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THE DIRECTOR  
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P.O. Box 12670  
**PRETORIA**  
0121

Attention: Mr. Stephan Roux

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Dear Sir

**COMMENT ON THE NOTICE ON INTENT FOR THE PROPOSED HOUSING DEVELOPMENT ON THE PORTION 91 OF THE FARM MATJESFONTEIN 304, PLETTENBERG BAY**

1. The Notice of Intent ("NOI") in respect of the abovementioned matter, received by this Department via e-mail on 16 November 2022, refers.
2. This letter serves as an acknowledgment of receipt of the aforementioned document by this Department.
3. The environmental impact management services ("EIMS") component of the Directorate: Development Management (Region 3) (hereinafter interchangeably referred to as "EIMS" or "this Directorate") has reviewed the document and provides the following comment:

3.1. Development proposal

From the information contained within the NOI this Directorate understands that the concept includes the development of  $\pm 73$  group housing stands with average erf sizes of  $\pm 375\text{m}^2$ . Open space and landscaped streets are incorporated into the design to enhance the quality of the neighbourhood.

The property is 14.7ha in size and the gross density will calculate at 5 units per ha. The nett density is calculated excluding the undevelopable steep slopes to the north of the site. The identified development area measures approximately 6ha and 73 units will calculate to a net density of 12 units per ha.

3.2. Applicable listed activities

The Department notes the listed activities as included in the NOI. However, the proposed development area is within the estuarine functional zone and must be referred to within the listed activities that trigger environmental authorisation.

The onus is on the proponent to ensure that all the applicable listed activities are applied for and assessed as part of the Basic Assessment process.

### 3.3. Need and Desirability

In terms of the Environmental Impact Assessment Regulations, 2014 ("EIA Regulations"), when considering an application, the Department must take into account a number of specific considerations including *inter alia*, the need for and desirability of any proposed development. As such, the need for and desirability of the proposed activity must be considered and reported on in the BAR. The BAR must reflect how the strategic context of the site in relation to the broader surrounding area, has been considered in addressing need and desirability.

Amongst others, the planning context must be considered when assessing the need and desirability of the proposed development. In this regard, the *Keurbooms & Environs Local Area Spatial Plan (KELASP)* (2013) is a relevant consideration.

It is noted that the KELASP has been described in the SSVR, however, it is not seen in any of the reports submitted that the KELASP has been reviewed and taken into consideration. This plan clearly indicates the developable area and the approximate estimation of existing development rights. Furthermore, relevant information exists regarding the Tshokwane River and associated wetlands that have been prepared by the Freshwater Consulting Group in 2013. It is advised that the specialists review this information and incorporate assess the alternatives with the information in the KELASP.

### 3.4. Alternatives

In terms of the EIA Regulations, 2014 the investigation of alternatives is mandatory. This includes the option of not proceeding with the proposed activity (the "no-go" option). All alternatives identified must be determined to be feasible and reasonable. In this regard it must be noted that the Department may grant authorisation for an alternative as if it had been applied for, or may grant authorisation in respect of the whole or part of the proposed project in the application. Alternatives are not limited to activity alternatives, but include layout alternatives, design, operational and technology alternatives.

Please be advised that, as a minimum, the development area which has been proposed in the KELASP will need to be identified and assessed as an alternative in the application process.

However, if after identified alternatives have been investigated, no feasible and reasonable alternatives were found, no comparative assessment of alternatives, beyond the comparative assessment of the preferred alternative and the option of not proceeding, is required during the assessment. What would, however, be required in this instance is proof of the investigations undertaken, and motivation for there being no reasonable or feasible alternatives other than the preferred option and the no-go option.

### 3.5. National Sector Classification List:

The list as indicated in the NOI includes the sectors for "Infrastructure/Transport Services/Roads – Private; Transformation of land – indigenous vegetation; Transformation of land – from agriculture or afforestation and any activities close to or within a watercourse". There is however just one screening tool report done for the "Transformation of land – Indigenous vegetation". It would be prudent to run a screening tool report for all the sectors and compare the results as there may be differences.

### 3.6. Site Sensitivity Verification Requirements

The Minister of Environment, Forestry, Fisheries has published general requirements for undertaking site sensitivity verification for environmental themes for activities requiring

environmental authorisation. In terms of these requirements, prior to commencing with a specialist assessment, the current land use and environmental sensitivity of the site under consideration by the screening tool must be confirmed by undertaking a site sensitivity verification.

