



EIA REFERENCE NUMBER: 16/3/3/1/D1/13/0004/21
NEAS REFERENCE: WCP/EIA/0000947/2021
DATE OF ISSUE: 09 November 2021

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 UPGRADE AND IMPROVEMENT OF THE EXISTING STORMWATER SYSTEM IN POORTJIES, PLETTENBERG BAY

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 **a part of the Preferred Alternative (Alternative 2)**, described in the Final Basic Assessment Report ("FBAR"), dated July 2021 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

The Municipal Manager
BITOU MUNICIPALITY
% Mr M.J. Rhode
Private Bag X1002
Plettenberg Bay
6600

Tel: 044 501 3000
E-mail: edebruin@plett.gov.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
Environmental Impact Assessment Regulations Listing Notice 1 of 2014, Government Notice No. 983 of 4 December 2014 (as amended)	
<p>Activity Number: 19A Activity Description:</p> <p><i>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—</i></p> <p><i>(i) the seashore;</i> <i>(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</i> <i>(iii) the sea; —</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></p> <p><i>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 improvement to the non-formalised outfall channel will require that material be excavated and deposited in excess of 5 cubic metres within 100 metres from the high-water mark of the estuary to construct, expand or modify the following infrastructure:</p> <ul style="list-style-type: none"> • pipe culvert outlets and existing waterways to the estuary; • widen existing channel, improve right bank and provide Energy Dissipaters at outlets of existing and proposed 1000 mm pipe culvert into widened existing channel along Erf No. 705; • widen the existing channel downstream of Phitidis Walk and line the first 5m of channel with reno Mattresses and gabions; and • establish a low berm at to prevent back flow during flood events from earth channel across Phitidis Walk.

The abovementioned list is hereinafter referred to as “**the listed activity**”.

The Holder is herein authorised to undertake the following activity that includes the listed activity as it relates to the refurbishment of the storm water outfall channel within the Keurbooms River Estuary:

The authorisation is for a part of the Preferred alternative which entails the infilling or depositing of more than 5m³ material; and the excavation or moving of soil, sand, shells, shell grit, pebbles or rock of more than 5m³ within 100 metres of the high-water mark of the estuary for the purpose to construct, expand or modify the following infrastructure, namely:

- ❖ pipe culvert outlets and existing waterways to the Kerubooms estuary;
- ❖ widening the existing channel and raise the earth banks of the existing channel on Erf 705 along Earp Jones Street (Erf RE/2066) and provide energy dissipaters at outlets of the existing and proposed 1000 mm pipe culvert into the widened existing channel;
- ❖ widening the existing channel downstream of Phitidis Walk and line the first 5m of channel with reno Mattresses and gabions;
- ❖ establish a low berm on a portion of Erf RE/706 to prevent back flow during flood events from the earth channel across Phitidis Walk, and
- ❖ movement of sand and reeds from the channel leading to the estuary.

C. SITE DESCRIPTION AND LOCATION

The storm water outflow in Phitidis Walk street is on the estuary side of the residential area north of Phitidis Walk. This structure is approximately 300 metres from the shopping mall and Checkers centre in Beacon Way street. The existing storm water channel is situated along Earp Jones street within the open space area on Erf 705.

Coordinates of the works to be undertaken at the storm water channel along Earp Jones street:

Position:	Latitude (South)	Longitude (East)
Start	34° 02' 37.91"	23° 22' 21.34"
End	34° 02' 42.12"	23° 22' 22.10"

Coordinates of the works to be performed at the storm water outfall structure on the estuary side of Phitidis Walk street:

Position:	Latitude (South)	Longitude (East)
Outfall structure	34° 02' 42.87"	23° 22' 22.13"

SG digit code of Erf 705: C03900080000070500000
SG digit code of RE/2066: C03900080000206600000 (street parcel)
SG digit code of RE/706: C03900080000070600000

Refer to Annexure 1: Locality Plan of this Environmental Authorisation.

