

**EIA REFERENCE NUMBER:** 16/3/3/1/D6/17/0020/22  
**NEAS REFERENCE:** WCP/EIA/0001142/2022  
**DATE OF ISSUE:** 24 March 2023

## ENVIRONMENTAL AUTHORISATION

### APPLICATION FOR ENVIRONMENTAL AUTHORISATION IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998) AND THE ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, 2014: THE PROPOSED DEVELOPMENT OF A PRIMARY DWELLING AND ASSOCIATED STRUCTURES AND INFRASTRUCTURE ON ERF 4716, GROOT BRAK RIVER

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

#### DECISION

By virtue of the powers conferred on it by the National Environmental Management Act, 1998 (Act No. 107 of 1998) ("NEMA") and the Environmental Impact Assessment ("EIA") Regulations, 2014, the Competent Authority herewith **grants Environmental Authorisation** to the applicant to undertake the listed activities specified in section B below with respect to **the Preferred Alternative**, described in the Final Basic Assessment Report ("FBAR"), dated 16 January 2023 as prepared and submitted by *HillLand Environmental*, the appointed environmental assessment practitioner ("EAP").

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

#### A. DETAILS OF THE APPLICANT FOR THIS ENVIRONMENTAL AUTHORISATION

THE DIRECTOR  
NEW BEGINNING 17 (PTY) LTD  
% Mr. W. Nel  
233 Blue Crane Drive  
West Lake Country & Safari Estate  
SKEERPOORT  
0232

Mobile: 083 287 1044  
E-mail: [nelw@pminc.co.za](mailto:nelw@pminc.co.za)

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

## B. LIST OF ACTIVITIES AUTHORISED

Listed Activities	Activity/Project Description
<b>Environmental Impact Assessment Regulations Listing Notice 1 of 2014, Government Notice No. 983 of 4 December 2014, as amended.</b>	
<p>Activity Number: 17 Activity Description:</p> <p>Development—</p> <ul style="list-style-type: none"> <li>(i) in the sea;</li> <li>(ii) in an estuary;</li> <li>(iii) within the littoral active zone;</li> <li>(iv) in front of a development setback; or</li> <li>(v) if no development setback exists, within a distance of 100 metres inland of the high-water mark of the sea or an estuary, whichever is the greater;</li> </ul> <p>in respect of—</p> <ul style="list-style-type: none"> <li>(a) fixed or floating jetties and slipways;</li> <li>(b) tidal pools;</li> <li>(c) embankments;</li> <li>(d) rock revetments or stabilising structures including stabilising walls; or</li> <li>(e) infrastructure or structures with a development footprint of 50 square metres or more —</li> </ul> <p>but excluding—</p> <ul style="list-style-type: none"> <li>(aa) the development of infrastructure and structures within existing ports or harbours that will not increase the development footprint of the port or harbour;</li> <li>(bb) 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;</li> <li>(cc) the development of temporary infrastructure or structures where such structures will be removed within 6 weeks of the commencement of development and where coral or indigenous vegetation will not be cleared; or</li> <li>(dd) where such development occurs within an urban area.</li> </ul>	<p>The development of a raised boardwalk and deck within 100 metres of the high water mark of the sea. The development footprint of the boardwalk and deck will be approximately 50m<sup>2</sup>.</p>
<b>Environmental Impact Assessment Regulations Listing Notice 3 of 2014, Government Notice No. 985 of 4 December 2014, as amended.</b>	
<p>Activity Number: 12 Activity Description:</p> <p>The clearance of an area of 300 square metres or more of indigenous vegetation except where such clearance of indigenous vegetation is required for maintenance purposes undertaken in accordance with a maintenance management plan</p> <p><b>i. Western Cape</b></p> <ul style="list-style-type: none"> <li>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;</li> <li>ii. Within critical biodiversity areas identified in bioregional plans;</li> </ul>	<p>The clearance of more than 300m<sup>2</sup> of Critically Endangered Groot Brak Dune Strandveld for the development of the primary dwelling and associated structures and infrastructure..</p>

<ul style="list-style-type: none"> <li>iii. <i>Within the littoral active zone or 100 metres inland from high water mark of the sea or an estuarine functional zone, whichever distance is the greater, excluding where such removal will occur behind the development setback line on even in urban areas;</i></li> <li>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></li> <li>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></li> </ul>	
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The abovementioned list is hereinafter referred to as **“the listed activity”**.

The Holder is herein authorised to undertake the following activities that includes the listed activities as it relates to the clearance of indigenous vegetation for the construction of the primary dwelling and associated structures and infrastructure. Also, the development of structures and infrastructure within 100 metres of the high-water mark of the sea.

