectfully pre-empting the matter, the Appellants' strictly reserve and/or confirm their rights to file a review application at the High Court of South African should the Municipal Planning Appeal Authority dismiss the Appellants' memorandum of appeal.

**CONCLUSION**

40. In the premises it is submitted that the Appellants' grounds for appeal be upheld.

41. It is furthermore submitted that the Municipal Planning Appeal Authority set aside the record of decision

SIGNED and DATED at PRETORIA on this 31<sup>ST</sup> day of MARCH 2016.

*Sgnd. N Dawlal*

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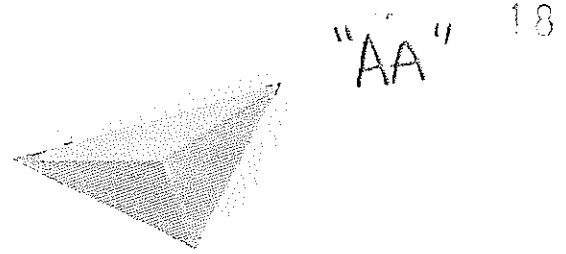
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23 February 2016

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Sir

**NOTICE OF OBJECTION: ERF 353, 60 MURCHISON STREET**

1. We refer to the above matter and to the meeting held on Friday, 19 February 2016 between Ms. Khathide, Mr. Zwane, Mr. Cindi and writer hereof.
2. We further refer to the Applicant's response to our clients' objections which was handed to writer hereof at the near conclusion of the aforesaid meeting, which response comprises 31 (thirty one) pages.
3. We further refer to your Mr. Cindi's email communiqué dated Friday, 19 February 2016 at 17:55 pm wherein we were informed to reply to the aforementioned response by no later than 16:00 on Tuesday, 23 February 2016.
4. We record that the Applicant's response was in your possession since at least the 25 January 2016 and furthermore your offices were aware since 12 February 2016 that the Applicant would not be attending the meeting on 19 February 2016.
5. We further record that on Monday, 22 February 2016, we informed your offices that the Applicant's response refers to a total of 17 (seventeen) annexures, however we have not been placed in possession of same and/or same was not annexed to the copy availed to us.
6. We further requested your offices to specifically avail Annexures:
  - 6.1 BB;
  - 6.2 HH;
  - 6.3 II;
  - 6.4 MM;
  - 6.5 NN;

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RESOURCES)  
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-2-

- 6.6 OO;
- 6.7 PP; and
- 6.8 QQ.
7. We furthermore advised that your requirement of our clients to reply to the Applicant's response in less than 2 (two) business days is unreasonable and furthermore proposed an opportunity to file a reply by close of business on Friday, 26 February 2016.
8. We record that writer hereof has not received any response to the aforementioned proposal and telephonically contacted Mr Cindi this afternoon whom advised that the Annexures referred by the Applicant were the same as filed by our clients and that Mr Cindi would contact writer hereof. We have explained to Mr Cindi that this is not entirely correct and hence our request for 8 (eight) of the specified annexures.
9. We confirm that we have neither heard from Mr. Cindi further [who further indicated to email the annexures to us via his private email in light of the voluminosity] nor received the requested 8 (eight) annexures and a response to our proposal.
10. We accordingly record our clients' dissatisfaction and prejudice in the manner in which this matter is conducted. We furthermore record that our clients have not been provided with proper and adequate opportunity to reply in detail to the Applicant's response herein.
11. Without derogating from the above and in light of the limited time availed to our clients herein we record that our clients stand by the content of its objections of 11 December 2015 and denies the contents of the Applicant's response in so far as same does not accord with our clients' objection already filed.
12. We further highlight page 29, paragraph 3 of the Applicant's statement which provides that "there was no intention of Mr Kader to ever close down the site" which clearly highlights the *mala fides* of Mr Kader.
13. We once again request that the Applicant's application be dismissed and not entertained, failing which this shall open the floodgates for parties to make baseless undertakings and thereafter apply for the removal thereof.
14. All of our clients' rights remain strictly reserved herein.

Yours faithfully

GILDENHUYS MALATJI INC

Per: Ms. Neetu Dawlal

[Electronically transmitted via email]

Neetu Dawlal

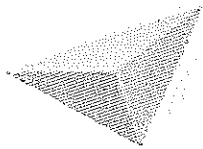
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**From:** Neetu Dawlal  
**Sent:** 25 February 2016 12:17  
**To:** Sphephelo Cindi  
**Cc:** Ntsiki Khathide; Qiniso Zwane  
**Subject:** RE: Notice of objection - Erf 353 (60 Murchison Street)

Dear Sir,

We acknowledge receipt of your email communiqué below and respond thereto below in blue.

Regards,



GILDE NHUYS MALATJI  
 CONSULTANTS

**Neetu Dawlal** | Senior Associate - Employment Law Department

Tel: +27 12 428 8681  
 Fax: +27 12 428 8601  
 Email: [ndawlal@gminc.co.za](mailto:ndawlal@gminc.co.za)

Address: GMI House, Harlequins Office Park, 164 Totius Street, Groenkloof, Pretoria  
 Post: PO Box 619, Pretoria, 0001, South Africa [www.gminc.co.za](http://www.gminc.co.za)

A LEVEL TWO (AAA) BBBEE AND VALUE ADDING SUPPLIER VERIFIED BY EMPOWERDEX

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**From:** Sphephelo Cindi [<mailto:Sphephelo.cindi@newcastle.gov.za>]  
**Sent:** 23 February 2016 17:17  
**To:** Neetu Dawlal  
**Cc:** Ntsiki Khathide; Qiniso Zwane  
**Subject:** RE: Notice of objection - Erf 353 (60 Murchison Street)

Madam

I acknowledge receipts of your email below and contents thereof.

I wish to confirm the following:

1. The minutes of the meeting held last week will be circulated to you to peruse and submit back to the Municipality with suggested corrections if any; We have subsequently received the draft minute at 16:18 on 24 February 2016. We have since inserted our track changes and emailed this back to your offices.
2. I have transmitted to you an email containing the additional information in the form of annexures which were appended into the applicant's response to you objection/s and stated that some of the annexures made reference to could not be found on our municipal file; We record that we have not been placed in possession of the annexures that we have requested. Your offices have merely sent us back our own annexures and not availed the "missing" 8 (eight) annexures that we have requested. We note with consternation and extreme apprehension that your offices indicate that some of the annexures could not be found. Please advise on what basis can the Applicant's response be accepted in such incomplete state and/or on what basis can we file a reply thereof in such incomplete state.
3. A seating of the Newcastle Municipal Planning Tribunal (MPT) has been confirmed for Thursday the 25<sup>th</sup> of February 2016 at 14:00; and See our comment at 2 above regarding the outstanding annexures.

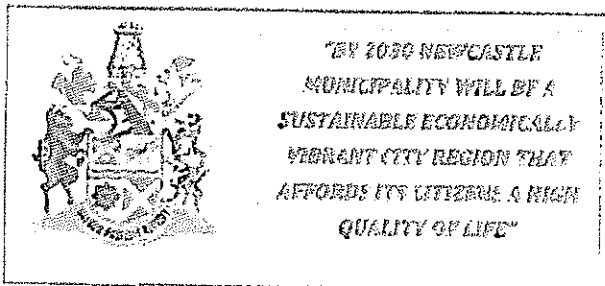


4. You will be advised of the outcome with respect to the application to remove the restrictive conditions issued as part of Appeal no. 3038.. Town Planning Appeals Board. See our comment at 2 above regarding the outstanding annexures.

The outstanding documents are still awaited from yourselves. We do not understand what your offices mean by this as we are still awaiting the requested annexures from your offices.

Kind regards,

Siphephelo Cindi  
 Land Use Management Section  
 Town Planning  
 Development Planning and Human Settlements  
 Tel: 034 328 3300/59  
 Fax: 034 328 3493/4  
 Cell: 083 751 6333

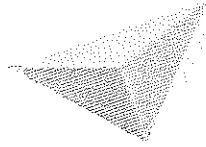


From: Neetu Dawlal [mailto:NDawlal@gminc.co.za]  
 Sent: 23 February 2016 04:01 PM  
 To: Sphephelo Cindi <Sphephelo.cindi@newcastle.gov.za>  
 Cc: Ntsiki Khathide <Ntsiki.Khathide@newcastle.gov.za>; Qiniso Zwane <Qiniso.Zwane@newcastle.gov.za>  
 Subject: RE: Notice of objection - Erf 353 (60 Murchison Street)  
 Importance: High

Dear Sir,

Please see attached.

Regards,



GILDENHUYS MALATJI  
ATTORNEYS

Neetu Dawlal | Senior Associate Employment Law Department  
Tel: +27 12 428 8681  
Fax: +27 12 428 8601  
Email: ndawlal@gminc.co.za

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Post: PO Box 619, Pretoria, 0001, South Africa [www.gminc.co.za](http://www.gminc.co.za)

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**From:** Neetu Dawlal  
**Sent:** 23 February 2016 12:57  
**To:** Sphephelo Cindi  
**Cc:** Ntsiki Khathide; Qiniso Zwane  
**Subject:** RE: Notice of objection - Erf 353 (60 Murchison Street)  
**Importance:** High

Dear Sir,

We refer to our email below and urgently await to hear from you in this regard.

Regards,



GILDENHUYS MALATJI  
ATTORNEYS

Neetu Dawlal | Senior Associate Employment Law Department  
Tel: +27 12 428 8681  
Fax: +27 12 428 8601  
Email: ndawlal@gminc.co.za

Address: GMI House, Harlequins Office Park, 164 Totius Street, Groenkloof, Pretoria  
Post: PO Box 619, Pretoria, 0001, South Africa [www.gminc.co.za](http://www.gminc.co.za)

A LEVEL TWO (AAA) BBBEE AND VALUE ADDING SUPPLIER VERIFIED BY EMPOWERDEX

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**From:** Neetu Dawlal  
**Sent:** 22 February 2016 17:27  
**To:** Sphephelo Cindi  
**Cc:** Ntsiki Khathide; Qiniso Zwane  
**Subject:** RE: Notice of objection - Erf 353 (60 Murchison Street)  
**Importance:** High

Dear Sir,

We acknowledge receipt of your email below, the contents of which has just come to the attention of writer hereof upon her return to office this afternoon after been in witness consultations the entire morning.

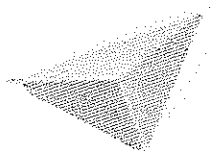
Kindly note that we have now had the opportunity to peruse the response filed by the Applicant herein. Please note that the response refers to a total of 17 (seventeen) annexures, however we have not been placed in possession of same and/or same was not annexed to the copy availed to us. Kindly and urgently avail same to our offices. We specifically require to consider annexures:

1. BB;
2. HH;
3. II;
4. MM;
5. NN;
6. OO;
7. PP; and
8. QQ.

We record that the response comprises 31 (thirty one) pages and was only handed to writer hereof on the afternoon of Friday, 19 February 2016 despite same been in possession of your offices since at least the 25 January 2016. Furthermore your offices were aware since 12 February 2016 that the Applicant would not be attending the meeting on 19 February 2016. Accordingly we are of the considered and respectful view that the requirement of our clients to respond thereto in less than 2 (two) business days is unreasonable in the circumstances.

We accordingly request, subject to us urgently receiving the aforementioned annexures, to kindly file our clients' response by close of business on Friday, 26 February 2016. Kindly confirm whether such proposal is in order.

Regards,



GILDENHUIS MALAJJI  
ATTORNEYS

**Neetu Dawlal** | Senior Associate - Employment Law Department

Tel: +27 12 428 8681  
Fax: +27 12 428 8601  
Email: [ndawlal@gminc.co.za](mailto:ndawlal@gminc.co.za)

Address: GMI House, Harlequins Office Park, 164 Totius Street, Groenkloof, Pretoria  
Post: PO Box 619, Pretoria, 0001, South Africa [www.gminc.co.za](http://www.gminc.co.za)

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**From:** Sphephelo Cindi [<mailto:Sphephelo.cindi@newcastle.gov.za>]  
**Sent:** 19 February 2016 17:55  
**To:** Neetu Dawlal  
**Cc:** Ntsiki Khathide; Qiniso Zwane  
**Subject:** RE: Notice of objection - Erf 353 (60 Murchison Street)

Afternoon Neetu

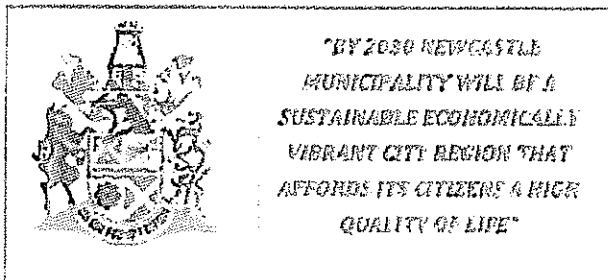
I refer to our meeting held earlier today.

The Chairperson of our meeting has requested me to communicate the deadline for submission of supplementary information, including providing responses to representations made by the applicant in response to the objections you made. We therefore will be pleased to receive all this mentioned information by Tuesday at 16:00. Since I do not have your mobile number, I called your office as well and left this message with Mr A Ndlovu who made an undertaking to pass the message by communicating the deadline which is the close of business on Tuesday (16:00).

Your cooperation in this regard will be highly appreciated.

Kind regards,

Siphephelo Cindi  
Land Use Management Section  
Town Planning  
Development Planning and Human Settlements  
Tel: 034 328 3300/59  
Fax: 034 328 3493/4  
Cell: 083 751 6333



**APPENDIX 2:  
RESPONDING MEMORANDUM BY THE MPT**

RESPONDING MEMORANDUM TO AN APPEAL SUBMITTED AGAINST DECISION TO APPROVE AN APPLICATION IN TERMS OF THE SPATIAL PLANNING AND LAND USE MANAGEMENT (SPLUMA) REGULATIONS AND BY-LAWS: APPLICATION FOR THE REMOVAL OF THE RESTRICTIVE CONDITION 20.2 (A) AND (B) STATED IN THE TOWN PLANNING APPEALS BOARD JUDGEMENT (APPEAL NO. 3038) FOR ERF 353 NEWCASTLE, 60 MURCHISON STREET, BY THE NEWCASTLE MUNICIPAL PLANNING TRIBUNAL CENTRAL BUSINESS DISTRICT (TP13/3/3-353) (30 MAY 2016)

AD PARAGRAPH 1

**1. INTRODUCTION**

1.1 A decision of the Municipal Planning Tribunal to approve an application stated below was transmitted to Gildenhuys Malatji Attorneys for the attention of Ms Neetu Dawlal on 2 March 2016 at 16:09 via email. The conditions stated has been extracted from the former KZN Provincial Appeal's Board Judgment;

Condition: 20.2 that appellant furnish to the Newcastle Municipality a written undertaking in terms of which he –

- a) Agrees to cease operating the petrol station on the site from which he at present carries on such operations;
- b) Abandons all rights pursuant to which he operates the petrol filling station on such site.

1.2 On 31 March 2016, Newcastle Municipality through Mr Cindi received a memorandum of appeal appended to this document as **Annexure A**. this contains the following:

- 1.2.1 It provided some essential facts of the matter;
- 1.2.2 Stated the grounds of appeal and relief sought;
- 1.2.3 Raised issues, which the Municipal Planning Appeal Authority must consider in making its decision.

1.3 The appeal as submitted by the law firm is hereby opposed in its entirety for the reasons advanced in this responding memorandum.

The question which the MPT had to consider was more about if from a sound planning point of view be whether it is desirable, reasonable and appropriate for the filling station

along Terminus Street to be maintained. From a professionally-considered planning point of view there is nothing to suggest that there would be a breakdown in the land use activity system to compromise the proper functioning of the CBD, let alone the vicinities in the area where the filling stations are located.

## **2. RESPONSIBILITY OF THE MPT**

The MPT has a responsibility to consider the application looking into many aspects surrounding it. Some of these aspects include what is already being presented i.e. application, comments, objections, responses and ancillary matters thereof. In detail this is appended as **Annexure B**, which outlines the matters to be considered by the MPT when making a recommendation.

AD THE PARAGRAPH 4-6

## **3. BODY/ PERSONS RESPONDING TO THE APPEAL**

3.1 This responding memorandum is filed by the Newcastle Municipal Planning Tribunal consisting of the following members:

- 3.1.1 Miss N. S. Thusi;
- 3.1.2 Mrs N. P. Khathide;
- 3.1.3 Mr G. Phiri;
- 3.1.4 Mr Z. Zincume;
- 3.1.5 Mr Z. Ndlovu;
- 3.1.6 Mr J. Fourie;
- 3.1.7 Mr P. Mphela

AD PARAGRAPH 18.1

## **4. POINTS IN LAMINE**

### **4.1 Appointment of the MPT Members**

4.1.1 The appellant is correct in the citation of the Newcastle Spatial Planning and Land Use Management Bylaw that it requires of the Municipality to publish a notice notifying the public about constituting the MPT and as well as the names of the members;

4.1.2 In compliance with the SPLUMA, its Regulations and Municipal Bylaw, the municipality published a notice as seen on **Annexure C** that Newcastle MPT has been constituted by:

- a) Miss N. S. Thusi (Chairperson);
- b) Mrs N. P. Khathide (Deputy Chairperson);
- c) Mr G. Phiri;
- d) Mr Z. Zincume;
- e) Mr Z. Ndlovu;
- f) Mr J. B. Fourie;
- g) Mr T. J. Mphela

4.1.3 Observation of internal municipal arrangements revealed some teething issues which would have potentially harmed the functioning of the MPT. This necessitated to amend the composition of the MPT members slightly. As such **Annexure D**, is a reflection of the MPT members replaced through Council resolution attached as **Annexure E**;

4.1.4 It is therefore, within this context that the scenario created and papers filed by the appellant is deemed to be unreliable, selective, misleading and devoid of any truth. It is clear from the observation by the appellant that they did not do adequate research on this aspect and this absence is recurringly manifest in their submission. In fact, had they given their appeal due diligence, they would have easily had access to this information from the relevant department before engaging on this misleading route as mentioned earlier.

4.1.5 Based on the clarification given above, and contrary to the appellant's submission, this section of the appeal must be dismissed and the decision of the MPT be upheld by the Appeal Authority.

#### **4.2 Refusal and/or failure to avail documentation to the Appellant**

4.2.1 The appellant is correct to point out that during the meeting between herself and the municipality, the applicant's response was submitted for her review in which she needed to respond by 23 February 2016. It is therefore difficult to understand the concern being raised by the appellant on the issue of Mr Kader's documents as the municipality submitted documents which had been handed by Mr Kader;



4.2.2 It would be pointed out that even prior to her response, the following additional information she requested was transmitted via email to Geldenhuise Malatjie Offices at 16:21 on 23 February 2016. In her submission, the appellant is conveniently silent in acknowledging that the documents were submitted to her. This is a glaring demonstration of the lack of a sincerity and objectivity in her appeal, which unfortunately is seen to be bent on desperately unearthing non-existent shortcomings. This observation is corroborated by her failure to acknowledge that the following documents were submitted to her by the department:

- a) Annexure BB:
- b) Annexure HH
- c) Annexure II
- d) Annexure MM
- e) Annexure NN
- f) Annexure OO
- g) Annexure PP
- h) Annexure QQ

4.2.3 All documents available at the municipal disposal were transmitted to the appellant and were afforded enough time to construct and enhance their case which unfortunately lacked substance, dwelled on allegations which have not been proven to be correct either by organs of state or the courts. In fact one of the recent court decisions in this case ordered the litigants to await the municipal outcome on the application for removal of restrictive conditions, refer to **Annexure F** paragraph 1.4;

4.2.4 The municipality could have not submitted the annexures which were not supplied by the applicant and had not been classified as the minimum requirements for submission of the planning application. Therefore, were not central to guide the decision making process on the matter;

Safe to state that, the sentiment that the appellant could not finalise his objection because not all the documents which she requested were supplied to them is untrue and misguided. In fact an email transmitted to the objector states that we had availed the total composition of the file we had at our disposal concerning the response to the objectors. In fact it was the same objector who queried as to why the municipality was submitting the same documents which she already has at her disposal. She further attempted to clarify which annexures were being referenced by way of telephonic

explanation for which Mr Cindi still responded by stating that she (the objector) already has the same, but because she insisted, the documents were transmitted to the objector's office nevertheless, refer to **Annexure G**.

4.2.5 It is unclear what materially new information the appellant would have presented to the case beyond so many missed opportunities presented during the application process which they could not obtain and present compelling grounds as to why the municipality should not consider the application favourably. Therefore, the absence of these documents because of non-submission from the applicant, since they were not prescribed to him (applicant) even though on the responding letter, reference to them was made, did not cause any prejudice on the part of the application process. It is hereby concluded that the appellant did not want to appreciate the process set down by the municipality but wanted to superimpose that which they wished to see to be part of the process. This is the position which the municipality did not agree to, please refer to **Annexure H** for ease of reference,

## 5. BACKGROUND TO THE MATTER

In December 2015 an application dated December 2015 was submitted in terms the SPLUMA Regulations and Bylaws: Schedule 4 respectively by Mr R. Kader, who, for the purposes of this responding memorandum is referred to as the applicant. However, it is important to provide an explicit background to this matter which gave rise to the application that surfaced recently (December 2015) from Mr Kader.

5.1 In February 2005 an application in terms of the Town Planning Ordinance, Ord. 27/1949 was lodged by Mr Kader to establish a petrol filling station, service industrial shop and residential building above the ground floor on Erf 353 Newcastle whom for the purposes of this submission if referred to Petrol Filling Station Land Use 'A' (**PFS A**);

5.2 Following initial evaluation by the planning department, the applicant was advised that the application was incomplete since two of the minimum requirements specified at the time was not complied with, the title deed and site development plan were not submitted as part of the application;

- 5.3 The application was advertised in the local newspaper and other medium of communication for 21 days, as per the requirement of the Ordinance and the Scheme at the time;
- 5.4 An objection with a petition of 9 signatories was submitted against the application from Naven Singh & Associates;
- 5.5 The objectors stated overtrading in the service station industry in the CBD as the main ground of objecting and that the CBD could not accommodate any additional petrol filling stations;
- 5.6 In 2005 Newcastle Municipality's Executive Committee, EXCO at its meeting which took place on the 16<sup>th</sup> of August 2005 resolved to decline the application for the establishment of the petrol filling station on Erf 353 Newcastle based on absence of clarity supplied regarding the title deed of the property and site development plan, this resolution is attached as '**Annexure I**';
- 5.7 Following the notification of the outcome of the application, the applicant was aggrieved by the decision of EXCO and lodged an appeal to the then Town Planning Appeal's Board;
- 5.8 On receipt of the memorandum of appeal, the appeal's Board conveyed the appeal to the municipality and ordered that it files its responding memorandum, referred to as **Annexure J**;
- 5.9 The applicant on his appeal acceded that the Appeal's Boards should consider his application favourably since he was at the point intending to close the PFS B prior to opening the new PFS A on Murchison;
- 5.10 Following due consideration by the Appeal's Board the appeal was granted with the self-imposed conditions confirmed by the Board as follows:

Condition: 20.2. *That the appellant furnish to the Newcastle Municipality a written undertaking in terms of which he -*

- a. agrees to cease operating the petrol filling station on the site from which he at present carries on such operations;*
- b. abandons all rights pursuant to which he operates the petrol filling station on such a site*

- 5.11 In 2009, the municipality approved building plans for establishment of the service station with convenient shop and the residential building on top of the ground floor;
- 5.12 The construction of the petrol filling station commenced and was finalised in year 2015;
- 5.13 In their letter dated 30 September and received on 5 October 2015 the attorneys representing the objectors, Gildenhuis Malatji Attorneys in the 2005 application to establish **PFS A** were enquiring from the municipality the reasons as to why the conditions were not being enforced;
- 5.14 At the same time the applicant submitted an application **Annexure K** to have the above stated restrictive condition set aside from the judgement which approved the initial application;
- 5.15 The application was advertised between 12 November and 14 December 2015 (32 days) in the local newspaper;
- 5.16 Three objections were received to this effect, one was from Gildenhuis Malatji Attorneys on behalf of 6 service stations operators located in the CBD, the second came from the Principal for St. Oswald's Secondary School, Dr. N Singh and lastly one was submitted by the MR D. Nkosi, the taxi driver currently operating at the taxi rank in Terminus Street, see **Annexure L**;
- 5.17 Gildenhuis Malatji Attorneys in their objection letter argued extensively the alleged illegality of trading fuel without necessary licenses and what they purport as mischievous directorship and ownership of different companies used to seek licences to operate a filling station. They further submitted that circumstances in the area which were stated by Mr Kader when pursuing his application to operate **PFS A** and in the course stating that he was going to close the **PFS B** have not changed. Therefore, it cannot be justified as to why he has to set aside the restrictive condition. Most of their objections from a town planning point of view have been placed or categorised to centre around trade and competitiveness for which this municipality is unable within its constitutive mandate adjudicate on;
- 5.18 The principal of a school in the vicinity pointed out issues of safety and security of the pupils at the Secondary school by citing specific prior events which were perceived to have jeopardised safety of the children;

- 5.19 Lastly, the taxi driver cited the evident circumstances of violence which have been noted recently in the taxi rank which becomes hazardous to all if **PFS B** was to remain open;
- 5.20 The applicant in his response letter to the objections stated that, there is a pending high court case on this matter, where the objectors are seeking an interdict against him to cease all operations in the PFS in 22 Terminus Street following the recently opened Total PFS in Murchison Street;
- 5.21 A meeting between the applicant and objectors was facilitated by the Department concerned for which the applicant opted not to participate. The meeting between the objectors and the municipality only, sat on 19 February 2016;
- 5.22 Flowing from this meeting a report from the Directorate of Town Planning was submitted to the MPT. After much deliberation on the report (**Annexure M**), the MPT resolved to approve the application for removal of restrictive conditions as can be seen on **Annexure N** of this document;
- 5.23 Both the applicant and the objector/s were advised of the outcome of the application for which the one objector, Gildenhuys Malatji Attorneys decided to exercise their right and lodge an appeal against the decision of the MPT;

#### AD PARAGRAPH 1.1

### 6. GENERAL OVERVIEW OF THE MEMORANDUM OF APPEAL

- 6.1 It is hereby submitted to the Appeal Authority of Newcastle Municipality that the appeal for which a responding memorandum is prepared contains many gaps, materially insufficient for the committee to rely upon. It is characterised by wild allegations which have not been proven factual by any relevant authority.
- 6.2 The appellant missed a good opportunity to assemble a convincing scenario and take the Appeal Authority to its confidence as to why they deemed it necessary and desirable from a town planning point of view not to approve the removal restrictive condition acceded into by Mr Kader and later confirmed by the then Provincial Town Planning Appeal's Board;

- 6.3 The appellant puts much emphasis on the pending allegations and design their case to pre-empt the course of action/s which are secondary to initial planning permission, the municipality has jurisdiction over. The appeal in its current form lends itself in a cart before the horse scenario and for that reason cannot be considered to be sound, dependable and sustainable from a town planning point of view;
- 6.4 It emerged during the processing of this application that the appellant was persistently pursuing the court case against Mr Kader actions for not closing the petrol filling station garage at Erf 257 Newcastle and in that course confused the municipal planning process with the matters before the court, hence, such heavy reliance on documents submitted at the high court regarding the alleged illegality of the petrol filling station at Erf 257 Newcastle. At times the appellant would draw the municipality's attention to these court papers almost as if parameters of municipal planning are also confined to judicial processes;
- 6.5 Had the municipality not been consistence in its approach and firm on matters that define parameters on municipal planning the matters could have potentially got out of control. It was through such separation of matters, that those before the court judicial process will take its course. The role of the municipality is limited to the power and functions defined in Schedule 4 Part B of the South African Constitution, Act 106 of 1996, especially as it deals with municipal planning;
- 6.6 The municipality is an organ of state whose fundamental course, operations and functionaries are guided by the constitution, municipal system act, etc. but appreciates that different organs of state dispense that which is constitutionally assigned to them. Therefore, other spheres of government or judicial institution must be given space and time to deal with matters of their competence, **Annexure O** is a validation of such stance.
- 6.7 For that reason we put to the Appeal Authority that during its consideration of this matter it zooms onto the gaps and weaknesses of this appeal make the determination that it cannot be correct to dismiss the decision of the MPT on the basis of weak argument advanced by the appellant. Therefore, this appeal should be dismissed in its totality.

## 7. Record of Decision

7.1 It is correct for the appellant to state that Section 18(5) of the SPLUMA By-law stipulates that the Chairperson signs the record of decision. However, it is important to bring to the attention of the appellant that Mrs N. P. Khathide was formally appointed as the deputy chairperson of the Municipal Planning Tribunal through Council resolution attached hereto as **Annexure P**. Put in a simple way, Mrs N.P. Khathide is the Director: Town Planning, Authorised Planning Official who is also appointed as the deputy chairperson of the Municipal Planning Tribunal.

7.2 In compliance with section 14 of the SPLUMA bylaws, the public was notified about the formal appointment of Mrs Khathide as the deputy chairperson, refer to **Annexure C** of this submission. Therefore, in the absence of Miss N.S. Thusi, the appointed Chairperson, Mrs N.P. Khathide in her capacity as the deputy chairperson, is expected to dispense of the duties assigned to Miss Thusi in order for the proper functioning of the Municipal Planning Tribunal carries on without interruption. Evidence provided suggests that there was no breach of any regulation or bylaw pertaining to SPLUMA;

7.3 Moreover, the letter signed by Mrs Khathide is a true reflection of the outcome of the meeting of the MPT committee, the minutes attached on **Annexure N** outlines this synergy between the letter communicated to the applicant and the minutes of the meeting;

7.4 Therefore, the notion presented by the appellant that the decision of the MPT be set aside or remit the matter for reconsideration on the grounds that the record of decision was signed by the Deputy Chairperson and not the Chairperson/Presiding Officer does not provide a firm basis for the appellant's case against the decision. This issue has been adequately clarified above and the appeal which is based on this misinformed position must be dismissed as there was no law or bylaw that was transgressed and the decision truly reflects the outcome of the meeting of the Municipal Planning Tribunal.

## 8 Grounds of Appeal

- 8.1 The thoroughness of the MPT committee is hereby commended for its sound principles to dispense of the matter without prejudice and bias. The report attached to this responding memorandum as **Annexure M** shows the depth and consideration of matters given prior to the resolution to approve was made. Paragraph 20-35 of the grounds of appeal cannot be agreed with;
- 8.2 The development and planning principles applied to the planning application to remove restrictive condition on Erf 353 Newcastle should be construed as nothing else but planning and development;
- 8.3 Reference is made to **Annexure Q** of this memorandum, where we draw the attention of the Appeal Authority to the reasons why Exco did not approve the application for special consent to establish a petrol filling station in 2005;
- 8.4 The appellant's view that the Municipal Planning Tribunal ought to have had a blinkered and lop-sided assessment of the application for the simple reason that the restrictive condition was self-imposed by the applicant is to greatly undermine the work of the Municipal Planning Tribunal. The view by the appellant is ill-considered and undermines the professional ethics of the members of the tribunal in exercising their unbiased, independent, fair and professional view when dealing with applications before it. The tribunal is not swayed by the implied intentions of applicants and this must be clearly understood by the appellant and applicant alike. The municipality could not limit its consideration of the application of removal of restrictive conditions to the views of the applicant and appellant in making its determination on the application. The appellant seems to have an unbalanced viewpoint which unfortunately is clearly aimed at protecting her clients' commercial interests against the commercial interests of the applicant. Let it be emphasized at this point that the tribunal is not entangled in these competitive commercial interests but is discharging its mandate as expected of it. Planning is an overarching discipline that considers applications of this nature in much more comprehensive as opposed to a narrow, limited view which characterises the appellant perspective;
- 8.5 The appellant appears to have a narrow and limited view by emphasizing the point that the applicant willingly imposed the restrictive conditions and cannot belatedly



aspire to set the same aside simply because, it no longer suite his interest. The appeal lacks understanding that the municipality rejected the application because of inadequate documentation submitted in 2005, when the application was first lodged. In fact **Annexure Q** of this submission, the last paragraph of the executive summary specifies that the establishment proposed was good and supported by Development Facilitation Act, however, due to the proper site development plan and the title deed not being available at the time the application was dismissed. It cannot be a contested fact that Section 153 of the Constitution of the Republic of South Africa places an obligation on local government to promote the social and economic development of the communities. Where the appellant errs is to insinuate that the MPT took a side in favour of the applicant and not the appellants. This is a completely wrong opinion which as indicated above, the tribunal is not entangled in competitive commercial interests of developers but is discharging its mandate as expected of it in fair, well-reasoned and in a manner which is untainted by biased commercial considerations.

- 8.6 Consideration as to why the applicant initially acceded to close down the establishment on Erf 257 Newcastle was one of the factors the MPT took into account in considering the application, but certainly not the only consideration. Caution needs to be exercised that planning is a multifaceted discipline and draws on a number of principles to either qualify or disqualify the matter;
- 8.7 It is merely the appellants' opinion to state that the appellant rendered an undertaking that he will close the business on Erf 257 Newcastle prior to operating on Erf 353 Newcastle to position himself in a better place to obtain necessary licences from the Department of Minerals and Energy. Consideration of planning applications cannot be determined on the basis of opinion of individuals but should be based on facts guided by sound planning principles;
- 8.8 In fact it is interesting to note that the same Department of Minerals and Energy in permitting the site on Erf 353 Newcastle did not order the applicant to close down the site on Erf 257 Newcastle. But it is understandable for the Department of Minerals and Energy not to extend their authority to regulate use of land since it falls beyond their jurisdiction. From the papers submitted to the courts and used as reference by the appellant, there is no evidence to suggest that the Department of Minerals and Energy has revoked the license it issued to the applicant to operate from Erf 257 Newcastle. The same license which the appellant purports is illegal,

the determination thereof, is yet to be made by the Department of Minerals and Energy;

8.9 The point about the weakness of the memorandum of appeal, is emphasised once more. The appellant thrives and emphasises responding on each and every point which the applicant or the MPT was cognitive of. It is not to say that such line of argument is incorrect but to an extent that it dismisses all due consideration given by the MPT without presenting planning acumen which rationalises why it is undesirable for the restrictive conditions to remain in force is a clear demonstration that these objections are driven by other matters but town planning principles;

8.10 It would have been prudent for the appellant during the objection stage to establish a principled stance which has resonance within planning and development and debate that through;

8.11 Instead, the appellant relied much on the court papers and omitted to dwell on the significant understanding that the municipality in dispensing of this application its consideration is limited to the use of land which must be established on the appropriate zone, (in this instance is Erf 257 Newcastle- Mixed Uses), refer to **Annexure R**, extract from the town planning scheme;

8.12 Therefore, this property is correctly suitable for a petrol filling station as a use of land. Throughout the submission made by the appellant, there is no mention of being opposed to the use of land (Erf 257 Newcastle) as a petrol filling station, except for when the same use of land exists in parallel to Erf 353 Newcastle. In other words, it is a situation of having to swap this specific use of land to establish it elsewhere. The question should from a sound planning point of view be whether it is desirable, reasonable and appropriate for the filling station along Terminus Street to be maintained. From a professionally-considered planning point of view there is nothing to suggest that there would be a breakdown in the land use activity system to compromise the proper functioning of the CBD let alone the vicinity of the area where the filling stations are located;

8.13 If town planning was driven and guided by uninformed and undesirable sensationalisation there would be anarchy in the functioning of cities and their economic engines, among them CBDs hence regulation on use of land through the

Newcastle Town Planning Scheme, the cover page appended here as **Annexure S**;

- 8.14 The appellant is correct to say Mr Kader undertook to cease operation on Erf 257 Newcastle prior to operating on Erf 353 Newcastle, however, this does not mean that had Mr Kader not submitted an application to set aside the restriction was intending to rezone Erf 257 Newcastle for any other purpose other than the one which accommodate amongst other petrol filling station, if this was the intention of the Municipality to rezone, **Annexure T**, the town planning scheme map would have been reflected differently.
- 8.15 Therefore, removal of restrictions does not mean the property is automatically rezoned, meaning that the property could be used by Mr Kader today or by any other interested person who would have entered into an agreement with the owner of the property on the tenure type;
- 8.16 Paragraph 23-24 of the memorandum of appeal, states that the MPT erred by not considering that the staff employed at the Engine site will lose their employment if this establishment closes down. But here the appellant fails to understand a simple logic that when the applicant made this undertaking to relocate staff to the new Total Site was in 2009 when he was still of the view that the Engine Site will cease to operate.
- 8.17 It is quite interesting to note that the argument about relocating staff to save their employment is being handled so irresponsibly by the appellants. This perception is misguided and does not take into account the context under which the proposition was made, nor does it project the applicant's understanding of the dynamics of the economy locally, globally and over time. The appellants seem again to be displaying an appalling misunderstanding of the municipality's mandate on economic development and job creation in line with not only government policy and the Constitution. It is shocking that the appellants have ignored even the unfavourable economic climate and the welfare of citizens in terms the high rates of unemployment and poverty. The Appeals Authority must not hesitate to dismiss this basis for the appeal as it is not only insensitive to the plight of citizens but also exposes the hollowness of the appellants' arguments in this submission.

8.18 Partiality of the municipality as it relates to this matter may amongst other be tested through the process followed in executing each milestone (administrative, consideration and decision making phase) pertinent to this application which also involved the objectors, particularly schedule 5 of the SPLUMA Bylaw, appended hereto as **Annexure U**;

8.19 The report of the registered planner before the MPT, specifically section 2 eloquently talks about how the traffic movements are likely to be affected by closing the Engine Site. Therefore, the sentiment that traffic flow movement was not considered by the MPT is completely incorrect. Moreover, the letter dated February 2012 did not speak about the traffic movements in the CBD. Instead the letter was making a point about accessibility to the filling station and the congestion in the lower part of the CBD. Interpretation of traffic movements cannot be interpreted to mean vehicular accessibility to the Engine site only, these are two different matters and should be treated as such. It is to be simplistic in thought to suggest that the Engen filling station alone contributes to the traffic volumes in the area. There are several land uses in the area and they should be considered in their totality in contributing to traffic volumes in the area. The appellants would be excused in failing to understanding that the transport network in the CBD and traffic movements in the system cannot be viewed within the context of one land use (Engen Filling Station) only but in a much more integrated way like '*the veins and blood in the human body*'. There is no basis for being apologetic about the carefully-considered view as expressed by the MPT and therefore the appellants view on this has no merit ;

There is nothing partial about the MPT expressing the view that Engen Site offers convenience to business owners in the area particularly the taxi industry. The MPT cannot be blinkered or gagged in its consideration of applications and cannot be influenced by Mr Kader nor the appellants. These are views expressed by an interdisciplinary team of members constituting the MPT committee and is supported by planning viewpoints.

8.20 The site inspection report conducted by town planners revealed that businesses in the vicinity are operational and the taxi rank is still the preferred mode of transportation, therefore, frequented by many pedestrians. It was one of the

recommendations of the MPT that accessibility to the Engine Site be improved to enable maximum convenience by business, motorist and pedestrians in the area;

8.21 Although one agrees with the expression on paragraph 27 of the memorandum of appeal that the taxi rank has witnessed recurrences of violent incidents especially shooting which has necessitated Provincial intervention to restore order, it is unclear how the violence at the taxi rank is caused by the existence of the petrol filling station. In fact that perception is incorrect and contrary to the growing phenomenon of having petrol filling station in close proximity to ranks. Taxi ranks are not only transport destinations but they also serve as destination points where diversity of services are rendered in and around them;

8.22 **Annexure O** is an illustration of the consideration given by the MPT in adjudicating the application to set aside the removal of restrictive conditions. This was done in compliance with Schedule 4: Part B of the Constitution of the Republic that the municipality is responsible for the following:

- Air pollution,
- Building regulations,
- Child care facilities,
- Electricity and gas reticulation,
- Fire-fighting services,
- Local tourism,
- Municipal airport,
- Municipal planning,
- Municipal public transport, etc.’

8.23 There was nothing evident from the objections submitted, particularly by Geldenhuise attorneys that challenged the planning perspective to set aside the conditions volunteered by the applicant and confirmed by the Provincial Appeals Board;

8.24 In fact the judgment attached hereto as **Annexure V**, a case between the City of Johannesburg Metropolitan Municipality and the Gauteng Development Tribunal judgement redefined that planning is a competency of the local municipality;

8.25 The above sentiments recently reinforced by the Constitutional Court on the matter between KZN Provincial Government and Thronox that municipalities be

given space to run their cause on planning without interference of other organs of state, please refer to **Annexure W**;

8.26 The department of Home Affairs has jurisdiction over issuing of South African identity and this municipality cannot be drawn into an arguments that different identities are utilised to manipulate the business venture. The appellant has not provided evidence from the department of Home Affairs that these identity numbers are fraudulent and illegitimate for positive identification. Nonetheless, the applicant was not bound to submit an identity number for processing of his application, therefore, it had no bearing on the application, as the relationship between the municipality and the applicant in this instance was limited to the owner of the property;

8.27 The argument advanced in paragraph 31 is swaying the municipality to transcend its authority and make determination on matters beyond its competency. Whilst the appellant makes this allegation of illegal trading by the applicant, they do not submit proof from the Department of Minerals and Energy that indeed there is truth in these allegations;

8.28 It is beyond comprehension to think that the appellant makes baseless allegations that the municipality through the decision of the MPT has opened flood gates for people advance their commercial interest through manipulation of municipal processes. It is clearly demonstration that this appellant has no appreciation of the MPT as an independent committee;

8.29 The inference of the statement made by the appellant does not come as a surprise to see that municipality's ability to comprehend matters at hand is being reduced and its future determination on planning and/or development applications is being extrapolated to be similar to the one made for Erven 353 and 257 Newcastle jointly;

## **9 CONCLUSION**

9.1 Based on the above counter arguments the appeal should be dismissed completely;

9.2 The determination made by the MPT to approve the application to have the following restrictive conditions contained on the KZN Appeal's Board judgement be upheld;

*20.2 That the appellant furnish to the Newcastle Municipality a written undertaking in terms of which he -*

- b) *agrees to cease operating the petrol filling station on the site (on Erf 257 Newcastle, Terminus Street, opposite the Taxi Rank) from which he at present carries on such operations; and*
- c) *abandons all rights pursuant to which he operates the petrol filling station on such a site (Erf 257 Newcastle, Terminus Street, opposite the Taxi Rank)*

**List of Annexures**

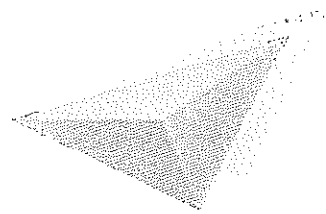
Annexure A: Appeal (Grounds of Appeal)  
 Annexure B: Schedule 8: Matters considered by the MPT  
 Annexure C: 1<sup>st</sup> MPT Notice  
 Annexure D: 2<sup>nd</sup> MPT Notice (Replacement of Members)  
 Annexure E: Council Resolution for the replacement of MPT Members  
 Annexure F: Court Judgement between the Applicant and the Appellant  
 Annexure G: Email transmissions by Mr S Cindi  
 Annexure H: SPLUMA Bylaw Schedule 4  
 Annexure I: 2005 Council Resolution  
 Annexure J: Responding Memorandum to the Appeals Board  
 Annexure K: Removal of Restrictive Conditions Application  
 Annexure L: Copy of Objections Received  
 Annexure M: Registered Planner's Report to the MPT  
 Annexure N: MPT Minutes  
 Annexure O: Schedule 4 Part B of the Constitution  
 Annexure P: 1<sup>st</sup> MPT Members Council Resolution  
 Annexure Q: 2005 Planning Report to EXCO  
 Annexure R: Scheme Use Zone Abstract (Mixed Uses)  
 Annexure S: Newcastle Town Planning Scheme Cover Page  
 Annexure T: Erf 257 Zoning Map  
 Annexure U: Schedule 5 SPLUMA Bylaws  
 Annexure V: CoJ vs Gauteng Development Tribunal Judgement  
 Annexure W: Tronox Judgement

  
**N. THUSI**  
**CHAIRPERSON:**  
**NEWCASTLE MUNICIPAL PLANNING TRIBUNAL**

**Annexure A  
Appeal (Grounds of Appeal)**



GILDENHUYS MALATJI  
INCORPORATED  
REG NO 1667/002/14/21  
VAT NO 4400102661



GILDENHUYS MALATJI  
ATTORNEYS

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31 March 2016

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Sir

**MEMORANDUM OF APPEAL: ERF 353, 60 MURCHISON STREET**

1. We refer to the record of decision as emailed to our offices by your Mr. Sphephelo Cindi on 2 March 2016 at 16:09 pm.
2. We confirm that we act on behalf of the following objectors/appellants herein:
  - 2.1 Lavasco Trading 1002 (Pty) Ltd t/a Engen Wimpy Waterside;
  - 2.2 LMD Africa Forensics (Pty) Ltd t/a Ayliff Garage;
  - 2.3 Move On Up 1074 CC t/a SSS Motors;
  - 2.4 NCL Moolas (Pty) Ltd t/a Newcastle Pitstop;
  - 2.5 Kwikcorp 1 CC t/a Leon Motors; and
  - 2.6 We-Two investments CC t/a Auto City.
3. We enclose herewith the objectors/appellants memorandum of appeal.
4. Kindly acknowledge receipt hereof.

**Yours faithfully**

**GILDENHUYS MALATJI INC**

Per: Ms. Neetu Dawlal

**[Electronically transmitted therefore unsigned]**

**DIRECTORS**  
 TSEGO MALATJI LL.B  
 KOEIS MARCKRAAFF BCOMM LL.M  
 DERIK DE BEER LL.M  
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 WIM CILLIERS LL.M  
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CHRISTELLE DOMAN (INFORMATION TECHNOLOGY)  
UMTHA RAMNATH (HUMAN RESOURCES)  
INNO THUPA (OFFICE)

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**MEMORANDUM OF APPEAL**  
**(ERF 353, 60 MURCHISON STREET, NEWCASTLE)**

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**INTRODUCTION**

1. At a meeting held on 25 February 2016, the Newcastle Municipal Planning Tribunal ("MPT") approved the removal of restrictive conditions in respect of Erf 353, 60 Murchison Street, Newcastle.
2. The record of decision was transmitted via email on 2 March 2016 at 16:09 by Mr. Sphephelo Cindi to the Appellant's legal representatives herein.
3. This is a memorandum of appeal in respect of the aforementioned record of decision.

**THE APPELLANTS**

4. The First Appellant is Lavasco Trading 1002 (Pty) Ltd t/a Engen Wimpy Waterside, an Engen fuel site situated on the N11.
5. The Second Appellant is LMD Africa Forensics (Pty) Ltd t/a Ayliff Garage, a Caltex fuel site situated at 16 Ayliff Street, Newcastle.
6. The Third Appellant is Move On Up 1074 CC t/a SSS Motors, a BP fuel site situated at 34 Kirkland Street, Newcastle.
7. The Fourth Appellant is NCL Moolas (Pty) Ltd t/a Newcastle Pitstop, an Engen fuel site situated on 68 Allen Street, Newcastle.
8. The Fifth Appellant is Kwikcorp 1 CC t/a Leon Motors, a Shell fuel site situated at 73 Allen Street, Newcastle.

9. The Sixth Appellant is We-Two investments CC t/a Auto City, a Shell fuel site situated at 15 Murchison Street, Newcastle.
10. The Appellants formed part of the group of objectors to the application for the removal of the restrictive conditions.

#### BACKGROUND TO MATTER

11. The Appellants have submitted the detailed background to the matter including no less than 19 (nineteen) supporting annexures as per its notice of objection dated 11 December 2015 and request that same be incorporated herein so as to avoid volumnosity and/or duplication.
12. Without derogating from the above and in a nutshell, Mr Rahim Abdool Kader ("Mr Kader") operates an Engen fuel site at 22 Terminus Street and, a recently established, Total fuel site at 60 Murchison Street.
13. On 23 May 2006, the Town Planning Appeals Board [Annexure "B" to the notice of objection] dated 23 June 2006 held that the Total fuel site is subject to the conditions that one Mr Kader furnishes the Municipality with a written undertaking in terms of which he:

*"a) agrees to cease operating the petrol filling station on the site from which he present carries on such operations [i.e. Engen fuel site at 22 Terminus Street]; and*

*b) abandons all rights pursuant to which he operates the petrol filling station on such site.*

*For the purposes of this condition, the date upon which the appellant shall cease to operate his existing petrol filling station and abandons any right to do so in the future shall be the last day of the month during which the new filling station on the appeal site [i.e. Total fuel site at 60 Murchison Street] commences operations. A certificate from the Newcastle Municipality shall*

*specify the date upon which the new filling station on the appeal site commences operation."*

14. Mr Kader duly submitted his undertaking and agreed that to the aforementioned conditions [Annexure "D" to the notice of objection]. It should be noted from the outset that the restrictive condition was volunteered by Mr Kader at the appeal hearing of the then Town Planning Appeals Board [paragraphs 18 and 19 of Annexure "B" to the notice of objection].
15. The Total site commenced operation on 10 September 2015 however Mr Kader refused to cease operation of the Engen site despite the conditions imposed and his undertakings to do so.
16. The Second to Sixth Appellants' secured an urgent interdict at High Court, Pietermaritzburg under case number 14322/2015 whereby the Engen and Total fuel sites were interdicted from concurrently operating.
17. Mr Kader submitted an application for removal of the restrictive conditions which was approved by the MPT and it is against this decision that the memorandum of appeal is lodged.

#### POINTS IN LIMINE

18. Prior to dealing with the specific grounds of appeal against the approval of the removal of the restrictive conditions herein, the Appellants herewith raise the following points *in limine* herein:
  - 18.1 Appointment and constitution of members of the MPT
    - 18.1.1 In terms of section 14 of the Newcastle Municipality Spatial Planning and Land Use Management By-Law, 2015 ("the by-law"):

- 4 -

*"Notice of the appointment of members to a Municipal Planning Tribunal must be published in the Gazette or in newspaper(s) circulating in its area of jurisdiction announcing –*

*(a) that it has established a Municipal Planning Tribunal;*

*(b) the names of the persons that it has appointed to a Municipal Planning Tribunal, including the Chairperson and Deputy Chairperson;*

*.."*

- 18.1.2 It is submitted that such notification has neither been published in the Kwa-Zulu Natal Provincial Gazette nor any local newspaper.
- 18.1.3 The only notification within the Appellants' knowledge is that published in the local newspaper of 5 February 2016 (Notice No. CS07/2016) relating to a *"replacement of members"*. However, to the Appellants' knowledge no initial and/or formal notice was published as to the appointment, composition and names of persons appointed to the MPT which is a peremptory requirement in terms of section 14 of the by-law.
- 18.1.4 It is accordingly submitted that there is/was no proper appointment and/or composition of the MPT and, as such, the record of decision is actually null and void and/or irregular and/or invalid.
- 18.2 Refusal and/or failure to avail documentation to the Appellants'
- 18.2.1 The Appellants' were invited to a meeting by Mr. Sphephelo Cindi which was chaired by Ms. Ntsiki Khathide in her capacity as Director: Town Planning, which meeting was held on Friday, 19 February 2016. At the near conclusion of this meeting, the Appellants' representative was handed an [incomplete] copy of Mr Kader's response to the Appellants' notice of objection. The Appellants' were afforded an opportunity to reply thereto by Tuesday, 23 February 2016.

18.2.2 The Appellants' legal representative called upon the Municipality *qua* Mr. Sphephelo Cindi, Ms. Ntsiki Khathide as well as Mr. Qiniso Zwane for the complete copy of the response, more specifically some of the missing annexures thereto, which the Municipality has up to date failed to provide. Copies of the thread of communiqué in this regard are attached hereto as Annexure "AA".

18.2.3 It is accordingly submitted that the record of decision is improper and/or invalid, as such decision was reached in the absence of the Appellants' reply which was afforded to the Appellants and which the Appellants' were unable to finalise in light of the Municipality's failure to avail the complete documentation.

18.3 Record of decision

18.3.1 Section 16(5) of the by-law provides that the "*Presiding Officer must sign the decision of the Municipal Planning Tribunal*".

18.3.2 It is submitted that the record of decision is improper and/or invalid and/or procedurally incorrect as same is signed by one, NP Khathide, in the capacity of "*Director: Town Planning, Authorised Planning Official*".

18.3.3 There is no indication whether NP Khathide is/was indeed the appointed Presiding Officer of the MPT and whom has authority to sign the record of decision.

19. In light of the aforementioned points *in limine*, it is submitted that in terms of section 79(4) of the by-law, the Municipal Planning Appeal Authority set aside the record of decision or remit the matter for re-consideration in light of the aforementioned points *in limine*.

## GROUNDS FOR APPEAL

20. In the event that Municipal Planning Appeal Authority does not uphold the Appellants' points *in limine*, the Appellants' herewith submit its grounds for appeal.
21. It is submitted that the MPT respectfully erred in rejecting the Appellants' grounds for objection and approving the removal of the restrictive conditions.
22. The MPT erred by not considering [alternatively not properly considering] that the restrictive conditions were in fact self-imposed by Mr Kader. Mr Kader was the one who volunteered to make the undertaking [just so that the special consent could be granted] and further undertook to close the Engen site [just so that he can successfully obtain site and retail licenses for the Total site from the Department of Energy]. This cannot now belatedly be set aside to suit, amongst others, Mr Kader's commercial interests.
23. The MPT seems to place reliance on section 153 of the Constitution of Republic of South Africa pertaining to an obligation on local government to promote the social and economic development of the community however the Municipality *qua* the MPT fails to promote the social and economic development of the Appellants' when it approved the removal of the restrictive conditions.
24. The MPT erred in finding that "*the current establishment provides employment to families, whom if the business ceases to operate may need to look for alternative employment, at worse remain unemployed.*" It is clear that the MPT failed to take into consideration, in this regard, that Mr Kader made an undertaking that the staff from the Engen site "*will be relocated*" to the Total site [paragraph 7 of Annexure "Q" to the notice of objection]. Accordingly, there can be no issue of any loss of employment.

25. The MPT further erred in indicating that the *"decommissioning the existing Service Station on Erf 257 Newcastle is likely to negatively impact on the current traffic movements in the immediate vicinity and the CBD in general."* There was no such submission before the MPT and in fact the Municipality itself confirms in its own letter to the Department of Energy dated 6 February 2012 that there the area is over congested. Accordingly, the closure of the Engen site would in fact alleviate the over congestion and in fact ease the flow of traffic.
26. The MPT erred in entering the arena and failing to remain impartial in adjudicating the matter when it indicates that the Engen site *"offers convenience to business owners in the area, particularly the taxi industry who frequents the garage in preparation of different destination points."* In fact this is in complete contradiction of Mr Kader's own submissions [Annexure "Q" to the notice of objection] and the Municipality's own letter to the Department of Energy dated 6 February 2012 where it indicates that, amongst others, this area is dangerous and over congested. Mr Kader in fact confirms [paragraphs E5 and E8 of Annexure "R" to the notice of objection] that *"the taxi rank is further a generally unsafe area and is avoided by motorist...troubled taxi rank area."*
27. The MPT clearly did not consider that Terminus Street is riddled with taxi violence incidents, as confirmed by Mr Kader himself, the Municipality and the Road Traffic Inspectorate.
28. The MPT merely indicates that *"reasons advanced against the removal of restrictive conditions in the objection letters dated 10, 11 and 14 December 2015 respectively, from a town planning point of view to be commercial/trade related."* This is completely incorrect and it is demonstrative that the MPT has in fact not even considered the content of such objections filed. The MPT has not provided any proper explanation and/or details for the rejection of the objections.



29. The MPT erred when it failed to consider that Mr Kader confirms to the Municipality on 28 October 2015 [Annexure "S1" and "S2" to the notice of objection] that "*I had placed this restriction on myself with the appeal board thinking this would make it easier and quicker to setup the new site using the old site paperwork (in essence I had asked that once the new site would trade I would close down the old site)*". This is a clear indication of Mr Kader's *mala fides* however the MPT elected to ignore such conduct to the detriment of the Appellants, residents of the Municipality and in fact the people of the country at large as this lends credence and/or support that one's purported unlawful conduct and *mala fides* can merely be "condoned" and/or accepted.
30. The MPT erred by not considering [alternatively not properly considering] the conduct of Mr Kader relating to use and/or abuse two separate identity numbers and the attempts to shift his business and operations between his corporate entities in seeking to avoid application of the restrictive conditions and his supply agreement with Engen Petroleum Limited, which company is considering taking legal action against Mr Kader.
31. The MPT erred by not considering [alternatively not properly considering] that the Engen site does not in fact have a valid retail license to retail petroleum products in terms of the Petroleum Products Act 120 of 1977 as a result of which, Engen Petroleum Limited has ceased supply of petroleum products to this site in any event.
32. The MPT erred by not considering [alternatively not properly considering] that Mr Kader only agreed to the restrictive conditions before the Town Planning Appeal Board in order for the Town Planning Appeals Board to uphold his appeal. He then made use of this approval to obtain retail and site licenses for the Total site only to now seek to renege on his undertakings now that the Total site is up and running.
33. The MPT failed in considering that the undertaking by Mr Kader in respect of the restrictive conditions was clearly a consideration by the Department of Energy in the granting of the licenses to the Total site.

34. The MPT has erred by not taking into consideration that the approval of the removal of the restrictive conditions shall open the floodgates for parties to merely make baseless undertakings, obtain approvals in order to proceed with commercial ventures and once up and running, seek to remove same.
35. The MPT, by coming to illogical conclusions that it has did, has adversely affected the fairness in determination of the matter to the detriment of the Appellants.

#### INDEPENDANCE OF THE MUNICIPAL PLANNING APPEAL AUTHORITY

36. Section 23(1) of the by-law provides that the Municipal Planning Appeal Authority is the Executive Authority of the Municipality (unless otherwise delegated).
37. Section 32 of the by-law specifically provides that Municipal Planning Appeal Authority must exercise their powers in an independent manner, free from governmental or any other outside interference or influence, and in accordance with the highest standards of integrity, impartiality, objectivity and professional ethics and furthermore that no person may interfere with the functioning of the Municipal Planning Appeal Authority.
38. The Appellants' herewith plead that this matter be adjudicated with impartiality and freedom of any bias.
39. Without respectfully pre-empting the matter, the Appellants' strictly reserve and/or confirm their rights to file a review application at the High Court of South African should the Municipal Planning Appeal Authority dismiss the Appellants' memorandum of appeal.

CONCLUSION

40. In the premises it is submitted that the Appellants' grounds for appeal be upheld.

41. It is furthermore submitted that the Municipal Planning Appeal Authority set aside the record of decision

SIGNED and DATED at PRETORIA on this 31<sup>ST</sup> day of MARCH 2016.

*Sgnd. N Dawlal*

---

**GILDENHUYS MALATJI INCORPORATED**

Attorneys for the **APPELANTS**

GMI House, Harlequins Office Park

164 Totius Street

PRETORIA

REF: N Dawlal/01733427

TEL: (012) 428 8681

FAX: (012) 428 8781

EMAIL: [ndawlal@gminc.co.za](mailto:ndawlal@gminc.co.za)

GILDENHUYS MALATJI  
INCORPORATED  
REG NO 1867400214/2/1  
VAT NO 4400102861



GILDENHUYS MALATJI  
ATTORNEYS

23 February 2016

OUR REF  
N Dawia  
01733427

Newcastle Municipality  
Town Planning  
**NEWCASTLE**

DIRECT TEL NO  
(012) 428 8681

Attention: Mr. Siphephelo Cindi

DIRECT E-MAIL  
ndawia@gminc.co.za

Email: Sphephelo.Cindi@newcastle.gov.za

DIRECT FAX  
(012) 428 8601

YOUR REF  
Mr. S Cindi

GMI HOUSE  
HARLEQUIN OFFICE PARK  
164 TOTIUS STREET  
GROENKLOOF 0027  
P O Box 618  
PRETORIA 0001  
DOCEX 4 PRETORIA  
E-MAIL [gminc@gminc.co.za](mailto:gminc@gminc.co.za)  
WEB ADDRESS [www.gminc.co.za](http://www.gminc.co.za)  
TEL +27 12 428 8600  
FAX +27 12 428 8601

Sir

**NOTICE OF OBJECTION: ERF 353, 60 MURCHISON STREET**

1. We refer to the above matter and to the meeting held on Friday, 19 February 2016 between Ms. Khathide, Mr. Zwane, Mr. Cindi and writer hereof.
2. We further refer to the Applicant's response to our clients' objections which was handed to writer hereof at the near conclusion of the aforesaid meeting, which response comprises 31 (thirty one) pages.
3. We further refer to your Mr. Cindi's email communiqué dated Friday, 19 February 2016 at 17:55 pm wherein we were informed to reply to the aforementioned response by no later than 16:00 on Tuesday, 23 February 2016.
4. We record that the Applicant's response was in your possession since at least the 25 January 2016 and furthermore your offices were aware since 12 February 2016 that the Applicant would not be attending the meeting on 19 February 2016.
5. We further record that on Monday, 22 February 2016, we informed your offices that the Applicant's response refers to a total of 17 (seventeen) annexures, however we have not been placed in possession of same and/or same was not annexed to the copy availed to us.
6. We further requested your offices to specifically avail Annexures:
  - 6.1 BB;
  - 6.2 HH;
  - 6.3 II;
  - 6.4 MM;
  - 6.5 NN;

**DIRECTORS**

TEDGOD MALATI L.L.B.  
KONUS MARGRETT B.COMM, LL.M.  
DERRICK DE BRUIJN LL.M.  
JOSE DA SILVA B.PROC.  
WIM CILLIERS LL.M.  
ANESKA MAHUNDO LL.B.  
SONE JE ELOFF B.COMM, LL.M.  
MDETI KANYANE LL.B.  
NICOLETTE DE WIT LL.B.  
RAKGAO PHOSA B.PROC.  
ANIL GRAY B.PROC.  
HOPE CHAANE LL.B.  
THEGCIWE VLAKZ LL.B.  
EDONANG MASIA LL.B.  
RHAAN VENTER LL.B.  
LUISE VON DÖRCKHEIM-BOER LL.M.  
GREYLING ERASMUS LL.M.  
THEKISO MAGEE LL.M.  
STEPHAN SMIT LL.B.

**SENIOR ASSOCIATES**

ZELMAINE SHAW B.PROC.  
NEETU DAWAL LL.M.  
JONES DYRSEA LL.B.  
JOHAN SMALBERGER LL.M.

**ASSOCIATES**

MINE VAN ZYL LL.B.  
THI MLOK LL.B.  
REHAI SHAMOUT LL.B.  
MASHUDU RAMADU LL.B.  
ANTHONY TOIT B.COMM LL.B.  
MAMPHO MOTSONI LL.B.  
SIMON MALLANE LL.B.  
THANDO MOLOBYE B.COMM LL.B.  
WANGILE MOKETGANI LL.B.  
ROBERTO MPAHLE LL.B.

**CONSULTANTS**

DIV LESSING LL.B.  
HENK KRUGER LL.M.

**MANAGERS**

GERBARD J V RENSBURG (FINANCIAL)  
CHRISTELLE DOMAT (INFORMATION TECHNOLOGY)  
UMTHA RAJANATH (HUMAN RESOURCES)  
RING THREE (OFFICE)

-2-

- 6.6 OO;
- 6.7 PP; and
- 6.8 QQ.
7. We furthermore advised that your requirement of our clients to reply to the Applicant's response in less than 2 (two) business days is unreasonable and furthermore proposed an opportunity to file a reply by close of business on Friday, 26 February 2016.
8. We record that writer hereof has not received any response to the aforementioned proposal and telephonically contacted Mr Cindi this afternoon whom advised that the Annexures referred by the Applicant were the same as filed by our clients and that Mr Cindi would contact writer hereof. We have explained to Mr Cindi that this is not entirely correct and hence our request for 8 (eight) of the specified annexures.
9. We confirm that we have neither heard from Mr. Cindi further [who further indicated to email the annexures to us via his private email in light of the voluminosity] nor received the requested 8 (eight) annexures and a response to our proposal.
10. We accordingly record our clients' dissatisfaction and prejudice in the manner in which this matter is conducted. We furthermore record that our clients have not been provided with proper and adequate opportunity to reply in detail to the Applicant's response herein.
11. Without derogating from the above and in light of the limited time availed to our clients herein we record that our clients stand by the content of its objections of 11 December 2015 and denies the contents of the Applicant's response in so far as same does not accord with our clients' objection already filed.
12. We further highlight page 29, paragraph 3 of the Applicant's statement which provides that "there was no intention of Mr Kader to ever close down the site" which clearly highlights the *mala fides* of Mr Kader.
13. We once again request that the Applicant's application be dismissed and not entertained, failing which this shall open the floodgates for parties to make baseless undertakings and thereafter apply for the removal thereof.
14. All of our clients' rights remain strictly reserved herein.

Yours faithfully

GILDENHUYS MALATJI INC

Per: Ms. Neetu Dawlal

[Electronically transmitted via email]

Neetu Dawlal

---

**From:** Neetu Dawlal  
**Sent:** 25 February 2016 12:17  
**To:** Sphephelo Cindi  
**Cc:** Ntsiki Khathide; Qiniso Zwane  
**Subject:** RE: Notice of objection - Erf 353 (60 Murchison Street)

Dear Sir,

We acknowledge receipt of your email communiqué below and respond thereto below in blue.

Regards,



GILDENHUYS MALATI

**Neetu Dawlal** | Senior Associate - Employment Law Department

Tel: +27 12 428 8681  
 Fax: +27 12 428 8601  
 Email: [ndawlal@gminc.co.za](mailto:ndawlal@gminc.co.za)

Address: GMI House, Harlequins Office Park, 164 Totius Street, Groenkloof, Pretoria  
 Post: PO Box 619, Pretoria, 0001, South Africa [www.gminc.co.za](http://www.gminc.co.za)

A LEVEL TWO (AAA) BBBEE AND VALUE ADDING SUPPLIER VERIFIED BY EMPOWERDEX

This email is intended only for the use of the individual or entity named above and contains information that is confidential and privileged. If you are not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this email is strictly prohibited. Opinions, conclusions and other information in this message that do not relate to the official business of our firm shall be understood as neither given nor endorsed by it. If you received this in error, please inform the sender and please delete all data from your computer.

**From:** Sphephelo Cindi [<mailto:Sphephelo.cindi@newcastle.gov.za>]  
**Sent:** 23 February 2016 17:17  
**To:** Neetu Dawlal  
**Cc:** Ntsiki Khathide; Qiniso Zwane  
**Subject:** RE: Notice of objection - Erf 353 (60 Murchison Street)

Madam

I acknowledge receipts of your email below and contents thereof.

