



Reference: 14/3/1/A6/57/0540/21

Mr Cobus Bedeker
The Board of Directors
Evergreen Property Investments (Pty) Ltd.
P.O. Box 30487

TOKAI
7966

Tel/Fax: (021)702 3200/2

Email: shannonn@evergreenlifestyle.co.za

Dear Mr Cobus Bedeker

APPEALS LODGED IN TERMS OF SECTION 43(2) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) AGAINST THE REFUSAL OF ENVIRONMENTAL AUTHORISATION ISSUED FOR THE PROPOSED LAKE MICHELLE DEVELOPMENT ON THE REMAINDER OF ERF NO. 3823, NOORDHOEK

Having considered the information at my disposal I, the Provincial Minister of Local Government, Environmental Affairs and Development Planning, have decided in terms of section 43(6) of the *National Environmental Management Act, 1998 (Act No. 107 of 1998)* ("NEMA") and the 2014 National Appeal Regulations (Government Notice No. R. 993 of 8 December 2014), to **uphold** the Appeals, **set aside** the Refusal of Environmental Authorisation and **grant** an Environmental Authorisation as set out herein below:

ENVIRONMENTAL AUTHORISATION

DECISION

By virtue of the powers conferred on the Provincial Minister by the NEMA, the 2014 Environmental Impact Assessment ("EIA") Regulations and the 2014 National Appeal Regulations (Government Notice No. R. 993 of 8 December 2014), the Provincial Minister herewith **grants** an Environmental Authorisation for the undertaking of listed activities specified in section B below as per the Revised Final Basic Assessment Report ("BAR"), Appeals, Responding Statements and additional information received on 30 June 2022.

The granting of this Appeal Environmental Authorisation is subject to compliance with the conditions set out in section E below.

A. DETAILS OF THE APPLICANT FOR THIS ENVIRONMENTAL AUTHORIZATION

The Board of Directors
Evergreen Property Investments (Pty) Ltd.
P.O. Box 30487

TOKAI
7966

Contact person: Mr Cobus Bedeker
Tel/Fax: (021)702 3200/2

Email: shannonn@evergreenlifestyle.co.za

The above-mentioned company is the holder of this Environmental Authorisation and is here after referred to as "the applicant or holder".

B. LIST OF ACTIVITIES AUTHORIZED

The following listed activities are being authorised on the Remainder of Erf No. 3823, Noordhoek (the locality map is contained in **Annexure 1**) in relation to Preferred Layout Alternative 4 in the additional information dated 30 June 2022 (the site development plan is contained in **Annexure 2**):

Government Notice No. R. 983 of 4 December 2014 as amended by Government Notice No. R. 327 on 7 April 2017:	
<p>Activity Number 19:</p> <p><i>"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;</i></p> <p><i>but excluding where such infilling, depositing, dredging, excavation, removal or moving—</i></p> <p><i>(a) will occur behind a development setback;</i></p> <p><i>(b) is for maintenance purposes undertaken in accordance with a maintenance management plan;</i></p> <p><i>(c) falls within the ambit of activity 21 in this Notice, in which case that activity applies;</i></p> <p><i>(d) occurs within existing ports or harbours that will not increase the development footprint of the port or harbour; or</i></p> <p><i>(e) 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."</i></p>	<p>The proposed development will entail the infilling and movement of more than 10 cubic metres material from the wetland area. Part of the reedbed depression (Wetland B) and a very small portion of the Juncus wetland (0.1 ha) will be infilled for construction purposes. Approximately 1.86ha of the wetland area would be infilled for construction purposes for the preferred alternative.</p>
<p>Activity Number 27:</p> <p><i>"The clearance of an area of 1 hectares or more, but less than 20 hectares of indigenous vegetation, except where such clearance of indigenous vegetation is required for—</i></p> <p><i>(i) the undertaking of a linear activity; or</i></p> <p><i>(ii) maintenance purposes undertaken in accordance with a maintenance management plan."</i></p>	<p>The proposed development will entail the clearance of more than 1ha of indigenous vegetation, including wetland/ riparian vegetation.</p>

The applicant is authorised, as per the Preferred Layout Alternative 4, to undertake part of the preferred alternative recommended by the Environmental Assessment Practitioner ("EAP") in the Revised Final BAR contained in the additional information received on 30 June 2022 in relation to the listed activities:

- 80 residential units;
- Redirecting stormwater around salt pans;
- Parking areas;
- Timber boardwalks;
- Bird hides;
- Paved walkways;
- A 30-meter setback buffer area; and
- Conservation of the central salt pan area and a total wetland area of 11ha.

Environmental Authorisation is **refused** for the 18 units (Units 42 to 49 and 58 to 67 of Layout Alternative 4), the lifestyle centre/clubhouse, and associated services infrastructure (including internal roads and parking, water and sewerage pipelines, etc.) for the 18 units and the lifestyle centre/clubhouse.

Application for the amendment of the Appeal Environmental Authorisation can be applied for from the competent authority should the holder intend to revise the units within the authorised footprint, e.g. to exclude units and rather propose the inclusion of the lifestyle centre/clubhouse within the authorised footprint of layout alternative 4.

C. SITE DESCRIPTION AND LOCATION

The listed activities are proposed and authorised on the Remainder of Erf No. 3823, Noordhoek.

The Surveyor General ("SG") 21-digit code for the Remainder of Erf No. 3823, Noordhoek is: C01600370000382300000

Coordinates for the Remainder of Erf No. 3823, Noordhoek (contained in **Annexure 1**) are:

Co-ordinates:

340 06' 56.40" South

180 22' 55.29" East

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

D. DETAILS OF THE EAP

Doug Jeffery Environmental Consultants (Pty) Ltd.

c/o Mr. Marais Geldenhuys/ Mr Doug Jeffery

P.O. Box 44

KLAPMUTS

7625

Tel: (021) 875 5272

Email: marais@dougjeff.co.za/ doug@dougjeff.co.za

E. CONDITIONS OF AUTHORISATION

Scope of authorisation

1. The holder must commence with the listed activities on the site within a period of **five (5) years** from the date of this Appeal Environmental Authorisation.
2. The development must be concluded within **ten (10) years** from the date of commencement of the listed activities.
3. As per the reduced Layout Alternative 4 contained in the Revised Final BAR submitted in the additional information dated 30 June 2022, the holder is authorised to establish 80 residential units; redirect stormwater around salt pans; parking areas; timber boardwalks; bird hides; paved walkways; a 30-meter setback buffer area; and conserve the central salt pan area and wetland areas. Environmental Authorisation is **refused** for the 18 units (construction of Units 42 to 49 and 58 to 67), the lifestyle centre/clubhouse, and associated

services infrastructure (including internal roads and parking, water and sewerage pipelines, etc.) for the 18 units and the lifestyle centre/clubhouse.

4. A site development plan of Layout Alternative 4 including only the authorised 80 residential units (**and excluding the refused development**); redirected stormwater around salt pans; parking areas; timber boardwalks; bird hides; paved walkways; a 30-meter setback buffer area; and conservation of the central salt pan area and wetland areas must be submitted to the Competent Authority within **90 days** from the date of the Appeal decision.
5. The activities which are authorised may only be carried out at the site indicated above.
6. Any changes to, or deviations from the scope of the description set out in section B above must be accepted or approved, in writing, by the Competent Authority before such changes or deviations may be implemented. In assessing whether to grant such an acceptance/approval or not, the Competent Authority may request such information as it deems necessary to evaluate the significance and impact of such changes or deviations and it may be necessary for the holder to apply for further authorisation in terms of the applicable legislation.

Notification of the appeal decision

7. The holder must, in writing, within 12 (twelve) calendar days of the date of this decision notify all registered Interested and Affected Parties ("I&APs") of –
 - 7.1. The outcome of the appeal;
 - 7.2. The reasons for the decision as included in Annexure 3; and
 - 7.3. The date of the Appeal decision.

Written notice to the Competent Authority

8. Seven calendar days' notice, in writing, must be given to the Competent Authority before the commencement of the construction activities.
 - 8.1. The notice must make clear reference to the site details and EIA reference number given above.
 - 8.2. The notice must also include proof of compliance with the following conditions described herein:
Conditions: 4, 7, 12 and 18.

Management of activity

9. The Environmental Management Programme ("EMPr") submitted as part of the Revised Final BAR for Environmental Authorisation contained in the additional information is hereby approved and must be implemented on condition that it is amended to reflect what has been authorised and refused in this Appeal decision. The EMPr must be included in all contract documentation for all phases of implementation.
10. The mitigation measures and recommendations made by the specialists involved in the EIA process, as contained in the Revised Final BAR and the EMPr, must be strictly adhered to.

Monitoring

11. A copy of this Appeal Environmental Authorisation and the EMPr must be kept at the site where the listed activities will be undertaken. Access to the site referred to in section C above must be granted and, the Environmental Authorisation and EMPr must be produced to any authorised official representing the Competent Authority who requests to see it for the purposes of assessing and/or monitoring compliance with the conditions contained herein. The Environmental Authorisation and EMPr must also be made available for inspection by any employee or agent of the applicant who works or undertakes work at the site.
12. The holder must appoint a suitably experienced Environment Control Officer ("ECO"), or site agent where appropriate, before the commencement of any land clearing or

construction activities, to ensure compliance with the EMPr and the conditions contained herein during the construction activities.

13. A copy of the Environmental Authorisation, EMPr, Environmental Audit Reports and compliance monitoring reports must be kept at the office of the EA holder of the authorised listed activities and must be made available to any authorised person on request.

Auditing

14. In terms of Regulation 34 of the NEMA EIA Regulations, 2014 (as amended), the holder must conduct environmental audits to determine compliance with the conditions of the Environmental Authorisation and the EMPr and submit Environmental Audit Reports to the Competent Authority. The Environmental Audit Reports must be prepared by an independent person and must contain all the information required in Appendix 7 of the NEMA EIA Regulations, 2014 (as amended).
 - 14.1. The holder must undertake an environmental audit within 6 (six) months of the commencement of the development/construction activities and submit an Environmental Audit Report to the Competent Authority upon the completion of the environmental audit.
 - 14.2. An Environmental Audit Report must be submitted to the Competent Authority every two years for the duration of the construction phase.
 - 14.3. A final Environmental Audit Report must be submitted to the Competent Authority 1 (one) month after the completion of the development/construction activities.
 - 14.4. The holder must, within 7 (seven) calendar days of the submission of an Environmental Audit Report to the Competent Authority, notify all potential and registered I&APs of the submission and make the Environmental Audit Report available to an authorised person on request.

Specific conditions

15. Should any heritage remains be exposed during excavations or any actions on the site, these must immediately be reported to the Provincial Heritage Resources Authority of the Western Cape, Heritage Western Cape (in accordance with the applicable legislation). Heritage remains uncovered or disturbed during earthworks must not be further disturbed until the necessary approval has been obtained from Heritage Western Cape. Heritage remains include: archaeological remains (including fossil bones and fossil shells); coins; indigenous and/or colonial ceramics; any articles of value or antiquity; marine shell heaps; stone artifacts and bone remains; structures and other built features; rock art and rock engravings; shipwrecks; and graves or unmarked human burials.

A qualified archaeologist must be contracted where necessary (at the expense of the applicant and in consultation with the relevant authority) to remove any human remains in accordance with the requirements of the relevant authority.

16. An integrated waste management approach, which is based on waste minimization that incorporates the reduction, recycling, re-use and disposal, where appropriate, must be employed.
17. No surface or ground water may be polluted due to any actions on the site. The applicable requirements with respect to relevant legislation pertaining to water must be met.
18. As required by the Department of Water and Sanitation, the following measures must be complied with before the commencement of the listed activities:
 - 18.1. The location of the sewer pump station infrastructure, length of the rising main and the layout of the route must be discussed with the DWS.
 - 18.2. Comments in support of the sewer pump station and rising main infrastructure must be obtained from the City of Cape Town.

19. The applicable requirements with respect to relevant legislation pertaining to occupational health and safety must be adhered to.
20. The holder of the Environmental Authorisation must, at all times, ensure that the construction activities comply with the Noise Regulations in terms of the relevant legislation.
21. The holder is responsible for ensuring compliance with the conditions by any person acting on his behalf, including an agent, sub-contractor, employee or any person rendering a service to the holder.
22. The applicant must notify the Competent Authority in writing, within 24 hours thereof if any condition herein stipulated is not being complied with.

F. DISCLAIMER AND CONSEQUENCES OF NON-COMPLIANCE

The Western Cape Government, the Local Authority, committees or any other public authority or organisation appointed in terms of the conditions of this Environmental Authorization 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.

Any non-compliance with a condition of this Appeal Environmental Authorisation or EMPr may result in the suspension or withdrawal of this authorisation and may render the holder liable for criminal prosecution.

Your interest in the future of our environment is appreciated.

Sincerely,



A BREDELL

**WESTERN CAPE MINISTER OF LOCAL GOVERNMENT,
ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING**

DATE: 18/10/2022

Copied to:

Mr. Marais Geldenhuys/ Doug Jeffery (Doug Jeffery Environmental Consultants) Email: marais@dougjeff.co.za/
Doug@dougjeff.co.za

Mr. A. Greenwood (City of Cape Town)
Mr Derril Daniels (Department of Water and Sanitation)

Email: Andrew.greenwood@capetown.gov.za
Email: DanielsD@dws.gov.za

LAKE MICHELLE, NOORDHOEK

Aerial image courtesy of Google Earth Pro 2016



Legend



Proposed Site

Site Coordinate

34° 06' 54.91" S
18° 22' 54.03" E

Datum: WGS84
Projection: Geographic
Scale: 1:10000



Date: November 2016

DJEC Ref. 2014/03

Proposed by



DOUGLAS JEFFREY
Environmental Consultants (Pty) Ltd.

ANNEXURE 3: REASONS FOR THE DECISION

In reaching this decision, I, the Provincial Minister, *inter alia*, considered the following:

- Relevant EIA Guidelines for the Public Participation, Alternatives, Need and Desirability (dated March 2013), etc.
- The objectives and requirements of relevant legislation, policies and guidelines, including section 2 of the NEMA.
- On 24 August 2020, an Application form, was received from the Applicant, Evergreen Property Investments (Pty) Ltd, to obtain an EA for the proposed Lake Michelle development on the remainder of Erf No. 3823, Noordhoek in terms of the NEMA and the 2014 EIA Regulations and Listing Notices.
- The Final BAR.
- The comments received from I&APs and the responses provided thereon, as included in the Final BAR.
- The Refusal of Environmental Authorisation ("EA") (Reference No: 16/3/3/1/A6/57/2045/20) issued refusing the listed activities with respect to the proposed Lake Michelle development on the remainder of Erf No. 3823, Noordhoek.
- 22 (twenty two) Appeals (First Appellants) were received from Shannon-Lee Newman Town Planner on behalf of the Appellants, against the Refusal of EA.
- The Responding Statement received from Mr Patrick and Ms Judy McKune (the First Respondent) in response to the Appeals lodged against the Refusal of EA.
- The Responding Statement received from Ms Diana Gill (the Second Respondent) in response to the Appeals lodged against the Refusal of EA.
- The Appeal received from Doug Jeffery Environmental Consultants on behalf of the Applicant, Evergreen Property Investments (Pty) Ltd (Second Appellant) against the Refusal of EA.
- The Responding Statement received from Sakkie Meeuwssen (the Third Respondent) in response to the Applicant's Appeal.
- The Responding Statement received from the DEA&DP's Directorate: Development Management (Region 1) (the Fourth Respondent) in response to the abovementioned Appeals.
- The Responding Statement received from Holland and Associates on behalf of the Lake Michelle Home Owners Association (the Fifth Respondent) in response to the Applicant's Appeal.
- The photographs captured during the site visits conducted by the Department's Directorate: Development Management (Region 1) and the Sub-directorate: Environmental Appeals Management.
- The additional information dated 30 June 2022 including the Revised Final BAR and the comments and responses report.

