

Comments & Response Table_ ARC Timbers

021015 - PROPOSED RESIDENTIAL DEVELOPMENT ON ERF 511, OTTERY, CAPE TOWN NOVEMBER 2021

Comment on the pre-application draft BAR is as follows

15 September 2021 Keegan-Leigh Adriaanse DEA & DP: Directorate: Development Management Region 1:

a). Applicable listed activity

- i. **Although a Botanical Compliance Statement (compiled by NCC Environmental Services and dated 04 May 2021) has been provided, it is unclear as to whether the proposed development will result in the clearance of an area 300m² or more within a Critically Endangered or Endangered ecosystem. The applicability of Activity 12 of Listing Notice 3 of the NEMA EIA Regulations, 2014 (as amended) is therefore questioned and must be confirmed**

This letter serves as response to the above comment received.

Response:

ERF511 is recorded according to the 2018 Vegetation Map of South Africa, Lesotho and Swaziland as historically comprising Cape Flats Sand Fynbos (FFd 5) which is listed as a, 'Critically Endangered' ecosystem under criterion A1 And D1 which pertain to thresholds reached on irreversible loss of habitat and threatened plant species associations (Gov Gazette 34809). As a result, the screening report for an environmental authorization as required by the 2014 EIA regulations - proposed development footprint environmental sensitivity for the proposed project on ERF511 produced a result of, 'Very High Terrestrial Biodiversity' sensitivity for the site.

In line with the protocol for compliance statements the site and associated vegetation has been physically assessed and it is confirmed that the site no longer comprises Cape Flats Sand fynbos. None of this vegetation type is still intact within the study area which is now of, 'low sensitivity' for terrestrial plant species and the proposed development will therefore not have any impact on terrestrial plant SCC.

Despite the lack of SCC the definition for clearance of indigenous vegetation as per NEMA EIA Regulations Definition is that, "*Indigenous vegetation: refers to vegetation consisting of indigenous plant species occurring naturally in an area, regardless of the level of alien infestation and where the topsoil has not been lawfully disturbed during the preceding 10 years.*"

As such the area could still be considered a critically endangered ecosystem as the topsoil has not been lawfully disturbed during the preceding 10 years and regardless of the level of infestation (transformation), however, what is absent from the site and pertinent to the definition is, 'consisting of indigenous plant species'. There is a difference between an invaded area of indigenous vegetation and a complete lack of it with replacement by others and in this case the latter is evident. As per the guidelines 'Discretion and common-sense must be applied in the determination as to whether an act indeed constitutes clearance' and the same should be applied to 'indigenous vegetation'.

The area of the site to be developed surpasses 300m² and as such Activity 12 of Listing Notice 3 of the NEMA EIA Regulations, 2014 (as amended) is at risk of being triggered if:

- 1.) It was accepted as still comprising, 'indigenous vegetation' which it is suggested it is not and,
- 2.) Regardless of the vegetation Activity 12 of Listing Notice 3 is only applicable in an identified geographical area (Western Cape Biodiversity Spatial Plan 2017: Critical Biodiversity Areas 1. The Western Cape Biodiversity Spatial Plan (WCBSP) which the site is not therefore **Activity 12 of Listing Notice 3 of the NEMA EIA Regulations, 2014 (as amended) is not triggered.**

Author

A handwritten signature in black ink, appearing to be 'Sean Altern', written over a horizontal line.

Sean Altern

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References:

- South African National Biodiversity Institute (2006-2018). The Vegetation Map of South Africa, Lesotho and Swaziland, Mucina, L., Rutherford, M.C. and Powrie, L.W. (Editors), Online, <http://bgis.sanbi.org/Projects/Detail/186>, Version 2018.
- Government Gazette No. 34809. 2011. Threatened Terrestrial Ecosystems in South Africa. National Environmental Management: Biodiversity Act 2004.
- Western Cape Biodiversity Spatial Plan 2017: Critical Biodiversity Areas 1. The Western Cape Biodiversity Spatial Plan (WCBSP).
- Clearance of Indigenous Vegetation Explanatory Document. May 2017.