

**EIA REFERENCE NUMBER:** 16/3/3/1/D1/14/0028/22  
**NEAS REFERENCE:** WCP/EIA/0001187/2022  
**DATE OF ISSUE:** 31 JULY 2023

## 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: PROPOSED 9 RESIDENTIAL I UNITS, WITH SOME DESIGNATED OPEN SPACE ON THE PROPERTY KNOWN AS PORTION 66 & 67 OF FARM 443, PLETTENBERG BAY**

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 **grants 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 ("FBAR"), dated 5 April 2023 as prepared and submitted by *EcoRoute Environmental Consultancy*, 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 DIRECTOR  
ATHINA DEVELOPMENT (PTY) LTD.  
% Mr. K. Powder  
1<sup>st</sup> Floor, Dean Street Arcade, Main Street  
NEWLANDS  
7700

Mobile: 082 505 1770  
E-mail: [kylepowter1@gmail.com](mailto:kylepowter1@gmail.com)

The abovementioned applicant is the holder of this Environmental Authorisation (hereinafter referred to as "**the Holder**").

## B. LIST OF ACTIVITIES AUTHORISED

Listed Activities	Activity/Project Description
<b>Environmental Impact Assessment Regulations Listing Notice 1 of 2014, Government Notice No. 983 of 4 December 2014, as amended.</b>	
<p>Activity Number: 17 Activity Description:</p> <p>Development—</p> <ul style="list-style-type: none"> <li>(i) in the sea;</li> <li>(ii) in an estuary;</li> <li>(iii) within the littoral active zone;</li> <li>(iv) in front of a development setback; or</li> <li>(v) if no development setback exists, within a distance of 100 metres inland of the high-water mark of the sea or an estuary, whichever is the greater;</li> </ul> <p>in respect of—</p> <ul style="list-style-type: none"> <li>(a) fixed or floating jetties and slipways;</li> <li>(b) tidal pools;</li> <li>(c) embankments;</li> <li>(d) rock revetments or stabilising structures including stabilising walls; or</li> <li>(e) infrastructure or structures with a development footprint of 50 square metres or more —</li> </ul> <p>but excluding—</p> <ul style="list-style-type: none"> <li>(aa) the development of infrastructure and structures within existing ports or harbours that will not increase the development footprint of the port or harbour;</li> <li>(bb) 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;</li> </ul>	<p>The development of structures and associated infrastructure of more than 50m<sup>2</sup> within 100 metres from the high-water mark of the sea and within the littoral active zone.</p>
<p>Activity Number: 19A Activity Description:</p> <p>The infilling or depositing of any material of more than 5 cubic metres into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock of more than 5 cubic metres from—</p> <ul style="list-style-type: none"> <li>(i) the seashore;</li> <li>(ii) the littoral active zone, an estuary or a distance of 100 metres inland of the high-water mark of the sea or an estuary, whichever distance is the greater; or</li> <li>(iii) the sea; —</li> </ul> <p>but excluding where such infilling, depositing, dredging, excavation, removal or moving—</p> <ul style="list-style-type: none"> <li>(a) will occur behind a development setback;</li> <li>(b) is for maintenance purposes undertaken in accordance with a maintenance management plan;</li> <li>(c) falls within the ambit of activity 21 in this Notice, in which case that activity applies;</li> <li>(d) occurs within existing ports or harbours that will not increase the development footprint of the port or harbour; or</li> <li>(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.</li> </ul>	<p>The infilling and excavation of sand of more than 5m<sup>3</sup> within 100 metres from the high-water mark of the sea and within the littoral active zone for the development of the residential estate.</p>

<p>Activity Number: 27 Activity Description:</p> <p>The clearance of an area of 1 hectare or more, but less than 20 hectares of indigenous vegetation, except where such clearance of indigenous vegetation is required for—</p> <p>(aa) the undertaking of a linear activity; or</p> <p>(bb) maintenance purposes undertaken in accordance with a maintenance management plan.</p>	<p>The clearance of more than 1 ha of indigenous vegetation for the development of a residential estate.</p>
<p><b>Environmental Impact Assessment Regulations Listing Notice 3 of 2014, Government Notice No. 985 of 4 December 2014, as amended.</b></p>	
<p>Activity Number: 4 Activity Description:</p> <p>The development of a road wider than 4 metres with a reserve less than 13,5 metres.</p> <p><b>i. Western Cape</b></p> <p>i. Areas zoned for use as public open space or equivalent zoning;</p> <p>ii. Areas outside urban areas;</p> <p>(aa) Areas containing indigenous vegetation;</p> <p>(bb) Areas on the estuary side of the development setback line or in an estuarine functional zone where no such setback line has been determined; or</p> <p>iii. Inside urban areas:</p> <p>(aa) Areas zoned for conservation use; or</p> <p>(bb) Areas designated for conservation use in Spatial Development Frameworks adopted by the competent authority.</p>	<p>The development of roads wider than 4 metres for the development of a residential estate.</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><b>i. Western Cape</b></p> <p>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;</p> <p>ii. Within critical biodiversity areas identified in bioregional plans;</p> <p>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;</p> <p>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> <p>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.</p>	<p>The clearance of more than 300m<sup>2</sup> Goukamma Dune Thicket within 100m metres from the high-water mark of the sea for the residential development and associated infrastructure.</p>