I wish to confirm the following:

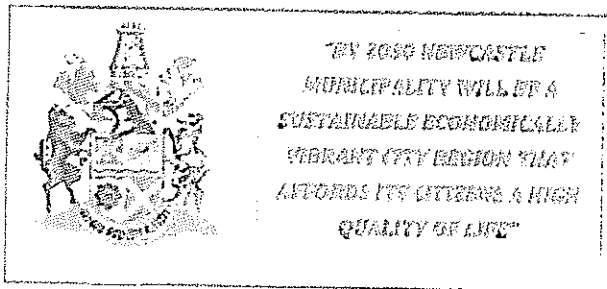
1. The minutes of the meeting held last week will be circulated to you to peruse and submit back to the Municipality with suggested corrections if any; We have subsequently received the draft minute at 16:18 on 24 February 2016. We have since inserted our track changes and emailed this back to your offices.
2. I have transmitted to you an email containing the additional information in the form of annexures which were appended into the applicant's response to you objection/s and stated that some of the annexures made reference to could not be found on our municipal file; We record that we have not been placed in possession of the annexures that we have requested. Your offices have merely sent us back our own annexures and not availed the "missing" 8 (eight) annexures that we have requested. We note with consternation and extreme apprehension that your offices indicate that some of the annexures could not be found. Please advise on what basis can the Applicant's response be accepted in such incomplete state and/or on what basis can we file a reply thereof in such incomplete state.
3. A seating of the Newcastle Municipal Planning Tribunal (MPT) has been confirmed for Thursday the 25<sup>th</sup> of February 2016 at 14:00; and See our comment at 2 above regarding the outstanding annexures.

4. You will be advised of the outcome with respect to the application to remove the restrictive conditions issued as part of Appeal no. 3038.. Town Planning Appeals Board. ~~you can comment on 2 above regarding the outstanding annexures.~~

The outstanding documents are still awaited from yourselves. ~~We do not understand what your offices mean by this as we are still awaiting the requested annexures from your offices.~~

Kind regards,

Siphephelo Cindi  
Land Use Management Section  
Town Planning  
Development Planning and Human Settlements  
Tel: 034 328 3300/59  
Fax: 034 328 3493/4  
Cell: 083 751 6333



From: Neetu Dawlal [mailto:NDawlal@gminc.co.za]  
Sent: 23 February 2016 04:01 PM  
To: Sphephelo Cindi <Sphephelo.cindi@newcastle.gov.za>  
Cc: Ntsiki Khathide <Ntsiki.Khathide@newcastle.gov.za>; Qiniso Zwane <Qiniso.Zwane@newcastle.gov.za>  
Subject: RE: Notice of objection - Erf 353 (60 Murchison Street)  
Importance: High

Dear Sir,

Please see attached.

Regards,



GILDENHUYS MALATJI

Neetu Dawlal | Senior Associate Employment Law Department  
Tel: +27 12 428 8681  
Fax: +27 12 428 8601  
Email: ndawlal@gminc.co.za

Address: GMI House, Harlequins Office Park, 164 Totius Street, Groenkloof, F  
Post: PO Box 619, Pretoria, 0001, South Africa [www.gminc.co.za](http://www.gminc.co.za)

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**From:** Neetu Dawlal  
**Sent:** 23 February 2016 12:57  
**To:** Sphephelo Cindi  
**Cc:** Ntsiki Khathide; Qiniso Zwane  
**Subject:** RE: Notice of objection - Erf 353 (60 Murchlson Street)  
**Importance:** High

Dear Sir,

We refer to our email below and urgently await to hear from you in this regard.

Regards,



GILDENHUYS MALATJI

Neetu Dawlal | Senior Associate Employment Law Department  
Tel: +27 12 428 8681  
Fax: +27 12 428 8601  
Email: ndawlal@gminc.co.za

Address: GMI House, Harlequins Office Park, 164 Totius Street, Groenkloof, Pretoria  
Post: PO Box 619, Pretoria, 0001, South Africa [www.gminc.co.za](http://www.gminc.co.za)

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**From:** Neetu Dawlal  
**Sent:** 22 February 2016 17:27  
**To:** Sphephelo Cindi  
**Cc:** Ntsiki Khathide; Qiniso Zwane  
**Subject:** RE: Notice of objection - Erf 353 (60 Murchison Street)  
**Importance:** High

Dear Sir,

We acknowledge receipt of your email below, the contents of which has just come to the attention of writer hereof upon her return to office this afternoon after been in witness consultations the entire morning.

Kindly note that we have now had the opportunity to peruse the response filed by the Applicant herein. Please note that the response refers to a total of 17 (seventeen) annexures, however we have not been placed in possession of same and/or same was not annexed to the copy availed to us. Kindly and urgently avail same to our offices. We specifically require to consider annexures:



1. BB;
2. HH;
3. II;
4. MM;
5. NN;
6. OO;
7. PP; and
8. QQ.

We record that the response comprises 31 (thirty one) pages and was only handed to writer hereof on the afternoon of Friday, 19 February 2016 despite same been in possession of your offices since at least the 25 January 2016. Furthermore your offices were aware since 12 February 2016 that the Applicant would not be attending the meeting on 19 February 2016. Accordingly we are of the considered and respectful view that the requirement of our clients to respond thereto in less than 2 (two) business days is unreasonable in the circumstances.

We accordingly request, subject to us urgently receiving the aforementioned annexures, to kindly file our clients' response by close of business on Friday, 26 February 2016. Kindly confirm whether such proposal is in order.

Regards,



GIL DENHUYS MALAJI  
ATTORNEYS

**Neetu Dawlal** | Senior Associate - Employment Law Department

Tel: +27 12 428 8681

Fax: +27 12 428 8601

Email: [ndawlal@gminc.co.za](mailto:ndawlal@gminc.co.za)

Address: GMI House, Harlequins Office Park, 164 Totius Street, Groenkloof, Pretoria  
Post: PO Box 619, Pretoria, 0001, South Africa [www.gminc.co.za](http://www.gminc.co.za)

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**From:** Sphephelo Cindi [<mailto:Sphephelo.cindi@newcastle.gov.za>]

**Sent:** 19 February 2016 17:55

**To:** Neetu Dawlal

**Cc:** Ntsiki Khathide; Qiniso Zwane

**Subject:** RE: Notice of objection - Erf 353 (60 Murchison Street)

Afternoon Neetu

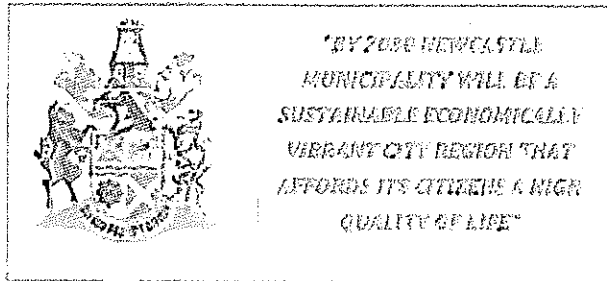
I refer to our meeting held earlier today.

The Chairperson of our meeting has requested me to communicate the deadline for submission of supplementary information, including providing responses to representations made by the applicant in response to the objections you made. We therefore will be pleased to receive all this mentioned information by Tuesday at 16:00. Since I do not have your mobile number, I called your office as well and left this message with Mr A Ndlovu who made an undertaking to pass the message by communicating the deadline which is the close of business on Tuesday (16:00).

Your cooperation in this regard will be highly appreciated.

Kind regards,

Siphephelo Cindi  
Land Use Management Section  
Town Planning  
Development Planning and Human Settlements  
Tel: 034 328 3300/59  
Fax: 034 328 3493/4  
Cell: 083 751 6333



**Annexure B**  
**Schedule 8: Matters considered by the MPT**

## SCHEDULE 8

## MATTERS THAT A MUNICIPAL PLANNING APPROVAL AUTHORITY MUST CONSIDER WHEN IT DECIDES OR MAKES A RECOMMENDATION ON AN APPLICATION FOR MUNICIPAL PLANNING APPROVAL

*(section 55(1))***Matters that a Municipal Planning Authority must consider when it decides or makes a recommendation on an application for municipal planning approval**

1.(1) A Municipal Planning Approval Authority must take the following matters into account when it decides or makes a recommendation on an application for municipal planning approval, if applicable –

- (a) the application;
- (b) comments from the relevant departments and comments received in response to the public consultation process;
- (c) the applicant's reply;
- (d) the Municipal Planning Registrar's assessment of compliance of the application with the application process;
- (e) the Registered Planner's report and recommendation on the application, if applicable;
- (f) the development principles in terms of section 7 of the Spatial Planning and Land Use Management Act;
- (g) policies, including national and provincial policies adopted in terms of any law and the Municipality's own policies;
- (h) norms and standards, including –
  - (i) national norms and standards for land use management and land development in terms of section 8 of the Spatial Planning and Land Use Management Act;
  - (ii) provincial planning norms and standards; and
  - (iii) the Municipality's own norms and standards;
- (i) spatial development frameworks, including –
  - (i) a national spatial development framework adopted in terms of section 13(1) of the Spatial Planning and Land Use Management Act;
  - (ii) a provincial spatial development framework adopted in terms of section 15(1) of the Spatial Planning and Land Use Management Act;
  - (iii) a regional spatial development framework adopted in terms of section 18(1) of the Spatial Planning and Land Use Management Act; and
  - (iv) the municipal spatial development framework adopted in terms of section 25(1) of the Municipal Systems Act read with section 20(1) of the Spatial Planning and Land Use Management Act;
- (j) the Municipality's Integrated Development Plan in terms of section 25(1) of the Municipal Systems Act;
- (k) the Municipality's land use scheme, including matters that a Municipality must consider that have been identified in the land use scheme;
- (l) the design guidelines and rules for plan approval of the land owner's association, body corporate or share block company that has been deposited with the Municipality;
- (m) the authorisation in terms of the Environmental Impact Assessment Regulations;
- (n) the potential impact, including the cumulative impact, on –
  - (i) the environment;
  - (ii) socio-economic conditions;
  - (iii) cultural heritage;
  - (iv) existing developments;
  - (v) existing rights to develop land; and
  - (vi) mineral rights;
- (o) the human and financial resources likely to be available for implementing the municipal planning approval;
- (p) the benefits that accrue from the adoption, replacement or amendment of land use scheme compared to the cost of compensation in terms of Chapter 8;
- (q) the provision and standard of engineering services;

NEWCASTLE SPATIAL PLANNING AND LAND USE MANAGEMENT BY-LAW

- (l) the impact, including the cumulative impact, of the application on the national, provincial and municipal road networks, public transport, municipal services, sewage and waste water disposal, water and electricity supply, waste management and removal, policing and security;
- (u) access to health, educational and recreational facilities;
- (v) the historical effects of past racially discriminatory and segregatory legislation on land ownership, land development and access to engineering services and public facilities, and the need to address the historical imbalances;
- (w) the protection or preservation of cultural and natural resources, including agricultural resources, unique areas or features, landscape character and biodiversity;
- (x) the natural and physical qualities of that area;
- (y) the number and purpose for which properties will be used when a Municipality decides if the Surveyor-General should –
- (i) approve a diagram for each property or a general plan for all the properties; and
  - (ii) approve the land –
    - (aa) as a farm, including a portion or a remainder of a farm;
    - (bb) as a subdivision of land that is not a farm; or
    - (cc) as an erf in a township;
  - (z) the need to prohibit the alienation of a part of the land by means of a sectional title scheme in terms of the Sectional Titles Act or a share block in terms of the Share Blocks Control Act, 1980 (Act No. 59 of 1980);
  - (aa) the provisions of section 13 of the Legal Succession to the South African Transport Services Act, 1989 (Act No. 9 of 1989) relating to the zoning of land owned by Transnet and other laws which regulate the zoning of land;
  - (ab) any local practice or approach to land use management that is consistent with –
    - (i) the laws of the Republic;
    - (ii) the provincial planning norms and standards; and
    - (iii) the Municipality's Integrated Development Plan; and
  - (ac) any other relevant factor.
- (2) A reduction in the value of land is not solely a relevant consideration for the purposes of considering the merits of an application for municipal planning approval.
- (3) If the Municipal Planning Approval Authority is the Municipal Council –
- (a) it may consider a summary of the comments received in response to the public consultation process, instead of the comments; and
  - (b) it must consider the Municipal Planning Tribunal's recommendation on the application in addition to the matters in this Schedule.

**Annexure C**  
**1<sup>st</sup> MPT Notice**



# NEWCASTLE MUNICIPALITY

## NOTICE NO. CS 87/2015

**THE SPATIAL PLANNING AND LAND USE MANAGEMENT ACT, 2013 (ACT NO. 16 OF 2013)**  
**LOCAL GOVERNMENT DEPARTMENT OF PLANNING AND THE ENVIRONMENT OF THE NEWCASTLE MUNICIPALITY**

Notice is hereby given in terms of Section 35(1) of the Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013), the following persons have been appointed as members of the Newcastle Municipal Planning Tribunal in terms of the Spatial Planning and Land Use Management Act, no. 16 of 2013:

### PRIVATE:

Johan Becker Fourie: Professional Engineer  
 Tshabang James Mphela: Admitted Attorney

### MUNICIPAL:

Strategic Executive Director (SED): Development Planning and Human Settlements (Chairperson)  
 Director: Town Planning (Deputy Chairperson);  
 Director: Urban Renewal and Special Projects;  
 Director: Civil Services;  
 Director: Water Services Authority

The period of office of members will be 3 years calculated from the date of appointment of such members by the Newcastle Municipal Council.

**B.E. MSWANE  
 ACTING MUNICIPAL MANAGER**  
 Newcastle Municipality  
 Murchison Street  
 Private Bag X6621  
 Newcastle, 2940

## NEW

### PROPERTY TO BE SOLD

Notice is hereby given in accordance with Section 6 of the Municipal Finance Management Act, 1997 (Act No. 56 of 1997) as amended, that the following property has been approved for sale at a public auction by the Council meeting held on 10 October 2015:

### PROPERTY:

A portion of Eri R/1, means Hospital (Pty) Ltd. at the Murchison Street, Newcastle, First Floor, is neighboring City of Investment area.

The public is hereby invited to inspect the Conditions of Sale with the Development Planning and Urban Renewal and Special Projects Officer, from 07h30 to 16h00 until the date of sale.

### REASONS FOR CAPITAL

1. To stimulate local Gross Domestic Product
2. To respond to the needs of the community
3. To create sustainable employment opportunities
4. The proposed development is valued at R600 million
5. The applicant has received Provincial Health Services approval

**B.E. MSWANE  
 ACTING MUNICIPAL MANAGER**  
 Municipal Office  
 Murchison Street  
 Private Bag X6621  
 Newcastle  
 2940



## public works

Department:  
 Public Works  
**PROVINCE OF KWAZULU-NATAL**

**THE KZN DEPARTMENT OF PUBLIC WORKS  
 ALMA JUBA WORKS DISTRICT OFFICE NEWCASTLE  
 INVITES BIDS FOR THE FOLLOWING SERVICES:**

<b>SERVICE</b>	<b>NEWCASTLE: DEPARTMENT OF EDUCATION:          IZIKO PRIMARY SCHOOL: REPLACE FENCE</b>
Contract Period	Two (2) calendar months
Bid No.	ZNQ-15/196/2-3/S
CIDB Grading	2SQ - 5SQ
Technical Enquiries	MR. MNISI - Tel: 034 - 3129188 (Ext. 133)
<b>SERVICE</b>	<b>NEWCASTLE: DEPARTMENT OF EDUCATION:          ZIBAMBELANI HIGH SCHOOL: REPLACE FENCE</b>
Contract Period	Two (2) calendar months
Bid No.	ZNQ-15/204/2-3/S
CIDB Grading	2SQ - 5SQ
Technical Enquiries	MR. MNISI - Tel: 034 - 3129188 (Ext. 133)
<b>SERVICE</b>	<b>NEWCASTLE: DEPARTMENT OF EDUCATION:          THOBANI PRIMARY SCHOOL: REPLACE FENCE</b>
Contract Period	Two (2) calendar months
Bid No.	ZNQ-15/208/2-3/S



### SERVICE

Contract Period  
 Bid No.  
 CIDB Grading  
 Technical Enquiries

### SERVICE

Contract Period  
 Bid No.  
 CIDB Grading

**Annexure D**  
**2<sup>nd</sup> MPT Notice (Replacement of Members)**



**Dannhauser Municipality (KZN 254)**

PUBLIC NOTICE NO: 462/2016

**INVITATION TO COMMENT ON THE 2014/2016 ANNUAL REPORT AND 2015 MID-YEAR BUDGET AND PERFORMANCE ASSESSMENT REPORT**

The 2014/2016 Draft Annual Report and 2015/2016 Mid-Year Report of Dannhauser Municipality was submitted to Council Meeting, which was held on Wednesday, 27 January 2016, in compliance with section 127 of the Municipal Finance Management Act, No. 56 of 2003

Copies of the 2014/2015 Annual Report and 2015/2016 Mid-Year Reports are available for public inspection starting from the 04 February 2016 to the 04 March 2016. This process is in line with the Municipal Systems Act 32 of 2000, Section 21A & 21B. The document will be available in the following areas:

- 1.1 Municipal Website
- 1.2 Dannhauser Municipal Foyer, 8 Church Street
- 1.3 Municipal Office, Hattingspruit
- 1.4 Dannhauser Library, 8 Church Street
- 1.5 Thusong Service Centre, Kwa-Mdakane

Members of the public wishing to comment on this document may do so, by submitting written comments to the Municipal Manager, no later than 2:00pm, Monday, 04 March 2016. Any enquiries relating to this notice should be directed to Philani Ndlovu, and SS Buthelezi who are available at 8 Church Street, Municipal Office, Office 21 and 10, and Telephone: 034 621 2666 ext 123/156, during office hours commencing from 7:30am - 4:00pm, Monday to Friday with a lunch interval between 1:00 pm - 1:30 pm

**W.B. NKOSI**  
MUNICIPAL MANAGER

**Call Cheryl**  
to place all your Auction, Legal, Public Notice and Tender Advertisements (034) 312 6021

**DUNDEE AUCTION**

**DUNDEE SALE**

**THURSDAY - 11 FEBRUARY 2016**

**@ 10:30 AT Auction grounds**

- 50 Slaughter Cattle (C Grade)
- 150 Weaners & feeders
- 150 Store & Trades

**350 CATTLE**

**ENQUIRIES:**  
PETER VAN ZYL 034 312 6068  
BROCK BROCKMANN 034 312 6091

**CONDITIONS OF SALE:** All goods will be sold at a reserve price and the right exists to bid by or on behalf of the owner or auctioneer unless indicated otherwise. The regulations of the Consumer Protection Act, 2008 is available at <http://www.gov.za/documents/consumer-protection-act-regulations>. See rules of auction, terms and conditions at [www.bid.co.za](http://www.bid.co.za)

**AUCTIONEER:**  
Mr Owen van Kerkhofe 3050  
Tel: 034 218 1261 Fax: 034 218 1262  
E-mail: [owen@bid.co.za](mailto:owen@bid.co.za)  
Web page: [www.bid.co.za](http://www.bid.co.za)  
Reg No: FOS20017367

**BISS Auctions DUNDEE:**  
Tel: 034 218 1265  
Fax: 034 218 1267  
AUCTIONEER  
Mark Winkler 034 218 1275  
Mark Winkler 034 218 1275

**Newcastle Municipality**

**NOTICE CS6/2016**

**APPLICATION IN TERMS OF THE SPATIAL PLANNING AND LAND USE MANAGEMENT ACT, 16 OF 2013 READ WITH THE PLANNING AND DEVELOPMENT ACT NO. 16 OF 2003.**

**CLOSURE OF TWO PORTIONS OF ERF 595 SECTION F MADADENI SECTION F AS PUBLIC OPEN SPACE AND THE SUBDIVISION OF THE TWO PORTIONS OF ERF 595 MADADENI SECTION F TO FORM THE PROPOSED PORTION 1 AND 2 OF ERF 595 MADADENI AND THE REMAINDER OF ERF 595 MADADENI FOR THE ZONING OF PORTION 1 AND 2 OF ERF 595 MADADENI INTO "WORSHIP"**

Notice is hereby given that it is the intention of the Newcastle Municipality to:

- A Close 2 portions of Erf 595 Madadeni Section F as Public Open Spaces.
- B Proposed subdivision of the 2 portions of Erf 595 Madadeni to form the proposed Portions 1 and 2 of Erf 595 Madadeni and the Remainder of Erf 595 Madadeni;
- C The Zoning of Portion 1 and 2 of Erf 595 into "Worship"

The property is located at the corner of MF 17 and MF 23 Road within Madadeni Section L. A copy of the application and its accompanying documents will be lying for inspection at the offices of the SED: Development Planning and Human Settlements, No 50 Harding Street, Nedbank Building, Newcastle between 07:30 a.m. to 16:00 p.m. weekdays. Any person having sufficient interest therein may lodge or post written objections or representations relating thereto with the Municipal Manager, 37 Murchison Street, Private Bag X 6621, Newcastle, 2940 by no later than the 4<sup>th</sup> of March 2016. Any person who fails to lodge written objections or representations in response to this notice by the aforementioned date shall be precluded from further participating in the process with regard to the application.

**Newcastle Municipality**  
Town Planning  
Private Bag x6621  
Newcastle  
2940

**Contact Person: Shahil Singh**  
Tel: 034 328 3300  
Fax: 034 328 3494  
Email: [townplanning@newcastle.gov.za](mailto:townplanning@newcastle.gov.za)

**higher education & training**

**Department of Higher Education and Training**  
REPUBLIC OF SOUTH AFRICA

**Majuba College**  
Technical and Vocational Education and Training  
*making greater heights together*

**MAJUBA TVET COLLEGE**

**QUOTATIONS ARE INVITED FOR THE UNDERMENTIONED SERVICES**

- (i) Bids must be on the official Bill of Quantities, which shall be completed in all respects, and all information must be supplied as stipulated in the bid document
- (ii) Bids must be submitted in a sealed envelope
- (iii) The envelope must be addressed to Majuba TVET College for attention Mr. Owen van Kerkhofe reflecting the Tender number
- (iv) The name and address of the quoting company must be endorsed on the back of the envelope
- (v) Please be advised that all Bidders must submit an original tax clearance certificate
- (vi) Bid documents are available from Majuba TVET College Central Office situated at 83 Allen Street, Newcastle. Telephone: (034) 326 4888. Fax: (034) 326 4889
- (vii) No telegraphic, faxed and late Bids will be accepted
- (viii) Bids may only be submitted on the Bid documentation that is issued

SERVICE	EMERGENCY WATER TANK
Proposal	Supply, installation and commissioning a Water Tank at the Dundee Technology Centre situated on Karel Landman Road, Dundee, 3000
Tender Number	Dun 15/14 C
CIDB Grading	3 CE
Closing Date	26th February 2016
Time	12:00
Contact Person	Mr. Chris Cason Tel. 034 312 6011
Compulsory site meeting	Yes
Date	10th February 2016
Time	11:00
Site	Dundee Technology Centre - Karel Landman Road, Dundee
Bid Documents available on	10th February, 2016
Bid documents available at:	83 Allen Street, Newcastle, 2940
Administrative Enquiries	Ms Leize Landsberg Tel: 034 32 64 888
Tender documents to be placed in the tender box at	<b>Majuba TVET College</b> Central Office 83 Allen Street Newcastle, 2940

**Note: A non-refundable deposit of R150.00 per Bid Document is payable**

**NEWCASTLE MUNICIPALITY**

**NOTICE NO. CS 07/2016**

**SPATIAL PLANNING AND LAND USE MANAGEMENT ACT (ACT NO. 16 OF 2013): REPLACEMENT OF MEMBERS OF THE NEWCASTLE MUNICIPAL PLANNING TRIBUNAL**

Notice is hereby given that in terms of the Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013), Council at its meeting held on 25 November 2015 resolved to appoint the following persons as members to serve on the Newcastle Municipal Planning Tribunal to replace the Director: Civil Services and the Director: Water Services Authority:

**MUNICIPAL:**  
Strategic Executive Director: Electrical / Mechanical Services  
Assistant Manager: Waste Water Treatment Works

**BE Mswane - Acting Municipal Manager, Newcastle Municipality**  
Private Bag X6621, Newcastle 2940

**PAID IN FULL**

**We like this stamp. So do you. But...**

**When paying accounts by direct deposit or internet banking, please use your Account Number as a reference.**

**Otherwise, we will not know who to stamp.**

**Annexure E**  
**Council Resolution for the replacement of MPT Members**

EXTRACT FROM THE MINUTES OF			A	DEPT	I
EXECUTIVE COMMITTEE MEETING				SED:D .P.	
HELD ON	ITEM	FOLIO		TP	
APPROVED BY COUNCIL ON				ED	
				ADM	

**MINUTES:**

**B370 : ATTEND TRAINING ON PROCESSING OF PLANNING/DEVELOPMENT APPLICATION APPEALS IN LINE WITH SPATIAL PLANNING AND LAND USE MANAGEMENT ACT (ACT N°. 16 OF 2013) AND TO AMEND THE COUNCIL RESOLUTION N°. CM49(D) : (DP&HS 1/3/3)**

**RESOLVED**

- (a) That the Executive Committee notes the invitation received from SALGA with regards to the training of Executive Committee members to enable them to process appeals on planning/development applications in terms of SPLUMA;
- (b) that with regards to (a) above, the Executive Committee nominate the following members who will attend this training :-
  - Cllr. N.P. Kunene
  - Cllr. N.S. Matthews
  - Cllr. R.N. Mdluli
  - Cllr. M. Shunmugam;
- (c) that Council resolution CM49 (d) taken on 2 September 2015 be amended to replace Director : Civil Services and Director : Water Services Authority with Strategic Executive Director : Electrical/Mechanical Services as well as the Assistant Manager : Waste Water Treatment Works to form part of the Municipal Planning Tribunal;
- (d) that the amendment as per (c) above be published in line with section 14 of the SPLUMA By-law for the public to note.

**SED:DP&HS**  
M. Shunmugam

**SED:DP&HS**  
M. Shunmugam

**REMARKS:**

**Annexure F**  
**Court Judgement between the Applicant and the**  
**Appellant**



IN THE HIGH COURT OF SOUTH AFRICA, KWAZULU-NATAL DIVISION  
PIETERMARITZBURG

ON THE 05<sup>TH</sup> DAY OF JANUARY 2016

Case no. 14300/15

Before The Honourable Mr Justice LOPES

In the matter between:

- MOVE ON UP 104 CC
- KWIKCORP 1 CC t/a LEON MOTORS
- NCL MOOLA'S (PTY) LTD t/a NEWCASTLE PITSTOP
- WE-TWO INVESTMENTS CC t/a AUTO CITY
- LMD AFRICA FORENSICS (PTY) LTD

- 1<sup>ST</sup> APPLICANT
- 2<sup>ND</sup> APPLICANT
- 3<sup>RD</sup> APPLICANT
- 4<sup>TH</sup> APPLICANT
- 5<sup>TH</sup> APPLICANT

and

- SAGEWISE 1018 CC t/a DRAGON FUELS
- KADBRO TAXI CITY CC
- SEYMA INVESTMENTS (PTY) LTD
- NEWCASTLE LOCAL MUNICIPALITY
- CONTROLLER OF PETROLEUM PRODUCTS
- TOTAL SOUTH AFRICA (PTY) LTD
- ENGEN PETROLEUM LIMITED

- 1<sup>ST</sup> RESPONDENT
- 2<sup>ND</sup> RESPONDENT
- 3<sup>RD</sup> RESPONDENT
- 4<sup>TH</sup> RESPONDENT
- 5<sup>TH</sup> RESPONDENT
- 6<sup>TH</sup> RESPONDENT
- 7<sup>TH</sup> RESPONDENT

UPON reading the Notice of Motion and the other documents filed of record; and

UPON the motion of Counsel on the 03<sup>rd</sup> December 2015 for the Applicant;

*THE COURT RESERVED JUDGMENT;*

*THEREAFTER ON THIS DAY;*

IT IS ORDERED THAT:

1. Judgment is granted in terms of:

- 1.1. That the First Respondent be interdicted and restrained from carrying on the business of selling of petroleum products, as defined in the Petroleum Products Act, 120 of 1977 (as amended) at its business premises situated at 60 Murchison Street, Newcastle, KwaZulu-Natal, until the closing of business premises situated at 60 Murchison Street, Newcastle, KwaZulu-Natal, until the closing of business ore termination of the selling of petroleum products as defined in the Petroleum Products Act, 120 of 1977 (as amended), at the site of Kadbro Taxi City situated at 22 Terminus Street, Newcastle, KwaZulu-Natal.
- 1.2. That the Second Respondent, or any person or entity on its behalf or acting through the Second Respondent or deriving any rights from the Second Respondent or authorised by the Second Respondent, be interdicted and restrained from carrying on the business of the selling of petroleum products, as defined in the Petroleum Products Act, 120 of 1977 (as amended) at the business premises situated at 22 Terminus Street, Newcastle, KwaZulu-Natal whilst First Respondent is carrying on the business of the selling of petroleum products as defined in the Petroleum Products Act, 120 of 1977 (as amended), at its business premises situated at 60 Murchison Street, Newcastle, KwaZulu-Natal.
- 1.3. The Sheriff or his deputy for the district of Newcastle, KwaZulu-Natal, be authorised and directed to take all necessary steps to give effect to this order, including, but not limited, to lock the pumps and to take control of all petroleum products as defined in the Petroleum Products Act, 120 of 1977 (as amended), and to keep it in his custody.



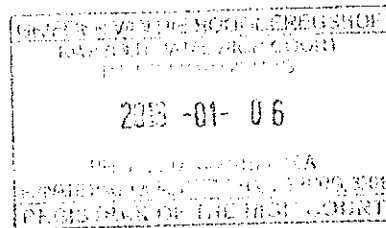
- 1.4. The relief granted in terms of paragraphs 1.2 to 1.4 will operate as an interim order with immediate effect pending the institution and finalization of proceedings for the removal of a restrictive condition, to be instituted by the First and/or Second Respondents within 30 (Thirty) days from date of this order, failing the institution of which this order will become final.
2. The First and Second Respondents are directed to pay the costs occasioned by the applicants', jointly and severally, the one paying the other to be absolved, and such costs are to include the costs consequent upon the employment of two counsel where appropriate.

BY ORDER OF THE COURT

R J JOOSTE  
REGISTRAR

*2013-01-06*

Tomlinson Mnguni James



**Annexure G**  
**Email transmissions by Mr. S Cindi**



**Sphephelo Cindi**

---

**From:** Sphephelo Cindi  
**Sent:** 23 February 2016 04:21 PM  
**To:** 'Neetu Dawlal'  
**Cc:** Ntsiki Khathide  
**Subject:** RE: Notice of objection - Erf 353 (60 Murchison Street)

Madam;

We hereby acknowledge receipt of your email.

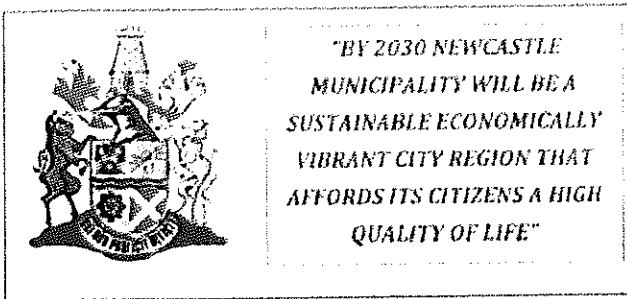
**I wish to state that we were unable to trace within our files the reference numbers cited on our email. We accordingly do not have documents attached as Annexure BB, HH, II, MM, OO, PP AND QQ in the applicant's annexures even though reference to the same is made on his response letter to the objections. You will note that some of these annexures are already at your disposal since you submitted most of them to the municipality.**

I will forward you the annexures below via my private email due to the capacity of my work email.

Annexure BB: Zoning Certificate, which you already have at your disposal  
 Annexure HH: Site License – (Annexure PQ and also Annexure H PDM4 on the applicants submission)  
 Annexure II: Retail License – (Annexure H PDM5 on the applicants submission)  
 Annexure MM: Identity Documents are not on the file  
 Annexure NN: Retail License – (Annexure H PDM5 on the applicants submission)  
 Annexure OO: Invoices not on the file  
 Annexure PP: Attorney's letter addressing a typographical error is not on the file  
 Annexure QQ: CIPRO (Annexure F & G on the applicants submission)

Kind regards,

Siphephelo Cindi  
 Land Use Management Section  
 Town Planning  
 Development Planning and Human Settlements  
 tel: 034 328 3300/59  
 Fax: 034 328 3493/4  
 Cell: 083 751 6333



**From:** Neetu Dawlal [mailto:NDawlal@gminc.co.za]  
**Sent:** 22 February 2016 05:27 PM  
**To:** Sphephelo Cindi <Sphephelo.cindi@newcastle.gov.za>  
**Cc:** Ntsiki Khathide <Ntsiki.Khathide@newcastle.gov.za>; Qiniso Zwane <Qiniso.Zwane@newcastle.gov.za>  
**Subject:** RE: Notice of objection - Erf 353 (60 Murchison Street)  
**Importance:** High

Dear Sir,

We acknowledge receipt of your email below, the contents of which has just come to the attention of writer hereof upon her return to office this afternoon after been in witness consultations the entire morning.

Kindly note that we have now had the opportunity to peruse the response filed by the Applicant herein. Please note that the response refers to a total of 17 (seventeen) annexures, however we have not been placed in possession of same and/or same was not annexed to the copy availed to us. Kindly and urgently avail same to our offices. We specifically require to consider annexures:

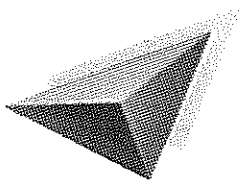
1. BB;
2. HH;
3. II;
4. MM;
5. NN;
6. OO;
7. PP; and
8. QQ.

We record that the response comprises 31 (thirty one) pages and was only handed to writer hereof on the afternoon of Friday, 19 February 2016 despite same been in possession of your offices since at least the 25 January 2016. Furthermore your offices were aware since 12 February 2016 that the Applicant would not be attending the meeting on 19 February 2016. Accordingly we are of the considered and respect

ful view that the requirement of our clients to respond thereto in less than 2 (two) business days is unreasonable in the circumstances.

We accordingly request, subject to us urgently receiving the aforementioned annexures, to kindly file our clients' response by close of business on Friday, 26 February 2016. Kindly confirm whether such proposal is in order.

Regards,



GILDENHUIS MALATJI  
ATTORNEYS

**Neetu Dawlal** | Senior Associate - Employment Law Department

Tel: +27 12 428 8681

Fax: +27 12 428 8601

Email: [ndawlal@gminc.co.za](mailto:ndawlal@gminc.co.za)

Address: GMI House, Harlequins Office Park, 164 Totius Street, Groenkloof, F  
Post: PO Box 619, Pretoria, 0001, South Africa [www.gminc.co.za](http://www.gminc.co.za)

A LEVEL TWO (AAA) BBBEE AND VALUE ADDING SUPPLIER VERIFIED BY EMPOWERDEX

This email is intended only for the use of the individual or entity named above and contains information that is confidential and privileged. If you are not the intended recipient, your distribution or copying of this email is strictly prohibited. Opinions, conclusions and other information in this message that do not relate to the official business of our firm shall be deleted. If you received this in error, please inform the sender and please delete all data from your computer.

**From:** Sphephelo Cindi [<mailto:Sphephelo.cindi@newcastle.gov.za>]  
**Sent:** 19 February 2016 17:55  
**To:** Neetu Dawlal  
**Cc:** Ntsiki Khathide; Qiniso Zwane  
**Subject:** RE: Notice of objection - Erf 353 (60 Murchison Street)

Afternoon Neetu

I refer to our meeting held earlier today.

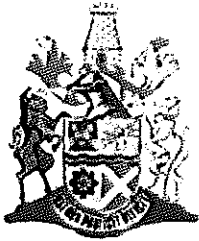
The Chairperson of our meeting has requested me to communicate the deadline for submission of supplementary information, including providing responses to representations made by the applicant in response to the objections you made. We therefore will be pleased to receive all this mentioned information by Tuesday at 16:00. Since I do not have your mobile number, I called your office as well and left this message with Mr A Ndlovu who made an undertaking to pass the message by communicating the deadline which is the close of business on Tuesday (16:00).

Your cooperation in this regard will be highly appreciated.

Kind regards,

Siphephelo Cindi  
Land Use Management Section  
Town Planning

Development Planning and Human Settlements  
Tel: 034 328 3300/59  
Fax: 034 328 3493/4  
Cell: 083 751 6333

	<p><i>"BY 2030 NEWCASTLE MUNICIPALITY WILL BE A SUSTAINABLE ECONOMICALLY VIBRANT CITY REGION THAT AFFORDS ITS CITIZENS A HIGH QUALITY OF LIFE"</i></p>
---	--



**WHAT ARE YOU  
WAITING FOR?**  
**SAVE WATER PROJECT**  
VISIT THE WEBSITE TODAY: [WWW.NMCASTLE.GOV.ZA](http://WWW.NMCASTLE.GOV.ZA)

**Sphephelo Cindi**

**From:** Neetu Dawlal <NDawlal@gminc.co.za>  
**Sent:** 25 February 2016 12:02 PM  
**To:** Siphephelo Cindi; Sphephelo Cindi  
**Cc:** Ntsiki Khathide; Qiniso Zwane  
**Subject:** RE: Notice of objection - Erf 353 (60 Murchison Street)

**Importance:** High

Dear Sir,

We refer to your email communiqué and attachments below.

May we respectfully and kindly enquire why you are sending our annexures back to us? The annexures that we have requested as per our email of 22 February 2016 does not correspond with the annexures that you have availed as per your email below.

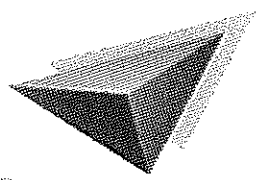
Annexures HH, II and NN are indeed site and retail licenses which we have also referred to in our objection. Clearly we require to see the copies put up by the Applicant and compare same to the copies in our possession as you are well aware that there is pending investigation into the alleged fraudulent licences. One cannot merely accept that both parties are referring to same version of the license especially seen that the veracity is in dispute.

In so far as Annexure QQ is concerned, the Applicant makes reference to Seyma Investments (Pty) Ltd been reinstated and clearly this does not accord with Annexures F and G which you are referring to your email below.

With all due respect, we fail to comprehend why our offices and our clients should be struggling to merely obtain the requested annexures from your offices seen that it was delivered to your offices by the Applicant on 25 January 2016.

All of clients' rights remain strictly reserved.

Regards,



**GILDENHUYS MALATJI**  
ATTORNEYS

**Neetu Dawlal** | Senior Associate - Employment Law Department  
 Tel: +27 12 428 8681  
 Fax: +27 12 428 8601  
 Email: ndawlal@gminc.co.za

Address: GMI House, Harlequins Office Park, 164 Totius Street, Groenkloof, F  
 Post: PO Box 619, Pretoria, 0001, South Africa [www.gminc.co.za](http://www.gminc.co.za)

A LEVEL TWO (AAA) BBBEE AND VALUE ADDING SUPPLIER VERIFIED BY EMPOWERDEX  
 This email is intended only for the use of the individual or entity named above and contains information that is confidential and privileged. If you are not the intended recipient, your distribution or copying of this email is strictly prohibited. Opinions, conclusions and other information in this message that do not relate to the official business of our firm shall be void if you received this in error, please inform the sender and please delete all data from your computer.

**From:** Siphephelo Cindi [mailto:sphephelocindi@gmail.com]  
**Sent:** 23 February 2016 16:26  
**To:** Neetu Dawlal  
**Subject:** RE: Notice of objection - Erf 353 (60 Murchison Street)

iMadam;

As mentioned in my work email, I attach the following:

Annexure HH: Site License – (Annexure PQ and also Annexure H PDM4 on the applicants submission)

Annexure II: Retail License – (Annexure H PDM5 on the applicants submission)

Annexure NN: Retail License – (Annexure H PDM5 on the applicants submission)

Annexure QQ: CIPRO (Annexure F & G on the applicants submission)

Kind regards,

Siphephelo Cindi  
Land Use Management Section  
Town Planning  
Development Planning and Human Settlements  
Tel: 034 328 3300/59  
Fax: 034 328 3493/4  
Cell: 083 751 6333

**Annexure H  
SPLUMA Bylaw Schedule 4**

## SCHEDULE 4

## APPLICATION PROCESSES FOR MUNICIPAL PLANNING APPROVAL. ALL APPLICATIONS, EXCEPT AN APPLICATION FOR A DWELLING ON LAND DEMARCATED FOR THE SETTLEMENT OF INDIGENT HOUSEHOLDS (SCHEDULE 7)

*(Section 54(1))***Persons who may make an application**

1.(1) An application for municipal planning approval must be made by –

- (a) a owner of a property that is the subject of an application, including an organ of state;
- (b) a person acting with the written consent of the owner of a property that is the subject of the application;
- (c) an organ of state, if it is in the process of acquiring the property that is the subject of the application.

(2) Any person may make application for municipal planning approval for the permanent closure of a municipal road or public place.

**Persons who must compile an application**

2.(1) An application for municipal planning approval that may be decided by a Authorised Planning Official as contemplated in item 1 of Schedule 2 may be compiled by any person.

(2) The Municipal Planning Tribunal Registrar may require that an application for municipal planning contemplated in subitem (1) must be compiled by –

- (a) a Registered Planner;
- (b) a person registered in terms of section 18(1)(a) of the Architectural Profession Act;
- (c) a person registered in terms of section 13(1)(d) of the Geomatics Professions Act, 2013, (Act No. 19 of 2013); or
- (d) an attorney or advocate,

if it is complex and requires technical expertise.

(3) An application for municipal planning approval that must be decided by the Chairperson of the Municipal Planning Tribunal, a tribunal member designated by the Chairperson, the Municipal Planning Tribunal or the Municipal Council as contemplated in items 2 to 4 of Schedule 2 must be compiled by –

- (a) a Registered Planner;
- (b) a person registered in terms of section 18(1)(a) of the Architectural Profession Act; or
- (c) a person registered in terms of section 13(1)(d) of the Geomatics Professions Act, 2013, (Act No. 19 of 2013).

**Pre-application procedure**

3.(1) An applicant must obtain approvals from organs of state, including municipal departments, which are relevant to a consideration of an application for municipal planning approval.

(2) Organs of state, including municipal departments, must provide a potential applicant with the information or a decision on an application that a potential applicant needs in order to make an application for municipal planning approval within 60 days from being served with a request for the information or decision, or such further period as agreed upon with the applicant.

(3) A Municipal Planning Registrar may give guidance to a potential applicant on approvals that may be required from organs of state and municipal departments and other information in order to make an application for municipal planning approval.

NEWCASTLE SPATIAL PLANNING AND LAND USE MANAGEMENT BY-LAW



(4) A Municipal Planning Registrar may not give advice about the merits of a proposed application for municipal planning approval when it provides guidance to a potential applicant.

(5) A Municipal Planning Authority may require an applicant to provide proof of any other statutory approval if, in its opinion, it is reasonably required to enable it to make a decision on an application.

**Failure by an organ of state to comment on a proposed application for municipal planning approval**

4.(1) An organ of state shall be regarded as having no comment on an application for municipal planning approval, if it did not provide comment on the proposed application within the time permitted, unless the use or development of land is dependent on an engineering service that it must provide.

(2) An organ of state may refuse to comment on a proposed application for municipal planning approval, if a separate application for its approval is required in terms of a law administered by it.

(3) A Municipal Planning Registrar may proceed with the processing of an application for municipal planning approval, if an organ of state failed to provide comment on a proposed application for municipal planning approval within the timeframe specified, or such further period as agreed upon with the organ of state, unless –

- (a) the use or development of land is dependent on an engineering service that must be provided by the organ of state;
- (b) the organ of state refused to comment on the application because a separate application for its approval is required in terms of a law administered by it; or
- (c) another law prohibits the Municipal Planning Registrar from proceeding with the application.

**Lodging of application**

5.(1) An application for municipal planning approval must be accompanied by –

- (a) the application form;
- (b) written motivation by the applicant in support of the application;
- (c) proof of registered ownership and a copy of the property diagram, unless the application relates to a general amendment of a land use scheme;
- (d) written consent of the registered owner of that land, if the applicant is not the owner thereof, unless the application relates to a general amendment of a land use scheme;
- (e) written confirmation by the land owner's association, body corporate established in terms of section 36(1) of the Sectional Titles Act, or a share block company contemplated in section 1 of the Share Blocks Control Act that the application complies with its design guidelines and rules for plan approval, if applicable;
- (f) written support of the traditional council for the application, if the property is located in a traditional authority area;
- (g) proof of circulation of an application to organs of state, including municipal departments;
- (h) if an application is an application for the subdivision or consolidation of land or township establishment –
  - (i) a request that the Municipality must require the Surveyor-General –
    - (aa) to approve a diagram for the subdivision or consolidation of the land; or
    - (bb) to approve a general plan for the subdivision or consolidation of the land or establishment of the township;
  - (ii) a request that the Municipality must require the Surveyor-General to approve the land –
    - (aa) as a farm or a subdivision of a farm, including a portion or a remainder of a farm;
    - (bb) as a subdivision of land that is not a farm;
    - (cc) as an erf in an existing township; or
    - (dd) as an erf in a new township;
- (i) the proposed street numbers and road names for all properties, and
- (j) any other plans, diagrams, documents, ESRI Shapefiles, information or fees that the Municipality may require.

- (2) An application for municipal planning approval must be lodged with –
  - (a) the Municipal Planning Registrar;
  - (b) another person designated by the Municipal Manager to receive applications for municipal planning approval; or
  - (c) the Municipal Manager, if a Municipality has not appointed a Municipal Planning Registrar and the Municipal Manager has not appointed any other person to receive applications for municipal planning approval.

(3) A Municipal Planning Registrar may not refuse to accept an application for municipal planning approval because the application is incomplete.

**Records of receipt of application, request for further documents and confirmation that application is complete**

- 6.(1) A Municipal Planning Registrar must –
  - (a) record receipt of an application for municipal planning approval in writing on the day of receipt; and
  - (b) notify the applicant in writing within 30 days after receipt of an application, or such further period as agreed upon with the applicant, which may not be more than 60 days after receipt of the application –
    - (i) that the application is complete; or
    - (ii) of any additional plans, documents other information or fees required.

(2) An application for municipal planning approval is regarded as complete, if the Municipal Planning Registrar did not request additional information within 30 days, or the further period as agreed upon with the applicant.

**Provision of additional information**

7.(1) An applicant must provide the Municipal Planning Registrar with the additional information required for the completion of an application for municipal planning approval contemplated in item 6(1)(b)(ii) within 90 days, or such further period as agreed upon with the applicant, which may not be more than 180 days from the request for additional information.

(2) The provisions of item 4 apply additional information that is required from an organ of state.

(3) An applicant may decline in writing to provide the additional information required, in which case the Municipal Planning Registrar must proceed with the processing of the application for municipal planning approval.

(4) An application for municipal planning approval lapses, if an applicant failed to submit plans, documents or information required by the Municipal Planning Registrar within the time permitted, unless the applicant declined in writing to provide the additional plans, documents or information before the application lapsed.

(5) A Municipal Planning Approval Authority may refuse an application for municipal planning approval, if it does not contain information that is necessary for it to make an informed decision contemplated section 6(2)(e)(iii) of the Promotion of Administrative Justice Act, 2000 (Act No.3 of 2000).

**Confirmation of lodging of complete application, if additional information was required**

- 8.(1) A Municipal Planning Registrar must notify the applicant in writing within 14 days after receipt of the additional plans, documents or information required –
  - (a) that the application is complete; or
  - (b) that the additional plans, documents or information do not meet the Municipality's requirements.

(2) If the time in which the applicant must provide the additional plans, documents or information has not yet expired, the applicant may resubmit the improved plans, documents or information, in which case the procedure in subitem (1) must be repeated.

(3) An application for municipal planning approval is regarded as a complete, if the Municipal Planning Registrar failed to notify the applicant in writing within 14 days –

- (a) that the application is complete; or
- (b) that the additional plans, documents or information do not meet the Municipality's requirements.

**Referral of application affecting the national interest to the Minister of Rural Development and Land Reform**

9. If an application for municipal planning approval affects the national interest as contemplated in section 52(1) and (2) of the Spatial Planning and Land Use Management Act, the Municipal Planning Registrar must serve a copy of the application on the Minister –

- (a) upon confirmation that the application is complete; or
- (b) upon the application being regarded as complete.

**Monitoring of application by the responsible Member of the Executive Council**

10. If the responsible Member of the Executive Council has determined that an application for municipal planning approval must be submitted to him or her for monitoring and support purposes as contemplated in section 105(2) of the Municipal Systems Act, the Municipal Planning Registrar must serve a copy of the application on him or her –

- (a) upon confirmation that the application is complete; or
- (b) upon the application being regarded as complete.

**Public consultation**

11.(1) The Municipal Planning Registrar must determine if it is necessary to consult the public on an application for municipal planning approval within –

- (a) 14 days of having been notified that the application is complete; or
- (b) 14 days after the application is regarded as complete.

(2) The Municipal Planning Registrar may require an applicant to consult the public at the applicant's expense by means of any combination of the methods of public notice contemplated in item 1 of Schedule 5.

(3) The closing date for submitting comments on an application for municipal planning approval may not be less than 30 days from the date of the notice.

(4) A notice of an application for municipal planning approval must include the items listed in item 2 of Schedule 5.

(5) An applicant may give notice of an application for municipal planning approval jointly with an application for environmental authorisation as contemplated in item 3 of Schedule 5 or with an application for a mining right as contemplated in item 4 of Schedule 5.

(6) An applicant must provide the Municipal Planning Registrar with proof that notice was given of an application for municipal planning approval.

**Applicant's right to respond**

12.(1) A Municipal Planning Registrar must serve –

- (a) copies of all comments received in response to a notice of an application; and
- (b) a notice informing the applicant of the applicant's right to respond to the comments and the right to waive the right to respond to the comments,

on an applicant within 7 days after the closing date for comment.

(2) An applicant may, within 60 days from the date that the Municipal Planning Registrar served the comments and accompanying notice on the applicant, lodge a written response to the comments with the Municipal Planning Registrar.

(3) An applicant may in writing waive the right to respond to comments.

**Referral of application to a Authorised Planning Official or Chairperson of a Municipal Planning Tribunal**

13.(1) The Municipal Planning Registrar must confirm –

(a) that the application for municipal planning approval complies with items 5 to 12 of this Schedule, and if it does not, provide details of the defect; and

(b) that the application complies with the Municipality's Spatial Development Framework, and if it does not, provide details of the departure.

(2) The Municipal Planning Registrar must compile the documents for consideration by the Authorised Planning Official or Municipal Planning Tribunal, which must include –

(a) the application;

(b) proof that the applicant gave notice of the application for municipal planning, if notice was required;

(c) the applicant's response to the comments, if any; and

(d) confirmation that the application complies with items 5 to 11 of this Schedule, or details of the defect, if it does not.

(3) The Municipal Planning Registrar must refer an application for municipal planning approval and the accompanying documents –

(a) that must be decided by a Authorised Planning Official to the Authorised Planning Official;

(b) that must be decided by the Municipal Planning Tribunal or Chairperson of the Municipal Planning Tribunal to the Chairperson of a Municipal Planning Tribunal;

(c) that must be decided by the Municipal Council to the Chairperson of a Municipal Planning Tribunal for the Municipal Planning Tribunal's technical evaluation and recommendation.

(4) The Municipal Planning Registrar must refer an application for municipal planning approval to the Planning Officer or the Chairperson of a Municipal Planning Tribunal –

(a) if it was not necessary to give notice of an application –

(i) upon confirming that the application is complete; or

(ii) upon the application being regarded as complete,

(b) if notice must be given of an application –

(i) upon the closing date for representations contemplated in item 2(f) of Schedule 5, if no comments were received;

(ii) upon receipt of an applicant's response to comments contemplated in item 12(2);

(iii) upon the expiry of the 60 days within which the applicant may respond to comments contemplated in item 12(2);

(iv) upon receipt of an applicant's waiver of the right to respond to comments contemplated in item 12(3);

or

(v) upon receipt of confirmation of –

(aa) the approval or refusal an application for environmental authorisation; or

(bb) the granting or refusal of a mining right,

if joint notice was given of applications as contemplated in items 3 and 4 of Schedule 5,

whichever is the latter.

(5) An application for municipal planning approval that has been referred to a Authorised Planning Official or the Chairperson of a Municipal Planning Tribunal must be accompanied by –

(a) proof that the applicant gave notice of the application, if applicable;

(b) comments received in response to the notice, if any; and

(c) the applicant's response to the comments, if any.

NEWCASTLE SPATIAL PLANNING AND LAND USE MANAGEMENT BY-LAW

**Site inspection**

14.(1) If the Municipal Planning Approval Authority is a Authorised Planning Official, he or she must conduct a site inspection within 30 days from the date that an application for municipal planning approval and accompanying documents were referred to him or her.

- (2) If the Municipal Planning Approval Authority is a Municipal Planning Tribunal or the Municipal Council –
- (a) the Municipal Planning Tribunal must decide whether to conduct a site inspection within 21 days from the date that an application for municipal planning approval and accompanying documents were referred to the Chairperson of the Municipal Planning Tribunal;
  - (b) A Municipal Planning Registrar must in writing notify –
    - (i) the applicant; and
    - (ii) any other person identified by the Presiding Officer; of the date and time for the site inspection; and
  - (c) the site inspection must be conducted within 60 days from the date that an application for municipal planning approval and accompanying documents were referred to the Municipal Planning Tribunal.

(3) A Authorised Planning Official or Municipal Planning Tribunal must leave land or a building as effectively secured against trespassers as it found it, if the owner or occupier is not present.

(4) A person who has entered upon land or entered a building for the purposes of this item, who has gained knowledge of any information or matter relating to another person's private or business affairs in the process, must treat that information or matter as confidential and may not disclose it to any other person.

(5) A person is guilty of an offence and liable on conviction to a fine or to a period of imprisonment not exceeding one year, or both, if that person subsequently discloses to any other person trade secrets or any privileged information obtained whilst entering upon land or entering a building, except if the disclosure –

- (a) was made for the purposes of deciding the appeal; or
- (b) was ordered by a competent court or is required under any law.

(6) A person who wilfully obstructs a person from entering upon land or entering a building contemplated in this item is guilty of an offence and is liable on conviction to a fine or to a period of imprisonment not exceeding six months, or both.

**Public hearing**

15.(1) If the Municipal Planning Approval Authority is the Municipal Planning Tribunal or the Municipal Council, the Municipal Planning Tribunal must decide whether to hold a public hearing within 21 days from the date that an application for municipal planning approval and accompanying documents were referred to the Chairperson of the Municipal Planning Tribunal.

- (2) A hearing should only be convened if, in the opinion of the Municipal Planning Tribunal, a hearing will –
- (a) assist in resolving disputes of fact or of law;
  - (b) assist the parties to the application to resolve differences of opinion arising from the application or any objections made thereto; or
  - (c) promote consensus on any aspect of the application.

(3) The Municipal Planning Tribunal must hold a public hearing, if necessary, within 60 days from the date that an application for municipal planning approval and accompanying documents were referred to it.

- (4) A Municipal Planning Registrar must –
- (a) in writing notify –

NEWCASTLE SPATIAL PLANNING AND LAND USE MANAGEMENT BY-LAW

- (i) the applicant, and
  - (ii) all parties who commented on an application for municipal planning approval.
- of the public hearing;
- (b) display at least four notices of a size at least 210mm X 297mm (A4) on the frontage of the land, or at any other conspicuous and easily accessible place on the land; and
  - (c) publish a notice in a newspaper circulating in the area of the land.
- (5) A notice of a public hearing must –
- (a) specify the place, date and time thereof;
  - (b) state the purpose thereof, and
  - (c) inform parties of their rights contemplated in this item –
    - (i) to be present or represented; and
    - (ii) to state their case or lead evidence in support thereof.
- (6) Any person has a right to attend the public hearing or to be represented at the public hearing, and to personally, or through their representative –
- (a) state their case;
  - (b) call witnesses to testify and to present other evidence to support their case;
  - (c) cross-examine any person called as a witness by any opposite party;
  - (d) have access to documents produced in evidence; and
  - (e) address on the merits of the application for municipal planning approval.
- (7) Any member of the public may attend a hearing but may not speak at the hearing with the leave of the Chairperson of the hearing who may impose any conditions limiting the person's address.
- (8) Any person that disrupts or interrupts the proceedings of a hearing may be asked to leave the hearing.
- (9) A Municipal Planning Approval Authority may take cognisance of any evidence produced at a public hearing when it considers an application for municipal planning approval.
- (10) A person who produced evidence at a public hearing, but who did not respond to an invitation to comment on an application for municipal planning approval as contemplated in item 11(1), does not have a right of appeal against the decision of the municipal planning approval authority.

#### **Registered planner's report on an application**

- 16.(1)** If the Municipal Planning Approval Authority is a Authorised Planning Official –
- (a) he or she must assess merits of the application for municipal planning approval in writing; or
  - (b) refer the application to a Registered Planner employed by the Municipality to –
    - (i) assess the merits of the application in writing; and
    - (ii) make a recommendation on the application.
- (2) If the Municipal Planning Approval Authority is the Municipal Planning Tribunal or Municipal Council –
- (a) a Registered Planner designated by the Chairperson of the Municipal Planning Tribunal in terms of section 16(2) must –
    - (i) assess the merits of the application in writing; and
    - (ii) make a recommendation on the application; or
  - (b) the Presiding Officer must refer the application to a Registered Planner employed by the Municipality to –
    - (i) assess the merits of the application in writing; and
    - (ii) make a recommendation on the application.

#### **Time in which a Authorised Planning Official or a Municipal Planning Tribunal must decide an application**

#### **NEWCASTLE SPATIAL PLANNING AND LAND USE MANAGEMENT BY-LAW**

17.(1) If the Municipal Planning Approval Authority is a Authorised Planning Official or a Municipal Planning Tribunal, it must decide the application for municipal planning approval –

(a) within 60 days from the date that the application and accompanying documents –

(i) were referred to the Authorised Planning Official, or

(ii) were referred to the Chairperson of the Municipal Planning Tribunal.

if the Authorised Planning Official or Municipal Planning Tribunal did not conduct a site inspection or hold a public hearing,

(b) within 30 days after the date of the site inspection or public hearing, whichever is the later date, if Authorised Planning Official or Municipal Planning Tribunal did conduct a site inspection or held a public hearing; or

(c) such further period as agreed upon with the applicant, which period may not exceed 180 days after the date that the application and accompanying documents were referred to –

(i) the Authorised Planning Official, or

(ii) the Chairperson of the Municipal Planning Tribunal.

(2) An application for municipal planning approval lapses if a Authorised Planning Official or a Municipal Planning Tribunal failed to decide the application within the specified period.

**Municipal Planning Tribunal's recommendation on an application that must be decided by the Municipal Council**

18. If the Municipal Planning Approval Authority is the Municipal Council, a Municipal Planning Tribunal must make a recommendation on the application for municipal planning approval to the Municipal Council –

(a) within 60 days from the date that the application and accompanying documents were referred to the Chairperson of the Municipal Planning Tribunal, if the Municipal Planning Tribunal did not conduct a site inspection or hold a public hearing;

(b) within 30 days after the date of the site inspection or public hearing, whichever is the later date, if the Municipal Planning Tribunal did conduct a site inspection or held a public hearing; or

(c) such further period as agreed upon with the applicant, which period may not exceed 180 days after the date that the application and accompanying documents were referred to the Chairperson of the Municipal Planning Tribunal.

**Referral of application that must be decided by the Municipal Council to the council**

19.(1) Upon receipt of a Municipal Planning Tribunal's recommendation the Municipal Planning Registrar must refer an application for municipal planning approval to the Municipal Council.

(2) An application for municipal planning approval that is referred to a Municipal Council must be accompanied by –

(a) a summary of the comments received in response to the public consultation process, if any;

(b) the applicant's response to the comments, if any;

(c) the Municipal Planning Tribunal's report on the application;

(d) the Municipal Planning Tribunal's recommendation on the application; and

(e) the Municipal Planning Tribunal's decision on any application for municipal planning approval relating to the same development that it decided.

**Time in which a Municipal Council must decide an application**

20.(1) A Municipal Council must decide an application for municipal planning approval –

(a) within 90 days after it received the documents contemplated in item 13; or

(b) within 90 days after a Municipality resolved whether or not to amend its Integrated Development Plan to accommodate an application for municipal planning approval contemplated in section 51(6); or

(c) such further period as agreed upon with the applicant, which period may not exceed 180 days after the date that the application and accompanying documents were referred to the Municipal Council.

(2) An application for municipal planning approval lapses, if a Municipal Council failed to decide the application within the specified period.

NEWCASTLE SPATIAL PLANNING AND LAND USE MANAGEMENT BY-LAW

This gazette is also available free online at [www.gpwnline.co.za](http://www.gpwnline.co.za)



**Annexure I  
2005 Council Resolution**

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(51) L

EXTRACT FROM THE MINUTES OF			A	DEPT	I
EXECUTIVE COMMITTEE MEETING			A.	TP	
				H&L	
				SBI	
				PSB	
				W/R	
				HAB	
				SI	

HELD ON 16-08-2005. ITEM B 584 FOLIO 17

APPROVED BY COUNCIL ON 31-Aug-2005.

MINUTES:

**B584 : APPLICATION FOR SPECIAL CONSENT TO ERECT A SERVICE STATION, MOTOR TRADE SHOP, INDUSTRIAL SHOP, SERVICE INDUSTRIAL WORKSHOP, LAUNDRETTE AND RESIDENTIAL BUILDING ON ERF 353 NEWCASTLE : (TP 13/3/4/1)**

RESOLVED

- (a) That in terms of section 67 of the Town Planning Ordinance N<sup>o</sup>. 27 of 1949, the application for the proposed development on erf 353 Newcastle not be approved;
- (b) that the applicant be informed of (a) above, however, also be informed of the right of appeal to the Appeal's Board in terms of section 67 ter of the said ordinance, within 28 days of being notified of Council's decision, such appeal to be forwarded to the Town Planning Appeal's Board, Private Bag x 9123, Pietermaritzburg, 3200;
- (c) that the applicant be advised to re-lodge the application within a period of three months from the date of receipt of the above resolution, once all supporting documents for the application are in place;
- (d) that the objectors be notified of the resolution not to approve the application.

TP  
N.S. Mthabela

**REMARKS:**

**Annexure J**  
**Responding Memorandum to the Appeals Board**

APPEAL TO THE TOWN PLANNING APPEALS BOARD IN TERMS OF SECTION 67 *ter* OF THE NATAL TOWN PLANNING ORDINANCE NO. 27 OF 1949 AGAINST THE MUNICIPALITY'S DECISION NOT TO APPROVE THE SPECIAL CONSENT APPLICATION FOR THE DEVELOPMENT OF A SERVICE STATION AND ANCILLARY USES ON ERF 353 NEWCASTLE

1. BACKGROUND

An application dated 20 May 2005, for Council's special consent to establish the above-mentioned development on erf 353 Newcastle was received from Pinkie Kuhne on behalf of Kadwa Family Trust.

Erf 353 Newcastle is a "Mixed Used" property located at the corner of Sutherland and Murchinson Street in the Newcastle CBD. The property is 4047m<sup>2</sup> in extent. The application is primarily for the development of a Service Station on the property, but also includes additional uses such as a motor trade shop, industrial shop, service industrial workshop, launderette and a residential building above ground floor. In terms of the provisions of the Newcastle Town Planning Scheme, a Service Station is permitted on a "Mixed Use" zone property, by Special Consent of the Newcastle Municipality. The additional uses proposed in the application, are also permitted within the "Mixed Use" zone.

The property is predominantly surrounded by developed single residential properties, as well as developed commercial properties. The Game and Pick n Pay complex is located opposite the subject property, along Murchinson Street. In terms of the motivation from the applicant, the said property forms part of what is known as "Van Kampen Village", which is a dilapidated housing complex within the Newcastle CBD.

On the closing date of objections, one letter of objection was received in a petition format with nine different signatories from concerned owners of petrol filling stations within Newcastle. In the light of the objections raised, a meeting was convened between relevant municipal officials, the applicant as well as the objectors, which was scheduled for 7 July 2005. The intention of the meeting was to resolve the issues that were raised by the objectors, in their letters dated 8 June 2005. However the meeting did not take place due to the non-attendance by both the applicant and the objector. The grounds of objection are attached as Annexure A.

In the light of inadequate information provided with the application, the most notable being that the Title Deed was not attached with the application, the Executive Committee (EXCO) of the Newcastle Municipality, at its meeting held on 16 August 2005, resolved not to approve of the Special Consent application. The Council Resolution is attached as Annexure B.

In their letter dated 6 September 2005, the Newcastle Municipality informed the applicant that the Special Consent application was not approved by EXCO, in which letter the applicant was also informed of their Right to Appeal in terms of Section 67

ter of the Natal Town Planning Ordinance (No. 27 of 1949) . In their letter dated 7 July 2005, the applicant lodged an Appeal against Municipality's decision not to approve the Special Consent application. In their Appeal, the applicant pointed out that in the existing Game and Pick 'n Pay complex, there is no petrol station and that in terms of the SA Constitution a free-market system is propagated. The Appeal is attached as Annexure C.

**2. PURPOSE**

The purpose of this report is to present to the Town Planning Appeals Board Councils arguments for the non approval of the Special Consent application for the development of a Service Station on Erf 353 Newcastle.

**3. RECOMMENDATIONS**

The Executive Committee in its delegated powers at its meeting held on 16 August 2005, resolved as follows:

- a) That the Executive Committee in its delegated powers by Council and in terms of Section 67 of the Town Planning Ordinance Ord. No. 27 of 1949 , as amended, disapprove the application for the above-mentioned establishment on erf 353 Newcastle;
- b) That the applicant be informed of Council's decision not to approve the special consent application, and also be informed of his/her right to appeal to the Appeal's Board in terms of Section 67 *ter* of the Ordinance, within 28 days of being notified of Council's decision. The Appeal should be forwarded to The Town Planning Appeal's Board at Private Bag x 9123, Pietermaritzburg, 3200;
- c) That the applicant be advised to re-lodge her application from the period of three months from the date of receipt of Council resolution once all the supporting documents for this application are in place;
- d) That the objectors be notified of the Council resolution not to approve this application.

TP

**4. REASONS FOR COUNCIL'S NON-APPROVAL**

The application for Special Consent was submitted to the Newcastle Town Planning Department on 24 May 2005. The notice was advertised on 20 May 2005, with the closing date for objections being 9 June 2005. In terms of the provision of Section 67

*bis (4)(a)* of the Natal Town Planning Ordinance, Municipality had to come to a decision on the application on the application by 24 July 2005. An objection by Neven Singh and Associates (acting on behalf of 9 objectors), was lodged on 8 June 2005, which was received by the Newcastle Municipality on 20 June 2005. In an attempt to accommodate the applicant and resolve the issues raised by the objections, a meeting was convened by officials from the Newcastle Municipality between the objectors and the applicant, which was scheduled for 7 July 2005. Neither the objectors nor the applicant arrived for the meeting. In the light of the objections received and the fact that the meeting did not occur, a request was directed to the applicant on 11 July 2005, requesting an extension of time for Municipality to come to a decision up to 3 September 2005 (Annexure D).

As previously stated, Municipality previously resolved not to approve the Special Consent, due to the fact that the Title Deed was not submitted with the application. The Title Deed was submitted on 4 October 2005 (Annexure E). As Municipality had to resolve on the application by 3 September 2005, it was therefore submitted out of time. The site development plan submitted with the application was also inadequate in that it only reflected Phase 1 of the proposed development.

#### **LIST OF ANNEXURES:**

- Annexure A: Objection Letters
- Annexure B: Council Resolution
- Annexure C: Appeal
- Annexure D: Extension of time request
- Annexure E: Title Deed

**ANNEXURE A**  
**LETTERS OF OBJECTION**

NEVEN SINGH & ASSOCIATES  
(ATTORNEYS, CONVEYANCERS & ADMINISTRATOR OF ESTATES)  
NEVENDRA SINGH (B. PROC.)

