



**DIRECTORATE: DEVELOPMENT MANAGEMENT
REGION 1**

REFERENCE: 16/3/3/6/1/A5/20/2083/17

ENQUIRIES: AYESHA HAMDULAY

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The Board of Directors
Devco Group of Companies
P O Box 1756
DURBANVILLE
7551

Attention: Mispa Coetzee

Tel.: (021) 979 4904
E-mail: mispa@terraplan.co.za

Dear Sir or Madam

APPLICABILITY OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) ("NEMA") AND ENVIRONMENTAL IMPACT ASSESSMENT ("EIA") REGULATIONS, 2014 (AS AMENDED) WITH RESPECT TO THE PROPOSED ESTABLISHMENT OF THE DURBANVILLE GARDENS – ASSISTED LIVING RESIDENTIAL DEVELOPMENT ON THE REMAINDER OF ERF 56 AND ON ERVEN 4144 AND 4145, DURBANVILLE

1. The Applicability Checklist with cover letter dated 24 May 2017, as received by this Department on 26 May 2017, refer.
2. Your attention is drawn to the listed activities in terms of the EIA Regulations, 2014 (as amended) as defined in Government Notice ("GN") No. R.983, R. 984 and R.985. These Regulations came into effect on 07 April 2017. All activities identified as listed activities in the EIA Regulations, 2014 (as amended) that had not been commenced with must not be undertaken without an Environmental Authorisation from the Competent Authority.
3. This Department has reviewed the Applicability Checklist and based on the information submitted, is of the opinion that the proposed establishment of the Durbanville Gardens – Assisted Living Residential Development on Remainder of Erf 56, Erven 4144 and 4145, Durbanville falls within the ambit of the following listed activities:

Item 19 of GN NO. 983 (as amended):
"The infilling or depositing of any material of more than 10 cubic metres into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock of more than 10 cubic metres from a watercourse;

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but excluding where such infilling, depositing, dredging, excavation, removal or moving—

- (a) will occur behind a development setback;
- (b) is for maintenance purposes undertaken in accordance with a maintenance management plan;
- (c) falls within the ambit of activity 21 in this Notice, in which case that activity applies;
- (d) occurs within existing ports or harbours that will not increase the development footprint of the port or harbour; or
- (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."

Item 27 of GN No. R.983 (as amended):

"The clearance of an area of 1 hectares or more, but less than 20 hectares of indigenous vegetation, except where such clearance of indigenous vegetation is required for—

- (i) the undertaking of a linear activity; or
- (ii) maintenance purposes undertaken in accordance with a maintenance management plan."

Item 12 of GN No. R.985 (as amended):

"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.

i. Western Cape

- 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;
- ii. Within critical biodiversity areas identified in bioregional plans;
- 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 or even in urban areas;
- 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
- 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."

4. This determination is based on the following:
- 4.1. The proposed development will be situated within the urban area of Durbanville and will be approximately 2.56ha in extent.
 - 4.2. The proposed development falls within 32m of the tributary of the Mosselbank River and traverses the 1:100 year floodline. Item 19 of GN No R. 983 (as amended) will thus be triggered.
 - 4.3. The land cover on the site was Cape Flats Sand Fynbos. The development proposal will result in the clearance of indigenous Cape Flats Sand Fynbos vegetation. Item 27 of GN No R. 983 (as amended) and Item 12 of GN No. 985 (as amended) will thus be triggered. Please note that NEMA defines indigenous vegetation as –

“vegetation consisting of indigenous plant species occurring naturally in an area, regardless of the level of alien infestation and where the topsoil has not been lawfully disturbed during the preceding ten years;”

5. The Plattekloof 430, a type 2 National Heritage Site of approximately 249.67ha in extent traverses the Remainder of Erf 56, Durbanville. Section 24C(2)(e) of the NEMA, which details the procedure for identifying the Competent Authority, states the following–

“(2) The Minister must be identified as the competent authority in terms of subsection (1), unless otherwise agreed to in terms of section 24C(3), if the activity–

- (a) has implications for international environmental commitments or relations, and where
 - (i) it is identified by the Minister by notice in the Gazette; or
 - (ii) it is an activity that takes place in an area protected by means of an international environmental instrument, other than-
 - (aa) a conservancy;
 - (bb) a protected natural environment;
 - (cc) a proclaimed private nature reserve;
 - (dd) a natural heritage site;
 - (ee) the buffer zone or transitional area of a biosphere reserve; or
 - (ff) the buffer zone or transitional area of a world heritage site;
- (b)
- (c) has a development footprint that falls within the boundaries of more than one province or traverses international boundaries;
- (d) is undertaken, or is to be undertaken, by-
 - (i) a national department;
 - (ii) a provincial department responsible for environmental affairs or any other organ of state performing a regulatory function and reporting to the MEC; or

