



14/3/1/D1/13/0270/17

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Dear Mr Calitz

APPEAL LODGED IN TERMS OF SECTION 43(2) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) AGAINST THE AMENDED ENVIRONMENTAL AUTHORISATION GRANTED FOR THE PROPOSED NATURE'S PATH LIFESTYLE VILLAGE ON PORTIONS 10 AND 192 OF FARM MATJIESFONTEIN NO. 304, KEURBOOMSTRAND, PLETTENBERG BAY

Your appeal lodged against the decision in the above regard dated 27 June 2017, refers.

Having considered the information at my disposal I, the Provincial Minister of Local Government, Environmental Affairs and Development Planning, have decided in terms of section 43(6) of the *National Environmental Management Act, 1998 (Act No. 107 of 1998)* ("NEMA") and the 2014 National Appeal Regulations (Government Notice No. R. 993 of 8 December 2014) (as amended) to dismiss your appeal and confirm the Amended Environmental Authorisation ("EA") (File Reference No: 16/3/3/5/D1/6/0007/16) with a new Amended EA issued as a result of the application submitted in terms of Part 2 of the Environmental Impact Assessment ("EIA") Regulations, 2014 for the amendment of the EA (File Reference No: 16/3/1/1/D1/6/0052/13). This new Amended Appeal EA which replaces the Amended EA dated 27 June 2017 (all the three letters dated 27 June 2017) is set out below.

DECISION

I herewith grant an Amended Appeal EA to the applicant to undertake the listed activities specified in section B below with respect to part of Alternative 2 described in the Final Basic Assessment Report ("BAR") dated 6 August 2014 prepared and submitted by the Environmental Assessment Practitioner ("EAP") i.e. Sharples Environmental Services cc.

The existing valid EA issued on 18 December 2014 and the Amended EA dated 27 June 2017 are replaced with this Amended Appeal EA.

The applicant for this Amended Appeal EA is required to comply with the conditions set out by the competent authority 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 Amended Appeal EA and is hereinafter referred to as "the holder".

B. LIST OF ACTIVITIES AUTHORISED

Activities under the EIA Amendment Regulations, 2010 (Listing Notice 1 of 2010: Government Notice No. R. 544 of 18 June 2010)	Similarly listed activities under the EIA Regulations, 2014 (Listing Notice 1 of 2014: Government Notice No. R. 983 of 4 December 2014 as amended by Government Notice No. R. 327 of 7 April 2017)
Activity Number 11(vi); (x) & (xi): <i>"The construction of:</i> (i) canals; (ii) channels; (iii) bridges; (iv) dams; (v) weirs; (vi) bulk storm water outlet structures; (vii) marinas;	Activity Number: 12(ii): <i>"The development of—</i> (i) dams or weirs, where the dam or weir, including infrastructure and water surface area, exceeds 700 square metres;

- (viii) jetties exceeding 50 square metres in size;
- (ix) slipways exceeding 50 square metres in size;
- (x) buildings exceeding 50 square metres in size;
- (xi) infrastructure or structures covering 50 square metres or more,

where such construction occurs within a watercourse or within 32 metres of a watercourse, measured from the edge of a watercourse, excluding where such construction will occur behind the development setback line."

- (ii) or infrastructure or structures with a physical footprint of 100 square metres or more;

where such development occurs—

- (a) within a watercourse;
- (b) in front of a development setback; or
- (c) if no development setback exists, within 32 metres of a watercourse, measured from the edge of a watercourse;

excluding—

- (aa) the development of infrastructure or structures within existing ports or harbours that will not increase the development footprint of the port or harbour;
- (bb) where such development activities are related to the development of a port or harbour, in which case activity 26 in Listing Notice 2 of 2014 applies;
- (cc) activities listed in activity 14 in Listing Notice 2 of 2014 or activity 14 in Listing Notice 3 of 2014, in which case that activity applies;
- (dd) where such development occurs within an urban area;
- (ee) where such development occurs within existing roads, road reserves or railway line reserves; or
- (ff) the development of temporary infrastructure or structures where such infrastructure or structures will be removed within 6 weeks of the commencement of development and where indigenous vegetation will not be cleared."

<p>Activity Number: 23(ii):</p> <p>"The transformation of undeveloped, vacant or derelict land to —</p> <p>(i) residential, retail, commercial, recreational, industrial or institutional use, inside an urban area, and where the total area to be transformed is 5 hectares or more, but less than 20 hectares, or</p> <p>(ii) residential, retail, commercial, recreational, industrial or institutional use, outside an urban area and where the total area to be transformed is bigger than 1 hectare but less than 20 hectares; -</p> <p>except where such transformation takes place —</p> <p>(i) for linear activities; or</p> <p>(ii) for purposes of agriculture or afforestation, in which case Activity 16 of Notice No. R. 545 applies."</p>	<p>Activity Number: 28(ii):</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>Activities under the EIA Amendment Regulations, 2010 (Listing Notice 3 of 2010: Government Notice No. R. 546 of 18 June 2010)</p>	<p>Activities under the EIA Regulations, 2014 (Listing Notice 3 of 2014: Government Notice No. R. 985 of 4 December 2014 as amended by Government Notice No. R. 327 of 7 April 2017)</p>
<p>Activity Number 4:</p> <p>"The construction of a road wider than 4 meters with a reserve less than 13.5 metres. (d) In Western Cape:</p> <p>i. In an estuary;</p> <p>ii. All areas outside urban areas;</p> <p>iii. In urban areas:</p>	<p>Activity Number 4 (II)(aa):</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>i. Areas zoned for use as public open space or equivalent zoning;</p> <p>ii. Areas outside urban areas;</p> <p>(aa) Areas containing indigenous vegetation;</p>

<p>(aa) Areas zoned for use as public open space within urban areas; and</p> <p>(bb) Areas designated for conservation use in Spatial Development Frameworks adopted by the competent authority, or zoned for a conservation purpose."</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>iii. 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(a):</p> <p>"The clearance of an area of 300 square metres or more of vegetation where 75% or more of the vegetative cover constitutes indigenous vegetation.</p> <p>(a) 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;</p> <p>(b) Within critical biodiversity areas identified in bioregional plans;</p> <p>(c) Within the littoral active zone or 100 metres inland from high water mark of the sea or an estuary, whichever distance is the greater, excluding where such removal will occur behind the development setback line on erven in urban areas."</p>	<p>Activity Number: 12(i):</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> <p>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;</p> <p>ii. Within critical biodiversity areas identified in bioregional plans;</p> <p>iii. Within the littoral active zone or 10 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</p>

	<p><i>development setback line on erven in urban areas;</i></p> <p>iv. <i>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</i></p> <p>v. <i>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."</i></p>
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The holder is herein authorised to undertake the following alternative relating to the listed activities:

The proposal entails the transformation of a portion of Portion 192 and a portion of Portion 10 of the Farm Matjesfontein No. 304 Plettenberg Bay, for the establishment of a development consisting of areas for residential; commercial; recreational; open space use. The remainder of Portion 10, south of Divisional Main Road ("MR") No. 394, will be set aside as a Nature Reserve and managed as an open space with a conservation use.

The proposed site development for the Nature's Path Lifestyle Village will not exceed:

- (a) 98 residential units;
- (b) 8 staff housing units;
- (c) 164 storage garages; and
- (d) footprint of the commercial area as depicted on the layout plan by TV3 (Proposed Site Development Plan ("SDP") No. 7, dated 19/01 /2017) which will include a wellness centre, club house with a bowling green and tennis courts.

In addition, the following associated infrastructure will be constructed:

- An internal road network with roads of 4 metres or wider. The road network will include the construction of structures to cross drainage lines;
- An intersection with MR 394 and a collector road to provide access to the property from the MR 394;
- Bulk service infrastructure for sewage reticulation;
- An internal water reticulation network;

- Electricity reticulation, substations and street lighting; and
- Stormwater reticulation and drainage structures, including an open channel stormwater network and stormwater pipelines.

The internal reticulation will be as per an approved services layout plan with pipelines laid within the road reserve.

C. SITE DESCRIPTION AND LOCATION

The listed activities will be undertaken on Portion 192 and Portion 10 of the Farm Matjesfontein No. 304, in the Knysna Division. The portions of land are respectively 7.7910 hectares and 19.6890 hectares in extent. The area is located approximately 9 kilometres east of Plettenberg Bay on MR 394.

Portion 10 is divided into two portions by MR 394, of which the southern section which stretches to the coastline, will be set aside as a conservation management area / nature reserve.

The properties are located within the coastal corridor, a narrow strip of land (500 — 600 meters wide) situated between the shore and the hinterland. The larger extent of the proposed site falls across the dune slack area, which is found between the coastal dunes and the foothills leading up to the plateau. The extreme north-eastern edge of the site rises fairly steep from the dune slack as part of foothills that comprise of a conglomerate of materials and is covered in dense vegetation. The development site slopes from north to south and is situated between contours levels 36 and 4 metres above sea level. The north-eastern fringe of the site is characterized by slopes steeper than 1: 4, however, it levels out to the south with the southern extent of the site being flat and supporting a seasonal wetland area that is orientated in an east-west direction.

The following are the co-ordinates approximate to the centre point of the proposed development:

34° 00' 24.79" South
23° 25' 19.86" East

The following are the co-ordinates of the proposed "nature reserve" situated south of MR 394:

1. North-western corner	34°	00'	30.50" South,	23°	25'	22.04" East
2. North-eastern corner	34°	00'	28.79" South,	23°	25'	32.26" East
3. South-eastern corner	34°	00'	42.26" South,	23°	00'	37.55" East
4. South-western corner	34°	00'	46.05" South,	23°	25'	28.14" East

The Surveyor General 21 digit codes are: C03900000000030400010
C03900000000030400192

Refer to **Annexure 1: Locality Plan** and **Annexure 2: Site Plan**.

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

D. DETAILS OF THE ENVIRONMENTAL ASSESSMENT PRACTITIONER ("EAP") AND REVIEWER

EAP:

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% Mr John Sharples
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Reviewer:

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E. CONDITIONS OF AUTHORISATION

Scope of authorisation

1. The holder is authorised to undertake the listed activities specified in Section B above on the site as described in Section C above.
2. The activities must be undertaken in accordance with and restricted to Alternative 2 described in the Final BAR dated 6 August 2014 prepared and submitted by Sharples Environmental Services cc.; the final Amendment Application Report (SES ref. no. 44) dated 6 March 2017 and the development parameters stipulated herein.

This Amended Appeal EA is for the transformation of a portion of Portion 192 and a portion of Portion 10 of the Farm Matjesfontein No. 304 Plettenberg Bay, for the establishment of a development consisting of areas for residential; commercial; recreational; open space use.

The remainder of Portion 10, south of MR 394, will be set aside as a nature reserve and managed as an open space with a conservation use.

In addition to the above, the following associated infrastructure will be constructed at the site:

- An internal road network with roads of 4 metres or wider. The road network will include the construction of structures to cross drainage lines;
- An intersection with MR 394 and a collector road to provide access to the property from the MR 394;
- Bulk service infrastructure for sewage reticulation;
- An internal water reticulation network;
- Electricity reticulation, substations and street lighting; and
- Stormwater reticulation and drainage structures, including an open channel stormwater network, stormwater pipelines and landscaping retention ponds.

