



**PROPOSED MEDIUM TO HIGH DENSITY RESIDENTIAL DEVELOPMENT ON RE / ERF 2074, MARINE WAY,
BITOU LOCAL MUNICIPALITY, WESTERN CAPE**

DEADP Reference: 16/3/3/1/D1/14/0037/24

Attention: Dorien Werth | Francois Naude
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Date: 28 May 2025

Thank you for the opportunity to respond to the Department's feedback on the Final Basic Assessment Report (FBAR) submitted for Erf 2074, Plettenberg Bay. I am writing to clarify several of the issues raised, as well as to correct a few misunderstandings that appear to have led to the Department's current intention to refuse the Environmental Authorisation (EA).

Please consider the following response:

1) Engagement with Organs of State – Including CapeNature

CapeNature submitted comments during the initial registration phase in response to the Background Information Document (BID) (**NOI period: 4 July – 4 August 2024**). I responded at the time to confirm that their concerns would be addressed in the Draft Basic Assessment Report (DBAR). This was done comprehensively.

CapeNature's inputs were incorporated into the mitigation measures outlined in the DBAR and Environmental Management Programme (EMPr). They did not submit any further comments during the 30-day DBAR review period (1 November to 2 December 2024), which indicates satisfaction with the proposed mitigation measures.

In terms of Regulation 41(4) of the National Environmental Management Act, 1998 (Act No. 107 of 1998): Environmental Impact Assessment Regulations, 2014 (Government Notice R982), as amended by Government Notices R326 and R346 of 2017.:

"If such State department fails to submit comments within such 30 days, it will be regarded that such State department has no comments."

Thus, it is incorrect to suggest their comments were not addressed or that engagement was inadequate.

2) Comment and Response Report (CRR) Format

A full CRR was compiled (241 pages). It appears that due to file size (~55MB), this may not have successfully uploaded in the original FBAR submission (the CRR cross-reference table consisting of 122 pages appears to be missing). However:

- All individual comments and responses were included in the CRR that uploaded even though the table was missing.
- Was shared with relevant parties
- Has now been re-submitted separately.

This CRR includes cross-referenced, tabulated responses to every comment received from CapeNature, SACAA, public participants, and others.

3) Confirmation from Bitou Municipality

Requests for confirmation of services were submitted to Bitou Municipality as required, and written confirmation was submitted to DEADP when received on 17 February 2025 – the meeting only took place on 14 February 2025. This letter did not raise any explicit objection. No indication was provided that services would be unavailable or insufficient to support the proposed development. Additionally, the FBAR includes the GLS Services Report, which indicates that bulk services have capacity. No objections were received from the Municipality during the public comment period.

In line with Regulation 43(4), the rezoning application is running concurrently under SPLUMA, and it is common practice that certain approvals are conditional on EA being granted.

4) Socio-Economic, Visual and Agricultural Considerations



As per the Screening Tool, the Agriculture Theme was flagged for medium sensitivity. Visual and socioeconomics is not an independent theme in the Screening Tool and is addressed under the general assessment protocols. In the Verification Report submitted with the NOI, the socio-economic section states that “aspects related to socio-economic impacts will be addressed in the basic assessment, however no specific specialist study is deemed to be required” and states that no agricultural specialist deemed necessary due to:

- The property being located within the urban edge;
- Its zoning and historical agricultural use being no longer viable;
- The surrounding built-up environment (adjacent residential estates);

Social and economic impacts were assessed in detail in Appendix J of the FBAR. Impacts addressed include:

- Provision of affordable housing;
- Local employment opportunities during construction and operation;
- Municipal revenue and infrastructure investment;
- Spatial integration and alignment with planning policy.
- Visual Impacts
- Traffic Impacts
- Noise impacts
- Waste, water, sewage management

In addition, the fauna specialist specifically considered visual disturbance in terms of its effects on fauna. Measures are included in the EMP to enhance / mitigate social impacts, including visual. This component was overlooked in DEADP’s feedback but is comprehensively covered.

With regard to the agriculture theme, the relevant NEMA EIA triggers relate to:

- The change in land use from agricultural to residential (Listing Notice 1, Activity 24), and
- The clearing of vegetation (Listing Notice 1, Activity 27).

Both of these have been fully assessed by the EAP in the FBAR. The site is within the urban edge and has been designated for residential use in municipal planning frameworks since its time under Knysna jurisdiction. Requiring a specialist agricultural assessment to confirm soil capability or potential for agricultural production is not meaningful in a context where the land is being lawfully transitioned to housing.

No request for separate specialist studies on visual or agriculture was made during DEADP’s comment on the DBAR. The EMP includes mitigation for any residual visual intrusion.

