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PROKUREUR • ATTORNEY

land law specialist

31 August 2026

For attention: Marius Venter

The Appeal Administrator
Department of Environmental Affairs & Development Planning
Western Cape Government

DEADP.Appeals@westerncape.gov.za

Sir

APPEAL AGAINST AMENDMENT OF ENVIRONMENTAL AUTHORISATION: REMAINDER FARM TERRA DE LUC FRANSCHHOEK: REFERENCE 16/3/3/5/B4/12/1027/26

1. The Notification

- 1.1. Sillito Environmental Consulting (Pty) Ltd (the "EAP") notified some of the Registered Interest and Affected Parties of the approval of the Part 1 Amendment Application for the above-mentioned project. A copy of the email concerned dated 12 August 2026, is attached as Annexure "A".
- 1.2. According to my instructions, the EAP *inter alia* failed to notify Mr. Paul Biden, Ms. Paula Disberry, Mr. C W Thompson, Mr. J Jansen van Vuuren (Domaine Des Anges) and the Principal of the West Eind School of the approval and their right to lodge appeals, all of whom claim to have registered as part of the original EIA process as Interested and Affected Parties ("I&APs").
- 1.3. When our client, Mr. C W Thompson, informally learned from third parties of the EAP's notification, he wrote to the EAP on 23rd August 2026. See his attached email, the contents of which is self-explanatory. (Annexure "B").
- 1.4. Subsequent correspondence followed between the EAP and some of the I&APs that were not notified of the decision. Suffice it to attach a copy of the last email that the EAP transmitted to some of the parties on 27 August 2026. (See Annexure "C").
- 1.5. Please note that all the rights of the registered I&APs whom the EAP failed to notify, are strictly reserved.

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2. The Appellant, Approval & Appeal

- 2.1. We act on behalf of Mr C W Thompson. He represents the registered owner of Farm 1/1087 Franschoek.
- 2.2. In terms of the letter of 28 July 2026, that the Director: Development Management (Region 1) addressed to the Board of Directors of La Luc Estate (Pty) Ltd, the Department of Environmental Affairs and Development Planning ("DEA&DP") granted an amendment of the Environmental Authorisation (the "EA") issued on 25 November 2014 (as subsequently amended), by amending the details of the holder of the EA from "La Luc (Pty) Ltd" to "La Luc Estate (Pty) Ltd".
- 2.3. In terms of my instructions, I hereby submit an appeal in terms of section 43(2) of NEMA, read with the National Appeal Regulations promulgated under NEMA in GN. R.5985 on 13 March 2025, on my client's behalf against the decision to grant the said amendment of the EA.
- 2.4. The duly completed prescribed NEMA Regulations Appeal Form is attached as Annexure "D".
- 2.5. DEA&DP previously confirmed that a non-refundable appeal fee as contemplated in section 4(3)(d) of the Appeal Regulations is not payable.

3. Timeframe for submitting appeals

- 3.1. As the EAP has not yet formally notified the Appellant of the decision concerned, the Appellant is not yet required to lodge the appeal. Consequently, there can be no talk of the appeal being lodged out of time.
- 3.2. This serves to confirm that a copy of this appeal is also submitted *inter alia* to:
 - 3.2.1. La Luc Estate (Pty) Ltd – werner@rouxcor.com.
 - 3.2.2. the Director: Development Management (Region 1), DEA&DP Dmitri.Matthews@westerncape.gov.za and to the Director: Law Enforcement Achmad.Bassier@westerncape.gov.za.
 - 3.2.3. the EAP- jonathan@environmentalconsultants.co.za.

4. Environmental Authorisation

- 4.1. Mr. Dunbar Crewe-Brown, an interested and affected party, wrote to Mr. D'mitri C Matthews (Environmental Officer: Specialised Production) of DEA&DP on 29 June 2026 concerning the validity of the EA, as Mr Crewe-Brown believed that the EA

may have lapsed, *inter alia*, as no "civil works" had commenced before the stipulated lapsing date.

