

REFERENCE: 16/3/3/5/D6/29/0008/22
NEAS REF.: WCP/EIA/AMEND/0000677/2022
DATE OF ISSUE: 22 June 2023

ADDENDUM TO ENVIRONMENTAL AUTHORISATION

APPLICATION IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998) AND PART 2 AND 4 OF CHAPTER 5 OF THE ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, 2014 FOR THE AMENDMENT OF THE APPEAL ENVIRONMENTAL AUTHORISATION ISSUED ON 18 AUGUST 2009 (REF 3/6/3) AND THE ENVIRONMENTAL MANAGEMENT PROGRAMME (DATED 8 MARCH 2008) FOR THE PROPOSED RESIDENTIAL DEVELOPMENT ON A PORTION OF THE FARM VAALE VALLEY 219, MOSSEL BAY – HARTLAND LIFESTYLE ESTATE

With reference to your application for the abovementioned, find below the decision with respect to the application (submitted 21 October 2022) for the amendment to the Environmental Authorisation issued on 18 August 2009 (hereinafter referred to as an "Environmental Authorisation").

A. DECISION

By virtue of the powers conferred on it by the National Environmental Management Act, 1998 (Act No. 107 of 1998, as amended) and the Environmental Impact Assessment Regulations, 2014, ("EIA Regulations") the competent authority herewith—

- **grants in part**, the amendment of the Environmental Authorisation issued on 18 August 2009; whereas, the removal of the social housing node from the development proposal is refused.
- **refuses** the amendment of Condition 8.3 of the Environmental Authorisation issued on 18 August 2009 to allow kikuyu grass (*Pennisetum clandestinum*) to be included in the list of plant species in the OEMP that must be encouraged on the estate.
- **grants**, the removal of the impact management action of the Construction Phase Environmental Management Programme ("CEMP") dated March 2008 and the Operational Phase Environmental Management ("OEMP") dated June 2008 regarding the establishment of an Environmental Liaison Committee ("ELC"); and
- **refuses** the amendment to the impact management action and impact management outcome in the CEMP and OEMP related to Condition 8.3 of the Environmental Authorisation issued on 18 August 2009, regarding the addition of kikuyu grass (*Pennisetum clandestinum*) to the list of plant species that should be encouraged/permitted on the estate.

The Environmental Authorisation issued on 18 August 2009 and the EMPr (comprising of the CEMP and OEMP) are amended as set out below.

1. The Environmental Authorisation issued on 18 August 2009 is amended as follows:

- 1.1 The substitution in the Title and Section A of the Environmental Authorisation for the expression “Hartenbos Landgoed Phase 2” or “Hartenbos Landgoed” where it refers to the development on portion of the Farm Vaale Valley 219, Mossel Bay, for the following words—

“Hartland Lifestyle Estate”

- 1.2 Section A: Description of the Activity is substituted with the following:

“The proposed development consists of a total of 2288 Residential units made up of single residential erven and general residential (including 150 Social Housing units), a 0.88ha Business Zone, 3.24ha Community Zone (consisting of a school and sports field) and an Open Space of 235ha (excluding the internal Open Spaces), which will be managed as a nature reserve, a road network and associated infrastructure services will be accommodated on the footprint.

The main access will be from through the New Vintage Development to the southwest of Hartland and the secondary access will be from the MR 344 through the culvert under the N2 National Road.

Water will be provided from the proposed new 15Ml reservoir that will supply both the proposed Hartland Lifestyle Estate and possible future developments in the area, in addition to a 5Ml reservoir and booster pump station.

Sewerage removal will be accommodated by means of a gravity sewer network in combination with sewage pump stations. The sewage will be pumped to a point near the north-western edge of the site from where it will gravitate and siphon to the Hartenbos Regional Sewage Treatment Works.”