This approach is deemed to be consistent with the national protocols, which allow EAPs to assess impacts and motivate exclusions where reasonable.

5) Obstacle Assessment (SACAA)

Repeated efforts were made to engage SACAA, including quote requests and procedural follow-ups. Unfortunately, no substantive response was received beyond a generic requirement for an obstacle assessment.

The site is not in an aviation corridor and is surrounded by residential units and complexes. A municipal water tower is located adjacent to Erf 2074, as visible in the bulk services mapping included in the GLS Report. This existing elevated structure would already comply with aviation safety requirements. Its proximity and elevation relative to the proposed development provides further support that the area has already been assessed from an obstacle management perspective. The proposed development falls below this elevation and is surrounded by existing three-storey buildings and infrastructure.

Requesting a specialist obstacle assessment in such a context is unreasonable and contrary to NEMA principles of proportionality and sustainable development. The client has already incurred R850,000 in professional fees, and requiring a study unlikely to yield meaningful new information is not cost-justified.



6) Need and Desirability

This is addressed comprehensively in the basic assessment form, in accordance with DEADP's 2017 guideline. The Town Planning Report (Appendix K) supplements this information by aligning the proposed development with local planning frameworks. A separate Need and Desirability report was not prepared to avoid duplication, but the case for housing need and planning alignment is clear throughout the documentation.

7) Administrative Acknowledgement of NOI and Pre-application Phase

Although the NOI was submitted in advance (27 June 2024), we did not receive formal acknowledgment in a timely manner. I was awaiting this acknowledgment in order to formally request a pre-application meeting, which ultimately could not proceed due to this delay. Additionally, payment details were only received after follow-up. These administrative oversights affected the flow of the process and limited early engagement opportunities that could have clarified expectations. It is also noted that a pre-consultation is referenced in the acknowledgment of application, but this was never carried out.

"It is noted that the report has been attached in Appendix D of the application form. The advice provided during the pre-app consultation phase regarding the screening tool report and associated site sensitivity verification report (see DEA&DP ref. 16/3/3/6/7/1/D1/14/0200/24) must be considered."

8) Comments by the CA on the draft BAR

The EA application process followed all public participation requirements:

NOI period: 4 July – 4 August 2024

A Background Information Document (BID) was circulated to all registered IAPs.

DBAR comment period: 1 November – 2 December 2024

Comments were only received from the CA on 3 February 2025, two months after the end of the comment period.

Had these issues been raised during the appropriate comment period, they could have been addressed timeously in the Final BAR. To now refuse consideration of additional clarifying information after submission of the FBAR, while relying on comments submitted outside of the regulated period, creates an unfair imbalance in process.

9) Regulation 24(1) Deadline for Decision

In terms of Regulation 24(1), the competent authority must make a decision within 107 days of submission of the Final BAR and notify the applicant within 5 days of the decision being reached. The FBAR was submitted on 3 February 2025 and the 107-day period ended on 21 May 2025.

- Submission Date: 3 February 2025 (Day 1)
- Count 107 calendar days (including weekends and public holidays — only excluding the year-end closure if it applied, which it doesn't here)
- The 107th day lands on: 21 May 2025
- Decision to be issued within 5 days of decision: 26 May 2025

No written agreement to extend this timeframe under Regulation 3(7) was provided. No request for clarification, additional information, or a site visit was made during this period. This omission is concerning, particularly if the Department intended to raise unresolved concerns on matters such as visual or spatial impacts.

10) Exceptional Circumstances (Regulation 3(7))

Given the scale of public involvement, volume of submissions, technical complexity, administrative delays, and the receipt of comments long after the DBAR period closed, there are sufficient exceptional circumstances to justify a reasonable extension in terms of Regulation 3(7). A further 30-day extension for decision-making would allow fair consideration of the complete documentation and any supplementary clarifications submitted, without compromising the integrity of the process.

Conclusion

I respectfully request that DEADP reconsider its intention to refuse the EA, on the following grounds:

- The FBAR is substantively and procedurally compliant with the EIA Regulations;



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- Any perceived gaps are based on misinterpretation or technical upload issues;
- The EAP has addressed all relevant specialist themes in accordance with the protocols and the development in question;
- The applicant should not be penalised for the non-response of organs of state;
- Cost-effectiveness, reasonableness, and public interest must be considered under NEMA;
- DEADP's statutory decision-making period has lapsed without a valid extension.

I recommend that the proposed development be authorised, subject to the implementation of the EMP and any reasonable conditions deemed necessary in the Environmental Authorisation (EA). I am open to providing clarifications, revised formats, as needed, and would appreciate an opportunity for engagement before a final decision is issued.

Kind regards,

Claire de Jongh

Environmental Assessment Practitioner (EAPASA Reg: 2021/3519)