



**EIA REFERENCE NUMBER:** 16/3/3/2/D2/19/0000/22  
**NEAS REFERENCE:** WCP/EIA/0001022/2022

The Appeal Authority  
Western Cape Ministry of Local Government,  
Environmental Affairs and Development Planning  
Private Bag X9186

**CAPE TOWN**

8000

**Attention: Mr. Marius Venter**

Fax: (021) 483 4174

Email: [DEADP.Appeals@westerncape.gov.za](mailto:DEADP.Appeals@westerncape.gov.za)

Dear Sir

**RESPONDING STATEMENT: APPEAL AGAINST THE DECISION ON THE APPLICATION FOR ENVIRONMENTAL AUTHORISATION IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998) AND THE ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, 2014: THE PROPOSED TERTIARY EDUCATION AND MIXED-USE DEVELOPMENT AT GARDEN ROUTE DAM ON A PORTION OF THE REMAINDER OF ERF 464, GEORGE**

1. The abovementioned decision issued by the Competent Authority on 19 September 2022 and the notice of appeal and appeal submissions received from the following parties:

- 1.1 Louis Coetzee
- 1.2 Dr Bool Smuts, Director and Accounting Officer of the Landmark Foundation Trust
- 1.3 Garden Route Dam Action Group (GARDAC)
- 1.4 Wildlife and Environment Society of South Africa (WESSA) Eden Branch
- 1.5 Tracey Pharoah (Communication Representative: Eden Residents' Association)
- 1.6 Nelson Mandela University
- 1.7 Katrivier Friends Group

(hereinafter interchangeably referred to as the "Appellants").

**INTRODUCTION**

- 2. The Directorate: Development Management (Region 3), hereinafter referred to as "this Directorate" opted to collectively deal and respond to each of the issues highlighted in the respective appeals and not respond separately to each of the appeals lodged by the 7 Appellants.
- 3. This Directorate further acknowledges that the issues and concerns raised by the Appellants are regarded as important. This Directorate will therefore consider and apply its mind to all of the issues raised, but focus and respond to the so called "main issues" which according to the Appellants will have the most significant and negative impact on the receiving environment (i.e. biophysical, socio-economic and cultural-historic).

4. It is evident from the respective appeals that the following main/key issues were raised:
- Potential Impact on the Garden Route Dam, which is the main water resource of the city.
  - Water Quality - Potential Impact on the rivers (Kat and Swart) and quality risks of the water in both the river and dam, which are the main supply resources for water in the dam.
  - Potential spills and pollution from Eden Pump Station and other old infra-structure and poor management of the water resource, blockages that causes overflows at manholes and stormwater contamination.
  - Potential Impact on public access to the dam and surrounding area (public facility, camping site, hiking and cycling trails etc.) and the exclusive use for certain group of the broader public.
  - Potential Impact on the endangered leopard and its territorial habitat and forage area.
  - Potential Impact on critical endangered vegetation habitat.
  - Evidence/Responses by the applicant does not support the reality.
  - Current structures and systems do not work.
  - Socio-Economic Benefit Questionable – Desirability of university is questioned.
  - Proper foresight needs to be developed to ensure planning has the correct future base.
  - Process – factual misrepresentations by EAP and specialists.
  - Reports do not reflect independent environmental impacts.
  - WULA not in place.
  - Alternatives - Lack of exploration of no-go option.
  - The current EA undermines the requirements of the previous 2014 EA.
  - Not all EIA listed activities were advertised.
  - The development falsely address socio-economic benefits and fails to address SDF imperatives, Policy A4, Policy D4, Policy Guidelines etc.
  - Material – key animal species leopard population, Alien Plant Impact, Open Space.
  - Record of Governance of water resources - Aquatic Specialist indicates that the releases for ecological reserves not met.
5. In accordance with the provisions of the National Appeal Regulations, 2014 the decision-maker, the Director Development Management, submits the following responding statement to the aforementioned appeal.
6. In response to the matters raised by the Appellants in their appeal submissions against the decision, the following matters must be highlighted:
- 6.1. The decision on the Application, which was subject to a Scoping & Environmental Impact Assessment process, was the culmination of the process as set out in Regulations 21, 22, 23 and 24 of the Environmental Impact Assessment Regulation, 2014 (as amended).
- 6.2. With due consideration of the relevant listed activities the Scoping & Environmental Impact Reporting (S&EIR) process was informed by the different independent specialist studies, inputs from various stakeholders, including government Departments and registered Interested and Affected parties who all participated in the public participation process.
7. This Department has further promoted an approach of integrating, co-ordinating and harmonising the knowledge and actions relating to the environment and consulted with officials from relevant sections/Directorates within this Department. In this regard, during the application process. The decision-maker applied its mind to all the relevant information contained in the Departmental information base, 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).

