



File Name.: Preekstoel 1012
DEADP Ref. No.: 14/1/1/E3/8/2/3/L1280/22

Environmental Planning
Impact Assessments
Management Plans
Environmental Audits

Tel.: 083 658 8744
aubreywithers@mweb.co.za
6 Santa Rosa St.,
DIE BOORD, 7613

30 January 2023

The Acting Director
Directorate: Environmental Law and Enforcement
DEADP
93 York Street
GEORGE
6529

For Attention: Mr Mr Raheem Dalwai

email to: Raheem.Dalwai@westerncape.gov.za

Dear Sir

PRE-COMPLIANCE NOTICE : INTENTION TO ISSUE A COMPLIANCE NOTICE IN TERMS OF SECTION 31L OF THE NATIONAL ENVIRONMENTAL ACT, 1998 : PREEKSTOEL COASTAL ESTATE ON ERF 1028 AND PORTION 3 OF ERF 599, STILL BAY EAST, WESTERN CAPE

I refer to your Pre-Compliance Notice emailed to me on Monday 23 January 2023, regarding the alleged allegations of non-compliance with the Environmental Authorisation (EA) 16/3/3/1/D5/18/0001/17 dated 6 February 2018, namely with the Conditions of Approval.

I reply to the allegations in the order and numbering system that you have used in your letter as follows:

- your allegations are presented in bold italics; and
- my response is in normal print.

2. *On considering the evidence before the Directorate: Environmental Law Enforcement there are reasonable grounds to believe that you have not complied with the following conditions of your EA:*

Condition 4:

4. The holder shall be responsible for ensuring compliance with the conditions by any person acting on his/her behalf, including an agent, sub-contractor, employee or any person rendering a service to the holder.

I am sure that the holder, Vivren Properties (Pty) Ltd., which is represented by the two Directors, know their responsibilities for ensuring compliance with the EA. Both Directors are seasoned developers.

Condition 5:

5. Any changes to, or deviations from the scope of the alternative described in section B above must be accepted or approved, in writing, by the Competent Authority before such changes or deviations may be implemented. In assessing whether to grant such acceptance/approval or not, the Competent Authority may request information in order to evaluate the significance and impacts of such changes or deviations, and it may be necessary for the holder to apply for further authorisation in terms of the applicable legislation.

Section B of the EA deals with the List of Activities Authorised by the DEADP: Directorate Development Management (DEADP). *The holder is herein authorised to undertake the following alternative that includes the listed activities as it related to the development and development footprint area, namely:*

The development of a residential estate on Erf 1028 and a Portion of Portion 2 of Erf 599, Still Bay.

The development site is 137 691 square metres in extent and will comprise the following:

- *Residential buildings: 114 single residential stands (58 540 square metres);*
- *Boutique Hotel (25 bedrooms) and Restaurant (3 147 square metres);*
- *Roads (16 608 square metres);*
- *Private Open Space (22 083 square metres), comprising a coastal ecological zone parallel to the high water mark and an open space system within the development (conservation corridor) and small clubhouse facilities (330 square metres);*
- *Utility Zone: comprising maintenance/security building, boat/trailer storage area (2 468 square metres).*
- *A single wooden boardwalk across the frontal dune from the public road, providing access to the beach for the general public and residents of the Preekstoel Coastal Estate (1.5 metre wide);*
- *Public Open Space (coastal corridor) (32 838 square metres);*
- *Biological Waste Water Treatment Plant (BWWTP) or Package Sewage Plant (300 square metres);*
- *Public Ablution Facility (75 square metres); and*
- *Public Parking (1 225 square metres).*

Part of the development approvals includes the rehabilitation of the Private Open Space area comprising a coastal ecological zone parallel to the high-water mark. To undertake such rehabilitation, it was either necessary to trap sand being eroded off the beach by brushwood fences to try and build up the sand denuded from the frontal dune system and then to stabilise the dunes that formed by planting strand plants on them; or to undertake mass earthworks to transport the sand removed from the coastal dune system by tens of decades of mismanagement and used by off-road vehicles and pedestrian trampling of coastal vegetation. To undertake such methods such as trapping sand or mass earthworks, it was necessary to get approval for Listing Notice 1: Activities 18, 19A and 27; together with Listing Notice 3: Activity 12 from the competent authority, namely the DEADP. These activities were accordingly approved.

