



REFERENCE: 16/3/3/1/D5/19/0006/22
ENQUIRIES: Shireen Pullen
DATE OF ISSUE: 08 November 2022

WA NEL and Irma Oosthuisen Trust IT 1596/2008
8 Nautilus Lane
GEORGE
6530

Attention: Mr. W. Nel

Tel.: 028 735 1772

Email: Willemnel54@gmail.com

Dear Sir

REFUSAL OF ENVIRONMENTAL AUTHORISATION

APPLICATION FOR ENVIRONMENTAL AUTHORISATION IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998) AND THE ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, 2014: PROPOSED DEVELOPMENT OF 5 RESIDENTIAL UNITS ON ERVEN 4139, 4140, 4141, 4142, 4143, 4144, 4145 (ERF 3997) - STILL BAY WEST

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 **refuses 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 ("BAR"), dated 22 July 2022 as prepared and submitted by *Sharples Environmental Services cc*, 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

WA NEL and Irma Oosthuisen Trust IT 1596/2008
% Mr. W. Nel
8 Nautilus Lane
GEORGE
6530

Tel.: 028 735 1772
 Email: Willemnel54@gmail.com

The abovementioned applicant is the holder of this Environmental Authorisation and is hereinafter referred to as “**the holder**”.

B. LIST OF ACTIVITIES REFUSED

Listed Activities	Activity/Project Description
<p>Government Notice No. R. 983 of 4 December 2014 (as amended)</p> <p><i>Activity Number: 19A</i> <i>Activity Description:</i></p> <p>The infilling or depositing of any material of more than 5 cubic metres into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock of more than 5 cubic metres from—</p> <ul style="list-style-type: none"> (i) the seashore; (ii) the littoral active zone, an estuary or a distance of 100 metres inland of the high-water mark of the sea or an estuary, whichever distance is the greater; or (iii) the sea; — <p>but excluding where such infilling, depositing, dredging, excavation, removal or moving—</p> <ul style="list-style-type: none"> (a) will occur behind a development setback; (b) is for maintenance purposes undertaken in accordance with a maintenance management plan; (c) falls within the ambit of activity 21 in this Notice, in which case that activity applies; (d) occurs within existing ports or harbours that will not increase the development footprint of the port or harbour; or (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. 	<p>The proposed sites are located within 100m of the highwater mark of the sea and therefore the proposed development will result in the depositing of more than 5 cubic metres of material as well as the excavation, removal or moving of material (sand, soil, pebbles or rock).</p>
<p>Government Notice No. 985 of 4 December 2014 (as amended)</p> <p><i>Activity Number: 4</i> <i>Activity Description:</i></p> <p>The development of a road wider than 4 metres with a reserve less than 13,5 metres.</p> <p>i. Western Cape</p> <ul style="list-style-type: none"> i. Areas zoned for use as public open space or equivalent zoning; 	<p>The properties are zoned open space and the road proposed as part of the development will be approximately 5m wide,</p>

<ul style="list-style-type: none"> ii. Areas outside urban areas; <ul style="list-style-type: none"> (aa) Areas containing indigenous vegetation; (bb) Areas on the estuary side of the development setback line or in an estuarine functional zone where no such setback line has been determined; or iii. Inside urban areas: <ul style="list-style-type: none"> (aa) Areas zoned for conservation use; or Areas designated for conservation use in Spatial Development Frameworks adopted by the competent authority. <p><i>Activity Number:12</i> <i>Activity Description:</i></p> <p>The clearance of an area of 300 square metres or more of indigenous vegetation except where such clearance of indigenous vegetation is required for maintenance purposes undertaken in accordance with a maintenance management plan.</p> <p>i. Western Cape</p> <ul style="list-style-type: none"> i. Within any critically endangered or endangered ecosystem listed in terms of section 52 of the NEMBA or prior to the publication of such a list, within an area that has been identified as critically endangered in the National Spatial Biodiversity Assessment 2004; ii. Within critical biodiversity areas identified in bioregional plans; iii. Within the littoral active zone or 100 metres inland from high water mark of the sea or an estuarine functional zone, whichever distance is the greater, excluding where such removal will occur behind the development setback line on erven in urban areas; iv. On land, where, at the time of the coming into effect of this Notice or thereafter such land was zoned open space, conservation or had an equivalent zoning; or v. On land designated for protection or conservation purposes in an Environmental Management Framework adopted in the prescribed manner, or a Spatial Development Framework adopted by the MEC or Minister 	<p>The proposal will require the clearance of more than 300m² of indigenous vegetation on land located within 100m from the highwater mark of the sea.</p>
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The applicant is herein **refused environmental authorisation** to undertake the listed activities which were applied for and as it relates to the proposed development.

