

31 May 2023

**Environmental Management Department
Old Main Road Building
3 Church Street
Knysna
6570**

Delivery by hand and for the personal **attention of Pam Booth**

Circulated by email to the following parties:-

pbooth@knysna.gov.za; knysna@knysna.gov.za; nina@gardenroute.gov.za;
dsmit@environment.gov.za; Danie.Swanepoel@westerncape.gov.za;
Megan.taplin@sanparks.org; Kobus.Munro@westerncape.gov.za; lphetha@dff.gov.za;
juliejefferys16@gmail.com; martinhatchuel@gmail.com; charles@34south.biz;
marike@vreken.co.za; lesterday@icloud.com; pierreg@srfinancial.co.za;
andries@kdpq.co.za; hsmit@knysna.gov.za; mark@mgprop.co.za;
keith@gkconsulting.co.za; cliffprop@gmail.com; wouter.kriel@westerncape.gov.za;
Alan.Winde@westerncape.gov.za; anton.bredell@westerncape.gov.za;
cs.knysna@gmail.com; mbotha@knysna.gov.za; mm@knysna.gov.za;
directorplanning@knysna.gov.za; directorcorporate@knysna.gov.za;
st.sabbagh@gmail.com; pbester@knysna.gov.za; ianraubenheimer@icloud.com

GOEBERHA BRANCH

Telephone: (041) 363 6044
E-mail: info@kaplanblumberg.co.za
Website: www.kaplanblumberg.co.za
Address: 1st Floor, Block A, Southern Life Gardens,
70-2nd Ave Newton Park, Gqeberha
Partners: Grant Howard B.Proc • David Nezar B.Proc • Peter Wiehahn B.Juris LLB
Chris Unwin B.Com LLB • Lizette Ferns LLB • Samantha Craddock LLB
Consultant: Desirah Howard B.Proc
Professional Assistants: Kelly Freeth LLB • Kyle Vermooten B.Com LLB
Danielle de Villiers BA Hons LLB

KNYSNA BRANCH

Telephone: 044 382 3000
E-mail: richard@sohn.co.za
Address: 11 Pitt St, Knysna Central, Knysna, 6571
Partner: Richard Sohn HDipCoLaw, HDipTaxLaw (Wits)
Professional Assistant: Emile Schmidt BA LLB (Stet)

Dear Sir/Madam,

**RE: REQUEST FOR COMMENTS ON THE DRAFT BY-LAW FOR THE CONTROL OF
ACTIVITIES IN COASTAL AREAS**

1. **Introduction**

We represent a number of concerned Knysna residents and organisations who have asked us to research and comment on the draft by-laws that you have recently had published and which appears on the Knysna Municipal website. As this is a matter of public interest we have been requested to circulate our comments and views to a number of parties. We have accordingly sent this communication to the email addresses appearing above as provided to us by a number of our clients and concerned residents. Our comments follow below.

2. **First Comment: Knysna Municipality's Lack of Authority**

2.1 we do not believe that the Knysna Municipality has the authority or power to promulgate this by-law as this is a competency that vests in the District Municipality and not the local municipality and is regulated by National legislation.

2.2 Our local coastal areas are regulated and managed by the Garden Route District Municipality in terms of the Garden Route District Coastal Management Plan which they established and have recently published. Their powers, duties and obligations are delegated to them in accordance with the prescripts of the National Environmental Management Integrated Coastal Management Act. (**"the National Act"**).

2.3 Put another way, the Knysna Municipality, as a local Municipality, lacks the enabling authority to promulgate this proposed by-law.

2.4 If the Knysna Municipality continues with the intended process it will be incurring fruitless and wasteful expenditure

- 2.5 By doing so it is likely to create confusion in the minds of officials and members of the public and will also be interfering with the Garden Route District Municipality's lawful processes and duties.
- 2.6 However well-meaning Knysna Municipality's intentions might be they are ill-conceived and the process needs to cease immediately.
- 2.7 We also refer to the circular of the 25 May 2023 ("the circular") distributed by the Western Cape Government confirming that it has now adopted the **Western Cape Provincial Coastal Management Plan Programme 2022 – 2027** ("the Programme"). For ease of reference we attach a copy of that circular.
- 2.8 The Programme was developed and adopted in terms of section 46(3) of **the National Act**.
- 2.9 The circular makes it clear that the implementation of the Programme will be in partnership with other relevant government and coastal stakeholders and communities.
3. **Second comment: the relevant legislation.**

