Appendix 3c

PROTECTED AREA MANAGEMENT AND CO-MANAGEMENT AGREEMENT

(“Agreement”)

Between

OVERSTRAND MUNICIPALITY

 (“Landowner” and “Management Authority”)

And

 ROOIELS CONSERVANCY

(“Conservancy”)

And RAZEENA OMAR

In her capacity as the Chief Executive Officer who warrants that she is duly authorized to

act on behalf of The Western Cape Nature Conservation Board

(‘‘The Board’’),

Collectively called “The Parties”.

PREAMBLE

WHEREAS Ms Madelein Erasmus of the OM is presently attending to the title deed registered details.

A.1 The Landowner is the registered owner of the Rooiels Township Erf 1 (Deed of Transfer

10864/949 SQ M 9557,0), Erf 199 (Deed of Transfer 13367/1948 SQM O/S), Erf 320 (Deed of Transfer

 13367/1948 SQM O/S), Erf 321(Deed of Transfer 13367/1948 SQM O/S), Erf 326 (Deed of Transfer

10865/1949SQM 8796,0), Erf 368 (Deed of Transfer-----SQM

O/S) , Erf 370 (Deed of Transfer---- SQM o/s), Erf 371 (Deed of Transfer---- SQM o/s) and Erf

 373(Deed of Transfer---- SQM o/s).

Collectively called “The Properties”

A.2 The Landowner is also the registered owner of Erven 211, 212 and 343 which are an existing Protected Area Nature Reserve.

A.3 The Landowner wishes to expand the existing Protected Area Nature Reserve to include the Properties.

B. The Rooiels Conservancy was formed on 15 November 2002 and was registered as a Conservancy with the Board on 4 March 2004.

C. The Properties have been identified as an area with high conservation value in that:

* it conserves a priority area identified in the Rooiels Conservancy
* the target area is uniquely rich and contains a wide diversity of habitats and nature elements which are not usually found in such a single stretch of the coastal belt.
* the target area is uniquely situated and chosen to create a vital link between the core zone of Kogelberg Biosphere Reserve and the buffer zone of the coastal and inland smallholdings (most of the latter have Critical Biodiversity status).
* combined with the naturally vegetated fynbos road verges in Rooiels, the target area will: create a corridor through the village of Rooiels between mountains-and-sea, create a corridor along the coast-to-coast ~~along~~ between the smallholdings and the Rooiels estuary, and, create a corridor from the core zone of the Kogelberg Biosphere Reserve to the coast and link it to the existing Rooiels Nature Reserve.

D. The MEC has entered into an agreement with the Landowner in terms of which the

 Properties is to be declared a Nature Reserve and the management of portion of the Properties has

 been assigned to the OVERSTRAND MUNICIPALITY as Management Authority.

E. The parties wish to formalize the management of the Properties to ensure the conservation of the

biodiversity located on it for a period of 99 years and the Landowner contracts its

Properties for this purpose.

F. The parties wish to record the terms of this Agreement against the title deeds of the Properties to

 ensure that they are binding on subsequent owners of the Properties and/or any person that may

 acquire a future right in respect of the Properties.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. DESCRIPTION OF THE PROPERTIES Ms Marienne de Villiers of CapeNature is determining the GPS points. A map will also be advisable.

1.1 The Properties comprise of:

1.1.1 Portion A \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (See Annex A): the GPS points follow in a clockwise direction from the southern boundary of the reserve to the Klein Hangklip Mountain (‘’the Conserved Area’’) :

1.1.1 a) …….

1.1.2 Excluding the existing slipway for small craft with the following co-ordinates: O/S.

1.2.1 a) …….

1.2 Registration of the Properties:

The Landowner is currently, at its own cost, in the process of regularising the Title Deed registrations in the name of the Landowner of the Properties which are not registered in its name.

2. MANAGEMENT OF THE CONSERVED AREA

2.1 The Conserved Area shall be co-managed with the MANAGEMENT AUTHORITY by the properly elected executive committee of the CONSERVANCY.

