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Dear Mr Meinesz

APPEAL LODGED IN TERMS OF SECTION 43(2) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) AGAINST THE ENVIRONMENTAL AUTHORISATION GRANTED FOR THE PROPOSED PREEKSTOEL COASTAL ESTATE ON ERF NO. 1028 AND PORTION 2 OF ERF NO. 599, STILL BAY EAST

Your appeal lodged against the Environmental Authorisation ("EA") granted on 6 February 2018, refers.

After careful consideration of the appeal, as well as supporting documentation received, in terms of section 43(2) of the *National Environmental Management Act, 1998 (Act No. 107 of 1998)* ("NEMA") and regulation 7(3) of the 2014 National Appeal Regulations (as amended), I have decided to partially dismiss your appeal and vary the abovementioned decision of the competent authority granted on 6 February 2018.

I have excluded section G from this appeal authorisation, added Condition E30 to the authorisation and amended Conditions E2, E3 and E6 to read as follows: -

Condition E 30

"Sign boards must be constructed on the site to:

30.1 Direct the public and residents of the Preekstoel development that the coastal public property must be accessed through the use of the authorised board walk; and

30.2 *The disturbance of the vegetation and soils along the authorised boardwalk corridor must be avoided."*

Condition E2

The non-operational component of the Environmental Authorisation is subject to the following:

- 2.1. *"The holder must commence with all the listed activities within a period of three (3) years from the date of issue of this Appeal Environmental Authorisation."*
- 2.2. *"The installation of service infrastructure such as the roads, boardwalk, waste water treatment plant or sewage plant, public parking and public ablution facility must be concluded within a period of five (5) years from the date of commencement of the first listed activity. The development of the residential, hotel and restaurant buildings, the utility zone component and public open space (construction phase) must be concluded within a period of eight (8) years from the date of commencement of the first listed activity; and"*
- 2.3. *"The post construction rehabilitation and monitoring requirements must be finalised within a period of 12 months from the dates of the conclusion of the installation of service infrastructure such as the roads, boardwalk, waste water treatment plant or sewage plant, public parking and public ablution facility and the development of residential, hotel and restaurant buildings, the utility zone component and public open space (construction phase)."*

Condition E3:

"The operational aspects of this Environmental Authorisation are granted until 31 May 2028 during which all rehabilitation and monitoring requirements and final environmental auditing and reporting must be finalized."

Condition E6:

"The holder of the authorisation must in writing, within 14 (fourteen) calendar days of the date of the appeal decision notify all registered Interested and Affected Parties ("I&APs")–

- 6.1 *the outcome of the appeal;*
- 6.2 *the reasons for the appeal decision; and*
- 6.3 *the date of the decision."*

REASONS FOR THIS APPEAL DECISION:

The reasons for partially dismissing your appeal and varying the aforementioned EA are contained in the aforementioned EA. Below find further reasons for my appeal decision:-

1.Part of the Preferred Alternative (Alternative 1)

1.1 Section 13 of the *National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008)* ("NEM: ICMA") states that "... any natural person in the Republic-

- (a) *has a right of reasonable access to coastal public property; and*
- (b) *is entitled to use and enjoy coastal public property, provided such use-*
 - (i) *does not adversely affect the rights of members of the public to use and enjoy the coastal public property;*
 - (ii) *does not hinder the State in the performance of its duty to protect the environment; and does not cause an adverse effect."*

1.2 The national environmental management principles contained in the NEMA (as amended) states that:

- a) The principles shall guide the interpretation, administration and implementation of the NEMA, and any other law concerned with the protection or management of the environment;
- b) Development must be environmentally, socially and economically sustainable;
- c) The disturbance of ecosystems and loss of biological diversity must be avoided, or, where they cannot be altogether avoided, must be minimized and remedied;
- d) A risk-averse and cautious approach must be applied, which takes into account the limits of current knowledge about the consequences of decisions and actions; and
- e) Sensitive, vulnerable, highly dynamic and stressed ecosystems such as coastal shores, estuaries, wetlands and similar systems requires specific attention in management and planning procedures, especially where they are subject to significant human resource usage and development pressure.

