



REFERENCE: 16/3/3/6/1/D6/26/0004/17
ENQUIRIES: Mr Francois Naudé
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The Municipal Manager:
Mossel Bay Municipality
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Attention: Mr Johan van Zyl

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Dear Sir

APPLICABILITY OF THE ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, 2014: MOSSEL BAY UPGRADING OF INFORMAL SETTLEMENTS PROGRAMME (UISP): 3546 (NATIONAL UPGRADING SUPPORT PROGRAMME PHASE 1 & 2 FRAMEWORK) – BROWNFIELD SITES - SITUATED ON VARIOUS ERVEN IN KWANONQUABA, MOSSEL BAY

1. The above and the correspondence dated 15 December 2016 that was received by this Department on 19 December 2016 and 18 January 2017 from your Environmental Assessment Practitioner (EAP), namely Aurecon (Pty) Ltd., refers.
2. This letter serves as an acknowledgment of receipt of the aforementioned document by this Department.
3. It is understood that as part of the Mossel Bay UISP 3546, the proposal is to upgrade the identified informal settlement sites ("Brownfield Sites") in the Kwanonquaba area of Mossel Bay, and to establish a residential development with associated infrastructure. Where the formalisation of the sites are feasible and can be completed, this will be done in conjunction with "decanting sites" which will provide temporary/overflow and permanent housing opportunities for inhabitants within the informal housing sector of Mossel Bay. The upgrading will consist of a small enhanced stand with a wet core linked to municipal service infrastructure.

The following sites have been identified within Kwanonquaba area of Mossel Bay to form part of this component of the UISP 3546 project:

| No. | NAME | CADASTRAL DESCRIPTION | ZONING | TRANSFORMED AREA |
|-----|-----------------|------------------------------|-------------------|---------------------------------|
| 1 | Asla Park A: | Erf 4750, Kwanonqaba | Institutional II | 3.6 ha |
| | | Erf 4749, Kwanonqaba | Open Space II | |
| | | Erf 4788 Kwanonqaba | Open Space | |
| | | Erf 6938 Kwanonqaba | Open Space I | |
| 2 | Asla Park B | Erf 1704, Kwanonqaba | Open Space I | 2.0 ha |
| | | Erf 7223, Kwanonqaba | Open Space I | |
| 3 | Asla Park C | Erf 4877 Kwanonqaba | Open Space I | 0.2 ha (2000m ²) |
| 4 | Asla Park D | Portion 220 of the Farm 249, | Agriculture | 1.7 ha |
| | | Erf 5184, Kwanonqaba | Open Space I | |
| | | Erven 7510, 7511 7512 | (not provided) | |
| 5 | Asla Park E | Erf 3372 Kwanonqaba | Institutional III | 0.1 ha (1000m ²) |
| 6 | Sewendelaan | Erf 1704 Kwanonqaba | Open Space I | 1.8 ha |
| 7 | Sinethemba | Erf 1717 Kwanonqaba | Undetermined | 3.5 ha |
| | | Erf 1704 Kwanonqaba, | Open Space I | |
| | | Portion 249 of Farm 220 | Agriculture | |
| 8 | Emfuleni | Erf 912, Kwanonqaba | Undetermined | 2.5 ha |
| | | Erf 1260 Kwanonqaba | Undetermined | |
| 9 | Gentswana A | Erf 912 Kwanonqaba | Undetermined | 0.8 ha (8000m ²) |
| 10 | Gentswana B | Erf 1712 Kwanonqaba | Undetermined | 3.4 ha |
| 11 | Gentswana C | Erf 1712 Kwanonqaba | Undetermined | 2.1 ha |
| 12 | PA Kamp | Erf 912 Kwanonqaba | Undetermined | 0.2 ha (2000m ²) |
| 13 | Thembani Street | Erf 912 Kwanonqaba | Undetermined | 2.9 ha |
| 14 | Transand Kamp | Erf 417 Kwanonqaba | Residential 2 | 0.1 ha (1000m ²) |
| 15 | Brandwacht | Portion 5 of Farm 164 | Agriculture 1 | 0.4 ha (4000m ²) |

4. In considering the applicability of Environmental Impact Assessment Regulations, 2014, aspects such as the provisions of NEMA¹; previous NEMA notices²; environmental authorisations; historical development proposals; Departmental Guidelines and Circulars are relevant to the consideration of the respective Brownfield Sites. The following provides a summary of said considerations:

¹ **NEMA** - National Environmental Management Act, 1998 (Act no. 107 of 1998)

² "**previous NEMA notices**" refers to the notices published in terms of section 24(2) of the National Environmental Management Act, 1998 (NEMA) (viz. Government Notices R. 386 and R. 387 in the Government Gazette of 21 April 2006, as amended, or Government Notice No. R. 544, 545 and 546 in the Government Gazette of 18 June 2010, as amended)

4.1. **Asla Park A** (Erven 4750; 4749; 4788 and 6938 Kwanonqaba)

According to this Directorate's records, the Mossel Bay Municipality has applied for environmental authorisation for various developments within the Kwanonqaba precinct. These included *inter alia* Erf 1704 and 2001 (DEA&DP ref. EG12/2/1/74/3848).

