



REFERENCE: 16/3/3/1/D1/14/0005/23
ENQUIRIES: Shireen Pullen
DATE OF ISSUE: 13 SEPTEMBER 2023

The Director
Acme Capital (Pty) Ltd
185 Constantia Main Road
CONSTANTIA
7806

Attention: Mr. LJ du Preez

Tel: 0824445664
Email: pierre.dupreez@suttonpl.com

Dear Sir

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 TELLURIC FARM ON REMAINDER 43 & 191 OF PORTION 444 AND FARM 104 OF PORTION 444, GANSVALLEI, PLETTENBERG BAY, BITOU MUNICIPALITY

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 **Departmental approved alternative**, which is a combination of the preferred alternative described in the Final Basic Assessment Report ("FBAR"), dated 29 May 2023, but with the exclusion of the area between the dam and the *Muraltia Knysnaensis* conservation area, the area identified as *Muraltia Knysnaensis* conservation area, the natural areas to the south, as well as the two natural areas at the other dam where a group of milkwood trees are found (all areas indicated within the red border on the site development plan in **Annexure 2** of this Authorisation) to improve connectivity and contact area with the remaining natural fynbos habitat areas onto the neighbouring property.

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
Acme Capital (Pty) Ltd
Mr. LJ du Preez
185 Constantia Main Road
CONSTANTIA
7806

Email: pierre.dupreez@suttonpl.com

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
<p>Environmental Impact Assessment Regulations Listing Notice 1 of 2014, Government Notice No. 983 of 4 December 2014</p>	
<p><i>Activity Number: 17</i> <i>Activity Description:</i></p> <p><i>Development—</i></p> <ul style="list-style-type: none"> (i) in the sea; (ii) in an estuary; (iii) within the littoral active zone; (iv) in front of a development setback; or (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; <p><i>in respect of—</i></p> <ul style="list-style-type: none"> (a) fixed or floating jetties and slipways; (b) tidal pools; (c) embankments; (d) rock revetments or stabilising structures including stabilising walls; or (e) infrastructure or structures with a development footprint of 50 square metres or more — <p><i>but excluding—</i></p> <ul style="list-style-type: none"> (aa) the development of infrastructure and structures within existing ports or harbours that will not increase the development footprint of the port or harbour; (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; (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 (dd) where such development occurs within an urban area. 	<p>The property is located within 100m of the high-water mark of an estuary albeit elevated substantially from natural ground level. The main gate and existing access partially fall within this scope.</p>
<p><i>Activity Number: 27</i> <i>Activity Description:</i> <i>The clearance of an area of 1 hectare or more, but less than 20 hectares of indigenous vegetation, except where such clearance of indigenous vegetation is required for—</i></p> <ul style="list-style-type: none"> (i) the undertaking of a linear activity; 	<p>Areas on the property previously brush-cut by the previous landowners and utilised for grazing without soil disturbance, therefore still</p>

<p>(ii) or maintenance purposes undertaken in accordance with a maintenance management plan.</p>	<p>defined as natural / indigenous vegetation albeit transformed.</p>
<p>Environmental Impact Assessment Regulations Listing Notice 3 of 2014, Government Notice No. 985 of 4 December 2014</p>	
<p>Activity Number: 4 Activity Description: The development of a road wider than 4 metres with a reserve less than 13,5 metres.</p> <p>i. Western Cape</p> <p>i) Areas zoned for use as public open space or equivalent zoning;</p> <p>ii) Areas outside urban areas;</p> <p>iii) Areas containing indigenous vegetation;</p> <p>iv) 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</p> <p>v) Inside urban areas:</p> <p>a) Areas zoned for conservation use; or</p> <p>b) Areas designated for conservation use in Spatial Development Frameworks adopted by the competent authority.</p> <p>Activity Number: 12 Activity Description: 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> <p>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;</p> <p>ii. Within critical biodiversity areas identified in bioregional plans;</p> <p>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;</p> <p>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</p> <p>v. On land designated for protection or conservation purposes in an Environmental Management Framework adopted in the prescribed manner, or a Spatial</p>	<p>The site contains several existing farm tracks. The main access and road to the proposed restaurant will be three (3m) wide, designed as a circular route that links to existing farm tracks, with passing bays that will exceed the 4m threshold in places.</p> <p>The proposal will result in the clearance of more than 300m² of threatened ecosystem. The threat status changed to "Endangered" in November 2022.</p>

Development Framework adopted by the MEC or Minister	
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The abovementioned list is hereinafter referred to as “**the listed activities**”.

The Holder is herein authorised to undertake the following alternative that includes the listed activities as it relates to the development and development footprint.

The proposal entails the development of a residential estate consisting of the following:

Portion 104/444

- A single storey 100-seater restaurant with storage cellar for wine sales/tasting;
- Parking area with a walkway to the restaurant;
- Conservation area adjacent to the proposed restaurant (presence of a single *Muraltia Knysnaensis* surveyed by botanist in area next to the proposed position of the restaurant);
- Main dwelling on this cadastral unit;
- New vineyards;
- New internal access road to restaurant (3m wide, circular route); and
- New 2-spoor farm track to the proposed primary dwelling.

Portion 191/444

- Main entrance gate off Provincial Road (Rietvlei Road);
- New main dwelling as primary right on this cadastral unit;
- New 2-spoor farm track to the proposed main dwelling; and
- New vineyards.