1.3 In addition to the consideration of the requirements of the NEMA and its 2014 EIA Regulations, the BAR considered *inter alia* the requirements of the NEM: ICMA as follows:

- a) A low risk coastal management line (comprising the erosion setback line and ecological management line) was determined for the property in terms of section 25 of the NEM: ICMA by a coastal specialist. By determining a low risk management line (development setback line) and by protecting the area between the high water mark of the sea and

the building management line, relevant consideration was given to the requirements of section 17 of the NEM: ICMA. This report confirmed the adequacy of the erosion, low risk coastal management and building setback lines for the proposed development. Future risks were considered in terms of the natural coastal regression or accretion, littoral active zones (mobile sand), projected sea level rise, storm-driven coastal inundation and projections of storm-driven coastal erosion.

- b) Boardwalks were recommended for construction over the frontal dune system and the steep aeolianite foreland scarp to provide public access to the high water mark of the sea.

1.4 Based on the layout and assessment undertaken to also meet the requirements of the NEM: ICMA, however:

- a) The development will not prevent access to the coastal public property;
- b) Although the development will be situated within the coastal protection zone it is not inconsistent with the purpose for which a coastal protection zone is established as set out in section 17;
- c) The development will not likely cause irreversible or long-lasting adverse effects to any aspect of the coastal environment that cannot satisfactorily be mitigated;
- d) The development will not likely cause significant damage or prejudice to the dynamic coastal processes;
- e) The development will not substantially prejudice the achievement of any coastal management objective; and
- f) The development will not be contrary to the interests of the whole community.

1.5 It was also not considered necessary to refer the application for consideration by the National Minister of Environmental Affairs in terms of section 64 of the NEM: ICMA as the competent authority believes that public interest will not be affected.

1.6 In terms of the potential environmental impacts during the operational phase of the activities, the BAR stated that the provision of the boardwalks over the rehabilitated frontal dune system and over the steep aeolianite foreland steep scarp will have a positive impact on the ecology of the conservation of the coastal corridor and on the safety of the proposed development by providing a robust and stable dune system and foreland scarp.

1.7 When the issue of public access to the beach was raised during the public participation process conducted during the basic assessment process, it was responded in the comments and responses report that:

- a) The intention of the boardwalks is to ensure that the public have a safe and unrestricted access to the coastline.
- b) The boardwalks will also protect against trampling of sensitive plant species growing on the frontal dune system and at the toe of the steep rocky escarpment.

- c) The boardwalk will be placed opposite the current access to the beach off the Preekstoel Road.
- d) A public access point will be maintained at the end of the Preekstoel Road.

1.8 It is therefore concurred with the Basic Assessment Report ("BAR") and/or appeal of the applicant that:

- i. The frontal dune system between the caravan park and Erf No. 1028 immediately east thereof has undergone severe erosion caused ultimately by humans over the last 50 years and more, impacts which were caused by off-road vehicles driving on the beach and the dunes.
- ii. As part of the proposed development, the developers would undertake a large rehabilitation programme to reinstate the frontal dune system by trapping sand to rebuild the primary and secondary dunes. When these dunes were formed, they planted local indigenous Blombos Strandveld species generally found on such dune systems.
- iii. One safe way of keeping the public off the sensitive frontal dune system is to construct boardwalks from the stable back-dune area to the high water mark.
- iv. The Alternative 1 in the BAR has specified that 4 wooden boardwalks would be constructed to provide the public and residents of the estate access to the beach. The landscaping plan clearly shows the approximate placement of the 4 boardwalks (Appendix B5 in the BAR). One boardwalk is from the public access point to the beach, whilst the other 3 boardwalks will provide access to the beach from the proposed development, ostensibly for the residents of the estate. The one boardwalk will provide patrons of the hotel access over the frontal dune system to the beach, while the other boardwalks will provide access over the sensitive, stable, steep foreland scarp.
- v. Given the sensitive nature of the frontal dune system to the west of the property and the steep foreland scarp to the east of the property, it was felt necessary to provide 4 boardwalks to allow a safe passage of the public and residents of the proposed development to the seashore and at the same time preventing any degradation to these sensitive natural systems on the property. One cannot expect the owners of property within the development to all use one boardwalk to the west of the development.

