



**Western Cape
Government**

Environmental Affairs and
Development Planning

**MINISTRY OF LOCAL GOVERNMENT,
ENVIRONMENTAL AFFAIRS AND
DEVELOPMENT PLANNING**

M 3/6/5

Mr J du Plessis
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Dear Mr du Plessis

**APPEALS IN TERMS OF SECTION 43 OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998
AGAINST THE ENVIRONMENTAL AUTHORISATION GRANTED FOR THE PROPOSED RESIDENTIAL
DEVELOPMENT ON PORTION 51 OF FARM PLATTEBOSCH NO. 458, STILL BAY**

1. The appeals lodged against the abovementioned Environmental Authorisation ("EA") refer.
2. After careful consideration of the appeals, as well as supporting documentation received, I have decided to vary the decision of the delegated officer.
3. The Department's EA granted on 5 August 2011 (as amended on 29 August 2011) is still valid and the conditions under which the authorisation was granted must be complied with. However, conditions G. 1 and G. 19 and Section I: "Appeal" (pages 19 and 20) are excluded from the authorisation and Condition 29 is added to the EA.

The "Description of the Activity" (page 1), "Critical Biodiversity Areas" (page 13) and "Departmental approved alternative" (page 17) under Section H: "Reasons for the Decision" and conditions G. 17, G. 24 and G. 28 are amended as follows:

- 3.1 Sub-sections "Description of the Activity" (page 1), "Critical Biodiversity Areas" (page 13) and "Departmental approved alternative" (page 17) under Section H: Reasons for the Decision are amended to state that EA is also granted for Erven 113, 114, 115, 123, 124, 125 and 126 except Erf 116 which is still excluded from this appeal decision.

- 3.2 Condition G. 17 is amended as follows:

"The holder of the authorisation must, in writing, within 12 (twelve) calendar days of the date of the decision on the application-

17.1 Notify all the registered interested and affected parties of-

17.1.1 The outcome of the appeal;

17.1.2 The reasons for the appeal decision; and

17.1.3 The date of the decision."

- 3.3 Condition G. 24 is amended as follows:

"The holder of the environmental authorisation must submit an application for

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amendment of the environmental authorisation to the Minister where any detail with respect to the environmental authorisation must be amended, added, substituted, corrected, removed or updated. Further, the rights granted by this environmental authorisation are personal rights (i.e. not attached to a property, but granted to a natural or juristic person). As such, only the holder may undertake the activity authorised by the Minister. Permission to transfer the rights and obligations contained herein must be applied for in the following manner:

- 24.1 The holder of the environmental authorisation must submit an originally signed and dated application for amendment of the environmental authorisation to the holder of the environmental authorisation stating that he/she wishes the rights and obligations contained herein to be transferred, and including (a) confirmation that the environmental authorisation is still in force (i.e. that the validity period has not yet expired or the activity was lawfully commenced with); (b) the contact details of the person who will be the new holder; (c) the reasons for the transfer; (d) an originally signed letter from the proposed new holder acknowledging the rights and obligations contained in the environmental authorisation and indicating that he/she has the ability to implement the mitigation and management measures and to comply with the stipulated conditions.
- 24.2 The Minister will issue an amendment to the new holder either by way of a new environmental authorisation or an addendum to the existing environmental authorisation if the transfer is found to be appropriate."

3.4 Condition G. 28 is amended as follows :

"28. This environmental authorisation is valid for a period of **5 years** from the date of issue. The holder must commence with the listed activity within the said period or this environmental authorisation lapses and a new application for environmental authorisation must be submitted to the competent authority, unless the holder has lodged a valid application for the amendment of the validity period of this environmental authorisation (**i.e. the application must be submitted to the Ministry responsible for environmental affairs in the Western Cape Province**), before the expiry of this environmental authorisation. In such instances, the validity period will be automatically be extended ("the period of administrative extension") from the day before this environmental authorisation would otherwise have lapsed, until the amendment application for the extension of the validity period is decided. The listed activity, including site preparation, may not commence during the period of administrative extension."

4. The following additional Condition G. 29 must also be complied with:

"29. The requirements of the National Forestry Act, 1998 must be complied with prior to the commencement of the activities by obtaining a licence for cutting, damaging, disturbing or destroying white milkwood trees on the site".