To assist you in considering your lack of authority and the negative and confusing impact your proposed by-laws will have on the current legislation we refer you to the following provisions of the relevant legislation:-

- 3.1 Coastal and estuary management is regulated by **the National Act**;
- 3.2 In terms of the definitions in **the National Act** note the following:
- 3.3 ***"Coastal Management Programme:" means the national or a provincial or municipal Coastal Management Programme established in terms of Chapter 6.***

3.4 **"Municipality"** means

- (a) *A metropolitan, district or local municipality established in terms of the Local Government Municipal Structures Act 1998 (Act No 117 of 1998); or*
- (b) *In relation to the implementation of a provision of this Act in an area which falls **within both a local and municipality and a district municipality** means-*
 - (i) *The district municipality; or*
 - (ii) *The local municipality, **if the district municipality by agreement with the local municipality, has assigned the implementation of that provision in that area to the local municipality;** (Our emphasis).*

Bearing in mind that this area falls within a district and local municipality the implementation of **the National Act** can only be implemented by the Knysna Municipality if the district municipality has assigned the implementation to it. From the recent circular it is clear that no such assignment has taken place.

4. **Third comment: The objects and purpose of the National Act**

4.1 The objects of **the National Act** are, among other things, (section 2)

- (i) *2(b) to provide, within the framework of the National Environmental Management Act, for the coordinated and integrated management of the coastal zone by all spheres of government in accordance with the principles of co-operative government.*
- (ii) *2(d) to secure equitable access to the opportunities and benefits of coastal public property.*

4.2 The state must act as trustee of the coastal zone, and sec (11) the ownership of coastal public property vests in the citizens of the Republic and must be held in trust by the state on behalf of the citizens. It is inalienable and cannot be sold, attached or acquired by prescription. The state must ensure that coastal public property is used, managed, protected, conserved and enhanced in the interests of the whole community (Sect 12).

4.3 Access to coastal public property is dealt with in section 13 in terms of which:

(i) Any natural person has a right of reasonable access and is entitled to use and enjoy such property, provided the use does not affect the rights of others, does not hinder the State in exercising its duties to protect the environment and does not cause an adverse effect.

(ii) Prohibitions and restrictions of access can be imposed relating to access to or the use of coastal public property which forms part of a protected area, to protect the environment, including biodiversity, in the interests of the whole community or in National interest.

(iii) No fee may be charged for access unless the MEC has approved and before granting such approval a public participation process set out in part 5 of Chapter 6 must be conducted.

4.4 In terms of Part 3 of Chapter 2 of **the National Act** with regard to designation of coastal access land each municipality must within 4 years of the commencement of **the National Act** make a by-law that designated strips of land as coastal access land.

Note that this was done by Garden Route District Municipality – then Eden – and not Knysna after the public participation process in terms of chapter 5 had been followed.

4.5 The responsibilities of municipalities with regard to coastal access land as contained in section 20 falls to the district, not local, municipality.

- 4.6 Special management areas may only be declared by the Minister by notice in the gazette after public participation in terms of part 5 of Chapter 6 and that will only happen if environmental, cultural or socio-economic conditions in the area require special measures (Sect 23).
- 4.7 With regard to Estuaries - Chapter 4 - an estuarine management plan must be developed by the responsible body. **This responsible body is the District Municipality who have developed and implemented their coastal management plan in which the Knysna Municipality participates.**
- 4.8 Part 4 of Chapter 5 deals with Municipal Coastal Committees and states that the metro or district municipality that has jurisdiction must establish a coastal committee. **Garden Route District municipality has done this.**
- 4.9 Part 3 of Chapter 6 deals with Municipal Coastal Management Programmes and states that a coastal municipality must prepare and adopt a municipal coastal management programme. **Garden Route District Municipality has done this.**
- 4.10 In terms of Section 50 a municipality may administer its coastal management plan and may make by-laws to provide for the implementation, administration and enforcement of the coastal management programme. **This refers to the District Municipality and not to the Knysna Local Municipality.**
- 4.11 Knysna Municipality contributes to the Garden Route District Municipality Coastal Management Programme, last reviewed 2021/2022 and the following is worth noting:
- (i) *The review of this Garden Route District Coastal Management Programme was done in accordance with Chapter 6, Part 6 (Section 55) of the ICM Act, which states as follows:*
1. *The MEC may at any time review a municipal coastal management programme.*
 2. *The MEC must, in reviewing the municipal coastal management programme, determine whether or not it —*

