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NEAS REFERENCE: WCP/EIA/0000724/2020
ENQUIRIES: Ms Jessica Christie
DATE OF ISSUE: 15 OCTOBER 2020

ENVIRONMENTAL AUTHORISATION

APPLICATION FOR ENVIRONMENTAL AUTHORISATION IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998) AND THE ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, 2014: PROPOSED ESTABLISHMENT OF A RESIDENTIAL DEVELOPMENT ON ERF 2839, GREAT BRAK RIVER

With reference to your application for the abovementioned, find below the outcome with respect to this application.

DECISION

By virtue of the powers conferred on it by the National Environmental Management Act, 1998 (Act No. 107 of 1998) ("NEMA") and the Environmental Impact Assessment ("EIA") Regulations, 2014, the Competent Authority herewith **grants Environmental Authorisation** to the applicant to undertake the listed activities specified in section B below with respect to **a part of the Preferred Alternative (Alternative A)**, described in the Final Basic Assessment Report ("FBAR"), dated 6 July 2020 as prepared and submitted by *Sharples Environmental Services*, the appointed environmental assessment practitioner ("EAP").

The applicant for this Environmental Authorisation is required to comply with the conditions set out in section E below.

A. DETAILS OF THE APPLICANT FOR THIS ENVIRONMENTAL AUTHORISATION

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The abovementioned applicant is the holder of this Environmental Authorisation (hereinafter referred to as "**the Holder**").

B. LIST OF ACTIVITIES AUTHORISED

Listed Activities	Activity/Project Description
Environmental Impact Assessment Regulations Listing Notice 1 of 2014, Government Notice No. 983 of 4 December 2014	
<p>Activity Number: 24 Activity Description:</p> <p>The development of a road—</p> <p>(i) for which an environmental authorisation was obtained for the route determination in terms of activity 5 in Government Notice 387 of 2006 or activity 18 in Government Notice 545 of 2010; or</p> <p>(ii) with a reserve wider than 13,5 meters, or where no reserve exists where the road is wider than 8 metres;</p> <p>but excluding a road—</p> <p>(a) which is identified and included in activity 27 in Listing Notice 2 of 2014;</p> <p>(b) where the entire road falls within an urban area; or</p> <p>(c) which is 1 kilometre or shorter.</p>	<p>The construction of roads for the proposed development will be 8 metres and wider.</p>
<p>Activity Number: 27 Activity Description:</p> <p>The clearance of an area of 1 hectare or more, but less than 20 hectares of indigenous vegetation, except where such clearance of indigenous vegetation is required for—</p> <p>(i) the undertaking of a linear activity; or</p> <p>(ii) maintenance purposes undertaken in accordance with a maintenance management plan.</p>	<p>The clearance of an area of approximately 9.8 hectares of indigenous vegetation for the establishment of the residential development.</p>
<p>Activity Number: 28 Activity Description:</p> <p>Residential, mixed, retail, commercial, industrial or institutional developments where such land was used for agriculture, game farming, equestrian purposes or afforestation on or after 01 April 1998 and where such development:</p> <p>(i) will occur inside an urban area, where the total land to be developed is bigger than 5 hectares; or</p> <p>(ii) will occur outside an urban area, where the total land to be developed is bigger than 1 hectare;</p> <p>excluding where such land has already been developed for residential, mixed, retail, commercial, industrial or institutional purposes.</p>	<p>The development of a residential development consisting of a residential and open space areas.</p>
Environmental Impact Assessment Regulations Listing Notice 3 of 2014, Government Notice No. 985 of 4 December 2014	
<p>Activity Number: 4 Activity Description:</p> <p>The development of a road wider than 4 metres with a reserve less than 13,5 metres.</p> <p>i. Western Cape</p> <p>(a) Areas zoned for use as public open space or equivalent zoning;</p> <p>(b) Areas outside urban areas;</p> <p>(aa) Areas containing indigenous vegetation;</p>	<p>The construction of roads for the proposed development will be 8 metres and wider.</p>

<p>(bb) Areas on the estuary side of the development setback line or in an estuarine functional zone where no such setback line has been determined; or</p> <p>(c) Inside urban areas:</p> <p>(aa) Areas zoned for conservation use; or</p> <p>(bb) Areas designated for conservation use in Spatial Development Frameworks adopted by the competent authority.</p>	
<p>Activity Number: 12 Activity Description:</p> <p>The clearance of an area of 300 square metres or more of indigenous vegetation except where such clearance of indigenous vegetation is required for maintenance purposes undertaken in accordance with a maintenance management plan</p> <p>i. Western Cape</p> <ol style="list-style-type: none"> i. Within any critically endangered or endangered ecosystem listed in terms of section 52 of the NEMBA or prior to the publication of such a list, within an area that has been identified as critically endangered in the National Spatial Biodiversity Assessment 2004; ii. Within critical biodiversity areas identified in bioregional plans; iii. Within the littoral active zone or 100 metres inland from high water mark of the sea or an estuarine functional zone, whichever distance is the greater, excluding where such removal will occur behind the development setback line on erven in urban areas; iv. On land, where, at the time of the coming into effect of this Notice or thereafter such land was zoned open space, conservation or had an equivalent zoning; or v. On land designated for protection or conservation purposes in an Environmental Management Framework adopted in the prescribed manner, or a Spatial Development Framework adopted by the MEC or Minister. 	<p>The clearance of more than 300 square metres of Endangered Western Cape Milkwood Forest.</p>

The abovementioned list is hereinafter referred to as "**the listed activities**".

The Holder is herein authorised to undertake the listed activities mentioned above, insofar as it relates to a part of the proposed development, identified as the development footprint in Annexure 2 and as described below:

The proposal entails the transformation of a portion of Erf 2839, Great Brak River for the development of a residential estate. The proposed development will comprise the following:

- ❖ Single Residential Erven;
- ❖ General Residential Zone II erven;
- ❖ Open Space Zone II erven;
- ❖ 1 Transport Zone II erf (Public Road);
- ❖ 1 Transport Zone III erf (Private Road).

In addition, hereto the following associated infrastructure will be constructed:

- ❑ An internal road network with roads of 10 metres and wider.
- ❑ An intersection with Main Road 344 and upgrade a collector road to provide access to the property from the Divisional Main Road no. 344.

- ❑ The internal sewerage network will consist of 160mm pipes with a 110mm connection to each erf. This network will drain to the existing sewer pump station at the Southern boundary of the property.
- ❑ The internal water reticulation system will consist of pipes varying in size between 75 mm and 110 mm diameter with the necessary provision made for isolating valves, pressure reducing valves, fire hydrants, as required and erf connections;
- ❑ Electricity reticulation, substations and street lighting, and
- ❑ Stormwater drainage structures and stormwater pipelines.