In terms of the history of the rehabilitation of the mobile dune plume to the east of the Goukou Estuary, it is important to note that the then Department of Forestry undertook a massive project to stabilise the mobile dune plume during the middle 1920's through to the 1950's by using invasive, exotic rooikrans trees and exotic marram grass from Europe. A frontal dune was also artificially stabilised too close to the then high-water mark from east of the estuary mouth through to the end of the Preekstoel beach (to where the fossilised ancient dune rock starts (coastal foreland scarp). A trial method of trapping sand moved off the beach was investigated by erecting brushwood fences within blow-out scars and along the foot of the back dune (**Photo 1**) during the week of 1 to 5 November 2021 (refer herewith to **Appendix 1**).



Photo 1: About 220m of brushwood fencing (arrows) was erected on the highly eroded Preekstoel frontal dune system.



Photo 2: Photo 1 was taken at approximately the same place as Photo 2. Photo 2 shows the rehabilitated frontal dune as on 21 August 2022. The red arrow shows the top of the same “stack” as in Photo 1. The stack was about 3.5m high. The transplanted strand plants can be seen between the shade cloth “fences”.



Photo 3: Shows the growth of the transplanted strand plants on the rehabilitated frontal dune system. The red arrow shows the top of the “stack”. The photo was taken on 12 December 2022.

On 4 March 2022 I had a site meeting with Mr Deon van Eeden, a dune rehabilitation expert, to assess the brushwood fences that had been used as a trial period for trapping sand and preventing the further erosion of sand from the badly eroded frontal dune system. After close examination of the brushwood fences and the mass erosion that had taken place on the frontal dune system, Mr Van Eeden came to the conclusion that only minor amounts of sand would be trapped by the brushwood fencing and that the sand eroded (by wind) from the dune system and trapped along the back dune (within the rooikrans vegetation, where windblown sand over the years increased the height of the back dune as more sand was trapped) should be removed by mechanical means (by an excavator) from the back dune area and replaced in the large blow-outs that had occurred on the eroded

frontal dune system, to the hummocky dunes that had formed just above the spring high water mark. He also indicated that the indigenous strand plants that were growing on the parts of the back dune system should be harvested before mechanical removal of the sand in the back dune area for later transplanting once the sand had been replaced.

A meeting between the applicants, Mr Van Eeden and myself took place on 28 April 2022 to inform the applicants of the recommendation for using mechanical means to remove the trapped sand from the back dune area to the blow-outs and eroded frontal dune system. The follow up rehabilitation of the dune system was also discussed. The applicants gave the go-ahead to rehabilitate the badly eroded frontal dune system and work started on 8 August 2022. By this time it was estimated that about 20 to 30m³ of sand had been trapped by the brushwood fences. This in essence meant that for sufficient sand to be trapped to form dunes within the areas, where massive amounts of sand had been eroded by the wind over some 80 years, it would take a further 80 or so years to build up sufficient sand to artificially create dunes to be rehabilitated with vegetation.

We do not believe that any changes to, or deviations from the scope of the alternative described above have taken place on the site. Certainly, all the required listed activities to undertake the above rehabilitation of the frontal dunes were approved and have been acted upon. At our site visit of 8 September 2022, one of the officials from the DEADP in George, indicated that it would appear to him that there had been a change in scope of the rehabilitation of the dunes. I did not agree with this official.

However, if the Directorate: Environmental Law and Enforcement **believes there was a change in scope**, then the developers and I will be happy **to undertake a Section 24G application**, in terms of NEMA, 1998 (as amended), and the NEMA EIA Regulations of 2014 (as amended), and the Section 24G Fine Regulations (2017) (GNR No. 40994 of 20 July 2017), **to be able to apply for ex post facto approval for the rehabilitation of the frontal dune system** to the south of the low risk management line to the spring tide high water mark of the Preekstoel beach.