The following are the reasons for this Appeal decision:

1. **Appeal ground 1: Fatal flaw in the assessment process**

- 1.1. The refusal of EA by the Competent Authority seems to have been reasonable during the decision-making process as you were unwilling to identify, consider and assess alternatives that will avoid impacts on wetlands before resorting to mitigation. However, a Revised Final BAR with a reduced layout alternative to further avoid impacts on wetlands has been submitted as additional information during the appeal process.
- 1.2. CapeNature stated that "*The most viable option would be for a reduced alternative that totally avoids having any impacts on the Lake Michelle wetland system, as opposed to the proposed layout that seeks to offset the impacts that it will have on this system. Hence, the proposed development also not being consistent with the requirements of the mitigation hierarchy of avoiding impacts.*" The Freshwater Specialist Study (BlueScience, 2021) stated that: "*For Alternatives 1 and 2 portions of the reed bed and a small portion of encroached salt marsh area would be lost by the proposed development*". The

environmental context of the site is demonstrated in the Revised Final BAR and the specialist studies. Therefore, it is not clear what has been misperceived regarding the environmental situation on the site.

- 1.3. The developmental history, facts and recommendations by specialist studies as detailed in the Revised Final BAR have been considered before the issuing of the decision.
- 1.4. The NEMA and the 2014 EIA Regulations obliges that the comments of the interested and interested affected are considered in the EIA processes. The comments received revolved, *inter alia*, to suggesting that the impacts on the wetlands should be avoided before settling for mitigation. As such, that was not satisfactorily done during the basic assessment process.
- 1.5. During the appeal process, as requested in the letter for additional information, an additional feasible alternative which further avoids impacts on the wetlands was submitted for consideration by the Appeal authority. The Revised Final BAR was distributed to all registered I&APs, the appellant and respondents and the DEA&DP's Director: Development Management (Region 1) to comment on the Revised Final BAR. The Revised Final BAR includes:
 - 1.5.1. Includes an assessment of an additional feasible alternative (Alternative 4).
 - 1.5.2. A Socio-Economic Assessment Addendum Letter commenting on the assessment of financial viability.
 - 1.5.3. A3 size layout alternative plans of all wetland areas overlain by the proposed development on Google Earth imagery.
 - 1.5.4. The updated EMPr.
 - 1.5.5. An updated comment from CapeNature.
 - 1.5.6. Proof that registered I&APs have been provided an opportunity to comment on the Revised Draft BAR and the Comments and Response Report.
- 1.6. Considering the above, additional information has been received during the appeal process which includes an additional alternative which further avoids impacts on the wetlands.

2. Appeal ground 2: Context and history

- 2.1. The Revised Final BAR shows that the development of phases 1-7 of Lake Michelle has been commenced with as the relevant approvals have been issued. A number of approvals for Phase 8 have also been issued. However, as the development for Phase 8 did not commence as per the initial approvals, and these approvals for Phase 8 have since lapsed. As such, the EIA application for Phase 8 was submitted to the DEA&DP's Directorate: Development Management (Region 1) and based on its own merits and information provided, was refused. However, additional information has since been submitted during the appeal process.
- 2.2. The Revised Final BAR reveals that the most disturbed and transformed section of the site is the north-western portion of the property where the dumping site was, while only sections of the seasonal *Juncus* wetland and the excavated section of the lake are disturbed. The suggestion that the entire ecological and aquatic system is disturbed is not correct, it is only certain portions of the site that were disturbed due to historic anthropogenic activities.
- 2.3. The Aquatic Ecological Assessment dated January 2021 reveals that "*Lake Michelle is a 24 hectare (ha) man-made lake that has been excavated in the mid-1970s within the footprint of a saltpan*".
- 2.4. Considering the above, the history and the context of the site have been adequately provided in the relevant record of decision.

3. Appeal ground 3: Information considered for decision-making

- 3.1. In reaching its decision, the Competent Authority considered, *inter alia*, all the information which was submitted by the EAP to inform the decision which culminated into the Refusal of EA.

- 3.2. The site visits were conducted to obtain a general overview of the site and its environs. During the site visits, the Competent Authority took photographs of the proposed site and the surrounding environment.
- 3.3. Should access be required in terms of the information submitted to the DEA&DP with regards to this matter a request may be lodged in terms of section 18(1) of the *Promotion of Access to Information Act, 2000 (Act No. 2 of 2000)* ("PAIA"). Ms Annelize De Villiers may be contacted in terms of the request for access to information process from: Tel: (021) 483 8315 or email Annelize.DeVilliers@westerncape.gov.za.
- 3.4. Unless the information must be treated as confidential, access to the information submitted to the Competent Authority with regards to this matter will be made available if applied for appropriately.
- 3.5. Considering the above, this ground of appeal has no merit and has been addressed.

4. Appeal ground 4: Public Participation

- 4.1. Regulation 41(2) of the 2014 EIA Regulations states that the person conducting the public participation process may give notice to potential I&APs of an application by:
 - 4.1.1. Fixing a board at the place accessible by the public at the boundary, on the fence or along the corridor of the site where the activity will be undertaken.
 - 4.1.2. Giving written notices to the occupiers of the site, occupiers of the land adjacent to site where the activity is or is to be undertaken, the municipality, the municipal councilor, any organ of state having jurisdiction and any other party as required by the Competent Authority.
 - 4.1.3. Placing a newspaper advertisement.
- 4.2. Regulation 44(1) of the 2014 EIA Regulations states that *"The applicant must ensure that the comments of interested and affected parties are recorded in reports and plans and that such written comments, including responses to such comments and records of meetings, are attached to the reports and plans that are submitted to the Competent Authority in terms of these Regulations."*
- 4.3. The public participation process included the following:
 - 4.3.1. Identification of and engagement with I&APs;
 - 4.3.2. On 21 August 2018, a notice was placed at the site where the listed activities are to be undertaken;
 - 4.3.3. On 23 August 2018, a newspaper advertisement was placed in the *"False Bay Echo"*;
 - 4.3.4. Distribution of written notices to I&APs;
 - 4.3.5. Giving written notices to the owners and occupiers of land adjacent to the site where the listed activities are to be undertaken, the municipality and ward councilor, and the various organs of state having jurisdiction in respect of any aspect of the listed activities;
 - 4.3.6. Hosting an open house meeting on 11 September 2018,
 - 4.3.7. A Home Owners Association meeting on 17 October 2018; and
 - 4.3.8. Making the BAR and all relevant information available to I&APs for public review and comment.
 - 4.3.9. During the appeal process, the registered I&APs have been afforded opportunities to submit:
 - 4.3.10. Appeals against the Refusal of EA.
 - 4.3.11. Responding statements against the Appeals.
 - 4.3.12. Comments on the Revised Final BAR.
- 4.4. The following issues raised by the I&APs are addressed in the comments and responses received during the pre-application and statutory public participation processes:
 - 4.4.1. Socio-economic and social aspects.
 - 4.4.2. Traffic Aspects.
 - 4.4.3. Civil Works.

- 4.4.4. Planning Aspects.
- 4.4.5. Environmental Aspects.
- 4.4.6. Legal Aspects.
- 4.5. As detailed in the Applicant's Appeal:
 - 4.5.1. The specialist consultants duly considered all comments and objections received. A comprehensive response was prepared with reference to the in-depth specialist studies that were undertaken to assess the proposals, as well as highlighting further refinement of the proposals to address concerns raised.
 - 4.5.2. The Revised Final BAR (supported by a wide range of specialist studies) found that the proposals are desirable from an ecological integrity, human well-being and economic efficiency perspective (i.e. the three pillars of sustainability). Extensive reference has been made in the Need and Desirability Report (Appendices G1A and G1B of the Revised Final BAR) to the developmental history of the site. This includes reference to approvals granted by authorities for the rezoning, development plan and subdivision of the Phase 8 development area, which approvals granted the establishment of 140 residential units in this portion of the Lake Michelle development.
 - 4.5.3. After all required approvals were granted, the development of Phase 8 was interrupted by the discovery of a species of wetland plant (*Sarcocornia natalensis*) or also described as "salt marsh communities". The relevant authorities at the time [i.e. the Department of Environmental and Cultural Affairs & Sport ("DECAS") and City of Cape Town] requested respectively that *"It is therefore urged that the development be placed on hold until such time as the necessary environmental investigation have taken place"* and *"The decision on whether to conserve the area in part or as a whole can only be taken following a comparative study aimed at establishing whether there are comparable and equally as intact salt marsh communities within the Noordhoek wetlands area..."*.
 - 4.5.4. Historic decisions therefore relate to a suspension of activities on site, pending further investigation.
 - 4.5.5. The current planning and environmental assessment process is therefore the continuation of the *"necessary environmental investigation"* by the new owner of the property to determine *"whether to conserve the area in part or as a whole"*, i.e. does the property provide development opportunities in the context of the existing marina development and the presence of *"salt marsh communities"* on the site and would the impact of such development be acceptable, maximizing positive impacts and minimizing negative impacts.
 - 4.5.6. As indicated in the Revised Final BAR, the proposals now conserve and enhance the *Sarcocornia natalensis* / salt marsh communities, as well as restorative actions to ensure their continued presence on the site.
- 4.6. When additional information was requested during the appeal process, responses were made to the comments that were received from the registered I&APs in terms of, *inter alia*, the following aspects:
 - Planning legislation**
 - 4.6.1. The property is located within the urban edge as confirmed by the Municipal Spatial Development Framework ("MSDF").
 - 4.6.2. Map 5d of the MSDF indicates the property as a "Consolidation Area". The alternative 4 layout is compliant with the 'Consolidation Area'.
 - 4.6.3. Map 5b of the MSDF indicate portions of the site as "Other Natural Areas (Buffer 1)" and containing wetlands, with a remaining part undesignated and presumed as possible development area.
 - 4.6.4. The SDF categorised the property as a mixture of "Urban Development", "Buffer 1" and "Waterbodies. These categories are similarly present in alternative layout 4.

- 4.6.5. Section 9(5) of the Municipal Planning By-Law ("MPBL") states that where there is conflict between the MSDF and SDF as described above, the MSDF prevails over the SDF.
- 4.6.6. Alternative layout 4 is in compliance with the MSDF's categorisation of the property as 'Consolidation Area' and comply with and is compatible with key principles, spatial strategies, policies, sub-strategies and policy guidelines as contained in the MSDF.

Duty of care

- 4.6.7. The reedbeds are a result of stormwater discharge from the local and provincial government service infrastructure onto the property which is causing the degradation of the wetland system.
- 4.6.8. The NEMA binds the person who is responsible for causing the degradation.
- 4.6.9. Evergreen however has a duty of care to maintain the wetland to be free of invasive alien vegetation and dutifully clears invasive alien vegetation on a regular basis.

Wetland off-set calculation

- 4.6.10. The wetland extent (hectare equivalent) off-set target is 11.5 ha and alternative layout 4 achieves 11.4 ha.
- 4.6.11. The negligible loss is largely related to reedbeds.
- 4.6.12. Reedbeds are an undesirable habitat for aquatic biota such as Western Leopard Toad ("WLT") and will be replaced with seasonal wetland habitat improving habitat diversity.
- 4.6.13. The wetland functionality (hectare equivalent) off-set target is 5.2 ha and alternative layout 4 adequately achieves 5.2 ha and meets the wetland functionality target.
- 4.6.14. The ecosystem conservation (hectare equivalent) off-set target is 12.3 ha and alternative layout 4 achieves a high 22.5 ha. The wetland off-set gain significantly exceed the wetland off-set target as ecologically important wetlands are being rehabilitated.
- 4.6.15. The species conservation (% habitat intactness) wetland target is 50-100 and alternative layout 4 achieves 60-80. The wetland off-set gain exceeds the wetland off-set target as a result of the rehabilitation and establishment works.
- 4.6.16. Alternative layout 4's wetland functionality, wetland ecosystem conservation and wetland species conservation adequately meet the determined wetland off-set targets.

Need for retirement accommodation

- 4.6.17. The number of elderly persons aged 60 years or older is increasing over time (Statistics South Africa).
- 4.6.18. Retirement property is not keeping pace, comprising a small portion of South Africa's housing stock.
- 4.6.19. 5 retirement villages within the area confirmed 100% occupancy, with long waiting lists.

Viability of project and economic sustainability

- 4.6.20. The three pillars of sustainability, being 'ecological integrity', 'human well-being' and 'economic efficiency' must be pursued as specified by section 2 of NEMA.
- 4.6.21. From a capital expenditure perspective, it should be noted that the approximate capital expenditure required to rehabilitate the wetland and associated development landscaping amounts to approximately R50,000,000. This cost would have to be covered by the development of the property.
- 4.6.22. If the development is restricted to 15 houses it would mean that the cost per house would equate to approximately R3,300,000 per house. This is without adding any building or other development costs into the equation. As the houses will be sold at

an average of R3,500,000 per house it is clear that the 15 houses alternative proposal would not be feasible.

