

REFERENCE: 16/3/3/1/D6/29/0004/22
NEAS REFERENCE: WCP/EIA/0001039/2022
DATE OF ISSUE: 26 August 2022

REFUSAL OF ENVIRONMENTAL AUTHORISATION

APPLICATION FOR ENVIRONMENTAL AUTHORISATION IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998) AND THE ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, 2014: THE PROPOSED DEVELOPMENT OF A STORAGE FACILITY ON ERF 21275 IN AALWYNDAL, MOSSEL 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 **refuses Environmental Authorisation** to the applicant to undertake the listed activities specified in section B below with respect to the *proposed development of a storage facility on Erf 21275 in Aalwyndal, Mossel Bay*, described in the Final Basic Assessment Report ("FBAR") (Ref: CT21/FBAR/05/22), dated 12 May 2022, as prepared and submitted by *Sharples Environmental Services cc*, the appointed environmental assessment practitioner ("EAP").

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

A. DETAILS OF THE APPLICANT FOR THIS ENVIRONMENTAL AUTHORISATION

The Managing Director
% Mr. Kaye Smith
Storage Mossel Bay (Pty) Ltd
4 Keerom Street

MOSSEL BAY

6500

E-mail: storagemosselbay@gmail.com

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

B. LIST OF ACTIVITIES REFUSED

Listed Activities
<p>Environmental Impact Assessment Regulations Listing Notice 1 of 2014, Government Notice No. 983 of 4 December 2014 (as amended)</p> <p>Activity Number: 27 Activity Description:</p> <p>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—</p> <ul style="list-style-type: none">(i) the undertaking of a linear activity; or(ii) maintenance purposes undertaken in accordance with a maintenance management plan.
<p>Environmental Impact Assessment Regulations Listing Notice 3 of 2014, Government Notice No. 985 of 4 December 2014 (as amended)</p> <p>Activity Number: 4 Activity Description:</p> <p>The development of a road wider than 4 metres with a reserve less than 13,5 metres</p> <ul style="list-style-type: none">i. Western Cape<ul style="list-style-type: none">i. Areas zoned for use as public open space or equivalent zoning; orii. Areas outside urban areas;<ul style="list-style-type: none">(aa) Areas containing indigenous vegetation;(bb) Areas on the estuary side of the development setback line or in an estuarine functional zone where no such setback line has been determined; oriii. Inside urban areas:<ul style="list-style-type: none">(aa) Areas zoned for conservation use; or(bb) Areas designated for conservation use in Spatial Development Frameworks adopted by the competent authority.
<p>Activity Number: 12 Activity Description:</p> <p>The clearance of an area of 300 square metres or more of indigenous vegetation except where such clearance of indigenous vegetation is required for maintenance purposes undertaken in accordance with a maintenance management plan.</p> <ul style="list-style-type: none">i. Western Cape<ul style="list-style-type: none">i. Within any critically endangered or endangered ecosystem listed in terms of section 52 of the NEMBA or prior to the publication of such a list, within an area that has been identified as critically endangered in the National Spatial Biodiversity Assessment 2004ii. Within critical biodiversity areas identified in bioregional plans;iii. Within the littoral active zone or 100 metres inland from high water mark of the sea or an estuarine functional zone, whichever distance is the greater, excluding where such removal will occur behind the development setback line or even in urban areas;iv. On land, where, at the time of the coming into effect of this Notice or thereafter such land was zoned open space, conservation or had an equivalent zoning; orv. On land designated for protection or conservation purposes in an Environmental Management Framework adopted in the prescribed manner, or a Spatial Development Framework adopted by the MEC or Minister.

The abovementioned list is hereinafter referred to as "**the listed activities**".

The applicant is herein **refused environmental authorisation** to undertake the following alternative that includes the listed activities as it relates to the development:

The proposal entails the development of a storage facility on Erf 21275 in Aalwyndal, Mossel Bay ("the property") which is approximately 7.7ha in extent. The property is currently zoned Residential Zone I in terms of the Mossel Bay Municipality Zoning Scheme By-law (2021) and will need to be rezoned to Industrial Zone I in order to accommodate the proposed development.