- (a) meets the requirements specified in section 49 (contents of MCMPs);*
 - (b) is consistent with the national and the provincial coastal management programmes;*
 - (c) gives adequate protection to coastal public property; and*
 - (d) was prepared in a manner that allowed for effective participation by interested and affected parties.*
- 3. If, after considering the advice of the Provincial Coastal Committee, the MEC believes that a municipal coastal management programme does not meet all the criteria referred to in subsection (2), the MEC must, by notice to the municipality concerned, require the municipality to amend or replace the municipal coastal management programme within a reasonable period, which must be specified in the notice.*
- 4. A municipality that receives a notice in terms of subsection (3), must amend or replace the municipal coastal management programme by following the same procedure used to prepare and adopt it in terms of this Act except that the new or amended coastal management programme may not be finally adopted without the consent of the MEC.*

AGAIN, THE MUNICIPALITY REFERRED TO IS GARDEN ROUTE DISTRICT MUNICIPALITY AND NOT THE KNYSNA MUNICIPALITY

5. Fourth Comment: Garden Route Coastal Management Programme

In the discussion with regard to section 50 of **the National Act** the Garden Route Coastal Management Programme states the following:

5.1 "Section 50: By-laws (RSA, 2008)

A municipality may administer its coastal management programme and may make by-laws to provide for the implementation, administration and enforcement of the coastal management programme.

The ICM Act prescribes three levels of CMPs, namely National (NCMP), Provincial (PCMP) and Municipal (MCMP), which differ fundamentally in terms of mandated functions and spatial coverage (DEA 2012). At each level, the primary objective is to provide action plans or strategies that facilitate a coordinated and integrated approach to coastal management. All tiers of CMPs will comprise strategic (broad themed and long-term) and operational (specific to an area's biophysical and socio-economic features) programmes. With MCMPs being at the bottom of the tier, they are more concerned with site-specific goals that have immediate to short-term effects on the environment and people's livelihoods. According to DEA (2012), MCMPs generally comprise 75% operational and 25% strategic focus.

By virtue of their definition, Municipal CMPs are not designed to address issues that are the mandate of Provincial or National Government (or para-statal for that matter). However, because Provincial and National legislation and the activities of the mandated organs of state often occur within the site-specific municipal context (with mandates sometimes being devolved to municipal level), there is a direct impact on municipal activities and local livelihoods.

Many of the issues raised by stakeholders should be dealt with at the Provincial, and sometimes National level. In such instances the mandate will be made clear and the recommended way forward will be for these issues to be addressed in either the PCMP or NCMP when they are developed. However, when a Provincial or National mandate has the potential to impact immediately and directly at the Municipal level, it will be addressed in more detail in this CMP.

Note how the powers of the municipality are limited which is quite understandable if there is to be conformity in the treatment of our national coastline heritage.

- 5.2 The Coastal Management Area to which the Programme applies is described as follows:

2.1 The Coastal Management Area

The coastline of the Garden Route District stretches from the Bloukrans River in the east to the Breede Estuary (Witsand) in the west and comprises five local, category B municipalities, namely (from east to west) Bitou, Knysna, George, Mossel Bay and Hessequa (Figure 1). The area under immediate consideration will extend inland of the high-water mark (HWM) to the extent of the coastal protection zone and seawards to the extent of Municipal jurisdiction or responsibility (i.e. a few hundred meters in most instances). Coastal management issues that are relevant to areas further offshore will fall under the jurisdiction of Provincial or National CMPs, and either SANParks or CapeNature in the case of MPAs and will be denoted as such. However, instances where Municipal cooperation and capacity can assist in the implementation of management actions beyond their jurisdiction will be included in this CMP.

- 5.3 The programme identifies coastal management objectives (CMO's) and the following 13 have been identified:

2.4.1 Public Access (CMO 1)

Reasonable and equitable access to coastal public property for all must be recognized as a basic human right and must be achieved without being to the detriment of the environment or infringing on the individual rights of people.

2.4.2 Infrastructure, Spatial Planning and Development (CMO 2)

Existing infrastructure and developments within the coastal zone must be maintained or upgraded (rehabilitated) so as to prevent degradation of the environment and all existing spatial planning strategies must be strictly enforced.