This will require the clearance of more than 1-hectare (but less than 20-hectares) of indigenous vegetation. Also, more than 300 square metres of an area mapped as Endangered Western Cape Milkwood Forest will be cleared of indigenous vegetation for this purpose.

The above proposal must be designed and implemented in accordance with the site development plan in Annexure 2 of the Environmental Authorisation.

C. SITE DESCRIPTION AND LOCATION

The proposed residential development will be located on a portion of Erf 2839, Great Brak River. The property lies to the west of the Great Brak River Estuary, along the Main Road 344 (R102). The property is 13.81 hectares in extent. The property can be accessed by driving in a westerly direction along the R102 and turning right (north) at Fynbos Avenue. The St. Ellen security complex is situated directly to the west of the site.

Only a portion of Erf 2839 will form part of the proposed development footprint. The figure "A B C D E F G" on the Site Development Plan in Annexure 2 depicts an area which will be excluded from development footprint and this open space will be managed for a conservation use.

Whereas—

- A-B-C: represents the interface between the residential development and open space area;
- C-D: represents the northern boundary of the open space which coincides with and a section of the northern property boundary;
- D-E: represents the eastern boundary of the open space which coincides with and a section of the eastern property boundary;
- E-F: represents a section of southern boundary of the open space which form the interface with a section of the northern boundary of Main Road 344 (R102) (SG street parcel RE/2839);
- F-G: represents the remaining section of southern boundary of the open space which forms the interface with a section of the northern boundary of the sewer servitude area (SG ID: 1502/2018001 and 1502/2018002); and
- GA: represents the section of the western boundary of the open space which forms the interface with a section of the street parcel (SG street parcel RE/2839).

The coordinates of the site:

	Latitude (South)	Longitude (East)
Centre of the proposed development footprint	34° 03' 33.5"	22° 12' 35.2"
Point "A" on the interface between the development footprint and open space area:	34° 03' 30.6" (-34.05849989)	22° 12' 42.1" (22.21170232)

Point "B" on the interface between the development footprint and open space area:	34° 03' 33.3" (-34.05926174)	22° 12' 41.5" (22.21152543)
Point "C" on the interface between the development footprint and open space area:	34° 03' 38.3" (-34.06064499)	22° 12' 27.0" (22.20751150)

SG digit code: Erf 2839: C05100030000283900000

Refer to Annexure 1: Locality Plan and Annexure 2: Site Development Footprint of this Environmental Authorisation.

The above is hereinafter referred to as "**the site**".

D. DETAILS OF THE ENVIRONMENTAL ASSESSMENT PRACTITIONER (EAP)

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E. CONDITIONS OF AUTHORISATION

Scope and Validity Period of authorisation

1. This Environmental Authorisation is granted for the period from date of issue until **30 November 2030**, the date on which all the listed activities, including post construction rehabilitation and monitoring requirements, will be deemed to be concluded at the site.

Further to the above, the Environmental Authorisation is subject to the following:

- 1.1. The Holder must start with the physical implementation and exceed the threshold of all the authorised listed activities on the site by 30 November 2022.
- 1.2. The post construction rehabilitation and monitoring requirements must be finalised at the site within a period of 6-months from the date the construction activities (construction phase) are concluded; but by no later than 30 May 2030.

Note: The post-construction rehabilitation and monitoring requirements should be completed at least six (6) months prior to expiry of the validity period of an environmental authorisation to ensure the Holder is able to comply with the environmental auditing requirements in time.

Failing which, this Environmental Authorisation shall lapse, unless the environmental authorisation is amended in accordance with the relevant process contemplated in the Environmental Impact Assessment Regulations promulgated under the National Environmental Management Act, 1998 (Act no. 107 of 1998).

2. The Holder is authorised to undertake the listed activities specified in Section B above in accordance with a part of the Preferred Alternative described in the FBAR dated 6 July 2020 on the site as described in Section C above in accordance with the development footprint depicted in Annexure 2 of this Environmental Authorisation.

This Environmental Authorisation is only for the implementation of a part of the Preferred Alternative for the site which entails:

The transformation of a portion of Erf 2839, Great Brak River for the development of a residential estate on Erf 2839, Great Brak River. The development site will comprise the following:

- ❖ Erven for residential use (i.e. Single Residential Zone I and General Residential Zone II);
- ❖ An area for an Open Space use (i.e. Open Space Zone II);
- ❖ An area for transport use (i.e. Transport Zone II (Public Road) and Transport Zone III erf (Private Road)).

In addition, hereto the following associated infrastructure will be constructed or modified:

- ❑ An internal road network with roads of 10 metres and wider.
- ❑ An intersection with Main Road 344 and a collector road to provide access to the property from the Divisional Main Road no. 344.
- ❑ The internal sewerage network will consist of 160mm pipes with a 110mm connection to each erf. This network will drain to the existing sewer pump station at the Southern boundary of the property.
- ❑ The internal water reticulation system will consist of pipes varying in size between 75 mm and 110 mm diameter with the necessary provision made for isolating valves, pressure reducing valves, fire hydrants, as required and erf connections;
- ❑ Electricity reticulation, substations and street lighting, and
- ❑ Stormwater drainage structures and stormwater pipelines.

This will require the clearance of more than 1-hectare (but less than 20-hectares) of indigenous vegetation. Also, more than 300 square metres of an area mapped as Endangered Western Cape Milkwood Forest will be cleared of indigenous vegetation for this purpose.

3. The holder must adopt and implement the following development parameters, restrictions and measures to the proposed development. The following must be addressed—
 - 3.1. A revised proposal and detailed site development plan / layout plan must be submitted to the competent authority for approval prior to site preparation or construction activities commencing on site.
 - 3.2. In accordance with the assessment of Alternative 1, the revised proposal must be restricted to the number of erven initially proposed with the following uses:
 - ❑ Single Residential Zone I;
 - ❑ General Residential Zone II;
 - ❑ Open Space Zone II;
 - ❑ Transport Zone II (Public Road);
 - ❑ Transport Zone III (Private Road).

- 3.3. The proposed development layout plan must be amended to address the following:
- 3.3.1. The residential erven and internal roads and infrastructure must be restricted to the development footprint depicted on the Site Development Plan in Annexure 2 of this Environmental Authorisation.
 - 3.3.2. The demarcated area depicted as figure A B C D E F G in Annexure 2 of this Environmental Authorisation, must be excluded from the development area. This area must be zoned as an open space and managed for a conservation use.

