



REFERENCE: 16/3/3/6/2/D4/4/0057/17  
ENQUIRIES: Shireen Pullen  
DATE OF ISSUE: 2017 -07- 18

Ms. M. Roos  
PO Box 66121  
HIGHVELD  
0169

Attention: Ms. M. Roos

Mobile: 082 601 9689  
Email: mmsroos@me.com

Dear Madam

**ADOPTION/DEFINITION OF AN AD-HOC SETBACK LINE IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO 107 OF 1998), AND THE ENVIRONMENTAL IMPACT REGULATIONS, 2014: PROPOSED DWELLING ON ERF 222, BUFFALO BAY**

1. The abovementioned matter and the final Ad-hoc setback line report received by this Department on 29 June 2017 refers.
2. In terms of the Environmental Impact Assessment Regulations, 2014, a "development setback" is defined as "a setback line as defined or adopted by the competent authority and where none has been defined or adopted it will be assumed that no setback line applies". With reference to the abovementioned, find below the outcome with respect to your request.

**3. DECISION**

The competent authority hereby **defines/adopts** the development setback in terms of the NEMA EIA Regulations, 2014 for the subject property (Erf 222, Buffalo Bay), as the **2 meter building line from the southern boundary of Erf 222**. The setback line is adopted only for the purposes to construct a two storey residential dwelling with a basement on erf 222. Access to the property will be via the existing access on the adjacent open space erf 210.

**4. REASONS FOR DECISION**

- 4.1. The property is vacant and the proposal is to construct a primary dwelling with associated infrastructure.
- 4.2. The proposal is considered to be in line with the current land use in the area.

- 4.3. The property does not form part of any Critical Biodiversity Area (CBA) and contains no threatened or rare plan species.
- 4.4. The draft coastal Management lines for Eden does not affect the proposal as the risk projection line and coastal management line is delineated along the high-water mark and the property is located on a rocky headland.
- 4.5. The site is totally transformed, and no sensitive vegetation will be removed as a result of the proposed development.
- 4.6. The environment and the rights and interests of other parties are not likely to be adversely affected by the decision to adopt a setback line for the property as all the issues raised by I&APs were adequately addressed in terms of the responses submitted.
- 4.7. The adoption of the 2m building line on the southern property boundary as the ad-hoc setback line was informed by issues and concerns raised during the PPP.
- 4.8. Access will be gained via the existing access road over public open space (erf 210) which will be formalised for this purpose.
- 4.9. The remainder of the open space erf may be rehabilitated to indigenous vegetation but this Department does not support the fencing of the area.
- 4.10. This Department is of the opinion that the adoption of an *ad-hoc* setback line will not result in any significant changes to the receiving environment and the anticipated impacts will remain the same as is presently the case.
- 4.11. All information presented to the Department was taken into account in the Department's consideration of the application.

## 5. PROPERTY DESCRIPTION AND LOCATION

The property is located approximately 6m from the high-water mark of the sea, Buffalo Bay.

Co-Ordinates: 34°05' 14. 20" South  
22° 58' 18. 85" East

SG21 Code: C0390015000002220000

## 6. PROPOSED ACTIVITIES

- 6.1. The proponent intends to construct a residential dwelling with a basement and formalize an existing access located on erf 210 which is the erf adjacent to erf 222.
- 6.2. Based on the information submitted to the Department it is confirmed that your proposed development triggers the following listed activities on the property, in terms of the NEMA EIA Regulations, 2014, as amended, being:

### **Government Notice 327:**

#### **Activity number: 19 A**

#### **Activity description:**

The infilling or depositing of any material of more than 5 cubic metres into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock of more than 5 cubic metres from—

- (i) the seashore;

- (ii) the littoral active zone, an estuary or a distance of 100 metres inland of the high-water mark of the sea or an estuary, whichever distance is the greater; or
- (iii) the sea; —

but excluding where such infilling, depositing, dredging, excavation, removal or moving—

- (a) will occur behind a development setback;
- (b) is for maintenance purposes undertaken in accordance with a maintenance management plan;
- (c) falls within the ambit of activity 21 in this Notice, in which case that activity applies;
- (d) occurs within existing ports or harbours that will not increase the development footprint of the port or harbour; or
- (e) where such development is related to the development of a port or harbour, in which case activity 26 in Listing Notice 2.

## **Government Notice 324**

### **Activity 12**

#### **Activity Description:**

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.

## **7. PUBLIC PARTICIPATION**

The following Public Participation Process (PPP) was conducted:

- 5.1. Giving written notification to the following parties with respect to the proposed setback line, with an opportunity to provide written comment:
  - occupiers of the land adjacent to the property;
  - the local authority;
  - Eden District municipality;
  - CapeNature;

- Department of Environmental Affairs & Development Planning: Coastal Management Unit.

No major issues were raised during the PPP that could prevent the proposal to be approved.