5. The reasons for varying the aforementioned decision of the delegated officer are contained in the EA granted on 5 August 2011 (as amended on 29 August 2011) and below find herewith specific responses to the appeal issues:

5.1 Critical biodiversity areas:

- 5.1.1 The botanical impact statement obtained from the specialist Dr McDonald of Bergwind Botanical Surveys & Tours CC (25 April 2012) concluded that:
- The vegetation occurring on the footprint of the proposed erven 113, 114, 115, and 116 is *Osteospermum moniliferum* (bietou) which is dominated by shrubland with low species diversity and ecological sensitivity. In addition, the central part (approximately one-third) of the footprint of erven 113-116 shows significant negative effects of historical vegetation clearing since this was part of the airstrip which is now no longer in use. No defensible botanical reasons were found based on the presence of sensitive vegetation and habitat or threatened plant species to suggest that development of erven 113-116 should not take place.
 - With respect to ecological corridors between the southern boundary of Erf 116 and the boundary of the Plattebosch Estate, the vegetation is mainly *Searsia* species- thicket (Dune Thicket) which forms part of vegetation of the coastal dune system. This vegetation is not regarded as unique to the area and in terms of ecological pattern

and process is widespread. In this type of ecosystem a corridor of 50m would be more than adequate (Fynbos Forum Ecosystem Guidelines recommend 20 m). The actual distance between the southern boundary of Erf 116 and the estate boundary is 95m (91m according to Helme's letter dated 20 September 2011) which provides a corridor far in excess of 50m (or 20m as stipulated in the Fynbos Fourm Ecosystem Guidelines). Furthermore, as pointed out by Helme's letter dated 20 September 2011, an undeveloped area of 42m width (my measurement = 45m) lies adjacent to the Plattebosch Estate boundary on Bosbokduin Estate. This effectively provides for an undeveloped corridor of natural habitat of 139m width. This is approximately three-times the recommended width (50m) and seven-times that stipulated in the Fynbos Forum Ecosystem Guidelines.

- The vegetation of erven 123, 124, 125 and 126 was investigated and the area was found to have dune vegetation typical of the coastal dunes around Still Bay. However, it was evident that the area was disturbed and this is most likely due to the removal of woody alien invasive shrubs (probably *Acacia Cyclops*) in the fairly recent past. It was concluded that from a botanical viewpoint the site of these four erven has low botanical sensitivity and no restrictions should be placed on the erven from this perspective.

5.1.2 The faunal impact statement which was undertaken by Simon Todd Consulting (April 2012) concluded that:

- Erfen 113-115 are not significant from a connectivity perspective, and their exclusion from the development would not contribute significantly to increasing the connectivity of the area. Only Erf 116 impinges slightly on an important area, and it is therefore recommended that only Erf 116 is excluded. With this erf excluded, the corridor would exceed 100m in width and would include the most significant area for maintaining the connectivity of the area for fauna. On this basis, the impact of the development on connectivity of the area for fauna is assessed to be of low magnitude and of minor significance. The mitigation measures as suggested in the original assessment are supported and would be sufficient to reduce the impact of the development to an acceptably low level. However, this appeal decision excludes only Erf 116 from the EA.
- Although the site is classified as threatened with *Albertinia* Sand Fynbos in terms of the national list of ecosystems (dated 9 December 2011) that are threatened and in need of protection in Government Gazette 34809, under Government Notice No. 1002 in terms of section 52(1)(a) of the National Environmental Management: Biodiversity Act, Act 10 of 2004, the botanical impact statement and the faunal impact statement dated April 2012 concluded that the exclusion of certain erven from the preferred alternative 3 that is described in the final EIA Report dated February 2011 is not warranted.

5.1.3 Although CapeNature does not support the proposed development due to the fact that it impacts on the Critical Biodiversity Areas network, the botanical and faunal impact assessments concluded that the proposed development is the best practicable environmental option from a biodiversity perspective.

5.2 Urban edge:

5.2.1 The proposed site is located within the urban edge of the Hessequa Spatial Development Framework that was adopted in terms of the Local Government: Municipal Systems Act, 2000.

5.2.2 In terms of employment opportunities, it is estimated that approximately 250 temporary jobs will be created during the construction phase (civils and housing). The majority of these jobs are likely to be taken up by local Historically Disadvantaged Individuals, specifically the low and semi-skilled skills categories.

