



EIA REFERENCE NUMBER: 16/3/3/1/D6/17/0010/21
NEAS REFERENCE: WCP/EIA/0001002/2021
DATE OF ISSUE: 06 JUNE 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 HOUSING UNITS AND ASSOCIATED INFRASTRUCTURE ON FARM NO. 377 AND PORTION 10 OF FARM NO. 255, RONDEHEUWEL, GREAT BRAK RIVER

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

DECISION

By virtue of the powers conferred on it by the National Environmental Management Act, 1998 (Act No. 107 of 1998) ("NEMA") and the Environmental Impact Assessment ("EIA") Regulations, 2014, the Competent Authority herewith **refuses Environmental Authorisation** to the applicant to undertake the listed activities specified in section B below with respect to the *preferred alternative*, described in the Final Basic Assessment Report ("BAR"), dated February 2022, as prepared and submitted by *HillLand Environmental Consultants 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
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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 hectares 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: 12 Activity Description:</p> <p>The clearance of an area of 300 square metres or more of indigenous vegetation except where such clearance of indigenous vegetation is required for maintenance purposes undertaken in accordance with a maintenance management plan.</p> <p>i. Western Cape</p> <ul style="list-style-type: none">i. Within any critically endangered or endangered ecosystem listed in terms of section 52 of the NEMBA or prior to the publication of such a list, within an area that has been identified as critically endangered in the National Spatial Biodiversity Assessment 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 on 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; or <p>On land designated for protection or conservation purposes in an Environmental Management Framework adopted in the prescribed manner, or a Spatial Development Framework adopted by the MEC or Minister.</p>

The 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 which were applied for and as it relates to the development:

The proposed development of eight dwelling units two properties, namely on a portion of Farm No. 377 and a portion of Portion 10 of Farm No. 255, located near Great Brak River. Four (4) dwelling units will be developed on each property, and these will consist of—

- (i) a main farmhouse;
- (ii) farm managers' house;
- (iii) a first additional dwelling unit; and
- (iv) the addition of a consent-use additional dwelling.

The proposed development will also include the development of service infrastructure (including potable water supply, rainwater harvesting, domestic sewage treatment facilities, electricity supply) and internal access roads.

Each dwelling will have a 1600m² disturbance footprint which consists of the dwelling footprint, disturbance footprint including garden, a 5m wide firebreak area and an area with managed natural vegetation.

C. SITE DESCRIPTION AND LOCATION

The listed activities were to take place on two properties, namely Farm No. 377 and a portion of Portion 10 of Farm No. 255 near Great Brak River. The area is locally known as Rondeheuwel and can be accessed via the Voorbrug Road i.e. Divisional Road 1597.

Coordinates of the site:

PROPERTY	Latitude			Longitude		
Farm No. 377	34°	02'	38.34"	22°	14'	45.21"
Portion 10 of Farm No. 255	34°	02'	37.93"	22°	14'	54.47"

SG digit codes:

Property	SG digit code
Farm No. 377	C02700000000037700000
Portion 10 of Farm No. 255	C02700000000025500010

Refer to Annexure 1 for the Locality Plan and Annexure 2 for the proposed layout of this Environmental Authorisation.

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

D. DETAILS OF THE ENVIRONMENTAL ASSESSMENT PRACTITIONER (EAP)

HILLAND ENVIRONMENTAL CONSULTANTS CC

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E. LEGISLATIVE REQUIREMENTS

1. In accordance with regulation 46 of the Environmental Impact Assessment Regulations, 2014, an applicant may not submit an application which is substantially similar to a previous application that has been refused, unless any appeals on that refusal have been finalised or the time period for the submission of an appeal has lapsed.
2. The applicant must in writing, within 14 (fourteen) calendar days of the date of this decision–
 - 2.1. notify all registered Interested and Affected Parties ("I&APs") of –
 - 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. GAVIN BENJAMIN
DIRECTOR: DEVELOPMENT MANAGEMENT (REGION 3)

