



REFERENCE: 16/3/1/1/A3/16/2076/13
ENQUIRIES: RONDINE ISAACS
DATE: 2015-06-10

The Board of Directors
Georgia Avenue Investments 41 (Pty) Ltd
17 Marzot Street
Brandwacht
STELLENBOSCH
7660

Attention: Mr Chris Möller

Tel/Fax: (021) 887 2019

Dear Sir

WITHDRAWAL OF THE APPLICATION FOR BASIC ASSESSMENT FOR THE PROPOSED MIXED USE DEVELOPMENT ON REMAINDER OF FARM NO. 1104 AND A PORTION OF FARM NO. 785/9, FIRGROVE.

1. The Application form and letter dated 16 July 2013, as received by this Department on 18 July 2013, the Department's acknowledgement letter dated 30 July 2013, the final Basic Assessment Report ("BAR") and letter dated 23 April 2015, as received by this Department on the same day, the additional information received on 30 April 2015, the Department's acknowledgement letter dated 11 May 2015 and the additional information received on 20 May 2015 and 25 May 2015, respectively, refer.
2. Your attention is drawn to the listed activities in terms of the National Environmental Management Act, 1998 (Act No. 107 of 1998) ("NEMA") Environmental Impact Assessment ("EIA") Regulations, 2014 as defined in Government Notice ("GN") No. R. 983, R. 984 and R. 985 of 4 December 2014. These Regulations came into effect on 8 December 2014. All activities identified as listed activities in the NEMA EIA Regulations of 2014 that had not been commenced with on 8 December 2014, must not be undertaken without an Environmental Authorisation from the competent authority.
3. This Department has reviewed your final BAR and noted the following:
 - The site is located within the urban edge and urban area of Firgrove, Somerset West.
 - There are a few derelict buildings on the site, with some being used for commercial and residential purposes and until recently for a hotel.
 - The site is heavily disturbed and covered with invasive alien vegetation.
 - The Moddergat River, which is currently being canalised, forms the western boundary of the site.
 - The site is zoned Agriculture Zone I and Amenity, respectively, with spot zonings for Business Zone I (retail), Business Zone V (filling station) and Resort Zone.

- The site has not been used for agriculture since 1 April 1998.

4. Based on the information provided, the proposed mixed-use development on Remainder of Farm No. 1104 and a Portion of Farm No. 785/9, Firgrove does not appear to constitute any listed activities as defined in terms of the NEMA EIA Regulations, 2014. As such, an application for environmental authorisation is not required by the competent authority. This determination is based on the following:

4.1 The pipeline will be positioned within the existing road reserve within an urban area, hence Activities 9 and 10 of GN No. R. 983 of 4 December 2014 will not be triggered:

Activity 9:

"The development of infrastructure exceeding 1000 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*
- (b) where such development will occur within an urban area".*

Activity 10:

"The development and related operation of infrastructure exceeding 1000 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 bulk transportation of sewage, effluent, process water, waste water, return water, industrial discharge or slimes inside a road reserve; or*
- (b) where such development will occur within an urban area".*

4.2 The property is situated within the urban edge and urban area of Firgrove, Somerset West, hence Activity 12 of GN No. R. 983 and Activity 14 of GN No. R. 985 of 4 December 2014 will not be triggered:

Activity 12 of GN No. R. 983:

"The development of-

- (i) canals exceeding 100 square metres in size;*
- (ii) channels exceeding 100 square metres in size;*
- (iii) bridges exceeding 100 square metres in size;*
- (iv) dams, where the dam, including infrastructure and water surface area, exceeds 100 square metres in size;*
- (v) weirs, where the weir, including infrastructure and water surface area, exceeds 100 square metres in size;*
- (vi) bulk storm water outlet structures exceeding 100 square metres in size;*
- (vii) marinas exceeding 100 square metres in size;*
- (viii) jetties exceeding 100 square metres in size;*
- (ix) slipways exceeding 100 square metres in size;*
- (x) buildings exceeding 100 square metres in size;*
- (xi) boardwalks exceeding 100 square metres in size; or*

(xii) 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; or
- (ee) where such development occurs within existing roads or road reserves".

