



REFERENCE (EMMP): 16/3/3/6/3/D6/8/0346/23
REFERENCE (NOI): 16/3/3/6/7/1/D6/8/0128/22
ENQUIRIES: Shireen Pullen
DATE OF ISSUE: **29 NOVEMBER 2023**

The Director
Technical Services: Mossel bay Municipality
Private Bag X29
MOSSSEL BAY
6500

Attention: Mr. S. Naidoo

Tel: 044 606 5082
Email: dnaidoo@mosselbay.gov.za

Dear Sir

ADOPTION AND DEFINITION OF MAINTENANCE MANAGEMENT PLAN IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998) AND THE ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, 2014 (AS AMENDED): PROPOSED UPGRADE OF FEROX STREET STORMWATER INFRASTRUCTURE, ERF 7284, DANA BAY, MOSSSEL BAY MUNICIPALITY

The Final Maintenance Management Plan ("MMP") for the proposed upgrades of the existing stormwater infrastructure (badly eroded gabion structures and tyre stabilization structures) and replacing it with an energy breaker to manage the high energy and velocity of the runoff, a step spillway, stilling basin and bio-conveyance channel. Find below the outcome with respect to the request for the adoption of the MMP:

1. DECISION

By virtue of the powers conferred on it by the National Environmental Management Act, 1998 (Act No. 107 of 1998) ("NEMA"), the Environmental Impact Assessment Regulations, 2014, (as amended), the Competent Authority hereby **adopts** and **defines** the final Maintenance Management Plan ("MMP") for the abovementioned proposal dated 02 November 2023, compiled by Ms. Sian Holder of Cape EAPrac (Pty) Ltd as received by this Directorate on 02 November 2023.

The MMP is for the purposes of upgrade of an existing stormwater structure. The existing stormwater gabion weir structures have failed and require urgent upgrade and repair to mitigate the on-going erosion and undercutting of the eastern embankment in-particular below private Erf 7285. This undercutting poses a direct threat of slope failure and the loss of private property above it. The MMP is only for the proposed repair and upgrade of the existing eroded stormwater conveyance system and bank stabilisation within the non-perennial watercourse located on Erf 7284, Dana Bay.

The adoption of the MMP is subject to the conditions imposed by the competent authority, which is set out in Section 4 below.

2. DETAILS OF THE HOLDER

The Director
Technical Services: Mossel Bay Municipality
Mr. S. Naidoo
Private Bag X29
MOSSEL BAY
6500

Tel: 044 606 5082
Email: dnaidoo@mosselbay.gov.za

The abovementioned juristic person is the holder of the Maintenance Management Plan and is hereinafter referred to as "**the Holder**".

3. SITE DESCRIPTION AND LOCATION

Erf 7284 is located within the urban area of Dana Bay and is bisected by a non-perennial drainage line, upper catchment of a mapped 'channelled valley-bottom wetland' to the south. The watercourse is mapped as an Aquatic Ecological Support Area (ESA).

The coordinates the site where activities will take place are:

POSITION	LATITUDE	LONGITUDE
START	34°11'50.63"S	22°02'32.55"E
MIDDLE	34°11'51.68"S	22°02'33.60"E
END	34°11'53.17"S	22°02'33.91"E

SG code: C05100070000728400000
Refer to Annexure 1 for the Locality Map.

The above is hereinafter referred to as "**the site**".

4. REQUIREMENTS ATTACHED TO ADOPTING OR DEFINING THE MMP:

4.1 The Holder must confirm acceptance of the conditions of this decision in writing, within **14 (fourteen) calendar days** of the date of the decision, failing which the decision to adopt the MMP is suspended until such time that the conditions are accepted.

Scope of the Maintenance Management Plan

4.2 This MMP for the maintenance of the existing stormwater channel located on Erf 7284, Dana Bay is granted until **04 December 2028**.

4.3 The MMP repair and upgrade of the existing eroded stormwater conveyance system and bank stabilisation within the non-perennial watercourse located on Erf 7284, Dana Bay and will be undertaken in accordance with the site development plan contained in this MMP adoption as Annexure 2. The activities includes the following:

- The removal of the existing top two (of three) gabion weir structures, as well as the tyre / concrete embankment stabilisation,
- The replacement of the unsafe structure with an upgraded stormwater conveyance system which will include a stepped spillway as an energy dissipation structure to *reduce flow velocity* and a stilling basin with an outlet weir sill to *manage volume*.
- Installation of river bank stabilisation in order to better manage stormwater, as well as protect private property, the sensitive downstream watercourse and the environment into the future.