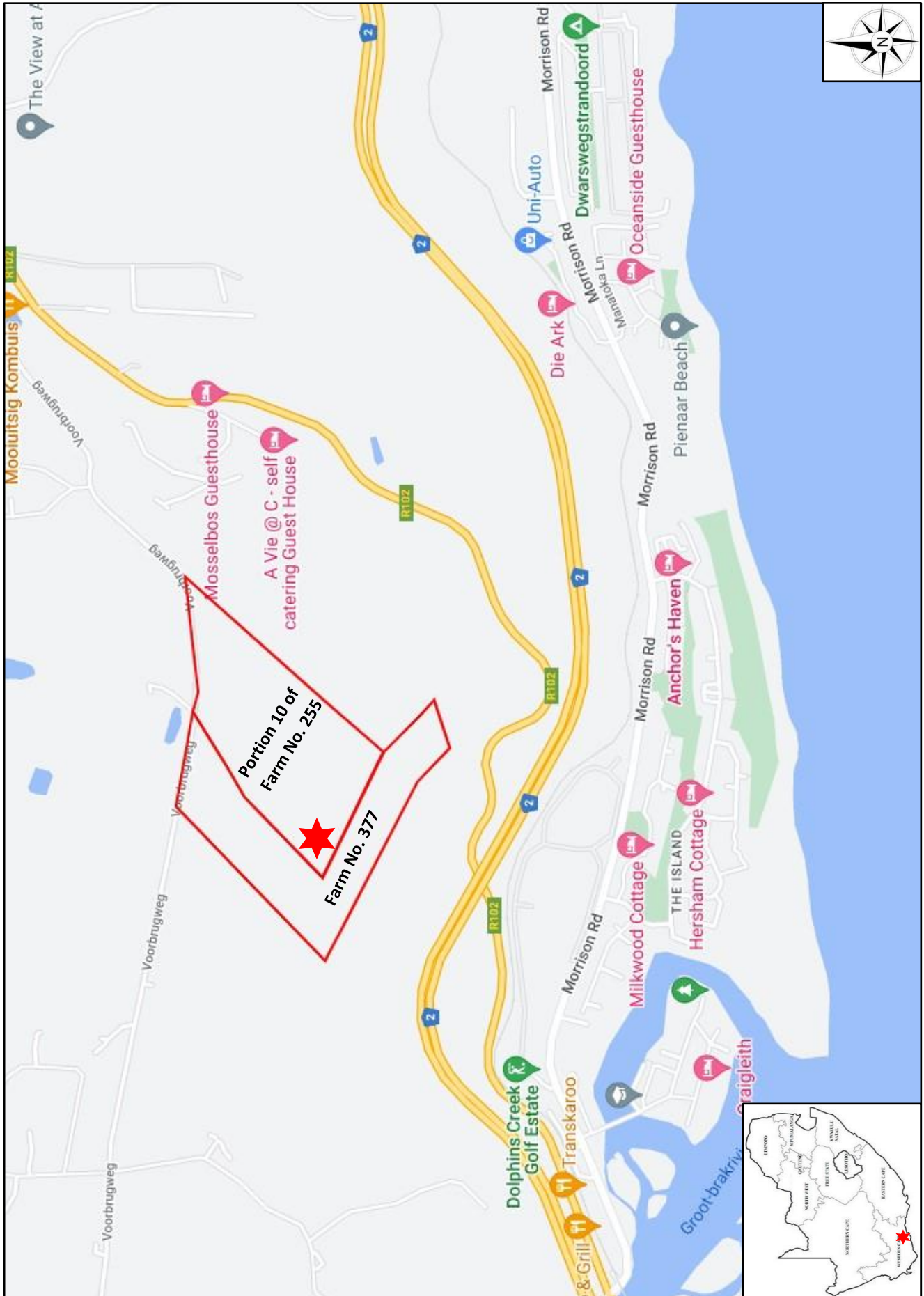
DATE OF DECISION: **06 JUNE 2022**

FOR OFFICIAL USE ONLY:

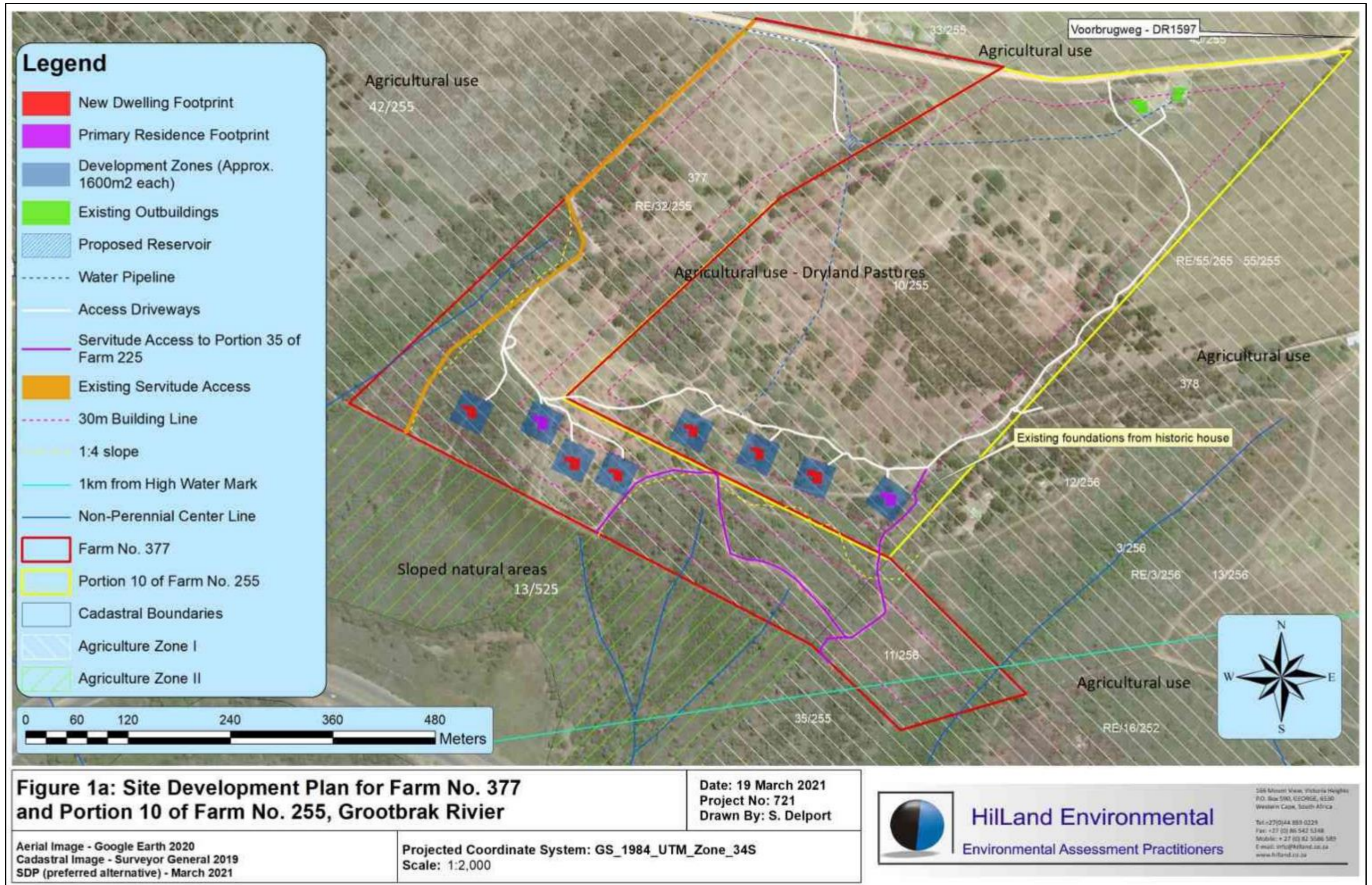
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ANNEXURE 1: LOCALITY MAP



ANNEXURE 2: LAYOUT PLAN FOR THE PROPOSED DWELLING UNITS



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, dated 26 October 2021 and received on 29 October 2021, the Basic Assessment Report (BAR) and EMPr submitted together on 17 February 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 17 February 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.

A pre-application site meeting was attended by Mr Danie Swanepoel from the Directorate Development Management (Region 3) on 8 February 2018. The development proposal at that time included a similar development proposal on Farm No. 377 and Portion 10 of Farm No. 255, Rondeheuwel. The Competent Authority had sufficient information before it to make an informed decision without conducting an additional a site inspection.

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 the two respective properties on 24 February 2020 (pre-application phase) and 13 January 2022 (application phase);
- 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 24 February 2020;
- the placing of a newspaper advertisement in the "Mossel Bay Advertiser" on 28 February 2020; and
- making the pre-application BAR available to I&APs from 28 February to 30 March 2020 (extended due to COVID-19 Lockdown restrictions) and the Draft Basic Assessment Report available to I&APs for public review and comment from 13 January to 14 February 2022.