No residential or other development may take place in the open space area, except for fencing and approved reticulation infrastructure or unless authorised by the Competent Authority.
 - 3.3.3. The neighbourhood shop (Business Zone III) area must be excluded from the proposed development.
 - 3.3.4. All services must be installed directly adjacent to erf boundaries.
4. This Environmental Authorisation may only be implemented in accordance with an approved Environmental Management Programme ("EMPr").
5. The Holder shall be responsible for ensuring compliance with the conditions by any person acting on his/her behalf, including an agent, sub-contractor, employee or any person rendering a service to the Holder.
6. Any changes to, or deviations from the scope of the alternative described in section B above must be accepted or approved, in writing, by the Competent Authority before such changes or deviations may be implemented. In assessing whether to grant such acceptance/approval or not, the Competent Authority may request information in order to evaluate the significance and impacts of such changes or deviations, and it may be necessary for the Holder to apply for further authorisation in terms of the applicable legislation.

Notification and administration of appeal

7. The Holder must in writing, within 14 (fourteen) calendar days of the date of this decision–
- 7.1. notify all registered Interested and Affected Parties ("I&APs") of –
 - 7.1.1. the decision reached on the application;
 - 7.1.2. the reasons for the decision as included in Annexure 3;
 - 7.1.3. the date of the decision; and
 - 7.1.4. the date when the decision was issued.
 - 7.2. draw the attention of all registered I&APs to the fact that an appeal may be lodged against the decision in terms of the National Appeal Regulations, 2014 (as amended) detailed in Section G below;
 - 7.3. draw the attention of all registered I&APs to the manner in which they may access the decision;
 - 7.4. provide the registered I&APs with the:
 - 7.4.1. name of the Holder (entity) of this Environmental Authorisation,
 - 7.4.2. name of the responsible person for this Environmental Authorisation,
 - 7.4.3. postal address of the Holder,
 - 7.4.4. telephonic and fax details of the Holder,
 - 7.4.5. e-mail address, if any, of the Holder,

- 7.4.6. contact details (postal and/or physical address, contact number, facsimile and e-mail address) of the decision-maker and all registered I&APs in the event that an appeal is lodged in terms of the 2014 National Appeals Regulations (as amended).
- 7.5. The listed activities, including site preparation, must not commence within 20 (twenty) calendar days from the date the applicant notified the registered I&APs of this decision.
- 7.6. In the event that an appeal is lodged with the Appeal Authority, the effect of this Environmental Authorisation is suspended until the appeal is decided i.e. the listed activities, including site preparation, must not commence until the appeal is decided.

Written notice to the Competent Authority

8. Seven calendar days' notice, in writing, must be given to the Competent Authority before commencement of any activities.
 - 8.1. The notice must make clear reference to the site details and EIA Reference number given above.
 - 8.2. The notice must also include proof of compliance with the following conditions described herein:
Conditions no.: 3, 7, 10, 12 and 20.
9. Seven calendar days' notice, in writing, must be given to the Competent Authority on completion of the construction activities of the—
 - 9.1. bulk internal service infrastructure (i.e. internal roads; water-, sewer-, electricity reticulation and bulk storm water); and
 - 9.2. final phase of the mixed/residential development.

Management of activity

10. The draft or Environmental Management Programme ("EMPr") submitted as part of the application for Environmental Authorisation must be amended and submitted for approval, subject to the following requirements:
 - 10.1. The EMPr must be amended to incorporate the following —
 - 10.1.1. Environmental Control Officer compliance reports must be submitted monthly to this Department's Regional Office for attention the Directorate Development Management (Region 3).
 - 10.1.2. Incorporate all the conditions contained in this Environmental Authorisation; The section dealing with the management and demarcation of the No-Go area's (including the open space areas) must clearly state how the areas will be demarcated prior to any earthworks / commencement of construction;
 - 10.1.3. The revised Site Development Plan must be included in the EMPr;
 - 10.1.4. Incorporate an alien invasive vegetation clearing plan detailing timelines for the phased clearing and follow-up schedule for the property.
 - 10.1.5. Incorporate the final recommendations from Heritage Western Cape
 - 10.2. The amended EMPr must be submitted to the Competent Authority and be approved, prior to the construction activities commencing on site.

Note: The revised EMPr should be submitted to the Competent Authority at least 90-days prior to the construction activities commencing on site to ensure the competent authority is able to process / review the revised EMPr prior to the intended date of commencement.

11. The EMPr must be included in all contract documentation for all phases of implementation.

Monitoring

12. The Holder must appoint a suitably experienced Environmental Control Officer ("ECO"), for the duration of the construction and rehabilitation phases of implementation contained herein.

13. The ECO must–

13.1. be appointed prior to commencement of any works (i.e. site clearance; removal and movement of soil and / or rubble or construction activities commencing);

13.2. ensure compliance with the EMPr and the conditions contained herein;

13.3. keep record of all activities on the site; problems identified; transgressions noted and a task schedule of tasks undertaken by the ECO;

13.4. remain employed until all development activities are concluded, and the post construction rehabilitation and monitoring requirements are finalised.

14. A copy of the Environmental Authorisation, EMPr, any independent assessments of financial provision for rehabilitation and environmental liability, closure plans, audit reports and compliance monitoring reports must be kept at the site of the authorised activities and be made available to anyone on request, and where the Holder has website, such documents must be made available on such publicly accessible website.

15. Access to the site referred to in Section C must be granted, and the environmental reports mentioned above must be produced, to any authorised official representing the Competent Authority who requests to see it for the purposes of assessing and/or monitoring compliance with the conditions contained herein.

Auditing

16. The Holder must, for the period during which the environmental authorisation and EMPr remain valid ensure the compliance with the conditions of the environmental authorisation and the EMPr, is audited;

17. The frequency of auditing of compliance with the conditions of the environmental authorisation and of compliance with the EMPr, must adhere to the following programme:

17.1. During the period which the activities have been commenced with on site until the construction of the bulk internal service infrastructure (i.e. internal roads; water-, sewer-, electricity reticulation and bulk storm water) has been completed on site, the Holder must undertake annual environmental audit(s) and submit the Environmental Audit Report(s) to the Competent Authority.

A final Environmental Audit Report must be submitted to the Competent Authority within **three (3)** months of completion of the construction of bulk internal services and the post construction rehabilitation and monitoring requirements thereof.

- 17.2. During the period the development of the residential phases (i.e. construction of top structures) is undertaken, the Holder must ensure that environmental audit(s) are performed regularly and submit these Environmental Audit Report(s) to the Competent Authority.

During this phase of the development, the frequency of the auditing of compliance with the conditions of the environmental authorisation and of compliance with the EMPr **may not exceed intervals of three (3) years.**

A final Environmental Audit Report must be submitted to the Competent Authority within **three (3)** months of completion of the final phase of the residential development and the post construction rehabilitation and monitoring requirements thereof.

