



REFERENCE: 16/3/3/1/D6/17/0028/23
DATE OF ISSUE: 11 December 2023

The Trustee(s)
KAAPLAND ONDERWYS TRUST (KOT)
PO Box 192
GREAT BRAK RIVER
6525

Attention: Mr. Johann Haupt

E-mail: bestuurder@dwarswegstrandoord.co.za

Dear Sir

COMMENT ON THE DRAFT BASIC ASSESSMENT REPORT FOR THE PROPOSED DWARSWEGSTRAND HOLIDAY RESORT ON ERF 720, MOSSEL BAY MUNICIPALITY

1. The Draft Basic Assessment Report (Ref: MOS643/09) dated 14 November 2023 compiled on your behalf by your appointed Environmental Assessment Practitioner ("EAP"), Ms. Louise-Mari van Zyl (EAPASA No: 2019/1444) and assisted by Candidate EAP, Mr. Francois Byleveld (EAPASA No: 2023/6770) of Cape EAPrac, and received by this Department on 14 November 2023, refers.
2. This Directorate has reviewed the information contained within the Draft Basic Assessment Report ("DBAR") and provides the following comment:

2.1. *BAR Requirements*

The BAR must contain all the information outlined in Appendix 1 of GN No. R. 982 of 4 December 2014 (as amended) and must also include the information requested in this letter. Omission of any of the said information may result in the application for Environmental Authorisation being refused. In this regard, the BAR must include, *inter alia*:

● *Declarations*

It is noted that the declarations by the applicant and appointed specialists have not been included in the DBAR. According to the relevant declaration templates provided in the document, the declarations will be included in the Final BAR. In this regard, kindly note that the omission of any declarations, especially that of the applicant in this instance, suggests that the applicant and specialist do not take responsibility for any information which is contained within the report.

In light of the fact that the DBAR forms part of the formal public participation process, the EAP is required to urgently submit the outstanding completed and duly signed declaration forms to ensure the report is recognised as part of the public participation process for the application for environmental authorisation. This information must be received by the Department prior to the BAR or the Revised Draft BAR (in the case of Regulation 19(1)(b) being applied) being submitted to the competent authority, failing which this may prejudice

the success of the application. As such, the omission of any of the required signed declarations from the BAR, will be render the report incomplete.

2.2. Requirements in terms of Chapter 6 of the Environmental Impact Assessment Regulations, 2014

With reference to Regulation 44 of the Environmental Impact Assessment Regulations, 2014 (as amended) ("EIA Regulations, 2014") please be reminded that the applicant must ensure that the comments of interested and affected parties are recorded in reports and plans and that such written comments, including responses to such written comments and records of meetings are attached to the reports and plans that are submitted to the competent authority in terms of these Regulations. In this regard, please ensure that the appointed EAP managing your application addresses the outstanding information.

This Directorate provided comment on the pre-application BAR (Ref: 16/3/3/6/7/1/D6/17/0045/23) on 20 September 2023. However, the comment and the responses thereto have not been included in the comments and responses report. This must be addressed in the BAR.

Furthermore, the comments and responses report contain summaries of the comments, mainly submitted during the pre-application process. The EAP must update the "comment & responses" report and include the written comments from each I&AP *verbatim* and respond in writing to each comment. The EAP must refrain from summarising comments as vital information or context may be lost in such instances.

2.3. Conservation of the remainder of Erf 720

This Directorate notes that the remainder of Erf 720 will be zoned open space for a conservation use to prevent development creep into the remaining open space (natural) areas. In this regard, according to the Mossel Bay Zoning Scheme By-law (2021) the following zonings can be considered:

- **Open Space II:** the objective of this zone is to provide for private active and passive recreational areas in order to promote recreation and enhance the aesthetic appearance of an area. The primary use of this zoning is "*private open space*".
- **Open Space III:** The objective of this zone is to provide for the conservation of natural resources in areas that have not been proclaimed as nature areas (non-statutory conservation), in order to sustain flora and fauna and protect areas of undeveloped landscape including woodlands, ridges, wetlands and the coastline. The primary use of this zoning is "*nature conservation area*".