In light of the above this Directorate has reviewed the Site Sensitivity Verification Report ("SSVR") compiled by the EAP and provides comment in respect of the following:

*(i) Agriculture Theme (High Sensitivity)*

The National Screening Tool Report (STR) indicates that the Sensitivity of the site for this theme is *HIGH*. It is noted that the EAP refutes the sensitivity and suggests a sensitivity of *low*. The motivation however does not demonstrate sufficiently that the sensitivity should be low. The sensitivity relates to the land capability and soil potential. But an Agricultural Compliance Statement must be undertaken. The findings of the *specialist statement* must be incorporated into the Basic Assessment Report, including any mitigation and monitoring measures as identified, which are to be contained in the EMPr. The compliance statement must be prepared by a soil scientist or agricultural specialist registered with the SACNASP.

*(ii) Animal Species Theme (High Sensitivity)*

The STR identified a *HIGH* Sensitivity for the Animal Species Theme and lists birds, invertebrates and mammals which are known to occur in the area, based on the habitat type identified by the applicable datasets. The STR also lists a "*Sensitive Species 8*" (i.e. a species which name has been withheld as the species may be prone to illegal harvesting and must be protected).

However, since the Specialist has undertaken a site sensitivity verification and suggested a sensitivity of *Medium* and has noted that there is high probability of certain Species of Conservation Concern ("SCC") being present, a Terrestrial Animals Species Specialist Assessment must be undertaken. The *Terrestrial Animal Species Specialist Assessment Report* must be undertaken by a specialist registered with the South African Council for Natural Scientific Professions (SACNASP) with a field of practice relevant to the taxonomic group ("taxa") for which the assessment is being undertaken.

*(iii) Aquatic Biodiversity Sensitivity (Very High Sensitivity)*

The STR states that the sensitivity in terms of aquatic biodiversity is *VERY HIGH* and the EAP and specialist has disputed this and has suggested a new sensitivity rating of *Low*. However, given the fact that the application area is within the estuarine functional zone and the level of the groundwater is unknown, a detailed specialist assessment is required. Therefore, considering the sensitivity rating, an Aquatic Biodiversity Specialist Assessment must be undertaken.

The Aquatic Biodiversity Specialist Assessment must be undertaken by a specialist registered with the South African Council for Natural Scientific Professions (SACNASP) with expertise in the field of aquatic sciences.

*(iv) Terrestrial Biodiversity Sensitivity (Very High Sensitivity)*

This Directorate notes that the specialist who undertook the SSV for Terrestrial Biodiversity confirms that a Terrestrial Biodiversity Specialist Assessment Report must be undertaken. Please note that the report must be undertaken by a specialist registered with the South African Council for Natural Scientific Professions (SACNASP) with expertise in the field of ecological sciences.

(v) *Archaeological and Cultural Heritage Sensitivity (Low Sensitivity)*

It is noted that a NID will be submitted to Heritage Western Cape (HWC). The NID and all supporting documents (submitted to HWC) must be appended to the Draft Basic Assessment report. In light of the above requirements from HWC please be advised that the Standard Operating Procedure between Heritage Western Cape and this Department must be followed.

(vi) *Civil Aviation Sensitivity (High sensitivity)*

It is noted that the STR has indicated that the sensitivity for the Civil Aviation Theme is *HIGH*. The EAP refutes this and the motivation for exclusion is noted, and the sensitivity is suggested to be *Low*. It is noted that the EAP has stated that the South African Civil Aviation Authority will be added to the I&AP register. The EAP is advised to consult the South African Civil Aviation Authority (% Ms. Lizell Stroh) at E-mail: Strohl@caa.co.za and / or Tel: (011) 545 to determine specific aspects that must be addressed.

(vii) *Defence Sensitivity (Low sensitivity)*

It is noted that the Screening Tool report has noted a low sensitivity for the Defence theme therefore no further assessment and mitigation measures are required in terms of the applicable Protocol published in Government Notice No. 320 of 20 March 2020.

