



**Western Cape
Government**

Environmental Affairs and
Development Planning

**DIRECTORATE: DEVELOPMENT MANAGEMENT
REGION 1**

REFERENCE: 16/3/3/6/7/1/A3/53/2194/19

ENQUIRIES: AYESHA HAMDULAY

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The Manager
Dax Con Construction CC
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SOMERSET WEST
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Attention: Dax Hunt

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Dear Sir

COMMENT ON THE NOTICE OF INTENT ("NOI") TO SUBMIT AN APPLICATION FORM FOR ENVIRONMENTAL AUTHORISATION IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) ("NEMA") AND THE ENVIRONMENTAL IMPACT ASSESSMENT ("EIA") REGULATIONS, 2014 (AS AMENDED): THE PROPOSED MIXED-USE DEVELOPMENT ON THE REMAINDER OF THE FARM NO. 845, SIR LOWRY'S PASS VILLAGE

1. The NOI Form with cover letter dated 28 November 2019, received by this Department on the same date, refers.
2. The proposed mixed use development on the Remainder of the Farm No. 845, Sir Lowry's Pass Village includes the following:
 - Approximately 846 high density residential units consisting of townhouses and apartment blocks with a development footprint of approximately 18.12ha;
 - Approximately 164 Medium density residential units;
 - Approximately 2.53ha public precinct with a General Business 1 zoning;
 - Approximately 1.02ha public precinct with a Community 1 zoning;
 - Approximately 1.07ha associated infrastructure for the development of shared amenities for the residential component.
3. The large size of the development proposal situated outside of the demarcated urban edge makes the development proposal arguably undesirable. This may prejudice the development proposal when the application is submitted to this Department for consideration during the formal EIA Process. In light of this, your case file will be referred to the land use planning section of this

Department for comment. The land use planning comment will be forwarded to you when received.

4. Declaration Pages

Please ensure that the declarations are completed by the proponent and Environmental Assessment Practitioner ("EAP") and are duly dated and the signature thereon must be original. All reports must contain the relevant declaration forms.

It is important to note that by signing the declaration, the proponent is confirming that they are aware and have taken cognisance of the contents of the report submitted to this Department. Furthermore, by signing the declaration, the proponent is making a commitment that they are both willing and able to implement the necessary mitigation, management and monitoring measures recommended within the report.

Please also ensure that specialist professionals sign the relevant declarations pages and that these declaration pages are duly dated and contain original signatures as well.

5. Listed Activities

5.1. After considering the information in the NOI, this Department notes that the development proposal constitutes the following listed activities as defined in terms of the EIA Regulations, 2014 (as amended):

Item 09 of GN No. R.983 (as amended):

"The development of infrastructure exceeding 1 000 metres in length for the bulk transportation of water or storm water—

- (i) with an internal diameter of 0,36 metres or more; or*
- (ii) with a peak throughput of 120 litres per second or more;*

excluding where—

- (a) such infrastructure is for bulk transportation of water or storm water or storm water drainage inside a road reserve or railway line reserve; or*
- (b) where such development will occur within an urban area."*

Item 10 of GN No. R.983 (as amended):

"The development and related operation of infrastructure exceeding 1 000 metres in length for the bulk transportation of sewage, effluent, process water, waste water, return water, industrial discharge or slimes –

- (i) with an internal diameter of 0,36 metres or more; or*
- (ii) with a peak throughput of 120 litres per second or more;*

excluding where—

- (a) such infrastructure is for the bulk transportation of sewage, effluent, process water, waste water, return water, industrial discharge or slimes inside a road reserve or railway line reserve; or*
- (b) where such development will occur within an urban area."*

Item 12 of GN N. R.983 (as amended):