In light of the above, this Directorate is of the considered opinion that the remainder of Erf 720 should be rezoned to Open Space III in order to achieve the desired outcome. Notwithstanding the zoning of the portion of land, the proposal must demonstrate the legally binding provisions or obligations on the portion of land to limit the use of the proposed open space area for a conservation use. Appropriate legally binding measures may include a "Non-User Conservation Servitude" over the portion of land.

Furthermore, it is advised that an operational environmental management plan, which addresses the conservation measures, access, fire management and the control and eradication of invasive alien species, be compiled in support of the measures pertaining to the use of the area.

2.4. Site Development Plan

This Directorate notes that Site Development Plan and Services Layout ("SDP") (Drawing No: 1903141/C/100 (Rev. P); dated 21 August 2023) attached as Appendix B1 of the DBAR. With reference to Point 2.3 of this Directorate's letter (Ref: 16/3/3/6/7/1/D6/17/0045/23) dated 20 September 2023, please be reminded that the SDP must be amended to depict the recommendations of the Terrestrial Animal Species Compliance Statement (Colville *et al*, 2022).

With reference to Point 2.3 above, the SDP must also be updated to depict the zoning and intended conservation use of the remaining natural area of Erf 720.

2.5. Environmental Management Programme

The contents of the EMPr must meet the requirements outlined in Section 24N (2) and (3) of the NEMA (as amended) and Appendix 4 of GN No. R. 982 of 4 December 2014. The EMPr must address the potential environmental impacts of the activity throughout the project life cycle, including an assessment of the effectiveness of monitoring and management arrangements after implementation (auditing).

● Construction through protected tree clumps

From the SDP it is noted that the 32mm diameter High-density polyethylene ("HDPE") will be developed through clusters of protected milkwood and cheesewood trees. In this regard, the EMPr must make allowance for manual labour to minimise the impact on the vegetation. The EMPr must make provision for a method statement to be compiled by the contractor. Such method statement must be submitted to the National Department of Forestry, Fisheries and the Environment: Western Cape Forestry – Knysna office ("DFFE") along with the application for a permit in terms of Section 15(1)(a) of the National Forest Act, Act No. 84 of 1998, (as amended).

3. Submission of Basic Assessment Report

The BAR must contain all the information outlined in Appendix 1 of the EIA Regulations, 2014, and must also include and address any information requested by the competent authority, including any previous correspondence in respect of this matter. This letter and the comment on the pre-application BAR (Ref: 16/3/3/6/7/1/D6/17/0045/23) on 20 September 2023 refers.

Please be reminded that in accordance with Regulation 19 of the EIA Regulations, 2014, the Department hereby stipulates that the BAR (which has been subjected to public participation) must be submitted to this Department for decision within **90 days** from the date of receipt of the application by the Department. However, if significant changes have been made or significant new information has been added to the BAR, the applicant/EAP must notify the Department that an additional 50 days (i.e. 140 days from receipt of the application) would be required for the submission of the BAR. The additional 50 days must include a minimum 30-day commenting period to allow registered I&APs to comment on the revised report/additional information.

If the BAR is not submitted within 90 days or 140 days, where an extension is applicable, the application will lapse in terms of Regulation 45 of Government Notice Regulation No. 982 of 4 December 2014 and your file will be closed. Should you wish to pursue the application again, a new application process would have to be initiated. A new Application Form would have to be submitted.

NOTE: Please be advised that in terms of Regulation 3(2) of the EIA Regulations, 2014, "*for any action contemplated in terms of these Regulations for which a timeframe is prescribed, the period of 15 December to 5 January must be excluded in the reckoning of days.*" With reference to this Department's Circular 0009/2023 dated 31 October 2023, please note that the


Department recommends that applicants and / or their appointed EAPs refrain from submitting application forms and report during the period from 4 December 2023 until 5 January 2024, unless the applicant and / or EAP must meet regulatory timeframes.

Furthermore, in accordance with Environmental Impact Assessment best-practice, you are kindly requested to notify all registered Interested and Affected Parties including the authorities identified in the Public Participation Plan of the submission of the FBAR and to make the document available to them. This will provide such parties an opportunity to review the document and how their issues were addressed.

