

Postal Private Bag X6546, George, 6530
Physical 4th Floor, York Park Building, York Street, George
6530
Website www.capenature.co.za
Enquiries Megan Simons
Telephone +27 87 087 3060
Email msimons@capenature.co.za
Reference LE14/2/6/1/6/6/ERF5000_Estuarine_Great Brak
Date 19 February 2024

HillLand Environmental,
P.O. Box 590,
George,
6530

Attention: Ms Inge Delpont
By email: environmental2@hilland.co.za

Dear Ms Inge Delpont

THE DRAFT BASIC ASSESSMENT REPORT FOR THE EXPANSION OF STRUCTURES AND INFRASTRUCTURE WITHIN 100M OF THE HIGH-WATER MARK OF THE ESTUARY- EXISTING RESTAURANT BUILDING, ASSOCIATED INFRASTRUCTURE, AND JETTY ON ERF 5000, GREAT BRAK RIVER, MOSSEL BAY LOCAL MUNICIPALITY, WESTERN CAPE.

CapeNature would like to thank you for the opportunity to review the above report. Please note that our comments only pertain to the biodiversity related impacts and not to the overall desirability of the application. CapeNature has provided comments for the above plan. Following a review of the updated report, we wish to make the following comments:

According to the Western Cape Biodiversity Spatial Plan (Pool-Stanvliet *et.al.* 2017)¹ the property has natural Critical Biodiversity Areas (CBA 1: Aquatic; Estuary) and degraded Ecological Support Areas (ESA 2: Restore). The property is within the Estuarine Functional Zone of the Groot Brak², which is moderately protected³.

According to Vlok and de Villiers (2007)⁴ fine scale vegetation maps the area is described as Groot Brak River and Floodplain and Groot Brak Estuary. According to the National Biodiversity Assessment (Skowno *et al.* 2018)⁵ the vegetation is Groot Brak Dune Strandveld Fynbos which is **Critically Endangered** (NEM:BA, 2022)⁶.

¹ Pool-Stanvliet, R., Duffell-Canham, A., Pence, G. & Smart, R. 2017. The Western Cape Biodiversity Spatial Plan Handbook. Stellenbosch: CapeNature.

² Nel, J.L., Murray, K.M., Maherry, A.M., Petersen, C.P., Roux, D.J., Driver, A., Hill, L., Van Deventer, H., Funke, N., Swartz, E.R., Smith-Adao, L.B., Mbona, N., Downsborough, L. & Nienaber, S. (2011). Technical Report for the National Freshwater Ecosystem Priority Areas project. WRC Report No. K5/1801.

³ Van Deventer, H., van Niekerk, L., Adams, J., Dinala, M.K./ Gangat, R., Lamberth, S.J., Lötter, M., MacKay, F., Nel, J.L., Ramjukadh, C.J., Skowno, A., Weerts, S. 2019. National Wetland Map 5-An Improved Spatial Extent and representation of inland aquatic and estuarine ecosystems in South Africa.

⁴ Vlok JHJ, de Villiers R (2007) Vegetation Map for the Riversdale Domain. Unpublished 1:50 000 maps and report supported by CAPE FSP task team and CapeNature.

⁵ Skowno, A. L., Poole, C. J., Raimondo, D. C., Sink, K. J., Van Deventer, H., Van Niekerk, L., Harris, L. R., Smith-Adao, L. B., Tolley, K. A., Zengeya, T. A., Foden, W. B., Midgley, G. F. and Driver, A. 2019. National Biodiversity Assessment 2018: The status of South Africa's ecosystems and biodiversity. Synthesis Report. Pretoria, South Africa. 214 pp.

⁶ National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004). The Revised National List of Ecosystems that are Threatened and in need of protection. 2022. Government Gazette No. 47526

Following a review of the dBAR and Estuarine Assessment, CapeNature wishes to make the following comments:

1. The property has one listed protected tree⁷ species which will be avoided. CapeNature reminds the applicant that in terms of section 15(1) of the National Forests Act⁸, no person may cut, disturb, damage, or destroy any protected tree or possess, collect, remove, transport, export, purchase, sell, donate or in any other manner acquire or dispose of any protected tree except under a license granted by the Minister.
2. It is understood the proposed expansion will be constructed mostly on the existing footprint, but the footprint will slightly increase.
3. The estuarine assessment mentioned heavy machinery will not disturb or impact on vegetation outside the demarcated areas. Given the proximity to the estuary it must be indicated where heavy machinery will be used.
4. CapeNature does not support the proposed development for the following reasons and with reference to the draft DEA&DP EMP 2021, currently in the approval process:
 - 4.1. Objective 6 of the EMP states that “Future development on the estuary is constrained to ensure that it does not compromise the existing sense of place, conservation value and/or cultural heritage resources associated with the Groot Brak River estuary”.
 - 4.2. The current zonation plan prevents further encroachment on the Estuary Functional Zone (EFZ) and no new developments should be allowed below the 1:50 year flood line or, if it is established, below the Coastal Management Line (CML).
 - 4.3. There is currently a very limited number of structures on the river system.
 - 4.4. Enhancements of existing rights should not be allowed; however, maintenance of existing approved infrastructure can be.
 - 4.5. The dBAR referred to the 2015 approved plan which illustrates the jetty. CapeNature kindly request the approvals for the existing jetty.
 - 4.6. The stormwater management should be improved. The EMP does not elaborate on this, however the proposed change would not improve the final stormwater release but merely channel the stormwater to a more concentrated point. Improvement of stormwater retention, litter collection systems and secondary utilization of water (such as SUDs) should be considered.
 - 4.7. The EMP mentions that vessel use on the system is currently very limited. The proposed extensive jetty would encourage more vessel use on the system.
 - 4.8. This increased vessel use would also be congested at this site with the addition of the access jetty, creating safety concerns on the waterway.
 - 4.9. This increased vessel use on the system could increase the pressure on living resources through pollution and increase resource use (fishing).
5. In terms of the Sea Shore Act, 1935 (Act No. 21 of 1935) a lease agreement is required from CapeNature for any structure’s seawards or on the High-Water Mark of the Sea on state-owned land. Please note that in terms of section 3(5) of the Sea-Shore Act, 1935 (Act No 21 of 1935)

“Before any lease is entered into under subsection (1) or any permit is granted under subsection (2), the Minister shall, at the expense of the person with or to whom it is proposed to enter into such lease or to issue such permit, cause a notice to be published in the Gazette and in not less than one

⁷ Notice of the List of Protected Tree Species under the National Forest Act, 1998 (Act No. 84 of 1998).

⁸ National Forest Act, 1998 (Act No. 84 of 1998). 1998. Government Gazette No. 19408.

The Western Cape Nature Conservation Board trading as **CapeNature**

Board Members: Associate Prof Denver Hendricks (Chairperson), Prof Gavin Maneveldt (Vice Chairperson), Ms Marguerite Loubser, Mr Mervyn Burton, Dr Colin Johnson, Prof Aubrey Redlinghuis, Mr Paul Slack

newspaper circulating in the neighbourhood wherein the portion of the sea-shore or the sea concerned is situated, wherein-

- (a) the proposal to enter into the lease or to issue the permit is made known.
- (b) the place where and the times at which full particulars of the proposed lease or permit will be open for inspection are specified; and
- (c) it is specified that objection to the proposed lease or permit may be lodged with a person specified in the notice, before a date so specified, which shall be not less than 30 days after the date on which the notice is published.

6. It is assumed that some work will be required on Coastal Public Property (CPP). In terms of the NEM: ICM Act⁹, CPP exists to:

- (i) improve public access to the seashore;
- (ii) protect sensitive coastal ecosystems;
- (iii) secure the natural functioning of dynamic coastal processes;
- (iv) protect people, property and economic activities from risk arising from dynamic coastal processes, including the risk of sea-level rise; or
- (v) to facilitate the achievement of any of the objects of the ICM Act.

7. The effect of the proposed activity on the above objectives must therefore be assessed, including how development setbacks have been utilised to achieve these objectives.

8. Please note that no structures should be placed on CPP unless it complies with the purpose of CPP as detailed in Section 7A of the NEM:ICM Act. In this regard, Section 15 of the ICM Act states:

- “(1) No person, owner or occupier of land adjacent to the seashore or other coastal public property capable of erosion or accretion may require any organ of state or any other person to take measures to prevent the erosion or accretion of the seashore or such other coastal public property, or of land adjacent to coastal public property, unless the erosion is caused by an intentional act or omission of that organ of state or other person.
- (2) No person may construct, maintain or extend any structure, or take other measures on coastal public property to prevent or promote erosion or accretion of the seashore except as provided for in this Act, the National Environmental Management Act or any other specific environmental management Act.”

CapeNature reserves the right to revise initial comments and request further information based on any additional information that may be received.

Yours sincerely,



Megan Simons
For: Manager (Conservation Intelligence)

⁹ National Environmental Management: Integrated Coastal Management Amendment Act, 2014 Act (No. 36 of 2014).
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