2.4.3 Biodiversity Protection, Conservation and Enhancement (CMO 3)

Biodiversity must, as a minimum, be protected and conserved through innovative spatial planning strategies, a network of protected & conservation areas, proactive management and the prevention of over exploitation. Ultimately, biodiversity should be enhanced through alien eradication, the reintroduction and nurturing of indigenous fauna and flora, as well as rehabilitation programmes (see Annexure C for Marine Protected Areas, Nature Reserves and estuaries).

2.4.4 Heritage Resources (CMO 4)

Heritage resources refer to any place or object of cultural significance to present communities and for future generations and are considered to be a part of the National Estate (NHR Act – Chapter 1, Section 3). The diverse heritage resources of the Garden Route therefore need to be recognized, protected and shared with all its people and visitors.

2.2.5 Disaster Management (CMO 5)

Disaster management must be implemented in a coordinated manner that involves all role players to ensure the health and safety of people, the integrity of property and infrastructure and the maintenance of ecosystem functioning.

2.4.6 Water Quality and Quantity (CMO 6)

Organs of state must cooperate to ensure that water resources are managed in such a way as to ensure a clean and healthy environment that supports ecosystem functioning and the safety and well-being of all users.

2.4.7 Institutional Arrangements (CMO 7)

The CMP must be implemented cooperatively and effectively by all spheres of government and civil society, through cooperation, increased capacity (personnel and awareness) and the prioritization of funds for coastal management.

2.4.8 Compliance and Enforcement (CMO 8)

Compliance with all legislation will be ensured through visible enforcement and made more effective via increased capacity, awareness, and proactive interaction with stakeholders.

2.2.9 Education and Awareness (CMO 9) *The value of the Garden Route district environment and its people must be communicated at all levels of basic education and within communities, and a culture of learning, cooperation and sense of ownership fostered between organs of state and civil society.*

2.4.10 Economic Development (Job Creation) (CMO 10)

Confidence and an enabling environment must be created in the Garden Route district in order to attract private investors and government programmes to boost the economy, create jobs and raise the profile of the area; all within a framework that preserves the integrity of Garden Route's environment and its people.

2.4.11 Tourism and Recreation (CMO 11)

The Garden Route should be recognized as the jewel of the Western Cape, and all the tourism and recreational opportunities should be pursued in a way that contributes to the enjoyment of all its users, a culture of environmental awareness and a responsibility to promote the benefit of the local economy.

2.4.12 Sustainable Livelihoods (CMO 12)

Manage existing subsistence activities and promote additional opportunities in a way that ensures compliance with legislation and responsible utilization of resources.

2.4.13 Research (CMO 13)

All management interventions need to be informed through scientific research aimed at addressing Garden Route-specific, and not generic, issues and challenges. Tertiary-based research should be encouraged to provide a better understanding of the Garden Route environment, its people, and their interaction. It is clear that this programme is aligned to the provincial and national strategies.

5.4 All references in the action plans to achieve the CMOS refers to by-laws that will be promulgated by the District Municipality. *CMO2 (b) Establish coastal planning scheme by-laws which indicate the above. ICM Act (Section 50). Garden Route DM to develop District By-law in consultation with all LMs.*

5.5 All actions by local municipalities must be to support the mandate of the GRDM. There is no provision for the Knysna Municipality to draft its own by-law and this is impermissible.

6. **Fifth comment: the Municipal Coastal Committee**

The municipal coastal committee is set out as follows:

6.1 **- 4.1.3 Garden Route District Municipal Coastal Committee**

In order for the Garden Route District Municipal Coastal Committee (MCC) to function effectively, one must guard against it comprising too many members. For example, if every angling club (deep-sea and rock & surf) were to be represented, their numbers alone would be close to 20. The same applies to ratepayers and homeowners' associations. Instead, it is proposed that the MCC comprise mainly organs of state and para-statals (managers and decision-makers) and in accordance with sub-section 2 of Section 4.2 of the ICM Act (see Section 4.2), sub-committees are set up that would comprise and represent the vast collection of different interest groups. The chairman of these sub-committees would then attend the MCC meetings and must be mandated to report back to their representative groups. Initially, sub-committees may be established to represent each of the coastal management objectives (see Chapter 2, Section 2.2), and can later be refined.