## THE APPELLANT'S GROUNDS OF APPEAL AND THE DECISION MAKER'S RESPONSES THERETO

8. In opening, it must be stated that based on the process followed and the requirements set out in the Environmental Impact Assessment Regulations, 2014 and the relevant legislation pertaining to the application and decision-making, a final decision was made on the application and presented in the most concise manner. The key issues listed above were grouped together under six grounds of appeal, discussed below.
9. The opinions of the Appellants as presented in the 7 appeal submissions are noted. Based on the nature of the grounds of appeal, it appears that the Appellants are of the view that the process was scientifically flawed and characterised by factual misrepresentations by the Environmental Assessment Practitioner (EAP) and specialists, despite the factual inputs and scientific evidence provided by interested and affected parties during the public participation process. The Appellants are further of the view that the decision-maker failed to take these inputs into account as part of the relevant considerations and as such the decision is substantively flawed as it is not rationally connected to the information placed before the decision-maker and as such the decision-making process was procedurally unfair. The Appellants are also of the opinion that the evidence and/or responses presented by the applicant does not support the reality and will lead to a completely different situation anticipated. Responses to these allegations are provided in the responses to the grounds of appeal below.

### 9.1. Ground 1: Potential Impact on the main water resource of the city

According to the Appellant/s no development should be permitted on slopes/gradients descending into the Garden Route Dam area to avoid any potential contamination of the sole potable drinking water supply of George, as there are already unresolved issues regarding pollution seemingly commencing in the Kat Rivier which “flows” through residential and commercial areas. The Appellants also submit that the Kat River, is the single developed tributary supplying the dam, and this is having a significant negative impact on water quality due to uncontrolled spills and contamination. According to the Appellants they have lodged an appeal to the municipality to seriously consider improved monitoring of the dam, establish the current status of water quality, and eliminate sewage spills from the Eden sewage pump station and old sewage pipelines. Appellants are also of the view that there is a lack of information as to the allocation of water resources, while many large developments are planned for George. The Appellant/s also require that the Department must uphold the pre-cautionary principle to ensure that the constitutional right to a healthy source of potable water. The Appellant/s also submit concerns regarding the water quality threats and that the mitigation measures will not be adequate over the lifespan of the sewage system and that its effectivity was not assessed, as well as that the environmental authorisation was issued in the absence of a Water use License.

**Response:** This Directorate regards the concerns relating to the potential impact of the development proposal on the main water resource valid and as such these could not be ignored during the EIA decision-making process. The applicant applied and submitted a Water Use License Application (WULA) to the Breede Gouritz Catchment Management Agency and all relevant information pertaining to the WULA was also submitted to this Directorate as part of the EIA application. As such, this Directorate had the opportunity to consider and apply its mind to the information pertaining to the WULA application together with the information submitted as part of the application for environmental authorisation. This Directorate had to make a decision, prior to the decision being issued on WULA due to legislated time frames and was satisfied with the proposed mitigation measures to protect the main water supply resource and proceeded with the decision on the environmental application. The conditions in the EA were specifically aimed at mitigating the effect of stormwater runoff, as well as a protective buffer of 100m around

all wetland areas during construction and operation to prevent and mitigate pollution of the water resource. The potential impact of sewage spills has also been taken into account and measures to place the western sewage pump station above the berm/swale to ensure that accidental spill or overflow will be caught by the berm/swale to prevent sewage from reaching the Garden Route Dam. These have been incorporated in the conditions of the EA to give effect to this requirement.

