Western Cape Government

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PER E-MAIL

REFERENCE: 16/3/3/6/7/1/D1/6/0110/21
ENQUIRIES: Jessica Christie
DATE: **07-OCT-2021**

THE DIRECTOR
CAVA MOLA MINING (PTY) LTD
P.O. Box 20366
PROTEA PARK
0305

Attention: Mr. G. Maritz

E-mail: gmz@agrilime.com
Cell: 083 267 1719

Dear Sir,

COMMENT ON THE PUBLIC PARTICIPATION PLAN FOR HOUSE MARITZ ON ERF 390 & REMAINDER ERF 141, KEURBOOMSTRAND

1. The Public Participation Plan in respect of the abovementioned matter, received by this Department via e-mail on 18 August 2021, refer.

2. In accordance with Regulation 8, the competent authority provides the following guidance of the nature and extent of any of the processes that may or must be followed in order to comply with the National Environmental Management Act, 1998 (NEMA) and *the "EIA Regulations"* [1].

3. *Public Participation Plan*

   This Department's Circular No. 0001/2021[2], provides that the Competent Authority may be approached for an agreement as provided for in Regulation 41(2)(e) of the EIA Regulations to conduct a public participation process which is reasonable and fair.

   Considering the above, this Directorate has reviewed the proposed Public Participation Plan ("PP-Plan") and has found that insufficient detail has been provided in the plan. Although some of requirements below have been included in the PP Plan, the following is a comprehensive list to which the PP Plan should comply with:

[1] "EIA Regulations" refer to the *Environmental Impact Assessment Regulations, 2014* (Government Notice 983 of 4 December 2014 (as amended). Any reference to "Regulation" in this document, refers to the set of EIA Regulations, 2014.

[2] DEADP Circular No. 0001/2021: *EIA and related licensing services and supporting professional services during COVID-19 Lockdown Alert Level 3 and for the remainder of the COVID-19 national state of disaster*, dated 6 January 2021.

3.1. Interested and Affected Parties (I&APs)

- The PP-plan should contain a preliminary register with a list of I&APs which have been identified.

- The list of I&APs must include:
  - the occupiers of the site and the owner or person in control of the site (if the proponent or applicant is not the owner or person in control of the site)
  - owners, persons in control of, and occupiers of land adjacent to the site where the activity is or is to be undertaken and to any alternative site where the activity is to be undertaken;
  - all organs of state which have jurisdiction in respect of the activity to which the application relates; including the municipality which has jurisdiction in the area;
  - the municipal councillor of the ward;

- When such a register must be submitted to the Competent Authority for the purpose of an application for Environmental Authorisation, it must contain the names, contact details (i.e. e-mail addresses) and physical addresses. Please refer to Regulation 42.

- The PP-Plan register must be updated if the CA identifies any other party which must be added to the register.

- PP-Plan must describe how the final I&AP Register will be compiled.

- The EAP must maintain the Register of I&APs (i.e. preliminary register must be updated with any new I&APs).

- The final register must be submitted to the Competent Authority with the BAR.

- This register must comply with Regulation 42 and must contain the names, contact details (i.e. e-mail addresses) and physical addresses.

- The register must provide details of the preferred form of communication (i.e. per e-mail; download from website) preferred address and highlight if the I&AP requires hardcopies of reports.

3.2. Complying with Regulation 41 during the Pre-Application or Application phase

- The public participation process ("PPP") which will be undertaken, must meet the requirements of Regulation 41 of the EIA Regulations. The public participation (i.e. notification process in terms of Regulation 41) may be undertaken prior to the submission of the application (Pre-Application), although this is not mandatory.

- The PP-Plan must describe whether I&APs will be provided with an opportunity to comment on the BAR, as contemplated in Sub-Regulation 40(1)(a) prior to the submission of the application for Environmental Authorisation (i.e. Pre-Application BAR).

- The PP-Plan must indicate when the person conducting the public participation process intends to comply with Regulation 41 in its entirety, e.g. within the Pre-Application Phase or the Application phase.

- The person conducting the public participation process may comply with Regulation 41 during both the Pre-Application and Application phase.

> **Note:**
> In terms of Sub-Regulation 40(3) of the Environmental Impact Assessment Regulations, 2014 (as amended) this Department may be provided with an opportunity to comment on the BAR, as contemplated in Sub-Regulation 40(1)(a) prior to the submission of the application for environmental Authorisation. Such a BAR must comply with the information requirements as stipulated in Sub-Regulations 19(3); 19(4) and 19(8) as well as Annexures 1, 4 and 6 of the regulations.
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> Such a BAR must be subject to public participation process as prescribed in Sub-Regulation 19(1)(a) read together with Regulation 41. With due consideration of these requirements, a public participation process conducted in terms of a BID (only) does not comply with said requirements. In such an instance, the person conducting the public participation process will need to comply with Regulation 41 for an application once it is submitted.