An application was received in December 2001 for the "*Proposed low cost housing project on Erf 1704 and portion of Erf 2001/RE, Kwanonqaba, Mossel Bay*". It was however resolved that the activities had commenced on the portions of land in accordance with a development plan, and an environmental authorisation was not required. The development plan (copy attached hereto as Appendix A) provided a specific subdivision layout and proposed zoning for the respective erven.

This information is relevant to the determination exercise currently being undertaken and is also relevant to the determination of the "*interim urban*" as adopted by the competent authority on 5 March 2012 (DEA&DP NEMA EIA Circular 1 of 2012 refers).

Note: It must be highlighted that the original plan has identified the remainder of Erf 1704 as "Open Space" and based on the information received said zoning has been assigned to the relevant *Asla Park A*, "brownfield sites" but also including *Asla Park B; Sewendelaan; and portion of Sinethemba*.

Based on this Department's NEMA EIA Circular 1 of 2012, and the information contained within the documentation received regarding the zoning, land-use and services, the erven of *Asla Park A* are regarded to form part of the "*interim urban edge*" as adopted on 5 March 2012. For the purpose of the Environmental Impact Assessment Regulations, 2014, the properties are therefore deemed to be an urban area.

❖ *Erf 4750 and Erf 4749*

Although Erf 4750 and Erf 4749 in *Asla Park A* appear to have contained indigenous vegetation when the previous notices (i.e. EIA Regulations 2006) came into effect, based on relevant satellite imagery, it is reasonable to conclude that the clearance of the indigenous vegetation on these properties that are zoned open space, indeed commenced lawfully prior to said notices coming into effect.

Notwithstanding the above determination, it is noted that the land-use will no longer be for the original intended use, namely a sport field and primary school. The Mossel Bay Municipality is urged to address the need for an alternative school and sports field site in the planning process.

❖ *Erf 4788 and Erf 6938*

Erf 4788 and Erf 6938 in *Asla Park A* still contain indigenous vegetation. It is expected that an area larger than 300 square metres of indigenous vegetation may still be cleared on these two properties which are zoned Open Space.

4.2. **Asla Park B** (Erven 7223; 7224; 7429, 7411 and 1704, Kwanonqaba)

❖ *Erven 7223; 7224; 7429, 7411*

According to this Directorate's records, the following two environmental authorisations have been issued for Erf 3304 and portion of Erf 1704 which include sites corresponding with Asla Park B (i.e. Erven 7223; 7224; 7429 and 7411, Kwanonqaba), namely:

- DEA&DP ref. EG12/2/3/1-D6/27-1408/09: Erf 3304 Kwanonqaba, Mossel Bay. Proposed development of 192 low cost housing dwelling units; and
- DEA&DP ref. EG12/2/4/1-D6/25-0004/11: Proposed Development of Low Cost Housing Area on Three Portions of Erf 1704, Kwanonqaba, Mossel Bay.

Compliance with the respective Environmental Authorisations will first need to be determined and the applicability of the Environmental Impact Assessment Regulations, 2014 to Asla Park B (Erf 7223) will be confirmed by a site specific audit of the two aforementioned environmental authorisations.

❖ *Erf 1704*

Please refer to the discussion of Erf 1704 under *Sewendelaan*. This portion of Asla Park B is regarded to require Environmental Authorisation.

4.3. **Asla Park C** (Erf 4877 Kwanonqaba)

Erf 4877, Kwanonqaba, is zoned Open Space and appears to be 2000 square metres in extent. Erf 4877 is regarded to form part of the "*interim urban edge*" as adopted on 5 March 2012, and for the purpose of the Environmental Impact Assessment Regulations, 2014, the property is therefore deemed to be an urban area.

The Asla Park C property appears to have been totally transformed from a vacant and undeveloped property covered with indigenous vegetation, to the current informal settlement or residential use. Based on relevant aerial photography and satellite imagery, the transformation appears to have commenced after November 2006 and had already been completed by 2009. It appears that the majority, if not all, of the indigenous vegetation on Erf 4877 had been cleared by 2009.