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

D. DETAILS OF THE ENVIRONMENTAL ASSESSMENT PRACTITIONER (EAP)

SHARPLES ENVIRONMENTAL SERVICES CC

% Ms Betsy Ditcham

P.O. Box 443

MILNERTON

7441

Tel: 021 554 5195

Fax: 086 575 2869

E-mail: betsy@sesc.net

Website: www.sesc.net

E. CONDITIONS OF AUTHORISATION

Scope and Validity Period of authorisation

1. This Environmental Authorisation is granted for the period from date of issue until **30 November 2026**, the date on which the non-operational aspects (construction phase), including post construction rehabilitation and monitoring requirements, will be deemed to be concluded at the site.

Further to the above, the Environmental Authorisation is subject to the following:

- 1.1. The Holder must start with the physical implementation of the activity and conclude the non-operational aspects (construction phase) including the post-construction rehabilitation and monitoring requirements on the site by 31 May 2026.

Note: The post-construction rehabilitation and monitoring requirements should be completed:

- within a period of 3-months from the date the development activities (construction phase) are concluded; and
- at least six months prior to expiry of the validity period of an environmental authorisation to ensure the Holder is able to comply with the environmental auditing requirements in time.

Failing which, this Environmental Authorisation shall lapse, unless the environmental authorisation is amended in accordance with the relevant process contemplated in the Environmental Impact Assessment Regulations promulgated under the National Environmental Management Act, 1998 (Act no. 107 of 1998).

2. The Holder is authorised to undertake the listed activities specified in Section B above in accordance with a part of the Preferred Alternative described in the FBAR dated July 2021 on the site as described in Section C above.

This Environmental Authorisation is only for the implementation of the Preferred alternative for the site which entails the infilling or depositing of more than 5m³ material; and the excavation or moving of soil, sand, shells, shell grit, pebbles or rock of more than 5m³ within 100 metres of the high-water mark of the estuary for the purpose to construct, expand or modify the following infrastructure, namely:

- ❖ pipe culvert outlets and existing waterways to the Kerubooms estuary;
- ❖ widening the existing channel and raise the earth banks of the existing channel on Erf 705 along Earp Jones Street (Erf RE/2066) and provide energy dissipaters at outlets of the existing and proposed 1000 mm pipe culvert into the widened existing channel;
- ❖ widening the existing channel downstream of Phitidis Walk and line the first 5m of channel with reno Mattresses and gabions;
- ❖ establish a low berm on Erf RE/706 to prevent back flow during flood events from the earth channel across Phitidis Walk, and
- ❖ movement of sand and reeds from the channel leading to the estuary.

3. This Environmental Authorisation may only be implemented in accordance with an approved Environmental Management Programme ("EMPr").
4. 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.
5. 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

6. The Holder must in writing, within 14 (fourteen) calendar days of the date of this decision–
 - 6.1. notify all registered Interested and Affected Parties ("I&APs") of –
 - 6.1.1. the decision reached on the application;
 - 6.1.2. the reasons for the decision as included in Annexure 2;
 - 6.1.3. the date of the decision; and
 - 6.1.4. the date when the decision was issued.

- 6.2. 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;
- 6.3. draw the attention of all registered I&APs to the manner in which they may access the decision;
- 6.4. provide the registered I&APs with the:
 - 6.4.1. name of the Holder (entity) of this Environmental Authorisation,
 - 6.4.2. name of the responsible person for this Environmental Authorisation,
 - 6.4.3. postal address of the Holder,
 - 6.4.4. telephonic and fax details of the Holder,
 - 6.4.5. e-mail address, if any, of the Holder,
 - 6.4.6. 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).
- 6.5. 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.
- 6.6. 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

7. Seven calendar days' notice, in writing, must be given to the Competent Authority before commencement of any activities.
 - 7.1. The notice must make clear reference to the site details and EIA Reference number given above.
 - 7.2. The notice must also include proof of compliance with the following conditions described herein:
Conditions no.: 9, 11, 13 and 19.
 - 7.3. Seven calendar days' notice, in writing, must be given to the Competent Authority on the commencement of any maintenance activities in the storm water outfall channel on the estuary side of Phitidis Walk during the period that the environmental authorisation is valid.
8. Seven calendar days' written notice must be given to the Competent Authority on completion of the construction activities.