Note: The final auditing requirements should be completed at least three months prior to expiry of the validity period of the environmental authorisation (i.e. by no later than 30 August 2030) to ensure the Holder is able to comply with all the environmental auditing and reporting requirements and for the competent authority to be able to process it timeously.

18. The Environmental Audit Report(s), must –

- 18.1. be prepared and submitted to the Competent Authority, by an independent person with the relevant environmental auditing expertise. Such person may not be the ECO or EAP who conducted the EIA process;
 - 18.2. provide verifiable findings, in a structured and systematic manner, on–
 - 18.2.1. the level of compliance with the conditions of the environmental authorisation and the EMPr and whether this is sufficient or not; and
 - 18.2.2. the ability of the measures contained in the EMPr to sufficiently provide for the avoidance, management and mitigation of environmental impacts associated with the undertaking of the activity.
 - 18.3. identify and assess any new impacts and risks as a result of undertaking the activity;
 - 18.4. evaluate the effectiveness of the EMPr;
 - 18.5. identify shortcomings in the EMPr;
 - 18.6. identify the need for any changes to the avoidance, management and mitigation measures provided for in the EMPr;
 - 18.7. indicate the date on which the construction work was commenced with and completed or in the case where the development is incomplete, the progress of the development and rehabilitation;
 - 18.8. indicate the date on which the operational phase was commenced with and the progress of the rehabilitation;
 - 18.9. include a photographic record of the site applicable to the audit; and
 - 18.10. be informed by the ECO reports.
19. The Holder must, within 7 calendar days of the submission of the audit report to the Competent Authority, notify all potential and registered I&APs of the submission and make the report available to anyone on request and on a publicly accessible website (if applicable).

Specific Conditions

20. The Holder must, prior to the activities physically commencing on site, register the following legally binding provisions or obligations on the land earmarked for open space (represented by figure "A B C D E F G" on the Site Development Plan in Annexure 2) to limit the use of the proposed open space area for a conservation use.

Such provisions must as a minimum be a –

20.1. "Non-User Conservation Servitude"

The Holder is required to register, in favour of the Home Owners of the proposed development on Erf 2839, a conservation servitude over the identified land which requires protection from development in perpetuity and in order to secure the conservation of the site. The conditions of the conservation servitude must *inter alia* address the following measures—

- (a) Fire management requirements (i.e. protective and ecological);
- (b) No earthworks or any form of development is permitted within the area, except in accordance with an approved conservation management plan and environmental authorisations;
- (c) No landscaping or planting except for rehabilitation in terms of an approved management plan;
- (d) An Alien Invasive Plant Control Programme for the portion of land;
- (e) No collection or damaging of fauna, flora and soil;
- (f) No vehicles of any type are permitted, except for rehabilitation and management in terms of an approved management plan;

20.2. "Restrictive Title Conditions"

The title conditions must be registered against the Title Deed(s) of the respective portion(s) of land on which the open space (i.e. Open Space Zone II) associated with the proposed development on Erf 2839, Great Brak River, will be established.

The restriction must contain the following as a minimum –

- (a) the conservation servitude; and
- (b) the properties must be managed together for a conservation use in accordance with a Conservation Management Plan ("CMP") approved by the Western Cape Provincial department responsible for environmental affairs.

Note:

- (a) The CMP should, *inter alia*, include financial provisions for the management and upkeep of the conservation area.
- (b) Relevant organs of state, including CapeNature should be provided an opportunity to comment on the CMP before submitting it for approval to the relevant authority.

21. The security fencing must be aligned to the perimeter of the development footprint area. The security fencing may not be installed within or around the conservation area, unless approved by the Competent Authority.

22. Should any heritage remains be exposed during excavations or any other actions on the site, these must immediately be reported to the Provincial Heritage Resources Authority of the Western Cape, Heritage Western Cape. Heritage remains uncovered or disturbed during earthworks must not be further disturbed until the necessary approval has been obtained from Heritage Western Cape. Heritage remains may

only be disturbed by a suitably qualified heritage specialist working under a directive from the relevant Heritage Resources Authority.

Heritage remains include: meteorites, archaeological and/or paleontological remains (including fossil shells and trace fossils); coins; indigenous and/or colonial ceramics; any articles of value or antiquity; marine shell heaps; stone artefacts and bone remains; structures and other built features with heritage significance; rock art and rock engravings; shipwrecks; and/or graves or unmarked human burials including grave goods and/or associated burial material.

F. GENERAL MATTERS

1. Notwithstanding this Environmental Authorisation, the Holder must comply with any other statutory requirements that may be applicable when undertaking the listed activities.

Amendment of Environmental Authorisation and EMPr

2. If the Holder does not start with all listed activities and exceed the threshold of each listed activity within the period referred to in Section E, this Environmental Authorisation shall lapse for that activity, and a new application for Environmental Authorisation must be submitted to the relevant Competent Authority.

If the Holder wishes to extend a validity period specified in the Environmental Authorisation, an application for amendment in this regard must be made to the relevant Competent Authority prior to the expiry date of such a period.

Note:

- (c) Failure to lodge an application for amendment prior to the expiry of the validity period of the Environmental Authorisation will result in the lapsing of the Environmental Authorisation.
 - (d) It is an offence in terms of Section 49A(1)(a) of NEMA for a person to commence with a listed activity if the competent authority has not granted an Environmental Authorisation for the undertaking of the activity.
3. The Holder is required to notify the Competent Authority where any detail with respect to the Environmental Authorisation must be amended, added, substituted, corrected, removed or updated.

In assessing whether to amend or correct the EA, the Competent Authority may request information to evaluate the significance and impacts of such changes or deviations, and it may be necessary for the Holder to apply for further authorisation in terms of the applicable legislation.

The onus is on the Holder to verify whether such changes to the environmental authorisation must be approved in writing by the relevant competent authority prior to the implementation thereof.

Note: An environmental authorisation may be amended or replaced without following a procedural requirement contained in the Regulations if the purpose is to correct an error and the correction does not change the rights and duties of any person materially

4. The manner and frequency for updating the EMPr is as follows:
 - (a) Any further amendments to the EMPr, other than those mentioned above, must be approved in writing by the relevant competent authority.

(b) An application for amendment to the EMPr must be submitted to the Competent Authority if any amendments are to be made to the impact management outcomes of the EMPr. Such amendment(s) may only be implemented once the amended EMPr has been approved by the competent authority.

The onus is however on the Holder to confirm the legislative process requirements for the above scenarios at that time.

5. Where an amendment to the impact management outcomes of an EMPr is required before an environmental audit is required in terms of the environmental authorisation, an EMPr may be amended on application by the Holder of the environmental authorisation.