The opinion is held that the transformation of this property (approximately 2000 square metres), commenced unlawfully and the transformed property has been used for a residential purpose which is not in accordance with the property rights and land use assigned to Open Space. The transformation of Erf 4877 triggered Activity 20 of Listing Notice 1 of the Environmental Impact Assessment Regulations, 2006 (Government Notice R. 386 of 21 April 2006) and written environmental authorisation was required for the activity.

Due to the repeal of the Environmental Impact Assessment Regulations, 2006 and the Environmental Impact Assessment Regulations, 2014 subsequently coming into effect on 8 December 2014, it does not appear that the unlawful transformation of Erf 4877 can be

rectified in terms of an application in terms of section 24G of the National Environmental Management Act, 1998 (NEMA) anymore. Aforementioned view is informed by –

- (a) the fact that the vegetation on the Open Space has been cleared prior to 8 December 2014 and during the period the property was transformed and cleared of vegetation the applicable threshold applicable to the clearance of vegetation on the property was larger than the property itself (i.e. 3 hectares in extent);
- (b) the changes to the listed activities identified in terms of sections 24(2) of NEMA. Although the transformation of Open Space in an urban context is currently listed as Activity 15 of the Environmental Impact Assessment Regulations Notice 3 of 2014, the property does not conform to any of the identified geographical areas in the Western Cape; and
- (c) only those activities which were commenced and listed activities at that time, and are still listed in terms of the current Environmental Impact Assessment Regulations Notices of 2014, may be considered and authorised in terms of Section 24G of NEMA. In this regard, it does not appear that Activity no. 12(iv) of the Environmental Impact Assessment Regulations Notice 3 of 2014 is similarly listed to Activity 20 of Listing Notice 1 of the Environmental Impact Assessment Regulations, 2006. The latter interpretation may however be revised based on new information.

4.4. **Asla Park D** (Erven 5184; 7510, 7511 and 7512 and Portion 220 of the Farm 249)

The Asla D site consist of Erven 5184; 7510, 7511 and 7512 and Portion 220 of the Farm 249, however, the information received appears to refer to Erf 5184 as limited information is available on erven 7510, 7511 and 7512 and Portion 220 of the Farm 249.

Based on this Department's NEMA EIA Circular 1 of 2012, and the information received, to consider the "*interim urban edge*" as adopted on 5 March 2012, for the purpose of the Environmental Impact Assessment Regulations, 2014, the following -

- Erf 5184 is deemed to conform to the interim urban edge and is deemed to be an urban area;
- Portion 220 of the Farm 249 does not conform to the requirements of the interim urban edge determination, and the property is therefore **not** deemed to be an urban area.
- Clarity is required regarding the zoning and services of Erven 7510, 7511 and 7512.

❖ *Portion 220 of the Farm 249*

It is noted that this portion of land is privately owned. The farm portion does not conform to the requirements of the "*interim urban edge*" as adopted on 5 March 2012 and is therefore **not** deemed to be an urban area.

The transformation of this portion of land has amongst other included the clearance of indigenous vegetation and construction of structures and buildings within 32 metres from

the edge of a watercourse. This Directorate reasonably suspects that the transformation of the portion of Portion 220 of the Farm 249 has taken place since 2010 and will have triggered Activity 11 of Listing Notice 1 of the Environmental Impact Assessment Regulations, 2010 (Government Notice R. 544 of 18 June 2010). It does however appear that a substantial number of structures/buildings may have been constructed after December 2014. Nonetheless, the opinion is held that Activity 12(x) and 12(xii) of Environmental Impact Assessment Regulations Listing Notice 3 of 2014 (GN No. R.983 of 4 December 2014) may be applicable to the portion of Portion 249 of Farm 220.

❖ *Erf 5184*

This erf in Asla Park C appears to have been substantially transformed from a vacant and undeveloped property covered with indigenous vegetation, to the current level informal settlement or residential use. Based on relevant aerial photography and satellite imagery, the transformation appears to have commenced after November 2006 and had already been completed by 2009. It appears that a large portion of the indigenous vegetation on Erf 4877 had been cleared by 2009.

The opinion is held that the transformation of this property, commenced unlawfully and the transformed portion of the property has been used for a residential purpose which is not in accordance with the property rights and land use assigned to Open Space. The transformation of Erf 5184 triggered Activity 20 of Listing Notice 1 of the Environmental Impact Assessment Regulations, 2006 (Government Notice R. 386 of 21 April 2006) and written environmental authorisation was required for the activity.