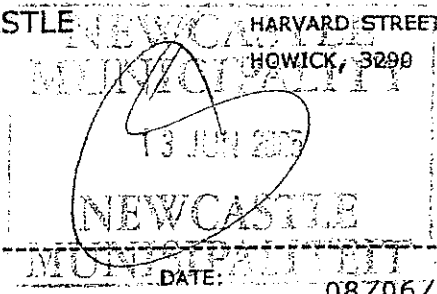
MAIN OFFICE

BRANCH OFFICE

SUITE 4, 1<sup>ST</sup> FLOOR  
FAVOURITE CURTAIN BLDG.  
32 ALLEN STREET  
NEWCASTLE  
2940

P.O. BOX 142  
NEWCASTLE  
2940

SHOP 16, SPAR CENTRE  
HARVARD STREET  
HOWICK, 3299



TEL/FAX : (034) 31 51946

OUR :  
YOUR : NS/RS/MISC

DATE: 08/06/2005

THE MUNICIPAL MANAGER  
MUNICIPAL OFFICES  
NEWCASTLE  
2940

N: TP  
A



S I R

RE: OBJECTION - APPLICATION FOR SPECIAL CONSENT

LOT 353 NEWCASTLE - CNR SUTHERLAND AND MURCHISON STREETS

We have been instructed by various businesses (as will appear from the foot of the correspondence annexed hereto) to lodge an objection to the proposed development of a service station at the abovementioned LOT. The correspondence annexed hereto forms the basis of our clients objection and has been forwarded to the Applicant by registered post (copy of registered slip annexed hereto).

Kindly advise if the objection was successful in writing.

Yours faithfully

NEVEN SINGH & ASSOCIATES

KINDLY ADDRESS ALL CORRESPONDENCE TO: P. O. BOX 142, NEWCASTLE,  
Prof. Assistant: Sundeep Singh (B. Proc)

TOWN PLANNING	A	DATE	SIGN
	DIR	1	
ADM			
LUM	A	RS.	RS
SP			
BIS			
BI			
EP			



PINKIE KUHNE  
P.O. BOX 22072  
NEWCASTLE  
2940

8TH JUNE 2005

M A D A M

PER REGISTERED POST

OBJECTION - APPLICATION FOR SPECIAL CONSENT

LOT 353 NEWCASTLE - CORNER OF SUTHERLAND & MURCHISON STREETS

We the undersigned do hereby lodge a formal objection to the proposed development on the above property of a service station.

The crux of our objection relates to the fact that the town of Newcastle is overtraded in the service station industry. Approving the establishment of another service station is just going to add to the woes of those currently running service stations and the overtrading could very well lead to the closing down of existing businesses.

If one looks around the town of Newcastle one would realise that there are at least seven existing service stations in the CBD itself. This is far too many for a small town like Newcastle. Furthermore, there are at least another seven more service stations within a two kilometer radius of the centre of Newcastle.

All of the existing service stations in CBD are positioned very close to each other with the result that competition is very stiff. We again reiterate that because Newcastle is a small town thus the many service stations in the CBD are located close to each other.

The last point that we have to make herein is that the area designated for the establishment of the service station is already very congested especially during peak periods, at month ends and on Fridays and Saturdays. The Game and Pick 'n Pay supermarkets attract a lot of shoppers and the establishment of other businesses in the area is going to result in major traffic problems, congestion and possibly accidents. It is presently so difficult to enter the road from the Pick 'n Pay parking area on to Sutherland Street and from the Game Parking Area onto Murchison Street.

PAGE 2

Kindly acknowledge receipt of this objection and investigate the many valid reasons put forth by us and you will realise that we have valid reasons for making the objection. Any correspondence addressed to us can be forwarded care of Attorneys Neven Singh & Associates, P.O. Box 142, Newcastle, 2940.

Yours faithfully

**MOVE ON UP CC T/A SSS MOTORS**  
34 KIRKLAND ST  
P.O. BOX 2835 NEWCASTLE 2940  
PH: 034 3123785 / 3129318  
FAX: 034 3129318  
CELL: 0824481876 / 0824481877

*[Handwritten signature]*

*[Handwritten signature]*  
A.Y. Lee George

**AUTO CITY**  
YOUR FRIENDLY SHELL DEALER  
14 MURCHISON STREET  
TEL (034) 3123584

**NEWCASTLE PITSTOP**  
P.O. Box 1314 Newcastle 2940  
Tel: (034) 312 5487  
Fax: (034) 312 8824

**Murchison Street Motors**  
20 Murchison Street  
P.O. Box 704  
Newcastle, 2940

*[Handwritten signature]*

Reg No: 2004/028864/80 WA  
**Leon Motors**  
VAT no: 489028272  
73 Allen Street Newcastle 2940  
Tel: 3121774 Fax: 3121278

**MORTIMER TOYOTA**  
P.O. BOX 1091, NEWCASTLE 2940  
TEL: (03431) 26241  
FAX: (03431) 29465

**BSS MOTORS**  
5 ROOIBOX AVENUE  
LITTEN HEIGHTS  
P.O. BOX 24718  
NEWCASTLE 2940

*[Handwritten signature]*

**BP-PITSTOP**  
88 ALLEN STREET  
P.O. BOX 1488 NEWCASTLE 2940  
TEL (034) 3121181  
FAX (034) 3121182

**ANNEXURE B**  
**COUNCIL RESOLUTION**

EXTRACT FROM THE MINUTES OF			A	DEPT	I
<b>EXECUTIVE COMMITTEE MEETING</b>  HELD ON 16 - 08 - 2005. ITEM B 584 FOLIO 17  APPROVED BY COUNCIL ON 31 - Aug - 2005.			A.	TP	
				H&L	
				SBI	
				PSB	
				W/R	
				HAB	
				SI	

MINUTES:

**B584 : APPLICATION FOR SPECIAL CONSENT TO ERECT A SERVICE STATION, MOTOR TRADE SHOP, INDUSTRIAL SHOP, SERVICE INDUSTRIAL WORKSHOP, LAUNDRETTE AND RESIDENTIAL BUILDING ON ERF 353 NEWCASTLE : (TP 13/3/4/1)**

**RESOLVED**

- (a) That in terms of section 67 of the Town Planning Ordinance N°. 27 of 1949, the application for the proposed development on erf 353 Newcastle not be approved;
- (b) that the applicant be informed of (a) above, however, also be informed of the right of appeal to the Appeal's Board in terms of section 67 *ter* of the said ordinance, within 28 days of being notified of Council's decision, such appeal to be forwarded to the Town Planning Appeal's Board, Private Bag x 9123, Pietermaritzburg, 3200;
- (c) that the applicant be advised to re-lodge the application within a period of three months from the date of receipt of the above resolution, once all supporting documents for the application are in place;
- (d) that the objectors be notified of the resolution not to approve the application.

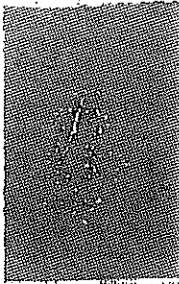
TP  
N.S. Mthabela

**REMARKS:**

**ANNEXURE C**

**APPEAL**

106



PINKIE KÜHNE

76 PATERSON STREET  
P O BOX 22072  
NEWCASTLE  
2940

TEL/FAX 034 312 3116  
CELL 082 952 2946

*faxed to 034 312 5698 (Rahim) 21 October 2005*

The Secretary, Town Planning Appeals Board  
Private X9123  
PIETERMARITZBURG  
3200

Sir/Madam

**APPLICATION FOR SPECIAL CONSENT TO ERECT A SERVICE STATION AND  
AUXILIARY USES ON LOT 353, NEWCASTLE.**

A letter received from the Director, Newcastle Town Planning is attached for your information as ANNEXURE A.

As can be seen, the application for Special Consent for the above mentioned property was not approved.

I hereby wish to appeal to the Board in terms of Section 67<sup>ter</sup> of the Natal Town Planning Ordinance (Ordinance 27 of 1949 as amended).

The motivation (and grounds for the appeal) is set out in ANNEXURE B.

As my client has to date made great financial investments towards this proposed venture, and the petrol company is pressurizing him for progress, this matter is of the greatest urgency. I therefore trust that a hearing can be arranged as soon as possible.

Any further information needed by the Appeals Board will be provided and dealt with during the hearing.

Thanking you in anticipation.

Yours faithfully,

Pinkie Kühne

*✓ site plan was taken to Town Planning*

*✓ copy to The Director  
Town Planning  
Private Bag X6624  
Newcastle  
2940*

*✓ faxed to Appeal Board, and sent to them also by Registered Post.*

3

Annexure B 07

# PINKIE KÜHNE

76 PATERSON STREET  
P O BOX 220  
NEWCASTL  
294

TEL/FAX: 034 312 3116  
CELL: 082 952 2946  
EMAIL: pinkie4kzn@telkomsa.net

07 July 2005

## APPLICATION FOR SPECIAL CONSENT: LOT 353, NEWCASTLE

According to the objectors, there are too many filling stations in Newcastle already. This argument is not valid in terms of the Constitution where a free market system is propagated.

Decentralization is moving out of the core of the CBD to the western side, where the new Game, Pick 'n Pay, Clicks, Wimpy, etc. is situated. There is no petrol filling station available there.

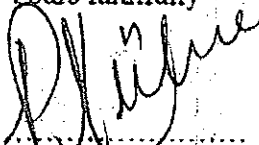
Newcastle's population of approximately half a million people cannot be described as a small town. The difficulty with which driving here in peak hours, indicates the contrary.

It is the trend in cities to establish a petrol filling station in or near decentralized shopping centres. This enhances the conveniency and alleviates driving around town, where shopping amenities and filling stations are far apart.

The proposed filling station cannot be called an additional filling station, as it will take the place of the one at the Bus Rank, which is to be closed down. There will, thus, be a need for a filling station in this part of Newcastle Central.

It is trusted that Council will regard the objections with the necessary attention and that this Special Consent will receive the consideration and approval it deserves.

Yours faithfully



Pinkie Kühne

✓ To: 034 317 3616 4

✓ To: Attention, Ntsiki  
Mr. Chetty 3152588 (client's lawyer)

**ANNEXURE D**  
**EXTENSION OF TIME REQUEST**



TP 13/3/4/1 - 353

N. P. Msomi

Tel (034) 317 1270  
Fax (034) 317 3616  
E-mail: [townplanning@newcastle.gov.za](mailto:townplanning@newcastle.gov.za)

11 July 2005

Pinkie Kühne  
P. O. Box 22072  
NEWCASTLE  
2940

Dear Madam

**APPLICATION FOR SPECIAL CONSENT TO ERECT A SERVICE STATION,  
MOTOR TRADE SHOP, INDUSTRIAL SHOP, SERVICE INDUSTRIAL  
WORKSHOP, LAUNDRETTE AND A RESIDENTIAL BUILDING ABOVE  
GROUND FLOOR ON ERF 353 NEWCASTLE.**

Reference is made to your application dated 20 May 2005 for special consent to establish the above-mentioned development on erf 353 Newcastle and our letter dated 24 July 2005 inviting you to a meeting that was scheduled for the 7<sup>th</sup> of July 2005.

Please be advised that following the publication of your application on the 20<sup>th</sup> of May 2005, one objection in a petition format with 9 signatories was received from Neven Singh & Associates on the 20<sup>th</sup> June 2005. Please be informed that the meeting which was initially scheduled for 7 July 2005 to discuss the above-mentioned application and objections has been postponed due to non-attendance by applicant and the objectors. You will be notified accordingly of the definite date.

Also take note that in terms of the Newcastle Town Planning Scheme the Council is expected to come to a decision as regards the establishment of the proposed development on erf 353 Newcastle no later than 24 July 2005. However, due to the objection received the Council will not be able to arrive at the decision. An extension of time in terms of Section 67 of the Town Planning Ordinance [Ord. No. 27 1949, as amended] is therefore requested up to and including 3 September 2005.

14 JUL 2005

Your patience and cooperation in this regard will be highly appreciated.

Yours Faithfully

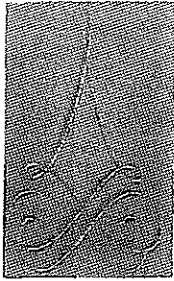


N. S. THUSI  
ACTING DIRECTOR: TOWN PLANNING  
c/lts/extension of time crf 353  
NPM

**ANNEXURE E**

**TITLE DEED**

2887  
171



# PINKIE KÜHNE

TEL/FAX 034 312 3116  
CELL 082 952 2946  
EMAIL pinkie4kzn@telkomsa.net

76 PATERSON STREET  
P O BOX 22072  
NEWCASTLE  
2940

4 October 2005



Your ref.: T.P.13/3/4/1-353

Director: Town Planning  
Private Bag X6621  
NEWCASTLE  
2940

Sir

## APPLICATION FOR SPECIAL CONSENT: LOT 353, NEWCASTLE

I have been telephonically in touch with Mr Rodney Swartz from your department who informed me that the reason for not finally processing the application was that a copy of the Title Deed was not included in the application.

I have since received a copy of the Deed of Transfer, which is attached for your attention.

I hereby sincerely wish to appeal to you to re-submit this application to the Executive Committee for their consideration.

I will appreciate your kind cooperation in this matter.

Yours faithfully

Pinkie Kühne

	A	NAME	DATE	SIGN
TOWN PLANNING	1			
	2			
	3	A	RS	
	4			
	5			
	6			
	7			
	8			
	9			
	10			

DEEDS  
DATED

DE JAGER, KLOPPER & STEYN  
Conveyancers  
NEWCASTLE

Prepared by me:  
*M*  
CONVEYANCER  
J.J. DE JAGER

N

VERBODEN  
RECEPLAAS

NO. 210 000, 00

ADDITIONAL FEE FOR RE-REGISTERING  
ADDITIONAL FEE FOR EXTENDING a 25 den, 00

VERBODEN  
RECEPLAAS

B. 2644/91

As Registrar  
I have signed  
this deed in the presence of  
the Registrar of Deeds

91 02 04

(6)

91 02 04

2066/91

DEED OF TRANSFER

BE IT HEREBY MADE KNOWN  
THAT EDMUND LANGTON BROWNE  
appeared before me, Registrar of Deeds for the Province of  
Natal at Pietermaritzburg, he, the said Appearer, being  
duly authorised thereto by a Power of Attorney granted to  
him by

NEWCASTLE ROUSING (PROPRIETARY) LIMITED  
NO. 62/62977/06

dated the 22nd day of NOVEMBER 1990  
and signed at SANDTON.

Page two.

AND the Appearer declared that the said NEWCASTLE HOUSING (PROPRIETARY) LIMITED NO. 62/02977/06 had on the 29th day of September 1990 truly and legally sold and that he, in his capacity aforesaid, did by these presents code and transfer in full and free property to and on behalf of

①

THE TRUSTEES FOR THE TIME BEING OF THE KADWA FAMILY TRUST NO. 7453/90

A MEMBER OF THE INDIAN GROUP

its successors in title or assigns, the following property, namely:

LOT 353 NEWCASTLE  
SITUATE IN THE BOROUGH OF NEWCASTLE  
ADMINISTRATIVE DISTRICT OF NATAL  
MEASURING : FOUR THOUSAND AND FORTY SEVEN  
(4047) SQUARE METRES

WHITE GROUP  
BLANKE GROEP

First transferred by Deed of Grant No.3088 with diagram annexed thereto and held by Deed of Transfer no. T3648/1981.

THIS PROPERTY IS TRANSFERRED:

Subject to such of the terms and conditions contained in the original Government Grant no.3088 as are still in force and applicable.

WHEREFORE the said Appearer, renouncing all the right and title which the said NEWCASTLE HOUSING (PROPRIETARY) LIMITED NO.62/02977/06 heretofore had to the premises, did in consequence also acknowledge it to be entirely dispossessed of and disentitled to the same and that, by virtue of these presents the said

TRUSTEES FOR THE TIME BEING OF THE KADWA FAMILY TRUST NO.7453/90

its successors in title or assigns, now is and henceforth shall be entitled thereto, conformably with local custom,

~

Page three.

State, however, reserving its rights and finally acknowledging the purchase price of the property to be the sum of THREE HUNDRED THOUSAND RAND (R300 000,00).

IN WITNESS WHEREOF I, the said Registrar, together with the Appearer, have subscribed to these presents and have caused the Seal of Office to be affixed thereto.

THUS DONE AND EXECUTED at the Office of the Registrar of Deeds at Pietermaritzburg in the Province of Natal on

9: 02 04

In my presence,

REGISTRAR OF DEEDS  
*[Signature]*

*[Signature]*

- 1. TRANSFER DUTY RECEIPT NO. 6580  
ISSUED AT PIETERMARITZBURG ON  
7.12.90 FOR R 8400.00  
CITY OF spaza 2
- 2. RATE OF CONTRIBUTION Borough  
of Newcastle 30/8/91
- 3. WATER RATES CLEARANCE CERTIFICATE

*[Signature]* DATA  
4/2 B  
40 E

**Annexure K  
Removal of Restrictive Conditions Application**



APPLICATION FOR THE REMOVAL OF CONDITION  
ON APPEAL NUMBER 3038 FOR LOT 353  
NEWCASTLE

MOTIVATION REPORT WITH ATTACHMENTS



	A	NAME	DATE	SIGN
SED				
DIR				
P.A./S.				
U.R.&P				
TOWN PLANNING				
LUMS	A	SC		
SP				
G&S				
PI				
ADMIN				
ENV.				

Mr RA Kader



UMKHANDLU WASE-NEWCASTLE / MUNISIPALITEIT VAN NEWCASTLE



NEWCASTLE MUNICIPALITY
TEL (034) 328 3300 FAX (034) 328 3393/4

STATUTORY LAND USE / DEVELOPMENT APPLICATION IN TERMS OF THE SPATIAL PLANNING AND LAND USE MANAGEMENT ACT NO. 16 OF 2013 READ WITH THE KWA-ZULU NATAL PLANNING AND DEVELOPMENT ACT NO. 6 OF 2008

OFFICE USE ONLY

APPLICATION FEE: 1723.70
DATE RECEIVED:
RECEIPT NUMBER: 484887
PAYMENT RECEIVED BY: THABOSIKU MWAJIDI
DELEGATED PLANNING OFFICIAL: S. GANDI

1. NOTES:

- All sections of this form MUST be completed.
Block letters MUST be used to type (where applicable)
This form MUST be signed by the Registered Owner of the property or the Agent (Applicant representative).

2. TYPE OF APPLICATION (Please tick the appropriate box)

Table with 2 columns: Application Type and Tick Box. Rows include Building control and development application (relaxation of envelope, review controls) and Land use/development application (consolidation, subdivision, title/establishment conditions, zoning map correction).



Extension of approval to already granted development application	
Permanent closure of a public place	
Special Consent in terms of a scheme	
Temporary closure of a public place	
The amendment of a scheme by the rezoning of land	
The amendment or cancellation in whole or in part of an approved general plan of a township	
The consolidation of any land outside a scheme	
The establishment of a township	
The extension of the scheme boundaries of a township	
The removal, amendment or suspension of a restrictive or obsolete condition, servitude or reservation registered against the title of the land	X
The removal, amendment or suspension of a restrictive title condition relating to the density of residential development on a specific Erf where the residential density is regulated by a scheme in operation	
The subdivision of any land outside a scheme	

IS THIS A COMBINED APPLICATION ( <i>Application Seeking more than one planning authorization for development</i> )	YES	NO X
WILL THE DEVELOPMENT APPLICATION ADOPT A PHASED APPROACH	YES	NO X

### 3. PERSONAL DETAILS OF THE APPLICANT [OWNER / AGENT]

	REGISTERED OWNER	APPLICANT / AGENT
Full names	SAGEWISE 1018 CC	RAHIM ABDUOL
Surname	/	KADER
Citizenship / Nationality	/	INDIAN
Identity number / Passport	/ CK 2003/00485/23	4801215098085
Cell phone number	082 656 1515	082 656 1515
Telephone number	(H) 3171202 (W) 3154786	(H) 3171202 (W) 3154786
Physical address & Postal code	PO BOX 1914 NEWCASTLE, 2940	PO BOX 1914 NEWCASTLE, 2940
Street address : IsiGodi	60 MURCHINSON STREET	
Fax number	034 - 3125698	0343125698
E-mail address	rahim@mweb.co.za	rahim@mweb.co.za
Signature	<i>P. Kader</i>	X <i>P. Kader</i>



#### 4. SUBJECT PROPERTY DETAILS

<b>A. Cadastral Description / Erf / Erven / Farm Number / Tribal Authority:</b>
LOT 353
<b>B. Street Number &amp; Name:</b>
60 MURCHISON STREET
<b>C. Suburb / IsiGodi:</b>
CBD
<b>D. Town:</b>
NEWCASTLE
<b>E. Extent of property (square metres):</b>
4047 SQM
<b>F. Title deed number:</b>
<b>G. Restrictions on the Title Deed in relation to the application (if any):</b>
N/A NO RESTRICTION ON TITLE DEEDS RESTRICTION ON SPECIAL CONSENT



### 5. APPLICATION DETAILS

<b>A. Short description of the purpose of the application</b>
TO REMOVE THE CONDITION RELATING TO DEVELOPMENT PREVIOUSLY IMPOSED BY THE TOWN PLANNING APPEAL BOARD.

### 6. DEVELOPMENTAL IMPLICATION(S)

<b>A. Estimated value of project</b>
R18 MILUON
<b>B. Estimated employment number of the proposed project (employment of the local population)</b>
45



## 7. DEVELOPMENT DETAILS *(Please omit this section if the relevant artistic impression has been submitted)*

**A. Street frontage (Is the development's outlook artistically inviting, modern and does it improve the surrounding environment?)**

YES

**B. Landscaping (Are there sufficient, inviting and fitting landscape features - i.e. greenery - on development?)**

YES

**C. Pedestrianisation (Are there sufficient provisions/facilities for pedestrian mobility, interaction and cycling?)**

YES

## 8. COMPULSORY DOCUMENTATION *(Please tick the relevant box(es))*

1. Thorough Motivation Letter	<input checked="" type="checkbox"/>	1
2. Signed registered Owner's written consent/affidavit, if the applicant is not the owner of the land.	<input type="checkbox"/>	N/A 2
3. Copy of the Title Deed Conditions - Permission to Occupy - Affidavit stating ownership of the property	<input checked="" type="checkbox"/>	3
4. Locality plan	<input checked="" type="checkbox"/>	4
5. Copy of the Surveyor General diagram or relevant part of the general plan	<input checked="" type="checkbox"/>	5
6. Copy of the scheme map showing the existing zoning of the property and properties in close proximity (100m radius)	<input checked="" type="checkbox"/>	6
7. Scaled drawing showing the existing zoning of the property and abutting properties (100m radius - from the boundary of subject site)	<input checked="" type="checkbox"/>	7
8. Site Development Plan	<input checked="" type="checkbox"/>	8





9	Proposed subdivision with subdivision numbers designated by the SG's office, width and length of hatched shaped erven, erf frontages	N/A.
10.	1:100 year floodline (if applicable)	N/A.
11.	Engineering Services / Service Level Agreement (if applicable)	N/A.
12.	Approved Traffic Impact Assessment	9 ✓
13.	Copy of a Record Of Decision (ROD)	10 YES.
14.	Geotechnical Report	11 YES
15.	Any other information that may be considered either by yourself or Council as being in support of your application	X
16.	Completed application form [Page 1 to 6]	✓

X SIGNATURES OF PEOPLE ALSO OPPOSING CLOSURE

- 12. Passing of Building Plan
- 13. Certificate of zoning
- 14. CC documents

**9. DECLARATION**

I, RAHIM ABDUOL KADEIR hereby declare that all the information provided by me on this application form, including the relevant attachments, is complete and correct.

Signature of the applicant: 

Date: 03 12 2015

Place signed at: NEWCASTLE





## MOTIVATION REPORT FOR

REMOVAL OF CONDITION ON APPEAL NUMBER 3038 DATED  
23 MAY 2006 HELD AT THE TOWN PLANNING APPEAL BOARD-  
PIETERMARTIZBURG

Completed by Mr Kader  
60 Murchinson Street  
NEWCASTLE  
2940

## PROPERTY DESCRIPTION

Total filling station which houses 6 islands, Bonjour Convenience Store RJS Grill Express, Rawsons Real Estate, Pizzagetti and two other stores which are in the process of opening in the next two months. The upper level has a conference hall as well as a sixteen room office block which will be occupied in the next month SK-WV MOVEMENT TRADING.

**LOT 353 – NEWCASTLE  
60 MURCHINSON STREET- NEWCASTLE  
CORNER OF SUTHERLAND AND MURCHINSON**

**THE AREA OF LOT 353**  
On Lot 353, NEWCASTLE (Central Business District)

## **EXISTING ZONE**

The property is zoned for MIXED USE

## PURPOSE

The purpose of this application is to obtain permission from the Newcastle Municipality to REMOVE the condition which was granted on the Special Consent in 22 November 2006.

The aim of developing this site also aims to regenerate the economy of the Newcastle CBD and specific and the wider municipal area by achieving:

- Improve the functionality
- A more attractive urban environment
- Environmental improvement
- Better urban management
- Improve safety and security
- The creation of new investment opportunities
- The creation of employment opportunities

## PROPERTY DESCRIPTION

- 1.1 OWNERSHIP  
SAGEWISE 1018C.C  
60 MURCHINSON STREET – NEWCASTLE (CBD)- Corner of  
Sutherland and Murchinson Street.  
*(Attached is a copy of the TITLE DEEDS – see 3)*
  
- 1.2 The site is situated on LOT 353 and in extent 4047sqmeters.  
Lot 353, is situated in the CENTRAL BUSINESS DISTRICT OF  
NEWCASTLE. The location of the property is 60 MURCHINSON  
STREET. The land was "MIXED ZONE" where residential units  
were on it. These units were dilapidated houses and are now  
replaced with a Petrol Service Station.
  
- 1.3 The property(Lot 353) have an entrance and exit on both  
Sutherland Street and Murchinson Street.

## DEVELOPED SITE

- 1.1 The site is flat land with drainage sloping to the North. No species of conservation importance were observed on the site.
- 1.2 There are no site encumbrance.

*(Attached is a copy of the TITLE DEEDS – see 3)*  
*(Attached is a copy of the SG DIAGRAM – see 5)*



## EXISTING ZONING AND USE OF SITE

1. USE OF ZONE – Mixed zone
2. *(Attached is a copy of the LAND USE PLAN – see 6)*
3. The purpose for which the building may be erected and used-  
SHOPS, COMMERCIAL WORKSHOP, PROFESSIONAL OFFICE  
BUILDING.
4. The purpose for which buildings may be erected and used with  
special Consent of Council only-  
Laundrette, Place of Physical Instruction, Place of Public  
Assembly, Private Office Building, Public Office Building, Industrial  
shop, Motor trade shop, club Building, Educational Building,  
Funeral Undertaking, Parking Garage, special Building, Betting  
depot, Hotel Wholesale Warehouse, Residential Building above  
ground floor, Service Station, Service Industrial Building, Light  
Industrial Building.
5. The purpose for which the buildings may not be erected and used  
is not stated in the Certificate supplied by the Municipality dated  
15 September 2014. *(Attached is a copy of the Certificate of  
zoning – see 1)*

## DEVELOPMENT CONTROL

1. ZONE- Mixed Purposes

F.A.R.	:	0,50
Height	:	No Limit
Coverage	:	No Limit
Building line	:	Waived
Side/Rear space	:	2m/2m

No additional provisions.

No Scheme Map Notation.

## SURROUNDING ZONING AND LAND USAGE

NORTH-	EXCLUSIV CARWASH
SOUTH-	PICK & PAY SCOTT STREET MALL
EAST-	FLATS- DOVER GARDENS
WEST-	COMMERCIAL AND DWELLING HOUSES

## PROPOSAL

DEVELOPMENT CONCEPT- The Newcastle CBD has been identified as a Primary CBD node by the Newcastle Spatial Development Framework review of (20012/2013) and this is where Lot 353 is situated.

ARTCHITECTURAL THEME- A modern theme with latest design for the canopy and well as energy saving lighting

BUILDING STANDARDS- Total SA fuel standard design

LANSCAPE CONCEPT- Minimal ceramic potplants with cyads. The creation of microhabitats has been encouraged.

NEED AND DESIREBILITY- West side of Allen Street there are no service stations to service Paradise, Lennoxton , Fairleigh, Fernwood, Richview, Sunsetview, Surrayville, Silvercity,Ghandi Park, Lenville New housing project behind St domincs, Normandien, Chelmsford and surrounding areas.

## **Town Planning issues**

Demolishing the dilapidated houses (32 Sutherland to 60 Murchison which equals to 10 houses) and to provide a spatial direction for the development and revitalisation of the CBD.

No health, safety and order issues were encountered when developing the site by the Town Planning department.

All material to complete site was locally sourced. The construction force was recruited from the local communities including skilled and semi-skilled labour.

## **Traffic Impact Assessment**

### **Scope**

The site access and egress – this has been passed by the Traffic department

There is no impact to the adjacent road network.

No improvements was required for the adjacent road network.

## **Initial Environmental Assessment(IEA)**

A environmental Management Plan was put into place by Enprocon CC headed by Mr Gerad Cillie. The Record of decision by the Department of Agriculture is attached.

## **Infrastructure services and Services Agreements**

Sewage Disposal	installed
Stormwater	installed
Water supply	installed
Electricity Supply	installed

## **CONCLUSION**

This completed service station will and has definitely added to the regeneration and revitalisation of the Newcastle CBD, and specifically enhanced the aesthetics of the area surround the filling station



**KZN Agriculture and Environmental Affairs**

Directorate: Environmental Services  
North Region

Address: Private Bag X1048  
Richards Bay  
3900

Tel : 035-780 6709

Fax : 035-789 0662

Ref : EIA/8092

Date : 15/09/2003

Enquiries : Dr. L.W. Mngoma

*uMnyango:  
weZolimo neZemvelo*

**ISIFUNDAZWE SAKWAZULU-NATALI**

Sagewise cc  
P.O. Box 1914  
Newcastle  
2950

Tel. 034-315 2486  
Fax. 034-315 2483

Attention: Mr. Rahim Abdool Kader

Dear Sir

**APPLICATION I.T.O. SECTIONS 21 AND 22 OF THE ENVIRONMENT CONSERVATION ACT, 73 OF 1989: PROPOSED DEVELOPMENT OF A SERVICE STATION, WORKSHOP AND LAUNDRETTE ON LOT 353 CORNER OF MURCHISTON AND SUTHERLAND STREET IN NEWCASTLE LOCAL MUNICIPALITY**

The KwaZulu-Natal Department of Agriculture and Environmental Affairs hereby authorizes, by virtue of powers delegated by the National Minister of Environmental Affairs and Tourism, and in terms of Section 22 of the Environment Conservation Act, 73 of 1989, the project.

**Proposed Development of a Service station, Workshop and Launderette, Newcastle Local Municipality.**

This authorization is subject to the conditions contained in the enclosed Record of Decision

The duration of this authorization is as follows.

- Construction is to commence within 12 months of the date of signature of this authorisation.
- Construction is to be completed within 24 months of commencement.
- Conditions relating to the operation of the project are valid for the lifetime of the project.

An appeal against this authorization or condition/s of authorization may be directed to the MEC of Agriculture and Environmental Affairs Mr. M. E. Mthimkhulu, Ministry of Agriculture and Environmental Affairs, P.O Box 2132, Durban, 4000, within 30 calendar days of authorization, setting out the grounds of appeal and including all the relevant documentation in accordance with Section 35 of the Environment Conservation Act, 73 of 1989.

Yours faithfully,

For HEAD OF DEPARTMENT  
*CC. Gerhard Gillis*

Enprocon CC FAX. 034-326 3849



# NEWCASTLE MUNICIPALITY

## KWAZULU-NATAL

My Ref :  
My Verw : 12/3/2/1/2  
Inkomba :

Enquiries :  
Navrae : M N Mpeko  
Imibuzo :

Private Bag : X 6621  
Privaatsak : Newcastle  
Isikhwama Seposi : 2940

Tel : 034 328 4700  
Fax : 034 328 4746  
E-mail : tfs@newcastle.gov.za

**09 November 2007**

Sagewise SA 1018 cc  
P O Box 1914  
**NEWCASTLE**  
2940

Sir / Madam

**APPLICATION FOR SPECIAL CONSENT TO ERECT A SERVICE STATION, MOTOR  
TRADE SHOP, INDUSTRIAL SHOP, SERVICE INDUSTRIAL SHOP, LAUNDRETTE  
AND A RESIDENTIAL BUILDING ABOVE GROUND FLOOR ON ERF 353  
NEWCASTLE : APPEAL NUMBER 3038 DATED 23 MAY 2006**

The above application bears reference.

**COMMENTS : FIRE SECTION**

We have no objection against this application provided that fire hydrants will be installed as per SANS 10090-2003, Community Protection Against Fire.

Yours faithfully

J M BARKHUIZEN  
DIRECTOR : COMMUNITY SERVICES



NEWCASTLE  
NATAL



My Verw:  
My Ref: TP 13/3/5/2 - 353

Munisipaliteit: Privaatsak X6621  
Municipality: Private Bag X6621  
NEWCASTLE  
2940

Navrae:  
Enquiries: C.J. Robberts  
Tel: 034 - 328 7600 034-3171270  
Fax: 034 - 312 1570

17 October 2008

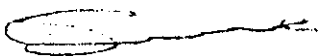
Newcastle Architectural Technologists  
P.O.Box 20151  
NEWCASTLE  
2940

Dear Sir / Madam

**INTERNAL TRAFFIC FLOW AND ENTRANCE TO ERF 353 NEWCASTLE**

Reference is made to your letter dated 13 October 2008 in the above regard.  
You are hereby informed that proposed site plan indicating the internal layout and traffic flow to and from the property has been perused, and discussed with the Traffic Department.  
After discussion, the layout on the proposed site plan was found to be in order.

Yours faithfully

  
K. MASANGE  
STRATEGIC EXECUTIVE DIRECTOR:  
PLANNING AND DEVELOPMENT



# NEWCASTLE NATAL

My Verw: TP13/6/2- 353  
My Ref:

Munisipaliteit: Privaatsak X6621  
Municipality: Private Bag X6621  
NEWCASTLE  
2940

Navrae: Y. Dawjee  
Enquiries:

Tel: (034) 328 7600 (034) 3171270  
Fax: (034) 312 1570

14 September 2009

R.A. Kader  
P.O. Box 1914  
NEWCASTLE  
2940

Dear Sir

**BUILDING PLAN NO. 223/2009 : ERF NO. 353**

Enclosed please find your approved plans for the above Erf together with the necessary inspection forms, subject to the following stipulations:

- (a) All construction and workmanship must comply with the National Building Regulations and Building Standards Act 103 of 1977.  
  
Ungraded timber for construction is not acceptable (no black cross timber to be used).
- (b) The Newcastle Municipality accepts no liability for the accuracy of the plan, the levels shown thereon, or for any damage or loss which may be caused by the proposed work.
- (c) It is the onus of the developer/owner to take precautions against the possibility of damage that could be caused to property by stormwater, for which the Newcastle Municipality does not accept responsibility. It may be necessary to furnish this office with a Civil Engineers certificate confirming that the stormwater control and disposal is to his design and specifications.
- (d) (i) Where any Local Authority has reason to believe that there may be unstable subsoils or unstable slopes in the area in which a site, upon which a building is to be erected, is situated, it shall so inform the applicant.

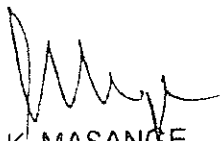
- (ii) Whether or not such local authority has informed such applicant in terms of subregulation (i) the applicant shall, if any unstable soil or unstable slope is evident within the boundaries of such site, submit to the Local Authority particulars specifying the measures he considers necessary to make provision for any differential movements or other effects which could be detrimental to such building and the Local Authority may require such particulars to be prepared by a Professional Engineer or other approved competent person.
- (iii) The measures contemplated in sub-regulation (ii) shall be applied in the erection of such building.
- (e) Building material/Rubble to be stored within the site. Permission is required for storage building material/rubble off the site. Application to be made to the Director Town Planning. Bulk refuse containers can be hired from Newcastle Municipality Cleansing Section.

**PLEASE NOTE:**

**UTHUKELA WATER:**

Developer to make sure that the invert levels of the internal sewer design is such that it will be able to connect up to the existing Municipal sewer invert as indicated on your site plan.

Yours faithfully



**K. MASANGE  
STRATEGIC EXECUTIVE DIRECTOR:  
DEPT. OF DEVELOPMENT PLANNING  
AND HUMAN SETTLEMENTS**

YD/nvw  
N1app 353

Prepared by me  
CONVEYANCER  
KADWA A A R

VERBOND		MORTGAGED	
RMB RMB 500 000, 00			
041426107		[Signature]	
2007-09-20			
[Stamp]			

FAKES
Stamp
041426107
2007-09-20
[Signature]

AYOUB KADWA & CO  
Shop 3, Southern Cross Centre  
130 Scott Street  
SCOTTBURGH  
4180

[Stamp]
041426107

### DEED OF TRANSFER

BE IT HEREBY MADE KNOWN:

THAT **SHAMOLA DASRAYN**

appeared before me, REGISTRAR OF DEEDS at PIETERMARITZBURG, he/she, the said Appearer, being duly authorised thereto by a Power of Attorney granted to him/her by

**THE KADWA FAMILY TRUST**  
NO. 7453/99

dated 20 September 2006

and signed at SCOTTBURGH  
(Deed of Transfer/Conventional) Form E

2

AND the said Appearer declared that his/her principal the said THE TRUSTEES FOR THE TIME BEING OF THE KADWA FAMILY TRUST had on 6 May 2005 truly and legally sold and that he/she, the said Appearer in his/her capacity aforesaid, did, by these presents cede and transfer to and on behalf of:

SAGE WISE 1018 CC  
Registration Number CK 2003/040085/23

their successors in title or assigns in full and free property:

ERF 353, NEWCASTLE  
REGISTRATION DIVISION HS  
PROVINCE OF KWAZULU-NATAL

IN EXTENT: 4047 (FOUR THOUSAND AND FORTY SEVEN) square metres

First held by Deed of Grant No. 3088 with diagram annexed thereto and held by Deed of Transfer No T 2066/91

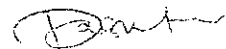
**THIS PROPERTY IS TRANSFERRED:**

Subject to such of the terms and conditions contained in the original Government Grant no. 3088 as are still in force and applicable.

WHEREFORE the Appearer, renouncing all the right and title which the said THE TRUSTEES FOR THE TIME BEING OF THE KADWA FAMILY TRUST heretofore had to the premises, did, in consequence also acknowledge him, to be entirely dispossessed of, and disentitled to, the same; and that, by virtue of these presents, the said SAGE WISE 1018 CC, their successors in title or assigns now is and henceforth shall be entitled thereto, conformably to local custom, the State, however, reserving its rights, and finally acknowledging the purchase price of the property hereby transferred to be the sum of R700 000.00 (SEVEN HUNDRED THOUSAND RAND).

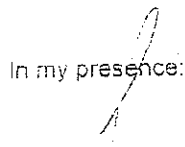
IN WITNESS WHEREOF I, the said Registrar of Deeds together with the Appearer, have subscribed to these presents, and have caused the Seal of Office to be affixed thereto.

THUS DONE AND EXECUTED at the Office of the REGISTRAR OF DEEDS at PIETERMARITZBURG on 2007-07-26



q.q. Signature of Appearer

In my presence:

---

Registrar of Deeds

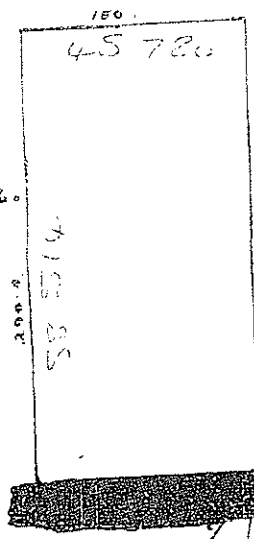
Grant Vol. 59 Fol. 89

45,72  
88,513

Kirkland Street.

54 Murchison Street.

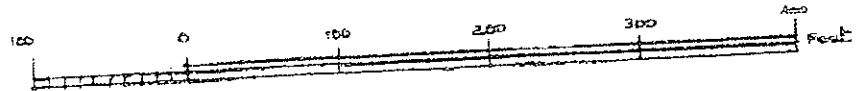
Sutherland Street.



Copied from Original and Certified Correct

*P. C. Sutherland*  
for Surveyor-General  
25-10-1863

REACONS	WIDE & DE
REPLACED/RELOCATED	APR/1990



Now registered as Lot 353  
Newcastle Township.

Reg. Div.  
HS

The above Diagram represents the figure and extent of Lot No. 52, in Murchison Street, in the Town of Newcastle, County of Klip River, Colony of Natal, measuring One Acre, more or less; bounded on the North-east by Sutherland Street, South-east by Murchison Street, North-west by 53 Kirkland Street, and South-west by 54 Murchison Street.

Surveyed by me,  
(Sgd) P.C.Sutherland.  
Surveyor General.

September, 1863

Page  
31  
(9)



# NEWCASTLE KWAZULU NATAL

My Verw: 14/1/1/1  
My Ref:

Munisipaliteit: Privaatsak X6621  
Municipality: Private Bag X6621  
Newcastle  
2940

Navrae: X. Madela  
Enquiries:

Tel (034) 328 7600  
Fax (034) 312 1570

Tel: (034) 328 -3300  
Fax: (034) 328-3494  
Email: [townplanning@newcastle.gov.za](mailto:townplanning@newcastle.gov.za)

15 September 2014

## CERTIFICATE

This is to certify that Erf 353 No. 60 Murchison Street Newcastle CBD, Newcastle is zoned for "Mixed Use" purposes, by the virtue of the Newcastle Town Planning Scheme, 1987 as amended.

### PURPOSE FOR WHICH BUILDINGS MAY BE ERECTED AND USED:

Shop, Commercial workshop, Professional Office Building.

### PURPOSE FOR WHICH BUILDINGS MAY BE ERECTED AND USED WITH SPECIAL CONSENT OF THE COUNCIL ONLY.

Laundrette, Place of Physical Instruction, Place of Public Assembly, Private Office Building, Public Office Building, Industrial Shop, Motor trade Shop, Club Building, Educational Building, Funeral Undertaking, Parking Garage, Special Building, Betting depot, Hotel, Wholesale Warehouse, Residential Building above ground floor, Service Station, Service Industrial Building, Light Industrial Building.

### DEVELOPMENT CONTROLS:

F.A.R.	: 0,50
Height	: No Limit
Coverage	: No Limit
Building line	: Waived
Side/rear space	: 2m/ 2m
Parking	: for every shop, one car space for every 30 square metres or part thereof of gross shop area, plus at least one loading space. where and if required by Council.

If there are any restrictions contained in the title deed of Erf 353 Newcastle CBD, which are in conflict with this zoning certificate, it shall be the responsibility of the applicant to have such restrictions removed.

SIGNED AT NEWCASTLE ON 15 SEPTEMBER 2014.

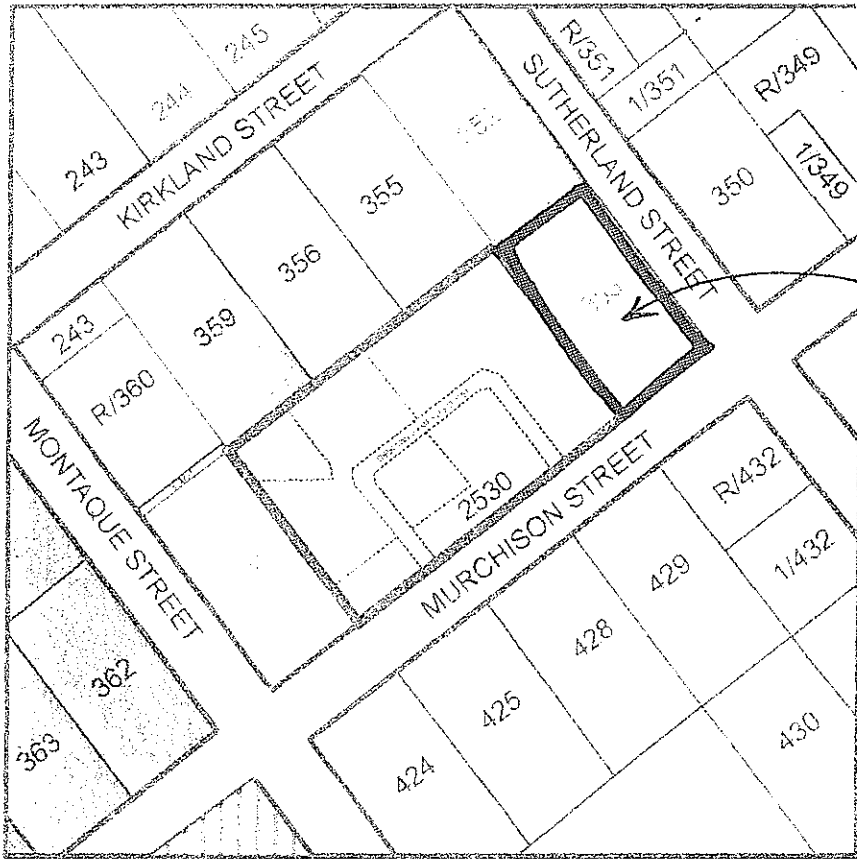
N. S. THUSI  
SED: DEVELOPMENT PLANNING  
AND HUMAN SETTLEMENTS




















# LAND USE PLAN

Erf ~~353~~ Newcastle

353



	Vacant		Shops		Car wash
	Dwelling houses		Civic grounds		Driving school
	Public open space		Flats		Flats being demolished
	Commercial		Medical		Brickyard
	Guest house		Filing station, workshop & residential building under construction		Offices
	Parking area		Offices		The property



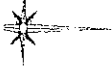
**TRAFFIC IMPACT ASSESSMENT**  
**FOR A PROPOSED**  
**PETROL FILLING STATION**  
**LOT 353**  
**NEWCASTLE**  
  
*OCTOBER 2007*

**PREPARED FOR:**  
Sagewise 1018 cc  
P.O. Box 1914  
NEWCASTLE  
2940

**PREPARED BY:**  
  
David McFarlane  
AND ASSOCIATES

TOP OF DRAWING

BOTTOM OF DRAWING



PROPOSED NGW SITE  
← Lot 353

SUTHERLAND STREET  
156  
2486  
1275  
TO TAXI RANK

2991  
10 x 11 12 E

3061  
78  
2656  
902

MURCHINSON STREET

4902  
(98) A 90  
(2486) → 81  
(2318) A 7

5734 625  
2683  
2622

TO  
SOUTH STREET

3917  
3497  
1580  
1572  
1580  
1580  
1580

6414  
6414  
6414  
6414  
6414

4392



MIKROS TRAFFIC MONITORING  
KZN (PTY) LTD

Prepared by

SUTHERLAND AND MURCHINSON I/S

MANUAL 12HR SURVEY

Prepared for:

KADBRO INVESTMENTS

## 1. INTRODUCTION

David McFarlane and Associates cc were requested by Sagewise 1018 cc to undertake a traffic impact assessment (TIA) for a proposed petrol filling station (PFS) to be situated on Lot 353, Newcastle. This report documents the findings of the TIA.

## 2. THE PROPOSED DEVELOPMENT

Lot 353 is situated on the south-west quadrant of the intersection of Sutherland street and Murchison street in the CBD of Newcastle, as shown on Figure 1.

An aerial photograph of the surrounding environment is as shown on Figure 2. Behind the proposed PFS (in the south-west quadrant of the intersection) are some flats (off Dirk Van Kappen street) as well as a few houses. In the north-west quadrant of the intersection are a number of land uses including flats, whole sale, motor trade and Doctors consulting rooms. In the north-east quadrant of the intersection is the Civic Centre of Newcastle, including the Town Hall, library, clinic and Municipal offices. In the south-east quadrant of the intersection is a large shopping centre (Pick and Pay, Game, Clicks etc) with a large parking area with access off Sutherland street.

The proposed PFS is to replace an existing PFS (also belonging to the same owner) situated to the north of the proposed site on Terminus street. The existing buildings on the site (Lot 353), as shown on Figures 2 and 3, are to be demolished to make way for the proposed PFS.

Two access points are proposed onto the site. One is positioned some 70 metres away from the Sutherland street and Murchison street intersection on Sutherland street, and the second some 35 metres away from the Sutherland street and Murchison street intersection on Murchison street, as shown on Figure 3.

The Sutherland street and Murchison street intersection is signalised with two approach and depart lanes on all four approaches, as shown on Figure 3.

## 3. EXISTING TRAFFIC SITUATION

A 12 hour classified manual traffic count was undertaken (by Mikros Traffic Monitoring) at the Sutherland street and Murchison street intersection on Thursday 26 July 2007, full details of which are as contained in the Appendix. The main movements through the day are through trips along Sutherland street and Murchison street, as well as the right turn from Sutherland street into Murchison street (south-east to north-east) and the corresponding left turn from Murchison street into Sutherland street (north-east to south-east). Evening traffic is higher than the morning traffic, presumably due to the shopping centre in the south-east quadrant of the intersection.

The morning and evening commuter peaks (peak 15 minutes) were analysed using the SIDRA computer package, the results of which are shown in Table 1 below.

**TABLE 1: EXISTING TRAFFIC ANALYSIS**

TIME PERIOD	OVERALL I/S		WORST MOVEMENT		
	DELAY	LOS	V/C	DELAY	LOS
AM	20.3	C	0.46	29.0	C
PM	27.3	C	0.82	44.2	D

As can be seen from Table 1, conditions currently are reasonably comfortable and certainly within the acceptable norms for a CBD environment.

#### 4. TRAFFIC GENERATION

The traffic generation of a PFS, according to the standard reference used in South Africa (reference 1), is that 4% of passing traffic would be expected to visit the site. Of those that visit the site, only 16% are additional trips on the street network (i.e. 84% are already on the street network).

Taking the worst case scenario of 4% of all traffic through the Sutherland street and Murchison street intersection visiting the PFS (including diverted trips which would not normally go past the entrance to the PFS), this equates to some 94 vph entering in the morning peak and some 107 vph entering in the evening peak.

#### 5. TRAFFIC IMPACT

The diverted traffic at the Sutherland street and Murchison street intersection that would visit the PFS will only be a small percentage of the current traffic volumes at this intersection. The impact of this on the performance of the intersection itself will thus be negligible. The main impact will be vehicles entering and exiting the facility, particularly right turners.

The fact that both Sutherland street and Murchison street are four lane (2+2) roads in this vicinity, right turners entering the facility will not block the entire road and hence will be acceptable, particularly in this CBD environment.

For traffic exiting the site, right turners will be most affected as this movement has to cross the two way traffic streams on the public roads. This situation was analysed (based on the current traffic volumes in this vicinity) for the morning and evening peaks, the results of which are as shown in Table 2 and 3 below.

TABLE 2: ANALYSIS OF PFS ENTRY AND EXIT POINT – SUTHERLAND ROAD

TIME PERIOD	MOVEMENT	PERFORMANCE		
		V/C	DELAY	LOS
AM	RIGHT TURN ENTRY	0.18	11.2	B
	LEFT TURN EXIT	0.02	13.2	B
	RIGHT TURN EXIT	0.10	21.9	C
PM	RIGHT TURN ENTRY	0.12	13.3	B
	LEFT TURN EXIT	0.05	15.7	C
	RIGHT TURN EXIT	0.10	23.6	C

TABLE 3: ANALYSIS OF PFS ENTRY AND EXIT POINT – MURCHISON ROAD

TIME PERIOD	MOVEMENT	PERFORMANCE		
		V/C	DELAY	LOS
AM	RIGHT TURN ENTRY	0.12	10.9	B
	LEFT TURN EXIT	0.03	13.1	B
	RIGHT TURN EXIT	0.04	18.2	C
PM	RIGHT TURN ENTRY	0.11	10.4	B
	LEFT TURN EXIT	0.03	12.7	B
	RIGHT TURN EXIT	0.03	16.6	C

As can be seen from Tables 2 and 3 above, conditions would be acceptable at the entry and exit points under the current traffic loadings in this vicinity, with some spare capacity available for growth in the current background traffic.

#### 6. ACCESS AND CIRCULATION

Two access points are proposed onto the site. One is positioned some 70 metres away from the Sutherland street and Murchison street intersection on Sutherland street, and the second some 35 metres away from the Sutherland street and Murchison street intersection on Murchison street, as shown on Figure 3. We believe this is the optimum arrangement given the shape and position of the site, with the access off the more heavily trafficked Sutherland street as far as practically possible away from the Sutherland street and Murchison street intersection, and the access off Murchison street roughly mid-way between the Sutherland street and Dirk Van Kappen street intersections.

With two entry/exit points onto and off of the site, deliveries by heavy vehicles (fuel to the tanks and deliveries to the convenience store) can easily be accommodated on the site in a forward direction without the difficulty of having to turn around on the site.

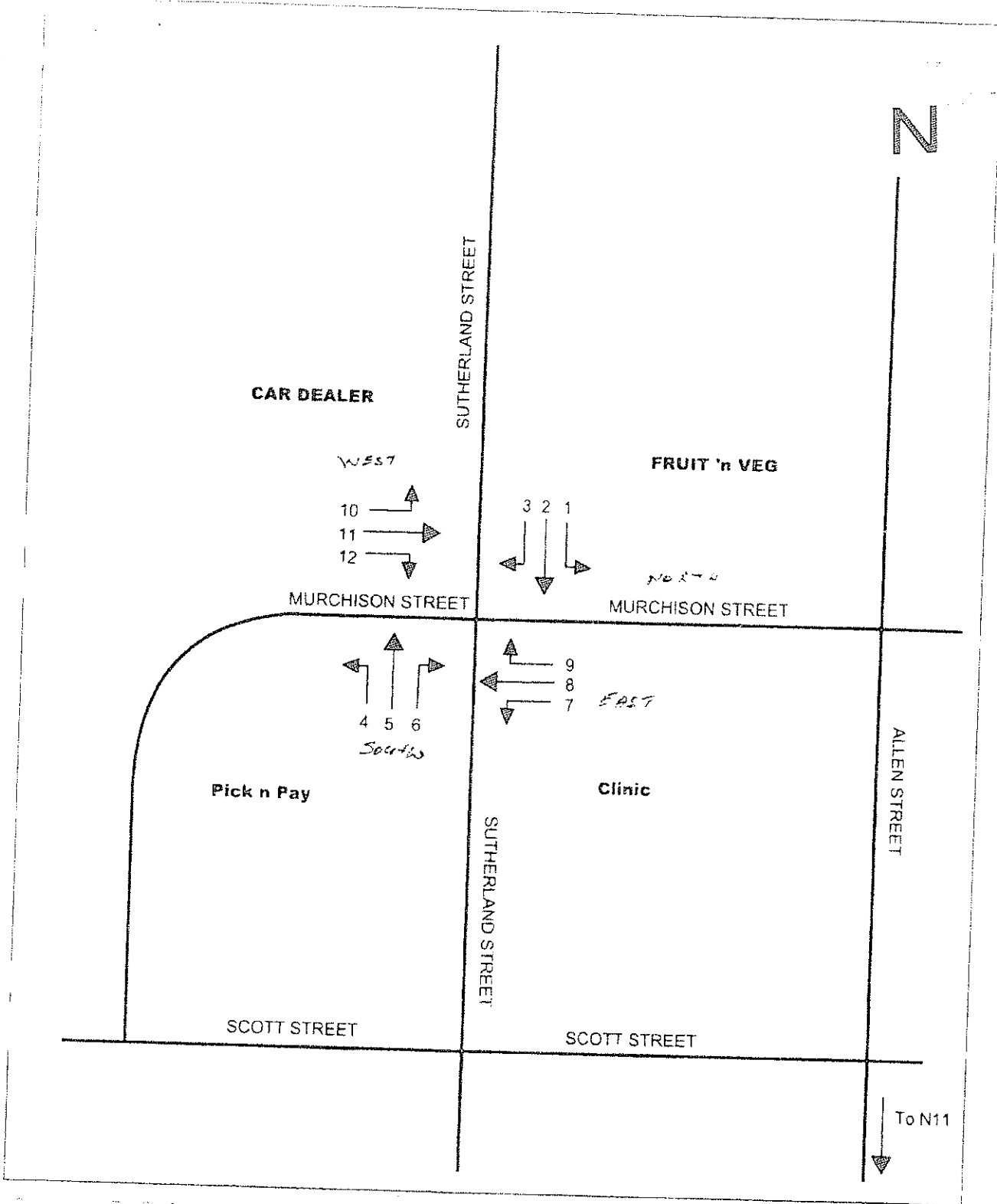
7. CONCLUSIONS AND RECOMMENDATIONS

We believe the proposed PFS on Lot 353, Newcastle, will operate at a satisfactory level from a traffic impact and traffic circulation point of view.

Our recommendation, therefore, is that the proposed development should be allowed to proceed (from a traffic impact perspective only).



\_\_\_\_\_  
D G McFarlane Pr Eng



NEWCASTLE,  
SUTHERLAND STREET  
AND  
MURCHISON STREET



Date SEPTEMBER 2010

Drawing No. Rev.