(viii) *Palaeontology Sensitivity (Very High Sensitivity)*

It is noted that a NID will be submitted to Heritage Western Cape (HWC). The NID and all supporting documents (submitted to HWC) must be appended to the Draft Basic Assessment report. In light of the above requirements from HWC please be advised that the Standard Operating Procedure between Heritage Western Cape and this Department must be followed.

(ix) *Plant Species Theme (Medium Sensitivity)*

The STR identified a *MEDIUM* sensitivity for the Plant Species Theme and numerous species which are known to occur in the area, based on the habitat type identified by the applicable datasets. The STR also lists a number of "Sensitive Species". It is noted in the SSV that the specialist had confirmed that a "*Terrestrial Plant Species Specialist Assessment*" should be done.

The *Terrestrial Plant Species Specialist Assessment Report* must be undertaken by a specialist registered with the South African Council for Natural Scientific Professions (SACNASP) with a field of practice relevant to the taxonomic group ("taxa") for which the assessment is being undertaken.

### 3.7. *Specialist Studies identified in the Screening Tool Report*

(i) *Landscape / Visual Impact Assessment*

The need for this specialist assessment was described in the SSVR. The visual impacts of the proposed development must be dealt with in terms of Appendix 1 and 6 of the Environmental Impact Assessment Regulations, 2014 together with the Department's *Guideline for involving visual and aesthetic specialists in the EIA process, June 2005*. Furthermore, it is noted that a Notice of Intent to Develop (NID) under Section 38(1) and (8) of the NHR Act will be submitted to HWC and that it is expected that the outcome of the NID will determine the requirements for a Visual Impact Assessment, and whether this will form part of the Heritage Impact Assessment.

(ii) Socio-Economic Assessment

As mentioned above, the KELASP must be taken into consideration when addressing the socio-economic impacts of the proposed development. Even if the Town Planning report will address socio-economic aspects, the relevance of this plan and the impact it has on the proposal must be addressed. Furthermore, it must be demonstrated how this Department's *Guideline for involving social assessment specialists in the EIA process, February 2007*, has been considered in the report.

4. Synchronising applications in terms of other applicable legislation with the EIA process:

● *National Water Act, Act No. 36 of 1998 ("NWA")*  
*(Synchronisation of the WULA – EIA processes / applications)*

The applicability of the National Water Act, 1998 must be confirmed by Breede Gouritz Catchment Management Agency (BGCMA) in writing.

Please be advised of the required synchronisation between the EIA process and the Water Use License Application ("WULA") process (if the latter is required). You are reminded that if these processes are not properly aligned, the lack of synchronisation; omission of any reports/information; or delay as a result thereof, may prejudice the success of this application for environmental authorisation.

All specialist reports submitted as part of the BAR (including those submitted for consideration and which also may form part of the WULA) must comply with the requirements of Appendix 6 of the Environmental Impact Assessment Regulations 2014.

● *National Heritage Resources Act, 1999 (Act No. 25 of 1999) ("NHRA")*  
*(Synchronisation of the HIA – EIA processes / applications)*

Section 38 of the NHRA sets out the requirements regarding the integration of the decision-making processes with that of the EIA Regulations 2014, however, under the proviso that the necessary information is submitted and any comments and recommendations of the relevant heritage resources authority (HWC) with regard to such development have been provided and taken into account prior to the granting of the authorisation. Further to the above:

- An application for Environmental Authorisation, must include, where applicable, the investigation, assessment and evaluation of the impact of any proposed listed or specified activity on any national estate referred to in section 3(2) of the National Heritage Resources Act, 1999 (Act No. 25 of 1999), excluding the national estate contemplated in section 3(2)(i)(vi) and (vii) of that Act.
- Where Section 38 of the NHRA is triggered, the Standard Operating Procedure between Heritage Western Cape and this Department must be followed. If Section 38 is applicable to the proposed development, then the proponent/applicant is required to submit a Notice of Intent to Develop ("NID") to Heritage Western Cape and attach a copy thereof to the EIA application form. If Heritage Western Cape requires a Heritage Impact Assessment, the Heritage Impact Assessment must be undertaken as one of the specialist studies of the EIA process to be undertaken in terms of the EIA Regulations, 2014.

## 5. *Municipal Bulk Services*

Confirmation from the Bitou Municipality must be obtained for all basic services to this proposal. This must include potable water supply, sewerage disposal, electrical supply and solid waste. This information must be included with forthcoming reports.