The abovementioned list is hereinafter referred to as “**the listed activity**”.

The Holder is herein authorised to undertake the following activities that includes the listed activities as it relates to the development of structures and infrastructure within 100 metres of the high-water mark of the sea and the littoral active zone, the clearance of indigenous vegetation of more than 300m<sup>2</sup>, development of roads wider than 4 metres and the excavation of more than 5m<sup>3</sup> of sand within 100 metres of the high-water mark of the sea and littoral active zone for the development of a small beachfront estate (9 residential stands) on Portion 66 and 67 of the Farm 443.

The development must be implemented in accordance with the layout developed by Objek Architects (dated 16/06/2022) Drawing number 10\_02 (Annexure 2).

### C. SITE DESCRIPTION AND LOCATION

The proposed development will take place on Portion 66 and 67 of the Farm Brakkloof 443 along the coastal strip between the Beacon Isle Hotel and the Robberg Nature Reserve. Access will be directly from Robberg Bay Road and OP07209.

Coordinates of the site:

Position:	Latitude (South)	Longitude (East)
Middle Point	34° 05' 24"	23° 22' 13"

SG digit code of Portion 66 of 443: C03900000000044300066

SG digit code of Portion 67 of 443: C03900000000044300067

Refer to Annexure 1: Locality Plan of this Environmental Authorisation; and Annexure 2 for the Site Development Plan (“SDP”).

The above is hereinafter referred to as “**the site**”.

## **D. DETAILS OF THE ENVIRONMENTAL ASSESSMENT PRACTITIONER (EAP)**

Ms Janet Ebersohn

EAPASA Registration number: 2019/1286

% ECO ROUTE

P.O. Box 1252

SEDGEFIELD

6573

Tel: 044 382 0473

E-mail: [janet@ecoroute.co.za](mailto:janet@ecoroute.co.za) | [admin@ecoroute.co.za](mailto:admin@ecoroute.co.za)

Website: [www.ecoroute.co.za](http://www.ecoroute.co.za)

## **E. CONDITIONS OF AUTHORISATION**

### ***Scope and Validity Period of authorisation***

1. This Environmental Authorisation is granted for the period from date of issue until **31 July 2028**, during which period the Holder must ensure that the—
  - (a) physical implementation of all the authorised listed activities is started with and concluded at the site;
  - (b) construction monitoring and reporting requirements are undertaken at the site and submitted to the Competent Authority in time to allow said authority to process such documents timeously;
  - (c) post construction rehabilitation and monitoring requirements is undertaken and completed at the site; and
  - (d) environmental auditing requirements are complied with; and that such auditing is finalised in time to allow the competent authority to be able to process the environmental audits timeously within the specified validity period.
2. The construction phase of the Environmental Authorisation is subject to the following:
  - 2.1 The Holder must finalise the post construction rehabilitation and monitoring requirements within a period of 3-months from the date the development activity (construction phase) is concluded.
3. The Holder is authorised to undertake the listed activities specified in Section B above in accordance with the Preferred Alternative described in the FBAR dated 5 April 2023 on the site as described in Section C above.

This Environmental Authorisation is only for the implementation of the Preferred Alternative which entails:

The Holder is herein authorised to undertake the following activities that includes the listed activities as it relates to the development of structures and infrastructure within 100 metres of the high-water mark of the sea and the littoral active zone, the clearance of indigenous vegetation of more than 300m<sup>2</sup>, development of roads wider than 4 metres and the

excavation of more than 5m<sup>3</sup> of sand within 100 metres of the high-water mark of the sea and littoral active zone for the development of a small beachfront estate (9 residential stands) on Portion 66 and 67 of the Farm 443.

