

REFERENCE NO: 16/3/3/6/3/D2/8/0112/24
DATE OF ISSUE: 11 June 2024

The Municipal Manager
% The Director: Civil Engineering Services
THE GEORGE MUNICIPALITY
PO Box 19
GEORGE
6530

Attention: Mr. Jannie Koegelenberg

E-mail: jkoegelenberg@george.gov.za

Dear Sir

ADOPTION & DEFINITION OF A MAINTENANCE MANAGEMENT PLAN IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998) AND THE ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, 2014 (AS AMENDED): THE PROPOSED MAINTENANCE AND MANAGEMENT OF THE STORMWATER STRUCTURES FOR PROJECT 28(1) FLOOD DAMAGE REPAIR IN GEORGE

The Final Maintenance Management Plan ("final MMP") for the abovementioned proposal dated 17 May 2024, compiled on your behalf by Ms. Cathy Avierinos (EAPASA No: 2019/1053) of *HillLand Environmental cc*, and received by this Directorate on 17 May 2024. Below please find the outcome of the request.

A. DECISION

By virtue of the powers conferred on it by the National Environmental Management Act, 1998 (Act No. 107 of 1998) ("NEMA"), the Environmental Impact Assessment Regulations, 2014, (as amended), the Competent Authority hereby **adopts** and **defines** the abovementioned Final Maintenance Management Plan ("MMP"), prepared by *HillLand Environmental cc*.

The MMP is for the purposes of undertaking maintenance activities associated with the maintenance and management of stormwater structures and infrastructure, specified in Section C below, in the suburbs of Borchards, Parkdene, Ballotsview and Thembaletu. The general scope of works *include inter alia*:

- refurbish / replace gabion structures;
- rehabilitation of eroded areas and implementation of erosion protection structures;
- reinstatement of retaining walls; and
- reconstruction of stormwater pipes, outlets, headwalls, and associated infrastructure.

The adoption of the MMP is subject to the conditions and the aspects which are defined by the competent authority set out in Section D below.

B. DETAILS OF THE HOLDER

The Municipal Manager
% The Director: Civil Engineering Services
THE GEORGE MUNICIPALITY
PO Box 19
GEORGE
6530

E-mail: jkoegelenberg@george.gov.za
Tel.: 27(0)44 801 9260

The abovementioned juristic person is the holder of the Maintenance Management Plan and is hereinafter referred to as "**the Holder**".

C. SITE DESCRIPTION AND LOCATION

The proposal entails the repairs and maintenance of erosion / damage to stormwater structures and infrastructure in the suburbs of Borchards, Parkdene, Ballotsview and Thembaletu.

Approximate coordinates for each site:

Site	Latitude (S)			Longitude (E)		
Site 28(1).1	33°	59'	15.98"	22°	28'	06.29"
Site 28(1).2	33°	59'	14.24"	22°	28'	06.79"
Site 28(1).37	34°	0'	21.32"	22°	30'	38.83"
Site 28(1).69	34°	0'	02.53"	22°	29'	23.84"
Site 28(1).77	33°	59'	55.30"	22°	29'	09.41"
Site 28(1).115 - 120	34°	01'	04.48"	22°	29'	17.43"

SG digit codes:

Property	Surveyor General 21-digit Code
Remainder Erf 13486	C02700020001348600000
Remainder of Portion 204 of Farm No. 197	C02700000000019700204
Remainder of Erf 1821	C02700100000182100000
Erf 1829	C02700100000182900000
Erf 3879	C02700100000387900000

Refer to Annexure 1 of this document for the Locality Plan.

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

D. CONDITIONS OF ADOPTING / DEFINING THE MMP:

1. The Holder must confirm acceptance of the conditions of this decision in writing, within **14 (fourteen) calendar days** of the date of the decision, failing which the decision to adopt the MMP is suspended until such time that the conditions are accepted.

Scope of the Maintenance Management Plan

2. The MMP is for the purposes of undertaking maintenance activities associated with the maintenance and management of stormwater structures and infrastructure, Specified in Section C above, in the suburbs of Borchers, Parkdene, Ballotsview and Thembaletu. The MMP is granted for a period until **30 June 2029**.