Compliance with Environmental Authorisation and EMPr

6. Non-compliance with a condition of this environmental authorisation or EMPr is an offence in terms of Section 49A(1)(c) of the National Environmental Management Act, 1998 (Act no. 107 of 1998, as amended).
7. This Environmental Authorisation is granted for a set period from date of issue, during which period all the listed activities must be commenced with and concluded, including the post-construction rehabilitation; monitoring requirements and environmental auditing requirements which must be concluded.

The validity period and conditions of the environmental authorisation has been structured to promote the effective administration of the environmental authorisation and guidance has been provided to ensure the compliance thereof within the validity period, for example:

- ❖ Failure to submit the revised EMPr to the Competent Authority at least 90-days prior to the construction activities commencing on site, may result in the competent authority not being able to process / review the revised EMPr prior to the intended date of commencement.
 - ❖ Failure to complete the post construction rehabilitation and monitoring requirements at least six months prior to expiry of the validity period of an environmental authorisation may result in the Holder not being able to comply with the environmental auditing requirements in time.
 - ❖ Failure to complete the auditing requirements at least three months prior to expiry of the validity period of the environmental authorisation may result in the Holder not being able to comply with all the environmental auditing and reporting requirements and may result in the competent authority not being able to process the audit timeously.
8. This Environmental Authorisation is subject to compliance with all the peremptory conditions (i.e. 3; 10, 12, and 20). Failure to comply with all the peremptory conditions prior to the physical implementation of the activities (including site preparation) will render the entire EA null and void. Such physical activities shall be regarded to fall outside the scope of the Environmental Authorisation and shall be viewed as an offence in terms of Section 49A(1)(a) of NEMA.
 9. In the event that the Environmental Authorisation should lapse, it is an offence in terms of Section 49A(1)(a) of NEMA for a person to commence with a listed activity, unless the competent authority has granted an Environmental Authorisation for the undertaking of the activity.
 10. Offences in terms of the NEMA and the Environmental Impact Assessment Regulations, 2014, will render the offender liable for criminal prosecution.

G. APPEALS

1. An appellant (if the holder of the decision) must, within 20 (twenty) calendar days from the date the notification of the decision was sent to the holder by the Competent Authority –
 - 1.1. Submit an appeal in accordance with Regulation 4 of the National Appeal Regulations 2014 (as amended) to the Appeal Administrator; and
 - 1.2. Submit a copy of the appeal to any registered I&APs, any Organ of State with interest in the matter and the decision-maker i.e. the Competent Authority that issued the decision.
2. An appellant (if NOT the holder of the decision) must, within 20 (twenty) calendar days from the date the holder of the decision sent notification of the decision to the registered I&APs–
 - 2.1. Submit an appeal in accordance with Regulation 4 of the National Appeal Regulations 2014 (as amended) to the Appeal Administrator; and
 - 2.2 Submit a copy of the appeal to the holder of the decision, any registered I&AP, any Organ of State with interest in the matter and the decision-maker i.e. the Competent Authority that issued the decision.
3. The holder of the decision (if not the appellant), the decision-maker that issued the decision, the registered I&AP and the Organ of State must submit their responding statements, if any, to the appeal authority and the appellant within 20 (twenty) calendar days from the date of receipt of the appeal submission.
4. The appeal and the responding statement must be submitted to the Appeal Administrator at the address listed below:

By post: Western Cape Ministry of Local Government, Environmental Affairs and
Development Planning
Private Bag X9186
CAPE TOWN
8000

By facsimile: (021) 483 4174; or

By hand: Appeal Administrator
Attention: Mr Marius Venter (Tel: 021 483 3721)
Room 809
8th Floor Utilitas Building, 1 Dorp Street, Cape Town, 8001

Note: For purposes of electronic database management, you are also requested to submit electronic copies (Microsoft Word format) of the appeal, responding statement and any supporting documents to the Appeal Authority to the address listed above and/ or via e-mail to DEADP.Appeals@westerncape.gov.za.

5. A prescribed appeal form as well as assistance regarding the appeal processes is obtainable from the Appeal Administrator at: Tel. (021) 483 3721, E-mail DEADP.Appeals@westerncape.gov.za or URL <http://www.westerncape.gov.za/eadp>.

H. DISCLAIMER

The Western Cape Government, the Local Authority, committees or any other public authority or organisation appointed in terms of the conditions of this Environmental Authorisation shall not be responsible for any damages or losses suffered by the Holder, developer or his/her successor in any instance where construction or operation subsequent to construction is temporarily or permanently stopped for reasons of non-compliance with the conditions as set out herein or any other subsequent document or legal action emanating from this decision.

Your interest in the future of our environment is appreciated.

Yours faithfully



MR. GAVIN BENJAMIN
DIRECTOR: DEVELOPMENT MANAGEMENT (REGION3)