3.3. Notification of I&APs in terms of Regulation 41 of the EIA Regulations:

The person conducting a public participation process must give notice to all potential interested and affected parties of an application or proposed application which is subjected to public participation by—

- Notice boards
  - The PP-plan must indicate if notice boards will be utilised, if no notice board(s) will be utilised, a motivation must be provided and an application for exemption may be required.
  - The PP-plan must describe where the notice boards will be placed (Note: this must be at a place conspicuous to and accessible by the public at the boundary, on the fence or along the corridor of the site where the activity to which the application or proposed application relates is or is to be undertaken; and any alternative site).

- Written notices:
  - The manner of delivering the written, as provided for in section 47D of the NEMA, must be described.
  - It must be possible to cross-reference this with the preferences indicated in the I&AP Register.

- Placing an advertisement in a local newspaper:
  - The PP-Plan must indicate in which local newspaper an advertisement will be placed.
  - If no advertisement will be placed in a local newspaper, a motivation must be provided and an application for exemption may be required.

- Placing an advertisement in at least one provincial newspaper or national newspaper:
  - The PP-Plan must indicate in which provincial newspaper an advertisement will be placed, if the activity has or may have an impact that extends beyond the boundaries of the metropolitan or district municipality in which it is or will be undertaken: Provided that this requirement need not be complied with if an advertisement has been placed in an official Gazette.

- Using reasonable alternative methods to address:

- illiteracy;
- disability; or
- any other disadvantage.

Proponents/Applicants and EAPs, in addition to the methods contained in Chapter 6 of the EIA Regulations, or as part of reasonable alternative methods proposed in terms of regulation 41(2)(e)(iii) of the EIA Regulations, may make use of the following non-exhaustive list of methods:

- e-mails, websites, Zero Data Portals, Cloud Based Services, or similar platforms, direct telephone calls, virtual meetings, newspaper notices, radio advertisements, community representatives, distribution of notices at places that are accessible to potential I&APs.
- the PP-plan must clearly identify the disadvantage (i.e. access to the internet) and describe which method will be utilised to notify the I&APs.

3.4. Making reports available for comment:

- Registered I&APs are entitled to comment on reports and plans in writing, on all reports or plans submitted to such party during the public participation process.

- The PP-Plan must clearly describe how the EAP will submit the reports to potential and Registered I&APs.

- Delivery of reports/documents must be done in a manner provided for in section 47D of the NEMA.

- Hard copies or electronic versions of reports may be made accessible through any of the following non-exhaustive list of methods: websites, Zero Data Portals, community or traditional authorities, Cloud Based Services, provided that all registered I&APs have access to the reports.

- Where I&APs cannot gain reasonable access to electrotonic copies, alternative means must be described, and provision must be made in the timeframes for the delivery of such documents.

- It must be possible to cross-reference the proposed delivery of documents to the preferences indicated in the I&AP Register.

- Reports may not be made available at any public places or premises closed to the public, as contemplated in the Regulations.

3.5. Notifying registered I&APs of a decision made on the application and providing access to the decision:

- The PP-Plan must clearly describe the how registered I&APs will be notified of the decision on an application and how access will be provided to a copy of the decision.

- Hard copies or electronic versions of decisions may be made accessible through any of the following non-exhaustive list of methods:

- E-mail; websites, Zero Data Portals, community or traditional authorities, Cloud Based Services, provided that all registered I&APs have access to the decision.

- It must be possible to cross-reference this method with the preferences indicated in the I&AP Register.

- The applicant or EAP must provide proof that all registered I&APs have been notified and provided access to the decision.

3.6. Timeframes:

- The PP-Plan must clearly describe the timeframes of the PPP in relation to the Project Programme. A clear distinction must be made between the Pre-Application phase and Application phase PPP.

- Regulation 3(8) requires that any public participation process must be conducted for a period of at least 30 days.

4. This Directorate **further recommends that the following be incorporated into the PP-Plan**:

- All interested and affected parties ("I&APs') including organs of state must be afforded a minimum of **three (3) calendar days** from date of notification before the 30-day commenting period on the Pre-application Basic Assessment Report ("BAR") and the link to access the supporting documents, commences. However, where the third day falls on a Saturday, Sunday or public holiday, it must be extended to the end of the next day which is not a Saturday, Sunday or public holiday.

5. Kindly quote the above-mentioned reference number in any future correspondence in respect of this matter.

6. This Department reserves the right to revise or withdraw initial comments or request further information from you based on any information received.

Yours faithfully

pp Francois Naudé Digitally signed by Francois Naudé Date: 2021.10.07 09:49:53 +02'00'

HEAD OF COMPONENT
ENVIRONMENTAL IMPACT MANAGEMENT SERVICES: REGION 3
DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING

Ref.: 16/3/3/6/7/1/D1/6/0110/21

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