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Your reference: EC05/C/LN1&3/M/52-2019

5 August 2025
12:40 PM

The Municipal Manager
Ndlambe Municipality
Port Alfred

BY HAND DELIVERY

Dear Advocate Dumezweni

ENVIRONMENTAL AUTHORISATION AND INFRASTRUCTURE MAINTENANCE MANAGEMENT PLAN FOR COASTAL AREAS WITHIN NDLAMBE MUNICIPALITY

We represent Estuary Care Dune Group, representing BRRAG, KOSRA, the Chamber of Business & Tourism and Estuary Care, as well as the approximately 1400 people who signed a supporting petition.

Our clients have been in discussions with Dr Ted Avis (representing your Municipality, Mr Robert Rose and the Kenton Sand Dune and Nature Conservation Association (KSDNA) and Mr Warren Lange representing your Municipality concerning a review of the Maintenance Management Plan (MMP) for the coastal dunes between the Bushman's River/ Estuary ("the Estuary") and Middle Beach at Kenton-on-Sea ("the Kenton Dunes"). The discussions have taken place over a few months with progress being delayed while our clients sought independent specialist advice on how best to deal with the large dune that has formed near the end of Westbourne Road ("the Westbourne Dune). You are obviously familiar with the issue, so it is not necessary for me to repeat the recent history.

Our clients made a proposal for the consideration of the options available for the removal of the Westbourne Dune and the reinstatement of the natural sediment transfer system that previously operated between the Estuary and Middle Beach, with a view to reaching consensus on a solution that would be mutually acceptable to the various stakeholder groups and would form the basis for the revision of the MMP.

Our clients' proposal was based on a report by Eco Coast environmental consultants specialising in coastal management. A copy of the report was delivered to your Municipality on 10 July 2025 with a request for a meeting to present its findings. Your Municipality refused our clients' request and declined to meet.

A draft of the report was also made available to Dr Avis and Mr Lange for comment.

It is apparent from the exchanges our clients have had with Dr Avis and Mr Lange that there is an impasse. The respective positions of the parties are summarised in annexure A hereto.

The proposal included the convening of a meeting between Dr Avis, Messrs Andy McClarty and Mr Stephen Luger of the consulting engineering firm PRDW, Mr Lange, Mr Simon Bundy (our clients' specialist consultant) officials of the Municipality, Mr Rose, KSDNA (likely represented by Mr Rose) and three representatives from our clients' group. Mr Rose declined the invitation to meet and indicated that he would not pay for Dr Avis or PWRD to attend the meeting. The proposed meeting and all discussions were summarily terminated on Mr Rose's instructions.

We point out that Dr Avis and PWRD represent the Municipality as the holder of the environmental authorisation (EA) and the accompanying maintenance management plan (MMP) and on whom the obligation falls to undertake a mandatory review of the MMP before its expiry on 11 August 2025. It is therefore unacceptable, and in our clients' view, unlawful for Mr Rose to dictate the terms of the review process.

Your Municipality and its advisors are of the erroneous opinion that:

- the MMP may only be reviewed "after five years" (from the date of its initial approval on 11 August 2020); and further
- if the MMP is not reviewed, it will "rollover for another five years" in its current form.

Attached as Annexure B are extracts from the EA from which it is abundantly clear that the MMP:

- Is valid for five years from the date of its initial approval with the approval of the EA, after which it expires - i.e does not "rollover";
- may, and in some circumstances must be reviewed from time to time to accommodate changes in the dynamic coastal environment to which it applies;
- must be revised and an updated MMP submitted to DEDEAT for approval six months before its expiry, failing which it will expire and be of no further force or effect.

It is obviously impossible for the Municipality to comply with the notice period stipulated in the EA before 11 August 2025 and the MMP will accordingly lapse before the lawful commencement of any work. Any activities undertaken thereafter, will be illegal.