The development must be implemented in accordance with the layout developed by Objek Architects (dated 16/06/2022) Drawing number 10\_02 (Annexure 2).

4. This Environmental Authorisation may only be implemented in accordance with an approved Environmental Management Programme ("EMPr").
5. The Holder shall be responsible for ensuring compliance with the conditions by any person acting on his/her behalf, including an agent, sub-contractor, employee or any person rendering a service to the Holder.
6. Any changes to, or deviations from the scope of the alternative described in section B above must be accepted or approved, in writing, by the Competent Authority before such changes or deviations may be implemented. In assessing whether to grant such acceptance/approval or not, the Competent Authority may request information in order 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 applicable legislation.

#### ***Notification and administration of appeal***

7. The Holder must in writing, within 14 (fourteen) calendar days of the date of this decision–
  - 7.1. notify all registered Interested and Affected Parties ("I&APs") of –
    - 7.1.1. the decision reached on the application;
    - 7.1.2. the reasons for the decision as included in Annexure 3;
    - 7.1.3. the date of the decision; and
    - 7.1.4. the date when the decision was issued.
  - 7.2. draw the attention of all registered I&APs to the fact that an appeal may be lodged against the decision in terms of the National Appeal Regulations, 2014 (as amended) detailed in Section G below;
  - 7.3. draw the attention of all registered I&APs to the manner in which they may access the decision;
  - 7.4. provide the registered I&APs with the:
    - 7.4.1. name of the Holder (entity) of this Environmental Authorisation,
    - 7.4.2. name of the responsible person for this Environmental Authorisation,
    - 7.4.3. postal address of the Holder,
    - 7.4.4. telephonic and fax details of the Holder,
    - 7.4.5. e-mail address, if any, of the Holder,
    - 7.4.6. 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 (as amended).

- 7.5. The listed activities, including site preparation, must not commence within 20 (twenty) calendar days from the date the applicant notified the registered I&APs of this decision.
- 7.6. In the event that an appeal is lodged with the Appeal Authority, the effect of this Environmental Authorisation is suspended until the appeal is decided (i.e., the listed activities), including site preparation, must not commence until the appeal is decided.

### ***Written notice to the Competent Authority***

8. Seven calendar days' notice, in writing, must be given to the Competent Authority before commencement of any activities.
- 8.1. The notice must make clear reference to the site details and EIA Reference number given above.
- 8.2. The notice must also include proof of compliance with the following conditions described herein: **Conditions no.: 7, 10 and 12.**
9. Seven calendar days' written notice must be given to the Competent Authority on completion of the construction activities.

### ***Management of activity***

10. The draft or Environmental Management Programme ("EMPr") submitted as part of the application for Environmental Authorisation must be amended and submitted to this Department for approval, at least 90-days prior to commencement of any activities on the site:
- 10.1. The EMPr must be amended to incorporate the following —
- 10.1.1. Incorporate all the conditions given in this Environmental Authorisation;
- 10.1.2. The ECO must conduct site inspections every two weeks during the construction phase (The frequency may be increased to weekly site inspections).
- 10.1.3. All ECO monitoring reports compiled monthly during the construction phase must be submitted to the competent authority quarterly (every three months), except when there is non-compliance observed, in which case the ECO must bring to the competent authority's immediate attention by means of a written report.
- 10.1.4. The ECO must conduct site inspections every two weeks during the rehabilitation phase and submit the ECO monitoring reports during this phase monthly.
- 10.1.5. Include the auditing schedule as set out by this Environmental Authorisation.
11. The EMPr must be included in all contract documentation for all phases of implementation.

### ***Monitoring***

12. The Holder must appoint a suitably experienced Environmental Control Officer ("ECO"), for the duration of the construction and rehabilitation phases of implementation contained herein.



13. The ECO must–

- 13.1. be appointed prior to commencement of any works (i.e. removal and movement of soil);
- 13.2. ensure compliance with the EMPr and the conditions contained herein;
- 13.3. keep record of all activities on the site; problems identified; transgressions noted and a task schedule of tasks undertaken by the ECO;
- 13.4. remain employed until all development activities are concluded, and the post construction rehabilitation and monitoring requirements are finalised; and
- 13.5. the ECO must conduct site inspections at least every 2 (two) weeks and must submit ECO Monitoring Reports on a monthly basis to the competent authority.

14. A copy of the Environmental Authorisation, EMPr, any independent assessments of financial provision for rehabilitation and environmental liability, closure plans, audit reports and compliance monitoring reports must be kept at the site of the authorised activities and be made available to anyone on request, and where the Holder has website, such documents must be made available on such publicly accessible website.