Based on this format and the other legal requirements detailed above, it is recommended that the following are included on the MCC (denotes those who may not be required to attend all MCC meetings, but only those when items within their mandate or interest are on the agenda):*

- *Garden Route District Municipality (lead authority and initial chair);*
- *Local (B) Municipalities of Bitou, Knysna, George, Mossel Bay and Hessequa (Additional representatives from the many Municipal Departments may be requested to attend depending on Agenda items);*
- *SANParks;*
- *CapeNature;*
- *Department of Environmental Affairs (Branches of Oceans & Coast and Biodiversity & Conservation);*
- *Department of Environmental Affairs and Development Planning (representative from Coastal Management in Cape Town and from regional office in George);*
- *Department of Water Affairs;*
- *Department of Agriculture, Forestry and Fisheries (representative from each Department);*
- *Department of Minerals and Energy (include Mossgas/Petro-SA)*;*
- *Department of Trade & Industry*;*
- *Department of Public Works*;*
- *National and Provincial Heritage Resources Agencies*;*
- *South African Maritime Safety Authority*;*
- *Transnet: National Ports Authority*;*
- *Gouritz Cluster Biosphere Reserve;*
- *Ward Councillors;*
- *Provincial Coastal Committee (chairperson or delegated representative);*
- *Estuary Management Forum (EMF) chairpersons (EMFs should be regarded as advisory bodies that assist the MCC in implementing individual EMPs; as per Section 9 of the Estuarine Management Protocol);*
- *Sub-committee chairpersons;*

- *WWF-SA;*
- *WESSA;*
- *Overberg and Cacadu District MCC chairpersons (once established). In the interim, representatives from the neighbouring local Kouga (east) and Overberg (west) Municipalities may be included;*
- *Specialists consultants or academics/scientists on an ad hoc basis and in an advisory capacity as required.*

6.2 It is self-evident that there is simply no ability for the Knysna Municipality to assume the functions it is attempting to do with the promulgation of the proposed by-law.

7. **Sixth comment**

We will now comment on the contents of the proposed by-law which has been published by the Knysna Municipality: -

- 7.1 The By-law is ostensibly being promulgated to promote a safe and healthy environment through the protection of natural resources.
- 7.2 It should by now be abundantly clear that the municipality has no authority whatsoever to promulgate legislation to preserve and protect the coastal zone and secure equitable access to the coast.

This is the function and purpose of the National legislation and is being regulated by the Garden Route District Municipality Coastal Management Plan

- 7.3 Garden Route District Municipality has not delegated any authority to Knysna Municipality. We will be sending this communication to the District Municipality and inviting them to comment on the views we are expressing in this communication.

- 7.4 No reference whatsoever has been made to the Coastal Management Plan to which Knysna Municipality is a contributor.
- 7.5 The purpose of the By-law is ostensibly "*to fulfil the responsibilities and duties assigned to Knysna Municipality by the Integrated Coastal Management Act*" (Section 2 (1) (a))' **There are NO responsibilities and duties that have been assigned to Knysna Municipality by the Integrated Coastal Management Act.**
- 7.6 The rest of the objects set out in section 2 cannot be controlled by Knysna Municipality.
- 7.7 The application of the by-law set out in section 3 is equally unenforceable. It is not a local municipal competency to bind every person and the state as to what conduct should take place in the coastal zone. This is regulated by National legislation. This by-law is unlawful, must be stopped in its tracks and must be withdrawn.
- 7.8 Without a dispensation from the District Municipality or a directive from the MEC the Municipality may not assume these functions. It is unlawful.
- 7.9 Chapter 3 deals with Coastal access land where the local municipality is ignoring the National legislation and the coastal management plan. The committee of the coastal management plan will determine signage, not Knysna Municipality, and the Municipality has no authority to regulate the number of people making use of the area or prohibit the use.
- 7.10 Knysna Municipality will be in flagrant breach of national legislation if they take it upon themselves to determine a fee for the use of coastal access land. Fees may only be determined by the Minister after extensive public participation.
- 7.11 Section 5 (2): Knysna Municipality does not have the authority to authorise anybody to block or impede access land and cannot dictate the actions of people in coastal access land.