The proposed storage facility will extend over the entire property and will accommodate approximately 1832 storage units that will be used for the storage of private goods, including but not limited to furniture, caravans, equipment, etc., as well to be utilised for airport storage. The 1832 storage units will consist of:

- 158 x 9m² units; and
- 1674 x 18m² units

In addition to the above the proposal also includes the following:

- A 39m² office with male and female toilet and hand wash basin. Inclusive of small kitchenette for office staff;
- A 57m² guardhouse with toilet and hand wash basin;
- A 97m² caretaker flat; and
- 346 parking bays with an additional eight visitors' parking bays.

The perimeter will be secured by a 2.4m high brick wall along the northern, southern and eastern boundary, while the western boundary will be secured by a 2.4m high palisade fence. A 1m high electric fence will be placed on top of the brick wall and palisade fence.

C. SITE DESCRIPTION AND LOCATION

The listed activities were to take place on Erf 21275 in Aalwyndal, Mossel Bay.

Coordinates of the site:

Latitude			Longitude		
34°	09'	19.00"	22°	03'	52.26"

SG digit code: C05100070002127500000

Refer to Annexure 1 for the 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. Ameesha Sanker

PO Box 443

Milnerton

7435

Tel: (021) 554 5195

Fax: (086) 575 2869

E-mail: ameesha@sesc.net

Web: <https://sesc.net/>

E. LEGISLATIVE REQUIREMENTS

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

F. APPEALS

1. An appellant (if the holder of the decision) must, within 20 (twenty) calendar days from the date the notification of the decision was sent to the holder by the Competent Authority –
 - 1.1. Submit an appeal in accordance with Regulation 4 of the National Appeal Regulations 2014 (as amended) to the Appeal Administrator;
 - 1.2. Submit a copy of the appeal to any registered I&APs, any Organ of State with interest in the matter and the decision-maker i.e. the Competent Authority that issued the decision; and
 - 1.3. Submit a copy of the appeal to the decision-maker (i.e. the Competent Authority that issued the decision) at:

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, any registered I&AP, any Organ of State with interest in the matter and the decision-maker i.e. the Competent Authority that issued the decision.

2.3. Submit a copy of the appeal to the decision-maker (i.e. the Competent Authority that issued the decision) at:

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>.

Your interest in the future of our environment is appreciated.