15. Access to the site referred to in Section C must be granted, and the environmental reports mentioned above must be produced, to any authorised official representing the Competent Authority who requests to see it for the purposes of assessing and/or monitoring compliance with the conditions contained herein.

**Environmental Auditing**

16. The Holder must, for the period during which the environmental authorisation and EMPr remain valid ensure the compliance with the conditions of the environmental authorisation and the EMPr, is audited.

17. 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:

17.1. Auditing during the non-operational phase (construction activities):

17.1.1. During the period which the development activities have been commenced with on the site, the Holder must ensure annual environmental audit(s) are undertaken and the Environmental Audit Report(s) submitted annually to the Competent Authority.

17.1.2. A final Environmental Audit Report for the construction phase (non-operational component) must be submitted to the Competent Authority within **three (3) months** of completion of the construction phase.

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



- 18.1. 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;
  - 18.2. provide verifiable findings, in a structured and systematic manner, on–
    - 18.2.1. the level of compliance with the conditions of the environmental authorisation and the EMPr and whether this is sufficient or not; and
    - 18.2.2. 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.
  - 18.3. identify and assess any new impacts and risks as a result of undertaking the activity;
  - 18.4. evaluate the effectiveness of the EMPr;
  - 18.5. identify shortcomings in the EMPr;
  - 18.6. identify the need for any changes to the avoidance, management and mitigation measures provided for in the EMPr;
  - 18.7. 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;
  - 18.8. indicate the date on which the maintenance/ rehabilitation was commenced with and the progress of the rehabilitation;
  - 18.9. include a photographic record of the site(s) applicable to the audit; and
  - 18.10. be informed by the ECO reports.
19. 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).

### **Specific Conditions**

20. The Holder must establish and maintain a six (6) metre wide ecological corridor along the northern boundary of the development. Further to this–
- 20.1. The ecological corridor must be incorporated in the site development plan as a servitude for conservation purposes.
  - 20.2. The servitude / corridor must be rehabilitated and maintained with locally indigenous plant species and kept clear of alien invasive vegetation.
  - 20.3. No structures or infrastructure may be constructed in this servitude without authorisation. This ecological servitude must not be fenced on the eastern and western boundaries.
21. The Holder must ensure the development provides the public unrestricted access to the coastal public property. A coastal access point should be established and maintained on the site.

22. Should any heritage remains be exposed during excavations or any other actions on the site(s), these must immediately be reported to the Provincial Heritage Resources Authority of the Western Cape, Heritage Western Cape. Heritage remains uncovered or disturbed during earthworks must not be further disturbed until the necessary approval has been obtained from Heritage Western Cape. Heritage remains may only be disturbed by a suitably qualified heritage specialist working under a directive from the relevant Heritage Resources Authority.

Heritage remains include meteorites, archaeological and/or paleontological remains (including fossil shells and trace fossils); coins; indigenous and/or colonial ceramics; any articles of value or antiquity; marine shell heaps; stone artefacts and bone remains; structures and other built features with heritage significance; rock art and rock engravings; shipwrecks; and/or graves or unmarked human burials including grave goods and/or associated burial material.

## **F. GENERAL MATTERS**

1. Notwithstanding this Environmental Authorisation, the Holder must comply with any other statutory requirements that may be applicable when undertaking the listed activities.

### ***Amendment of Environmental Authorisation and EMPr***

2. If the Holder does not start with the authorised listed activity and conclude the activity within the period referred to in Section E, this Environmental Authorisation shall lapse for that activity, and a new application for Environmental Authorisation must be submitted to the relevant Competent Authority.

If the Holder wishes to extend a validity period specified in the Environmental Authorisation, an application for amendment in this regard must be made to the relevant Competent Authority prior to the expiry date of such a period.

#### **Note:**

- (a) Failure to lodge an application for amendment prior to the expiry of the validity period of the Environmental Authorisation will result in the lapsing of the Environmental Authorisation.
  - (b) It is an offence in terms of Section 49A(1)(a) of NEMA for a person to commence with a listed activity if the competent authority has not granted an Environmental Authorisation for the undertaking of the activity.
3. The Holder is required to notify the Competent Authority where any detail with respect to the Environmental Authorisation must be amended, added, substituted, corrected, removed or updated.

In assessing whether to amend or correct the EA, the Competent Authority may request information 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 applicable legislation.

The onus is on the Holder to verify whether such changes to the environmental authorisation must be approved in writing by the relevant competent authority prior to the implementation thereof.