Condition 7:

7. Seven calendar days' notice, in writing, must be given to the Competent Authority before commencement of construction activities.

7.1. The notice must make clear reference to the site details and EIA Reference number given above.

An email was sent to the DEADP: Appeals Division (Mr Marius Venter) and Mr Gavin Benjamin (DEADP: Development Management in George, amongst others) on 18 October 2021 (refer herewith to **Appendix 2**). It is interesting to note that the only one to respond to this notification was Mr Venter.

7.2. The notice must also include proof of compliance with the following conditions described herein: Condition No.: 6, 8, 10, 17 and 21.

Condition 6 was supplied to the Competent Authority (DEADP in George) and is not required here.

Condition 8:

8. The draft or Environmental Management Programme ("EMPr") submitted as part of the application for Environmental Authorisation must be amended to address the following aspects, and must then be resubmitted to the Competent Authority and approved prior to commencement of construction.

The EMPr was amended in October and November 2021 and again in January 2022. I received an email from Mr Loxolo Kula from the DEADP Appeals Division in Cape Town on 1 December 2021 regarding proof of submission of Condition 6 (of the Appeal decision) 8, 17 and 21 of the Appeal Environmental Authorisation (I believe Mr Kula meant the original EA that had been issued by the DEADP in George. I responded by email to Mr Kula that I had had a serious neck operation (on 16 November 2021) and that I would only be able to respond to him in full in the second week of January 2020 (**Appendix 3**).

I posted a letter (rather than emailing it because of the size of the file), with a memory stick, to Marius Venter (Minister's office) on 14 January 2022 regarding the revised EMPr and other compliances in respect of the conditions of approval required in terms of the EA. I would normally have personally taken the memory stick to Mr Venter's office, but I was still not allowed to drive a car or drive in a car because of my neck operation. I did not follow up with Mr Venter as to whether such information posted to him had actually been received by him or not. Why I did not follow up with Mr Venter is a mystery to me. I simply forgot.

Despite having followed due process by informing the DEADP of the start of dune rehabilitation, mass earthworks and the installation of municipal services (by email) and indeed emailing three ECO Checklists to Mr Venter and the George office, I only received the applicable emails from Mr Venter to say that he had received my correspondence. I did not receive any follow-up emails from either Mr Venter or Mr Kula, or the George office indicating that there was anything remiss. It was only from correspondence from Mr Danie Swanepoel of the DEADP George office (dated 30 September 2022), that I was led to believe that Mr Venter never received my letter and memory stick posted to him.

All I can think is that there was perhaps a miscommunication between the various Departments of the DEADP (Minister's office, Appeals Division and the George office: Directorate of Development Management), regarding the letter from the Minister indicated that the various offices of the Directorate Development Management would be taking over those projects that were originally assigned to the Appeals Division (as contained in a recent email from Mr Venter to me). The first contact with the DEADP George office from the time I informed the various Departments at the DEADP (Mr Venter's office and the DEADP George office) regarding the start of the Preekstoel contract, was only on 7 September 2022 when I was contacted telephonically by Ms Jessica Christie from the DEADP George office that she would be undertaking a site visit on 8 September 2022. This visit happened to coincide with my next ECO site visit. At the site visit I was asked whether I had submitted the required information (Conditions of Approval). I responded that I had sent a letter and memory stick with the relevant information to Mr Venter's office in January 2022. I was also asked if written approval for the revised EMPr had been received from the DEADP Minister's office. I replied that I had not. It was only then that I realised I was in trouble. Whilst I did post the revised EMPr and the relevant Appendices to Mr Venter I had completely forgotten to follow up about the approval of the EMPr, as noted above.

Given that I was remiss in that I did not make sure that the revised EMPr had been approved, I should have informed the developers that approval for the revised EMPr had not been given and that construction should not go ahead. Given the above **the developers and I would be happy to undertake a Section 24 G application as mentioned above.** A copy of the revised EMPr and its Appendices were emailed to the DEADP George. A copy of the Revised (November 2021) is herewith provided to you.