The specific details of the proposed development on the property comprises of the following:

- Primary house, driveway, parking and garden south of the road – 2955.52m<sup>2</sup>;
- Outbuilding and driveway north of the road – 567.18m<sup>2</sup>;
- Raised boardwalk and deck – approximately 50m<sup>2</sup>;
- The total clearance of vegetation will be approximately 3760.3 m<sup>2</sup>. The remainder of the property will not be cleared of indigenous vegetation and will be managed for a conservation use.

The development must be implemented in accordance with the layout developed by Ryan Hamilton Architectural Design (dated January 2023) Drawing number MD08 (Annexure 2) subject to the specific development parameters.

### C. SITE DESCRIPTION AND LOCATION

The proposed development will take place on Erf 4716 which is situated west of Groot Brak Rivier central and adjacent to the coastline. Access to the property is from the MR6817 which bisects the property.

Coordinates of the site:

Position:	Latitude (South)	Longitude (East)
Middle Point	34° 3' 44.07"	22° 12' 46.01"

SG digit code of Erf 4716: C05100030000471600000

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

The above is hereinafter referred to as **“the site”**.

## D. DETAILS OF THE ENVIRONMENTAL ASSESSMENT PRACTITIONER (EAP)

HILLAND ENVIRONMENTAL

% Mrs Inge Delpont

P.O. Box 590

GEORGE

6530

Tel: 044 889 0229

E-mail: [info@hilland.co.za](mailto:info@hilland.co.za) | [environmental2@hilland.co.za](mailto:environmental2@hilland.co.za)

Website: [www.hilland.co.za](http://www.hilland.co.za)

## E. CONDITIONS OF AUTHORISATION

### **Scope and Validity Period of authorisation**

1. This Environmental Authorisation is granted for the period from date of issue until **31 March 2028** (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.
2. The construction phase of the Environmental Authorisation is subject to the following:
  - 2.1 The Holder must finalise the post construction rehabilitation and monitoring requirements within a period of 3-months from the date the development activity (construction phase) is concluded.
3. The Holder is authorised to undertake the listed activities specified in Section B above in accordance with the Preferred Alternative described in the FBAR dated 16 January 2023 on the site as described in Section C above.

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

The Holder is herein authorised to undertake the following activities that includes the listed activities as it relates to the clearance of indigenous vegetation for the construction of the primary dwelling and associated structures and infrastructure. Also, the development of structures and infrastructure within 100 metres of the high water mark of the sea.

The specific details of the proposed development on the property comprises of the following:

- Primary house, driveway, parking and garden south of the road – 2955.52m<sup>2</sup>;
- Outbuilding and driveway north of the road – 567.18m<sup>2</sup>;
- Raised boardwalk and deck – approximately 50m<sup>2</sup>;
- The total clearance of vegetation will be approximately 3760.3 m<sup>2</sup>. The remainder of the property will not be cleared of indigenous vegetation and will be managed for a conservation use.

The development must be implemented in accordance with the layout developed by Ryan Hamilton Architectural Design (dated January 2023) Drawing number MD08 (Annexure 2) subject to the specific development parameters.

4. This Environmental Authorisation may only be implemented in accordance with an approved Environmental Management Programme ("EMPr").
5. The Holder shall be responsible for ensuring compliance with the conditions by any person acting on his/her behalf, including an agent, sub-contractor, employee or any person rendering a service to the Holder.
6. Any changes to, or deviations from the scope of the alternative described in section B above must be accepted or approved, in writing, by the Competent Authority before such changes or deviations may be implemented. In assessing whether to grant such acceptance/approval or not, the Competent Authority may request information in order to evaluate the significance and impacts of such changes or deviations, and it may be necessary for the Holder to apply for further authorisation in terms of the applicable legislation.

### **Notification and administration of appeal**

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

- 7.4.5. e-mail address, if any, of the Holder,
- 7.4.6. contact details (postal and/or physical address, contact number, facsimile and e-mail address) of the decision-maker and all registered I&APs in the event that an appeal is lodged in terms of the 2014 National Appeals Regulations (as amended).

7.5. The listed activities, including site preparation, must not commence within 20 (twenty) calendar days from the date the applicant notified the registered I&APs of this decision.

7.6. In the event that an appeal is lodged with the Appeal Authority, the effect of this Environmental Authorisation is suspended until the appeal is decided i.e. the listed activities, including site preparation, must not commence until the appeal is decided.

### **Written notice to the Competent Authority**

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

8.1. The notice must make clear reference to the site details and EIA Reference number given above.

8.2. The notice must also include proof of compliance with the following conditions described herein: **Conditions no.: 7, 10 and 12.**

9. Seven calendar days' written notice must be given to the Competent Authority on completion of the construction activities.