- 4.6.23. Should the development however be approved as per the preferred option, the cost could be spread over more houses and the cost per house would be significantly lower at approximately R500,000 per house and the development would be feasible based on selling the houses at the average of R3,500,000 per house.
 - 4.6.24. From an operational cost perspective, it should be noted that the approximate annual operational cost to maintain and manage the wetland amounts to approximately R2,500,000. This cost would have to be covered by the monthly levies paid by the residents. If the development is restricted to 15 houses it would mean that the monthly levy payable per house would be approximately R13,000 per house. This is without any other operational costs such as security and general maintenance being added into the equation.
 - 4.6.25. Should the development however be approved as per the preferred option, the monthly levy payable per house would be significantly lower in the amount of approximately R2,000 per house.
 - 4.6.26. As demonstrated above, it is clear that limiting the development to 15 houses or implementing a no development option is definitely not viable.
 - 4.6.27. The approval of the preferred option would on the other hand ensure economies of scale and the development would therefore be both viable and sustainable.
- 4.7. The following relevant authorities objected to the previously refused alternatives (and/ or also objected/ commented to layout alternative 4) to the proposed development as follows:
- 4.7.1. **The City of Cape Town** in its comments dated 6 December 2020 stated that they are not in support of the proposed development, which will negatively impact the already stressed Noordhoek Wetland System. By ensuring no net loss of the wetlands, the City of Cape Town will fulfil its requirement of building resilient cities in which wetlands have a significant role to play. Further, the owner of the site has a legal obligation to ensure any areas within the site which are of environmental significance / sensitivity are adequately and appropriately maintained. On 31 March 2022, with respect to layout alternative 4, the **City of Cape Town** commented *inter alia* that:
"While it is acknowledged that the new alternative will slightly reduce the impact on the wetlands, it is still our opinion that an unacceptable amount of wetlands (it is important to note that the reedbeds are also wetlands) will be infilled, which the City cannot condone. All our previous comments stand."
 - 4.7.2. On 8 April 2022, with respect to layout alternative 4, **South African National Parks** commented *inter alia* that:
"The focus of the revised final BAR is towards moving the development footprint away from the wetlands. In this regard, Alternative 4 reduces the development footprint in the wetlands by 1.3 ha (page 17) when compared to alternative 2. However, figure 3 (page 23) also notes that 1.9 ha of wetlands clearing and infilling is still required, which is 1.9 ha more than Alternative 3."
 - 4.7.3. **CapeNature** in its comments dated 23 October 2018 indicated that CapeNature is not in support of the proposed development. The most viable option would be for a reduced alternative that totally avoids having any impacts on the Lake Michelle wetland system, as opposed to the proposed layout seeks to offset the impacts that it will have on this system. Hence, the proposed development also not being consistent with the requirements of the mitigation hierarchy of avoiding impacts. On 10 May 2022, with respect to layout alternative 4, CapeNature commented *inter alia* that:

"2.1 Alternative 4 has reduced the number of residential units from 110 to 98 and removed the development node between the proposed rehabilitated salt pans and the *Juncus* wetland. This has also resulted in no encroachment onto salt marsh wetland and has improved the connectivity of the proposed conservation area considerably to the Papkuilsvlei area in the north-west. CapeNature is therefore satisfied that alternative 4 provides sufficient ecological connectivity to surrounding wetland areas. By revising the proposed development plan to create alternative 4, the mitigation hierarchy has been considered, particularly aspects of avoidance as more wetland habitat will be avoided especially salt marsh habitat and inhibition of ecological functionality on the *Juncus* wetlands have been mitigated by removing the requested development node. This also addresses CapeNature's concern in previous comments that the consideration of offsets need to be considered only after the mitigation hierarchy has been applied.

2.2 Furthermore, the aquatic assessment addendum impact assessment (appendix G27 of the FBAR) is supported, considering that more wetland areas will be retained in the conservation area and the revised layout (alternative 4) would meet the wetland offset target requirements in contrast to that of alternative 2 (the previous preferred alternative). As per the freshwater specialist, the wetland rehabilitation efforts should ultimately result in the removal of weedy invasive indigenous reed species and a return of the wetland state to indigenous seasonal *Juncus* wetland while at the same time preserving the salt marsh habitat on site.

2.3 The conclusions and impact assessment of the faunal assessment addendum (appendix G29), which dealt only with the impacts on WLTs, are accepted. Alternative 4 will have similar impact to that of alternative 2 but was ultimately regarded as a more favourable alternative due to the reduction in habitat loss and improved configuration of development layout. All recommendations provided are supported. It is noted that WLT underpasses under Noordhoek main road are a primary mitigation to reduce WLT mortality, which has received formal approval as per appendix E7 of the FBAR."

- 4.8. The issues which were raised by the relevant authorities, with regards to layout alternative 4 submitted with the additional information, were addressed *inter alia* as follows by the EAP and specialists:

City of Cape Town

4.8.1. The proposal is that the undesirable condition (created by dense reedbed growth in response to increasing nutrient rich stormwater entering the site) will be progressively removed and the seasonal *Juncus* wetland habitat reestablished. The seasonal wetlands are what would naturally occur at the site and provide a much more biodiverse habitat. There would only be 1.6% of the wetland habitat that is proposed to be infilled to allow for the development. This loss of wetland area is far outweighed by the biodiversity and functionality gains for the proposed rehabilitated wetlands and the sustainability gain of the ecologically important salt marsh within the site.

4.8.2. Lake Michelle is an artificial lake and wetland specifically created for the purposes of a residential marina, where developable and wetland areas are created. The subject property has been modified and intended for development for the purposes of a residential marina since the 1970's. The developers of the residential marina have had an ongoing number of interactions with various transitional structures of local [p'=and provincial government. These have led to a series of development and land use related approvals stretching over a period of nearly 40 years. These include *inter alia* 'need and desirability' approved by the Administrator, rezoning and subdivision. The subject property forms part of this history and residential marina. The entire extent of the Lake Michelle development was zoned for the purpose of establishing a marina township. The approval for

Phase 8 (the subject property) contained a total of 140 residential units, which included group housing. As an artificially created lake and wetland for the purposes of a residential marina, this site and wetland cannot be compared to the greater Noordhoek Wetland System or other natural wetlands.

- 4.8.3. Each site needs to be evaluated against its unique circumstances and each application needs to be evaluated based on its individual merit.
- 4.8.4. Notwithstanding the aforementioned, the proposals show that it is intended to protect and rehabilitate *inter alia* the Juncus wetland and remnant saltmarsh vegetation communities and diversify the habitat currently provided by the property. It is the objective of the current proposals to give effect to the rehabilitation and protection of the identified salt marsh areas from *inter alia* excessive water and nutrient supply emanating from outside of the site and further encroachment by reedbeds (Typha). This application addresses the concern raised by DECAS and City of Cape Town, which led to the construction of Phase 8 to be put on hold.
- 4.8.5. A trend has been noted that the salt marsh communities and open water pan habitat within the site are being replaced by reedbeds, the reedbeds noted by the City of Cape Town: Environmental Management Department, which is due to an increase in stormwater entering the site from surrounding areas. A model for habitat change suggests that with time the salt marsh communities and open water pan habitat will disappear leading to a major reduction in both habitat and species presence. Without any functional management interventions, the decline in pan habitat will proceed unchecked and a key wetland habitat is likely to be lost. The amended development proposals for Phase 8 *inter alia* protect and enhance the long-term existence of the Juncus wetland and salt marsh communities.
- 4.8.6. The proposals will facilitate operational requirements of the biophysical environment into perpetuity. The rehabilitation and protection of the saltmarsh vegetation communities, additional habitat creation and enhanced ecological functioning, with associated ecological benefits, are proposed.
- 4.8.7. The wetland offset calculation performed by the specialist aquatic ecological consultant, i.e. BlueScience, demonstrates that the wetland losses associated with the preferred development alternative are largely associated with the reedbed habitat loss. All of the other proposed wetland habitat changes have associated positive impacts or benefits in terms of functional, ecosystem conservation and species conservation and exceed the determined targets. As the reedbed habitat is seen as an undesirable habitat, the loss of this wetland habitat and replacement with seasonal wetland habitat is seen as a positive impact.
- 4.8.8. With the implementation of the proposed mitigation measures, the potential impacts of the preferred development alternative are likely to be of a low significance and over the long term are likely to result in a positive impact in terms of an improvement in the ecological condition and functioning of the retained wetland areas and in particular secure the long-term sustainability of the saltmarsh habitat. In terms of the natural environment, the cumulative impacts will be of a positive nature.
- 4.8.9. The environmental impact studies have found that the proposals have substantial positive environmental, social and economic impacts and that negative impacts associated with the development can be mitigated to acceptable levels.

Applicable Spatial Planning Policy Guidelines and Frameworks

- 4.8.10. As previously acknowledged, Lake Michelle is an artificial lake and wetland specifically created for the purposes of a residential marina, where developable and wetland areas are created. The MSDF identifies areas suitable for urban development and catalytic interventions to achieve spatial transformation; areas where the impact of development must be managed; and areas not suited for

urban development. The MSDF states that *“the basis for growth management in the City is established via four primary Spatial Transformation Areas...”*. These are the ‘Urban Inner Core’, ‘Consolidation Areas’, ‘Discouraged Growth Areas’ and ‘Critical Natural Assets’.

- 4.8.11. The MSDF’s Consolidated Spatial Plan Concept (Map 5d as contained in the MSDF) depicts these spatial transformation areas spatially across Cape Town. Lake Michelle and Rem. Erf 3823 are indicated as located within the urban edge and demarcated as located within a *“Consolidation Area”*.
- 4.8.12. The MSDF states that two of the desired spatial outcomes for ‘Consolidation Areas’ are *“Diversification of mono-use residential patterns”* and *“Incremental intensification (density and diversity) via subdivisions/second and third dwellings and rezonings.”*
- 4.8.13. The MSDF does not demarcate the site as a *“Discouraged Growth Area”* or a *“Critical Natural Assets”* as is the case with the adjacent ‘Checkers / Long Beach Mall’ wetland area to the southeast and the Papkuilsvlei wetland to the west and southwest respectively. Map 5b: Biodiversity Network and Marine Protected Areas as contained in the MSDF does not indicate the site as a *“Protected and Conserved Area (Core 1)”*, *“Critical Biodiversity Area (Core 1: CBA 1a - CBA 2)”*, *“Ecological Support Area (Core 2)”* or an *“Other Ecological Support Area (Buffer 2)”*. The proposals are in compliance with the categorization of the site as ‘Consolidation Area’.
- 4.8.14. As detailed in the Planning Background / Need and Desirability Report, the proposals comply with and are compatible with key principles, spatial strategies, policies, sub-strategies and policy guidelines as contained in the MSDF. The abovementioned spatial designations of the MSDF seem to acknowledge the developmental history of Lake Michelle and its various phases as a residential marina where developable and wetland areas are created.
- 4.8.15. The abovementioned spatial designations of the MSDF seem to acknowledge the developmental history of Lake Michelle and its various phases as a residential marina where developable and wetland areas are created. Map 5b: Biodiversity Network and Marine Protected Areas however indicate portions of the site as *“Other Natural Areas (Buffer 1)”* and containing wetlands, with a remaining part undesignated and presumed to be possible development area. Map 5b and relevant sections do however not refer to the developmental history of the site, the quality of the wetland and its functioning or its habitat diversity.
- 4.8.16. In terms of the provisions of the City of Cape Town Municipal Planning By-Law, 2015 (as amended), which By-Law regulates elements pertaining to its MSDF, various proposal and site-specific circumstances exist that should be considered should a deviation from this element (i.e. Buffer 1) of the MSDF be required. Various proposal and site-specific circumstances have specifically been highlighted in the Planning Background / Need and Desirability Report as well as the Planning Addendum Letter dated 10 February 2022.

Southern District Plan (2012)

- 4.8.17. The District Plan indicates that the land on which Phase 8 is located is within the urban edge, between two existing urban development areas (existing Lake Michelle phases and Crofter’s Valley) and categorised as a mixture of *“Urban Development”*, *“Buffer 1”* and *“Waterbodies”*. Noordhoek Main Road directly to its north is classified as a *“Connector Route”*.
- 4.8.18. The *“Buffer 1”* and *“Waterbodies”* categorization recognises the existence of the wetland on the site. The District Plan however does not refer to the developmental history of the site, the quality of the wetland (e.g. previous disturbance), wetland functioning and habitat diversity.

- 4.8.19. As portions of the site are to be developed for residential purposes (as in a residential marina), an application to deviate from the spatial plan of the District Plan is necessary in order to change portions of the site's categorisation from "Buffer 1" and "Waterbodies" to "Urban Development".
- 4.8.20. As noted in the Planning Background / Need and Desirability Report, such deviation is motivated according to 'site specific circumstances'. The site specific circumstances of "Urban Development", "Buffer 1" and "Waterbodies" are still present in the preferred development option, but it is proposed to amend and refine the location of these spatial categories across the site. Section 9(5) of the City of Cape Town Municipal Planning By-Law states as follows: "9(5) If there is a conflict between the municipal spatial development framework and a district spatial development framework or local spatial development framework, the municipal spatial development framework prevails over other development frameworks to the extent of the conflict."
- 4.8.21. The MSDF therefore prevails over the Southern District Plan. As indicated above, the proposals are in compliance with the MSDF's categorisation of the property as 'Consolidation Area' and comply with and are compatible with key principles, spatial strategies, policies, sub-strategies and policy guidelines as contained in the MSDF.
- 4.8.22. The Southern District Plan (extract of which is provided in the Planning Background / Need and Desirability Report) does not indicate this site as "Core 2". It indicates the site as "Urban Development", "Buffer 1" and "Waterbodies". Other areas, not related to the property, are specifically indicated by the District Plan as "Core 2".

Densification Policy (2012)

- 4.8.23. Although a relatively low density of 5 units/ha is proposed, the proposals are considered to be compliant with the objectives of the Densification Policy taking the site's environmental characteristics into account. The extent of development, number of residential units and subsequent residential density have been determined by contextual informants such as environmental sensitivity, carrying capacity of the environment and the provision of services. The addition of the dwelling units nonetheless contributes to increasing the residential density of Lake Michelle, which is located within the urban edge. This promotes a compact and efficient urban environment that optimizes resources and the utilisation of land, with due consideration to sensitive environments.
- 4.8.24. The proposals for Phase 8 diversify (and integrate) the residential mix and products offered by Lake Michelle and the wider Noordhoek / Sun Valley area.

Veldfire Related Planning Guidelines (2004)

- 4.8.25. Risk areas have been considered in the placement of development components. Of particular note is the 'high risk fire line' associated with the reedbeds towards the east and southeast of Lake Michelle (the 'Checkers / Long Beach Mall' wetland). Proposed residential units are located a minimum of 22 m from the estate boundary and are separated from the reedbeds by a gravel road located outside of and to the east of the estate boundary as well as Lakeshore Drive within the estate. Further, open spaces will be appropriately landscaped so as not to increase the risk of fires.
- 4.8.26. Regarding evacuation, the internal layout of the retirement village provides for a road link connecting the western portion of the village with the eastern portion. Alternative or multiple evacuation routes are therefore provided.

The Scenic Drives Policy (2003)

- 4.8.27. Land uses, the placement of development components, proposed densities, the urban form of development components and wetland/ecological interventions have considered *inter alia* Noordhoek Road and its scenic and visual quality.
- 4.8.28. Substantial wetland and open spaces are adjacent to Noordhoek Road and views across the wetland towards the remainder of Lake Michelle are maintained.

The Peninsula Urban Edge Policy (2001)

4.8.29. The Peninsula Urban Edge Policy or Study indicates the property as located within the urban edge. The MSDP and Southern District Plan also indicates the property as located within the urban edge.

Existing Development Rights, Expectations and Obligations

4.8.30. The development history of the site as part of a residential marina and previous approvals to this effect should also be acknowledged. The entire extent of the Lake Michelle development, including Phase 8, was rezoned to “*Subdivisional Area*” for the purpose of establishing a marina township. Although the rezoning and subsequent subdivision approvals for Phase 8 have lapsed, the approval for Phase 8 contained a total of 140 residential units. Substantially less residential units are now proposed. The current application is a continuation of the suspended development process, supported by further specialist environmental investigation as requested to develop a viable, sustainable development and saltmarsh restoration plan for the site.

4.8.31. Regarding the applicability of Section 28 of NEMA, it will not be required of the landowner to mitigate the freshening of the wetland areas with the associated indigenous reed encroachment (*Typha capensis*) that is a result of increasing nutrient rich stormwater entering the site from surrounding areas. This aspect is the one that is particularly placing the remaining salt marsh habitat at threat and degrading this habitat.

