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13 October 2025

Dear Madam

**APPLICATION FOR ENVIRONMENTAL AUTHORISATION (BASIC ASSESSMENT REPORT) FOR THE
PROPOSED SPOOKDRAAI DEVELOPMENT ON THE REMAINDER OF PORTION 281, STRUISBAAI.**

- 1 The development proposal entails the subdivision and rezoning of Farm RE/281 Struisbaai ("the property") for the construction of six single residential dwellings. The property is privately owned.
- 2 The property contains no Critical Biodiversity Areas ("CBAs"), and the mapped Ecological Support Area ("ESA") is preserved within the open space design (per the draft BAR at page 33).
- 3 The proposal aligns with the Cape Agulhas SDF, Integrated Development Plan, and the Western Cape Provincial Spatial Development Framework, all of which promote compact, infill development within the existing urban edge while maintaining public access and ecological buffers.

- 4 The property lies within the Coastal Protection Zone ("CPZ") as defined in Section 16 of the National Environmental Management: Integrated Coastal Management Act, 2008 ("ICMA"). The property is located seaward of the Overberg District Coastal Management Line ("CML") but remains within the urban edge of Struisbaai, as demarcated by the Cape Agulhas Spatial Development Framework (2022–2027).
- 5 Section 17 of ICMA sets out the purpose of the CPZ which was established to enable the use of land that is adjacent to coastal public property or that plays a significant role in a coastal ecosystem to be managed, regulated or restricted in order to:
 - 5.1 protect the ecological integrity, natural character and the economic, social and aesthetic value of coastal public property;
 - 5.2 avoid increasing the effect or severity of natural hazards in the coastal zone;
 - 5.3 protect people, property and economic activities from risks arising from dynamic coastal processes, including the risk of sea-level rise;
 - 5.4 maintain the natural functioning of the littoral active zone;
 - 5.5 maintain the productive capacity of the coastal zone by protecting the ecological integrity of the coastal environment; and
 - 5.6 make land near the seashore available to organs of state and other authorised persons for:
 - 5.6.1 performing rescue operations; or

5.6.2 temporarily depositing objects and materials washed up by coastal waters.

- 6 The applicant reviewed and adapted the development proposal against the coastal risk zones including erosion, storm surge and sea-level rise projections. At a pre-application meeting, DEADP's Sub Directorate: Coastal management ("SD: CM") recommended that the applicant should ensure that the entire development should be located as far landward of the coastal risk zones as possible which the applicant adhered to. All erven, once subdivided, will be located landward of the delineated "low risk zone" and above the high water mark as determined by the land surveyor, as well as above the 1:10 year high water mark.
- 7 The development will be located above the 5m contour and within a previously disturbed area forming part of the Struisbaai urban area.
- 8 Pursuant to concerns expressed by the SD: CM, an area that was proposed as "Private Open Space" (Erf 8 - Alternative 4: Previously Preferred), a portion of which would have been located below the highwater mark (and therefore considered to be Coastal Public Property in terms of ICMA), is no longer part of the development proposal.
- 9 The applicant has taken cognizance of the risk pertaining to the loss of property should the high-water mark of the sea move inland of the property boundary with due regard to section 14 of ICMA and the Advisory Note from the Office of the Chief Surveyor-General, dated 15 October 2021.
- 10 The SD: CM acknowledged that the applicant did their due diligence to consider the impacts of recent storm events and demonstrated how the subject property was unaffected by these events due to its rocky nature. No concerns were therefore raised in terms of flooding, sand movement and erosion. The applicant also indicated that the proposed built infrastructure was set back as far as possible within each proposed erf, however, despite this, the SD: CM expressed concerns regarding the

adequacy of the buffer to absorb any possible effects of coastal processes given the proximity to the highwater mark.

- 11 It is clear therefore that the applicant has applied a precautionary approach, as recommended in the Departmental Circular (DEA&DP 0004/2021), regarding '*The consideration of coastal risk in land use decisions as well as the way forward with respect to the establishment and implementation of Coastal Management Lines in terms of the NEM: ICMA*'.
- 12 Section 13 of ICMA deals with "Access to coastal public property" and provides, inter alia, that any natural person in the Republic has a right of reasonable access to coastal public property; and is entitled to use and enjoy coastal public property.
- 13 The applicant has addressed concerns regarding the impact of the proposed development on the public's historical access to the coast to ensure that reasonable public access can still be obtained, inter alia, via a dedicated 12m wide public footpath leading to the coastal public property via the proposed Open Space Erf 7 (as per new preferred Layout – Alternative 5). This was acknowledged with appreciation by SD: CM in their letter of 5 March 2025. In the circumstances it is clear that the proposed development will not restrict reasonable access to coastal public property and does not fall foul of section 13 of ICMA.
- 14 There is no statutory prohibition on development within the CPZ, however, any such development requires consideration in accordance with the criteria set out in Section 63 of ICMA.
- 15 Section 63 requires that for coastal activities which require environmental authorisation in terms of Chapter 5 of NEMA, the competent authority must take into account all relevant factors, including:
 - 15.1 the representations made by the applicant and by interested and affected parties;