The proposed site development plan for the Nature's Path Lifestyle Village may not exceed the proposed:

- (a) 98 residential units;
 - (b) 8 staff housing units;
 - (c) 164 storage garages; and
 - (d) footprint of the commercial area as depicted on the layout plan by TV3 (Proposed SDP No. 7, dated 19/01 /201 7) which will include a wellness centre, club house with a bowling green and tennis courts.
3. Development must be restricted to the development nodes and internal road network depicted on the SDP in Annexure 2 of this Amended Appeal EA. No development (including buildings, structures or infrastructure) may take place in the following areas, unless specified:
- 3.1 Forested areas on the site, specifically the area to the north of the old road to Keurboomstrand (hereinafter referred to as the "old road"), except for a dense stand of *Eucalyptus species* (Blue Gum) trees which is situated to the west of the historic homestead;
 - 3.2 Site 1 situated on the north-western slope above the "old road", except for the area where three (3) dwelling units were proposed in a dense stand of *Eucalyptus species* (Blue Gum) trees which is situated close to the historic homestead;
 - 3.3 Site 2 situated on the north-eastern slopes above the "old road" (where 6 dwelling units were proposed);

- 3.4 Wetlands, watercourses and demarcated wetland buffer areas, except for the service and access infrastructure which is proposed to traverse the wetland directly north from the access gate on MR 394;
 - 3.5 A distance of 100 metres from the high water mark of the sea measured in a straight line on a horizontal plane. Therefore, no buildings, structures or infrastructure may be constructed or expanded within this area.
 - 3.6 The conservation management area "*nature reserve*" proposed on a portion of Portion 10 of the Farm Matjesfontein No. 304 Plettenberg Bay situated south of MR394;
 - 3.7 The area in proximity to the farmyard precinct, as referred to by Heritage Western Cape in their final comment dated 29 July 2014. The open space to the south-east of the development (existing farm buildings) must not be developed.
4. The non-operational component of this Amended Appeal Environmental Authorisation is granted for a period until 30 February 2028, during which period —
 - 4.1 The holder must commence with the listed activities by 30 February 2023;
 - 4.2 The commencement of activities must be concluded by 30 February 2028; and
 - 4.3 The post construction rehabilitation and monitoring requirements must be finalised.

These validity periods may not be extended unless the required process to further amend this Amended Appeal EA is followed.
 5. The operational aspects of this Amended Appeal EA are granted until 30 February 2038 during which period all rehabilitation and monitoring requirements and final environmental auditing and reporting must be finalised.
 6. 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.
 7. 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.

Written notice to the Competent Authority

8. The holder of the Amended Appeal EA must provide the Competent Authority proof of compliance with the following specified conditions of authorisation within **sixty (60)** calendar days of the date of issue of this Appeal decision:

Conditions: 10.

9. Seven calendar days' notice, in writing, must be given to the Competent Authority before commencement of construction activities.

9.1 The notice must make clear reference to the site details and EIA and Appeal Reference numbers given above.

9.2 The notice must also include proof of compliance with the following conditions described herein:

Conditions: 12 and 14.

Notification about the appeal decision

10. The holder must in writing, within 14 (fourteen) calendar days of the date of this decision—

10.1 Notify all registered Interested and Affected Parties ("I&APs") of the decision reached on the appeal;

10.2 The reasons for the decision as included in **Annexure 3**; and

10.3 The date of the decision.

Management of activity

11. The Environmental Management Programme ("EMPr") submitted as part of the application for EA and application for the Amendment of the EA, must be amended to address the following aspects, and must then be re-submitted to the Competent Authority for approval prior to the commencement of activities, namely—

11.1 Incorporate all the conditions given in this Amended Appeal EA;

11.2 The EMPr must meet the requirements outlined in Section 24N (2) & (3) of the NEMA and Appendix 4 of the EIA Regulations 2014;

11.3 An amended layout plan reflecting the restrictions and development parameters;

11.4 Incorporate a conservation management plan for the open spaces and "nature reserve" area. The conservation management plan must –

- 11.4.1. Incorporate a fire management plan;
- 11.4.2. Detail any structures, pathways and access routes, excluding the area 100 metres from the high-water mark of the sea;
- 11.4.3. Incorporate an Alien Invasive Plant Control Programme for the reserve. The initial alien clearing must be done during the construction phase of the proposed development;
- 11.4.4. Detail any linkages and management initiatives with other properties;
- 11.4.5. Detail the measures to formalise the status of the area as a nature reserve and to maintain such a status;
- 11.4.6. Detail the applicable requirements of the CapeNature Stewardship Programme;
- 11.4.7. Be compiled in conjunction with input from CapeNature, the Department of Agriculture, Fisheries and Forestry and the Bitou Municipality;
- 11.5 Incorporate an updated storm water master plan;
- 11.6 Incorporate a detailed Alien Invasive Plant Control Programme to eradicate alien trees and other alien plants from the forest, thicket and marshland areas;
- 11.7 Include a rehabilitation program for the marshland and its buffer area. This must also address the removal of all the building rubble and other waste that was discarded in the wetland;
- 11.8 Incorporate all the mitigation measures required by the Botanical Assessment to inform the plant rescue operation that must take place prior to construction and operational activities commencing;
- 11.9 Incorporate the construction phase and operational requirements which were set during the EIA process or consultative process, by the organs of state having jurisdiction in respect of any aspect of the activity;
- 11.10 Describe the level and type of competency required of the Environmental Control Officer ("ECO");
- 11.11 Describe the frequency of site visits by the ECO;
- 11.12 Include copies of all the relevant permits / licences of approval that have been obtained.

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

Monitoring

13. The holder must appoint a suitably experienced ECO, before commencement of any land clearing or construction activities to ensure compliance with the EMPr and the conditions contained herein.

14. A copy of the Amended Appeal EA, EMPr, audit reports and compliance monitoring reports must be kept at the site of the authorised activities, and must be made available to anyone on request, including where available a 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 this Amended Appeal EA and EMPr remain valid ensure that the compliance with the conditions of the Amended Appeal EA and the EMPr, is audited. Further to the above —

16.1 The environmental audit report must provide verifiable findings and recommendations for improvement, in a structured and systematic manner, on the performance and compliance of the holder and project against the conditions of authorisation and requirements of the EMPr, and must contain all the information required in Appendix 7 of the EIA Regulations, 2014;

16.2 The holder must undertake an environmental audit annually for the duration of the construction phase and submit Environmental Audit Reports to the Competent Authority on an annual basis during the construction period.

16.3 The final Environmental Audit Report must be submitted to the Competent Authority within six (6) months from the date of completion of the construction of the development;

16.4 During the operation phase, the holder must ensure that environmental audit(s) are performed regularly and submit these Environmental Audit Report(s) to the Competent Authority;

- 16.5 During the operational phase the frequency of the auditing of compliance with the conditions of the Amended Appeal EA and of compliance with the EMPr may not exceed intervals of 5 years;
- 16.6 The holder must, within 7-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); and
- 16.7 The environmental audit report must be prepared and submitted to the Competent Authority, by an independent person with the relevant environmental auditing expertise.

Specific Conditions

17. In terms of the management of heritage resources:

- 17.1 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.
- 17.2 Heritage remains include: meteorites, archaeological and/or palaeontological 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 and/or graves or unmarked human burials including grave goods and/or associated burial material.
- 17.3 A qualified archaeologist and/or palaeontologist must be contracted where necessary (at the expense of the holder) to remove any heritage remains. Heritage remains can only be disturbed by a suitably qualified heritage specialist working under a directive from the relevant heritage resources authority.

18. The gravel road that traverses the northern section of the properties, known as the old road to Keurboomstrand, must be demarcated and may not be encroached upon by the proposed development. The old road must be incorporated as a feature of the open space system. This road should be suitably restored as an access corridor, unless it forms part of a buffer area for the forest.

19. An integrated waste management approach, which is based on waste minimisation and incorporates reduction, recycling, re-use and disposal, where appropriate, must be employed. Any solid waste must be disposed of at a landfill licensed in terms of the applicable legislation.

20. The three coastal corridors which have been identified to create linkage from the north to south of the development must be implemented with the following parameters:
 - 20.1 Coastal corridor width:
 - 20.1.1 Eastern boundary corridor— minimum of 20 metres measured from the boundary of Portion 10 of Farm Matjiesfontein No. 304;
 - 20.1.2 Central corridor — a minimum of 40 metres wide between the respective erf boundaries situated to the east and west of the corridor;
 - 20.1.3 Western corridor — minimum 40 metres wide between the respective erf boundaries situated to the east and west of the corridor;
 - 20.2 The corridors must be incorporated into the open space area along the two identified drainage lines and may not form of any of the residential erven along the corridor;
 - 20.3 Except for linear infrastructure (i.e. roads and reticulation infrastructure) crossing the corridors, the corridors must be managed as a no-go area for conservation purposes and be rehabilitated/vegetated with local indigenous plant species and maintained.
 - 20.4 The infrastructure crossing points must be approximate to the road network proposed in the SDP of 19 January 2017.
 - 20.5 The corridors should be managed as free flowing drainage areas, however, where attenuation structures are established within the drainage corridors, such structures must be set back at least 32 metres from the edge of the full extent of the wetland (e.g. the point where the drainage corridor and wetland intersect);
21. An integrated open space system must be established incorporating the coastal corridors, the wetland areas and wetland corridors, forest areas, private open spaces and nature reserve. The open space areas must —
 - 21.1 For the duration of the construction phase be managed in accordance with an approved conservation management plan ("CMP"). Where such CMP defines how the open space area is managed in an integrated manner to promote biodiversity management objectives and conservation;
 - 21.2 Be cleared of all alien invasive plants species within 5-years from the date the activities commenced on site. The alien invasive clearing programme must include a dedicated follow-up programme to be completed during the said period; and
 - 21.3 Be rezoned appropriately to limit the use of the open space for conservation use, or an equivalent zoning.
22. The holder must, prior to the activities commencing on site, register the following legally binding provisions or obligations on the land to prevent the separation of the nature reserve from the proposed development and to limit the use of the open space for conservation purposes. Such provisions must, as a minimum, be a —

22.1 "Non-User Conservation Servitude"

The holder is required to register, in favour of the Home Owners Association ("HOA") and Bitou Municipality, 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 -

22.1.1 Fire management requirements (i.e. protective and ecological);

22.1.2 No earthworks or any form of development is permitted within the area;

22.1.3 No landscaping or planting except for rehabilitation in terms of an approved management plan;

22.1.4 No collection or damaging of fauna, flora, soil and water resources;

22.1.5 No vehicles of any type are permitted, except for rehabilitation in terms of an approved management plan;

22.1.6 No pets or domestic animals are permitted.

22.2 Restrictive title condition, registered against the Title Deed(s) of the respective portions of land on which the Nature's Path Retirement Estate and nature reserve will be established. (viz. Portion 10 and Portion 192 of the Farm Matjiesfontein No. 304, Plettenberg Bay). The restriction must contain the following as a minimum —

22.2.1 The conservation servitude;

22.2.2 The property may not be subdivided and no disturbance, removal or degradation of any fauna, flora or any natural ecosystems may be undertaken on the property without the written approval of the Western Cape Government's department responsible for environmental affairs, or its successors; and

22.2.3 The respective properties must be managed together for a conservation use in accordance with a CMP approved by the Western Cape provincial department responsible for environmental affairs.

23. The development and associated infrastructure must incorporate and implement the following measures, namely:

23.1 Development must be set back from the edge of the wetland as demarcated in the freshwater assessments by Blue Science (dated March and May 2015);

23.2 Property boundaries must be above the 1: 50 year floodline; and building platforms located on the natural lie of the land, must be above the 1:100 year floodline;

- 23.3 The existing farm road/track which runs directly north from the access gate on MR 394 and crosses the wetland, must serve as the only access corridor to cross the "marshland"/wetland which lies to the north of MR 394. The proposed access road off MR 394 and all service infrastructure must be aligned to this single wetland crossing.
- 23.4 The wetland crossing for the main access must incorporate hydrological linkages and prevent overtopping at the crossings;
- 23.5 The section of the wetland on the eastern border (currently separated by a track), must incorporate hydrological linkages with the remainder of the wetland to the east of the site. Such measures must promote the flow of water in either an easterly or westerly direction and prevent water from damming up;
- 23.6 An internal road network as depicted on the SDP of 19 January 2017 with roads of 4 metres or wider;
- 23.7 The road network must include the construction of structures to cross the two identified drainage corridors;
- 23.8 The road network must include the construction of permeable pavements;
- 23.9 Stormwater runoff from the roads must be collected in an open channel network and where necessary stormwater pipelines. The open channel network must be permeable;
- 23.10 Stormwater discharged from the MR 394 and abutting property to the west of the site, Portion 126 of the Farm 304, must still be able to enter the wetland corridor on the site;
- 23.11 The internal reticulation water will be developed as per the services layout plan with pipelines laid within the road reserve. Except for the single wetland crossing, no reticulation infrastructure may cross or be placed within the wetland. A layout plan depicting the engineering services reticulation must be provided; and
- 23.12 Street lighting must be a low bollard type.