1.9 At the same time, it is also concurred with the EA and/or the responding statement of the Department that:

- 1) The proposed development and frontal dune abut a Marine Protected Area and the said dune forms part of the coastal protection zone. Therefore, the stability of the frontal dune for the protection of the coastal estate development is as important as having an ecologically functioning dune.
- 2) The applicant's request for at least 4 boardwalks to provide access to the beach along the length of the property must be weighed against the requirements of section 63 of the NEM: ICMA, and inter alia the need to ensure that the objective of a stable frontal

dune is achieved. In this instance, the restrictive condition was found to be the most appropriate measure to achieve the purpose of the coastal protection zone.

- 3) The appellant has motivated that developing boardwalks is the only method of protecting the frontal dune from trampling. The general public which makes use of the beach (non-residents of the estate), are likely to still traverse portions of the frontal dune. Once a boardwalk has been established, especially in areas with a dynamic system such as the littoral active zone, there is a tendency that an edge effect occurs where the vegetation and soils along the boardwalk corridor are disturbed and even degraded.

- 1.10 In light of the above and the NEMA principles, which *inter alia* require, on the one hand, an environmentally sustainable development and, on the other hand, a risk-averse and cautious approach to be adopted when making decisions, the 1.5-metre-wide wooden boardwalk authorised in the EA is considered adequate to provide the general public and the residents of the proposed development access to the coastal public property as required in terms of section 13(1) of the NEM: ICMA. In light of the fact that the frontal dune abuts a Marine Protected Area, this dune forms part of the coastal protection zone and the edge effect which occurs where the vegetation and soils along the boardwalk corridor are disturbed, the distance that will be walked by the residents of the Preekstoel development to the boardwalk authorised in the EA is considered reasonable from an environmentally sustainable development point of view. To further mitigate the edge effect which occurs where the vegetation and soils along the boardwalk corridor are disturbed, the following condition must be implemented and complied with:

"Condition E30:

Sign boards must be constructed on the site to:

- 30.1 *Direct the public and residents of the Preekstoel development that the coastal public property must be accessed through the use of the authorised board walk; and*
- 30.2 *The disturbance of the vegetation and soils along the authorised boardwalk corridor must be avoided."*

2. Condition E2 of the EA

- 2.1 Section 24E(a) of the NEMA requires an EA to ensure that adequate provision is made for the on-going management and monitoring of the impacts of the activity on the environment throughout the life cycle of the activity.
- 2.2 In order to give effect to section 24E(a) of the NEMA, regulation 26(d) and (i) of the 2014 EIA Regulations must be complied with.
- 2.3 With regard to Condition E2.1 of the EA, it is concurred with the applicant's appeal that:
 - i. The *Western Cape Land Use Planning Act, 2014 (Act No. 3 of 2014)* ("LUPA") process, which is usually a lengthy process, still needs to be undertaken and approved and only once such

approvals have been obtained can detailed planning be undertaken for the proposed development.

- ii. These processes take time and a longer period should replace the 2-year period for making a start with the development i.e. before all the listed activities can be commenced with. A longer timeframe will prevent a submission of an amendment application which will be intended to extend the period within which the listed activities may be commenced with.

2.4 In light of the above, Condition E2.1 of the EA must be amended, as follows, in order to extend the period within which all the listed activities authorised in the EA must be commenced with:

Condition E2.1:

"The holder must commence with all the listed activities within a period of three (3) years from the date of issue of this Appeal Environmental Authorisation."

2.5 The term "development" is defined in the 2014 EIA Regulations' Listing Notice 1 (Government Notice No. R. 983 of 4 December 2014 as amended by Government Notice No. R. 327 of 7 April 2017) as "... the building, erection, construction or establishment of a facility, structure or infrastructure, including associated earthworks or borrow pits, that is necessary for the undertaking of a listed or specified activity, but excludes any modification, alteration or expansion of such a facility, structure or infrastructure, including associated earthworks or borrow pits, and excluding the redevelopment of the same facility in the same location, with the same capacity and footprint;". The term "development" therefore is not only referring to the installation of bulk services.

2.6 The state of the South African economy is improving although it cannot be guaranteed that the selling of erven will be sold within the EA validity period in order to ensure the completion of the development.