8.1. *Incorporate all the conditions given in this Environmental Authorisation;*

All the conditions of approval were added into the revised EMPr.

8.2. *Comply with section 24N of the National Environmental Management Act, 1998 and Appendix 4 of the Environmental Impact Assessment Regulations, 2014;*

I believe that the revised EMPr complies with section 24N and Appendix 4 of the EIA Regulations of 2014.

8.3. *Clearly list the impact management outcomes and impact management actions for the proposed development;*

I believe that the impact management outcomes and impact management actions for the proposed development are incorporated into the revised EMPr.

8.4. *Incorporate the recommendations from specialist reports (i.e. Botanical, HIA, Visual & Traffic);*

I believe that the recommendations from the specialist reports are incorporated into the revised EMPr.

8.5. *Include detail on soil protection and rehabilitation measures that can be installed in areas where erosion may occur.*

I believe that the erosion measures for soil protection and rehabilitation measures have been incorporated into the revised EMPr.

8.6. *Include a site plan that —*
(a) *indicates the services on the site in terms of the sewer pipelines, water supply and electrical infrastructure; and*

The services plan from the consulting engineer was included in the revised EMPr.

- (b) provides a distinction between the private open space and the public open space.**

The **site development plan** used in the revised EMPr **does not clearly define the public open space and the private open space as both these open spaces have been designated as “POS”**. The POS that runs parallel to the high water mark to the south of the development is the conservation corridor between the high water mark and the low risk management line (refer herewith to **Appendix 4**).

- 8.7. Include a detailed Storm Water Management Plan that shows exactly where the specific water features / ponds will be located and associated infrastructure will be constructed.**

The stormwater management plan from the consulting engineers was included with the revised EMPr.

- 8.8. Include a rehabilitation plan for the Frontal Dune System on Erf 1028. The “Rehabilitation Guidelines” for the Frontal Dune System on Erf 1028 may serve as reference for such a plan. The plan must inter alia address the following:**

- (a) Only locally indigenous vegetation species may be planted on exposed sand surfaces, dunes or blow-out areas. This must clearly include locally indigenous dune vegetation.**
- (b) Planting Marram Grass (*Ammophila arenaria*) or any other identified alien invasive species must be strictly forbidden.**
- (c) The irrigation plan during the non-operational phase must be detailed. The irrigation of the frontal dune with effluent must be prohibited. Only potable water or effluent treated to potable standard may be used and only for the initial establishment of the planted vegetation.**

The Maintenance Management Plan: Rehabilitation Guidelines for the Frontal Dune System on Erf 1028, Still Bay East was included as Appendix 4 to the revised EMPr (refer herewith to **Appendix 5**). **Note that the irrigation plan for the non-operational phase was not included** in the Maintenance Management Plan, primarily because I am not an irrigation specialist. What I do know is that once rehabilitation of dunes by planting locally indigenous strand plants has been undertaken, the rehabilitated area should be irrigated for at least a two years period after planting. This is currently taking place on the rehabilitated frontal dune system.

- 8.9. Include an Alien Vegetation Management / Eradication plan for the removal of alien invasive species and on-going management of the open space areas on the property. This plan must include targets that must be achieved. This plan must include fire management too;**

An Alien Vegetation Management report was provided with the EMPr (the EMPr's Appendix 3) (refer herewith to **Appendix 6**).

A basic Fire Management Plan is included with the revised EMPr (the EMP's Appendix 5) (refer herewith to **Appendix 7**).

- 8.10. Operational Aspects –**

- 8.10.1. Provide an implementation plan with clear impact management outcomes and which highlights when each phase of the development will be handed over to a Homeowner's Association or Body Corporate for management of the open spaces etc.**

The EMPr deals with Operational Aspects of the development. Generally, a HOA is only formulated when one or more properties have been transferred to the new owner. Only once all properties of a particular phase have transferred to the new owners and the new owners are satisfied that the developer hands over total control to the new owners does the developer withdraw from the HOA for that particular phase.