Yours faithfully

MR. ZAAHIR TOEFY

DIRECTOR: DEVELOPMENT MANAGEMENT

DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING

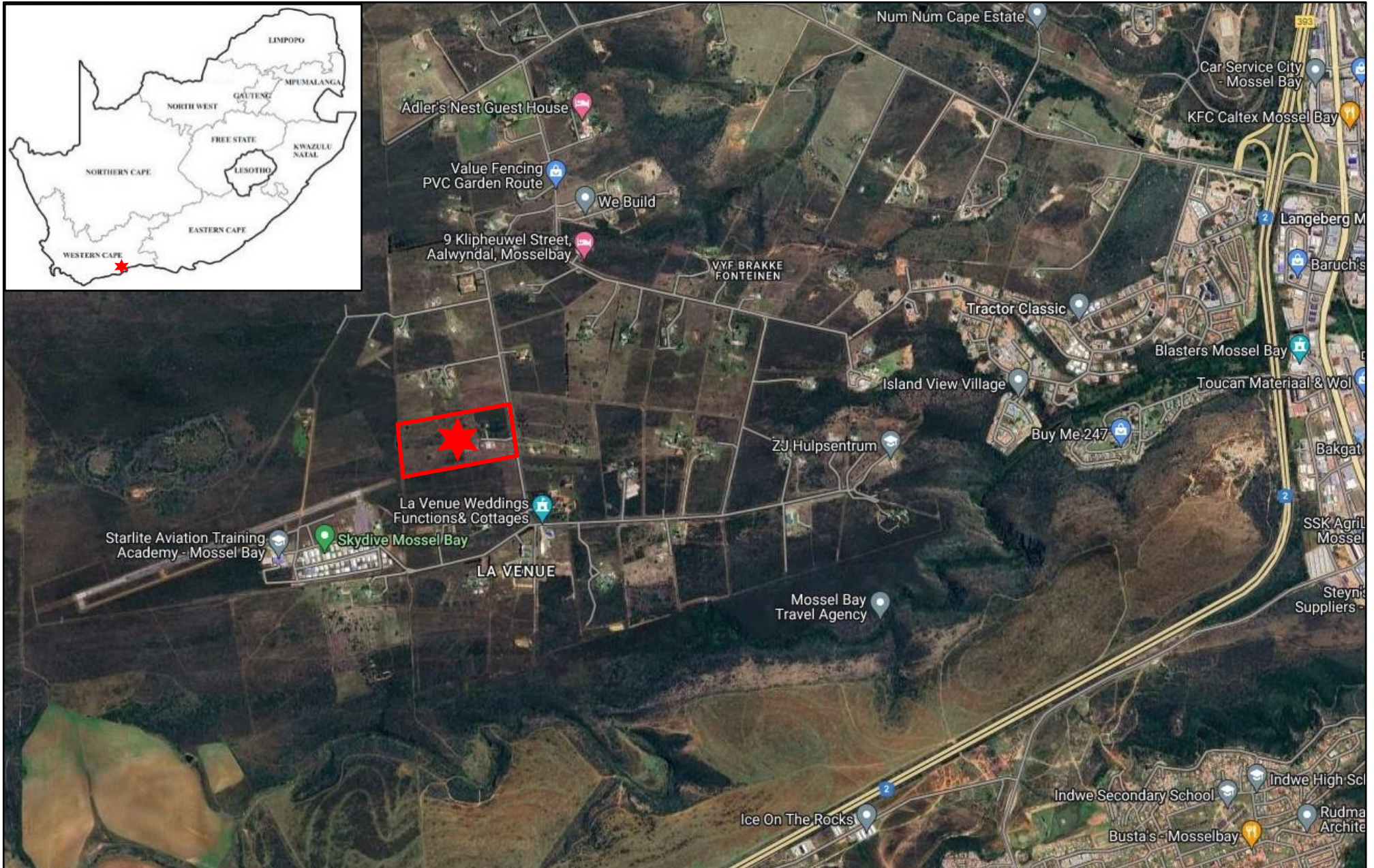
DATE OF DECISION : 26 AUGUST 2022

FOR OFFICIAL USE ONLY:

REFERENCE: 16/3/3/1/D6/29/0004/22

NEAS REFERENCE: WCP/EIA/0001039/2022

ANNEXURE 1: LOCALITY MAP



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 7 February 2022, the Basic Assessment Report (Ref: CT21/FBAR/05/22) (BAR) and Environmental Management Programme ("EMPr") submitted together with the BAR on 12 May 2022;
- b) Relevant information contained in the Departmental information base, including the Guidelines on Public Participation, Alternatives (dated March 2013);
- c) The objectives and requirements of relevant legislation, policies and guidelines, including section 2 of the National Environmental Management Act, 1998 (Act No. 107 of 1998);
- d) The comments received from I&APs and responses to these, included in the BAR submitted on 12 May 2022;
- e) The balancing of negative and positive impacts and proposed mitigation measures; and
- f) Appropriate information was made available in the report to understand the environmental and spatial context.
- g) The site visit undertaken on 2 August 2022 by the following parties:
 - Directorate: Development Management (Region 3) - Messrs. Francois Naudé and Steve Kleinhans; and
 - CapeNature: Conservation Intelligence - Ms. Megan Simons

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

1. Public Participation

The public participation process included:

- identification of and engagement with interested and affected parties (I&APs) including organs of state which have jurisdiction in respect of the activity to which the application relates;
- fixing notice boards at three locations on 5 November 2021;
- giving written notice to the owners and occupiers of land adjacent to the site and any alternative site where the listed activities are to be undertaken, the municipality and ward councillor, and the various organs of state having jurisdiction in respect of any aspect of the listed activities on 5 November 2021;
- the placing of a newspaper advertisement in the "Mossel Bay Advertiser / Suid-Kaap Forum" on 5 November 2021; and
- making the pre-application Basic Assessment Report available from 8 November to 7 December 2021 and Draft Basic Assessment Report available from 28 February to 30 March 2022 to I&APs for public review and comment.

The following State Departments / Organs of State provided comment on the proposal:

❖ *CapeNature:*

Letter (Ref: LE14/2/6/1/6/6/ERF 21275 Construction Aalwyndal) dated 14 December 2021

- The site should be viewed as very sensitive due to the presence of Species of Conservation Concern and of elements of Critically Endangered Mossel Bay Shale Renosterveld on the site.