Operation Conditions

- 24. Measures must be implemented to minimise the visual intrusion of the proposed storage garages on the western boundary of Portion 192, including *inter alia*—
 - 24.1 Establishing and maintaining a tall vegetation screen along the extent of the boundary wall. The garages should be set back from the property boundary to allow for the vegetation screen (similar to the proposal depicted in the landscape plan dated 1 June 2015); and
 - 24.2 The use of non-reflective, darker earth-tone colours, for the finishes.
- 25. Rainwater may be harvested from rooftops and collected in storage tanks placed on, or incorporated into, each residential / commercial property. The harvested rainwater may be used for irrigation purposes.
- 26. The following stormwater related mitigation measures must be implemented and complied with:

- 26.1 Storm water may be discharged into the proposed wetland system, but shall not be collected from the wetland for irrigation purposes.
 - 26.2 The wetland system must be able to drain/dissipate naturally in either an easterly or westerly direction to the remainder of the wetland system which is situated to the north of MR 394, including the off-site portion of the wetland.
 - 26.3 Although preference must be given to natural dissipation of water within the wetland system, excess stormwater generated as a result of flood runoff may discharge at a proposed culvert below the MR 394 and discharged onto the portion of Portion 10 south of the divisional road.
 - 26.4 The culvert must be designed in collaboration with the roads authority responsible for MR 394.
27. For the duration of the operational phase, the open space area must be managed in an integrated manner to promote conservation and biodiversity management objectives. The open space areas must—
- 27.1 Be managed in accordance with an approved CMP.
 - 27.2 The CMP must incorporate the principles, objectives and management measures of the CapeNature Stewardship Programme;
 - 27.3 Be maintained clear of all alien invasive plants species, with a dedicated long-term follow-up clearing programme.
28. A HOA with a Constitution, must be established for the proposed development.
- 28.1 The HOA must comprise of all plot owners of the residential units;
 - 28.2 The HOA constitution and the EMPr must detail the roles and responsibilities during the respective phases of implementation (e.g. transition from construction to operational phase); and
 - 28.3 The HOA must play an advisory role in environmental management of the site during all phases of the development.

F. GENERAL MATTERS

1. Notwithstanding this Amended Appeal EA, the holder must comply with any other statutory requirements that may be applicable when undertaking the listed activities.
2. Non-compliance with a condition of this Amended Appeal EA or EMPr may render the holder liable to criminal prosecution.
3. If the holder does not conclude a listed activity within the period referred to in Condition 2, this Amended Appeal EA shall lapse for that activity, and a new application for EA must be submitted to the Competent Authority.
4. If the holder wishes to extend the validity period of the EA, an application for amendment in this regard must be made to the Competent Authority prior to the expiry date of the EA.

Note: In terms of the provisions of section 49A(l) of the NEMA a person is guilty of an offence if that person

- commences with a listed activity for which the competent authority has not granted an EA prior to undertaking of the activity;
 - fails to comply with or contravenes a condition of an EA granted for a listed activity or specified activity or an approved EMPr.
5. The holder must submit an application for the amendment of the EA to the Competent Authority where any detail with respect to the EA must be amended, added, substituted, corrected, removed or updated. If a new holder is proposed (i.e. change of ownership or transfer of rights and obligations), an application for Amendment in terms of Part 1 of the EIA Regulations, 2014 must be submitted or any relevant legislation that may be applicable at the time.
 6. The above is applicable *inter alia*, where the rights and obligations will be transferred to the HOA for the implementation and auditing of the EMPr, or the ongoing compliance with the relevant Conditions of Authorisation contained in this EA.
 7. Please note that an amendment is not required if there is a change in the contact details of the holder. In this case, the Competent Authority must only be notified in writing of such changes.
 8. The manner and frequency for updating the EMPr are as follows:
 9. Amendments to the EMPr, other than those mentioned above, must be done in accordance with Regulations 35 to 37 of Government Notice ("GN") No. R. 982 of 4 December 2014 as amended by Government Notice No. R. 326 of 7 April 2017 or any relevant legislation that may be applicable at the time.

REASONS FOR THE DECISION

In reaching the decision, I took *inter alia*, the following into consideration:

A. Reasons for the decision of the Environmental Authorisation issued on 18 December 2014 and to issue a New Environmental Authorisation

1. The information contained in the application for amendment dated 22 September 2016, as received by this Department on 23 September 2016, as well as the Amendment Application Report dated 6 March 2017, as received by the Department on 6 March 2016.
2. The reasons for the decision of 18 December 2014 to grant EA, as well as the guidance provided by the competent authority to the proponent and EAP regarding the nature and extent of any of the processes that may or must be followed or decision support tools that must be used in order to comply with the NEMA and the EIA Regulations, 2014 including any matter that may prejudice the success of an application.

Public Participation Process

3. A public participation process ("PPP") was conducted for the amendment application, which comprised of the following:
 - 3.1 All previous registered Interested and Affected Parties ("I&APs"), including organs of state, which have jurisdiction in respect of any aspect of the relevant activity, were sent notifications of the amendment application on 27 September 2016;
 - 3.2 An advertisement was placed in the local newspaper, ("Knysna-Plett Herald"), on 29 September 2016;
 - 3.3 Notices were placed on site;
 - 3.4 A commenting period on the initial report was allowed from 27 September 2016 to 7 November 2016; and
 - 3.5 The EAP notified the Department that as a result of significant changes or significant new information being added to the report, a second 30-day commenting period was provided for, ending 6 March 2017.

At the end of the respective commenting periods, comments were received from various organs of state and registered I&APs of which objections to the proposed amendments were also received.

Authority Consultation

4. The following authorities were consulted and their comment on the amendment application is summarised briefly.
 - 4.1 Department of Agriculture, Forestry and Fisheries: Western Cape ("DAFF")
 - 4.1.1 In their latest comment the DAFF cited the applicability of their "*Policy Principles and Guidelines for the Control of Development on Affected Natural Forest*" and confirmed that their previous comment remained unchanged. DAFF stated that any decisions on land use or development that will affect natural forests must be taken with the utmost care (precautionary principle) and with due consideration of:
 - 4.1.1.1 Keeping the dynamic forest processes intact;
 - 4.1.1.2 Preventing disturbance to forest ecosystems, fauna and flora;
 - 4.1.1.3 Keeping forest margins and surrounding mosaics of habitats in place as far as possible (*inter alia* through sufficient buffer zones, corridors and protected areas);
 - 4.1.1.4 Not allowing disturbance caused by poor land management to be used as a motivating factor for land use change that transforms forest.
 - 4.2 The DAFF provided comment on the initial proposal and opposed the loss of any forest and forest habitat. While this view has been maintained, the DAFF reviewed their position after which they were prepared to allow limited development at Site 1 which is situated on the north-western portion of Portion 192 of the Farm 304. The DAFF's revised position allows 3 of the proposed 12 units to be developed where a dense stand of Eucalyptus species - Blue Gum

trees is situated to the north of the "old road to Keurboomstrand" close to the historic homestead. The DAFF does not support any loss of forest habitat in the north-eastern section (i.e. at Site 2 where 6-dwelling units are proposed on the north-eastern portion of Portion 192 of the Farm 304 to the north of the "old road to Keurboomstrand. The DAFF stated that it would not approve any licences to destroy any forest.

5. CapeNature:

- 5.1 This organ of state commented on the project on separate occasions. The initial comment confirmed the findings of the freshwater aquatic specialist and an objection was submitted regarding any development (Site 2 where six (6) dwelling units are proposed) of the upper northeastern section of the property, where forest has emerged and is expanding. Furthermore, CapeNature concurred with the DAFF that only three (3) dwelling units may be constructed at the north-western section of the property and that the remaining proposed nine (9) dwelling units are not supported. The permissible three (3) dwelling units must be positioned close to the historical farmstead precinct where the presence of *Eucalyptus species* is densest.
- 5.2 In its final comment dated 1 March 2017, CapeNature confirmed that the Proposed Nature Area on the Remainder of Portion 10 of the Farm Matjesfontein No. 304, (south of the road), has been reviewed by the CapeNature Stewardship committee and it was found that the site did meet the criteria for Conservation Stewardship and CapeNature will approach the landowner to enter the Conservation Stewardship programme.
- 5.3 In their comment on the application CapeNature recommended the following measures to be included as conditions in the amended EA:
 - 5.3.1 Commencement of the development may only occur following an official stewardship agreement.
 - 5.3.2 The upper north-eastern section and parts of the north-western section of the property, where forest has emerged and is expanding must be managed as a nature area. The subdivision of the Proposed Nature Area on the Remainder of Portion 10 of the Farm Matjesfontein No. 304, (south of MR 394), off from the existing development should not be permitted.
 - 5.3.3 The construction of boardwalks is not supported as part of the application to amend the EA and that any proposed boardwalk construction must form part of a separate application to the relevant competent authority.
- 5.4 CapeNature has concluded that it does not object to the amendment of the Environmental Authorisation, provided that the applicant complies with any future conservation stewardship conditions and recommendations as well as the DAFF recommendations are complied with.

6. Breede-Gouritz Catchment Management Agency ("BGCMA").

6.1 The BGCMA did not object to the proposed amendments, but did recommend certain restrictions and clearly pointed out that a water use licence will be required for development within the 1:100 year floodline or 500 metres from the edge of a wetland.

7. Eden District Municipality ("EDM"):

The EDM submitted its objection to the amendment of the EA, specifically the proposed dwelling units on the north-western and north-eastern slopes in the forest.

8. Western Cape Government ("WCG"): Department of Health ("DoH"):

The DOH had no objection to the amendment of the EA.

9. WCG: Department of Agriculture ("DoA"):

The DOA had no objection to the amendment of the EA.

10. Heritage Western Cape ("HWC")

HWC had no objection to the amendment of the EA, subject to their previous comment dated 23 June 2014 being implemented, namely-

10.1 The removal of the two units east of the historic farm building; and

10.2 The open space to the south-east of the development not be developed. (This is understood to refer to the open space adjacent to the historic farm building).

11. Consultation with other I&APs.

During the PPP, the EAP notified and consulted the following I&APs. A brief summary of their responses is provided.

11.1 W & G Hope do not consent to the proposed amendment, however, they do support the initial proposal authorised on 18 December 2014.

11.2 Laurence and Claire Parkman in light of their support of the various submissions of the Dunes Resort BC, Keurbooms Property Owners Association, CapeNature, DAFF and the Plettenberg Bay Environmental Forum who have comprehensively detailed their opinions regarding this application, it is apparent that they do not support the proposed amendments.

11.3 The Keurbooms Property Owners Association (KPOA) listed the proposed amendments to the EA which they do not support and concluded that the association does not support the changes to the SDP.

11.4 Ms M Edwards — provided various comments on matters of concern to her. The responses from the EAP are noted.

- 11.5 Comment from Mr Duncan Durant, the person in control of Portion 11 of the Farm Matjiesfontein no. 304, Plettenberg Bay, was received from the EAP on 25 May 2017. According to the EAP, although the landowner of the land adjacent to the site where the activity is, did not register as an Interested and Affected Party during the application process, the party was, however provided an opportunity to comment on the application. The party strongly objected to the development on the basis of the issues raised under the following measures:
- 11.5.1 Visual impact;
 - 11.5.2 Flooding;
 - 11.5.3 Safety along MR 394;
 - 11.5.4 Commercial viability; and
 - 11.5.5 Density and scarce resources.
- 11.6 The comments and responses to the above were received from the EAP after the final Amendment Report had been submitted to the Competent Authority. The issues have been noted in this decision for record purposes.

