

REFERENCE NUMBER: 16/3/3/5/A4/41/3009/22 (A)
NEAS REFERENCE NUMBER: WCP/EIA/AMEND/0000590/2022
ENQUIRIES: Ms. N. Wookey
DATE OF ISSUE: 07 April 2022

The Director
Communicare (Pty) Ltd.
P.O. Box 259
CAPE TOWN
8000

For Attention: Ms. C. Procter

Tel: (021) 421 6008

Email: Cprocter@communicare.org.za

Dear Madam

APPLICATION IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) AND PART 1 OF THE ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, 2014 (AS AMENDED) FOR THE AMENDMENT OF THE ENVIRONMENTAL AUTHORISATION ISSUED BY THIS DEPARTMENT ON 28 OCTOBER 2011 (REF. NO. E12/2/4/2-A1/297-3018/11) FOR THE PROPOSED MONT CLAIR MIXED USE DEVELOPMENT AND ASSOCIATED INFRASTRUCTURE ON THE REMAINING EXTENT OF ERF 2939, ERF 2941 AND ERF 3547 (SUBDIVIDED FROM ERF 776), MANDALAY, CAPE TOWN.

1. With reference to the above application, the Department hereby notifies you of its decision to **grant** an amendment of the Environmental Authorisation, attached herewith, together with the reasons for the decision.
2. In terms of Regulation 4 of the Environmental Impact Assessment Regulations, 2014 (as amended), you are instructed to ensure, within 14 days of the date of the decision on the application, that all registered interested and affected parties ("I&APs") are provided with access to the decision and reasons for the decision, and that all registered I&APs are notified of their right to appeal.
3. Your attention is drawn to Chapter 2 of the National Appeal Regulations, 2014 (as amended), which prescribes the appeal procedure to be followed. This procedure is summarised in the attached Environmental Authorisation.

Yours faithfully

MR. ZAAHIR TOEFY
DIRECTOR: DEVELOPMENT MANAGEMENT (REGION 1)

Copies to: (1) Ms. A. van Wyk (City of Cape Town: ERM)
(2) Mr. J. Neethling (Johan Neethling Environmental Services)

Email: Azanne.vanWyk@capetown.gov.za
Email: Info@jnes.co.za

AMENDED ENVIRONMENTAL AUTHORISATION

APPLICATION IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) AND PART 1 OF THE ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, 2014 (AS AMENDED) FOR THE AMENDMENT OF THE ENVIRONMENTAL AUTHORISATION ISSUED BY THIS DEPARTMENT ON 28 OCTOBER 2011 (REF. NO. E12/2/4/2-A1/297-3018/11) FOR THE PROPOSED MONT CLAIR MIXED USE DEVELOPMENT AND ASSOCIATED INFRASTRUCTURE ON THE REMAINING EXTENT OF ERF 2939, ERF 2941 AND ERF 3547 (SUBDIVIDED FROM ERF 776), MANDALAY, CAPE TOWN.

With reference to your application for the abovementioned, find below the amendment to the Environmental Authorisation with respect to this application.

DECISION

By virtue of the powers conferred on it by the National Environmental Management Act, 1998 (Act No. 107 of 1998) ("NEMA") and the Environmental Impact Assessment ("EIA") Regulations, 2014 (as amended), the Competent Authority herewith **grants** the amendment to the Environmental Authorisation ("EA") issued by this Department on 28 October 2011 (Ref. No. E12/2/4/2-A1/297-3018/11) (attached as Annexure A) in terms of Part 1 of the NEMA EIA Regulations, 2014 (as amended). The EA is amended as set out below:

A. DETAILS OF THE HOLDER OF THIS ENVIRONMENTAL AUTHORISATION

The Director
Communicare (Pty) Ltd.
% Ms. C. Procter
P.O. Box 259
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8000

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The abovementioned company is the holder of the amended EA and is hereinafter referred to as "the applicant".

