



REFERENCE: 16/3/3/6/2/E2/9/1510/22

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REQUEST TO ADOPT AN AD HOC DEVELOPMENT SETBACK LINE ("SBL") IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998) ("NEMA") ENVIRONMENTAL IMPACT ASSESSMENT ("EIA") REGULATIONS, 2014 FOR THE PROPOSED SINGLE RESIDENTIAL DWELLING ON A PORTION OF ERF 1896, FRANSKRAALSTRAND

1. The abovementioned electronic correspondence dated 25 October 2023, as received by this Department on the same day, refers.
2. Based on the information submitted to this Department, it is hereby confirmed that the listed activities in bold below applies to the proposed development on the abovementioned property. This is a listed activity in terms of the National Environmental Management Act, 1998 (Act No. 107 of 1998) ("NEMA") Environmental Impact Assessment ("EIA") Regulations, 2014 (Government Notice ("GN") No. 324, 325, 326 and 327 in Government Gazette No. 40772 of 7 April 2017):

In terms of Listing Notice 1:

Activity Number 19A:

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) the seashore;
- (ii) 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; or**
- (iii) the sea; —

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;
- (c) falls within the ambit of activity 21 in this Notice, in which case that activity applies;
- (d) occurs within existing ports or harbours that will not increase the development footprint of the port or harbour; or

where such development is related to the development of a port or harbour, in which case activity 26 in Listing Notice 2 of 2014 applies.

3. A Public Participation Process (“PPP”) was conducted and involved the following:
 - 3.1 Notification letters were distributed to the local and district municipality and the relevant Organs of State, as well as identified interested and affected parties (“I&APs”) informing them of the request for the adoption of the ad hoc development setback line.
 - 3.2 A 30-day commenting period was afforded to the I&APs, from 7 February 2023, to provide written comment with respect to the proposed ad hoc development setback line adoption request.
 - 3.3 The Department is satisfied that the PPP that was followed met the minimum legal requirements for public participation for an ad hoc development setback line and that the concerns raised by I&APs were responded to and adequately addressed.
4. In terms of the NEMA EIA Regulations, 2014 (as amended) a “development setback” is defined as “a setback line defined or adopted by the competent authority”.
5. In this regard, the competent authority hereby adopts the *ad hoc* development setback line on Erf No. 1896, Franskraalstrand. The *ad hoc* development setback line is depicted in Appendix A (attached hereto). The co-ordinates for the *ad hoc* development setback line that are depicted in Appendix A.
6. The decision by the competent authority to adopt the *ad hoc* development setback line is based on the following factors:
 - 6.1 The site is a vacant residential erf located within the built-up area of Franskraalstrand, set back and elevated from the coastline, thereby reducing its exposure to climate change related sea level rise and storm surges.
 - 6.2 The property boundary falls outside the low, medium, and high-risk urban risk zones associated with the draft Overberg Coastal Setback Line.
 - 6.3 All concerns highlighted during the PPP were adequately addressed by amending the development footprint and moving the *ad hoc* setback line further inland.
7. With regards to the ad hoc development setback line, please note that:
 - 7.1 the ad hoc development setback line is adopted in terms of the NEMA EIA Regulations, 2014 and only relate to the listed activity mentioned above and to the determination of whether or not environmental authorisation in terms of NEMA is required before undertaking the listed activity;
 - 7.2 the ad hoc development setback line is not adopted in terms of the National Water Act, 1998 (Act No. 36 of 1998) or any other legislation. Notwithstanding the location of the ad hoc development setback line, any other statutory requirements that may be applicable to the undertaking of the development must be adhered to;
 - 7.3 the ad hoc development setback line does not imply that the areas behind the line will not be exposed to impacts of dynamic processes, including sedimentation, erosion and flooding; and
 - 7.4 the fact that development will be undertaken behind the ad hoc development setback line does not absolve you from your general “duty of care” set out in Section 28(1) of the NEMA which 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.” (Note: When interpreting the “duty of

care" responsibility, cognisance must be taken of the principles of sustainability as contained in Section 2 of the NEMA).

8. Since the proposed activity will be undertaken behind the abovementioned *ad hoc* development setback line, environmental authorisation will not be required for the abovementioned listed activity in terms of NEMA.
9. It is, however, reiterated that the development setback line only relates to the listed activity mentioned above. If any of the other listed activities are triggered, environmental authorisation will have to be obtained in terms of the NEMA. It remains the responsibility of the proponent to determine if listed activities are triggered and to ensure that the necessary environmental authorisation is obtained.
10. Please note, that I&APs involved in the Public Participation Process must be informed of the decision and their opportunity to lodge an appeal in terms of the provisions contained in the National Appeal Regulations, 2014.
11. This Department will not be held liable for any loss or damage to property or person as a consequence of any development within the development setback area as adopted by the Directorate.
12. This Department reserves the right to revise or withdraw any comments or request further information from you based on any information received.

Yours faithfully

MR. ZAAHIR TOEFY

DIRECTOR: DEVELOPMENT MANAGEMENT (REGION 1)

DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING

Cc to: (1) Mr. C Arendse (Overstrand Municipality)

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(2) Ms. M Naylor (Lornay Environmental Consulting (Pty) Ltd) Email: michelle@lornay.co.za

Appendix A



boetiesbaai
 marais street, erf 1896 (a portion of erf 1041),
 franskrakstrand
 revision 2- 2022-10-16

spacekraft
 _architects

Figure 1: Proposed residential dwelling and ad hoc setback line.