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

- *CapeNature:*
CapeNature provided comment on the Botanical Impact Assessment and clarification in respect of the Western Cape Biodiversity Spatial Plan Handbook.
- *Breede-Gouritz Catchment Management Agency;*

The BGCMA has no objection in principle to the proposal. However, the BGCMA did indicate that the disposal of sewage must comply with the National Water Act, Act No. 36 of 1998.

The comment from the BGCMA also specified other conditions relating to management of the proposal and water resources in the vicinity of the site.

- **Heritage Western Cape:**
A notice of intent to development was submitted to the HWC and based on the information received no further studies were required for activities identified in terms of Section 38(8) of the National Heritage resources Act (Act No. 25 of 1999).
- **Western Cape Government: Department of Agriculture:**
The WCG: DOA initially was of the opinion that no bona fide agricultural activities took place on the subject properties. However, information submitted by the appointed Environmental Assessment Practitioner indicated that dryland grazing is taking place on the property. The WCG: DOA agreed and indicated that bona fide agricultural activities were taking place on the subject properties. It is not apparent that the WCG:DOA was consulted on the provisions of the Conservation of Agricultural Resources Act, 1983 (Act No. 43 of 1983) ("CARA") as they relate to farm management practises. In this regard, there is also no input from the Directorate: Land Use and Soil Management (Department of Agriculture, Land Reform and Rural Development) on the cultivation of virgin soil.
- **South Cape Fire Protection Association:**
The SCFPA initially required the establishment of a 100m wide firebreak along the southern borders of the subject properties. The EAP suggested a 50m wide strip of land to be cleared of alien invasive species and that the thicket vegetation be restored within this strip. The SCFPA confirmed that the 50m wide strip must be a maintained but as a firebreak.

The following State Departments / Organs of State that administer a law relating to a matter affecting the environment relevant to this application, were not included in the list of registered interested and affected parties and it is not apparent that they were consulted during this application:

- National Department of Fisheries Forestry and the Environment: Directorate Biosecurity Services (Alien & Invasive Specie Component); and
- Department of Agriculture, Land Reform and Rural Development: Directorate: Land Use and Soil Management.

Comment was received from one neighbouring landowner, GF Volschenk; however, no issues were raised by this landowner.

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 1: Preferred Alternative

The proposal entails the development of eight dwelling units two properties, namely on a portion of Farm No. 377 and a portion of Portion 10 of Farm No. 255, located near Great Brak River. Four (4) dwelling units will be developed on each property, and these will consist of –

- (i) a main farmhouse;
- (ii) farm managers' house;

- (iii) a first additional dwelling unit; and
- (iv) the addition of a consent-use additional dwelling.

The proposed development will also include the development of service infrastructure (including potable water supply, rainwater harvesting, domestic sewage treatment facilities, electricity supply) and internal access roads.

Each dwelling will have a 1600m² disturbance footprint which consists of the dwelling footprint, disturbance footprint including garden, a 5m-wide buffer to serve as firebreak area and an area with managed natural vegetation. The footprint areas of the dwellings are set out below.

The development on Farm no. 377 will consist of—

- Two (2) houses (additional dwellings) with a maximum footprint area of 175m² (height restricted to 6,5m, single storey with a loft); and
- Two (2) houses (other dwellings with a maximum footprint area of 200m² each, height restriction of 7m)

The development Portion 10 of Farm No. 255 will consist of—

- Two (2) houses (additional dwellings) with a maximum footprint area of 175m² (height restricted to 6,5m, single storey with a loft); and
- Two (2) houses (other dwellings with a maximum footprint area of 200m² each height restriction of 7m).

Other Alternatives:

An alternative location of the proposed dwellings included in the BAR, but which was not assessed, included the development of the proposed dwellings on the northern portions of the respective properties, close to Voorbrug Road. According to the BAR this alternative was not considered reasonable and feasible to the applicant due to the fact that the land is being used for agricultural purposes and would be subject to excessive dust from the Voorbrug Road. In this regard, the EAP has included a motivation letter in the BAR from the Applicant (Appendix K of the BAR) and referenced this letter as the motivation for not considering the alternative. The letter references information / studies which have not been made available in the BAR. This motivation letter does not substantiate the reasons for not undertaking the assessment of this alternative and this submission is contrary to the provisions of sub-regulation 12(3)(b) of the Environmental Impact Assessment Regulations, 2014 (as amended). Therefore, the process followed to reach the proposed preferred alternative within the site is inadequate as the motivation required in terms of Appendix 1: Section (3)(1)(h)(x) of the Environmental Impact Assessment Regulations, 2014 (as amended) to exclude this alternative location, is found to be unsubstantiated and the alternative should have been assessed in accordance with legislative requirements.