4.8.32. The stormwater discharge into the property (the major contributing factor to the deterioration of the saltmarsh habitat) has its origin from outside of the site and occurs via the stormwater infrastructure installed to prevent flooding on Noordhoek Main Road.

Need and Desirability

4.8.33. The need and desirability of the proposals are not motivated based on a single fact, but a range of site specific circumstances overlapping ecological, human and economic considerations. A holistic approach is pursued.

Development Alternatives

4.8.34. It should be noted that ‘alternatives’ should constitute ‘feasible’ and ‘reasonable’ proposals.

4.8.35. Due to the nature of the site and its location relative to natural areas, broad planning and design principles have been identified to ensure that the development responds to and is integrated with its environment. The three pillars of sustainability, also referred to as the ‘triple bottom line’, being ‘ecological integrity’, ‘human wellbeing’ and ‘economic efficiency’, are pursued. Ecological integrity alone does not constitute sustainability. The triple bottom line requires a holistic approach.

4.8.36. The principles in Section 2 of NEMA stated *inter alia* that development must be environmentally and economically sustainable.

4.8.37. The preferred alternative incorporated recommendations made by various specialist consultants from a wide field of expertise.

4.8.38. Alternative 3 (Limited Development Alternative) will not result in positive biophysical or socio-economic changes. Alternative 3 does not comply with the definition of ‘sustainability’.

The road running parallel to Noordhoek Main Road should be removed from the design

4.8.39. Internal roads have been kept to a minimum. This is not only to the benefit of the biophysical environment, but also provides for an economical layout.

4.8.40. The position of this road corresponds to an existing raised, hardened pedestrian route. Safe movement for WLT is ensured by the provision of dedicated underpasses.

4.8.41. The referenced road fulfils a number of important functions, e.g.:

- 4.8.41.1. Provides for an integrated retirement village. The road links the western and eastern portions of the village. Access from the east to the common areas and facilities to the west, e.g. clubhouse, administration and maintenance, is for example facilitated;
 - 4.8.41.2. The link aids orderly management of the retirement village;
 - 4.8.41.3. The link promotes a sense of community within the village;
 - 4.8.41.4. The link road aids evacuation in the event of danger, e.g. fire. Alternative or multiple evacuation routes are therefore provided; and
 - 4.8.41.5. Assists in deviating the stormwater entering the site from outside (the north) around the rehabilitated saltmarsh area.
- 4.8.42. The necessity and desirability of this internal link road were also acknowledged when the Phase 8 Development Plan was approved during March 1998. In this regard, the approval by the South Peninsula Municipality contains the following condition (included in the Planning Background / Need and Desirability Report):
 “3. ...*The link road between phases 8 and 9 is to be constructed when phase 8 is developed.*” (i.e. a link between Northshore Drive and Lakeshore Drive).

Department of Environmental Affairs and Development Planning's Directorate: Development Management

- 4.8.43. The majority of the impacts assessed for Alternative 2, the previous preferred development alternative, were already assessed as low negative. The revised impact assessment by the specialists have assessed the majority of the impacts associated with the revised layout also as low negative.
- 4.8.44. The Department should not ignore the fact that Lake Michelle is an artificial lake and wetland specifically created for the purposes of a residential marina, where developable and wetland areas are created. This includes Phase 8.
- 4.8.45. Phase 8 was commenced with. The development of Phase 8 proceeded in accordance with an approved EMP. At the time, the development of Phase 8 was interrupted by the discovery of a species of wetland plant (*Sarcocornia nataliensis*) or also described as “*salt marsh communities*”. In 2001, the development of Phase 8 was placed on hold “*until such time as the necessary environmental investigation have taken place*” (as requested by DECAS) in relation to the salt marsh communities. In 2018 the applicant purchased the property from Amdec Residential Developments (Pty) Ltd and immediately initiated the “*the necessary environmental investigation*”. The amended development proposals for Phase 8 *inter alia* protect and enhance the long-term existence of the *Juncus* wetland and salt marsh communities.
- 4.8.46. The forward planning policies are addressed in the responses to the City of Cape Town's comments.
- 4.8.47. Regarding the statement “*...wetlands as important for conservation*” – The proposals are specifically intended to protect and rehabilitate *inter alia* the *Juncus* wetland and remnant saltmarsh vegetation communities and diversify the habitat currently provided by the site. It is the objective of the proposals to give effect to the rehabilitation and protection of the identified saltmarsh areas from *inter alia* excessive water and nutrient supply emanating from outside of the site and further encroachment by *Typha*.
- 4.8.48. The existence of objections to a retirement housing development is not a valid reason for turning down an application. It is not clear what is objectionable against a retirement village as a land use. Each site needs to be evaluated against its unique circumstances and each application needs to be evaluated based on its individual merit.
- 4.8.49. The Provincial Spatial Development Framework (“PSDF”) and MSDF specifically promote:

- 4.8.49.1. A compact and efficient urban environment that optimises resources and the utilisation of land, with due consideration to site characteristics and the natural environment;
 - 4.8.49.2. Land use intensification;
 - 4.8.49.3. Mixed-use as opposed to mono-functional land uses;
 - 4.8.49.4. Settlements to be more inclusionary, widening the range of opportunities;
 - 4.8.49.5. Integrated settlements;
 - 4.8.49.6. Locational advantages with improved accessibility to, e.g. services, a wide range of facilities;
 - 4.8.49.7. A quality environment; and
 - 4.8.49.8. Sustainable, integrated and inclusive housing.
- 4.8.50. A retirement housing development is compatible with the surrounding residential and commercial uses.
- 4.8.51. Regarding the need for retirement housing, the research undertaken as part of the Socio-Economic Assessment indicates that there is a growing demand for well designed, secure retirement facilities in the local area. The Socio-Economic Assessment states *inter alia* regarding need for retirement housing –
- 4.8.51.1. Statistics South Africa's mid-year population estimates for 2017 notes that 8.1% of the South African population is 60 years or older and that the proportion of elderly persons aged 60 years or older is increasing over time; and
 - 4.8.51.2. Currently, those aged 60 and over make up 8% of the population, while those 50 years and above comprise almost double that at 15.8%. Retirement property meanwhile is not keeping pace, comprising only a small portion of SA's housing stock. A lack of supply means retirement homes are relatively scarce and expensive.
- 4.8.52. Interviews held with representatives of five existing retirement villages within a 6 km radius of the site indicate that occupancy rates of the facilities surveyed are 100%, with long waiting lists (in excess of 10 years) and that there is generally agreement that additional retirement accommodation is needed.
- 4.8.53. Alternative layout 4 is a feasible and reasonable layout and has a lesser impact on the wetlands and when compared to alternative layout 2 conserves an additional 1.28ha of wetland area.
- 4.8.54. The 19.24ha property will comprise:
- 4.8.54.1. A substantial 11.45ha rehabilitated wetland habitat.
 - 4.8.54.2. A significantly reduced 4.20ha development footprint.
 - 4.8.54.3. 3.59ha of the property comprises the existing Lake Michelle estate's access roads, gatehouses and administrative offices.
- 4.8.55. Alternative layout 4:
- 4.8.55.1. Protects the unique salt marsh habitat and conserves the Juncus Wetland.
 - 4.8.55.2. Improves the ecological connectivity and habitat diversity on-site.
 - 4.8.55.3. Includes infrastructure upgrades (i.e. stormwater management, toad underpasses, non-motorized transport ("NMT") lane etc).
 - 4.8.55.4. Enhances the amenity value through stewardship opportunities, education tours, etc.
 - 4.8.55.5. Addresses the retirement accommodation housing demand.
 - 4.8.55.6. Creates medium and long-term job opportunities.
- 4.8.56. Evergreen retains ownership of all completed houses, the lifestyle centre, open spaces and wetlands.
- 4.8.57. Evergreen's Life Right business model ensures a long-term commitment and investment in Lake Michelle in perpetuity.

- 4.8.58. From a capital expenditure perspective, the approximate capital expenditure required to rehabilitate the wetland and associated development landscaping amounts to approximately R50,000,000. This cost would have to be covered by the development of the property. If the development is restricted to 15 houses it would mean that the cost per house would equate to approximately R3,300,000 per house. This is without adding any building or other development costs into the equation. As the houses will be sold at an average of R3,500,000 per house it is clear that this proposal would not be feasible.
- 4.8.59. Should the development however be approved per the preferred option, the cost could be spread over more houses and the cost per house would be significantly lower at approximately R500,000 per house and the development would be feasible based on selling the houses at the average of R3,500,000 per house.
- 4.8.60. From an operational cost perspective, the approximate annual operational cost to maintain and manage the wetland amounts to approximately R2,500,000. This cost would have to be covered by the monthly levies paid by the residents.
- 4.8.61. If the development is restricted to 15 houses it would mean that the monthly levy payable per house would be approximately R13,000 per house. This is without any other operational costs such as security and general maintenance being added into the equation.
- 4.8.62. Should the development however be approved per the preferred option, the monthly levy payable per house would be significantly lower in the amount of approximately R2,000 per house.
- 4.8.63. As demonstrated above, it is clear that limiting the development to 15 houses or implementing a no development option is definitely not viable.
- 4.8.64. The approval of the preferred option would on the other hand ensure economies of scale and the development would therefore be both viable and sustainable.
- 4.8.65. It is noted that the Department notes that “...*Layout Alternative 3 is deemed as the best practical environmental option...*”.
- 4.8.66. It should be noted that ‘alternatives’ should constitute ‘feasible’ and ‘reasonable’ proposals.
- 4.8.67. The principles in Section 2 of NEMA state *inter alia* that development must be environmentally and economically sustainable.
- 4.8.68. Alternative 3 (Limited Development Alternative) will not result in positive biophysical or socio-economic changes. Alternative 3 does not comply with the definition of ‘sustainability’.
- 4.8.69. Development only on the area consisting of the capped municipal dump has been determined to be financially unviable due to the following:
- 4.8.69.1. Land and development costs;
 - 4.8.69.2. The cost of habitat rehabilitation and creation and the future long-term management thereof cannot be funded in either the construction or operational phases with the funds generated by the sale and future levies of only 15 residential units;
 - 4.8.69.3. The construction and operation of the required lifestyle centre/clubhouse will not be possible with the funds generated by the sale and future levies of only 15 residential units.
- 4.8.70. It should be noted that valuable properties, in sufficient quantities (i.e. creating economies of scale) must be provided in order to ensure the economic viability of the development, efficient utilisation of resources and services and the successful rehabilitation and long-term management of the property.
- 4.8.71. The Limited Development and the No Development Option are very similar in that they would result in no positive biophysical or socio-economic changes. The Limited Development Alternative is not regarded as a practical long-term option.

- 4.8.72. It should be noted that the preferred development alternative does not exclude opportunities for “*environmental education tours for the youth from the surrounding areas which focuses on the aquatic systems and unique salt marsh areas, bird watching etc.*”
- 4.8.73. It should be acknowledged that the stormwater discharge into the property (the major contributing factor to the deterioration of the saltmarsh habitat) has its origin from outside of the site and occurs via stormwater infrastructure installed to prevent flooding on Noordhoek Main Road. This scenario was created by the relevant authorities and is not under the control of the owner of Phase 8.
- 4.8.74. Further to note that the existing Record of Decision(s) and/or Environmental Authorisation(s) apply to Phases 1 - 7 of Lake Michelle and not Phase 8 (Rem. Erf 3823). These phases are under the control of the Lake Michelle HOA and not the owner of Rem. Erf 3823. Rem. Erf 3823 is not part of the Lake Michelle HOA and is not subject to its management rules.
- 4.8.75. The ROD for Phases 4 – 7 should be read within the correct context. The ROD for Phases 4 – 7 makes specific reference to the salt marsh area (i.e. “13.1 The sensitive salt marsh area (Phase 8) that does not form part of the development approved in this ROD, must be protected from excessive water and nutrient supply, further encroachment by Typha and disturbance by humans and their pets.”. This condition places an obligation on the development being approved/authorised, i.e. Phases 4 – 7 (not Phase 8) not to lead to excessive water and nutrient supply, further encroachment by Typha and disturbance by humans and their pets.
- 4.8.76. Notwithstanding the above, the proposals show that it is intended to protect and rehabilitate remnant saltmarsh vegetation communities. It is the objective of the preferred development alternative to give effect to the rehabilitation and protection of the identified salt marsh areas from *inter alia* excessive water and nutrient supply emanating from outside of the site and further encroachment by Typha.
- 4.8.77. The reedbeds is a result of stormwater discharge from the local and provincial government service infrastructure onto the property which is causing the degradation of the wetland system. NEMA binds the person who is responsible for causing the degradation.
- 4.8.78. Evergreen however has a duty of care to maintain the wetland to be free of invasive alien vegetation and dutifully clears invasive alien vegetation on a regular basis.
- 4.8.79. The Department of Water and Sanitation informed the EAP that the wetland offset will be evaluated as part of the Water Use License application process.
- 4.8.80. The Socio-Economic Statement dated January 2022 does not conclude that Alternative 4 is regarded as acceptable from an ecological perspective. The Conclusion (Section 1.7) of the Socio-Economic Statement (January 2022) states “*If the reduced impact on the Juncus Wetland associated with Alternative 4 is regarded as acceptable from an ecological perspective, then Alternative 4 represents a suitable alternative*”.
- 4.8.81. In response to reference to spatial justice, the Social Impact Assessment acknowledges that the development does not address spatial justice issues effectively. However, it is not always possible for private projects to address spatial justice issues in the same way that public, state funded projects can.

South African National Parks

- 4.8.82. The stormwater discharge into the property (the major contributing factor to the deterioration of the saltmarsh habitat) has its origin from outside of the site and occurs via stormwater infrastructure installed to prevent flooding on Noordhoek Main Road.

- 4.8.83. The landowner has removed invasive alien vegetation and this is an ongoing management process.
- 4.8.84. The wetland offset determinations considered the change in wetland habitats between the existing habitats on the site and the habitats that will occur once the site has been developed and the wetland rehabilitation works undertaken. The perception that reedbeds are to be filled to allow for the proposed development is incorrect. The proposal is that the undesirable condition (created by dense reedbed growth in response to increasing nutrient rich stormwater entering the site) will be progressively removed and the seasonal *Juncus* wetland habitat re-established. The seasonal wetlands are what would naturally occur at the site and provide a much more biodiverse habitat.
- 4.8.85. Alternative 4 in terms of wetland area loss as a whole does result in less loss of wetland habitat than Alternative 3. The loss of wetland habitat would relate to loss of reedbeds that are of low ecological importance and sensitivity.
- 4.8.86. Below is a summary of the outcome of the wetland offset calculation:
- 4.8.86.1. The wetland extent (hectare equivalent) off-set target is 11.5ha and alternative layout 4 achieves 11.4ha. The negligible loss is largely related to reedbeds.
 - 4.8.86.2. Reedbeds are an undesirable habitat for aquatic biota such as WLT and will be replaced with seasonal wetland habitat improving habitat diversity.
 - 4.8.86.3. The wetland functionality (hectare equivalent) offset target is 5.2ha and alternative layout 4 adequately achieves 5.2ha and meets the wetland functionality target.
 - 4.8.86.4. The ecosystem conservation (hectare equivalent) off-set target is 12.3ha and alternative layout 4 achieves a high 22.5ha. The wetland off-set gain significantly exceed the wetland off-set target as ecologically important wetlands are being rehabilitated.
 - 4.8.86.5. The species conservation (% habitat intactness) wetland target is 50-100 and alternative layout 4 achieves a great 60-80. The wetland off-set gain exceeds the wetland off-set target as a result of the rehabilitation and establishment works.
 - 4.8.86.6. Alternative layout 4's wetland functionality, wetland ecosystem conservation and wetland species conservation adequately meet the determined wetland off-set targets.
- 4.8.87. As stated above, the wetland areas are not so much to be infilled but rather to be rehabilitated to re-establish natural seasonal wetland areas. There would only be 1.6% of the wetland habitat that is proposed to be infilled to allow for the development. This loss of wetland area is far outweighed by the biodiversity and functionality gains for the proposed rehabilitated wetlands and the sustainability gain of the ecologically important salt marsh within the site.
- 4.8.88. The developmental history of the site should not be ignored. Lake Michelle is an artificial lake and wetland specifically created for the purposes of a residential marina, where developable and wetland areas are created. Arguably, the only "intact vegetation" is the salt marsh vegetation communities (remnant *Sarcocornia natalensis*) dating from the site's original form as a salt pan.
- 4.8.89. The intent of the proposal is to protect and rehabilitate remnant saltmarsh vegetation communities, amongst other wetland environments. A vast area of the site is protected and retained as wetlands.