Amendments applied for and granted in full or in part:

12. Considering the negative and positive impacts and proposed mitigation measures, the advantages associated with the proposed change to certain development parameters or development areas listed below, are regarded to outweigh the disadvantages. The restrictions regarding the following development parameters or development areas have been reduced in light of —
- 12.1 The measures to ensure avoidance, management and mitigation of impacts associated with the proposed change;
 - 12.2 The information contained in the report and supporting documentation; and
 - 12.3 The co-ordination and harmonisation of policies, legislation and actions relating to the environment and the Keurboomstrand area.
13. The development parameters or development areas include—
- 13.1 Three (3) dwelling units that are permitted within the forest area situated on the north-western slope to the north of the "old road to Keurboomstrand" close to the historic homestead (Condition 6.1.3 and 6.1.4 refer).
 - 13.2 Development within proximity to wetlands on the property (Condition 6.1.5 refers).
 - 13.3 The width of the coastal corridors (Condition 6.1.6(a) refers).
 - 13.4 The road network and infrastructure crossings through the central and western coastal corridors (Condition 6.1.6(e) refers).
 - 13.5 The setback of storage garages from the western boundary of Portion 192 (Condition 6.1.8 refers) and the avoidance of any wetland.
14. The transfer of ownership of the proposed "nature reserve" on the remainder of Portion 10 of the Farm Matjiesfontein No. 304 to the HOA.

15. The area designated as the "nature reserve" is regarded as an integral part of the development which should not be alienated from the proposed village. The concept of a conservation management area across existing properties is strengthened by the Bitou Municipality's Local Area Spatial Plan for Keurboomstrand and Environs. Ultimately the management of the conservation open space (nature reserve) will become the responsibility of the HOA. Although the proposed amendment has underscored this concept, the application has failed to provide a suitable mechanism which will ensure the protection from development in perpetuity in order to secure the conservation of the open space or prevent the alienation of the portion of land from the proposed development (village). The proposed subdivision of Portion 10 of the Farm Matjiesfontein into two portions, thereby separating the nature reserve from the proposed development, is not supported. In order to ensure that the conservation objectives are achieved and the "nature reserve" is not alienated from the residential development, the condition is amended to include the registration of a restrictive title deed condition in conjunction with a "non-user conservation servitude".

Amendments which were applied for but not granted:

16. The proposed development of dwelling units and infrastructure on the north-eastern slope (i.e. 6 units at Site 2) and north-western slope (i.e. 9 of the proposed 12 units at Site 1) of the property above the "old road to Keurboomstrand":
17. Considering the balance of important influencing factors, the negative and positive impacts and proposed mitigation measures, the disadvantages associated with the proposed change to this component of the development layout, are regarded to outweigh the advantages. Consideration has been given to *inter alia* —
- 17.1 The measures to ensure avoidance, management and mitigation of impacts associated with the proposed change;
 - 17.2 The indigenous vegetation; conservation management objectives for the area; the expected and realistic management objectives for the vegetation north of the Old road to Keurboomstrand;
 - 17.3 The expected visual intrusion of the units on the higher slope and a development line;
 - 17.4 The risk or impact of fire and how this may influence the proposed development and the expected fire prevention measures or lack thereof; and
 - 17.5 The co-ordination and harmonisation of policies, legislation and actions relating to the environment and the Keurboomstrand area.

Amendments to comply with the current legislative framework

18. The original application was considered and authorised in terms of the EIA Amendment Regulations, 2010 (Government Notice No. R. 543 of 2 August 2010), however, on 4 December 2014, the Minister of Environmental Affairs promulgated the EIA Regulations, 2014 and respective Listing Notices of 2014 in terms of Chapter 5 of the NEMA. The regulations (refer to Government

Notice No. R. 982, R. 983, R. 984 and R. 985 in Government Gazette No. 38282 of 4 December 2014) came into effect on 8 December 2014 and replaced the EIA Amendment Regulations, 2010. The Minister of Environmental Affairs amended the EIA Regulations, 2014 and respective Listing Notices of 2014 on 7 April 2017. The amendments to the regulations (refer to Government Notice No. R. 324, R. 325, R. 326 and R. 327) took effect on 7 April 2017.

19. The changes in the environmental management framework since the previous NEMA Regulations, (e.g. the EIA Amendment Regulations, 2010) are quite substantial. The nature of these changes require that the EA and EMPr relate to the current legislative requirements such as, environmental auditing, amendments, validity periods and extension periods, etc. The EA issued on 18 December 2014 does not adequately address these aspects.
20. Activity Number 16(iii) and 16(iv) of the EIA Regulations Listing Notice 3 of 2010 (Government Notice No. R. 546 of 18 June 2010) are no longer similarly listed in the list of activities identified under the EIA Regulations Listing Notices of 2014. The two activities have been removed from the list of activities authorised in the original EA as they are no longer triggered.
21. Editorial changes which have been made to conditions contained in section G of the EA to comply with the current legislative requirements, include-
 - 21.1 The validity period for which the EA is granted with a date on which the activity will be deemed to have been concluded (amendment of condition 1);
 - 21.2 Requirements of the EMPr (amendment of condition 7.1); and
 - 21.3 The insertion of conditions setting out the Environmental Auditing requirements.

Socio-economic benefits

22. Notwithstanding the spatial parameters and restrictive measures, the EA provides a development framework which allows the SDP for the Nature's Path Lifestyle Village proposal to be adapted to still include:
 - 22.1 98 residential units;
 - 22.2 8 staff housing units;
 - 22.3 164 storage garages; and
 - 22.4 A commercial area that would include a wellness centre and club house with a bowling green and tennis courts (TV3 Plan No. 7 dated 19/01/2017).
23. Given the above, it is expected that the socio-economic benefits described in the report can be accomplished, as there is no information clearly suggesting the contrary.

NEMA Principles

24. The NEMA 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:
 - 24.1 The effects of decisions on all aspects of the environment to be taken into account;

- 24.2 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;
- 24.3 The co-ordination and harmonisation of policies, legislation and actions relating to the environment;
- 24.4 Sensitive, vulnerable, highly dynamic or stressed ecosystems, such as coastal shores, estuaries, wetlands, and similar systems require specific attention in management and planning procedures, especially where they are subject to significant human resource usage and development pressure;
- 24.5 The resolving of actual or potential conflicts of interest between organs of state through conflict resolution procedures; and
- 24.6 The selection of the best practicable environmental option.

B. Reasons for the Decision Issued on 18 December 2014

1. In reaching the decision on 18 December 2014, the competent authority, *inter alia*, considered the following:
 - 1.1 The information contained in the application form received by the competent authority on 29 August 2013, the Final BAR dated 6 August 2014 and the EMPr submitted together with the aforementioned BAR;
 - 1.2 Relevant information contained in the Departmental information base, including, the Guidelines on Public Participation, Alternatives and Exemptions (dated March 2013);
 - 1.3 The objectives and requirements of relevant legislation, policies and guidelines, including section 2 of the NEMA;
 - 1.4 The comments received from interested and affected parties and the responses provided thereon, as included in the aforementioned BAR dated 6 August 2014; and
 - 1.5 The sense of balance of the negative and positive impacts and proposed mitigation measures;
 - 1.6 The site inspection conducted by officials from the Department.
2. All information presented to the competent authority was taken into account in the consideration of the application for EA. A summary of the issues which, according to the competent authority, were the most significant reasons for the decision is set out below.

Exemption and Legislative Requirements

3. Exemption from Regulation 10(2)(d) of the 2010 EIA Amendment Regulations was granted. All registered I&APs were notified of the exemption application, as required. With reference to the exemption application, no significant concerns were raised by I&APs.

4. As such, the exemption application was regarded as appropriate by the competent authority in this instance based on the adequate PPP and the limited number of comments submitted with respect to the application.
5. The applicant has not applied for the construction or expansion of structures and infrastructure within the littoral active zone or 100 metres from the high-water mark of the sea. The proposed boardwalk/steps in this area are not authorised.

Public Participation

6. The PPP included:
 - 6.1 An advert that was placed in the local newspaper, the Knysna-Plett Herald on 3 October 2013;
 - 6.2 Written notifications that were submitted to landowners and stakeholders;
 - 6.3 Notice of commencement of the basic assessment process that was issued on 30 September 2014;
 - 6.4 A deviation that was granted from erecting a site notice at an alternative site (Regulation 54(1)(a)(ii) of the 2010 EIA Amendment Regulations, however a site notice was erected at the entrance gate to Portion 92 of Farm 304;
 - 6.5 The Draft Basic Assessment Report was circulated for public comment for a period of forty (40) days;
 - 6.6 The Final BAR was circulated over a period of twenty-one days for all Registered I&APs for comment;
 - 6.7 Notification of organs of state having jurisdiction in respect of any aspect of the activity as well as the local and district municipalities which have jurisdiction in the area. This included the notice of commencement of the basic assessment process was issued on 30 September 2013 and 1 October 2013; notification in terms of section 24O of the NEMA regarding the commenting period on the Draft BAR, issued on 12 March 2014; and the notice of a 21 -day commenting period on the Final BAR which extended from 21 May 2014 to 3 June 2014 was provided;
 - 6.8 Additional enquiries were made by the EAP to CapeNature and Department of Water and Sanitation on 10 September 2014; and
 - 6.9 The Municipal Ward Councillor and community representatives were also notified in writing.
7. The Department of Transport and Public Works indicated that they are not opposed to the proposal provided that detailed concerns are noted and addressed during the *Land Use Planning Ordinance, 1985 (Ordinance No. 15 of 1985)* ("LUPO") application. The applicability of *Roads and Ribbon Development, 1940 (Act No. 21 of 1940)* and Ordinance 19 of 1976, for the proposed access off MR 394 was raised.

8. The DAFF commented on the applicability of the *National Forest Act, 1998 (Act No. 84 of 1998)* and the *National Veld and Forest Fire Act, 1998 (Act No. 101 of 1998)* and cautioned the applicant to ensure that these are taken into consideration. It was recommended that the proposed development form part of the Southern Cape Fire Protection Association ("FPA") in the area.
9. The National Department of Environmental Affairs — Integrated Coastal Management, did not raise an objection to the proposal, but did provide comment pertaining to certain mitigation measures, the applicability of the *National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008)* and the control of use of vehicles in the coastal zone.
10. The DAFF indicated that they have no objection to the proposed activity on condition that it adheres to the Spatial Development Framework and relevant planning documents pertaining to the Keurboomstrand area.
11. The WCG: Department of Health indicated that they have no objection to the proposed activity subject to certain conditions being met.
12. Heritage Western Cape have indicated that they support the report submitted to them, subject to the following:
 - 12.1 The removal of the two units east of the historic farm building;
 - 12.2 The open space to the south-east of the development not be developed. This is understood to refer to the open space adjacent to the historic farm building.
13. The Department of Water and Sanitation raised various concerns regarding the proposed development and required specialist input, however, based on further consultation the Regional Department of Water & Sanitation office indicated that they will consider the issuance of a General Authorisation, considering the current state of the seasonal marshland and the beneficial rehabilitation thereof, as well as certain conditions to be imposed.
14. CapeNature objected to the proposed development on various grounds relating to biodiversity matters and attaining the management objectives for Critical Biodiversity Areas ("CBA"). However, based on further consultation CapeNature has indicated that the grounds for objection and related impacts could be mitigated to an acceptable level subject to a revised layout plan. A recommendation was also made that the holder should approach the CapeNature Stewardship Programme regarding the proposed "nature reserve" as the unit may have an interest in the proposal.
15. The concerns raised by I&APs were adequately addressed through specific conditions of authorisation and management and mitigation measures in this EA.

