



REFERENCE: 16/3/3/5/D4/17/0000/23
NEAS REF.: WCP/EIA/AMEND/0000707/2023
DATE OF ISSUE: 18 AUGUST 2023

ADDENDUM TO ENVIRONMENTAL AUTHORISATION

APPLICATION IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998) AND PART 2 AND 4 OF CHAPTER 5 OF THE ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, 2014 FOR THE AMENDMENT OF THE APPEAL ENVIRONMENTAL AUTHORISATION ISSUED ON 27 SEPTEMBER 2012 (REF M3/6/4 291/10) FOR THE CHANGE OF LAND USE TO ESTABLISH A RESIDENTIAL DEVELOPMENT ON ERF 4015, KNYSNA

With reference to your application for the abovementioned, find below the decision with respect to the application (submitted 30 January 2023) for the amendment to the Environmental Authorisation issued on 27 September 2012 (hereinafter referred to as an "Environmental Authorisation").

A. DECISION

By virtue of the powers conferred on it by the National Environmental Management Act, 1998 (Act No. 107 of 1998, as amended) and the Environmental Impact Assessment Regulations, 2014, ("EIA Regulations") the competent authority herewith—

- **grants**, the amendment of the Environmental Authorisation issued on 27 September 2012.
- **refuses** the exclusion / removal of conditions 2, 3, 4, 5, 7, 8, 9, 14, 22, 23, 24 and 25 from the Environmental Authorisation issued on 27 September 2012.

1. The Environmental Authorisation issued on 27 September 2012 is amended as set out below.

1.1 Section A: Description of the Activities is substituted with the following:

"The activities entail the establishment of a residential estate that will consist of 79 single residential erven on Erf 4015 with associated infrastructure services. The components of the development will entail the following:

- 29x single residential erven;
- 2x group housing (general residential zone I) erven, that will include a group housing site with 10x "tiny homes" and a group housing site consisting of 40x sectional title group housing units;
- 1x Guesthouse / lodge
- 1x Private Conservation area;
- Private open spaces with rights for a restaurant (coffee shop and deli);

- Communal agricultural fields, that include sheep, vegetables, vineyards, macadamia trees, olive trees, chickens, goats and lavender fields.
- Associated road network and municipal services"

The proposed development will be constructed in accordance with the layout plan compiled by GLH Architects (Drawing number SDP001 Rev M dated 03/20/19). See attached as Annexure A in this document.

1.2 Section G: Condition 21 is substituted with the following:

"21. The Holder must, for the period during which the environmental authorisation and EMPr (comprising of the CEMP and OEMP) remain valid, ensure the compliance with the conditions of the environmental authorisation and the EMPr, is audited.

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

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

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

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

During this phase of the development, the frequency of the auditing of compliance with the conditions of the environmental authorisation and of compliance with the EMPr may not exceed intervals of five (5) years.

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

“21.2. The Environmental Audit Report(s), must–

- 21.2.1 be prepared and submitted to the Competent Authority, by an independent person with the relevant environmental auditing expertise. Such person may not be the ECO or the EAP who managed the application or the EIA process;
- 21.2.2 provide verifiable findings, in a structured and systematic manner, on–
 - 21.2.2.1 the level of compliance with the conditions of the environmental authorisation and the EMPr and whether this is sufficient or not; and
 - 21.2.2.2 the ability of the measures contained in the EMPr to sufficiently provide for the avoidance, management and mitigation of environmental impacts associated with the undertaking of the activity.
- 21.2.3 identify and assess any new impacts and risks as a result of undertaking the activity;
- 21.2.4 evaluate the effectiveness of the EMPr;
- 21.2.5 identify shortcomings in the EMPr;
- 21.2.6 identify the need for any changes to the avoidance, management and mitigation measures provided for in the EMPr;
- 21.2.7 indicate the date on which the construction work was commenced with and completed or in the case where the development is incomplete, the progress of the development and rehabilitation;
- 21.2.8 indicate the date on which the maintenance/ rehabilitation was commenced with and the progress of the rehabilitation;
- 21.2.9 include a photographic record of the site(s) applicable to the audit; and
- 21.2.10 be informed by the ECO reports.