B. LISTED ACTIVITIES AUTHORISED

The amendment does not constitute a listed activity on its own. However, the listed activities authorised in the original EA (Ref. No. E12/2/4/2-A1/297-3018/11) are similarly listed in terms of the NEMA EIA Regulations, 2014 (as amended) as follows:

Listed Activity	Activity / Project Description
<p>Listing Notice 1 of the NEMA EIA Regulations, 2014 (as amended):</p> <p>Activity Number: 12 Activity Description:</p> <p><i>The development of—</i></p> <p><i>(i) dams or weirs, where the dam or weir, including infrastructure and water surface area, exceeds 100 square metres; or</i></p> <p><i>(ii) infrastructure or structures with a physical footprint of 100 square metres or more;</i></p> <p><i>where such development occurs—</i></p> <p><i>(a) within a watercourse;</i></p> <p><i>(b) in front of a development setback; or</i></p> <p><i>(c) if no development setback exists, within 32 metres of a watercourse, measured from the edge of a watercourse; —</i></p> <p><i>excluding—</i></p> <p><i>(aa) the development of infrastructure or structures within existing ports or harbours that will not increase the development footprint of the port or harbour;</i></p> <p><i>(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;</i></p> <p><i>(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;</i></p> <p><i>(dd) where such development occurs within an urban area;</i></p> <p><i>(ee) where such development occurs within existing roads, road reserves or railway line reserves; or</i></p> <p><i>(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.</i></p>	<p>The proposed development entails the development of infrastructure with a physical footprint of 100m² or more within or within 32m of a watercourse.</p>

<p>Activity Number: 19 Activity Description:</p> <p><i>The infilling or depositing of any material of more than 10 cubic metres into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock of more than 10 cubic metres from a watercourse;</i></p> <p><i>but excluding where such infilling, depositing, dredging, excavation, removal or moving—</i></p> <p><i>(a) will occur behind a development setback;</i> <i>(b) is for maintenance purposes undertaken in accordance with a maintenance management plan;</i> <i>(c) falls within the ambit of activity 21 in this Notice, in which case that activity applies;</i> <i>(d) occurs within existing ports or harbours that will not increase the development footprint of the port or harbour; or</i> <i>(e) where such development is related to the development of a port or harbour, in which case activity 26 in Listing Notice 2 of 2014 applies.</i></p>	<p>The proposed development entails the infilling or depositing and excavation of more than 10m³ of soil or sand from a watercourse on the proposed development site.</p>
<p>Activity Number: 48 Activity Description:</p> <p><i>The expansion of—</i></p> <p><i>(i) infrastructure or structures where the physical footprint is expanded by 100 square metres or more; or</i> <i>(ii) dams or weirs, where the dam or weir, including infrastructure and water surface area, is expanded by 100 square metres or more;</i></p> <p><i>where such expansion occurs—</i></p> <p><i>(a) within a watercourse;</i> <i>(b) in front of a development setback; or</i> <i>(c) if no development setback exists, within 32 metres of a watercourse, measured from the edge of a watercourse;</i></p> <p><i>excluding—</i></p> <p><i>(aa) the expansion of infrastructure or structures within existing ports or harbours that will not increase the development footprint of the port or harbour;</i> <i>(bb) where such expansion activities are related to the development of a port or harbour, in which case activity 26 in Listing Notice 2 of 2014 applies;</i></p>	<p>The proposed development entails the expansion of infrastructure within or within 32m of a watercourse.</p>

<p>(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;</p> <p>(dd) where such expansion occurs within an urban area; or</p> <p>(ee) where such expansion occurs within existing roads, road reserves or railway line reserves.</p>	
<p>Listing Notice 2 of the NEMA EIA Regulations, 2014 (as amended):</p> <p>Activity Number: 15</p> <p>Activity Description:</p> <p><i>The clearance of an area of 20 hectares or more of indigenous vegetation, excluding where such clearance of indigenous vegetation is required for—</i></p> <p><i>(i) the undertaking of a linear activity; or</i></p> <p><i>(ii) maintenance purposes undertaken in accordance with a maintenance management plan.</i></p>	<p>The proposed development entails the clearance of indigenous vegetation (i.e. Cape Flats Dune Strandveld) in excess of 20 ha for the development of a mixed-use development approximately 23.54 ha in extent.</p>

The abovementioned is hereinafter referred to as "listed activities".