RE43/444

New vineyards

The development will be implemented approximate to the site development plan contained in Annexure 2 of this authorisation with the exclusion of the area between the dam and the *Muraltia Knysnaensis* conservation area, the area identified as *Muraltia Knysnaensis* conservation area, the natural areas to the south, as well as the two natural areas at the other dam where a group of milkwood trees are found (all areas indicated within the red border on site development plan in Annexure 2 of this Authorisation) to improve connectivity and contact area with remaining natural fynbos habitat areas onto the neighbouring property.

C. SITE DESCRIPTION AND LOCATION

Approximately 15ha of the property is indigenous vegetation according to the definition of 'indigenous vegetation' in terms of the NEMA EIA regulations because soil disturbance has not been noted, however this +/-15ha brush-cut area consist of approximately 4.5ha transformed Fynbos (more recently brush cut) and roughly 10ha degraded Fynbos with some secondary thicket. The site is located on the Farm Gansevallei, Plettenberg Bay and can be accessed via an existing road directly off Rietvlei Road (Provincial Road), across Portion 7/444.

The coordinates of the centre of the proposed development footprint site:

Latitude (S)	Longitude (E)
34° 0' 55.44" South	23° 22' 11.39" East

Farm Portion	SG 21 Digit code
104/444	C03900000000044400104
RE/43/444	C03900000000044400043
RE/7/444	C03900000000044400007

Refer to Annexure 1: Locality Plan and Annexure 2 of this Environmental Authorisation.

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

D. DETAILS OF THE ENVIRONMENTAL ASSESSMENT PRACTITIONER (EAP)

Cape EAPrac (Pty) Ltd
% Ms Louise-Marie van Zyl
P.O. Box 2070
GEORGE
6530

Tel: 044 874 0365
E-mail: louise@cape-eaprac.co.za
Website: www.cape-eaprac.co.za

E. CONDITIONS OF AUTHORISATION

Scope and Validity Period of authorisation

1. This Environmental Authorisation is granted for a period of 10 years from the date of issue of this authorisation until **18 September 2033** to complete all the listed activities, including post construction, rehabilitation and monitoring requirements at the site.

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 the Departmental approved alternative and the Preferred Alternative, as described in Section B above and below:

The proposal entails the development of a residential estate consisting of the following:

Portion 104/444

- A single storey 100-seater restaurant with storage cellar for wine sales/tasting;

- Parking area with a walkway to the restaurant;
- Conservation area adjacent to the proposed restaurant (presence of a single *Muraltia Knysnaensis* surveyed by botanist in area next to the proposed position of the restaurant);
- Main dwelling on this cadastral unit;
- New vineyards;
- New internal access road to restaurant (3m wide, circular route); and
- New 2-spoor farm track to the proposed primary dwelling.

Portion 191/444

- Main entrance gate off Provincial Road (Rietvlei Road);
- New main dwelling as primary right on this cadastral unit;
- New 2-spoor farm track to the proposed main dwelling; and
- New vineyards.

Remainder 43/444

New vineyards

The development will be implemented approximate to the site development plan contained in Annexure 2 of this authorisation with the exclusion of the area between the dam and the *Muraltia Knysnaensis* conservation area, the area identified as *Muraltia Knysnaensis* conservation area, the natural areas to the south as well as the two natural areas at the other dam where a group of milkwood trees are found (areas within the red border on site development plan contained in Annexure two of this Authorisation) to improve connectivity and contact area with remaining natural fynbos habitat areas onto the neighbouring property.

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

3. 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.
4. 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

5. The Holder must in writing, within 14 (fourteen) calendar days of the date of this decision–
 - 5.1. notify all registered Interested and Affected Parties ("I&APs") of –
 - 5.1.1. the decision reached on the application;
 - 5.1.2. the reasons for the decision as included in Annexure 3;
 - 5.1.3. the date of the decision; and
 - 5.1.4. the date when the decision was issued.
 - 5.2. 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;
 - 5.3. draw the attention of all registered I&APs to the manner in which they may access the decision;
 - 5.4. provide the registered I&APs with the:
 - 5.4.1. name of the Holder (entity) of this Environmental Authorisation,
 - 5.4.2. name of the responsible person for this Environmental Authorisation,
 - 5.4.3. postal address of the Holder,
 - 5.4.4. telephonic and fax details of the Holder,

- 5.4.5. e-mail address, if any, of the Holder,
- 5.4.6. 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).
- 5.5. 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.
- 5.6. 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

- 6. Seven calendar days' notice, in writing, must be given to the Competent Authority before commencement of any activities.
 - 6.1. The notice must make clear reference to the site details and EIA Reference number given above.
 - 6.2. The notice must also include proof of compliance with the following conditions described herein:

Conditions Number: 9, 11, 19 & 20

- 7. Seven calendar days' notice, in writing, must be given to the Competent Authority on completion of the construction activities of the internal service infrastructure (i.e. internal roads; water, sewer, electricity reticulation and bulk storm water).

Management of activity

- 8. The Environmental Management Programme ("EMPr") submitted as part of the application for Environmental Authorisation is hereby approved subject to the inclusion of the final site development plan, which gives effect to the description of the Departmental approved alternative of this authorisation. A copy of the EMPr inclusive of the approved site development plan must be submitted to the competent authority for record purposes.
- 9. The EMPr must be included in all contract documentation for all phases of implementation of the development.