2.2 In the event that the Conservancy, in the discretion of the MANAGEMENT AUTHORITY, does not

manage the Conserved Area according to this management and co-management agreement and the

management plan in terms of this agreement, then an advisory committee may be appointed by the

MANAGEMENT AUTHORITY in terms of the “Regulations for the Proper Administration of Nature

Reserves”, until such a time as a new executive of the Conservancy has been properly elected .

3. TERMS AND OBJECTIVES

The parties agree to the following terms and management objectives in relation to the Conserved Area:

3.1 The target area is in need of long-term protection for the maintenance of its biodiversity and pristine nature.

3.2 ~~As~~ the target area for inclusion is highly diverse and as such some of the elements of the

properties included in the Conserved Area will require special attention:

• A colony of seals, which occupies part of the proposed area, needs protection from

human intrusion.

• This is the only known area where the Cape Rockjumper occurs at sea level

• The natural dune system in part of the area needs proactive conservation

• Some parts of the target area adjoin private erven and the expansion by some

owners of their private living space into the target area will need to be curtailed.

• Pedestrian access will have to be reviewed with a view to balancing enjoyment and

impact.

• Protecting fauna such as otters and small buck, and the observable bird colonies on

the rocks and at Rooiels Point from undue human interference.

• Ensuring that the reserve is restored to its pristine nature, with unnecessary

intrusions being removed.

• Erf 1, which is part of the target area, is owned by central government which may

have a different priority. Every effort will be made to acquire ownership by the Landowner.

3.3 Except for the maintenance of the existing footpaths (by means of natural materials only) and

the maintenance of the existing benches and signposts, there shall be no development of any nature

or description in the Conserved Area.

3.4. Consent uses in terms of the Land Use Planning Act, 2015, or any zoning scheme shall not be approved for the Conserved Area.

3.5. In order to protect and maintain the street reserves adjacent to the Conserved Area, which

 serve as green linkages between the mountains and the coastline and which contribute to the

 character of Rooiels, the following natural features will be maintained:

3.5.1 Streets and roads adjacent to the Conserved Area will not be widened and will be brick-paved

where necessary.

3.5.2 Streets and roads already serve as firebreaks and firebreaks will not be constructed next to

streets and roads adjacent to the Conserved Area, unless specifically required and motivated in

terms of an approved fire protection plan by an approved Rooiels community organisation, such as

the Rooiels Ratepayers’ Association.

3.5.3 Street and road verges shall serve as fuel load breaks only in terms of the fire protection plan

named in paragraph 3.5.2. and not as firebreaks.

3.5.4 In order to maintain the existing seedbeds in the road reserves adjacent to the Conserved

Area, and also to prevent illegal parking or widening of roads, the road reserves will not be burned or clearcut.

3.5.5 Trimming may be done of indigenous vegetation that overhangs streets and road verges

adjacent to the Conserved Area, and to reduce the excess fuel load caused by the amount of

indigenous vegetation in the street reserves. Removing or clearcutting of indigenous vegetation to

reduce the fuel load shall be limited to identified plant species which pose an undue fire risk, in

accordance with the fire protection plan named in paragraph 3.5.2.

3.6 Management Plan

3.6.1 The Landowner and Conservancy shall, within 12 months of its assignment, submit a

Management Plan for the Conserved Area to the MEC for approval, which Management Plan is to be

prepared in consultation with the Board, municipalities, other organs of state, local

communities and other affected parties which have an interest in the area and must take

into account any applicable aspects of the integrated development plan of the municipality

in which the Conserved Area is situated.

3.6.2 The Landowner and Conservancy agree that the Conserved Area shall be managed exclusively

for the purpose for which it was declared and in accordance with the Agreement and Management

Plan and applicable national and provincial legislation, policies, plans or municipal by-laws.