### **Management of activity**

10. The draft or Environmental Management Programme ("EMPr") submitted as part of the application for Environmental Authorisation must be amended and submitted to this Department for approval prior to commencement of any activities on the site:

10.1. The EMPr must be amended to incorporate the following —

10.1.1. Incorporate all the conditions given in this Environmental Authorisation;

10.1.2. All monthly ECO reports to be submitted to the competent authority.

10.1.3. Include the auditing schedule as set out by this Environmental Authorisation.

10.1.4. A revised site development plan reflecting all specific development parameters.

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

### **Monitoring**

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

13. The ECO must—

- 13.1. be appointed prior to commencement of any works (i.e. removal and movement of soil);
  - 13.2. ensure compliance with the EMPr and the conditions contained herein;
  - 13.3. keep record of all activities on the site; problems identified; transgressions noted and a task schedule of tasks undertaken by the ECO;
  - 13.4. remain employed until all development activities are concluded, and the post construction rehabilitation and monitoring requirements are finalised; and
  - 13.5. the ECO must conduct site inspections at least every 2 (two) weeks and must submit ECO Monitoring Reports on a monthly basis to the competent authority.
14. A copy of the Environmental Authorisation, EMPr, any independent assessments of financial provision for rehabilitation and environmental liability, closure plans, audit reports and compliance monitoring reports must be kept at the site of the authorised activities and be made available to anyone on request, and where the Holder has website, such documents must be made available on such publicly accessible website.
  15. Access to the site referred to in Section C must be granted, and the environmental reports mentioned above must be produced, to any authorised official representing the Competent Authority who requests to see it for the purposes of assessing and/or monitoring compliance with the conditions contained herein.

### **Auditing**

16. The Holder must, for the period during which the environmental authorisation and EMPr remain valid ensure the compliance with the conditions of the environmental authorisation and the EMPr, is audited.
17. The frequency of auditing of compliance with the conditions of the environmental authorisation and of compliance with the EMPr, must adhere to the following programme:
  - 17.1. Auditing during the non-operational phase (construction activities):
    - 17.1.1. During the period which the development activities have been commenced with on the site, the Holder must ensure annual environmental audit(s) are undertaken and the Environmental Audit Report(s) submitted annually to the Competent Authority.
    - 17.1.2. A final Environmental Audit Report for the construction phase (non-operational component) must be submitted to the Competent Authority within **three (3) months** of completion of the construction phase.
18. The Environmental Audit Report(s), must–
  - 18.1. be prepared and submitted to the Competent Authority, by an independent person with the relevant environmental auditing expertise. Such person may not be the ECO or EAP who conducted the EIA process;
  - 18.2. provide verifiable findings, in a structured and systematic manner, on–

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

### **Specific Conditions**

20. The holder must adopt and implement the following specific development parameters:
- 20.1. The security fence on the southern portion of the property must be aligned to the 100 metres from the high-water mark of the sea as per the survey done by CDJ Land Surveyors (Ref Gf225-Sketch plan, dated 23 September 2022). A gate may be installed to gain access to the boardwalk and viewing deck.
  - 20.2. The remaining security fences on the portion of property located south of the road MR6817 must follow the alignment which is setback from the boundary line as depicted on the Site Development Plan. No fences may be erected on the eastern and western property boundaries.
  - 20.3. The security fence on the portion of the property located on the north of the road must follow the alignment as depicted on the Site Development Plan (See Annexure 2).
  - 20.4. All ecological corridors must be managed for a conservation use.
21. Should any heritage remains be exposed during excavations or any other actions on the site(s), these must immediately be reported to the Provincial Heritage Resources Authority of the Western Cape, Heritage Western Cape. Heritage remains uncovered or disturbed during earthworks must not be further disturbed until the necessary approval has been obtained from Heritage Western Cape. Heritage remains may only be disturbed by a suitably qualified heritage specialist working under a directive from the relevant Heritage Resources Authority.



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

## **F. GENERAL MATTERS**

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

### ***Amendment of Environmental Authorisation and EMPr***

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

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

#### **Note:**

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

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

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

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

4. The manner and frequency for updating the EMPr is as follows:

- (a) Any further amendments to the EMPr, other than those mentioned above, must be approved in writing by the relevant competent authority.
- (b) An application for amendment to the EMPr must be submitted to the Competent Authority if any amendments are to be made to the impact management outcomes of the EMPr. Such amendment(s) may only be implemented once the amended EMPr has been approved by the competent authority.