- 8.10.2. Incorporate a schedule for the ECO to conduct site inspections during the operational phase of the development to monitor compliance with the Environmental Management Programme and the Environmental Authorisation.**

A proposed schedule is given in the Operational Aspects of the revised EMPr, which is also alluded to in the Conditions of Approval.

8.10.3. Include a conservation management plan for the private open space area in the estate and Erf 593; and

A **Conservation Management Plan was not compiled** in terms of the EMPr for the private open space area within the estate. The EMPr does, however, allude to the fact that Blombos Strandveld species must be used in the landscaping plan. The landscaping of the first phase that was completed at the end of last year (15 December 2022) still needs to be undertaken according to the landscaping master plan that was included with the BAR and the EMPr.

8.10.4. An indication of the persons who will be responsible for the implementation of the impact management actions.

Generally during the Construction Phase of the project, the appointed ECO would be responsible for the implementation of the impact management actions. Thereafter the HOA would be responsible for the operational management actions. I did inform the Appeals Unit and the DEADP George office that I had been appointed as the ECO.

Condition 18:

18. The holder must ensure that vehicular and pedestrian access to the Geelkrans Nature Reserve is established and maintained across the property during all phases of the proposed Preekstoel Coastal Estate. Further to this—

This condition of approval has been adhered to during the construction of Phase 1 of the project.

18.1. any member of the public must be allowed to gain vehicular or pedestrian access to the Geelkrans Nature Reserve across the site;

There was no conflict with this condition of approval during the Phase 1 construction phase.

18.2. the holder of the authorisation must have an access servitude registered across the portion of Erf 599 for the access road along the proposed alignment. Such servitude must be registered against the title deed of the portion of land of Erf 599 and must be applicable to the successors in title of the portion of Erf 599;

This aspect of the condition of approval is **currently being dealt with by the appointed attorney** of the developer. This aspect could only take place now as the **property has only recently been transferred** from the Hessequa Municipality to Vivren Properties (Pty) Ltd.

18.3. the holder must formalise the road access to the Geelkrans Nature Reserve at his own cost;

The developer will undertake this upgrade to the road once the development has been fully constructed.

18.4. the Geelkrans Nature Reserve must be accessible to the public (both vehicular and pedestrian access) at all times during the construction phase of the development.

This condition of approval is being honoured.

Condition 21:

21. The holder must, prior to the activities commencing on site, register the following legally binding provisions or obligations on the land between the development setback line and the high water mark of the sea (i.e. private and public open space) to limit the use of the proposed open space area for a conservation use.

If the Directorate: Environmental Law and Enforcement **believes the activities (rehabilitation of the frontal dune system) and the construction of Phase 1 of the development were undertake without due approval**, then the developers will be happy **to undertake a Section 24G application**, as is contained in Condition 5 above. As noted above and below and 21.1 below, such legally binding provisions have not been possible until transfer takes place (of a portion of Erf 599) and as indicated below such a “servitude” is not possible for the conservation corridor.

21.1. “Non-User Conservation Servitude” The holder is required to register, in favour of the Hessequa Municipality and the Home Owners Association, a conservation servitude over the identified land which requires protection from development in perpetuity and in order to secure the conservation of the site. The conditions of the conservation servitude must inter alia address the following measures –

- (a) No earthworks or any form of development is permitted within the area, except if environmental authorisation is granted and in accordance with an approved conservation management plan;**

Please note the attorney for the developer has indicated that the registration of such a servitude is legally not possible (given that a HOA has yet to be formed). In any event, this conservation corridor has been rezoned from “undetermined” use to **Open Space III**, which means it is for “**conservation use**”, so the attorney for the developer believes that this condition is “mute”.

It should be noted that authorisation has been obtained for earthworks in terms of the authorisation of the required listed activities. Similarly, **a maintenance management plan was prepared for the rehabilitation of the frontal dune system** (refer to the attached **Appendix 5**). As noted above if the competent authority believes there was a change in scope of the dune rehabilitation programme, then the developers and I will be happy to **undertake a Section 24G application as noted above in Condition 5 above.**

- (b) No landscaping; encroachment by gardens (albeit deliberate or inattentive) or planting except for rehabilitation in terms of an approved management plan;**

Whilst properties have been sold to investors, no houses have been built and no domestic gardens have been planted. There is a valid 5m setback from the low risk management line. However, private domestic gardens are allowed to be planted between the 5m building line and the low risk management line. Such gardens are to be only planted with Blombos Strandveld species and no kikuyu grass is to be planted at all.