Scale Not To Scale

12-HOUR TRAFFIC COUNT



TRAFFIC SURVEY ANALYSIS

CLIENT SASOL OIL  
 SITE INTERSECTION OF MURCHISON STREET AND SUTHERLAND STREET  
 DATE 12 HOUR COUNT ON WEDNESDAY 22 SEPTEMBER 2010  
 UNITS CLASSIFIED

APPROACH FROM NAME MOVEMENT TIME	EAST MURCHISON STREET															TOTAL ALL MOVEMENTS
	(7) LEFT TURN					(8) STRAIGHT					(9) RIGHT TURN					
	C	T	H	B	TOTAL	C	T	H	B	TOTAL	C	T	H	B	TOTAL	
06:00 - 06:15	2	0	0	0	2	2	0	2	0	4	0	0	0	0	0	6
06:15 - 06:30	1	0	0	0	1	3	1	0	0	4	2	0	0	0	2	7
06:30 - 06:45	9	2	0	0	11	22	2	4	0	28	6	0	0	0	6	45
06:45 - 07:00	4	0	0	0	4	6	1	1	0	10	2	1	0	0	3	17
07:00 - 07:15	14	0	0	0	14	26	5	2	0	33	13	1	1	1	16	63
07:15 - 07:30	33	3	0	0	36	55	7	0	0	62	14	3	2	0	19	117
07:30 - 07:45	22	3	0	1	26	22	0	0	0	22	6	1	0	0	7	55
07:45 - 08:00	39	3	0	0	42	47	5	2	0	54	9	1	0	0	10	106
08:00 - 08:15	40	2	1	0	43	38	0	1	0	39	6	0	1	1	8	90
08:15 - 08:30	32	1	0	0	33	17	0	2	0	19	11	0	0	1	12	64
08:30 - 08:45	41	4	1	1	47	33	1	0	0	34	16	0	1	0	17	98
08:45 - 09:00	42	1	1	0	44	38	0	2	0	40	16	1	2	1	20	104
09:00 - 09:15	23	1	1	0	25	25	1	0	0	26	8	0	1	0	9	60
09:15 - 09:30	67	2	1	0	70	47	1	1	0	49	9	0	1	0	10	129
09:30 - 09:45	56	1	0	0	57	44	0	2	0	46	12	0	0	0	12	115
09:45 - 10:00	41	1	1	0	43	46	0	6	0	52	10	0	1	0	11	106
10:00 - 10:15	53	0	0	1	54	49	2	0	0	51	11	0	0	0	11	116
10:15 - 10:30	60	0	1	0	61	40	1	0	0	41	12	0	0	0	12	114
10:30 - 10:45	50	1	0	0	51	47	0	3	0	50	9	1	1	0	11	112
10:45 - 11:00	42	0	0	0	42	31	0	1	0	32	15	0	0	0	15	89
11:00 - 11:15	70	1	0	0	71	46	0	0	0	46	21	0	3	0	24	141
11:15 - 11:30	57	0	0	1	58	38	0	0	0	38	9	0	2	0	11	107
11:30 - 11:45	62	1	1	0	64	51	1	2	0	54	24	0	0	0	24	162
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12:15 - 12:30	55	1	1	0	57	45	0	1	1	47	17	1	0	0	18	122
12:30 - 12:45	56	0	1	0	57	55	0	0	0	55	22	0	0	0	22	134
12:45 - 13:00	59	3	1	1	64	36	0	0	1	37	13	1	0	0	14	115
13:00 - 13:15	77	2	0	0	79	60	1	1	0	62	11	0	1	0	12	153
13:15 - 13:30	62	0	1	0	63	41	0	2	0	43	6	0	0	0	6	112
13:30 - 13:45	69	4	0	1	74	56	0	3	0	59	10	0	0	0	10	143
13:45 - 14:00	52	0	0	0	52	70	1	1	0	72	7	1	0	0	8	132
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14:30 - 14:45	63	0	0	0	63	36	1	3	0	42	16	1	0	0	17	122
14:45 - 15:00	43	0	1	0	44	46	0	1	0	47	25	0	0	0	25	116
15:00 - 15:15	77	1	2	0	80	66	0	2	0	68	24	2	0	0	26	174
15:15 - 15:30	58	0	2	0	60	33	0	1	0	34	20	5	0	1	26	120
15:30 - 15:45	65	1	2	0	68	52	0	1	1	54	30	1	1	0	32	174
15:45 - 16:00	34	2	0	0	36	36	0	2	0	38	13	2	0	0	15	89
16:00 - 16:15	60	1	0	0	61	63	1	0	0	64	14	2	1	0	17	142
16:15 - 16:30	61	0	1	0	62	44	2	0	0	46	13	2	2	0	17	125
16:30 - 16:45	87	3	2	1	93	72	1	2	0	75	18	0	1	0	19	167
16:45 - 17:00	59	2	0	0	61	67	1	1	0	69	26	1	0	0	27	167
17:00 - 17:15	81	0	0	0	81	63	0	0	0	63	49	0	0	0	49	193
17:15 - 17:30	61	4	0	1	66	63	0	3	0	66	48	1	0	1	50	182
17:30 - 17:45	39	0	0	0	39	43	0	0	0	43	29	1	1	0	31	113
17:45 - 18:00	20	0	0	0	20	14	0	0	0	14	16	0	0	0	16	50
<b>TOTAL</b>	<b>2379</b>	<b>62</b>	<b>32</b>	<b>8</b>	<b>2481</b>	<b>1993</b>	<b>37</b>	<b>60</b>	<b>3</b>	<b>2093</b>	<b>741</b>	<b>33</b>	<b>27</b>	<b>8</b>	<b>809</b>	<b>5383</b>
<b>EST. 24 HR</b>	<b>2855</b>	<b>74</b>	<b>38</b>	<b>10</b>	<b>2977</b>	<b>2392</b>	<b>44</b>	<b>72</b>	<b>4</b>	<b>2512</b>	<b>889</b>	<b>40</b>	<b>32</b>	<b>10</b>	<b>971</b>	<b>6460</b>

TRAFFIC SURVEY ANALYSIS

CLIENT SASOL OIL

SITE INTERSECTION OF MURCHISON STREET AND SUTHERLAND STREET

DATE: 12 HOUR COUNT ON WEDNESDAY 22 SEPTEMBER 2010  
 UNITS: CLASSIFIED

APPROACH FROM NAME MOVEMENT TIME	WEST MURCHISON STREET															TOTAL ALL MOVEMENTS
	(10) LEFT TURN					(11) STRAIGHT					(12) RIGHT TURN					
	C	T	H	B	TOTAL	C	T	H	B	TOTAL	C	T	H	B	TOTAL	
06:00 - 06:15	1	0	0	0	1	1	1	0	0	2	0	0	0	0	0	0
06:15 - 06:30	1	2	0	1	4	3	0	0	0	3	0	0	0	0	0	0
06:30 - 06:45	4	1	1	0	6	5	1	0	0	6	0	0	0	0	0	0
06:45 - 07:00	5	0	0	2	7	7	0	0	0	7	0	0	0	0	0	0
07:00 - 07:15	13	2	1	0	16	21	0	0	1	22	2	0	0	0	2	16
07:15 - 07:30	16	0	0	1	17	31	1	1	1	34	1	0	0	0	0	38
07:30 - 07:45	12	1	0	1	14	17	0	1	0	18	0	0	0	0	1	52
07:45 - 08:00	14	0	1	1	16	17	1	0	0	18	0	0	0	0	0	32
08:00 - 08:15	14	0	0	0	14	34	0	0	0	34	0	0	0	0	0	34
08:15 - 08:30	4	0	0	0	4	33	0	1	0	34	2	0	0	0	0	48
08:30 - 08:45	18	1	0	0	19	18	0	0	0	18	5	0	0	0	2	40
08:45 - 09:00	8	0	0	0	8	37	0	2	0	39	0	0	0	0	5	42
09:00 - 09:15	7	2	0	0	9	25	0	2	0	27	0	0	0	0	0	47
09:15 - 09:30	3	0	1	0	4	35	1	1	0	37	2	0	0	0	2	38
09:30 - 09:45	9	0	1	0	10	13	2	5	0	20	0	0	0	0	0	41
09:45 - 10:00	11	0	0	0	11	20	0	1	0	21	0	0	0	0	0	30
10:00 - 10:15	10	0	1	0	11	20	0	0	0	20	1	0	0	0	1	32
10:15 - 10:30	21	0	3	0	24	33	0	0	0	33	2	0	0	0	2	32
10:30 - 10:45	11	1	0	0	12	20	0	1	0	21	0	0	0	0	0	59
10:45 - 11:00	21	0	0	0	21	26	0	1	0	27	0	0	0	0	0	33
11:00 - 11:15	8	0	0	0	8	32	0	0	0	32	4	0	0	0	1	49
11:15 - 11:30	11	0	0	0	11	31	0	1	0	32	0	0	0	0	4	44
11:30 - 11:45	17	1	0	0	18	24	1	1	0	26	0	0	0	0	0	43
11:45 - 12:00	2	0	1	2	5	5	0	1	0	6	0	0	0	0	0	44
12:00 - 12:15	12	0	0	0	12	11	0	2	0	13	1	0	0	0	0	11
12:15 - 12:30	22	1	1	0	24	13	0	0	0	13	0	0	0	0	1	26
12:30 - 12:45	16	1	0	0	17	30	0	4	0	34	0	0	0	0	0	37
12:45 - 13:00	10	1	1	0	12	24	0	0	0	24	1	0	0	0	1	51
13:00 - 13:15	15	1	0	0	16	22	0	0	1	23	7	0	0	0	1	37
13:15 - 13:30	11	0	0	0	11	17	0	0	0	17	0	0	0	0	0	47
13:30 - 13:45	16	0	0	0	16	13	0	1	0	14	0	0	0	0	0	28
13:45 - 14:00	18	0	0	0	18	25	0	2	0	27	1	0	0	0	1	30
14:00 - 14:15	27	1	0	0	28	23	0	1	0	24	0	0	0	0	0	46
14:15 - 14:30	12	1	0	0	13	19	1	1	0	21	0	0	0	0	0	52
14:30 - 14:45	14	2	1	0	17	41	0	1	0	42	0	0	0	0	0	34
14:45 - 15:00	20	0	0	0	20	37	0	3	0	40	0	0	0	0	0	59
15:00 - 15:15	6	2	1	0	9	48	0	3	0	51	1	0	1	0	2	60
15:15 - 15:30	14	0	0	0	14	36	0	2	0	38	0	0	0	0	0	62
15:30 - 15:45	19	0	0	0	19	33	0	1	0	34	0	0	1	0	1	52
15:45 - 16:00	12	1	0	0	13	14	0	0	0	14	0	0	1	0	1	54
16:00 - 16:15	26	0	0	0	26	39	0	0	0	39	0	0	1	0	1	28
16:15 - 16:30	19	0	0	0	19	31	0	0	0	31	0	0	0	0	0	65
16:30 - 16:45	20	1	0	1	22	44	0	1	0	45	0	0	0	0	0	50
16:45 - 17:00	14	0	0	0	14	23	0	2	0	25	2	0	0	0	2	67
17:00 - 17:15	30	1	1	0	32	33	0	0	0	33	1	0	0	0	1	41
17:15 - 17:30	14	1	0	1	16	19	0	0	0	19	0	0	0	0	0	66
17:30 - 17:45	7	1	0	0	8	7	0	0	0	7	0	0	0	0	0	35
17:45 - 18:00	6	0	0	0	6	6	0	0	0	6	0	0	0	0	0	15
<b>TOTAL</b>	<b>621</b>	<b>26</b>	<b>15</b>	<b>10</b>	<b>672</b>	<b>1116</b>	<b>9</b>	<b>43</b>	<b>3</b>	<b>1171</b>	<b>33</b>	<b>0</b>	<b>5</b>	<b>0</b>	<b>38</b>	<b>1881</b>
<b>EST. 24 HR</b>	<b>745</b>	<b>31</b>	<b>18</b>	<b>12</b>	<b>806</b>	<b>1339</b>	<b>11</b>	<b>52</b>	<b>4</b>	<b>1405</b>	<b>40</b>	<b>0</b>	<b>6</b>	<b>0</b>	<b>46</b>	<b>2257</b>

TRAFFIC SURVEY ANALYSIS

CLIENT SASOL OIL

SITE INTERSECTION OF MURCHISON STREET AND SUTHERLAND STREET

DATE 12 HOUR COUNT ON WEDNESDAY 22 SEPTEMBER 2010  
 UNITS CLASSIFIED

APPROACH FROM NAME MOVEMENT TIME	NORTH SUTHERLAND STREET															TOTAL ALL MOVEMENTS
	(1) LEFT TURN					(2) STRAIGHT					(3) RIGHT TURN					
	C	T	H	B	TOTAL	C	T	H	B	TOTAL	C	T	H	B	TOTAL	
06 00 - 06 15	2	0	0	0	2	2	5	0	0	7	1	3	1	0	5	14
06 15 - 06 30	0	0	0	0	0	6	4	0	0	10	1	2	1	0	4	14
06 30 - 06 45	4	0	1	0	5	10	7	0	0	17	2	4	1	0	7	29
06 45 - 07 00	3	1	0	1	5	12	4	0	1	17	0	0	0	0	0	22
07 00 - 07 15	17	1	0	0	18	29	14	1	1	45	10	3	0	0	13	76
07 15 - 07 30	13	0	1	0	14	56	16	0	0	72	13	2	0	0	15	101
07 30 - 07 45	21	2	2	1	26	59	11	0	0	70	15	4	2	0	21	117
07 45 - 08 00	21	0	0	0	21	34	14	2	1	51	16	2	0	0	18	90
08 00 - 08 15	10	0	1	0	11	35	7	0	0	42	12	3	1	0	16	69
08 15 - 08 30	15	0	1	0	16	26	6	0	0	32	10	0	0	0	10	58
08 30 - 08 45	11	0	1	0	12	28	3	2	0	33	14	0	1	0	15	60
08 45 - 09 00	16	0	1	0	17	25	5	0	0	30	8	1	0	0	9	56
09 00 - 09 15	9	0	0	0	9	33	3	0	0	36	11	1	0	0	12	57
09 15 - 09 30	12	0	0	0	12	34	4	1	1	40	12	1	0	0	13	65
09 30 - 09 45	11	0	2	0	13	35	5	0	0	40	11	0	0	0	11	64
09 45 - 10 00	24	0	3	0	27	32	0	1	0	33	9	0	1	0	10	70
10 00 - 10 15	18	0	0	0	18	43	4	0	0	47	11	0	1	0	12	77
10 15 - 10 30	15	2	0	0	17	31	5	2	0	38	15	1	2	0	18	73
10 30 - 10 45	9	1	1	0	11	25	4	2	0	31	15	2	1	0	18	60
10 45 - 11 00	14	0	3	0	17	34	7	1	0	42	14	1	3	0	18	77
11 00 - 11 15	4	0	0	0	4	9	2	1	0	12	10	0	2	0	12	28
11 15 - 11 30	4	0	0	0	4	19	6	0	0	25	8	0	0	0	8	37
11 30 - 11 45	3	0	1	0	4	37	6	1	0	44	15	1	0	1	17	65
11 45 - 12 00	14	0	2	1	17	50	1	1	0	52	9	0	0	0	9	78
12 00 - 12 15	13	2	1	0	16	40	9	1	0	50	17	2	0	0	19	85
12 15 - 12 30	12	0	0	0	12	44	5	0	1	50	16	0	0	0	16	78
12 30 - 12 45	13	1	1	0	15	43	9	0	1	53	4	0	1	0	5	73
12 45 - 13 00	20	1	1	0	22	25	10	1	0	36	12	0	2	0	14	72
13 00 - 13 15	9	0	1	1	11	44	6	1	0	51	24	1	0	0	25	87
13 15 - 13 30	14	0	1	0	15	33	5	1	1	40	17	1	3	1	22	77
13 30 - 13 45	9	1	1	0	11	63	9	0	0	72	10	0	0	0	10	93
13 45 - 14 00	20	1	1	0	22	12	5	1	0	18	23	3	1	1	28	68
14 00 - 14 15	6	0	3	0	9	39	7	1	1	48	12	4	0	0	16	73
14 15 - 14 30	19	1	0	0	20	50	6	0	11	67	10	3	0	0	13	100
14 30 - 14 45	26	0	1	0	27	43	11	1	3	58	7	1	0	1	9	94
14 45 - 15 00	14	0	1	0	15	31	4	2	2	39	15	0	1	0	16	70
15 00 - 15 15	16	0	0	0	16	42	6	0	0	50	11	2	0	0	13	79
15 15 - 15 30	24	2	0	0	26	39	7	0	0	46	19	0	0	0	19	91
15 30 - 15 45	13	1	0	0	14	47	10	0	0	57	15	0	1	0	16	87
15 45 - 16 00	12	0	1	0	13	22	7	0	0	29	14	0	0	0	14	56
16 00 - 16 15	11	1	0	0	12	43	7	0	0	50	20	1	0	0	21	83
16 15 - 16 30	24	2	0	0	26	40	10	2	0	52	18	1	0	0	19	97
16 30 - 16 45	7	1	0	0	8	53	11	0	0	64	15	2	0	0	17	89
16 45 - 17 00	16	0	0	0	16	39	4	1	0	44	20	1	0	0	21	81
17 00 - 17 15	15	0	0	0	15	29	10	0	0	39	14	1	0	1	16	70
17 15 - 17 30	4	0	0	0	4	34	7	0	0	41	8	0	0	0	8	53
17 30 - 17 45	3	0	0	0	3	23	6	1	0	30	7	0	0	0	7	40
17 45 - 18 00	15	0	0	0	15	28	6	0	0	34	14	0	0	0	14	63
<b>TOTAL</b>	<b>605</b>	<b>21</b>	<b>33</b>	<b>4</b>	<b>663</b>	<b>1610</b>	<b>322</b>	<b>28</b>	<b>24</b>	<b>1984</b>	<b>584</b>	<b>54</b>	<b>26</b>	<b>5</b>	<b>669</b>	<b>3316</b>
<b>EST. 24 HR</b>	<b>726</b>	<b>25</b>	<b>40</b>	<b>5</b>	<b>796</b>	<b>1932</b>	<b>386</b>	<b>34</b>	<b>29</b>	<b>2381</b>	<b>701</b>	<b>65</b>	<b>31</b>	<b>6</b>	<b>803</b>	<b>3979</b>

TRAFFIC SURVEY ANALYSIS

CLIENT SASOL OIL

SITE INTERSECTION OF MURCHISON STREET AND SUTHERLAND STREET

DATE 12 HOUR COUNT ON WEDNESDAY 22 SEPTEMBER 2010  
 UNITS CLASSIFIED

APPROACH FROM NAME MOVEMENT TIME	SOUTH SUTHERLAND STREET															TOTAL ALL MOVEMENTS
	(4) LEFT TURN					(5) STRAIGHT					(6) RIGHT TURN					
	C	T	H	B	TOTAL	C	T	H	B	TOTAL	C	T	H	B	TOTAL	
06:00 - 06:15	0	0	0	0	0	3	1	0	0	4	2	0	0	0	2	6
06:15 - 06:30	0	0	0	0	0	3	2	0	0	5	2	1	0	0	3	8
06:30 - 06:45	0	0	0	0	0	6	2	0	0	8	3	1	0	0	4	12
06:45 - 07:00	0	0	0	0	0	8	2	0	0	10	2	0	0	0	2	12
07:00 - 07:15	0	0	0	0	0	21	11	0	5	37	14	1	0	0	15	52
07:15 - 07:30	0	0	0	0	0	54	11	2	8	75	30	0	0	0	30	105
07:30 - 07:45	2	0	1	0	3	15	4	1	2	22	11	0	0	1	12	37
07:45 - 08:00	0	0	0	0	0	35	3	1	1	40	19	0	0	1	20	60
08:00 - 08:15	2	0	1	0	3	25	2	1	0	28	28	5	2	0	35	66
08:15 - 08:30	4	0	0	0	4	13	1	2	0	16	30	1	0	1	32	52
08:30 - 08:45	0	0	0	0	0	32	1	0	0	33	33	0	1	0	34	67
08:45 - 09:00	1	0	0	0	1	34	7	2	0	43	38	2	1	1	42	86
09:00 - 09:15	1	0	0	0	1	22	3	1	0	26	25	1	0	0	26	53
09:15 - 09:30	1	0	0	0	1	30	1	1	0	32	38	0	1	0	39	72
09:30 - 09:45	3	0	0	0	3	35	3	0	1	39	24	1	1	1	27	69
09:45 - 10:00	0	0	2	0	2	30	3	1	0	34	37	0	1	0	38	74
10:00 - 10:15	2	0	0	0	2	42	3	0	0	45	45	0	1	0	46	93
10:15 - 10:30	1	0	0	0	1	44	3	2	0	49	28	1	0	0	29	79
10:30 - 10:45	0	0	0	0	0	28	3	0	0	31	39	2	0	1	42	73
10:45 - 11:00	2	0	0	0	2	29	2	0	0	31	40	0	0	0	40	73
11:00 - 11:15	2	0	0	0	2	31	0	0	0	31	41	2	1	0	44	77
11:15 - 11:30	3	0	0	0	3	31	2	0	0	33	41	0	1	1	43	79
11:30 - 11:45	1	0	0	0	1	31	2	0	0	33	46	1	0	0	47	81
11:45 - 12:00	1	0	0	0	1	39	5	1	0	45	40	1	0	0	41	87
12:00 - 12:15	0	0	0	0	0	45	1	1	0	47	49	0	3	0	52	99
12:15 - 12:30	4	0	1	0	5	29	3	0	0	32	51	1	0	0	52	89
12:30 - 12:45	5	0	1	0	6	39	5	1	0	45	49	0	1	0	50	101
12:45 - 13:00	3	0	0	0	3	40	5	0	0	45	40	2	2	1	45	93
13:00 - 13:15	4	0	0	0	4	29	1	1	0	31	48	0	1	0	49	84
13:15 - 13:30	1	0	0	0	1	37	3	1	1	42	38	0	0	0	38	81
13:30 - 13:45	0	0	1	0	1	24	3	1	0	28	46	0	3	0	49	78
13:45 - 14:00	0	0	1	0	1	53	4	0	1	58	78	0	0	1	79	138
14:00 - 14:15	1	0	0	0	1	37	5	0	2	44	46	0	2	0	48	93
14:15 - 14:30	1	0	0	0	1	40	7	0	0	47	42	0	2	0	44	92
14:30 - 14:45	3	0	0	0	3	59	6	1	1	67	39	0	0	0	39	109
14:45 - 15:00	1	0	0	0	1	50	5	1	0	56	51	1	1	0	53	110
15:00 - 15:15	4	0	0	0	4	47	8	0	0	55	36	1	1	1	39	98
15:15 - 15:30	4	0	1	0	5	65	4	3	0	72	56	0	1	0	57	134
15:30 - 15:45	5	0	1	0	6	49	7	1	0	57	56	0	0	1	57	120
15:45 - 16:00	0	0	3	0	3	31	3	0	0	34	26	1	0	0	27	64
16:00 - 16:15	5	0	0	0	5	45	12	1	0	58	47	0	1	0	48	111
16:15 - 16:30	1	0	0	0	1	46	6	0	0	52	44	0	1	0	45	98
16:30 - 16:45	4	0	0	0	4	57	10	0	0	67	82	0	0	0	82	153
16:45 - 17:00	3	0	0	0	3	40	9	0	0	49	55	1	2	0	58	110
17:00 - 17:15	4	0	0	0	4	48	1	0	0	49	26	1	1	0	28	81
17:15 - 17:30	2	0	0	0	2	43	5	1	0	49	37	0	2	0	39	90
17:30 - 17:45	0	0	0	0	0	23	2	0	0	25	11	0	1	0	12	37
17:45 - 18:00	0	0	0	0	0	13	1	0	0	14	8	0	1	0	9	23
<b>TOTAL</b>	<b>81</b>	<b>0</b>	<b>13</b>	<b>0</b>	<b>94</b>	<b>1630</b>	<b>193</b>	<b>28</b>	<b>22</b>	<b>1873</b>	<b>1717</b>	<b>28</b>	<b>36</b>	<b>11</b>	<b>1792</b>	<b>3759</b>
<b>EST. 24 HR</b>	<b>97</b>	<b>0</b>	<b>16</b>	<b>0</b>	<b>113</b>	<b>1956</b>	<b>232</b>	<b>34</b>	<b>26</b>	<b>2248</b>	<b>2060</b>	<b>34</b>	<b>43</b>	<b>13</b>	<b>2150</b>	<b>4511</b>

**Annexure L**  
**Copy of Objections Received**



**OBJECTION TO ENGEN FILLING STATION ON 22 TERMINUS STREET**

To: Newcastle Municipality  
Attention: Mr. Siphephelo Cindi

1. We all are taxi drivers making use of the taxi rank on Terminus Street.
2. There has been so many troubles and problems with taxi violence in the area and fires breaking out in the taxi rank.
3. We want the Engen fuel site to close down as we are scared that if there is more violence, the fuel site will explode.
4. We have no option but to use the taxi rank to collect our passengers.
5. All of our details are as follows:

		A	NAME	DATE	SIGN
TOWN PLANNING	SED				
	DIR	1			
	P. J. JS				
	J. R. S. P.				
	LUMS		A. K. S.		
	SP		A. MINDI		
	GIS				
	GI				
	ADMIN				
	ENV.				

No	Name	Surname	ID number	Address	Cellphone
1.	December	Nkosi	6512185533 098	11033 Dry-cut	0722289405
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					



# ST. OSWALDS SECONDARY SCHOOL

DEPARTMENT OF EDUCATION - PROVINCE OF KWAZULU-NATAL

50 KIRKLAND STREET  
 CNR. OF KIRKLAND & SUTHERLAND STREETS  
 1965  
 NEWCASTLE  
 2940  
 (034) 3129942  
 FAX: (034) 3129946

Our Ref.: 2-4401

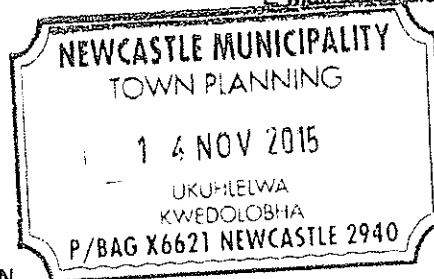
Enquiries:

Your Ref.:

E-Mail: [stoswalds@telkomsa.net](mailto:stoswalds@telkomsa.net)

09 December 2015

Newcastle Municipality  
 Att: Mr Siphephelo Cindi



Sir

**OBJECTION TO REMOVAL OF RESTRICTIVE CONDITION**

I hereby object to the removal of a restrictive condition placed on the ENGEN garage in Terminus Street.

Taxi violence has escalated recently and the school itself has come under attack several times. In the latest incident, two tear gas canisters that were fired by the Police, ended up in the school and caused major problems. In the first attack, learners and an educator were affected and had to evacuate their classroom.

In the second attack, a tear gas canister smashed through a window pane and ended up inside a classroom. The classroom wall and floor was burnt in places as the canister banged onto the notice board and then rolled onto the floor. Fortunately, the classroom was vacant at that stage but the Cleaners who were outside the room were badly affected and had to be put off from work.

Such incidents could very easily play out at the ENGEN Garage and cause a massive explosion. Given the proximity of the school to the Taxi rank and the Garage, I fear for the safety of the learners and the staff. The garage is very close to the school.

I feel that the restrictive condition should remain.

Yours faithfully

DR N SINGH  
 PRINCIPAL

	A	NAME	DATE	SIGN
SED				
DIR				
P.A./S				
U.R. & P				
LUMS		A SC		
SP		A MA		
GIS				
RI				
ADMIN				
ENV.				





# ST. OSWALDS SECONDARY SCHOOL

DEPARTMENT OF EDUCATION - PROVINCE OF KWAZULU-NATAL

50 KIRKLAND STREET  
 CNR. OF KIRKLAND & SUTHERLAND STREETS  
 1965  
 NEWCASTLE  
 2940  
 ☎ (034) 3129942  
 FAX: (034) 3129946

Our Ref : 2-4401

Enquiries:

Your Ref.:

E-Mail: stoswalds@telkomsa.net

09 December 2015

Newcastle Municipality  
 Att: Mr Siphephelo Cindi

Sir

## OBJECTION TO REMOVAL OF RESTRICTIVE CONDITION

I hereby object to the removal of a restrictive condition placed on the ENGEN garage in Terminus Street.

Taxi violence has escalated recently and the school itself has come under attack several times. In the latest incident, two tear gas canisters that were fired by the Police, ended up in the school and caused major problems. In the first attack, learners and an educator were affected and had to evacuate their classroom.

In the second attack, a tear gas canister smashed through a window pane and ended up inside a classroom. The classroom wall and floor was burnt in places as the canister banged onto the notice board and then rolled onto the floor. Fortunately, the classroom was vacant at that stage but the Cleaners who were outside the room were badly affected and had to be put off from work.

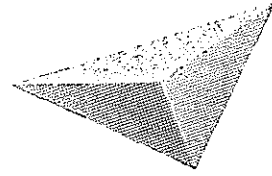
Such incidents could very easily play out at the ENGEN Garage and cause a massive explosion. Given the proximity of the school to the Taxi rank and the Garage, I fear for the safety of the learners and the staff. The garage is very close to the school.

I feel that the restrictive condition should remain.

Yours faithfully

DR N SINGH  
 PRINCIPAL

GILDENHUYS MALATJI  
INCORPORATED  
REG NO 1987/002114/21  
VAT NO 4400102661



GILDENHUYS MALATJI  
ATTORNEYS

OUR REF  
N Dawlal  
01733427

Newcastle Municipality  
Town Planning  
**NEWCASTLE**

11 December 2015

DIRECT TEL NO  
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**Attention:** Mr. Siphephelo Cindi

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Sir

**NOTICE OF OBJECTION: ERF 353, 60 MURCHISON STREET**

1. We refer to the notification placed in the Newcastle Advertiser of 12 November 2015 pertaining to an "application in terms of the Spatial Planning and Land Use Management Regulations read with the Newcastle Municipality Spatial Planning and Land Use-By-Law."
2. We confirm that we act on behalf of the following objectors herein:
  - 2.1 Lavasco Trading 1002 (Pty) Ltd t/a Engen Wimpy Waterside;
  - 2.2 LMD Africa Forensics (Pty) Ltd t/a Ayliff Garage;
  - 2.3 Move On Up 1074 CC t/a SSS Motors;
  - 2.4 NCL Moolas (Pty) Ltd t/a Newcastle Pitstop;
  - 2.5 Kwikcorp 1 CC t/a Leon Motors; and
  - 2.6 We-Two investments CC t/a Auto City.
3. We enclose herewith our client's notice of objection and annexures thereto.
4. We kindly request, as per our clients' mandate, that all further notifications and communiqué herein be addressed to our offices for the attention of writer hereof.
5. Kindly acknowledge receipt hereof.

Yours faithfully

**GILDENHUYS MALATJI INC**

Per: Ms. Neetu Dawlal

**DIRECTORS**  
TEBGO MALATJI LLB  
KONIS MARGRAFF BCOMM LLM  
DERK DE BEER LLM  
JOEL DA SILVA BPROC  
WIM CILLIERS LLM  
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SUNILE ELOFF BCOMM LLM  
MGETI KANYANE LLB  
NICOLETTE DE WIT LLB  
RAKGAZI PHOSA BPROC  
ANEL GRAY BPROC  
HOPE CHAANE LLB  
SHEJWE VILAKAZI LLB  
BONANG MASIA LLB  
RAAN VENTER LLE  
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TECHNOLOGY)  
LIPITHA RAMINATH (HUMAN  
RESOURCES)  
INDO LIFFE (OFFICE)

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NOTICE OF OBJECTION TO REMOVAL OF RESTRICTIVE CONDITIONS  
(ERF 353, 60 MURCHISON STREET, NEWCASTLE)

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**INTRODUCTION**

1. This is an objection filed in response to a notification placed in the Newcastle Advertiser dated 12 November 2015 pertaining to an "*application in terms of the Spatial Planning and Land Use Management Regulations read with the Newcastle Municipality Spatial Planning and Land Use By-Law.*" A copy of this notification is attached hereto as **Annexure "A"**.
2. The application pertains to the removal of restrictive conditions imposed in respect of Erf 353, 60 Murchison Street, Newcastle.
3. On 23 May 2006, the Town Planning Appeals Board, as per **Annexure "B"** dated 23 June 2006, specifically held that the aforementioned site is subject to the conditions that one Mr Rahim Abdool Kader ("Mr Kader") furnishes the Newcastle Municipality with a written undertaking in terms of which he:

*"a) agrees to cease operating the petrol filling station on the site from which he present carries on such operations [i.e. Engen fuel site at 22 Terminus Street]; and*

*b) abandons all rights pursuant to which he operates the petrol filling station on such site.*

*For the purposes of this condition, the date upon which the appellant shall cease to operate his existing petrol filling station and abandons any right to do so in the future shall be the last day of the month during which the new filling station on the appeal site [i.e. Total fuel site at 60 Murchison Street] commences operations. A certificate from the Newcastle Municipality shall specify the date upon which the new filling station on the appeal site commences operation."*

4. On 22 November 2006, the Newcastle Municipality notified Mr Kader of the aforementioned as per **Annexure "C"**. Mr Kader submitted his undertaking and agreed that to the aforementioned conditions as per **Annexure "D"**.
5. The Total site commenced operation on 10 September 2015 however Mr Kader refuses to cease operation of the Engen site despite the conditions imposed and his undertakings to do so. As a result whereof, both the Engen and Total sites are concurrently in operation. There is currently an application by the Second to Sixth objectors pending before the High Court, Pietermaritzburg under case number 14300/2015 in this regard. The Newcastle Municipality has been cited as a Fourth Respondent in this application and was duly served a copy of same by the Sheriff on 28 October 2015. The application was heard by Judge Lopes on 3 December 2015 and parties currently await judgment to be delivered herein.
6. Mr Kader has subsequently and belatedly [as dealt with further hereunder] filed an application for the removal of the aforementioned [self-imposed] conditions.

#### **THE OBJECTORS**

7. The First Objector is Lavasco Trading 1002 (Pty) Ltd t/a Engen Wimpy Waterside, an Engen fuel site situated on the N11.
8. The Second Objector is LMD Africa Forensics (Pty) Ltd t/a Ayliff Garage, a Caltex fuel site situated at 16 Ayliff Street, Newcastle.
9. The Third Objector is Move On Up 1074 CC t/a SSS Motors, a BP fuel site situated at 34 Kirkland Street, Newcastle.
10. The Fourth Objector is NCL Moolas (Pty) Ltd t/a Newcastle Pitstop, an Engen fuel site situated on 68 Allen Street, Newcastle.
11. The Fifth Objector is Kwikcorp 1 CC t/a Leon Motors, a Shell fuel site situated at 73 Allen Street, Newcastle.

12. The Sixth Objector is We-Two investments CC t/a Auto City, a Shell fuel site situated at 15 Murchison Street, Newcastle.
13. All of the objectors are competitors operating in the near proximity of the Engen fuel site (22 Terminus Street) and Total fuel site (60 Murchison Street). The Newcastle Town Planning Scheme was no doubt enacted for, amongst others, the objectors' protection and it is submitted that the objectors have the requisite *locus standi* and interest to file this objection.

**THE APPLICANT: MR RAHIM ADBOOL KADER**

14. Prior to dealing with the specific grounds of objection to the removal of the restrictive conditions herein, it is prudent to highlight the background leading up to this matter and the conduct and web spun by the protagonist, Mr Kader, herein.
15. In this application pending before the Newcastle Municipality, it is uncertain which "persona" of Mr Kader that parties are dealing with as Mr Kader makes uses of two identity numbers which he selects for usage depending on the transaction and parties involved.
16. The first identity number is 480121 5098 05 1. Mr Kader makes use of this identity number in respect of Sagewise 1018 CC t/a Dragon Fuels which is the Total site situated at 60 Murchison Street. This identity number is also used for Kadbro Taxi City CC which appears to be the Engen fuel site situated at 22 Terminus Street. Confirmation of this first identity number is attached hereto as **Annexure "E"**.
17. The second identity number is 480121 5098 08 5. Mr Kader makes use of this identity number in respect of Kadbro Taxi City Service Station CC when he concludes his retail and/or supply agreements with Engen Petroleum Limited. Confirmation of this second identity number is attached hereto as **Annexure "F"**.

18. The two identity numbers, been a difference of the last two digits, is not a typographical error as the confirmations annexed above have been received from the offices of the Companies and Intellectual Property Commission ("CIPC") which system is linked to that of the Department of Home Affairs. This can furthermore not be construed as a typographical error if regard is had to the transactional agreements concluded between Mr Kader and Engen Petroleum Limited [dealt with further hereunder] clearly demonstrating as and when Mr Kader selects which identity number to use.
19. It clearly appears that Mr Kader is illegally making use and/or abusing two separate ID numbers to further his unlawful conduct [as furthermore elaborated hereunder], to the detriment of the objectors, the Newcastle Municipality, the Department of Energy and the public as a whole.

#### **THE ENTITIES / CORPORATE VEHICLES INVOLVED**

20. Over and above the issue of Mr Kader's two identity numbers, there are various entities involved in this matter which Mr Kader attempts to shift his business and operations between in an attempt to, amongst others, possibly avoid the application of the restrictive conditions herein.
21. Kindly note that section 2A of the Petroleum Products Act 120 of 1977 provides that a person is prohibited from holding a site and retailing petroleum products without having the requisite site and retail licenses.
22. Mr Kader confirms [in the papers filed in the aforementioned Pietermaritzburg, High Court application] that Kadbro Taxi City CC is the holder of a retail license issued by the Department of Energy and is operating an Engen fuel station situated on 22 Terminus Street, Newcastle. Engen Petroleum Limited has since confirmed that is false and even produced a retail license which on face value appears to be fraudulent.

23. The retail license for the fuel site situated at 22 Terminus Street is in the name of Radbro Taxy City CC. The registration number reflected is that of CK902825723 [which is actually the registration number of Kadbro Taxi City CC]. This license was issued on 13 May 2009 however Radbro Taxy City (Pty) Ltd was only registered on 17 September 2015 with registration number 2015/333565/07 in terms whereof Mr Kader's wife, Moonewar Begum Kader, is the sole director.
24. An affidavit filed by Engen Petroleum Limited in regard of these issues are attached hereto as **Annexure "G"**.
25. Mr Kader perjures himself under oath [in papers filed in a different Pretoria, High Court application under case number 95104/15] when he indicates that the issue of Radbro Taxy City is a typographical error whilst a photo of the signage at the Engen site clearly indicates same as Radbro Taxy City. A copy of the "perjured affidavit" and photo of the site is attached as **Annexure "H"** and **Annexure "I"** respectively.
26. The photo of the signage clearly accords with the alleged "erroneous" spelling of the retail licence, coupled with the "coincidence" that it is the very same name used by the company registered during September 2015 by Mr Kader's wife.
27. Mr Kader further attempted to confuse Engen Petroleum Limited by positively stating that "Radbro Taxy City" is the holder of a retail licence (whilst that is patently incorrect). He then requests Engen Petroleum Limited to "*send me the new documents (retail dealer agreement) in the above name Radbro Taxy City so that we will not have any more issues*". He further advised Engen that his attorney advised "*...The licence is in the name of Radbro Taxy City and not Kadbro Taxj City, the new owner is Mrs Moonewar Kader.*" A copy of this communiqué is attached as **Annexure "J"**.

28. It is clearly not a mere "typographical error" as alleged by Mr Kader. The "typographical error" is nothing other than another devious attempt by Mr Kader (apparently in cahoots with his wife) to set the scene for an obvious attempt to circumvent the conditions of the special consent use. Radbro Taxi City was employed already in 2009 to lend credence to the scheme.
29. Furthermore, the scheme lends credence then to the letter from Sarlie & Ismail Incorporated Attorneys (Mr Kader's attorneys) attached as **Annexure "K"** when it stated on 23 September 2015 in a letter in reply to the objectors' attorneys seeking an undertaking that the Engen site would cease trading:
- "We record that our client Rahim Abdul Kader and/or Kadbro Taxi, have ceased to operate the filling station on the site in question. Our client Mr Kader has also now ceased to enjoy any rights in the operations at such site. In the circumstances our client has complied fully with the undertakings given to Newcastle Municipality in 2006, and now regards the matter vis-à-vis him and/or Kadbro Taxi City as closed."*
30. If Mr Kader did not then view himself and/or his entities bound to the undertakings given and the conditions of the special consent use, the question needs to be asked why the scheme was devised and why it is now belatedly been attempted to be removed? The answer is obvious, it is submitted: Mr Kader and his corporate vehicles are doing everything in their power to escape the inevitable, i.e. the closure of one or both of the filling stations.
31. Engen Petroleum Limited did not however buy in on Mr Kader's scheme and Engen have since 24 November 2015 ceased supply to the Engen site and even locked up the pumps as per **Annexure "L"**.
32. It clearly appears that Mr Kader is abusing the corporate entities that he is involved in (apart from using two separate ID numbers) to further his unlawful conduct, to the detriment of the objectors, the Newcastle Municipality, the Department of Energy and the public as a whole.



33. This conduct by Mr Kader (and his obvious perjury) should respectfully not pass unnoticed by the Newcastle Municipality and its Town Planning Department and is deserving of censure.

#### SEYMA INVESTMENTS (PTY) LTD

34. It should further be noted that the site license in respect of the Engen site on 22 Terminus Street has been issued to an entity namely Seyma Investments (Pty) Ltd. A copy of this site license is attached as **Annexure "M"**. Mr Kader is a Director of this company.
35. As far as the objectors are aware, Seyma Investments (Pty) Ltd remains a deregistered company as per **Annexure "N"**. The objectors have not had sight of any potential application for reinstatement despite been verbally notified of same by Mr Kader's attorneys during the application proceedings in the Pietermaritzburg High Court aforementioned.
36. It thus follows in any event that Kadbro Taxi City CC, or any other entity, can in any event not lawfully operate the filling station on 22 Terminus Street as per the Petroleum Products Act 120 of 1977.
37. It is submitted that the public interest is at stake and illegal trading should not be tolerated. Accordingly, the restrictive conditions should stand and be enforced.

#### RESTRICTIVE CONDITIONS

38. On 23 May 2006, Mr Kader's appeal was heard before the Town Planning Appeals Board. At this appeal hearing, Mr Kader was legally represented by Mr C van Wyk.

39. The judgment of the Town Planning Appeals Board (as per Annexure "B") specifically indicated at paragraphs 18 and 19 "*furthermore with regard to the merits of the matter the municipality is not opposed and, is indeed sympathetic, to the appellant's application and has no objection in principle to the location of a service station on the appeal site. Subject, therefore, to certain conditions to ensure that the municipality's technical requirements are satisfied and, indeed, to assuage the objectors' fears about overtrading the Board is unanimously of the view that the appeal should be allowed*" and "*during the hearing of the appeal it was emphasised on behalf of the appellant [i.e. Mr Kader] that, as set out above, the appellant intended to move his existing filling station operations in Terminus Street to the appeal site. In corroboration of this fact, the appellant stated, during the course of the hearing that he would accept, as a condition of the grant of his application for a filling station on the appeal site, a requirement that the existing site in Terminus Street be closed.*"
40. Accordingly this is a self-imposed condition which Mr Kader now belatedly wants to set aside. It is submitted that Mr Kader was the one who volunteered to make the undertaking [just so that the special consent could be granted] and further undertook to close the Engen site [just so that he can successfully obtain site and retail licenses for the Total site from the Department of Energy]. This cannot now belatedly be set aside to suit, amongst others, Mr Kader's commercial interests.
41. Mr Kader contends in the Pietermaritzburg High Court application that the special consent use conditions are allegedly contractual in nature. Mr Kader places reliance on the decision in *De Vroeg en 'n Ander v Stadsraad van Randburg*<sup>1</sup> in which it was held that a concession by a town council amounted to an offer, the acceptance of which brought about a contractual relationship between the parties. The decision in *De Vroeg* was not followed in *Transvaalse Raad vir die Ontwikkeling van Buite - Stedelike Gebiede v Steyn Uitzicht Beleggings (Edms) Bpk*<sup>2</sup>. The headnote thereof reads as follows:

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<sup>1</sup> 1970 (2) SA 132 (W).

<sup>2</sup> 1977 (3) SA 351 (T).

"Where a local authority is specially appointed by Ordinance 20 of 1943 (T), and that local authority is responsible for the application of the provisions of the Pretoria Regional Town Planning Scheme, 1 of 1960, proclaimed by the Administrator on 9 Desember 1960, and that local authority gives an owner of property within its jurisdiction the right under clause 16 (c) of the Scheme to use the land for digging and removing sand under the prescribed conditions, then no contractual relationship is created between the parties, but in essence there is an extension of the Scheme in so far as the piece of land is concerned. The rights of the local authority on the owner doing anything in conflict with the provisions of the Scheme are set out in section 40 and the local authority is confined to those rights. The decision in *De Vroeg en 'n Ander v Stadsraad van Randburg, 1970 (2) SA 132 (W)*, not followed." (own emphasis)

42. It is in any event submitted that the facts of the present matter are distinguishable from the facts in *De Vroeg*. The Newcastle Municipality qua the Town Planning Appeals Board did not make any concession or grant any revocable consent in respect of the special consent use. The condition amounted to an extension of the town planning scheme.
43. In *Estate Breet v Peri - Urban Areas Health Board*<sup>3</sup> the Court dealt with conditions imposed by the Administrator in proclaiming a township. Schreiner JA held as follows:

"To sum up the position as it appears from the foregoing, there is authority and reason for holding that the steps by which a township is established and proceedings can be brought to recover endowment moneys, involve mutual consent between the Administrator and the applicant as to the township conditions, and that the Administrator may be regarded, not inappropriately, as making an offer to the applicant

<sup>3</sup> 1955 ((3) SA 523 (A) at 531C - D.

*which the latter must accept if a township is to be brought into existence. But there is no authority binding on this Court to the effect that the mutual assent, though it may properly be called an agreement (cf. Williston, Contracts, Revised Ed., para. 2), is a contract for the purposes of the Prescription Act. The Industrial and Commercial Timber and Ruyteplaats cases do not establish this."*

44. It is accordingly submitted that the condition imposed is not contractual nature.
45. Mr Kader having applied for the removal of the condition, which is a clear indication that he regards the condition not as a contractual issue, but as a condition of the special consent.
46. In **BEF (Pty) Ltd v Cape Town Municipality and Others**<sup>4</sup> the following was stated:

*"The purposes to be pursued in the preparation of a scheme suggest to me that a scheme is intended to operate, not in the general public interest, but in the interest of the inhabitants of the area covered by this scheme, or at any rate those inhabitants who would be affected by a particular provision. And by "affected" I do not mean damnified in a financial sense. "Health, safety, order, amenity, convenience and general welfare" are not usually measurable in financial terms. Buildings which do not comply with the scheme may have no financial effect on neighbouring properties, or may even enhance their value, but they nevertheless detract from the amenity of the neighbourhood and, if allowed to proliferate, may change the whole character of the area. This is, of course, a purely subjective judgment, but in my view this is the type of value which the ordinance, and schemes created thereunder, are designed to promote and protect. In my view a person is entitled to take up the attitude that he lives in a particular area in which the scheme provides certain amenities which he would like to*

<sup>4</sup> 1983 (2) SA 387 (C) at 401B – F.

*see maintained. I also consider that he may take appropriate legal steps to ensure that nobody diminishes those amenities unlawfully. I would not like to assert dogmatically that such a remedy would be available to all persons living in the area covered by a scheme as large as that of Cape Town. In the present case, however, the applicant is an immediate neighbour to the property on which the non - conforming garage was built."*

47. It is furthermore submitted that Mr Kader volunteered the condition and it is difficult to appreciate how a self - imposed condition can be regarded as *ultra vires* and its removal be claimed on such basis. The condition was not imposed on a "need" basis. Such is abundantly clear from the judgment of the Town Planning Appeals Board.
48. Mr Kader submits in his affidavit dated 30 September 2014, as per **Annexure "O"**, that *"the Newcastle Municipality is the organ in the best position to make an informed decision on the prevailing economic conditions in the town and whether the town can accommodate an additional filling station"*. Without derogating from the above, it is submitted that this is not correct. As recently as March 2015 and July 2015 respectively, the Department of Energy have recently rejected licenses in respect of Royal Kelders (Pty) Ltd, Richtol (Pty) Ltd and ABM Motors. Copies of these rejections are attached as **Annexure "P1"** and **Annexure "P2"**. The Department of Energy would not have rejected such licenses if there was capability/need for the accommodation of an additional filling station.
49. Mr Kader avers that the Town Planning Appeals Board decision was handed long ago in 2006 based on economic circumstances prevailing at the time. However it is clear that Mr Kader only made the undertaking that he did in order the Town Planning Appeal Board to uphold his appeal. When he received this go ahead, he then used this to apply for his site and retail licenses with the Department of Energy for 60 Murchison Street by stating that he will close down the Engen site once the Total site commences.

50. The undertaking used by Mr Kader to cease operation of the Engen was clearly a consideration applied by the Department of Energy in the granting of the licenses for the Total site. In Mr Kader's letter of motivation in his application for the licenses dated 9 March 2009, Mr Kader from the outset represents that the Engen site is "*is to be replaced ... insufficient and very crowded...the taxi rank is dangerous...*" as per Annexure "Q". Now that Mr Kader has obtained his special consent from the Newcastle Municipality and licences from the Department of Energy, he now seeks to apply to set aside the restrictive condition. This is clearly disingenuous and as such this application for removal of the restrictive conditions should be dismissed.
51. It is furthermore submitted that Terminus Street is indeed riddled with numerous taxi violence incidents [as per Mr Kader's version as well]. The specific details of the various incidences can be obtained and/or confirmed with the Road Traffic Inspectorate and its occurrence book listings. As recent as 2 October 2015, a huge fire broke due to taxi violence. This area is extremely volatile and if fire or bullets had to strike one of the fuels pumps, there would be explosion with damages and various lives affected and possibly lost. It would therefore would in any event be in the public's interest for this site to close down and Mr Kader abide by the conditions imposed. Mr Kader himself even confirms in his motivation to the Department of Energy regarding the incidences of taxi violence and that the area is dangerous.
52. Mr Kader submits in his affidavit dated 30 September 2014 (as per Annexure "O") that he "*was compelled to enter into a Transaction Agreement with Engen Petroleum Limited, which agreement will terminate on 31 August 2019*".
53. It is difficult to understand how the assertion to the effect that the Engen site cannot be closed down due to the renewal of the agreement with Engen Petroleum Limited, can in any event be construed as to negate the clear conditions imposed by the Town Planning Appeals Board, and undertaking given by Mr Kader in that regard.

54. It is submitted that Mr Kader was not compelled in any manner. In any event as stated above, Mr Kader was making use of different identity numbers and entities to signing such agreements with Engen Petroleum Limited.
55. Furthermore, Engen Petroleum Limited has since ceased supply to the Engen site and locked up the pumps since 24 November 2015 in light of Mr Kader's apparent fraudulent retail license and voided agreements, as per Annexure "L".
56. Mr Kader's attorneys in the letter dated 23 September 2015 (as per Annexure K) acknowledged the existence and validity of the undertaking given subsequent to the judgment of the Town Planning Appeals Board.
57. It is evident that Mr Kader was clearly of the view that the special consent use conditions would simply disappear if no attempts were made to enforce same. When it proved not to be the case, a flurry of correspondence and applications followed by Mr Kader's (and in the midst of exchanging papers in the Pietermaritzburg High Court application) correspondence to Engen Petroleum Limited seeking to pull the wool over its eyes by alleging that Mr Kader and his entities indeed are not trading unlawfully or in breach of any condition, an attempt by Kader and his wife to move the business over to other entities, the sign board Radbro Taxy City, the false and downright dishonest averment that Kadbro Taxi City CC complied with all terms and conditions imposed (in that it ceased to operate the filling station in question), only to later on find out that both filling stations are operating.
58. The fact that Mr Kader no longer regarded itself bound by the undertaking as far back as 19 April 2012 (when the supplementary heads were filed with the Department of Energy as per **Annexure "R"**) should count against Mr Kader and his entities. Why did Mr Kader only take steps for the removal of the restrictive condition (on his version) during the latter part of 2014? It is evident that this just part of web of schemes cooked up Mr Kader all along to obtain and set up his new fuel site at 60 Murchison Street. Mr Kader sat on his hands and did nothing about this matter, it was only when the Second to Sixth objectors launched the application at Pietermaritzburg High Court then Mr Kader wants to

now set aside his self-imposed condition which is clearly an indication of *mala fides*.

59. It is further interesting to note that nothing was said about the agreements concluded with Engen Petroleum Limited in these heads of argument dated 19 April 2012. The agreements were concluded in 2010 already. It has however now turned out the agreement have not been concluded with Engen Petroleum Limited.
60. Mr Kader is clearly disingenuous when he submits in his letter to the Newcastle Municipality dated 14 September 2015 and then directly to the Mayor on 28 October 2015 (as per **Annexure "S1"** and **Annexure "S2"**) that *"after we agreed to this condition, it came to our notice that the Department of Energy does not allow a license to be transferred from one site to another site (from 22 Terminus Street to 60 Murchison)"* and *"I had placed this restriction on myself with the appeal board thinking this would make it easier and quicker to setup the new site using the old site paperwork (in essence I had asked that once the new site would trade I would close down the old site)"* [our emphasis].
61. Mr Kader attempts to reason away by [in in so doing contradicts himself] when he mentions in his papers of the application proceedings at Pietermaritzburg High Court that he "understood" that special consent conditions were only binding upon him (Kader) as an individual and not upon either Sagewise 1018 CC and Kadbro Taxi City CC. He then further averred that he "agreed" to sell Kadbro Taxi City's business to his wife. He fails to take the Newcastle Municipality into his confidence about the reason for the failure of this scheme to materialise.
62. In light of the aforementioned, it is submitted the restrictive conditions should stand and not be set aside.



**CONCLUSION**

63. It is submitted that Mr Kader was the one who volunteered to make the undertaking and conditions to the Town Planning Appeals Board and so such these restrictive conditions should stand and not now belatedly be set aside now that the Total site is up and running.
64. The Engen site on 22 Terminus Street in any event does not have valid licenses from the Department of Energy to hold a site and retail petroleum products. This site is thus trading illegally. Engen Petroleum Limited has since 24 November 2015 ceased supply to the Engen site and locked up the pumps. Engen Petroleum Limited has indicated that they considering institution legal proceedings of their own against Mr Kader and his entities.
65. In the premises it is submitted that the application for the restrictive conditions be dismissed.

SIGNED and DATED at PRETORIA on this 11<sup>TH</sup> day of DECEMBER 2015.

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**GILDENHUYS MALATJI INCORPORATED**

Attorneys for the **OBJECTORS**

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**PRETORIA**

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**Annexure M**  
**Registered Planner's Report to the MPT**

APPLICATION IN TERMS OF THE SPATIAL PLANNING AND LAND USE MANAGEMENT REGULATIONS AND BY-LAWS: APPLICATION FOR THE REMOVAL OF THE RESTRICTIVE CONDITION 20.2 (A) AND (B) STATED IN THE TOWN PLANNING APPEALS BOARD JUDGEMENT (APPEAL NO. 3038) FOR ERF 353 NEWCASTLE, 60 MURCHISON STREET, CENTRAL BUSINESS DISTRICT(TP13/3/3-353) (01 FEBRUARY 2016).

1. EXECUTIVE SUMMARY

An application for the removal of a restrictive condition in terms of the Spatial Planning and Land Use Management Regulations and By-law has been received from R. Kader, the owner of Sagewise, the registered owner of Erf 353 Newcastle. The application is for the removal of the restrictive condition 20.2 (a) and (b) stated in the Town Planning Appeals Board Judgement (Appeal No. 3038; Annexure E) for Erf 353 Newcastle, 60 Murchison Street, Central Business District, which reads as follows.

- 20.2 *That the appellant furnish to the Newcastle Municipality a written undertaking in terms of which he -*
  - a) *agrees to cease operating the petrol filling station on the site (on Erf 257 Newcastle, Terminus Street, opposite the Taxi Rank) from which he at present carries on such operations; and*
  - b) *abandons all rights pursuant to which he operates the petrol filling station on such a site (Erf 257 Newcastle, Terminus Street, opposite the Taxi Rank)*

For ease of reference, the land use on Erf 257 Newcastle (Total Garage) is referred to as petrol filling station 'PFS A' while the one on Erf 257 Newcastle (Engine Garage) for the purposes of this report is referred to as petrol filling station 'PFS B'

The above condition was imposed upon approval of the Service Station on Erf 353 Newcastle (as part of the mixed use development on Erf 353 Newcastle located at 60 Murchison Street, at the corner of Sutherland and Murchison Streets in the Newcastle CBD. The condition imposed relates to the petrol filling station on Erf 257 Newcastle, Terminus Street, opposite the Taxi Rank. In essence, the operation of this Petrol Filling Station should have first been preceded by ceasing operations and abandonment of all rights pursuant to which he operates the petrol filling station on Erf 257 Newcastle, Terminus Street, opposite the Taxi Rank two blocks away).

Two objections have been received from Gildenhuis Malatji Attorneys is essentially on the non-enforcement of Condition 20.2 as quoted above and by extension, on the operation of the Petrol Filling Station on Erf 353 Newcastle, 60 Murchison Street. The other part of the objection alleges that the applicant is a fraud as he is using different identity numbers for different companies and is trading without necessary licences from the Department of Mineral Resources. The other objection received from Dr N. Singh on the continued operation on Erf 257 Newcastle-PFS B, Terminus Street where violence normally breaks out and has adverse impacts on the school in the vicinity.

Having reviewed the merits of the application and demerits of some of the objections for the removal of the restrictive condition 20.2 (a) and (b) stated in the Town Planning

Appeals Board Judgement (Appeal No. 3038) for Erf 353 Newcastle, 60 Murchison Street, Central Business District, the Directorate Town Planning supports the application to remove the restrictive condition and for Erf 257 Newcastle to be used as the Petrol Filling Station in line with all the town planning development controls and those imposed by the Municipal Planning Tribunal.

## 2. RECOMMENDED

It is hereby recommended:

- A. That the Newcastle Municipal Planning Tribunal approves the application for the removal of the following restrictive condition as imposed by the Town Planning Appeal's Board:

Condition: 20.2. *That the appellant furnish to the Newcastle Municipality a written undertaking in terms of which he -*

- a. *agrees to cease operating the petrol filling station on the site from which he at present carries on such operations; and*
- b. *abandons all rights pursuant to which he operates the petrol filling station' on such a site*

- B. The approval in terms of 'A' above be based on the following justification:

- i. The current use of land as a PFS enhances the consideration given on Sec 153 of the South African Constitution as it states that local government must promote the social and economic development of the community;
- ii. The filling station is responsive to the municipal IDP vision which states that the municipality strives to be an economically vibrant city by 2030 which affords its residents the quality of life by playing a critical role in providing a services within an intermodal transportation hub;
- iii. The existing PFS B has been in existence for many years and has not been deemed undesirable from a planning point of view, instead it offers convenience to business owners in the area, particularly the taxi industry who frequents the garage in preparation of different destination points;
- iv. Keeping the city operational is consistent with the Municipality's economic development strategies which amongst others seek to support initiatives aimed at the revitalisation of the Central Business District;
- v. The current establishment provides employment to families, whom if the business ceases to operate may need to look for alternative

*Time Pheme*

*Alfred van der Merwe*

employment, at worse remain unemployed, given the downward spiral of the country's economic trend;

- vi. Decommissioning the existing PFS B is likely to negatively impact on the current traffic movements in the immediate vicinity and the CBD in general;
- vii. Reasons advanced against the removal of restrictive conditions in the objection letters dated 10, 11 & 14 December 2015 respectively are considered from a town planning point of view to be commercially/ trade related and the municipality is unable to conclude within sound principles of modern urbanity to decline this application;
- viii. However, matters of safety and security inside the premises of the PFS A require improvement given its proximity to the taxi rank which evidently has been riddled with numerous occurrences of violence;
- ix. That the aesthetics and physical appearance of the PFS B on Terminus Street be improved;
- x. That this approval does not absolve the applicant to seek other types of authorisations necessary to establish and operate a petrol filling station which may include but not limited to retail licence from the Department of Energy;

**3. PURPOSE**

The purpose of this report is to obtain a decision from Newcastle Municipal Planning Tribunal to remove the restrictive condition stated below. Having this restrictive condition remaining as stated in the Town Planning Appeal's Board judgement cited as Appeal no.3038 regardless of who and how it was introduced into the context, impacts negatively on the recently established Total Petrol Filling Station on Erf 353 Newcastle (PFS A). This condition further requires the municipality to administer and enforce it, hence this application from Mr Kader was submitted. Therefore, these two properties (Erf 353 Newcastle PFS A and Erf 257 PFS B) are used interchangeably in this report. The applicant submitted an application stating reasons as to why it is unviable to cease the use of the existing PFS B. The following has been extracted from the same judgement and gave rise to the application.

- 20.2 That the appellant furnish to the Newcastle Municipality a written undertaking in terms of which he -
  - a) agrees to cease operating the petrol filling station on the site from which he at present carries on such operations; and
  - b) abandons all rights pursuant to which he operates the petrol filling station on such a site

#### 4. REPORT

##### 4.1 Application background

This application is submitted in terms the SPLUMA Regulations and Schedule 4 of the Spatial Planning and Land Use Management Bylaws respectively. Mr R. Kader, who, for the purposes of this application is referred to both as the applicant and registered owner of the property, see Annexure H 1 of this report. The following is an illustration of events which occurred and have triggered this application:

- 4.1.1 In February 2005 an application in terms of the Town Planning Ordinance, Ord. 27/1949 was lodged by Mr Kader to establish a petrol filling station, service industrial shop and residential building above the ground floor on Erf 353 Newcastle (PFS A);
- 4.1.2 Following initial evaluation by the planning department, the applicant was advised that the application was incomplete since one of the minimum requirements was not complied with, the title deed was not submitted as part of the application;
- 4.1.3 The application was advertised in the local newspaper for 21 days as per the requirement of the Ordinance and the Scheme;
- 4.1.4 An objection with a petition of 9 signatories was submitted against the application from Naven Singh & Associates;
- 4.1.5 The objectors stated overtrading in the service station industry in the CBD as the main ground of objecting and that the CBD could not accommodate any additional petrol filling station;
- 4.1.6 In 2005 EXCO at its meeting resolved to decline the application for the establishment of the petrol filling station on Erf 353 Newcastle based on absence of clarity supplied regarding the title deed of the property and site development plan;
- 4.1.7 After notification of the outcome of the application, the applicant was aggrieved by the decision of EXCO and lodged an appeal to the Appeal's Board.
- 4.1.8 The applicant on his appeal acceded that the Appeal's Boards should consider his application favourably since he was at the point intending to close the PFS B prior to opening the new PFS A on Murchison;
- 4.1.9 Following due consideration by the Appeal's Board the appeal was granted with the self-imposed conditions confirmed by the Board as follows:  
  
Condition: 20.2. That the appellant furnish to the Newcastle Municipality a written undertaking in terms of which he -

- (a) agrees to cease operating the petrol filling station on the site from which he at present carries on such operations;
- (b) abandons all rights pursuant to which he operates the petrol filling station on such a site

- 4.1.10 In 2009, the municipality approved building plans for establishment of the service station with convenient shop and the residential building on top of the ground floor;
- 4.1.11 The construction of the petrol filling station commenced and was finalised in year 2015;
- 4.1.12 In their letter dated 30 September and received on 5 October 2015 the attorneys representing the objectors Gildehuys Malatjie Attorneys in the 2005 application to establish PFS A were enquiring from the municipality the reasons as to why the conditions were not being enforced;
- 4.1.13 At the same time the applicant submitted an application Annexure H to have the above stated restrictive condition deleted from the judgement which approved the initial application;
- 4.1.14 The application was advertised between 12 November and 14 December 2015 in the local newspaper;
- 4.1.15 Three objections were received to this effect, one was from Gildehuys Malatjie Attorneys on behalf of 6 service stations operators located in the CBD, the second came from the Principal for St. Oswalds Secondary School, Dr. N Singh and lastly one was submitted by the MR D. Nkosi, the taxi driver currently operating at the taxi rank in Terminus Street, see Annexure C;
- 4.1.16 Gildehuys Malatjie Attorneys in their objection letter argued extensively the alleged illegality of trading fuel without necessary licenses and what they purport as mischievous directorship and ownership of different companies used to sought licences to operate a filling station. They further submitted that circumstances in the area which were stated by Mr Kader when pursuing his application to operate PFS A and in the course stating that he was going to close the PFS B have not changed. Therefore, it cannot be justified as why he has to set aside the restrictive condition. Most of their objections from a town planning point of view have been placed or categorised to centre around trade and competitiveness for which this municipality is unable within its constitutive mandate adjudicate on;
- 4.1.17 The principal of a school in the vicinity pointed out issues of safety and security of the pupils at the Secondary school by citing specific prior events which were perceived to have jeopardised safety of the children;

4.1.18 Lastly, the taxi driver cites the evident circumstances of violence which have been noted recently in the taxi rank which becomes hazardous to all if PFS B was to remain open;

4.1.19 The applicant in his response letter to the objections stated that there is a pending high court case on this matter, where the objectors are seeking an interdict against him to cease all operations in the PFS in 22 Terminus Street following the recently opened Total PFS in Murchison Street. The municipality was not cited as a respondent and thus did not participate in the court action as a litigant;

**4.2 Decision of the Town Planning Appeals Board (Annexure E)**

The Town Planning Appeal's Board having heard all heads of argument for and against the establishment of the PFS A on Erf 353 Newcastle, Cnr. Sutherland and Murchison Streets and other considerations, upheld the appeal by granting Mr Kader land use rights for establishment of the petrol filling station and further attached strict conditions which were volunteered by Mr Kader. These conditions were binding on the applicant and the owner of the property Erf 353 Newcastle and further required the municipality to enforce.

**4.3 Summary of the Property Particulars**

Primary property description	:	Erf 353 Newcastle (PFS A - land use rights granted with strict conditions affecting Erf 257 Newcastle)
Secondary property description	:	Erf 257 Newcastle (PFS B- whose operation and existence is affected by conditions imposed prior establishing another PFS on Erf 353 Newcastle)
Existing Zoning Erf 353 Newcastle	:	Mixed Uses
Application type	:	Removal of a restrictive conditions
Name of applicant/owner	:	R. Kader (Director: Sagewise)
Date of Publication	:	12 November 2015
Closing date for objections	:	14 December 2015
Objections received	:	Three
Details of the objectors	:	Gildenhuis Malatji Attorneys on behalf of 6 service stations located in the CBD, the Principal for St. Oswalds Secondary School, Dr. N Singh and Mr D. Nkosi (taxi driver)



#### 4.4 Locational context and access arrangements

##### Erf 353 Newcastle (PFS-A)

Erf 353 Newcastle (Total PFS) is a mixed used property located at the corner of Sutherland and Murchison Street in the Newcastle Central Business District. Ingress and egress of the property is gained from both streets. Murchison Street is regarded as one of the district collector roads as it carries vehicular traffic from the CBD and distribute it to the Lennoxton area and the surroundings. On the other hand Sutherland is also perceived to be fulfilling a similar role as it acts as the connector road between the downtown part with suburbs in the south of the CBD. Therefore, these two roads are considered to be busy, hence the proposed location of the PFS to capitalise on the number of vehicles moving through these routes.

It is common that PFS owners generally locate along the busiest transport routes as is happening with Allen Street. The PFS's currently are located along Allen Street road with Shell garage being the first one within the southern block of the CBD, The BP garage is in the neighbouring block and within a distance of 100m apart. Sasol Garage was established recently in town and is also located along Allen Street, although to the north of this primary route. Other garages found in the CBD are located along Ayliff Street, a road parallel to Allen Street. Another which the applicant owns and is the subject for this applicant is located in no. 22 Terminus Street in the taxi rank vicinity.

##### Erf 257 Newcastle (PFS-B)

On the other hand Erf 257 Newcastle (Engine PFS) is accessed from Terminus Street. This property provides an important service of supplying petroleum related lubricants to different modes of transportation which the rank hosts. It is located in the concentrated area for commercial and service industrial activities. St Oswald Secondary School is located to the south of the PFS. This filling station is at least a kilometre apart from the Total garage also owned by Mr Kader.

#### 4.5 Surrounding uses and compatibility of the proposed use

Erf 353 Newcastle is surrounded by a mixture of diverse land uses varying from commercial to service industrial. Recently the department has approved applications for office park development to add to the mixture of diversity found in the area. Moreover, the property is bordered by a block of flats to the east, whilst its composition also includes the residential building on the first floor. It is conveniently abutted by the Pick n Pay centre to the south west. It uplifts the neglected services industrial properties which host scrap metals to the north. Erf 353 Newcastle measures 4047m<sup>2</sup> in extent. Opposite the subject property along Murchison Street is the old Game and Pick 'n Pay complex.

**5. AVAILABILITY OF INFRASTRUCTURAL SERVICES AND OTHER COMMENTS FROM THE RELEVANT MUNICIPAL DEPARTMENTS**

The application for the removal of the restrictive condition 20.2 is not expected to have a negative impact on the existing infrastructure. The application is in respect of an existing Petrol Filling Station which was approved with the comments received. As this is an application for the removal of a restrictive condition, no infrastructural services should be affected.

The applicant did however provide a Traffic Impact Assessment with the proposal. This is to support the application in a sense that the existing road network will carry and cope with both service stations in existence. This is attached as Annexure F.

**5.1 Community Services Department**

**5.1.1 Traffic Section**

Whilst I am not in a position to express my opinion on the legalities surrounding such application, on face value, I am concerned about the poor precedence which we may create by rescinding written undertakings.

From a traffic perspective, our records confirm that Terminus Street, in the immediate vicinity of the Filling station is a volatile area during the taxi related altercations.

The following is a sample of recorded incidents:

Our OB/ Ref	Date	Time	Occurrence
T1508/004	15-08-2015	09h16	Traffic -taxi violence
T1508/0043	15-08-2015	10h11	Traffic- taxi violence
T1508/0052	18-08-2015	08h35	Traffic- taxi violence
T1509/0088	30-09-2015	14h14	Traffic- taxi violence
F1510/0005	02-10-2015	15h15	Fire- taxi violence

**5.1.2 Fire and Disaster Section**

The Fire Services has no objection against Mr Kader operating two filling stations provided that he has a valid Certificate of Compliance from the Fire Service for both the premises.

5.2 Technical Services

5.2.1 Water and Sewer

Infrastructural water and sewer services are already existing and sufficient for the referenced two property for the current land use. Lifting of restrictive condition is supported.

6. COMPLIANCE WITH HIERARCHY OF LAWS/ LEGISLATION/ POLICY FRAME WORK

The application for the removal of the restrictive condition 20.2 (a) and (b) stated in the Town Planning Appeals Board Judgement (Appeal No. 3038; Annexure E) for Erf 353 Newcastle, 60 Murchison Street (PFS A), Central Business District, is in line with the following principles:

6.1 Development Facilitation Act (Act No.67 of 1995)

The proposed removal of the restrictive conduction will not compromise the provisions of the Development Facilitation Act No. 67 of 1995 principles for land development in that:

- i. The proposed removal of the restrictive conduction will promote the availability of employment opportunities in close proximity to or integrated with each other since the development is in the Newcastle CBD. The proposed abandonment of the restrictive condition is considered to be consistent with this notion in that the Garage is within walking distance to residential areas therefore, reduces transport costs and travelling time to work;
- ii. The proposed removal of the restrictive conduction will aim to optimise the use of existing resources including such resources relating to land, bulk infrastructure, roads, transportation and social facilities, and applying the principles of densification in towns and cities;
- iii. The proposed removal of the restrictive conduction will support the maintenance of a diverse combination of land uses in the area as the proposed zoning of the site is Mixed Use and infusing with existing surrounding uses that are predominantly zoned as Commercial, Civic and Residential;

6.2 Newcastle Integrated Development Plan

The Newcastle IDP indicates that there's growth of the urban core and this is evident with new buildings emerging in the area. At the same time, it notes the down part of the CBD

is getting rapidly neglected and requires new intervention to revitalise it and boost employment opportunities.

### 6.3 Newcastle Spatial Development Framework

The proposed development falls within the Newcastle urban edge as defined by the Newcastle SDF. Through SDF development which falls inside the urban edge is promoted as it maximises the available infrastructure network of the municipality and keeps the area of supply manageable. One of the SDF objectives is to have the publicly performing activity routes and corridors, hence it is considered that both locations for the Engine and Total PFS are maximising the opportunities presented by these two Streets (Terminus and Murchison)

### 6.4 Spatial Planning and Land use Management Act 16 of 2013 read with the Newcastle Spatial Planning and Land Use Management Bylaws

The amendment of the scheme is done in terms of the Spatial Planning and Land use Management Act No. 16 of 2013 read with the Spatial Planning and Land use Management Bylaws, which amongst other requires the following:

- A public notice to be placed in the local newspaper inviting interested parties to comment/object to the application within a period of 30 days;
- Notices to be distributed to property owners within a 100m radius of the subject site to solicit their comments/objections to the application.

## 7. GROWTH PROSPECT

The main purpose of the application for the removal of the restrictive condition 20.2 (a) and (a) stated in the Town Planning Appeals Board Judgement (Appeal No. 3038) for Erf 353 Newcastle, 60 Murchison Street, Central Business District, which reads as follows:

- 20.2 That the appellant furnish to the Newcastle Municipality a written undertaking in terms of which he -
- a) agrees to cease operating the petrol filling station on the site from which he at present carries on such operations; and
  - b) abandons all rights pursuant to which he operates the petrol filling station on such a site

With a population figure of 363 237 people residing in the Newcastle area, this type of development can be regarded as a priority since Newcastle is also regarded as a development zone in terms of the Provincial Growth and Development Strategy. Looking at the investment of private and public sector for 2015 one will notice that Newcastle is definitely growing, with growth comes the need for more job opportunities.

With this in mind and the aim of the Municipality to become a commercial and industrial hub by 2030, is it important to also support investment in Newcastle as this will contribute towards realisation of this goal.

7.1 Traffic Study/Traffic Impact Assessment (TIA)

The applicant sourced David McFarlane and Associates (DMA) for the findings of Traffic Impact Assessment (TIA). A 12 hour traffic count was undertaken by Mikros Traffic Monitoring at the intersection of Erf 353 Newcastle. This came as a response to the objections previously received to establish the service station. The conclusions and recommendations of the study revealed that the service station will operate at a satisfactory level.

7.2 Objections

A notice regarding the application for the removal of restrictive condition of the above mentioned property was published in the local newspaper, i.e. Newcastle Advertiser for objections and/or representations from interested persons to express their views in writing. The same notices were also displayed on the property for a period of not less than 30 days from 12 November 2015 and sent to property owners of abutting properties.

7.2.1 Summary of the grounds of objections:

One objection (Annexure C) was received from Gildenhuys Malatji Attorneys representing 6 service stations in Newcastle namely:

- 1) Lavasco Trading 1002 (Pty) Ltd t/a Engen Wimpy Waterside on N11;
- 2) LMD Africa Forensics (Pty) Ltd t/a Ayliff Garage, a Caltex fuel Site on 16 Ayliff Street;
- 3) Move On Up 1074 CC t/a SSS Motors, a BP fuel site on 34 Kirkland Street;
- 4) NCL Moolas (Pty) Ltd t/a Newcastle Pitstop, an Engen fuel site on 68 Allen Street;
- 5) Kwikcorp 1 CC t/a Leon Motors, a Shell fuel site on 73 Allen Street and;
- 6) We-Two investments CC t/a Auto City, a Shell fuel site on 15 Murchison Street.

The objection is based on the fact that the applicant did abide by the condition as imposed by the Town Planning Appeals Board as quoted below and within the backdrop of the applicant still operating the two service stations, Condition 20.2:

*That the appellant furnish to the Newcastle Municipality a written undertaking in terms of which he -*

- a) *agrees to cease operating the petrol filling station on the site from which he at present carries on such operations; and*
- b) *abandons all rights pursuant to which he operates the petrol filling station on such a site*

7.2.1.1 Applicant is a protagonist in terms of his persona as he uses two identity numbers.

The objectors allege that the applicant is a protagonist in terms of his persona as he uses two identity numbers. The objectors allege that Mr Kader is misusing two different identity numbers to further his unlawful conduct. Objectors regard unlawful conduct in this instance, as an attempt by Mr Kader to avoid the removal of restrictive conditions;

Applicant's response: The applicant puts forward how he ended up with two Identity Numbers in his response to the objection. The applicant argues that in the granting of the license to different companies, the objectors were already aware as they had initially objected to the application, making this notion irrelevant to the subject. The applicant points out how he transferred the property to his wife, legally. The applicant puts forward that they will try to ensure that the existing service station does not close down and the allegations are denied.

Planning Overview: The application to set aside the restrictive condition is submitted by Mr Kader as the sole director for the petrol filling station. He attached to his application a copy of the South African identity document which meets the minimum requirement of the department. SPLUMA bylaws make provision for an application to be submitted by a person who either owns the property or have been duly appointed by the registered owner of the property to do so. Therefore, it is considered from a compliance point of view that the applicant has complied with the minimum requirements as set down in the SPLUMA bylaws.