Management of activity

9. The draft or Environmental Management Programme ("EMPr") submitted as part of the application for Environmental Authorisation must be amended and submitted to this Department prior to commencement of any activities on the site:
 - 9.1. The EMPr must be amended to incorporate the following —
 - 9.1.1. The ECO must conduct weekly site inspections;
 - 9.1.2. Incorporate all the conditions given in this Environmental Authorisation;
 - 9.1.3. Include final designs of all the works to be performed within 100 metres from the highwater mark of the estuary, including detailed designs and site location for the:
 - (a) widening the existing channel and raise the earth banks of the existing channel on Erf 705 along Earp Jones Street (Erf RE/2066);
 - (b) widening the existing channel downstream of Phitidis Walk;
 - (c) reno Mattresses and gabions in the first 5 metres of channel in Erf RE/706;
 - (d) low berm on portion of Erf RE/706

9.1.4. Make the changes as set out in this Environmental Authorisation.

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

Monitoring

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

12. The ECO must–

12.1. be appointed prior to commencement of any works (i.e. removal and movement of soil;

12.2. ensure compliance with the EMPr and the conditions contained herein;

12.3. keep record of all activities on the site; problems identified; transgressions noted and a task schedule of tasks undertaken by the ECO;

12.4. remain employed until all development activities are concluded, and the post construction rehabilitation and monitoring requirements are finalised.

13. 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.

14. 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

15. 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.

16. The frequency of auditing of compliance with the conditions of the environmental authorisation and compliance with the approved EMPr, must comply with the following—

16.1. during the non-operational phase (construction phase), the holder must undertake annual environmental audit(s) and submit the Environmental Audit Report(s) to the Competent Authority;

16.2. an Environmental Audit Report must be submitted to the Competent Authority within three (3) months of completion of the activities (construction phase) and the post construction rehabilitation and monitoring requirements, but by no later than 30 July 2026.

Note: Should the activities (construction and the post construction rehabilitation and monitoring) be completed within a period of 12-months or less, only a single environmental audit report will need to be prepared and submitted to the Competent Authority.

17. The Environmental Audit Report(s), must –

- 17.1. 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;
 - 17.2. provide verifiable findings, in a structured and systematic manner, on–
 - 17.2.1. the level of compliance with the conditions of the environmental authorisation and the EMPr and whether this is sufficient or not; and
 - 17.2.2. 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.
 - 17.3. identify and assess any new impacts and risks as a result of undertaking the activity;
 - 17.4. evaluate the effectiveness of the EMPr;
 - 17.5. identify shortcomings in the EMPr;
 - 17.6. identify the need for any changes to the avoidance, management and mitigation measures provided for in the EMPr;
 - 17.7. 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;
 - 17.8. indicate the date on which the maintenance/ rehabilitation was commenced with and the progress of the rehabilitation;
 - 17.9. include a photographic record of the site applicable to the audit; and
 - 17.10. be informed by the ECO reports.
18. 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

19. No vegetation, including protected trees species, may be cleared or disturbed on the site without the prior approval from the relevant competent authority identified in terms of the:
 - ❖ National Forest Act, 1998;
 - ❖ Western Cape Nature Conservation Laws Amendment Act, 2000 (Act No. 3 of 2000; or
 - ❖ Outeniqua Sensitive Coastal Area Extension Regulations published in terms of the Environmental Conservation Act, 1989.