Monitoring

- 10. The Holder must appoint a suitably experienced Environmental Control Officer ("ECO"), for the duration of the construction and rehabilitation phases.
- 11. The ECO must–
 - 11.1. be appointed prior to commencement of any works (i.e. removal and movement of soil and / or rubble or construction activities commencing;
 - 11.2. ensure compliance with the EMPr and the conditions contained herein;
 - 11.3. keep record of all activities on the site; problems identified; transgressions noted and a task schedule of tasks undertaken by the ECO;
 - 11.4. remain employed until all development activities are concluded, and the post construction rehabilitation and monitoring requirements are finalised.
- 12. 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 a website, such documents must be made available on such publicly accessible website.

13. 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

14. The Holder must, for the period during which the environmental authorisation and EMPr remain valid ensure that compliance with the conditions of the environmental authorisation and provisions of the EMPr, is audited.
15. The frequency of auditing compliance with the conditions of the environmental authorisation and provisions of the EMPr, must adhere to the following programme:

- 15.1. During the period which the clearance activities have been commenced with on site until the establishment of the vineyards has been completed on site, the Holder must undertake annual environmental audit(s) and submit the Environmental Audit Report(s) to the Competent Authority.

A final Environmental Audit Report must be submitted to the Competent Authority within **three (3)** months of completion vineyards, rehabilitation and monitoring requirements thereof.

Note: The final auditing requirements should be completed at least three months prior to expiry of the validity period of the environmental authorisation to ensure that the Holder is able to comply with all the environmental auditing and reporting requirements and for the competent authority to be able to process it timeously.

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

- 16.1. 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;
- 16.2. provide verifiable findings, in a structured and systematic manner, on–
 - 16.2.1. the level of compliance with the conditions of the environmental authorisation and the provisions of the EMPr and whether this is sufficient or not; and
 - 16.2.2. 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.
- 16.3. identify and assess any new impacts and risks as a result of undertaking the activity;
- 16.4. evaluate the effectiveness of the EMPr;
- 16.5. identify shortcomings in the EMPr;
- 16.6. identify the need for any changes to the avoidance, management and mitigation measures provided for in the EMPr;
- 16.7. 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;
- 16.8. indicate the date on which the operational phase was commenced with and the progress of the rehabilitation;
- 16.9. include a photographic record of the site applicable to the audit; and
- 16.10. be informed by the ECO reports.

17. 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

18. An invasive alien management plan must be compiled for the thicket and wetland areas. This invasive alien management plan must be read together with the Environmental Management Programme and submitted to this Directorate for record keeping purposes, prior to commencement of construction activities.
19. The No-go areas (designated botanical reserve) must be demarcated prior to any site clearing/preparation for the vineyards/orchards. All machinery and materials to be used must be highly visible and appropriate signage must be placed around the area to ensure that workers and machinery does not encroach into this area.
20. A search and rescue mission for plants and animals must be undertaken, prior to commencement of construction activities on site and rescued plants must be transplanted into the thicket vegetation areas.
21. A controlled ecological burn of the reserve must be undertaken after one year from when the area is demarcated and thereafter at least every 12 years from the burn at the end of the first year.
22. A Botanist must survey the reserve, before the first ecological burn (year 1) to establish a baseline species list and condition of the reserve.
23. A Botanist must conduct a plant species survey within the designated botanical reserve every third year from year 1, with a further 2 surveys after the second ecological burn. Thereafter the Botanist must make recommendations for additional measures to restore the habitat if not suitably restored, or alternatively submit a report to the Competent Authority and CapeNature, which confirms that the biodiversity diversity is restored to an acceptable level.
24. No development must take place on slopes 1:4 and steeper.
25. 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 activities and exceed the threshold of each 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.

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.
 - (c) An environmental authorisation may be amended where it relates to a change of ownership or transfer of rights and obligations.
 - (d) On application, if the competent authority decides to grant environmental authorisation, the competent authority may issue a single environmental authorisation or multiple environmental authorisations in the name of the same or different applicants covering all aspects for which authorisation is granted.
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 the 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.

8. This Environmental Authorisation is subject to compliance with all the suspensive conditions (i.e. 11 & 19 of Section E). Failure to comply with all the suspensive 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, any Organ of State with interest in the matter and the decision-maker i.e. the Competent Authority that issued the decision.
2. An appellant (if NOT the holder of the decision) must, within 20 (twenty) calendar days from the date the holder of the decision sent notification of the decision to the registered I&APs–
 - 2.1. Submit an appeal in accordance with Regulation 4 of the National Appeal Regulations 2014 (as amended) to the Appeal Administrator; and
 - 2.2. Submit a copy of the appeal to the holder of the decision, any registered I&AP, any Organ of State with interest in the matter and the decision-maker i.e. the Competent Authority that issued the decision.
3. The holder of the decision (if not the appellant), the decision-maker that issued the decision, the registered I&AP and the Organ of State must submit their responding statements, if any, to the appeal authority and the appellant within 20 (twenty) calendar days from the date of receipt of the appeal submission.
4. The appeal 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. ZAAHIR TOEFY
DIRECTOR: DEVELOPMENT MANAGEMENT