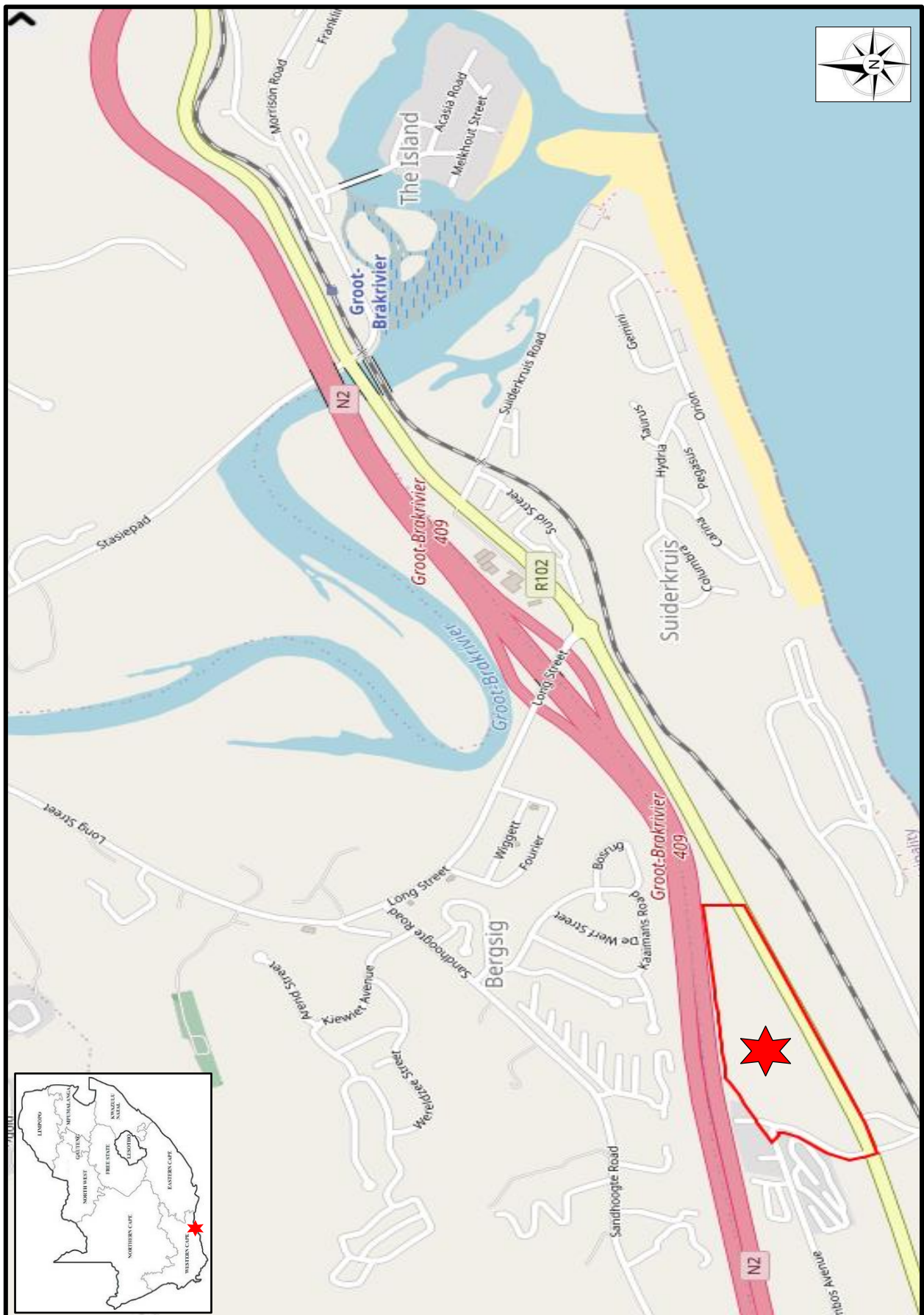
DATE OF DECISION: **15 OCTOBER 2020**

FOR OFFICIAL USE ONLY:

EIA REFERENCE NUMBER: 16/3/3/1/D6/17/0001/20





NEAS REFERENCE: WCP/EIA/0000724/2020

ANNEXURE 1: LOCALITY MAP



ANNEXURE 2: SITE DEVELOPMENT FOOTPRINT



KEY:		Erf 2938 property boundary
		Open Space
		Development Footprint for Residential use and Private Roads
		Transport Zone (Public Road)

ANNEXURE 3: REASONS FOR THE DECISION

In reaching its decision, the Competent Authority considered, *inter alia*, the following:

- a) The information contained in the Application Form received on 3 February 2020, the Final Basic Assessment Report (FBAR) and EMPr submitted together with the FBAR on 6 July 2020;
- b) Relevant information contained in the Departmental information base, including the Guidelines on Public Participation, Alternatives (dated March 2013);
- c) The objectives and requirements of relevant legislation, policies and guidelines, including section 2 of the National Environmental Management Act, 1998 (Act No. 107 of 1998);
- d) The comments received from I&APs and responses to these, included in the FBAR dated 10 December 2019;
- e) The balancing of negative and positive impacts and proposed mitigation measures; and
- f) Appropriate information was made available in the report to understand the environmental and spatial context and the case officer is familiar with the area.

All information presented to the Competent Authority was taken into account in the consideration of the application for Environmental Authorisation. A summary of the issues that were considered to be the most significant for the decision is set out below.

1. Public Participation

A sufficient public participation process was undertaken, and the applicant has satisfied the minimum requirements as prescribed in the EIA Regulation 2014 for public involvement. The public participation process included:

- identification of and engagement with interested and affected parties (I&APs) including organs of state which have jurisdiction in respect of the activity to which the application relates;
- fixing a notice board at the site since October 2019;
- giving written notice to the owners and occupiers of land adjacent to the site and any alternative site where the listed activities are to be undertaken, the municipality and ward councillor, and the various organs of state having jurisdiction in respect of any aspect of the listed activities on 17 October 2019;
- the placing of a newspaper advertisement in the 'Mossel Bay Advertiser' in 18 October 2019; and
- making the draft Basic Assessment Report available to I&APs for public review from 24 February 2020 till 24 March 2020.

The following Organs of State provided comment on the proposal:

- ❖ *Breede Gouritz Catchment Management Agency;*
- ❖ *CapeNature;*
- ❖ *Mossel Bay Municipality;*
- ❖ *Department of Environment, Forestry and Fisheries – Forestry Division;*
- ❖ *WCG: Department of Transport and Public Works – Road Network Management;*
- ❖ *Heritage Western Cape*

- ❖ *General Public / Interested & Affected Parties (I&APs) included:*
 - *St Ellen Body Corporate*

The St Ellen Body Corporate made a comment that they did not support the business zone as it would impact on the sense of place in the immediate area because of visual and noise impacts. They also noted that there is an already well-established business node less than 2 kilometres down the road that

has all the necessary amenities. There is also a shopping complex in Reebok. As such the need and desirability was questioned and not adequately addressed. This Department agreed with the argument made by the St Ellen Body Corporate and therefore, the business zone is not approved.

All the comments and issues raised by the I&APs and respective *Organs of State* that were captured in the Basic Assessment Report were responded to by the EAP. *Organs of State* were further consulted where clarity was required on inputs received.

2. Alternatives

Part of the proposed Preferred Alternative (Herewith Approved):

The proposal entails the transformation of a portion of Erf 2839, Great Brak River for the development of a residential estate on Erf 2839, Great Brak River. The development site will comprise the following:

- ❖ Single Residential Erven;
- ❖ General Residential Zone II erven;
- ❖ Open Space Zone II erven;
- ❖ 1 Transport Zone II erf;
- ❖ 1 Transport Zone III erf (Private Road).

In addition, hereto the following associated infrastructure will be constructed:

- ❑ An internal road network with roads of 10 metres and wider.
- ❑ An intersection with Main Road 344 and a collector road to provide access to the property from the Divisional Main Road no. 344.
- ❑ The internal sewerage network will consist of 160mm pipes with a 110mm connection to each erf. This network will drain to the existing sewer pump station at the Southern boundary of the property.
- ❑ The internal water reticulation system will consist of pipes varying in size between 75 mm and 110 mm diameter with the necessary provision made for isolating valves, pressure reducing valves, fire hydrants, as required and erf connections;
- ❑ Electricity reticulation, substations and street lighting, and
- ❑ Stormwater drainage structures and stormwater pipelines.

This will require the clearance of more than 1-hectare (but less than 20-hectares) of indigenous vegetation. Also, more than 300 square metres of an area mapped as Endangered Western Cape Milkwood Forest will be cleared of indigenous vegetation for this purpose.