"The development of—

- (i) dams or weirs, where the dam or weir, including infrastructure and water surface area, exceeds 100 square metres; or
- (ii) infrastructure or structures with a physical footprint of 100 square metres or more;

where such development occurs—

- (a) within a watercourse;
- (b) in front of a development setback; or
- (c) if no development setback exists, within 32 metres of a watercourse, measured from the edge of a watercourse; —

excluding—

- (aa) the development of infrastructure or structures within existing ports or harbours that will not increase the development footprint of the port or harbour;
- (bb) where such development activities are related to the development of a port or harbour, in which case activity 26 in Listing Notice 2 of 2014 applies;
- (cc) activities listed in activity 14 in Listing Notice 2 of 2014 or activity 14 in Listing Notice 3 of 2014, in which case that activity applies;
- (dd) where such development occurs within an urban area;
- (ee) where such development occurs within existing roads, road reserves or railway line reserves; or
- (ff) the development of temporary infrastructure or structures where such infrastructure or structures will be removed within 6 weeks of the commencement of development and where indigenous vegetation will not be cleared.

Item 19 of GN No. R.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;

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 4 of GN No. R.985 (as amended):

"The development of a road wider than 4 metres with a reserve less than 13,5 metres.

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- i. Areas zoned for use as public open space or equivalent zoning;
- ii. Areas outside urban areas;
 - (aa) Areas containing indigenous vegetation;
 - (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
- iii. Inside urban areas:
 - (aa) Areas zoned for conservation use; or
 - (bb) Areas designated for conservation use in Spatial Development Frameworks adopted by the competent authority."

- 5.2. Please note that should internal road reserve widths be wider than 13.5m and exceed 1km in length, the following additional listed activity will be applicable:

Item 24 of GN No. R.983 (as amended):

"The development of a road—

- (i) for which an environmental authorisation was obtained for the route determination in terms of activity 5 in Government Notice 387 of 2006 or activity 18 in Government Notice 545 of 2010; or
- (ii) with a reserve wider than 13,5 meters, or where no reserve exists where the road is wider than 8 metres;

but excluding a road—

 - (a) which is identified and included in activity 27 in Listing Notice 2 of 2014;
 - (b) where the entire road falls within an urban area; or
 - (c) which is 1 kilometre or shorter."

- 5.3. Although the proposed site is zoned for agricultural uses, following a desktop analysis, the site seems to not have been used for agricultural activities with Google Earth Historical Imagery TM dating as far back as 2003. If the proposed site has not indeed been used for agricultural activities in the last 10 years, the proposed site is deemed to be virgin land and Item 28 of GN No. R.983 (as amended) below, will not be applicable to the development proposal:

Item 28 of GN No. R.983 (as amended):

"Residential, mixed, retail, commercial, industrial or institutional developments where such land was used for agriculture, game farming, equestrian purposes or afforestation on or after 01 April 1998 and where such development:

- (i) will occur inside an urban area, where the total land to be developed is bigger than 5 hectares; or
 - (ii) will occur outside an urban area, where the total land to be developed is bigger than 1 hectare;
- excluding where such land has already been developed for residential, mixed, retail, commercial, industrial or institutional purposes."

5.4. You are hereby advised that only those listed activities applied for in terms of the EIA Regulations, 2014 (as amended) will be considered for authorisation. The onus is on the proponent to ensure that all applicable listed activities are applied for and assessed as part of the pre-application and formal EIA process. Failure to include any applicable listed activity may invalidate the application.

6. The following requirements must be met regarding all applications for Environmental Authorisation in terms of the NEMA and the EIA Regulations, 2014 (as amended):

6.1. Request for a Specific Fee Reference

This Department reminds you that the "Request for a Specific Fee Reference Number" form must be completed and submitted to this Department prior to submission of the Application Form for Environmental Authorisation. Upon receipt of the specific fee reference number, the reference number must be inserted into the Application Form for Environmental Authorisation and proof of payment of the applicable fee attached when the Application Form is submitted to this Department.

6.2. Exemption

This Department notes that you do not intend to apply for exemption in terms of the National Exemption Regulations, 2014 promulgated on 08 December 2014 from any of the requirements of the Public Participation Process ("PPP") as stipulated in Regulation 41 of the EIA Regulations, 2014 (as amended) and that you do not intend to apply for exemption from any other provisions contained in the EIA Regulations, 2014 (as amended), the NEMA or any notice issued under the NEMA. Please note that should you fail to meet a requirement of the EIA Regulations, 2014 (as amended) or the NEMA and if no exemption from that provision was applied for and granted, your application for Environmental Authorisation may be refused by this Department.