- 1.3 Section G: Condition 25 is substituted with the following:

“25. The Holder must, for the period during which the environmental authorisation and EMPr (comprising of the CEMP and OEMP) remain valid, ensure the compliance with the conditions of the environmental authorisation and the EMPr, is audited.”

25.1 The frequency of auditing of compliance with the conditions of the environmental authorisation and of compliance with the EMPr, must adhere to the following programme:

25.1.1 During the period which the activities have been commenced with on site until the construction of the bulk internal service infrastructure (i.e., internal roads; water-, sewer-, electricity reticulation and bulk

storm water) 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 of the construction of bulk internal services and the post construction rehabilitation and monitoring requirements thereof.

- 25.1.2 During the period the development of the residential phases (i.e., construction of top structures) is undertaken, the Holder must ensure that environmental audit(s) are performed regularly and submit these Environmental Audit Report(s) to the Competent Authority.

During this phase of the development, the frequency of the auditing of compliance with the conditions of the environmental authorisation and of compliance with the EMPr may not exceed intervals of three (3) years.

A final Environmental Audit Report must be submitted to the Competent Authority within three (3) months of completion of the final phase of the residential development and the post construction rehabilitation and monitoring requirements thereof."

1.4 Section G: Condition 26 is substituted with the following:

"26. The Environmental Audit Report(s), must–

- 26.1 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 the EAP who managed the application or the EIA process.
- 26.2 provide verifiable findings, in a structured and systematic manner, on–
 - 26.2.1 the level of compliance with the conditions of the environmental authorisation and the EMPr and whether this is sufficient or not; and
 - 26.2.2 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.
- 26.3 identify and assess any new impacts and risks as a result of undertaking the activity;
- 26.4 evaluate the effectiveness of the EMPr;
- 26.5 identify shortcomings in the EMPr;
- 26.6 identify the need for any changes to the avoidance, management and mitigation measures provided for in the EMPr;

- 26.7 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;
- 26.8 indicate the date on which the maintenance/ rehabilitation was commenced with and the progress of the rehabilitation;
- 26.9 include a photographic record of the site(s) applicable to the audit; and
- 26.10 be informed by the ECO reports.

Note: 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).
The EMPr comprises of the CEMP and OEMP"

- 1.5 All other conditions contained in the Environmental Authorisation issued on 18 August 2009 (as amended) still remain unchanged and in force.

2. The EMPr (comprising of the CEMPr and OEMPr approved on 18 August 2009) is amended as set out below:

- 2.1. The requirements of Condition 25 of the Environmental Authorisation as issued on 18 August 2009, which required the establishment of an Environmental Liaison Committee ("ELC") prior to the commencement of site preparation and construction activities; may be removed respectively from the CEMPr and OEMPr (as approved on 18 August 2009); and
- 2.2. The requirement relating to the submission of an Environmental Audit Report to the Department within 6 months after installation of the services of each phase that has been completed as contained in Condition 26 of the Environmental Authorisation as issued on 18 August 2009; must be amended to address the environmental auditing requirements of the Environmental Impact Assessment Regulation, 2014 and incorporate the changes to the conditions in Section G made in this Addendum to the Environmental Authorisation.

B. CONDITIONS

- 1. The applicant must, in writing, within **14 (fourteen)** calendar days from the date of the Department's decision –
 - 1.1 notify all registered interested and affected parties registered in the previous EIA process of –
 - 1.1.1 the outcome of the application;
 - 1.1.2 the reasons for the decision;
 - 1.1.3 the date of the decision; and
 - 1.1.4 the date of issue of the decision;

- 1.2 draw the attention of all registered interested and affected parties registered in the previous EIA process to the fact that an appeal may be lodged against the decision in terms of the National Appeals Regulations, 2014 (as amended) in section D below;
 - 1.3 draw the attention of all registered interested and affected parties registered in the previous EIA process to the manner in which they may access the decision.
2. The holder of the environmental authorisation must within thirty (30) calendar days of the issue of this amendment decision, provide the competent authority with written proof of compliance with condition 1 above.
3. A new Site Development Plan ("SDP") must be submitted that includes the Social Housing units. This SDP must be submitted to this Department prior to the commencement of the new phases.
4. The amended CEMPr and OEMPr submitted with the Final Impact Report must be amended to incorporate the changes made in this Addendum to the Environmental Authorisation. The amended CEMPr and OEMPr must be submitted to this Department for approval prior to the commencement of the construction of the new phases.