Due to the repeal of the Environmental Impact Assessment Regulations, 2006 and the Environmental Impact Assessment Regulations, 2014 subsequently coming into effect on 8 December 2014, it does not appear that the unlawful transformation of Erf 5184 can any longer be rectified in terms of an application submitted in terms of section 24G of the National Environmental Management Act, 1998 (NEMA).

It is noted that the proposed development footprint will be 500 square metres. Clarity is sought regarding the 1.7 hectares which has already been transformed and how the developable development footprint relates to the transformed area. Please note that the formalisation / expansion of the informal settlement, specifically on Erf 5184, which will exceed 300 square metres on public open space, shall require environmental authorisation.

❖ *Erven 7510, 7511 and 7512*

It appears that Erven 7510, 7511 and 7512 form part of the *Proposed low cost housing project on Erf 1704 and portion of Erf 2001/RE, Kwanonqaba, Mossel Bay* (see Appendix A). The activity is regarded to have commenced prior to the relevant EIA Regulations coming into effect.

4.5. **Asla Park E** (Erf 3372 Kwanonqaba)

The site is situated on Erf 3372 which forms part of the subdivisions of Erf 3081 of Kwanonqaba approved in May 1996 (see General Plan no 2421/1996, Sheet 3 of 6). The property is approximately 1484 square metres and is currently zoned *Institutional III*.

Based on the information provided and relevant satellite imagery, it is apparent that activities have commenced on the larger site (including Erf 3372) prior to the Environmental Impact Assessment Regulations, 2014, and previous NEMA notices coming into effect.

Notwithstanding the above determination, it is noted that the land-use will no longer be for the original intended use, namely Institutional. The Mossel Bay Municipality is urged to address the need for suitable alternative sites for such land-use in the planning process.

4.6. **Sewendelaan (Asla Park B)**

Due to the nature of the activities and the period when the activities took place on the respective portions of Erf 1704 (i.e. Sewendelaan and Asla Park B), the activities which have taken place on this erf will be considered in conjunction with one another, rather than how it has been presented in the checklist as separate entities.

Both the Sewendelaan and Asla Park B brownfield sites comprise of Erf 1704, which is currently zoned Open Space. The information in the Mossel Bay SDF indicates that this portion of Erf 1704 forms part of terrestrial and aquatic critical biodiversity areas. This portion of Erf 1704 Kwanonqaba also forms a single erf and is not separated by other land parcels. The erf is regarded to form part of the "interim urban edge" as adopted on 5 March 2012 and is therefore deemed to be an urban area.

The portions of Erf 1704, (Sewendelaan, Asla Park B) appear to have indigenous vegetation and had indigenous vegetation when the previous notices came into effect. The Sewendelaan portion of Erf 1704 which has been transformed is reported to be 1.8 hectares in extent, whereas the Asla Park B section appears to be in excess of one (1) hectare. Based on relevant aerial photography and satellite imagery, this Directorate reasonably suspects that an area larger than 1 hectare was transformed and cleared of indigenous vegetation between 2010 and 2012. Furthermore, it appears that an area of greater than 1000 square metres has been transformed and an area larger than 300 square metres has been cleared of indigenous vegetation since December 2014.

The opinion is held that the transformation of the property and subsequent residential use, is not in accordance with the zoning of the property. Therefore, the transformation and the clearance of the indigenous vegetation on the Sewendelaan and Asla Park B portions of Erf 1704, Kwanonqaba, requires environmental authorisation. Furthermore, the aforementioned activities may be regarded to have commenced unlawfully.

Notwithstanding the above opinion, it is noted that the proposed developable area is smaller than the transformed area. It is unclear what form of rehabilitation will be

implemented on the remainder of the transformed area. It is of concern whether effective measures can be implemented to prevent inappropriate use of the land once rehabilitated.

4.7. **Sinethemba**

The Sinethemba site consists of a portion of Erf 1704/RE; Erf 1717, and a portion of Portion 249 of Farm 220.

❖ Erf 1704

This erf is deemed to conform to the "*interim urban edge*" as adopted on 5 March 2012 and is therefore regarded to be in an urban area. It is noted that the portion of Erf 1704/RE is mapped as an Ecological Support Area, however the information on the Mossel Bay SDF does not include the portion of land in the terrestrial or aquatic critical biodiversity areas. Clarity is sought on what the purpose of this portion of open space would be, it is however apparent that it was established to protect the watercourse and drainage of the area.