The description of the authorised alternative (as described in the EA issued by this Department on 28 October 2011 (Ref. No. E12/2/4/2-A1/297-3018/11)) reads as follows:

"The proposed development entails the construction of a mixed use development and associated infrastructure on Erf 776, Mandalay. The mixed development will consist of a single residential component, an apartment component, a commercial component, a Rural Zone component and associated infrastructure. Erf 776 will be subdivided as follows:

- *Approximately 413 single residential erven, with a total footprint of approximately 78 626m²;*
- *4 blocks of 3 storey apartments containing approximately 650 units with a total footprint of approximately 62 214m²;*
- *1 commercial zone Erf consisting of shops and or offices with a total footprint of approximately 8217m²;*
- *3 private Open Spaces with a total footprint of approximately 9 458m²;*
- *2 public Open Spaces with a total footprint of approximately 23 098m²;*
- *Internal roads with a total footprint of approximately 53 818m²; and*
- *Associated infrastructure.*

The total footprint of the proposed development is approximately 235 431m².

The proposed development will be accessed off Montclair Drive.

The proposed development will connect to the following municipal services:

- *Solid waste management;*
- *Storm water management;*
- *Treatment and disposal of sewage and effluent;*
- *Water supply; and*
- *Power supply."*

The portion of the authorised development applicable to this amended EA pertains to the Remaining Extent of Erf 2939, Erf 2941 and Erf 3547 (Subdivided from Erf 776), Mandalay as follows:

- Approximately 413 single residential erven, with a total footprint of approximately 78 626m²;
- 2 blocks of 3 storey apartments containing approximately 521 units with a total footprint of approximately 54 882m²;
- 1 commercial zone Erf consisting of shops and / or offices with a total footprint of approximately 8217m²;
- 3 private Open Spaces with a total footprint of approximately 9 458m²;
- 2 public Open Spaces with a total footprint of approximately 23 098m²;
- Internal roads with a total footprint of approximately 53 818m²; and
- Associated infrastructure

C. PROPERTY DESCRIPTION AND LOCATION

The listed activities will take place on the Remaining Extent of Erf 2939, Erf 2941 and Erf 3547 (Subdivided from Erf 776), Mandalay.

The 21-digit Surveyor General codes are:

RE/2939	C01600300000293900000
Erf 2941	C01600300000294100000
Erf 3547	C01600300000354700000

The central co-ordinates for the proposed development are as follows:

Point	Longitude	Latitude
Middle	34° 1'15.54"S	18°37'17.47"E

hereinafter referred to as "the site".

D. DETAILS OF THE ENVIRONMENTAL ASSESSMENT PRACTITIONER

Johan Neethling Environmental Services CC
 % Mr. J. Neethling
 P.O. Box 16594
VLAEBERG
 8018

