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DATE: 26 July 2023

The Municipal Manager
City of Cape Town
8 Voortrekker Road
Corner of Mike Pienaar Boulevard
BELLVILLE
7535

Attention: Mr. K. Olsen

E-mail: Keith.Olsen@capetown.gov.za

Dear Sir

DETERMINATION ON THE APPLICABILITY OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, 2014 (AS AMENDED) WITH REGARDS TO THE PROPOSED REVISED UPGRADE DESIGN OF THE UPGRADE AND EXPANSION OF THE MACASSAR WASTE WATER TREATMENT WORKS ("WWTW") ON ERF 1205, MACASSAR.

1. The Applicability Checklist and associated information as received by this Department via electronic mail correspondence on 25 May 2023, this Directorate's electronic mail correspondence dated 23 June 2023 (requesting additional information) and the additional information received via electronic mail correspondence on 19 July 2023, refer.
2. This Department has reviewed your correspondence and noted the following:
 - 2.1 The Department issued an environmental authorisation on 7 July 2016 for the upgrade and capacity increase of the existing Macassar WWTW on Erf 1205, Macassar.
 - 2.2 Construction activities in line with the environmental authorisation commenced on 2 March 2018.
 - 2.3 Alternative technology options have been identified by the design engineers in order to improve the efficiency of the WWTW and improve the quality of the effluent being discharged to the estuary. The current proposal includes refurbishment of the process units and facilities of the existing Macassar WWTW, which includes the following:
 - 2.3.1 Development of a new inlet works, primary settling tanks, biological reactors, secondary settling tanks, associated pipework, primary sludge screening, primary sludge pumping, gravity thickeners, anaerobic digesters, gas holding tanks, dewatering building, sludge facility and storage, phosphorous dosing, chlorine dosing, odour control, extension of the disinfection system (including ultra violet disinfection), wash water pump station, maturation ponds (modifications), new outlet to the river, smaller ancillary structures, new buildings on site (including new administration building, new workshop and store, new guardhouse and new electrical infrastructure building) and civil infrastructure (including roads, fencing, paved areas).
 - 2.3.2 The proposed revised upgrade design will require the clearance of additional areas containing indigenous vegetation (more than 1ha in extent). Some of the areas containing indigenous vegetation include Cape Flats Dune Strandveld, which is

mapped as an Endangered ecosystem in terms of the National Environmental Management: Biodiversity Act, 2002 Revised List of Threatened Ecosystems in Need of Protection, 2022.

- 2.3.3 The site is located adjacent to the Eerste River estuary.
- 2.3.4 The authorised treatment and discharge capacities will remain the same.
- 2.3.5 The existing Water Use License is proposed to be amended to increase discharge capacity from 62.1 Ml/day to the authorised 80 Ml/day.
- 2.3.6 The footprint of the new design of the outlet structures is less than the footprint of the existing infrastructure and will not exceed what was previously allowed for.

3. Please be advised that, based on the information provided, the proposed revised design upgrade constitutes the following listed activities in terms of the EIA Regulations, 2014 (as amended). Written authorisation is **therefore required** from the competent authority prior to the undertaking of the said activities. This determination is based on the following:

3.1 The proposed revision to the design upgrades will require the clearance of more than 1ha of indigenous vegetation, which includes Endangered Cape Flats Dune Strandveld vegetation.

Listing Notice 1:

Activity 27:

"The clearance of an area of 1 hectare or more, but less than 20 hectares of indigenous vegetation, except where such clearance of indigenous vegetation is required for-

- (i) the undertaking of a linear activity; or*
- (ii) maintenance purposes undertaken in accordance with a maintenance management plan".*

Listing Notice 3:

Activity 12:

"The clearance of an area of 300 square metres or more of indigenous vegetation except where such clearance of indigenous vegetation is required for maintenance purposes undertaken in accordance with a maintenance management plan.

i. Western Cape

- i. Within any critically endangered or endangered ecosystem listed in terms of section 52 of the NEMBA or prior to the publication of such a list, within an area that has been identified as critically endangered in the National Spatial Biodiversity Assessment 2004;*
- ii. Within critical biodiversity areas identified in bioregional plans;*
- iii. Within the littoral active zone or 100 metres inland from high water mark of the sea or an estuarine functional zone, whichever distance is the greater, excluding where such removal will occur behind the development setback line on erven in urban areas;*
- iv. On land, where, at the time of the coming into effect of this Notice or thereafter such land was zoned open space, conservation or had an equivalent zoning; or*
- v. On land designated for protection or conservation purposes in an Environmental Management Framework adopted in the prescribed manner, or a Spatial Development Framework adopted by the MEC or Minister".*

3.2 Considering the information provided and the case specific details, since the proposed amendment will result in a listed activity(ies) being triggered, an environmental authorisation for said activity would be required.

Regulation 31 of the EIA Regulations, 2014 (as amended) states:

"Amendments to be applied for in terms of Part 2

31. An environmental authorisation may be amended by following the process prescribed in this Part if the amendment will result in a change to the scope of a valid environmental authorisation where such change will result in an increased level or change in the nature of impact where such level or change in nature of impact was not-

(a) assessed and included in the initial application for environmental authorisation; or

(b) taken into consideration in the initial environmental authorisation;

and the change does not, on its own, constitute a listed or specified activity."

3.2.1 A Part 2 amendment process can therefore not apply where the change (on its own) triggers a listed or specified activity.

4. An environmental authorisation is therefore required for the proposed additional clearance of indigenous vegetation. However, an amendment of the existing environmental authorisation will also be required to reflect the proposed project design changes and project description.

4.1 The application for amendment of the existing environmental authorisation can be applied for as part of the Basic Assessment application for additional vegetation clearance.

4.2 Further, in accordance with Regulation 25(4) of the EIA Regulations, 2014 (as amended), the competent authority may replace the existing environmental authorisation.

Regulation 25(4) of the EIA Regulations, 2014 (as amended) states:

"The competent authority may replace an existing valid environmental authorisation with an environmental authorisation contemplated in this regulation, indicating the extent of replacement in the environmental authorisation, if the existing valid environmental authorisation is directly related to the application for environmental authorisation."

5. The application for environmental authorisation must include proof of the submission of the application for amendment of the existing Water Use License.

6. Please be advised that it is prohibited in terms of Section 24F of the 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. A person convicted of this prohibition is liable to a fine not exceeding R10 million or imprisonment for a period not exceeding ten years, or to both such fine and imprisonment.

7. This Department reserves the right to revise its comments and request further information based on any information received.

Yours faithfully

Taryn
Dreyer
Digitally signed
by Taryn Dreyer
Date: 2023.07.26
13:59:39 +02'00'

pp **MR. ZAAHIR TOEFY**
DIRECTOR: DEVELOPMENT MANAGEMENT REGION 1

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