Furthermore, placement of the dwelling units further south on the respective properties was also investigated but rejected since the dwelling units would be located on 1:4 slopes and located near non-perennial drainage lines. In general, the Department does not support the development on slopes of 1:4 or greater and impacts in or near sensitive areas (such as watercourses) must be avoided. Therefore, the motivation to not investigate or assess this alternative further, is found to be acceptable.

"No-Go" Alternative

This alternative implies that the proposed dwellings units and associated infrastructure are not developed. According to the information provided in the BAR the No-Go alternative will not allow for the development in accordance with the existing land use rights.

3. Key Factors affecting the decision

In reaching its decision to refuse the proposed development, the Competent Authority 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, 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 Activity "Need and Desirability"

With regard to considering the need and desirability of this application, notwithstanding the Mossel Bay Municipality's decision (dated 16 August 2019) regarding the application for consent and permanent departure in terms of Section 15 of the Mossel Bay By-Law on Municipal Land Use Planning, 2015 in which the proposed development is approved (Appendix E21 of the BAR refers), the competent authority is obliged to consider all the relevant facts and factors to reach his/her own decision. Such an independent decision in terms of NEMA / Environmental Impact Assessment Regulations, 2014 may reach the same conclusion as contained in the Municipal approval; differ partially; differ completely or even refuse the proposal. It is noted that this Directorate was not consulted on the application the Mossel Bay By-Law on Municipal Land Use Planning, 2015; however, the decision states as a condition of approval of the additional dwellings that an Environmental Authorisation must be obtained and submitted with the building plans. From this procedure it is unclear how the principles set out in Section 2 of NEMA were considered and applied in that decision making process. It is further evident that said application did not fully comply with Sections 24(4)a) and 24(4)(b) of NEMA, and it can therefore not be considered as an environmental authorisation. The manner in which that application was managed and concluded limited the co-ordination and harmonisation of actions relating to the environment.

According to the information in the BAR the proposal will provide additional housing opportunities in line with the consent use policy for agricultural land and the existing land use approval. It is motivated that both properties have historically been utilised for agricultural purposes and the current land use entails dryland pastures due to inadequate water and low-quality soil. According to the information in the BAR the agricultural activities are not financially sustainable, and the housing units are intended to supplement the owner's income by additional shareholder's capital and income for the continuation of agricultural activities.

In light of the above and with reference to 3.3 above it is not apparent that the dwelling units will in fact be used for *bona fide* agricultural workers or used for *bona fide* agricultural activities. The statement in the BAR suggests that the dwellings may form part of an agreement between the owner of the property / development and potential shareholders to supplement income. The BAR also motivates that when considering the *Western Cape Land Use Planning: Rural Areas Guideline (2019)* the proposed land uses would be categorised as 'Rural Accommodation' specifically with the objective focused on a tourist accommodation use. In this regard, the motivation provided in the BAR is misleading as reference is made to the proposed use in separate section or supporting documents as being for additional dwellings units (i.e. for *bona fide* agricultural activities); for shareholder accommodation / residences; and also for tourist accommodation. It is noted that the motivation states that the Zoning Scheme By-law does not prohibit the applicant to rent out the additional dwelling units, and the renting out of an additional dwelling unit should not be mistaken for a 'guest house' or a 'resort unit'. The motivation is unclear on the specific use, and the application fails to justify the use of units as motivated to be directly associated / reasonably connected with a *bona fide* agricultural use. In light hereof it is unclear that the need for the additional dwellings is in fact in line with the Mossel Bay Municipality Zoning Scheme By-law, 2021.

Furthermore, when considering the *Western Cape Land Use Planning: Rural Areas Guideline (2019)*, if a property of 50 ha or less is located within 1-kilometre of the high-water mark of a tidal river, additional dwellings may not be allowed unless it complies with the municipal zoning scheme with regards to "additional dwelling unit". It must be noted that Farm 377 lies within 1-kilometre from the high-water mark of a tidal river (i.e. Great Brak Estuary). It is acknowledged that this guideline does (and specifically this decision) not replace the any administrative action in terms of the Mossel Bay By-Law on Municipal Land Use Planning, 2015; however, it is an important consideration for this application.