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

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

### **Compliance with Environmental Authorisation and EMPr**

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

The validity period and conditions of the environmental authorisation has been structured to promote the effective administration of the environmental authorisation and guidance has been provided to ensure the compliance thereof within the validity period, for example the following milestones should not be missed:

- Failure to submit the revised EMPr to the Competent Authority at least 90-days prior to the construction activities commencing on site, may result in the competent authority not being able to process / review the revised EMPr prior to the intended date of commencement.
- Failure to complete the post construction rehabilitation and monitoring requirements at least six months prior to expiry of the validity period of an environmental authorisation may result in the Holder not being able to comply with the environmental auditing requirements in time.
- Failure to complete the final auditing requirements at least three months prior to expiry of the validity period of the environmental authorisation may result in the Holder not being able to comply with all the environmental auditing and reporting requirements and may result in the competent authority not being able to process the audit timeously.
- Failure to lodge an application for amendment prior to the expiry of the validity period of the Environmental Authorisation will result in the lapsing of the Environmental Authorisation.

**Note:** It is advised that if any of the milestones as indicated above, might not be achieved, the Holder must consider extending the validity period through an amendment process.

8. This Environmental Authorisation is subject to compliance with all the peremptory conditions (**i.e., 7, 10 and 12**). Failure to comply with all the peremptory conditions prior to the physical implementation of the activities (including site preparation) will render the entire EA null and void. Such physical activities shall be regarded to fall outside the scope of the Environmental Authorisation and shall be viewed as an offence in terms of Section 49A(1)(a) of NEMA.
9. In the event that the Environmental Authorisation should lapse, it is an offence in terms of Section 49A(1)(a) of NEMA for a person to commence with a listed activity, unless the competent authority has granted an Environmental Authorisation for the undertaking of the activity.
10. Offences in terms of the NEMA and the Environmental Impact Assessment Regulations, 2014, will render the offender liable for criminal prosecution.

## **G. APPEALS**

1. An appellant (if the holder of the decision) must, within 20 (twenty) calendar days from the date the notification of the decision was sent to the holder by the Competent Authority –
  - 1.1. Submit an appeal in accordance with Regulation 4 of the National Appeal Regulations 2014 (as amended) to the Appeal Administrator; and
  - 1.2. Submit a copy of the appeal to any registered I&APs 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](mailto:Zaahir.Toefy@westerncape.gov.za) and copied to:  
[DEADPEIAadmin.George@westerncape.gov.za](mailto:DEADPEIAadmin.George@westerncape.gov.za)  
[Gavin.Benjamin@westerncape.gov.za](mailto: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](mailto:Zaahir.Toefy@westerncape.gov.za) and copied to:  
[DEADPEIAadmin.George@westerncape.gov.za](mailto:DEADPEIAadmin.George@westerncape.gov.za)  
[Gavin.Benjamin@westerncape.gov.za](mailto: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  
8<sup>th</sup> 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](mailto: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](mailto:DEADP.Appeals@westerncape.gov.za) or URL <http://www.westerncape.gov.za/eadp>.

## H. DISCLAIMER

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

Your interest in the future of our environment is appreciated.

Yours faithfully

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**DIRECTOR: DEVELOPMENT MANAGEMENT**

