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Economic Development, Tourism and
Environmental Affairs
PROVINCE OF KWAZULU-NATAL

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Reference : 0010/March/2017
Inkomba :
Verwysing :

Fax : -----
iFeksi :
Faks :

Date : 13/06/2017
Usuku :
Datum :

E-mail Transmission

To : Messrs KSEMS Environmental Consulting

For Attention : Mr. Nishkar Maharaj

Dear Sir

RE: 0010/March/2017 - The construction of a KFC fast food outlet and associated infrastructure on 20 Rodger Street, situated in Tongaat within the eThekweni District

1. Background:

- 1.1. On 29 March 2017, the Environmental Impact Assessment ('EIA') section received this enquiry from the Environmental Assessment Practitioner ('EAP'), Mr. Nishkar Maharaj of Messrs KSEMS Environmental Consulting on behalf of the developer.
- 1.2. The enquiry requested clarity as to the listed activitiesⁱ triggered by the construction of a KFC fast food outlet and associated infrastructure on 20 Rodger Street, situated in Tongaat within the eThekweni District.
- 1.3. The site is zoned residential and has an extent of 6070m². The proposed development will span 1685m² and comprise:
 - a. A fast food outlet,
 - b. A drive-through facility,
 - c. Parking bays,
 - d. A detention chamber,
 - e. A septic tank system, and;
 - f. A head wall.

ⁱ In terms of Government Notice Regulation ('GNR') 327, 325 and 324 of the National Environmental Management Act (Act 107 of 1998) (as amended) ('NEMA'), EIA Regulations, December 2014 (as amended).

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- 1.4. A watercourseⁱⁱ flows along the lower boundary of the site however the EAP has confirmed that all development activities will occur outside the watercourse i.e. further than 32m of the watercourse.
- 1.5. The site falls within the KwaZulu-Natal Coastal Belt vegetation unit (which is critically endangered) however the EAP has confirmed that indigenous and/or protected vegetation is not prevalent on site due to historic transformation and clearance activities.
- 1.6. On 02 May 2017, a site visit was conducted by officials from the EIA section of the Department in the presence of the EAP.

2. Key Decision Factors:

2.1. Listed activities applicable:

- a. The proposed development will span 1685m² however Activity 12 of GNR 327 of the NEMA, EIA Regulations, December 2014 (as amended) (which reads as follows) **will not be triggered** as the EAP has confirmed that all development activities will occur outside the watercourse i.e. further than 32m of the watercourse.

GNR No. 327 Activity Number 12: *"The development of -*

- (i) dams or weirs, where the dam or weir, including infrastructure and water surface area, exceeds 100 square metres; or*
- (ii) infrastructure or structures with a physical footprint of 100 square metres or more;*

where such development occurs -

- (a) within a watercourse;*
- (b) in front of a development setback; or*
- (c) if no development setback exists, within 32 metres of a watercourse, measured from the edge of a watercourse; -*

excluding -

- (aa) the development of infrastructure or structures within existing ports or harbours that will not increase the development footprint of the port or harbour;*
- (bb) where such development activities are related to the development of a port or harbour, in which case activity 26 in Listing Notice 2 of 2014 applies;*
- (cc) activities listed in activity 14 in Listing Notice 2 of 2014 or activity 14 in Listing Notice 3 of 2014, in which case that activity applies;*
- (dd) where such development occurs within an urban area;*
- (ee) where such development occurs within existing roads, road reserves or railway line reserves; or*
- (ff) the development of temporary infrastructure or structures where such infrastructure or structures will be removed within 6 weeks of the commencement of development and where indigenous vegetation will not be cleared".*

ⁱⁱ "watercourse" means -

- (a) a river or spring;
- (b) a natural channel or depression in which water flows regularly or intermittently;
- (c) a wetland, pan, lake or dam into which, or from which, water flows; and,
- (d) any collection of water which the Minister may, by notice in the Gazette, declare to be a watercourse as defined in the National Water Act, 1998 (Act 36 of 1998) and a reference to a watercourse includes, where relevant, its bed and banks (Reference: GNR 324, 325 and 327 of the NEMA, EIA Regulations, December 2014 (as amended)).

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- b. Activity 19 of GNR 327 of the NEMA, EIA Regulations, December 2014 (as amended) (which reads as follows) **will not be triggered** as the EAP has confirmed that all development activities will occur outside the watercourse i.e. further than 32m of the watercourse.

GNR No. 327 Activity Number 19: *“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;*

but excluding where such infilling, depositing, dredging, excavation, removal or moving -

(a) will occur behind a development setback;

(b) is for maintenance purposes undertaken in accordance with a maintenance management plan;

(c) falls within the ambit of activity 21 in this Notice, in which case that activity applies;

(d) occurs within existing ports or harbours that will not increase the development footprint of the port or harbour; or 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”.