4. Please note that a listed 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. 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.
5. Kindly quote the above-mentioned reference number in any future correspondence in respect of this matter.
6. This Department reserves the right to revise or withdraw initial comments or request further information from you based on any information received.

Yours faithfully

pp Francois Naudé

 Digitally signed by Francois Naudé
Date: 2023.12.11 14:57:05 +02'00'

HEAD OF COMPONENT

ENVIRONMENTAL IMPACT MANAGEMENT SERVICES: REGION 3

DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING

Ref.: 16/3/3/1/D6/17/0028/23

Copied to:

Cape EAPrac:

- (1) Registered EAP - Ms. Louise-Mari van Zyl
- (2) Candidate EAP - Mr. Francois Byleveld

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REFERENCE: 16/3/3/6/7/1/D6/17/0045/23
DATE OF ISSUE: 20 September 2023

The Trustee(s)
KAAPLAND ONDERWYS TRUST (KOT)
PO Box 192
GREAT BRAK RIVER
6525

Attention: Mr. Johann Haupt

E-mail: bestuurder@dwarswegstrandoord.co.za

Dear Sir,

COMMENT ON THE PRE-APPLICATION BASIC ASSESSMENT REPORT FOR THE PROPOSED DWARSWEGSTRAND HOLIDAY RESORT ON ERF 720, MOSSEL BAY MUNICIPALITY

1. The pre-application Basic Assessment Report (Ref: MOS643/07) dated 22 August 2023 ("pre-app BAR") compiled on your behalf by your appointed Environmental Assessment Practitioner ("EAP"), Ms. Louise-Mari van Zyl (EAPASA No: 2019/1444) of Cape EAPrac, and received by this Department on 24 August 2023, refers.
2. This Directorate has reviewed the information contained within the pre-application Basic Assessment Report ("pre-app BAR") and provides the following comment:

2.1. Relevant listed activities

The Department notes the opinion of the EAP with regard to the "interim urban edge" as defined in this Department's Circular 1 of 2012 on Section E.9 of the pre-app BAR. According to the EAP the property is located inside the interim urban edge since it was zoned as Resort Zone on 5 March 2012.

The opinion of the EAP is acknowledged; however, this Department does not necessarily consider "Resort Zone" as an urban use. It is also understood that although the portion of land may have been zoned as Resort Zone, it was not services or set aside for development, but rather as a undeveloped portion of land or even for a conservation use. In light of the above, the Department stands by the comment in this regard as presented in the comment on the Notice of Intent, dated 17 March 2023. Therefore, the relevant activities should be applied for and assessed in the application for environmental authorisation. Please be advised that only those activities applied for and authorised in an Environmental Authorisation, may be commenced with in accordance with Section 24F of the National Environmental Management Act, 1998 ("NEMA"). The onus is on the proponent/applicant

to ensure that all the applicable listed activities are applied for and assessed as part of the environmental impact assessment (EIA) process.

Furthermore, the Department notes that the EAP is applying for activities triggered within a listed geographical area (i.e. Critical Biodiversity Areas identified in bioregional plans). Please be advised that the Western Cape Minister of Local Government, Environmental Affairs and Development Planning has, to date, not adopted the Western Cape Biodiversity Spatial Plan (2017). Therefore, until such time that a biodiversity spatial plan for the Western Cape been adopted by the relevant authority, the specified activity in the identified geographical area is excluded from the requirement to obtain environmental authorisation.

Please be advised that only those listed activities which are applied for and will be triggered by the proposal will be considered for authorisation by the Competent Authority.

2.2. Legislative requirements in respect of the alternatives considered:

● *National Forests Act, Act 84 of 1998 (as amended)*

The Department notes that the layout for the preferred has been informed by the presence of protected tree species *Sideroxylon inerme* (milkwood) and *Pittosporum viridiflorum* (cheesewood). It is noted that the layout avoids the clumps of protected trees in order to avoid removal of such trees. In this regard, it is noted that micro-siting will be undertaken prior to construction to ensure that tree growth and / or germination of new protected trees are taken into account. However, it is understood that trimming will in all likelihood be required.

