

6 February 2023

Project. 1001556

Ms. Nasreen Asmal
KZN Department of Economic Development, Tourism and Environmental
Affairs (EDTEA)
270 Jabu Ndlovu Street,
Pietermaritzburg,
3201

Dear Ms Asmal,

**Cato Ridge Land Release and Development Project, eThekweni Metropolitan Municipality,
KwaZulu-Natal – exclusion of commercially confidential information from the EIR**

The Cato Ridge Development Company Ltd (“CRDC”) (a wholly-owned subsidiary of Assmang (Pty) Limited (“Assmang”), wants to release land parcels within a study area in Cato Ridge to allow for the establishment of a light industrial, logistics, distribution and warehousing precinct. The final scoping report was submitted under a cover letter dated 11 January 2023.

As we prepare to enter the EIA phase, we are seeking guidance from the Kwazulu-Natal Department of Economic Development, Tourism and Environmental Affairs (EDTEA) regarding the handling of ‘commercially confidential information’¹ during the public participation process in the Environmental Impact Assessment (EIA) phase.

Regarding the competent authorities’ right of access to information, the National Environmental Management Act (Act 107 of 1998 as amended) (NEMA) Environmental Impact Assessment Regulations (GN 982 of 2014) (EIA Regulations) regulation 10 (c) states - “*an applicant must - provide the EDTEA with all information that reasonably has or may have the potential of influencing any decision with regard to an application.*”

Due to the nature of the application, commercially sensitive information will be produced. However, the public disclosure of some details may prejudice the commercial interests of the Applicant and they wish to exclude certain details from the public record. In terms of Regulation, 13 (1) (f)² the EAP wishes to (1) disclose the existence of said sensitive information and (2) seek guidance from the EDTEA in terms of Section 8 (a)³ and (b)⁴ of the EIA Regulations regarding the disclosures of such information, ensuring compliance with NEMA and avoiding the alienation of rights of the public and the Applicant.

¹ NEMA defines “commercially confidential information” as *commercial information, the disclosure of which would prejudice to an unreasonable degree the commercial interests of the holder: Provided that details of emission levels and waste products must not be considered to be commercially confidential notwithstanding any provision of this Act or any other law.*

² NEMA EIA Regulation 13(1)(f): *General requirements for EAPs and specialists. (1) An EAP and a specialist, appointed in terms of regulation 12(1) or 12(2), must - (f) disclose to the proponent or applicant, registered interested and affected parties and the competent authority all material information in the possession of the EAP and, where applicable, the specialist, that reasonably has or may have the potential of influencing - (i) any decision to be taken with respect to the application by the competent authority in terms of these Regulations; or (ii) the objectivity of any report, plan or document to be prepared by the EAP or specialist, in terms of these Regulations for submission to the competent authority; unless access to that information is protected by law, in which case it must be indicated that such protected information exists and is only provided to the competent authority.*

³ NEMA EIA Regulation 8(a): *Guidance by competent authority to proponent or applicant - A competent authority, subject to the payment of any reasonable charges, if applicable - (a) may advise or instruct the proponent or applicant of the nature and extent of any of the processes that may or must be followed or decision support tools that must be used in order to comply with the Act and these Regulations;*

⁴ NEMA EIA Regulation 8(b): *must advise the proponent or applicant of any matter that may prejudice the success of an application;*



The Environmental Impact Report (EIR) and associated reports will present the specialist findings but certain commercially sensitive information may be withheld / redacted.

The following list provides an indication of the type of commercial information the Applicant wishes to make publicly available and assist EDTEA in making an informed decision on the Project Application:

- Total offset costs;
- Total engineering cost;
- Total professional and consulting fees;
- Total bulk services and infrastructure costs;
- Total financial cost;
- Total Investment Cost; and
- Macro-Economic and Social benefits associated with the Project

It should be understood that total costs have not been defined to a final master plan level of detail. While the level of detail and accuracy is considered sufficient for decision-making the actual total costs may be subject to further refinement as detailed engineering and procurement processes continue.

The following list provides examples of the commercial details which will be withheld due to commercial sensitivity, in so far as these items are negotiated with end-user tenants, in competition with other developers:

- Commercial arrangements with future end-users;
- Commercial terms of lease agreements;
- Long-term cash flow projections (which would by necessity incorporate competitive information);
- Land sales and lease prices; and
- The required return on investment.

In terms of Regulation, 13 (f) the EAP understands that a disclosure must be included in the EIR informing registered Interested and Affected Parties (I&APs) that some details are considered commercially sensitive and have been withheld to protect the Applicant's commercial interests.

With this letter, we seek to disclose the intention to withhold information and seek the EDTEA's guidance regarding the protection of confidential information. In terms of Section 8 (a) and (b) of the EIA Regulations we request the EDTEA to please confirm the approach and any procedural measures to be taken by the EAP to avoid the alienation of rights of the Applicant, the Competent Authority and the Public.

Please do not hesitate to contact the undersigned with any queries or clarifications.

Yours faithfully



Patrick Killick
Environmental Assessment Practitioner (Reg: 2021/4095)

CC: Ian Felton <Ian.Felton@kznedtea.gov.za>

Patrick Killick

From: Natasha Brijlal <Natasha.Brijlal@kznedtea.gov.za>
Sent: 28 February 2023 15:02
To: Patrick Killick
Subject: RE: Cato Ridge Land Release and Development Project, eThekweni Metropolitan Municipality, KwaZulu-Natal - Dealing with commercially confidential information in the EIR

Follow Up Flag: Follow up
Flag Status: Completed

Hi Patrick

We have had an internal discussion regarding this, and the Department has no objection as the information to be restricted is limited to commercial characteristics of the project.

Kind regards



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Private Bag 1015
Nasasha.Brijl
Tel: 031 350 30

NATASHA BRIJLAL
CONTROL ENVIRONMENTAL OFFICER
Environmental Impact Assessment

Growing KwaZulu-Natal Together

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From: Patrick Killick <Patrick.Killick@zutari.com>
Sent: Monday, 06 February 2023 15:15
To: Nasreen Asmal <Nasreen.Asmal@kznedtea.gov.za>
Cc: Ian Felton <Ian.Felton@kznedtea.gov.za>
Subject: Cato Ridge Land Release and Development Project, eThekweni Metropolitan Municipality, KwaZulu-Natal - Dealing with commercially confidential information in the EIR

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Dear Ms. Asmal,

I trust this finds you well.

Please refer to the attached letter for the details regarding our request for procedural guidance from the EDTEA as it relates to the handling and exclusion of commercially sensitive information in the EIA phase for the Cato Ridge Land Release and Development Project.

Please don't hesitate to contact me to discuss the matter.

Regards,

Patrick Killick (EAPASA certified)

SENIOR CONSULTANT, ENVIRONMENT AND PLANNING | ZUTARI