DATE OF DECISION: 13 SEPTEMBER 2023

Copies to: Ms. L. van Zyl
Ms. A. Taljaard

Cape EAPrac
Bitou Municipality

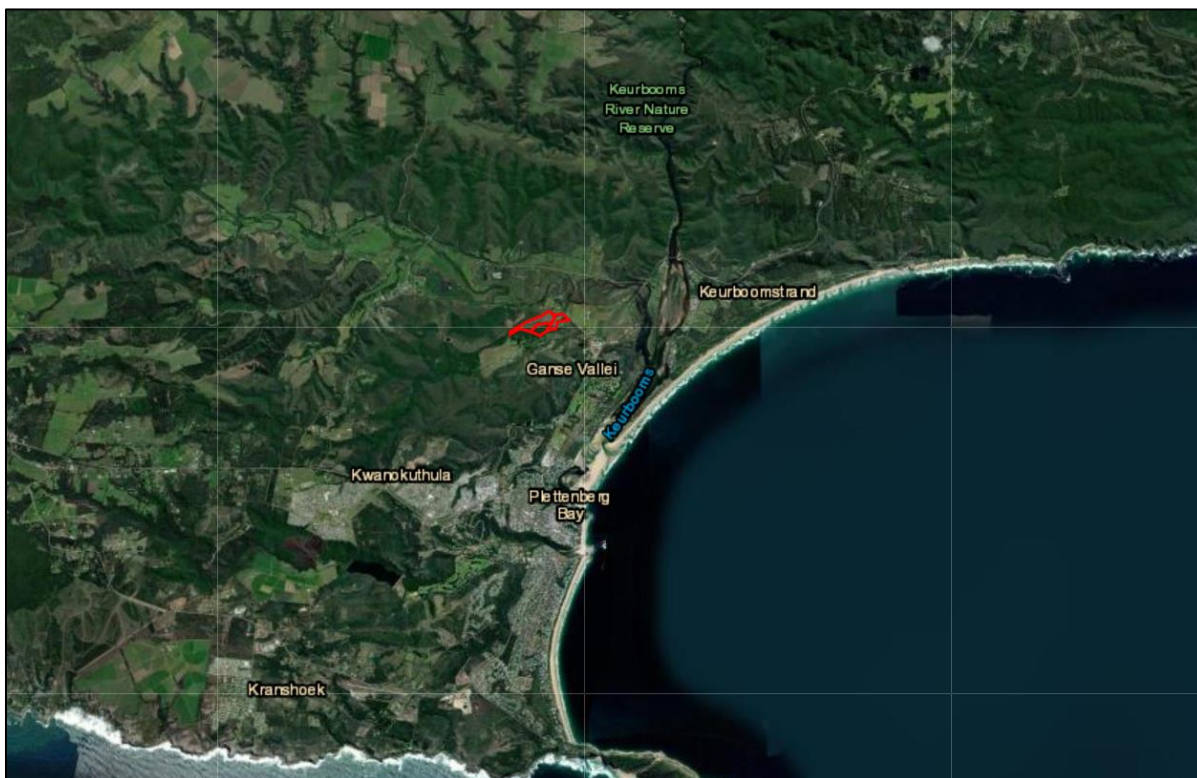
Email: louise@cape-eaprac.co.za
Email: ataljaard@plett.gov.za

FOR OFFICIAL USE ONLY:

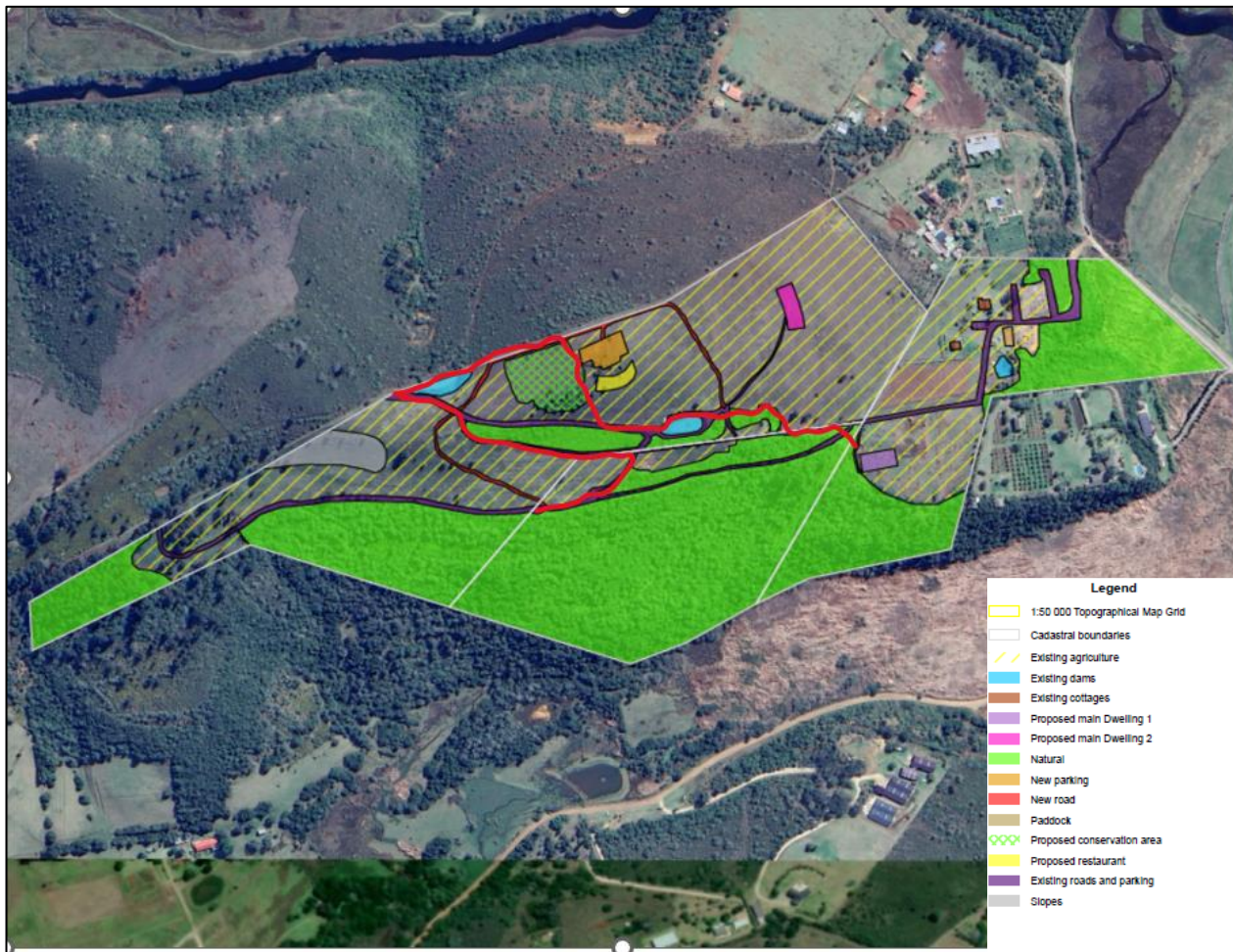
EIA REFERENCE NUMBER: 16/3/3/1/D1/14/0005/23