In light of the above, please be informed that in terms of Section 15(1)(a) of the National Forest Act, Act No. 84 of 1998, (as amended) no person may cut, disturb, damage or destroy any protected tree (i) except under a license granted by the Minister. An application for a license for the cutting, disturbance and / or removal of a protected tree species must therefore be obtained from the National Department of Forestry, Fisheries and the Environment ("DFFE") prior to the cutting, disturbance and / or removal of such trees. Therefore, you are advised to consult with the DFFE: Western Cape Forestry – Knysna office timeously to obtain the relevant permits.

● *National Environmental Management: Biodiversity Act, Act 10 of 2004 (as amended)*

According to the information in the pre-app BAR, the No-Go Alternative will have a Low indirect negative impact over the long terms on indigenous habitat and biodiversity due to, *inter alia*, the spread of alien invasive plants. According to the EAP the spread of alien invasive will be as a result of less maintenance by the owner / management to keep the alien vegetation under control. However, please be advised of the duty of care relating to listed invasive species in terms of Section 73(2) of the National Environmental Management: Biodiversity Act, Act 10 of 2004 (as amended) a person who is the owner of land on which a listed invasive species occurs must take steps to control or eradicate the listed invasive species as prescribed by the Minister; and take all the required steps to prevent or minimise harm to biodiversity. Therefore, the Department does not agree with the statement since the landowner has a legal obligation to control or eradicate listed invasive species on the property.

2.3. Specialist reports

● *Terrestrial Animal Species Compliance Statement*

The Department has reviewed the Terrestrial Animal Species Compliance Statement (Colville *et al*, 2022). It is noted that the recommendations made by the specialist include, *inter alia*:

- the establishment of a 10m buffer from the ecotone between the upper development area and the lower "ravine" area;
- the omission of the 1.8m-high fence along the southern boundary of the development site as it will cut off access to fauna to the upper areas of natural vegetation; and
- the omission of a proposed wooden staircase due to its proximity to the western tail-end of natural vegetation which connects to a large corridor of natural vegetation on the other side of H.C. Botha Street.

The Department acknowledges the recommendations provided by Colville *et al.* (2022) as it will minimise the impact on connectivity and faunal movement between the proposed development area and the ravine which will remain undeveloped. In this regard, the Site Development Plan & Services Layout (Drawing No: 1903141/C/100 (Rev. P); dated 21 August 2023) must be amended to depict the recommendations and assessed as an alternative.

● *Botanical Impact Assessment:*

According to the specialist, Dr. McDonald of Bergwind Botanical Surveys and Tours cc, the vegetation of the study area is typical of the "upland" phase of Hartenbos Dune Thicket on the dune crest or plateau, but less dense than the "slope phase" of the vegetation type on the steeper, south-facing slopes that has more large and well-developed trees. In this regard, it must be reiterated that the current conservation status of the ecosystem is Endangered. According to the Technical Report: Assessment details and ecosystem descriptions (Report No. 7664) compiled by the South African National Biodiversity Institute (2022), this ecosystem is poorly protected and there is evidence of ongoing biotic disruption due to invasive species.

In light of the above, it is advised that the remaining undeveloped portion of the property is zoned open space with a conservation purpose (e.g. Open Space Zone III). Furthermore, an alien invasive management plan must be compiled for the ongoing control and eradication of alien invasive species on the property. This plan must be submitted to the Department of Forestry, Fisheries and the Environment: Branch - Biosecurity for consideration and agreement.

Furthermore, it is noted that the list of species recorded by the specialist include species which are included in Schedules 3 and / or 4 of the Western Cape Nature Conservation Laws Amendment Act, 2000 (Act No. 3 of 2000). Please be reminded that species included in Schedule 3 and 4 of this Act may not be picked or removed without the relevant permit from CapeNature.