4.4 The agreement excludes the development of new structures or infrastructure or the expansion of existing structures or infrastructure which constitutes any other activity listed in the Environmental Impact Assessment Regulations Listing Notices of 2014.

Management and monitoring of activity

4.5 The Holder shall be responsible for ensuring compliance with the MMP by any person acting on its behalf, including but not limited to, an agent, sub-contractor, employee, or any person rendering a service to the Holder.

4.6 The Holder must appoint a suitably experienced Environmental Site Agent ("ESA") or Control Officer ("ECO") for the duration of the upgrade and maintenance works.

The ESA / ECO must—

- 4.6.1 be appointed before commencement of any maintenance activities;
- 4.6.2 be on site for the duration of the works to monitor and provide guidance relating to the conditions of this MMP;
- 4.6.3 ensure that, prior to commencement a walk-through of the site is undertaken in order to identify plants that can be transplanted into adjacent vegetated areas or be retained to plant back into the working area;
- 4.6.4 ensure that the no-go areas are demarcated prior to commencement;
- 4.6.5 ensure that the mitigation measures and recommendations referred to in the MMP are implemented, and where such measures are not implemented that it is recorded and reported to the Competent Authority;
- 4.6.6 conduct the necessary monitoring; and
- 4.6.7 collect photographic material demonstrating the before-, during- and post-maintenance activities.

4.7 A copy of this decision and the adopted EMMP must be kept at the site whenever maintenance activities will be undertaken. The aforesaid documents must be produced to any authorised official of the Department who requests to see the documents and such documents must be made available for inspection by any employee or agent of the Holder who works or undertakes work at the site.

Written notices to the Competent Authority

4.8 The Holder must, for the period during which the MMP remains valid, give written notice to the Competent Authority (for attention the Directorate: Development Management Region 3) of the implementation of the maintenance activities. Such notice must—

- 4.8.1 provide the date of commencement of the maintenance activities on the site;
- 4.8.2 make clear reference to the reference number given above; and
- 4.8.3 provide proof of compliance with the requirement to appoint an ESA / ECO and provide the details of the ESA / ECO.

4.9 The Holder's written notice must be submitted to the Competent Authority prior to the commencement of the maintenance activities and prior to each subsequent maintenance project.

Environmental Auditing

- 4.10 The Holder must submit an MMP Audit Report, ("audit report") to this Directorate within **30 days** after the maintenance activities have been completed; or each subsequent maintenance project is completed.

This Directorate may require remedial action should the audit report reflect that rehabilitation is inadequate. The audit report must

- 4.11 The Audit Report must –
- 4.11.1 be prepared by the appointed ESA/ ECO;
 - 4.11.2 indicate the date on which the maintenance/repair work was completed;
 - 4.11.3 detail compliance with the MMP and the conditions of this agreement as well as the status of the rehabilitation programme;
 - 4.11.4 include detailed designs or plans at a legible scale, for each of the sites where the maintenance work was undertaken; and
 - 4.11.5 include a photographic record of the completed site,
 - 4.11.6

Notification and administration of appeal

- 4.12 The Holder 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 Anchor Environmental (Pty) Ltd and NCC Environmental Services (Pty) (Ltd) during the public participation process (hereinafter "the I&APs). The notice must –

- 4.12.1 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;
- 4.12.2 inform the I&APs of the fact that an appeal may be lodged against the decision in terms of the National Environmental Management Act: National Appeal Regulations (GN R.993 of 8 December 2014 as amended); and
- 4.12.3 draw the attention of all the I&APs to the manner in which they may access the decision.

- 4.13 Appeals must comply with the provisions contained in the National Appeal Regulations 2014 (as amended).

