

PER E-MAIL

REFERENCE: 16/3/3/6/7/1/D6/28/0230/20
ENQUIRIES: Ms Jessica Christie
DATE OF ISSUE: **22-SEP-2021**

The Municipal Manager
MOSEL BAY MUNICIPALITY
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MOSEL BAY
6500

Attention: Mr. Carel Venter

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Dear Sir,

COMMENT ON THE PUBLIC PARTICIPATION PLAN FOR THE PROPOSED LOUIS FOURIE MIXED-USE DEVELOPMENT, MOSEL BAY

1. The abovementioned document dated July 2021 received by this Department on 9 July 2021 refers.
2. This Directorate hereby acknowledges receipt of the document.

3. Public Participation Plan

In accordance with this Department's Circular 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*, dated 6 January 2021 a Public Participation Plan ("PP-Plan") which details the measures to be undertaken in respect of the public participation process and identifies which authorities and potential I&APs will be informed of the proposal must be submitted.

Considering the above, this Directorate has reviewed the proposed Public Participation Plan ("PP-Plan") and found that there are a few shortcomings that need to be included in the PP Plan:

3.1. *Complying with Regulation 41 during the Pre-Application or Application phase*

- ❖ The public participation process ("PPP") which will be undertaken, must meet the requirements of Regulation 41 of the EIA Regulations, 2014. The public participation (i.e. notification process in terms of Regulation 41) may be undertaken prior to the submission of the application (Pre-Application), although this is not mandatory.
- ❖ The PP-Plan must describe whether I&APs will be provided with an opportunity to comment on the Scoping Report, as contemplated in Sub-Regulation 40(1)(a) prior to the submission of the application for Environmental Authorisation (i.e. Pre-Application BAR).

- ❖ The PP-Plan must indicate when the person conducting the public participation process intends to comply with Regulation 41 in its entirety, e.g. within the Pre-Application Phase or the Application phase.
- ❖ The person conducting the public participation process may comply with Regulation 41 during both the Pre-Application and Application phase.

3.2. Notification of I&APs in terms of Regulation 41 of the EIA Regulations, 2014

The person conducting a public participation process must give notice to all potential interested and affected parties of an application or proposed application which is subjected to public participation by—

- ❖ Notice boards
 - The PP-plan must indicate if notice boards will be utilised, if no notice board(s) will be utilised, a motivation must be provided and an application for exemption may be required.
 - The PP-plan must describe where the notice boards will be placed (Note: this must be at a place conspicuous to and accessible by the public at the boundary, on the fence or along the corridor of the site where the activity to which the application or proposed application relates is or is to be undertaken; and any alternative site).

It is noted that Notice Boards were placed at three (3) positions according to the map in the PP Plan, however, these notice boards do not comply with Regulation 41(3).

- ❖ Written notices
 - The manner of delivering the written, as provided for in section 47D of the NEMA, must be described.
 - It must be possible to cross-reference this with the preferences indicated in the I&AP Register.
- ❖ Placing an advertisement in a local newspaper
 - The PP-Plan must indicate in which local newspaper an advertisement will be placed.
 - If no advertisement will be placed in a local newspaper, a motivation must be provided and an application for exemption may be required.

It is noted that an advertisement was placed in the "Mossel Bay Advertiser" on the 12th March 2021, however, this advertisement does not comply with Regulation 41(3).

- ❖ Placing an advertisement in at least one provincial newspaper or national newspaper
 - The PP-Plan must indicate in which provincial newspaper an advertisement will be placed, if the activity has or may have an impact that extends beyond the boundaries of the metropolitan or district municipality in which it is or will be undertaken: Provided that this requirement need not be complied with if an advertisement has been placed in an official Gazette.
- ❖ Using reasonable alternative methods:
 - illiteracy;
 - disability; or
 - any other disadvantage.

- Proponents/Applicants and EAPs, in addition to the methods contained in Chapter 6 of the EIA Regulations, or as part of reasonable alternative methods proposed in terms of regulation 41(2)(e)(iii) of the EIA Regulations, may make use of the following non-exhaustive list of methods: *e-mails, websites, Zero Data Portals, Cloud Based Services, or similar platforms, direct telephone calls, virtual meetings, newspaper notices, radio advertisements, community representatives, distribution of notices at places that are accessible to potential I&APs.*
- The PP-plan must clearly identify the disadvantage and describe which method will be utilised to notify the I&APs.

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 clearly describe how the EAP will submit the reports to potential and Registered I&APs.
- ❖ Delivery of reports/documents must be done in a manner provided for in section 47D of the NEMA.
- ❖ Hard copies or electronic versions of reports may be made accessible through any of the following non-exhaustive list of methods: websites, Zero Data Portals, community or traditional authorities, Cloud Based Services, provided that all registered I&APs have access to the reports.
- ❖ Where I&APs cannot gain reasonable access to electrotonic copies, alternative means must be described, and provision must be made in the timeframes for the delivery of such documents.
- ❖ It must be possible to cross-reference the proposed delivery of documents to the preferences indicated in the I&AP Register.
- ❖ Reports may not be made available at any public places or premises closed to the public, as contemplated in the Regulations.

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

- ❖ 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.
- ❖ 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.
- ❖ It must be possible to cross-reference this method with the preferences indicated in the I&AP Register.

- ❖ The applicant or EAP must provide proof that all registered I&APs have been notified and provided access to the decision.

3.5. Timeframes

- ❖ The PP-Plan must clearly describe the timeframes of the PPP in relation to the Project Programme. A clear distinction must be made between the Pre-Application phase and Application phase PPP.
- ❖ Regulation 3(8) requires that any public participation process must be conducted for a period of at least 30 days.
- ❖ All interested and affected parties ("I&APs") including organs of state must be afforded a minimum of **three (3) calendar days** from date of notification before the 30-day commenting period on the Pre-application Basic Assessment Report ("BAR") and the link to access the supporting documents, commences. However, where the third 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.

4. **Due to the nature and extent of the proposal, the following method of consultation must be incorporated into the PP-Plan prior to any general Public Participation being conducted:**

4.1. An additional authority meeting must be conducted with this Directorate, the Mossel Bay Municipality and the Environmental Assessment Practitioner to discuss the proposal and the various limitations on the properties in question presented by previous Environmental Authorisations etc. This meeting must be held before the 15th December 2021.

4.2. Thereafter, an authority stakeholder meeting / workshop must be held to discuss the strategic planning for this proposal and strategic aspects such as a possible biodiversity offset. The stakeholder list must include *inter alia* the following stakeholders:

- ❖ WCG: Department of Environmental Affairs and Development Planning—
 - EIMS Region 3
 - Regulatory Planning Advisory Services Region 3
 - Spatial Planning & Support Services (Region 3)
 - Biodiversity and Coastal Management (Sub-directorate: Biodiversity)
 - Pollution and Chemicals Management;
 - Waste Management;
- ❖ WCG: Department of Agriculture;
- ❖ WCG: Department of Health;
- ❖ WCG: Department of Education;
- ❖ WCG: Department of Transport and Public Works;
- ❖ CapeNature;
- ❖ Heritage Western Cape;
- ❖ Breede Gouritz Catchment Management Agency;
- ❖ Mossel Bay Municipality; and
- ❖ WESSA.

5. 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

6. 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.
7. 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

Ref no. 16/3/3/6/7/1/D6/28/0230/20

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