Note: The Holder must, within 7 calendar days of the submission of the audit report to the Competent Authority, notify all potential and registered I&APs of the submission and make the report available to anyone on request and on a publicly accessible website (if applicable). The EMPr comprises of the CEMP and OEMP”

21.3 Section G: Condition 36 is substituted with the following:

“36. This Environmental Authorisation is granted for the period from date of issue until **30 September 2033** (validity period), during which period the Holder must ensure that the—

- (a) physical implementation of all the authorised listed activities is started with and concluded at the site;
- (b) construction monitoring and reporting requirements are undertaken at the site and submitted to the Competent Authority in time to allow said authority to process such documents timeously;

(c) post construction rehabilitation and monitoring requirements is undertaken and completed at the site; and

(d) environmental auditing requirements are complied with; and that such auditing is finalised in time to allow the competent authority to be able to process the environmental audits timeously within the specified validity period.

(e) operational aspects, rehabilitation and monitoring requirements as well as the final environmental auditing and reporting must be finalised."

21.4 All other conditions contained in the Environmental Authorisation issued on 27 September 2012 (as amended) still remain unchanged and in force.

B. CONDITIONS

1. The applicant must, in writing, within **14 (fourteen)** calendar days from the date of the Department's decision –
 - 1.1 notify all registered interested and affected parties and those parties registered in the previous EIA process of–
 - 1.1.1 the outcome of the application;
 - 1.1.2 the reasons for the decision;
 - 1.1.3 the date of the decision; and
 - 1.1.4 the date of issue of the decision;
 - 1.2 draw the attention of all registered interested and affected parties registered in the previous EIA process to the fact that an appeal may be lodged against the decision in terms of the National Appeals Regulations, 2014 (as amended) in section D below;
 - 1.3 draw the attention of all registered interested and affected parties registered in the previous EIA process to the manner in which they may access the decision.
2. The holder of the environmental authorisation must within thirty (30) calendar days of the issue of this amendment decision, provide the competent authority with written proof of compliance with condition 1 above.
3. The amended CEMPr and OEMPr submitted with the Final Impact Report must be amended to incorporate the changes made in this Addendum to the Environmental Authorisation. The amended CEMPr and OEMPr must be submitted to this Department for approval prior to the commencement of the construction of the new phases.

C. APPEALS

1. An appellant (if the holder of the decision) must, within 20 (twenty) calendar days from the date the notification of the decision was sent to the holder by the Competent Authority–
 - 1.1. Submit an appeal in accordance with Regulation 4 of the National Appeal Regulations 2014 (as amended) to the Appeal Administrator; and

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

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

By facsimile: (021) 483 4174; or

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

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

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

D. DISCLAIMER

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

Your interest in the future of our environment is appreciated.

Yours faithfully

ZAAHIR TOEFY
DIRECTOR: DEVELOPMENT MANAGEMENT
DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING

DATE OF DECISION: 18 AUGUST 2023

FOR OFFICIAL USE ONLY:

APPEAL ENVIRONMENTAL AUTHORISATION

REFERENCE NUMBER: M3/6/4 291/10)
DATE OF ISSUE: 25 SEPTEMBER 2012

EA ADDENDUM #1 REFERENCE NUMBER: 14/3/1/1/D4/17/0155/16
DATE OF ISSUE: 1 JULY 2016

EA ADDENDUM #2 REFERENCE NUMBER: 16/3/3/5/D4/17/0000/23
NEAS REF.: WCP/EIA/AMEND/0000707/2023
DATE OF ISSUE: THIS DECISION
CASE OFFICER: MS. JESSICA CHRISTIE | Jessica.Christie@westerncape.gov.za