The above proposal will be designed and implemented in accordance with the site development plan in Annexure 2 of the Environmental Authorisation.

This layout alternative is derived from Layout Alternative A. Only part of the north-western portion of the layout is approved for development. The approved alternative responds better to the critical biodiversity and ecological location factors and provides proper ecological links with adjacent properties. The high-risk and business-use components have also been excluded from the approved layout.

Layout Alternative A:

The development will consist of 62 Single Residential Zone 1 erven, 47 General Residential Zone 1, one Business Zone III erf, three Open space Zone II erven, one Transport Zone II (Public street) and one Transport Zone III (Private street).

- ❖ The 62 Single residential Zone I erven will have an average size of 530 square metres (19 units per hectare).
- ❖ The General Residential Zone II erven will have an average size of 255 square metres (33 units per hectare).
- ❖ The Business Zone II erf will have an area of 3100 square metres however the development of the erf will be limited to 930 square metres.
- ❖ The three Open Space Zone II erven have a total area of 4.12 hectares. In terms of the development proposal, a total of 109 residential units are planned, which amounts to an open space ratio of approximately 378 square metres external open space per dwelling unit.
- ❖ As seen from the proposed Site Development Plan, the Main Road 344 (R102) and Fynbos Avenue are part of Erf 2839. However, since Main Road 344 (R102) and Fynbos Avenue will not form part of the development, it will be cut from the property.
- ❖ The Internal Private roads (Transport Zone III) will be 10–12 metres wide and have a total footprint of approximately 1.44 hectares.

Alternative A is the Applicant's preferred layout alternative. Of the two layout alternatives, this layout alternative has a larger General Residential component which provides a greater density per hectare. The layout alternative does not adequately avoid or respond to the critical biodiversity and ecological location factors. The need for phase 5 highlights a disregard for both ecological and risk factors. In addition, objections were received regarding the need and desirability of the proposed Business Zone III erf, which erf would also effectively cut-off / block the East-West ecological corridor with the adjacent property. This alternative is therefore not supported; however, only a part of the development footprint of this alternative is considered appropriate.

Layout Alternative B:

This Alternative will consist of 62 Single Residential Zone 1 erven, 39 General Residential Zone 1, 1 Business Zone III erf, 3 Open space Zone II erven, 1 Transport Zone II (Public street) and finally 1 Transport Zone III (Private street).

- ❖ The 62 Single residential Zone I erven will have an average size of 530 square metres (19 units per hectare).
- ❖ The General Residential Zone II erven will have an average size of 255 square metres (33 units per hectare).
- ❖ The Business Zone II erf will have an area of 3100 square metres however the development of the erf will be limited to 930 square metres.
- ❖ The three Open Space Zone II erven have a total area of 4.28 hectares.
- ❖ The Main Road 344 (R102) and Fynbos Avenue are part of Erf 2839. However, since Main Road 344 (R102) and Fynbos Avenue will not form part of the development, it will be cut from the property.
- ❖ The Internal Private roads (Transport Zone III) will be 10 – 12m wide and have a total footprint of approximately 1.44 hectares

This layout alternative has a larger Single Residential component, which will result in a lower density per hectare. The layout alternative does not adequately avoid or respond to the critical biodiversity and ecological location factors. This alternative is therefore not supported.

No other alternatives were assessed.

"No-Go" Alternative

The option of not implementing the activity means that development will be established and none of the impacts, positive or negative, associated with the construction and operation of the development will be experienced.

3. Impact Assessment and Mitigation Measures

3.1 Activity need and desirability

In the motivation it is pointed out that the site was previously zoned for an approved housing development however as the previous land-owner never implemented the approval, the site has reverted to an Undetermined Zoning. Furthermore, the previous landowner obtained an environmental authorisation for a housing development on the property, but that authorisation also lapsed as no development was commenced with during the validity period of the Environmental Authorisation. According to the Mossel Bay Municipality, the property market was not ready, and new large-scale developments were not implemented during the period 2008 – 2018.

The property has been included within the Urban Edge in the Spatial Development Framework (SDF) of the Mossel Bay Municipality and the municipality has confirmed this, however, in terms of the National Environmental Management Act, 1998 and the interim urban edge adopted by the Competent Authority on 5 March 2012, the area is deemed to fall outside of an urban area as defined in the Environmental Impact Assessment Regulations, 2014.

During the EIA process, this Department requested that the sensitivity of the ecosystem on the site be reassessed, especially because of the presence of Milkwood pockets and with due consideration of the comments received from the Department of Environment, Forestry and Fisheries: Forestry Division and CapeNature. Notwithstanding the responses from the EAP and Specialist, it remains unclear how the mitigation hierarchy was used in determining the impacts on the biodiversity and how the layout was derived by taking into consideration all the constraints on the property (including Critical Biodiversity Areas - CBA). These location factors are pertinent to the consideration of the need and desirability and are further considered below.

The Department also requested a motivation regarding the proposed 8 General Residential Zone erven envisaged within the open space area as the need and desirability of this component was not adequately addressed. In response to this comment, the EAP stated that *"The motivation is profit. The landowner has invested funds into buying the property with the intentions on seeing a return on his investment. As such more profit will be made if more units can be sold (assuming units are the same size, amongst other things), thereby maximizing returns and profit. The opportunity to provide houses in a more natural surrounding will also be lost by not constructing the 8 units as will the loss of jobs. The positive Socio-economic impact will therefore be slightly less if this option is not approved. There will however be less of a negative biophysical impact."* (sic). The view is held that a response of this nature does not adequately address the need and desirability to have eight (8) general residential zone erven within the open space which includes a terrestrial CBA and various protected tree species. In addition to the sensitivity of the area, the fact that the assessment has highlighted that this open space would have a high fire risk should have clearly indicated to the EAP and Specialist that the development in this area should be avoided. The motivation merely based on profit, does not warrant the approval and as such, these erven have not been approved.

3.2 Biodiversity

A description of the biodiversity issues and risks that were identified during the environmental impact assessment process, as well as an assessment of the significance of each issue and risk, cumulative impacts of the proposed development and levels of acceptable change have been considered.

Terrestrial biodiversity:

According to the Western Cape Biodiversity Spatial Plan, 2017 (WCBSP) the property contains a Critical Biodiversity Area (CBA) and Ecological Support Area (ESA). The site comprises a large, nearly vacant area between the N2 and Divisional Main Road 344 (R102) and contains fynbos, forest and thicket vegetation and only partly infested with alien vegetation. According to the Botanical specialist, Mr Mark Berry, the site presents a valuable botanical hot spot and stepping stone in the coastal biodiversity corridor between Mossel Bay and Great Brak River. It is acknowledged that there are no known streams or rivers or Freshwater Ecosystem Priority Areas (FEPAs) located on the property. The findings of the botanical specialist satisfactorily corroborate the biodiversity status of the site; however, in light of the proposed layout alternatives it is not apparent that the disturbance of ecosystems and loss of biological diversity has been avoided.