The area which has been transformed on this portion of the property is more than 0.3 hectares or 3000 square metres in extent. The majority of the area which has been transformed lies between a watercourse and the residential erven which are also situated within 32 metres of the edge of a watercourse. Other areas on the open space have been transformed for the concentration of livestock, some of these facilities appear to be quite old, however, there seem to be facilities that have been developed more recently.

It appears that some of the abutting residential erven initially encroached onto Erf 1704/RE as the property fences were relocated/extended toward the watercourse. After this, building/structures were erected on the portion of the Municipal property. The construction of the structures/buildings within 32 metres from the edge of the watercourse appears to have taken place between 2006 and 2009. Minor alterations/expansions have taken place since 2010, however, the majority of the current transformed area had already been changed to another use. The opinion is held that the transformation of the property is not in accordance with the zoning and purpose of the property, and the construction of the structures within 32 metres were erected unlawfully.

The transformation of the portion of Erf 1704 triggered Activity 1(m) and 20 of Listing Notice 1 of the Environmental Impact Assessment Regulations, 2006 (Government Notice R. 386 of 21 April 2006) and written environmental authorisation was required for the activity at that time. The further transformation of the property since 2010 will have triggered Activity 24 of Listing Notice 1 of the Environmental Impact Assessment Regulations, 2010 (Government Notice R. 544 of 18 June 2010) Activity 16(iii) and 16(iv) of Listing Notice 3 of the Environmental Impact Assessment Regulations, 2010 (Government Notice R. 546 of 18 June 2010).

Due to the repeal of the Environmental Impact Assessment Regulations, 2006 and Environmental Impact Assessment Regulations, 2010 and the Environmental Impact Assessment Regulations, 2014 subsequently coming into effect on 8 December 2014 the unlawful transformation of the portion of Erf 1704/RE may still require environmental authorisation. The applicability of section 24G of the National Environmental Management Act, 1998 (NEMA) to Erf 1704/RE must however be determined. The opinion is held that Activity 15(ii)(aa) of Environmental Impact Assessment Regulations Listing Notice 3 of 2014 (GN No. R.985 of 4 December 2014) may be applicable.

❖ Erf 1717

The erf does not conform to the requirements of the "*interim urban edge*" as adopted on 5 March 2012 and is therefore **not** deemed to be an urban area.

The information in the Mossel Bay SDF indicates that Erf 1717 forms part of the terrestrial and aquatic critical biodiversity areas. The erf is zoned undetermined and does not appear to be earmarked for urban development (i.e. commercial, residential, industrial uses) but rather a conservation purpose.

The transformation of this portion of land has amongst other included the clearance of indigenous vegetation and construction of structures and buildings within 32 metres from the edge of a watercourse. Although the events leading to the transformation of the portion of the property have taken place over an extended period, it is reasonably suspected that the transformation of the portion of Erf 1717 between 2006-2010 triggered Activity 1(m) of Listing Notice 1 of the Environmental Impact Assessment Regulations, 2006 (Government Notice R. 386 of 21 April 2006). The further transformation of the property since 2010 will have triggered Activity 11 of Listing Notice 1 of the Environmental Impact Assessment Regulations, 2010 (Government Notice R. 544 of 18 June 2010) and Activity 13(c)(ii)(ff) of Listing Notice 3 of the Environmental Impact Assessment Regulations, 2010 (Government Notice R. 546 of 18 June 2010).

❖ Portion 220 of the Farm 249

It is noted that this portion of land is privately owned. The farm portion does not conform to the requirements of the "*interim urban edge*" as adopted on 5 March 2012 and is therefore **not** deemed to be an urban area.

The transformation of this portion of land has amongst other included the clearance of indigenous vegetation and construction of structures and buildings within 32 metres from the edge of a watercourse. The events leading to the transformation of the portion of the farm have taken place over an extended period, however, it is reasonably suspected that the transformation of the portion of the portion of Portion 220 of the Farm 249 between 2006-2010 triggered Activity 1(m) of Listing Notice 1 of the Environmental Impact Assessment Regulations, 2006 (Government Notice R. 386 of 21 April 2006). The further transformation of the property since 2010 will have triggered Activity 11 of Listing Notice 1

of the Environmental Impact Assessment Regulations, 2010 (Government Notice R. 544 of 18 June 2010).

The opinion is held that Activity 12(x) and 12(xii) of Environmental Impact Assessment Regulations Listing Notice 3 of 2014 (GN No. R.983 of 4 December 2014) may be applicable to both Erf 1717 and the portion of Portion 249 of Farm 220.

Note: The proposal to relocate the informal settlements due to the environmental constraints and land ownership and to rehabilitate the areas is noted. The success of the rehabilitation will depend upon how well appropriate measures can be implemented to prevent unplanned land-use practices from reoccurring.