Activity 14 of GN No. R. 985:

"The development of-

- (i) canals exceeding 10 square metres in size;
- (ii) channels exceeding 10 square metres in size;
- (iii) bridges exceeding 10 square metres in size;
- (iv) dams, where the dam, including infrastructure and water surface area exceeds 10 square metres in size;
- (v) weirs, where the weir, including infrastructure and water surface area exceeds 10 square metres in size;
- (vi) bulk storm water outlet structures exceeding 10 square metres in size;
- (vii) marinas exceeding 10 square metres in size;
- (viii) jetties exceeding 10 square metres in size;
- (ix) slipways exceeding 10 square metres in size;
- (x) buildings exceeding 10 square metres in size;
- (xi) boardwalks exceeding 10 square metres in size; or
- (xii) infrastructure or structures with a physical footprint of 10 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 has been adopted, within 32 metres of a watercourse, measured from the edge of a watercourse;

excluding the development infrastructure or structures within existing ports or harbours that will not increase the development footprint of the port or harbour.

(f) In the Western Cape:

i. Outside urban areas, in:

- (aa) A protected area identified in terms of NEMPAA, excluding conservancies;
- (bb) National Protected Area Expansion Strategy Focus areas;
- (cc) World Heritage Sites;
- (dd) Sensitive areas as identified in an environmental management framework as contemplated in chapter 5 of the Act and as adopted by the competent authority;
- (ee) Sites or areas listed in terms of an International Convention;

- (ff) Critical biodiversity areas or ecosystem service areas as identified in systematic biodiversity plans adopted by the competent authority or in bioregional plans;
- (gg) Core areas in biosphere reserves; or
- (hh) Areas on the estuary side of the development setback line or in an estuarine functional zone where no such setback line has been determined".

4.3 No infilling or depositing of any material of more than 5 cubic metres into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock of more than 5 cubic metres from a watercourse will take place, therefore Activity 19 of GN No. R. 983 of 4 December 2014 will not be triggered:

Activity 19:

"The infilling or depositing of any material of more than 5 cubic metres into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock of more than 5 cubic metres from-

- (i) a watercourse;
- (ii) the seashore; or
- (iii) the littoral active zone, an estuary or a distance of 100 metres inland of the high-water mark of the sea or an estuary, whichever distance is the greater -

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; or
- (c) falls within the ambit of activity 21 in this Notice, in which case that activity applies".

4.4 The site is heavily disturbed with no indigenous vegetation remaining, hence Activity 27 of GN No. R. 983 and Activity 12 of GN No. R. 985 of 4 December 2014 will not be triggered:

Activity 27 of GN No. R. 983:

"The clearance of an area of 1 hectare 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".

Activity 12 of GN No. R. 985:

"The clearance of an area of 300 square metres or more of indigenous vegetation except where such clearance of indigenous vegetation is required for maintenance purposes undertaken in accordance with a maintenance management plan.

(a) In the Western Cape:

- i. Within any critically endangered or endangered ecosystem listed in terms of section 52 of the NEMBA or prior to the publication of such a list, within an area that has been identified as critically endangered in the National Spatial Biodiversity Assessment 2004;
- ii. Within critical biodiversity areas identified in bioregional plans;
- iii. Within the littoral active zone or 100 metres inland from the high water mark of the sea or an estuarine functional zone, whichever distance is the greater, excluding where such removal will occur behind the development setback line on erven in urban areas; or



iv. On land, where, at the time of the coming into effect of this Notice or thereafter such land was zoned open space, conservation or had an equivalent zoning".

4.5 The site was not used for agriculture or afforestation on or after 1 April 1998, therefore Activity 28 of GN No. R. 983 of 4 December 2014 will not be triggered:

Activity 28:

"Residential, mixed, retail, commercial, industrial or institutional developments where such land was used for agriculture 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. Please be advised that this Department has withdrawn the application with effect from the date of issue of this letter and has hereby closed the file for all administrative purposes.
- 6. Please also note that it is the applicant's responsibility to ensure that all statutory requirements relevant to the proposal are met. It remains the responsibility of the applicant and/or their Environmental Assessment Practitioner to identify all listed activities applicable to future applications.
- 7. Please be reminded of your general duty of care and the remediation of environmental damage, Section 28(1) of NEMA specifically states that –

"Every person who causes, has caused or may cause significant pollution or degradation of the environment must take reasonable measures to prevent such pollution or degradation from occurring, continuing or recurring, or, in so far as such harm to the environment is authorised by law or cannot reasonably be avoided or stopped, to minimise and rectify such pollution or degradation of the environment". The obligation to take reasonable measures is imposed on, inter alia, "an owner of land, a person in control of land or a person who has a right to use the land or premises on which or in which (a) any activity or process is or was performed or undertaken or (b) any other situation exists which causes, has caused or is likely to cause significant degradation of the environment....".

- 8. The Department reserves the right to revise initial comments and request further information based on the information received.

Yours faithfully


HEAD OF DEPARTMENT
DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING

CC: (1) Johan Neethling (Johan Neethling Environmental Services cc)
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