C. APPEALS

1. An appellant (if the holder of the decision) must, within 20 (twenty) calendar days from the date the notification of the decision was sent to the holder by the Competent Authority–
 - 1.1. Submit an appeal in accordance with Regulation 4 of the National Appeal Regulations 2014 (as amended) to the Appeal Administrator; and
 - 1.2. Submit a copy of the appeal to any registered I&APs including any Organ of State with interest in the matter; and
 - 1.3. Submit a copy of the appeal to the decision-maker (i.e. the Competent Authority that issued the decision) at:
Zaahir.Toefy@westerncape.gov.za and copied to:
DEADPEIAadmin.George@westerncape.gov.za
Gavin.Benjamin@westerncape.gov.za
2. An appellant (if NOT the holder of the decision) must, within 20 (twenty) calendar days from the date the holder of the decision sent notification of the decision to the registered I&APs–
 - 2.1. Submit an appeal in accordance with Regulation 4 of the National Appeal Regulations 2014 (as amended) to the Appeal Administrator; and
 - 2.2 Submit a copy of the appeal to the holder of the decision and any registered I&AP including any Organ of State with an interest in the matter; and

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

Zaahir.Toefy@westerncape.gov.za and copied to:
DEADPEIAAdmin.George@westerncape.gov.za
Gavin.Benjamin@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>.

D. DISCLAIMER

The Western Cape Government, the Local Authority, committees or any other public authority or organisation appointed in terms of the conditions of this Addendum to the 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

**Zaahir
Toefy**

Digitally signed by
Zaahir Toefy
Date: 2023.06.21
18:52:36 +02'00'

ZAAHIR TOEFY

DIRECTOR: DEVELOPMENT MANAGEMENT

DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING

DATE OF DECISION: 21 JUNE 2023

FOR OFFICIAL USE ONLY:

APPEAL ENVIRONMENTAL AUTHORISATION

REFERENCE NUMBER: 3/6/3 (HARTENBOS LANDGOED PHASE 2)
DATE OF ISSUE: 18 AUGUST 2009

EA ADDENDUM #1 REFERENCE NUMBER: M3/6/5
DATE OF ISSUE: 18 DECEMBER 2012

EA ADDENDUM #2 REFERENCE NUMBER: M3/6/5
DATE OF ISSUE: 12 FEBRUARY 2018

EA ADDENDUM #3 REFERENCE NUMBER: 16/3/3/5/D6/29/0008/22
NEAS REF.: WCP/EIA/AMEND/0000677/2022
DATE OF ISSUE: THIS DECISION
CASE OFFICER: MS. JESSICA CHRISTIE | Jessica.Christie@westerncape.gov.za

ANNEXURE A: REASONS FOR THE DECISION

In reaching its decision, the Department took, *inter alia*, the following into consideration:

- a) The information contained in the Application Form received on 21 October 2022, the Final Impact Report (FIR) and supporting documents submitted on 3 April 2023;
- b) Relevant information contained in the Departmental information base, including the Guidelines on Public Participation and Need and Desirability;
- 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 Interested and Affected Parties (I&APs) and responses to these, included in the FIR received by this Department on 3 April 2023;
- e) The balancing of negative and positive impacts and proposed mitigation measures;
- f) All relevant information that was made available in the report to understand the environmental and spatial context.
- g) The site inspection that was undertaken by Ms. Jessica Christie and Mr. Francois Naudé on 2 August 2022.