4.8. **Emfuleni; Gentswana A; Gentswana B; Gentswana C; PA Camp, & Thembani Str.**

The above-mentioned sites include properties which are zoned Undetermined, and include Remainder of Erf 912, Erf 1260 and Erf 1712, Kwanonqaba. Although these erven are zoned underdetermined, they are regarded to have a conservation use. The information in the Mossel Bay SDF indicates that these erven form part of the terrestrial and aquatic critical biodiversity areas and also have areas with slopes of 1:4 or steeper.

Based on this Department's NEMA EIA Circular 1 of 2012, and the information received, the Remainder of Erf 912, Erf 1260 and Erf 1712, Kwanonqaba **do not conform** to the requirements of the "interim urban edge" as adopted on 5 March 2012. For the purpose of the Environmental Impact Assessment Regulations, 2014, all three these properties are therefore not regarded to be an urban area.

The portions of land appear to have indigenous vegetation and comprised of such vegetation when the previous NEMA notices came into effect. Based on relevant satellite imagery, the opinion is held that, on the—

- (a) *Emfuleni site* – in excess of 2.5 hectares of Erf 912/RE has been transformed of which an area of approximately 2.2 hectares will be formalised for housing.

The Emfuleni site is described to consist of Erf 1260 and Erf 912/RE. The detail on Erf 1260 is not clear from the documentation, however, the erf is 31 279 square metres (3.1 hectares) of which 1.1 hectares appears to have been transformed by informal settlement and the indigenous vegetation removed since 2010. This activity triggered Activity 13(c)(ii)(ff) of Listing Notice 3 of the Environmental Impact Assessment Regulations, 2010 (Government Notice R. 546 of 18 June 2010) and therefore required environmental authorisation.

The combined area of cleared indigenous vegetation on the Emfuleni site may in fact be in excess of 5 hectares.

- (b) *Gentswana B and Gentswana C sites* - in excess of 5 hectares of Erf 1712 has been transformed. Portions of these sites appears to have been transformed by informal

settlement and the indigenous vegetation removed after 2010. This activity triggered Activity 13(c)(ii)(ff) of Listing Notice 3 of the Environmental Impact Assessment Regulations, 2010 (Government Notice R. 546 of 18 June 2010) and therefore required environmental authorisation. It also appears that in addition to the above, more than 1 hectare of the property may even have been cleared of indigenous vegetation since 4 December 2014.

(c) *Gentswana A site* – approximately 0.8 hectares of Erf 912/RE was transformed, of which an area of approximately 0.7 hectares will be formalised.

(d) *PA Camp site* - approximately 0.2 hectares of Erf 912/RE was transformed, of which 0.04 hectares will be formalised for housing.

(e) *Thembanani Street* - approximately 2.9 hectares of Erf 912/RE was transformed, of which an area of approximately 1.74 hectares will be formalised for housing,

Note: Due to the locality of 912/RE, the respective sites on this property can be grouped in two separate sections, namely

- 912/RE west - consisting of *Emfuleni*, and
- 912/RE east - consisting of *Gentswana A*; *PA Camp*; and *Thembanani Street* sites.

The area which has been transformed on the respective sites on Erf 912/RE east (including Thembanani Street) has a combined area of nearly 4 hectares in size, whereas, the combined area of all the Brownfield Sites on Erf 912/RE which have been transformed/cleared of indigenous vegetation since the previous NEMA notices came into effect, appears to exceed 6.4 hectares (i.e. $2.5+0.8+0.2+2.9$).

It is this Directorate's view that more than 1 hectare of indigenous vegetation has been cleared and the area transformed on the respective sections of Erf 912/RE between 2 August 2010 and 7 December 2014, and a combined area of more than 300 square metres (or even one (1) hectare) of indigenous vegetation has been cleared since 8 December 2014. Please note that this clearance of indigenous vegetation does not necessarily form a single or linked entity on the property, but refers the clearance of indigenous vegetation on the same property during the same period.

4.9. **Transand Kamp** (Erf 4178, Kwanonqaba)

It appears that the Transand Kamp is situated on Erf 4178, Kwanonqaba. This erf forms part of a development which appears to have been approved prior to the Environmental Impact Assessment Regulations, 2014 and the previous NEMA notices coming into effect. The activities on this specific erf are deemed to have commenced and the erf is also regarded to form part of the interim urban edge as adopted on 5 March 2012 by this Department.

4.10. Brandwacht (Portion 5 of the Farm 164)

Insufficient information has been provided to inform the determination on the applicability of the Environmental Impact Assessment Regulations, 2014.