With regard to the capacity available to support the development proposal, written confirmation has been obtained from George Municipality that there is sufficient unallocated capacity available to sustainably support the authorised development.

An EA can be issued in the absence of a WULA. The environmental authorization and the water use license are issued in terms of the National Environmental Management Act (NEMA) and the National Water Act (NWA), respectively, and each process is independent and regulated by its own legislative timeframes. The respective authorities strive to synchronise the processes for the issuing of licences (WULA) and environmental authorisations, but a decision should not be delayed as a result of another legislative process that still needs to be completed.

## **9.2. Ground 2: Current structures and systems do not work**

According to the Appellant/s there is a significant increase in students with typical experimental behaviour in alcohol, drugs, sex and speed close by, which will exacerbate the current already out of control problem. If the project goes ahead access to the park needs to be redesigned to ensure a higher law-abiding rate deterring unwanted activities such as alcohol, drugs, motorbikes and sex in the park.

Further, according to the Appellant/s, the evidence and/or responses presented by the applicant does not support the reality and will lead to a completely different situation anticipated. The Appellant/s is therefore of the view that the evidence does not support the reality and there is proof that the current structures and systems do not work.

**Response:** This argument is misplaced and completely disconnected to the development proposal, but relates to activities taking place somewhere else (Dikkop Park). Although these concerns are acknowledged and these incidents are taking place at the identified place, it must also be acknowledged that it is taking place where no control measures and monitoring systems are in place to respond and address the problem. There are no buildings or infra-structure at the park that requires management and protection. The local authority also needs to be responsible as to where they deploy their resources (i.e. financial, security personnel etc.) and is also expected by the public to wisely spend, deploy and manage priority areas where assets and people's property are at stake/risk.

The development proposal includes specific measures that will be put in place and to monitor and control access. As much as the public is concerned about the fact that no structures and systems are in place and that it does not work, this argument also contradicts itself where views are expressed that the general public will be excluded by means of access control. This Directorate has considered both of these opposing viewpoints and concluded that development of the area will necessitate access control and monitoring of activities to ensure that the broader public is safe, the development is protected and that access to the open space facilities are controlled. This does not imply exclusion, but management of access in the best interest of all.

### **9.3. Ground 3: There is no rational connection between the decision and the information placed before the decision-maker**

The Appellant/s submits that the economic benefit to George, its businesses and other stakeholders of the approved proposal was based on previous case studies. According to the Appellants the world has however accelerated to *University 4.0* with a completely different operating model and this new technology-heavy operating model is more cost effective on the premises that students do not have to physically attend the university. The Appellant/s holds the view that the expected high revenue and economic boost are thus misplaced or overestimated to the point that the negative impact of the university may outweigh the potential positive impact. The response also does not demonstrate any knowledge or understanding of what Foresight development is.

**Response:** The argument/reasons put forward by the Appellant/s regarding Foresight relates to a different scale, which is mainly directed or based at the level or scale of a country and large international organisations at the forefront of changing the world. Such entities include the United States and World Economic Forum. The type of development proposed must be viewed in the context and scale of a small developing town (George) and not a major city or country as referred to by the Appellant/s. It is however unreasonable to expect a development of this nature and scale to embark on studies at the required scale and scope as stated by the Appellant/s. The EIA is also limited to site specific assessments which relates to the cadastral boundaries of the site. Although cumulative impacts are considered as part of the EIA decision-making process, the scale of the suggested *Foresight* studies is beyond the scope of an EIA. This Directorate therefore holds the view that there is a rational connection between the decision and the information placed before the decision-maker, as the studies submitted by the applicant are still relevant to the local context and scale of a developing town such as George. Not all training can be done on-line and there may still be a need for training at a facility that is not on-line, especially for certain practical skills.