All information presented to the Competent Authority was taken into account in the consideration of the application for the amendment of the 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 public participation process was undertaken according to a Public Participation Plan that was approved by this Department and the plan has satisfied the minimum requirements as prescribed in the EIA Regulation 2014 for public involvement.

The following Organs of State provided comment on the proposal during the Public Participation Process:

- WCG: Department of Agriculture
- CapeNature
- Department of Forestry, Fisheries and Environment – Forestry Section
- Breede Gouritz Catchment Management Agency
- Interested and Affected Parties ("I&APs):
 - Chairperson of Garden Route Stakeholders of Built Environment
 - Mr. Charl Moller (Consulting Engineer)

2. Key Factors Affecting the Decision

- Layout alternative and densification of housing:

The proposed amendments will not increase the total development footprint of the estate, but the purpose is to re-align internal roads and increase the density of the houses. This proposed changes to the layout and density of the development, except for the

exclusion of the social housing node, are supported as this will improve the efficiency of the land use and promote the better utilisation of resources.

- Removing the requirement for a Social Housing node:

During the process to develop the property now known as Hartland Lifestyle Estate, the developer at the time entered into an agreement with the Mossel Bay Municipality to include 150 social housing units in the SDP to allow for the relocation of residents of Power Town. Due to the time delay in commencing with the development, the Mossel Bay Municipality developed a further phase to Sonskynvallei to provide residents an alternative to relocate from Power Town; however, many residents from Power Town did not wish to relocate. Since then, the developer and the Mossel Bay Municipality have reached a new agreement regarding the social housing node whereby the developer will provide a financial contribution to the Mossel Bay Municipality. It is written that this funding will be ringfenced by the municipality specifically for the development of municipal services for the Power Town community since the municipality has not yet decided on the way forward regarding the remaining residents of Power Town.

Notwithstanding this agreement, the application to remove the social housing units from the development is refused as the need for social housing / inclusionary housing in the development had not been refuted and the assessment had not addressed this aspect appropriately. It appears that the social housing had only been interpreted as a form of "low-cost housing" in the initial application for environmental authorisation. The Socio-Economic Compliance Statement only addressed the economic nature of the removal of the social housing for a single community and concluded that "*the removal of the 150 social housing units will not produce an adverse social / economic impact as alternative provisions have been made for the community in question*", and it thereby failed to address the need for social housing and an integrated residential development in general. Providing social / inclusionary housing opportunities in high-value, well-resourced urban locations through private developments, is a mechanism to promote spatial transformation and seeks to offer an alternative to poor spatial choices facing middle to lower income households. It should not be seen as the development of low-cost housing alone, which in this application it was.

Therefore, this item / aspect was not removed from the proposed scope of the development. A condition has been set that a revised site development plan be submitted to the Competent Authority to demonstrate how a social housing component has been retained in the development.

- Refusal to amend Condition 8.3 of the Environmental Authorisation dated 18 August 2009:

Whereas condition 8 of said Environmental Authorisation requires that Chapter 12 of the Operational Management Plan must be expanded to include specific impact management actions related to biodiversity impact management outcomes on the estate, Condition 8.3 states: "*The list of plant species that should be encouraged must include all the locally occurring indigenous plant species, as well as kweek and buffalo*

grass". The latter refers to *Cynodon dactylon* (kweek grass) and *Bouteloua dactyloides* (buffalo grass).

In the application for the amendment of the Environmental Authorisation, it has been requested that Kikuyu grass (*Pennisetum clandestinum*) be added to the list in Condition 8.3 as one of plant species that are allowed to be introduced to / planted and therefore should be encouraged on the estate.

The Environmental Impact Report and supporting documentation has failed to demonstrate what the impact would be and how the relevant biodiversity impact management outcome(s) will be influenced. No reason or motivation besides that "it comes up naturally" has been given. There are specific impacts and impact management outcomes that were initially assessed, and which must be met.