Further to this—

 - 19.1. Proof of compliance to the above legislation (where applicable) must be submitted to the Competent Authority prior to commencing any activities on the site (including site preparation).
20. No more than 300 square metres of indigenous vegetation may be cleared on Erf RE/706 to establish the structures (including the reno-mattresses, gabions and low berm).
21. The low berm proposed on Erf RE/306 to prevent back flow during flood events from earth channel across Phitidis Walk, must—
 - 21.1. be an earth berm;
 - 21.2. be constructed as depicted in the layout plan for Alternative 2 (Figure 4 of Appendix B of the Final Basic Assessment Report (dated July 2021, SES report ref. CT07/24); and
 - 21.3. not exceed one (1) metre in height as measured above ground level.

22. Should any heritage remains be exposed during excavations or any other actions on the site, these must immediately be reported to the Provincial Heritage Resources Authority of the Western Cape, Heritage Western Cape. Heritage remains uncovered or disturbed during earthworks must not be further disturbed until the necessary approval has been obtained from Heritage Western Cape. 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 all listed activity and exceed the threshold of the listed activity within the period referred to in Section G, this Environmental Authorisation shall lapse for that activity, and a new application for Environmental Authorisation must be submitted to the relevant Competent Authority.

Where a validity period has been specified for operational aspects, the onus is on the Holder to ensure the activities are always undertaken in terms of a valid environmental authorisation.

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 all the listed activities 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:

- ❖ 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.
8. This Environmental Authorisation is subject to compliance with all the peremptory conditions (i.e. 9, 11, 13 and 19). 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:
Gavin.Benjamin@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 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:
Gavin.Benjamin@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>.

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

MR. GAVIN BENJAMIN
DIRECTOR: DEVELOPMENT MANAGEMENT (REGION3)
WCG: DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING

DATE OF DECISION: 08 NOVEMBER 2021

FOR OFFICIAL USE ONLY:

EIA REFERENCE NUMBER: 16/3/3/1/D1/13/0004/21
NEAS REFERENCE: WCP/EIA/0000947/2021

ANNEXURE 1: LOCALITY MAP



ANNEXURE 2: 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 19 April 2021, the Final Basic Assessment Report (FBAR) and EMPr submitted together with the FBAR (SES report ref. CT07/24) on 21 July 2021;
- 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 July 2021 (SES report ref. CT07/24);
- e) The balancing of negative and positive impacts and proposed mitigation measures; and
- f) A site inspection was not conducted by the Directorate as the case officer knows the area and the environment aspects of the site.

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. Legislated Requirements

The onus is on the Applicant to ensure that the applicable listed activities are applied for and assessed as part of the Environmental Impact Assessment ("EIA") process. The competent authority confirmed that although the proposed development consists of various components/sections, not all the components/sections will trigger a listed activity. Therefore, only part of the development proposal would be subject to environmental authorisation.

The infilling or depositing of material within 100 metres of the high-water mark of the estuary, such as the raising of the earth bank of the existing stormwater channel along Earp Jones Street, the construction of the low berm to prevent back flow from the earth channel across Phitidis Walk during flood events, as well as the excavation, removal or movement of soil, sand, shells, shell grit, pebbles or rock within 100 metres of the high-water mark of the estuary, such as the excavations to establish structures and removal/moving of material in the channel leading to the estuary are the only activities authorised in this Environmental Authorisation. The other listed activities which were described in the basic assessment report have not been authorised, namely:

- ❖ Activity 17 of Listing Notice 1 (Government Notice No. 983 of 4 December 2014, as amended): The Applicant/EAP believed the activity was not applicable and therefore did not apply for this listed activity. It is also not clear that this activity was adequately assessed in all relevant aspects of the application.
- ❖ Activity 18 of Listing Notice 1 (Government Notice No. 983 of 4 December 2014, as amended): The FBAR states that the development of an energy dissipater at the existing non-formalised outfall channel situated on the estuary side of Phitidis Walk (or Susan Street) will trigger this activity. However, the area where the proposed works will take place is not regarded to form part of a '*littoral active zone*' as defined in the National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008). Therefore, this component

of the proposed development does not trigger Activity 18 and the listed activity therefore not authorised.