It is important to note that the number of agri-worker dwelling units must be reasonably connected to the *bona fide* primary farming and agricultural activities on the farm. The development of the additional dwelling units is not clearly supported by low agricultural potential due to the lack of water and low-quality soil as described in the BAR. The lack of detail on how the additional dwellings will be linked to *bona fide* agricultural activities and information to substantiate this aspect, is of concern and regarded to be a further compounding factor and gap in information. Insufficient information or studies (i.e. the findings of the Agricultural Agro-Ecosystem Specialist Assessment / Agricultural Compliance Statement; or socio-economic assessment) has been provided to substantiate or refute this aspect.

As such, development of this nature and position within the landscape, may set a precedent for similar developments on surrounding properties, which in essence and in terms of environmental considerations, may be regarded to be a "residential development" outside the urban area and a form of urban sprawl in a rural area and which will promote a development line in the landscape for which the proposed mitigation measures will not adequately address the impacts associated with such development.

3.3 Biodiversity

A description of the biodiversity issues and risks that were identified during the environmental impact assessment process, as well as an assessment of the significance of each issue and risk, cumulative impacts of the proposed development and levels of acceptable change have been considered.

According to the Western Cape Biodiversity Spatial Plan, 2017 (WCBSP) the properties form part of a Critical Biodiversity Area (CBA) and Ecological Support Area (ESA). The status of the CBA is mapped as CBA Terrestrial/Aquatic CBA2 – degraded and ESA2 (to restore). The vegetation type on the property has been identified and mapped as *Garden Route Granite Fynbos*, which has a gazetted

ecological threat status of *Endangered (EN)*. However, according to the Botanical Impact Assessment the lack of fire over a period of 30 years has resulted in the fynbos becoming moribund and has been largely displaced by early pioneers of thicket / forest vegetation. This report states that the severely transformed state of the affected *Garden Route Granite Fynbos* implies that the intrinsic biodiversity of this area has largely been lost and that it could not be restored to its original condition. The reason why the original vegetation cannot be restored lies in the fact that the portion of the property is severely overgrown with alien plants. The specialist report / input fails to demonstrate to what level the area could in fact be restored within an acceptable period, and whether this level of restoration would in fact adequately achieve the objectives of the CBA, ESA and the ecosystem. It would also be important to understand what measures would need to be implemented to achieve this, the fact that the use of fire as an ecological driver and management tool is merely disregarded is of concern. It would be prudent to implement a controlled burn in the "moribund fynbos" prior to the establishment of any dwellings on the properties to address/eliminate the initial fire-risk. This action would also reveal which ecological elements are still present and the restoration capability of the "moribund-fynbos". In addition, it is unclear whether either botanical specialist has consulted with the organ of state responsible for biodiversity in the province regarding the issue of the proposed biodiversity outcome.

It is noted from the Botanical report that the affected area consists of 2nd and 3rd generation alien invasive species including *Acacia cyclops*, *A. mearnsii*; *A. saligna*; *Eucalyptus lehmannii*; *E. saligna*; *Hakea sericea*; *Leptospermum laevigatum* and *Pinus pinaster*. Fynbos is fire driven system, and it is acknowledged that the presence of the alien invasive vegetation will increase the risk of fire which may spread to adjacent properties. In this regard an alien invasive control plan would be required in terms of the provisions of the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004) ("NEM:BA") and Conservation of Agricultural Resources Act, 1983 (Act No. 43 of 1983). The consultation process with the relevant authority regarding an alien invasive control plan was requested by the competent authority; however, only a copy of the alien invasive control plan was received as an annexure to the EMPr. The consultation with said authority was not demonstrated in the application and included in the BAR. The latter is a flaw in the public participation process, as all organs of state which have jurisdiction in respect of the activity to which the application relates, must be consulted as part of the public participation process. It has also limited the co-ordination and harmonisation of actions relating to the environment.