Alternative A (Preferred Alternative):

This alternative entails the consolidation, subdivision and rezoning of the site to allow for the development of an additional 5 new erven along the northern boundary of the property. In addition, the two existing undeveloped erven, are proposed to be rezoned and incorporated into the Open Space. The proposal also includes the upgrade of the existing access road.

The proposal would result in the clearance of more than 300m² of indigenous vegetation within 100m of the high water mark of the sea, the development of a road of more than 4 metres wide, as well as the infilling of more than 5 cubic metres within 100m of the highwater mark of the sea.

C. SITE DESCRIPTION AND LOCATION

The proposed site is located within a residential area on erven 4139, 4140, 4141, 4142, 4143, 4144 and 4145, Still Bay West at Muishondbaai, which is located immediately adjacent to and south-west of Skulpiesbaai Local Nature Reserve and within 100m of the highwater mark of the sea. The Vegetation on site has been identified and confirmed as Blombos Strandveld, which is the only vegetation type present on site.

Co-ordinates:

Latitude (S)	Longitude (E)
34° 24' 4.33" South	21° 24' 33.67" East

SG 21 Digit code:

Erf 4139- C06400060000413900000

Erf 4140- C06400060000414000000

Erf 4141- C06400060000414100000

Erf 4142- C06400060000414200000

Erf 4143- C06400060000414300000

Erf 4144- C06400060000414400000

Erf 4145- C06400060000414500000

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

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

D. DETAILS OF THE ENVIRONMENTAL ASSESSMENT PRACTITIONER

Sharples Environmental Services cc

% Mr. Michael Bennett

P.O. Box 9087

GEORGE

6530

Tel: 044 873 4923

E-mail: michael@sesc.net

Website: www.sesc.net

E. LEGISLATIVE REQUIREMENTS

1. In accordance with regulation 46 of the Environmental Impact Assessment Regulations, 2014, an applicant may not submit an application which is substantially similar to a previous application that has been refused, unless any appeals on that refusal have been finalised or the time period for the submission of an appeal has lapsed.
2. The applicant must in writing, within 14 (fourteen) calendar days of the date of this decision–
 - 2.1. notify all registered Interested and Affected Parties (“I&APs”) of –
 - (a) the outcome of the application;
 - (b) the reasons for the decision as included in Annexure 3;
 - (c) the date of the decision; and
 - (d) the date when the decision was issued.
 - 2.2. draw the attention of all registered I&APs to the fact that an appeal may be lodged against the decision in terms of National Appeals Regulations, 2014 detailed in Section F below;
 - 2.3. draw the attention of all registered I&APs to the manner in which they may access the decision;
 - 2.4. provide the registered I&APs with:
 - (a) the name of the holder (entity) of this Environmental Authorisation,
 - (b) name of the responsible person for this Environmental Authorisation,
 - (c) postal address of the holder,
 - (d) telephonic and fax details of the holder,
 - (e) e-mail address, if any, of the holder,
 - (f) 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 2014 National Appeals Regulations.

F. 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;
 - 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; 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
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.
 - 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
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>.

Your interest in the future of our environment is appreciated.

Yours faithfully

MR. ZAAHIR TOEFY
DIRECTOR: DEVELOPMENT MANAGEMENT

DATE OF DECISION: 08 NOVEMBER 2022

Copies to: Mr. Mr. M. Bennett
Mr. H. Visser
Ms. I. Oosthuizen

SEScC (EAP)
Hessequa Municipality
Irma Oosthuizen Trust IT
1596/2008

Email: michael@sesc.net
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FOR OFFICIAL USE ONLY:

EIA REFERENCE NUMBER: 16/3/3/1/D5/19/0006/22

NEAS REFERENCE: WCP/EIA/0001054/2022

ANNEXURE 1: LOCALITY MAP



ANNEXURE 2: SITE DEVELOPMENT PLAN



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 by this Directorate on 24 February 2022, the final BAR and the Environmental Management Programme ("EMPr") submitted together with the final BAR on 22 July 2022;
- 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 BAR dated 22 July 2022;
- e) The balancing of negative and positive impacts and proposed mitigation measures;
- f) 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).
- g) The site observations during the site inspection that was conducted on 27 October 2022 (Persons present: Shireen Pullen and Dorien Werth from this Directorate & Mr. Willem Nel (applicant) and on 02 November by Mr Zaahir Toefy).