Given the proposed layouts, the conclusions submitted regarding the ecological connecting corridors (especially east-west) are questioned. Two east-west corridors are proposed of which the majority of both connecting corridors have been compromised and have been transformed due to the installation of bulk sewer lines. Furthermore, the proposal also includes the installation of storm water attenuation structures within the east-west corridor situated on the southern boundary of the property. This infrastructure will need to be maintained and it is highly unlikely that the vegetation will be re-established. The north-south corridor which is proposed between the two residential nodes (i.e. represented by Phase 1&4 and Phase 2&3), will also be impacted upon by the installation of storm water infrastructure and the internal road network which will cross the corridor three times. Furthermore, the eight (8) general residential erven proposed in the eastern portion of the property would have been placed in a high sensitivity area and which is also identified to have a high fire risk. This residential component (i.e. Phase 5 of Layout Alternative A) would result in the loss of biological diversity and compromise the biodiversity and management of this open space.

According to the Department of Environment, Forestry and Fisheries – Forestry section (DEFF), the specialist incorrectly described the vegetation as dune fynbos and dune thicket and upon inspection at the property, found that the property consists predominately of Western Cape Milkwood Forest as well as Coastal Forest consisting of the protected Milkwood trees / shrubs. Notwithstanding the difference in opinion regarding the presence of forest, the specialist also noted that a number of tall Milkwood trees and *Kasuur* were recorded next to the road leading into the property and found it impractical to map all these tree species as both are abundant throughout the site. The assessment by the DEFF confirmed the presence of both these tree species and confirmed that they are protected species.

The open space area is proposed to be rezoned as Open Space II which is a private open space use which according to the Mossel bay Municipality: Integrated Zoning Scheme By-Law: “*The objective of this zone is to provide for private active and passive recreational areas in order to promote recreation and enhance the aesthetic appearance of an area*”. However, the zone allows for a number of consent-uses which may transform the areas and detract from the conservation of biodiversity. Based on the sensitivity of the site and the vegetation as described and endangered Milkwood Forest and coastal forest, the rezoning and proposed use as Open Space II is not deemed adequate enough and therefore a legally binding provision or obligations on the land earmarked for open space to limit the use of the proposed open space area for a conservation use is deemed necessary and must be registered.

The approved layout (development footprint) aims to limit the development mainly to the ESA and area delineated as CBA: Wetland to avoid the impacts as a result on the disturbance of ecosystems and loss of biological diversity and to achieve a balance between the proposed development and conservation of biodiversity.

3.3 Biophysical Impacts

Impacts on the biophysical environment of the preferred location on the property are anticipated. The expected impact on the biophysical environment through the lifecycle of the approved part of the proposed development is considered to fall within acceptable levels. Further to this, the construction phase of the proposed development will require earthworks for the installations of services, construction of internal roads and residential units. The required vegetation clearing will expose soil to wind and erosion, which could potentially result in soil erosion. These activities will increase storm water runoff and potential sedimentation. The risks and impacts associated with the construction can be mitigated to acceptable levels through the implementation of the EMPr construction phase management requirements.

3.4 Heritage / Archaeological Aspects

A *Notice of Intent to Development* was submitted to Heritage Western Cape (HWC) because the development will entail the rezoning of the property which is in excess of 10 000 square metres and to address the change in character of the site which will be more than 5 000 square metres. Heritage Western Cape required a Heritage Impact Assessment to be done. Final recommendations from Heritage Western Cape were given which include:

- *No mitigation is required prior to the construction activities commencing;*
- *The ECO must be briefed by the archaeologist prior to vegetation clearance;*
- *Targeted archaeological monitoring must be undertaken during the construction phase of the project and a monitoring work plan must be submitted to Heritage Western Cape prior to excavations commencing.*

3.5 Other Impacts

No other impacts of significance are anticipated.

4. **Scope and Validity Period of authorisation**

This environmental authorisation does not define specific operational aspects. The applicant has indicated that the construction activities (non-operational aspects) should be completed within a period of 8 years. The environmental authorisation's validity period has been granted for a period of ten years (10) years, during which period the construction activities must commence and be concluded, including the post-construction rehabilitation and monitoring, and submission of the final environmental audit. In light of the proposed implementation programme, the monitoring and post-construction rehabilitation can be adequately incorporated in the construction phase. The Holder is required to substantially implement the proposal within a period of 5-years after the environmental authorisation is issued. Where the activity has been commenced with, the EIA Regulations, 2014 allow that (upon application) the period for which the environmental authorisation is granted may be extended for a further period of 5-years.

5. **National Environmental Management Act Principles**

The National Environmental Management Principles (set out in section 2 of the NEMA, which apply to the actions of all organs of state, serve as guidelines by reference to which any organ of state must exercise any function when taking any decision, and which must guide the interpretation, administration and implementation of any other law concerned with the protection or management of the environment), *inter alia*, provides for:

- the effects of decisions on all aspects of the environment to be taken into account;
- the consideration, assessment and evaluation of the social, economic and environmental impacts of activities (disadvantages and benefits), and for decisions to be appropriate in the light of such consideration and assessment;
- the co-ordination and harmonisation of policies, legislation and actions relating to the environment;

- the resolving of actual or potential conflicts of interest between organs of state through conflict resolution procedures; and
- the selection of the best practicable environmental option.

6. Conclusion

After consideration of the information and factors listed above, the Department made the following findings:

- (a) The identification and assessment of impacts are detailed in the FBAR dated 6 July 2020 and sufficient assessment of the key identified issues and impacts have been completed.
- (b) The procedure followed for the impact assessment is adequate for the decision-making process.
- (c) The proposed mitigation of impacts identified and assessed, curtails the identified negative impacts.
- (d) The EMPr proposed mitigation measures for the pre-construction, construction and rehabilitation phases of the development and were included in the FBAR. The mitigation measures will be implemented to manage the identified environmental impact during the construction phase.

In view of the above, the NEMA principles, compliance with the conditions stipulated in this Environmental Authorisation, and compliance with an approved EMPr, the Competent Authority is satisfied that the proposed listed activities will not conflict with the general objectives of integrated environmental management stipulated in Chapter 5 of the National Environmental Management Act, 1998 (Act No. 107 of 1998) and that any potentially detrimental environmental impacts resulting from the listed activities can be mitigated to acceptable levels.

----- **END** -----