- CapeNature concurs with the specialist that the proposed development will negatively impact the Aalwyndal biodiversity.
- CapeNature reiterates that any endangered species or protected species listed in Schedules 3 and 4 respectively, in terms of the Western Cape Nature Conservation Laws Amendment Act, 2000 (Act No. 3 of 2000) may not be picked or removed without the relevant permit, which must be obtained from CapeNature.
- Recommends that a rehabilitation plan be drafted by a qualified specialist to outline the ecological functioning of rescued plants and their success. The specialist should determine a suitable location before search-and-rescue is undertaken. Consideration should also be given to the season to give plants an adequate chance to re-establish.

Letter (Ref: LE14/2/6/1/6/6/ERF 21275/PostBAR/Construction Aalwyndal) dated 18 May 2022

- Concern was raised that the development process will clear 5.8ha of indigenous vegetation without considering any rehabilitation or conservation programme.
- Any indigenous vegetation that requires removal must be rescued and used for rehabilitation purposes; therefore, alternative rehabilitation sites must be identified.
- Considering the development pressures on Aalwyndal it is crucial to have conservation areas or alternative rehabilitation sites.
- Since the proposal entails the development of the entire site of 7.75ha, a conservation area must be set aside.
- CapeNature does not support the development of the entire site due to the loss of 5.8 ha of fynbos.

❖ *Breede-Gouritz Catchment Management Agency:*

- According to the BGCMA the use a septic tank and soak-away system has a potential to pollute groundwater resource. The applicant is therefore encouraged to consider the use of a conservancy tank to be emptied by a honeysucker and disposed at the municipal wastewater treatment works.
- Water for construction purposes must be obtained from an authorised abstraction point.
- According to the BGCMA the proposal does not trigger a water use licence in terms of Section 21 of the National Water Act, Act No. 36 of 1998.
- The BGCMA has no objection to the proposed project

❖ *Directorate: Pollution and Chemicals Management*

Letter (Ref: 19/3/2/4/D6/28/PMIM075/21) dated 7 December 2021

- The PCM considers septic tank and soak-away systems are undesirable and would support the installation of conservancy tanks.
- Sludge removal will be required for both a septic tank or conservancy tank, although infrequent; however, the Hartenbos WWTW must confirm available capacity to accept the sludge.
- Care must be taken not to damage tanks during the installation and proper and regular servicing to prevent possible groundwater contamination.
- Any wash water (where relevant) from the facility must be handled on-site and re-used where appropriate.

Letter (Ref: 19/3/2/4/A8/13/PMIM072/21) dated 30 March 2022

- PCM is satisfied that their concerns raised in letter of 7 December 2021 were largely addressed and recommends that the proposed mitigation measures be implemented and strictly adhered to.

- ❖ *Western Cape Government: Department of Agriculture – Land Use Management*
Letter (Ref: 20/9/2/4/7/345) dated 24 January 2022
 - Efforts must be considered to salvage plant material to be used for rehabilitation and conservation elsewhere. This needs to occur in collaboration between the ECO, CapeNature and municipal environmental management department.
 - Time and allowance should be made prior to construction activity to allow a search and rescue of faunal species, conducted by the ECO. Use of shade cloth over the existing fence line to prevent animals from entering.
 - Ensure that stockpiles are bunded and do not exceed 2m in height.

- Letter (Ref: 20/9/2/4/7/345) dated 1 April 2022
 - Western Cape Government: Department of Agriculture – Land Use Management has no objection towards the Basic Assessment Report.

- ❖ *Heritage Western Cape:*
Letter (Case No: 21072111SB0722E) dated 3 December 2021
 - HWC has a reason to believe that the proposed construction of a storage facility on Erf 1275 will impact on heritage resources.
 - A Heritage Impact Assessment is required that satisfies Section 38(3) of the National Heritage Resources Act, Act No. 25 of 1999.

- Letter (Case No: 21072111SB0722E) dated 16 May 2022
 - The Heritage Officer Meeting Committee endorsed the HIA by Lize Malan and endorsed the proposed development of a storage facility on Erf 21275, Mossel Bay provided that any archaeological finds that are uncovered are reported to the archaeologist who will inform HWC.

- ❖ *Mossel Bay Municipality: Town Planning*
 - The Mossel Bay Municipality adopted the Aalwyndal Precinct Plan to guide land use applications in the area.
 - The proposal is located within the Mossel Bay Airport Noise Zone which cannot be used for residential purposes.
 - Furthermore, the property is located in line with the airport runway which further limit the use on the property.
 - Due to the mentioned factors the specific property was earmarked in the Aalwyndal Precinct Plan for storage or Airport related uses.
 - The proposal is therefore in line with the adopted spatial documents for Aalwyndal.