CapeNature

- 4.8.90. The intention of the rehabilitation plan is to remove unwanted *Typha* reeds and allow for the salt marsh wetland vegetation to be reinstated.

- 4.8.91. In practical terms, it is not viable to conduct search-and-rescue of WLTs whilst earthworks are already taking place. Instead, it is proposed that a preconstruction faunal search-and-rescue operation be conducted. The main target species would be the WLT and Cape Dwarf Chameleons, but all other vertebrate species encountered during the search-and-rescue stint will also be translocated to nearby safe areas. The details of the faunal search-and-rescue will be required in the EMP by means of a method statement to be compiled by a specialist prior to construction commencing. In essence it would entail the fencing off of the areas that are to be developed and/or landscaped/restored. Then a 2-week search-and-rescue stint (trapping and active searching) will be conducted within these fenced-off areas, whereafter the areas will remain fenced off for the duration of the construction phase so that animals are prevented from re-entering these hazardous areas. If any left-over toads are indeed encountered during the earthwork's activities, these too will be translocated to safe zones. The fences will be removed at end of construction period, so that the fauna can gradually recolonise some of the areas with suitable habitat. This type of search-and-rescue is likely to be of moderate success, but it could potentially reduce the construction phase toad mortalities impact to low-medium (or down to low). The intention would be to improve the Leopard Toad habitat on the site.
- 4.8.92. All subsidiary plans such as implementation phasing plan, detailed rehabilitation plan, and the maintenance management plan for the operation and maintenance of the wetland along with detailed designs will be provided to SANParks, City of Cape Town: Environmental Management Section and CapeNature for comment before commencement of activities.
- 4.8.93. A Stormwater management report and stormwater management plan was included in Appendix G4 of the Revised Final BAR circulated for review. As noted, the stormwater management system was explained to CapeNature in a meeting held on 12 April 2022.
- 4.8.94. Erosion in the buffer area is unlikely. Ongoing monitoring and removal of alien vegetation is the most likely maintenance activity that will take place in the wetland buffer areas. This action has been addressed in the MMP for the site (Appendix G17B of the Revised Final BAR. Placement of pathways along the wetland buffers provides a good management edge and access point for the management of the spread of alien species into the conservation area. Planting guidelines that ensure the planting of indigenous species within the residential areas is also supported and recommended.
- 4.8.95. Evergreen supports the proposal and welcomes CapeNature's valuable input on the management of the wetland and believes this will provide for many conservation opportunities.
- 4.8.96. Phases 4 – 7 relates to separate and different land parcels and not Erf 3823 (Phase 8). Responsibilities regarding Phases 4 – 7, or the conditions pertaining to Phases 4 – 7, cannot be transferred to the owner of a different land parcel, in this case Erf 3823.
- 4.8.97. Notwithstanding the aforementioned, it is the intention of the proposals and related stormwater management plan to protect the sensitive salt marsh area (remnant *Sarcocornia natalensis* communities) at Phase 8 from excessive water and nutrient supply, further encroachment by Typha and disturbance by humans and their pets.
- 4.8.98. The degradation and the wetland degradation existed long before Evergreen acquired the property in 2018.

Department of Water and Sanitation ("DWS")

- 4.8.99. According to the Freshwater Specialist report attached as Appendix G6 the NFEPA wetland area mapped is part of a larger estuarine wetland according to the SANBI data sets.
- 4.8.100. A Water Use License Application process is being followed with DWS.

- 4.8.101. The proposed stormwater channels and ponds are designed to be separate from the conservation wetland area and are aimed at mitigating to a large extent the stormwater from surrounding developed areas that is currently placing the more special seasonal to ephemeral habitats within the site at risk. These stormwater management areas will largely comprise of more permanently wet reed that are currently abundant within the site and sedges that can help clean the stormwater. The intention is to have minimal need for maintenance these areas and for natural wetland habitats to be created within the proposed stormwater system as far as possible.
- 4.8.102. The intention of the applicant is to avoid contamination of surface and groundwater resources.
- 4.8.103. The applicant will adhere to the requirements of the *National Water Act, 1998 (Act No. 36 of 1998)*.
- 4.9. Considering the above, the public participation process met the requirements of the NEMA and the 2014 EIA Regulations.

5. Appeal ground 5: Alternatives

- 5.1. In terms of the criteria to be considered by the Competent Authority when considering Applications, section 24O(1)(b)(iv) of the NEMA further states that if the Competent Authority considers an Application for an EA, it must consider “*where appropriate, any feasible and reasonable alternatives to the activity which is the subject of the application and any feasible and reasonable modifications or changes to the activity that may minimise harm to the environment.*” Therefore, alternatives must be considered reasonable and feasible for inclusion in the EIA process.
- 5.2. The definition and assessment requirements relating to “alternatives” makes it clear that the obligation to consider alternatives may be achieved in a variety of different ways including site locations, types of activities, design or layout; and technological or operational aspects of undertaking the activity (either in combination or in isolation of each other).
- 5.3. Alternatives that were considered in the basic assessment process include three layout alternatives and the no-go alternative and the fourth layout alternative which has been assessed during the appeal process.

Layout Alternative 1 (rejected by the applicant)

- 5.3.1. This alternative entailed the construction of a retirement village comprising:
 - 5.3.1.1. A total of 110 residential units;
 - 5.3.1.2. A lifestyle centre along access road with views to the south west;
 - 5.3.1.3. Redirecting stormwater around salt pans;
 - 5.3.1.4. Conservation of the central salt pan area;
 - 5.3.1.5. A 30-meter setback buffer area;
 - 5.3.1.6. Infilling of a portion of Juncus wetland where the lifestyle center is proposed; and
 - 5.3.1.7. Creation of additional saltmarsh areas (to offset the loss of the on-site pan and seasonal Juncus wetland).

Layout Alternative 2 (preferred by the applicant and refused in the decision subjected to the appeal)

- 5.3.2. This alternative entails the construction of a retirement village comprising:
 - 5.3.2.1. A total of 110 residential units;
 - 5.3.2.2. A lifestyle center overlooking the Juncus wetland;
 - 5.3.2.3. Redirecting stormwater around salt pans;
 - 5.3.2.4. Parking areas;
 - 5.3.2.5. Timber boardwalks;
 - 5.3.2.6. Bird hides;
 - 5.3.2.7. Paved walkways;

- 5.3.2.8. Infilling of a portion of Juncus wetland where the lifestyle center is proposed;
 - 5.3.2.9. A 30-meter setback buffer area; and
 - 5.3.2.10. Conservation of the central salt pan area and a total wetland area of 11ha.
- 5.3.3. Layout Alternative 2 was regarded as preferred by the applicant as it incorporated some of the findings of the specialist reports and in order to address comments received during the public participation process:
- 5.3.3.1. A denser development footprint to 'free up' space to accommodate natural open space areas;
 - 5.3.3.2. Relocation of the lifestyle centre and residential units out of the vicinity of the Juncus wetland area;
 - 5.3.3.3. Retaining approximately 8360 m² of Juncus wetland area;
 - 5.3.3.4. Omission of the stormwater retention pond in the Juncus wetland area;
 - 5.3.3.5. Accommodating an open space corridor between the 'core' wetland restoration area in the east and the Juncus wetland area in the west;
 - 5.3.3.6. Filling in the existing stormwater channel along Lakeshore Drive and moving residential units closer to this road;
 - 5.3.3.7. Creating an additional access road from Northshore drive;
 - 5.3.3.8. Creating a non-motorised transport lane along the southern side of Noordhoek Main Road;
 - 5.3.3.9. Creating dedicated pedestrian links from two access gates;
 - 5.3.3.10. Units located adjacent to Waterlily Close have been pulled further back and staggered to reduce visual impact;
 - 5.3.3.11. Reducing the number of footpaths and boardwalks in the central conservation area;
 - 5.3.3.12. Constructing a jetty to provide access to the footpaths and boardwalks from the main lake area; and
 - 5.3.3.13. Construction of bird hides.
- 5.3.4. Given the abovementioned adjustments, Layout Alternative 2 was preferred by the applicant. However, since the development would result in the loss of approximately 2.5ha of wetland in an important wetland system, it was not considered as appropriate by the Competent Authority hence it was not authorised.

Layout Alternative 3 (rejected by the applicant)

- 5.3.5. This alternative entailed the construction of:
- 5.3.5.1. A total of 15 residential retirement units;
 - 5.3.5.2. A clubhouse;
 - 5.3.5.3. Retaining the on-site wetland and reedbeds;
 - 5.3.5.4. Accommodating a 10m wide buffers around the wetland areas;
 - 5.3.5.5. Retaining the existing on-site laterite track;
 - 5.3.5.6. Associated access roads and service infrastructure; and
 - 5.3.5.7. Associated maintenance and stormwater management options.
- 5.3.6. Layout Alternative 3 is regarded as not viable due to its limited economic benefits, i.e. the sale of 15 units generating insufficient market returns and funds for *inter alia*, habitat rehabilitation and long-term management of the property. The Final BAR therefore concludes that Layout Alternative 3 would result in no positive biophysical or socio-economic changes.
- 5.3.7. This alternative does not constitute any listed activities in terms of the EIA Regulations, 2014 (as amended) and development, in accordance with Layout Alternative 3 would be able to proceed without the need to obtain and EA from the Competent Authority.

Technology alternatives

5.3.8. The implementation of technology alternatives was considered, including the installation of Photo Voltaic / solar panels and energy saving lighting.

“No-Go” Alternative (not authorised)

5.3.9. According to the Revised Final BAR, the No-Go Alternative will result in the status quo being maintained leading to the eventual complete loss of salt pan habitat within the site over the longer term. Reeds will continue to encroach in wetland areas and alien invasive vegetation will also continue to spread across the site. Thus, the development will, through adequate mitigation measures, result in a positive impact for the site. The best practical environmental option would thus be to develop the site which would allow for rehabilitation of wetland areas.

5.3.10. The “no-go” alternative was rejected by the applicant based on the following reasons provided in the Final BAR:

- 5.3.10.1. No employment opportunities will be generated during the construction and operational phase;
- 5.3.10.2. A complete loss of salt pan habitat (due to no interventions to prevent it being implemented);
- 5.3.10.3. Deterioration of the aquatic ecosystems (due to no interventions to prevent it being implemented); and
- 5.3.10.4. No measures being implemented to enhance the natural environment and habitat for WTLs.

Layout Alternative 4 (Preferred alternative herewith authorised in the Appeal Environmental Authorisation but with further units still being refused) assessed in the appeal process

5.4. Alternative 4 involves a total of 98 units (i.e. a reduction of 12 units when compared to Alternatives 1 and 2). For this alternative the unit designs have been amended, the lifestyle centre/clubhouse have also been reduced in size and the development portions have been realigned and clustered. This resulted in a large portion of Juncus wetland and salt pan being conserved.

5.4.1. The Alternative 2 development footprint is approximately 5.4 ha in extent while the Alternative 4 development footprint is approximately 4.2 ha in extent. The development footprint for Alternative 4 will be reduced by 1.2 ha compared to Alternative 2.

5.4.2. There is a 1.28 ha gain in wetland area for Alternative 4. For Alternative 4 the majority of the Juncus wetland will be retained.

5.5. The following motivation has been provided with regards to the preferred layout alternative 4:

5.5.1. Alternative layout 4 is a feasible and reasonable layout comprising 98 houses and a lifestyle centre.

5.5.2. Alternative layout 4 has a lesser impact on the wetlands and when compared to alternative layout 2, conserves an additional 1.28ha of wetland area.

5.5.3. The 19.24 ha property will comprise:

- 5.5.3.1. A substantial 11.45ha rehabilitated wetland habitat.
- 5.5.3.2. A significantly reduced 4.20ha development footprint.
- 5.5.3.3. A total of 3.59 ha of the property comprises the existing Lake Michelle estate's access roads, gatehouses and administrative offices.

5.5.4. Alternative layout 4 protects the unique salt marsh habitat and conserves the Juncus Wetland.

5.5.5. Alternative layout 4 improves the ecological connectivity and habitat diversity on-site.

5.5.6. Alternative layout 4 includes infrastructure upgrades (i.e. stormwater management, toad underpasses, NMT lane etc).

5.5.7. Alternative layout 4 enhances the amenity value through stewardship opportunities, education tours, etc.

5.5.8. Alternative layout 4 addresses the retirement accommodation housing demand.

- 5.5.9. Alternative layout 4 creates medium and long-term job opportunities.
- 5.5.10. Evergreen retains ownership of all completed houses, the lifestyle centre, open spaces and wetlands.
- 5.5.11. Evergreen's Life Right business model ensures a long-term commitment and investment in Lake Michelle in perpetuity.
- 5.6. Considering the above, the reduced preferred layout alternative 4 and the refused component will ensure further avoidance of wetland impacts on the site.