Exclusion of the proposed structure on Erf 6504:

The applicant failed to obtain the written consent from the land-owner or person in control of the land to undertake such activities on that land. Furthermore, based on this Department's NEMA EIA Circular 1 of 2012, and the information received, the portion of land on Erf 6504 is not deemed to be an urban area for the purpose of the Environmental Impact Assessment Regulations, 2014. Therefore, the following listed activities are also deemed applicable:

- ❖ Activity no. 17 of Listing Notice 1 (Government Notice No. 983 of 4 December 2014, as amended); and
- ❖ Activity number 14 of Listing Notice 3 (Government Notice No. 985 of 4 December 2014, as amended)

These listed activities were not applied for and the portion of the proposed development to which the applicable listed activity relates was not described, therefore were not authorised in this Environmental Authorisation.

2. 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 was performed in accordance with the Public Participation Plan agreed to by this Department.

The following Organs of State provided comment on the proposal:

- ❖ *Department Forestry, Fisheries and Environment – Forestry Section:*
This State Department provided comment in the pre-application phase and no further comment was received. A specific condition has been set to ensure compliance with the relevant legislation.
- ❖ *WCG: Department of Environmental Affairs and Development Management – Biodiversity and Coastal Management; and*
- ❖ *CapeNature.*

The neighbouring property owners and general public provided comment on the proposal and there was a general consensus that the proposed structure ('flood wall') on Erf 6504 was not supported and the impact on the neighbouring property owner's land not adequately addressed.

The Competent Authority is satisfied that sufficient information has been provided to consider all the comments and issues raised by the respective *Organs of State* and other I&APs and to decide the application.

3. Alternatives

Development proposal (Herewith Approved):

The part of the Preferred Alternative entails the infilling or depositing of more than 5m³ material; and the excavation or moving of soil, sand, shells, shell grit, pebbles or rock of more than 5m³ within 100 metres of the high-water mark of the estuary for the purpose to construct, expand or modify the following infrastructure, namely:

- ❖ pipe culvert outlets and existing waterways to the Kerubooms Estuary;

- ❖ widening the existing channel and raise the earth banks of the existing channel on Erf 705 along Earp Jones Street (Erf RE/2066) and provide energy dissipaters at outlets of the existing and proposed 1000 mm pipe culvert into the widened existing channel;
- ❖ widening the existing channel downstream of Phitidis Walk and to line the first 5m of channel with reno Mattresses and gabions;
- ❖ establish a low berm on Erf RE/706 to prevent back flow during flood events from the earth channel across Phitidis Walk, and
- ❖ movement of sand and reeds from the channel leading to the estuary.

The following component/activities do not form part of this Environmental Authorisation:

- ❖ The development of a structure / 'flood wall' on Erf 6504.

Alternative 1: Second Outfall via Earp-Jones Street

Alternative 1 for the second 1 000 mm outfall culvert via Earp-Jones Street (Erf RE/2066) would comprise the following:

- ❖ Route of Second 1 000 mm Pipe Culvert:
 - Inlet in Shoprite Checkers Centre Parking Area (including provision to enable overflows into the road to the North of the Shoprite Checkers Centre to flow to the inlet via the existing passageway on the western side of the building).
 - Susan Street
 - Bird Street
 - Plato Road
 - Earp-Jones Street
 - Under Phitidis Walk
 - USBR Impact Type Energy Dissipater shown in Figure 4, at outfall into existing earth channel to Estuary.
 - Widen existing earth channel and line approximately 10 m with gabions and Reno mattresses.
- ❖ Existing 1 000 mm Pipe Culvert Outlet and Channel parallel to Earp Jones Street:
 - Preferably also construct the USBR Impact Type Energy Dissipater shown in Figure 5 at the existing pipe outfall into the existing channel (Provisional Sum Item).
 - Slightly raise the earth banks of the existing channel to contain calculated backwater depths from existing downstream culvert.
- ❖ Low berm to prevent back flow from earth channel across Phitidis Walk during flood events.
- ❖ The level of Earp-Jones street to be raised by approximately 400 mm to provide sufficient cover for the 1 000 mm Pipe Culvert.