**Note:** An environmental authorisation may be amended or replaced without following a procedural requirement contained in the Regulations if the purpose is to correct an error and the correction does not change the rights and duties of any person materially

4. The manner and frequency for updating the EMPr is as follows:

- (a) Any further amendments to the EMPr, other than those mentioned above, must be approved in writing by the relevant competent authority.
- (b) An application for amendment to the EMPr must be submitted to the Competent Authority if any amendments are to be made to the impact management outcomes of the EMPr. Such amendment(s) may only be implemented once the amended EMPr has been approved by the competent authority.

The onus is however on the Holder to confirm the legislative process requirements for the above scenarios at that time.

5. Where an amendment to the impact management outcomes of an EMPr is required before an environmental audit is required in terms of the environmental authorisation, an EMPr may be amended on application by the Holder of the environmental authorisation.

#### **Compliance with Environmental Authorisation and EMPr**

- 6. Non-compliance with a condition of this environmental authorisation or EMPr is an offence in terms of Section 49A(1)(c) of the National Environmental Management Act, 1998 (Act no. 107 of 1998, as amended).
- 7. This Environmental Authorisation is granted for a set period from date of issue, during which period the listed activity must be commenced with and concluded, including the post-construction rehabilitation; monitoring requirements and environmental auditing requirements which must be concluded.

The validity period and conditions of the environmental authorisation has been structured to promote the effective administration of the environmental authorisation and guidance has been provided to ensure the compliance thereof within the validity period, for example the following milestones should not be missed:

- Failure to submit the revised EMPr to the Competent Authority at least 90-days prior to the construction activities commencing on site, may result in the competent authority not being able to process / review the revised EMPr prior to the intended date of commencement.
- Failure to complete the post construction rehabilitation and monitoring requirements at least six months prior to expiry of the validity period of an environmental authorisation may result in the Holder not being able to comply with the environmental auditing requirements in time.

- Failure to complete the final auditing requirements at least three months prior to expiry of the validity period of the environmental authorisation may result in the Holder not being able to comply with all the environmental auditing and reporting requirements and may result in the competent authority not being able to process the audit timeously.
- Failure to lodge an application for amendment prior to the expiry of the validity period of the Environmental Authorisation will result in the lapsing of the Environmental Authorisation.

**Note:** It is advised that if any of the milestones as indicated above, might not be achieved, the Holder must consider extending the validity period through an amendment process.

8. This Environmental Authorisation is subject to compliance with all the peremptory conditions (**i.e., 7, 10 and 12**). Failure to comply with all the peremptory conditions prior to the physical implementation of the activities (including site preparation) will render the entire EA null and void. Such physical activities shall be regarded to fall outside the scope of the Environmental Authorisation and shall be viewed as an offence in terms of Section 49A(1)(a) of NEMA.
9. In the event that the Environmental Authorisation 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.
10. Offences in terms of the NEMA and the Environmental Impact Assessment Regulations, 2014, will render the offender liable for criminal prosecution.

## **G. 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](mailto:Zaahir.Toefy@westerncape.gov.za) and copied to:  
[DEADPEIAadmin.George@westerncape.gov.za](mailto:DEADPEIAadmin.George@westerncape.gov.za)  
[Gavin.Benjamin@westerncape.gov.za](mailto: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](mailto:Zaahir.Toefy@westerncape.gov.za) and copied to:  
[DEADPEIAadmin.George@westerncape.gov.za](mailto:DEADPEIAadmin.George@westerncape.gov.za)  
[Gavin.Benjamin@westerncape.gov.za](mailto: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  
8<sup>th</sup> 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](mailto: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](mailto:DEADP.Appeals@westerncape.gov.za) or URL <http://www.westerncape.gov.za/eadp>.