5. APPEALS

- 5.1. An appellant (if the holder of the decision) must, within 20 (twenty) calendar days from the date the notification of the decision was sent to the holder by the Competent Authority –
- 5.1.1. Submit an appeal in accordance with Regulation 4 of the National Appeal Regulations 2014 (as amended) to the Appeal Administrator;
 - 5.1.2. Submit a copy of the appeal to any registered I&APs, any Organ of State with interest in the matter and the decision-maker *i.e.* the Competent Authority that issued the decision; and
 - 5.1.3. Submit a copy of the appeal to the decision-maker (*i.e.*, the Competent Authority that issued the decision) at:
Zaahir.Toefy@westerncape.gov.za;
Gavin.Benjamin@westerncape.gov.za; and copied to
DEADPEIAadmin.George@westerncape.gov.za
- 5.2. An appellant (if NOT the holder of the decision) must, within 20 (twenty) calendar days from the date the holder of the decision sent notification of the decision to the registered I&APs–

- 5.2.1. Submit an appeal in accordance with Regulation 4 of the National Appeal Regulations 2014 (as amended) to the Appeal Administrator; and
- 5.2.2. Submit a copy of the appeal to the holder of the decision, any registered I&AP, any Organ of State with interest in the matter and the decision-maker *i.e.*, the Competent Authority that issued the decision.
- 5.2.3. Submit a copy of the appeal to the decision-maker (*i.e.*, the Competent Authority that issued the decision) at:
Zaahir.Toefy@westerncape.gov.za; and copied to
Gavin.Benjamin@westerncape.gov.za;
DEADPEIAAdmin.George@westerncape.gov.za
- 5.3. The holder of the decision (if not the appellant), the decision-maker that issued the decision, the registered I&AP and the Organ of State must submit their responding statements, if any, to the appeal authority and the appellant within 20 (twenty) calendar days from the date of receipt of the appeal submission.
- 5.4. The appeal and the responding statement must be submitted to the Appeal Administrator at the address listed below:
- By post: 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: Appeal Administrator
 Attention: Mr Marius Venter (Tel: 021 483 3721)
 Room 809
 8th Floor Utilitas Building, 1 Dorp Street, Cape Town, 8001

Note: For purposes of electronic database management, you are also requested to submit electronic copies (Microsoft Word format) of the appeal, responding statement and any supporting documents to the Appeal Authority to the address listed above and/ or via e-mail to DEADP.Appeals@westerncape.gov.za.

- 5.5. A prescribed appeal form as well as assistance regarding the appeal processes is obtainable from the Appeal Administrator at: Tel. (021) 483 3721, E-mail DEADP.Appeals@westerncape.gov.za or URL <https://www.westerncape.gov.za/eadp/resource-library/forms>.

6. GENERAL MATTERS

Amendment, Suspension or Withdrawal of the Maintenance Management Plan

- 6.1. The Holder may submit a written request to the Competent Authority for an extension of the validity period of the MMP prior to the validity period lapsing. Such a request must contain a review of the MMP in terms of the need and desirability of such an extension and the objectives contained in the MMP. The review must make recommendations on possible amendments to the MMP or give reasons for maintaining the status quo.
- 6.2. Any changes to, or deviations from, the project description or maintenance activities set out in the adopted MMP must be approved in writing, by this Department, before effect may be given to such changes or deviations. In assessing whether to grant such approval or not, the Department may request such information as it deems necessary to evaluate the significance and impacts of such changes or deviations and it may be necessary for the Holder to apply for further authorisation in terms of the regulations pertaining to environmental impact assessments under sections of the National Environmental Management Act, 1998 (Act No. 107 of 1998).

Any erection/construction of new structures or the expansion of an existing structure or infrastructure, which constitutes any other activity listed in the NEMA Listing Notices (currently Government Notice R.983; R.984 or R.985 of 4 December 2014) may require environmental authorisation. This must first be confirmed with the competent authority.

- 6.3. This Department reserves the right to –
- revise the adopted MMP or its initial comments; or
 - define further measures to be incorporated into the MMP,

based on any new or revised information received and to request further information from the Holder where necessary.

- 6.4. This Department may suspend or withdraw the MMP based on any non-compliance with the MMP.

Compliance with MMP

- 6.5. Non-compliance with this MMP, may be considered an offence in terms of Section 49A(1)(e) and/or 49A(1)(f) of the National Environmental Management Act, 1998 (Act no. 107 of 1998, as amended) ("NEMA").
- 6.6. In the event that the MMP should lapse, it is an offence in terms of Section 49A(1)(a) of 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.
- 6.7. Offences in terms of the NEMA and the Environmental Impact Assessment Regulations, 2014, will render the offender liable for criminal prosecution.
- 6.8. Notwithstanding the adoption of the MMP, the Holder must still comply with any other statutory requirements that may be applicable to the undertaking of the breaching activities.