- (c) No collection or damaging of fauna and flora;**

No fauna have been collected or damaged (injured), whilst indigenous strand plants growing on the remnant dune system were collected for transplanting on the rehabilitated dunes within the conservation corridor (refer to **Photo 3** above).

- (d) No vehicles of any type are permitted, unless ORV permit has been issued by the competent authority for the purpose thereof;**

No vehicles have been allowed on the conservation area. An excavator was used to transport and spread the sand collected in the back dune area toward the hummocky dunes above the spring high tide mark. The applicable listed activities were approved for this purpose.

- (e) Access points and access control.**

The only access point to the beach is off the tar road over the back dune area to the beach. Pedestrians were kept out of the dune rehabilitation area with the use of numerous sign boards.

- 3. In terms of section 49A(1)(c) of the NEMA it is an offence to fail to comply with or contravene a condition of an environmental authorisation granted for a listed activity or specified activity. A person convicted of such an offence 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 such imprisonment.**

As noted above I believe that all **the necessary listed activities were approved** for this development. Again, if the competent authority **believes that any condition of approval was not complied with** then the developer and I are willing to **undertake a 24G Application** as has been noted above (particularly Condition 5 above).

- 4. As such, you are hereby given notice of the Department’s intention to issue you with a Compliance Notice in terms of section 31L of the NEMA, which will instruct you to:**

- 4.1. Immediately cease all activities on site, and**

No further construction is taking place on the Preekstoel property, other than irrigating the strand plants on the dune system.

4.2. comply with the conditions of the above EA.

The developers and I will be happy to comply with those conditions of the above EA if we are found wanting.

- 5. Furthermore, failure to comply with a Compliance Notice is an offence in terms of section 49A(1)(k). A person convicted of failing to comply with a Compliance Notice is liable to a maximum fine of R5 million or 5 years imprisonment or both such fine and such imprisonment.**

As noted above, the developer and I will comply with a Compliance Notice should it be served on us if after due consideration of our responses herewith by the Directorate: Environmental Law Enforcement if we are found wanting.

- 6. You are afforded a period of 7 (seven) calendar days from the date of receipt of this Pre-Compliance Notice to make written representations to the Department as to why a Compliance Notice should not be issued.**

Written representations are supplied above and we trust that they will be given fair consideration by your Directorate.

- 7. If you inform the Department, in respect of paragraph 6 above that you intend to rectify the non-compliance, you must submit to the Department for approval, within 30 (thirty) calendar days of receipt of this Pre-Compliance Notice, an Action Plan outlining the measures which will be implemented to ensure compliance with the EA.**

If the developers and I are found wanting, we **will provide your office**, within 30 calendar days of receipt of this Pre-Compliance Notice, i.e. on or before 22 February 2023, **with an Action Plan** outlining the measures which will be implemented to ensure compliance with the EA.

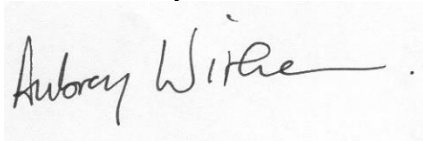
- 8. If the above plan is approved by the Department, you will be obliged to take the necessary remedial / mitigation measures at your own cost.**

The developers and I will be happy to undertake the remedial / mitigation measures at our own cost.

- 9. Notwithstanding the above plan, the Department may issue a Compliance Notice and/or commence criminal proceedings should circumstances so require.**

The developers and I trust that it will not be necessary to commence criminal proceedings and your Directorate will be given our fullest co-operation to resolve any issues pertaining to the EA.

Yours sincerely



A.W.WITHERS

Aubrey Withers Environmental Consultant

EAPASA Reg. No.: 2022/5105