Tel: (021) 461 4386
 Cell: 083 449 3920
 Email: info@jnes.co.za

E. CONDITIONS OF AUTHORISATION

1. The holder must in writing, within **fourteen (14)** calendar days of the date of this decision–
 - 1.1. Notify all registered Interested and Affected Parties (“I&APs”) of –
 - 1.1.1. the outcome of the application;
 - 1.1.2. the reasons for the decision as included in Section H;
 - 1.1.3. the date of the decision; and
 - 1.1.4. the date when the decision was issued.
 - 1.2. Draw the attention of all registered I&APs to the fact that an appeal may be lodged against the decision in terms of the National Appeal Regulations, 2014 (as amended) detailed in Section F below;
 - 1.3. Draw the attention of all registered I&APs to the manner in which they may access the decision; and
 - 1.4. Provide the registered I&APs with:
 - 1.4.1. The name of the holder (entity) of this amended Environmental Authorisation;
 - 1.4.2. The name of the responsible person for this amended Environmental Authorisation;
 - 1.4.3. The postal address of the holder;
 - 1.4.4. The telephonic and fax details of the holder;
 - 1.4.5. The e-mail address, if any, of the holder; and
 - 1.4.6. The contact details (postal and/or physical address, contact number, facsimile and e-mail address) of the decision-maker and all registered I&APs in the event that an appeal is lodged in terms of the National Appeal Regulations, 2014 (as amended).
2. The listed activities, including site preparation, must not commence within twenty (20) calendar days from the date the holder notifies the registered I&APs of this decision. In the event that an appeal is lodged with the Appeal Authority, the effect of this Environmental Authorisation is suspended until the appeal is decided i.e. the listed activities, including site preparation, must not commence until the appeal is decided.
3. A minimum of 7 (seven) calendar days' notice, in writing, must be given to the Competent Authority before commencement of the remainder of the development activities. The notice must:
 - 3.1. make clear reference to the site details and EIA Reference number given above; and
 - 3.2. include proof of compliance with the following conditions described herein:

Conditions 1 and 2.
4. The development activities associated with the remainder of the development on the Remaining Extent of Erf 2939, Erf 2941 and Erf 3547 (Subdivided Erf 776), Mandalay must be **concluded within 10 years** of the date of commencement of development activities.
5. The applicant must submit an application for an amendment in terms of Chapter 5 of the NEMA EIA Regulations, 2014 (as amended) of the amended environmental authorisation to the competent authority where any detail or scope with respect to the amended environmental authorisation must be amended, added, substituted, corrected, removed or updated.
6. The approved Environmental Management Programme (“EMPr”) (compiled by Braaf Environmental Practitioners and dated February 2011) must be implemented.
7. In terms of Regulation 34 of the NEMA EIA Regulations, 2014 (as amended), the holder must conduct environmental audits to determine compliance with the conditions of the environmental

authorisation and the EMPr and submit Environmental Audit Reports to the Competent Authority. The Environmental Audit Reports must be prepared by an independent person with expertise and must contain all the information required in Appendix 7 of the NEMA EIA Regulations, 2014 (as amended).

- 7.1. The holder must undertake an environmental audit within 6 months of the date of commencement of development activities on the Remaining Extent of Erf 2939, Erf 2941 and Erf 3547 (Subdivided from Erf 776), Mandalay. The Environmental Audit Report must be submitted within one (1) month after the completion of the environmental audit.
 - 7.2. An Environmental Audit Report must be submitted every three (3) years after the commencement of the remainder of the development until such time that the development activities have been concluded.
 - 7.3. A final Environmental Audit Report must be submitted to the Competent Authority within one (1) year of the completion of the development phase; and
 - 7.4. The holder must, within seven (7) days of the submission of an Environmental Audit Report to the Competent Authority, notify all potential and registered I&APs of the submission and make the Environmental Audit Report available to any person on request.
8. The conditions stipulated in the EA issued by the competent authority on 28 October 2011 (Ref. No. E12/2/4/2-A1/297-3018/11) (attached as Annexure A) remain unchanged and must be implemented.

F. APPEALS

Appeals must comply with the provisions contained in the National Appeal Regulations, 2014 (as amended).

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

By post: Attention: Marius Venter

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: Attention: Mr M. Venter (Tel: 021 483 2659)
Room 809
8th Floor Utilitas Building
1 Dorp Street
CAPE TOWN
8001

By e-mail: DEADP.Appeals@westerncape.gov.za

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

G. 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

MR. ZAAHIR TOEFY
DIRECTOR: DEVELOPMENT MANAGEMENT (REGION 1)

DATE OF DECISION: 07 APRIL 2022

Copies to: (1) Ms. A. van Wyk (City of Cape Town: ERM)
(2) Mr. J. Neethling (Johan Neethling Environmental Services)

Email: Azanne.vanWyk@capetown.gov.za
Email: info@ines.co.za

H. REASONS FOR THE DECISION

In reaching its decision, the Competent Authority took, inter alia, the following into consideration:

1. The information contained in the application for amendment dated 14 February 2022 and received by the competent authority on 15 February 2022, and the additional information dated and received by the competent authority of 02 March 2022;
2. The application for amendment.
 - 2.1. The application for amendment of the EA (Ref. No. E12/2/4/2-A1/297-3018/11) was received by this Department on 15 February 2022 for the split (i.e. transfer of rights and obligations) of the EA (Ref. No. E12/2/4/2-A1/297-3018/11) into three (3) components as follows:
 - 2.1.1. The remainder of the larger part of the Remaining Extent of Erf 2939, Erf 2941 and Erf 3547 (subdivided from Erf 776), Mandalay (as depicted in the layout plan dated 31 January 2012 (attached as Annexure B) and the rights and obligations of the EA (Ref. No. E12/2/4/2-A1/297-3018/11) will remain in the responsibility of the existing EA holder (i.e. Communicare (Pty) Ltd. (Ref. No. 16/3/3/5/A4/41/3009/22 (A)).
 - 2.1.2. The development of Erf 3573 (subdivided from Erf 776), Mandalay and rights and obligations of the EA (Ref. No. E12/2/4/2-A1/297-3018/11) have been transferred to a new holder (i.e. L and F Ventures Trading (Pty) Ltd.) since the sale of property has taken place and will be developed by the new landowner i.e. L & R Ventures Trading (Pty) Ltd (Ref. No. 16/3/3/5/A4/41/3009/22 (B)).
 - 2.1.3. The development of Erf 3300 (subdivided from Erf 776), Mandalay and the rights and obligations of the EA (Ref. No. E12/2/4/2-A1/297-3018/11) have been transferred to a new holder (i.e. Amani Ventures Trading (Pty) Ltd.) since the sale of property has taken place and will be developed by the new landowner i.e. Amani Ventures Trading (Pty) Ltd (Ref. No. 16/3/3/5/A4/41/3009/22 (C)).
 - 2.2. Since the proposed amendment is for the transfer of rights and obligations, will not result in a change to the scope of the EA (Ref. No. E12/2/4/2-A1/297-3018/11) and will not result in an increased level or change in the nature of impact, a Part 1 amendment process in terms of the NEMA EIA Regulations, 2014 (as amended) was followed.
3. The following listed activities authorised in the original EA (Ref. No. E12/2/4/2-A1/297-3018/11) have commenced and are similarly listed in terms of the NEMA EIA Regulations, 2014 (as amended):
 - 2.3. Activities 11, 18, and 39 of Government Notice No. R544 of the EIA Regulations, 2010; and
 - 2.4. Activity 15 of Government Notice No. R545 of the EIA Regulations, 2010.
3. The environment and the rights and interests of other parties are not likely to be adversely affected by the decision to amend the EA (Ref. No. E12/2/4/2-A1/297-3018/11).
4. The conditions contained in the EA issued by the competent authority on 28 October 2011 (Ref. No. E12/2/4/2-A1/297-3018/11) will remain unchanged and in force.

National Environmental Management Act Principles

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

- the effects of decisions on all aspects of the environment to be taken into account;

- the consideration, assessment and evaluation of the social, economic and environmental impacts of activities (disadvantages and benefits), and for decisions to be appropriate in the light of such consideration and assessment;
- the co-ordination and harmonisation of policies, legislation and actions relating to the environment;
- the resolving of actual or potential conflicts of interest between organs of state through conflict resolution procedures; and
- the selection of the best practicable environmental option.

Conclusion

In view of the above, the NEMA principles, compliance with the conditions stipulated in this Environmental Authorisation, and compliance with the 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.

You are reminded of your general duty of care towards the environment in terms of Section 28(1) of the NEMA which states: *“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.”*

-----END-----

ANNEXURE A:

Copy of the Environmental Authorisation issued by this Department on 28 October 2011 (Ref. No. E12/2/4/2-A1/297-3018/11).

ANNEXURE B:

Copy of the Layout Plan (dated 31 January 2012) indicating Erf 3300 (blue) and Erf 3753 (red).