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

The public participation process included:

- identification of and engagement with I&APs;
- fixing a notice board at the site and any alternative site where the listed activities are to be undertaken on 23 July 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 23 July 2021;
- the placing of a newspaper advertisement in the 'South Cape Forum' on 30 July 2021;
- making the pre-app BAR available to I&APs for public review from 30 July 2021 to 30 August 2021;
- making the draft BAR available to I&APs for public review from 9 March 2022 to 11 April 2022; and
- an additional 30 days PPP was undertaken 21 June 2022 to 21 July 2022 due to the 50 day extension notification.

The following Organs of State were notified to provide comment on the proposal:

- Western Cape Government: Department of Environmental Affairs and Development Planning – Development Management (Region 3);
- Western Cape Government: Department of Environmental Affairs and Development Planning – Development Planning; Directorate: Biodiversity & Coastal Management;
- Western Cape Government: Department of Health
- Garden Route District Municipality
- Department of Oceans and Coasts
- Western Cape Government: Department of Agriculture
- Hessequa Municipality, Manager
- Eden District Municipality Municipal Manager

- South African Civil Aviation Authority
- Breede-Gouritz Catchment Management Agency (BGCMA")
- Department of Forestry, Fisheries and Environment: Western Cape Forestry (DFFE)
- Garden Route District Municipality

Only Cape Nature and the DFFE provided inputs on the proposal and had no objections subject to certain conditions. CapeNature did not object provided that a search and rescue operation is undertaken prior to construction activities commencing and that the coastal corridor remains undisturbed by the proposed development. Furthermore, the DFFE (Forestry) stated that they do not object to the proposal, provided that all milkwood thicket patches, as well as individual protected trees are tagged by means of the global positioning system and incorporated into the proposed development lay-out.

The following general Public / Interested & Affected Parties (I&APs) included:

- Neighbouring Property Owners
- Hessequa Municipality, Ward 3

Numerous objections were received from adjacent landowners of Bosbokduin, as well as the Bosbokduin Home Owners Association. Below is a summary of the issues raised:

- The applicant did not comply with the environmental approval of 2000, which states that the applicant must join the Bosbokduin Home Owners Association.
- The visual impact of the proposed development on the landowners situated behind (to the north of) the new row of erven.
- The architectural design of the proposed new erven being different to the Bosbokduin design concept and will not fit in with the rest of the Bosbokduin Resort.
- Concerns regarding the earthworks associated with sinking the double storey houses into the ground to lessen the visual impact and why this will be better than what is already approved.
- Concerns regarding stormwater management, close proximity of the erven to each other and having the erven sunken into the topography.
- Concerns regarding the lack of alternatives considered as part of the EIA process.

This Directorate is of the opinion that the abovementioned issues and concerns raised by I&APs during the public participation process were not adequately addressed and responded to by the Environmental Assessment Practitioner (EAP).

2. Background

The proponent has an existing environmental authorisation for the development of the property and approached this Directorate to amend the environmental authorisation. The proponent was however informed that the proposal triggers additional listed activities identified in terms of the NEMA EIA Regulations, 2014 (as amended), that was not approved as part of the existing environmental authorisation and therefore an application for amendment could not be considered. The proponent was advised to submit a new application for environmental authorisation to get approval for the additional listed activities and to amend the lay-out of the approved development. It subsequently appeared that the Environmental Authorisation issued on 26 October 2000 has not been implemented and has lapsed.

3. Alternatives

Alternative A (Preferred Alternative- herewith authorised)

The preferred alternative entails the establishment of 5 residential erven on the northern boundary of the site. The site already has two houses, which will be incorporated into the proposed layout. The proposal also includes the development of a road on the northern boundary of the site. There is also a road located at the proposed location so the existing road will be upgraded to accommodate the

increase in residential units. The rest of the site will be zoned open space. The development will take place approximate to the site development plan contained in Annexure 2 of this decision. Alternative A is the applicant's preferred alternative.

