

## CHAPTER ONE: AMENDMENT APPLICATION OVERVIEW

### 1.1 BACKGROUND AND PROJECT OVERVIEW

Fairview Suburban Estate Company (Pty) Ltd (the applicant) received a positive Environmental Authorisation (EA) for the Residential and Mixed Use Development of the Remainder of Erf 1082, Fairview, Nelson Mandela Bay Municipality, from the Department of Economic Development, Environmental Affairs and Tourism (DEDEAT), on 9 May 2012 (DEDEAT reference no ECm1/387/M/07-169). This EA followed the submission of a Final Environmental Impact Assessment Report (Final EIA), dated March 2011, by Public Process Consultants, the independent Environmental Assessment Practitioner (EAP) appointed by the applicant. Subsequent to the receipt of the EA, dated 9 May 2012, the following amendments have been issued by DEDEAT:

- Amendment Notice 1, 24 August 2012 (non-substantive amendment).
- Amendment Notice 2, 6 November 2012 (substantive amendment, which supersedes the original EA, dated 9 May 2012).
- Amendment Notice 3, 27 May 2013 (non-substantive amendment)
- Amendment Notice 4, 17 January 2017 (non-substantive amendment)

The applicant proposes to consolidate, subdivide and rezone Phases 5 and 6 of Erf 1082 from Residential 2 (Private Open Space and Transportation (Access)) **to** Special Purpose (High Tech/Industrial Business Park and Transportation (Roads)). The EA for Erf 1082 contains the following condition, amongst others:

*“3.2.7. Any changes to, or deviations from the project description set out in this Environmental Authorisation must be approved, in writing, by the Department before such changes or deviations may be effected. 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 of this Environmental Authorisation to apply for further authorisation in terms of the regulations.”*

Correspondence from DEDEAT, dated 5 September 2017, confirmed that the *“...rezoning and subsequent change in use of the relevant portions would require an amendment application and authorisation for such prior to the rezoning coming into effect; and 4) That such an amendment is viewed as substantive the Department (especially considering the portions in question are adjacent to the Public Open Space which forms a riverine corridor to the Baakens River. This must therefore be addressed through an amendment application made in terms of Sections 31 and 32 of the NEMA EIA Regulations, 2014, which must be subjected to a public participation process as prescribed by the Regulations.”*

This Amendment Application and associated Final Amendment Report (Final AR) is thus a substantive application for the amendment of an existing EA. The applicant has appointed Public Process Consultants as the independent EAP to manage the Amendment Application (AA) and associated Public Participation Process.

## 1.2 LEGAL CONTEXT AND AMENDMENT APPLICATION PROCESS

The following section of the report provides an overview of the AA Process.

### 1.2.1 Legal Framework

Environmental assessment processes and their associated administrative procedures are governed primarily by the National Environmental Management Act: Environmental Impact Assessment Regulations 2014 (as amended), promulgated under Chapter 5 of the NEMA (as amended), which came into effect on the 8 December 2014 and were amended on the 7 April 2017 by Government Notice R326, 327, 325 and 324, published in Government Gazette 40772. The Government Notices published are collectively referred to as the NEMA EIA Regulations 2014 (as amended). The procedure for amending an EA is outlined specifically in Chapter Five of the NEMA EIA Regulations 2014 (as amended) and substantive amendments are required to follow Part 2, Regulation 31 and 32 of GN R326.

- In terms of Regulation 31 of GN R 326:

*“An environmental authorisation may be amended by following the process prescribed in this Part if the amendment will result in a change to the scope of a valid environmental authorisation where such change will result in an increased level or change in the nature of impact where such level or change in nature of impact was not —*

- (a) assessed and included in the initial application for environmental authorisation; or*
- (b) taken into consideration in the initial environmental authorisation;*  
*and the change does not, on its own, constitute a listed or specified activity.”*

- Regulation 31 above, allows for the amendment of the scope of a valid existing EA, where the proposed change/ s were not previously assessed or taken into consideration, subject to Regulation 32 below.