## H. DISCLAIMER

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

---

**DIRECTOR: DEVELOPMENT MANAGEMENT**

**WCG: DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING**

**DATE OF DECISION: 31 JULY 2023**

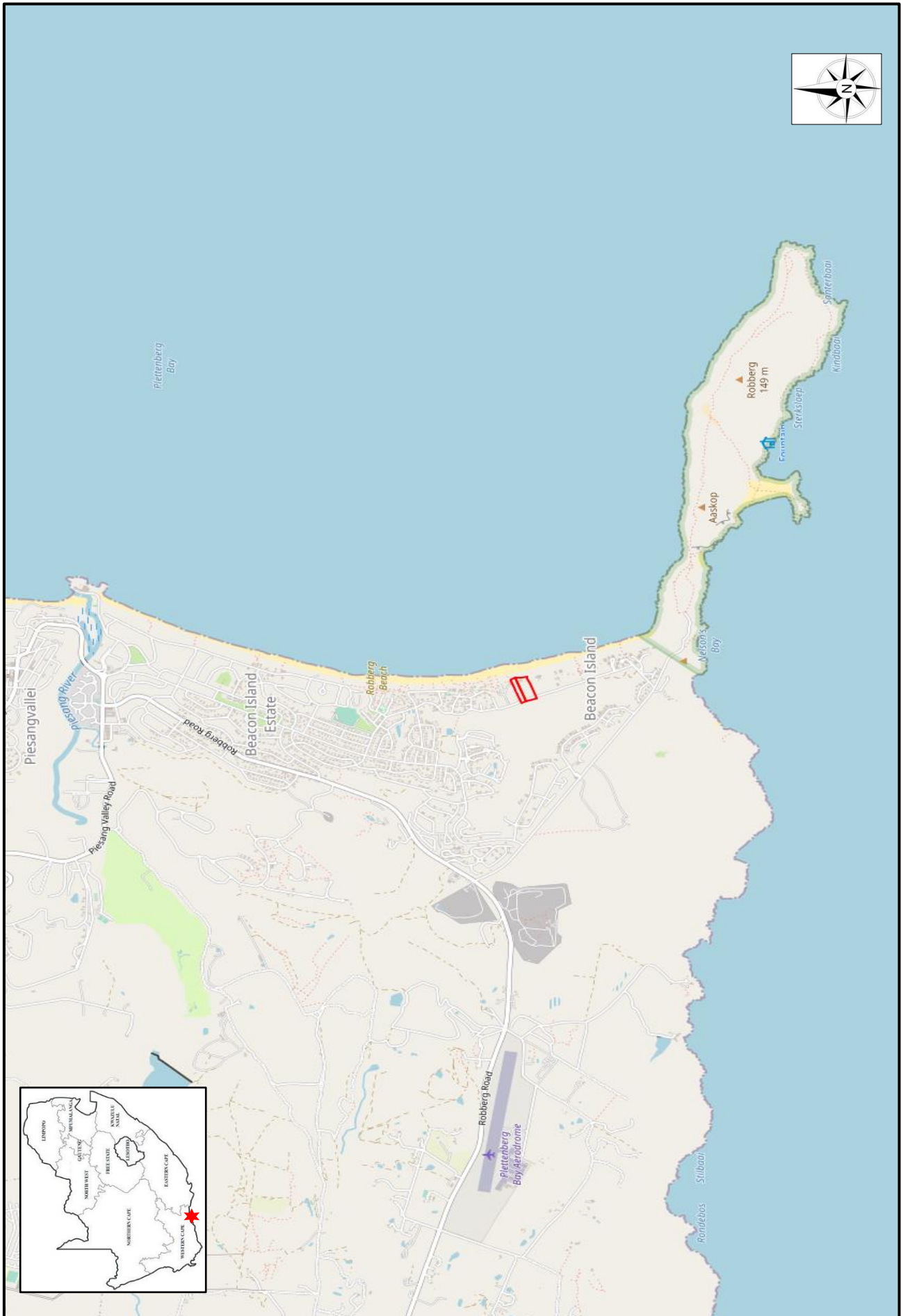
**FOR OFFICIAL USE ONLY:**

**EIA REFERENCE NUMBER:** 16/3/3/1/D1/14/0028/22

**NEAS REFERENCE:** WCP/EIA/0001187/2022

**CASE OFFICER:** Ms Jessica Christie | Jessica.Christie@westerncape.gov.za

## ANNEXURE 1: LOCALITY MAP





ANNEXURE 2: SITE DEVELOPMENT PLAN



## **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 received on 24 October 2022, the Final Basic Assessment Report (FBAR) and EMPr submitted together with the FBAR on 6 April 2023;
- 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 FBAR dated 5 April 2023;
- e) The balancing of negative and positive impacts and proposed mitigation measures; and
- f) A site inspection was undertaken on 28 February 2023 by Ms Jessica Christie and Mr. Francois Naudé.

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**

A sufficient public participation process was undertaken, and the applicant has satisfied the minimum requirements as prescribed in the EIA Regulation 2014 for public involvement. 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 a notice board at the site on 3 November 2022;
- 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 3 November 2022 to comment on the Draft Basic Assessment Report;
- the placing of a newspaper advertisement in the “*Knysna-Plett Herald*” on 3 November 2022; and
- making the revised Basic Assessment Report available to I&APs for public review from 23 January 2023 till 22 February 2023.
- making a second revised basic Assessment Report available to I&APs for public review from 3 March 2023 till 4 April 2023.