Alternatives

16. The following two layout alternatives were considered:

Layout Alternative 1 (Original Proposal)

17. This layout alternative entails the transformation of a portion of Portion 192 and a portion of Portion 10 of the Farm Matjesfontein No. 304, Plettenberg Bay, for the establishment of a development consisting of:
- 17.1 110 residential units;
 - 17.2 8 staff housing units;
 - 17.3 165 storage garages;
 - 17.4 A bowling green and tennis court; and
 - 17.5 A club house and/or restaurant.
18. Access to the proposed development will be gained off the MR 394 opposite to the existing The Dunes Resort development as a 5-meter-wide access road. The proposal will also include internal roads and associated service infrastructure.

Layout Alternative 2 (the Preferred Alternative)

19. This layout alternative entails the transformation of a portion of Portion 192 and a portion of Portion 10 of the Farm Matjesfontein No. 304 Plettenberg Bay, for the establishment of a development consisting of areas for residential; commercial; recreational; open space Use. The remainder of Portion 10, on the south of MR 394, will be set aside as a nature reserve and managed as an open space with a conservation use.
20. The proposal can include:
- 20.1 98 residential units;
 - 20.2 8 staff housing units;
 - 20.3 164 storage garages; and
 - 20.4 A commercial area that would include a wellness centre and club house with a bowling green tennis courts (TV3 Plan No. 6 (dated 05/02/2014).
21. Access to the proposed development will be gained off MR 394 opposite to the existing he Dunes Resort development as a 5-meter-wide access road. The proposal has been positioned at a 4m contour level around a currently degraded seasonal marsh/wetland area that occurs on site.

Property and location/site alternatives:

22. The property has been identified through the analyses that was conducted as part of the Keurbooms Local Area Spatial Plan ("LASP") drafting process and has been earmarked as an area for potential urban development therefore no other site/location alternative was considered.

Activity alternatives:

23. The option of an activity alternative was not considered as a need within the private retirement accommodation market segment currently exists, opposed to conventional residential development and the proposal is aimed at contributing to this market segment.

"No-Go" Alternative

24. The "No-Go" option proposes that the *status quo* remains and the site remains undeveloped and vacant.
25. Potential disadvantages of the "No-Go" Alternative:
- 25.1 There would be no increase in available residential properties;
 - 25.2 Any anticipated capital investment would not result;
 - 25.3 It is unlikely that the applicant would continue with the establishment of the proposed nature area due to fact that a significant amount of funds will have to be committed towards the ongoing rehabilitation and long term maintenance of the area;
 - 25.4 Should the landowner fail to control access to the property and to comply with relevant legislation and the management of the property and its vegetation, the continued establishment and invasion of alien vegetation would carry on as well as the dumping of rubbish and litter. This would continue to degrade the natural vegetated areas and negatively impact on the biodiversity of the site.
26. Potential advantages of the "No-Go" Alternative:
- 26.1 No increase in traffic volumes on the road;
 - 26.2 No construction phase, therefore no potential for any construction related nuisances (i.e. noise visual disturbance, erosion, removal of vegetation or topsoil, heavy vehicles on the road, etc.); and
 - 26.3 The ecological functioning of the property could be improved, only if alien vegetation is removed on an on-going basis and the natural areas are managed so that the indigenous plant species can return.
27. From a socio-economic point of view, the No-Go option is not preferred as no benefit would be gained for the local and district communities.

Impact Assessment and Mitigation measures

Activity Need and Desirability and Regional/ Planning Context

28. Generally coastal towns /settlements are considered to have a strong residential / retirement link and in this context the particular development is considered appropriate at this location.
29. The property has been identified through the analyses that were conducted as part of the Keurbooms Environs Local Area Spatial Plan ("LASP") drafting process, which has been adopted and approved as part of the Bitou Municipal Spatial Development Framework in terms of the Municipal Systems Act, as an area earmarked for potential urban development/ future urban expansion and this particular property abuts, or is effectively located opposite the existing established built up footprint on Matjesfontein Portion 9/304.
30. This proposal will therefore expand the range of available retirement accommodation opportunities and fulfil the need which currently exists within the retirement accommodation market segment within the broader Bitou Municipal Area.

Pollution or contamination of soil and/or water resources in the area:

31. Construction materials (i.e. bitumen, fuels, oils, cement slurry) and waste (i.e. litter, plastic bags, building rubble) can pose an environmental risk during the construction phase if not suitably managed and contained on site. This potential impact is considered to be of local extent and medium term and therefore of medium-high negative significance without mitigation, and very low negative significance with mitigation.

Erosion risk due to land clearing and removal of vegetation.

32. Construction activities (i.e. land clearing, cutting and infilling, excavations and earthworks) would result in significant land disturbance and removal of topsoil. Although these activities would be of a temporary nature, they are known to pose certain risks (i.e. increased erosion) if not managed appropriately. This potential impact is considered to be local extent and short term and therefore of medium-high negative significance without mitigation, and very low negative significance with mitigation.

Disturbance or loss of wetland habitat:

33. In making this decision it was important to understand the extent of the sensitive, vulnerable, highly dynamic or stressed ecosystems, such as the wetlands on the property and surrounding area, and how specific attention has been given in the planning procedures and proposed management thereof.
34. The National Freshwater Ecosystem Priority Area ("FEPA") has identified and mapped an estuarine wetland on the property which forms part of the Tsokwane River floodplain. This wetland stretches from the Keurbooms River to well beyond the site and lies to the south and south-east of the proposed development site. The wetland is shown to lie below the 5 metre contour level and occurs to the north and south of MR 394. This is regarded to form part of the estuarine functional zone.
35. The BAR has reported that the wetland ("marshland") which occurs just north of Divisional Main Road No 394, on the southern extent of Portion 10 of the Farm Matjiesfontein No. 304, forms part of a series of seeps to the north of the Divisional Main Road No 394, which lie in an east-west orientation. These wetlands drain the steep south-facing shale and enon slopes just south of the N2 Road, and feed into the Tshokwane River floodplain. The position of this wetland is shown on the fine scale vegetation maps of the Garden Route Biodiversity Sector Plan, 2010 and mapped as "Garden Route Wetlands". This part of the wetland falls in an area mainly categorised as "River FEPA" on the National Freshwater Ecosystem Priority Area layer. However, it is apparent that there are functional linkages between this wetland system and that of the abovementioned FEPA estuarine wetland. Both the wetland components have been incorporated into the Keurbooms & Environs LASP as an exclusion zone.

36. The Vegetation Sensitivity Analysis (supplement) by Mr Ken Coetzee (Conservation Management Services) states that *"The primary mitigation is to exclude the entire marshland area from the development layout and to ensure the natural runoff flow from the forested slope to the north is not cut off by the development. Drainage corridors in between nodes of the development will permit the required inflow. Other than an access boardwalk, part of a nature trail, and a general clean-up of the wetland, no other disturbance or impact should occur in this habitat and it should be permanently conserved as a natural wetland."* The report by Coetzee recommends that a final delineation of the wetland should be done.
37. Observations made on the site have highlighted that the extent of the wetland is larger than what has been reported on and excluded in the applicant's preferred layout plan. It is evident from the wetland elements observed that there is a definite horizontal linkage / corridor on the property from west to east. Notwithstanding the transformation of portions of the wetland the identified conservation management objectives are believed to be attainable should the wetland be rehabilitated. A formal wetland delineation report, wherein the full extent of the wetland is determined, was however not reported on and the formal delineation was not provided.
38. A potential risk to the marshland area identified on the property is that construction activities could spill into the wetland and result in physical destruction/disturbance to the habitat. It is also likely, that waste materials generated during construction could contaminate the water resource. The proposed mitigation measures in Layout Alternative 2 that (i.e. a buffer strip beyond the full extent of the marshland area be incorporated and that this buffer area may not be disturbed, furthermore that a natural drainage connection with the steep slope to the north must be established), will only be realised once the full extent of the wetland is established and delineated.
39. Also proposed with Alternative 2 is the construction of a 3,5-metre-wide roadway across the marshland. Notwithstanding the proposed position and design of the marshland crossing structure, the potential impacts associated with such a structure which have been identified, must be avoided. The proposed mitigation to traverse a narrow section of marshland does not adequately avoid the impacts and Layout Alternative 1 has shown that the wetland need not be crossed at this point. Therefore, the impact avoidance principle is applied in this regard and the access road will need to be realigned to pass over the existing track crossing the wetland. As such, the design of this access will still need to make provision for hydrological linkage between the wetland components. Conditions have been set to address this issue as well as the crossing of the drainage corridors.

Impact of floods on the proposed development

40. The site contains areas which form part of the estuarine functional zone as well as wetland areas below the 4.5 metre contour. Although the BAR has not reflected the 1:100 floodline, a precautionary principle is applied that property boundaries must be above the 1:50 year floodline; and building platforms must be above the 1: 100 year floodline.

Natural vegetation and biodiversity of the site:

41. The removal of vegetation and associated loss of valuable natural forest, marshland and thicket habitat would have a major impact during the construction phase, depending on the footprint of the proposed layout alternative. The footprint of the layout would be mainly restricted to the transformed area and incorporate two drainage corridors which will be planted with indigenous vegetation. This potential impact is considered to have a low significant impact on the natural vegetation, provided that proper mitigation measures are in place during the construction phase.

Biodiversity

Ecological Support and Critical Biodiversity Areas:

42. The proposed development area falls within a mapped CBA according to the Garden Route Biodiversity Sector Plan. It is considered areas critical for maintaining hydrological processes or protected habitat (wetlands, forests etc.). The extreme north-eastern edge and south-western fringe of the proposed development area remains natural, whereas the larger central extent has been transformed. The stated management objective is to rehabilitate degraded areas to natural or near natural and to manage for no further degradation.
43. The extreme northern fringe of Portion 10 and 192 of the Farm Matjesfontein No. 304 support indigenous forest considered to be highly sensitive to disturbance. The aforementioned farm portions also contain wetland areas on the lower lying areas. The respective components of the wetland have been included in the FEPA and fine scale vegetation maps of the Garden Route Biodiversity Sector Plan, 2010.
44. It is proposed that a nature reserve area be set aside on the remainder of Portion 10 (south of MR 394) which will serve as a valuable ecological asset to the development and improve the coastal corridors. The proposed nature reserve can be considered to be valuable for nature conservation with the dedicated application of a rehabilitation programme consisting largely of the removal of invasive alien trees. The conserved area of dune fynbos, dune thicket and wetland fynbos will be of considerable value in the area. Although access over the coastal dunes on the nature reserve, is proposed to be on boardwalks to prevent damage to the dune vegetation, the detail on this proposal is insufficient to make an informed decision on the removal of vegetation and construction of the infrastructure.

Alien vegetation:

45. The ecological functioning of the property could be improved, if the alien vegetation is removed on an on-going basis and the natural areas are managed so that the indigenous plant species can return.

Rehabilitation and management of natural areas:

46. The proposed development will provide for the on-going and long term rehabilitation and management of the natural areas, as well as the establishment of a nature reserve area south of MR 394. The revised layout will provide for a positive impact in this regard, as the layout will take cognisance of the natural areas and allows for green belts through the development and will allow for a highly positive impact in the long term management of the natural areas on site.

"Biodiversity offsets":

47. The proposal includes the establishment of "nature reserve" on the remaining portion of Portion 10 of the Farm Matjesfontein No. 304 as an "ecological offset". It must be noted that an ecological offset or "biodiversity offset" should provide a mechanism to compensate for residual negative impacts on biodiversity after a developer has proven that all feasible and reasonable alternatives have been considered in arriving at the proposed development; and reasonable and responsible actions have been taken in the location, siting, scale, layout, technology and design of the proposed development to avoid, minimize and repair/restore associated impacts. Therefore, a biodiversity offset is seen as a last resort option in the mitigation hierarchy.
48. Although development nodes have been depicted in the Keurbooms & Environs LASP for Portion 10 and Portion 192 of the Farm Matjesfontein No. 304, the development footprint and detailed layout of such a development on these properties must still comply with the relevant legislation and first avoid the impacts of such a development on the receiving environment. Furthermore, the LASP already earmarks the southern portion of Portion 10 as "conservation area" which should be linked to the coastal corridors on said properties. This "nature reserve" area should therefore form part of the development and not be seen as a separate entity. The proposed subdivision of Portion 10 of the Farm Matjesfontein into two portions, thereby separating the nature reserve from proposed development, is not supported.
49. It must be highlighted that the landowner has a "general duty of care" toward the environment, and the management of the property (i.e. clearance of alien invasive plant species, prevention of disposal of waste on site and removal of waste, etc.) forms an integral part of such a duty of care.