7. REASON(S) FOR DECISION

In reaching its decision, the competent authority, *inter alia*, considered the following:

- 7.1. The information contained in the Final Maintenance Management Plan ("MMP") for the proposed development dated and received by this Directorate on 02 November 2023;
- 7.2. The public participation process followed, and comments received from interested and affected parties. The draft MMP was made available for a 30-day commenting period from Friday, 22 September 2023 to Monday, 23 October 2023;
- 7.3. The sense of balance of the negative and positive impacts and proposed mitigation measures;
- 7.4. The objectives and requirements of relevant legislation, policies and guidelines, including section 2 of the National Environmental Management Act, 1998 (Act No. 107 of 1998); *and*
- 7.5. *Other relevant considerations*
- 7.5.1. The Breede Olifants Catchment Management Agency have indicated that they do not have any objection to the proposed maintenance works. They also have indicated that a general authorisation in terms of the National Water Act on 23 March 2023 is applicable to the proposal.
- 7.5.2. The Freshwater Specialist Assessment found that the proposed maintenance activities will not result in any further loss to aquatic biodiversity and will not compromise the national

or provincial freshwater conservation management objectives of the watercourse and broader catchment area (subject to the implementation of the recommendations included in the method statements).

7.5.3. It further states that the proposed development is expected to improve the attenuation of stormwater flows which is considered as beneficial for the protection of more sensitive wetland and aquatic habitat located further downstream of Erf 7284.

7.5.4. This Directorate is therefore satisfied that impacts of the proposed development has been adequately assessed and the mitigation measures are adequate to effectively manage the negative impacts that may result from the proposed development.

7.6. The MMP is adopted/defined in terms of –

**Environmental Impact Assessment Regulations Listing Notice 1
GN No. R. 983 as amended on 7 April 2017 –**

Activity 19

Activity Description:

The infilling or depositing of any material of more than 10 cubic metres into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock of more than 10 cubic metres from a watercourse;

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

where such development is related to the development of a port or harbour, in which case activity 26 in Listing Notice 2 of 2014 applies.

Whereas—

“maintenance” means actions performed to keep a structure or system functioning or in service on the same location, capacity and footprint.

“maintenance management plan” means a management plan for maintenance purposes defined or adopted by the competent authority

7.7. The National Environmental Management Principles (set out in section 2 of the NEMA, which apply to the actions of all organs of state, serve as guidelines by reference to which any organ of state must exercise any function when taking any decision, and which must guide the interpretation, administration and implementation of any other law concerned with the protection or management of the environment), *inter alia*, provides for:

- the effects of decisions on all aspects of the environment to be taken into account;
- the consideration, assessment and evaluation of the social, economic and environmental impacts of activities (disadvantages and benefits), and for decisions to be appropriate in the light of such consideration and assessment;
- the co-ordination and harmonisation of policies, legislation and actions relating to the environment;
- the resolving of actual or potential conflicts of interest between organs of state through conflict resolution procedures; and
- the selection of the best practicable environmental option.

In view of the above, the NEMA principles, compliance with the conditions stipulated in the adopted EMMP, and compliance with the MMP, the competent authority is satisfied that the proposed activities will not conflict with the general objectives of integrated environmental management stipulated in Chapter 5 of the National Environmental Management Act, 1998 (Act No. 107 of 1998) and that any potentially detrimental environmental impacts resulting from the proposed activities can be mitigated to acceptable levels.

8. DISCLAIMER

The Western Cape Government, the Local Authority, committees or any other public authority or organisation appointed in terms of the adopted MMP shall not be responsible for any damages or losses suffered by the Holder, developer or his/her successor in any instance where construction or operation subsequent to construction is temporarily or permanently stopped for reasons of non-compliance with the conditions as set out herein or any other subsequent document or legal action emanating from this decision.

Notwithstanding the adoption of this MMP, the Holder must still comply with any other statutory requirements that may be applicable to the undertaking of the maintenance activity.

Your interest in the future of our environment is appreciated.

