



APPEAL FORM

In terms of the National Appeal Regulations

April 2019

Form Number: 2019

Note that:

1. This appeal must be submitted within **20 days** of being notified of the decision.
 2. This form is current as of **April 2019**. It is the responsibility of the Appellant to ascertain whether subsequent versions of the form have been released by the Appeal Administrator.
 3. This form must be used for appeals submitted in terms of National Appeal Regulations, 2014 in so far as it relates to decisions in terms of the:
 - a. Environment Conservation Act, 1989 (Act No. 73 of 1989);
 - b. National Environmental Management Act, 1998 (Act No. 107 of 1998);
 - c. National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004);
 - d. National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004);
 - e. National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008); and subordinate legislation made in terms of these laws.
 4. The required information must be inserted within the spaces provided in the form. The sizes of the spaces provided are not necessarily indicative of the amount of information to be provided. The spaces may be expanded where necessary.
 5. Unless protected by law, all information contained in, and attached to this application, will become public information on receipt by the Department.
 6. A digital copy of this form may be obtained from the Department's website at <http://www.capecgateway.gov.za/dept/eadp>.
 7. Please consult the National Appeal Regulations (dated 8 December 2014) and the Department's Circular EADP 0028/2014 on the "One Environmental Management System" and the EIA Regulations (dated 9 December 2014), and any other relevant regulations.
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A. DECISION BEING APPEALED

1. Reference Number of the Decision being appealed:

16/3/3/1/D1/14/0037/24

2. Type of Decision being appealed (please circle the appropriate option):

Environmental Authorisation	24G Administrative Fine	Amendment of Environmental Authorisation	Amendment of Environmental Management Programme	Waste Management Licence	Atmospheric Emission Licence	Exemption Notice
Permit in terms of NEM: BA	Administrative Notice/ Directive	ECA: OSCA Permit	Other			

3. Brief Description of the Decision:

APPEAL AGAINST REFUSAL OF ENVIRONMENTAL AUTHORISATION APPLICATION FOR ENVIRONMENTAL AUTHORISATION (EA) IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998) AND THE ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, 2014 (AS AMENDED): THE PROPOSED RESIDENTIAL DEVELOPMENT ON REMAINDER OF ERF 2074, SOUTH OF MARINE WAY, BITOU MUNICIPALITY

DEA&DP Grounds for Refusal:

Non-compliance: The Final Basic Assessment Report (FBAR) did not meet minimum information requirements under EIA Regulations.

Consultation Issues: Inadequate engagement with organs of state, including Bitou Municipality and Breede-Olifants Catchment Management Agency (BOCMA).

Infrastructure Concerns:

Uncertainty about the capacity of the Gansevlei Wastewater Treatment Plant (WWTP) to handle effluent from the development.

Specialist Studies:

Missing socio-economic and visual impact assessments, as well as an agricultural compliance statement.

Need and Desirability:

The development's benefits were deemed insufficient compared to its environmental and social costs.

4. Date of the decision being appealed (i.e. date on which the decision was made):

28 May 2025

B. APPELLANT'S INFORMATION

5. Please circle the appropriate option

Applicant	State Department / Organ of State	Interested and Affected Party
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6. Appellant's information:

Name: Duinesand (Pty) Ltd: Attention Mr. Gerhard de Vos

Address: 2nd Floor, 476 Kings Highway, Lynnwood, Pretoria, 0081

Tel: 0836476794 Cell: 0836476794

Fax: N/A Email: gerhardjdevos@hotmail.com

C. APPEAL INFORMATION

7. Did you lodge an Appeal submission within 20 days of the notification of the decision being sent to you?

Yes / **No** (Circle the appropriate response). If "Yes", attach a copy herewith.

8. The following documents must accompany the appeal submission, kindly indicate if they have been attached to the submission:

- 8.1 **a statement setting out the grounds of appeal?**

Yes / **No** (Circle the appropriate response)

- 8.2 supporting documentation which is referred to in the appeal submission?

Yes / **No** (Circle the appropriate response)

- 8.3 a statement, including supporting documentation, by the appellant that a copy of the appeal was submitted to the applicant, any registered interested and affected party and any organ of state with interest in the matter within 20 days from:

- 8.3.1 the date that the notification of the decision was sent to the registered interested and affected parties by the applicant.

Yes / **No** (Circle the appropriate response).

Please indicate the date on which a copy of the Notice of the decision was sent. **06/06/2025**

OR

- 8.3.2 the date that the notification of the decision was sent to the applicant by the competent authority, issuing authority or licensing authority.

Yes / **No** (Circle the appropriate response).

Please indicate the date on which a copy of the Notice of the decision was sent. **28/05/2025**

D. GROUNDS OF APPEAL

9. Set out the ground/s of your appeal: Clearly list your appeal issues and provide an explanation of why you list each issue.

Ground 1: Municipal Services confirmation was unfairly excluded

Issue: The DEA&DP refused the EA in part because Bitou Municipality had not confirmed services availability during the FBAR public participation period.