2.4. Confirmation of Municipal Services:

It is noted that potable water for the proposed resort will be obtained by connecting to an existing 110mm diameter municipal pipeline along HC Botha Street. Furthermore, it is noted that sewage disposal will be by means of conservancy tanks until such time that the bulk

sewage pipeline along Morrison Road (Main Road 348) is installed within the next 5 to 10 years. It is understood that until such time that the conservancy tanks will be emptied as and when required by the proponent or an appointed service provider. Furthermore, it noted that electricity will be obtained by connecting to the existing 11 kilovolt ("kV") line which runs along the northern boundary of the property.

According to the correspondence from the Mossel Bay Municipality (Ref: 15/1/2 J Cox) dated 14 November 2022, included in the Engineering Services Report, it is noted that the municipality supports the proposed development in principle subject to the submission of detailed design drawings as well as the compilation, approval and signing of a services agreement between the developer and the Mossel Bay Municipality. In light hereof, the Mossel Bay Municipality: Infrastructure Services must provide guidance on the requirements and implementation of such a service level agreement. In addition, with specific reference to the proposed method for the disposal of sewage, the level of the service must be specified (i.e. service standard) and under which circumstances the municipality shall need to undertake the management and the maintenance of the facility to provide the service (i.e. failure to provide an adequate service).

2.5. *Environmental Management Programme*

The contents of the EMPr must meet the requirements outlined in Section 24N (2) and (3) of the NEMA (as amended) and Appendix 4 of GN No. R. 982 of 4 December 2014. The EMP must address the potential environmental impacts of the activity throughout the project life cycle, including an assessment of the effectiveness of monitoring and management arrangements after implementation (auditing).

This Department has reviewed the EMPr as included and received as part of the pre-app BAR. The following aspects must be addressed:

- *Map with environmental sensitivities*

It is noted that the EMPr lists that the map has been included in Appendix 1; however, no appendices has been attached to the EMPr. The EMPr must include a map at an appropriate scale which superimposes the proposed activity, its associated structures, and infrastructure on the environmental sensitivities of the preferred site, indicating any areas that should be avoided, including buffers. This must be informed by the recommendations of the various specialist reports.

- *Curriculum vitae of the EAP*

According to Table 1 (Checklist in terms of Appendix 4 of the EIA Regulations), the EAP's curriculum vitae has been attached in Appendix 4 of the EMPr. However, as indicated above, the EMPr does not have any appendices thereto. As such, the referenced documentation must be attached to the EMPr.

- *General*

This Directorate advises that the EAP consider amending the EMPr and include all aspects relating to occupational health and safety as an annexure to the EMPr as the auditing requirements of health and safety related aspects are undertaken in terms of the Occupational Health and Safety Act, Act No. 85 of 1993 and relevant Regulations and submitted to a different administering authority.

Furthermore, it is noted that the EMPr provides for, *inter alia* a procedure for disposal of bulbs and procedure in event a bulb break. It is unclear how these relate to the management outcomes identified in the Basic Assessment Report and how this will be audited. This must be clarified by the EAP.


3. *Public Participation over the festive period*

With due consideration of the time period until the December festive period, please be reminded that in accordance with Regulation 3(2) of the EIA Regulations (2014), please be advised that for any action contemplated in the Regulations for which a timeframe is prescribed, that the period from 15 December to 5 January must be excluded from the reckoning of days. However, Regulation 3(3) of the EIA Regulations, 2014 that the applicant must refrain from conducting any public participation process over aforementioned period unless justified by exceptional circumstances, as agreed to by the Competent Authority. Therefore, should the EAP plan to conduct public participation over the festive period, the EAP must approach competent authority prior to conducting the public participation.

4. Please note that the activity may not commence prior to an Environmental Authorisation being granted by the Department.
5. Kindly quote the above-mentioned reference number in any future correspondence in respect of this matter.
6. This Department reserves the right to revise or withdraw initial comments or request further information from you based on any information received.

Yours faithfully

pp Francois Naudé

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HEAD OF COMPONENT

ENVIRONMENTAL IMPACT MANAGEMENT SERVICES: REGION 3

DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING

Ref.: 16/3/3/6/7/1/D6/17/0045/23

Copied to:

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