NEAS REFERENCE: WCP/EIA/0001243/2023

**ANNEXURE 1
LOCALITY PLAN**



ANNEXURE 2: SITE DEVELOPMENT PLAN



AREA WITHIN THE RED BORDER THAT SHOULD BE INCLUDED IN THE CONSERVATION AREA.

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 22 February 2023, the Final Basic Assessment Report (FBAR) and EMPr submitted together with the FBAR on 29 May 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 29 May 2023;
- e) The balancing of negative and positive impacts and proposed mitigation measures;
- f) Adequate/Sufficient information was made available in the report to understand the environmental and spatial context and the case officer is familiar with the area; and
- g) The observations that were made during the site inspection conducted on 25 July 2023 by the EAP, Ms. Shireen Pullen and Mr Malcolm Fredericks from this Directorate, Ms. Megan Simons from CapeNature and a representative of the applicant, Ms. Megan van der Merwe.

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 entrance of Telluric Farm on 24 March 2023;
- 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;
- Notices were given on 24 March 2023 to the municipality and ward councillor, and the various organs of state having jurisdiction in respect of any aspect of the listed activities;
- Notification of the availability of the Draft BAR from 27 March 2023 until 2 May 2023 was sent on 26 March 2023; and
- The placing of a newspaper advertisement in the 'Knysna Plett Herald' on 23 March 2023

The following Organs of State provided comment on the proposal:

- Breede-Olifants Catchment Management Agency (BOCMA)
- South African Civil Aviation Authority (SACAA)
- CapeNature
- Heritage Western Cape
- Department of Agriculture
- Department of Health
- South African Roads Agency Limited (SANRAL)
- Bitou Municipality
- Garden Route District Municipality
- Department of Transport: Provincial Roads
- Department of Forestry

CapeNature highlighted the following criteria which are to be considered with respect to the site's ecological importance and agricultural potential, namely: conserving threatened ecosystems (fynbos), protecting protected habitats (forests), avoiding loss of habitat and supporting ecosystem functionality.

It must be noted that the threatened ecosystem (status) of the affected habitat was classified Vulnerable throughout the entire period of specialist assessment and only recently (November 2022) was elevated to 'endangered'. However, the EAP confirmed that it did not change the outcome of the specialist's findings/recommendations due to the fact that the fynbos habitat has been exposed to different levels of disturbances over a period of time. The area noted by the specialist as being of conservation importance, to help protect a Species of Conservation Concern (SOSC) was excluded and set aside. The remnant conservation worthy portion of the endangered ecosystem on the site is therefore deemed to be conserved in accordance with this focus item. This EA further expands the conservation (botanical reserve) area down to the existing dam to improve connectivity and contact area with remaining natural fynbos habitat on the neighbouring property.

Furthermore, the preferred alternative avoids the protected habitats that contains protected tree species altogether and the portion of transformed thicket/forest habitat that is still recovering from historical transformation, will be restored to an elevated natural state through ongoing invasive alien clearing and protection of this habitat.

The loss of habitat has been considered and assessed by the specialist -in the final BAR. The loss of habitat (thicket/forest) is not considered a significant concern, as the thicket/forest areas will be avoided by the preferred alternative. The forest/thicket habitat along most of the southern portions of the total property, retaining the supporting ecosystem functionality and CBA principles.

BOCMA issued a WULA in support of the water rights that is required to support the proposed development.

The Department of Forestry was approached for comment, however, no written comment was received during the regulated commenting period. Protected trees noted on the site have however been identified and avoided in the preferred site layout. The remnant milkwood thicket on the southern slopes will not be affected.

No written comment was received from the Department of Agriculture. However, the Department of Agriculture, Mr Dawie de Villiers confirmed telephonically that they are in support of the agricultural activities applied for in terms of the Conservation of Agricultural Resources Act ("CARA") application.

No major objections were raised against the proposal. This Directorate is satisfied that the mitigation measures proposed will effectively address the concerns raised by I&APs to ensure that the impacts on the receiving environment will be insignificant.

2. Consideration of Alternatives

Site Alternatives

Although several potential sites in the area were initially considered by the viticulturist at the outset of their search for a property, these did not form part of the environmental investigation. Ultimately the proposed farm portions (104/444, RE/7/444 and RE/43/444) were deemed suitable and were purchased for the development. The preferred site was the only site assessed in the process.