You will recall that our clients contend that the EA is invalid. Because the Municipality indicated a willingness to engage with them to find an amicable solution, our clients did not pursue a judicial review of the EA. Its setting aside would have had serious and far-reaching consequences, beyond Kenton-on-Sea, and this may not have been the interests of the wider Ndlambe community. As you know, despite its invalidity, the EA would have remained in force until set aside by a competent court, provided there was compliance with all its terms and conditions.

The Municipality faces a bigger problem: the EA has lapsed and is of no further force or effect. This is by virtue of condition 3.1.1 of the EA that required authorised activities to commence within 24 months of the date of issue (i.e. by 11 August 2022). This date was extended 13 July 2023 by the appeal against the EA. No lawful activities have commenced on the Kenton Dunes and it has accordingly lapsed.

The lapse of the EA in respect of the Kenton Dunes is automatic. It is *ipso facto* void and does not require review or setting aside by a court.

The lapse of the MMP and EA does not preclude the preparation of a new MMP without the need for EA provided:

- it applies to existing infrastructure (which would include dunes within the nature reserve managed by the Municipality); and
- no "listed activities" that are not excluded under an approved MMP are undertaken.

Our clients are of the view that their proposal for the Kenton Dunes can be undertaken under an approved MMP. We will not elaborate on this reasoning now because, as you will observe below, it is our clients' intention to take the matter up with the Department of Economic Development, Tourism and Environmental Affairs.

You are accordingly given notice that our clients will proceed as follows:

- they will make representations to DEDEAT on the lapsing of EA and MMP and will demand that they serve a directive to this effect on the Municipality;
- they will make submissions as to how the required work may be undertaken under a revised MMP and demand that the Municipality be directed to review its MMP and in such directive, prescribe the process to be followed in such review;
- they will raise with the Minister of Forestry, Fisheries and the Environment, the failure of his Department to act on their investigation and findings on the illegal activities within the Joan Muirhead Nature Reserve undertaken by Mr Rose in 2020, the product of which Mr Rose seeks to protect through his influence over the MMP.

If the forementioned actions do not elicit an appropriate response, our clients will turn to the High Court for the necessary relief against the Municipality and the authorities concerned.

In the meanwhile, you are given notice and cautioned that if your Municipality proceeds with any work under the current and soon to lapse MMP:

- it will be illegal and will invite criminal sanction;
- our clients will approach the High Court for appropriate relief.

This letter is not a demand for you to give our clients any undertakings or that you must desist from any unlawful conduct. Our clients' experience is that such demands fall

on deaf ears. You are simply given notice that any unlawful conduct will be met with both criminal charges and a High Court interdict.

This does not mean that all communication with the Municipality is no longer possible. Our clients are willing to resume the discussions that were so abruptly and unlawfully terminated by Mr Rose. In this regard, the ball is in your court to instruct your representatives and consultants to return to the negotiating table.

Your response would be welcomed, but I reiterate, this is up to you.

Yours faithfully

JEREMY RIDL
RIDL & CO

ANNEXURE A

The Dune - Summary

1. **CES PROPOSAL – PROMOTED BY ROSE**
    a. Lower the dune to 7m above SL
    b. Slope dune towards the Bushmans mouth – to 70m from river.
    c. Vegetate the whole area
    d. No go areas
    e. Move sand to Middle Beach via
        i. Lands End Road
        ii. Westbourne Rd
    f. Annual removal of sand every three xxxxx trucking to Middle Beach
    g. Sand to be stored on Western side (between the vegetated area and river)
    h. Staging area in Westbourne Road
    i. Costs initially covered by KSDNA
    j. On going costs for Rate Payers account /Ndlambe
    k. "It solves a problem that residents want to have solved"
2. **ECO COAST PROPOSAL – PROMOTED BY ESTUARY CARE DUNE GROUP**
    a. Leave it be – Nature will take approx. 10 years to move the dune through DBV or
    b. Partial removal to Middle Beach via DBV
    c. Pushing sand into slacks in DBV
    d. Pushing sand towards headland
    e. No vegetating
    f. No annual cost to remove sand
3. **Disputed**
    a. the volume of sand 18000m³ westward vs 35000m³ eastwards
    b. vegetation the dune
    c. Pushing sand towards the mouth
    d. On going cost for the Rate Payers account
4. **Overall Approach and Philosophy**