With reference to the socio-economic benefit and need & desirability of the university: The proposal to establish an educational facility does not respond to a specific need of the applicant, but to the interest and needs of the broader public, which is in line with the requirements of the need and desirability guideline. The proposal therefore has regard for the NEMA principles, as it places people and their needs at the forefront, the proposal is integrated and also pursues environmental justice.

### **9.4. Ground 4: The local authority is neglecting to be a custodian of the Katrivier Local Authority Nature Reserve.**

The Appellant/s are of the opinion that the authorisation practically gives away a section of the reserve to an educational institution and private owners to make parks and open spaces for their own private use. The establishment of a Local Authority Nature Reserve was done on 10 October 1989 by the George Municipality and now they are neglecting their duty by not looking after the Katrivier Local Authority Nature Reserve. According to the Appellant/s a university will exclude the general public just as Nelson Mandela University locked all out during the Covid pandemic. The site should be secured for future use by all and not a select group.

**Response:** The allegation that the George Municipality as custodian of the Katrivier Nature Reserve is neglecting the management of the Katrivier Nature Reserve, is acknowledged, but this is a separate matter and not relevant to the proposed development. Only the proposed hotel site will encroach on the Katrivier NR, but conditions 31 & 36 require that the hotel site be set back, which will locate the hotel outside the current boundary of the Katrivier Nature Reserve.

The argument that a university will exclude the general public is not valid and the reasons put forward by the appellant/s relating to the pandemic is exceptional circumstances, as these restrictions were imposed at a national level in the interest to protect the broader public and had no intent to exclude the public.

#### **9.5. Ground 5: Procedural unfairness**

The Appellant/s are of the view that the process was not fair in terms of what was submitted to the administrator and claims that the submissions that were made by both the EAP and specialists constituted factual misrepresentations. According to the Appellant/s the Environmental practitioners and specialist consultants wilfully, and despite being informed of scientific facts to the contrary during the I&AP comment period, doubled down on factual misrepresentations on the impact of the proposed development on threatened and protected species, specifically the leopards (*Panthera pardus*). The Appellant/s believe the environmental impact documents are thus fraudulently inaccurate in attempt to greenwash the reports and their full-throated support of the development.

**Response:** This Directorate was never ignorant towards the scientific facts and the allegations regarding misrepresentations on the impact of the proposed development on threatened and protected species, specifically the leopard population (*Panthera pardus*) made by interested and affected parties during the public participation process when considering the application. The impact on threatened and protected species was taken very seriously and as such this Directorate evaluated the impacts of the proposed development based on the claimed existence of the leopard population (*Panthera pardus*). This Directorate also had to consider the fact that the site has been subjected to a high incidence of anthropogenic disturbances such as forestry activities, municipal maintenance activities, public recreational use and even squatting and weigh these against the natural behaviour of these animals. This Directorate also had to consider whether there is sufficient habitat left for retreat and adaptation, should the development be authorised and concluded that there are still areas of lower disturbance in the mountains and forests to the north and east to which these endangered species can retreat and find suitable habitat and adapt. Despite the accusations of misrepresentation of information, this Directorate had to remain focussed on the issues at hand and which are relevant and rationally connected to the information before it to avoid being biased in any way towards any party that participates in the process, whether it being the applicant, consultants, stakeholders or authorities to ensure procedural fairness and transparency of the process.

#### **9.6. Ground 6: Failure to take into account relevant considerations when rendering a decision**

The Appellants list several material environmental issues on which their appeals are based. These include (i) key species, (ii) alien plant impact, (iii) water quality risk and (iv) open space.

According to the Appellant/s the development site incorporates key and critical leopard habitat as demonstrated by one leopard that was collared and studied in the surrounding area. Detailed scientific analysis of leopard resource use indicates that the area adjacent to the dam is key habitat for this species and its persistence in the area adjacent to the dam is key habitat for this species and its persistence in the area. The Appellants further submits that it is notable that even after these comments and inputs were submitted in the consultation period, the consultants doubled down to grossly misrepresent the ecological data and facts. They have been duly reported to the oversight authorities. DEADP also claimed to have “applied their minds” but disregarded this input that should have on its own, had the application been rejected.