- 4.2. The following is an extract from an email that D'mitri Matthews transmitted to Mr. Dunbar Crewe-Brown on Friday 17 July 2026.

An amendment to the Appeal Decision dated 20 April 2021 (Reference No.: 14/3/1/1/B4/12/0507/21), amended the validity period of the EA to end on 14 April 2026. The relevant condition was amended to read as follows: "This Environmental Authorisation is valid until 14 April 2026. The holder must commence with the listed activities within the said period or the Environmental Authorisation lapses and a new application for Environmental Authorisation must be submitted to the competent authority." This condition replaced the condition regarding the validity period of the original EA and has not been amended subsequently. In terms of the determination of the lawful commencement of the development within the approved validity period, this is the condition to be considered.

The development is considered to have been commenced with lawfully and the Environmental Authorisation is still valid, for the following reasons:

- *According to the ECO Reports received by this Directorate, commencement of the development was undertaken before 14 April 2026. The site clearance and levelling are physical activities that were undertaken **on the approved site** in furtherance of the approved listed activities. **There is a clear and direct connection between the approved listed activities and the clearance (and levelling) of the site.***
- *The most recent condition relating to the validity of the of the Environmental Authorisation is contained in the amendment to the Appeal Decision on 20 April 2021 and does not specify that "all of the listed activities" must be commenced with by 14 April 2026.*

[Emphasis added.]

5. PARTIAL LAPSING OF EA

- 5.1. I respectfully disagree with the conclusion that Mr. Matthews have reached, namely that the EA is still valid in respect of all authorised listed activities. I submit that the EA has partially lapsed for the reasons stated below.
- 5.2. The EA need not use the word "all" listed activities when stating it must commence within the EA validity period. The Appeal Decision of 20 April 2021 is sufficiently clear. It reads:

*"This Environmental Authorisation is valid until 14 April 2026. The holder must commence with the listed **activities** within the said period or the Environmental Authorisation lapses and a new application for*

Environmental Authorisation must be submitted to the competent authority."

[Emphasis added.]

- 5.3. The use of the plural (i.e. "**activities**") clearly indicates that all of the authorised listed activities must commence within the validity period and not only some of them. By necessary implication, the authorised listed activities that have not commenced within the validity period, will automatically lapse. That is the legal position.
6. I also respectfully disagree with the statement that *there is a clear and direct connection between (a) the approved listed activities and (b) the clearance (and levelling) of the site* and therefore, that *the site clearance and levelling are physical activities that were undertaken on the approved site is in furtherance of all the approved listed activities.*
- 6.1. The following relevant project details are noteworthy.
- 6.1.1. The section of Dirkie Uys Road from the entrance of Domaine Des Anges and northwards must be between 5.7m and 6m.
- 6.1.2. A portion of the river originating in the Wemmershoek Forest Reserve runs through Erf 1078/1, Dirkie Uys Street and Domaine Des Anges, and continues underneath Main Road 191.
- 6.1.3. The portion of the river running through Dirkie Uys Street is covered by a bridge which is situated north of the Domain Des Anges entrance – i.e. this bridge forms part of the road section which is required to be upgraded as part of the Development's project.
- 6.1.4. However, the width of the bridge is 5.3m. Thus, in order to comply with the conditions of approval, the developer will be required to widen the bridge to the east side of the road.
- 6.2. According to the EA the authorised alternative *inter alia* entails that:
- 6.2.1. a bridge will be constructed upstream of the dam to gain vehicular access to the northern portion of the site;
- 6.2.2. a pedestrian bridge will be constructed downstream of the dam;
- 6.2.3. the culvert under the Dirkie Uys river crossing will be replaced with seven 1,8m X 1,8m culverts;
- 6.2.4. the 900mm pipe culverts (pedestrian crossing) at the boundary of the site and La Petite Provence and replacing this crossing with a galvanised steel walkway bridge with a handrail that is approximately 1,5m high.
- 6.3. In terms of the EA of 25 November 2014, five listed activities were authorised. They are:

- 6.3.1. Activity No. **11** (construction of canals, channels etc. within a watercourse of within 32m thereof).
 - 6.3.2. Activity No. **18** (infilling or depositing of material of more than 5 cubic metres into/ from a water course).
 - 6.3.3. Activity No. **23** (transformation of undeveloped land to residential use where the total area to be transformed is 5 ha or more).
 - 6.3.4. Activity No. **39** (expansion of canals, bridges etc. within a watercourse or within 32m from it).
 - 6.3.5. Activity No. **24** (the expansion of infrastructure where the infrastructure will be expanded by more than 10 square metres or more within a watercourse or within 32m from it).
7. It is noteworthy that all the authorised activities will not take place on the approved site and also involves work outside of the four boundaries of the subject properties.
- 7.1. A question about commencement similar to the one currently under consideration arose for decision in Joint Owners, Erf 5216 Hartenbos v Minister for Local Government, Environmental Affairs and Development Planning 2011(1) SA 128 (WCC).
 - 7.2. The Court (per Baartman J) preferred the argument by the Provincial Minister that '*[f]or an activity to qualify as having been "in furtherance" of a listed activity, there must be evidence that **it advanced the activity**, i.e. some reasonably direct connection between the physical activity and the Listed Activity*' (para 40).
 - 7.3. The Court consequently concluded that because the development consisted of several listed activities and the owners had not attempted to show a connection between the earthworks and each listed activity, they were not entitled to a declaration that because of the earthworks they were not obliged to apply for and obtain environmental authorisation for any of the listed activities (para 41).
 - 7.4. On my interpretation of the judgment, it requires more than a connection between the physical activity and a generalised conception of each Listed Activity. The judgment contemplates (and requires) a direct connection between the actual physical activities (already commenced) and the intended physical manifestation of each Listed Activity (in the future).
 - 7.5. I submit that the required direct connection between the actual physical activity on the approved site (i.e. *site clearance and levelling*) and some of the listed activities relating to a watercourse, is lacking. The site clearance and levelling

were not done in furtherance of all the approved listed activities and, to the extent that the required connection is lacking, the EA has lapsed in respect of the listed activities concerned.

8. Grounds of Appeal

8.1. I submit that it was wrong and unacceptable to deal only with the amendment of the EA relating to the change of the holder's particulars without confirming that:

8.1.1. the EA has lapsed in respect of identified authorised listed activities that have not commenced within their validity period; and

8.1.2. a new application for Environmental Authorisation must be submitted to the competent authority in respect of those listed activities.

8.2. My client is entitled to administrative action that is lawful, reasonable and procedurally fair. Our Constitutional Court has affirmed that as a fundamental principle the state should be exemplary in its compliance with the fundamental constitutional principles. ^[1] It also held ^[2] that state functionaries are enjoined to uphold and protect the rule of law. Our courts insist that the state, in all its dealings, operates within the confines of the law and, in so doing, remains accountable to those on whose behalf it exercises power. ^[3]

8.3. I submit that, if the Department does not insist on a new application for environmental authorisation in respect of the listed activities concerned, it will constitute dereliction of duty.

9. Please confirm receipt of this appeal.

Kind regards.



JOHAN DU PLESSIS

¹ See Merafong City v Anglogold Ashanti Ltd 2017 (2) SA 211 (CC) at para. 61 and Lesapo v North West Agricultural Bank [1999] ZACC 16; 2000 (1) SA 409 (CC); 1999 (12) BCLR 1420 (CC) at para 17.

² Khumalo v Member of the Executive Council for Education: KwaZulu Natal [2013] ZACC 49; 2014 (5) SA 579 (CC); 2014 (3) BCLR 333 (CC).

³ Id at para 29.