



REFERENCE: 16/3/3/6/7/1/D6/28/0230/20
ENQUIRIES: Ms Jessica Christie
DATE OF ISSUE: 29 January 2021

The Municipal Manager
MOSEL BAY MUNICIPALITY
Private Bag X29
MOSEL BAY
6500

Attention: Mr. C. Venter

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E-mail: cventer@mosselbay.gov.za

Dear Sir

ACKNOWLEDGEMENT OF RECEIPT OF THE NOTICE OF INTENT TO SUBMIT AN APPLICATION FOR ENVIRONMENTAL AUTHORISATION IN TERMS OF THE ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, 2014 FOR THE PROPOSED DEVELOPMENT OF LOUIS FOURIE PRECINCT ON VARIOUS ERVEN, MOSEL BAY MUNICIPALITY

1. The abovementioned undated document received by this Directorate on 11 December 2020 refers.
2. This letter serves as an acknowledgment of receipt of the abovementioned document.
3. From the information provided in the document, it is understood that The Louis Fourie Corridor comprises of the only remaining vacant land within the core of the Mossel Bay town that could provide an integrated solution for a wide variety of housing and social infrastructure. The proposed Integrated scenario aims to provide a middle ground between the three main economic clusters. The township is proposed to consist of:
 - Open Space
 - Residential; and
 - Commercial
4. After considering the information provided in the Notice of Intent the Department concurs that the proposed development constitutes listed activities as defined in terms of the NEMA EIA Regulations, 2014, however, Activities 12 and 27 of Listing Notice 1 (GN No. R. 983 of 4 December 2014 (as amended 7 April 2017)) is applicable and must be included in the forthcoming application form.
5. The following advice or instructions of the nature and extent of any of the processes that may or must be followed or decision support tools that must be used, in order to comply with the Act and the Environmental Impact Assessment Regulations, 2014, is provided below.

5.1. Protocols or Minimum Information Requirements

Please be informed that the applicable protocols or minimum information requirements, which were published in Government Notice No. 320 of 20 March 2020 (Government Gazette No. 43110 of 20 March 2020 refers), which came into effect on 9 May 2020, must be applied to the impact assessment process that must be followed: Provided that if the specialist assessment affected by any of the protocols, was commissioned before 9 May 2020, then the applicant is allowed to continue and submit documents for decision-making, which do not need to comply with the requirements of the protocols. Proof that the specialist work was outsourced before 9 May 2020, is deemed to be sufficient to allow this on a case-by-case basis. In such instances, the specialist report need not comply with the applicable protocol but must comply with Appendix 6 of the Environmental Impact Assessment Regulations, 2014 (as amended).

Therefore—

- in accordance to the above, where the applicable protocol applies any specialist performing work related to any of the fields of practice listed in Schedule I of the Natural Scientific Professions Act, 2003 (Act 27 of 2003) must be registered with the South African Council for Natural Scientific Professions (“SACNASP”) in any of the prescribed categories [Section 18] and further to this, only a person registered with the SACNASP may practise in a consulting capacity [Section 20]; or
- where a specialist assessment was commissioned prior to 9 May 2020, you are required to submit proof to the competent authority that the work was commissioned prior to said date (e.g. approved quotation for specialist assessment and/or proof of work being carried out)

5.2. National Web Based Environmental Screening Tool Report

It is noted that the National Web Based Environmental Screening Tool Report has been attached to the Notice of Intent. In accordance with Regulation 16(1)(b)(v) the report must also be attached to the application for environmental authorisation.

- Site Sensitivity Verification Report and Motivation to Exclude Assessments:

On 20 March 2020 the Minister of Forestry, Fisheries and the Environment published the general requirements for undertaking site sensitivity verification for environmental themes for activities requiring environmental authorisation (Government Gazette No. 43110). In terms of these requirements, prior to commencing with a specialist assessment, the current land use and environmental sensitivity of the site under consideration by the screening tool must be confirmed by undertaking a site sensitivity verification. However, no Site Sensitivity Verification Report which complies with the respective protocols have been included in the NOI. As such you are required to submit a Site Sensitivity Verification Report in accordance with the applicable protocols. Such a report(s) must be submitted to this Directorate prior to the submission of the application for environmental authorisation.

- Specialist studies identified by the screening tool report

Please note that where an assessment is linked to one of the themes for which a protocol has been developed, that the protocol must be implemented, subject to the outcome of the site sensitivity verification.