6. Appeal ground 6: Activity need and desirability

- 6.1. On 7 June 2007, the Constitutional Court judgment of the Fuel Retailers Association of Southern Africa vs Director-General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province and Others cautioned/ stated that environmental authorities must not unlawfully discharge their duty of considering the need and desirability to local authorities.
- 6.2. Regulation 18 of the current EIA Regulations 2014 requires the Competent Authority to consider the need and desirability aspects of the proposed activity when an application for EA is submitted for consideration.
- 6.3. The Guideline on need and desirability states that:
 - 6.3.1. The need and desirability of development must therefore be measured against the abovementioned contents of the credible Integrated Development Plan ("IDP"), SDF and Environmental Management Framework ("EMF") for the area, and the sustainable development vision, goals and objectives formulated in, and the desired spatial form and pattern of land use reflected in the area's IDP and SDF.
 - 6.3.2. While the concept of need and desirability relates to the type of development being proposed, essentially, the concept of need and desirability can be explained in terms of the general meaning of its two components in which need refers to time and desirability to place – i.e. is this the right time and is it the right place for locating the type of land-use/activity being proposed? Need and desirability can be equated to wise use of land – i.e. the question of what is the most sustainable use of land?
- 6.4. The property lies between the already developed phases of Lake Michelle (i.e. Phases 1 – 7) to the southwest and Noordhoek Main Road to the northeast. The immediate surrounding land uses include the Noordhoek Wetlands, which fall within the Table Mountain National Park to the west of the site, and Crofters Valley residential area located to the north-east of the site.
- 6.5. The need and desirability aspects of the proposed activities are detailed on pages 54 to 61 of the Revised Final BAR as follows:
 - 6.5.1. On 14 December 1987 and 9 November 1988 respectively, the 'Administrator' rezoned the entire extent, including the subject property from "Amenity Zone" to "Subdivisional Area" for the purpose of establishing a marina township. A number of land use approvals were issued that included Remainder Erf 3823 (Phase 8). However, as the development of Phase 8 did not commence as per its initial approvals, the rezoning and subdivision approvals insofar as it relates to Phase 8 have lapsed. The City of Cape Town has amended its zoning map accordingly and is indicating the zoning of Remainder Erf 3823 as "Limited Use Zone". In terms of the City of Cape Town Development Management Scheme ("DMS"), the following uses are permitted for land zoned Limited Use Zone:
 - 6.5.1.1. Primary uses – limited to lawful uses existing at the commencement date
 - 6.5.1.2. Consent uses – none
 - 6.5.2. An application will be submitted to the City to rezone the property in order to complete the marina township. The application is to rezone the property from Limited Use Zone to General Residential Zone 2 ("GR2") for the purposes of a

retirement village and ancillary uses on a portion of the property, while setting aside a significant portion of the property for the restoration of the existing wetland area.

Provincial Spatial Development Framework

6.5.3. The development proposal complies with the PSDF's guiding principle and overall policy objective of sustainable development, i.e. economic efficiency / prosperity, ecological integrity and social equity. The PSDF is based on a number of guiding principles that are relevant to the proposed development namely:

Spatial justice

6.5.3.1. A socially just society is based on the principles of equality, solidarity and inclusion. The proposed development will:

6.5.3.1.1. Provide housing for the retired and aged;

6.5.3.1.2. Diversify (or integrate) the residential mix and products offered by Lake Michelle and the wider Noordhoek / Sun Valley area; and

6.5.3.1.3. Create employment opportunities for historically disadvantaged members of the local community. The majority of the employment opportunities created by the proposed development are likely to benefit local historically disadvantaged members.

Sustainability and resilience

6.5.3.2. The proposed development:

6.5.3.2.1. Is spatially compact (taking the property's environmental characteristics into account);

6.5.3.2.2. Falls within the urban edge as previously defined by the Peninsula Urban Edge Study and City of Cape Town Spatial Development Framework (2012);

6.5.3.2.3. Falls within the urban edge as defined by the Southern District Plan;

6.5.3.2.4. Provides the opportunity to rehabilitate the wetland in terms of species diversity and functioning; and

6.5.3.2.5. The EIA concluded that not developing the site as proposed would result in no changes to the aquatic ecosystems within the site from its current state. This would imply that there would be the current ongoing loss of the saltmarsh habitats, as well as growth of nuisance reeds and bulrush. A negative trajectory of ecological condition of the aquatic ecosystems could thus be expected on the site should the property not be developed as proposed.

Spatial efficiency

6.5.3.3. The proposed development:

6.5.3.3.1. Is spatially efficient (taking the properties environmental characteristics into account);

6.5.3.3.2. Diversifies the residential options offered by Lake Michelle and the broader Noordhoek / Sun Valley area;

6.5.3.3.3. The proposed density and proximity to Noordhoek Main Road will assist to contribute towards supporting public transport.

Accessibility

6.5.3.3.4. The proximity of the proposed development to Noordhoek Main Road and the Sun Valley and Longbeach shopping malls do assist in addressing accessibility and efficient transport modes.

Quality and livability

6.5.3.3.5. The proposed retirement village has been designed to provide a quality environment for the inhabitants and improve ecological diversity and function.

6.5.4. Policies contained in the PSDF in support of the proposed development include *inter alia* the following:

6.5.4.1. Policy R1: Protect Biodiversity and Ecosystem Services:

- 6.5.4.1.1. According to the biodiversity network for the Cape Town municipal area, the site is demarcated as “Other Natural Vegetation”. It should be noted that the wetland within the site is earmarked for rehabilitation, facilitated by the proposed development. This represents a positive move forward as the wetland areas are under pressure from reduced functionality.
- 6.5.4.2. Policy S1: Protect, Manage and Enhance Sense of Place, Cultural and Scenic Landscapes
 - 6.5.4.2.1. The proposed development will protect remaining saltmarsh habitat and rehabilitate degraded saltmarshes whereby wading birds will be drawn back to the area and add to the sense of place and scenic landscape.
- 6.5.4.3. Policy S3: Promote Compact, Mixed Use and Integrated Settlements:
 - 6.5.4.3.1. The proposal promotes a compact and efficient urban environment that optimizes resources and the utilization of land, with due consideration to site characteristics;
 - 6.5.4.3.2. The proposal diversifies (or integrates) the residential mix and products offered by Lake Michelle and the wider Noordhoek / Sun Valley area.
- 6.5.4.4. Policy S5: Promote Sustainable, Integrated and Inclusive Housing (formal and informal markets) –
 - 6.5.4.4.1. Increase densities of settlements and dwelling units in new housing projects: The proposal promotes a compact and efficient urban environment that optimizes resources and the utilization of land, with due consideration to the site's biophysical characteristics.
 - 6.5.4.4.2. Achieve a wider range of housing opportunities with regards to diversity of tenure, size, density, height and quality: The proposal diversifies (or integrates) the residential mix and products offered by Lake Michelle and the wider Noordhoek / Sun Valley area. Housing opportunities for the elderly are proposed.
- 6.5.5. The City of Cape Town Integrated Development Plan (“IDP”) represents the overarching strategic framework through which the City of Cape Town aims to realize its development vision for the city. The proposed development rests on the City's two development vision pillars, including inter alia:
 - 6.5.5.1. Pillar 1: Ensure that Cape Town continues to grow as an opportunity city (create an economically enabling environment in which investment could grow and employment created);
 - 6.5.5.2. Pillar 4: Ensure that Cape Town is an inclusive city (everyone has a stake in the future and enjoys a sense of belonging)
- 6.5.6. The development proposal is compliant and compatible with the strategic framework of the IDP.
- City of Cape Town Spatial Development Framework (2018)**
- 6.5.7. The Lake Michelle Phase 8 site is located within a “Consolidation area”. One of the desired spatial outcomes for Consolidation Areas is “*incremental intensification (density and diversity) via subdivisions/second and third dwellings and rezonings.*” The proposed development is in compliance with the categorisation of the site as Consolidation Area.
- 6.5.8. The extent of development, number of residential units and density should be determined by contextual informants such as environmental sensitivity, carrying capacity of the environment and the provision of services, as well as desirability criteria highlighted in strategic planning policy (e.g. Cape Town SDF, District Plan and Densification Policy). Dwelling units in environmentally sensitive areas should not be spread out evenly across the landscape but should rather be clustered

according to ecological design criteria that should reveal the most suitable areas for development.

- 6.5.9. The No-Go Alternative will result in the status quo being maintained leading to the eventual complete loss of salt pan habitat within the site over the longer term. Reeds will continue to encroach in wetland areas. Alien invasive vegetation will also continue to spread across the site. Thus, the development will, through adequate mitigation measures, result in a positive impact for the site. The best practical environmental option would thus be to develop the site which would allow for rehabilitation of wetland areas. The conceptual plan shows the construction of timber boardwalks across the salt pans, which will increase the amenity value of the site.
 - 6.5.10. The proposed plan conform to these design criteria and majority of the sensitive areas will not be disturbed.
 - 6.5.11. The construction phase will extend over a period of approximately 2 years and create in the region of 1000 employment opportunities. This would represent a significant opportunity for the local building sector and members of the local community who are employed in the building sector.
 - 6.5.12. The operational phase will also create opportunities for local businesses, such as local maintenance and building companies, garden services and security companies, petrol stations, shops and restaurants etc.
 - 6.5.13. The retirement village will create approximately 30 permanent opportunities. Additional employment opportunities (approximately 66) will also be created for domestic workers, gardeners and care workers. The majority of the employment opportunities are likely to benefit Historically Disadvantaged Individuals.
 - 6.5.14. The majority of the site is infested with reeds and the proposed development will enhance the visual appearance of the site while rehabilitating the wetland. The proposed Lake Michelle Retirement Village is designed to create a safe and quality living environment.
 - 6.5.15. In addition, residents within the Lake Michele Estate and surrounds would be able to retire within the area they live. This also encourages multigenerational living where grandparents can retire in the same estate as their children.
 - 6.5.16. The findings of the Mid-2015 report by Statistics South Africa indicate that the development of retirement facilities was not keeping pace with the demand.
 - 6.5.17. The monthly rates bill would be in the region of R 2 million per annum (2017-rand values). In addition, the proposed development would also generate revenue for the City of Cape Town from the consumption of water and electricity.
 - 6.5.18. The Need and Desirability Report (Appendices G1A and G1B of the Revised Final BAR) included the correct information regarding the Southern District Plan, regard to which will show the SDP does not demarcate the property as a spatial planning category of 'Core 2'.
- 6.6. Considering the above, the need and desirability aspects were adequately considered in compliance with the requirements of the NEMA and the 2014 EIA Regulations.

7. Appeal ground 7: Biophysical Impacts

Description of the property(ies) on which the listed activity(ies) are to be undertaken and the location of the listed activity(ies) on the property

- 7.1. The development is proposed on the Remainder of Erf 3823, Noordhoek and forms part of the larger Lake Michelle development. Phase 8 lies between the already developed phases of Lake Michelle (i.e. Phases 1 – 7) to the southwest and Noordhoek Main Road to the northeast. The Lake Michelle development is situated on an artificially deepened lake (formerly a seasonal saltpan) which accommodates a residential marina / waterfront development. The remainder of Erf 3823 (Phase 8) currently accommodates existing access infrastructure (i.e. the western and eastern gatehouses and access roads), estate

offices and maintenance facilities, civil services lines, gravel tracks, footpaths and stormwater drainage channels.

- 7.1.1. A portion of reedbed wetland and a small pan will be infilled for the construction of the units. The construction will also result in the clearance of indigenous vegetation. These activities will trigger Activity 19 and 27 of listing notice 1.

Surface waters

- 7.1.2. Wetland areas (see Figure 6 for the mapped wetlands of the Revised Final BAR) identified during the field assessment can be characterized as follows:
 - 7.1.2.1. Seasonal depression dominated by the rush *Juncus kraussii* (Wetland A);
 - 7.1.2.2. Reedbed depression that is dominated by *Phragmites* reeds and *Typha* bulrushes (Wetland B);
 - 7.1.2.3. Permanent open water with marginal *Schoenoplectus maritimus* sedges (Wetland C);
 - 7.1.2.4. Stormwater channel dominated by *Typha* bulrushes (Wetland D); and
 - 7.1.2.5. Salt pan depressions dominated by *Sarcocornia natalensis* (Wetland E, Wetland F and Wetland G).
- 7.1.3. A small dam occurs in the northern part of the wetland that was excavated more than 30 years ago and appears to be linked to groundwater rather than surface water.
- 7.1.4. The remnant saline wetlands (Wetlands E, F and G) are in a largely natural to moderately modified ecological condition however the extent of the wetland areas (and in particular Wetland G) has been reduced from about 10ha within the site to its current extent of 2.6 ha. This loss of wetland area has largely been replaced by reed bed wetland (Wetland B) and permanent open water (Wetland C), wetlands that are in a largely modified ecological state. The seasonal depression (Wetland A) is a remnant of the marginal wetland area that would previously have surrounded the salt pan area and is in a moderately modified ecological condition. The wetland associated with the storm water channel is artificial and is considered to be in a seriously modified ecological state.
- 7.1.5. The seasonal and saltmarsh wetlands are specifically sensitive to flow and water quality changes. The wetland areas are considered of moderate to high ecological importance.
- 7.1.6. Wetland areas B (reed bed) and C (open water) provide the most goods and services in terms of flow and water quality mitigation due their size, however Wetland A (seasonal) and Wetlands E, F and G (saline wetlands) are more important in terms of maintenance of biodiversity. Wetland D (storm water channel) provides little in terms of goods and services.
- 7.1.7. From the previous assessments of the wetland features within the site, there is agreement that the salt pan wetland area on the site is considered of a high ecological importance. It has been recommended that these wetland areas be conserved with ongoing interventions to mitigate stormwater impacts on the wetlands. With no intervention having taken place in the past, a decline in these wetlands has been noted. Recent assessments of the wetland area by the project team have allowed for a more detailed assessment of the salt pan areas within the dense reed bed. These assessments have confirmed that the saline pan wetland habitats are still intact and are still important to maintain. For this reason, a *Juncus* (Wetland A) and central core salt pan area will be retained and managed as part of the development proposal.
- 7.1.8. While it is agreed that the only value that the reed bed wetland area within the site currently provides is to buffer the saltmarsh area from the surrounding impacts, it does however also provide a significant barrier for the movement of biota. The dense growth of specifically the *Typha* bulrush reed bed is largely a response to the additional stormwater entering the site. Thus, to prevent bulrush from dominating

any future wetland area retained or created within the site, stormwater entering the site will be managed by diverting it around the wetland area using berms and swales. Removal of the bulrush and rehabilitating this area through shaping and replanting the area with suitable seasonal wetland vegetation will provide opportunity for the area to provide improved habitat for biota.