Alternative 1

Portion 104/444

This alternative entails the construction of a single storey 100-seater restaurant with storage cellar for wine sales and tasting along the Eastern slope, separated from the parking area on the top of the hill on this particular piece of property. The distance between the parking area and restaurant was deemed problematic and it would also imply an uphill from the restaurant back to the parking area. The presence of *Muraltia Knysnaensis* was unknown at this point in time, thus there was not provision for a botanical reserve. The proposal also included a main dwelling, a second dwelling, two sheds and vineyards across the entire site not excluding remaining thicket and protected tree species.

RE/7/444 (7.25ha) – now consolidated as Portion 191/444

This alternative entails constructing a main dwelling (located in the remnant thicket) and vineyards across the entire site not excluding remaining thicket on this parcel of land.

RE43/444 (7.51ha)

This alternative entails the construction of a main dwelling and a second dwelling, a store and vineyards all to be located across the remnant thicket on this parcel of land.

This was not the applicant's preferred alternative as a lot of the remnant thicket vegetation would be lost. The complete transformation of the entire property into vineyards would result in the loss of remnant, intact milkwood thicket that comprises approximately 50% of the property. This habitat resembles the least degraded, remaining natural habitat on the property, containing protected trees and being a habitat for fauna that rely on the thicket for food and protection. This is therefore not the Department's preferred alternative either.

Alternative 2

Portion 104/444 (15.48ha)

The BAR submits that on this section of the property, it was proposed to construct a single storey 100-seater restaurant with storage cellar for wine sales/tasting along the Eastern slope, separated from the parking area on the top of the hill. The distance between the parking area and restaurant was deemed problematic and would also imply an uphill from the restaurant back to the parking area.

According to the BAR this alternative makes provision for a 0.5ha botanical reserve for *Muraltia Knysnaensis*. It also included a main dwelling on this cadastral unit, a second dwelling, two sheds (one still located in remnant thicket), vineyards reduced and restricted to transformed and degraded Fynbos areas. This alternative also avoids protected trees as the location thereof is known at this point.

RE/7/444 (7.25ha) – now consolidated as Portion 191/444

The alternative proposed on this portion of the property also entails the construction of a main dwelling partially in the remnant thicket and the proposed vineyards were reduced and restricted to transformed and degraded Fynbos areas on this portion of land.

RE43/444 (7.51ha)

The alternative on this portion of the property included the construction of a main dwelling, a second dwelling and a store located in the remnant thicket. This alternative contains much reduced vineyards avoiding the remnant thicket and protected trees.

Although deemed a significant improvement compared the previous alternative as it reduced, the extent of the vineyards to avoid the remnant milkwood thicket and incorporating the conservation areas with protected trees and the Knysna Butterflybush, the number of dwellings and stores, especially their positioning within the remnant Thicket is still determined to be undesirable according to the BAR, as it will unnecessarily fragment the remaining intact natural habitat. As such, according to the BAR this is therefore not the proponent's preferred alternative.

Preferred Alternative

The proposal entails the development of a residential estate consisting of the following:

Portion 104/444

- A single storey 100-seater restaurant with storage cellar for wine sales/tasting;
- Parking area with a walkway to the restaurant;
- Conservation area adjacent to the proposed restaurant (presence of a single *Muraltia Knysnaensis* surveyed by botanist in area next to the proposed position of the restaurant);
- Main Dwelling on this cadastral unit
- New vineyards

- New internal access road to restaurant (3m wide, circular route)
- New 2-spoor farm track to proposed primary dwelling

Portion 191/444

- Main entrance gate off Provincial Road (Rietvlei Road)
- New main Dwelling as primary right on this cadastral unit
- New 2-spoor farm track to proposed main dwelling
- new vineyards

RE43/444

New vineyards

The development will be implemented approximate to the site development plan, as per Annexure 2 of this authorisation with the exclusion of the area between the dam and the *Muraltia Knysnaensis* conservation area, the area identified as *Muraltia Knysnaensis* conservation area, the natural areas to the south, as well as the two natural areas at the other dam where a group of milkwood trees are found (areas indicated within the red border on the site development plan in Annexure 2 of this Authorisation) to improve connectivity and contact area with remaining natural fynbos habitat areas onto the neighbouring property.

This Directorate is of the opinion that is the best practicable environment option as the number of structures is significantly reduced, thereby preserving the overall rural atmosphere of the property and the conservation area is significantly enhanced to ensure connectivity and conservation of the sensitive areas. According to the BAR this alternative entirely avoids the remaining intact Thicket habitat and protected trees. The BAR further submits that the close proximity of the botanical reserve and the restaurant to each other will increase the exposure of visitors to the reserve, which may create and opportunity for environmental awareness and education about the species that occur here. The extension of the conservation area all the way down to the dam also ensures a larger botanical reserve for the *Muraltia Knysnaensis* species.

According to the BAR the approved alternative avoids the remaining, intact natural habitats that animals favour on this property. Improved invasive alien clearing will be implemented within these areas with the additional income generated by the proposed development. According to the BAR, implementing the proposed activity within the transformed and degraded Fynbos areas is deemed to be supportive of the best practical environmental option since the socio-economic benefits will be balanced with a moderate to low negative environmental impact. This Directorate is in support of implementing the proposed activity in the aforementioned fynbos area.

The development will be implemented approximate to the site development plan, as per Annexure 2 of this authorisation with the exclusion of the area between the identified conservation area and the dam in order to extend the conservation area down to the existing dam to improve connectivity and contact area with remaining natural fynbos habitat on the neighbouring property.