The Botanical Report also disputes the Critical Biodiversity Area (CBA) classification of the property; however, according to input from CapeNature, the classification should consider a suite of informants and parameters. It is not clear that this has been achieved in the Botanical Report. It is noted that the Botanical Specialist is of the opinion that the vegetation and mapped ecosystem - *Garden Route Granite Fynbos* – cannot be restored to the original state; however, with regard to the proposed biodiversity outcome namely, to establish an Ecological Support Area by eradicating all the alien invasive vegetation in the affected area and to allow the local vegetation to change naturally from fynbos to a thicket–forest vegetation, it must be stated that the detail of this proposal and how it can be successfully achieved, is unknown. It is also unclear if such an outcome will be supported by the organ of state responsible for biodiversity of the Western Cape province. Furthermore, given the fire-risk and the mitigation measures required from the Southern Cape Fire Protection Association, achieving such a biodiversity outcome, remain unclear.

3.4 Alternatives

The BAR included and assessed only one site alternative (i.e. the preferred alternative) in addition to the No-Go Alternative. The Department did advise that an alternative site location closer to the Voorbrug Road needed to be included to avoid impacts (i.e. visual impacts). According to the information in the BAR this was not considered a reasonable alternative due to exposure to excessive

dust from Voorbrug Road and that the location of the units would limit the financial benefit as a capital generating opportunity as the dwellings would not have an ocean view.

With reference to exposure to excessive dust from Voorbrug Road, this Department is of the considered view that the impact can be managed with appropriate measures and that rejecting the alternative based on this aspect is not adequate. Furthermore, the reason given that it would limit the financial benefit by not having ocean view, confirms that the dwellings will not be used for *bona fide* agricultural activities or directly linked to such activities.

It is important to highlight that an alternative location which considered the relevant environmental attributes and issues and which avoid the expected impacts (i.e. CBA, fire risk; possible visual intrusion; dust; practicable and feasible mitigation measures, etc.) was not presented in the application. Such an alternative location could have been considered on a portion of the dry-land which is set-back from the steep slope and ridge-line outside the natural vegetation and away from the expected dust problems.

3.5 Spatial context and Land Use

It is noted from the BAR that the current landscape character is rural. Landscape features that reinforce the rural, agricultural sense-of-place such as open pastures, informal farm-type fencing and farm dams are in evidence in the greater landscape surrounding the site. Building density is sparse with predominantly low-rise development, and existing structures are typically set back from the road edges. The two properties are located outside the interim urban edge (as adopted by the competent authority on 5 March 2012), and they are also outside the urban edge as defined in the Mossel Bay spatial development framework (SDF) of 2018. Furthermore, the information provided highlights that the intrinsic value of the scenic resources of the area can be described as high.

It is motivated that the property has been used for agricultural purposes and is currently used for dryland pastures. It must be highlighted that the area has not been cleared of vegetation nor the topsoil disturbed in the preceding ten-year period, this is supported by relevant satellite and aerial imager. Information on the WCG: Department of Agriculture GIS (CapeFarmMapper URL <https://gis.elsenburg.com/apps/cfm/#>) also shows that no crops have been established on the properties since 2013. The cultivation/clearance of vegetation (albeit for dryland pastures) on this portion of the property is likely to require environmental authorisation and a permit in terms of the Conservation of Agricultural Resources Act, 1983 (Act No. 43 of 1983). The application has not provided sufficient information on the proposed agricultural activities in support of the proposed development and what level of manage support such activities would require.

The properties subject to the proposed development are zoned *Agriculture Zone I* in terms of the Mossel Bay Municipality Zoning Scheme By-law, 2021 and is located outside the urban edge of the Mossel Bay Municipality. In terms of the By-law each such cadastral unit is permitted a primary dwelling house and agricultural worker accommodation (i.e. farm manager's dwelling unit and labourer's dwelling unit). In addition to the above the Mossel Bay Municipality approved an application for consent use and permanent departure for an additional dwelling unit on each of the subject properties (Ref: 15/4/34/6/; 15/4/34/4/M Engelbrecht C 5518181) dated 16 August 2019. According to the Zoning Scheme By-law (2021) the agricultural worker accommodation as well as the additional dwelling units may be erected for *bona fide* agricultural workers.

3.6 Visual impact

A Visual Impact Assessment was undertaken to inform the application for environmental authorisation. According to the VIA the proposed dwelling units will have a high visual impact, and

the receptors are rated as highly sensitive. The main receptors are from the N2 National Road, viewpoints south of the property and nearby residential developments.