Visual intrusion and disturbance:

50. Due to the location of the property and the topography of the land, the construction activities would be visible to the surrounding properties. The proposed development will result in the loss of open undeveloped visual resources, the change from open space to a built-up area which is lit-up at night. The loss of open, undeveloped visual resources is of medium to high significance, however, this potential impact is considered to be of low to medium significance with proper visual mitigation measures in place during the operational phase.

51. Areas of concern have been excluded from the development, however, these areas have other corresponding impacts which are limiting factors such as steep slopes, forestry exclusion areas, etc. The visual impact assessment has made various recommendations, of which one was that the units in the north-east section are stepped up or down the slope to prevent high, steep cut and fill slopes and resulting visual scarring. The Bitou Municipality has also highlighted a concern regarding the visual intrusion of these units and the EAP has stated that the north-eastern fringe of the site is characterized by slopes steeper than 1:4. In general this Department does not support development on slopes of 1 :4 or steeper and at risk of erosion once disturbed. The units in this section of the site have been excluded. A second area is in the north-western section along the Old N2-Road (Main Road 1888), where the units are positioned right on the boundary of the property. Views and scenic qualities of this road need to be protected from inappropriate development, and an appropriate setback and architectural styles should be adopted. This area also contains forest elements too.

Heritage resources:

52. The cultural landscape will change from a rural context to an urbanised area. Urban development has already occurred in the area and the site is earmarked for urban expansion. The planners however recognised tangible heritage resources and the axial connections, mentioned above and which were excluded from the development area (i.e. Alternative 2).

53. The heritage resources which were identified include the-

53.1 Farmhouse and immediate outbuildings;

53.2 Doctors rooms approximately 40 meters south of the house;

53.3 The old access road and mature tree surrounds; and

53.4 Terraced area along old road with possible grave sites and remnants of labour related dwellings.

54. The resources were accommodated in wide corridors and large stands to reflect its evolution as part of the agricultural rural landscape of Keurbooms River. An extended setback from the "old Farm yard precinct and doctors room" has been incorporated into the decision. These resources are protected under the *National Heritage Resources Act, 1999 (Act No. 25 of 1999)* and no alterations are possible without the relevant permit. The impact on these resources is therefore medium-low.

Socio-Economic

Job creation:

55. From an economic point of view, the activity will create job opportunities and the development will impact positively on the local economy. It is expected that the construction phase will result in direct and indirect employment opportunities over a period of approximately 18 months. These opportunities will include skilled, semi-skilled and un-skilled labourers. The anticipated new jobs would therefore have a medium to high positive impact on the regional area (i.e. Eden district).

Traffic

56. Heavy vehicles and other construction related traffic would be travelling to and from the property on the MR 394 during the course of the construction phase. This potential impact is considered to be of local extent and short term and therefore of low negative significance without mitigation, and very low negative significance with mitigation.
57. The proposed development will result in additional trips, but the increase in traffic would be of a very low significance as the existing surrounding road network has sufficient spare capacity to accommodate this increase during the operational phase.

Increase in services demand:

58. The Bitou Municipality indicated that they would be able to accommodate the development within their services network (i.e. potable water, sewage and solid waste removal, electricity supply and storm water management). In addition, the applicant is proposing to incorporate the following energy and water saving measures in the development in order to ensure that the demand of the development does not put unnecessary strain on the Municipality:
- 58.1 Water saving measures and electricity saving measures be implemented; and
 - 58.2 A recycling programme be implemented which follows a cradle-to-grave approach. All recycled material would be separated at source and be stored separate to the general household waste, removed by a registered Recycling Service Provider employed by the Municipality, and be handled at a recognized recycling facility.
59. The proposed development would therefore have a very low impact on the Municipality in terms of services delivery.

Noise disturbance:

60. Loud noises during construction are likely to create a nuisance to the surrounding land owners and residents, albeit for a short duration.
61. This potential impact is considered to be of local extent and short term and therefore of medium negative significance, without mitigation and low negative with mitigation.

Access to the coastline / beach:

62. The Department of Transport and Public Works raised an issue pertaining to the number and location of parking bays for residents visiting the beach, especially those staying north of MR 394, as it is anticipated that everybody will not walk from their residence to the beach. This issue was not addressed in detail in the Final BAR, however, the Bitou Municipal Spatial Development Framework states that the existing identified accesses are sufficient to provide adequate access to the beachfront and no new beach access is identified on Portion 10 of the Farm Matjesfontein No. 304. In light of the fact that this issue was not adequately addressed and that the applicant did not apply for related listed activities to gain access to the beach, this has not been included in this EA. The applicant is advised to make use of a shuttle service to gain access to the beach via existing beach access routes, such as on Portion 9 of Farm 304 (The Dunes).

NEMA Principles

63. 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:
- 63.1 The effects of decisions on all aspects of the environment to be taken into account;
 - 63.2 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;
 - 63.3 The co-ordination and harmonisation of policies, legislation and actions relating to the environment;
 - 63.4 Sensitive, vulnerable, highly dynamic or stressed ecosystems, such as coastal shores, estuaries, wetlands, and similar systems require specific attention in management and planning procedures, especially where they are subject to significant human resource usage and development pressure;
 - 63.5 The resolving of actual or potential conflicts of interest between organs of state through conflict resolution procedures; and
 - 63.6 The selection of the best practicable environmental option.
64. The development will result in both negative and positive impacts.

Negative Impacts:

65. Negative impacts include loss of indigenous vegetation, loss of stockpiled topsoil, dust and noise nuisance, possible interruption of services and traffic, erosion and visual impacts. However, with the implementation of the mitigation measures suggested in the BAR and the EMP, these impacts will all be manageable and of low negative significance. The proposed development will also result in a low negative impact on the watercourse should all mitigation measures be implemented.

Positive impacts:

66. Positive impacts that will result from the development are that the need for private retirement accommodation market segment which currently exist, will be met and this proposal is aimed at contributing to this market segment. The positive long term (operational phase) impacts (i.e. rehabilitation and maintenance of natural areas, increase in available accommodation, socio-

economic spin offs) to be associated with the establishment of the proposal will far outweigh the negative impacts that could result from the proposal.

67. In view of the above, the NEMA principles, compliance with the conditions stipulated in this Amended EA, and compliance with the EMP, 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 NEMA and that any potentially detrimental environmental impacts resulting from the listed activities can be mitigated to acceptable levels.
68. Notwithstanding this Amended EA, the holder must comply with any other statutory requirements that may be applicable to the undertaking of the listed activities.

C. RESPONSES TO THE GROUNDS OF APPEAL

1. Sub-regulation 27(1) of the NEMA EIA Regulations, 2014 states that *"The competent authority that issued an environmental authorisation has jurisdiction in all matters pertaining to the amendment of that environmental authorisation as long as the environmental authorisation is still valid, provided that the competent authority that issued such environmental authorisation still has jurisdiction in terms of the Act."*
2. Sub-regulation 27(2) further states that *"[w]here the competent decides to amend an environmental authorisation, the competent authority must—*
 - (a) issue an amendment to the environmental authorisation either by way of a new environmental authorisation or new environmental authorisations or an addendum to the relevant environmental authorisation; or*
 - (b) replace an existing valid environmental authorisation with an environmental authorisation contemplated in this regulation, indicating the extent of replacement in the environmental authorisation, if the existing environmental authorisation is directly related to the amendment required."*
3. In terms of sections 43(2) and (6) of the NEMA:
"Any person may appeal to an MEC against a decision taken by any person acting under a power delegated by that MEC under this Act or a specific environmental management Act."
"The ... MEC may, after considering such an appeal, confirm, set aside or vary the decision, provision, condition or directive or make any other appropriate decision, including a decision that the prescribed fee paid by the appellant, or any part thereof, be refunded."
4. In terms of regulation 10(2) of the National Appeal Regulations (Government Notice No. R. 993 of 8 December 2014) (as amended):
"An appeal lodged after the commencement of the Environmental Impact Assessment Regulations, 2014 must be submitted, processed and considered in terms of these Regulations."

Biophysical Impacts (including forest areas)

5. The NEMA principles that apply to the actions of all organs of state that may significantly affect the environment specifically require *inter alia* that:
 - 5.1 Environmental management must place people and their needs at the forefront of its concern and serve their physical, psychological, developmental, cultural and social interests equitably;
 - 5.2 Development must be socially, environmentally and economically sustainable;
 - 5.3 That the disturbance of ecosystems and loss of biological diversity are avoided, or where they cannot be altogether avoided, are minimised and remedied;
 - 5.4 That a risk-averse and cautious approach is applied, which takes into account the limits of current knowledge about the consequences of decisions and actions; and
 - 5.5 The social, economic and environmental impacts of activities, including disadvantages and benefits, must be considered, assessed and evaluated, and decisions must be appropriate in the light of the such consideration and assessment.
6. A preliminary vegetation sensitivity assessment of the property in its entirety, as carried out by Conservation Management Services in November 2010 to inform the basic assessment process found and concluded *inter alia* that:
 - 6.1 The forest of the study area is classified as Afromontane forest and the balance of the study area as Garden Route Shale Fynbos.
 - 6.2 The vegetation is classified as Ericaceous Fynbos in wetter areas and Graminoid Fynbos in drier areas with clumps of Thicket in the fire protected areas near the coast. On the study area, the Ericaceous and Graminoid Fynbos has been transformed by farming, development and alien plant invasion.
7. The on-site vegetation has been separated *inter alia* as follows:

Marshland

8. This area is best described as a seasonal wetland. The presence of typical wetland plants, black peat soil and frog populations indicate at least seasonal wetland conditions. The marsh basically consists of the core wet sedge and grass cover, a surrounding drier grass and pioneer plant cover and the adjacent coastal thicket. Although the general area is currently in the grip of a severe drought, it is postulated that the ever-increasing invasive stands of mature gum and pine trees between the marsh and the slope to the north contribute to the current shortage of water in the marsh. The marshland has long been considered to be "wasteland" and was consequently used as a dumping ground for building rubble and other rubbish such as tyres. The dumped material has, over time, in some places been completely covered over by the marsh vegetation, indicating a long history of dumping in the marsh. The marshland appears to be continuous with similar habitat to the east on the adjacent property.

Coastal thicket

9. This patch of thicket partly flanks the marshland along its southern edge and extends between it and the tarred road to Keurbooms. The coastal thicket contains many of the species found in the dune thickets closer to the seashore and resembles it more than it does the forest patches in the area. The thicket, although dense and almost impenetrable in some parts, is not in a pristine condition as it is invaded by alien *Pinus sp.*, *Acacia Cyclops*, *Acacia mearnsi*, *Acacia melanoxylon* and *Hakea sericea*, particularly in the western half. These invasive trees occur in scattered patches throughout the thicket area. Another invasive alien, a mature Brazilian pepper tree (*Schinus terebinthifolius*) was found at the edge of the Thicket adjacent to the wetland. In some parts the extensive shrub cover can be classed as pioneer thicket consisting mostly of *Searsia* species.

Afro-temperate forest

10. The Afro-temperate forest patch covers much of the rocky, steeper slopes along the northern boundary of the study area. In parts, the forest, is undisturbed and pristine, while in others there is some infestation of invasive alien trees. The lower parts are more infested, while the upper parts on rocky substrate are undisturbed. The lower forested area invaded by *Eucalyptus*, *Acacia*, *Quercus* and *Pinus* alien tree species. At the southern edges of the forest, where the slope levels out, there is a very old terrace or roadway, which is now invaded by forest precursors and which lies across the property on an east/west orientation. The terrace is approximately 20m wide. The forest habitat of the study area is severely threatened by the invasion of alien trees and has already been fragmented (northwards) by the two roads. Connectivity to the east, however, is still intact. The indigenous forest should not be disturbed by any form of development other than a hiking trail.