7.2.1.2 Directorship of the companies

The directorship of the companies which Mr Kader owns and the use of these companies for trading the fuel is being questioned by the objectors. They allege that Mr Kader is manipulating these companies to further his interests;

Applicant's Response: The applicant points that the fuel retail industry is closely regulated, therefore the need for this service station was closely looked at by the Controller of Petroleum Products guided by the Petroleum Products Act 120 of 1977. The Controller of Petroleum Products as ordered by the Minister (Department of Energy) has to investigate the need for the service station in the area before the issue of a license.

Planning Overview: The same sentiment expressed in 8.2.1.1 that the manipulation of the directorships by Mr Kader could not be determined from the planning point of view. In pursuant of this application the essential documents were submitted by the applicant and complied with each milestone of the process flow. The role of the municipality is limited to planning aspects of the application leaving the remaining aspects to other institutions to regulate such as Department of Energy and the franchise companies i. e Engine, Total etc.

### 7.2.1.3 Unlawful conduct by applicant

They further allege that the unlawful conduct by Mr Kader has resulted in Engen ceasing supply of fuel in PFS B, 22 Terminus Street, the allegation which the applicant confirmed;

Applicant's Response: The applicant submits that Engen continues to supply fuel to the site.

Planning Overview: The objection can be resolved elsewhere as this is not a competency of planning.

### 7.2.1.4 Fact that restriction because is self-imposed it is not acceptable

Objectors purport that the argument by Mr Kader that he wishes to set aside this restriction because he self-imposed it is not acceptable;

Applicant's Response: The applicant also outlines the circumstances leading to the current situation arising. This being the time delay in processing the relevant steps in the application process. The application dates back 10 years ago.

Planning Overview: The department notes that Mr Kader hastily opened the Total PFS along Murchison without first having obtained permission from the municipality to have the restrictive condition set aside. However, having evaluated the application submitted by the applicant, and having due regard of sound planning principles and policy directives for this Council, the application to have the restrictive condition is supported as there are no foreseeable undesirable effects arising from its continued operation. Instead, there a number of positive effects and impacts due to its continued operation as outlined hereunder.

The continued use of the land as a Petrol Filling Station (PFS B) along Terminus Street is in synch with the surrounding land uses. In fact, it provides convenience to the users of the intermodal transportation services. It further provides for land use diversity which in terms of modern town planning principles optimises the use of land and supports other uses in the area;

- i. In line with Development Facilitation Act, the use of the property (PFS B) optimises the use of existing infrastructure in the area since the development falls within the municipal urban edge;
- ii. The downtown part of the CBD where the Engine Garage is located is in need for new investment to uplift the image of the area and disassociate the area with the negativity which clouds it, i.e. the lawlessness and unstructured informality;

#### Convenience of shopping:

- iii. The ancillary shop to the PFS affords convenient shopping to people who come into contact with the Garage

Sustaining the people's livelihoods:

- iv. Achieving the city status by 2030 requires the municipality to intensify its efforts to attract investment and development within its jurisdiction. In turn, foreign and direct investment into the municipality is likely to increase the population thresholds driven by the pull factors into the municipal area. This enhances the people's livelihoods;
- v. Therefore, it is a delicate balance to demonstrate with sound reasoning from the broad planning perspective the need and desirability for the PFS B to cease operation where it is currently located in 22 Terminus Street;
- vi. The proposed removal of the restrictive condition supports the maintenance and growth in the Municipality's rates base.

The municipality has through the revenue enhancement strategy identified expansion of the municipal rate base as one of the strategies to improve the fiscal stability of Council. Therefore, it would not be justifiable within sound development principles for the municipality to choose to lose rates and other services charges it generates from the valuation of this property and assets of Erf 257 located on 22 Terminus Street. Municipalities are expected to be self-sustainable and to raise their own revenue.

**7.2.1.5 Applicant is trading illegally**

The objection also alleges that the applicant is trading illegally and the condition should therefore be enforced as contained in paragraph 34-37;

Applicant's Response: The applicant submits SEYMA Investments has been placed back on the roll of registered companies. Therefore the service stations are not operating illegally.

Planning Overview: The issue is between the two parties and is of no planning concern.

**7.2.1.6 Applicant is insincere as he accepted that the PFS B will close down to allow operation of the new PFS A.**

The objector also argues that this restrictive condition is self-imposed. The applicant accepted that the Engen Garage will close down come the operation of the new Total Garage. Reference is also made to several court encounters where the argument is that Mr. R. Kader has a contractual obligation to the judgement. The objector also argues that the applicant only accepted the settlement only for the appeal to be upheld. Mention is also made to several taxi violence incidents in/around the Terminus Street Garage. This is contained in paragraph 38-62 of the objection.

Applicant's Response: The applicant confirms the allegations and submits there has been a change in circumstances which justify the application. The applicant also submits the preservation of jobs. The applicant also states the reasons for the rejection of the other



licenses are not related to him. The applicant also indicates they also presented to the Department of Energy that due to a change in circumstances, they could not close down the PFS B.

The applicant argues that he is not trading illegally as the said company has been registered with CIPRO. The applicant also puts forward that the taxi violence issue is not relevant to the Town Planning matter as it is a competency of the South African Police Service with their Special Task Force, which has halted such violence.

Planning Overview: The matter has been dealt with above accordingly.

**8.2.2.1 Taxi violence**

The second and third objections are solely based on taxi violence occurrences in the area. Dr. N. Singh mentions that since the school and the garage are next to the taxi rank, violence may occur and impact negatively on the school because of the garage.

Mr D. Nkosi one of the taxi drivers operating in the taxi rank at Terminus Street, also shares the sentiments expressed by Dr N. Singh by stating the future possibility that the PFS B site may explode when there is violence outbreak in the rank. He supports his argument on the basis that recently, there has been numerous violent occurrences in the taxi rank.

Applicant's Response: The applicant also outlines the circumstances leading to the current situation arising. This being the time delay in processing the relevant steps in the application process. The application dates back 10 years ago.

Planning Overview: This objection is not relevant to the application as it is not town planning or land use related. The use of land as a Petrol Filling Station (PFS) in Terminus Street is in synch with the surrounding land uses, and provides convenience to the users of the intermodal transportation services. It further provides for land use diversity which in terms of modern town planning principles optimises the use of land in the area. However this is an issue that can be raised and dealt with by the South African Police Service, as it is currently doing.

**9. Conclusion**

The applicant demonstrated in his submission the reasons for removal of the restrictive condition, which he volunteered during the appeal process in 2006 and was later confirmed in the judgement of the Town Planning Appeal's Boards, Appeal No.3038. The proposal is in line with the development trends and guidelines for this area. The application is deemed desirable, viable and is in the interest of urban regeneration. The proposal for the removal of the restrictive condition is from a town planning point of view, is supported.

10. List of Annexures
- |              |   |
|--------------|---|
| Annexure A   | Site and locality plan  |
| Annexure B   | Newspaper advert  |
| Annexure C   | Objections received in the order of:                                  |
| Annexure C1  | Gildenhuys Malatji Attorneys;   |
| Annexure C2  | Dr N. Singh   |
| Annexure C3  | Lastly Mr D. Nkosi  |
| Annexure D   | Objection responses   |
| Annexure E   | Town Planning Appeals Board judgment                                  |
| Annexure F   | Traffic Impact Studies conducted                                      |
| Annexure G   | Letter of request for the meeting by the objector                     |
| Annexure H   | Application Received  |
| Annexure H 1 | Title Deed  |
| Annexure I   | Registered Planner's Certificate                                      |
| Annexure J   | Letter declining the meeting request by the applicant                 |
| Annexure K   | Supplementary Objections submitted at the meeting on 19 February 2016 |



S. D. CINDI

REGISTERED PLANNER:

DEPARTMENT OF DEVELOPMENT PLANNING AND HUMAN SETTLEMENTS

**Site & Locality**  
**Enf:353**  
**Newcastle**

**Legend**

- Newcastle Sewer
- Newcastle Water



**Locality of Site**

Scale : 1:3000



Projection: Clarke 1880

Mappped by

S. Nkrabande

Drawing No:  
0001

Shrine: WGS84

Datum: D. Hertfordshopeak\_1994

Date

03/02/2016

**DIRECTORATE:TOWN PLANNING**



Private Bsp X6021  
Newcastle  
Enf:353  
arranged@newcastle.gov.za


Heading Street  
Newcastle  
Enf:353  
Tel:031421-4433

Signature

*[Handwritten Signature]*



**Annexure B**  
**Newspaper advert**

  
**NEWCASTLE MUNICIPALITY**


**Bid No.: -A031-2015/16 - Supply installation and maintenance of an X-Ray Inspection unit.**

Please note that the closing date for the above bids has been extended to **Friday 04 December 2015 at 12h00.**

Original closing date: **18 November 2015**  
New closing date: **04 December 2015**

The physical address for submission of tender offers: **Municipal Civic Centre (Rates Hall), 37 Murchison Street, Newcastle**

**B. E. MSWARE  
ACTING MUNICIPAL MANAGER**  
Newcastle Municipality  
Murchison Street  
Private Bag X6621  
Newcastle, 2840


  
**DANNAUSER MUNICIPALITY**

The Dannhauser Licensing Department would like to inform the public of closure of the licensing office during the festive season

The offices will close at 12:00pm on the **24<sup>th</sup> December 2015** until the **31<sup>st</sup> December 2015**, and re-open for service on the **04<sup>th</sup> January 2016.**

On behalf of the Dannhauser Municipality staff, we would like to wish you all a Merry Christmas and a blessed new year.

**S NAIDOO  
MANAGER COMMUNITY SERVICES**

  
**NEWCASTLE MUNICIPALITY**  
Notice No: CS91/2015

**APPLICATION IN TERMS OF THE SPATIAL PLANNING AND LAND USE MANAGEMENT ACT (2015) (SPLUMA) FOR THE ZONING OF ERF 2784 OSIZWEN SECTION A INTO SERVICE INDUSTRIAL**

Notice is hereby given that it is the intention of the Newcastle Municipality to zone Erf 2784 Osizwen Section A into Service Industrial.

A copy of the application and its accompanying documents will be lying for inspection at the offices of the SED Development Planning and Human Settlements, No 50 Harding Street, Nedbank Building, Newcastle between 07:30 am to 16:00 p.m. weekdays. Any person having sufficient interest therein may lodge or post written objections or representations relating thereto with the Municipal Manager, 37 Murchison Street, Private Bag X 6621, Newcastle, 2940 by no later than the 14th December 2015. Any person who fails to lodge written objections or representations in response to this notice by the aforementioned date shall be precluded from further participating in the process with regard to the application.

Contact Person: **Shahil Singh**  
Tel: **034 328 3300**  
Fax: **034 328 3494**  
Email: **Shahil.singh@newcastle.gov.za**

Acting Municipal Manager: **B. E. Msware**  
Newcastle Municipality  
Town Planning  
Private Bag x6621  
Newcastle  
2940

**DE JAGERSDRIFT**  
**DE JAGERSDRIFT BALE**  
**THURSDAY 19 NOVEMBER 2015**  
**AT 11:00 IN AFTERNOON**

**160 Weaners & Feeders.**  
**150 Store & Trades (incl. Ngurus)**  
**30 Slaughter Cattle (C Grade)**  
**5 Beefmaster Breeding Bulls**

**AUCTIONEER'S NOTE:**  
Beefmaster Breeding Bulls are 2 years old & have been tested for fertility & Vibriosis from Naude's Boarding.

**350 CATTLE**

**ENQUIRIES:**  
Bennie Boshoff 034 328 3300  
Tel: 034 328 3494

**CONDITIONS OF SALE:** All goods to be sold at a reserve price and the right exists to bid by or on behalf of the owner or auctioneer unless indicated otherwise. The regulations of the Consumer Protection Act, 2008 is applicable to all goods and services. For more information on protection and regulations, see rules of auction, terms and conditions of sale on www.ebay.com.

**EKB  
GULDIP**

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**APPLICATION IN TERMS OF THE SPATIAL PLANNING AND LAND USE MANAGEMENT REGULATIONS READ WITH THE NEWCASTLE MUNICIPALITY SPATIAL PLANNING AND LAND USE BY-LAW**

Notice is hereby given in terms of the Spatial Planning and Land Use Management Regulations read with the Newcastle Municipality Spatial Planning and Land Use By-law that the Newcastle Municipality is considering a planning application for the following:


- **Rozette Erf 3489 Newcastle no. 2 End Avenue, Nutton Heights from "Single Residential" to "General Residential"** for the purpose of establishing a Guest House

Documentation relating to the above is available for inspection between 07:30 to 16:00, Monday-Friday at Development Planning and Human Settlements Offices (Town Planning Directorate) located at No.50 Harding Street Newcastle Municipality for a period not less than 30 days from 12 November 2015 to 14 December 2015

Any person having sufficient interest herein may lodge written objections or representations relating hereto with the undersigned within 30 days commencing from 12 November 2015. Such can be directed to: **Mr. Siphaphelo Cindi, 034 328 3300.**

Newcastle Municipality, Town Planning  
Private Bag X 6621  
Newcastle  
2940  
siphaphelo.cindi@newcastle.gov.za

Any person who fails to respond to this notice by either submitting comments or representations during the advertising period as specified above will be disqualified to participate further in the application process.

  
**NEWCASTLE MUNICIPALITY**  
Notice No: CS 92/2015

**APPLICATION IN TERMS OF THE SPATIAL PLANNING AND LAND USE MANAGEMENT ACT (2015) (SPLUMA)**  
**SUBDIVISION OF ERF 54 MADADANI SECTION 3 TO FORM THE PROPOSED PORTION A OF ERF 54 MADADANI AND THE REMAINDER OF ERF 54 MADADANI SECTION 3 AND THE ZONING OF THE PROPOSED PORTION A OF ERF 54 MADADANI SECTION 3 INTO WORSHIP.**

Notice is hereby given that it is the intention of the Newcastle Municipality to:

- Subdivide Erf 54 Madadani Section L to form the proposed:
  - 1 Portion a of Erf 54 Madadani Section L,
  - 2 The Remainder of Erf 54 Madadani Section L
- And to zone the proposed portion A of Erf 54 Madadani Section L into "Worship".

The property is located at the corner of M24 Street and the Mad9 Street within Madadani Section L. A copy of the application and its accompanying documents will be lying for inspection at the offices of the SED Development Planning and Human Settlements, No 50 Harding Street, Nedbank Building, Newcastle between 07:30 am to 16:00 p.m. weekdays. Any person having sufficient interest therein may lodge or post written objections or representations relating thereto with the Municipal Manager, 37 Murchison Street, Private Bag X 6621, Newcastle, 2940 by no later than the 14th December 2015. Any person who fails to lodge written objections or representations in response to this notice by the aforementioned date shall be precluded from further participating in the process with regard to the application.

Contact Person: **Shahil Singh**  
Tel: **034 328 3300**  
Fax: **034 328 3494**  
Email: **Shahil.singh@newcastle.gov.za**

Acting Municipal Manager: **B. E. Msware**  
Newcastle Municipality  
Town Planning  
Private Bag x6621  
Newcastle  
2940

**APPLICATION IN TERMS OF THE SPATIAL PLANNING AND LAND USE MANAGEMENT REGULATIONS READ WITH THE NEWCASTLE MUNICIPALITY SPATIAL PLANNING AND LAND USE BY-LAW**

Notice is hereby given the Newcastle Municipality is considering an application in terms of the Spatial Planning and Land Use Management Regulations read with the Newcastle Municipality Spatial Planning and Land Use By-law

The application is for the removal of the restrictive condition 20.2 (a) and (a) stated in the Town Planning Appeals Board Judgement (Appeal No. 3038) for Erf 353 Newcastle, 60 Murchison Street, Central Business District, which reads as follows:

20.2 That the applicant furnish to the Newcastle Municipality a written undertaking in terms of which he -

- agrees to cease operating the petrol filling station on the site from which he, at present carries on such operations; and
- abandons all rights pursuant to which he operates the petrol filling station on such a site

Documentation relating to the above is available for inspection between 07:30 to 16:00, Monday-Friday at Development Planning and Human Settlements Offices (Town Planning Directorate) located at No.50 Harding Street Newcastle Municipality for a period not less than 30 days from 12 November 2015 to 14 December 2015

Any person having sufficient interest herein may lodge written objections or representations relating hereto with the undersigned within 30 days commencing from 12 November 2015. Such can be directed to: **Mr. Siphaphelo Cindi, 034 328 3300.**

Newcastle Municipality, Town Planning  
Private Bag X 6621  
Newcastle  
2940  
siphaphelo.cindi@newcastle.gov.za

Any person who fails to respond to this notice by either submitting comments or representations during the advertising period as specified above will be disqualified to participate further in the application process.

**Annexure C**  
**Objections received**  
**C1: Gildenhuys Malatjie Attorneys**

GILDENHUYS MALATJI  
ATTORNEYS

11 December 2015

OUR REF  
N Dawlal  
01733427

Newcastle Municipality  
Town Planning  
**NEWCASTLE**

DIRECT TEL NO  
(012) 428 8681

**Attention:** Mr. Siphephelo Cindi

DIRECT E-MAIL  
ndawlal@gminc.co.za

DIRECT FAX  
(012) 428 8601

YOUR REF  
Mr. S Cindi

GMI HOUSE  
HARLEQUINS OFFICE PARK  
166 TOTIUS STREET  
GROENKLOOF 0027  
P O BOX 619  
PRETORIA 0001  
DOCEX 4 PRETORIA  
E-MAIL gminc@gminc.co.za  
WEB ADDRESS www.gminc.co.za  
TEL +27 12 428 8600  
FAX +27 12 428 8601

Sir

**NOTICE OF OBJECTION: ERF 353, 60 MURCHISON STREET**

1. We refer to the notification placed in the Newcastle Advertiser of 12 November 2015 pertaining to an "application in terms of the Spatial Planning and Land Use Management Regulations read with the Newcastle Municipality Spatial Planning and Land Use-By-Law."
2. We confirm that we act on behalf of the following objectors herein:
  - 2.1 Lavasco Trading 1002 (Pty) Ltd t/a Engen Wimpy Waterside;
  - 2.2 LMD Africa Forensics (Pty) Ltd t/a Ayliff Garage;
  - 2.3 Move On Up 1074 CC t/a SSS Motors;
  - 2.4 NCL Moolas (Pty) Ltd t/a Newcastle Pitstop;
  - 2.5 Kwikcorp 1 CC t/a Leon Motors; and
  - 2.6 We-Two investments CC t/a Auto City.
3. We enclose herewith our client's notice of objection and annexures thereto.
4. We kindly request, as per our clients' mandate, that all further notifications and communiqué herein be addressed to our offices for the attention of writer hereof.
5. Kindly acknowledge receipt hereof.

Yours faithfully

**GILDENHUYS MALATJI INC**

Per: Ms. Neetu Dawlal

DIRECTORS

HELENE VAN ZYL LL.B.  
THERESA VAN DER BEEK LL.B.  
DEBORAH BEEK LL.B.  
SARAH DE BEEK LL.B.  
VAN OLLSEN LL.B.  
ALEX MANDI LL.B.  
DANIEL BODDIE LL.B.  
MOEN RANDE LL.B.  
FRANÇOISE DE WIT LL.B.  
FRANÇOISE DE WIT LL.B.  
FRANÇOISE DE WIT LL.B.  
FRANÇOISE DE WIT LL.B.  
FRANÇOISE DE WIT LL.B.  
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SENIOR ASSOCIATES

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NEETU DAWLAL LL.B.

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SARAH DE BEEK LL.B.  
VAN OLLSEN LL.B.  
ALEX MANDI LL.B.  
DANIEL BODDIE LL.B.  
MOEN RANDE LL.B.  
FRANÇOISE DE WIT LL.B.  
FRANÇOISE DE WIT LL.B.  
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CONSULTANTS

FRANÇOISE DE WIT LL.B.  
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MANAGERS

FRANÇOISE DE WIT LL.B.  
FRANÇOISE DE WIT LL.B.  
FRANÇOISE DE WIT LL.B.  
FRANÇOISE DE WIT LL.B.  
FRANÇOISE DE WIT LL.B.

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NOTICE OF OBJECTION TO REMOVAL OF RESTRICTIVE CONDITIONS  
(ERF 353, 60 MURCHISON STREET, NEWCASTLE)

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INTRODUCTION

1. This is an objection filed in response to a notification placed in the Newcastle Advertiser dated 12 November 2015 pertaining to an "*application in terms of the Spatial Planning and Land Use Management Regulations read with the Newcastle Municipality Spatial Planning and Land Use By-Law.*" A copy of this notification is attached hereto as Annexure "A".
2. The application pertains to the removal of restrictive conditions imposed in respect of Erf 353, 60 Murchison Street, Newcastle.
3. On 23 May 2006, the Town Planning Appeals Board, as per Annexure "B" dated 23 June 2006, specifically held that the aforementioned site is subject to the conditions that one Mr Rahim Abdool Kader ("Mr Kader") furnishes the Newcastle Municipality with a written undertaking in terms of which he:

*"a) agrees to cease operating the petrol filling station on the site from which he present carries on such operations [i.e. Engen fuel site at 22 Terminus Street]; and*

*b) abandons all rights pursuant to which he operates the petrol filling station on such site.*

*For the purposes of this condition, the date upon which the appellant shall cease to operate his existing petrol filling station and abandons any right to do so in the future shall be the last day of the month during which the new filling station on the appeal site [i.e. Total fuel site at 60 Murchison Street] commences operations. A certificate from the Newcastle Municipality shall specify the date upon which the new filling station on the appeal site commences operation."*



- 2 -

4. On 22 November 2006, the Newcastle Municipality notified Mr Kader of the aforementioned as per Annexure "C". Mr Kader submitted his undertaking and agreed that to the aforementioned conditions as per Annexure "D".
5. The Total site commenced operation on 10 September 2015 however Mr Kader refuses to cease operation of the Engen site despite the conditions imposed and his undertakings to do so. As a result whereof, both the Engen and Total sites are concurrently in operation. There is currently an application by the Second to Sixth objectors pending before the High Court, Pietermaritzburg under case number 14300/2015 in this regard. The Newcastle Municipality has been cited as a Fourth Respondent in this application and was duly served a copy of same by the Sheriff on 28 October 2015. The application was heard by Judge Lopes on 3 December 2015 and parties currently await judgment to be delivered herein.
6. Mr Kader has subsequently and belatedly [as dealt with further hereunder] filed an application for the removal of the aforementioned [self-imposed] conditions.

#### **THE OBJECTORS**

7. The First Objector is Lavasco Trading 1002 (Pty) Ltd v/a Engen Wimpy Waterside, an Engen fuel site situated on the N11.
8. The Second Objector is LMD Africa Forensics (Pty) Ltd v/a Ayliff Garage, a Caltex fuel site situated at 16 Ayliff Street, Newcastle.
9. The Third Objector is Move On Up 1074 CC v/a SSS Motors, a BP fuel site situated at 34 Kirkland Street, Newcastle.
10. The Fourth Objector is NCL Moolas (Pty) Ltd v/a Newcastle Pitstop, an Engen fuel site situated on 68 Allen Street, Newcastle.
11. The Fifth Objector is Kwikcorp 1 CC v/a Leon Motors, a Shell fuel site situated at 73 Allen Street, Newcastle.

12. The Sixth Objector is We-Two investments CC t/a Auto City, a Shell fuel site situated at 15 Murchison Street, Newcastle.
13. All of the objectors are competitors operating in the near proximity of the Engen fuel site (22 Terminus Street) and Total fuel site (60 Murchison Street). The Newcastle Town Planning Scheme was no doubt enacted for, amongst others, the objectors' protection and it is submitted that the objectors have the requisite *locus standi* and interest to file this objection.

**THE APPLICANT: MR RAHIM ADBOOL KADER**

14. Prior to dealing with the specific grounds of objection to the removal of the restrictive conditions herein, it is prudent to highlight the background leading up to this matter and the conduct and web spun by the protagonist, Mr Kader, herein.
15. In this application pending before the Newcastle Municipality, it is uncertain which "persona" of Mr Kader that parties are dealing with as Mr Kader makes uses of two identity numbers which he selects for usage depending on the transaction and parties involved.
16. The first identity number is 480121 5098 05 1. Mr Kader makes use of this identity number in respect of Sagewise 1018 CC t/a Dragon Fuels which is the Total site situated at 60 Murchison Street. This identity number is also used for Kadbro Taxi City CC which appears to be the Engen fuel site situated at 22 Terminus Street. Confirmation of this first identity number is attached hereto as **Annexure "E"**.
17. The second identity number is 480121 5098 08 5. Mr Kader makes use of this identity number in respect of Kadbro Taxi City Service Station CC when he concludes his retail and/or supply agreements with Engen Petroleum Limited. Confirmation of this second identity number is attached hereto as **Annexure "F"**.

18. The two identity numbers, been a difference of the last two digits, is not a typographical error as the confirmations annexed above have been received from the offices of the Companies and Intellectual Property Commission ("CIPC") which system is linked to that of the Department of Home Affairs. This can furthermore not be construed as a typographical error if regard is had to the transactional agreements concluded between Mr Kader and Engen Petroleum Limited [dealt with further hereunder] clearly demonstrating as and when Mr Kader selects which identity number to use.

19. It clearly appears that Mr Kader is illegally making use and/or abusing two separate ID numbers to further his unlawful conduct [as furthermore elaborated hereunder], to the detriment of the objectors, the Newcastle Municipality, the Department of Energy and the public as a whole.

#### THE ENTITIES / CORPORATE VEHICLES INVOLVED

20. Over and above the issue of Mr Kader's two identity numbers, there are various entities involved in this matter which Mr Kader attempts to shift his business and operations between in an attempt to, amongst others, possibly avoid the application of the restrictive conditions herein.

21. Kindly note that section 2A of the Petroleum Products Act 120 of 1977 provides that a person is prohibited from holding a site and retailing petroleum products without having the requisite site and retail licenses.

22. Mr Kader confirms [in the papers filed in the aforementioned Pietermaritzburg, High Court application] that Kadbro Taxi City CC is the holder of a retail license issued by the Department of Energy and is operating an Engen fuel station situated on 22 Terminus Street, Newcastle. Engen Petroleum Limited has since confirmed that is false and even produced a retail license which on face value appears to be fraudulent.

23. The retail license for the fuel site situated at 22 Terminus Street is in the name of Radbro Taxy City CC. The registration number reflected is that of CK902825723 [which is actually the registration number of Kadbro Taxi City CC]. This license was issued on 13 May 2009 however Radbro Taxy City (Pty) Ltd was only registered on 17 September 2015 with registration number 2015/333565/07 in terms whereof Mr Kader's wife, Moonewar Begum Kader, is the sole director.
24. An affidavit filed by Engen Petroleum Limited in regard of these issues are attached hereto as Annexure "G".
25. Mr Kader perjures himself under oath [in papers filed in a different Pretoria, High Court application under case number 95104/15] when he indicates that the issue of Radbro Taxy City is a typographical error whilst a photo of the signage at the Engen site clearly indicates same as Radbro Taxy City. A copy of the "perjured affidavit" and photo of the site is attached as Annexure "H" and Annexure "I" respectively.
26. The photo of the signage clearly accords with the alleged "erroneous" spelling of the retail licence, coupled with the "coincidence" that it is the very same name used by the company registered during September 2015 by Mr Kader's wife.
27. Mr Kader further attempted to confuse Engen Petroleum Limited by positively stating that "Radbro Taxy City" is the holder of a retail licence (whilst that is patently incorrect). He then requests Engen Petroleum Limited to "*send me the new documents (retail dealer agreement) in the above name Radbro Taxy City so that we will not have any more issues*". He further advised Engen that his attorney advised "*...The licence is in the name of Radbro Taxy City and not Kadbro Taxj City, the new owner is Mrs Moonewar Kader.*" A copy of this communiqué is attached as Annexure "J".

28. It is clearly not a mere "typographical error" as alleged by Mr Kader. The "typographical error" is nothing other than another devious attempt by Mr Kader (apparently in cahoots with his wife) to set the scene for an obvious attempt to circumvent the conditions of the special consent use. Radbro Taxi City was employed already in 2009 to lend credence to the scheme.
29. Furthermore, the scheme lends credence then to the letter from Sarlie & Ismail Incorporated Attorneys (Mr Kader's attorneys) attached as Annexure "K" when it stated on 23 September 2015 in a letter in reply to the objectors' attorneys seeking an undertaking that the Engen site would cease trading:
- "We record that our client Rahim Abdul Kader and/or Kadbro Taxi, have ceased to operate the filling station on the site in question. Our client Mr Kader has also now ceased to enjoy any rights in the operations at such site. In the circumstances our client has complied fully with the undertakings given to Newcastle Municipality in 2006, and now regards the matter vis-à-vis him and/or Kadbro Taxi City as closed."*
30. If Mr Kader did not then view himself and/or his entities bound to the undertakings given and the conditions of the special consent use, the question needs to be asked why the scheme was devised and why it is now belatedly been attempted to be removed? The answer is obvious, it is submitted: Mr Kader and his corporate vehicles are doing everything in their power to escape the inevitable, i.e. the closure of one or both of the filling stations.
31. Engen Petroleum Limited did not however buy in on Mr Kader's scheme and Engen have since 24 November 2015 ceased supply to the Engen site and even locked up the pumps as per Annexure "L".
32. It clearly appears that Mr Kader is abusing the corporate entities that he is involved in (apart from using two separate ID numbers) to further his unlawful conduct, to the detriment of the objectors, the Newcastle Municipality, the Department of Energy and the public as a whole.

33. This conduct by Mr Kader (and his obvious perjury) should respectfully not pass unnoticed by the Newcastle Municipality and its Town Planning Department and is deserving of censure.

#### SEYMA INVESTMENTS (PTY) LTD

34. It should further be noted that the site license in respect of the Engen site on 22 Terminus Street has been issued to an entity namely Seyma Investments (Pty) Ltd. A copy of this site license is attached as Annexure "M". Mr Kader is a Director of this company.
35. As far as the objectors are aware, Seyma Investments (Pty) Ltd remains a deregistered company as per Annexure "N". The objectors have not had sight of any potential application for reinstatement despite been verbally notified of same by Mr Kader's attorneys during the application proceedings in the Pietermaritzburg High Court aforementioned.
36. It thus follows in any event that Kadbro Taxi City CC, or any other entity, can in any event not lawfully operate the filling station on 22 Terminus Street as per the Petroleum Products Act 120 of 1977.
37. It is submitted that the public interest is at stake and illegal trading should not be tolerated. Accordingly, the restrictive conditions should stand and be enforced.

#### RESTRICTIVE CONDITIONS

38. On 23 May 2006, Mr Kader's appeal was heard before the Town Planning Appeals Board. At this appeal hearing, Mr Kader was legally represented by Mr C van Wyk.

39. The judgment of the Town Planning Appeals Board (as per Annexure "B") specifically indicated at paragraphs 18 and 19 "furthermore with regard to the merits of the matter the municipality is not opposed and, is indeed sympathetic, to the appellant's application and has no objection in principle to the location of a service station on the appeal site. Subject, therefore, to certain conditions to ensure that the municipality's technical requirements are satisfied and, indeed, to assuage the objectors' fears about overtrading the Board is unanimously of the view that the appeal should be allowed" and "during the hearing of the appeal it was emphasised on behalf of the appellant [i.e. Mr Kader] that, as set out above, the appellant intended to move his existing filling station operations in Terminus Street to the appeal site. In corroboration of this fact, the appellant stated, during the course of the hearing that he would accept, as a condition of the grant of his application for a filling station on the appeal site, a requirement that the existing site in Terminus Street be closed."
40. Accordingly this is a self-imposed condition which Mr Kader now belatedly wants to set aside. It is submitted that Mr Kader was the one who volunteered to make the undertaking [just so that the special consent could be granted] and further undertook to close the Engen site [just so that he can successfully obtain site and retail licenses for the Total site from the Department of Energy]. This cannot now belatedly be set aside to suit, amongst others, Mr Kader's commercial interests.
41. Mr Kader contends in the Pietermaritzburg High Court application that the special consent use conditions are allegedly contractual in nature. Mr Kader places reliance on the decision in *De Vroeg en 'n Ander v Stadsraad van Randburg*<sup>1</sup> in which it was held that a concession by a town council amounted to an offer, the acceptance of which brought about a contractual relationship between the parties. The decision in *De Vroeg* was not followed in *Transvaalse Raad vir die Ontwikkeling van Buite - Stedelike Gebiede v Steyn Uitzicht Beleggings (Edms) Bpk*<sup>2</sup>. The headnote thereof reads as follows:

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<sup>1</sup> 1970 (2) SA 132 (W).

<sup>2</sup> 1977 (3) SA 351 (T).

*"Where a local authority is specially appointed by Ordinance 20 of 1943 (T), and that local authority is responsible for the application of the provisions of the Pretoria Regional Town Planning Scheme, 1 of 1960, proclaimed by the Administrator on 9 Desember 1960, and that local authority gives an owner of property within its jurisdiction the right under clause 16 (c) of the Scheme to use the land for digging and removing sand under the prescribed conditions, then no contractual relationship is created between the parties, but in essence there is an extension of the Scheme in so far as the piece of land is concerned. The rights of the local authority on the owner doing anything in conflict with the provisions of the Scheme are set out in section 40 and the local authority is confined to those rights.*

*The decision in De Vroeg en 'n Ander v Stadsraad van Randburg, 1970 (2) SA 132 (W), not followed."* (own emphasis)

42. It is in any event submitted that the facts of the present matter are distinguishable from the facts in *De Vroeg*. The Newcastle Municipality *qua* the Town Planning Appeals Board did not make any concession or grant any revocable consent in respect of the special consent use. The condition amounted to an extension of the town planning scheme.

43. In *Estate Breet v Peri - Urban Areas Health Board*<sup>3</sup> the Court dealt with conditions imposed by the Administrator in proclaiming a township. Schreiner JA held as follows:

*"To sum up the position as it appears from the foregoing, there is authority and reason for holding that the steps by which a township is established and proceedings can be brought to recover endowment moneys, involve mutual consent between the Administrator and the applicant as to the township conditions, and that the Administrator may be regarded, not inappropriately, as making an offer to the applicant*

<sup>3</sup> 1955 ((3) SA 523 (A) at 531C – D.



*which the latter must accept if a township is to be brought into existence. But there is no authority binding on this Court to the effect that the mutual assent, though it may properly be called an agreement (cf. Williston, Contracts, Revised Ed., para. 2), is a contract for the purposes of the Prescription Act. The Industrial and Commercial Timber and Ruytelaars cases do not establish this.*"

44. It is accordingly submitted that the condition imposed is not contractual nature.
45. Mr Kader having applied for the removal of the condition, which is a clear indication that he regards the condition not as a contractual issue, but as a condition of the special consent.
46. In *BEF (Pty) Ltd v Cape Town Municipality and Others*<sup>4</sup> the following was stated:

*"The purposes to be pursued in the preparation of a scheme suggest to me that a scheme is intended to operate, not in the general public interest, but in the interest of the inhabitants of the area covered by this scheme, or at any rate those inhabitants who would be affected by a particular provision. And by "affected" I do not mean damnified in a financial sense. "Health, safety, order, amenity, convenience and general welfare" are not usually measurable in financial terms. Buildings which do not comply with the scheme may have no financial effect on neighbouring properties, or may even enhance their value, but they nevertheless detract from the amenity of the neighbourhood and, if allowed to proliferate, may change the whole character of the area. This is, of course, a purely subjective judgment, but in my view this is the type of value which the ordinance, and schemes created thereunder, are designed to promote and protect. In my view a person is entitled to take up the attitude that he lives in a particular area in which the scheme provides certain amenities which he would like to*

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<sup>4</sup> 1983 (2) SA 387 (C) at 401B – F.

- 11 -

*see maintained. I also consider that he may take appropriate legal steps to ensure that nobody diminishes those amenities unlawfully. I would not like to assert dogmatically that such a remedy would be available to all persons living in the area covered by a scheme as large as that of Cape Town. In the present case, however, the applicant is an immediate neighbour to the property on which the non - conforming garage was built."*

47. It is furthermore submitted that Mr Kader volunteered the condition and it is difficult to appreciate how a self - imposed condition can be regarded as *ultra vires* and its removal be claimed on such basis. The condition was not imposed on a "need" basis. Such is abundantly clear from the judgment of the Town Planning Appeals Board.
48. Mr Kader submits in his affidavit dated 30 September 2014, as per Annexure "O", that *"the Newcastle Municipality is the organ in the best position to make an informed decision on the prevailing economic conditions in the town and whether the town can accommodate an additional filling station"*. Without derogating from the above, it is submitted that this is not correct. As recently as March 2015 and July 2015 respectively, the Department of Energy have recently rejected licenses in respect of Royal Kelders (Pty) Ltd, Richtol (Pty) Ltd and ABM Motors. Copies of these rejections are attached as Annexure "P1" and Annexure "P2". The Department of Energy would not have rejected such licenses if there was capability/need for the accommodation of an additional filling station.
49. Mr Kader avers that the Town Planning Appeals Board decision was handed long ago in 2006 based on economic circumstances prevailing at the time. However it is clear that Mr Kader only made the undertaking that he did in order the Town Planning Appeal Board to uphold his appeal. When he received this go ahead, he then used this to apply for his site and retail licenses with the Department of Energy for 60 Murchison Street by stating that he will close down the Engen site once the Total site commences.

50. The undertaking used by Mr Kader to cease operation of the Engen was clearly a consideration applied by the Department of Energy in the granting of the licenses for the Total site. In Mr Kader's letter of motivation in his application for the licenses dated 9 March 2009, Mr Kader from the outset represents that the Engen site is "*is to be replaced ... insufficient and very crowded...the taxi rank is dangerous...*" as per Annexure "Q". Now that Mr Kader has obtained his special consent from the Newcastle Municipality and licences from the Department of Energy, he now seeks to apply to set aside the restrictive condition. This is clearly disingenuous and as such this application for removal of the restrictive conditions should be dismissed.
51. It is furthermore submitted that Terminus Street is indeed riddled with numerous taxi violence incidents [as per Mr Kader's version as well]. The specific details of the various incidences can be obtained and/or confirmed with the Road Traffic Inspectorate and its occurrence book listings. As recent as 2 October 2015, a huge fire broke due to taxi violence. This area is extremely volatile and if fire or bullets had to strike one of the fuels pumps, there would be explosion with damages and various lives affected and possibly lost. It would therefore would in any event be in the public's interest for this site to close down and Mr Kader abide by the conditions imposed. Mr Kader himself even confirms in his motivation to the Department of Energy regarding the incidences of taxi violence and that the area is dangerous.
52. Mr Kader submits in his affidavit dated 30 September 2014 (as per Annexure "O") that he "*was compelled to enter into a Transaction Agreement with Engen Petroleum Limited, which agreement will terminate on 31 August 2019*".
53. It is difficult to understand how the assertion to the effect that the Engen site cannot be closed down due to the renewal of the agreement with Engen Petroleum Limited, can in any event be construed as to negate the clear conditions imposed by the Town Planning Appeals Board, and undertaking given by Mr Kader in that regard.

54. It is submitted that Mr Kader was not compelled in any manner. In any event as stated above, Mr Kader was making use of different identity numbers and entities to signing such agreements with Engen Petroleum Limited.
55. Furthermore, Engen Petroleum Limited has since ceased supply to the Engen site and locked up the pumps since 24 November 2015 in light of Mr Kader's apparent fraudulent retail license and voided agreements, as per Annexure "L".
56. Mr Kader's attorneys in the letter dated 23 September 2015 (as per Annexure K) acknowledged the existence and validity of the undertaking given subsequent to the judgment of the Town Planning Appeals Board.
57. It is evident that Mr Kader was clearly of the view that the special consent use conditions would simply disappear if no attempts were made to enforce same. When it proved not to be the case, a flurry of correspondence and applications followed by Mr Kader's (and in the midst of exchanging papers in the Pietermaritzburg High Court application) correspondence to Engen Petroleum Limited seeking to pull the wool over its eyes by alleging that Mr Kader and his entities indeed are not trading unlawfully or in breach of any condition, an attempt by Kader and his wife to move the business over to other entities, the sign board Radbro Taxy City, the false and downright dishonest averment that Kadbro Taxi City CC complied with all terms and conditions imposed (in that it ceased to operate the filling station in question), only to later on find out that both filling stations are operating.
58. The fact that Mr Kader no longer regarded itself bound by the undertaking as far back as 19 April 2012 (when the supplementary heads were filed with the Department of Energy as per Annexure "R") should count against Mr Kader and his entities. Why did Mr Kader only take steps for the removal of the restrictive condition (on his version) during the latter part of 2014? It is evident that this just part of web of schemes cooked up Mr Kader all along to obtain and set up his new fuel site at 60 Murchison Street. Mr Kader sat on his hands and did nothing about this matter, it was only when the Second to Sixth objectors launched the application at Pietermaritzburg High Court then Mr Kader wants to

now set aside his self-imposed condition which is clearly an indication of *mala fides*.

59. It is further interesting to note that nothing was said about the agreements concluded with Engen Petroleum Limited in these heads of argument dated 19 April 2012. The agreements were concluded in 2010 already. It has however now turned out the agreement have not been concluded with Engen Petroleum Limited.
60. Mr Kader is clearly disingenuous when he submits in his letter to the Newcastle Municipality dated 14 September 2015 and then directly to the Mayor on 28 October 2015 (as per Annexure "S1" and Annexure "S2") that *"after we agreed to this condition, it came to our notice that the Department of Energy does not allow a license to be transferred from one site to another site (from 22 Terminus Street to 60 Murchison)"* and *"I had placed this restriction on myself with the appeal board thinking this would make it easier and quicker to setup the new site using the old site paperwork (in essence I had asked that once the new site would trade I would close down the old site)"* [our emphasis].
61. Mr Kader attempts to reason away by [in in so doing contradicts himself] when he mentions in his papers of the application proceedings at Pietermaritzburg High Court that he "understood" that special consent conditions were only binding upon him (Kader) as an individual and not upon either Sagewise 1018 CC and Kadbro Taxi City CC. He then further averred that he "agreed" to sell Kadbro Taxi City's business to his wife. He fails to take the Newcastle Municipality into his confidence about the reason for the failure of this scheme to materialise.
62. In light of the aforementioned, it is submitted the restrictive conditions should stand and not be set aside.

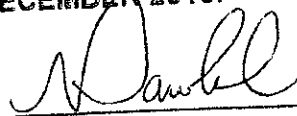
**CONCLUSION**

63. It is submitted that Mr Kader was the one who volunteered to make the undertaking and conditions to the Town Planning Appeals Board and so such these restrictive conditions should stand and not now belatedly be set aside now that the Total site is up and running.

64. The Engen site on 22 Terminus Street in any event does not have valid licenses from the Department of Energy to hold a site and retail petroleum products. This site is thus trading illegally. Engen Petroleum Limited has since 24 November 2015 ceased supply to the Engen site and locked up the pumps. Engen Petroleum Limited has indicated that they considering institution legal proceedings of their own against Mr Kader and his entities.

65. In the premises it is submitted that the application for the restrictive conditions be dismissed.

**SIGNED and DATED at PRETORIA on this 11<sup>TH</sup> day of DECEMBER 2015.**



**GILDENHUYS MALATJI INCORPORATED**

**Attorneys for the OBJECTORS**

**GMI House, Harlequins Office Park**

**164 Totius Street**

**PRETORIA**

**REF: N Dawlal/01733427**

**TEL: (012) 428 8681**

**FAX: (012) 428 8601**

**EMAIL: ndawlal@gminc.co.za**



**APPLICATION IN TERMS OF THE SPATIAL PLANNING AND LAND USE MANAGEMENT REGULATIONS READ WITH THE BY-LAW OF THE MUNICIPALITY**

Notice is hereby given in terms of the Spatial Planning and Land Use Management Regulations read with the Newcastle Municipality Spatial Planning and Land Use By-law that the Newcastle Municipality is considering a planning application for the following:

- **Razons Erf 3289 Newcastle no. 2 End Avenue, Hutton Heights from "Single Residential" to "General Residential 3" for the purpose of establishing a Guest House**
- Documentation relating to the above is available for inspection for inspection between 07:30 to 16:00, Monday-Friday at Herding Street Newcastle Municipal Offices (Town Planning Directorate) located at, No.50 14 December 2015.

Any person having sufficient interest herein may lodge written objections or representations relating hereto with the undersigned within 30 days commencing from 12 November 2015. Such can be directed to: Mr. Siphopheto Cindi, 024 328 3300.

Newcastle Municipality: Town Planning  
Private Bag X 6621  
Newcastle  
2940

[siphopheto.cindi@newcastle.gov.za](mailto:siphopheto.cindi@newcastle.gov.za)

Any person who fails to respond to this notice by either submitting comments or representations during the advertising period as specified above will be disqualified to participate further in the application process.

**APPLICATION IN TERMS OF THE SPATIAL PLANNING AND LAND USE MANAGEMENT REGULATIONS READ WITH THE BY-LAW OF THE MUNICIPALITY**

Notice is hereby given the Newcastle Municipality is considering an application in terms of the Spatial Planning and Land Use Management Regulations read with the Newcastle Municipality Spatial Planning and Land Use By-law.

The application is for the removal of the restrictive condition 20.2 (a) and (a) stated in the Town Planning Appeals Board Judgement (Appeal No. 3038) for Erf 353 Newcastle, 60 Murchison Street, Central Business District, which reads as follows:

- 20.2 That the applicant furnish to the Newcastle Municipality a written undertaking in terms of which he -
- a) agrees to cease operating the petrol filling station on the site from which he at present carries on such operations; and
- b) abandons all rights pursuant to which he operates the petrol filling station on such a site

Documentation relating to the above is available for inspection between 07:30 to 16:00, Monday-Friday at Development Planning and Human Settlements Offices (Town Planning Directorate) located at, No.50 Harding Street Newcastle Municipality for a period not less than 30 days from 12 November 2015 to 14 December 2015. Any person having sufficient interest herein may lodge written objections or representations relating hereto with the undersigned within 30 days commencing from 12 November 2015. Such can be directed to: Mr. Siphopheto Cindi, 024 328 3300.

Newcastle Municipality: Town Planning  
Private Bag X 6621  
Newcastle  
2940

[siphopheto.cindi@newcastle.gov.za](mailto:siphopheto.cindi@newcastle.gov.za)

Any person who fails to respond to this notice by either submitting comments or representations during the advertising period as specified above will be disqualified to participate further in the application process.

Acting Municipal Manager: B. E. Mswane  
Newcastle Municipality  
Town Planning  
Private Bag x6621  
Newcastle  
2940

Tel: 024 328 3300  
Fax: 024 328 3494  
Email: [Shahil.singh@newcastle.gov.za](mailto:Shahil.singh@newcastle.gov.za)

Notice No: CS 922015

**NEWCASTLE MUNICIPALITY**

**APPLICATION IN TERMS OF THE SPATIAL PLANNING AND LAND USE MANAGEMENT REGULATIONS READ WITH THE BY-LAW OF THE MUNICIPALITY**

Notice is hereby given that it is the intention of the Newcastle Municipality to:

- 1. Subdivide Erf 54 Madadent Section L to form the proposed:
- 2. Portion a of Erf 54 Madadent Section L;
- 3. The Remainder of Erf 54 Madadent Section L.

And to zone the proposed portion A of Erf 54 Madadent Section L into "Worship".

The property is located at the corner of M124 Street and the Mad6 Street within Madadent Section L of the SED. Development Planning and Human Settlements will be lying for inspection at the offices Newcastle between 07:30 am to 16:00 p.m. weekdays. Any person having sufficient interest therein may lodge or post written objections or representations relating thereto with the Municipal Manager, 37 Murchison Street, Private Bag X 6621, Newcastle, 2940 by no later than the 14th December 2015. Any person who fails to lodge written objections or representations in response to this notice by the aforementioned date shall be precluded from further participating in the process with regard to the application.

Contact Person: Shahil Singh  
Tel: 024 328 3300  
Fax: 024 328 3494  
Email: [Shahil.singh@newcastle.gov.za](mailto:Shahil.singh@newcastle.gov.za)

Acting Municipal Manager: B. E. Mswane  
Newcastle Municipality  
Town Planning  
Private Bag x6621  
Newcastle  
2940

Notice No: CS 922015

Acting Municipal Manager: B. E. Mswane  
Newcastle Municipality  
Town Planning  
Private Bag x6621  
Newcastle  
2940

Tel: 024 328 3300  
Fax: 024 328 3494  
Email: [Shahil.singh@newcastle.gov.za](mailto:Shahil.singh@newcastle.gov.za)

## TOWN PLANNING APPEALS BOARD

APPEAL NO 3038 : by MR RAHIM

Heard on 23<sup>rd</sup> May 2006 by -

MR D PISTORIUS                      Chairman  
 MR T MTHEMBU  
 MR S MASEKO

APPEARANCES

For Appellant                      :     Mr C van Wyk  
 For Local Authority                :     Mr R Swartz of Newcastle Municipality  
 Objectors                            :     Move On Up CC  
    Murchison Street Motors  
    Leon Motors  
    Auto City  
    Mortimer Toyota  
    BSS Motors  
    Newcastle Pitstop  
    BP Pitstop  
    All objectors are represented by Mr N Singh  
    of Neven Singh & Associates - (not present  
    at hearing)

- 
1. The appeal site is, as set out in the municipality's memorandum, Erf 353 Newcastle which is a "mixed use" property located at the corner of Sutherland and Murchison Streets in the Newcastle CBD. The property is 4 047m<sup>2</sup> in extent. In the words of the municipality's memorandum:

*"The property is predominantly surrounded by developed single residential properties, as well as developed commercial properties.*





*A Game and Pick 'n Pay complex is located opposite the subject property, along Murchison Street. In terms of the motivation from the applicant, the said property forms part of what is known as 'Van Kampen Village', which is a dilapidated housing complex within the Newcastle CBD."*

2. In February 2005 the appellant made application for special consent to develop on the appeal site a service station, including a motor trade shop, industrial shop, service industrial workshop, launderette and a residential building above ground floor level. By virtue of the "mixed use" zoning the service station required special consent from the municipality but the additional uses as proposed are permitted in the mixed use zone.
3. The application for special consent drew objections from nine other service stations all of which were represented by Messrs Neven Singh & Associates and the reasons for their objections were set out in a letter addressed to the applicant dated 8<sup>th</sup> June 2005.
4. The municipality convened a meeting to which both the applicant and the objectors were invited on 7<sup>th</sup> July 2005 but apparently neither the objectors nor the applicant arrived for the meeting and their differences were, accordingly, not resolved.
5. At a meeting dated 16 August 2005 the Executive Committee of the Newcastle Municipality disapproved of the application and at the same time informed the applicant of its rights of appeal to this Board and also advised the applicant to re-lodge the application within a period of three months from the date of receiving notification of the municipality's resolution.

6. The reasons for the municipality's non-approval are stated to be that the application for special consent was submitted to the Planning Department on 24 May 2005, after being advertised on 20 May 2005, and that in terms of section 67bis(4)(a) of the Town Planning Ordinance, 1949 the municipality was obliged to make its decision by 24 July 2005 (i.e. a period of two months). In parentheses, it is refreshing for the Board to note that some local authorities do attempt to abide by the time periods laid down in the Ordinance. By the end of the two month period, the applicant had not yet submitted the requisite title deed and for that reason, together with the fact that the development plan submitted with the application reflected only Phase 1 of the proposed development, the municipality refused the application. That refusal is the basis of this appeal.
7. The appeal was originally set down before the Board on 25<sup>th</sup> April 2006 but two circumstances resulted in its adjournment to 23<sup>rd</sup> May. The first was that one of the Board members was obliged to withdraw at the last minute and the Secretary was unable, within the time available, to find a replacement. Secondly, Messrs Neven Singh & Associates, for the objectors, sought a postponement upon the basis that they were unaware of the appeal date. It is not necessary to investigate that claim having regard to the first circumstance which required the appeal to be adjourned.
8. On 19 May 2006 Messrs Neven Singh & Associates addressed a letter to the Secretary of the Board stating that they were notified of the hearing only on 15 May 2006 and requesting a further postponement. This request was advised to the Chairman telephonically on 22<sup>nd</sup> May and the Chairman instructed the Secretary to advise Messrs Neven Singh & Associates that -

- 8.1 He could not order an adjournment without reference to the other parties to the appeal;
  - 8.2 If the other parties agreed to such an adjournment, it could be granted;
  - 8.3 If Messrs Neven Singh & Associates were unable to obtain the consent of the other parties they should be represented at the appeal and make formal application for the adjournment, thus giving the other parties an opportunity to debate the matter and to present their views.
9. The Secretary advised the offices of Messrs Neven Singh & Associates that the appeal hearing would proceed on 23<sup>rd</sup> May 2006 but no representative from or on behalf of Messrs Neven Singh & Associates was present at the hearing.
10. Despite the absence of any formal application for an adjournment the Board nonetheless requested Mr van Wyk, on behalf of the appellant, and Mr Swartz, on behalf of the municipality, to deal with the request for a postponement as set out from Messrs Neven Singh & Associates dated 19<sup>th</sup> May 2006. The reasons advanced for the postponement were that –
- 10.1 Messrs Neven Singh & Associates were notified of the date of the hearing only on 15 May 2006 giving them one week only to communicate with all the interested parties (said to be ten) and for them to communicate with their company representatives;

- 10.2 One week was insufficient to enable the interested parties and their representatives to make themselves available for the hearing;
- 10.3 Two representatives of the interested parties at least, Mr Mkhwanazi and Mr Singh, had expressed an interest at being present at the hearing but neither was available;
- 10.4 Messrs Neven Singh & Associates were attempting to obtain documents from the Newcastle Municipality regarding a meeting which was held between Mr Singh and members of the council which contained information relevant to the appeal;
- 10.5 Mr Nevendra Singh, himself, was not available.
11. In the first place it is pointed out that the reason for the relatively short notice was that having regard to the previous request for a postponement and bearing in mind that the prejudice suffered by the applicant could best be assuaged by setting the matter down again as soon as possible, the Board and the Secretary were able to utilise the postponement of a further matter which had been set down for 23<sup>rd</sup> May in order to accommodate this appeal.
12. Despite the relatively short notice, it is inconceivable that not one or more of the nine objectors could not have been available. Bearing in mind, also, that all the objections were in exactly the same terms as set out in the letter of objection dated 8<sup>th</sup> June 2005, it would not have been impossible for the objectors to have been represented, and if not by Mr Nevendra Singh himself, then by someone on his behalf (e.g. one of his associates).

13. With regard to the complaint that Mr Singh was attempting to obtain documents from the Newcastle Municipality, it is pointed out that this should have been done prior to 23<sup>rd</sup> April, the original date set for the hearing of the matter.
14. As a practising attorney Mr Nevendra Singh must know that a party to proceedings in which others are involved and who are likely to be prejudiced by an adjournment, cannot expect to enjoy the indulgence for which he has asked by simply writing a letter to the relevant tribunal. Mr Singh should, at least, have instructed a correspondent, or the like, to appear before this Board and to advance fully the reasons why an adjournment is necessary, and as indicated, thereby give the other parties an opportunity to debate the matter and to present their views on the application. By demanding an adjournment purely on the basis of a written letter, the other parties are deprived of those rights.
15. Finally, an adjournment would seriously prejudice the appellant, who has already been obliged to accept one adjournment due to no fault of his own and whose development is being held up unnecessarily.
16. Despite the absence of the objectors and any oral presentation of their objections, the Board considered and required both the appellant and the municipality to comment, if they wished, on the objections as set out in the letter of 8<sup>th</sup> June 2005. It is quite clear, in the first place, that these are "trade objections" from rival service station owners. That, in itself, does not matter, because valid town planning objections are not made less so purely because they emanate from the mouth of a rival. More importantly, however, it is clear from the second, third and fourth paragraphs in the letter of objection that the complaint relates to additional competition and the absence of a need for further service stations in the area. As the Board has had occasion to mention in many previous appeals, need is not a town planning consideration which the

Board takes into account unless, as in the case of the Durban Town Planning Scheme, there is specific provision for an applicant seeking a service station to prove need. To the extent, therefore, that the objections are based on the number of existing service stations, allegations of overtrading and the locations of these service stations to each other, there is no merit in them. The only genuine town planning objection is that raised in the fifth paragraph in the letter of objection. This contends that the area in which it is proposed to establish the new service station is already very congested, and attracts much traffic at peak periods and month ends to the Game and Pick 'n Pay supermarkets with the result that there will be major traffic problems and congestion. This point was put to Mr Swartz, representing the municipality, and he responded by saying that if the municipality had thought it necessary they would have required a traffic count and they had not done so. He therefore, disagreed with the contention that the location of the new service station would cause traffic problems or create traffic hazards.

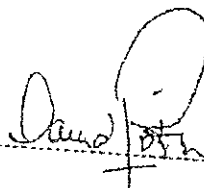
17. More importantly, and as a complete answer to the question of overtrading and need, is the fact that the applicant already owns an existing service station on Terminus Street not far from the appeal site and that such station will be moved from that location to the appeal site when the latter is developed. In short there will be no additional service station in Newcastle.
18. Furthermore with regard to the merits of the matter the municipality is not opposed and, is indeed sympathetic, to the appellant's application and has no objection in principle to the location of a service station on the appeal site. Subject, therefore, to certain conditions to ensure that the municipality's technical requirements are satisfied and, indeed, to assuage the objectors' fears about overtrading the Board is unanimously of the view that the appeal should be allowed.

- 19. During the hearing of the appeal it was emphasized on behalf of the appellant that, as set out above, the appellant intended to move his existing filling station operations in Terminus Street to the appeal site. In corroboration of this fact, the appellant stated, during the course of the hearing that he would accept, as a condition of the grant of his application for a filling station on the appeal site, a requirement that the existing site in Terminus Street be closed
  
- 20. The Board accordingly allows the appeal, and sets aside the decision of the municipality dated 31<sup>st</sup> August 2005 subject to the following conditions:
  - 1. That the appellant provide the Newcastle Municipality with such documents and plans, including plans in respect of the development after the completion of Phase 1 thereof, as the Municipality may reasonably require.
  
  - 2. That the appellant furnish to the Newcastle Municipality a written undertaking in terms of which he -
    - a) agrees to cease operating the petrol filling station on the site from which he at present carries on such operations; and
  
    - b) abandons all rights pursuant to which he operates the petrol filling station on such site.

For the purposes of this condition, the date upon which the appellant shall cease to operate his existing petrol filling station and abandons any right to do so in the future shall be the last day of the month during which the new filling station on the appeal site commences operations. A



certificate from the Newcastle Municipality shall specify the date upon which the new filling station on the appeal site commences operations.

A handwritten signature in black ink, appearing to read 'D. Pistorius', is written over a horizontal dashed line.

D PISTORIUS  
CHAIRMAN

15<sup>th</sup> June 2006

Report  
Need Letter of Support + Budget of Project. No. 02/2006



# NEWCASTLE NATAL

My Verw: TP 13/3/4/1-353  
My Ref:

Munisipaliteit: Privaatsak X6621  
Municipality: Private Bag X6621  
NEWCASTLE  
2940

Navrae: S. Mkhize  
Enquiries:

Tel: (034) 328 7600  
Fax: (034) 312 1570

3171270

22 November 2006

0839560042

e.mail address : [townplanning@newcastle.gov.za](mailto:townplanning@newcastle.gov.za)

Mr. Rahim Abdool Kader  
P.O. Box 1914  
Newcastle  
2940

Dear Sir

**Re: APPLICATION FOR SPECIAL CONSENT TO ERECT A SERVICE STATION, MOTOR TRADE SHOP, INDUSTRIAL SHOP, SERVICE INDUSTRIAL WORKSHOP, LAUNDRETTE AND A RESIDENTIAL BUILDING ABOVE GROUND FLOOR ON ERF 353 NEWCASTLE: APPEAL NUMBER 3038 DATED 23 MAY 2006**

Please be advised that an appeal with regard to the above has been granted on the 23 May 2006 by the Town Planning Appeal Board-Pietermaritzburg. The decision of the Town Planning Appeal Board has also been confirmed on review by the Minister M. Mabuaykhulu in terms of the authority delegated to him per Cabinet Resolution No. 72 of 5 July 1994.

The Town Planning Appeal Board allowed this appeal subject to certain conditions which were required from the appellant and are as follows:

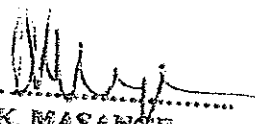
1. In terms of Clause 20.2 (a) Rahim Abdool Kader of Kadbro Taxi Citi agree to fulfill the Clause 20.2 (a) and 20.2 (b) as set out in the Board's judgement and furnish to the Newcastle Municipality a written undertaking in terms of which Mr. R.A. Kader,

- 20.2(a) Agrees to cease operating the petrol filling station on the site from which he at present carries on such operations; and
- 20.2(b) Abandons all rights pursuant to which he operates the petrol filling station on such site.

The date upon which you shall cease to operate on the existing petrol filling station and abandons any right to do so in the future shall be the last day of the month during which the new filling station on the appeal site commences operation. It should be noted that this decision is made in the Town Planning context and does not absolve you from compliance with any relevant provision in terms of the Newcastle Town Planning Scheme as well as in terms of the Town Planning Ordinance (Ord No. 27 of 1949).

A report rescinding Council resolution B584 dated 16 August item B584 folio 17 will be tabled at the Executive Committee with comments of the Town Planning Appeal Board for final consideration.

Attached herewith is a copy of the Town Planning Appeal Board's judgement.

  
 K. MASANCE  
 DIRECTOR: TOWN PLANNING

# RAHIM ABDOOL KADER

P.O. BOX 1914, NEWCASTLE, 2940  
22 TERMINUS STREET, NEWCASTLE  
TEL: 034-3125698 FAX: 034-3125698/ CELL: 0826561515  
IDENTITY NUMBER: 4801215098085

08 November 2006

The Town Planning Department  
NEWCASTLE  
Director : Town Planning  
ATTENTION : MR K MASANGE

APPLICATION FOR SPECIAL CONSENT TO ERECT A SERVICE STATION, MOTOR TRADE SHOP, INDUSTRIAL SHOP, SERVICE INDUSTRIAL WORKSHOP, LAUNDRETTE AND A RESIDENTIAL BUILDING ABOVE GROUND FLOOR ON ERF 353- NEWCASTLE

APPEAL NUMBER 3038 DATED 23<sup>RD</sup> MAY 2006

Dear Sir


Please be informed that an appeal with regard to the above has been granted on 23<sup>rd</sup> May 2006 by the Town Planning Appeal Board – PIETERMARITZBURG. In terms of the Board allowing this appeal, certain conditions were required from the appellant.

In terms of Clause 20.1(a) The plans of the site has been supplied by Pinkie Khune.

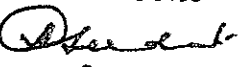
In terms of Clause 20.2(a) I RAHIM ABDOOL KADER of Kadbro Taxi Citi agree to fulfill the Clause 20.2(a) and 20.2(b) as set out.

- 20.2(a) *agree to cease operating the petrol filling station on the site from which he present carries on such operations; and*
- 20.2(b) *abandons all rights pursuant to which he operates the petrol filling station such site*

For the purposes of this condition, the date upon which the appellant shall cease to operate his existing petrol filling station and abandons any right to do so in the future shall be the last day of the month during which the new filling station on the appeal site commences operation. A certificate from the Newcastle Municipality shall specify the date upon which the new filling station on the appeal site commences operation.

Yours faithfully  
  
RA KADER  
KADBRO TAXI CITY

ISMAIL DAWOOD SEEDAT  
COMMISSIONER OF OATHS  
89 Scott Street - ☐ 1004  
Newcastle 2940  
Tel: 034-312 5133

  
15/03/2009

TOWN PLANNING DEPARTMENT

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Person Relationship to  
registered enterprise disclosures

Search Criteria - ID Number : 4801215098051

Person	Roll	Status	Enterprise Name	Registration No	Ent. Type	Ent. Status
KADER, RAHIM	Member	Active	KADBRO TAXI CITY	1990/028257/23	Close Corporation	Deregistration Final
KADER, RAHIM	Member	Active	KADBRO TESTING STATION	1991/030642/23	Close Corporation	In Business
KADER, RAHIM	Director	Active	MONEYLINE 404	1998/004677/07	Private Company	In Business
KADER, RAHIM	Member	Active	AVAX SA 103	2000/043467/23	Close Corporation	AR Final deregistration
ABDOOL	Member	Active	GEODAY INVESTMENTS BRAZIL	1999/049170/23	Close Corporation	AR Final deregistration
KADER, RAHIM	Member	Active	KADBRO INVESTMENTS	1992/006102/23	Close Corporation	In Business
ABDOOL	Member	Active	SAGE WISE 1018	2003/04085/23	Close Corporation	In Business
KADER, RAHIM	Member	Active	WILD BREAK 1148	2002/022722/23	Close Corporation	Deregistration Final
ABDOOL	Member	Resigned				

Disclosure Reference number: 32681538

Person Relationship to  
registered enterprise disclosures  
Search Criteria - ID Number : 2801215098083

Person	Roll	Status	Enterprise Name	Registration No	Ent. Type	Ent. Status
KADER, RAHIM ABDOOL Disclosure Reference number: 32681563	Member	Active	KADBRO TAXI CITY SERVICE STATION	2009/193267/23	Close Corporation	In Business

IN THE HIGH COURT OF SOUTH AFRICA  
KWAZULU-NATAL DIVISION, PIETERMARITZBURG

In the matter between :-

CASE NO : 14300/2015

MOVE ON UP 1074 CC <i>vs</i> SSS MOTORS	FIRST APPLICANT
KWIKCORP 1 CC <i>vs</i> LEON MOTORS	SECOND APPLICANT
NCL MOOLA'S (PTY) LTD <i>vs</i> NEWCASTLE PITSTOP	THIRD APPLICANT
WE-TWO INVESTMENTS CC <i>vs</i> AUTO CITY	FOURTH APPLICANT
LMD AFRICA FORENSICS (PTY) LTD	FIFTH APPLICANT

and


SAGEWISE 1018 CC <i>vs</i> DRAGON FUELS	FIRST RESPONDENT
KADBRO TAXI CITY CC	SECOND RESPONDENT
SEYMA INVESTMENTS (PTY) LTD	THIRD RESPONDENT
NEWCASTLE LOCAL MUNICIPALITY	FOURTH RESPONDENT
CONTROLLER OF PETROLEUM PRODUCTS	FIFTH RESPONDENT
TOTAL SOUTH AFRICA (PTY) LTD	SIXTH RESPONDENT
ENGEN PETROLEUM LIMITED	SEVENTH RESPONDENT

---

SEVENTH RESPONDENT'S ANSWERING AFFIDAVIT

---

1



I the undersigned,

PRISCILLA DEVI MAHARAJ

do hereby make oath and state that :-


1.

I am :-

- 1.1 an adult female, the deponent hereto and the facts deposed to by me herein are true and correct and are within my personal knowledge, save where the context indicates the contrary in which event they are to the best of my belief, both true and correct;
- 1.2 a non-practicing Attorney of this Honourable Court, employed by the Seventh Respondent, who for purposes of convenience I shall refer to as Engen, in the capacity of a Legal Advisor; and,
- 1.3 authorised to represent Engen in these proceedings.

2.