“No-Go” Alternative

The option of not implementing the activity means that grazing will continue on existing pastures that will require regular brush cutting across most of the Fynbos habitat. No restaurant and no primary dwellings will be constructed. This is not the applicant t's preferred alternative.

3. Impact Assessment and Mitigation Measures

3.1 Activity Need and Desirability

The property is zoned for Agriculture I. It is the intention of the Applicant to continue to exercise agricultural rights on the property and to optimise the agricultural potential of the site by converting grazing and pastures to vineyard or orchards.

Comprehensive soil studies were conducted, which confirmed that the site was suitable for the planting of the grapevine cultivars in particular. The Land Capability of each of the three properties were investigated to establish if the soils fall within the Moderate to Moderate-low land capabilities, which is important for quality wine production. Together with soil sampling, soil profiling and Dynamic Cone Penetrometer testing were carried out to assess the impact of the proposed agricultural activities on the site. Soil samples were also chemically analysed to help identify the area's most suitable for the establishment of vineyards or orchards.

3.2 Forward Planning

The BAR submits that the Provincial Spatial Development Framework (PSDF) supports Economic sectors and specific areas targeted for support includes the Agricultural sector. Furthermore, according to Bitou Municipality's Spatial Development Framework, the small contribution which agriculture is making to the Bitou economy should be expanded. Only 50% of the available land is currently being utilised for agriculture and new ways of increasing agricultural production should be explored. The draft Goose Valley SDF does indicate a small portion of the site as commercial agriculture with the majority of the property as Biodiversity Area, which aligns with the Critical Biodiversity Area dataset for the area. It is noted however that natural grazing areas (albeit utilised for agricultural purposes) are not reflected as agriculture in this draft document. It is assumed that it is because no lawful soil disturbance has occurred in such areas in which case it is still deemed 'natural'. Bitou Municipality's Integrated Development Plan (IDP) states that Agro-tourism including wine farming provide an opportunity for further tourism development. Agro-tourism is part of Bitou Municipality's Agricultural Development Programme. The proposal is therefore in line with these Planning documents.

3.3 Impact on the Environment

Plant species

According to the BAR the plant species assessment concluded that a single individual of the Endangered species, *Muraltia Knysnaensis*, was found on site. It further states that this single species is probably part of a larger population, the size of which is probably small (maximum of a few individuals) and locally restricted in extent, but this could not be confirmed due to the moribund/degraded state of suitable habitat.

Furthermore, the Site Ecological Importance for the habitat in which the threatened plant species occurs was calculated as being High. According to the Species Environmental Assessment Guidelines, this indicates that avoidance mitigation should be applied, which will be achieved by conserving the suitable habitat. According to the BAR an assessment was undertaken, and the outcome indicates that the possible impacts on an individual plant of *Muraltia Knysnaensis* is of low negative significance. The approved lay-out includes a botanical reserve from where the species was found, right down to the dam at the bottom of the slope. Three species of protected trees were found on site. A permit will be required if any of these are affected by the proposed development.

Animal species

The animal species assessment concluded that the various animal species of conservation concern that are flagged for the site and are most likely to occur on site would be found within Milkwood Thicket habitats. These thicket areas are therefore assessed as having High sensitivity for animal species of concern. The study also found that no thicket areas will be affected by the proposed project, therefore it is unlikely that the project will have any direct impact on animal species of conservation concern.

Terrestrial Biodiversity Impact

According to the BAR, the Terrestrial Biodiversity Assessment states that the Western Cape Biodiversity Spatial Plan for Bitou shows that significant parts of the site are within a Critical Biodiversity Area (CBA) 1 area with small sections of CBA2 and Ecological Support Area (ESA) 2 areas.

Despite the overall ecosystem type for the entire site being indicated as Garden Route Shale Fynbos with an Endangered ecosystem threat status, following a full habitat assessment of the study site, which included surveys for special species concern, protected flora, as well as protected trees, undertaken by the specialist in March, April & October surveys, it was determined by the independent botanical/biodiversity specialist that the remnant natural habitat includes fynbos, thicket and estuarine wetland vegetation and not only Garden Route Shale Fynbos as per the ecosystem threat status dataset.

The specialist determined that the natural habitat to be affected by the proposed activity, will be original fynbos habitat that composes nearly half of the property (+/- 15ha). Roughly 7ha is significantly transformed (Western half) of this fynbos area (mostly on Portion 104/444) and is no longer representative of Garden Route Shale Fynbos. This has a low biodiversity value, whilst approximately 8.5ha (Eastern half) has been degraded albeit less so compared to the highly transformed western half of the cadastral unit. The ecological importance of these original Fynbos areas has been compromised as a result of the historic and ongoing grazing practices.

According to the BAR, the remaining 50% of the property (southern slopes) contains milkwood thicket in various stages of succession, along with old pastures and a very small area indicated as wetland habitat. All the milkwood thicket will be avoided with the implementation of the approved alternative.

Continued brush-cutting over many years have resulted in gradual conversion to natural pastures that are utilised for grazing purposes. The BAR submits that the proposed activities on site are limited within the transformed and degraded fynbos areas. Despite continued degradation of the degraded Fynbos area (Eastern half), as a result of brush-cutting and grazing, this area has not been irreversibly transformed through soil disturbance, thus it still has the potential to recover to a natural state. To achieve this, the current landowner will have to cease all grazing, remove all animals from the property, stop brush-cutting, implement a long-term alien clearing programme and once the Fynbos has been restored, implement ecological burning. Ecological burning has been included as a condition of approval of this authorisation. The areas where the *Knysna Butterflybush* was identified within the brush cut areas, have been avoided and is excluded from the preferred alternative.