The general scope of works include *inter alia*:

- refurbish / replace gabion structures;
 - rehabilitation of eroded areas and implementation of erosion protection structures;
 - reinstatement of retaining walls; and
 - reconstruction of stormwater pipes, outlets, headwalls, and associated infrastructure.
3. The initial repair of the various structures and infrastructure will be undertaken in accordance with the following design layout plan drafted by WEC Consult: Consulting Engineers and Project Managers dated April 2024:
 - Site 28(1).1 Drawing Number
 - 23-GM-009/SUR104/00
 - 23-GM-009/SUR105/00
 - Site 28(1).2 Drawing Number
 - 23-GM-009/SUR106/00
 - Site 28(1).37: Drawing Number
 - 23-GM-009/SUR112/00
 - 23-GM-009/SUR113/00
 - Site 28(1).69 Drawing Number
 - 23-GM-009/SUR116/00
 - 23-GM-009/SUR117/00
 - Site 28(1).77 Drawing Number
 - 23-GM-009/SUR120/00
 - 23-GM-009/SUR121/00
 - Site 28(1).115-120 Drawing Number
 - 23-GM-009/SUR123/00
 - 23-GM-009/SUR123/00
 - 23-GM-009/SUR123/00
 - 23-GM-009/SUR123/00
 4. The agreement **excludes** the development of new structures or infrastructure or the expansion of existing structures or infrastructure which constitutes any other activity listed in the Environmental Impact Assessment Regulations Listing Notices of 2014. In this regard the following sites are subject to an application for environmental authorisation (Ref: 16/3/3/1/D2/8/0014/24):
 - Site 28(1).2
 - Site 28(1).69

IMPORTANT: Maintenance and repair activities associated with the above sites may only be commenced with once written authorisation has been obtained from the Competent Authority for the application for environmental authorisation.

Management and monitoring of activities

5. The Holder shall be responsible for ensuring compliance with the MMP and conditions herein, by any person acting on its behalf, including but not limited to, an agent, sub-contractor, employee, or any person rendering a service to the Holder.
6. The Holder must appoint a suitably experienced Environmental Control Officer ("ECO") for the duration of the maintenance activities at each site.

The **ECO** must—

- 6.1. be appointed before commencement of any maintenance activities;
- 6.2. be on site for the duration of the works to monitor and provide guidance relating to the conditions of this MMP;
- 6.3. ensure compliance with the MMP and the conditions contained herein, including the mitigation measures and recommendations referred to in the MMP;
- 6.4. conduct the necessary monitoring and keep record of all activities on the site; problems identified; transgressions noted, and a task schedule of tasks undertaken by the ECO;
- 6.5. undertake the environmental compliance monitoring reporting; and where the measures are not implemented that it is reported to the Competent Authority;
- 6.6. collect photographic material demonstrating the before-, during- and post-maintenance activities.

However, once the initial repair of the various structures and infrastructure have been completed, an Environmental Site Agent ("**ESA**") may be appointed for each of the subsequent maintenance project. Such an appointment and ESA must comply with the above requirements.

7. A copy of this decision and the adopted MMP must be kept at the site whenever maintenance activities will be undertaken. The aforesaid documents must be produced to any authorised official of the Department who requests to see the documents and such documents must be made available for inspection by any employee or agent of the Holder who works or undertakes work at the site.

Written notices to the Competent Authority

8. The Holder must, for the period during which the MMP remains valid, give written notice to the Competent Authority (for attention the Directorate: Development Management Region 3) of the implementation of the maintenance activities and for each subsequent maintenance project.

Such notice must—

- 8.1. provide the intended date of commencement of the maintenance activities on the site(s);
- 8.2. make clear reference to the reference number given above;
- 8.3. provide proof of compliance with the requirement to appoint an ECO and provide the details of the ECO; and

- 8.4. where subsequent maintenance projects will be undertaken, provide proof of compliance with the requirement to appoint an ECO/ESA and provide the details of the ECO/ESA.
9. The Holder's written notice must be submitted to the Competent Authority prior to the commencement of the maintenance activities or subsequent maintenance projects.

Compliance Monitoring and Reporting

10. The Holder must, for the period during which the MMP remains valid, ensure that compliance with the MMP and the conditions herein, is monitored and reported on to the Competent Authority.
11. The frequency of reporting of compliance with the MMP and conditions herein, must adhere to the following programme:
- 11.1. The Holder must ensure a Compliance Monitoring Report is submitted to the Competent Authority within nine (9) months from the date of issue of this decision; **or** within 30-days of completion of the initial maintenance project, whichever date will occur first.
- 11.2. Thereafter, the Holder must ensure that an Environmental Compliance Monitoring Report is submitted to the Competent Authority within 30-days of completion of each subsequent maintenance project (phase).
- 11.3. A final Environmental Compliance Monitoring Report for the MMP (completion report) must be submitted to the Competent Authority at least three (3) months prior to the validity period of the MMP lapsing; **or** within 30-days of completion of the final maintenance project, whichever date will occur first.