The Appellant/s argue that the consultants repeatedly state that forestry and alien plant growth justify development as it represents high levels of human disturbance. The appellants claim that this is not an accurate position and misrepresents the complexity of the reality, since the alien plant growth is a factor of municipal maladministration and negligence, as is the unprocessed and lack of removal of cut alien plants. The Appellants believe this was deliberately left unattended to fabricate a justification to develop the site. The appellants further submits that this municipal negligence is a fire risk to the town and should rather result in DEADP and other state entities enforcing compliance to CARA instead of issuing development permits that will destroy viable habitats and open spaces. Appellants is also of the opinion that these forested stands (aliens and plantations) provide key habitat to wide-ranging species and is dismissed by the consultants and this is again contrary to the inaccurate misinformation provided by the environmental expert report.

The Appellant/s submit that Water Quality Risk and ample precedent of developments on the edges of the dam have polluted and destroyed the water storage reservoirs and polluted dams including/such as Hartebeespoort Dam is a classic example. According to the Appellant/s other good examples are Lake Centurian, Burma Lake and Zeekoevlei, to mention only a few. According to the Appellant/s the fact that the municipality and the consultants naively suggest that this development would be different goes against repeated experience, and at worse is grossly irresponsible and untruthful. The Appellants argue that water is a key resource for all residents and every attempt should be made, as per the Spatial Development Framework (SDF) prescripts, to avoid riparian developments. The Appellant/s state that the Garden Route Dam is the main water supply resource to George and MUST be protected from private interests and risk of degradation and future limitation to capacity increases.

Open Space: The Appellant/s submit that the decision made in the 2014 Environmental Authorisation was that; *"the remainder of the site will be public open space that would mainly be used for recreational purposes"* is in line with the SDF. The Appellant/s are of the view that while the site is not zoned open space, the current authorisation undermines this intent and permit condition. The Appellants submit that the site for the development is an extraordinary open and recreational space. It has a sense of place with a thriving natural ecosystem that ought to be preserved for all the peoples of George and its future generations. The Appellants further state that all humans have a constitutional right to a healthy environment (1996 Constitution section 24) and this development that will hand out these extraordinary public assets to private gain will detract from that and opportunities to develop a standout natural open and accessible space to the citizens of George.

**Response:** This Directorate has taken the concerns relating to the impact of the proposed development into consideration and applied its mind to the scientific facts. The area around the dam is not a pristine area, as it has been subjected to several high incidence of anthropogenic disturbances such as forestry activities, municipal maintenance activities, public recreational use. Despite these forms of disturbance, the leopard that was collared and studied have still foraged and persisted in these areas, which confirms their adaptation capabilities in areas that have been disturbed. This Directorate however re-iterates that this aspect was taken into account. It is acknowledged that leopard may from time to time traverse over the site of the proposed development, (although there is no evidence of a leopard actually being on the site of the proposed development), but given the fact that there are large surrounding areas of lower disturbance in the mountains and forests to the north and east, which these endangered species utilise, the competent authority took into account to what extent the authorised development will impact on the leopard population, their habitat and behaviour in the decision that was made. The competent authority is of the considered opinion that the loss of a part of

this site will not result in the extinction of the local leopard population or a significant detrimental impact on the local leopard population.

The arguments put forward by the Appellant/s in their submissions relating to alien plants, namely that it was deliberately left unattended by the Municipality to fabricate a justification to develop the site are all speculative in nature, completely irrelevant and disconnected to the decision-making process and cannot be considered by the administrator in rendering a decision.

The Appellant/s concerns regarding water quality risks is a valid concern and this Directorate fully support this concern. There are several instances where the resource has been subjected to pollution as a result of sewage spills and pollution from burst pipes and sewage pump stations, which are often linked to old infra-structure and poor or lack of regular maintenance. This was a critical aspect in the decision-making process for the competent authority to consider. As such, and in light of the current issues pertaining to sewage spills into the Kat River that were raised early in the process it was recommended that, to avoid these incidents, the one pump station must be placed downstream of the Garden Route Dam in case of possible spillage or overflow, and the other pump station is set back from the dam and above a berm/channel that would direct any accidental sewage spillage away from the dam. This has also been included as a condition of approval in the environmental authorisation.