**WCG: DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING**

DATE OF DECISION: 24 MARCH 2023

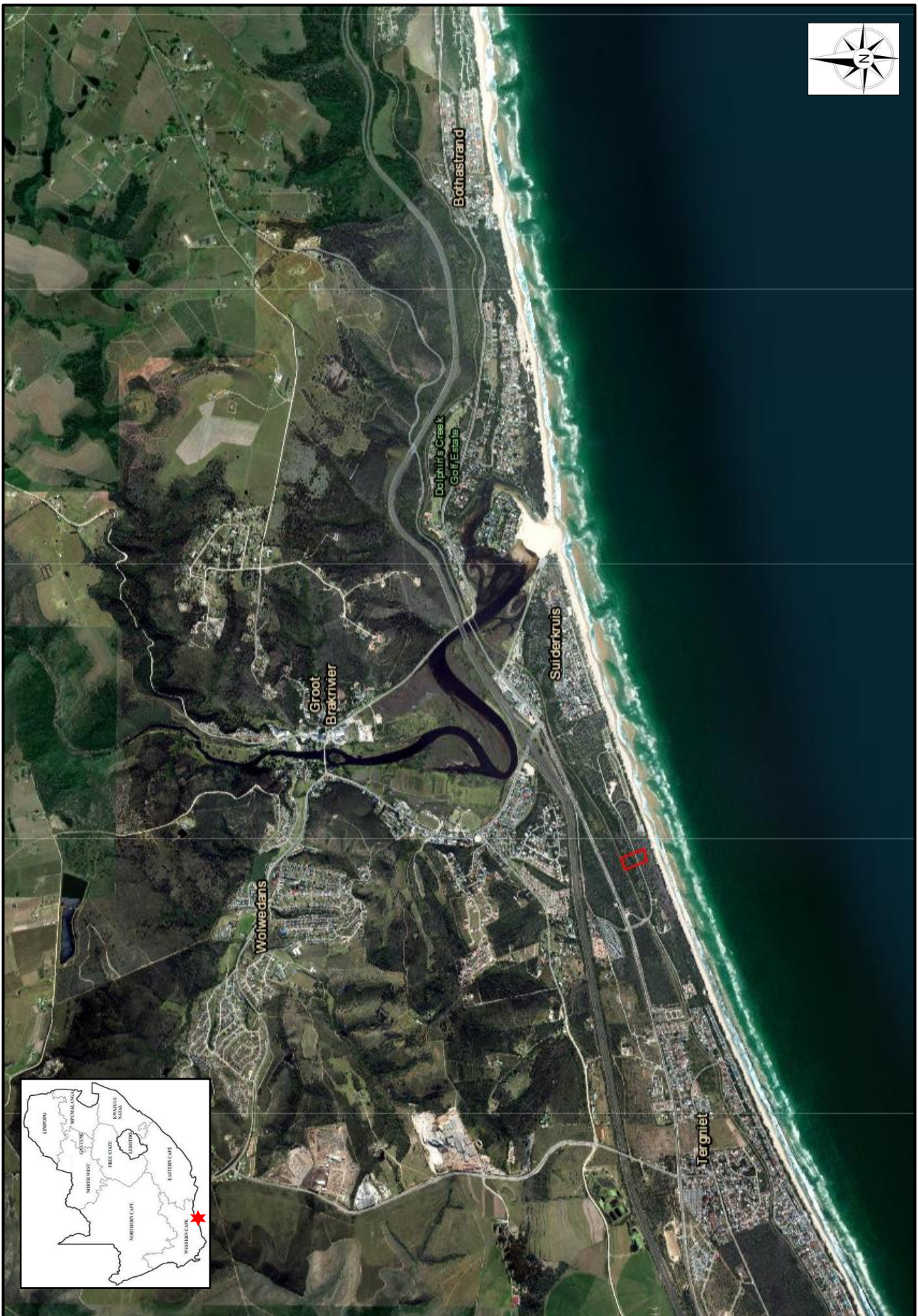
**FOR OFFICIAL USE ONLY:**

**EIA REFERENCE NUMBER:** 16/3/3/1/D6/17/0020/22

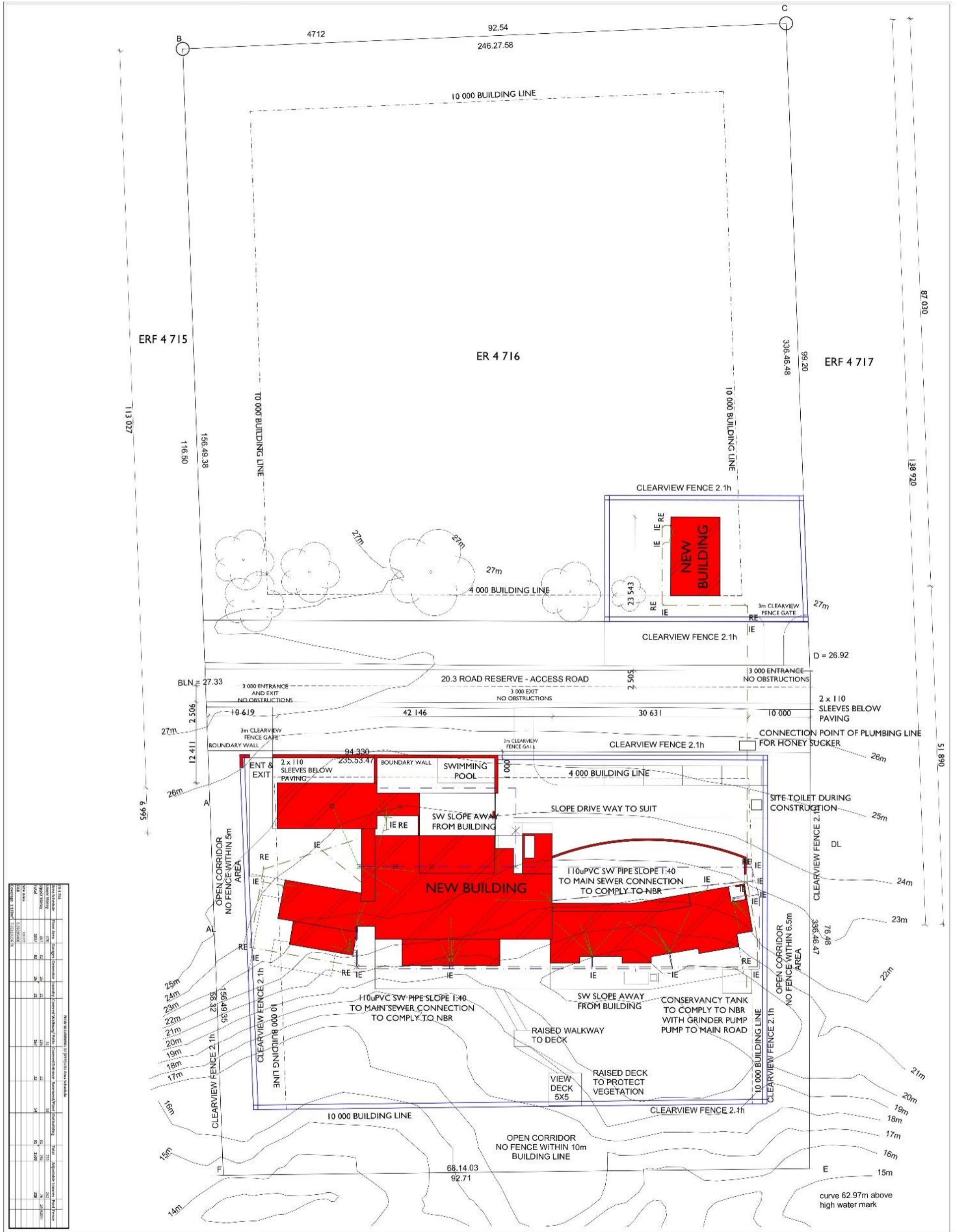
**NEAS REFERENCE:** WCP/EIA/0001142/2022