Alternative B

This alternative entails the development of 6 erven (including the two previously authorised, erf 8 and 9), and four new erven along the northern boundary of the site). This is not the applicant's preferred alternative as this alternative largely impacts on the existing open space area.

Alternative C (Previous approval)

This alternative entails the implementation of the development that was previously approved on the site. The Basic Assessment Report refers to this alternative as the "no-go option".

No-Go Alternative (the option of no development)

This alternative entails no development and maintaining the status quo on site. This option is the baseline against which all alternatives are assessed.

Technology alternatives.

The applicant considered the following technology alternatives:

- The implementation of resource conservation measures such as dual flush toilets, encouraging the use of "grey" water waste, 1000 litres above-ground rainwater tanks, energy efficient building design of the units and solar panels on the roof of the proposed new units.

4. Key Factors affecting the decision

In reaching its decision to refuse the proposed development, the Competent Authority took into account the following factors:

4.1 The Site

According to the BAR the entire site used to be covered by healthy Hartenbos Dune Thicket and Cape Seashore Vegetation. The vegetation surrounding the project area is dominated by Hartenbos Dune Thicket with some agricultural areas (grassy) in between. Along the coastline, Cape Seashore vegetation is present and towards the east the estuarine vegetation. The entire site is also located within 100m of the highwater mark of the sea, making the entire site sensitive and dynamic from a coastal perspective. Although the proposed development is set back further north than the approved development, the earthworks that will be required to sink the platforms of the new residential units was not sufficiently assessed and compared against the previous approved development proposal. **This represents a gap in knowledge and therefore this Directorate takes a risk averse and cautious approach in refusing environmental authorisation.**

4.2 National Environmental Management 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 must 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. Whereas development must be socially, environmentally and economically sustainable;
- 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;

- the avoidance, minimisation or remediation of the disturbance of landscapes and sites that constitute the nation's cultural heritage and/or National estate;
- specific attention is required in the management and planning procedures relating to sensitive, vulnerable, highly dynamic or stressed ecosystems, such as coastal shores, estuaries, wetlands, and similar systems, especially where they are subject to significant human resource usage and development pressure; and
- the selection of the best practicable environmental option.

4.3 Lack of Services Confirmation

Through the course of the pre-application and application processes, this Directorate emphasised and reiterated that the final BAR must include written confirmation from Hessequa Municipality that the Municipality has sufficient unallocated capacity to provide the proposed development with water and sewage services. No confirmation regarding the availability of such services was received with the submission of the final BAR. Further, despite the size of the development, this Directorate is however concerned about the on-going sewage capacity constraints at Hessequa Municipality, especially in the Still Bay area and therefore takes a risk averse and cautious approach not to authorise the current proposal.

4.4 Non-compliance with Appendix 1 Section 3 (1) (t) of the Environmental Impact Assessment Regulations, 014 (as amended):

*"A Basic Assessment Report must contain the information that is necessary for the competent authority to consider and come to a decision on the application, and must include:
(t) any specific information that may be required by the competent authority"*

➤ Activity "Need and Desirability"

Regarding the consideration of need and desirability of the development proposal the competent authority is obliged to consider all the relevant facts and factors to reach a decision. During the environmental impact assessment process it was highlighted that the need for and desirability of the proposed activity must be considered and reported on in the BAR and that the BAR must reflect how the strategic context of the site in relation to the broader surrounding area has been considered in addressing need and desirability. The motivation for need and desirability of the preferred alternative in the BAR does not effectively address this aspect that there is a need for the proposed development and that the new proposed alternative (applicant's preferred alternative, Alternative A) is more desirable than the previously approved alternative (Alternative C). The final BAR does not reflect how the context of the new location of the proposed 5 erven in relation to the larger Bosbokduin development, has been considered in addressing need and desirability.

In light of the above, this Directorate is not satisfied that the need and desirability of the proposed development has been adequately assessed.