The following Organs of State provided comment on the proposal:

- WCG: Department of Infrastructure
- WCG: Department of Health
- WCG: Department of Environmental Affairs and Development Planning: Biodiversity and Coastal Management

- Department of Forestry, Fisheries and Environment – Forestry Section
- Breede-Olifants Catchment Management Agency (BOCMA)
- Heritage Western Cape; and
- CapeNature
- General Public / Interested & Affected Parties (I&APs) included:
  - A.P. van der Merwe
  - Peter Gain
  - Ivor Karan
  - Plettenberg Bay Community Environmental Forum
  - K. Otto
  - Southern Cape Fire Protection Agency

Key issues identified by I&APs and stakeholders:

- Ecological processes and coastal corridor
- Alien Invasive plant species

All the comments and issues raised by the respective *Organs of State and I&APs* that were captured in the Basic Assessment Report were responded to by the EAP. The Competent Authority is satisfied with the responses from the EAP to the I&APs comments and concerns.

## 2. Alternatives

### Preferred Layout Alternative (Herewith Approved):

The Holder is herein authorised to undertake the following activities that includes the listed activities as it relates to the development of structures and infrastructure within 100 metres of the high-water mark of the sea and the littoral active zone, the clearance of indigenous vegetation of more than 300m<sup>2</sup>, development of roads wider than 4 metres and the excavation of more than 5m<sup>3</sup> of sand within 100 metres of the high-water mark of the sea and littoral active zone for the development of a small beachfront estate (9 residential stands) on Portion 66 and 67 of the Farm 443.

The development must be implemented in accordance with the layout developed by Objek Architects (dated 16/06/2022) Drawing number 10\_02 (Annexure 2).

### Alternative 1:

The development concept included 15 residential stands that vary between 750m<sup>2</sup> and 1300m<sup>2</sup> in size as well as Communal Open Space that will be rehabilitated. The density and layout received negative feedback following public participation, and the layout did not adequately address the environmental constraints. The density was therefore changed to 9 residential stands (i.e., Preferred Layout).

### "No-Go" Alternative

The no-go alternative is to have the site remain as is. There is an existing house on the property, however, no approval has been granted by the Bitou Municipality for this house.



### 3. Impact Assessment and Mitigation Measures

#### 3.1 Activity Need and Desirability

The property has been earmarked for development in the Bitou Municipality's Spatial Development Framework ("SDF"). Although the properties are zoned as Agriculture Zone I, the land is not suitable for large scale or economically feasible agricultural land use. Furthermore, the SDF supports the densification of urban areas although no specific densification policy has been formed for this area. This development further resonates with other spatial planning policies at every level of government. The competent authority is satisfied with the need and desirability presented in the FBAR.

#### 3.2 Biophysical Impacts

According to the Western Cape Biodiversity Spatial Plan ("WCBSP"), the site is situated within an Ecological Support Area ("ESA"). The definition of the ESA is an area that is not essential for meeting any biodiversity targets but it plays an important role in supporting the functioning of a Critical Biodiversity Area ("CBA"). There is however no identified CBA area in the surrounding or abutting areas. Based on the WCBSP and confirmed by the various specialists, the site has a low conservation value, and the limited loss of the ESA area was reported to be acceptable. Furthermore, specialist input found no sensitive areas that should be mapped as a No-Go area abutting the wetland. However, a narrow strip of land containing indigenous vegetation abutting the primary dune and coastal corridor, was identified as a no-go area and this will not be impacted on by the development.

The National Web-based Screening Tool generated a report ('STR') identifying a number of plant species that are considered Species of Conservation Concern ("SCC"). However, the specialist botanist did not find any SCCs on the site, and it was found unlikely that any of the species flagged in the STR would be found on the site due to the unsuitability of the habitat. In terms of the animal species, the faunal specialist found that the development site is not considered to be good habitat for the species that are expected to occur in the area. Nonetheless a six (6) metre servitude along the northern boundary of the property will not be fenced and will serve as an ecological corridor between the coastal corridor and the wetland to the west of the development.

#### 3.3 Coastal Aspects

When any listed activities are to be carried out within the coastal zone which require an environmental authorisation in terms of the NEMA, the National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008) (NEM:ICMA) provides for additional criteria which must be considered when evaluating an application for an activity which will take place within the coastal zone.