- 7.1.9. It is recommended that development of the site should only take place outside of the delineated salt pan areas and should include an approximate 30-40m buffer where the clearing of reeds and alien invasive plants is undertaken.
- 7.1.10. The seasonal depression wetland (Wetland A), part of the reedbed depression (Wetland B), and a portion of the salt pan depression (Wetland G) will be infilled for construction purposes. The potential loss of wetland areas due to the construction of the proposed development was assessed using the Department of Water and Sanitation ("DWS") Wetland Offset Calculator to determine the wetland targets that would need to be achieved by the proposed wetland offset.
- 7.1.11. The development off-sets include:
 - 7.1.11.1. The establishment of a conservation area of approximately 8 ha within the centre of the site which will comprise of the existing salt pans within a wide buffer area.
 - 7.1.11.2. The existing dense Phragmites and Typha reed bed within this area will be replaced by a mosaic of the seasonal depression wetlands with the pans.
 - 7.1.11.3. Low berms will be implemented to divert incoming stormwater and ensure the integrity of the wetland type created in the area.
- 7.1.12. In terms of the Biodiversity Network, there are no terrestrial Critical Biodiversity Areas ("CBAs") within the study area. The majority of site is marked as "*Other Natural Areas*". A smaller corner of the site where the Historic landfill and gate house is situated is classified as "*No Natural Habitat*". The City of Cape Town Bionet and Wetland Layer indicates an aquatic CBA 2 in the western corner of the site.
- 7.1.13. In terms of whether the proposed development and its alternatives have an impact on terrestrial vegetation, or aquatic ecosystems, the potential impacts of the proposed development on the aquatic ecosystems within the site are:
 - 7.1.13.1. Short- and longer-term disturbance to and loss of aquatic habitat.
 - 7.1.13.2. Modified storm water runoff from the developed site and the potential for impairment of water quality.
- 7.1.14. The preferred development layout has, to a large extent, taken the wetland areas within the site into consideration.
- 7.1.15. Portions of the reed bed and a small portion of encroached salt pan area would be lost by the proposed development.
- 7.1.16. This loss will be offset by the creation of additional saltmarsh areas within the wetland area to be rehabilitated. The proposed rehabilitation of this area and management of storm water runoff to the area would also ensure the sustainability of the salt pan wetlands that are currently decreasing in extent.
- 7.1.17. The significance of the freshwater impacts for these development alternatives is likely to be low over the longer term with a potential positive impact associated with removal of reedbeds and rehabilitation of this area to establish seasonal wetland areas.
- 7.1.18. In terms of whether the proposed development and its alternatives have an impact on any populations of threatened plant or animal species, and/or on any habitat that may contain a unique signature of plant or animal species:
 - 7.1.18.1. There are four wetland areas within the site that range from moderately modified for much of the wetland and largely modified for the storm water channel and deeper lake area. The wetland as a whole is considered to be of a high ecological importance because of the

presence of rare and endangered species; areas of habitat and species richness and elements of uniqueness.

- 7.1.18.2. Remainder Erf No. 3823 is not considered a breeding area for endangered WLT *Sclerophrys pantherinus* but rather acts as an ecological corridor for the WLT traveling to the larger Lake Michelle wetland area.
- 7.1.18.3. The site contains a sensitive salt pan wetland vegetation. However, the salt pan wetland areas are in decline and the site is prone to invasive alien plants. Invasive reeds are encroaching on wetland areas.
- 7.1.18.4. The development proposes to address this by re-establishing the salt pans and by catering for WLT movement through the site to breeding grounds. Thus, the proposed development will promote ecological integrity of the area rather than negatively impacting thereupon.

Key findings of this basic assessment process include:

- 7.1.19. The findings from the Botanical Assessment indicate that the habitat on site is largely anthropogenic in nature, there are no species of conservation concern found on site, and the major impact with regards to the development of the site is on the loss of habitat and not on species. The *Typha* and *Phragmites* reed bed community that would be most affected is not considered to be a highly sensitive plant community based on its species composition. The loss of some of this habitat to development would have a low relative impact compared to the loss of the salt pan habitat which is considered locally unique.
- 7.1.20. Initial assessments of the wetland areas within the site in 2001 have recommended that the salt pan wetlands be retained and protected and that there be ongoing intervention in terms of mitigating the storm water impact on these wetlands. More recent assessments in 2014 have documented the declining ecological condition of these wetlands due to the lack of intervention. Assessments undertaken by the project team in 2017 confirmed that the saline pan wetland habitats are still intact within the wider reed bed area and are still important to maintain. Therefore, there is an opportunity to rejuvenate this central saltmarsh area through appropriate intervention.
- 7.1.21. The findings of the Amphibian Assessment concluded that Pan A can from time to time serve as WLT breeding habitat because of the seasonal flooding with fresh water, whereas the prospects of this happening at Pan B is less likely and it is seemingly even less so for Pan C. The overall suitability of the site as WLT breeding wetlands appears to be limited and the proposed development does not overlap with known WLT breeding sites. The wetlands are also heavily infested with reedbeds consequently inhibiting WLT movement. The terrestrial terrain of the site does apparently serve as WLT shelter/ foraging habitat and/ or as WLT ecological corridors, and the area abutting Noordhoek Main Road is especially important in this regard. Although WLT shelter/ foraging habitat will be lost due to the preferred development alternative, it is feasible to provide adequate substitute habitat within the development site.
- 7.1.22. The survey for the Cape Platanna was unsuccessful in trapping or recording any of the specimen. It is of course not possible to prove the actual non-occurrence of Cape Platannas within the site but based on the current evidence it appears that this species is not present there.
- 7.1.23. The findings of the Avifaunal Assessment indicate that there will be a potential negative impact on the African Marsh Harrier as a result of reduced foraging habitat for this species. The exposure of more of the salt pans and shallow water habitats is likely to favor wading birds, including a suite of plover and sandpiper species that don't presently occur at the site, as well as egret and heron species.

7.1.24. The findings of the Faunal Baseline Assessment notes that as a unit, the site is fairly homogenous, and it lacks topographical and geological diversity. These conditions are not conducive in terms of promoting faunal diversity. In summary, it is concluded that the Lake Michelle mammal and reptile faunal groups do not represent any significant constraints in terms of the development proposal.

Design

7.1.25. A philosophy of 'design with nature' has been adopted by the layout design. The three pillars of sustainability, also referred to as the "triple bottom line", being ecological integrity, human well-being and economic efficiency, have been pursued. Development components have been confined to the less sensitive portions of the site. Where not entirely possible, offsets via habitat creation and rehabilitation is undertaken.

7.1.26. A conservation area of approximately 7 ha will be established within the centre of the site that will comprise of the existing salt pans within a wide buffer area. The salt pan wetlands are important to maintain given their rarity in the peninsula. The total area of wetlands to be conserved is approximately 11 ha.

7.1.27. The development, upon completion, will result in retirement homes overlooking a more natural wetland and salt pan habitat. It is expected that this salt pan habitat will attract wader birds. Limited pathways through the saltmarsh will be established giving the residents access to these natural areas.

7.1.28. The layout was designed in such a way as to allow for ecological connectivity with adjacent habitats. Various shelter/foraging habitat and ecological corridors have been provided to accommodate WLTs.

Ecological aspects

7.1.29. From an ecological perspective, specialists indicated that there are sensitive features and habitats on site. Wetlands and salt pans of ecological importance have been identified on site. The site is also home to the endangered WLT. The preferred development alternative restricts development to less sensitive reed bed communities with the result that the overall significance of this loss is considered to be low with a potential positive impact should rehabilitation prove to be successful.

7.1.30. There is a documented decline in the salt pan wetlands due to the lack of intervention in the past. The salt pans were historically present in the Noordhoek area but are currently absent in the remainder of the peninsula and therefore important to maintain given their rarity. The development will take place outside the important wetland areas apart from one small pan that will be lost. The preferred development alternative allows for habitat creation and rehabilitation and ensures sustainability of the salt pan habitat within the site.

7.1.31. A major loss (52%) of pan and open water habitat has been noted between 2002 and 2013 on the site. In addition, the encroaching reedbeds provide a significant barrier for the movement of biota. Without intervention the entire wetland area will become reedbed dominated. A model for habitat change suggests that with time the pan and open water habitats will disappear leading to a major reduction in both habitat and species presence. Without any functional management interventions, decline in pan habitat will proceed and a key wetland habitat is likely to be lost.

7.1.32. The preservation / restoration of the saltmarsh indefinitely will require significant intervention at present and continued management thereafter. However, to facilitate the rehabilitation of the saltmarsh, habitat creation/diversification and long-term management, offsets are required by the introduction of residential development to the site. The introduction of residential development will therefore facilitate the rehabilitation and restoration of the saltmarsh, habitat diversification and long-term management of the wetland.

- 7.1.33. Toad underpasses under Noordhoek Main Road are proposed for the northern portion of the site.
- 7.1.34. Stormwater design will allow for salt pan recovery.
- 7.1.35. It is proposed to construct timber boardwalks and bird hides in some of the sensitive marsh areas. This will enhance the amenity value of the site.
- 7.2. On 9 November 2021, the Appeal authority however requested a Revised Final BAR which includes an assessment of an additional feasible alternative which further avoids impact on the wetlands. On 30 June 2022 the following information was received:
- 7.2.1. The specialist Botanical Assessment (dated January 2022) indicate that the habitat on site is largely anthropogenic in nature, there are no species of conservation concern found on site, and the major impact with regards to the development of the site is the loss of habitat and not on species. The Typha and Phragmites reed bed community that would be most affected is not considered to be a highly sensitive plant community based on its species composition. The loss of some of this habitat to development would have a low relative impact compared to the loss of the salt pan habitat which is considered locally unique.
- 7.2.2. The Juncus wetland is approximately 1.25 ha in extent and provides connectivity with adjacent wetland areas and therefore plays a crucial role. This provides the primary motivation for supporting Alternative 4 as the Juncus wetland will be retained. The existing Juncus wetland would be largely lost to the development under Alternative 1. Alternative 2 will retain approximately 0.8 ha of the Juncus wetland, and Alternative 4 will retain 1.15 ha of Juncus wetland and much of development proposed in this area has been removed. The proposition to re-establish the salt pan habitat is supported and would function to offset loss to reedbed wetlands.
- 7.2.3. The Freshwater Assessment indicated that the wetlands on site are considered of moderate to high ecological importance. Although the reed bed and lake provide the most goods and services in terms of flow and water quality mitigation, due to their size the seasonal wetland and salt pan areas are more important in terms of maintenance of biodiversity. The Freshwater Assessment concurred that the reed bed habitat is seen as an undesirable habitat. The reed beds provide a significant barrier for the movement of biota and the increasing reed beds have also led to the decline of the more unique salt pan habitat. The present wetland size is estimated at 11.5 ha. A total of approximately 11.45 ha of wetland habitat (pans, seasonal wetlands and stormwater related wetland areas) will be retained, rehabilitated and enhanced for the Alternative 4 proposed development alternative. The wetland habitat loss associated with Alternative 4 is predominantly associated with the loss of reedbed habitat. This development alternative will largely avoid the loss of Juncus wetland. The small pan in the western corner of the site will also be retained. The significance of the freshwater impacts for the preferred development alternative is likely to be low over the longer term with a potential positive impact associated with removal of reedbeds and rehabilitation of this area to establish seasonal wetland areas.
- 7.2.4. The survey for the Cape Platanna was unsuccessful in trapping or recording any of the specimen although it is not possible to prove the actual non-occurrence of Cape Platannas within the site.
- 7.2.5. Findings of the Avifaunal Assessment indicate that there will be a potential negative impact on the African Marsh Harrier as a result of reduced foraging habitat for this species. The exposure of more of the salt pans and shallow water habitats is likely to favour wading birds, including a suite of plover and sandpiper species that don't presently occur at the site, as well as egret and heron species.
- 7.2.6. Findings of the Faunal Baseline Assessment notes that as a unit, the site is fairly homogenous, and it lacks topographical and geological diversity. These conditions

are not conducive in terms of promoting faunal diversity. In summary, it is concluded that the Lake Michelle mammal and reptile faunal groups do not represent any significant constraints in terms of the development proposal.

- 7.3. In terms of the description of the impacts and risks identified for the preferred alternative, including the nature, significance, consequence, extent, duration and probability of the impacts, including the degree to which these impacts can be reversed; may cause irreplaceable loss of resources; and can be avoided, managed or mitigated, the basic assessment process found, *inter alia*, the following with regards to the environmental impacts of the proposed development:

CONSTRUCTION PHASE

Aquatic ecosystem impacts: Loss of aquatic habitat and potential for flow and water quality modification

- 7.3.1. The significance rating of the impact of the proposed development (Alternative 4 – Preferred alternative) on aquatic ecosystems before and after the implementation of the mitigation measures will be “Medium-negative” and “Low with a potential positive impact associated with removal of reedbeds and rehabilitation of this area to establish seasonal wetland areas.”
- 7.3.2. The mitigation measures, which have been included in the Environmental Management Programme (“EMPr”) for implementation, include *inter alia* the following:
- 7.3.2.1. The core pan/marsh areas should be demarcated and treated as no-go areas during the construction phase.
 - 7.3.2.2. A broad buffer area of at least 30m should be created around the core pan/marsh areas that comprises of suitable local indigenous vegetation and includes the development of the seasonal wetlands in conjunction with the pans. Access to this area should take place via raised boardwalks.
 - 7.3.2.3. A Wetland Rehabilitation and Management Plan should be compiled to guide rehabilitation and long-term management of the conservation/larger wetland area.
 - 7.3.2.4. The stormwater management plan for the site should ensure that runoff entering the site and generated within the developed areas is diverted away from the pan/marsh areas.
 - 7.3.2.5. Ecological corridors should be catered for in the design of the conservation area that will facilitate the movement of biota to and from the wetland area.
 - 7.3.2.6. Contaminated runoff from the construction site should be prevented from directly entering the wetland areas. Construction adjacent to the conservation area should preferably take place during the drier months of the year.

Loss of wetland habitat due to transformation of currently intact wetland habitat for housing development

- 7.3.3. Alternative 4 will result in habitat loss within the wetland of about 1.86 ha and increase the general isolation of the wetland. The overall extent of the wetland will be reduced even after mitigation and rehabilitation.
- 7.3.4. The significance rating of the impact of the proposed development (Alternative 4 – Preferred alternative) on aquatic ecosystems before and after the implementation of the mitigation measures will be “Medium” and “Low (negative)” respectively.
- 7.3.5. The mitigation measures, which have been included in the EMPr for implementation, include *inter alia* the following:
- 7.3.5.1. Construction should take place in late summer when the water levels are at their lowest to minimize impact to the wetland.

- 7.3.5.2. Disturbance to the areas of salt pan should be avoided where possible.
- 7.3.5.3. Measures should be taken to ensure that the risks of pollution from the operation of heavy vehicles in the vlei are minimised.
- 7.3.5.4. The development footprint should be clearly delineated from the rest of the wetland with temporary fencing or similar.
- 7.3.5.5. The wetland area should be demarcated as a no-go area for construction personnel during construction of the housing development.

WLT mortalities associated with earthworks and other construction activities, specifically of the terrestrial (non-wetland) terrain of the Phase 8 site

- 7.3.6. WLT specimens may be inadvertently killed whilst clearing the site and during the construction of the retirement village buildings and the associated infrastructure.
- 7.3.7. The significance rating of the impact of the proposed development (Alternative 4 – Preferred alternative) before and after the implementation of the mitigation measures will be “Medium negative” and “Medium negative” respectively.
- 7.3.8. It is anticipated that this particular site is not densely populated by WLTs, and that the construction phase WLT mortalities here would constitute a relatively small proportion of the overall Noordhoek WLT population. The negative impact of these WLT mortalities will likely be recovered over a few WLT generations.
- 7.3.9. The mitigation measure, which has been included in the EMPr for implementation, include *inter alia* the following:
 - 7.3.9.1. Earthworks activities must be limited to the specific designated development nodes.

Disturbance and displacement of birds

- 7.3.10. The significance rating of the impact of the proposed development (Alternative 4 – Preferred alternative) before and after the implementation of the mitigation measures will be “Medium” and “Low negative” respectively.
- 7.3.11. The mitigation measures, which have been included in the EMPr for implementation, include *inter alia* the following:
 - 7.3.11.1. Conducting a preconstruction survey to ensure that no priority species (and in particular African Marsh Harrier) are breeding in or close to the development area.
 - 7.3.11.2. Minimising noise and movement disturbance and all forms of pollution associated with the construction process and minimizing the destructive footprint of all lay-down areas and of the construction site itself.