- 7.12 Section 6 relates to the closure of coastal access land – the municipality does not have this competence – officials must work with the committee formed by the district municipality managing the coastal management programme.
- 7.13 Section 7: Control of activities on coastal public property – this cannot be regulated by Knysna Municipality.
- 7.14 Section 8: Encroachment onto coastal public property – it is not up to Knysna Municipality to police this and the municipality may not force people to stop exercising accrued and existing rights.
- 7.15 Chapter 6 is again not a competence of Knysna Municipality and they cannot assume it. It is dealt with by national legislation and comprehensively addressed in the Garden Route District Coastal Management Plan.
- 7.16 Chapter 7: Public launch sites: this too is to be regulated by the District Municipality's Coastal Management committee in conjunction with Cape Nature and SANParks.
- 7.17 Chapter 8: Knysna Municipality can most certainly not take it upon themselves to determine the use of coastal facilities and can most certainly not determine a fee, as has been dealt with above.
- 7.18 Chapter 9: Enforcement: The municipality has no authority to enforce any of the items in this by-law as the by-law is unenforceable. The Municipality may not promulgate this by-law, it cannot act outside its mandate: it is a creature of statute and is regulated by legislation.
- 7.19 The municipality certainly cannot attempt to criminalise the actions of citizens when they do not have the authority to impose these regulations.
- 7.20 As any notice or document issued in terms of this law would be *ultra vires* there is no merit whatsoever in the draconian contents of section 16, that states that the mere production of such must be regarded as *prima facie* evidence of "that fact".

8. Should this by law be passed it will immediately be taken on review and we have no doubt will be rescinded. In this regard our instructions are to take any decision to proceed with the promulgation of the by – law on review.
9. We invite the legal department of Knysna Municipality to weigh in on this issue to ensure that the by-law does not see the light of day and to prevent further fruitless and wasteful expenditure from being incurred.
10. We shall submit these comments to the District Municipality and the MEC, requesting their assistance in making the Municipality understand the unlawfulness of their proposed action and the limited role they play with the relevant body of legislation.

Yours faithfully

A handwritten signature in black ink, appearing to read 'R A Sohn', written over a horizontal line.

Per R A Sohn

Western Cape Government adopts Coastal Management Programme

25 May 2023

Anton Bredell, Western Cape Minister of Local Government, Environmental Affairs and Development Planning recently gave notice of the adoption of the Western Cape Provincial Coastal Management Programme 2022–2027.

"The Coastal Management Programme is an invaluable tool allowing for integrating coastal management in the Western Cape. It sets out the programmatic schedule for the implementation of coastal management in priority areas by the Department of Environmental Affairs and Development Planning as the lead agency. The Programme also enables cooperative governance and stakeholder partnerships, as it plays a key role in bringing together the efforts of various spheres and sectors of government, the private sector, and communities, to provide an accessible and well-managed coast for all inhabitants of, and visitors to, the Western Cape," Minister Bredell said.

"The Western Cape Government takes great pride in our picturesque and iconic coastline. The rich social, cultural, and natural heritage associated with the coast is an intrinsic part of the value of our natural environment and a key economic differentiator in our Province," Minister Bredell continued.

He warned that, "the current state of resource depletion and degradation of our coastal and estuarine resources in the context of a changing climate requires that we take the necessary steps to reduce the negative impacts on coastal communities, the natural environment and coastal infrastructure."

The Programme identifies nine priority areas:

1. Social and economic development.
2. Partnership, Cooperative governance, and Local government support.
3. Coastal access facilitation.
4. Climate change, dynamic coastal processes, and planning for resilient communities.
5. Land and marine-based sources of pollution and waste
6. Natural and cultural resource management.
7. Estuarine Management.
8. Capacity building, advocacy, and education.
9. Compliance, monitoring, and enforcement.

The implementation of the Programme will be in partnership with all other relevant government and coastal stakeholders and communities. "I want to thank all stakeholders who will be joining hands working together to achieve a sustainably developed and resilient coastline. Our success is directly linked to our ability to work as a team," Minister Bredell said.

The Programme was developed and is adopted in terms of section 46(3) of the National Environmental Management: Integrated Coastal Management Act, 2008.

The Programme and a summary thereof are available for public inspection electronically and in hard copy, respectively, as follows:

- (a) on the website of the Department at <https://www.westerncape.gov.za/eadp/about-us/meet-chief-directorates/env...> ; and
- (b) at the head office of the Department on the Ground Floor, 1 Dorp Street, Cape Town.

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Any queries can be directed by email to wccmp@westerncape.gov.za (link sends e-mail).

Enquiries:

Wouter Kriel

Spokesperson for Minister Anton Bredell