After having considered the Application filed by the Applicants, the affidavit deposed to by RAHIM ABDOOL KADER (Kader) on behalf of the First, Second and Third Respondents as well as certain salient facts that neither the Applicants

2  
 A



nor remaining Respondents have placed before the Court, Engen has elected neither to oppose nor support the relief being sought. It has accordingly not delivered a Notice of Opposition and delivers this affidavit solely for the purposes of placing the aforementioned facts before this Honourable Court in accordance with its civil duties to do so.

### **THE KADBRO & RADBRO IDENTITIES**

#### **3.**

Kader is the common controlling mind, in the capacities stated hereunder, of the following corporate entities :-

- 3.1 qua Sole Director of RADBRO TAXY CITY (PTY) LTD, a private company that was registered on 17 September 2015 under registration number 2015/333565/07;
- 3.2 qua Sole Member of KADBRO TAXI CITY SERVICE STATION CC, a Close Corporation that was registered on 16 October 2009 under registration number CK2009/193287/23; and,
- 3.3 qua a Member (together with two others) of KADBRO TAXI CITY CC, a Close Corporation that was registered on 05 May 1990 under registration number CK1990/028257/23.



4.

In support of the foregoing I refer this Honourable Court to annexures PDM1 to PDM3 hereto, being enterprise reports that I obtained from the Commissioner of Companies and Intellectual Property Commission, through its e-services utility available on its website.

5.

The phonetic similarities in the names of the above entities, whether deliberately intended or not, easily leads to confusion and to avoid confusion I will refer to the aforementioned entities as RADBRO, KADBRO SERVICE STATION and KADBRO CITY respectively.

6.

On 13 May 2009 the Fifth Respondent issued the Third Respondent with a Site Licence, a copy of which is annexed hereto marked PDM4. Also on 13 May 2009, the Fifth Respondent issued a Retail Licence to KADBRO CITY, a copy of which is annexed hereto marked PDM5. Although the name RADBRO appears on PDM5, the licensee can only be KADBRO CITY because its registration number appears on the licence (albeit in the previously used format) and RADBRO did not exist at that time, it having only come into existence during 2015. How its name appeared on PDM5 six years before it was incorporated is a matter that only Kader can explain. Likewise nothing in the Retail Licence can possibly relate to KADBRO SERVICE STATION because it too was not



incorporated at the time of issue of the Retail Licence.

#### **DEREGISTRATION OF THE RETAIL LICENCE HOLDER**

7.

KADBRO CITY was finally deregistered on 22 JUNE 2009. In this regard I refer to annexure PDM3 hereto, which endorses that fact and to annexure PDM6, a historical information report in respect of KADBRO CITY that I obtained from the records of CIPC through the internet utility [www.sacompany.co.za](http://www.sacompany.co.za).

8.

The consequences of final deregistration are trite, KADBRO CITY's existence came to an end on 22 June 2009, ownership of its assets vested in the State *bona vacantia* and its contractual rights and obligations terminated.



9.

It is inconceivable that KADER is not aware of this fact and perhaps explains the reasons why he incorporated KADBRO SERVICE STATION four months later with a confusingly similar name.

#### **NO LICENCED RETAILER**

10.

It is KADBRO SERVICE STATION that now conducts the fuel retail business without the requisite Retail Licence in violaton of the provisions of section

5  
 

2A(1)(d) of the Petroleum Products Act, 1977 (the PPA).

11.

Engen only became aware of this fact during September 2015 on account of the Applicant's Attorneys having addressed a letter to it regarding this Application.

12.

It is clear from Kader's answer, appearing at paragraph 55 of his affidavit that he is attempting to pass-off KADBRO SERVICE STATION as being KADBRO CITY, having contended that he is the Sole Member, a fact that applies to the former but not the latter entity.

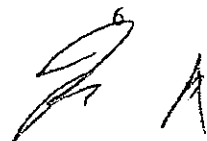
13.

His generic answer to the specific averments made by the Applicants at paragraph 8 draws attention to itself and underscores the obvious attempt to pass-off the one entity for the other.

#### **ENGEN AGREEMENTS**

14.

During November and December 2010 Engen concluded 4 agreements relating to the site and fuel retail business conducted from the site, copies of which are annexed hereto, marked annexures PDM7 to PDM10.



15.

After having considered those agreements in the light of this Application it is apparent to Engen that Kader:-

15.1 misrepresented that the retail licence holder, identified by name, was contracting with Engen when this was legally impossible because it was deregistered; and,

15.2 was aware of this fact and therefore used the registration number of KADBRO SERVICE STATION.

**KNOWLEDGE**

16.

Kader was at all material times aware of the foregoing.

17.

On 11 September 2015, as a result of receiving correspondence from the Applicants' Attorneys, PHILANI SITHEBE addressed an email to Kader requesting a meeting, to be held on 22 September 2015. In that email he recorded that Engen had not consented to the 'closure' of KADBRO CITY for the purposes of allowing the First Respondent to obtain the requisite licences from the Fifth Respondent.

Handwritten signature and initials, possibly 'S A', located at the bottom right of the page.

18.

Kader refused to reply to that email which resulted in Engen repeating its call for a meeting on 14 September 2015.

19.

On 18 September 2015 Kader addressed a reply to Engen wherein he :-


- 19.1 declined to meet with Engen, due to the requested date coinciding with Eid-du Adha;
- 19.2 alerted Engen to the problem regarding the retail licence in a manner that conveyed his full appreciation that the company that was retailing fuels, did not possess a retail licence; and,
- 19.3 requested that Engen should have the agreements prepared in the name of RADBRO, for signature.

20.

A copy of the email thread evidencing the foregoing is annexed hereto marked PDM11.

21.

To the extent that annexures PDM7 to PDM10 were concluded as a result of

 8  
K

misrepresentation or mistake Engen is entitled to cancel them or they are void. Engen is considering its legal position with a view to bringing appropriate legal proceedings.

22.

In the meantime Engen has stopped supplying fuel to the site so as to end its non-compliance with the provisions of Section 2A(6) of the PPA that was caused solely by Kader's misrepresentations.

*R. Kader*  
DEPONENT

The Deponent has acknowledged that she knows and understands the contents of this affidavit, which was signed and sworn to before me at DURBAN on this 23<sup>rd</sup> day of NOVEMBER 2015, the regulations contained in Government Gazette Notices Nos. R1258 of 21 July 1992 and R1648 of 16 August 1997 having been complied with.

*[Signature]*  
COMMISSIONER OF OATHS

JASON DAVID DOIG  
COMMISSIONER OF OATHS  
LEGAL ADVISOR TO  
BUSINESS PARTNERS LIMITED  
23 JAN HOFMEYR ROAD, WESTVILLE 3630  
EX OFFICIO: LEGAL OFFICER DURBAN

*Admitted attorney.*

*[Signature]*  
9

PDM1

Certificate issued by the Commissioner of Companies & Intellectual Property Commission on Thursday, September 17, 2015 at 12:29

COR14.3: Registration Certificate

Company Name: RABRO TAXY CITY  
Registration Number: 170812815

ENTERPRISE INFORMATION

Registration Number: 170812815  
Company Name: RABRO TAXY CITY  
Registration Date: 17/09/2015  
Business Start Date: 17/09/2015  
Company Type: Private Company  
Company Status: In Business  
Company Form: Factory  
PO Box: 0212864161  
Address: POSTAL ADDRESS

POSTAL ADDRESS  
PO BOX 1814  
NEWCASTLE  
NEWCASTLE  
KWA-ZULU NATAL  
2840

ADDRESS OF REGISTERED OFFICE  
22 JERMINUS STREET  
NEWCASTLE  
NEWCASTLE  
KWA-ZULU NATAL  
2840

ACTIVE MEMBERS / DIRECTORS

Surname and First Names	Type	ID Number / Date of Birth	Appoint Date	Address
...	Director	...	...	...

Page 1 of 1

17/09/2015  
Newcastle Office  
17/09/2015  
5:11:00 PM

17/09/2015  
17/09/2015  
17/09/2015  
05:01

Page: 256  
Date: 17/09/2015  
Company Name: RABRO TAXY CITY  
Company Registration Number: 170812815  
Date of Issue: 17/09/2015



Handwritten signature or initials.



ENTERPRISE NAME SEARCH

ENTERPRISE NUMBER ENQUIRY

Enterprise Number  
2009 193287 23

PDM2

Enterprise Number 2009 / 193287 / 23  
Enterprise Name KADBRO TAXI CITY SERVICE STATION  
Enterprise Type Close Corporation  
Enterprise Status In Business  
Registration Date 2008/10/16

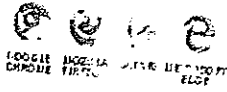
**PHYSICAL ADDRESS:**  
81 HARDING STREET  
NEWCASTLE

**POSTAL ADDRESS:**  
PO BOX 1814  
NEWCASTLE

2840

2840

PRINTED REPORT



You are using: Chrome 31.0

480121 XXXX 08 X

RAHIM ABDOOL

KADER

Member

Active

ENTERPRISE NAME SEARCH

ENTERPRISE NUMBER ENQUIRY

Enterprise Number  
1990 028257 23

PDM3

Enterprise Number 1990 / 028257 / 23  
Enterprise Name KADBRO TAXI CITY  
Enterprise Type Close Corporation  
Enterprise Status Deregistration Final  
Registration Date 1990/09/05

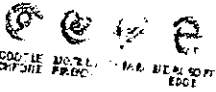
PHYSICAL ADDRESS:  
21 SCOTT STREET  
NEWCASTLE

POSTAL ADDRESS:  
P O BOX 176  
NEWCASTLE

2840

2940

SUPPORTED Browsers:



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490609 XXXX 08 X	RASHIED ABDOOL KADER	GAFFOOR	Member	Active
460121 XXXX 08 X	RAHM	KADER	Member	Active
600614 XXXX 08 X	YUNUS ABDOOL	KADER	Member	Active



the dme  
Department  
Minerals and Energy  
REPUBLIC OF SOUTH AFRICA

PDM4  
LPM 101

SITE LICENCE CERTIFICATE

THIS IS TO CERTIFY THAT  
SEYMA INVESTMENTS (PTY) LTD

ID/REGISTRATION NUMBER  
620484607

LICENCE NUMBER  
S/2009/0778

Is a Site Licence holder in terms of the  
Petroleum Products Act, 1977 (Act No. 120 of 1977)

LICENSED PETROLEUM PRODUCTS  
LPG USED FOR THE PROPULSION OF VEHICLES, PETROL, DIESEL

ADDRESS  
257  
22 TERMINUS STREET  
NEWCASTLE  
2940

13 May 2009  
Date of issue

Control of Petroleum Products  
007907

(Please see conditions of licence on reverse side)



the dme  
Department:  
Minerals and Energy  
REPUBLIC OF SOUTH AFRICA

DP/1/11

PDMS

RETAIL LICENCE CERTIFICATE

THIS IS TO CERTIFY THAT  
RADBRO TAXY CITY CC

ID/REGISTRATION NUMBER  
CK902825723

LICENCE NUMBER  
R/2009/0778

Is a Retail Licence holder in terms of the  
Petroleum Products Act, 1977 (Act No. 120 of 1977)

LICENSED PETROLEUM PRODUCTS  
LPG USED FOR THE PROPULSION OF VEHICLES, PETROL, DIESEL

ADDRESS  
257  
22 TERMINUS STREET  
NEWCASTLE  
2940

13 May 2009  
Date of Issue

Controller of Petroleum Products

007908

(Please see conditions of licence on reverse side)

Company History - KADBRO TAXI CITY

Historical Information for KADBRO TAXI CITY

PDM6

Date of Change	05/09/1990
Type of Change	Name Change
Value	
Company Status	In Business
Company Previous Status	Provisional Liquidation
Company Type	
Company Previous Type	Not Available
Effective Date of Change	05/09/1990

\*\*\* Next Result \*\*\*

Date of Change	02/10/2000
Type of Change	Category Change
Value	
Company Status	In Business
Company Previous Status	
Company Type	Close Corporation
Company Previous Type	
Effective Date of Change	19/09/2000

\*\*\* Next Result \*\*\*

Date of Change	02/10/2000
Type of Change	Category Change
Value	
Company Status	In Business
Company Previous Status	
Company Type	Close Corporation
Company Previous Type	
Effective Date of Change	19/09/2000

\*\*\* Next Result \*\*\*

Date of Change	02/10/2000
Type of Change	Registered Address Change
Value	
Company Status	In Business
Company Previous Status	
Company Type	Close Corporation
Company Previous Type	

Effective Date of Change 19/09/2000

\*\*\* Next Result \*\*\*

Date of Change	02/10/2000
Type of Change	Postal Address Change
Value	
Company Status	In Business
Company Previous Status	
Company Type	Close Corporation
Company Previous Type	
Effective Date of Change	19/09/2000

\*\*\* Next Result \*\*\*

Date of Change	22/06/2009
Type of Change	Final Deregistration of CC/CO
Value	
Company Status	Deregistration Final
Company Previous Status	
Company Type	Close Corporation
Company Previous Type	
Effective Date of Change	22/06/2009

\*\*\* Next Result \*\*\*

Date of Change	28/01/2009
Type of Change	In Deregistration
Value	
Company Status	Deregistration Process
Company Previous Status	
Company Type	Close Corporation
Company Previous Type	
Effective Date of Change	28/01/2009

Back

PDM7

TRANSACTION AGREEMENT

Between:

**ENGEN PETROLEUM LIMITED**  
(Registration No. 1989/003754/06)  
represented herein by **Michael Edwards**  
he being duly authorised hereto  
(hereinafter referred to as "ENGEN")

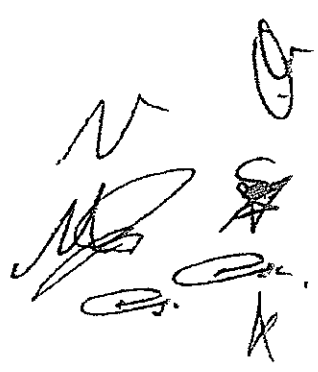
and

**SEYMA INVESTMENTS (PTY) LTD**  
(Registration No. 62/04846/07)  
represented herein by **Rahim Abdool Kader**  
they being duly authorised hereto  
(hereinafter referred to as "SEYMA")

And

**KADBRO TAXI CITY CC**  
(Registration No. 2009/193287/23)  
represented herein by **Rahim Abdool Kader**  
they being duly authorised hereto  
(hereinafter referred to as "KTC")

WHEREAS



1. SEYMA is the registered owner of the immovable property described as LOT 257, Newcastle in extent one acre ("the PROPERTY").
2. ENGEN entered into a retail dealer agreement ("RDA") with KTC in respect of the service station on the PROPERTY.
3. This RDA will terminate in approximately 20 years.
4. ENGEN, KTC and SEYMA hereby agree to enter into new agreements in terms of which an RDA, tripartite operating agreement and suretyships are concluded between the parties. The current retail dealer agreement is hereby cancelled and simultaneously a new retail dealer agreement is entered into between ENGEN and SEYMA, and a tripartite operating agreement entered into between all three parties. The remaining agreements pertaining to the servitude and bond remain intact and valid between the parties. ENGEN, SEYMA, and KTC wish to record, in writing, the terms and conditions of their agreement.

**NOW THEREFORE IT IS AGREED:**

1.

**CONFIRMATION OF PREAMBLES**

- 1.1. The parties confirm the contents of the preambles hereto.
- 1.2. The parties agree that the preambles hereto shall be deemed to form part of this Agreement.

.2.

**RETAIL DEALER AGREEMENT:**

Handwritten signatures of the parties involved in the agreement, including ENGEN, SEYMA, and KTC, along with a circular stamp or mark.



2.1 ENGEN and SEYMA hereby conclude a Retail Dealer Agreement ("RDA") relating to the business, and in the form of that annexed hereto and marked "A", which agreement will commence with effect from 1 September 2009 and will continue for a total period of ten years, comprising an initial period of five years and one renewal period of five years.

2.2 This RDA shall be deemed to be renewed for the renewal periods referred to in 2.1, unless Engen shall have given written notice to the dealer of Engen's intention not to renew this agreement, in which event it shall not be renewed for that renewal period.

2.2 The discount in arrears payable by ENGEN to SEYMA is as follows:

2.2.1 Four cents per litre on petrol and diesel sold and delivered by ENGEN to SEYMA for the initial period of five years ie from year 1 to year 5 of the RDA;

2.2.2 Five cents per litre on petrol and diesel sold and delivered by ENGEN to SEYMA for the renewal period ie from year 6 to year 10 of the RDA;

3.

EQUIPMENT:

3.1 SEYMA and KTC hereby agree and acknowledge that, at all times, ENGEN shall remain the owner of such pumps, tanks and signage currently installed, and if any others are installed by ENGEN on the PROPERTY.

3.2 On termination of the RDA for whatever reason, ENGEN shall be entitled to remove such pumps, tanks and signage provided that the cost of such removal shall be borne by ENGEN.

4.

*[Handwritten signatures and initials]*

TRIPARTITE OPERATING AGREEMENT:

4

SEYMAI has sub-let the operation of the service station to KTC. For this purpose, ENGEN, SEYMA and KTC enter into a tripartite operating agreement in the form annexed hereto marked "B".

5.

COSTS:

ENGEN and SEYMA and KTC shall each pay their own costs in respect of the negotiation and preparation of this agreement and the costs incidental thereto.

6.

DOMICILIUM AND NOTICES:

9.1 The following addresses shall constitute the *Domicilium Citandi et Executandi* of each of the parties:


- 9.1.1 ENGEN at Engen Court, Thibault Square, Cape Town;
- 9.1.2 LHARI at 21-25 John Ross Highway, Eshowe, 3815;
- 9.1.3 RMJ at 21-25 John Ross Highway, Eshowe, 3815;

DATED at Johannesburg this 11th day of December 2010.

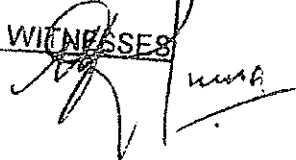

AS WITNESSES:

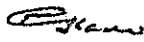
Handwritten signatures of witnesses, including a large signature at the top and several smaller ones below, some with initials.

1.   
 2. 

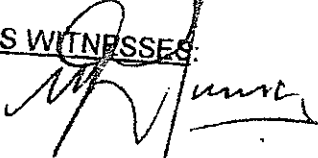

  
 For and on behalf of ENGEN  
 PETROLEUM LIMITED


DATED at Newcastle this 16<sup>th</sup> day of November 2010.

AS WITNESSES:  
 1.   
 2. 

  
 RAHIM ABDOOL KADER  
 For and on behalf of SEYMA  
 INVESTMENTS PTY LTD

DATED at Newcastle this 16<sup>th</sup> day of November 2010.



AS WITNESSES:  
 1.   
 2. 

  
 RAHIM ABDOOL KADER  
 For and on behalf of KADBRO TAXI  
 CITY

**SCHEDULE OF ANNEXURES**

Annexure "A"- Retail Dealer Agreement

Annexure "B"- Third Party Operator Agreement

Retail Dealer Agreement

PDM8

PART I - General Information

- 1. THE DEALER: SEYMA INVESTMENTS (PTY) LTD, Registration No. 62/04846/07.
- 2. THE PREMISES: LOT 257, Newcastle
- 3. ENGEN SITE NUMBER: 5MAL
- 4. COMMENCEMENT DATE: 1 September 2009
- 5. DURATION:
  - 5.1. Initial Period in years Five
  - 5.2. First Renewal Period in years Five
  - 5.3. Second Renewal Period in years n/a
  - 5.4. Third Renewal Period in years n/a
  - 5.5. Additional Renewal Period (s) (if any) n/a
- 6. NOMINATED OPERATOR: Rahim Abdool Kader ID 4801215098085
- 7. PROPERTY RIGHTS:
  - 7.1. Ownership of the Premises: Seyma Investments Pty Ltd Registration No. 62/04846/07
  - 7.2. Nature of Dealer's right of Occupancy: n/a  
EG "lessee" "owner" or describe nature of right
  - 7.3. Initial Period of Dealer's Lease (if Lessee) n/a
  - 7.4. Renewal rights of dealer if any (if Lessee) n/a
- 8. REBATES
  - 8.1. Subject to the provisions of clauses 1 and 7 of Part II, Engen shall allow <sup>Kader Tavi CC</sup> ~~the Dealer~~ a rebate on the price of Engen's brand of petrol and diesel sold by Engen to the Dealer under this agreement in each Accounting Month in accordance with the following criteria:
    - (a) Four cents per litre on petrol and diesel sold and delivered by ENGEN to dealer for the initial period of five years ie from year 1 to year 5 of the RDA;
    - (b) Five cents per litre on petrol and diesel sold and delivered by ENGEN to dealer for the renewal period ie from year 6 to year 10 of the RDA;

*[Handwritten signature]*

9. EQUIPMENT RENTAL  
For the purposes of clause 21.3 of Part II the Basic Equipment Rental shall be a sum of R7000,00 per month.

PART II - Terms and Conditions of Agreement

1. INTERPRETATION AND APPLICATION

*[Handwritten signatures and initials]*

- 1.1. Engen and the Dealer hereby agree upon the terms and conditions set out in Parts I and II of this document with respect to the conduct of the Business on the Premises.
- 1.2. Unless otherwise stated, all clause references are to this Part II.
- 1.3. In this agreement, unless the context indicates otherwise,
- (a) "Accounting Month" shall mean a period designated by Engen as such in its business generally, immediately following the preceding Accounting Month, such that one and only one Accounting Month shall commence within any particular Calendar Month;
  - (b) "the Act" shall mean the Petroleum Products Act, No 120 of 1977 (as amended) inclusive of regulations promulgated thereunder, as in force from time to time;
  - (c) "Automotive Fuels" shall mean leaded and unleaded petrol, automotive diesel oil, liquefied petroleum gas, any mixture of petroleum products and chemicals used as a fuel for motor vehicles and any substitute for liquid fuels in use at the beginning of the millenium, such as electricity, hydrogen cells or the like;
  - (d) "the Business" shall mean shall mean the business activities of the Dealer on the Premises consisting primarily of an automotive fuel filling business and with the agreement of Engen, as contemplated in sub-clause 4.1, may include other activities such as a convenience store, restaurant, bakery, fast food, facility and a car-wash;
  - (e) "Calendar Month" shall mean one of the twelve periods into which the year is divided according to the calendar (for example January, February, etc.);
  - (f) "the Controller" shall mean the Controller of Petroleum Products under the Act;
  - (g) "Equipment" shall mean the equipment leased by Engen to the Dealer in terms of clause 21, or a specified part thereof as may be indicated by the context in which it is used;
  - (h) "Initial Period" shall mean the initial period of this agreement as detailed in Part I;
  - (i) "Premises" shall mean the premises described in Part I;
  - (j) "Processing" in relation to any quantity of petrol sold and delivered to, and paid for by, the Dealer shall mean completion of the recording of that transaction by Engen in its accounting records, regardless of any lapse of time since sale, delivery or payment, and "Process" and other cognate expressions shall bear a corresponding meaning: Provided that no quantity of such petrol shall be considered to have been Processed during the Accounting Month which includes the "Commencement Date" specified in clause 4 of Part I, unless delivered to and paid for by the Dealer on or after the said Commencement Date;
  - (k) "Related Agreement" shall mean any agreement to which Engen and the Dealer are parties relating to the Business, or the Premises including the agreement (if any) providing for the conclusion of this agreement and generally referred to by Engen as a "Transaction Agreement" and any lease or other agreement relating to the Premises or the Business, including any agreement for the conduct of any convenience store, restaurant, bakery, fast food outlet, car wash, automatic teller machine or other facility on the Premises and any mortgage bond, servitude or other deed registered over the Property in favour of Engen;
  - (l) "Relevant Volume" in respect of any Accounting Month shall mean the quantity of Engen's brand of petrol –
    - (i) sold and delivered by Engen to the Dealer for resale to the public by the Dealer at the Premises in the Business;
    - (ii) paid for by the Dealer; and
    - (iii) Processed during that Accounting Month.

- (m) "Renewal Period" shall mean any of the renewal periods referred to in Part I and "Period" shall mean either the Initial Period, or a Renewal Period;
- (n) "Retail Licence" shall mean the licence defined by the Act as such;
- (o) "Site Licence" shall mean the licence defined by the Act as such;

2. PREAMBLE

2.1. The Dealer acknowledges that

- (a) the Business is or will be closely identified with Engen, through the use by the Dealer of Engen's trademarks, brand names, logos, corporate image, and the sale of Engen's products;
- (b) the image of the Business will or may affect the image and the business of Engen and its network of service stations and convenience stores; and
- (c) Engen will contribute substantially to the development of the Business in consequence of,
  - (i) the use of its assets referred to in paragraph 2.1(a);
  - (ii) the advertising and promotion of its brands; and
  - (iii) the use of its signage and equipment.

2.2. In consequence of the factors referred to in sub-clause 2.1 and the rights of Engen under this agreement, the Dealer accepts that Engen has a material interest in, the manner in which the Business is conducted, the maintenance of proper operating standards on the Premises and the continuity of the Companies relationship with the Business in the event of the alienation of the Business or the Premises.

3. COMMENCEMENT AND DURATION

3.1. This Agreement shall, subject to it having been signed by Engen and the Dealer, commence (or be treated as having commenced) on the "Commencement Date" referred to in Part I, and shall, subject to the other provisions of this Agreement and those of law, remain in force for the initial period stated in Part I. Should no specific date be stated in Part I -

- (a) this agreement shall enter into force at termination of the subsisting retail dealer agreement between the parties (should one exist) or, failing any such subsisting agreement, subject to paragraph 3.1(b), at the time determined as the commencement time for this agreement by notice thereof given by Engen to the Dealer;
- (b) should the service station buildings at the Premises not be complete and ready for occupation by the Dealer, Engen shall not unreasonably determine the commencement time pursuant to paragraph 3.1(a) otherwise than as being the time at which the Premises are in its reasonable and bona fide opinion so complete and ready.

3.2. This agreement shall be deemed to be renewed for each of the Renewal Periods referred to in Part I, unless Engen shall have given written notice to the dealer of Engen's intention not to renew this agreement for any specific Renewal Period, in which event it shall not be renewed for that Renewal Period and for each of the subsequent Renewal Periods if any.

3.3. Notwithstanding the foregoing provisions of this clause 3, Engen may at any time terminate this agreement by written notice of not less than 12 (twelve) months to the Dealer.

4. THE BUSINESS

4.1. The Dealer shall at all times during the currency of this Agreement conduct at the Premises the business of an automotive fuel filling station in which the Dealer shall have available for sale and shall promote, to the greatest extent reasonably possible, the sale of the products of Engen, its subsidiaries and associated companies.

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- 4.2. The Dealer shall conduct such additional business activities on the Premises as Engen may agree with the Dealer, including (but not limited to) a convenience store, restaurant, fast food outlet, automatic bank teller, bakery, outlet and car wash.
- 4.3. The Dealer may carry on, as part of the Business, the activities of a motor garage, but may not engage in any other activity, including but not limited to the buying, selling, storage or display of new or second hand motor vehicles, without the prior written consent of Engen.
- 4.4. The Dealer shall not remove the Business or any portion thereof from the Premises or alter the name of the Business without the prior written consent of Engen.
- 4.5. The Dealer shall operate and take part, as and when so requested by Engen such systems as Engen may reasonably prescribe from time to time, such as, by way of example, and without limiting the scope of the foregoing, Extra-Net and the e-Fuel systems.
- 4.6. If reasonably required by Engen the Dealer shall participate in any banking or information technology arrangement or system which is widely used by service station businesses and which facilitates the conduct of the Business or the payment for automotive fuels.

#### 5. EXCLUSIVITY

Subject to clause 13, the Dealer shall purchase exclusively from Engen, or Engen's nominee appointed in writing, the Dealer's entire requirements of Automotive Fuels for resale from the Premises and shall not directly or indirectly store on or sell or distribute from the Premises or through the Business any Automotive Fuel whatsoever other than that purchased from Engen or its nominee.

#### 6. SUPPLY OF AUTOMOTIVE FUEL

- 6.1. Engen shall supply or cause to be supplied all products sold to the Dealer at the applicable wholesale selling price ruling at the time of delivery, and for the place of delivery: Provided that, if Engen does not deal in any type of fuel this agreement shall not be construed as obliging Engen to supply same and the Dealer shall not deal therein in the course of the Business. Engen shall determine the brands of Automotive Fuels to be marketed by the Business.
- 6.2. The Dealer shall endeavour to order, and Engen shall endeavour to supply, Automotive Fuel in quantities not less than the minimum order quantity as reasonably prescribed by Engen from time to time. It is recorded that a stipulation by Engen that the minimum order quantity shall be the lesser of the maximum capacity of a road tanker, or 80 % (eighty percent) of the storage capacity of the Equipment, shall be reasonable. Engen shall deliver each order without unreasonable delay, and deliveries of Automotive Fuels may be effected into the Equipment whether or not the Dealer is present.
- 6.3. For the purposes of this agreement, a certificate apparently on the stationery of Engen, and apparently signed on behalf of Engen by anyone professing to be a manager of Engen, purporting to reflect the cost of the quantity of automotive fuels delivered, and tendered as evidence on behalf of Engen, shall constitute *prima facie* evidence of the quantity of any Automotive Fuel delivered to the Dealer during any period of time and it shall not be necessary for Engen to prove the identity or capacity or authority of the signatory of that certificate.

#### 7. REBATES

- 7.1. Notwithstanding anything to the contrary, Engen's obligation to allow rebates under this agreement is premised entirely and absolutely on complete performance of all accrued obligations of the Dealer under this agreement and under any Related Agreement. Engen shall have no obligation to allow rebates until all Related Agreements have been duly executed by or on behalf of the Dealer and all leases, servitudes, mortgage bonds and other deeds, (which are Related Agreements) intended for deeds office registration, shall have been duly registered, whatever the reason for any delay or default may be.
- 7.2. Should the Dealer have any obligation under a Related Agreement to effect any alterations or improvements to the Premises, Engen may withhold rebates under this agreement until the relevant

alterations or improvements have been performed in proper compliance with the Related Agreement Engen shall be entitled to withhold rebates under this agreement in the event that the Dealer performs any work on the Premises as a consequence of which the Premises do not conform to the brand image of Engen (such as painting the canopy a colour which does not conform to that prescribed by Engen).

- 7.3. Any provision under this agreement whereby rebates are either not payable, or may be withheld, shall be construed such that their payment is not merely suspended, but that such rebates are not payable.
- 7.4. Subject to the provisions of this clause 7 and sub-clause 32.6, Engen shall allow the Dealer the rebates specified in clause 8 of Part I.
- 7.5. For the purposes of this agreement Engen's records shall be *prima facie* proof of time and quantity of any delivery of any quantity of petrol.
- 7.6. Engen shall be entitled to set off the rebates referred to in clause 8 of Part I against any amount owing by the Dealer to Engen, including but not limited to any amount owing in respect of any loan or other indebtedness of whatsoever nature. For such purposes "any amount owing" means any amount then due and payable.

## 8. RETAIL PRICE

- 8.1. The Dealer shall not sell or offer or advertise for sale, from the Premises, any Automotive Fuels at any price in contravention of law.
- 8.2. Engen may suspend supplies of any Automotive Fuel to the Dealer if and for so long as the Dealer sells, or offers or advertises for sale, Automotive Fuels in breach of the provisions of sub-clause 8.1, or if Engen is of the *bona fide* and reasonable opinion that the Dealer would do so if such Automotive Fuels were supplied to it. Notwithstanding such suspension of supplies, the Dealer shall remain bound by all of its obligations in terms of this Agreement.

## 9. OWNERSHIP OF AND RISK IN AUTOMOTIVE FUEL

- 9.1. Ownership of any Automotive Fuel sold by Engen to the Dealer shall not pass to the Dealer until such fuel shall have been delivered to the Dealer, and payment for such fuel shall have been made in full. To the extent that such fuel may upon delivery have been mixed with fuel already owned by the Dealer, the fuel owned by the Dealer shall (regardless of the relative quantities of each) accede to Engen's fuel by *commixtio*, and the mixture shall be owned by Engen; provided that the Dealer shall be entitled to compensation for the fuel previously owned by it at the original cost of such fuel to the Dealer. Engen may set off any such amount of compensation against any amount owing to it by the Dealer.
- 9.2. The risk in any Automotive Fuel sold by Engen to the Dealer shall pass to the Dealer upon delivery, irrespective of when payment for such fuel is made.

## 10. PAYMENTS

- 10.1. Payment shall be made in cash for all Automotive Fuels sold to the Dealer. Engen reserves the right to accept a cheque from the Dealer on delivery, or to require that payment in hard cash or by bank cheque or bank-guaranteed cheque be made at its offices or by way of electronic transfer into Engen's nominated banking account prior to dispatch of the delivery.
- 10.2. Engen may from time to time agree to grant credit facilities to the Dealer in respect of certain specified products sold by Engen to the Dealer, in which event the nature, extent, duration and conditions of such credit facilities shall be in the absolute discretion of Engen.
- 10.3. Engen and the Dealer shall, from time to time, agree on suitable methods of payment in respect of various amounts which may be due by the Dealer to Engen. It is recorded that Engen's preferred method of payment is the system whereby a direct debit is raised against the bank account of the Dealer, whether manually or via computer, and the Dealer hereby undertakes not unreasonably to withhold his consent to the implementation of such a system of payment. Engen shall endeavour to source and administer the most cost-effective way of direct debiting.



- 10.4. Engen may appropriate any payment by or on behalf of the Dealer, at any time after such payment is made, to any debt owed by the Dealer to Engen, provided that should the Dealer expressly indicate that a specific payment is in respect of a specific debt, Engen shall so appropriate such payment.
- 10.5. All payments by the Dealer shall be made to such office of Engen as Engen may from time to time direct

11. **PROOF OF INDEBTEDNESS**

A certificate apparently on the stationery of Engen, and apparently signed on behalf of Engen by anyone professing to be a manager of Engen, purporting to state the amount due and payable by the Dealer to Engen and tendered as evidence on behalf of Engen, shall constitute prima facie evidence of what it so purports to reflect, and it shall not be necessary for Engen to prove the identity or capacity or authority of the signatory of that certificate.

12. **INTEREST ON OVERDUE AMOUNTS**

12.1. For purposes of this clause 12 –

- (a) "financial breach" means a breach by the Dealer of an obligation to pay a liquidated amount of money which is due and payable in terms of this agreement;
- (b) "prime rate" with respect to any period of time means the rate of interest quoted publicly by the Standard Bank as its prime rate of interest for unsecured private sector overdrafts during that period of time;
- (c) "stipulated interest rate" with respect to a financial breach during a period of time means an interest rate per annum of two percentage points above the prime rate during that period of time, for example, should the prime rate during February 2008 be 11% per annum, the stipulated interest rate shall be 13% per annum.

- 12.2. The amount due and payable from time to time with respect to any financial breach shall bear interest at the stipulated interest rate. All such interest shall be due and payable as it accrues, without notice or demand: Provided that it shall not be capitalised except at the end of the calendar month in which it accrues.

- 12.3. A certificate, apparently on the stationery of the Standard Bank purporting to be signed by a manager of that bank, stating the prime rate of interest for unsecured overdrafts quoted by that bank during any period of time, shall constitute conclusive proof of the prime rate with respect to that financial breach for that period of time.

13. **FORCE MAJEURE**

- 13.1. If, for any reason beyond Engen's control, quantities of any Automotive Fuels or other product which Engen has available for supply to its customers (including but not limited to the Dealer), in the district where the Premises are situated, become insufficient to meet the requirements of all such customers, or Engen has a reasonable apprehension that they may become so insufficient, Engen shall be entitled to withhold supplies of such Automotive Fuel from the Dealer, or to allocate such supplies to the Dealer in such manner or quantity as it may deem fit and no right of action, whether for damages or otherwise, shall thereby accrue to the Dealer. In such event there shall be no obligation on Engen to take extraordinary measures to make up any shortfall or incur extraordinary expenditure for the procurement, production, storage or transportation of any Automotive Fuel or raw material and the Dealer shall be entitled, after reasonable written notice to Engen and with the written consent of Engen, to purchase any shortfall in supplies of such Automotive Fuel from another available source for the period during which Engen so withholds supplies of such Automotive Fuel in whole or in part to the Dealer.
- 13.2. For the purposes of sub-clause 13.1, circumstances beyond Engen's control in respect of the availability of an Automotive Fuel shall include, without limitation, any cause of any nature whatsoever directly or indirectly or wholly or partly beyond Engen's control, including, but not limited to, and whether or not similar to, the following: the inability for any reason whatsoever of Engen to obtain its full requirements of

that or of any other Automotive Fuel from any of its normal sources of supply by its usual means; the inability for any reason whatsoever of any of Engen's suppliers to obtain that supplier's full requirements of such Automotive Fuel or any relevant raw material from its usual sources of supply by its usual means; the inability for any reason whatsoever of Engen or any of its suppliers to process any such raw material or to meet required specifications by processing the raw materials available to it; the inability for any reason whatsoever of Engen or any of its suppliers to store or transport by usual means and at usual expense any Automotive Fuel or raw material; the unplanned and planned "shut-down" of any refinery or other plant in South Africa producing Automotive Fuels, whether or not related to Engen; any compliance by Engen or any of its suppliers with any order or request of any Governmental authority or person purporting to act therefor; or the interruption, inadequacy or lack of availability of any source or facility of production, manufacture, storage, transport, distribution or delivery, contemplated by Engen, for whatever reason.

13.3. Nothing contained in this clause 13 shall entitle the Dealer to purchase any Automotive Fuel from any other source in the event of Engen refusing to deliver Automotive Fuel to the Dealer, or placing any condition on any such delivery, in terms of any provision of this Agreement, pursuant to default on the part of the Dealer.

14. EXPIRY DATE AND THE LIKE OF PRODUCTS AND GOODS

14.1. The Dealer undertakes not to offer for sale, sell or display any products or goods at the Premises to the extent that any such product or goods –

- (a) shall have reached its sell-by date; or
- (b) shall have perished; or
- (c) are stale.

14.2. The Dealer undertakes to remove any such products or goods which –

- (a) are about to reach their sell-by date, immediately prior to the end of such sell-by date; or
- (b) which are about to become perished; or
- (c) which are about to become stale;

and shall dispose of such products or goods without delay thereafter, otherwise than by sale in the Business.

14.3. Engen shall have the right at any time to require the Dealer to remove and to dispose of any products or goods offered for sale or displayed at the Premises and which Engen determines in its sole and absolute discretion –

- (a) to have reached, or are about to reach, its sell-by date; or
- (b) to have, or which are about to become, perished; or
- (c) are, or which are about to become, stale;

as and when so requested by Engen. Any decision of Engen with respect to any of the foregoing shall be final and binding on the Dealer.

14.4. For the avoidance of any doubt it is recorded and agreed that Engen shall not be liable to compensate the Dealer in respect of any products or goods removed or disposed of or required to be removed and disposed of as contemplated by the provisions of this clause 14.

15. HYGIENE

15.1. The Dealer shall comply with Engen's hygiene standards, as advised to the Dealer by Engen from time to time.

15.2. Notwithstanding anything to the contrary contained in this Agreement, in the event of non-compliance by the Dealer of Engen's said standards contemplated in sub-clause 15.1, Engen shall be entitled to require the Dealer to remedy the said non-compliance within a reasonable period. It is recorded and agreed that the Dealer to remedy the said non-compliance with Engen's standards relating to hygiene, a period to remedy same with regard to any non-compliance with Engen's standards shall be considered a reasonable period. Notwithstanding anything to the contrary contained in this Agreement, should the Dealer fail to remedy the non-compliance within the period as may be stipulated by Engen as contemplated aforesaid, Engen shall be entitled to take such action as it may deem fit (including, but not necessarily limited to, the use of a specialist contractor), at the cost of the Dealer, to remedy the non-compliance concerned.

16. MINIMUM SERVICE STATION OPERATING STANDARDS

16.1. The Dealer shall -

- (a) keep the Premises open for the sale of Automotive Fuel and other Automotive Products for such periods as Engen may, after consultation with the Dealer, reasonably determine from time to time;
- (b) employ such numbers, and have on duty at any particular time such numbers of pump attendants and other staff as may be necessary for the satisfactory operation of the Business;
- (c) ensure that all pump attendants are properly trained and efficient in executing driveway functions and other duties necessary for the Business; and that all its staff are adequately trained in their respective work functions, customer care, and health, safety and environment matters;
- (d) purchase from Engen's nominated supplier such uniforms as Engen may reasonably prescribe from time to time to the extent such uniforms are reasonably priced and are of a reasonably good quality and provided that such nominated supplier provides a reasonably good and reliable service, and ensure that all on-duty pump attendants and other staff are dressed in such uniforms and that such uniforms are maintained in a clean and tidy condition and are replaced whenever necessary;
- (e) maintain a standard of driveway service as reasonably determined by Engen from time to time;
- (f) ensure that access to the pumps is unrestricted and that the pumps are clearly visible from the adjoining streets, and not permit any vehicle, other than those in the course of receiving or awaiting service from the pumps, to park in such manner as to restrict access to the pumps or the area demarcated as the forecourt;
- (g) contract with such recognised third parties who provide debit and credit facilities so as to become a recognised merchant or supplier in respect of debit cards, credit cards, fleet management and other similar systems generally in use by the motoring public. In addition to such facilities, and without derogating from the Dealer's obligations in terms of this paragraph 16.1(g), the Dealer shall permit Engen at any time to install and maintain at its own cost any debit or credit card system as Engen may deem fit;
- (h) ensure that all signage supplied by Engen which is capable of and intended to be illuminated, remains operational and illuminated between the hours of sunset and sunrise;
- (i) partake and co-operate to the fullest extent in all promotions which Engen may from time to time arrange with respect to the Premises; (The Dealer may conduct such other promotional campaigns as he may wish, provided that Engen shall be entitled to require the Dealer to cease any promotional campaign which Engen reasonably believes to be detrimental to the image and standing of Engen, its network of service stations as a whole, and/or its products and brands);
- (j) subject to paragraph 16.1(i) actively participate in all sales and service promotions and/or programmes which Engen may from time to time initiate, where such promotions and/or programmes are applicable to the Premises; and make such financial contributions thereto as Engen may reasonably require, and ensure that all the Dealer's staff are fully briefed and trained in the execution of such promotions and/or programmes;

- (j) actively promote the Service Station and Engen's products by the initiation of regular independent promotional campaigns and other such initiatives, subject to the approval of Engen having first been obtained;
- (k) maintain full and proper stock and other accounting records;
- (l) comply fully with all laws and Engen's guidelines relating to fire protection, and maintain on the Premises an adequate number of operational fire extinguishers;
- (m) keep all areas of the Premises clean, neat and tidy and free of scrap (including redundant vehicles) at all times;
- (n) maintain all gardens, shrubs, lawns and trees on or about the Premises, in a neat, tidy and environmentally pleasing condition;
- (o) maintain any public toilets or rest rooms in a clean and hygienic condition, and ensure that they are adequately supplied with soap, clean towels and toilet paper, and that the plumbing, hand basins, water closets and all other fixtures and fittings therein are maintained in good working order at all times;
- (p) comply with all Company manuals relating to Service Station standards, and with all reasonable guidelines issued by Engen to its Dealers from time to time;
- (q) comply fully with Engen's graphics standards as set out in Engen's Retail Appearance Standards Manual, as amended from time to time, which Manual and all subsequent amendments shall be made available to the Dealer by Engen;
- (r) develop and maintain a proper business plan, as and when required by Engen and with the assistance of Engen where necessary, in accordance with normal good business practice. The Dealer undertakes to substantially adhere to such business plan;
- (s) assist Engen to complete (or complete himself, if so requested) a Retail Efficiency Development Guide at regular intervals, as determined by Engen, in order to determine the Dealer's level of retail efficiency;
- (t) ensure a readily available supply of water and air on the forecourt for the free use of all customers;
- (u) conduct the Business in all respects without any discrimination on the grounds of race, colour, creed, religion, gender, culture, or sexual orientation; provided that this paragraph 16.1(u) shall not prevent the Dealer from designating separate rest room or toilet facilities for males and females;

16.2. To the extent that this agreement may require compliance with any manuals or extraneous materials issued or prescribed by Engen, the Dealer shall be obliged to ensure that the Dealer has on the Property a complete and current version thereof or has access thereto via Engen's "extranet" web site.

16.3. The Dealer undertakes to comply with the reasonable directions of Engen flowing from information reflected by any Retail Efficiency Development Guide (Form RSD 23) completed in respect of the Business, in order to achieve a satisfactory level of retail efficiency.

16.4. Without prejudice to any other remedy which Engen may have in terms of this agreement, should the Dealer, in the reasonable opinion of Engen, have failed to comply with any of the provisions of sub-clause 16.1, or directions issued in terms of sub-clause 16.3 or any manual prescribed by this agreement, notwithstanding the expiry of a reasonable period of time after having been requested in writing by Engen so to do, Engen may itself cause that failure to be remedied and to recover the cost thereof from the Dealer. For the purposes of this sub-clause 16.4, a certificate apparently on the stationery of Engen, and apparently signed on behalf of Engen by anyone professing to be a manager of Engen, purporting to reflect the amount of such cost, and tendered as evidence on behalf of Engen, shall constitute prima facie evidence of what it so purports to reflect, and it shall not be necessary for Engen to prove the identity or capacity or authority of the signatory of that certificate.

16.5. Engen shall supply or cause to be supplied to the Dealer, at a price equal to the cost thereof to Engen, uniforms contemplated by the provisions of paragraph 16.1(d) in such quantities as the Dealer may reasonably require from time to time.

17. APPEARANCE OF PREMISES TRADEMARKS AND SIGNS

17.1. Notwithstanding anything to the contrary in this agreement, and without derogation from any of the other provisions of this agreement, the Dealer shall, at its own cost, ensure that the appearance of the Premises is at all times to the reasonable satisfaction of Engen in accordance with such directions as it may from time to time reasonably determine. Such directions may include the painting or repainting of the Premises in accordance with Engen's standard colours for the brand of Automotive Fuels marketed through the Premises. Without limiting the generality of the foregoing, the Dealer shall not, at, on, in or in relation to, the Premises, without the prior written consent of Engen -

- (a) permit any infringement of any of Engen's trademarks or those which it has the right to use, or any detraction from any brand or corporate image of Engen so determined; or
- (b) instal or exhibit or allow the installation or exhibition of any sign, device, other signage, other advertising material or notice; or
- (c) effect or allow to be effected any alterations or improvements.

17.2. Engen may at any time, at its own cost, cause such signs (including illuminated signs, advertising material, notices and all other manner of signage) as it may in its discretion consider appropriate to be installed on, in or about the Premises. Such signs shall form part of the Equipment leased by Engen to the Dealer, and the provisions of clause 21 shall apply *mutatis mutandis* to such signs.

17.3. The Dealer shall not exhibit or allow the exhibition at, on, in or about the Premises of any other signage, notice or advertising material without the prior written consent of Engen, and Engen shall have the right to direct the Dealer to remove any signage whatsoever on or about the premises.

17.4. The Dealer acknowledges that he does not have and shall not acquire any right in or to any trademark or brand or corporate image or any other intangible right of Engen, or any right to require Engen to afford the Premises the same image, signage or other attribute as any other service station at which any of Engen's products may be sold.

18. INSURANCE

18.1. The provisions of this clause 18 shall not apply unless the Dealer is the owner of the Premises.

18.2. The buildings and other improvements on or constituting the Premises or which may from time to time be erected thereon, (hereinafter referred to as the Buildings) shall be insured and kept insured by the Dealer, to the full value thereof, as reasonably agreed with Engen from time to time, with such insurer(s) as Engen may nominate in writing, or agree in writing -

- (a) against risk of loss and damage by fire, riot, flood, civil disturbance, earthquake and such other causes (whether or not similar to the foregoing) against which property of such nature is ordinarily insured otherwise than as contemplated in paragraph 18.2(b); and
- (b) against risk of loss or damage by political riot, malicious damage and similar causes to the extent commercially available in the country in which the Premises are situate.

18.3. The Dealer shall not unreasonably withhold agreement to any proposal made by Engen for the value to be placed on the Buildings for the purposes of such insurance, and in breach of that obligation by the Dealer Engen shall be entitled reasonably to determine the value unilaterally. Should the withholding of such agreement be an issue, the burden of proof shall be on the Dealer to prove the reasonableness of such withholding, and not on Engen to prove the contrary.

18.4. Each such policy of insurance (including but not limited to any applicable coupon associated therewith) shall, at Engen's option, be issued either in the name of the Dealer alone or in the joint names of the Dealer and Engen for their respective interests.

- 18.5. The rights, title and interests of the Dealer in each such policy of insurance (including but not limited to any applicable coupon associated therewith) are hereby ceded to Engen as security for the performance by the Dealer of its obligations hereunder including but not limited to the obligation to apply the proceeds thereof in accordance with the terms of sub-clause 18.7.
- 18.6. The Dealer shall promptly produce evidence of the required insurance to the reasonable satisfaction of Engen without the need for notice or demand by Engen. Should the Dealer fail to perform any obligation promptly in terms of the provisions of this clause 18, Engen may itself effect the insurance concerned and recover the cost thereof from the Dealer.
- 18.7. The proceeds of the policies of insurance (including but not limited to any applicable coupon associated therewith) shall be applied for the restoration (under such conditions as Engen may determine) of the Buildings or that part thereof which shall have been damaged or destroyed, provided that, if such proceeds are insufficient to restore same to the original size, specification or standards, Engen shall determine the nature of restoration work to be effected and the precise scope thereof.
- 18.8. The provisions of this clause 18 are solely for the benefit of Engen which may at any time and from time to time, by notice in writing to the Dealer, waive compliance thereof for such period or periods and to such extent as it may deem fit in its absolute discretion without having to furnish any reason for such waiver.

#### 19. INDUSTRIAL RELATIONS

The Dealer undertakes to adhere to sound and fair industrial relations practices at all times, in order to restrict to the minimum any possible disruptions to the Business as a result of industrial action. The Dealer acknowledges that his failure to comply with this provision could have an adverse impact on Engen's industrial relations.

#### 20. HSEQ CONSIDERATIONS

- 20.1. The Dealer undertakes to comply in careful detail with Engen's Service Station HSEQ Manual as applicable from time to time and in doing so shall complete and retain for inspection on the Premises all associated forms and check-lists. Without limiting the generality of the foregoing, the Dealer shall comply strictly with all laws and regulations concerning occupational health and safety and environmental protection. Engen shall be entitled to conduct an audit from time to time to assess the level of compliance by the Dealer with the said manual and such laws and regulations. The Dealer shall comply strictly with all written directions as may be issued by Engen pursuant to such audits.
- 20.2. The Dealer acknowledges that strict control of fuel stocks is essential for the maintenance of proper environmental protection. The Dealer shall adhere to such fuel management system as Engen may prescribe from time to time, which may include a system managed by Engen or a third party (hereinafter referred to as "the prescribed system"). In the absence of any written direction by Engen to the contrary, this shall be the Statistical Inventory Analysis Management system administered by Engen.
- 20.3. The Dealer undertakes to participate in the prescribed system in order to endeavour to detect fuel losses at an early stage and to determine the causes of such losses. The Dealer shall adhere to all the requirements of the prescribed system as directed by the administrator thereof as amended from time to time.
- 20.4. The Dealer shall maintain the motor fuel sales control strictly, and accurately, on a daily basis in accordance with the prescribed system. Provided that the Dealer complies diligently with all requirements, the Dealer shall be entitled to all data, test results, diagnostics, reports and the like from the prescribed system as and when available in terms thereof.
- 20.5. The cost of participation in the prescribed system shall be for the account of the Dealer.
- 20.6. The Dealer shall indemnify and hold Engen harmless against all costs incurred by it consequent upon contamination of the environment where this could have been prevented or minimised by the maintenance of proper stock control procedures and/or the implementation of the prescribed system. The Dealer acknowledges that he is furthermore aware that should environmental contamination occur or be

aggravated as a result of his failure to keep adequate stock records or follow required procedures, this may result in his prosecution in terms of environmental legislation.

21. EQUIPMENT

21.1. Engen shall lease to the Dealer such equipment as Engen may determine is reasonably necessary for the for the storage, dispensing and sale of Automotive Fuel, and (to the extent any such equipment is not already installed) shall install such equipment on the Premises at its own cost. Any reference in this Agreement to "the Equipment" shall mean the equipment leased by Engen to the Dealer in terms of this clause 21, or a specific part thereof as may be indicated by the context.

21.2. Engen shall remain the owner of the Equipment regardless of the manner of its installation on the Premises, and irrespective of the fact that tanks and equipment may be installed under the surface of the Premises. The Dealer waives any claim to the effect that such equipment has acceded to and become part of the Premises. Engen shall be entitled to remove, modify, reposition or replace the Equipment or any part of it at any time, provided that should there be an effective reduction of capacity this shall be subject to a reasonable adjustment of the rental payable. On the expiration or earlier termination of this agreement, or should Engen or any of its associated companies cease to supply, or be the supplier of, Automotive Fuels for sale or distribution from the Premises, Engen shall be entitled to remove from the Premises all pumps, tanks and other equipment for the storage and dispensing of Automotive Fuels and all brand signage

21.3. The rental payable by the Dealer in respect of any month shall be the Basic Rental stated in clause 9 of Part I which sum shall escalate by 8% (eight per cent) per annum compounded. Payment of rental shall be suspended, provided that;

- (a) the Dealer complies strictly with the provisions of this agreement and Related Agreements; and
- (b) all Related Agreements have been duly executed by or on behalf of the Dealer without delay after written request and all leases, servitudes, mortgage bonds and other deeds, (which are Related Agreements) intended for deeds office registration, have been duly registered.

21.4. In the event that Engen becomes entitled to cancel this agreement in consequence of a breach thereof by the Dealer, rental shall cease to be suspended (unless already payable under paragraph (b) of sub-clause 21.3) and shall become due and payable as from the commencement of this agreement and shall continue to be payable monthly in advance. In such event arrear as from the commencement of the agreement, or as from the time when rental was last paid shall become payable on demand.

21.5. Engen shall be responsible, at its own cost, for repairing or replacing any equipment which, in Engen's opinion, requires such repair or replacement as a result of fair wear and tear.

21.6. The Dealer shall not reposition or remove any of the Equipment without the prior written consent of Engen.

21.7. The Dealer shall not install, or allow to be installed on the Premises any fuel storage or dispensing equipment, inclusive of equipment for the storage and dispensing of fuels other than petroleum fuels, other than the equipment installed by Engen.

21.8. The Dealer shall be responsible for obtaining all licences, consents and other authorities required for the use of the Equipment, at the Dealer's own cost.

21.9. Subject to clause 13, the Dealer shall not use or permit the use of the Equipment otherwise than in connection with the storage and resale of Automotive Fuels purchased from Engen, or for such other purpose as may be specified by Engen.

21.10. The Dealer shall not use any item of the Equipment for any purpose other than that for which it was designed and installed, and shall operate the Equipment in accordance with the instructions of the manufacturer and Engen.

21.11. Engen shall be entitled to exhibit advertising and other signs on the Equipment, and the Dealer shall not affix or allow to be affixed to the Equipment any signs other than those exhibited or approved by Engen.

- 21.12. The Dealer shall notify Engen promptly with confirmation in writing of any defect in the Equipment or any incident of loss or damage to the Equipment. The Dealer shall not effect any repairs to the Equipment (other than such repairs as may be urgently required for reasons of safety or prevention of loss) without the prior written consent of Engen.
- 21.13. Engen shall at its own cost provide a maintenance service for fuel pumping and metering equipment for the purposes of ensuring that the Equipment complies with assize requirements.
- 21.14. Should there be any loss of Automotive Fuel of 200 litres or less a day as a result of any defect in, or fair wear and tear of, the Equipment, Engen shall be liable to replace any such loss of Automotive Fuel sustained: Provided that such liability shall not arise unless the Dealer shall have strictly complied with the prescribed system for stock management contemplated by clause 20.
- 21.15. Engen's liability (to the extent existing in accordance with the provisions of sub-clause 21.14) shall be limited to replacing such lost Automotive Fuel. Subject to the foregoing, once the loss has been verified and substantiated as contemplated in sub-clause 21.18, Engen will replace (whether by payment or delivery of Automotive Fuels) such Automotive Fuel lost within thirty days after such verification and substantiation.
- 21.16. Should there be a loss of Automotive Fuel of more than 200 litres a day as a result of any defect in, or fair wear and tear of, the Equipment, Engen shall be liable to replace any such loss of Automotive Fuel sustained: Provided that such liability shall not arise unless -
  - (a) the Dealer shall have strictly complied with the prescribed system for stock management contemplated by clause 20;
  - (b) the loss of Automotive Fuel is reported within six days by the Dealer;
- 21.17. Engen's liability (to the extent existing in accordance with the provisions of sub-clause 21.16) -
  - (a) shall be limited to replacing such lost Automotive Fuels; and
  - (b) in no case shall Engen be liable for any loss of Automotive Fuels sustained more than 5 (five) days prior to the date on which such loss of Automotive Fuels shall have been first reported in writing to Engen by the Dealer.

Subject to the foregoing, once the loss has been proven or agreed, Engen will replace (whether by payment or delivery of Automotive Fuels to the Dealer) such Automotive Fuels lost within thirty days after such proof or agreement.
- 21.18. Where a customer lodges a claim against the Dealer in respect of the supply of any faulty, contaminated or otherwise off-specification Automotive Fuels to such customer, the Dealer shall be obliged to investigate that claim without delay and in a businesslike fashion. The Dealer shall take all reasonable steps to minimise any loss or damage with respect to any faulty, contaminated or otherwise off-specification Automotive Fuels. After the investigation of any such claim, should -
  - (a) the Dealer believe that the supply of any faulty, contaminated or otherwise off-specification Automotive Fuels to the customer concerned was due to the negligence or other fault of, or in law attributable to, Engen or its servants, the Dealer shall refer such claim to Engen without delay. Should Engen request the Dealer to settle any such claim on behalf of Engen, the Dealer shall not unreasonably refuse to do so provided that Engen shall have undertaken in writing to refund the Dealer forthwith;
  - (b) the Dealer be satisfied that the supply of any faulty, contaminated or otherwise off-specification Automotive Fuels to the customer concerned was due to the negligence or other fault of, or in law attributable to, the Dealer or its servants, the Dealer shall attend to and settle such claim (whether itself or via its insurers) without delay.
- 21.19. If -
  - (a) faulty, contaminated or otherwise off-specification Automotive Fuel is supplied by Engen to the Dealer; or

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(b) Automotive Fuels in the tanks at the Premises has become faulty, contaminated or otherwise off-specification;

due to the negligence or other fault of, or in law attributable to, Engen or its servants, Engen will replace (whether by payment or delivery of Automotive Fuel) such faulty, contaminated or otherwise off-specification Automotive Fuel within thirty days after it shall have been proven or agreed.

- 21.20. Save as provided for in sub-clauses 21.14 to 21.19 (both inclusive), Engen shall be exempt from and shall not be liable under any circumstances for any damages (whether indirect or consequential damages or special damages of any nature or loss of profit, or otherwise howsoever whether or not similar to the foregoing examples) which the Dealer may sustain as a result of or in any way connected with the loss of Automotive Fuel from the Equipment or any faulty, contaminated or otherwise off-specification Automotive Fuel.
- 21.21. Nothing contained in this clause 21 or elsewhere in this Agreement shall detract from the liability of either party for any losses or damage caused directly by such of its own acts or its servants' acts as may be proved to have been negligent or wilful.
- 21.22. In the event of Engen having to replace or repair any Equipment, the Dealer shall have no claim whatsoever against Engen for any damages (including but not limited to any claim in respect of loss of income) save as is set out in this Agreement and subject to such conditions as is stated herein.
- 21.23. All Equipment for the storage and dispensing of Automotive Fuels and signage, on the Premises at any time shall be deemed to belong to Engen unless the contrary is proved.
- 21.24. Engen shall have reasonable access for its employees, contractors and workmen to the said property for the purposes of installing or removing Equipment or brand signage as contemplated in this agreement.
- 21.25. Engen through its employees, contractors and agents shall be entitled to conduct such environmental studies with respect to the Premises for the purposes of installing Equipment and for the removal of Equipment and the rehabilitation of the Premises and, upon removal of Equipment, shall be entitled to perform such work, inclusive of the removal of soil and materials, for the rehabilitation of the Premises.
- 21.26. The Dealer shall furthermore sign, in his capacity as owner of the Premises such applications, powers of attorney, affidavits and other documents as may be reasonably necessary for any application to a competent authority in connection with the installation, removal or existence of Equipment on the Premises.

## 22. RIGHT TO OCCUPY PREMISES

- 22.1. The Dealer warrants that the Dealer has, and for the duration of this agreement (including any extension thereof) will continue to have, the right to occupy the Premises, and to carry on the Business thereat. The Dealer undertakes to do everything within the Dealer's power to ensure that such right is maintained and enforced during that period.
- 22.2. The Dealer shall not during the currency of this agreement let the Premises or any portion thereof or otherwise allow anyone else directly or indirectly to occupy the same or alter the nature of the Dealer's right to occupy the Premises, whether by lease, sale, disposal, donation, other alienation or otherwise howsoever, without the prior written consent of Engen, which shall not be unreasonably withheld.
- 22.3. The provisions of this clause 22 are in addition to, and without prejudice to, the provisions of clause 23.

## 23. LEASE OF THE PREMISES

- 23.1. The provisions of this clause 23 shall not apply unless the Dealer is a lessee of the Premises otherwise than from Engen.
- 23.2. The Dealer undertakes to Engen –
- (a) not to breach any of its obligations under that lease;

- (b) not to waive any of its rights thereunder or allow any such rights to be prejudiced through failure to enforce same diligently;
- (c) without limiting the scope of paragraph 23.2(b), to exercise its rights of renewal, if any, in accordance with the directions of Engen.

- 23.3. The Dealer hereby irrevocably and *in rem suam* appoints Engen (with powers of substitution and sub-delegation) to be its agent for purposes of enforcing any right under such lease, including but not limited to any right to extend or renew the tenancy thereby constituted.
- 23.4. The Dealer undertakes not to agree to any alteration or termination of such lease without the prior written consent of Engen.

24. DISPOSAL OF BUSINESS OR PREMISES

24.1. Should the Dealer at any time wish to sell or dispose of or alienate the Business, and/or the Premises, Engen (or its nominee) shall have the first right of acquiring the Business, and/or the Premises, at the same price and upon the same terms and conditions as are offered therefore by any *bona fide* third party and which the Dealer is prepared to accept provided that Engen (or its nominee) exercises such right within a period of thirty days following that upon which notice in writing has been received by it from the Dealer advising Engen (or if Engen shall have nominated a nominee at that stage, the nominee) of the offer of purchase received, the name and address of the *bona fide* proposed purchaser, and the terms and conditions of the offer of purchase, and calling upon it to exercise its option (subject to the terms of clause 24.4). The Dealer may not sell the Business, and/or the Premises, otherwise than the whole thereof. Should Engen (or its nominee) not exercise the right to purchase hereby granted to it when called upon so to do, then the Dealer shall be entitled to sell or dispose of or alienate the Business, and/or the Premises, subject always to the provisions of clause 24.2, and provided further that except with the previous written consent of Engen, no such sale shall be effected at a price lower and/or on terms and conditions substantially more favourable to the proposed purchaser than those so communicated to Engen (or its nominee). Any variation in the terms and conditions so communicated to Engen (or its nominee) shall be regarded as a new offer to which the foregoing provisions shall apply.

24.2. Having regard to *inter alia* the factors recorded in clause 2, the Dealer acknowledges that Engen has a material interest in the continuation of its relationship with the Business and has a right to be placed in the same position with any successor in title as it has with the Dealer. Should the Dealer sell the Business, during the currency of this agreement in circumstances where Engen does not exercise its right of first refusal, then:-

- (a) it shall be a condition of any sale, disposal or alienation of the Business that the proposed purchaser will be bound by all the provisions of this Agreement, including, but not limited to, this clause 24 and clause 25 (in the case of a further sale, disposal or alienation of the Business and/or Property; and
- (b) the Dealer shall provide Engen with a written document executed by the purchaser, undertaking to be bound to Engen in respect of all obligations under this agreement.

24.3. In the event of the sale of the Premises, but not the Business, in circumstances where Engen does not exercise its right of first refusal, the Dealer shall procure that the purchaser executes Engen's standard "agreement with owner" with respect to the Premises.

24.4. Should the terms and conditions as are offered by any *bona fide* third party, for either the Business or the Premises, as submitted to Engen in terms of clause 24.1, be subject to any condition whereby the sale is either suspended or will not take place, depending on the fulfilment or non-fulfilment of that condition, the notification required by clause 24.1 shall be given, but the period of thirty days referred to in clause 24.1 shall commence on the date of receipt by Engen of written notice, given by the Dealer, to the effect that the sale has become unconditional, but for Engen's right of first refusal. The intention of the parties in this respect is that Engen's right of first refusal, as expressed in this clause 24, shall be exercisable in relation to the terms of any intended sale once they have become final. Following the notification given in terms of clause 24.1, the Dealer shall keep Engen fully informed in writing with respect to progress made towards fulfilment, or non-fulfilment, of all the conditions concerned and shall notify Engen in writing once the intended sale has become unconditional, but for the right of first refusal set out in this clause 24.

24.5. Should Engen notify the Dealer in writing, to the effect that, Engen will not exercise its right of first refusal subject to a condition which requires execution by the *bona fide* third party of documentation whereby the third party will become bound to Engen in accordance with agreements substantially the same (with the necessary amendments) as this agreement, any lease or sub-lease of the Premises, or any other agreement between Engen and the Dealer relating to the use or occupation of the Premises, or the operation of the Business, or the registration of any mortgage bond in substitution of any existing mortgage bond, the period of thirty days referred to in clause 24.1 shall be extended until expiry of fifteen days after Engen notifies the Dealer in writing to the effect that it is satisfied that such condition has been fulfilled.

24.6. Should the Dealer at any time wish to sell or dispose of or alienate the Business, and/or the Premises, by public auction, the Dealer shall, in writing, notify the auctioneer of the terms of this clause 24 and instruct the auctioneer to ensure that he complies therewith strictly. Without limiting the generality hereof, the auctioneer shall include in the conditions of sale of such auction provisions which render any intended sale subject to the terms of this clause 24.

24.7. The Dealer shall not dispose of the Business or the Premises in any transaction which involves the sale of other assets together with the Business or the Premises. The Business and the Premises may be disposed of in a composite transaction. Furthermore, assets of the business such as stock may be disposed of as part of the Business.

24.8. The Dealer undertakes to Engen (and its nominee) duties of utmost good faith and full disclosure in connection with the obligations of the Dealer in terms of the foregoing provisions of this clause 24.

25 FIRST REFUSAL ON TERMINATION

25.1. On termination of this agreement, whether in terms of clause 3 or otherwise, (but not in circumstances where Engen exercises any option to lease the Property or to take assignment of the Dealer's lease of the Property) Engen (or its nominee appointed in writing) will have the first right of concluding with the Dealer an agreement for the supply of Automotive Fuel to the Dealer for or in connection with the Business subsequent to such termination in accordance with such prices, terms and conditions as are offered by a bona fide third party and which the Dealer is prepared to accept: Provided that -

(a) to the extent that any such offer refers to the supply of any particular brand of Automotive Fuel, or to price determination by reference to another supplier's list prices, Engen shall be entitled to supply its own brand of Automotive Fuel, and the price for Automotive Fuel which the Dealer is so prepared to accept, shall be determined by reference to Engen's wholesale list selling price for such Automotive Fuel;

(b) Engen exercises this right within sixty days after that on which written notice has been received by Engen furnishing it with a true and complete copy of the said offer, including the name and address of the offeror if not apparent therefrom, and calling on Engen to exercise the said right.