Aspect	**CES Plan Summary**	**EcoCoast Summary**
Philosophy	Proactive, permanent stabilization through reshaping and vegetation	Flexible: natural recovery or phased removal; sediment seen as a moving part of a dynamic system
Long-Term Vision	Stabilized dune with built-in sand storage and seasonal management	Reinstated natural bypass system over time with minimal ongoing intervention

ANNEXURE B

NT **EXTRACTS FROM THE ENVIRONMENTAL AUTHORISATION AND COMME**

Project specific conditions generally applicable to routine maintenance activities, emergency repair work and dune management

3.3.1. The MMP inclusive of method statements / specifications contained therein and read together with the Environmental Management Standard Operational Procedure Book attached to the Assessment Report as Appendix G is hereby approved and are to be implemented / adhered to for all work / activities to be undertaken in terms of this Environmental Authorisation.

3.3.2. The approval referred to in Condition 3.3.1 is valid for a period of 5 years from the date of issue of this Environmental Authorisation. In this regard a revised and updated MMP to be submitted to DEDEAT for approval six months prior to the lapsing of the 5 years as referenced.

COMMENT: By not complying with this condition, the NM is in breach of the environmental authorisation. Apart from being an offence, should invite compliance action.

This does NOT result, as Dr Avis says, of the Municipality being stuck with the existing MMP for another 5 years.

3.3.3. Further to Condition 3.3.2 amendments to the approved MMP can be effected during the course of the five year period if practicalities / lessons learned dictate such which amendments are to be approved by the Department. Any proposed amendments as referenced in this Condition to be tabled and discussed at Bilateral sessions between the Ndlambe Municipality and the Department.

COMMENT: This disposes of the erroneous statement that the MMP cannot be reviewed until 5 years is up.

3.7.1. An EMC to be established by the NM that will serve as a vehicle of communication and reporting to relevant stakeholders and I&AP's. The EMC are to be established prior to commencement of any activities as authorised in this Environmental Authorisation or within a period of 6 months, whichever comes first.
COMMENT: Proposed amendments to the MMP should have been communicated to the EMC, who in turn should have communicated with stakeholders and should have ensured stakeholder participation in the decisions made. This did not occur, thus defeating part of the purpose of the condition in the EA.

INFORMATION CONSIDERED IN MAKING THE DECISION

4.2.4. Due to the extent of the area in question as well as the large variety of actions that may be required for routine maintenance work, emergency repairs and dune management linked to limited detailed information available at the time of compilation of the MMP, a strategic approach was followed to develop the MMP. In this regard the MMP contains actions and responsibilities of a generic nature and it is envisaged that project specific method statements / environmental specifications will be implemented for individual projects / actions. Furthermore the MMP is regarded as a living document which will be refined as and when circumstances and / or practical experience dictate such, with the proviso that such should be **done at least every five years.** Hence approval of the MMP is only granted for a period of five years after which the MMP will have to be revised and updated.
This confirms that the MMP should be amended when circumstances dictate but must be reviewed at least every 5 years.

4.2.7 (at the end of the clause) In addition it was deemed appropriate to require the establishment of an Environmental Monitoring Committee for independent oversight and reporting especially given the sensitivity of the coastal corridor and the extent and number of areas of jurisdiction for which the MMP has been approved.

Non-compliance with this condition and the exclusion of stakeholders from the review of the MMP is at the heart of the conflict within the community. Instead of following an open and transparent process, the Municipality has allowed one person to dictate proceedings in his own interests