Aquatic Biodiversity Impact

According to the BAR the Estuarine Functional Zone of the Keurbooms Estuary extends into RE/7/444 (eastern most extent) and 43/444 (southern extent). There are three existing dams on-site (all are off-stream dams). Two on 104/444 and one on RE/7/444. The northern most dam on 104/444 is located within an area of natural drainage but is not located within a watercourse. A non-perennial drainage line forms further down the slope from this dam into a northerly direction onto the immediate neighbouring property. The southern-most dam on 104/444 is fed by existing furrows.

According to the Aquatic Assessment the majority of proposed activities occur outside the Keurbooms Estuarine Zone and no degradation of the aquatic habitat is anticipated. The development and operational phases are acceptable from an aquatic ecosystem perspective. Only the far eastern most corner of RE/7/444 is categorized as an aquatic CBA. No other aquatic CBAs or ESAs occur on RE/7/444 or the other two properties. The BAR confirms that no activities will take place within any aquatic CBA.

The wetland present on the site will not be directly impacted by the proposed development if the mitigation measures and management recommendations in the EMPr are implemented and strictly adhered to.

This Directorate is therefore satisfied that the proposed development will not result in any significant impacts on the aquatic environment.

Coastal Impact

The majority of Telluric Farm is located outside of the Coastal Management Lines as per DEADP Coastal Management Map for Plettenberg Bay. A small portion of the property is located within the coastal management lines, but no activities are proposed within this area of the property. It can therefore be agreed that the proposal will not affect the aims and objectives of the Coastal Protection Zone.

Socio-Economic Impact

The BAR states that the development would represent an opportunity to support the development of tourism in the area. The employment and investment opportunities associated with the establishment and operation phase, as well as the benefits associated with visitors to the area will be beneficial to the local economy.

According to the BAR Telluric farm will look to employ the labour required for the establishment/development phase from the local Bitou community with a narrow focus on the Wittedrift area to ensure that maximum economic benefit can be transferred to the local community.

Potential visual impact of restaurant in rural landscape

The BAR submits that the restaurant will be positioned below the ridgeline in an attempt not to break the skyline. In addition, the restaurant will be cut into the slope, with a landscaped rooftop to blend in with the surrounding landscape and the surrounding vineyards will add as a softening feature. Lighting will be downlighters to reduce light pollution at night and the parking area will be positioned behind the restaurant to ensure that the visual footprint is limited as an additional measure to not create a visual impression.

Agricultural Impact

The agricultural impact assessment confirms that the site is suitable for wine production and that the soils are shallow to moderately deep duplex soils with a clay content of between 10 and 25% in the upper soil horizons, which predominantly represents Sterkspruit and Estcourt soil forms. According to the agricultural assessment, although these soils pose challenges for wine making, this assessment is confident that the site can be effectively used for the proposed vineyard development and that the soil resources on the site will not be damaged by the proposed activities. This Directorate is therefore satisfied that the approved development site is favourable from an agricultural suitability point of view.

Impact on Services

According to the BAR Telluric farm will abstract water for irrigation purposes from the licensed borehole that is located on the most Western border of portion 104/444 to supplement the existing surface water resources and pump it into the existing on-site dams to supplement surety of supply when run-off water to the dams is reduced during dry periods. According to the BSR the restaurant will rely on the same sources for washing and ablution, whilst all water required for drinking in the restaurant will be bottled water and rainwater. Households will rely on water from the licensed borehole and rainwater from rainwater storage tanks at each house.

Bitou Municipality has also confirmed that they have sufficient bulk services available for sanitation and water provision as per letter dated 04 October 2022.

Heritage Impact

According to the BAR existing structures with heritage value has been identified at the Eastern bottom of the site and these will be retained and not affected by the proposed activity. The Notice of Intent to develop concludes that the proposal would not materially impact on heritage resources of high cultural significance; that no further heritage related studies are warranted, and that the development may therefore proceed. Heritage Western Cape also confirmed in their letter dated 12 January 2023, that there are no further studies required in terms of Paleoethology or Archaeology.

Considering the above, the view is held that the applicant has adequately considered the heritage and archaeological aspects and that the proposed development will not result in significant negative impact on any heritage resources. The competent authority is satisfied that the evaluation fulfils the requirements of the relevant heritage resources authority in terms of the National Heritage Resources Act, 1999.

3.4 Other Impacts

According to the BAR no other impacts of significance were identified and anticipated.

4. Scope and Validity Period of authorisation

This environmental authorisation does not define specific operational aspects. The applicant has indicated that the listed activities will commence within 5 years from the date of issue of this environmental authorisation and that the development will be implemented and concluded within a further 5 years from when commencement took place. 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 that are detailed in the FBAR dated 29 May 2023 is sufficient.
- (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 proposed mitigation measures included in the EMPr for the pre-construction, construction and rehabilitation phases of the development is considered adequate.

In view of the above, the NEMA principles, compliance with the conditions stipulated in this Environmental Authorisation, and compliance with the mitigation measures contained in the EMPr, the Competent Authority is satisfied that the proposed listed activities will not conflict with the general objectives of integrated environmental management stipulated in Chapter 5 of the National Environmental Management Act, 1998 (Act No. 107 of 1998) and that any potentially detrimental environmental impacts resulting from the listed activities can be mitigated to acceptable levels.

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