- 15.2 the extent to which the applicant has in the past complied with similar authorisations;
- 15.3 whether coastal public property, the coastal protection zone or coastal access land will be affected, and if so, the extent to which the proposed development or activity is consistent with the purpose for establishing and protecting those areas;
- 15.4 the estuarine management plans, coastal management programmes, coastal management lines and coastal management objectives applicable in the area;
- 15.5 the socio-economic impact if the activity:
 - 15.5.1 is authorised;
 - 15.5.2 is not authorised;
- 15.6 the likely impact of coastal environmental processes on the proposed activity;
- 15.7 whether the development or activity:
 - 15.7.1 is situated within coastal public property and is inconsistent with the objective of conserving and enhancing coastal public property for the benefit of current and future generations;
 - 15.7.2 is situated within the coastal protection zone and is inconsistent with the purpose for which a coastal protection zone is established as set out in section 17;

- 15.7.3 is situated within coastal access land and is inconsistent with the purpose for which coastal access land is designated as set out in section 18;
 - 15.7.4 is likely to cause irreversible or long-lasting adverse effects to any aspect of the coastal environment that cannot satisfactorily be mitigated;
 - 15.7.5 is likely to be significantly damaged or prejudiced by dynamic coastal processes;
 - 15.7.6 would substantially prejudice the achievement of any coastal management objective; or
 - 15.7.7 would be contrary to the interests of the whole community;
 - 15.8 whether the very nature of the proposed activity or development requires it to be located within coastal public property, the coastal protection zone or coastal access land;
 - 15.9 whether the proposed activity or development will provide important services to the public when using coastal public property, the coastal protection zone, coastal access land or a coastal protected area; and
 - 15.10 the objects of this Act, where applicable.
- 16 Having regard to the facts and considerations set out in paragraphs 2 to 12 above, it is clear that the proposed development meets the decision-making criteria set out in section 63 of ICMA, including the purpose of the CPZ, as set out in section 17. It came as a surprise therefore that the SD: CM, in their letter of 5 March 2025, expressed the view that they do not support the proposed development. It is the opinion of the SD: CM that the proposed development is not aligned to the purpose of the CPZ as stated in Section 17 of the ICMA, as it does not protect the ecological integrity or natural

character of the coastline and also does not protect the social and aesthetic value of coastal public property and further that the proposed development does not protect people, property or economic activities from risks arising from dynamic coastal processes including the risk of sea level rise. Furthermore, the SD: CM is of the view that the proposed development does not maintain the natural functioning of the littoral active zone or the productive capacity of the coastal zone.

- 17 The SD: CM's grounds for not supporting the application are disputed by the applicant, supported by the independent Environmental Assessment Practitioner ("EAP") and relevant specialists' assessments and inputs. We are of the view, based on what is set out in paragraphs 2 to 12 above, that the SD: CM's grounds are poorly substantiated and do not withstand scrutiny.
- 18 We point out furthermore, that the considerations under ICMA, while relevant and one of the considerations in respect of the NEMA application for environmental authorisation, are but one of the numerous factors for consideration by the decision-maker. The competent authority under NEMA is required to balance the three legs of sustainable development - environmental, social and economic to arrive at a balanced decision. This requires a consideration, guided by independent expert reports, as to whether environmental impacts can be prevented, or where not, adequately mitigated, and an assessment of the socio-economic impacts and benefits associated with the development.
- 19 Having regard to the measures taken by the applicant to prevent or mitigate the impacts of the proposed development on the environment, including the CPZ, as informed by the EAP and various specialist inputs, and the various socio-economic benefits which the proposed development will entail, including construction phase employment opportunities and operational phase, permanent employment opportunities, together with additional municipal rates and taxes, it is our view that the proposed development will meet the triple bottom-line test for "sustainable development", espoused under NEMA.

20 In *Fuel Retailers Association of Southern Africa v Director-General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province, and Others* 2007 (6) SA 4 (CC) ("**Fuel Retailers**") the Constitutional Court had occasion to consider the provisions of Section 24 of the Constitution along with the provisions of NEMA.

21 The court noted that one of the declared purposes of NEMA is to establish principles that will guide organs of State in making decisions that may affect the environment. One of these principles requires environmental authorities to consider the social, economic and environment impact of the proposed activity including its disadvantages and benefits.

22 In his judgment Ncobo J stated that:

"The need to protect the environment cannot be gainsaid. So, too, is the need for social and economic development."

23 The Court dealt extensively with the term "sustainable development" and what this concept entails. In his judgment Ncobo J stated as follows:

"What is immediately apparent from Section 24 is the explicit recognition of the obligation to promote justifiable, economic and social development. Economic and social development is essential to the wellbeing of human beings. This Court has recognised that socio-economic rights that are set out in the Constitution are indeed vital to the enjoyment of other human rights guaranteed in the Constitution¹."

¹ *Government of the Republic of South Africa & Others v Grootboom & Others* 2001 (1) SA 46 (CC)

24 The Constitution recognises the inter-relationship between the environment and development. It envisages that environmental considerations will be balanced with socio-economic considerations through the ideal of sustainable development. This is apparent from Section 24 (d)(iii) which provides that the environment will be protected by securing *"ecologically sustainable development and use of natural resources while promoting justifiable economic and social development"*.

Conclusion:

25 There is no statutory prohibition on development within the CPZ, provided the criteria set out in Section 63 of ICMA are met.

26 For the reasons motivated above, we are of the considered view that the development proposal meets the relevant statutory requirements under ICMA, including the objective of the CPZ, as set out in section 17, and the decision-making criteria set out in section 63.

27 The EAP must ensure that this is clearly motivated in the final BAR that will be submitted to DEADP for decision-making and that the SD: CM's comments are adequately addressed in the relevant comments and responses report.

28 We advise accordingly.

Yours faithfully

WERKSMANS ATTORNEYS

Per: 
JUSTIN TRUTER