Note: This Department may require remedial action should the audit report reflect that rehabilitation is inadequate.

12. The Compliance Monitoring Report must be prepared by the appointed ECO (or where applicable the ESA) and detail the following:
- 12.1. indicate the date on which the maintenance work, was commenced with and completed;
- 12.2. detail compliance with the MMP and the conditions herein, as well as the status of the rehabilitation programme; and
- 12.3. include a photographic record of the completed site(s) which form part of the maintenance project.

Environmental Auditing

13. The Holder must, for the period during which the MMP remains valid, ensure that compliance with the MMP and the conditions thereof, is audited.
14. The frequency of auditing the compliance with the MMP and the conditions herein, must adhere to the following programme:
- 14.1. A final Environmental Audit Report for the MMP must be submitted to the Competent Authority at least three (3) months prior to the validity period of the MMP lapsing; **or** within 30-days of completion of the final maintenance project, whichever date will occur first.

Note: This Department may require remedial action should the audit report reflect that rehabilitation is inadequate.

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

- 15.1. be prepared and submitted to the Competent Authority, by an independent person with the relevant environmental auditing expertise. Such person may not be the ECO or EAP who conducted the EIA process;
- 15.2. provide verifiable findings, in a structured and systematic manner, on–
 - 15.2.1. the level of compliance with the MMP and conditions herein and whether this is sufficient or not; and
 - 15.2.2. the ability of the measures contained in the MMP to sufficiently provide for the avoidance, management and mitigation of environmental impacts associated with the undertaking of the activity.
- 15.3. identify and assess any new impacts and risks as a result of undertaking the activity;
- 15.4. evaluate the effectiveness of the MMP;
- 15.5. identify shortcomings in the MMP;
- 15.6. identify the need for any changes to the avoidance, management and mitigation measures provided for in the EMP;
- 15.7. indicate the date on which the maintenance/construction work was commenced with and completed or in the case where the development is incomplete, the progress of the development and rehabilitation;
- 15.8. include a photographic record of the site applicable to the audit; and
- 15.9. be informed by the ECO/ESA compliance monitoring reports.

Notification and administration of appeal

16. The Holder must within **14 (fourteen)** calendar days of the date of the decision give written notice to all the interested and affected parties and organs of state which were identified and engaged by *HillLand Environmental cc* during the public participation process (hereinafter “the I&APs). The notice must –
- 16.1. inform the I&APs of –
 - (a) the outcome of the decision;
 - (b) the date of the decision; and
 - (c) the date of issue of the decision;
 - 16.2. inform the I&APs of the fact that an appeal may be lodged against the decision in terms of the National Environmental Management Act: National Appeal Regulations (GN R.993 of 8 December 2014 as amended); and
 - 16.3. draw the attention of all the I&APs to the manner in which they may access the decision.
17. Appeals must comply with the provisions contained in the National Appeal Regulations 2014 (as amended).

E. 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 <https://www.westerncape.gov.za/eadp/resource-library/forms>.

F. GENERAL MATTERS

Amendment, Suspension or Withdrawal of Maintenance Management Plan

1. The Holder may submit a written request to the Competent Authority for an extension of the validity period of the MMP prior to the validity period lapsing. Such a request must contain a review of the MMP in terms of the need and desirability of such an extension and the objectives contained in the MMP. The review must make recommendations on possible amendments to the MMP or give reasons for maintaining the status quo.
2. Any changes to, or deviations from, the project description or maintenance activities set out in the adopted MMP must be approved in writing, by this Department, before effect may be given to such changes or deviations. In assessing whether to grant such approval or not, the Department may request such information as it deems necessary to evaluate the significance and impacts of such changes or deviations and it may be necessary for the Holder to apply for further authorisation in terms of the regulations pertaining to environmental impact assessments under sections of the National Environmental Management Act, 1998 (Act No. 107 of 1998).

Any erection/construction of new structures or the expansion of an existing structure or infrastructure, which constitutes any other activity listed in the NEMA Listing Notices (currently Government Notice R.983; R.984 or R.985 of 4 December 2014) may require environmental authorisation. This must first be confirmed with the competent authority.

3. This Department reserves the right to —
 - revise the adopted MMP or its initial comments; or
 - define further measures to be incorporated into the MMP,based on any new or revised information received and to request further information from the Holder where necessary.
4. This Department may suspend or withdraw the MMP based on any non-compliance with the MMP or a condition as defined in this decision.