The transformed area

11. The relatively flat transformed area includes the areas formerly transformed for plantations, grazing, farming and dumping. It also incorporates the areas of black wattle, gum tree and pine tree infestation. In the open areas, the plant cover is dominated by a kikuyu (*Pennisetum clandestinum*) grass cover with pioneer fynbos shrubs and pioneer thicket saplings. Throughout the transformed area pioneer seedlings and saplings of indigenous thicket and forest trees were located, as well as occasional mature shrubs (mostly *Searisia*). As with the marshland, parts of the transformed area have also been used for the dumping of building waste and rubble for some time.
12. Subsequent to the abovementioned preliminary vegetation sensitivity assessment, a more detailed follow-up investigation of the sensitivity of the north-western corner (Site 1) and north-eastern corner (Site 2) of the proposed development area, above the Old Road, in August 2013 was conducted at the request of the applicant. This supplementary vegetation sensitivity assessment, which also included the use of an offset area as a nature reserve, found and concluded that:

Site 1: north-western corner of the property

Vegetation description

13. The vegetation of the site consists of an isolated, narrow remnant of the former indigenous forest, invasive alien tree stands and open transformed areas. The forest remnant consists of dry scrub forest. The forest area occurs as a dense, impenetrable thicket, but it is infested with invasive alien trees such as black wattle (*Acacia mearnsii*) and gum trees (*Eucalyptus camaldulensis*). The forest area represents a small, unconnected remnant, isolated by roads and habitat transformation. Approximately half of the area has been transformed, presumably through forest clearing in the past. The vegetation in these open areas is grassy. Other than a couple of very large gum trees, the alien tree infestations of the site consist largely of black wattle (*A mearnsii*) and gum tree (*E camaldulensis*).

Vegetation sensitivity

14. Approximately half of the site has been transformed through clearing. The balance of the site is composed of approximately 60% alien tree cover and 40% indigenous tree and shrub cover. It is thus a very small proportion of the study area that actually consists of intact indigenous forest and this forest area is also invaded by alien trees. The site is isolated by roads and transformed developed areas and it is not connected by means of any significant or functional corridor and only a small part consists of relatively intact forest vegetation. Given its location and its alien tree invasive status, the site is unlikely to persist for much longer as true indigenous forest area. It is concluded that the site has a relatively low importance in terms of long-term indigenous forest conservation. Any indigenous forest trees can be considered to be valuable as habitat for local fauna and it is therefore recommended that as many of the indigenous trees as possible be retained in the development layout of Site 1. The proposed development layout will enable this approach.

Site 2: north-eastern corner of the property

Vegetation description

15. As described in the 2010 sensitivity report, Site 2 lies within an Afro Temperate Forest area which has been invaded by alien trees, most importantly, black wattle (*A mearnsii*). Within the forest area there are areas of dense *A mearnsii* and *Eucalyptus* infestations. The infestations may have been on former clearings in the forest as they consist almost exclusively of black wattles. During the detailed field survey of Site 2 in August 2013, it was found that the dense patches of invasive alien trees in this forest area were extensive, but due to the density of the vegetation. It was not a simple matter to assess the degree of alien tree infestation within the forest area. It was then recommended that the developer contract somebody to completely remove all of the alien trees from the Site 2 area in order to be able to more accurately assess the degree of infestation. This was necessary because the developer specifically wishes to include a number of sensitively located residential units within the forest area, in the overall layout plan.

16. A contractor was put to work during September, October and November 2010 and most of the alien trees were removed from the area. The indigenous forest patches were left undisturbed. With the removal of the dense alien tree thickets, it was possible to re-assess Site 2 and the results clearly show it will be possible to locate residential units with the areas formerly covered by alien plants without fragmenting or disturbing any of the remaining forest. Much of the proposed site for residential units proved to be south of the true forest and actually within stands of gum trees. The infestation within the forest area was the dense black wattle.

Vegetation sensitivity

17. In the 2010 Vegetation Sensitivity Assessment report, the site was classed as an area of indigenous forest and as highly sensitive. Although this area of the forest is fragmented by the tar to the north of it, it is connected by way of an intact forest corridor to extensive areas of intact forest to the east. This classification of high sensitivity was originally made despite the infestation of invasive alien trees, because the intact areas of indigenous forest, and its connectivity to a greater area of undisturbed forest, represent a conservation worthy ecological resource. With the clearing away of the dense alien tree infestations on Site 2 in this forest area, it became evident that the sensitive positioning of a number of residential units within the forest area will be possible without any additional fragmentation or disturbance of the forest habitat. The proposed positioning of the residential units on Site 2 were physically marked on site by the surveyor and the field inspection ensured that no indigenous forest would be negatively impacted by this layout proposal.
18. It was concluded that:
- 18.1 Both Sites 1 and 2 lie within a CBA. The vegetation sensitivity assessments of 2010 and 2014 showed that very little vegetation of the study site actually consists of intact natural vegetation. The final layout for the proposed development was informed by the detailed on-site sensitivity evaluation and all of the conservation-worthy areas have been retained unchanged. Even these conservation-worthy areas were under the severe threat of complete transformation by alien vegetation invasion and that their retention and rehabilitation, as part of the development plan, represents the best possible option in terms of local natural habitat preservation.
 - 18.2 The proposal to establish a useful nature reserve, between the main development area and the sea, represents a significant ecological offset and should be seriously considered as a once-off opportunity to not only acquire the land for nature conservation but also to get it cleared of alien plant infestations as well.
 - 18.3 The nature reserve area will have to be cleared of all alien vegetation plants and dedicated long-term follow-up clearing will be required. This will be the only requirement for the successful rehabilitation of the area. With the variable habitats of thicket, wetland fynbos, dune fynbos and seashore vegetation, the nature reserve will provide habitat for

a great variety of fauna, many of which are endemic to the Western Cape and some of which are Red Data listed species. The proposed area can be transformed into a valuable nature reserve, which will be valuable for the conservation of biodiversity in the area and also as a site in which to develop the public-nature interface.

19. In light of the abovementioned preliminary vegetation sensitivity assessment in November 2010 and the more detailed vegetation sensitivity assessment in January 2014, the Department granted an Original EA and exemption on 18 December 2014 to authorise Nature's Path Life Style Village (Pty) Ltd for the transformation of a portion of Portion 192 and Portion 10 of the Farm Matjiesfontein No. 304, Knysna for the establishment of a development consisting of areas for residential, commercial, recreational and open space use. The remainder of Portion 10 south of Divisional Main Road No. 394 (MR394) will be set aside as a nature reserve and managed as an open space with a conservation use. The original EA also authorised the infrastructure associated with the development. However, based on the findings of the vegetation sensitivity assessment of November 2010, development was refused on the relatively narrow belt along the northern boundary, fully spanning the study area from west to east. That is, the original EA refused authorisation on the Afromontane forest for the following:
 - 19.1 Six (6) residential units that would be included in the north-eastern corner of the property to be sensitively placed.
 - 19.2 Twelve (12) units that would be included in the north-western corner of the property.
20. The holder of the original EA was informed of their internal right to appeal to the Appeal authority in terms of section 43(2) of the NEMA if aggrieved by the decision but, as per their right to submit or not to submit an appeal, the holder of the Original EA elected not to appeal against the decision.
21. Upon instructions of the holder of the Original EA, Jan Vlok of Regalis Environmental Services (RES) investigated the site on 29 July 2015 and wrote a letter summarising his Environmental Review Report findings on 31 July 2015. In a subsequent letter dated 30 March 2016, Vlok dealt with questions about the layout on 'Site 1' and 'Site 2' following the Original EA issued by competent authority.
22. After Regalis Environmental Services' visit to the property and specifically Site 1 and Site 2 in 2015 the letter of 31 July 2015 the specialist laid out reasons as to why he did not agree with the classification of the vegetation found on the steep slopes on the northern boundary of the property as Afro-temperate forest. The specialist had regard to the species composition of the vegetation and considered its history and ecology in coming to that informed conclusion. It was noted in particular that the site has been protected from fire for a long period and whereas it would very probably have been fynbos in the past, it has become wooded due to exclusion of fire. He supports his views by referring to a detailed fine-scale mapping reference site (Vlok *et al.* 2008) and presents a strong argument that the so-called forest vegetation on Site 1 and Site 2 is at the interface between Knysna Enon Fynbos and Keurbooms Thicket, and that the vegetation is not climax Afro-temperate Forest.

23. Before the issuing of the Amended EA, Dr McDonald of Bergwind Botanical Surveys and Tours CC, was appointed to review the abovementioned botanical reports of Conservation Management Services and Regalis Environmental Services on the proposed site, principally to consider and evaluate the areas assigned as Site 1 and Site 2 as defined by Conservation Management Services and Regalis Environmental Services. Bergwind Botanical Surveys and Tours CC was also appointed to consider the comments and opinions of the commenting authorities i.e. CapeNature and the Department of Agriculture, Forestry and Fisheries ("DAFF") in the context of the property but also within the broader context of development in the Keurboomstrand area of Bitou Municipality. The botanical review specialist adopted the following approach: First, a site visit was conducted on 8 July 2016 to inform his own, independent opinion about the type and condition of the vegetation found at Site 1 and Site 2. Secondly, after the site visit the reports by Conservation Management Services (2010, 2014), the review reports by Regalis Environmental Services (2015, 2016) and the letters issued by CapeNature and the DAFF were read and their contents noted. Attention was not only paid to the plant species that are present but also to those that would indicate forest but that are absent. Dr McDonald found all the tree and shrub species listed by Coetzee (2010, 2014) and mentioned by Vlok (2015). However, he did not find species such as *Podocarpus fatcatus* (Outeniqua yellowwood), *Podocarpus tatifotius* (real yellowwood), *Curtisia dentata* (assegai tree), *Ocotea buttata* (stinkwood) in the overstorey and species such as *Buchettia bubatina* (wild pomegranate), *Trichostadus crinitus* (underbush), *Diospyros whyteana* (bladdernut) in the understorey, that one would expect to find in Afro-temperate Forest in the southern Cape. No *Sideroxyton inerme* (white milkwood) was found which immediately indicates that this is not Western Cape Milkwood Forest as suggested by CapeNature in their correspondence.
24. It was also found *inter alia* that the vegetation found on the steep slopes along the northern part of the property and in particular at Site 1 and Site 2 is not Afro-temperate Forest. Therefore, the botanical review specialist concurred strongly with Conservation Management Services' 2014 reports and the review reports by Regalis Environmental Services dated 2015 and 2016 concerning the type and sensitivity of the vegetation at Site 1 and Site 2 that the vegetation is not true forest and is not sensitive. This opinion was also confirmed by Andrew West Environmental Consultancy in the Environmental Review Report which also concluded that the vegetation at Site 1 and Site 2 is not true forest and is not sensitive.
25. It is concurred with the Department as stated in the responding statement that:
- 25.1 The aforementioned Sites 1 and 2 form part of an area which has been identified as a CBA and Ecological Support Area in the Western Cape Biodiversity Spatial Plan 2017 (as well as the preceding plan in 2010).
- 25.2 The recent tragedy experienced in the Garden Route (Eden District) as a result of uncontrolled veld fires necessitates that the risk of potential fires on the site and its environs should be taken very seriously.

- 25.3 The relevant sites (Site 1 and Site 2) are not considered to contain Afro-temperate Forest as initially reported by Coastal Management Services; but still consist of the indigenous vegetation with a level of alien infestation.
- 25.4 Vlok confirms that true continuous thicket/forest vegetation occurs to the east of the affected properties.