Notwithstanding the above, *Pennisetum clandestinum* is classified as an alien invasive plant species. Even though a person may not be required to obtain a specific permit in terms of the provisions of the National Environmental Management: Biodiversity Act, 2004 (as amended) to allow such a person to grow or allow the spread of any specimen of this plant on the site, since this is a recognised alien invasive plant species any impacts on biodiversity within the site must be avoided. The impact report fails to clearly address the advantages and disadvantages associated with the proposed change; the measures to ensure avoidance, management and mitigation of impacts associated with such proposed change; and which changes to the EMPr are required. The reasons provided do not justify the loss or risk of loss of biodiversity or the degradation to the environment. This decision is further supported by the principles as set out in Section 2 of the National Environmental Management Act, 1998 (as amended ("NEMA")).

- Refusal to amend the impact management outcome in the CEMPr and OEMPr related to the introduction of kikuyu grass (*Pennisetum clandestinum*).

The abovementioned reasons to refuse the amendment of Condition 8.3 consequently inform the decision to refuse the application to amend the EMPr to include kikuyu grass.

In light of this decision, the EMPr should in fact be amended to include *Pennisetum clandestinum* on the list of plant species which must not be planted or permitted in the estate. Condition 8.2 of the Environmental Authorisation issued on 18 August 2009 has reference in this regard.

- Amendment of Condition 25 of the Environmental Authorisation:

Condition 25 of the Environmental Authorisation required the establishment of an Environmental Liaison Committee ("ELC") prior to the commencement of site preparation and construction. It is noted that the developer placed an advert to invite participants to join the ELC and a Terms of Reference ("TOR") was submitted to this Department for approval, nonetheless, the establishment of the ELC did not occur.

This Department is satisfied that an Environmental Control Officer (“ECO”) was appointed to monitor compliance with the Environmental Authorisation and EMPr in accordance with the agreed frequency. The establishment of the ELC only at this point in the development of the estate is regarded unnecessary and the presence of an established estate homeowners’ association can support the role and responsibility of the ECO. The omission of the requirement to establish and maintain an ELC is regarded to be acceptable.

- **Amendment of Condition 26 of the Environmental Authorisation:**

Condition 26 required the Holder of the Environmental Authorisation to submit an Environmental Audit Report to the Department within 6 months after installation of the services of each phase that has been completed.

The changes to Condition 25 and 26 are regarded to comply with the environmental auditing requirements stipulated in the Environmental Impact Assessment Regulations, 2014 (as amended) and the changes will adequately address the auditing frequency and reporting requirements for the estate development.

It must be acknowledged that the EAP revised the CEMPr and OEMPr to bring the document in line with Appendix 4 of the Environmental Impact Assessment Regulations 2014, however, it has not been approved as the document does not comply with Appendix 4 of the EIA Regulations 2014 and the abovementioned refusal to allow kikuyu to be planted, amongst other aspects are still contained within the EMPr.

3. 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;
- sensitive, vulnerable, highly dynamic or stressed ecosystems to receive specific attention in the management and planning procedures;
- the prevention of the disturbance of ecosystems and loss of biological diversity, or, where this cannot be altogether avoided, that the disturbance or losses are minimised and remedied;
- 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.

4. Conclusion

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

- (a) The identification and assessment of impacts associated with the proposed changes to the Environmental Authorisation and EMPr are detailed in the Final Impact Report (FIR) and supporting documents submitted on 3 April 2023.
- (b) The procedure followed for the impact reporting is adequate for the decision-making process.

Due consideration is also given to the person's duty of care described in Section 28 of NEMA:

"Every person who causes, has caused or may cause significant pollution or degradation of the environment must take reasonable measures to prevent such pollution or degradation from occurring, continuing or recurring, or, in so far as such harm to the environment is authorised by law or cannot reasonably be avoided or stopped, to minimise and rectify such pollution or degradation of the environment".

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

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