25.2. Any variation in the prices or in any of the other terms and conditions of any offer which the Dealer is prepared to accept from those communicated to Engen shall be a new offer which must be communicated in writing to Engen at once, and in respect of which Engen will have the same first right for the same period set out above as from the date on which such new offer is first communicated to it.

25.3. Should Engen not exercise this right, then the Dealer will be entitled to contract with the third party in accordance with the prices, terms and conditions communicated to Engen in accordance with the provisions of the foregoing sub-clauses of this clause 25.

25.4. Notwithstanding anything to the contrary in this agreement or elsewhere, the Dealer shall not contract with a third party for the supply of Automotive Fuel to or in connection with the Business either -

(a) during the currency of this agreement; or

(b) otherwise than by acceptance of an offer in accordance with the procedures hereinbefore contemplated after termination of this agreement.

- 25.5. The provisions of this clause 25 are severable from the remainder of this agreement and shall survive its termination. They shall continue to apply until the first anniversary (or fifth anniversary in the case of termination pursuant to clause 32) of the day of termination of this agreement even if the Dealer shall validly have concluded an agreement with another supplier during that period, so that should that other agreement terminate prior to that anniversary, Engen's first refusal right shall be reinstated.
- 25.6. The Dealer acknowledges that it owes Engen duties of utmost good faith and full disclosure with respect to the implementation of this clause 25.

26. LICENCES

- 26.1. Subject to the provisions of this clause 26, the Dealer shall be responsible for the preparation and prosecution of all necessary applications under the Act to procure, to renew and/or to maintain the Site Licence and the Retail Licence. The Dealer shall furthermore be responsible to take all reasonable steps to ensure that the Site Licence and the Retail Licence are maintained, inclusive of steps which may be necessary to comply with directions by the Controller. The Dealer shall carry out at own cost all such structural alterations, structural additions and structural repairs to the Premises as may from time to time be required by any competent authority as a condition of the grant or renewal of any licence, (including but not limited to the Site Licence and the Retail Licence) for the conduct of the Business.
- 26.2. In the event of, the refusal of the Site Licence or the Retail Licence, or the withdrawal thereof, or in the event of any adverse official action with respect thereto, the Dealer shall, upon written request of Engen, prosecute such appeal or review proceedings as may be available under the Act or otherwise.
- 26.3. The Dealer hereby appoints the company secretary of Engen or any legal adviser of Engen, each individually, as the attorney and agent of the Dealer, with power of substitution and sub-delegation, to sign such application, power of attorney and all such documents as may be necessary to bring an application for the Site Licence or the Retail Licence, or for its renewal, or extension and to take all steps as the Dealer itself may take with respect to the prosecution of such application, the launching of any appeal or review proceedings or such other steps as may be necessary to bring the application for the Site Licence or the Retail Licence to a final end and determination. Engen shall not exercise the powers so provided unless the Dealer has failed to take reasonable steps to bring the relevant application, or to take any necessary step during the process thereof, or to launch appeal or review proceedings, or to take any necessary step in connection with the prosecution thereof. For the purposes hereof, the Dealer shall be deemed to have so failed if it is in default of having taken material action after expiry of written notice by Engen of 10 days. In the event that the company secretary of Engen or any legal adviser of Engen (and his/her appointee or substitutes) and hold them entirely harmless of all expenditure, losses and claims as may arise from the action so taken inclusive of any action by the Dealer consequent upon failure of action taken by Engen or its officer concerned (and his/her appointee or substitutes) whether for damages or otherwise.
- 26.4. The parties agree that the procurement of the Site and Retail Licences and any other licence as may be necessary for the conduct of the business on the Property are fundamental objectives of this agreement and each undertakes to co-operate to the fullest extent as may be reasonable with respect to the procedures necessary to achieve these objectives. Without limiting the generality of the foregoing, the Dealer shall provide Engen with a copy of each application and document relating thereto and each notice or other communication received from or sent to the Controller.
- 26.5. In the event that the Dealer is in default of compliance with its obligations under sub-clause 26.1 with respect to its obligation to effect at its cost structural alterations, structural additions and structural repairs to the Premises as may be required by any competent authority as a condition of the grant or renewal of any licence, Engen shall be entitled to have the relevant work performed at its cost, in which event;
  - (a) it shall be entitled to recover from the Dealer the amount reasonably expended in doing so; or
  - (b) alternatively, upon written request by Engen, the period of this agreement shall be extended as from the date upon which it would ordinarily expire at the end of the final period for which it may be renewed until it shall have supplied to the service station on the Property for resale that number of kilolitres of its brand of petrol which when multiplied by R75,00 (seventy five Rand) is equivalent to the expenditure incurred by it.

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- 26.6 For the purposes of paragraph 26.5(b) the quantity of petrol concerned shall be that supplied by Engen or its nominee to the service station on the Property for resale and the records of Engen shall be *prima facie* proof thereof.
- 26.7 Should the Site Licence or the Retail Licence not be granted or renewed or should any other necessary licence, permit or the like for the conduct of the Business not be granted or renewed by the authority concerned, notwithstanding that proper application therefor shall have been made, then Engen shall be entitled to terminate this agreement by written notice to the Dealer of not less than thirty days. Should Engen so determine, failure to grant any such application within a reasonable time after it shall have been made shall be deemed to be a refusal thereof.
- 26.8 The Dealer shall conform to all provisions of law affecting the conduct of the Business and shall not contravene or permit any contravention of any of the conditions of title under which the Premises are held.
- 26.9 In the event that Engen terminates this agreement in consequence of the breach thereof by the Dealer, the Dealer undertakes to apply for the surrender of the retail licence.

## 27. PROTECTION OF INTERESTS

For the duration of this agreement and for a period of twelve months after termination of this agreement for any reason whatever, the Dealer shall not directly or indirectly, be interested, or assist, in any way in any undertaking (other than the Business) which includes the operation of an automotive fuel filling or service station within a distance of five kilometres from the Premises.

## 28. DOMICILIA AND NOTICES

- 28.1 The following addresses shall constitute the *Domicilium Citandi et Executandi* of each of the parties:
- Engen at the office of its managing director, Engen Court, Thibault Square, Cape Town;
  - The Dealer at the Premises.
- 28.2 Either party may change its *domicilium citandi et executandi* to any other physical address in the Republic of South Africa by giving written notice to the other thereof.
- 28.3 All notices required to be given in terms of this Agreement may be sent by pre-paid registered post, in which event such notice shall be deemed to have been received on the sixth day after the posting thereof, or delivered by hand, in which event such notice shall be deemed to have been received on the day of delivery.
- 28.4 All requirements for the written consent of Engen shall be satisfied if Engen shall have given such written consent by means of hand delivery, ordinary mail or facsimile, on the stationery of Engen and signed by an authorised official of Engen.
- 28.5 Any provision of this agreement which provides for any matter to be dealt with on "notice" by one party to the other, or any other reference to a notice or other communication under this agreement shall be construed as referring to a written notice or communication. Any verbal notice or communication shall not be a valid communication unless recorded in writing and communicated as such by one party to the other.

## 29. INTEGRATION, VARIATION AND WAIVER

- 29.1 This Agreement represents the entire agreement between the parties, and no addition, deletion or amendment thereof (including this sub-clause 29.1) shall be valid unless reduced to writing and signed by both parties. Notwithstanding the provisions of this clause 29, any related or unrelated agreement which is in writing and signed by both parties shall be fully valid for the duration thereof, except to the extent that this Agreement may replace any earlier agreement between the parties on the subject matter hereof.

29.2. No relaxation, indulgence or waiver by either party of any of its rights in terms of this Agreement shall constitute a novation of the provisions of this Agreement, or preclude that party from any subsequent enforcement of the same or other rights.

### 30. CONFIDENTIALITY

Both parties undertake to regard all and any information obtained in terms of this Agreement in connection with the other party's business as confidential, and shall not disclose any such information to any unauthorised third parties except as may be required for the protection or enforcement of any of their rights in terms of this Agreement.

### 31. MISCELLANEOUS

31.1. Where this Agreement requires that any action should be reasonable, or should not be unreasonable, the onus shall be on the party alleging unreasonableness to prove the unreasonableness of the action concerned.

31.2. Should the Dealer fail to pay any amount to Engen on or before the due date therefore, then the full amount owing by the Dealer to Engen shall immediately become due and payable without notice or demand.

31.3. This Agreement shall be binding on each of the partners in the Dealer (if a partnership) and on any executor, trustee, liquidator or judicial manager of the Dealer or of any partner in the Dealer.

31.4. Engen may cede, assign or delegate any rights or obligations in terms of this Agreement, to any other person, provided that such person is capable of exercising such rights and performing such obligations to the same extent as Engen. To the extent that this agreement relates in any manner to brand names and marks of Engen, it shall following such assignment relate to the brand names and marks administered by the assignee.

31.5. The clauses of this Agreement are severable, and, in the event of any clause or portion of this Agreement being declared illegal or unenforceable for any reason whatsoever, the remainder of this Agreement shall be effective and binding upon the parties.

31.6. Any word denoting any particular gender shall be interpreted also to include any other gender, and any word denoting the singular shall include the plural, and vice versa.

31.7. All obligations expressed as being those of a party to this agreement shall be performed at the cost of that party unless otherwise stated.

### 32. BREACH BY THE DEALER

32.1. Notwithstanding anything to the contrary contained in this Agreement, should –

- (a) the Dealer breach any of his obligations in terms of sub-clause 4.1 (i.e. The Dealer shall at all times during the currency of this Agreement conduct at the Premises the business of an Automotive Fuel filling and service station); or
- (b) the Dealer breach any of his obligations in terms of clause 5 (i.e. Subject to clause 13, the Dealer shall purchase exclusively from Engen the Dealer's entire requirements of Automotive Fuel for resale from the Premises and shall not directly or indirectly store on or sell or distribute from the Premises or through the Business any Automotive Fuel whatsoever other than that purchased from Engen); or
- (c) the Dealer breach any of his obligations in terms of sub-clause 21.7 (i.e. The Dealer shall not install, or allow to be installed, on the Premises any fuel storage or dispensing equipment other than that installed by Engen); or

- (d) the Dealer stand dry (a concept which is generally understood in the industry) without reasonable cause or reasonable mistake, and in particular, a reasonable cause shall not include the financial inability of the Dealer to purchase or pay for any Automotive Fuel; or
- (e) the Dealer fail to sell any Automotive Fuel to anyone prior to an imminent price increase of such Automotive Fuel; or
- (f) the Dealer deliberately or negligently misrepresent (without reasonable cause) or misreport the extent of his turnover whether for the purposes of the calculation of any turnover-related rental payable by the Dealer under any Related Agreement, or otherwise howsoever;

then Engen shall, notwithstanding anything to the contrary contained in this Agreement, be entitled at any time thereafter on written notice to the Dealer-

- (i) to cancel forthwith this Agreement; or
- (ii) to require specific performance of this Agreement; and
- (iii) in either event, to recover rental on the Equipment as provided in clause 21 or, damages in lieu thereof.

32.2. Notwithstanding anything to the contrary contained in this Agreement, should the Dealer breach the provisions of sub-clause -

- (a) 8.1 (i.e. The Dealer shall not sell or offer or advertise for sale, from the Premises, any Automotive Fuel at any price in contravention of law); or
- (b) 20 (i.e. provisions in relation to health, safety and the environment);

and not remedy same within twenty-four hours after Engen shall have requested in writing that same be remedied, then Engen shall be entitled at any time thereafter on written notice to the Dealer to exercise the rights provided for in sub-paragraphs (i), (ii) or (iii) of sub-clause 32.1.

32.3. Notwithstanding anything to the contrary contained in this Agreement, should the Dealer fail to pay any amount for Automotive Fuel owing to Engen on or before due date therefore and not remedy same immediately after Engen shall have requested in writing that same be paid, then Engen shall be entitled at any time thereafter on written notice to the Dealer to exercise the rights provided for in sub-paragraphs (i), (ii) or (iii) of sub-clause 32.1.

32.4. Subject to the other provisions of this Agreement (including but not limited to sub-clauses 32.1, 32.2 and 32.3), should the Dealer breach any of his other obligations in terms of this Agreement (i.e. other than those mentioned in, or contemplated by the provisions of, sub-clause 32.1, 32.2 and 32.3), Engen shall be entitled to give notice to the Dealer in writing to remedy the breach concerned within a reasonable period commensurate with the breach concerned: Provided that if such breach is not reasonably capable of being remedied within the period concerned or should circumstances have arisen or arise during the period of the notice concerned and which, being partly or entirely beyond the control of the Dealer, prevent it from so remedying such breach within the period concerned, then the Dealer shall be allowed such additional period as may reasonably be required therefore. Without detracting from the right of Engen to give any notice period commensurate for a breach concerned to be remedied, in the case of a dispute or uncertainty as to what is a reasonable period, the parties agree that a period of seven days is reasonable for a breach to be remedied unless the foresaid proviso applies. Should the Dealer fail to remedy the breach within the period allowed therefore Engen shall be entitled at any time thereafter on written notice to the Dealer to exercise the rights provided for in sub-paragraphs (i), (ii) or (iii) of sub-clause 32.1.

32.5. Nothing contained in this Agreement (including but not limited to this clause 32) shall preclude, limit, derogate from or otherwise prejudice the enforcement by Engen of any right of cancellation or other right (such as the right to demand specific performance) which it may have at common law or in terms of this Agreement or any other agreement with the Dealer, the provisions of this clause 32 being intended to supplement, and not to replace, any such rights.

32.6. Notwithstanding anything to the contrary -

- (a) should the Dealer be in arrear with respect to any amount owing to Engen under this agreement, or any Related Agreement; or
- (b) should the Dealer be in breach of this agreement, or any Related Agreement, in a manner not contemplated by paragraph 32.6(a); or
- (c) should the Dealer effect, or allow to be effected, any alterations to the Premises or their appearance, so as to detract from the corporate image of Engen, without the written consent of Engen, or not in complete compliance with Engen's written directions;

Engen shall be entitled to withhold supplies of products and/or rebates provided for in clause 8 of Part I as read with clause 7. In the event of supplies being withheld, same shall not be regarded as an inability on the part of Engen to supply as contemplated by clause 13.

32.7. In the event that Engen becomes entitled to cancel this agreement, Engen (if not already lessee of the Premises) or its nominee, appointed in writing, shall have the option to hire the Premises from the Dealer (if owner thereof) in accordance with the following terms:

- (a) for the balance of the period for which this agreement is then due to continue, but for cancellation under this clause 32, subject to further options in favour of Engen corresponding to the periods for which this agreement may be renewed under clause 5 of Part I;
- (b) at a rental and basis of escalation determined as follows:
  - (i) by agreement by the parties in writing;
  - (ii) in the event that the parties do not reach agreement, within 30 days after Engen notifies the dealer of its interest in exercising such option under clause 32.8 below, the rental and the basis of escalation shall be determined by agreement between two property brokers conducting business within the area of jurisdiction of the local authority where the premises are situated, one of whom shall be appointed in writing by each of the parties not later than 60 days of such notification;
  - (iii) in the event of the said property brokers not reaching agreement within 30 days of the second of them to be appointed, they shall jointly appoint a third whose decision as to the extent of the rent and the basis of escalation shall be final;
  - (iv) in the event that a party does not appoint a property broker for the purposes of sub-paragraph 32.7(b)(ii), the determination of the other appointee shall be final;
  - (v) in the event of the property brokers not reaching agreement on the appointment of a third as provided in sub-paragraph 32.7(b)(iii), such appointment shall be made by the president of the Law Society of the Kwazulu Natal;
  - (vi) the determinations in terms of the foregoing sub-paragraphs shall be made on the basis of determining a market rental and escalation based on comparable rentals in the area where the premises are situated.
- (c) in other respects, in accordance with the terms of the standard form of head lease of Engen for "leased sites".

32.8. Should Engen consider exercising its option in terms of sub-clause 32.7, it shall notify the Dealer in writing of its interest in doing so. After determination of the rental and basis of escalation, under sub-clause 32.7, Engen may exercise its option by written notice within 30 days of the determination being communicated to it in writing.

32.9. After exercise of the option, the Dealer shall execute promptly upon demand such powers of attorney and other documents in order to give effect to the lease arising from the exercise of the option and if so required by Engen to register it against the title deed of the Property. Unless this agreement has been terminated, it shall be deemed to terminate upon execution of the lease that comes about in consequence of the exercise of the option.



32.10 In the event that the Dealer is not owner of the Property and Engen becomes entitled to cancel this agreement under this clause 32, Engen or its nominee, appointed in writing, shall have the option to take assignment of the Dealer's rights and obligations under the lease agreement whereby the Dealer hires the Premises should the owner be prepared to consent thereto. In the event of the exercise of such option, the provisions of sub-clause 32.9 shall apply *mutatis mutandis*.

### 33. BREACH BY ENGEN

33.1. Should Engen breach any of its obligations in terms of this Agreement reasonably capable of being remedied, and fail to remedy such breach within twenty one days after receipt of written notice by the Dealer to Engen requiring Engen to remedy that breach, then subject to the provisions of sub-clause 33.2, the Dealer shall be entitled to cancel this Agreement forthwith; Provided that if such breach is not reasonably capable of being remedied within the said period of twenty one days or should circumstances have arisen or arise during the period of the said notice and which, being partly or entirely beyond the control of Engen, prevent it from so remedying such breach within the said period of thirty days, then Engen shall be allowed such additional period as may reasonably be required therefore.

33.2. The Dealer shall not be entitled to cancel this Agreement by reason of breach thereof by Engen unless that breach is not reasonably capable of being remedied and would not at common law entitle such cancellation. If the breach is capable of remedy, and Engen shall have failed to remedy that breach within the time period allowed therefore in terms of sub-clause 33.1, then the Dealer may invoke the provisions of clause 37 and the Dealer shall be entitled to claim any damages it may have suffered from Engen because of the non-rectification of such breach by Engen.

33.3. Should Engen in conflict with the provisions of this Agreement, do or fail to do anything in *bona fide* compliance with any law, such act or omission shall not constitute a breach of this Agreement.

### 34. REPEATED BREACHES

Should the Dealer commit any breach of this Agreement, after having committed not less than three other breaches of this Agreement within the immediately preceding period of twelve Calendar months in respect of which written notice has been given to the Dealer in terms of this Agreement to remedy such breach, Engen shall be entitled to cancel forthwith this Agreement by written notice to the Dealer.

### 35. DISPUTE RESOLUTION

35.1. Each party consents to the referral to arbitration by a single arbitrator of any dispute arising out of this agreement, whether in relation to its formation, interpretation, application performance, termination or otherwise.

35.2. The arbitrator shall be a senior counsel who has practised as a senior counsel for not less than five years as a member of the bar affiliated to the National Bar Council at the seat of the Provincial Division of the High Court of South Africa which would otherwise have jurisdiction in relation to the dispute concerned. In the event of more than one Provincial Division having jurisdiction, the arbitrator shall be selected from amongst the members of the bar council at the seat of the court selected by the party requesting arbitration. In the event that the parties have not agreed upon the identity of the arbitrator within ten business days of either of them requesting arbitration of the dispute by notice in writing, the arbitrator shall be appointed by the secretary of the bar council concerned.

35.3. Except to any extent otherwise directed by the arbitrator from time to time, the uniform rules of the high courts in effect for the time then being, as read together with relevant provisions of the High Court Act and in accordance with High Court practice, then pertaining, shall apply *mutatis mutandis* to such arbitration, and the arbitrator shall, in addition to the powers conferred by legislation, have all the powers of a high court judge to the fullest extent lawfully possible.

35.4. Any arbitration proceedings pursuant to the arbitration agreement contained in this clause 35 shall be treated as confidential by the parties to this agreement. In the event of there being any doubt with respect to the rules and practice to be applied, the arbitrator shall determine same. The arbitration shall be held in the city where the arbitrator keeps chambers and in the event of his keeping chambers in more than one city, in the city selected by the party requesting arbitration. The arbitrator shall be entitled to award and tax

costs as if the proceedings were high court proceedings, provided that the arbitrator may delegate the taxation of such costs to any third party experienced in the drawing and taxation of high court bills of costs.

35.5. This clause 35 shall not preclude either party from seeking interdictory or urgent relief from any court which may have had jurisdiction but for this clause 35.

35.6. The provisions of this clause 35 -

(a) shall not preclude either party from seeking interdictory or urgent relief from any court which may have had jurisdiction but for this clause 35; and

(b) shall be severable from the remainder of this agreement and shall survive cancellation or other termination of this agreement for whatever cause or reason.

36. PAYMENT UPON TERMINATION

Should this Agreement be cancelled in terms of clauses 32 to 35 (both inclusive), each party shall pay all amounts owed by it to the other party within seven days of such cancellation.

37. RIGHT TO REMEDY DEFAULTS

Should either party breach any of its obligations in terms of this Agreement, and fail to remedy such breach within the time period allowed therefore after being called upon so to do, the other party may, upon three days' written notice, and without prejudice to any other right it may have, remedy such breach on behalf of and as the agent of the party in breach, and recover the reasonable cost of so doing from the party in breach.

38. ACCESS

Engen, its representatives, contractors, personnel, contractor's personnel or other persons appointed by it in writing, shall have unrestricted access to the Premises at all reasonable times for the purpose of exercising any right, or performing any obligation, under this agreement. Such right of access shall include, the right;

(a) to inspect, the Premises, records of the Dealer, the Equipment and signage;

(b) to install, maintain, replace, repair and remove equipment and signage;

(c) to exercise the rights under clause 37 by physical rectification of any feature of the Premises which constitutes a breach of this agreement (such as for example, by causing the Premises or any feature thereof to be repainted so as to conform to Engen's corporate image); and

(d) to conduct an audit of compliance with any provision of this agreement.

39. NO PREJUDICE

Without limiting the scope of, and subject to the provisions of, sub-clause 35.2, nothing contained in clauses 32 to 34 (both inclusive) shall detract from any right of either of the parties to claim damages from the other as a result of any breach of this Agreement, or to exercise any other right or remedy it may have in terms of this Agreement, or in law, or otherwise.

SIGNED at Johannesburg this 22nd day of December 2010.

AS WITNESSES:

for and on behalf of Engen

1. \_\_\_\_\_

2. \_\_\_\_\_

SIGNED at Newcastle

this 16<sup>th</sup> day of November

2010.

AS WITNESSES:

for and on behalf of  
the Dealer

1. [Signature]

2. [Signature]

[Signature]

END OF PART II

[Signature]  
[Signature]

AGREEMENT FOR THE APPOINTMENT OF  
THIRD PARTY OPERATOR

concluded among

Engen Petroleum Limited  
(registration number 1989/003754/06)  
(hereinafter called "Engen")

PDM9

and

SEYMA INVESTMENTS (PTY) LTD  
(Registration No. 62/04846/07)  
(hereinafter called "the Owner")

and

KADBRO TAXI CITY CC  
(Registration No. 2009/193287/23)  
(hereinafter called "the Operator")

Whereby it is recorded that the parties agree as follows:

1. DEFINITIONS

1.1 In this agreement, unless the context otherwise indicates:

- (a) "Property" shall mean Lot 257, Newcastle.
- (b) "Business" shall mean the automotive fuel filling and service station business and related businesses conducted from time to time at the Property;
- (c) "Principal Dealer Agreement" shall mean the retail dealer agreement concluded between Engen and the Owner, relating to, *inter alia*, the conduct of a fuel filling and service station business and related businesses on the Property;
- (d) "Operator's Dealer Agreement" shall mean the retail dealer agreement concluded or about to be concluded between Engen and the Operator, relating to, *inter alia*, the conduct of fuel filling and service station business and related businesses on the Property;
- (e) "Lease" shall mean the agreement of lease, or sub-lease, whereby the Operator hires, or is about to hire, the Property from the Owner;

(f) BACKGROUND

- a. Engen and the Owner concluded the Principal Dealer Agreement for the conduct of the Business on the Property and for matters incidental thereto.
- b. In consequence of arrangements between the Owner and the Operator, with the consent of Engen and subject to this agreement, the Operator will conduct the Business on the Property for his/her own account.
- c. Engen and the Owner have material interests in the proper conduct of the Business arising from the Principal Dealer Agreement and the matters referred to therein.
- d. The parties wish to record herein their mutual agreements with respect to the conduct of the Business by the Operator.

(g) OPERATOR'S DEALER AGREEMENT

Handwritten signatures and initials, including a large signature and several smaller initials, located at the bottom right of the document.

- a. The **Operator and Engen** hereby conclude a retail dealer agreement in the form of the document attached hereto, defined in this agreement as the **Operator's Dealer Agreement**.
- b. Notwithstanding the terms of the **Operator's Dealer Agreement**, and in addition to any rights of cancellation set out therein, **Engen** shall be entitled to cancel same;
  - i. should the **Lease** expire, be cancelled by mutual agreement or at the instance of either the **Owner** or the **Operator**, or should it otherwise terminate for any reason, other than the **Operator's** acquisition of the **Property**; and
  - ii. should the **Operator** vacate the **Property**, abandon the business, be liquidated or sequestrated or commit any act of insolvency.
- c. Notwithstanding the terms of the **Operator's Dealer Agreement**, the **Operator** recognises that no discounts or rebates on fuel sales shall be payable thereunder unless specifically otherwise agreed in writing by **Engen** and the **Owner**.
- d. In the event that the **Principal Dealer Agreement** ceases to be suspended, the **Operator** shall vacate the **Property** and give up occupation of the **Property** to the **Owner**.

(h) PRINCIPAL DEALER AGREEMENT

- a. With effect from the time when the **Operator** takes occupation of the **Property**, the provisions of the **Principal Dealer Agreement** shall be suspended, save that;
  - i. rebates (if any) provided for therein on sales of fuel by **Engen** to the **Business** shall continue to be paid to the **Owner** based on the quantities of petrol sold by **Engen** to the **Operator** in all respects as if such sales had been to the **Owner** and all provisions relating to such rebates shall apply *mutatis mutandis* as if such sales had been to the **Owner** under the **Principal Dealer Agreement**;
  - ii. rights of first refusal in favour of **Engen** to purchase the **Property** as set out therein shall continue to apply;
  - iii. rights in favour of **Engen** with respect to installation, replacement and removal of equipment and signage shall continue to apply;
  - iv. the **Principal Dealer Agreement** shall continue to exist for the period stated therein, subject to renewal options which shall be exercised or declined as stated therein; and
  - v. rights of first refusal which become applicable on expiry of the **Principal Dealer Agreement** which shall apply upon its expiry.
- b. In the event of the following circumstances, the **Principal Dealer Agreement** shall cease to be suspended and shall apply in all respects between the **Engen** and the **Owner**;

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- i. should the Lease expire, be cancelled by mutual agreement or at the instance of either the Owner or the Operator, or otherwise terminate for any reason;
  - ii. should the Operator vacate the Property, abandon the business, be liquidated or sequestrated or commit any act of insolvency; or
  - iii. should Engen give written notice to the Owner to the effect that Operator's Dealer Agreement has been cancelled; or
  - iv. should the Operator's Dealer Agreement otherwise terminate.
- c. In the event that the Principal Dealer Agreement ceases to be suspended, the Owner shall take steps to cancel the Lease, if still in existence and shall take such steps as may be necessary to occupy the Property and to perform the obligations thereunder, or let the Property to an alternative operator, subject to:
- i. approval of the alternative operator by Engen in writing;
  - ii. a lease which is *mutatis mutandis* the same as the Lease; and
  - iii. execution by the alternative operator, the Owner and Engen of an agreement *mutatis mutandis* the same as this agreement and execution by the alternative operator of an Operator's Dealer Agreement *mutatis mutandis* the same as the Operator's Dealer Agreement.
5. THE LEASE
- 5.1 The Owner shall not agree to or otherwise permit the alteration or consensual termination of the Lease without the prior written consent of Engen.
- 5.2 Before exercising any right of cancellation of the Lease owing to any breach of the same on the part of the Operator, the Owner shall give Engen written notice of the fact of that breach and of the Owner's intention to cancel the Lease.
- 5.3 Without limiting the generality of the provisions of clause 5.2, to the extent that the Lease may require that the Operator be given written notice before the exercise by the Owner of any right of cancellation, the Owner shall, in addition to its obligation in terms of clause 5.2, deliver to Engen a copy of any such notice.
- 5.4 Within twenty-one days after the date of receipt of the notice referred to in clause 5.1, Engen shall be entitled to make good that breach within the foresaid period of twenty-one days (or such longer period as may reasonably be necessary to make good that breach) in which event the Owner shall be deemed to have condoned entirely the breach in question and to have ceded to Engen its rights for damages or other relief against the Operator arising from that breach.
- 5.5 Should Engen decline to make good the relevant breach the Owner shall be entitled to cancel or agree to the termination of the Lease, as the case may be.
- 5.6 The Owner and the Operator agree that notwithstanding the terms of the Lease, the following shall be material additional terms which shall be deemed to have been incorporated therein:

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- (a) The Lease shall be deemed to have been premised on the Operator conducting on the Property the business of a automotive fuel filling station, convenience store and related business activities, in full compliance with the Operator's Dealer Agreement. The Operator undertakes in relation to the Owner to comply strictly with the terms of the Operator's Dealer Agreement in every respect.
- (b) The Operator agrees that it is a material and fundamental term of the Lease that the Owner shall be entitled forthwith to cancel the Lease in the event of the cancellation by Engen of the Operator's Dealer Agreement, anything to the contrary notwithstanding. The Operator agrees furthermore that in the event that the Owner cancels the Lease, Engen shall be entitled to terminate the Operator's Dealer Agreement.

6. NON-PREJUDICE

This agreement shall not prejudice any right Engen has, or may acquire, against the Owner, or in any way prejudices the continued validity of any of the agreements inclusive of any lease of the Property to Engen subsisting between the Owner and Engen or any deeds registered over the Property in Engen's favour, except to the extent specifically otherwise herein provided.

SIGNED at Jerrameeth this 22nd day of December 2010.  
 AS WITNESSES  
 1. [Signature]  
 2. [Signature]  
 For and on behalf of Engen

SIGNED at Newcastle this 16th day of November 2010.  
 AS WITNESSES  
 1. [Signature]  
 2. [Signature]  
 For and on behalf of the Owner

SIGNED at Newcastle this 16th day of November 2010.  
 AS WITNESSES:  
 For and on behalf of

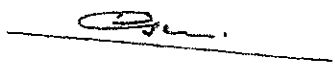
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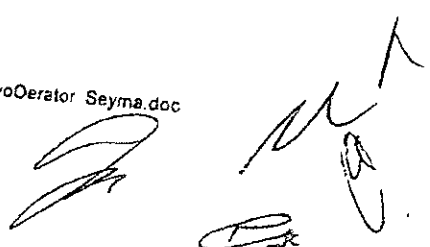
Agreement for the Appointment of Third Party Operator

1.  \_\_\_\_\_

the Operator

2.  \_\_\_\_\_

 \_\_\_\_\_





PDM10

Retail Dealer Agreement

PART I - General Information

- 1. THE DEALER: KADBRO TAXI CITY CC, (Registration No. 2009/193287/23)
- 2. THE PREMISES: LOT 257, Newcastle
- 3. ENGEN SITE NUMBER: 5MAL
- 4. COMMENCEMENT DATE: 1 September 2009
- 5. DURATION:
  - 5.1. Initial Period in years Five
  - 5.2. First Renewal Period in years Five
  - 5.3. Second Renewal Period in years n/a
  - 5.4. Third Renewal Period in years n/a
  - 5.5. Additional Renewal Period (s) (if any) n/a
- 6. NOMINATED OPERATOR: Rahim Abdool Kader ID 4801215098085
- 7. PROPERTY RIGHTS:
  - 7.1. Ownership of the Premises: Seyma Investments Pty Ltd Registration No. 62/04846/07
  - 7.2. Nature of Dealer's right of Occupancy: Lessee  
EG "lessee" "owner" or describe nature of right
  - 7.3. Initial Period of Dealer's Lease (if Lessee) 1 September 2009 - 30 August 2014
  - 7.4. Renewal rights of dealer if any (if Lessee) 5 years

8. REBATES

- 8.1. Subject to the provisions of clauses 1 and 7 of Part II, Engen shall allow the ~~Owner~~ Kadbro Taxi City CC a rebate on the price of Engen's brand of petrol and diesel sold by Engen to the Dealer under this agreement in each Accounting Month in accordance with the following criteria:
  - (a) Four cents per litre on petrol and diesel sold and delivered by ENGEN to dealer for the initial period of five years ie from year 1 to year 5 of the RDA;
  - (b) Five cents per litre on petrol and diesel sold and delivered by ENGEN to dealer for the renewal period ie from year 6 to year 10 of the RDA;

9. EQUIPMENT RENTAL

For the purposes of clause 21.3 of Part II the Basic Equipment Rental shall be a sum of R7000,00 per month.

PART II - Terms and Conditions of Agreement

1. INTERPRETATION AND APPLICATION

*(Handwritten signatures and initials)*

Kadbro Taxi City CC  
Owner Seyma Investments

- 1.1. Engen and the Dealer hereby agree upon the terms and conditions set out in Parts I and II of this document with respect to the conduct of the Business on the Premises.
- 1.2. Unless otherwise stated, all clause references are to this Part II.
- 1.3. In this agreement, unless the context indicates otherwise,
  - (a) "Accounting Month" shall mean a period designated by Engen as such in its business generally, immediately following the preceding Accounting Month, such that one and only one Accounting Month shall commence within any particular Calendar Month;
  - (b) "the Act" shall mean the Petroleum Products Act, No 120 of 1977 (as amended) inclusive of regulations promulgated thereunder, as in force from time to time;
  - (c) "Automotive Fuels" shall mean leaded and unleaded petrol, automotive diesel oil, liquefied petroleum gas, any mixture of petroleum products and chemicals used as a fuel for motor vehicles and any substitute for liquid fuels in use at the beginning of the millenium, such as electricity, hydrogen cells or the like;
  - (d) "the Business" shall mean shall mean the business activities of the Dealer on the Premises consisting primarily of an automotive fuel filling business and with the agreement of Engen, as contemplated in sub-clause 4.1, may include other activities such as a convenience store, restaurant, bakery, fast food, facility and a car-wash;
  - (e) "Calendar Month" shall mean one of the twelve periods into which the year is divided according to the calendar (for example January, February, etc.);
  - (f) "the Controller" shall mean the Controller of Petroleum Products under the Act;
  - (g) "Equipment" shall mean the equipment leased by Engen to the Dealer in terms of clause 21, or a specified part thereof as may be indicated by the context in which it is used;
  - (h) "Initial Period" shall mean the initial period of this agreement as detailed in Part I;
  - (i) "Premises" shall mean the premises described in Part I;
  - (j) "Processing" in relation to any quantity of petrol sold and delivered to, and paid for by, the Dealer shall mean completion of the recording of that transaction by Engen in its accounting records, regardless of any lapse of time since sale, delivery or payment, and "Process" and other cognate expressions shall bear a corresponding meaning: Provided that no quantity of such petrol shall be considered to have been Processed during the Accounting Month which includes the "Commencement Date" specified in clause 4 of Part I, unless delivered to and paid for by the Dealer on or after the said Commencement Date;
  - (k) "Related Agreement" shall mean any agreement to which Engen and the Dealer are parties relating to the Business, or the Premises including the agreement (if any) providing for the conclusion of this agreement and generally referred to by Engen as a "Transaction Agreement" and any lease or other agreement relating to the Premises or the Business, including any agreement for the conduct of any convenience store, restaurant, bakery, fast food outlet, car wash, automatic teller machine or other facility on the Premises and any mortgage bond, servitude or other deed registered over the Property in favour of Engen;
  - (l) "Relevant Volume" in respect of any Accounting Month shall mean the quantity of Engen's brand of petrol -
    - (i) sold and delivered by Engen to the Dealer for resale to the public by the Dealer at the Premises in the Business;
    - (ii) paid for by the Dealer; and
    - (iii) Processed during that Accounting Month.

(m) "Renewal Period" shall mean any of the renewal periods referred to in Part I and "Period" shall mean either the Initial Period, or a Renewal Period;

(n) "Retail Licence" shall mean the licence defined by the Act as such;

(o) "Site Licence" shall mean the licence defined by the Act as such;

2. PREAMBLE

2.1. The Dealer acknowledges that

(a) the Business is or will be closely identified with Engen, through the use by the Dealer of Engen's trademarks, brand names, logos, corporate image, and the sale of Engen's products;

(b) the image of the Business will or may affect the image and the business of Engen and its network of service stations and convenience stores; and

(c) Engen will contribute substantially to the development of the Business in consequence of,

(i) the use of its assets referred to in paragraph 2.1(a);

(ii) the advertising and promotion of its brands; and

(iii) the use of its signage and equipment.

2.2. In consequence of the factors referred to in sub-clause 2.1 and the rights of Engen under this agreement, the Dealer accepts that Engen has a material interest in, the manner in which the Business is conducted, the maintenance of proper operating standards on the Premises and the continuity of the Companies relationship with the Business in the event of the alienation of the Business or the Premises.

3. COMMENCEMENT AND DURATION

3.1. This Agreement shall, subject to it having been signed by Engen and the Dealer, commence (or be treated as having commenced) on the "Commencement Date" referred to in Part I, and shall, subject to the other provisions of this Agreement and those of law, remain in force for the initial period stated in Part I. Should no specific date be stated in Part I -

(a) this agreement shall enter into force at termination of the subsisting retail dealer agreement between the parties (should one exist) or, failing any such subsisting agreement, subject to paragraph 3.1(b), at the time determined as the commencement time for this agreement by notice thereof given by Engen to the Dealer;

(b) should the service station buildings at the Premises not be complete and ready for occupation by the Dealer, Engen shall not unreasonably determine the commencement time pursuant to paragraph 3.1(a) otherwise than as being the time at which the Premises are in its reasonable and bona fide opinion so complete and ready.

3.2. This agreement shall be deemed to be renewed for each of the Renewal Periods referred to in Part I, unless Engen shall have given written notice to the dealer of Engen's intention not to renew this agreement for any specific Renewal Period, in which event it shall not be renewed for that Renewal Period and for each of the subsequent Renewal Periods if any.

3.3. Notwithstanding the foregoing provisions of this clause 3, Engen may at any time terminate this agreement by written notice of not less than 12 (twelve) months to the Dealer.

4. THE BUSINESS

4.1. The Dealer shall at all times during the currency of this Agreement conduct at the Premises the business of an automotive fuel filling station in which the Dealer shall have available for sale and shall promote, to the greatest extent reasonably possible, the sale of the products of Engen, its subsidiaries and associated companies.

- 4.2. The Dealer shall conduct such additional business activities on the Premises as Engen may agree with the Dealer, including (but not limited to) a convenience store, restaurant, fast food outlet, automatic bank teller, bakery, outlet and car wash.
- 4.3. The Dealer may carry on, as part of the Business, the activities of a motor garage, but may not engage in any other activity, including but not limited to the buying, selling, storage or display of new or second hand motor vehicles, without the prior written consent of Engen.
- 4.4. The Dealer shall not remove the Business or any portion thereof from the Premises or alter the name of the Business without the prior written consent of Engen.
- 4.5. The Dealer shall operate and take part, as and when so requested by Engen such systems as Engen may reasonably prescribe from time to time, such as, by way of example, and without limiting the scope of the foregoing, Extra-Net and the e-Fuel systems.
- 4.6. If reasonably required by Engen the Dealer shall participate in any banking or information technology arrangement or system which is widely used by service station businesses and which facilitates the conduct of the Business or the payment for automotive fuels.

5. EXCLUSIVITY

Subject to clause 13, the Dealer shall purchase exclusively from Engen, or Engen's nominee appointed in writing, the Dealer's entire requirements of Automotive Fuels for resale from the Premises and shall not directly or indirectly store on or sell or distribute from the Premises or through the Business any Automotive Fuel whatsoever other than that purchased from Engen or its nominee.

6. SUPPLY OF AUTOMOTIVE FUEL

- 6.1. Engen shall supply or cause to be supplied all products sold to the Dealer at the applicable wholesale selling price ruling at the time of delivery, and for the place of delivery. Provided that, if Engen does not deal in any type of fuel this agreement shall not be construed as obliging Engen to supply same and the Dealer shall not deal therein in the course of the Business. Engen shall determine the brands of Automotive Fuels to be marketed by the Business.
- 6.2. The Dealer shall endeavour to order, and Engen shall endeavour to supply, Automotive Fuel in quantities not less than the minimum order quantity as reasonably prescribed by Engen from time to time. It is recorded that a stipulation by Engen that the minimum order quantity shall be the lesser of the maximum capacity of a road tanker, or 80 % (eighty percent) of the storage capacity of the Equipment, shall be reasonable. Engen shall deliver each order without unreasonable delay, and deliveries of Automotive Fuels may be effected into the Equipment whether or not the Dealer is present.
- 6.3. For the purposes of this agreement, a certificate apparently on the stationery of Engen, and apparently signed on behalf of Engen by anyone professing to be a manager of Engen, purporting to reflect the cost of the quantity of automotive fuels delivered, and tendered as evidence on behalf of Engen, shall constitute *prima facie* evidence of the quantity of any Automotive Fuel delivered to the Dealer during any period of time and it shall not be necessary for Engen to prove the identity or capacity or authority of the signatory of that certificate.

7. REBATES

- 7.1. Notwithstanding anything to the contrary, Engen's obligation to allow rebates under this agreement is premised entirely and absolutely on complete performance of all accrued obligations of the Dealer under this agreement and under any Related Agreement. Engen shall have no obligation to allow rebates until all Related Agreements have been duly executed by or on behalf of the Dealer and all leases, servitudes, mortgage bonds and other deeds, (which are Related Agreements) intended for deeds office registration, shall have been duly registered, whatever the reason for any delay or default may be.
- 7.2. Should the Dealer have any obligation under a Related Agreement to effect any alterations or improvements to the Premises, Engen may withhold rebates under this agreement until the relevant

alterations or improvements have been performed in proper compliance with the Related Agreement. Engen shall be entitled to withhold rebates under this agreement in the event that the Dealer performs any work on the Premises as a consequence of which the Premises do not conform to the brand image of Engen (such as painting the canopy a colour which does not conform to that prescribed by Engen).

- 7.3. Any provision under this agreement whereby rebates are either not payable, or may be withheld, shall be construed such that their payment is not merely suspended, but that such rebates are not payable.
- 7.4. Subject to the provisions of this clause 7 and sub-clause 32.6, Engen shall allow the Dealer the rebates specified in clause 8 of Part I.
- 7.5. For the purposes of this agreement Engen's records shall be *prima facie* proof of time and quantity of any delivery of any quantity of petrol.
- 7.6. Engen shall be entitled to set off the rebates referred to in clause 8 of Part I against any amount owing by the Dealer to Engen, including but not limited to any amount owing in respect of any loan or other indebtedness of whatsoever nature. For such purposes "any amount owing" means any amount then due and payable.

8. RETAIL PRICE

- 8.1. The Dealer shall not sell or offer or advertise for sale, from the Premises, any Automotive Fuels at any price in contravention of law.
- 8.2. Engen may suspend supplies of any Automotive Fuel to the Dealer if and for so long as the Dealer sells, or offers or advertises for sale, Automotive Fuels in breach of the provisions of sub-clause 8.1, or if Engen is of the *bona fide* and reasonable opinion that the Dealer would do so if such Automotive Fuels were supplied to it. Notwithstanding such suspension of supplies, the Dealer shall remain bound by all of its obligations in terms of this Agreement.

9. OWNERSHIP OF AND RISK IN AUTOMOTIVE FUEL

- 9.1. Ownership of any Automotive Fuel sold by Engen to the Dealer shall not pass to the Dealer until such fuel shall have been delivered to the Dealer, and payment for such fuel shall have been made in full. To the extent that such fuel may upon delivery have been mixed with fuel already owned by the Dealer, the fuel owned by the Dealer shall (regardless of the relative quantities of each) accede to Engen's fuel by *commixtio*, and the mixture shall be owned by Engen; provided that the Dealer shall be entitled to compensation for the fuel previously owned by it at the original cost of such fuel to the Dealer. Engen may set off any such amount of compensation against any amount owing to it by the Dealer.
- 9.2. The risk in any Automotive Fuel sold by Engen to the Dealer shall pass to the Dealer upon delivery, irrespective of when payment for such fuel is made.

10. PAYMENTS

- 10.1. Payment shall be made in cash for all Automotive Fuels sold to the Dealer. Engen reserves the right to accept a cheque from the Dealer on delivery, or to require that payment in hard cash or by bank cheque or bank-guaranteed cheque be made at its offices or by way of electronic transfer into Engen's nominated banking account prior to dispatch of the delivery.
- 10.2. Engen may from time to time agree to grant credit facilities to the Dealer in respect of certain specified products sold by Engen to the Dealer, in which event the nature, extent, duration and conditions of such credit facilities shall be in the absolute discretion of Engen.
- 10.3. Engen and the Dealer shall, from time to time, agree on suitable methods of payment in respect of various amounts which may be due by the Dealer to Engen. It is recorded that Engen's preferred method of payment is the system whereby a direct debit is raised against the bank account of the Dealer, whether manually or via computer, and the Dealer hereby undertakes not unreasonably to withhold his consent to the implementation of such a system of payment. Engen shall endeavour to source and administer the most cost-effective way of direct debiting.

*[Handwritten signatures and initials]*

- 10.4. Engen may appropriate any payment by or on behalf of the Dealer, at any time after such payment is made, to any debt owed by the Dealer to Engen, provided that should the Dealer expressly indicate that a specific payment is in respect of a specific debt, Engen shall so appropriate such payment.
- 10.5. All payments by the Dealer shall be made to such office of Engen as Engen may from time to time direct.

#### 11. PROOF OF INDEBTEDNESS

A certificate apparently on the stationery of Engen, and apparently signed on behalf of Engen by anyone professing to be a manager of Engen, purporting to state the amount due and payable by the Dealer to Engen and tendered as evidence on behalf of Engen, shall constitute prima facie evidence of what it so purports to reflect, and it shall not be necessary for Engen to prove the identity or capacity or authority of the signatory of that certificate.

#### 12. INTEREST ON OVERDUE AMOUNTS

- 12.1. For purposes of this clause 12 –

- (a) "financial breach" means a breach by the Dealer of an obligation to pay a liquidated amount of money which is due and payable in terms of this agreement;
- (b) "prime rate" with respect to any period of time means the rate of interest quoted publicly by the Standard Bank as its prime rate of interest for unsecured private sector overdrafts during that period of time;
- (c) "stipulated interest rate" with respect to a financial breach during a period of time means an interest rate per annum of two percentage points above the prime rate during that period of time, for example, should the prime rate during February 2008 be 11% per annum, the stipulated interest rate shall be 13% per annum.

- 12.2. The amount due and payable from time to time with respect to any financial breach shall bear interest at the stipulated interest rate. All such interest shall be due and payable as it accrues, without notice or demand: Provided that it shall not be capitalised except at the end of the calendar month in which it accrues.

- 12.3. A certificate, apparently on the stationery of the Standard Bank purporting to be signed by a manager of that bank, stating the prime rate of interest for unsecured overdrafts quoted by that bank during any period of time, shall constitute conclusive proof of the prime rate with respect to that financial breach for that period of time.

#### 13. FORCE MAJEURE

- 13.1. If, for any reason beyond Engen's control, quantities of any Automotive Fuels or other product which Engen has available for supply to its customers (including but not limited to the Dealer), in the district where the Premises are situated, become insufficient to meet the requirements of all such customers, or Engen has a reasonable apprehension that they may become so insufficient, Engen shall be entitled to withhold supplies of such Automotive Fuel from the Dealer, or to allocate such supplies to the Dealer in such manner or quantity as it may deem fit and no right of action, whether for damages or otherwise, shall thereby accrue to the Dealer. In such event there shall be no obligation on Engen to take extraordinary measures to make up any shortfall or incur extraordinary expenditure for the procurement, production, storage or transportation of any Automotive Fuel or raw material and the Dealer shall be entitled, after reasonable written notice to Engen and with the written consent of Engen, to purchase any shortfall in supplies of such Automotive Fuel from another available source for the period during which Engen so withholds supplies of such Automotive Fuel in whole or in part to the Dealer.
- 13.2. For the purposes of sub-clause 13.1, circumstances beyond Engen's control in respect of the availability of an Automotive Fuel shall include, without limitation, any cause of any nature whatsoever directly or indirectly or wholly or partly beyond Engen's control, including, but not limited to, and whether or not similar to, the following: the inability for any reason whatsoever of Engen to obtain its full requirements of

that or of any other Automotive Fuel from any of its normal sources of supply by its usual means; the inability for any reason whatsoever of any of Engen's suppliers to obtain that supplier's full requirements of such Automotive Fuel or any relevant raw material from its usual sources of supply by its usual means; the inability for any reason whatsoever of Engen or any of its suppliers to process any such raw material or to meet required specifications by processing the raw materials available to it; the inability for any reason whatsoever of Engen or any of its suppliers to store or transport by usual means and at usual expense any Automotive Fuel or raw material; the unplanned and planned "shut-down" of any refinery or other plant in South Africa producing Automotive Fuels, whether or not related to Engen; any compliance by Engen or any of its suppliers with any order or request of any Governmental authority or person purporting to act therefor; or the interruption, inadequacy or lack of availability of any source or facility of production, manufacture, storage, transport, distribution or delivery, contemplated by Engen, for whatever reason.

13.3. Nothing contained in this clause 13 shall entitle the Dealer to purchase any Automotive Fuel from any other source in the event of Engen refusing to deliver Automotive Fuel to the Dealer, or placing any condition on any such delivery, in terms of any provision of this Agreement, pursuant to default on the part of the Dealer.

14. EXPIRY DATE AND THE LIKE OF PRODUCTS AND GOODS

14.1. The Dealer undertakes not to offer for sale, sell or display any products or goods at the Premises to the extent that any such product or goods -

- (a) shall have reached its sell-by date; or
- (b) shall have perished; or
- (c) are stale.

14.2. The Dealer undertakes to remove any such products or goods which -

- (a) are about to reach their sell-by date, immediately prior to the end of such sell-by date; or
- (b) which are about to become perished; or
- (c) which are about to become stale;

and shall dispose of such products or goods without delay thereafter, otherwise than by sale in the Business.

14.3. Engen shall have the right at any time to require the Dealer to remove and to dispose of any products or goods offered for sale or displayed at the Premises and which Engen determines in its sole and absolute discretion -

- (a) to have reached, or are about to reach, its sell-by date; or
- (b) to have, or which are about to become, perished; or
- (c) are, or which are about to become, stale;

as and when so requested by Engen. Any decision of Engen with respect to any of the foregoing shall be final and binding on the Dealer.

14.4. For the avoidance of any doubt it is recorded and agreed that Engen shall not be liable to compensate the Dealer in respect of any products or goods removed or disposed of or required to be removed and disposed of as contemplated by the provisions of this clause 14.

15. HYGIENE

15.1. The Dealer shall comply with Engen's hygiene standards, as advised to the Dealer by Engen from time to time.

*[Handwritten signatures and initials]*

- 15.2. Notwithstanding anything to the contrary contained in this Agreement, in the event of non-compliance by the Dealer of Engen's said standards contemplated in sub-clause 15.1, Engen shall be entitled to require the Dealer to remedy the said non-compliance within a reasonable period. It is recorded and agreed that with regard to any non-compliance with Engen's standards relating to hygiene, a period to remedy same within twenty-four hours shall be considered a reasonable period. Notwithstanding anything to the contrary contained in this Agreement, should the Dealer fail to remedy the non-compliance within the period as may be stipulated by Engen as contemplated aforesaid, Engen shall be entitled to take such action as it may deem fit (including, but not necessarily limited to, the use of a specialist contractor), at the cost of the Dealer, to remedy the non-compliance concerned.
16. MINIMUM SERVICE STATION OPERATING STANDARDS
- 16.1. The Dealer shall –
- (a) keep the Premises open for the sale of Automotive Fuel and other Automotive Products for such periods as Engen may, after consultation with the Dealer, reasonably determine from time to time;
  - (b) employ such numbers, and have on duty at any particular time such numbers of pump attendants and other staff as may be necessary for the satisfactory operation of the Business;
  - (c) ensure that all pump attendants are properly trained and efficient in executing driveway functions and other duties necessary for the Business; and that all its staff are adequately trained in their respective work functions, customer care, and health, safety and environment matters;
  - (d) purchase from Engen's nominated supplier such uniforms as Engen may reasonably prescribe from time to time to the extent such uniforms are reasonably priced and are of a reasonably good quality and provided that such nominated supplier provides a reasonably good and reliable service, and ensure that all on-duty pump attendants and other staff are dressed in such uniforms and that such uniforms are maintained in a clean and tidy condition and are replaced whenever necessary;
  - (e) maintain a standard of driveway service as reasonably determined by Engen from time to time;
  - (f) ensure that access to the pumps is unrestricted and that the pumps are clearly visible from the adjoining streets, and not permit any vehicle, other than those in the course of receiving or awaiting service from the pumps, to park in such manner as to restrict access to the pumps or the area demarcated as the forecourt;
  - (g) contract with such recognised third parties who provide debit and credit facilities so as to become a recognised merchant or supplier in respect of debit cards, credit cards, fleet management and other similar systems generally in use by the motoring public. In addition to such facilities, and without derogating from the Dealer's obligations in terms of this paragraph 16.1(g), the Dealer shall permit Engen at any time to install and maintain at its own cost any debit or credit card system as Engen may deem fit;
  - (h) ensure that all signage supplied by Engen which is capable of and intended to be illuminated, remains operational and illuminated between the hours of sunset and sunrise;
  - (i) partake and co-operate to the fullest extent in all promotions which Engen may from time to time arrange with respect to the Premises; (The Dealer may conduct such other promotional campaigns as he may wish, provided that Engen shall be entitled to require the Dealer to cease any promotional campaign which Engen reasonably believes to be detrimental to the image and standing of Engen, its network of service stations as a whole, and/or its products and brands);
  - (j) subject to paragraph 16.1(i) actively participate in all sales and service promotions and/or programmes which Engen may from time to time initiate, where such promotions and/or programmes are applicable to the Premises; and make such financial contributions thereto as Engen may reasonably require, and ensure that all the Dealer's staff are fully briefed and trained in the execution of such promotions and/or programmes;



- (j) actively promote the Service Station and Engen's products by the initiation of regular independent promotional campaigns and other such initiatives, subject to the approval of Engen having first been obtained;
- (k) maintain full and proper stock and other accounting records;
- (l) comply fully with all laws and Engen's guidelines relating to fire protection, and maintain on the Premises an adequate number of operational fire extinguishers;
- (m) keep all areas of the Premises clean, neat and tidy and free of scrap (including redundant vehicles) at all times;
- (n) maintain all gardens, shrubs, lawns and trees on or about the Premises, in a neat, tidy and environmentally pleasing condition;
- (o) maintain any public toilets or rest rooms in a clean and hygienic condition, and ensure that they are adequately supplied with soap, clean towels and toilet paper, and that the plumbing, hand basins, water closets and all other fixtures and fittings therein are maintained in good working order at all times;
- (p) comply with all Company manuals relating to Service Station standards, and with all reasonable guidelines issued by Engen to its Dealers from time to time;
- (q) comply fully with Engen's graphics standards as set out in Engen's Retail Appearance Standards Manual, as amended from time to time, which Manual and all subsequent amendments shall be made available to the Dealer by Engen;
- (r) develop and maintain a proper business plan, as and when required by Engen and with the assistance of Engen where necessary, in accordance with normal good business practice. The Dealer undertakes to substantially adhere to such business plan;
- (s) assist Engen to complete (or complete himself, if so requested) a Retail Efficiency Development Guide at regular intervals, as determined by Engen, in order to determine the Dealer's level of retail efficiency;
- (t) ensure a readily available supply of water and air on the forecourt for the free use of all customers;
- (u) conduct the Business in all respects without any discrimination on the grounds of race, colour, creed, religion, gender, culture, or sexual orientation; provided that this paragraph 16.1(u) shall not prevent the Dealer from designating separate rest room or toilet facilities for males and females;
- 16.2. To the extent that this agreement may require compliance with any manuals or extraneous materials issued or prescribed by Engen, the Dealer shall be obliged to ensure that the Dealer has on the Property a complete and current version thereof or has access thereto via Engen's "extranet" web site.
- 16.3. The Dealer undertakes to comply with the reasonable directions of Engen flowing from information reflected by any Retail Efficiency Development Guide (Form RSD 23) completed in respect of the Business, in order to achieve a satisfactory level of retail efficiency;
- 16.4. Without prejudice to any other remedy which Engen may have in terms of this agreement, should the Dealer, in the reasonable opinion of Engen, have failed to comply with any of the provisions of sub-clause 16.1, or directions issued in terms of sub-clause 16.3 or any manual prescribed by this agreement, notwithstanding the expiry of a reasonable period of time after having been requested in writing by Engen so to do, Engen may itself cause that failure to be remedied and to recover the cost thereof from the Dealer. For the purposes of this sub-clause 16.4, a certificate apparently on the stationery of Engen, and apparently signed on behalf of Engen by anyone professing to be a manager of Engen, purporting to reflect the amount of such cost, and tendered as evidence on behalf of Engen, shall constitute prima facie evidence of what it so purports to reflect, and it shall not be necessary for Engen to prove the identity or capacity or authority of the signatory of that certificate.

16.5. Engen shall supply or cause to be supplied to the Dealer, at a price equal to the cost thereof to Engen, uniforms contemplated by the provisions of paragraph 16.1(d) in such quantities as the Dealer may reasonably require from time to time.

17. APPEARANCE OF PREMISES TRADEMARKS AND SIGNS

17.1. Notwithstanding anything to the contrary in this agreement, and without derogation from any of the other provisions of this agreement, the Dealer shall, at its own cost, ensure that the appearance of the Premises is at all times to the reasonable satisfaction of Engen in accordance with such directions as it may from time to time reasonably determine. Such directions may include the painting or repainting of the Premises in accordance with Engen's standard colours for the brand of Automotive Fuels marketed through the Premises. Without limiting the generality of the foregoing, the Dealer shall not, at, on, in or in relation to, the Premises, without the prior written consent of Engen –

- (a) permit any infringement of any of Engen's trademarks or those which it has the right to use, or any defraction from any brand or corporate image of Engen so determined; or
- (b) instal or exhibit or allow the installation or exhibition of any sign, device, other signage, other advertising material or notice; or
- (c) effect or allow to be effected any alterations or improvements.

17.2. Engen may at any time, at its own cost, cause such signs (including illuminated signs, advertising material, notices and all other manner of signage) as it may in its discretion consider appropriate to be installed on, in or about the Premises. Such signs shall form part of the Equipment leased by Engen to the Dealer, and the provisions of clause 21 shall apply *mutatis mutandis* to such signs.

17.3. The Dealer shall not exhibit or allow the exhibition at, on, in or about the Premises of any other signage, notice or advertising material without the prior written consent of Engen, and Engen shall have the right to direct the Dealer to remove any signage whatsoever on or about the premises.

17.4. The Dealer acknowledges that he does not have and shall not acquire any right in or to any trademark or brand or corporate image or any other intangible right of Engen, or any right to require Engen to afford the Premises the same image, signage or other attribute as any other service station at which any of Engen's products may be sold.

18. INSURANCE

18.1. The provisions of this clause 18 shall not apply unless the Dealer is the owner of the Premises.

18.2. The buildings and other improvements on or constituting the Premises or which may from time to time be erected thereon, (hereinafter referred to as the Buildings) shall be insured and kept insured by the Dealer, to the full value thereof, as reasonably agreed with Engen from time to time, with such insurer(s) as Engen may nominate in writing, or agree in writing –

- (a) against risk of loss and damage by fire, riot, flood, civil disturbance, earthquake and such other causes (whether or not similar to the foregoing) against which property of such nature is ordinarily insured otherwise than as contemplated in paragraph 18.2(b); and
- (b) against risk of loss or damage by political riot, malicious damage and similar causes to the extent commercially available in the country in which the Premises are situate.

18.3. The Dealer shall not unreasonably withhold agreement to any proposal made by Engen for the value to be placed on the Buildings for the purposes of such insurance, and in breach of that obligation by the Dealer Engen shall be entitled reasonably to determine the value unilaterally. Should the withholding of such agreement be an issue, the burden of proof shall be on the Dealer to prove the reasonableness of such withholding, and not on Engen to prove the contrary.

18.4. Each such policy of insurance (including but not limited to any applicable coupon associated therewith) shall, at Engen's option, be issued either in the name of the Dealer alone or in the joint names of the Dealer and Engen for their respective interests.

- 18.5. The rights, title and interests of the Dealer in each such policy of insurance (including but not limited to any applicable coupon associated therewith) are hereby ceded to Engen as security for the performance by the Dealer of its obligations hereunder including but not limited to the obligation to apply the proceeds thereof in accordance with the terms of sub-clause 18.7.
- 18.6. The Dealer shall promptly produce evidence of the required insurance to the reasonable satisfaction of Engen without the need for notice or demand by Engen. Should the Dealer fail to perform any obligation promptly in terms of the provisions of this clause 18, Engen may itself effect the insurance concerned and recover the cost thereof from the Dealer.
- 18.7. The proceeds of the policies of insurance (including but not limited to any applicable coupon associated therewith) shall be applied for the restoration (under such conditions as Engen may determine) of the Buildings or that part thereof which shall have been damaged or destroyed, provided that, if such proceeds are insufficient to restore same to the original size, specification or standards, Engen shall determine the nature of restoration work to be effected and the precise scope thereof.
- 18.8. The provisions of this clause 18 are solely for the benefit of Engen which may at any time and from time to time, by notice in writing to the Dealer, waive compliance thereof for such period or periods and to such extent as it may deem fit in its absolute discretion without having to furnish any reason for such waiver.

19. INDUSTRIAL RELATIONS

The Dealer undertakes to adhere to sound and fair industrial relations practices at all times, in order to restrict to the minimum any possible disruptions to the Business as a result of industrial action. The Dealer acknowledges that his failure to comply with this provision could have an adverse impact on Engen's industrial relations

20. HSEQ CONSIDERATIONS

- 20.1. The Dealer undertakes to comply in careful detail with Engen's Service Station HSEQ Manual as applicable from time to time and in doing so shall complete and retain for inspection on the Premises all associated forms and check-lists. Without limiting the generality of the foregoing, the Dealer shall comply strictly with all laws and regulations concerning occupational health and safety and environmental protection. Engen shall be entitled to conduct an audit from time to time to assess the level of compliance by the Dealer with the said manual and such laws and regulations. The Dealer shall comply strictly with all written directions as may be issued by Engen pursuant to such audits.
- 20.2. The Dealer acknowledges that strict control of fuel stocks is essential for the maintenance of proper environmental protection. The Dealer shall adhere to such fuel management system as Engen may prescribe from time to time, which may include a system managed by Engen or a third party (hereinafter referred to as "the prescribed system"). In the absence of any written direction by Engen to the contrary, this shall be the Statistical Inventory Analysis Management system administered by Engen.
- 20.3. The Dealer undertakes to participate in the prescribed system in order to endeavour to detect fuel losses at an early stage and to determine the causes of such losses. The Dealer shall adhere to all the requirements of the prescribed system as directed by the administrator thereof as amended from time to time.
- 20.4. The Dealer shall maintain the motor fuel sales control strictly, and accurately, on a daily basis in accordance with the prescribed system. Provided that the Dealer complies diligently with all requirements, the Dealer shall be entitled to all data, test results, diagnostics, reports and the like from the prescribed system as and when available in terms thereof.
- 20.5. The cost of participation in the prescribed system shall be for the account of the Dealer.
- 20.6. The Dealer shall indemnify and hold Engen harmless against all costs incurred by it consequent upon contamination of the environment where this could have been prevented or minimised by the maintenance of proper stock control procedures and/or the implementation of the prescribed system. The Dealer acknowledges that he is furthermore aware that should environmental contamination occur or be

aggravated as a result of his failure to keep adequate stock records or follow required procedures, this may result in his prosecution in terms of environmental legislation.

21. EQUIPMENT

- 21.1. Engen shall lease to the Dealer such equipment as Engen may determine is reasonably necessary for the storage, dispensing and sale of Automotive Fuel, and (to the extent any such equipment is not already installed) shall install such equipment on the Premises at its own cost. Any reference in this Agreement to "the Equipment" shall mean the equipment leased by Engen to the Dealer in terms of this clause 21, or a specific part thereof as may be indicated by the context.
- 21.2. Engen shall remain the owner of the Equipment regardless of the manner of its installation on the Premises, and irrespective of the fact that tanks and equipment may be installed under the surface of the Premises. The Dealer waives any claim to the effect that such equipment has acceded to and become part of the Premises. Engen shall be entitled to remove, modify, reposition or replace the Equipment or any part of it at any time, provided that should there be an effective reduction of capacity this shall be subject to a reasonable adjustment of the rental payable. On the expiration or earlier termination of this agreement, or should Engen or any of its associated companies cease to supply, or be the supplier of, Automotive Fuels for sale or distribution from the Premises, Engen shall be entitled to remove from the Premises all pumps, tanks and other equipment for the storage and dispensing of Automotive Fuels and all brand signage.
- 21.3. The rental payable by the Dealer in respect of any month shall be the Basic Rental stated in clause 9 of Part I which sum shall escalate by 8% (eight per cent) per annum compounded. Payment of rental shall be suspended, provided that:
- (a) the Dealer complies strictly with the provisions of this agreement and Related Agreements; and
- (b) all Related Agreements have been duly executed by or on behalf of the Dealer without delay after written request and all leases, servitudes, mortgage bonds and other deeds, (which are Related Agreements) intended for deeds office registration, have been duly registered.
- 21.4. In the event that Engen becomes entitled to cancel this agreement in consequence of a breach thereof by the Dealer, rental shall cease to be suspended (unless already payable under paragraph (b) of sub-clause 21.3) and shall become due and payable as from the commencement of this agreement and shall continue to be payable monthly in advance. In such event arrear as from the commencement of the agreement, or as from the time when rental was last paid shall become payable on demand.
- 21.5. Engen shall be responsible, at its own cost, for repairing or replacing any equipment which, in Engen's opinion, requires such repair or replacement as a result of fair wear and tear.
- 21.6. The Dealer shall not reposition or remove any of the Equipment without the prior written consent of Engen.
- 21.7. The Dealer shall not install, or allow to be installed on the Premises any fuel storage or dispensing equipment, inclusive of equipment for the storage and dispensing of fuels other than petroleum fuels, other than the equipment installed by Engen.
- 21.8. The Dealer shall be responsible for obtaining all licences, consents and other authorities required for the use of the Equipment, at the Dealer's own cost.
- 21.9. Subject to clause 13, the Dealer shall not use or permit the use of the Equipment otherwise than in connection with the storage and resale of Automotive Fuels purchased from Engen, or for such other purpose as may be specified by Engen.
- 21.10. The Dealer shall not use any item of the Equipment for any purpose other than that for which it was designed and installed, and shall operate the Equipment in accordance with the instructions of the manufacturer and Engen.
- 21.11. Engen shall be entitled to exhibit advertising and other signs on the Equipment, and the Dealer shall not affix or allow to be affixed to the Equipment any signs other than those exhibited or approved by Engen.