**CASE OFFICER:** Ms Jessica Christie | [Jessica.Christie@westerncape.gov.za](mailto:Jessica.Christie@westerncape.gov.za)

# ANNEXURE 1: LOCALITY MAP



**ANNEXURE 2: SITE DEVELOPMENT PLAN**



NO.	DATE	DESCRIPTION
1	17/01/2023	ISSUED FOR PERMIT
2	17/01/2023	ISSUED FOR PERMIT
3	17/01/2023	ISSUED FOR PERMIT
4	17/01/2023	ISSUED FOR PERMIT
5	17/01/2023	ISSUED FOR PERMIT
6	17/01/2023	ISSUED FOR PERMIT
7	17/01/2023	ISSUED FOR PERMIT
8	17/01/2023	ISSUED FOR PERMIT
9	17/01/2023	ISSUED FOR PERMIT
10	17/01/2023	ISSUED FOR PERMIT

**GENERAL NOTES:**

1. THE DRAWING IS TO BE USED IN CONJUNCTION WITH THE PERMITTING DOCUMENTS.
2. THE DRAWING IS TO BE USED IN CONJUNCTION WITH THE PERMITTING DOCUMENTS.
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10. THE DRAWING IS TO BE USED IN CONJUNCTION WITH THE PERMITTING DOCUMENTS.

**CLIENT:** [Name]

**DATE:** [Date]

**SCALE:** [Scale]

**PROJECT:** [Project Name]

**DRAWING NO:** [Drawing No]

**REV:** [Revision]

**PROJECT NO:** [Project No]

**DRAWING NO:** [Drawing No]

**REV:** [Revision]

## **ANNEXURE 3: REASONS FOR THE DECISION**

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

- a) The information contained in the Application Form received on 29 July 2022, the Final Basic Assessment Report (FBAR) and EMPr submitted together with the FBAR on 16 January 2023;
- b) Relevant information contained in the Departmental information base, including the Guidelines on Public Participation, Alternatives (dated March 2013);
- c) The objectives and requirements of relevant legislation, policies and guidelines, including section 2 of the National Environmental Management Act, 1998 (Act No. 107 of 1998);
- d) The comments received from I&APs and responses to these, included in the FBAR dated 16 January 2023;
- e) The balancing of negative and positive impacts and proposed mitigation measures; and
- f) A site inspection was conducted by officials from the Directorate on the 2 August 2022 and attended by Ms Jessica Christie, Mr Francois Naudé and Mr. Danie Swanepoel.

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

### **1. Public Participation**

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

- identification of and engagement with interested and affected parties (I&APs) including organs of state which have jurisdiction in respect of the activity to which the application relates;
- fixing a notice board at the site on 24 September 2022;
- giving written notice to the owners and occupiers of land adjacent to the site and any alternative site where the listed activities are to be undertaken, the municipality and ward councillor, and the various organs of state having jurisdiction in respect of any aspect of the listed activities on 26 September 2022 to comment on the Draft Basic Assessment Report;
- the placing of a newspaper advertisement in the 'Mossel Bay Advertiser' on 23 September 2022; and
- making the revised Basic Assessment Report available to I&APs for public review from 16 November 2022 till 9 January 2023.