6.3. Alternatives

Please be advised that in terms of the NEMA and EIA Regulations, 2014 (as amended), the investigation of alternatives is mandatory. All alternatives identified must be determined to be feasible and reasonable. In this regard it must be noted that this Department may grant Environmental Authorisation for an alternative as if the alternative had been applied for, or may grant Environmental Authorisation for the proposed project in respect of all or part of the activities applied for in the application as specified in Regulation 20 of GN No. R.982 (as amended). Alternatives are not limited to activity alternatives, but include layout alternatives, design, operational and technology alternatives.

You are hereby reminded that it is mandatory to investigate and assess the option of not proceeding with the proposed activity (i.e., the "No-Go" option) in addition to other alternatives identified. Every pre-application and formal EIA process must therefore identify and investigate alternatives, with feasible and reasonable alternatives to be comparatively

assessed. If, however, after identified alternatives have been investigated, no feasible and reasonable alternatives were found, no comparative assessment of alternatives, beyond the comparative assessment of the preferred alternative and the option of not proceeding, is required during the assessment. What would, however, be required in this instance is proof of the investigations undertaken, and motivation for there being no reasonable or feasible alternatives other than the preferred option and the "No-Go" option. Refer to this Department's Guideline on Alternatives available on this Department's website: <http://www.westerncape.gov.za/eadp>).

6.4. Public Participation

The pre-application BAR must be subjected to a PPP that complies with Chapter 6 of the EIA Regulations, 2014 (as amended) and must take into account any applicable Guidelines published in terms of Section 24J of the NEMA, this Department's Circular EADP 0028/2014 on the "One Environmental Management System" and the EIA Regulations, 2014 (as amended), as well as any other guidelines developed by this Department. Note that the public participation requirements are applicable to all proposed sites.

In addition to the above, the EAP must submit **one** printed copy and **one** CD copy of the pre-application BAR to this Department for a minimum commenting period of 30 days. The pre-application BAR must be made available to all relevant State Departments/Organs of State that administer laws relating to a matter affecting the environment, for a minimum commenting period of 30 days. The EAP must notify this Department in writing of the date the pre-application BAR was submitted to the relevant State Departments/Organs of State and clearly indicate whether or not such State Departments/Organs of State were notified of the commenting period in terms of Section 24O of the NEMA. It is imperative that State Departments/Organs of State be in possession of the Reports when the EAP issues them with the notice in terms of Section 24O of the NEMA. **Please note that the EAP is responsible for such consultation.** Therefore, it is requested that the EAP include proof of such notification to the relevant State Departments/Organs of State in terms of Section 24O(2) and (3) of the NEMA in the pre-application BAR, where appropriate.

In terms of good environmental practice you are encouraged to engage with State Departments and other Organs of State early in the pre-application and formal EIA process to solicit their inputs on any of their requirements to be addressed in the pre-application and formal EIA process. Please note that this does not replace the requirement of making the pre-application and formal BAR available to State Departments/Organs of State as stipulated above. The following State Departments/Organs of State must be consulted during the pre-application and formal EIA process as part of the PPP:

- CapeNature;
- Heritage Western Cape;
- City of Cape Town;
- The Western Cape Government: Agriculture;
- The Western Cape Government: Transport and Public Works; and
- The National Department of Water and Sanitation.

A register of Interested and Affected Parties ("I&APs") must be opened and maintained. The said register must be submitted to this Department. The EAP must record and respond to all comments received. The comments and responses must be captured in a Comments and Responses Report and must include a description of the PPP followed. This report must be

included in the public participation information attached to the pre-application BAR to be submitted for a decision during the formal EIA process.