2.7 In light of the above, Condition E2.2 of the EA must be amended, as follows, in order to extend the period within which the development activities (construction phase) must be concluded:

"The installation of service infrastructure such as the roads, boardwalk, waste water treatment plant or sewage plant and public ablution facility must be concluded within a period of five (5) years from the date of commencement of the first listed activity. The development of residential, hotel and restaurant buildings (construction phase) must be concluded within a period of eight (8) years from the date of commencement of the first listed activity; and".

2.8 In light of the amendment to Condition E2.2 of the EA, Condition E2.3 of the EA must be amended as follows:

"The post construction rehabilitation and monitoring requirements must be finalised within a period of 12 months from the dates of the conclusion of the installation of service infrastructure such as the roads, boardwalk, waste water treatment plant or sewage plant, public parking

and public ablution facility and the development of residential, hotel and restaurant buildings, the utility zone component and public open space (construction phase)."

3. Management of activity

3.1 During the EIA process the issue of irrigating with treated effluent water was dealt with as follows:

- i. The treated effluent will be used for irrigation of public open space, gardens and will also be used in the dune rehabilitation programme.
- ii. The Maintenance Management Plan ("MMP") submitted as part of the Environmental Management Programme ("EMP") to *inter alia* rehabilitate the frontal dune system strongly recommended that an irrigation system be installed onto the newly created frontal dune system to ensure that the plants survive the windy and dry summers.

3.2 As a result, the Construction and Operational Phases Environmental Management Programme submitted with the BAR includes the following mitigation measures:

- i. Irrigation of domestic gardens, private open spaces and road verges must use treated sewage effluent required to initially get the young plants to grow.
- ii. No pollution of surface or groundwater may occur due to any activity on the property. The relevant requirements of the *National Water Act, 1998 (Act No. 36 of 1998)* must be complied with at all times.

3.3 Regular checks must be taken of the quality of the treated effluent that will be used for the irrigation of private open spaces and domestic gardens.

3.4 CapeNature, a custodian of biodiversity in the Western Cape, objected in their responding statement to irrigating the frontal dune system with potable water or treated effluent water, arguing that:

- i. The irrigation of the dune systems with sewage works effluent, in an attempt to rehabilitate/re-establish the *Blombos Strandveld* is a serious concern and has not been adequately assessed. CapeNature is currently successfully conducting restoration work within the extent of the Geelkrans Nature Reserve without such interventions. It is unclear how this vegetation unit on the properties may undergo succession due to the proposed changes from the natural hydrological regime. The Fynbos Forum Ecosystems Guidelines for Environmental Assessment in the Western Cape states that sediment characteristics, drainage patterns, rainfall regime and soil nutrient properties all determine where Strandveld naturally occurs and what plant species naturally grow at a specific location.
- ii. The use of effluent to artificially irrigate dune systems may irreversibly change these soil characteristics and result in the loss of *Blombos Strandveld* as it undergoes a form of succession due to the anthropogenic hydrological regime with nutrient rich water. Detailed investigation into how the use of the effluent could modify the soil characteristics and result in the succession of the *Blombos Strandveld* into another vegetation unit would be required, before this proposal could be considered.

- 3.5 In cognisance of the abovementioned risk-averse and cautious approach principle of the NEMA, no amendment is required in terms of Condition E8.8(c) of the EA since no detailed investigation was provided by the applicant into how the use of the potable water and treated effluent water could modify the soil characteristics and result in the succession of the Blombos Strandveld into another vegetation unit.

4. **Specific Conditions**

4.1 It is concurred with the Department as detailed in their responding statement that:

- i. At the present, there are members of the public who make use of vehicles to gain access to their property/residence situated to the east of the Geelkrans Nature Reserve.
- ii. CapeNature have contractors that have gained access to the reserve through the access road in question over an extensive period. By implementing the restrictive proposal of the appellant, these members of the public shall not be able to gain access to the reserve during the construction phase.
- iii. The current access route is probably the only feasible route to gain access to the Geelkrans Nature Reserve. Developing an alternative route for public vehicular access is not the best practical environmental option.
- iv. The condition of the EA ensures that the development does not limit access of the public to the Provincial Nature Reserve, but it ensures that the development does not place a restriction on the future utilisation of the Provincial Nature Reserve where increased vehicular access is required.
- v. The condition is essential and must not be set aside.