Yours faithfully

MR ZAAHIR TOEFY
DIRECTOR: DEVELOPMENT MANAGEMENT
DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING

DATE OF DECISION: 29 NOVEMBER 2023

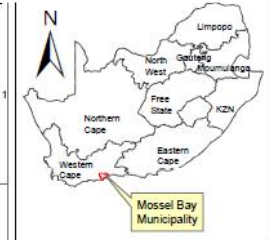
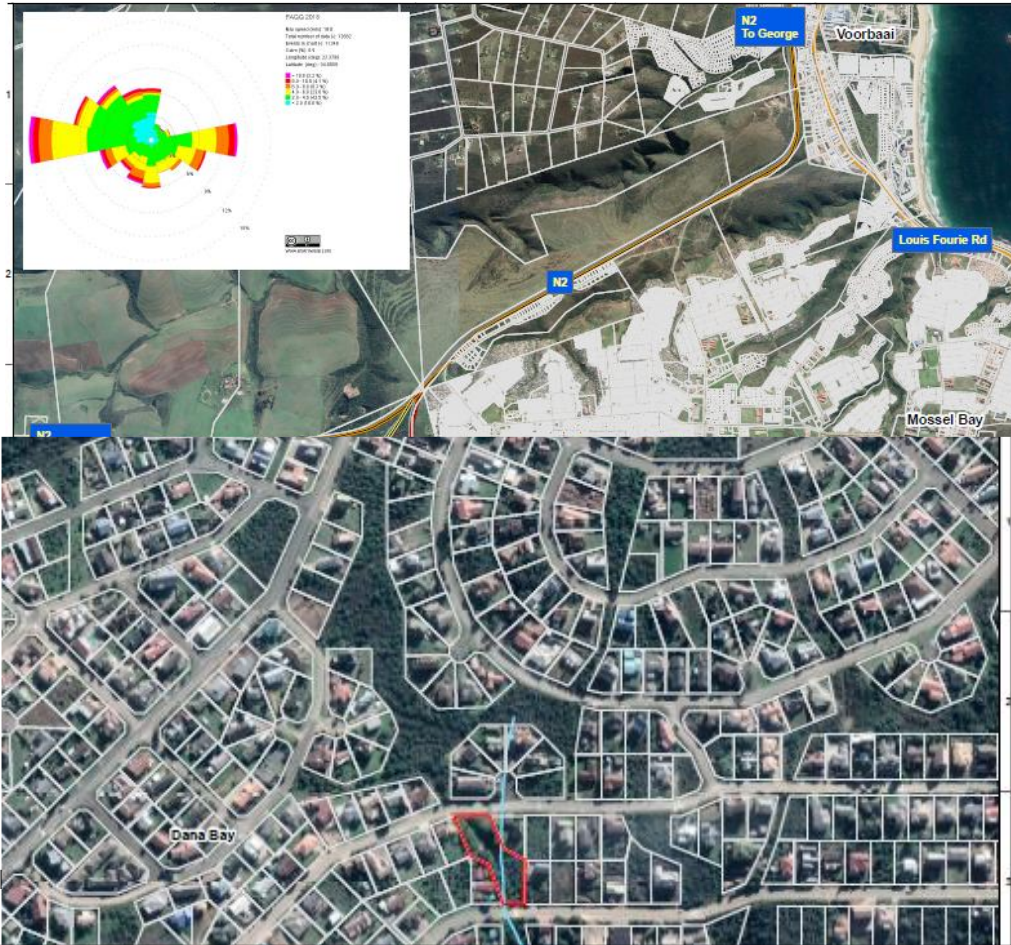
Copies to:

Ms. Siân Holder
Mr. Eddie Kruger

Cape EAPrac (Pty) Ltd
Mossel Bay Municipality

Email: sian@cape-eaprac.co.za
Email: ekruger@mosselbay.gov.za

ANNEXURE 1: LOCALITY MAP



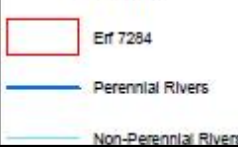
**Ferox Stormwater Upgrade
Erf 7284
Dana Bay**