- In terms of Regulation 32 of GN R 326 (1):

*“The applicant must within 90 days of receipt by the competent authority of the application made in terms of regulation 31, submit to the competent authority —*

*(a) a report, reflecting—*

- (i) an assessment of all impacts related to the proposed change;*
- (ii) advantages and disadvantages associated with the proposed change; and*
- (iii) measures to ensure avoidance, management and mitigation of impacts associated with such proposed change; and*
- (iv) any changes to the EMPr;*  
*which report—*
  - (aa) had been subjected to a public participation process, which had been agreed to by the competent authority, and which was appropriate to bring the proposed change to the attention of potential and registered interested and affected parties, including organs of state, which have jurisdiction in respect of any aspect of the relevant activity, and the competent authority, and*
  - (bb) reflects the incorporation of comments received, including any comments of the competent authority;*

- Regulation 32 prescribes the reporting requirements for an Amendment Application, which, for a substantive amendment, must be subject to Public Participation in a format agreed to with the competent authority. The Final Amendment Report (FAR) submitted to the competent authority, must include the comments received from all I&APs, as well as authorities (competent authority, affected/ Juristic Organs of State and State Departments).

The competent authority which is required to make a decision on this Amendment Application is the Department of Economic Development Environmental Affairs & Tourism (DEDEAT), Sarah Baartman Region. In accordance with the above and on the 25 January 2018, notification of the

intention to submit an Amendment Application on behalf of the applicant was submitted to DEDEAT. This notification outlined the proposed project changes, AA Process to be followed, proposed specialist assessments, as well as the proposed Public Participation Process to be followed. In correspondence dated the 8 June 2018, the DEDEAT approved the proposed AA Process, as well as the proposed Public Participation Process. Correspondence to and from DEDEAT are contained in Appendix B of this report.

- In line with Regulation 33 of GN R 326:

*“(1) The competent authority must within 107 days of receipt of the report contemplated in regulation 32, in writing, decide the application.*

*“(2) On having reached a decision, the competent authority must comply with regulation 4(1), after which the applicant must comply with regulation 4(2).”*

Chapter Three of this report provides a detailed overview of the Public Participation Process proposed for this AA Process.

### 1.3 AMENDMENT APPLICATION TEAM

This section of the report provides an overview of the project team under the management of Public Process Consultants.

*Table 1.1: Assessment Team and Specialists.*

EIA PROJECT TEAM		
Team Member	Company	Role
Sandy Wren	Public Process Consultants	EIA Team Leader
Wandile Junundu	Public Process Consultants	Community Consultation
Marisa Jacoby	Public Process Consultants	Environmental Assessment Practitioner and Vegetation Specialist
Zandri Grobbelaar	Public Process Consultants	Environmental Assessment Practitioner
Brian Colloty	Sherman Colloty and Associates	Aquatic Specialist Assessment
Charl Swanepoel	Royal Haskoning DHV	Traffic Impact Statement
Rob Dobson	Hatch	Bulk Services Report
Simiso Thebe	Metroplan	Town Planning

### 1.4 DETAILS AND EXPERTISE OF THE ENVIRONMENTAL ASSESSMENT PRACTITIONER AND EXPERTISE TO CARRY OUT THE AMENDMENT APPLICATION

Public Process Consultants was established in 1997 by Sandy Wren. Initially the company was established to focus on the overarching management and integration of the Public Participation component for Scoping and Environmental Impact Assessment Reports (Scoping and EIA) and Strategic Environmental Assessments (SEAs). Under this role, Sandy was actively involved in projects such as the SEA for the expansion of Addo Elephant National Park, SEA for the Coega Industrial Development Zone and Port of Ngqura, the EIA for the Boardwalk Casino and development of a Sustainable Coastal Development Policy for SA. This management and integration role expanded through years of experience to include the management of Basic Assessments (BA), as well as Scoping and EIA Reports. Sandy has over 20 years of experience in the management of Scoping and EIA's, as well as BA Reports for numerous projects within the Nelson Mandela Bay Metropolitan Area and beyond, for both public and private clients.