➤ Inputs from Coastal Management

It is acknowledged that the erven proposed by the applicant's preferred layout alternative are set back more from the high water mark than the two erven previously authorised. According to the EAP the placement of the erven on the top platform and set back from the steep embankment will greatly reduce the risk of natural hazards in the coastal zone. However, this Directorate remains concerned about the extent of the earthworks associated with the sinking of the proposed houses into the ground as per the preferred alternative and the potential impact it may have on the overall stability of the area.

The original EA approved the two erven on a flat part of the site, which was previously used for caravan parking. According to the EA the steep slope on the southern side and the dune on the northern side should be avoided and left undeveloped. It is therefore gathered from the aforementioned authorisation that the part where the two erven were approved is indeed not steep, as wrongfully indicated in the BAR, as it is a suitable plateau for the two approved erven.

4.5 Specialist Input

➤ Visual Impact Assessment

The potential impact of any development on the receiving environment plays an important role in determining which would be the best practicable environmental option. Inputs from a visual specialist is therefore key in the decision-making process. The Visual Impact Assessment did not comparatively assess the alternatives, and there was no assessment of the visual impact of Alternative B and the previously approved alternative (Alternative C).

The visual assessment however fails to comparatively assess the potential visual impact of the development proposal with the previous approval and the option of no development on the site. According to the Guideline for involving visual and aesthetic specialists in the process, a visual assessment should enable 'before' and 'after' comparisons to be made, as well as comparison of alternatives, taking into account the proposed mitigation measures. The visual impact assessment fails to look at the previous approval and therefore could not provide the required information to determine which is the environmental best practicable option from a visual perspective. This represents a gap in knowledge which prevents this Directorate from making an informed decision regarding the development proposal.

The visual impact assessment also fails to consider and assess the change in the architectural style of the new proposed housing units and how it will fit in with the rest of the Bosbokduin development. A condition of approval of the original EA for the two previously approved erven states that the two new erven must comply with the architectural guideline of Bosbokduin and may not be higher than the existing houses in Bosbokduin. The BAR reports on how the new buildings will be more energy efficient, but it does not consider how the "sense of place" of the existing Bosbokduin development will be affected by the new styled residential units, despite this being raised as a concern in the public participation process.

The report defines visual intrusion" as the level of compatibility or congruence of the project with the particular qualities of the area, or its sense of place. This is related to the idea of context and maintaining the integrity of the landscape or townscape. The VIA then proceeds with an unsubstantiated statement that the visual intrusion for the proposed development is low. Given the fact that the site for the proposed development visually forms part of the Bosbokduin Resort and that there are already two dwellings on the site with the same architectural style as Bosbokduin report, the competent authority respectfully disagrees with the statement in the VIA.

Considering the above, this Directorate is of the opinion that the Visual Impact Assessment for the proposed development and its alternatives are inaccurate and incomplete.

➤ Botanical Assessment

The botanical assessment fails to assess the previous approved development (referred to in the BAR as the no-go option) and therefore does not provide the necessary information to determine whether the preferred alternative can be regarded as the best practicable option from a botanical point of view. The Botanical Assessment only considered and assessed the preferred alternative (Alternative A) and Alternative B (four dwellings along the northern boundary of the site and two between the existing erven). The assessment concludes that the latter is less preferred, because of the larger disturbance area. The lack of assessment of the botanical impact of the previous approved development represents a gap in knowledge and therefore this Directorate does not have sufficient information to make an informed decision as to whether the preferred alternative is more desirable from a botanical perspective than the approved development alternative.

4.6 Best practicable environmental option

According to section 23 (b) of NEMA, environmental management must be integrated, acknowledging that all elements of the environment are linked and interrelated, and it must take into account the

effects of decisions on all aspects of the environment and all people in the environment by pursuing the selection of the best practicable environmental option.

By definition, the best practicable environmental option is the alternative/option that provides the most benefit or causes the least damage to the environment as a whole, at a cost acceptable to society, in the long term as well as in the short term. The BAR and the specialist assessment does not put this Directorate in a position to determine which of the previous approved development or the new proposed alternative (applicant's preferred alternative) represents the best practicable environmental option due to the incomplete assessment and findings of the BAR with respect to the assessment of alternatives.

Sustainable development requires amongst others, requires the integration of social, economic and environmental factors in decision-making. One of the NEMA Principles require that the social, economic and environmental impacts of activities, including disadvantages and benefits, must be considered, assessed and evaluated, and decisions must be appropriate in light of such consideration and assessment. The Basic Assessment Report does not clearly identify those parties that stand to benefit and those parties that stand to be disadvantaged by the proposed project.