- c. A total of 1685m² of vegetation will be cleared however Activity 12 of GNR 324 of the NEMA, EIA Regulations, December 2014 (as amended) (which reads as follows) **will not be triggered** as the EAP has confirmed that no indigenous and/or protected vegetation is prevalent on site due to historic transformation and clearance activities.

GNR No. 324 Activity Number 12: *“The clearance of an area of 300 square metres or more of indigenous vegetation except where such clearance of indigenous vegetation is required for maintenance purposes undertaken in accordance with a maintenance management plan.*

(d) In KwaZulu-Natal:

i. Trans-frontier protected areas managed under international conventions;

ii. Community Conservation Areas;

iii. Biodiversity Stewardship Programme Biodiversity Agreement areas;

iv. Within any critically endangered or endangered ecosystem listed in terms of section 52 of the NEMBA or prior to the publication of such a list, within an area that has been identified as critically endangered in the National Spatial Biodiversity Assessment 2004;

v. Critical biodiversity areas as identified in systematic biodiversity plans adopted by the competent authority or in bioregional plans;

vi. Within the littoral active zone or 100 metres inland from high water mark of the sea or an estuarine functional zone, whichever distance is the greater, excluding where such removal will occur behind the development setback line on even in urban areas;

vii. On land, where, at the time of the coming into effect of this Notice or thereafter such land was zoned open space, conservation or had an equivalent zoning;

viii. A protected area identified in terms of NEMPAA, excluding conservancies;

ix. World Heritage Sites;

x. Sites or areas identified in terms of an International Convention;

xi. Areas designated for conservation use in Spatial Development Frameworks adopted by the competent authority or zoned for a conservation purpose;

xii. Sensitive areas as identified in an environmental management framework as contemplated in chapter 5 of the Act and as adopted by the competent authority; or

xiii. In an estuarine functional zone”.

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- d. The proposed development will span 1685m² however Activity 14 of GNR 324 of the NEMA, EIA Regulations, December 2014 (as amended) (which reads as follows) **will not be triggered** as the EAP has confirmed that all development activities will occur outside the watercourse i.e. further than 32m of the watercourse.

GNR No. 324 Activity Number 14: "The development of -

(i) dams or weirs, where the dam or weir, including infrastructure and water surface area exceeds 10 square metres; or

(ii) infrastructure or structures with a physical footprint of 10 square metres or more;

where such development occurs -

(a) within a watercourse;

(b) in front of a development setback; or

(c) if no development setback has been adopted, within 32 metres of a watercourse, measured from the edge of a watercourse; excluding the development of infrastructure or structures within existing ports or harbours that will not increase the development footprint of the port or harbour.

d. KwaZulu-Natal

i. In an estuarine functional zone;

ii. Community Conservation Areas;

iii. Biodiversity Stewardship Programme Biodiversity Agreement areas;

iv. A protected area identified in terms of NEMPAA, excluding conservancies;

v. World Heritage Sites;

vi. Sites or areas identified in terms of an international convention;

vii. Critical biodiversity areas or ecological support areas as identified in systematic biodiversity plans adopted by the competent authority or in bioregional plans;

viii. Sensitive areas as identified in an environmental management framework as contemplated in chapter 5 of the Act and as adopted by the competent authority;

ix. Core areas in biosphere reserves;

x. Outside urban areas:

(aa) Areas within 10 kilometres from national parks or world heritage sites or 5 kilometres from any terrestrial protected area identified in terms of NEMPAA or from the core area of a biosphere reserve; or

(bb) Areas seawards of the development setback line or within 1 kilometre from the high-water mark of the sea if no such development setback line is determined; or

xi. Inside urban areas:

(aa) Areas zoned for use as public open space;

(bb) Areas designated for conservation use in Spatial Development Frameworks adopted by the competent authority, zoned for a conservation purpose; or

Areas seawards of the development setback line or within 100 metres from the high-water mark of the sea if no such development setback line is determined".

3. Conclusion:

3.1. The Department brings the following to your attention:

- a. All activities associated with the development, which are identified as listed activities in terms of the NEMA, EIA Regulations, December 2014 (as amended), are subject to approval by the Department prior to any physical commencement of the activities being undertaken on site.

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- b. Your obligations to ensure compliance with the provisions for *Duty of Care and remediation of environmental damage* contained in Section 28 of the NEMA, where the determination of environmental degradation and the need for remediation will be decided by the Department.
 - c. The Department retains the right to inspect the site at any reasonable time in terms of Section 31K(1) of the NEMA.
 - d. This correspondence does not exclude you from compliance with any other relevant and applicable legislation and local by-laws.
4. Please do not hesitate to contact the Assessing Officer, Ms. Adika Rambally, should you have any queries regarding this correspondence.



Signed by: Ms. Adika Rambally

Environmental Officer: EIA

Department of Economic Development, Tourism and Environmental Affairs - eThekweni District

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