## 6. CONDITIONS OF THE DECISION

- 6.1. The Applicant, Ms. M. Roos must within **14 (fourteen) calendar days** of the date of the decision give written notice to all the interested and affected parties and organs of state which were identified and engaged by the Applicant himself during the public participation process (hereinafter "the I&APs). The notice must –
- 6.1.1. inform the I&APs of –
    - (a) the outcome of the decision;
    - (b) the date of the decision; and
    - (c) the date of issue of the decision;
  - 6.1.2. inform the I&APs of the fact that an appeal may be lodged against the decision in terms of the National Appeals Regulations (Government Notice R.993 of 8 December 2014); and
  - 6.1.3. draw the attention of all the I&APs to the manner in which they may access the decision.

## 7. APPEALS

Appeals must comply with the provisions contained in the National Appeal Regulations 2014 (refer to Government Notice R.993 of 8 December 2014).

- 7.1. An appellant must –
  - 7.1.1. submit an appeal in accordance with Regulation 4 to the appeal administrator, within 20 (twenty) calendar days from the date the applicant notified registered I&APs of this decision.
  - 7.1.2. In this regard please note that when a period of days must be reckoned in terms of the National Appeal Regulations 2014, the period must be reckoned as from the start of the day following that particular day to the end of the last day of the period, but if the last day of the period falls on a Saturday, Sunday or public holiday, that period must be extended to the end of the next day which is not a Saturday, Sunday or public holiday.
  - 7.1.3. if the appellant is the applicant, provide any registered I&AP, any Organ of State and the decision-maker with a copy of the appeal lodged with the appeal administrator;
  - 7.1.4. if the appellant is a person other than the applicant, provide any registered I&AP, any Organ of State and the decision-maker with a copy of the appeal lodged with the appeal administrator;
- 7.2. The applicant (if not the appellant) the decision-maker, I&APs and Organ of State must submit their responding statement, if any, to the appeal authority and the appellant within 20 days from the date of receipt of the appeal submission.
- 7.3. The appeal form/s must be submitted by means of one of the following methods:

By post: Attention: Jaap de Villiers  
Western Cape Ministry of Local Government, Environmental Affairs and  
Development Planning  
Private Bag X9186  
CAPE TOWN  
8000

By facsimile: (021) 483 4174; or

By hand: Attention: Mr J. de Villiers (Tel: 021 483 3721)  
Room 809  
8th Floor Utilitas Building,  
1 Dorp Street,  
Cape Town,  
8001

By e-mail: Jaap.DeVilliers@westerncape.gov.za

7.4. A prescribed appeal form, as well as assistance regarding the appeal processes is obtainable from the office of the appeal authority/ at: Tel. (021) 483 3721, E-mail Jaap.deVilliers@westerncape.gov.za or URL <http://www.westerncape.gov.za/eadp>.

## 8. GENERAL

10.1. With regard to the development setback line, the following:

- 10.1.1. no buildings, structures or infrastructure (including revetments, stabilising structures, and stabilising walls) may be constructed or expanded on the seaward side of the defined/adopted development setback, unless authorised by the competent authority. (In this regard it is recommended that the proposed building be setback from the southern building line of the erf);
- 10.1.2. the development setback line is adopted in terms of the NEMA EIA Regulations 2014 and only relates to the abovementioned listed activity and whether or not environmental authorisation in terms of NEMA is required before undertaking this listed activity;
- 10.1.3. the development setback line is not adopted in terms of the National Environmental Management Act: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008) ("ICMA") / National Water Act, 1998 (Act No. 36 of 1998) or any other legislation;
- 10.1.4. This Department reminds the applicant of sections of the National Environmental Management Act: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008) ("ICMA") which says:
  - 11(2) "Coastal public property is alienable and cannot be sold, attached or acquired by prescription and rights over it cannot be acquired by prescription"
  - 15(2) "No person may construct, maintain or extend any structure, or take other measures on coastal public properties to prevent or promote erosion or accretion of the seashore except as provided for in this Act."

- 63(2) "The competent authority may not issue an environmental authorisation if the development or activity for which authorisation is sought–  
(e) is likely to be significantly damaged or prejudiced by dynamic coastal processes"

10.1.5. Also, please take note of the provisions of Section 15 of the ICMA, which state

*"(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.*

10.1.6. the development setback line does not imply that the area inland of the line will not be exposed to risks arising from dynamic processes, including the risk of flooding, erosion or accretion of the seashore; and

10.1.7. the fact that development will be undertaken behind (inland of) the development setback line does not absolve you from your general "duty of care" set out in Section 28(1) of the NEMA which states that-

*"Every person who causes, has caused or may cause significant pollution or degradation of the environment must take reasonable measures to prevent such pollution or degradation from occurring, continuing or recurring, or, in so far as such harm to the environment is authorised by law or cannot reasonably be avoided or stopped, to minimise and rectify such pollution or degradation of the environment."*

9. This Department will not be held liable for any loss or damage to property or person as a consequence of any form of development within the development setback line area, as adopted by the Department.

10. This Department reserves the right to revise or withdraw its comments or request further information from you based on any new or revised information received.

Yours faithfully



**MR. GAVIN BENJAMIN**

**DIRECTOR: DEVELOPMENT MANAGEMENT (REGION 3)**

Copied to:

Ms. S. Holder

(Cape EA/Prac- EAP)

Fax: 044 874 0432