- ❖ *Mossel Bay Municipality: Infrastructure Services*
 - The Mossel Bay Municipal: Infrastructure Services has no objection to the proposed use of harvested rainwater for drinking / cooking and use of groundwater not exceeding 10m³/day for washing, waterborne sewage and fire emergency purposes.
 - The property must adhere to the Mossel Bay Town Planning Scheme and Building Regulations.

- ❖ *Mossel Bay Aero Club:*
 - The Mossel Bay Aero Club objects to the proposed development of storage facilities on Erf 21275, Aalwyndal as all the aeronautical safety regulations have not been addressed and approval from relevant regulatory institutions must be obtained.

❖ *South African Civil Aviation Authority*

- The SACAA conducted an assessment for the proposed development and objects to the proposal as the proposed development impacts on a declared Clearway (CWY) and will negatively impact on Obstacle Limitation Surfaces "Take Off" and "Approach".

Cognisant of the limitations of the public participation process and issues/comment that were unclear, consultation between the competent authority and organs of state administering a law relating to a matter affecting the environment was undertaken to clarify specific issues.

All the comments and issues raised by the respective Organs of State and Interested and Affected Parties (I&APs) that were captured in the Basic Assessment Report were responded to by the EAP. The Competent Authority is satisfied that responses were provided to these other organs of state and I&APs by the EAP. However, the Department does not necessarily concur with all the responses or that the issues have been adequately addressed.

2. Alternatives

Alternative Layout 1: (Applicant's Preferred Alternative)

This alternative entails the development of a storage facility on Erf 21275 in Aalwyndal, Mossel Bay ("the property") which is approximately 7.7ha in extent. The property is currently zoned Residential Zone I in terms of the Mossel Bay Municipality Zoning Scheme By-law (2021) and will need to be rezoned to Industrial Zone I in order to accommodate the proposed development.

The alternative will require the clearance of the entire property and will accommodate approximately 1832 storage units that will be used for the storage of private goods, including but not limited to furniture, caravans, equipment, etc., as well to be utilised for airport storage. The 1832 storage units will consist of:

- 158 x 9m² units; and
- 1674 x 18m² units

In addition to the above the proposal also includes the following:

- A 39m² office with male and female toilet and hand wash basin. Inclusive of small kitchenette for office staff;
- A 57m² guardhouse with toilet and hand wash basin;
- A 97m² caretaker flat; and
- 346 parking bays with an additional eight visitors' parking bays.

The perimeter will be secured by a 2.4m high brick wall along the northern, southern and eastern boundary, while the western boundary will be secured by a 2.4m high palisade fence. A 1m high electric fence will be placed on top of the brick wall and palisade fence.

This alternative is not acceptable to the Competent Authority based on the environmental attributes and sensitivities as well as the impact on aeronautical safety. The reasons for this view are set out in the key factors below.

Alternative Layout 2:

This alternative entails the development of a storage facility on Erf 21275 in Aalwyndal, Mossel Bay ("the property") which is approximately 7.7ha in extent. The property is currently zoned Residential Zone I in terms of the Mossel Bay Municipality Zoning Scheme By-law (2021) and will need to be rezoned to Industrial Zone I in order to accommodate the proposed development.

- 150 x 9m² units;

- 795 x 18m² units;
- 14 x 180m² units; and
- 18 x 225m² units

The alternative will require the clearance of the entire property and will accommodate approximately 977 storage units that will be used for the storage of private goods, including but not limited to furniture, caravans, equipment, etc., as well to be utilised for airport storage. The 977 storage units will consist of:

In addition to the above the proposal also includes the following:

- Manager and security office on site as well as ablution facilities;
- Perimeter fencing; and
- 372 parking bays

This alternative is not acceptable to the Competent Authority based on the environmental attributes and sensitivities as well as the impact on aeronautical safety. The reasons for this view are set out in the key factors below.

“No-Go” Alternative:

This alternative entails that the storage facility will not be implemented, and that the status quo will remain.