Visual Impacts

26. Megan Anderson Landscape Architects was appointed to undertake a Visual Impact Assessment to inform the BAR. The Megan Anderson report dated January 2014 found *inter alia* the following:
- 26.1 The site falls on the dune slack valley and adjacent south facing lower foothills of an area described as a partly transformed coastal corridor with moderate to high scenic resources.
- 26.2 The view catchment is defined by the ridges surrounding the lower catchment off the Keurbooms and Bitou River valleys, between 6 km and 9km away with the zone of visual influence being restricted to between 500m to 1km, and can be described as local.
- 26.3 Receptors are highly visually sensitive and include users of the Keurboomstrand access road (MR394) and old N2 Road (DR1888) used by residents, holidaymakers and tourists, neighbouring residents and patrons of 'The Dunes' resort and camping site.
- 26.4 The Keurboomstrand Road (MR394) and old N2 (DR1888) are important view corridors.
- 26.5 The visual sensitivity of the site and the visual absorption capacity thereof is rated as moderate. Likewise, the visual intrusion of the proposed development will be moderate.
- 26.6 Visual impacts include change from unbuilt, visibility to high sensitivity receptors and additional lighting at night.
27. The visual impacts of the preferred proposal were rated "medium" significance before mitigation and "low-medium" significance after the mitigation measures which include landscaping, fencing and recessive architectural style, material and colour are implemented.
28. The Megan Anderson report dated January 2014 concluded that the preferred proposal which includes development in the north-west and north-east of the site above the Old Road to Keurboomstrand must be developed on condition that the following recommendations *inter alia* intended to mitigate the potential visual impacts are implemented:
- 28.1 The implementation of the preferred proposal with corridors of open space and fewer and closely clustered units.
- 28.2 Indigenous trees and large shrubs are planted in the gardens, along roads and in public open space corridors to screen and soften the built environment, with open lawn areas kept to a minimum.
- 28.3 The units in the north-eastern corner of the site are stepped up or down the slope to prevent high, steep cut and fill slopes and resulting visual scarring.
- 28.4 The western boundary /garage walls are softened with an indigenous hedge or creeper.

29. During the Amendment Application process, a review of the Megan Anderson visual impact assessment report was conducted by Alan Clapwijk of Clapwijk and Associates who found *inter alia* the following:

The north-eastern development of 6 units

30. The visual implications of the double storey development indicate that the group will be visually prominent in the context of the position on the slope and the scale of the existing homestead and cottage. The cottage is the most prominent building at present and is situated on the 18m contour. Upslope the gradient is approximately 1:5 and below it is approximately 1:10.
31. There are 6 units in two rows of 3 located between contour 18 and 27 on a slope that varies from approximately 1:4 in the north-eastern corner to 1:5 in the south-western corner.
32. The slope on this prominent landform is relatively steep although confirmed to be not as steep as the limit for development of 1:4.
33. This is particularly important as the geology of the site consists mainly of compacted sediment from the Keurboomstrand River estuary and aeolian (wind deposited) sands of the coastal dunes. In addition, there would have to be cut to fill to provide the platform for the houses which will require retaining walls.
34. The visual implication of this housing group, as planned, is that the top terrace will be approximately 5m higher than the existing cottage terrace at the homestead.
35. The elevation and the earthworks will make the units visually prominent in that context and setting, especially during the construction phase of the activities.
36. The building platform can be engineered to fit the site and the house height can have a low pitched roof, possibly concrete slab planted with vegetation and a colour that blends in with the vegetation on the rising landform as backdrop. If these design aspects are implemented the recommendation is that the 6 units be built. Alternatively, the units could be single storey with a similar profile.
37. These 6 units will be visually intrusive, meaning out of place visually in the setting and context of the proposed development.
38. The visual impact of the group units is negative and of medium significance without mitigation measures and low with mitigation measures implemented.
39. The cumulative impacts of permitting development high up the buildable slope may set a precedent along the slopes of the consolidated dunes in what is essentially a visually sensitive area in terms of the coastal landform. However, the upper limit of future development will be constrained by a slope of 1:4 and steeper. The visual impact could have medium significance in future.

The north-western development of 12 units

40. These units are on a relatively level to gently southward sloping ground along the northern property boundary.

41. The visual intrusion of these units will be reduced by them being lower in the landscape than the homestead to the east and along the Old Road.
42. The present vegetation that also comprises of predominantly alien invader species will be removed. The units will however be screened in views from the Keurboomstrand Road to the south.
43. These units sit comfortably in the area and will form a partly solid block of structures along the road. This group is visually connected to those units to the south across the road.
44. There is no visual intrusion in views toward the site from the Keurboomstrand Road as the existing trees and proposed housing units and garages will screen this group of units. The view onto these units from the west looking east will be from the Old Road N2 but obscured by existing vegetation.
45. There is no visual or landform slope reasons to exclude this group from the development.
46. The visual impact is negative and of low significance.
47. It is recommended that the proposed 12 houses be approved on condition that mitigation measures are implemented.
48. The Keurbooms Environs Local Area Spatial Plan adopted by the Bitou Municipality as part of their spatial development framework allows for development on slopes with a gradient lower than 1:4.
49. The applicant presented a slope analysis confirming that there will be no development on any slope with a gradient higher than 1:4.

Transfer of ownership of the proposed nature reserve

50. Section 24 of the NEMA states that: "*[i]n order to give effect to the general objectives of integrated environmental management laid down in this Chapter, the potential consequences for or impacts on the environment of listed activities or specified activities must be considered, investigated, assessed and reported on to the competent authority or the Minister responsible for mineral resources, as the case may be, except in respect of those activities that may commence without having to obtain an environmental authorisation in terms of this Act.*"
51. Section 24E(a) of the NEMA states that "*[e]very environmental authorisation must as a minimum ensure that- adequate provision is made for the ongoing management and monitoring of the impacts of the activity on the environment throughout the life cycle of the activity.*"
52. In the SLC Property Group (Pty) Ltd and Another and Minister of Environmental Affairs & Economic Development (Western Cape) and Another in 2008, it was determined that "*It is a trite principle of our law that the legislature and the executive ... in every sphere are constrained by the principle that they may exercise no power and perform no function beyond that conferred upon them by law.*"
53. In the Fuel Retailers Association of Southern Africa v Director-General Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province and Others the Constitutional Court had occasion to consider the provisions of section 24 of the Constitution of the Republic of South Africa, 1996 along with the provisions of the NEMA and of the Environment Conservation Act, 1989 (Act No. 73 of 1989) ("ECA") and stated that:

- 53.1 The decision to grant or refuse authorisation in terms of section 22(1) of ECA must be made in the light of the provisions of the NEMA.
- 53.2 One of the declared purposes of the NEMA is to establish principles that will guide organs of state in making decisions that may affect the environment. One of these principles requires environmental authorities to consider the social, economic and environmental impact of a proposed activity including its disadvantages and benefits.
- 53.3 The need for development must now be determined by its impact on the environment, sustainable development and social and economic interests. The duty of environmental authorities is to integrate these the factors into decision-making and make decisions that are informed by these considerations. This process requires a decision-maker to consider the impact of the proposed development on the environment and socio-economic conditions.

54. It is concurred with the Department as detailed in the responding statement that:

- 54.1 The relevance of the appellant's arguments is unclear as the transfer of the ownership of the land has not been set as a condition, but rather, the registration of a restrictive title deed condition in conjunction with a "non-user conservation servitude". The reasoning behind the statement that this is "*ultra vires*" is quite unclear. It is important to understand the relationship between the proposed development and the establishment of the nature reserve. No new information to substantiate why the portion of land should be subdivided from the larger development, and if it is subdivided, how it will be managed exclusively for a nature reserve.
- 54.2 It should be noted that the Review Report by Andrew West has supported the option to maintain one land unit. The conditions are in line with what has been applied for.
- 54.3 It is understood that the Biodiversity Agreement (Stewardship Agreement) which CapeNature is prepared to enter at this point, will be limited to a certain period and such agreement between the current land-owner and CapeNature may be cancelled at any time. The limitation of such an agreement and the extent thereof does not provide a suitable mechanism to ensure the implementation of the proposed nature reserve in perpetuity as alleged in the appeal.
- 54.4 The conditions that have been set are regarded to be appropriate to the proposal of the holder.
- 54.5 The Department is appreciative of the holder's commitment to set aside approximately 12 hectares of land for a conservation use. It is however important to note that the portion of land south of the MR394, which is proposed as a Nature Reserve, was already identified as a "*Conservation Management Area*" in the Keurbooms Local Area Spatial Plan prior to the application being received by the applicant. Therefore, any development on that portion of land would unlikely have been supported by other organs of state. The portion of land under the 4.5 metre topographical contour includes a portion of the Tshokwane wetland, a further factor which would likely have resulted in the exclusion of it from

- development. In light of the above framework, and the documents presented in the respective applications, it is reasonable to reach a conclusion that the most appropriate land use for the portion of land would have been for a conservation use or open space.
- 54.6 The triple bottom line has been considered and the development proposal which has been approved is far more sustainable than what is proposed in the appellant's appeal statements.
- 54.7 This Department remains of the opinion that the decision has been considered carefully and due consideration has been given to the principles of the NEMA and due process has been followed to address the requirements of the PAJA to achieve a decision that balances the environmental aspects, interests of the public and the interest of the developer.
55. In light of the above, the decision-maker therefore derived his powers from the relevant provisions of the applicable legislation. It is therefore not considered to be beyond the scope of the EA and also not considered ultra vires to impose restrictions in relation to the transfer of ownership of the proposed "nature reserve".

Socio-economic impacts

56. The 98 units authorised in the Amended EA are considered to result in development that will be socially, environmentally and economically sustainable. The Economic Impact Assessment conducted by the Bureau for Economic Research, in February 2016, to inform the amendment application concluded inter alia that:
- 56.1 The proposed development will result in the output to the value of R 574.63 million in the Western Cape economy.
- 56.2 Due to the construction, business services, government and finance and insurance sectors linkages to the rest of South Africa, the nationwide impact will amount to additional output to the value of more than R 590.28 million.
- 56.3 The proposed development will result in a R 233.45 million increase in the Western Cape's Gross Domestic Product and R 240.83 million increase in the South African economy.
- 56.4 Labour remuneration is expected to increase by R 91.71 million in the Western Cape and R 94.54 million in South Africa for the period under review.
- 56.5 There are significant employment gains to be achieved from the proposed development. Approximately 1055 jobs will be created or sustained in the Western Cape for the duration of the project. The nationwide employment impact will be 1085 additional or sustained jobs over the 18 months' construction phase of the project. Additionally, the unskilled labour force will benefit by far the most from this project.
- 56.6 The socio-economic benefits described in the "High Level Economic Impact Assessment" report by the Bureau for Economic Research can be enhanced with the authorisation of all the 12 units in the north-western corner of the site above the Old Road to Keurboomstrand.

56.7 No new activities are triggered by the proposed amendments in terms of the 2014 EIA Regulations' Listing Notices (Government Notices No. R. 983, R. 984 and R. 985 of 4 December 2014 as amended by Government Notices No. R. 324, R. 325 and R. 327 in Government Gazette No. 40772 of 7 April 2017 respectively) promulgated in terms of the NEMA.

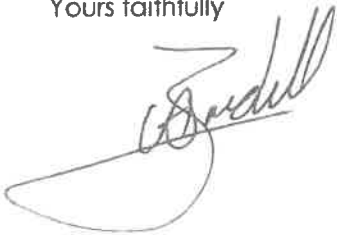
CONCLUSION:

In view of the above, the NEMA principles, compliance with the conditions stipulated in this Amended Appeal EA and compliance with the conditions of the EMPr, the proposed activities will not conflict with the general objectives of integrated environmental management stipulated in Chapter 5 of the NEMA and any potentially detrimental environmental impacts resulting from the activities can be mitigated to acceptable levels.

DISCLAIMER:

The Western Cape Government, the Local Authority, committees or any other public authority or organisation appointed in terms of the conditions of this EA 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.

Yours faithfully



**ANTON BREDELL
PROVINCIAL MINISTER OF LOCAL GOVERNMENT,
ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING**

DATE: 12/10/2018

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