The following Organs of State provided comment on the proposal:

- WCG: DEA&DP – Biodiversity and Coastal Management
- WCG: Department of Agriculture
- Department of Forestry, Fisheries and Environment – Forestry Section
- Mossel Bay Municipality
- Transnet



- *Department of Forestry, Fisheries and Environment – Coastal Development and Protection*
- *Breede Gouritz Catchment Management Agency*
- *Heritage Western Cape; and*
- *CapeNature*
- *General Public / Interested & Affected Parties (I&APs) included:*
  - *Gourikwa Khoisan Stamhuis*
  - *The Chainouqua Tribal House of South Africa*

Key issues identified by I&APs and stakeholders:

- **Greater Souwesia Heritage Land**  
The Gourikwa Khoisan Stamhuis submitted comment stating that this property is a part of the greater Souwesia Heritage land. It was also claimed that there is a unfinalized land claim on Souwesia and that the Land claim Commission has it on record. However, comment from the office of the Regional Land Claims Commissioner for the Western Cape has confirmed that there is no land claim on their database.

All the comments and issues raised by the respective *Organs of State and I&APs* that were captured in the Basic Assessment Report were responded to by the EAP. The Competent Authority is satisfied with the responses from the EAP to the I&APs comments and concerns.

## **2. Alternatives**

Preferred Alternative (Herewith Approved):

The Holder is herein authorised to undertake the following activities that includes the listed activities as it relates to the clearance of indigenous vegetation for the construction of the primary dwelling and associated structures and infrastructure. Also, the development of structures and infrastructure within 100 metres of the high-water mark of the sea.

The specific details of the proposed development on the property comprises of the following:

- Primary house, driveway, parking and garden south of the road – 2955.52m<sup>2</sup>;
- Outbuilding and driveway north of the road – 567.18m<sup>2</sup>;
- Raised boardwalk and deck – approximately 50m<sup>2</sup>;
- The total clearance of vegetation will be approximately 3760.3 m<sup>2</sup>. The remainder of the property will not be cleared of indigenous vegetation and will be managed for a conservation use.

Site Alternatives:

Option 1:

The construction of the primary dwelling on the northern portion of the property, directly below the railway line. This alternative was rejected due to the negative impact it would have on the Milkwood Forest on the steep north facing slope which has a high sensitivity. Also, the placement of the dwelling would be on an unsuitably sloped area and based on geotechnical input, it has been found unsuitable.

#### Option 2:

The construction of the primary dwelling on the most southern portion of the property. This would locate the house within 100 metres of the high-water mark of the sea and seawards of the coastal management line and the coastal erosion lines. The alternative was discarded for these reasons.

#### "No-Go" Alternative

The no-go alternative is to construct a smaller dwelling of less than 300m<sup>2</sup> which is not the desired outcome to the landowner. This alternative was regarded as a no-go option since the landowner has a primary right to develop a primary residence on the property. A development of less than 300m<sup>2</sup> was motivated by the Applicant as undesirable and unfeasible.

### **3. Impact Assessment and Mitigation Measures**

#### *3.1 Activity Need and Desirability*

The property is zoned Agriculture Zone I and the construction of a primary dwelling on the property in keeping with the rights on the property and permitted in terms of the land use rights of the property. However, the WCG: Department of Agriculture has requested the Mossel Bay Municipality to give the property an appropriate zoning as the properties are not viable agricultural units.

#### *3.2 Biophysical Impacts*

The vegetation classification and threat status is regarded as *Endangered Groot Brak Dune Strandveld* according to the National Biodiversity Assessment 2011. With various input from the botanical specialist, the EAP, this Directorate and CapeNature, a ground truthing exercise by the Botanical Specialist, the EAP and CapeNature was done. CapeNature confirmed that the vegetation is the mapped Groot Brak Dune Strandveld. Although the vegetation on the property is heavily invaded by "Rooikrans" the species composition remains relevant to the classified vegetation type.

No species of conservation concern were found on the property and the level of alien invasive plant species present poses the major threat to this. However, the alien invasive plant species clearing will be ongoing measure to aid in the restoration of the strandveld on the remainder of the property.

Specific conditions were included to (1) setback the proposed security fence to 100 metres inland of the high-water mark of the sea, to ensure ecological connectivity from east to west. Also, (2) no fences are permitted on the eastern and western property boundaries as indicated on the site development plan. A revised site development plan reflecting the specific development parameters must be submitted.

The proposed dwelling therefore has a set development footprint as authorised in this Environmental Authorisation and this footprint includes a garden area, boardwalk and viewing deck. The remainder of the property will remain indigenous vegetation and

managed for a conservation use. The alien invasive vegetation will be managed in accordance with Section 71 of the provisions of the National Environmental Management Biodiversity Act 2004 (Act no. 10 of 2004) and the Outeniqua Sensitive Coastal Area Regulations (Section 22(1)) of the Environment Conservation Act 1989 (Act No. 73 of 1989). The Milkwood thicket to the north of the road, along the band as identified by the specialist, will remain undisturbed.