5.3. Public Participation Plan

This Department has issued various circulars during the respective alert levels of the Covid-19 Lockdown regarding EIA and related licensing services and supporting professional services during Covid-19 Lockdown, the latest being Circular No. 00001/2021¹. In terms of said circular the Department should be approached with a proposed Public Participation Plan ("PP-plan") setting out all the public participation steps, including any additional measures. Considering the above, the following aspects or measures must be addressed/incorporated in a Public Participation Plan (PP-plan):

5.3.1. Notification of potential and registered I&APs:

The public participation process ("PPP") which will be undertaken, must meet the requirements of Regulation 41 of the EIA Regulations, 2014.

It is noted that all the relevant options in terms of Regulation 41(2)(a-d) will be implemented. This Department supports this proposal. However, the PP-plan must indicate that all notices, including site notices include the option for the I&AP to choose/indicate the following:

- the period within which comment must be submitted;
- the preferred method of receiving notifications;
- the preference for receiving reports and other correspondence (i.e. digitally, downloading, hardcopy per mail etc.); and
- whether the I&AP has any specific needs/restrictions which must be considered when receiving notices/documents.

5.3.2. Registering as Interested and Affected Parties ("I&APs"):

An applicant must ensure the opening and maintenance of a register of I&APs. In this regard it is noted that the parties identified in Regulation 41(2)(b) will be notified.

A Register of I&APs must be included in the PP-plan and must incorporate the following:

- Choice for the preferred method of receiving notifications; and
- Choice for the preference for receiving reports and other correspondence (i.e. digitally, downloading, hardcopy per mail etc.); and
- any disadvantage an I&AP may have to participate in the process (including receiving notices and accessing documentation digitally).

5.3.3. Making reports available for comment:

Registered I&APs are entitled to comment on reports and plans in writing, on all reports or plans submitted to such party during the public participation process.

The PP-Plan must describe how the EAP will submit the reports to potential and Registered I&APs. Furthermore, it is noted that allowance has been made in the event where I&APs do not have sufficient data to download electronic documents. Please be advised that potential and registered I&APs must have a minimum of 30 days to comment on report. This must be addressed in the PP-plan.

Furthermore, it is advised that all potential interested and affected parties including I&APs and organs of state, must be afforded a minimum of seven (7) calendar days from date of notification before the 30-day commenting period on the Draft Basic Assessment Report. However, where the seventh day falls on a Saturday, Sunday or public holiday, it must be extended to the end of the next day which is not a Saturday, Sunday or public holiday.

[1] CIRCULAR DEA&DP NO. 0001/2021: EIA AND RELATED LICENSING SERVICES AND SUPPORTING PROFESSIONAL SERVICES DURING COVID-19 LOCKDOWN ALERT LEVEL 3 AND FOR THE REMAINDER OF THE COVID-19 NATIONAL STATE OF DISASTER, ISSUED ON 6 JANUARY 2021.

5.3.4. Notifying registered I&APs of a decision made on the application and providing access to the decision:

- a) The PP-Plan must clearly describe the how registered I&APs will be notified of the decision on an application and how access will be provided to a copy of the decision.
- b) Hard copies or electronic versions of decisions may be made accessible through any of the following non-exhaustive list of methods:
E-mail; websites, Zero Data Portals, community or traditional authorities, Cloud Based Services, provided that all registered I&APs have access to the decision.
- c) It must be possible to cross-reference this method with the preferences indicated in the I&AP Register.
- d) The applicant or EAP must be able to provide proof that all registered I&APs have been notified and provided access to the decision.

Notwithstanding the above, the following must also be addressed:

6. Notwithstanding the above, the following must also be addressed:

6.1. Synchronising applications in terms of other applicable legislation with the EIA process

(a) *National Water Act, Act No. 36 of 1998 ("NWA")*

(Synchronisation of the WULA – EIA processes / applications)

You are required to engage with the Breede-Gouritz Catchment Management Agency ("BGCMA") in respect of any authorisations which may be required in terms of the National Water Act, Act No. 36 of 1998.

Please be advised of the required synchronisation between the EIA process and the Water Use License Application ("WULA") process (if required). You are reminded that if these processes are not properly aligned, the lack of synchronisation; omission of any reports/information; or delay as a result thereof, may prejudice the success of this application for environmental authorisation.

Furthermore, specialist reports submitted as part of the BAR (including those submitted for consideration and which also may form part of the WULA) must comply with the requirements of Appendix 6 of the Environmental Impact Assessment Regulations 2014.