3.6.3 The Management Plan shall, as a minimum, contain:

3.6.3.1 The terms and conditions of any applicable biodiversity Management Plan;

3.6.3.2 A co-ordinated policy framework;

3.6.3.3 Such planning measures, controls and performance criteria as may be

prescribed;

3.6.3.4 A programme for the implementation of the plan and its costing;

3.6.3.5 Procedures for public participation, including participation by the owner (if

applicable), any local community, or other interested party;

3.6.3.6 Where appropriate, the implementation of community-based natural resource

management;

3.6.3.7 A zoning of the area indicating what activities may take place in different

sections of the area, and the conservation objectives of the sections;

3.6.3.8 The objectives stated in clause 2.1 of this Agreement; and

3.6.3.9 The rights and obligations of the parties in relation to the Conserved Area,

which are set out in clauses 3 to 6 of this Agreement.

3.7 Monitoring and Review of the Management Plan

3.7.1 The Board shall carry out regular inspection of the Conserved Area.

3.7.2 The Board shall convene a meeting with the Landowner and Conservancy on an annual basis,

or at such earlier time should any of the parties deem it necessary, to formally review progress

toward achieving the management objectives set out in 2.1 and the Management Plan.

3.7.3 The Board will present the following information to the Landowner and Conservancy at this meeting:

3.7.3.1 the extent to which the current Management Plan has achieved the stated

Objectives of the Agreement;

3.7.3.2 the extent to which the parties have complied with their respective rights and

obligations under the current Management Plan;

3.7.3.3 current and future challenges to the conservation, management and status of

the Conserved Area; and

3.7.3.4 proposed amendments to the Management Plan.

3.7.3.5 The parties shall, by mutual agreement and with the MEC’s consent,

 amend the Management Plan when necessary, which amendments shall be reduced to

writing and signed by both parties.

4. RIGHTS OF LANDOWNER IN RESPECT OF CONSERVED AREA

4.1 Ownership

4.1.1 The Landowner retains all rights of ownership over the Conserved Area.

4.1.2 The Landowner warrants that the exercise of such ownership shall be consistent

with the provisions of this Agreement, any regulations made by the MEC under section 87

of the Protected Areas Act, municipal by-laws or internal rules made by the Management

Authority in terms of section 52 of the Protected Areas Act.

5. OBLIGATIONS OF LANDOWNER AND CONSERVANCY IN RESPECT OF CONSERVED AREA

5.1 Compliance with the Management Plan

The Landowner and Conservancy shall comply with all the terms and conditions set out in the

 Management Plan.

5.2 Development

5.2.1 The Landowner and Conservancy shall not construct, erect or upgrade, or allow the

construction, erection or upgrading, of any buildings, roads or structures in the Conserved Area,

except as expressly provided for in the Management Plan (and subject to any regulations

published by the MEC in terms of section 87) to further the conservation of biodiversity

in the Conserved Area.

5.2.2 The Landowner and Conservancy shall obtain any necessary approval, permission or exemption

required in order to undertake any development contemplated in the Management Plan.

5.3 Biodiversity

5.3.1 The Landowner and Conservancy shall not remove or destroy, or permit the destruction or

removal of, any indigenous species in the Conserved Area, save as expressly required in the

Management Plan.

5.3.2 The Landowner and Conservancy shall not plant, or permit the planting of, any flora other

than local non-invasive indigenous flora in the Conserved Area.

5.3.4 The Landowner and Conservancy shall not do, or permit, any act that may adversely affect any

indigenous flora and fauna, or their habitats, in the Conserved Area.

5.4 Water

5.4.1 The Landowner and Conservancy shall not do, or permit, any act that may adversely affect the

 natural state, flow, supply, quantity or quality of any water resource located in the Conserved

Area.

5.5 Commercial Activity

5.5.1 The Landowner and Conservancy shall not permit or consent to any prospecting, exploration,

or mining in the Conserved Area.

5.5.2 The Landowner and Conservancy shall not permit or consent to the placement of any

transmission lines, telecommunication lines, cellular towers or public works in the

Conserved Area.

5.5.3 The Landowner and Conservancy shall not subdivide, or permit the subdivision of, the Conserved Area.

5.5.4 The Landowner and Conservancy shall not operate, or permit the operation of, any trade,

 industry or business in the Conserved Area.