Explanation:

- A written confirmation letter dated 14 February 2025 from Bitou Municipality confirmed that bulk services are available, subject to:
 1. Signing of a Service Level Agreement (SLA)
 2. Payment of Augmentation fees and Contributions as per the GLS report
- The FBAR was submitted shortly before this confirmation was obtained (3 February 2025), but no allowance was made by DEA&DP to accept this critical, official municipal correspondence afterward.
- GLS reports—compiled for the Municipality—confirmed sufficient capacity in the “Close to Town” reservoir, sewer reticulation system, and infrastructure upgrades needed, which the developer is willing to fund.
- GLS reports for services were required by Bitou municipality, as they are appointed as the consultants to their engineering department. Therefore, all the inputs provided by GLS were on behalf of the municipality in relation to the planned development. Subsequently Bitou Municipality officially confirmed availability of services with future SLAs to be finalised.
- Infrastructure capacity was confirmed by GLS Consulting Engineers, and the development aligns with municipal spatial planning priorities
- The lack of consideration of this late but pivotal confirmation constitutes a procedural unfairness, especially since municipal processes often lag behind private EIA timelines.
- The FBAR was submitted 03/02/2025 well within the 90 day time frame, the service letter was submitted to DEA&DP on 18/02/2025 please refer to proof Appendix A.

Ground 2: Adequate Engagement with Organs of State and Public

Issue: The Department found consultation with organs of state (e.g., BOCMA, SACAA) inadequate.

Explanation:

- CapeNature commented in the NOI their concerns were addressed in the DBAR and EMPr; they made no further objections during the DBAR phase. Per EIA Reg. 41(4), their silence within 30 days is deemed as "no comment".
- Repeated efforts were made to engage SACAA, but no concrete feedback was received. The site lies outside a designated aviation corridor, with taller existing structures adjacent (e.g., water tower). Requiring a costly specialist study without this context is disproportionate and not in line with NEMA's principle of reasonableness. Please refer to Appendix B.
- BOCMA was asked to provide comments in the PPP for the NOI and Draft BAR Per EIA Reg. 41(4), their silence within 30 days is deemed as "no comment". Furthermore an Aquatic Specialist study was completed that there were no watercourses on site. Please refer to Appendix C
- Public Participation was held on a BID document and Draft BAR. Please refer to Appendix D
- A full 241-page CRR was compiled, but the cross-referenced table may not have uploaded due to size constraints. This has now been re-submitted. The public participation process was compliant with the 2014 EIA Regulations please refer to Appendix E.

Ground 3: Missing Specialist Studies:

Issue: DEA&DP cited the absence of socio-economic, visual, and agricultural studies

Explanation:

- Socio-economic impacts were addressed in detail under Appendix J of the FBAR (employment, affordable housing, municipal revenue, spatial integration). Please refer to Appendix F.
- Visual and noise impacts were considered in both the general impact assessment and by the fauna specialist. Visual mitigation was included in the EMPr. Please refer to Appendix G.
- Agricultural compliance was not necessary:
 - Site lies within the urban edge
 - No longer viable for agriculture due to zoning and surrounding built-up areas
 - Land use transition is lawful and consistent with spatial planning frameworks

- DEA&DP's own Screening Tool flagged the agriculture theme as medium sensitivity, allowing EAP assessment where appropriate, which was done.

Ground 4: Pre-Application Phase Was Compromised by Administrative Oversight:

Issue: The NOI was submitted (27 June 2024), but no acknowledgment/comments or payment instructions were issued in time. Please refer to Appendix H.

Explanation:

- This prevented a formal pre-application meeting, limiting early alignment between EAP and Competent Authority expectations.
- DEA&DP cited the pre-application consultation phase in their documents, but this never occurred. This represents a breakdown in administrative procedure and undermined opportunity for clarity and guidance.

Ground 5: Draft Bar comments from DEA&DP

Issue: The DBAR comments from DEA&DP were received 60 days after the closing date for comments from Interested and Affected Parties (I&APs) and organs of state.

Explanation:

- This delay in providing comments impacted the environmental authorization process. Please refer to Appendix I.

Ground 6: DEA&DP's Statutory Decision Period Was Exceeded Without Extension

Issue: EA decision was issued outside the regulated 107-day period (due 21 May 2025) without agreement or valid extension.

Explanation:

- Per EIA Reg. 24(1), a decision must be issued within 107 days of FBAR submission (3 February 2025).
- A 'Teams' meeting was held on the 27/05/2025 where the Eap the submitted a written response on the 28/05/2025 please refer to Appendix J.
- No extension under Reg. 3(7) was requested or granted.
- The refusal was only issued on 28 May 2025, thus procedurally defective and potentially unlawful.

9.1 Is your appeal based on factors associated with the process that was followed by the applicant/Environmental Assessment Practitioner/**Competent Authority** in reaching the decision?

Yes / ~~**No**~~ (Circle the appropriate response). Please provide details.