6.5. Environmental Management Programme ("EMPr")

In accordance with Section 24N of the NEMA and Regulation 19 of GN No. R.982 (as amended), this Department hereby requires the submission of an Environmental Management Programme ("EMPr"). The contents of such an 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 (as amended). 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). The EMPr must be submitted together with the pre-application BAR. When compiling the EMPr, this Department's Guideline for Environmental Management Plans (June 2005), available on the Department's website must be taken into account as well as Appendix 4 of the EIA Regulations, 2014 (as amended).

6.6. Guidelines

You are referred to Appendix 1 of GN No. R.982 (as amended) for the requirements with respect to the 'Content of basic assessment reports'. You are advised that when undertaking the Basic Assessment process you must take into account the Department's Circular EADP 0028/2014 on the "One Environmental Management System" and the EIA Regulations, 2014 (as amended) as well as any other guidelines developed by this Department. This Department's guidelines can be downloaded from this Department's website. In particular, the guidelines that may be applicable to the proposed project include, *inter alia*, the following:

6.6.1. Circular EADP 0028/2014: One Environmental Management System

6.6.2. Guideline for Determining the Scope of Specialists Involvement in the EIA Process (June 2005)

6.6.3. Guideline for Environmental Management Plans (June 2005)

6.6.4. Guideline on Exemption Applications (March 2013)

6.6.5. Guideline on Public Participation (March 2013)

6.6.6. Guideline on Alternatives (March 2013)

6.6.7. Guideline on Need and Desirability (March 2013)

6.7. Need & Desirability

In terms of the NEMA and the EIA Regulations, 2014 (as amended), when considering an application, this Department must take into account a number of specific considerations including, *inter alia*, the need for and desirability of any proposed project. As such, the need for and desirability of the proposed activity must be considered and reported on in the pre-application BAR. The pre-application BAR must reflect how the strategic context of the site in relation to the broader surrounding area, has been considered in addressing need and desirability. Refer to this Department's Guideline on Need and Desirability (March 2013).

6.8. NEMA Principles

In addition to the above, you must clearly show how the proposed project complies with the principles contained in Section 2 of the NEMA and must show how the proposed project meets the requirements of sustainable development.

6.9. Water Crisis

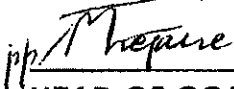
Your attention is drawn to the fact that the Western Cape has recently experienced a severe drought. In light of the above, water must be used wisely during all phases of any development. No potable water must be used as far as possible and alternative methods to save water must be implemented.

6.10. Social and Gender Considerations

You are reminded that the social context of the proposed development must always be considered. This includes the impact that the development proposal may have on the prevalence of HIV/AIDS, sexually transmitted infections (STI) and Tuberculosis (TB), as well as equity and gender related concerns.

7. This Department awaits the submission of the pre-application Basic Assessment Report. Please note that one printed copy and one electronic copy (saved on CD/DVD) of the pre-application Basic Assessment Report must be submitted.
8. Please note that the pre-application consultation is an advisory process and does not pre-empt the outcome of any future application which may be submitted to this Department. No information provided, views expressed and/or comments made by officials during the pre-application consultation should in any way be seen as an indication or confirmation that additional information or documents will not be requested, or of the outcome of an application.
9. In addition to the above, you must clearly show how the proposed development complies with the principles contained in Section 2 of the NEMA and must also show how the proposed development meets the requirements of Sustainable Development.
10. It is prohibited in terms of the NEMA to commence with a listed activity without a relevant Environmental Authorisation from the Competent Authority. Non-compliance in terms of the prohibition must be referred to the Environmental Law Enforcement Directorate of this Department for possible prosecution. The penalty for a person convicted of an offence in terms of the above is a fine not exceeding R5 000 000 or imprisonment for not more than 10 years, or both such fine and such imprisonment.
11. Kindly quote the abovementioned reference number in any future correspondence regarding this letter.
12. This Department reserves the right to revise or withdraw its comments and request further information from you based on any new or revised information received.

Yours faithfully



HEAD OF COMPONENT

DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING

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