5.3 Impact on archaeology:

5.3.1 Archaeological impacts have been satisfactorily addressed since Heritage Western Cape approved the application on the proposed site in terms of the National Heritage Resources Act, 1999 with no further archaeological studies required.

5.3.2 The fish traps are located along a public beach below the high-water mark of the sea.

5.4 Visual Impacts:

5.4.1 The visual impact assessment which was undertaken to inform the Departmental decision-making process concluded that the overall visual impact of the proposed

development will be acceptable. The Department is further of the opinion that the detailed Architectural Guideline that deals with density, coverage, colour schemes and height in a particular manner will satisfactorily address any other concerns pertaining to visual impact.

- 5.4.2 The visual impact statement which was undertaken to further advise the appeal decision-making process concluded that Erven 113, 114, 115 and 116 and Erven 123, 124, 125 and 126 do not warrant exclusion from a visual impact perspective.

5.5 Access road- Condition G. 11 and G. 12:

- 5.5.1 The applicant has committed that it will retain the right to use road and grant others the right to use the road provided that their use of the existing servitude road does not materially hinder the dominant owner to exercise his right of servitude.
- 5.5.2 Access to the proposed development will be via the existing access road which leads to Bosbokduin. In order to improve the already stressed intersection of the MR 331 (Jongensfontein Road) and the MR 332 the existing four-way stop will be upgraded to a round-about.
- 5.5.3 The traffic impact assessment ("TIA") that was undertaken by SSI Engineers and Environmental Consultants as part of the environmental impact assessment ("EIA") concluded that no impacts will result due to the proposed development. However, recommendations were made that the intersection of the Main Road 331/Main Road 332 be analysed closer to the 5 year horizon to determine how to improve the intersection capacity for future volumes. The Hessequa Municipality and the Provincial Department of Transport and Public Works accepted the findings of the TIA. Condition G. 12 has been included in the EA to implement the mitigation measures as detailed in the TIA.
- 5.5.4 In terms of the liability of costs relating to the upgrading to the road works, the applicant submitted a copy of their undertaking to the Department, dated 8 April 2011, in response to the concerns raised during the process relating to upgrading costs, financial commitments and long-term maintenance of the access road. The applicant committed to take full financial responsibility for the required improvements to Jongensfontein - Bosbokduin access road in the event of the approval of the proposed development application. The applicant's written undertaking further commits to a process of negotiation between the affected road users, namely the Bokmakierie and Bosbokduin Home Owners Association.
- 5.5.5 The applicant further states that compliance with the above written undertaking, the EA and the Environmental Management Plans ("EMPs"), is mandatory and will be monitored through either on site monitoring and appointment of an Environment Control Officer ("ECO") or the required environmental audits. Conditions G. 11 and G. 14 have been included in the EA to ensure compliance with this written commitment.

5.6 Conditions G. 11 and G. 12:

- 5.6.1 In terms of the liability of costs relating to road upgrading, the applicant submitted a copy of their undertaking to the Department, dated 8 April 2011, in response to the concerns raised during the process relating to upgrade costs, financial commitments and long-term maintenance of the access road. The applicant committed to take financial responsibility for the required improvements to Jongensfontein - Bosbokduin access road in the event of the approval of the proposed development. The applicant's written undertaking further commits to a process of negotiation between the affected road users, namely the Bokmakierie and Bosbokduin Home Owners Association.
- 5.6.2 The applicant states that compliance with the above written undertaking, the EA and the EMPs, is mandatory and will be monitored through either on site monitoring and appointment of an ECO or the required environmental audits. Conditions G. 11 and G. 14 have been included in the EA to ensure compliance with this written commitment.

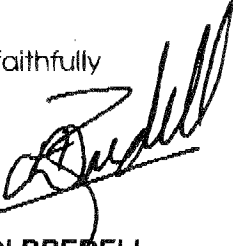
5.7 Public participation during the appeal process:

- 5.7.1 During the EIA appeal process, additional information was made available from 30 May 2012 to 21 June 2012.

5.7.2 The public participation process generated a number of concerns by registered I&APs relating to the vegetation, CBAs, provision of services and access to the proposed development.

Your interest in the future of our environment is appreciated.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Anton Bredehl', written over a horizontal line.

ANTON BREDELL
MINISTER OF LOCAL GOVERNMENT,
ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING

DATE: 21/1/2013