- A Notice of Intent (NOI) was submitted but not acknowledged by the Department of Environmental Affairs and Development Planning (DEADP), which impacted pre-application consultations.
- Department of Environmental Affairs and Development Planning provided comments on the Draft Basic Assessment Report (DBAR) 60 days after the closing date for comments from Interested and Affected Parties (I&APs) and organs of state. This delay in providing comments impacted the environmental authorization process.

9.2 Is your appeal based on factors associated with matters of ~~unacceptable environmental impacts~~/**extenuating circumstances not taken into account by the Competent Authority**?

Yes / ~~**No**~~ (Circle the appropriate response). Please provide details.

Bitou Municipality, by way of indicated service level agreements with the developer, requires contributions and augmentation monies to assist in funding infrastructure upgrades to be able to allow for further development in the Bitou Municipal area. However, without Environmental Authorisations in place, Bitou Municipality will not approve development rights or do service level agreements and therefore the developers will not provide funding for bulk services upgrades. Bitou municipality has indicated the availability of bulk services subject to service level agreements (SLAs), which will manage the process and development phases to make the required enhancements to services and allow for the development rights of this applicant. This applicant's application, due to the size of the land requires Environmental Authorisation, but is not the only developer who will contribute financially to Bitou Municipality for the enhancement of bulk services and will contribute in a pro rata usage method as indicated by the municipality. Therefore the full responsibility of enhancement of Bitou Municipality total bulk services does not reside or is in the control of the applicant for this Environmental Authorisation.

9.3 Have your appeal issues been raised previously in the public participation process?

Yes / ~~**No**~~ (Circle the appropriate response). Please provide details.

Please refer to appendix E where certia public where concerned about services like water and electricity

9.4 Are you fundamentally opposed to the decision (e.g. to any development activity on the site)?

~~**Yes**~~ / ~~**No**~~ / **Not applicable** (Circle the appropriate response). Please provide details.

As the appointed Eap please refer to the recommendations of the EAP in the Final BAR Appendix K.

9.5 Are you in favour of the decision if your concerns can be remedied by rectifying the process or by mitigating or eliminating an impact/s of the activity/ies?

~~Yes~~ / ~~No~~ / **Not applicable** (Circle the appropriate response). Please provide details.

The negative decision is the reason for the appeal.

9.6 Please indicate what measures you propose to have your concerns remedied.

1. Revisit the FBAR and the C&R and revise the negative decision as all information requested was adequately addressed.
2. DEA&DP did not stick to the timelines as provided for in NEMA therefor we urge them to revisit the FBAR.
3. Consultation with Bitou Municipality with regards to the Services required and a way forward as the applicant cannot be held responsible for his EIA process to receive a negative EA as per below comment:
Bitou Municipality, by way of indicated service level agreements with the developer, requires contributions and augmentation monies to assist in funding infrastructure upgrades to be able to allow for further development in the Bitou Municipal area. However, without Environmental Authorisations in place, Bitou Municipality will not approve development rights or do service level agreements and therefore the developers will not provide funding for bulk services upgrades. Bitou municipality has indicated the availability of bulk services subject to service level agreements (SLAs), which will manage the process and development phases to make the required enhancements to services and allow for the development rights of this applicant. This applicant's application, due to the size of the land requires Environmental Authorisation, but is not the only developer who will contribute financially to Bitou Municipality for the enhancement of bulk services and will contribute in a pro rata usage method as indicated by the municipality. Therefore the full responsibility of enhancement of Bitou Municipality total bulk services does not reside or is in the control of the applicant for this Environmental Authorisation.
4. A condition in the EA that no development is permitted until the services are upgraded and efficient.

9.7 Does your appeal contain any new information that was not submitted to the Environmental Assessment Practitioner (EAP) / or registered I&APs/ or the competent authority prior to the decision?

Yes / ~~No~~ (Circle the appropriate response). If the answer above is "Yes" please explain what this information is and why it should be considered by the Appeal Authority and why it was not made available to the EAP/ or I&AP/ or the competent authority prior to the decision. (Please ensure that the new information is attached hereto.)

The Bitou Municipality official bulk services availability confirmation, subject level agreement letter was only received on the 17 of February after the FBAR was submitted so this letter was never in the PPP however the letter was submitted to DEA&DP for consideration before the decision was made, that is stipulated in the negative EA

E. SUBMISSION ADDRESS

This appeal must be submitted to the Appeal Administrator at the address listed below within 20 days of being notified of the decision:

By post: Attention: Marius Venter
Western Cape Ministry of Local Government, Environmental Affairs &
Development Planning
Private Bag X9186, Cape Town, 8000; or

By facsimile: (021) 483 4174; or

By hand: Attention: Mr Marius Venter (Tel: 021-483 3721)
Room 809, 8th floor Utilitas Building
1 Dorp Street, Cape Town, 8000; or

By e-mail: DEADP.Appeals@westerncape.gov.za

Note: You are also requested to submit an electronic copy (Microsoft Word format) of the appeal and any supporting documents to the Appeal Administrator.



Appellant's signature

17/6/2025

Date