This Directorate applied its mind to the recommendations in the final Environmental Impact report (EIR), which states that the sump of the pump station would receive the sewage flow and act as a storage vessel from where sewage is periodically pumped. The sump would comprise an active volume and a relatively small internal emergency storage volume depending on the size of the sump. The emergency storage capacity will further provide additional safety when the pumps fail, in that it provides time for the Municipality's maintenance operatives to make the necessary repairs as well as catering for normal power outages. A minimum storage capacity that is equivalent to four to six hours' flow (George Municipality suggest 8 hours flow) at the design flow rate would be provided. The emergency storage would be provided outside of the pump station. These recommendations have been included as conditions of approval in the environmental authorisation.

The issue regarding open space is a relevant consideration and warranted serious consideration in the decision-making process. The reasons put forward by the Appellants are therefore considered valid as the area is known to be an attractive asset to many of the local residents and these have always been viewed as a key aspect that should not be overlooked or undermined in any decision to develop the land around the dam. The 2014 decision confirmed that this Directorate protected this interest, and this was again critically considered and accommodated in the recent decision. Approximately 67 ha remained natural open space. As such, this Directorate concluded that the proposed development will not result in the loss of these open space areas nor restrict public access to the dam or any of the open space facilities, as the proposed development aims to improve access for cyclists, trail runners, walkers and canoeists, fishermen, amongst others to the existing recreational areas around the dam. Since this area has historically been used by the public as a recreational area, the proposal aims to enhance this aspect by dedicating or maintaining these uses within the natural open spaces of approximately 67ha.



## CONCLUSION

10. This responding statement only deals with the content of the appeals and supporting documents received from the Appellants.
11. It must be noted that the Environmental Authorisation issued by the Department is consistent with the various Guidelines, relevant legislation and the National Environmental Management Principles (set out in section 2 of the NEMA, which apply to the actions of all organs of state, and does 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 authorised listed activities can be mitigated to acceptable levels.
12. The Appeal Authority is advised to consider all information which has been submitted to the Department regarding this development proposal.
13. This Directorate remains of the opinion that the decision has been considered carefully and due consideration has been given to the principles of NEMA and due process has been followed to address the requirements of the Public Administration Justice Act, 2000 (Act no 3 of 2000) to achieve a decision that balances the environmental aspects, interests of the public and the interest of the applicant. These various issues are reflected in the written record of the decision. It is my respectful submission that the decision was properly, rationally, and lawfully taken with due regard to all relevant facts and circumstances.
14. This Directorate reserves the right to revise its initial comments based on any new or revised information received.

Yours faithfully

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**MR ZAAHIR TOEFY** (DECISION MAKER)  
**DIRECTOR: DEVELOPMENT MANAGEMENT**  
**DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING**

**DATE: 31 OCTOBER 2022**

Copied to:

The Appellants:

Katriver Friends Group

Garden Route Dam Action Group (GARDAG)

Nelson Mandela University

Louis Coetzee

Eden Resident's Association

WESSA Eden

Dr Bool Smuts / Landmark Foundation Trust

[inge@groupware.co.za](mailto:inge@groupware.co.za)

[gardag21@gmail.com](mailto:gardag21@gmail.com)

[Kaluke.Mawila@mandela.ac.za](mailto:Kaluke.Mawila@mandela.ac.za)

[Lee-Anne.Groener@mandela.ac.za](mailto:Lee-Anne.Groener@mandela.ac.za)

[louiswcoetzee@gmail.com](mailto:louiswcoetzee@gmail.com)

[esca@cimarroncoaching.co.za](mailto:esca@cimarroncoaching.co.za)

[era@ezipezi.com](mailto:era@ezipezi.com)

[wessageorge@isat.co.za](mailto:wessageorge@isat.co.za)

[bool@landmarkfoundation.org.za](mailto:bool@landmarkfoundation.org.za)