5.6 Other Human Activities

5.6.1 The Landowner and Conservancy shall not use, or permit the use of, motorcycles or four-wheel drive vehicles in the Conserved Area unless their use is necessary for the proper management and protection of the Conserved Area.

5.6.2 The Landowner and Conservancy shall not dump, or permit the dumping of, any waste material in the Conserved Area.

5.6.3 The Landowner and Conservancy shall not hunt, or permit hunting, to take place in the

Conserved Area unless it is necessary for the proper management of the fauna located in the

Conserved Area, and the proper permits have been obtained and restrictions adhered to.

5.6.4 The Landowner and Conservancy shall only permit the general public to access the Conserved

 Area as provided for in the Management Plan.

6. RIGHTS OF BOARD IN RESPECT OF CONSERVED AREA

6.1 Access to fulfil obligations in terms of the Management Plan

The Landowner and Conservancy shall allow the Board, its employees and consultants access to the

Conserved Area to fulfil their obligations under the Management Plan, which will include

access to undertake scientific research, and to ensure proper management and

compliance with the terms of this agreement.

6.2 Ownership of wildlife

Ownership of wildlife vest in the Landowner. All introductions or removals of wildlife will be catered

for in the Management Plan or by agreement with the Landowner and Conservancy.

7. OBLIGATIONS OF BOARD IN RESPECT OF THE CONSERVED AREA

7.1 Compliance with the Management Plan

The Board shall comply with all the terms and conditions set out in the Management Plan.

7.2 Supervision and Technical Support

The Board shall provide any technical assistance, information and management advice

that may be required to ensure the effective conservation of the Conserved Area.

7.3 Notification of Access

The Board, its consultants and employees shall notify the Landowner and Conservancy whenever

they intend to enter the Conserved Area. However, the Board, its consultants and employees

may also be empowered by legislation to enter any property for official purposes.

7.4 Rates & Taxes

7.4.1 The Board will not be liable for rates due on commercial or other infrastructure,

developments or improvements unless by agreement herein.

7.4.2 The Board shall notify the Landowner of the Landowner’s eligibility for exemption

from any other levies, duties or taxes which may be pursuant to this agreement.

7.5 Conservation Costs

The Conservancy shall pay all reasonable costs associated with the establishment of the Conserved

Area. The costs of the implementation of the Management Plan for the duration of this

agreement will be shared between the Conservancy and the Landowner, which costs may include

the following, as detailed in the Management Plan:

7.5.1. Clearing alien invasive vegetation

7.5.2. Fire management

7.5.3. Monitoring

7.5.4. The Conservancy shall keep an accurate record of all such costs which it shall make

available to the Board and the Landowner on request.

7.5.5. Such costs shall include direct expenditure on materials, transport, third party

expertise (including labour contractors and legal advice), and shall increase with the standard

inflation indices. Such costs shall not include reimbursement of the time of the agency’s

personnel or staff in establishing the Conserved Area or in implementing this agreement.

8. REZONING OF CONSERVED AREA

8.1 Where it is not already so zoned, the Landowner agrees to rezone the Conserved Area to Open

 Space Zone1:Nature Reserve in terms of the Land Use Planning Act, 2015, or applicable zoning

 scheme regulations.

8.2 The Landowner shall take all measures necessary to attend to this rezoning within

six months of this Agreement coming into effect.

8.3 The Landowner shall take all necessary measures and sign all necessary

documentation relating to the rezoning on the Conserved Area when requested by the

Board.

8.4 All costs associated with the rezoning shall be borne by the Landowner.

9. REGISTRATION OF A NOTARIAL DEED

9.1 The parties agree that the terms of this Agreement will be binding on the

Landowner’s successors in title and the Landowner agrees to record the terms of the

Agreement in a Notarial Deed to be registered against the title deeds of the properties in

order to ensure that this area is conserved for ninety-nine years.

9.2 The Notarial Deeds, as agreed on between the parties, are annexed to this

Agreement marked\_\_\_\_\_\_\_\_\_\_\_

9.3 The Landowner shall instruct its attorneys, within one month of the Management

Agreement coming into effect, to register the Notarial Deeds.