4.2 It is also concurred with CapeNature's responding statement that:

- i. Currently Geelkrans Nature Reserve has unrestricted public vehicular access through the existing erven and a gravel road.
- ii. Geelkrans is a Provincial Nature Reserve and is required to provide the public with access to the reserve as a state entity.
- iii. CapeNature does have contractors entering the reserve on a daily basis for work purposes.
- iv. The neighbour on the eastern boundary of the Geelkrans Nature Reserve has been using the reserve access road for more than 30 years to get access to their property.
- v. According to the NEM: ICMA the public has a right to reasonable access to the coast. Geelkrans Nature Reserve does and has historically provided coastal access to the public (via vehicle access point) and is committed to continue doing so.

4.3 In light of the above, no amendments must be effected to Condition E18.4 of the EA.

Given the arguments presented with regard to the impacts of irrigating with potable and/or treated effluent water under the "**Part of the Preferred Alternative (Alternative 1)**" appeal ground, Condition E27 must not be amended.

5. **Aquifer underneath the site**

5.1 In terms of the groundwater, soil and geological stability of the site, the BAR, as concurred with by the competent authority, states that:

- i. To the east, the property comprises of part of the steep aeolianite foreland scarp of an ancient dune system that was deposited along the Still Bay coastline some 125,000 years ago. The steep foreland scarp was formed during falling sea levels of various regression periods (dropping sea levels). The vegetation growing on these steep slopes is highly sensitive to human trampling and any disturbance could expose the aeolianite to blow-outs during strong winds. Soils derived from the weathering of the aeolianites and that are blown up the beach to the west of the property have formed a steep frontal dune system. This dune system is also vulnerable to trampling by humans causing destabilisation with concomitant sand being blown inland (as has happened in the western section of Erf No. 1028 over the past 50 to 80 years and more).
- ii. The ancient dune plume forms an unconfined aquifer which would be saline due to the proximity of the sea and with the dunes lying above weathered shales of the Bokkeveld Group.

5.2 The significance rating of the potential pollution of groundwater due to the proposed development will be low due to the implementation of the following mitigation measures:

- i. The use of drip trays under stationary machinery.
- ii. Correct storage of hazardous materials.
- iii. The use of spill kits on site.

5.3 In terms of regulation 41 of the 2014 EIA Regulations a 30 days public participation process must be conducted to provide an opportunity to the interested and affected parties to submit comments on the proposed development.

5.4 In terms of the concern raised by the respondent i.e. Still Bay Conservation Trust:

- i. As required by regulation 41 of the 2014 EIA Regulations a comprehensive public participation process as detailed in the reasons for the EA was conducted to the satisfaction of the competent authority. In addition, no further public participation process is considered necessary as placing advertisements in a provincial newspaper and/or national newspaper

is only required 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.

- ii. The specialist visual impact assessment which was conducted to inform the proposed development concluded that the loss of open, undeveloped visual resources will be moderate to high provided that the mitigation measures which have been imposed in the conditions of the EA and EMP are implemented and complied with.

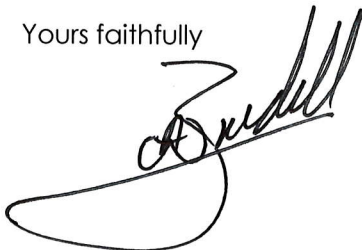
CONCLUSION:

In view of the above, the NEMA principles, compliance with the conditions stipulated in the Appeal EA and compliance with the conditions of the EMP, the proposed activities will not conflict with the general objectives of integrated environmental management stipulated in Chapter 5 of the NEMA and any potentially detrimental environmental impacts resulting from the activities can be mitigated to acceptable levels.

DISCLAIMER:

The Western Cape Government, the Local Authority, committees or any other public authority or organisation appointed in terms of the conditions of this EA shall not be responsible for any damages or losses suffered by the holder, developer or his/her successor in any instance where construction or operation subsequent to construction is temporarily or permanently stopped for reasons of non-compliance with the conditions as set out herein or any other subsequent document or legal action emanating from this decision.

Yours faithfully



ANTON BREDELL
PROVINCIAL MINISTER OF LOCAL GOVERNMENT,
ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING

DATE: 2/8/2018

Copied to:

Mr Aubrey Withers (Withers Environmental Consultants)

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