There are many aspects that must be taken into account when the competent authority considers an application for authorisation, *inter alia*:

- Representations made by the applicant and by interested and affected parties;
- The applicant's past record in complying with similar authorisations;
- If coastal public property, coastal access land or the coastal protection zone will be affected by the proposed action;

- Coastal management objectives;
- The socio-economic impact if that activity or action is authorised or not authorised;
- The likely impact on the coastal environment including the cumulative effect;
- The likely effect of coastal processes (such as wave, current and wind action, erosion, accretion, sea-level rise, storm surges and flooding) on the activity; and
- The objectives of the NEM:ICMA which apply to the activity.

Although the development is within the Coastal Protection Zone ("CPZ"), the development is landward of the Coastal Management line and the 100-year erosion risk line. The development has been setback to increase the coastal corridor.

The NEM:ICMA further, requires the consideration of public access. Since the development proposal is sensitive toward the character of the area, the layout of the development has allowed for public access to the beach. This aspect was highlighted in the FBAR and supporting documents.

The information which has been provided in the Final BAR and supporting documents, has satisfactorily addressed the abovementioned aspects. The FBAR has also adequately demonstrated the likely impact of coastal environmental processes on the proposed activity which is a specific aspect to be considered in this decision in terms of section 63 of the NEM:ICMA.

### 3.4 Aquatic Biodiversity

From the onset of the Basic Assessment Process, this Department highlighted the necessity of the aquatic biodiversity and the impact of the development on the large depression wetland to the west of the site. Flow into the wetland is derived from overland surface runoff generated from the surrounding catchment area which slopes steeply from all directions into the wetland. From the freshwater assessment conducted, the specialist determined that the Present Ecological State of the wetland is Largely natural and concluded that despite extensive urban development surrounding the wetland the natural hydrological and geomorphological functions of the wetland have remained largely unaltered.

The specialist determined that since there is a well vegetated buffer between the development and the wetland, it is expected to provide adequate protection from surface runoff. It was also found that the impacts of upgrading of the road are expected to be minor in nature and no significant modification to the hydrology, geomorphology nor vegetation is anticipated. The new rising sewerage main pipeline that connects the development to the municipal network requires a Water Use License, which was applied for. The information submitted to the BOCMA was included in the FBAR.

### 3.5 Palaeontological / Heritage / Archaeological Aspects

Heritage Western Cape ("HWC") endorsed the Heritage Impact Assessment ("HIA") that was prepared in terms of Section 38(8) of the National Heritage Resources Act (Act 25 of 1999). HWC further made recommendations that are that which the Palaeontological Impact Assessment, Archaeological Impact Assessment and HIA specialists made. These recommendations have been included in the EMPr. The competent authority is satisfied that

the evaluation fulfils the requirements of the relevant heritage resources authority in terms of the National Heritage Resources Act, 1999 and the comments and recommendations of the relevant heritage resources authority regarding the proposed development have been taken into account.

### 3.6 Other Impacts

No other impacts of significance are anticipated for the area that has been authorised in this Environmental Authorisation.

Considering the findings of the impact assessment and proposed mitigation measures to address the aforementioned impacts this Department is satisfied that the activity will not negatively impact on the receiving environment, subject to strict implementation of conditions of this EA and the mitigation measures proposed in the EMPr.

## 4. Scope and Validity Period of authorisation

This environmental authorisation does not define specific operational aspects. The environmental authorisation's validity period has been granted for a period of five (5) years, during which period the construction activities must commence and be concluded, including the post-construction rehabilitation and monitoring and submission of the final environmental audit reports for the construction phase. Considering the proposed implementation programme, the monitoring and post-construction rehabilitation can be adequately incorporated in the construction phase.

Where the activity has been commenced with, the EIA Regulations, 2014 allow that (upon application) the period for which the environmental authorisation is granted may be extended for a further period of 5-years. This implies that a 10-year period is available to the Holder to conclude the authorised listed activities.

## 5. 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;
- 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.

## 6. Conclusion

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

- (a) The identification and assessment of impacts are detailed in the FBAR dated 5 April 2023 and sufficient assessment of the key identified issues and impacts have been completed.
- (b) The procedure followed for the impact assessment is adequate for the decision-making process.
- (c) The proposed mitigation of impacts identified and assessed, curtails the identified negative impacts.
- (d) The EMPr proposed mitigation measures for the pre-construction, construction and rehabilitation phases of the development and were included in the FBAR. The mitigation measures will be implemented to manage the identified environmental impact during the construction phase.

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 this Environmental Authorisation, 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.

----- **END** -----