Alternative 2: Second Outfall via Widened Existing Channel with New Culverts

Alternative 2 for the proposed Second 1 000 mm Outfall Culvert and would comprise the following:

- ❖ Route for proposed Second 1 000 mm Outfall Culvert:
 - Inlet at Shoprite Checkers Centre Parking Area (including provision to enable overflows into the road to the North of the Shoprite Checkers Centre to flow to the inlet via the existing passageway on the western side of the building)
 - Susan Street
 - Bird Street
 - Plato Road
 - Outfall into existing channel via USBR Impact Type Energy Dissipater.
- ❖ Pipe culvert outlets and existing waterways to Estuary:
 - Preferably provide USBR Impact Type Energy Dissipaters shown in Figure 4 above at outlets of existing and proposed 1 000 mm pipe culvert into widened existing channel.
 - Widen existing channel and slightly raise banks.
 - Construct two 3.6 m by 0.57 m culverts at Phitidis Walk.
- ❖ Existing earth channel downstream of Phitidis Walk:
 - Widen existing channel
 - Line first 5 m of channel with Reno Mattresses and gabions.

- ❖ Low berm to prevent back flow during flood events from earth channel across Phitidis Walk.

Alternative 3: Second Outfall via Susan Street

Alternative 3 for the proposed Second 1 000 mm Outfall Culvert and would comprise the following:

- ❖ Route for proposed Second 1 000 mm Pipe Culvert:
 - Inlet at Shoprite Checkers Centre Parking Area (including provision to enable overflows into the road to the North of the Shoprite Checkers Centre to flow to the inlet via the existing passageway on the western side of the building).
 - Susan Street
 - Outfall via gabion and Reno mattress headwall into Estuary.
- ❖ Existing 1 000 mm Pipe Culvert Outlet and Channel parallel to Earp Jones Street:
 - Preferably construct USBR Impact Type Energy Dissipater at existing pipe outlet into existing channel (Provisional Item).
 - Slightly raise earth banks of existing channel to contain calculated backwater depths from existing downstream culvert.
- ❖ Low berm to prevent back flow during flood events from earth channel across Phitidis Walk.

"No-Go" Alternative

Without the improved management of stormwater in the area, the damage caused by flooding and the pollution from the existing stormwater outfall into the estuary will continue to occur and the Bitou Municipality will therefore not comply with other legislation

4. Impact Assessment and Mitigation Measures

4.1 Activity Need and Desirability:

The stormwater drainage in the Poortjies area has been an ongoing problem in the area for a number of years as the majority of the residential dwellings lie below the 5-metre topographical contour (which can be below the 1:100 year floodline) and within the estuarine functional zone (i.e. floodplain area). The Stormwater Management plan prepared by a consulting engineering firm, AURECON (July 2020) notes that stormwater runoff from the upper catchment will contribute towards the future flooding of Poortjies, leaving the community and commercial enterprises susceptible and vulnerable. Flooding of the community will potentially cause damage to existing infrastructure relied upon by the residents of Poortjies and interfere with economic activity. The proposed stormwater upgrades will ensure that flooding is reduced within Poortjies. Furthermore, many properties in Poortjies area are situated below the road levels which further exacerbates flooding events. The existing sewerage pumpstation on Erf 705 has been converted to pump storm water away from the lower lying area; however, this action has not been sufficient enough and additional storm water management measures are required.

4.2 Aspects related to the Coastal Zone

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.

There are many aspects that must be taken into account when the competent authority considers an application for authorisation, *inter alia*:

- Representations made by the applicant and by interested and affected parties;
- The applicant's past record in complying with similar authorisations;
- If coastal public property, coastal access land or the coastal protection zone will be affected by the proposed action;

- Coastal management objectives;
- The socio-economic impact if that activity or action is authorised or not authorised;
- The likely impact on the coastal environment including the cumulative effect;
- The likely effect of coastal processes (such as wave, current and wind action, erosion, accretion, sea-level rise, storm surges and flooding) on the activity; and
- The objectives of the NEM:ICMA which apply to the activity.