9.4 The Landowner shall take all necessary measures and sign all necessary

documentation relating to the Notarial Deed when requested by the Board to do so.

9.5 The Landowner will likewise ensure that an appropriate recording in a notarial deed be registered against the title deeds of the properties constituting the existing Protected Area Nature Reserve as in A.2

9.6 Any costs incurred in giving effect to this clause shall be borne by the Landowner.

10. DELEGATION OF RIGHTS AND RESPONSIBILITIES

1.01 Subject to the terms of this agreement, the parties to this agreement may not delegate or cede any of their rights or

obligations under this agreement unless:

10.1.1 they have the written consent of the other party to this agreement, which consent

shall not be unreasonably withheld; and

10.1.2 the party to whom the rights and/or obligations have been delegated or ceded, has

acknowledged its acceptance of the delegation or cession in writing, to both parties to this

agreement.

11. BREACH

11.1 If any party breaches the terms in this Agreement, any other party can notify the

offending party in writing and call on him/her to remedy the breach within a reasonable

period.

11.2 If the offending party still fails to remedy the breach, the other party may, without

detriment to any other remedy available to it in law:

11.2.1 take any necessary measures itself to remedy the breach, or appoint a third party to

do so, and recover its costs in doing so from the offending party; and/or

11.2.2 enforce or cancel the agreement and claim any damages it may be legally entitled

to.

12 RECOVERY OF EXPENDITURE ON TERMINATION

In the event that this Agreement is terminated at the instance of the Board in terms of clause 8, the

 Landowner shall reimburse the Board for any expenditure reasonably incurred by it in giving effect

 to the terms of this Agreement.

13. RIGHT OF FIRST REFUSAL

In the event that the Landowner wishes to sell the property, or a portion/s of it, during the

duration of this Agreement, the Landowner undertakes to offer the said property, or any portion/s

of it, to the Board on the same terms and conditions as offered to/by any third party and shall

grant the Board a period of 60 (sixty) days within which to consider the offer and exercise its

right of first refusal.

14. DISPUTE RESOLUTION

The parties agree that they will be bound by the provisions contained in Chapter 4 of the

National Environmental Management Act 107 of 1998 and that any disputes of any nature which

may arise at any time from this Agreement will be dealt with in accordance with this Chapter.

15. DOMICILIA AND NOTICES

The parties choose the addresses set out below as their domicilia citandi et executandi for all

purposes of this agreement and as their respective addresses for the service of any notice

required to be served on them in terms of this agreement.

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The Landowner

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The Conservancy

Physical: CapeNature House, Belmont Office Park, 14 Belmont Road, Rondebosch, 7700

Postal Private Bag X29, Rondebosch, 7701

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The Board

16. VARIATION OF AGREEMENT

No variation, amendment or suspension of any of the terms of this Agreement shall be valid, and

no further agreement which may conflict in any way with the terms of this Agreement shall be

binding on the parties unless the variation, amendment, suspension or conflicting agreement has

been recorded in writing and signed by the parties.

17. COSTS OF AGREEMENT

All costs associated with the preparation or registration of this Agreement shall be borne by the

Conservancy.

18. DURATION

18.1 This agreement shall come into effect on the date on which the last party signs it and

shall remain in force for a period of ninety-nine years unless:

18.1.1 the declaration of the Conserved Area as a protected area is for any reason withdrawn

prior to the expiry of the Agreement in which case this Agreement shall terminate at the

date of withdrawal;

18.1.2 The Landowner elects to sell the property prior to the expiry of the Agreement in which

case the Agreement shall terminate at the date of transfer of the property to the new

owner.

SIGNED AT \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ON \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ .

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LANDOWNER

AS WITNESSES

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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SIGNED AT \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ON \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ .

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In her capacity as Chief Executive Officer of the Western Cape Nature Conservation

Board (Duly authorized by the Board in terms of Resolution …………………………………..dated ……………

annexed as annexure ‘’C’’)

AS WITNESSES

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ANNEXURE “A”

DIAGRAM OF “CONSERVATION AREA”