Legend



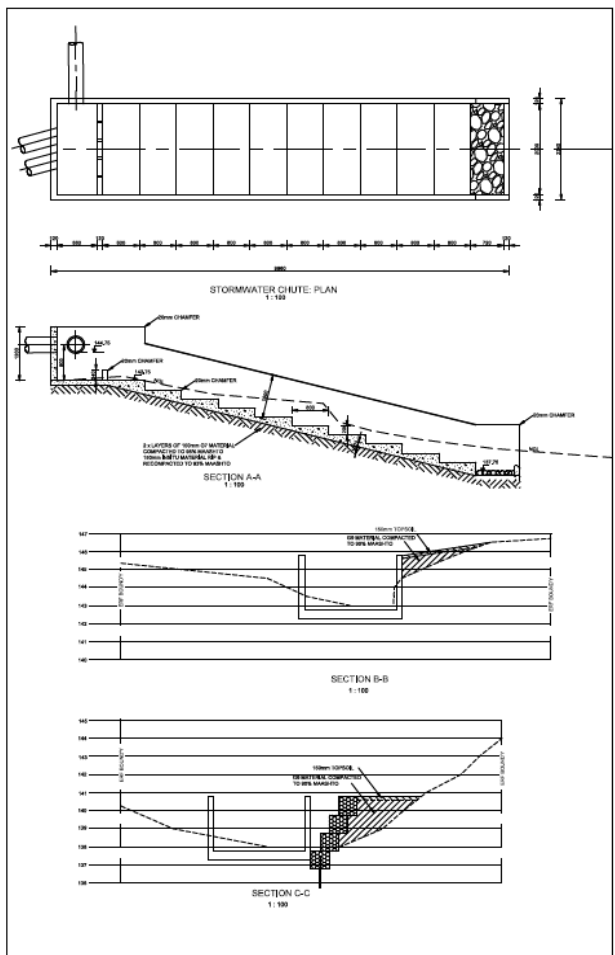
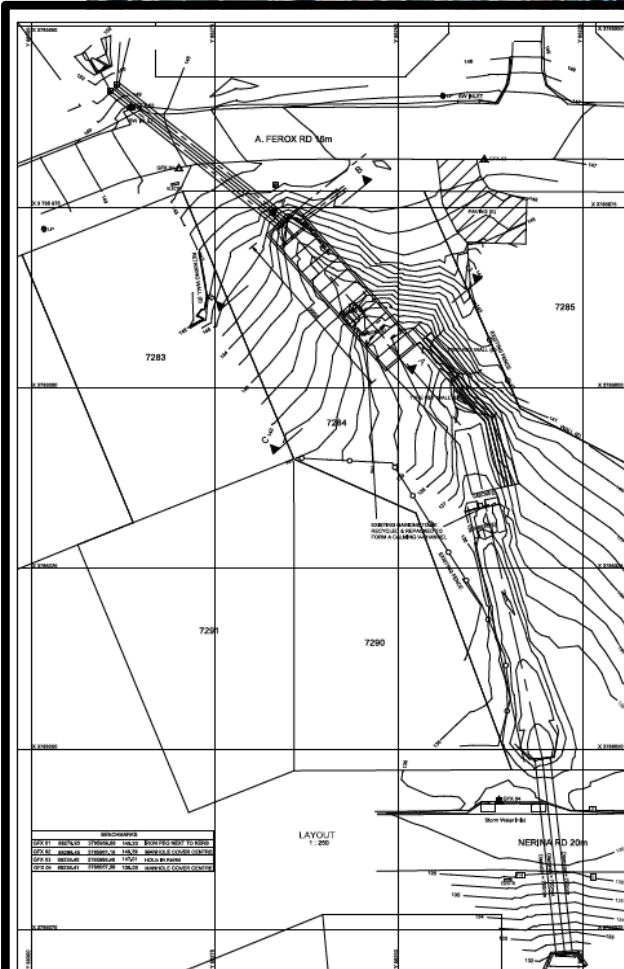
**Ferox Stormwater Upgrade
Erf 7284
Dana Bay**

Legend



**LOCATIO
AREA LOCATION**

AN



PRELIMINARY
(FOR TENDER PURPOSES ONLY)

10082001-400

NO.	DATE	REVISIONS

MOSSEL BAY MUNICIPALITY

V3 CONSULTING ENGINEERS
111-113 DE WET STREET, WINDHOLM, WESTERN CAPE
CESA

PROJECT: TDR245/2021/2022: UPGRADE OF STORMWATER WATERCOURSE, A. FEROX, DANA BAY

DESCRIPTION: LAYOUT & DETAILS

10082001-400

DESIGNED BY	CHECKED BY

DATE: 2023-11-14

SCALE: 1:100