3. Key Factors affecting the decision

In reaching its decision to refuse the proposed development, this Department took into account the following:

3.1 National Environmental Management Principles

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

- the effects of decisions on all aspects of the environment must be taken into account;
- the consideration, assessment and evaluation of the social, economic and environmental impacts of activities (disadvantages and benefits), and for decisions to be appropriate in the light of such consideration and assessment. Whereas development must be socially, environmentally and economically sustainable;
- the co-ordination and harmonisation of policies, legislation and actions relating to the environment;
- the resolving of actual or potential conflicts of interest between organs of state through conflict resolution procedures;
- the avoidance of the disturbance of ecosystems and loss of biological diversity, or, where they cannot be altogether avoided, are minimised and remedied;
- the avoidance, minimisation or remediation of the disturbance of landscapes and sites that constitute the nation's cultural heritage and/or National estate;
- specific attention is required in the management and planning procedures relating to sensitive, vulnerable, highly dynamic or stressed ecosystems, such as coastal shores, estuaries, wetlands, and similar systems, especially where they are subject to significant human resource usage and development pressure; and
- the selection of the best practicable environmental option.

3.2 Biodiversity aspects

A Botanical Assessment was also commissioned to inform the BAR. The vegetation on the property is mapped as *North Langeberg Sandstone Fynbos* which has a gazetted ecosystem threat status of *Least Threatened* (LT). The specialist questions the inclusion of the fynbos vegetation - *North Langeberg Sandstone* - on Erf 21275 as the property is completely isolated from the latter ecosystem type (associated with the northern slopes of the Langeberg) and do not share any geographically important species. Furthermore, the presence of certain species indicates an influence of nearby Gouritz Valley Thicket and Mossel Bay Shale Renosterveld. Significant elements of the Mossel Bay Shale Renosterveld were observed in the greater area. According to the National list of ecosystems that are threatened and in need of protection (Government Notice No. 1002 of 9 December 2011), *Mossel Bay Shale Renosterveld* has a gazetted conservation status of *Endangered* (EN).

As previously stated, the property is approximately 7.7ha in extent. According to the botanical assessment 5.8ha is considered good quality fynbos while the remaining extent has been disturbed by small-scale cultivation, mowing and alien infestation in the eastern part of the property. The report states that this disturbance can revert to original vegetation if disturbances are ceased due to the good quality of the remaining fynbos and high diversity of indigenous species on the property.

According to the botanical assessment the development proposal as presented will result in the loss of 5.8ha of good quality fynbos with no mitigation possible unless some of the plant material can be salvaged and reintroduced elsewhere. In this regard, the specialist previously indicated that this is only achievable if a suitable site is found. However, after being requested to provide the relevant information, no site was identified nor reported on by the specialist or applicant.

Furthermore, it was also reported that search and rescue of Species of Conservation Concern, such as bulbous species and other sensitive fynbos species is impractical because it is highly unlikely that salvaged material will survive the transplanting process. However, subsequent comment from the specialist indicates that there are salvageable indigenous plants (i.e. bulbs and seed collection from seed-bearing plants) on the property. However, the specialist reiterates potential success of salvaging SCC's (all shrub species) is improbable and tiny succulents such as *Haworthia pygmaea* is very hard to spot and relocating them would be risky. Furthermore, it is understood that a suitable donation site has (or sites have) been identified; however, the detail and locations of such sites have not been provided in the BAR. The credibility and practicability of such donation sites could not be verified.

The specialist mentioned that a useful mitigation measure would be to propose a biodiversity offset for the 5.8ha of good quality fynbos which will be lost as a result of the proposed development. It must be highlighted that to "offset" impacts falls outside the mitigation hierarchy and should only be considered where significant residual, adverse impacts cannot be avoided, minimised and/or rehabilitated or restored. Furthermore, the required procedure to identify and secure an offset area, was not undertaken prior or during the application process. Therefore, an offset area for this application for environmental authorisation cannot be considered at this time.

In addition, the *Western Cape Biodiversity Spatial Plan 2017* indicates that the property has *Ecological Support Area: Aquatic* along the western boundary of the property. This presence of the ESA was disputed by an aquatic specialist who could not find aquatic habitat within the boundaries of the site or within 500m of the site. The findings were presented to CapeNature which accepted the conclusion by the specialist.

The decision-maker has considered the findings of the Botanical Assessment; however, with due consideration of the sensitivity of the vegetation present on the property and unlikely success of relocating plants to a rehabilitation / conservation area, and the lack of feasible avoidance or remediation measures being presented (including the consideration of a biodiversity offset) it is

prudent that the decision-maker adopt a risk-averse and cautious approach in the consideration of the application for environmental authorisation.