ANNEXURE B: REASONS FOR THE DECISION

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

- a) The information contained in the Application Form received on 30 January 2023, the Final Impact Report (FIR) and supporting documents submitted on 3 May 2023;
- b) Relevant information contained in the Departmental information base, including the Guidelines on Public Participation and Need and Desirability;
- c) The objectives and requirements of relevant legislation, policies and guidelines, including section 2 of the National Environmental Management Act, 1998 (Act No. 107 of 1998);
- d) The comments received from Interested and Affected Parties (I&APs) and responses to these, included in the FIR received by this Department on 3 May 2023;
- e) The balancing of negative and positive impacts and proposed mitigation measures;
- f) All relevant information that was made available in the report to understand the environmental and spatial context.

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

1. Public Participation

A public participation process was undertaken according to a Public Participation Plan that was approved by this Department and the plan has satisfied the minimum requirements as prescribed in the EIA Regulation 2014 for public involvement.

The following Organs of State provided comment on the proposal during the Public Participation Process:

- *Knysna Municipality*
- *SANParks*
- *CapeNature*
- *Breede-Olifants Catchment Management Agency (BOCMA)*
- *Interested and Affected Parties ("I&APs"):*
 - *Western Head Conservancy – D. Edge*
 - *Neighbour – C. Isherwood*

2. Key Factors Affecting the Decision

- **Scope and Validity Period of authorisation**

The Appeal Environmental Authorisation defined operational aspects and condition 5 of the EA required an Operational Phase Management Plan to be compiled and submitted for approval.

The Appeal Environmental Authorisation's validity period was granted for a period of five (5) years, and after which it was extended for another 5-year period until 1 July 2021, during which period the construction activities were required to commence.

In accordance with the current regulatory framework, the Environmental Impact Assessment Regulations 2014, the content of an Environmental Authorisation and conditions subject to which the activity may be undertaken, must include a distinction between the portions of the environmental authorisation that deal with operational and non-operational aspects respectively and the respective periods for which the distinct portions of the environmental authorisation is granted, where the environmental authorisation contains operational and non-operational aspects.

To address the above, requirement, condition 36 was amended and an end date has been introduced. The amended condition requires that the non-operational and operational aspects of the Appeal Environmental Authorisation be concluded on said date, including the post-construction rehabilitation and monitoring and submission of the final environmental audit reports for the construction phase. Considering the proposed implementation programme, the monitoring and post-construction rehabilitation can be adequately incorporated in the construction phase.

Conditions addressing the requirements for the avoidance, management, mitigation, monitoring and reporting of the impacts of the activity on the environment throughout the life of the activity in addition to those contained in the EMPr were included in the Appeal Environmental Authorisation, and these are discussed below. Nonetheless, the conditions relating to operational aspects (i.e., Conditions 2, 5, 7, 8 and 14) can be dealt with during the validity period stipulated within the amended Condition 36.

- Changes to the Site Development Plan (SDP):

The drive towards densifying residential developments and providing a diversity (mixed housing) of residential units within the urban edge of Knysna is a key factor in authorising the amendment to the SDP. No disadvantages were identified during the assessment. Furthermore, the Knysna Municipality approved the new SDP which includes, 3 small holdings, 29 residential Zone 1 erven, 2 group housing nodes, 13 Open Space Zone II erven and the remainder of Erf 4015 as Open Space III.

- Refusal to exclude / remove conditions 2, 3, 4, 5, 7, 8, 9, 14, 22, 23, 24 and 25 from the Environmental Authorisation issued on 27 September 2012:

Although the applicant has applied to remove certain conditions from the Appeal Environmental Authorisation, it has not been adequately demonstrated that these conditions should be removed. As stated above, these may be conditions in addition to those requirements of the approved EMPr. Nonetheless, these conditions support the enabling framework for the avoidance, management, mitigation, monitoring and reporting and need not be removed from the Appeal Environmental Authorisation. It must be highlighted that certain conditions address both non-operational and

operational aspects. Furthermore, the environmental auditing requirements must determine compliance with the conditions of the Appeal Environmental Authorisation and the approved EMPr.