Ecological corridors on the eastern (5 metres wide) and western (6.5 metres wide) boundaries of the property are included to create linking corridors for small scale pattern and process to continue as a part of the overall restoration of the remaining natural areas as indicated by the terrestrial biodiversity specialist report. Based on specialist inputs received, all fire control mitigation measures (including firebreaks) will be incorporated in the development footprint area.

Overall, the loss of Endangered Groot Brak Strandveld for this development is considered acceptable and of low significance based on the restoration and protection of the remainder of the property and the area seawards of the property boundary.

### 3.3 Aspects related to coastal activities:

When any listed activities are to be carried out within the coastal zone which require an environmental authorisation in terms of the NEMA, the National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008) (NEM:ICMA) provides for additional criteria which must be considered when evaluating an application for an activity which will take place within the coastal zone.

The information which has been provided in the BAR including specialist studies, has provided sufficient information to consider the additional aspects which should be considered in terms of S63 of NEM:ICMA and to inform the decision.

The site falls within the coastal protection zone as defined in the Integrated Coastal Management Act, 2008. The coastal protection zone includes, amongst others, the following:

- Any rural land unit that is situated within one kilometre (1000 metres) of the HWM which is zoned as agricultural or undetermined.
- Any land that would be inundated (submerged or covered) by a 1:50 year flood or storm event.
- Any coastal wetland, lake, lagoon or dam which is situated completely or partially within a land unit situated within 1000 metres of the HWM that was zoned for agricultural.

The coastal protection zone is established to manage, regulate and restrict the use of land that is adjacent to coastal public property, or that plays a significant role in the coastal ecosystem. More specifically, the coastal protection zone aims:

- To protect the ecological integrity, natural character, and the economic, social and aesthetic value of the neighbouring coastal public property;
- To avoid increasing the effect or severity of natural hazards;

- To protect people, property and economic activities from the risks and threats which may arise from dynamic coastal processes such as wave and wind erosion, coastal storm surges, flooding and sea level rise;
- To maintain the natural functioning of the littoral active zone;
- To maintain the productivity of the coastal zone; and
- To allow authorities to perform rescue and clean-up operations."

The proposal is not in conflict with the intention/purpose of the relevant zones as defined in the ICMA in that the activity involves positioning the dwelling outside of the 100 metres of the high-water mark of the sea. Furthermore, the dwelling will also be placed well beyond the projected erosion lines and in this way, no specific engineered erosion prevention / management interventions would be necessary. The boardwalk and viewing deck will occur within 100 metres from the high-water mark of the sea and will remain within the boundaries of Erf 4716, no access across the dune to the beach is authorised.

### 3.4 *Heritage / Archaeological Aspects*

An archaeological specialist undertook a foot survey of the property. Heritage Western Cape confirmed that no application needs to be made with HWC.

### 3.5 *Historic and Cultural Aspects*

The local Gourikwa Khoisan Stamhuis community raised concerns in relation to the proposal due to a land claim and potential ancestral burial sites. The Land Claims Commissioner has confirmed that there are no registered land claims on the property, a fact that was also checked by the owner prior to the purchase of the property. There was also no indication of any ancestral graves on the property. The owner has no intention to disturb any ancestral burial sites if they are located on his portion of the larger property. It was confirmed by the Land Claims Commissioner that the claim submitted was for a different property and was unsuccessful and rejected.

### 3.6 *Other Impacts*

No other impacts of significance are anticipated for the area that has been authorised in this Environmental Authorisation.

Considering the findings of the impact assessment and proposed mitigation measures to address the aforementioned impacts this Department is satisfied that the activity will not negatively impact on the receiving environment, subject to strict implementation of conditions of this EA and the mitigation measures proposed in the EMPr.

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

This environmental authorisation does not define specific operational aspects. The environmental authorisation's validity period has been granted for a period of five (5) years, during which period the construction activities must commence and be concluded, including the post-construction rehabilitation and monitoring and submission of the final environmental audit reports for the construction phase. In light of the proposed

implementation programme, the monitoring and post-construction rehabilitation can be adequately incorporated in the construction phase.

Where the activity has been commenced with, the EIA Regulations, 2014 allow that (upon application) the period for which the environmental authorisation is granted may be extended for a further period of 5-years.

## 5. National Environmental Management Act Principles

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

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

## 6. Conclusion

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

- (a) The identification and assessment of impacts are detailed in the FBAR dated 16 January 2023 and sufficient assessment of the key identified issues and impacts have been completed.
- (b) The procedure followed for the impact assessment is adequate for the decision-making process.
- (c) The proposed mitigation of impacts identified and assessed, curtails the identified negative impacts.
- (d) The EMPr proposed mitigation measures for the pre-construction, construction and rehabilitation phases of the development and were included in the FBAR. The mitigation measures will be implemented to manage the identified environmental impact during the construction phase.

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 this Environmental Authorisation, and compliance with an approved 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 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.

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