OPERATIONAL PHASE

Loss of aquatic habitat and potential for flow and water quality modification

- 7.3.12. The significance rating of the impact of the proposed development (Alternative 4 – Preferred alternative) before and after the implementation of the mitigation measures will be “Medium negative” and “Low negative with a possible positive impact” respectively.
- 7.3.13. The mitigation measures, which have been included in the EMPr for implementation, include *inter alia* the following:
 - 7.3.13.1. Disturbance of wetland areas over the longer term should only be associated with maintenance activities. Access to this area should take place via raised boardwalks.
 - 7.3.13.2. A Wetland Management Plan should be compiled to guide long term management of the wetland areas.
 - 7.3.13.3. The stormwater arising from the developed areas must be diverted away from the pan/marsh areas.
 - 7.3.13.4. Ongoing monitoring and removal of invasive alien plants within the conservation area is likely to be required.

Degradation of the wetland after construction as a result of alien invasion and changes to the hydrology of the wetland

- 7.3.14. The wetland will be highly vulnerable to alien plant invasion after construction and significant alien invasion would result in degradation of the wetland. In addition, undesirable changes to the composition of the wetland may occur during operation due to changes in the hydrology of the wetland.
- 7.3.15. The significance rating of the impact of the proposed development (Alternative 4 – Preferred alternative) before and after the implementation of the mitigation measures will be “Medium” and “Low negative” respectively.
- 7.3.16. The mitigation measures, which have been included in the EMPr for implementation, include *inter alia* the following:
- 7.3.16.1. There should be wetland monitoring programme put in place to monitor changes in water chemistry and vegetation within the wetland. This should be directly linked to thresholds of concern where specific actions are triggered. A clear target state should also be set and progress towards this goal assessed on a regular basis.
 - 7.3.16.2. An alien vegetation management plan for the wetland should be developed and implemented at the site.
 - 7.3.16.3. No herbicides should be used to control problem species in the wetland.

The development will contribute towards cumulative habitat loss and degradation of the Noordhoek Wetland System

- 7.3.17. The development will result in some habitat loss within the wetland which will contribute to cumulative impacts on wetlands in the Noordhoek Wetland System.
- 7.3.18. The significance rating of the impact of the proposed development (Alternative 4 – Preferred alternative) before and after the implementation of the mitigation measures will be “Medium” and “Low negative” respectively.
- 7.3.19. The mitigation measures, which have been included in the EMPr for implementation, include *inter alia* the following:
- 7.3.19.1. The linkages with the main Lake Michelle water body and the wetland system outside of Lake Michelle to the north should be maintained.
 - 7.3.19.2. Any paths through the wetland should be constructed as boardwalks in order to minimise long-term disturbance.
 - 7.3.19.3. Rehabilitate disturbed areas around the margin of the wetland.

Loss of semi-natural terrestrial and wetland habitat, and therefore a reduction in the extent of habitat available for WLT as shelter/foraging resources

- 7.3.20. The proposed retirement village development will convert about 1.86 ha of semi-natural terrestrial wetland habitat into residential units and associated infrastructure.
- 7.3.21. The significance rating of the impact of the proposed development (Alternative 4 – Preferred alternative) before and after the implementation of the mitigation measures will be “Medium to low negative” and “Low negative” respectively.
- 7.3.22. The mitigation measures, which have been included in the EMPr for implementation, include *inter alia* the following:
- 7.3.22.1. Establish lots of mixed gardening nodes similar to that currently in place within the greater Lake Michelle Estate, to serve as substitute WLT shelter/foraging habitat.
 - 7.3.22.2. Integrate logs and other forms of supplementary WLT shelters within the estate's landscape.
 - 7.3.22.3. Provide guidelines on toad-friendly gardening to residents.

An increase of artificial structures (e.g. buildings and walls) that may inhibit the dispersal potential for WLTs

7.3.23. The significance rating of the impact of the proposed development (Alternative 4 – Preferred alternative) before and after the implementation of the mitigation measures will be “Low negative” and “Low negative” respectively.

7.3.24. The mitigation measures, which have been included in the EMPr for implementation, include *inter alia* the following:

7.3.24.1. Any essential wall or fences must be modified so as to make them permeable for WLTs at ground level.

7.3.24.2. The edges of roads and pavements should be gentle (see Lake Michelle Estate examples) rather than steep-sided.

Increased vehicular traffic that may lead to increased WLT mortalities

7.3.25. The significance rating of the impact of the proposed development (Alternative 4 – Preferred alternative) before and after the implementation of the mitigation measures will be “Medium to low negative” and “Medium to low negative” respectively.

7.3.26. The mitigation measures, which have been included in the EMPr for implementation, include *inter alia* the following:

7.3.26.1. Raise the internal road along the Noordhoek Main Road boundary, and provide underpasses here.

7.3.26.2. Provide signage during the peak WLT season to alert drivers to toads on the roads.

7.3.26.3. Impose speed limits of 30 km/h along Lakeshore and Northshore drives the proposed internal east/west boundary road, and 20 km/h on all the side roads (as per the current speed limits in place for the greater Lake Michelle Estate).

7.4. Considering the above, the biophysical impacts have been adequately identified, assessed and communicated but development components are refused in the western portion of the site to ensure a wider ecological corridor.

8. Appeal ground 8: Socio-economic impacts

8.1. The social and economic impacts of the proposed development include the following:

8.1.1. The expected capital value of the project on completion is R400 million.

8.1.2. The expected yearly income or contribution to the economy that will be generated by or as a result of the project is R2 million per annum.

8.1.3. The construction phase will extend over a period of approximately 2 years and create approximately 1000 employment opportunities. This will be made up of 500 (50%) low skilled workers, 350 (35%) semi-skilled workers and 150 (15%) skilled workers. The majority of employment opportunities for all three skills sectors are likely to be taken up by historically disadvantaged individuals.

8.1.4. The total wage bill for the construction phase will be in the region of R 96 million (2017 rand values). Of this total R 48 million will be earned by low skilled workers, R 34 million by semi-skilled workers, and R 14 million by skilled workers.

8.1.5. The majority of employment opportunities for all three skills sectors are likely to be taken up by historically disadvantaged individuals. The majority of the employment opportunities are likely to benefit local historically disadvantaged members of the community. This would represent a significant opportunity for the local building sector and members of the local community who are employed in the building sector.

8.1.6. The developer and contractors will source a portion of the labour from the local community and historically disadvantaged individuals will form a percentage of the labour force.

8.1.7. During the operational phase, the retirement village will create approximately 30 permanent opportunities. Additional employment opportunities (approximately 66)

will also be created by domestic workers, gardeners, carers and frail care workers. The majority of the employment opportunities are likely to benefit historically disadvantaged individuals. Opportunities will also be created for local businesses, such as local maintenance and building companies, garden services and security companies, petrol stations, shops and restaurants etc. In addition, the proposed development would also generate revenue for the City of Cape Town from the consumption of water and electricity.

8.1.8. As detailed in the Applicant's Appeal, the following benefits were also identified.

Safe and quality living environment

8.1.9. The proposed development will contribute to meeting the growing need for safe and secure retirement accommodation. The proposed Lake Michelle Retirement Village is also designed to create a safe and quality living environment for residents, including the establishment of an open space system linked to the rehabilitation of the wetland.

8.1.10. It is acknowledged that development caters for higher income groups. Given the location of the site both in terms of access and adjacent land uses this is acceptable.

8.2. Considering the above, the proposed development will generate socio-economic opportunities.

9. Appeal ground 9: National Environmental Management Act Principles

9.1. The NEMA principles were considered during the basic assessment process as follows:

Environmental management placing people and their needs at forefront of its concern, and serve their physical, physiological, developmental, cultural and social interests equitably.

9.1.1. The environmental impacts of the proposed development have been considered in terms of the triple bottom line.

Development must be socially, environmentally and economically sustainable.

9.1.2. The potential need and desirability of the proposed facilities have been given attention to determine whether there is a need and/or demand for the development. Impacts on the environment will be within acceptable limits, provided mitigation measures proposed are implemented.

Costs of remedying pollution and environmental degradation.

9.1.3. The applicant appointed specialists to assess any impacts potentially resulting from the proposal and propose mitigation measures to avoid any significant negative impacts and to identify areas that should be avoided at all costs.

Sensitive, vulnerable, highly dynamic or stressed ecosystems.

9.1.4. A Botanist, Freshwater Ecologist, and Faunal Specialist have assessed the potential impacts that may be caused by the proposal and have proposed measures to mitigate negative impacts where they cannot be avoided.

9.1.5. Negative Impacts on the environment and people's environmental rights must be anticipated and prevented, and where they cannot be prevented are minimized and remedied.

9.1.6. A Socio-economic Specialist, Traffic Engineer, Geotechnical Engineer, Environmental Engineer, Mammal/Reptile Specialist, Avian Specialist, Visual Specialist and Heritage Specialist were appointed to determine the impacts on the environment and people's environmental rights.

9.1.7. In this decision, certain units have been refused to further avoid negative impacts on the wetlands.

Waste avoidance, minimization and recycling.

9.1.8. Recycling of solid waste will be encouraged during the Operational Phase of the development. Construction waste will be re-used where possible, otherwise it will be recycled.

Responsible and equitable use of non-renewable resources.

9.1.9. Energy and water saving technology and methods will be implemented as part of the development. They include the following, but are not limited to, double glazing, roof insulation, rainwater harvesting, Light Emitting Diode ("LED") lighting, water heating etc.

Avoidance, minimization and remedying of environmental impacts

9.1.10. Layout alternative 4 was formulated with a significantly reduced number of units in response to impact avoidance and units are refused authorization so as to further avoid significant impacts on the wetlands.

9.1.11. Where impacts could not be avoided, various precautionary and mitigation measures have been incorporated to ensure environmental impacts are kept to a minimum.

9.1.12. Interests, needs and values of I&APs.

9.1.13. This process provides potential I&APs and other key stakeholders with sufficient opportunity for review, comment and input in the process.

Access of information.

9.1.14. Registered I&APs were provided with the available documentation contained in this report.

9.2. The Revised Final BAR identified the following risks and impacts in relation to the proposed activities:

Construction phase

9.2.1. Disturbance of surface geology.

9.2.2. Aquatic ecosystem impacts: Loss of aquatic habitat and potential for flow and water quality modification.

9.2.3. The Phase 8 development will result in habitat loss within the wetland of about 2.8 ha and increase the general isolation of the wetland. The overall extent of the wetland will be reduced even after mitigation and rehabilitation.

9.2.4. WLT specimens may be inadvertently killed whilst clearing the site and during the construction of the retirement village buildings and the associated infrastructure.

Employment opportunities.

9.2.5. Impact on family structures and social networks associated with presence of construction activities.

9.2.6. The presence of construction workers in the area has the potential to impact on the safety and security of local residents.

9.2.7. Construction related activities can impact negatively on adjacent landowners and communities. The typical impacts include dust, noise and safety.

9.2.8. Visual impacts of construction activities on the site.

9.2.9. Disturbance and displacement of birds.

Operational phase

9.2.10. Loss of aquatic habitat and potential for flow and water quality modification.

9.2.11. The wetland will be highly vulnerable to alien plant invasion after construction and significant alien invasion would result in degradation of the wetland. In addition, undesirable changes to the composition of the wetland may occur during operational phase due to changes in the hydrology of the wetland.

9.2.12. The development will result in some habitat loss within the wetland which will contribute to cumulative impacts on wetlands in the Noordhoek Wetland System.

9.2.13. Increased WLT mortalities as a result of hazardous terrain and traffic.

9.2.14. An increase of artificial structures (e.g. buildings and walls) that may inhibit the dispersal potential for WLTs.

9.2.15. Creation of employment and business opportunities.

9.2.16. Increased rates and tax revenue for the City of Cape Town which can be used to address some of the socioeconomic challenges facing the city.

9.2.17. Impact on surrounding transport network.

Visual impacts

9.2.18. Disturbance and displacement of birds.

9.2.19. Loss of habitat of birds.

9.2.20. Rehabilitation and enhancement of habitat of birds.

9.3. Considering the above, the principles have been considered as the impacts of the proposed activities have been avoided before it was resorted to the mitigation of impacts.

10. Heritage/archaeological impacts

A Notification of Intent to develop was sent to Heritage Western Cape ("HWC"). HWC commented that the proposed retirement village will not impact on any heritage resources therefore no further action is required under section 38 of the Natural Heritage Resources.

11. Visual impacts

11.1. The Visual Impact Assessment concluded that the low density of the proposed development and the retention and establishment of natural habitats and open water would serve to reduce the degree of visual impact, accepting that the resultant wetlands would be of great benefit to biota and would be experienced by residents. It is also noted that there would be only limited adverse impact on the local townscape and landscape character. Built form would be established closer to receptors but there would be extensive areas of natural and managed wetland that would relate to the existing character of Lake Michelle, and which would be partly visible to receptors at higher elevations.

12. Traffic impacts

12.1. A Transport impact assessment was carried out for the proposed development. The purpose of the study was to determine the expected transportation impact of the proposed Lake Michelle Retirement Village on the surrounding road network.

12.2. For the 2018 Total Conditions, the estimated development trips were added to the 2018 Background traffic volumes. It was further assumed that the Noordhoek Main/ Ou Kaapse Weg capacity improvements have been completed already.

12.3. Based on the total traffic conditions, it is expected that the intersections will continue to operate at good level-of-service during the weekday a.m. peak hour and p.m. peak hour. The existing road network has sufficient capacity to accommodate the additional trips from the development. The number of trips generated by the proposed development is also minimal and will have a marginal impact on the surrounding road network. For the 2018 Total Conditions, the estimated development trips were added to the 2018 Background traffic volumes. It was further assumed that the Noordhoek Main/ Ou Kaapse Weg capacity improvements have been completed already.

12.4. Fill material will be sourced from the historic dump site. 1200m³ of waste material will have to be removed from the site and based on 10m³ per truck this will require 120 truck trips out of the site. It is the traffic engineer's professional opinion that the impact of the construction vehicles is expected to be less than that of the development traffic.

13. Conclusion

13.1. Considering the above and to meet the requirements of the NEMA principles, a risk-averse and cautions approach and to ensure that development is socially, environmentally and economically sustainable, residential units must be:

13.1.1. Authorised along the eastern portion of the site and certain areas of eastern portion of the site.

13.1.2. Refused in the certain areas of the western portion of the site.

13.2. I concur with the delegated Competent Authority that the general duty of care towards the environment in terms of section 28(1) of the NEMA states that: *“Every person who causes, has caused or may cause significant pollution or degradation of the environment must take reasonable measures to prevent such pollution or degradation from occurring, continuing or recurring, or, in so far as such harm to the environment is authorised by law or cannot reasonably be avoided or stopped, to minimise and rectify such pollution or degradation of the environment.”*

13.3. In view of the above, the NEMA principles, compliance with the conditions stipulated in this Appeal Environmental Authorization, and compliance with the EMPr, the Provincial Minister is satisfied that the proposed listed activities will not conflict with the general objectives of Integrated Environmental Management stipulated in Chapter 5 of the NEMA and that any potentially detrimental environmental impact resulting from the listed activities can be mitigated to acceptable levels.

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