**Sandy Wren**, is a graduate from the University of Port Elizabeth, majoring in Political Science, Sociology and Industrial and Organisational Psychology. Sandy obtained a BA Honours Degree in Development Studies in 2003 for which she obtained distinctions in courses in Environmental Management. Sandy is a former Regional Director of Idasa (Institute for Democracy in SA). Sandy's EIA project management experience includes, proposed new housing and "estate" type developments, expansion of agricultural related activities (broiler house facilities and citrus production), bulk infrastructure related projects (sewer, stormwater, sewage reticulation works and pump stations), as well as industrial type developments (SA Breweries IBhayi Biogas facility, NiRoVe Paint Stripping and increase in LNG for Umicore). Sandy continues to play a key role in the management of various public participation processes associated with the Coega Project (Proposed Regional Hazardous Waste Site Facility; Proposed Bulk Liquid Storage and Handling Facility in the Coega IDZ: Marine Servitude and Pipelines in the Coega IDZ), as well as various renewable energy projects (wind and solar). See Appendix A for curriculum vitae.

The application for the project EIA team is being led by Sandy Wren who will be supported by Marisa Jacoby and Zandri Grobbelaar.

**Marisa Jacoby**, EAP, obtained a BSc Honours in Botany (cum laude) from the Nelson Mandela Metropolitan University. Marisa has worked as an EAP, as well as a biophysical specialist (fauna and flora) on various Basic Assessments, Scoping and EIA Processes for new residential developments, expansion of agricultural activities, broiler production facilities, and bulk infrastructure projects. See Appendix A for curriculum vitae.

**Zandri Grobbelaar**, EAP, obtained a BSc Honours in Botany (Aquatic Botany and Environmental Management) from the Nelson Mandela Metropolitan University. Zandri has worked as an EAP on various Scoping and EIA Processes for agricultural developments.

## 1.5 OBJECTIVES OF THE AMENDMENT REPORT

This AA Process was preceded by a comprehensive Scoping and EIA Process which resulted in the issuing of an EA on the 9 May 2012 (DEDEAT reference no ECm1/387/M/07-169). The Amendment Application needs to show the responsible authority, DEDEAT, where the proposed amendments might alter the predicted significance of the environmental impacts, as contained in the Final EIA (March 2011), as well as describe any advantages and disadvantages of the proposed change and review the mitigatory measures accordingly.

In terms of legal requirements, a key objective of the Amendment Report (AR) is to satisfy the requirements of Regulations 31 – 32 in Chapter 5 of GN R326 of the NEMA EIA Regulations 2014 (as amended). These regulations prescribe the AA Process and, amongst others, the process to be followed for substantive amendments. An overview of where the requirements for an Amendment Application are addressed in this report, is presented in Table 1.2 below.

## 1.6 ASSUMPTIONS AND LIMITATIONS

The following assumptions and limitations apply to this AA Process:

- The AA Process focuses on the amendments required and does not re-assess the project in its entirety.
- The AA Process will review the significance of impacts identified in the Final EIA (2011), as they pertain to the required amendments only.
- The impacts identified in the Final EIA (2011) were for the development of the entire Erf 1082 as authorised and not just Phases 5 and 6 (which are proposed for rezoning). Therefore, some of

the impacts assessed in the Final EIA (2011) may have limited or no applicability to the proposed change in zoning for Phases 5 and 6.

- Information provided by Fairview Suburban Estate Company (Pty) Ltd (the applicant) is assumed to be accurate.

*Table 1.2: Summary of where requirements of an Amendment Application Process (in terms of Sections 27 to 33 of the NEMA EIA Regulations 2014 (as amended) are provided in this Report.*