The applicant stated that the following conditions, namely 13, 15, 16, 17, 18 and 19, were already included in the EMPr; however, did not clearly motivate for the removal from the Appeal Environmental Authorisation. Even so, these conditions remain in the Appeal Environmental Authorisation and have not been specifically refused for the reasons stated above.

- Non-operational Conditions: 2, 3, 9, 13, 23, 24 and 25:

Although these conditions have been either included and approved in the Environmental Management Programme (EMPr), or physically implemented, they remain valid and applicable to the proposed development and by retaining these conditions in the Appeal Environmental Authorisation will not materially change the rights or responsibilities of the Holder.

- Operational Conditions: 2, 3, 4, 5, 7 and 14:

Can be dealt with during the validity period and by retaining these conditions in the Appeal Environmental Authorisation will not materially change the responsibilities of the Holder.

Condition 4: Although the Knysna Municipality is responsible to provide this engineering service, the condition remains valid and applicable to the proposed development and by retaining the condition will not materially change the rights or responsibilities of the Holder.

Condition 8: The Stewardship Agreement with CapeNature is not in place yet (formally approved) and no Conservation Management Plan is in place either. This condition remains valid and retaining the condition in the Environmental Authorisation will not materially change the rights and responsibilities of the holder.

- Procedural Arrangements: Condition 22

This condition has been completed; however, by not removing it from the Appeal Environmental Authorisation, will not materially change the rights and responsibilities of the holder.

- Amendment of Condition 21 of the Environmental Authorisation:

Condition 21 of the Environmental Authorisation required the Holder of the Environmental Authorisation to submit an Environmental Audit Report to the Department one (1) year after any construction had been commenced with and one year after any operation has been commenced with.

The changes to Condition 21 are regarded to comply with the environmental auditing requirements stipulated in the Environmental Impact Assessment Regulations, 2014 (as

amended) and the changes will adequately address the auditing frequency and reporting requirements for the estate development.

3. National Environmental Management Act Principles

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

- the effects of decisions on all aspects of the environment to be taken into account;
- sensitive, vulnerable, highly dynamic or stressed ecosystems to receive specific attention in the management and planning procedures;
- the prevention of the disturbance of ecosystems and loss of biological diversity, or, where this cannot be altogether avoided, that the disturbance or losses are minimised and remedied;
- the consideration, assessment and evaluation of the social, economic and environmental impacts of activities (disadvantages and benefits), and for decisions to be appropriate in the light of such consideration and assessment;
- the co-ordination and harmonisation of policies, legislation and actions relating to the environment;
- the resolving of actual or potential conflicts of interest between organs of state through conflict resolution procedures; and
- the selection of the best practicable environmental option.

4. Conclusion

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

- (a) The identification and assessment of impacts associated with the proposed changes to the Environmental Authorisation and EMPr are detailed in the Final Impact Report (FIR) and supporting documents submitted on 3 May 2023.
- (b) The procedure followed for the impact reporting is adequate for the decision-making process.

Due consideration is also given to the person's duty of care described in Section 28 of NEMA:

“Every person who causes, has caused or may cause significant pollution or degradation of the environment must take reasonable measures to prevent such pollution or degradation from occurring, continuing or recurring, or, in so far as such harm to the environment is authorised by law or cannot reasonably be avoided or stopped, to minimise and rectify such pollution or degradation of the environment”.

In view of the above, the NEMA principles, compliance with the conditions stipulated in the Environmental Authorisation (as amended), and compliance with an approved EMPr, the Competent Authority is satisfied that the proposed listed activities will not conflict with the

general objectives of integrated environmental management stipulated in Chapter 5 of the National Environmental Management Act, 1998 (Act No. 107 of 1998) and that any potentially detrimental environmental impacts resulting from the listed activities can be mitigated to acceptable levels.

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