The information which has been provided in the Final BAR and specialist study, has satisfactorily addressed the abovementioned aspects. The Specialist has also adequately demonstrated the likely impact of coastal environmental processes on the proposed activity which is a specific aspect to be considered in this decision in terms of section 63 of the NEM:ICMA.

The Coastal Management Line ('CML') which has been delineated in terms of the provisions of the NEM:ICMA by this Department in 2016, has been considered. Although the CML has not been formerly adopted (i.e. draft status), the purpose of the CML in relation to the CPZ, CPP and the need for pro-active planning for the expected effects and risks associated with climate change, is noted. The draft CML lies landward of a large portion of the site. Given the context and historical background of the Poortjies area, the strict application of CML is outweighed by the need to protect amongst other important public infrastructure.

In terms of the NEM:ICMA, specifically Sub-section 15(2) which deals with measures affecting erosion and accretion, "*No person may construct, maintain or extend any structure, or take other measures on coastal public property to prevent or promote erosion or accretion of the seashore except as provided for in this Act, the National Environmental Management Act or any other specific environmental management Act.*"

With due regard to the position of the HWM, this refers to the highest line reached by coastal waters but excludes exceptional or abnormal weather or sea conditions. Based on the available information the proposed dune rehabilitation (sleeping revetment footprint) will be located on Erf RE/706 (Public Place) above the HWM as defined in NEM:ICMA. The works on Erf RE/2066 and Erf 705 as well as the proposed structure/rehabilitation on RE/706 will be for the protection of important infrastructure and will not infringe on Coastal Public Property (CPP) as defined in Section 7 of NEM:ICMA, therefore Section 15(2) is regarded not to apply to the proposed activity on these portions of Erven RE/2066; 705 end RE/706.

4.3 Biophysical Impacts

Aquatic environment:

The Keurbooms Estuary and the wetlands are of very high conservation importance. The estuary is one of the core set of temperate estuaries required to meet the targets for biodiversity protection of estuarine resources and the Keurbooms Estuary has been ranked as the 18th most important estuary in South Africa in terms of biodiversity. However, both water resources have been subjected to anthropogenic impacts, largely from residential development. The activities will occur within the Coastal Protection Zone (CPZ) albeit residential.

The cumulative impact of this activity on the aquatic habitat will be of high significance but can be mitigated to medium significance. It is not anticipated that there will be any loss to important biota during the construction or maintenance phase.

4.4 Biodiversity

The vegetation type that would have originally occurred in the study area is *Garden Route Shale Fynbos*. The vegetation type is not threatened according to the National List of Threatened

Ecosystems (2011) and there will be no significant loss of this ecosystem as there is no remaining vegetation belonging to this ecosystem type. The anticipated direct impacts would be considered insignificant. According to the Biodiversity Spatial Development Framework the area where works are to take place is estuarine and the objective is to maintain in a natural or near-natural state, with no further loss of natural habitat. Degraded areas should be rehabilitated. Only low-impact, biodiversity-sensitive land uses are appropriate. The works here are deemed as low impact.

Furthermore, the mitigation measures that will be taken to address the environmental impacts resulting from the undertaking of activity are regarded adequate. These mitigation measures have been included in the EMP.

4.5 Heritage / Archaeological Aspects

Final comment was received from Heritage Western Cape (HWC), which indicated that there is no reason to believe that the proposed development will have an impact on heritage resources. No further assessment was required from HWC, therefore, the competent authority is satisfied that the requirements in terms of Section 38 of the National Heritage Resource Act (Act 25 of 1999) have been addressed.

4.6 Other Impacts

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

5. **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 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. In light of the proposed implementation programme, the monitoring and post-construction rehabilitation can be adequately incorporated in the construction phase. The Holder should however substantially implement the development within a period of 24-months after the environmental authorisation is issued.

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.

6. **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.

7. 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 30 November 2020 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 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.

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