Compliance with the MMP

5. Non-compliance with this MMP or a condition thereof, may be considered an offence in terms of Section 49A(1)(e) and/or 49A(1)(f) of the National Environmental Management Act, 1998 (Act no. 107 of 1998, as amended) ("NEMA").
6. In the event that the MMP should lapse, it is an offence in terms of Section 49A(1)(a) of NEMA for a person to commence with a listed activity, unless the competent authority has granted an Environmental Authorisation for the undertaking of the activity.
7. Offences in terms of the NEMA and the Environmental Impact Assessment Regulations, 2014, will render the offender liable for criminal prosecution.
8. Notwithstanding the adoption of the MMP, the Holder must still comply with any other statutory requirements that may be applicable to the undertaking of the maintenance activities.

G. REASON(S) FOR THE DECISION

In reaching its decision, the competent authority, *inter alia*, considered the following:

- a) Final Maintenance Management Plan ("final MMP") for the abovementioned proposal dated 17 May 2024, compiled by Ms. Cathy Avierinos (EAPASA No: 2019/1053) of HillLand Environmental cc, and received by this Directorate on 17 May 2024;
- b) The public participation process followed, and comments received from interested and affected parties. 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;
 - the placing of a newspaper advertisement in the "George Herald" on 18 April 2024;
 - making the Maintenance Management Plan for the proposed upgrades available to I&APs for public review and comment from 18 April to 13 May 2024 as agreed to by the Department;
 - I&APs could access the documentation via <https://hilland.co.za/public-processes/project281/>.
- c) The sense of balance of the negative and positive impacts and proposed mitigation measures;
- d) 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); and
- e) The MMP is adopted/defined in terms of –

Environmental Impact Assessment Regulations Listing Notice 1 Government Notice R.983 of 4 December 2014, as amended)

Activity 19

Activity Description

The infilling or depositing of any material of more than 10 cubic metres into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock of more than 10 cubic metres from a watercourse;
but excluding where such infilling, depositing, dredging, excavation, removal or moving—

- (a) will occur behind a development setback;
- (b) is for maintenance purposes undertaken in accordance with a maintenance management plan;
- (c) falls within the ambit of activity 21 in this Notice, in which case that activity applies;
- (d) occurs within existing ports or harbours that will not increase the development footprint of the port or harbour; or
- (e) where such development is related to the development of a port or harbour, in which case activity 26 in Listing Notice 2 of 2014 applies.

Environmental Impact Assessment Regulations Listing Notice 3 Government Notice R.985 of 4 December 2014, as amended)

Activity 12

Activity Description

The clearance of an area of 300 square metres or more of indigenous vegetation except where such clearance of indigenous vegetation is required for maintenance purposes undertaken in accordance with a maintenance management plan.

Western Cape

- i. Within any critically endangered or endangered ecosystem listed in terms of section 52 of the NEMBA or prior to the publication of such a list, within an area that has been identified as critically endangered in the National Spatial Biodiversity Assessment 2004
- ii. 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 erven 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
- v. 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.

Whereas—

"maintenance" means actions performed to keep a structure or system functioning or in service on the same location, capacity and footprint.

"maintenance management plan" means a management plan for maintenance purposes defined or adopted by the competent authority

- f) The National Environmental Management Principles (set out in section 2 of the NEMA, which apply to the actions of all organs of state, serve as guidelines by reference to which any organ of state must exercise any function when taking any decision, and which must guide the interpretation, administration and implementation of any other law concerned with the protection or management of the environment), *inter alia*, provides for:
- the effects of decisions on all aspects of the environment to be taken into account;
 - the consideration, assessment and evaluation of the social, economic and environmental impacts of activities (disadvantages and benefits), and for decisions to be appropriate in the light of such consideration and assessment;
 - the co-ordination and harmonisation of policies, legislation and actions relating to the environment;
 - the resolving of actual or potential conflicts of interest between organs of state through conflict resolution procedures; and
 - the selection of the best practicable environmental option.

In view of the above, the NEMA principles, compliance with the conditions stipulated in the adopted MMP, and compliance with the MMP, the competent authority is satisfied that the proposed 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 proposed activities can be mitigated to acceptable levels.

H. DISCLAIMER

The Western Cape Government, the Local Authority, committees or any other public authority or organisation appointed in terms of the adopted MMP 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.

Notwithstanding the adoption of this MMP, the Holder must still comply with any other statutory requirements that may be applicable to the undertaking of the maintenance activity.

Your interest in the future of our environment is appreciated.

Yours faithfully

DIRECTOR: DEVELOPMENT MANAGEMENT (REGION 3)
DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING

DATE OF DECISION: **11 JUNE 2024**

ANNEXURE 1: LOCALITY MAP