The Department is of the considered view that the proposed dwelling units will be highly visible as a result of the clearance of the surrounding vegetation and the establishment of the 50m wide fire break south of the dwelling units in accordance with the requirements of the South Cape Fire Protection Agency (email correspondence from Mr. Charl Wade on 17 February 2022). The measures to be implemented to reduce the risk of fire will therefore reduce the effectiveness of the mitigation measures recommended by the specialist. The VIA suggests replacing the removed alien vegetation with trees to match the existing bush encroachment of indigenous vegetation and forest species to provide screening of the proposed dwellings in time. This contradicts the requirement of the fire break, which requires that a 50m-wide area south of the proposed dwelling units needs to be kept clear of tall, dense vegetation. As such, the view is held that the establishment and subsequent maintenance of the 50m-wide fire break will not provide effective screening of the proposed dwelling units and will lower the Visual Absorption Capacity and increase Visual Intrusion and Visual Exposure. A noteworthy fact is that the Visual Absorption Capacity (VAC) to the south of the proposed dwellings is described as moderate to low. Without any adequate mitigation measures, the visual intrusion is expected to be significant.

Furthermore, the Department does not agree that the proposed dwellings fit within the development context of the surrounding areas. The VIA has not demonstrated how the Guideline for the Management of Development on Mountains, Hills and Ridges of the Western Cape was considered and the relevant issues addressed. The VIA fails to clearly address the influence of establishing a "development line" in the landscape, including the impacts and cumulative impacts associated thereof or provide adequate mitigation of such impacts. The encroachment of agricultural development into the natural area (which is a CBA and forms part of the Gouritz Cluster Biosphere Reserve) is not supported.

3.7 Fire Management

A description of the fire management of the two properties has been included in the BAR and EMPr. According to the documents a 50m-wide strip along the southern border will be restored to indigenous vegetation and kept free of alien invasive species.

However, according to correspondence from the Manager: Southern Cape Fire Protection Association, Mr. Charl Wade (dated 17 February 2022), the 50m-wide strip must be maintained as a cut firebreak. Therefore, this fire-risk management requirement has a direct influence or negative impact on the VAC of the area surrounding the dwellings as the landscape without tall or dense vegetation will not be provide the proposed screening to the dwellings. A balance between managing the fire-risk and visual intrusion or impact on a landscape of cultural significance, has not been achieved in the application. Alternative sites on the property should be investigated to address this issue.

3.8 Storage, treatment and disposal of effluent and sewage

According to the BAR sewage storage, treatment and disposal will be by means of an on-site treatment package plant (i.e. Biorock system) and states that the plant requires no municipal connection or tanker service. The effluent from the treatment process would be used for irrigation.

However, additional information was submitted to the Department on 30 May 2022 which indicated that conservancy tanks will be installed, and which will be emptied by a honey sucker. This aspect was not assessed in the BAR. Furthermore, relevant experience indicates that one of the minimum

requirements for such service is that roads must be a minimum of 4.5m wide. It is acknowledged that an existing road leads to the proposed dwellings; however, according to the BAR driveways will be managed farm tracks which are anticipated to be 3.5m wide. The relevant listed activity, Activity No. 4 of the Environmental Impact Assessment Listing Notice 3 of 2014 was not included and assessed in the application for environmental authorisation.

3.9 Heritage Resources

A submission in terms of Section 38 of the National Heritage Resources Act (Act 25 of 1999) was made and Heritage Western Cape (HWC) subsequently issued a response stating that no further assessment was required from HWC, therefore. The competent authority is satisfied that the requirements in terms of Section 38 of the National Heritage Resource Act (Act 25 of 1999) have been addressed.

However, neither the BAR or comment from HWC (or relevant heritage agency), addressed the investigation, assessment and evaluation of the impact of any proposed listed activity on any national estate referred to in section 3(2) of the National Heritage Resources Act, 1999 (Act No. 25 of 1999). The landscape and natural features are regarded to be of cultural significance, as they form part of a recognised scenic tourist route. The latter is also emphasized in the Visual Impact assessment report. The view is held that the impacts associated with this aspect of the proposed development can be regarded to have significant negative influence and have not been adequately addressed.

4. Conclusion

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

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

The Competent Authority has applied a risk-averse and cautious approach with respect to this development proposal. The Competent Authority took the potential negative impacts (as identified above) into consideration and although some impacts can be minimised, not all can altogether be avoided or prevented.

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