4.7 Consideration of Alternatives

According to this Department's Guideline on alternatives dated March 2013, the assessment of alternatives must at all times include the "no-go" option as a baseline against which all other alternatives must be measured. The option of not implementing the activity must always be assessed and to the same level of detail as the other feasible and reasonable alternatives. Although a "no-go alternative" was considered, which corresponds with the previous approved development, this was not comparatively assessed at the same level of detail with the other alternatives. Furthermore, in accordance with the definition of the "no-go" alternative as defined in the aforementioned guideline, a "true" no-go alternative was not reported on and never assessed by the EAP.

The Guideline further states that the Basic Assessment Report must contain a description of any feasible and reasonable alternatives that have been identified, including a description and comparative assessment of the advantages and disadvantages that the proposed activity and alternatives will have on the environment and on the community that may be affected by the activity. The BAR failed to comparatively assess, as a minimum, the previously approved development in relation to the applicant's current preferred alternative in all aspects. Further to this, neither the Visual Impact Assessment nor the Botanical Assessment included an assessment of the previously approved development (Alternative C) and therefore the assessment of alternatives in the BAR did not comparatively assess all the impacts of the approved, the no-go, as well as the preferred alternative.

4.8 Stormwater Management and Erosion

Due to the proximity of the site to the steep areas, this Directorate advised that a detailed stormwater management plan must be developed to manage the cumulative impact of the proposed development on the surrounding sloped areas. This plan must contain a detailed description and diagrammatical presentation of the storm water management measures and these had to be included in the EMP under section 8.9. These measures were not included in the EMP as requested.

According to the BAR the preferred alternative will require major earthworks that will be carried out to lower the ground level on erven 3 - 7 by 1,5m. This will create a series of building platforms at a level low enough not to obstruct views of higher lying erven. Erosion control will include the use of straw, vegetating or other environmentally acceptable means. It further states that the stormwater management on-site will be done by attenuating the runoff from hardened surfaces by means of attenuation tanks, which will slowly release water to a 20m long gabion basket on the seaside edge of each erf. Once vegetation has re-established there should be no negative impact on the surrounding area. It is further noted that the steep area between the upper platform and the lower platform cuts

back into the proposed erven 5, 6 & 7 (on Site development plan in Annexure 2), which will result in major earthworks on this steep slope area as well.

The original EA approved the two erven on a flat part of the site, which was previously used for caravan parking. It further states that the steep slope on the southern side and the dune on the northern side should be avoided and left undeveloped. A condition of approval was that the two residential units be constructed at least 4 metres from the steep slope on the southern side of the two erven. It is therefore gathered from the approved development authorisation that the part where the two erven is approved is indeed not steep, as indicated in the BAR as it was found to be a suitable plateau for the two approved erven.

4.9 Gaps in knowledge

According to Section 24(4) (e), procedures for the investigation, assessment and communication of the potential impact of activities must ensure, as a minimum, with respect to every application for an environmental authorisation-minimum requirements set out in of NEMA reporting on gaps in knowledge, the adequacy of predictive methods and underlying assumptions, and uncertainties encountered in compiling the required information.

This Department is of the opinion that the BAR did not report on all the gaps in knowledge and the assumptions made by the EAP.

5. Conclusion

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

- (a) The identification and assessment of impacts are detailed in the BAR dated February 2022; however, the assessment of the key identified issues and impacts have not been adequately completed.
- (b) The procedure followed for the impact assessment is not deemed adequate for informed decision-making.
- (c) The consideration of alternatives is lacking as identified alternatives have not been comparatively assessed at the same level of detail.
- (d) The proposed mitigation of impacts identified and assessed, do not sufficiently curtail the identified negative impacts.
- (e) The EMPr details the proposed mitigation measures for the pre-construction, construction and rehabilitation phases of the development, and these which were included in the BAR. The mitigation measures that will be implemented to manage the identified environmental impacts during the construction and operational phases are however deemed insufficient.

Considering the above and in light of the lack of information and gaps in knowledge, this Department takes a risk averse and cautious approach in refusing Environmental Authorisation for the preferred alternative.

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