No.	Requirement for an Amendment	Where this is provided in this Final AR
27.	(1) The competent authority that issued an environmental authorisation has jurisdiction in all matters pertaining to the amendment of that environmental authorisation as long as the environmental authorisation is still valid, provided that the competent authority that issued such environmental authorisation still has jurisdiction in terms of the Act.	Correspondence from DEDEAT is included in Appendix B.
27.	2) Where the competent authority decides to amend an environmental authorisation, the competent authority must—  (a) issue an amendment to the environmental authorisation either by way of a new environmental authorisation or new environmental authorisations or an addendum to the relevant environmental authorisation; or  (b) replace an existing valid environmental authorisation with an environmental authorisation contemplated in this regulation, indicating the extent of replacement in the environmental authorisation, if the existing environmental authorisation is directly related to the amendment required.	Chapters 4 to 6 identify impacts of the proposed changes to the project. However, the competent authority, DEDEAT, is responsible for making the final decision.
27.	(3) Where an environmental authorisation granted in terms of these Regulations does not include operational aspects and the activity has been commenced with, the period for which such environmental authorisation is granted may only be extended for a maximum further period of 5 years.	Not applicable.  Phase 5 and 6 have not yet commenced.
27.	(4) An environmental authorisation may be amended or replaced without following a procedural requirement contained in these Regulations if the purpose is to correct an error and the correction does not change the rights and duties of any person materially.	Not applicable.  This is a substantive amendment.
28.	(1) An application for the amendment of an environmental authorisation must be submitted to the relevant competent authority on condition that the environmental authorisation is valid on the date of receipt of such amendment application.	This amendment; the authorisation for this project is still valid.
28.	(1A) The competent authority shall not accept or process an application for amendment of an environmental authorisation if such environmental authorisation is not valid on the day of receipt of such amendment application but may consider an application for environmental authorisation for the same development.	The authorisation for this project is still valid.
28.	(1B) An environmental authorisation which is the subject of an amendment application contemplated in this Chapter remains valid pending the finalisation of such amendment application.	Noted.
28.	(3) An application in terms of subregulation (1) must be made in writing and accompanied by a motivation for such amendment.	This report and motivation included in Chapter Two.
<b>Part 1: - NOT APPLICABLE AS THIS IS A SUBSTANTIVE AMENDMENT</b>		
<i>Part 2: Amendments where a change in scope occurs</i>		
<b>Amendments to be applied for in terms of Part 2</b>		
31.	An environmental authorisation may be amended by following the process prescribed in this Part if the amendment will result in a change to the scope of a valid environmental authorisation where such change will result in an increased level or change in the nature of impact where such level or change in nature of impact was not— (a) assessed and included in the initial application for environmental authorisation; or	This is a substantive amendment. Chapters 4 to 6 for the results of the specialist assessments.

	(b) taken into consideration in the initial environmental authorisation; and the change does not, on its own, constitute a listed or specified activity.	
32.	<b>Process and consideration of application for Amendment</b> (1) The applicant must within 90 days of receipt by the competent authority of the application made in terms of regulation 31, submit to the competent authority— (a) a report, reflecting— (i) an assessment of all impacts related to the proposed change; (ii) advantages and disadvantages associated with the proposed change; and (iii) measures to ensure avoidance, management and mitigation of impacts associated with such proposed change; and (iv) any changes to the EMPr;	Chapters 4 to 6 for the results of the specialist assessments and Chapter 7 for potential changes to the EMPr.
32.	(1) (a) which report— (aa) had been subjected to a public participation process, which had been agreed to by the competent authority, and which was appropriate to bring the proposed change to the attention of potential and registered interested and affected parties, including organs of state, which have jurisdiction in respect of any aspect of the relevant activity, and the competent authority, and	Chapter 3 for the Public Participation Process and approval received from DEDEAT in Appendix B.  Appendix D for the I&AP database, Appendix E and F for correspondence with I&APs.
32.	(1) (a) which report— (bb) reflects the incorporation of comments received, including any comments of the competent authority; or	Correspondence with DEDEAT is included in Appendix B. Chapter 3 for the Public Participation Process and Comments and Responses Trail. Appendix E and F for correspondence with I&APs.
32.	(1) (b) a notification in writing that the report will be submitted within 140 days of receipt of the application by the competent authority, as significant changes have been made or significant new information has been added to the report, which changes or information was not contained in the report consulted on during the initial public participation process contemplated in subregulation (1)(a) and that the revised report will be subjected to another public participation process of at least 30 days.	Not applicable.  Currently, the report is required to be submitted within 90 days of submission of the application for amendment as per Regulation 32 (1) (a).
32.	(2) In the event where subregulation (1)(b) applies, the report, which reflects the incorporation of comments received, including any comments of the competent authority, must be submitted to the competent authority within 140 days of receipt of the application by the competent authority.	Not applicable.  This amendment is currently subject to Regulation 32 (1) (a).
33.	<b>Decision on amendment application</b> (1) The competent authority must within 107 days of receipt of the report contemplated in regulation 32, in writing, decide the application.	Noted.
33.	(2) On having reached a decision, the competent authority must comply with regulation 4(1), after which the applicant must comply with regulation 4(2).	All I&APs will be notified in writing of the outcome of the decision-making process within the regulated timeframe.