(b) *National Heritage Resources Act, 1999 (Act No. 25 of 1999) ("NHRA")*

(Synchronisation of the HIA – EIA processes / applications)

Section 38 of the NHRA sets out the requirements regarding the integration of the decision-making processes with that of the EIA Regulations 2014, however, under the proviso that the necessary information is submitted and any comments and recommendations of the relevant heritage resources authority (HWC) with regard to such development have been provided and taken into account prior to the granting of the authorisation. Further to the above:

- An application for Environmental Authorisation, must include, where applicable, the investigation, assessment and evaluation of the impact of any proposed listed or specified activity on any national estate referred to in section 3(2) of the National Heritage Resources Act, 1999 (Act No. 25 of 1999), excluding the national estate contemplated in section 3(2)(i)(vi) and (vii) of that Act.

- Where Section 38 of the NHRA is triggered, the Standard Operating Procedure between Heritage Western Cape and this Department must be followed. If Section 38 is applicable to the proposed development, then the proponent/applicant is required to submit a Notice of Intent to Develop ("NID") to Heritage Western Cape and attach a copy to thereof to the EIA application form. If Heritage Western Cape requires a Heritage Impact Assessment, the Heritage Impact Assessment must be undertaken as one of the specialist studies of the EIA process to be undertaken in terms of the EIA Regulations, 2014.

It is reasonable to suspect that if the proposed activity triggers an activity identified in terms of section 38 of the National Heritage Resources Act, 1999 (Act No. 25 of 1999) ("NHRA") and it is likely that the national estate may be impacted upon. Comment from Heritage Western is therefore required.

*(c) Conservation of Agricultural Resources Act, 1983 (Act No. 43 of 1983) ("CARA")
(Synchronisation of the CARA – EIA processes / applications)*

Where an application for the cultivation of virgin soil application in terms of the CARA and the Conservation of Agricultural Resources Regulations of 1984 (as amended) ("CARA Regulations") must be complied with, the Standard Operating Procedure between the Department of Agriculture and this Department must be followed.

6.2. Principles of the National Environmental Management Act, 1998 (Act 107 of 1998) ("NEMA")

This Directorate reminds you that the NEMA specifically states that the principles set out in section 2 apply throughout the Republic to the actions of all organs of state that may significantly affect the environment. The above-mentioned principles must therefore be considered and applied by the approving authority in the taking of the decision to approve such a plan.

In addition to this, the impact mitigation hierarchy or impact mitigation sequence must be clearly shown in the assessment process. Where it is found that after every effort has been made to avoid or prevent impacts, minimise and then rehabilitate remaining impacts to a degree of no net-loss of biodiversity against biodiversity targets, yet significant residual negative impacts on biodiversity remain, a mechanism such a biodiversity offset may be considered to remedy the impact.

The need for biodiversity offsets must be identified, and potential offsets must be investigated and evaluated, during the Environmental Impact Assessment (EIA) and decision-making process for proposed development. This process may require extensive consultation with relevant conservation authorities. Where this mechanism is applicable, the synchronisation of such a process with the EIA process is of the utmost importance.

7. 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 the 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
- of the outcome of the application

8. Due to the current measures being implemented by the Department to address, prevent and combat the spread of COVID-19 and until such time that the Department requires otherwise, all applications, reports and documents, which include all signatures and Annexures which are included as part of the application and subsequent reports, must be submitted via e-mail to the relevant official, with

attached PDF versions of letters and reports. If the documents are too large to attach to an e-mail, the competent authority must be notified per e-mail and provided with an electronic link to such documents that is accessible by the relevant authority.

Note: The Directorate: Development Management (Region 3), has created a generic e-mail address to centralise its administration within the component (i.e. notifying clients of decisions and receiving EIA applications, Notice of Intent form; request for fee reference numbers, etc.) Please make use of the new e-mail address too when submitting such documents:

DEADPEIAAdmin.George@westerncape.gov.za

9. Please note that the activities may not commence prior to an environmental authorisation being granted by this Directorate.
10. This Directorate reserves the right to revise or withdraw initial comments or request further information from you based on any information received.
11. Please note that it is an offence in terms of Section 49A(1)(a) of the NEMA for a person to commence with a listed activity unless the Competent Authority has granted an Environmental Authorisation for undertaking it. Failure to comply with the requirements of Section 24F of the NEMA shall result in the matter being referred to the Environmental Compliance and Enforcement Directorate of this Department. 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.
12. This Department reserves the right to revise or withdraw initial comments or request further information from you based on any information received.

Yours faithfully

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HEAD OF COMPONENT

ENVIRONMENTAL IMPACT MANAGEMENT SERVICES: REGION 3

DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING

Reference: 16/3/3/6/7/1/D6/28/0230/20

CC: EAP: Mr Ronaldo Retief

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