- 21.12. The Dealer shall notify Engen promptly with confirmation in writing of any defect in the Equipment or any incident of loss or damage to the Equipment. The Dealer shall not effect any repairs to the Equipment (other than such repairs as may be urgently required for reasons of safety or prevention of loss) without the prior written consent of Engen.
- 21.13. Engen shall at its own cost provide a maintenance service for fuel pumping and metering equipment for the purposes of ensuring that the Equipment complies with assize requirements.
- 21.14. Should there be any loss of Automotive Fuel of 200 litres or less a day as a result of any defect in, or fair wear and tear of, the Equipment, Engen shall be liable to replace any such loss of Automotive Fuel sustained; Provided that such liability shall not arise unless the Dealer shall have strictly complied with the prescribed system for stock management contemplated by clause 20.
- 21.15. Engen's liability (to the extent existing in accordance with the provisions of sub-clause 21.14) shall be limited to replacing such lost Automotive Fuel. Subject to the foregoing, once the loss has been verified and substantiated as contemplated in sub-clause 21.18, Engen will replace (whether by payment or delivery of Automotive Fuels) such Automotive Fuel lost within thirty days after such verification and substantiation.
- 21.16. Should there be a loss of Automotive Fuel of more than 200 litres a day as a result of any defect in, or fair wear and tear of, the Equipment, Engen shall be liable to replace any such loss of Automotive Fuel sustained; Provided that such liability shall not arise unless -
- the Dealer shall have strictly complied with the prescribed system for stock management contemplated by clause 20;
  - the loss of Automotive Fuel is reported within six days by the Dealer;
- 21.17. Engen's liability (to the extent existing in accordance with the provisions of sub-clause 21.16) -
- shall be limited to replacing such lost Automotive Fuels; and
  - in no case shall Engen be liable for any loss of Automotive Fuels sustained more than 5 (five) days prior to the date on which such loss of Automotive Fuels shall have been first reported in writing to Engen by the Dealer.
- Subject to the foregoing, once the loss has been proven or agreed, Engen will replace (whether by payment or delivery of Automotive Fuels to the Dealer) such Automotive Fuels lost within thirty days after such proof or agreement.
- 21.18. Where a customer lodges a claim against the Dealer in respect of the supply of any faulty, contaminated or otherwise off-specification Automotive Fuels to such customer, the Dealer shall be obliged to investigate that claim without delay and in a businesslike fashion. The Dealer shall take all reasonable steps to minimise any loss or damage with respect to any faulty, contaminated or otherwise off-specification Automotive Fuels. After the investigation of any such claim, should -
- the Dealer believe that the supply of any faulty, contaminated or otherwise off-specification Automotive Fuels to the customer concerned was due to the negligence or other fault of, or in law attributable to, Engen or its servants, the Dealer shall refer such claim to Engen without delay. Should Engen request the Dealer to settle any such claim on behalf of Engen, the Dealer shall not unreasonably refuse to do so provided that Engen shall have undertaken in writing to refund the Dealer forthwith,
  - the Dealer be satisfied that the supply of any faulty, contaminated or otherwise off-specification Automotive Fuels to the customer concerned was due to the negligence or other fault of, or in law attributable to, the Dealer or its servants, the Dealer shall attend to and settle such claim (whether itself or via its insurers) without delay.
- 21.19. If -
- faulty, contaminated or otherwise off-specification Automotive Fuel is supplied by Engen to the Dealer; or

(b) Automotive Fuels in the tanks at the Premises has become faulty, contaminated or otherwise off-specification;

due to the negligence or other fault of, or in law attributable to, Engen or its servants, Engen will replace (whether by payment or delivery of Automotive Fuel) such faulty, contaminated or otherwise off-specification Automotive Fuel within thirty days after it shall have been proven or agreed.

21.20. Save as provided for in sub-clauses 21.14 to 21.19 (both inclusive), Engen shall be exempt from and shall not be liable under any circumstances for any damages (whether indirect or consequential damages or special damages of any nature or loss of profit, or otherwise howsoever whether or not similar to the foregoing examples) which the Dealer may sustain as a result of or in any way connected with the loss of Automotive Fuel from the Equipment or any faulty, contaminated or otherwise off-specification Automotive Fuel.

21.21. Nothing contained in this clause 21 or elsewhere in this Agreement shall detract from the liability of either party for any losses or damage caused directly by such of its own acts or its servants' acts as may be proved to have been negligent or wilful.

21.22. In the event of Engen having to replace or repair any Equipment, the Dealer shall have no claim whatsoever against Engen for any damages (including but not limited to any claim in respect of loss of income) save as is set out in this Agreement and subject to such conditions as is stated herein.

21.23. All Equipment for the storage and dispensing of Automotive Fuels and signage, on the Premises at any time shall be deemed to belong to Engen unless the contrary is proved.

21.24. Engen shall have reasonable access for its employees, contractors and workmen to the said property for the purposes of installing or removing Equipment or brand signage as contemplated in this agreement.

21.25. Engen through its employees, contractors and agents shall be entitled to conduct such environmental studies with respect to the Premises for the purposes of installing Equipment and for the removal of Equipment and the rehabilitation of the Premises and, upon removal of Equipment, shall be entitled to perform such work, inclusive of the removal of soil and materials, for the rehabilitation of the Premises.

21.26. The Dealer shall furthermore sign, in his capacity as owner of the Premises such applications, powers of attorney, affidavits and other documents as may be reasonably necessary for any application to a competent authority in connection with the installation, removal or existence of Equipment on the Premises.

22. RIGHT TO OCCUPY PREMISES

22.1. The Dealer warrants that the Dealer has, and for the duration of this agreement (including any extension thereof) will continue to have, the right to occupy the Premises, and to carry on the Business thereat. The Dealer undertakes to do everything within the Dealer's power to ensure that such right is maintained and enforced during that period.

22.2. The Dealer shall not during the currency of this agreement let the Premises or any portion thereof or otherwise allow anyone else directly or indirectly to occupy the same or alter the nature of the Dealer's right to occupy the Premises, whether by lease, sale, disposal, donation, other alienation or otherwise howsoever, without the prior written consent of Engen, which shall not be unreasonably withheld.

22.3. The provisions of this clause 22 are in addition to, and without prejudice to, the provisions of clause 23.

23. LEASE OF THE PREMISES

23.1. The provisions of this clause 23 shall not apply unless the Dealer is a lessee of the Premises otherwise than from Engen.

23.2. The Dealer undertakes to Engen -

(a) not to breach any of its obligations under that lease;

- (b) not to waive any of its rights thereunder or allow any such rights to be prejudiced through failure to enforce same diligently;
- (c) without limiting the scope of paragraph 23.2(b), to exercise its rights of renewal, if any, in accordance with the directions of Engen.

- 23.3. The Dealer hereby irrevocably and *in rem suam* appoints Engen (with powers of substitution and sub-delegation) to be its agent for purposes of enforcing any right under such lease, including but not limited to any right to extend or renew the tenancy thereby constituted.
- 23.4. The Dealer undertakes not to agree to any alteration or termination of such lease without the prior written consent of Engen.

24. DISPOSAL OF BUSINESS OR PREMISES

24.1. Should the Dealer at any time wish to sell or dispose of or alienate the Business, and/or the Premises, Engen (or its nominee) shall have the first right of acquiring the Business, and/or the Premises, at the same price and upon the same terms and conditions as are offered therefore by any *bona fide* third party and which the Dealer is prepared to accept provided that Engen (or its nominee) exercises such right within a period of thirty days following that upon which notice in writing has been received by it from the Dealer advising Engen (or if Engen shall have nominated a nominee at that stage, the nominee) of the offer of purchase received, the name and address of the *bona fide* proposed purchaser, and the terms and conditions of the offer of purchase, and calling upon it to exercise its option (subject to the terms of clause 24.4). The Dealer may not sell the Business, and/or the Premises, otherwise than the whole thereof. Should Engen (or its nominee) not exercise the right to purchase hereby granted to it when called upon so to do, then the Dealer shall be entitled to sell or dispose of or alienate the Business, and/or the Premises, subject always to the provisions of clause 24.2, and provided further that except with the previous written consent of Engen, no such sale shall be effected at a price lower and/or on terms and conditions substantially more favourable to the proposed purchaser than those so communicated to Engen (or its nominee). Any variation in the terms and conditions so communicated to Engen (or its nominee) shall be regarded as a new offer to which the foregoing provisions shall apply.

24.2. Having regard to *inter alia* the factors recorded in clause 2, the Dealer acknowledges that Engen has a material interest in the continuation of its relationship with the Business and has a right to be placed in the same position with any successor in title as it has with the Dealer. Should the Dealer sell the Business, during the currency of this agreement in circumstances where Engen does not exercise its right of first refusal, then:-

- (a) it shall be a condition of any sale, disposal or alienation of the Business that the proposed purchaser will be bound by all the provisions of this Agreement, including, but not limited to, this clause 24 and clause 25 (in the case of a further sale, disposal or alienation of the Business and/or Propwerty; and
- (b) the Dealer shall provide Engen with a written document executed by the purchaser, undertaking to be bound to Engen in respect of all obligations under this agreement.

24.3. In the event of the sale of the Premises, but not the Business, in circumstances where Engen does not exercise its right of first refusal, the Dealer shall procure that the purchaser executes Engen's standard "agreement with owner" with respect to the Premises.

24.4. Should the terms and conditions as are offered by any *bona fide* third party, for either the Business or the Premises, as submitted to Engen in terms of clause 24.1, be subject to any condition whereby the sale is either suspended or will not take place, depending on the fulfilment or non-fulfilment of that condition, the notification required by clause 24.1 shall be given, but the period of thirty days referred to in clause 24.1 shall commence on the date of receipt by Engen of written notice, given by the Dealer, to the effect that the sale has become unconditional, but for Engen's right of first refusal. The intention of the parties in this respect is that Engen's right of first refusal, as expressed in this clause 24, shall be exercisable in relation to the terms of any intended sale once they have become final. Following the notification given in terms of clause 24.1, the Dealer shall keep Engen fully informed in writing with respect to progress made towards fulfilment, or non-fulfilment, of the all the conditions concerned and shall notify Engen in writing once the intended sale has become unconditional, but for the right of first refusal set out in this clause 24.

24.5. Should Engen notify the Dealer in writing, to the effect that, Engen will not exercise its right of first refusal subject to a condition which requires execution by the *bona fide* third party of documentation whereby the third party will become bound to Engen in accordance with agreements substantially the same (with the necessary amendments) as this agreement, any lease or sub-lease of the Premises, or any other agreement between Engen and the Dealer relating to the use or occupation of the Premises, or the operation of the Business, or the registration of any mortgage bond in substitution of any existing mortgage bond, the period of thirty days referred to in clause 24.1 shall be extended until expiry of fifteen days after Engen notifies the Dealer in writing to the effect that it is satisfied that such condition has been fulfilled.

24.6. Should the Dealer at any time wish to sell or dispose of or alienate the Business, and/or the Premises, by public auction, the Dealer shall, in writing, notify the auctioneer of the terms of this clause 24 and instruct the auctioneer to ensure that he complies therewith strictly. Without limiting the generality hereof, the auctioneer shall include in the conditions of sale of such auction provisions which render any intended sale subject to the terms of this clause 24.

24.7. The Dealer shall not dispose of the Business or the Premises in any transaction which involves the sale of other assets together with the Business or the Premises. The Business and the Premises may be disposed of in a composite transaction. Furthermore, assets of the business such as stock may be disposed of as part of the Business.

24.8. The Dealer undertakes to Engen (and its nominee) duties of utmost good faith and full disclosure in connection with the obligations of the Dealer in terms of the foregoing provisions of this clause 24.

25. FIRST REFUSAL ON TERMINATION

25.1. On termination of this agreement, whether in terms of clause 3 or otherwise, (but not in circumstances where Engen exercises any option to lease the Property or to take assignment of the Dealer's lease of the Property) Engen (or its nominee appointed in writing) will have the first right of concluding with the Dealer an agreement for the supply of Automotive Fuel to the Dealer for or in connection with the Business subsequent to such termination in accordance with such prices, terms and conditions as are offered by a bona fide third party and which the Dealer is prepared to accept. Provided that -

(a) to the extent that any such offer refers to the supply of any particular brand of Automotive Fuel, or to price determination by reference to another supplier's list prices, Engen shall be entitled to supply its own brand of Automotive Fuel, and the price for Automotive Fuel which the Dealer is so prepared to accept, shall be determined by reference to Engen's wholesale list selling price for such Automotive Fuel;

(b) Engen exercises this right within sixty days after that on which written notice has been received by Engen furnishing it with a true and complete copy of the said offer, including the name and address of the offeror if not apparent therefrom, and calling on Engen to exercise the said right.

25.2. Any variation in the prices or in any of the other terms and conditions of any offer which the Dealer is prepared to accept from those communicated to Engen shall be a new offer which must be communicated in writing to Engen at once, and in respect of which Engen will have the same first right for the same period set out above as from the date on which such new offer is first communicated to it.

25.3. Should Engen not exercise this right, then the Dealer will be entitled to contract with the third party in accordance with the prices, terms and conditions communicated to Engen in accordance with the provisions of the foregoing sub-clauses of this clause 25.

25.4. Notwithstanding anything to the contrary in this agreement or elsewhere, the Dealer shall not contract with a third party for the supply of Automotive Fuel to or in connection with the Business either -

- (a) during the currency of this agreement; or
- (b) otherwise than by acceptance of an offer in accordance with the procedures hereinbefore contemplated after termination of this agreement.



- 25.5. The provisions of this clause 25 are severable from the remainder of this agreement and shall survive its termination. They shall continue to apply until the first anniversary (or fifth anniversary in the case of termination pursuant to clause 32) of the day of termination of this agreement even if the Dealer shall validly have concluded an agreement with another supplier during that period, so that should that other agreement terminate prior to that anniversary, Engen's first refusal right shall be reinstated.
- 25.6. The Dealer acknowledges that it owes Engen duties of utmost good faith and full disclosure with respect to the implementation of this clause 25.

26. LICENCES

- 26.1. Subject to the provisions of this clause 26, the Dealer shall be responsible for the preparation and prosecution of all necessary applications under the Act to procure, to renew and/or to maintain the Site Licence and the Retail Licence. The Dealer shall furthermore be responsible to take all reasonable steps to ensure that the Site Licence and the Retail Licence are maintained, inclusive of steps which may be necessary to comply with directions by the Controller. The Dealer shall carry out at own cost all such structural alterations, structural additions and structural repairs to the Premises as may from time to time be required by any competent authority as a condition of the grant or renewal of any licence, (including but not limited to the Site Licence and the Retail Licence) for the conduct of the Business.
- 26.2. In the event of, the refusal of the Site Licence or the Retail Licence, or the withdrawal thereof, or in the event of any adverse official action with respect thereto, the Dealer shall, upon written request of Engen, prosecute such appeal or review proceedings as may be available under the Act or otherwise.
- 26.3. The Dealer hereby appoints the company secretary of Engen or any legal adviser of Engen, each individually, as the attorney and agent of the Dealer, with power of substitution and sub-delegation, to sign such application, power of attorney and all such documents as may be necessary to bring an application for the Site Licence or the Retail Licence, or for its renewal, or extension and to take all steps as the Dealer itself may take with respect to the prosecution of such application, the launching of any appeal or review proceedings or such other steps as may be necessary to bring the application for the Site Licence or the Retail Licence to a final end and determination. Engen shall not exercise the powers so provided unless the Dealer has failed to take reasonable steps to bring the relevant application, or to take any necessary step during the process thereof, or to launch appeal or review proceedings, or to take any necessary step in connection with the prosecution thereof. For the purposes hereof, the Dealer shall be deemed to have so failed if it is in default of having taken material action after expiry of written notice by Engen of 10 days. In the event that the company secretary of Engen or any legal adviser of Engen exercises the powers under this clause 26 the Dealer shall indemnify Engen and such officer (and his/her appointee or substitutes) and hold them entirely harmless of all expenditure, losses and claims as may arise from the action so taken inclusive of any action by the Dealer consequent upon failure of action taken by Engen or its officer concerned (and his/her appointee or substitutes) whether for damages or otherwise.
- 26.4. The parties agree that the procurement of the Site and Retail Licences and any other licence as may be necessary for the conduct of the business on the Property are fundamental objectives of this agreement and each undertakes to co-operate to the fullest extent as may be reasonable with respect to the procedures necessary to achieve these objectives. Without limiting the generality of the foregoing, the Dealer shall provide Engen with a copy of each application and document relating thereto and each notice or other communication received from or sent to the Controller.
- 26.5. In the event that the Dealer is in default of compliance with its obligations under sub-clause 26.1 with respect to its obligation to effect at its cost structural alterations, structural additions and structural repairs to the Premises as may be required by any competent authority as a condition of the grant or renewal of any licence, Engen shall be entitled to have the relevant work performed at its cost, in which event;
  - (a) it shall be entitled to recover from the Dealer the amount reasonably expended in doing so; or
  - (b) alternatively, upon written request by Engen, the period of this agreement shall be extended as from the date upon which it would ordinarily expire at the end of the final period for which it may be renewed until it shall have supplied to the service station on the Property for resale that number of kilolitres of its brand of petrol which when multiplied by R75,00 (seventy five Rand) is equivalent to the expenditure incurred by it.

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- 26.6. For the purposes of paragraph 26.5(b) the quantity of petrol concerned shall be that supplied by Engen or its nominee to the service station on the Property for resale and the records of Engen shall be *prima facie* proof thereof.
- 26.7. Should the Site Licence or the Retail Licence not be granted or renewed or should any other necessary licence, permit or the like for the conduct of the Business not be granted or renewed by the authority concerned, notwithstanding that proper application therefor shall have been made, then Engen shall be entitled to terminate this agreement by written notice to the Dealer of not less than thirty days. Should Engen so determine, failure to grant any such application within a reasonable time after it shall have been made shall be deemed to be a refusal thereof.
- 26.8. The Dealer shall conform to all provisions of law affecting the conduct of the Business and shall not contravene or permit any contravention of any of the conditions of title under which the Premises are held.
- 26.9. In the event that Engen terminates this agreement in consequence of the breach thereof by the Dealer, the Dealer undertakes to apply for the surrender of the retail licence.

27. PROTECTION OF INTERESTS

For the duration of this agreement and for a period of twelve months after termination of this agreement for any reason whatever, the Dealer shall not directly or indirectly, be interested, or assist, in any way in any undertaking (other than the Business) which includes the operation of an automotive fuel filling or service station within a distance of five kilometres from the Premises.

28. DOMICILIA AND NOTICES

- 28.1. The following addresses shall constitute the *Domicilium Citandi et Executandi* of each of the parties:
  - (a) Engen at the office of its managing director, Engen Court, Thibault Square, Cape Town;
  - (b) The Dealer at the Premises.
- 28.2. Either party may change its *domicilium citandi et executandi* to any other physical address in the Republic of South Africa by giving written notice to the other thereof.
- 28.3. All notices required to be given in terms of this Agreement may be sent by pre-paid registered post, in which event such notice shall be deemed to have been received on the sixth day after the posting thereof, or delivered by hand, in which event such notice shall be deemed to have been received on the day of delivery.
- 28.4. All requirements for the written consent of Engen shall be satisfied if Engen shall have given such written consent by means of hand delivery, ordinary mail or facsimile, on the stationery of Engen and signed by an authorised official of Engen.
- 28.5. Any provision of this agreement which provides for any matter to be dealt with on "notice" by one party to the other, or any other reference to a notice or other communication under this agreement shall be construed as referring to a written notice or communication. Any verbal notice or communication shall not be a valid communication unless recorded in writing and communicated as such by one party to the other.

29. INTEGRATION, VARIATION AND WAIVER

- 29.1. This Agreement represents the entire agreement between the parties, and no addition, deletion or amendment thereof (including this sub-clause 29.1) shall be valid unless reduced to writing and signed by both parties. Notwithstanding the provisions of this clause 29, any related or unrelated agreement which is in writing and signed by both parties shall be fully valid for the duration thereof, except to the extent that this Agreement may replace any earlier agreement between the parties on the subject matter thereof.

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29.2. No relaxation, indulgence or waiver by either party of any of its rights in terms of this Agreement shall constitute a novation of the provisions of this Agreement, or preclude that party from any subsequent enforcement of the same or other rights.

### 30. CONFIDENTIALITY

Both parties undertake to regard all and any information obtained in terms of this Agreement in connection with the other party's business as confidential, and shall not disclose any such information to any unauthorised third parties except as may be required for the protection or enforcement of any of their rights in terms of this Agreement.

### 31. MISCELLANEOUS

31.1. Where this Agreement requires that any action should be reasonable, or should not be unreasonable, the onus shall be on the party alleging unreasonableness to prove the unreasonableness of the action concerned.

31.2. Should the Dealer fail to pay any amount to Engen on or before the due date therefore, then the full amount owing by the Dealer to Engen shall immediately become due and payable without notice or demand.

31.3. This Agreement shall be binding on each of the partners in the Dealer (if a partnership) and on any executor, trustee, liquidator or judicial manager of the Dealer or of any partner in the Dealer.

31.4. Engen may cede, assign or delegate any rights or obligations in terms of this Agreement, to any other person, provided that such person is capable of exercising such rights and performing such obligations to the same extent as Engen. To the extent that this agreement relates in any manner to brand names and marks of Engen, it shall following such assignment relate to the brand names and marks administered by the assignee.

31.5. The clauses of this Agreement are severable, and, in the event of any clause or portion of this Agreement being declared illegal or unenforceable for any reason whatsoever, the remainder of this Agreement shall be effective and binding upon the parties.

31.6. Any word denoting any particular gender shall be interpreted also to include any other gender, and any word denoting the singular shall include the plural, and vice versa.

31.7. All obligations expressed as being those of a party to this agreement shall be performed at the cost of that party unless otherwise stated.

### 32. BREACH BY THE DEALER

32.1. Notwithstanding anything to the contrary contained in this Agreement, should –

- (a) the Dealer breach any of his obligations in terms of sub-clause 4.1 (i.e. The Dealer shall at all times during the currency of this Agreement conduct at the Premises the business of an Automotive Fuel filling and service station); or
- (b) the Dealer breach any of his obligations in terms of clause 5 (i.e. Subject to clause 13, the Dealer shall purchase exclusively from Engen the Dealer's entire requirements of Automotive Fuel for resale from the Premises and shall not directly or indirectly store on or sell or distribute from the Premises or through the Business any Automotive Fuel whatsoever other than that purchased from Engen); or
- (c) the Dealer breach any of his obligations in terms of sub-clause 21.7 (i.e. The Dealer shall not install, or allow to be installed, on the Premises any fuel storage or dispensing equipment other than that installed by Engen); or

- (d) the Dealer stand dry (a concept which is generally understood in the industry) without reasonable cause or reasonable mistake, and in particular, a reasonable cause shall not include the financial inability of the Dealer to purchase or pay for any Automotive Fuel; or
  - (e) the Dealer fail to sell any Automotive Fuel to anyone prior to an imminent price increase of such Automotive Fuel; or
  - (f) the Dealer deliberately or negligently misrepresent (without reasonable cause) or misreport the extent of his turnover whether for the purposes of the calculation of any turnover-related rental payable by the Dealer under any Related Agreement, or otherwise howsoever;
- then Engen shall, notwithstanding anything to the contrary contained in this Agreement, be entitled at any time thereafter on written notice to the Dealer-
- (i) to cancel forthwith this Agreement; or
  - (ii) to require specific performance of this Agreement; and
  - (iii) in either event, to recover rental on the Equipment as provided in clause 21 or, damages in lieu thereof.

32.2. Notwithstanding anything to the contrary contained in this Agreement, should the Dealer breach the provisions of sub-clause -

- (a) 8.1 (i.e. The Dealer shall not sell or offer or advertise for sale, from the Premises, any Automotive Fuel at any price in contravention of law); or
- (b) 20 (i.e. provisions in relation to health, safety and the environment);

and not remedy same within twenty-four hours after Engen shall have requested in writing that same be remedied, then Engen shall be entitled at any time thereafter on written notice to the Dealer to exercise the rights provided for in sub-paragraphs (i), (ii) or (iii) of sub-clause 32.1.

32.3. Notwithstanding anything to the contrary contained in this Agreement, should the Dealer fail to pay any amount for Automotive Fuel owing to Engen on or before due date therefore and not remedy same immediately after Engen shall have requested in writing that same be paid, then Engen shall be entitled at any time thereafter on written notice to the Dealer to exercise the rights provided for in sub-paragraphs (i), (ii) or (iii) of sub-clause 32.1.

32.4. Subject to the other provisions of this Agreement (including but not limited to sub-clauses 32.1, 32.2 and 32.3), should the Dealer breach any of his other obligations in terms of this Agreement (i.e. other than those mentioned in, or contemplated by the provisions of, sub-clause 32.1, 32.2 and 32.3), Engen shall be entitled to give notice to the Dealer in writing to remedy the breach concerned within a reasonable period commensurate with the breach concerned: Provided that if such breach is not reasonably capable of being remedied within the period concerned or should circumstances have arisen or arise during the period of the notice concerned and which, being partly or entirely beyond the control of the Dealer, prevent it from so remedying such breach within the period concerned, then the Dealer shall be allowed such additional period as may reasonably be required therefore. Without detracting from the right of Engen to give any notice period commensurate for a breach concerned to be remedied, in the case of a dispute or uncertainty as to what is a reasonable period, the parties agree that a period of seven days is reasonable for a breach to be remedied unless the foresaid proviso applies. Should the Dealer fail to remedy the breach within the period allowed therefore Engen shall be entitled at any time thereafter on written notice to the Dealer to exercise the rights provided for in sub-paragraphs (i), (ii) or (iii) of sub-clause 32.1.

32.5. Nothing contained in this Agreement (including but not limited to this clause 32) shall preclude, limit, derogate from or otherwise prejudice the enforcement by Engen of any right of cancellation or other right (such as the right to demand specific performance) which it may have at common law or in terms of this Agreement or any other agreement with the Dealer, the provisions of this clause 32 being intended to supplement, and not to replace, any such rights

32.6. Notwithstanding anything to the contrary -

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- (a) should the Dealer be in arrear with respect to any amount owing to Engen under this agreement, or any Related Agreement; or
- (b) should the Dealer be in breach of this agreement, or any Related Agreement, in a manner not contemplated by paragraph 32.6(a); or
- (c) should the Dealer effect, or allow to be effected, any alterations to the Premises or their appearance, so as to detract from the corporate image of Engen, without the written consent of Engen, or not in complete compliance with Engen's written directions;

Engen shall be entitled to withhold supplies of products and/or rebates provided for in clause 8 of Part I as read with clause 7. In the event of supplies being withheld, same shall not be regarded as an inability on the part of Engen to supply as contemplated by clause 13.

32.7. In the event that Engen becomes entitled to cancel this agreement, Engen (if not already lessee of the Premises) or its nominee, appointed in writing, shall have the option to hire the Premises from the Dealer (if owner thereof) in accordance with the following terms:

- (a) for the balance of the period for which this agreement is then due to continue, but for cancellation under this clause 32, subject to further options in favour of Engen corresponding to the periods for which this agreement may be renewed under clause 5 of Part I;
- (b) at a rental and basis of escalation determined as follows;
  - (i) by agreement by the parties in writing;
  - (ii) in the event that the parties do not reach agreement, within 30 days after Engen notifies the dealer of its interest in exercising such option under clause 32.8 below, the rental and the basis of escalation shall be determined by agreement between two property brokers conducting business within the area of jurisdiction of the local authority where the premises are situated, one of whom shall be appointed in writing by each of the parties not later than 60 days of such notification;
  - (iii) in the event of the said property brokers not reaching agreement within 30 days of the second of them to be appointed, they shall jointly appoint a third whose decision as to the extent of the rent and the basis of escalation shall be final;
  - (iv) in the event that a party does not appoint a property broker for the purposes of sub-paragraph 32.7(b)(ii), the determination of the other appointee shall be final;
  - (v) in the event of the property brokers not reaching agreement on the appointment of a third as provided in sub-paragraph 32.7(b)(iii), such appointment shall be made by the president of the Law Society of the Kwazulu Natal;
  - (vi) the determinations in terms of the foregoing sub-paragraphs shall be made on the basis of determining a market rental and escalation based on comparable rentals in the area where the premises are situated.
- (c) in other respects, in accordance with the terms of the standard form of head lease of Engen for "leased sites".

32.8. Should Engen consider exercising its option in terms of sub-clause 32.7, it shall notify the Dealer in writing of its interest in doing so. After determination of the rental and basis of escalation, under sub-clause 32.7, Engen may exercise its option by written notice within 30 days of the determination being communicated to it in writing.

32.9. After exercise of the option, the Dealer shall execute promptly upon demand such powers of attorney and other documents in order to give effect to the lease arising from the exercise of the option and if so required by Engen to register it against the title deed of the Property. Unless this agreement has been terminated, it shall be deemed to terminate upon execution of the lease that comes about in consequence of the exercise of the option.

32.10. In the event that the Dealer is not owner of the Property and Engen becomes entitled to cancel this agreement under this clause 32, Engen or its nominee, appointed in writing, shall have the option to take assignment of the Dealer's rights and obligations under the lease agreement whereby the Dealer hires the Premises should the owner be prepared to consent thereto. In the event of the exercise of such option, the provisions of sub-clause 32.9 shall apply *mutatis mutandis*.

33. BREACH BY ENGEN

33.1. Should Engen breach any of its obligations in terms of this Agreement reasonably capable of being remedied, and fail to remedy such breach within twenty one days after receipt of written notice by the Dealer to Engen requiring Engen to remedy that breach, then subject to the provisions of sub-clause 33.2, the Dealer shall be entitled to cancel this Agreement forthwith: Provided that if such breach is not reasonably capable of being remedied within the said period of twenty one days or should circumstances have arisen or arise during the period of the said notice and which, being partly or entirely beyond the control of Engen, prevent it from so remedying such breach within the said period of thirty days, then Engen shall be allowed such additional period as may reasonably be required therefore.

33.2. The Dealer shall not be entitled to cancel this Agreement by reason of breach thereof by Engen unless that breach is not reasonably capable of being remedied and would not at common law entitle such cancellation. If the breach is capable of remedy, and Engen shall have failed to remedy that breach within the time period allowed therefore in terms of sub-clause 33.1, then the Dealer may invoke the provisions of clause 37 and the Dealer shall be entitled to claim any damages it may have suffered from Engen because of the non-rectification of such breach by Engen.

33.3. Should Engen in conflict with the provisions of this Agreement, do or fail to do anything in *bona fide* compliance with any law, such act or omission shall not constitute a breach of this Agreement.

34. REPEATED BREACHES

Should the Dealer commit any breach of this Agreement, after having committed not less than three other breaches of this Agreement within the immediately preceding period of twelve Calendar months in respect of which written notice has been given to the Dealer in terms of this Agreement to remedy such breach, Engen shall be entitled to cancel forthwith this Agreement by written notice to the Dealer.

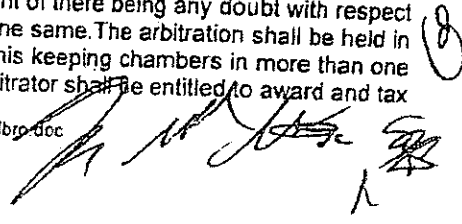
35. DISPUTE RESOLUTION

35.1. Each party consents to the referral to arbitration by a single arbitrator of any dispute arising out of this agreement, whether in relation to its formation, interpretation, application performance, termination or otherwise.

35.2. The arbitrator shall be a senior counsel who has practised as a senior counsel for not less than five years as a member of the bar affiliated to the National Bar Council at the seat of the Provincial Division of the High Court of South Africa which would otherwise have jurisdiction in relation to the dispute concerned. In the event of more than one Provincial Division having jurisdiction, the arbitrator shall be selected from amongst the members of the bar council at the seat of the court selected by the party requesting arbitration. In the event that the parties have not agreed upon the identity of the arbitrator within ten business days of either of them requesting arbitration of the dispute by notice in writing, the arbitrator shall be appointed by the secretary of the bar council concerned.

35.3. Except to any extent otherwise directed by the arbitrator from time to time, the uniform rules of the high courts in effect for the time then being, as read together with relevant provisions of the High Court Act and in accordance with High Court practice, then pertaining, shall apply *mutatis mutandis* to such arbitration, and the arbitrator shall, in addition to the powers conferred by legislation, have all the powers of a high court judge to the fullest extent lawfully possible.

35.4. Any arbitration proceedings pursuant to the arbitration agreement contained in this clause 35 shall be treated as confidential by the parties to this agreement. In the event of there being any doubt with respect to the rules and practice to be applied, the arbitrator shall determine same. The arbitration shall be held in the city where the arbitrator keeps chambers and in the event of his keeping chambers in more than one city, in the city selected by the party requesting arbitration. The arbitrator shall be entitled to award and tax



costs as if the proceedings were high court proceedings, provided that the arbitrator may delegate the taxation of such costs to any third party experienced in the drawing and taxation of high court bills of costs.

35.5. This clause 35 shall not preclude either party from seeking interdictory or urgent relief from any court which may have had jurisdiction but for this clause 35.

35.6. The provisions of this clause 35 -

(a) shall not preclude either party from seeking interdictory or urgent relief from any court which may have had jurisdiction but for this clause 35; and

(b) shall be severable from the remainder of this agreement and shall survive cancellation or other termination of this agreement for whatever cause or reason.

36. PAYMENT UPON TERMINATION

Should this Agreement be cancelled in terms of clauses 32 to 35 (both inclusive), each party shall pay all amounts owed by it to the other party within seven days of such cancellation.

37. RIGHT TO REMEDY DEFAULTS

Should either party breach any of its obligations in terms of this Agreement, and fail to remedy such breach within the time period allowed therefore after being called upon so to do, the other party may, upon three days' written notice, and without prejudice to any other right it may have, remedy such breach on behalf of and as the agent of the party in breach, and recover the reasonable cost of so doing from the party in breach.

38. ACCESS

Engen, its representatives, contractors, personnel, contractor's personnel or other persons appointed by it in writing, shall have unrestricted access to the Premises at all reasonable times for the purpose of exercising any right, or performing any obligation, under this agreement. Such right of access shall include, the right;

(a) to inspect, the Premises, records of the Dealer, the Equipment and signage;

(b) to install, maintain, replace, repair and remove equipment and signage;

(c) to exercise the rights under clause 37 by physical rectification of any feature of the Premises which constitutes a breach of this agreement (such as for example, by causing the Premises or any feature thereof to be repainted so as to conform to Engen's corporate image); and

(d) to conduct an audit of compliance with any provision of this agreement.

39. NO PREJUDICE

Without limiting the scope of, and subject to the provisions of, sub-clause 35.2, nothing contained in clauses 32 to 34 (both inclusive) shall detract from any right of either of the parties to claim damages from the other as a result of any breach of this Agreement, or to exercise any other right or remedy it may have in terms of this Agreement, or in law, or otherwise.

SIGNED at Johannesburg this 23rd day of December 2010.

AS WITNESSES:

for and on behalf of Engen

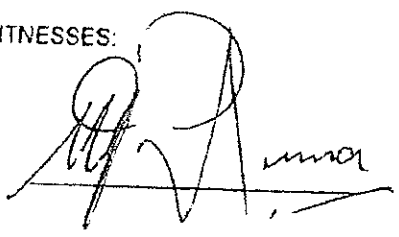
1. \_\_\_\_\_

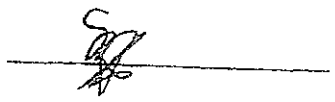
2. \_\_\_\_\_

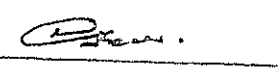
SIGNED at Newcastle this 16<sup>th</sup> day of November 2010

AS WITNESSES:

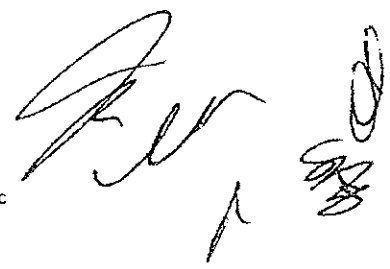
for and on behalf of  
the Dealer

1.  \_\_\_\_\_

2.  \_\_\_\_\_

 \_\_\_\_\_

END OF PART II





From: Philani Sithebe  
Sent: 21 September 2015 08:40 AM  
To: [rahim@telkomsa.net](mailto:rahim@telkomsa.net)  
Cc: Goodness Maseko; Jeremy Rajah  
Subject: FW: Engen Kadbros Taxi City, Newcastle, KZN

ADM11

Good Morning Rahim

Your email below is noted and our property department will engage with you shortly as there seem to be differences on the entities that we have agreements with and those that hold the site and retail licences.

You have however not answered the question in hand, that of closing Taxi City, the current Engen site on Terminus Street when your new Total site on Murchison Street is opened. I need clarity on this as we still have an agreement that will only expire on 31 August 2019 and we will not agree to the closure without compensation.

Thanks

From: Rahim Kader [<mailto:rahim@mweb.co.za>]  
Sent: 18 September 2015 12:33  
To: Goodness Maseko  
Cc: Philani Sithebe  
Subject: RE: Engen Kadbros Taxi City, Newcastle, KZN

Dear Goodness

I have attached the documents to this email.

Our Total City registration of KADBROS TAXI CITY which is the RETAIL LICENCE and the SITE LICENCE is in the name of ENGEN OIL DISTRIBUTION (Pty) LIMITED

I will be happy to be related if you can send me new documents (RETAIL DEALER AGREEMENT) in the above name and conditions that we will not have anymore from this here on. I will duly complete and return them to you. The name of my company is, Moonwar Begun Kader.

Our Total City we applied for the Special Consent for the new site, at that time we had agreed with Hennie from Engen to move our Terminus Engen site to 60 Murchison. There was some documents drawn up for Engen to move the site. However, Hennie changed their mind and did not want the site anymore, so on that note we accepted their proposal.

It is my personal conviction that the competitor's intention of closing us down will not be possible. The licence is in the name of KADBROS TAXI CITY and not KADBROS TAXI CITY, the new owner is MRS MOONEWAR KADER.

I am sorry to inform that I will not be able to attend the meeting schedule for next, as it is the day of our sacrifices to the Lord (10/09/15).

I will be happy to send the documents with the same terms and conditions of the last Agreement.

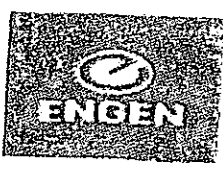
Many thanks for everything  
RAHIM KADER

From: Goodness Maseko [<mailto:Goodness.Maseko@engenoil.com>]  
Sent: 14 September 2015 01:32 PM  
To: Taxi City <[rahim@mweb.co.za](mailto:rahim@mweb.co.za)>; Taxi City <[rahim@telkomsa.net](mailto:rahim@telkomsa.net)>  
Cc: Philani Sithebe <[Philani.Sithebe@engenoil.com](mailto:Philani.Sithebe@engenoil.com)>  
Subject: FW: Engen Kadbros Taxi City, Newcastle, KZN

Dear Rahim,

Please confirm urgently.

Regards



Goodness Maseko  
Area Manager | Retail  
PO Box 136 • Durban • 4000 • Fax:+27 31 250 2766  
[Goodness.Maseko@engenoil.com](mailto:Goodness.Maseko@engenoil.com)  
Tel: +27 31 250 2687 Cell: +27 76 936 4437

**From:** Philani Sithebe  
**Sent:** 11 September 2015 19:53  
**To:** [rahim@telkom.co.za](mailto:rahim@telkom.co.za)  
**Cc:** Goodness Maseko; Jeremy Rajah; Priscilla Maharaj  
**Subject:** FW: Engen Kadbro Taxi City, Newcastle, KZN

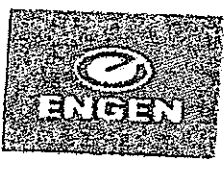
Dear Rahim

We need to meet urgently to discuss this because according to our records Engen did not consent to the closure of Taxi City in order for the Total site to be granted licences. Our agreements with Kadbro will expire on 31 August 2019.

I suggest that the meeting be set for 22 September 2015 at our Westville Office at 10:00.

Please confirm urgently

Thanks



Philani Sithebe  
Retail Sales Operations Manager | Retail  
PO Box 136 • Durban • 4000 • Fax:+27 31 250 2766  
[Philani.Sithebe@engenoil.com](mailto:Philani.Sithebe@engenoil.com)  
Tel: +27 31 250 2752 Cell: +27 82 508 2670

**From:** Neetu Dawlal [<mailto:NDawlal@gminc.co.za>]  
**Sent:** 09 September 2015 03:39 PM  
**To:** Priscilla Maharaj  
**Subject:** Engen Kadbro Taxi City, Newcastle, KZN

Dear Madam,

We refer to our previous communiqué exchanged below.

For your information purposes, we enclose herewith communiqué dispatched to Engen Kadbro Taxi Citi, the contents of which are self-explanatory.

Regards,

1. Dec. 2015 8:40

No. 1065 P. 2

310

IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

In the matter between :

CASE NO: 95104/15

RAHIM ABDOOL KADER

APPLICANT

and

KADBRO TAXI CITY CC

FIRST RESPONDENT

THE COMPANIES AND INTELLECTUAL  
PROPERTY COMMISSION

SECOND RESPONDENT

MINISTER OF FINANCE

THIRD RESPONDENT

MINISTER OF PUBLIC WORKS

FOURTH RESPONDENT

---

NOTICE OF MOTION  
[URGENT]

---

BE PLEASED TO TAKE NOTICE THAT the abovenamed Applicant intends to make application to the above Honourable Court at 10h00 on Tuesday the 1<sup>st</sup> of December 2015, or as soon thereafter as Counsel for the Applicant may be heard, for an Order in the following terms :-

1. That the registration of KADBRO TAXI CITY CC (Registration No : 1991/028257/23) be reinstated in terms of Section 82(4), as read with 83(4)(a) of the Companies Act, 71 of 2008.
2. That the Companies and Intellectual Property Commission be directed to restore the name of the First Respondent KADBRO TAXI CITY CC to the register of companies.

3. That the assets of the First Respondent **KADBRO TAXI CITY CC** are declared to be no longer *bona vacantia* and are re-invested in the First Respondent, **KADBRO TAXI CITY CC**.
4. That all agreements and all juristic acts performed by the First Respondent between deregistration and restoration be and are validated retroactively, and that the First Respondent be deemed to have continued in existence as from the date of deregistration as if it were not deregistered.
5. That the costs of this application be paid by the First Respondent upon the reinstatement of its registration.
6. Further and/or alternative relief.

TAKE NOTICE FURTHER THAT the affidavit of **RAHIM ABDOOL KADER** together with annexures annexed hereto shall be used in support of this application.

TAKE NOTICE FURTHER THAT the Applicant has appointed the address of his attorneys, namely, **SARLIE & ISMAIL INC.** No. 137 - 8<sup>th</sup> Avenue, Bez Valley, Johannesburg, c/o **ATTORNEY MOHAMED SEEDAT**, 466 HIMALAYA STREET, LAUDIUM, PRETORIA, P.O. BOX 14226, LAUDIUM, 0037, TEL : (012) 384-2159, FAX : 086 561 6623, E-MAIL : seedatm@telkomsa.net, as the address at which he will accept notice and service of all processes in these proceedings.

TAKE NOTICE FURTHER THAT if you intend opposing this application, you are required to :-

- a) notify the Applicant's attorneys in writing on or before 16h00 on THURSDAY 26<sup>TH</sup> NOVEMBER 2015 of your intention to do so;
- b) and to file your answering affidavit, if any, before 10H00 on MONDAY 30<sup>TH</sup> NOVEMBER 2015;
- (c) and further that you are required to appoint in such notification an addressed referred to in Rule 6(5)(b) at which you will accept notice and service of all documents in these proceedings.

**KINDLY ENROLL THE MATTER FOR HEARING ACCORDINGLY.**

DATED AT JOHANNESBURG ON THIS THE 2<sup>ND</sup> DAY OF NOVEMBER 2015.



SARLIE & ISMAIL INC.  
APPLICANT'S ATTORNEYS  
137- 8<sup>TH</sup> AVENUE BEZ VALLEY  
JOHANNESBURG  
P.O. BOX 591238, KENGRAY, 2100  
TEL : (011) 618-1036/7,  
FAX : (011) 618-4447  
E-MAIL : shafs@mweb.co.za  
REF : MR SARLIE/K425  
c/o ATTORNEY MOHAMED SEEDAT  
466 HIMALAYA STREET  
LAUDIUM, PRETORIA  
P.O. BOX 14226, LAUDIUM, 0037  
TEL : (012) 384-2159  
FAX : 086 561 6623  
E-MAIL : [seedatm@telkomsa.net](mailto:seedatm@telkomsa.net)

TO : THE REGISTRAR OF THE  
ABOVE HONOURABLE COURT

AND TO : KADBRO TAXI CITY CC  
FIRST RESPONDENT  
NO. 22 TERMINUS STREET  
NEWCASTLE, KWA ZULU-NATAL

RECEIVED A COPY HEREOF

\_\_\_\_\_  
TIME : DATE :

AND TO : THE COMPANIES AND INTELLECTUAL  
PROPERTY COMMISSION  
SECOND RESPONDENT  
DTI CAMPUS, BLOCK F  
77 MEINTJIES STREET  
SUNNYSIDE, PRETORIA

RECEIVED A COPY HEREOF

\_\_\_\_\_  
TIME : DATE :

AND TO : MINISTER OF FINANCE  
THIRD RESPONDENT  
c/o STATE ATTORNEY  
NO. 316 THABO SEHUME  
AND FRANCIS BART STREETS  
SULU BUILDING  
GROUND FLOOR  
PRETORIA

RECEIVED A COPY HEREOF

\_\_\_\_\_  
TIME : DATE :

AND TO : MINISTER OF PUBLIC WORKS  
FOURTH RESPONDENT  
c/o STATE ATTORNEY  
NO. 316 THABO SEHUME  
AND FRANCIS BART STREETS  
SULU BUILDING  
GROUND FLOOR  
PRETORIA

RECEIVED A COPY HEREOF

\_\_\_\_\_  
TIME : DATE :

IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

In the matter between :

CASE NO :

RAHIM ABDOOL KADER

APPLICANT

and

KADBRO TAXI CITY CC

FIRST RESPONDENT

THE COMPANIES AND INTELLECTUAL  
PROPERTY COMMISSION

SECOND RESPONDENT

MINISTER OF FINANCE

THIRD RESPONDENT

MINISTER OF PUBLIC WORKS

FOURTH RESPONDENT

---

**FOUNDING AFFIDAVIT**

---

I, the undersigned

**RAHIM ABDOOL KADER**

do hereby make oath and say that :-

1. **AUTHORITY**

I am :-

1.1 A major male businessman who resides at No. 5 Toucan Place,  
Newcastle, KwaZulu-Natal.

1.2 The facts deposed to in this affidavit fall within my personal

knowledge and belief unless the context indicates otherwise, and are both true and correct.

1.3 Where I make legal submissions in this affidavit, I do so on the basis of advice received from my legal representatives, which advice I accept to be accurate and correct.

2. THE PARTIES

THE APPLICANT :-

As stated before I am an adult male businessman.

3. THE FIRST RESPONDENT :

3.1 is KADBRO TAXI CITY CC;

3.2 bears CK Registration No : 1991/028257/23;

3.3 is a Close Corporation duly incorporated in terms of the close corporation laws of the Republic of South Africa;

3.4 has its principal place of business at No. 22 Terminus Street Newcastle, Kwa Zulu-Natal.



4. THE SECOND TO THE FOURTH RESPONDENTS

- 4.1 The Second respondent is the **COMPANIES AND INTELLECTUAL PROPERTY COMMISSION ("CIPC")** of the DTI Campus, Block F, 77 Meintjies Street, Sunnyside, Pretoria;
- 4.2 The Third Respondent is the **MINISTER OF FINANCE**, care of the State Attorney, No. 316 Thabo Sehume and Francis Bart Streets, Sulu Building, Ground Floor, Pretoria;
- 4.3 The Fourth Respondent is the **MINISTER OF PUBLIC WORK**, care of the State Attorney, No. 316 Thabo Sehume and Francis Bart Streets, Sulu Building, Ground Floor, Pretoria;
- 4.4 No relief is sought against the Second to Fourth Respondents and no costs order will be sought against the Second to Fourth Respondents, save in the event of any of them opposing this application.

NATURE OF APPLICATION

This is an application to :-

- 5.1 reinstate the registration of the First respondent in terms of Section 82(4), as read with Section 83(4)(a), of the Companies Act No. 71 of 2008 ("the Companies Act") (in terms of Section 66 of the Close

*[Handwritten initials]*

Corporation Act 69 of 1984, the Companies Act is applicable to a corporation insofar as it relates to its liquidation and the like, shall apply *mutatis mutandis* to corporations);

5.2 direct the Second Respondent to restore the First Respondent's name to the register of companies and close corporations and

5.3 to re-vest the assets and liabilities of the First Respondent immediately prior to its dissolution on the 22<sup>nd</sup> of June 2009, in the First Respondent;

5.4 That all agreements and all juristic acts performed by the First Respondent between deregistration and restoration be and are validated retroactively, and that the First Respondent be deemed to have continued in existence as from the date of deregistration as if it were not deregistered.

6. **LOCUS STANDI AND JURISDICTION**

I have an interest in the First Respondent, as contemplated in Section 83(4) of the Companies Act in that :-

6.1 I am a member of the First Respondent;

6.2 I am also an employee of the First Respondent, and am owed an amount of approximately R240 000-00 being a claim for salary as the manager of the First Respondent's business;

6.3 In support of as my interest as a member I refer this Honourable Court to annexure "RK1" hereto, being the First Respondent's amended Founding statement (CK2);

The above Honourable Court has jurisdiction to entertain this application in terms of the provisions of Section 21(1) of the Superior Courts Act, 10 of 2013 by virtue of the following :-

6.4 The Respondents against whom relief is sought are all situated or carrying on business within its area of jurisdiction; and/or

6.5 The whole cause of action arose within its area of jurisdiction.

### BACKGROUND

#### 7. THE BUSINESS OF THE FIRST RESPONDENT

7.1 The primary business of the Respondent is the retailing and selling of petroleum products;

7.2 The First Respondent operates an Engen filling station, selling, *inter alia*, petroleum products at No. 22 Terminus Street, Newcastle, Kwa Zulu-Natal;

7.3 The First Respondent is the holder of the retail licence for the selling of petroleum products at the aforementioned premises, issued to it by

the Controller of Petroleum Products, the Department : Minerals and Energy, Republic of South Africa. A copy of the retail licence certificate is annexed hereto marked annexure "RK2";

7.4 I mention that annexure "RK2" issued by the said governmental department contains two typographical errors, namely, "RADBRO" should be "KADBRO", and "TAXY" should be spelt "TAXI";

7.5 Until recently, the First Respondent has traded as aforementioned, oblivious to the problems with its registration. I manage such business;

7.6 Indeed, the First Respondent has operated the filling station in terms of the Petroleum Products Act 120 of 1977 as amended, more especially the regulations promulgated from time to time in terms of the said Act, from the said premises since about 1990. The issuing of fuel retail licences was only done by the Controller of Petroleum Products since 2009.

### STATUS OF THE FIRST RESPONDENT

On or about the 20<sup>th</sup> of November 2015, in the course of preparations and the filing of Answering and Supplementary Affidavits etc. in the urgent High Court application in the KwaZulu-Natal division, Pietermaritzburg, (which I refer extensively to hereinafter), I discovered the following :-



8.1 That the First Respondent was placed in deregistration due to non-submission of annual returns to the Second Respondent since 28 January 2009; and

8.2 On the 22<sup>nd</sup> of June 2009, the First Respondent was placed in final deregistration;

I annex hereto marked annexure "RK3" a copy of the CIPC report in confirmation of the foregoing.

### THE REINSTATEMENT OF THE FIRST RESPONDENT

#### 9. The legislative framework for reinstatement

9.1 In terms of Section 73(5) of the 1973 Companies Act, the registrar of the Companies and Intellectual Property Registration Office ("The Registrar") was entitled to deregister a company for, *inter alia*, failure to submit annual returns. Similar powers are granted to the Second Respondent in terms of the Companies Act.

9.2 The Companies Act, which repealed the 1973 Act, prescribed the methods of reinstatement of a deregistered company. It is respectfully submitted that the methods of reinstatement prescribed by the Companies Act (set out below) are applicable in respect of the reinstatement of the First Respondent.

10. The first method of reinstatements : application to the Second Respondent

10.1 Section 82(4) of the Companies Act states that :-

*"if the Commission deregisters the company ... any interested person may apply in the prescribed manner and form to the Commission, to reinstate the registration of the Company."*

10.2 On the 26<sup>th</sup> of April 2011, the Second Respondent, CIPC, issued practice note 2 of 2011 on deregistration and reinstatement procedures in respect of Companies and Close Corporations ("the practice note"). The practice note refers to the requirements set forth in Section 82 of the Companies Act, part 8 of schedule 3 to the Companies Act and Regulation 40. A copy of the practice note is attached hereto marked annexure "RK4".

10.3 In terms of the practice note, any interested party may apply for the reinstatement of a deregistered entity by filling the prescribed form at CIPC'S offices together with, *inter alia*, :-

10.3.1 certified identity document copies of all members or directors;

10.3.2 a letter from the National Treasury and a letter from the Department of Public Works if the entity owns immovable property; and



10.3.3 a copy of the notice published in a local newspaper given 21 days clear notice of such application.

10.4 Regulation 40(6) states that CIPC may reinstate a deregistered company only after it has filed the outstanding annual returns and paid the outstanding prescribed fee in respect thereof;

10.5 It appears therefore that, in addition to the requirement set out in the practice note, the deregistered entity cannot be reinstated by CIPC unless its annual returns are brought up to date and the outstanding prescribed fee in respect thereof is paid;

10.6 I should mention that the First Respondent owns no immovable property.

11. The second method of reinstatement : application to court

11.1 Section 83(1) of the Companies Act states that :-

*"a company is dissolved as of the date its name is removed from the Companies register ..."*

11.2 Section 83(4) of the Companies Act states further that :-

*"at any time after a company has been dissolved -*

a the liquidator of the company, or other person with an interest in the company, may apply to a court for an order declaring the dissolution to have been void, or any other order that is just and equitable in the circumstances; and

b if the court declares the dissolution to have been void, any proceedings may be taken against the company as might have been taken if the company had not been dissolved." (emphasis added)

12. Steps taken by Applicant to reinstate First Respondent

Immediately upon discovering the deregistration of the First Respondent, I duly instructed M.A. Statutory Services (Pty) Ltd, (namely, THANJA ERASMUS at the said accounting firm) to apply for the reinstatement of the First Respondent. The said reinstatement has been commenced with in terms of the first method of reinstatement, namely, the application to the Second Respondent set out above.

13. The Applicant's only practicable method of reinstatement

13.1 I have now elected instead, to bring an application to this Honourable Court in terms of Section 82(4) as read with Section 83(4) of the Companies Act for the following reasons :-

13.1.1 Action against the First Respondent



For the reasons which I submit are not relevant to these proceedings, in 2003/2004 I considered it best to acquire a fresh site elsewhere in the Newcastle Municipality from which to operate a petrol filling station, *namely*, No. 60 Murchison Street, Corner of Sutherland Street, Newcastle CBD, Kwa Zulu-Natal which I had then purchased through my company Sagewise 1018 CC;

- 13.1.2 The use of the site at No. 60 Murchison Street, Corner of Sutherland Street, Newcastle CBD, Kwa Zulu-Natal required a special consent application to the Newcastle local municipality, and finally on appeal, such consent was granted, with special conditions being attached, *namely*, that I would, *inter alia*, close the First Respondent's business, the Engen filling station conducted at No. 22 Terminus Street;
- 13.1.3 However, given the protracted time of almost 10 years between 2003/2004 and the finalization of such appeal, and the further time that the Controller of Petroleum Products took to grant the site and retail licences to me for the operation of the new, Total filling station at No. 60 Murchison Street, it became commercially impossible to close the First Respondent's business, and I then challenged the validity and/or continued need of the said restrictions imposed by the Newcastle Municipality;
- 13.1.4 In early November 2015 several rival filling stations operators, united and then launched an urgent application, in



the High Court of South Africa, KwaZulu-Natal division, Pietermaritzburg, under case number 14300/15 to, *inter alia*, interdict the new Total filling station that I had now constructed and commence business with through the company Sagewise 1018 CC t/a Dragon Fuels at No. 60 Murchison Street, until the First Respondent ceased or terminated its Engen filling station business at No. 22 Terminus Street, Newcastle;

- 13.1.5 The application and the Answering Affidavits etc., at this stage, constitute volumes of documents. I am advised that for the purpose of this application it is necessary only to annex the Notice of Motion in such proceedings, *sans* the founding papers, which notice is then annexed hereto marked annexure "RK5";
- 13.1.6 I and the First Respondent, (obviously oblivious to the status of the First Respondent as being deregistered) have vigorously opposed the said urgent application brought, and on the 10<sup>th</sup> of November 2015, the said application was postponed provisionally to the 2<sup>nd</sup> of December 2015, on which date it is expected to be argued before the said Honourable Court. My attorneys of record are representing the First Respondent and my other company in the said proceedings where similarly, SHAFIQUE SARLIE, of the said firm is handling such matter. I annex hereto marked

annexure "RK6", a copy of the order granted on 10<sup>th</sup> November 2015.

14. Prejudice To The Applicant, First Respondent And Other Parties

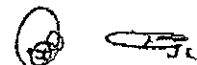
14.1 The urgent application in the Pietermaritzburg High Court is pending and is due to be heard on 2<sup>nd</sup> December 2015;

14.2 The First Respondent has numerous creditors, which are creditors in the normal course of business. I have been advised that they cannot be paid by the First Respondent, until its restoration;

14.3 Despite the First Respondent having to date conducted its business as a filling station with a proper retail licence therefore at No. 22 Terminus Street, I neglected on behalf of the First Respondent to properly file the annual returns to the Second Respondent and pay the nominal prescribed fees that arise therefrom. However, same arose from a *bona fide* mistake, namely, :-

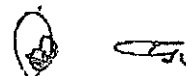
14.3.1. I had also registered a Kadbro Taxi City Service Station CC with registration number 2009/193287/23 in 2009 which corporation I intended utilizing as a vehicle for operating some or other business at the premises where the First Respondent conducts its business. "Kadbro" is an acronym for Kader brothers;

14.3.2 I am a member and shareholder in many close corporations and companies, and appoint an accounting firm and



bookkeepers to assist in the administration of such corporation and company;

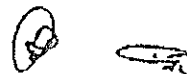
- 14.3.3 In error, I then started using Kadbro Taxi City Service Station CC with registration number 2009/193287/23 (for convenience shortening the name to "Kadbro Taxi City CC") to conduct the First Respondent's business, rendering the annual returns to the Second Respondent under the said entity;
- 14.3.4. Indeed, as part of the renewal of the First Respondent's business, I even entered into a retail dealer agreement with Engen Petroleum Limited, through the incorrect "Kadbro Taxi City CC", registration number 2009/193287/23 as opposed to the correct fuel retail licence holder of the particular site, *namely*, the First Respondent.
- 14.3.5 The deregistration of the First Respondent presents numerous obstacles in that the First Respondent has had to cease forthwith to trade at its business. Its fuel supplier Engen Petroleum Limited has threatened to lock the pumps and tanks (which it owns on the forecourt of the filling station) inasmuch as it considers further supplies to the First Respondent a contravention of the provisions of Section 2(A)(6) of the Petroleum Products Act 1977;



14.3.6 In support of the foregoing I annex hereto marked annexure "RK7" a letter dated the 23<sup>rd</sup> of November 2015 received from Attorneys Maharaj, acting for Engen Petroleum Limited. I also annex hereto marked annexure "RK8" a notice from Engen Petroleum Limited directly, namely, its area manager, informing me that their contractor would be on site the same day to lock the pumps and tanks at the filling station that the First Respondent operated at No. 22 Terminus Street;

14.3.7 The First Respondent employs a staff compliment of 12 employees, mostly petrol attendants, many of whom have worked for the First Respondent since it commenced business in 1990. I annex hereto marked annexure "RK9" a list of such employees, together with, *inter alia*, the date of commencement of their employ with the First Respondent. The present suspension of the business activities of the First Respondent and its deregistration status, has created the further rippling effect that strictly the First Respondent is unable to pay its staff salaries or any other dues. This is particularly of concern to me given the coming Festive Season with the expectation of such staff members, and the reliance on their salaries by their many dependents.

15. In the circumstances, I submit that the only exigent method of reinstatement of the First Respondent is through this application.



16. WELL-GROUNDED APPREHENSION OF IRREPARABLE HARM

I submit that but for this Court's urgent intervention and reinstatement of the First Respondent, the First Respondent, I and its other creditors, including staff members will suffer irreparable harm. The result of deregistration is placing the First Respondent's filling station business at great risk. Its fuel supplier Engen has threatened to cancel the fuel retail agreement that the First Respondent requires to operate a filling station. The purchase and dispensing of petroleum products is extremely regulated, and if such agreement is cancelled the first Respondent could not simply purchase fuel from another supplier. Moreover, the Controller of Petroleum Products could revoke the First Respondent's licence.

17. Moreover, the continued closure of the First Respondent's business for any protracted period beyond just a few days, will sound its death knell.

18. The First Respondent and I have spent in excess of R250 000-00 in legal fees alone, to oppose the proceedings in the Pietermaritzburg High Court, having also engaged senior Counsel to assist in such opposition. The deregistration of the First Respondent, especially, the chief protagonist in the said opposition, if not urgently restored, will no doubt cause such opposition to flounder.

19. I submit that the continued deregistration of the First Respondent will clearly result in severe and irreparable harm and prejudice, not only to the First Respondent and I, but to many interested parties that I have mentioned hereinbefore.



20. BALANCE OF CONVENIENCE

On behalf of the First Respondent I had already proceeded with an application for the reinstatement of the deregistered close corporation submitted to the Second Respondent. The grant of such application, and the successful reinstatement of the First Respondent, I submit, is in the normal course, a *fait accompli*. By the nature of the deregistration, and the reinstatement process, the Third and Fourth Respondents really have no interest in the matter. The First Respondent owns no immovable property. Indeed, the only party having a real interest is the Second Respondent, whom I submit simply regulates compliance with the submission of returns and payment of the prescribed fees which are nominal.

21. I therefore humbly submit that the balance of convenience clearly favours me in this application.

22. ABSENCE OF SATISFACTORY REMEDY

I submit that given the nature of the problem there is no other satisfactory remedy and that this fact clearly appears from what is set out hereinbefore.

23. URGENCY: RULE 6(12)

I submit that the very nature of the method for the reinstatement of the First Respondent, that I have embarked on, illustrates the urgency of this matter.

24. I submit that I have acted with the necessary haste and explored the available alternatives, such as the application to the Second Respondent

itself which I had initially embarked on, before deciding to approach this Honourable Court for relief.

25. Should this application be heard in the normal course (it most certainly will not be opposed), it will only be heard at least 3 to 4 weeks hence. By which time, I submit it is clear from the foregoing, the restoration of the First Respondent would be an exercise in futility, since its commercial existence would have been terminated by the events and circumstances set out hereinbefore. In the premises, I submit that I have no alternative but to approach the above Honourable Court for relief on an urgent basis.

26. CONCLUSION

In the premises, I submit that I am entitled to the relief sought.

27. In support of the allegations herein contained, I annex hereto marked annexures "RK10" and "RK11" a confirmatory affidavit by THANJA ERASMUS of M.A. Statutory Services (Pty) Ltd, and SHAFIQUE SARLIE of my attorneys of record.

  
 \_\_\_\_\_  
 DEPONENT



THUS SIGNED AND SWORN TO BEFORE ME AT NEWCASTLE ON THIS THE 25th DAY OF NOVEMBER 2015 BY THE DEPONENT WHO ACKNOWLEDGES THAT HE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT AND THAT HE HAS NO OBJECTION TO THE TAKING OF THE PRESCRIBED OATH AND CONSIDERS SAME TO BE BINDING ON HIS CONSCIENCE.

Before me :

*[Signature]*

COMMISSIONER OF OATHS

Full Name :

LADEN PATRICIA ELLIS

Address:

91 HARDING STREET

Area :

NEWCASTLE

Capacity:

Tax PRACTITIONER

I certify that the DEPONENT has acknowledged that he/she knows and understands the contents of this affidavit, that he/she does not have any objection to taking the oath, and that he/she considers it to be binding on his/her conscience, and which was sworn to and signed before me: At: NEWCASTLE on this day of 25 / 11 / 2015 administering oath according with the regulations contained in Government Gazette No. A1278 of 23 July 1972, as amended.

Signature: [Signature]  
COMMISSIONER OF OATHS  
EATF Member Initials and Surname: L P ELLIS  
Ex Office - MTP (EA): 19046164  
Commissioner of Oaths (RSA)  
Member business address: 91 Harding Street Newcastle

*[Small mark]*

WET OP BESLOTE KORPORASIES, 1984  
CLOSE CORPORATIONS ACT, 1984

(Artikels 13, 15, 24, 29, 47 en 60 / Sections 13, 15, 24, 29, 47 and 60)  
(Regulasies 2 en 16 / Regulations 2 and 16)

Gewysigde Stigtingsverklaring / Amended Founding Statement

Voor invulling van die vorm, kyk eers na notas op bladsy 2 / Before filling in the form, first read notes on page 2.

REGISTRASIONOMMER VAN KORPORASIE REGISTRATION NUMBER OF CORPORATION  CK 90/28727/83	DATUM VAN INLEIDING VAN VERANDERING DATE OF COMMENCEMENT OF CHANGE 1991-09-24 CHRYD VAN DER MERWE ONTWERPER	Datum van inleiding van verandering / Date of commencement of change
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DEEL A / PART A

Volle naam van korporasie\* / Full name of corporation\* KADARO TAXI CITY CC

Vorige naam van korporasie\* / Previous name of corporation\* KADARO SERVICE STATION CC

Letterlike vertaling van naam\* / Literal translation of name\* \_\_\_\_\_

Verkorte vorm van naam\* / Shortened form of name\* \_\_\_\_\_

Beskrywing van vernaamste besigheid / Description of principal business SALES OF PETROLEUM PRODUCTS AND MOTOR VEHICLE SPARES

Datum van einde van boekjaar\* / Date of end of financial year\* 28/02

DEEL B / PART B

Posadres\* / Postal address\* P.O. Box 1170  
Newcastle - 2940

Adres van geregistreerde kantoor (nie postbus nie)\* / Address of registered office (not post office box)\* 11 A, J.M.S. Centre  
21 MURCHISON STREET  
Newcastle - 210

Naam en posadres van rekeningkundige beampte\* / Name and postal address of accounting officer\* F.H.C. BOGA  
P.O. Box 1170  
Newcastle - 2940

Volle naam van erkende profesie van rekeningkundige beampte / Full name of recognised profession of accounting officer INSTITUTE OF ACCOUNTANTS  
SOUTH AFRICA

\*Kyk nota 2 op bladsy 2 / See note 2 on page 2.  
Dit is 'n afskrif van die oorspronklike dokument wat by die Registrasie van Beslote Korporasies ingedien is.  
This is a copy of the original document filed with the Registrar of Close Corporations.