It is understood that an area on Portion 5 of the Farm 164, next to the formal settlement in Brandwacht, has been transformed as part of an informal settlement. The area which appears to have been transformed may be in excess of 1.1 hectares in size. It appears that this farm forms part of the *Communal Property Association of Brandwacht* (commonage), and the property is likely to have been utilised for agriculture purposes. A detailed map of the proposed area to be formalised should also be provided to inform the matter.

5. Phased Activities

Please note that the above Brownfield Sites include activities which may be subject to phased development, which means any one phase of the activity may be below a threshold, but where a combination of the phases exceeds the threshold (i.e. clearance of indigenous vegetation) environmental authorisation must be obtained from the competent authority. Phased activities include all activities similarly listed in any of the previous NEMA notices, which commenced on or after the effective date of such previous NEMA Notices.

6. Based on the information received and the above, the table below provides a summary of the need for environmental authorisation from the relevant authority; the applicability of the Environmental Impact Assessment Regulations, 2014 and previous NEMA notices; and relevant provisions of NEMA.

| No. | NAME | CADASTRAL DESCRIPTION | DETERMINATION |
|-----|-------------|-----------------------|--|
| 1 | Asla Park A | Erf 4750, Kwanonqaba | Activities commenced lawfully prior to EIA Regulations coming into effect. Written authorisation not required from the relevant authority prior to the undertaking of the activities. |
| | | Erf 4749, Kwanonqaba | Activities commenced lawfully prior to EIA Regulations coming into effect. Written authorisation not required from the relevant authority prior to the undertaking of the activities. |
| | | Erf 4788 Kwanonqaba | Proposed development constitutes listed activities ³ . Written authorisation required from the relevant authority prior to the |
| | | Erf 6938 Kwanonqaba | |

³ "listed activities" refers to activities identified in terms of section 24(2) of NEMA and published in the Environmental Impact Assessment Regulations Listing Notice 1 of 2014 (GN No. R.983 of 4 December 2014) and/or Environmental Impact Assessment Regulations Listing Notice 3 of 2014 (GN No. R.983 of 4 December 2014) ("LN3");

| No. | NAME | CADASTRAL DESCRIPTION | DETERMINATION |
|-----|-------------|-----------------------------|---|
| | | | undertaking of the activities. |
| 2 | Asla Park B | Erf 7223; 7224; 7429 & 7411 | Environmental Authorisation already issued by the relevant competent authority. Refer to: EG12/2/3/1-D6/27-1408/09; and EG12/2/4/1-D6/25-0004/11 |
| | | Erf 1704, Kwanonqaba | The development constituted listed activities which required environmental authorisation. The activities commenced unlawfully on site. No legal mechanism available to obtain environmental authorisation. |
| 3 | Asla Park C | Erf 4877 Kwanonqaba | The development constituted listed activities which required environmental authorisation. The activities commenced unlawfully on site. Based on the available information it appears that no legal mechanism is available to rectify the situation or obtain environmental authorisation. |
| 4 | Asla Park D | Portion 220 of the Farm 249 | The development constitutes listed activities which require environmental authorisation. The activities commenced on the site without environmental authorisation. |
| | | Erf 5184, Kwanonqaba | The development constitutes listed activities which require environmental authorisation. The activities commenced on the site without environmental authorisation. |
| | | Erven 7510, 7511 7512 | Activities commenced lawfully prior to EIA Regulations coming into effect. Written authorisation not required from the relevant authority prior to the undertaking of the activities. |
| 5 | Asla Park E | Erf 3372 Kwanonqaba | Activities commenced lawfully prior to EIA Regulations coming into effect. Written authorisation not required from the relevant authority prior to the undertaking of the activities. |
| 6 | Sewendelaan | Erf 1704 Kwanonqaba | The development constitutes listed activities which require environmental authorisation. The activities commenced on the site without environmental authorisation. |
| 7 | Sinethemba | Erf 1717 Kwanonqaba | The development constitutes listed activities which require environmental authorisation. The activities commenced on the site without environmental |