6. You are advised that when undertaking the Basic Assessment process, you must take into account applicable guidelines, including the circulars and guidelines developed by the Department. These can be provided upon request. In particular, the guidelines that may be applicable to the proposed development include, *inter alia*, the following:

- Guideline for the Review of Specialist Input in the EIA process (June 2005).
- Guideline for Environmental Management Plans (June 2005).
- Guideline on Alternatives (March 2013).
- Guideline for determining the scope of specialist involvement in EIA processes, June 2005.
- Guideline for the review of specialist input in the EIA process, June 2005.
- Guideline for involving biodiversity specialists in the EIA process, June 2005.
- Guideline for involving visual and aesthetic specialists in the EIA process, June 2005.
- Guideline for involving heritage specialists in the EIA process, June 2005.
- Guideline for involving social assessment specialists in the EIA process, February 2007.
- Guideline for the management of development on mountains, hills and ridges of the Western Cape, 2002.
- DEA (2017), Guideline on Need and Desirability, Department of Environmental Affairs.
- Western Cape Provincial Spatial Development Framework.
- Western Cape Land Use Planning Guidelines - Rural Areas (March 2019)

## 7. *Public Participation Plan:*

It must be ensured that Regulation 41 of the Environmental Impact Assessment, 2014 (Government Notice No. R. 982 of 4 December 2014, as amended) is complied with simultaneously during the pre-application phase (where relevant) or application phase or both *inter alia*, the placement of an advertisement in the local newspaper, the placement of a site notice at the site or alternative site and informing owners, persons in control of, and occupiers of land adjacent to the site; and informing relevant State Departments and Organs of State which administers a law in respect of the proposed development. Please be informed that failure to comply with Regulation 41 may prejudice the outcome of this application for environmental authorisation.

Should a public participation process, which includes the circulation of the pre-application BAR for comment, be undertaken prior to submission of an Application Form to the Department, in terms of Regulation 40, the pre-application BAR must also be submitted to the Department for commenting purposes.

Furthermore, the Department notes the State Departments / Organs of State that will be informed of the decision. In addition to the identified authorities, you are also required to notify the following authorities which administer a law in respect of the proposal:

- *Western Cape Government: Department of Transport and Public Works*  
% Mr. S.W. Carstens (Road Planning) – [Grace.Swanepoel@westerncape.gov.za](mailto:Grace.Swanepoel@westerncape.gov.za)

8. Kindly ensure the Basic Assessment Report ("BAR") and Environmental Management Programme ("EMPr") contain all information requirements outlined in Appendices 1 and 4 respectively of the Environmental Impact Assessment Regulations, 2014 (GN R. 982 of 4 December 2014, as amended).



9. The Department reminds you that the "Request for a specific fee reference number" form must be completed and submitted to the Department prior to submission of the formal application for the abovementioned proposed development. Upon receipt of the specific fee reference number, it must be inserted into the Application Form and proof of payment of the applicable fee attached when the Application Form is submitted to the Department.
10. The Department notes that the Environmental Assessment Practitioner ("EAP") intends to schedule a pre-application meeting with officials from this Directorate. The EAP must please liaise with the case officer listed above to arrange such consultation.  
Please note that the pre-application consultation is an advisory process and does not pre-empt the outcome of any future application which may be submitted to the Department.

No information provided, views expressed and /or comments made by officials during the pre-application consultation should in any way be seen as an indication or confirmation:

- that additional information or documents will not be requested
- of the outcome of the application

11. Please note that the activity may not commence prior to an environmental authorisation being granted by the Department. It is an offence in terms of Section 49A of the National Environmental Management Act, 1998 (Act no. 107 of 1998) ("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. Offences in terms of the NEMA and the Environmental Impact Assessment Regulations, 2014, will render the offender liable for criminal prosecution. A person convicted of an offence in terms of the above is liable to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, or to both such fine and imprisonment.
12. Kindly quote the above-mentioned reference number in any future correspondence in respect of this matter.
13. This Department reserves the right to revise or withdraw initial comments or request further information from you based on any information received.

Yours faithfully

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**HEAD OF COMPONENT**

**ENVIRONMENTAL IMPACT MANAGEMENT SERVICES: REGION 3**

**DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING**

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