3.3 *Civil aviation aspects:*

The decision-maker considered civil aviation aspects as the property borders on the Mossel Bay Aerodrome which is located directly to the west of the property. In this regard, issues related to the aeronautical impacts were already raised in the pre-application consultation process (i.e. Pre-App BAR).

An Aeronautical Impact Assessment was undertaken during the application process and compiled to inform the BAR. According to the assessment the site lies under Obstacle Limitation Surfaces (OLS) related to the Mossel Bay Aerodrome's runway, which are regulated under Part 139 of the Civil Aviation Regulations 2011 (pursuant to the Civil Aviation Act 2009), which is administered by the South African Civil Aviation Authority. The assessment found that the particular surface which overlay the proposed development site include the sloping OLS Approach, Take-Off Climb and Transitional surface related to the runway, which must not be penetrated by the proposed development. The aeronautical assessment was conducted based on information included in FAMO Aerodrome Data effective 2 December 2021 as published by the SACAA. According to the data the Clearway (CWY) length is regarded to be "0". The Aeronautical Impact Assessment study concluded that a maximum height of 5 metres above ground level, the OLS would not be infringed upon by the permanent structures resulting from the proposed development nor from temporary structures and equipment used during construction. The minimum clearance between the maximum assessment height and the OLS surfaces is in the south-west corner of the property (i.e. 2 metre height clearance) and increases towards the east and north of the property.

However, the applicant submitted a letter to this Department from the SACAA in which an objection was raised to the proposal as it will impact negatively on OLS "Take Off" and "Approach". This letter of objection was based on information submitted to the SACAA on 26 May 2022 by the Mossel Bay Aerodrome which included a declared Clearway (CWY) greater than "0".

The SACAA was consulted further to obtain clarity on this matter, and the decision-maker understands that the SACAA's objection to the proposed layout is based on the absence of an alternative layout which excludes the structures / storage units which would affect the "Take Off" and "Approach" OLS. While it is acknowledged that both the application regarding the OLS that was submitted to the SACAA and their subsequent letter of objection, were received after the BAR was submitted to the Competent Authority, the safety aspects associated with the aerodrome cannot be ignored. In this regard, the decision-maker is of the considered opinion that the current layout proposals included in the BAR will negatively impact on the safety related aspects of the Mossel Bay Aerodrome, and that further appropriate consultation by the specialist/EAP with the relevant organ of state should have been undertaken to fully address the matter, especially once the new information became available. Nonetheless, this aspect is regarded to be a relevant consideration regarding the EIA process, rather than a defining factor which has explicitly influenced the decision to refuse the environmental authorisation. The area where the height of the structures is of concern, overlays a portion of the area of important biodiversity, of which the foreseen impacts have not been adequately addressed.

3.4 *Need and desirability:*

The applicant has provided a motivation for the need and desirability of the proposed development. According to the BAR the proposed development is in line with the planning policies of the Mossel Bay Municipality. Furthermore, the BAR states that there is a lack of storage facilities in Aalwyndal or within 5km of the proposed development site, which indicates that the development of such a facility is required to address the current and future needs of the people and the economy. This motivation

is acknowledged; however, insufficient information has been made available in the application/BAR to support this need. In addition, with due consideration of the absence of reasonable alternatives being considered and reported on, wherein the foreseen impacts can be avoided, or, where they cannot be altogether avoided, are minimised and remedied (i.e. layout alternatives as well as the 5.8ha good quality fynbos on the property which will need to be cleared and which relocation is unlikely to succeed or, a biodiversity offset to address the loss of the biodiversity on the property), the need and desirability of the proposed development of this scale on Erf 21275, Aalwyndal, at this point in time, has not adequately been substantiated in the BAR.

4. Conclusion

The Competent Authority applied a risk-averse and cautious approach with respect to this development proposal. The Department therefore took into consideration the potential negative impacts (as identified above) and that although some impacts can be minimised, it cannot altogether be prevented or mitigated to an acceptable level. The alternatives that were presented and proposed mitigation measures, did not provide the means to grant environmental authorisation in respect of all or part of the activity applied for. In this regard, the application was not deemed justified.

It is recommended that the applicant investigates an alternative which avoids sensitive areas, and provides reasonable measures to minimise and remedy the foreseen impacts.

----- **END** -----