| No. | NAME | CADASTRAL DESCRIPTION | DETERMINATION |
|-----|-----------------|-----------------------------|---|
| | | | authorisation. |
| | | Erf 1704 Kwanonqaba, | The development constitutes listed activities which require environmental authorisation. The activities commenced on the site without environmental authorisation. |
| | | Portion 220 of the Farm 249 | The development constitutes listed activities which require environmental authorisation. The activities commenced on the site without environmental authorisation. |
| 8 | Emfuleni | Erf 912/RE Kwanonqaba | The development constitutes listed activities which require environmental authorisation. The activities commenced on the site without environmental authorisation. |
| | | Erf 1260 Kwanonqaba | |
| 9 | Gentswana A | Erf 912/RE Kwanonqaba | The development constitutes listed activities which require environmental authorisation. The activities commenced on the site without environmental authorisation. |
| 10 | Gentswana B | Erf 1712 Kwanonqaba | The development constitutes listed activities which require environmental authorisation. The activities commenced on the site without environmental authorisation. |
| 11 | Gentswana C | Erf 1712 Kwanonqaba | |
| 12 | PA Kamp | Erf 912/RE Kwanonqaba | The combined development constitutes listed activities which require environmental authorisation. The activities commenced on the site without environmental authorisation. |
| 13 | Thembani Street | Erf 912/RE Kwanonqaba | |
| 14 | Transand Kamp | Erf 417 Kwanonqaba | |
| 15 | Brandwacht | Portion 5 of Farm 164 | Insufficient information to make an informed determination. |

7. **Written authorisation is required** from the relevant authority (as defined in GN No R. 982 of 4 December 2014), prior to the undertaking of the said activities for the proposed activities on -

Erf 4788 and Erf 6938 Kwanonqaba - Asla Park A.

- 7.1. The onus is on the proponent/applicant to ensure that all the applicable listed activities are applied for and assessed as part of the environmental impact assessment (EIA) process.
- 7.2. An application form must be completed and submitted to the Directorate: Development Management (Region 3) for consideration in accordance with the

procedures stipulated in GN No. R. 982 of 4 December 2014. This Directorate will only proceed with the consideration of the application upon receipt of this information.

In accordance with the provisions of the Environmental Impact Assessment Regulations, 2014 you are required to appoint an environmental assessment practitioner ('EAP') to assist you with the investigation and administration of your application.

- 7.3. Please note that the activities may not commence prior to an environmental authorisation being granted by the Department. It is an offence in terms of Section 49A of the National Environmental Management Act, 1998 (Act no. 107 of 1998) ("NEMA") for a person to commence with a listed activity unless the competent authority has granted an environmental authorisation for the undertaking of the activity.

8. Sites where activities have commenced without environmental authorisation

- 8.1. The activities on the following brownfield sites are regarded to have required environmental authorisation and are still similarly listed in the relevant Environmental Impact Assessment Regulations Notices of 2014, namely:

- (a) Portion of Asla Park D: Erf 5184
- (b) Sewendelaan: Erf 1704 Kwanonqaba
- (c) Sinethemba: Erf 1704/RE; Erf 1717, and a portion of Portion 249 of Farm 220
- (d) Emfuleni: 912/RE (west)
- (e) Gentswana B and Gentswana C: Erf 1712
- (f) Gentswana A; PA Camp; and Thembani Street: 912/RE (east)

- 8.2. The commencement of the activities on aforementioned sites is regarded to be an offence in terms of section 24F and 49(a) of NEMA. Your attention is drawn to the provisions of section 24G of NEMA which deal with the formal procedures for offenders (in terms of Section 24F) to apply for the rectification of the unlawful commencement of listed activities.

- 8.3. You are requested to liaise with the Competent Authority as a matter of urgency to determine the way forward on said development sites.

9. Activities which do not require written environmental authorisation.

In light of the information received and the above assessment, **written authorisation is therefore not required** from the relevant authority (as defined in GN No R. 982 of 4 December 2014), prior to the undertaking of the proposed development activities on the following sites:

- (a) Portion of Asla Park A: Erf 4750, Erf 4749 Kwanonqaba

| | |
|----------------------------|---------------------------|
| (b) *Asla Park C | Erf 4877 Kwanongqaba |
| (c) Portion of Asla Park D | Erven 7510, 7511 and 7512 |
| (d) Asla Park E: | Erf 3372 Kwanongqaba |
| (e) Transand Kamp | Erf 417 Kwanongqaba |

Note: Section 24G of NEMA may be applicable to the sites denoted with *.

10. Please be reminded that Asla Park B (Erf 1704 and Erf 7223, Kwanongqaba) is already subject to Environmental Authorisation (ref. EG12/2/3/1-D6/27-1408/09 and EG12/2/4/1-D6/25-0004/11). Assistance from the Mossel Bay Municipality to complete the environmental audit on said environmental authorisations, will be appreciated.
11. Kindly provide additional information on the Brandwacht site to inform this Directorate's response.
12. The Department reserves the right to revise initial comments and request further information based on the information received.

Yours faithfully



HEAD OF COMPONENT: EIMS (REGION 3)
DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING

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