



environmental affairs

Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA

Private Bag X447, Pretoria, 0001, Environment House, 473 Steve Biko Road, Pretoria, 0002

APPEAL RESPONSE REPORT

PROJECT NAME/TITLE: NOTICE OF AMENDMENT OF THE ENVIRONMENTAL AUTHORISATION (EA) ISSUED ON 21 JANUARY 2015 FOR THE PROPOSED DEEPENING, LENGTHENING, AND WIDENING OF BERTHS 203 TO 205 AT PIER 2 CONTAINER TERMINAL, PORT OF DURBAN, KZN

PROJECT LOCATION: Berths 203 – 205 at Pier 2 Container Terminal, Port of Durban, KZN

PROJECT REFERENCE NUMBER: 14/12/16/3/3/2/275/AM2

DATE PROJECT/ACTIVITY AUTHORISED: 07 May 2021

DATE OF NOTIFICATION OF THE DEPARTMENTS DECISION: 21 May 2021

DETAILS OF THE APPELLANT	DETAILS OF THE APPLICANT
Name of appellant: South Durban Community Environmental Alliance (SDCEA)	Name of applicant: Transnet SOC Limited
Appellant's representative (if applicable): Desmond D'Sa	Applicant's representative (if applicable): Johnny Mokheseng
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GROUNDS OF APPEAL	RESPONDING STATEMENT BY THE APPLICANT	COMMENTS BY THE DEPARTMENT
1.	Amendment 2: Amendment to the project description of the EA.	

<p>The dredging activity at Lot 10 does not speak about the impacts it will have on the level of mortality of organisms that have been affected by the properties of a substance, such as contaminated water, sediment, or dredged material. Furthermore, how will you prevent turbidity from affecting aquatic life? How will you prevent the destruction of an organism's habitat?</p>	<p>Impacts relating to the mortality of organisms and the impacts of turbidity were assessed by Anchor Environmental in their specialist report attached as Appendix 4 of the motivation report (i.e. amendment report). Sections 2, 3 and 4.2 of the specialist report assess potential impacts relating to organisms (i.e. benthic fauna). Page 25 of the motivation report states the following: <i>"Lot 10 is overgrown with grass, bushes and small trees, as such there is little subtidal or intertidal habitat in the area, and therefore the extent of impact of dredging at Lot 10 is small and the intensity is low. While there will be direct loss of habitat and direct mortality of subtidal fauna along Berths 203 to 205, organisms are expected to re-colonise disturbed areas relatively rapidly. Because the disturbed habitat is not uncommon in this area and due to the temporary nature of the disturbance within the relatively small</i></p>	
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<p>There has been mention in the reason for the amendment is that even although the approved EIA Report investigated the impacts of the proposed development, did not consider the impacts of dredging at the caisson construction site. The question then why have you not considered this impact? Why have you not carried out an investigation in this regard? Why have you not developed a mitigation plan, or are you of the opinion that its not your responsibility?</p>	<p><i>construction footprint, this impact is assessed as 'very low'."</i></p> <p>There is no dredging taking place at the Caisson construction site. Caisson construction will be taking place on the landside of Lot 10 and the impacts associated with the caisson construction were assessed during the initial EIA. The current amendment refers to the inclusion of dredging operations on the waterside of Lot 10. The potential impacts of dredging at the caisson construction site have been discussed in 4.2 of the Marine Specialist report attached as Appendix 4 and Section 4.3 of the motivation report. There is an EMPr in place and an addendum to the EMPr to address the mitigation measures as discussed in the motivation report is referenced under Section 2 of the addendum to the EMPr.</p>	
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<p>The role of consultancies / EAPs should be representing the environment, not their clients' pockets by only doing the bare minimum when it comes to representing the environment. This can be seen by the lack of substance that accompanies these amendments.</p> <p>For example, well thought out mitigation plans, anticipated environmental impacts, possible consequences of this dredging at Lot 10; there is nothing that we can follow and understand that the procedures to be followed are the best suited and by all means to protect the sensitive environment. And it's the failure of ECA to apply its mind, by unpacking the problems and constructively paving a way forward that is safe for the environment and benefits the anticipated construction.</p>	<p>ECA consulting is led by registered EAPs who are also EAPASA Assessors. Please note that such comments are defamatory and do not form any ground for appeal.</p> <p>The proposed impacts associated with dredging at Lot 10 is assessed and discussed in Section 4.3 of the Motivation Report. The mitigation measures proposed by the Marine Specialist and the EAP are covered by the existing EMPr as well as the Central Sandbank Mitigation Plan (CSMP). Where amendments were required, these were duly proposed by the EAP and specialist.</p>	
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<p>Further to this how will this area be impacted by traffic as it will be a construction site, and other environmental issues such as dust, run off into the harbour are not considered. Further to this, these amendments do not speak to how noise and air quality will be impacted upon by dust. How will sensitive receptors be impacted and taken into consideration, and dominant wind direction. How will compliance monitoring and auditing be submitted and to whom? Who will be the designated ECO? We've been proactively involved and demand to have a sight visit of Lot 10 as well as be involved as an oversight committee member together with DEFE, the ECO and other stakeholders and I&APs.</p>	<p>The original EIA considered Lot 10 within the project scope. Please note that these issues are not additional issues, the mentioned issues have already been assessed as part of the original EIA application and is covered in the approved EMPr. Potential issues i.e. traffic, dust, run-off, noise and air quality are addressed in the EMPr. As per Section 14.2.27 of the EMPr, weather will be monitored during the construction phase. Furthermore, "Dust fallout units to be located taking into consideration significant sources of air pollution, sensitive receptors, and dominant wind direction "and "Noise monitoring sampling sites to be located taking into consideration significant sources of noise, sensitive receptors, and dominant wind direction." (Section 12 of the EMPr). Compliance monitoring is addressed in Condition 13 of the EA. An ECO will be appointed prior to commencement of</p>	
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	<p>construction. An independent ECO for the project was appointed in June 2018 whose role is to conduct compliance monitoring to environmental specifications. The details of the ECO were communicated with the competent authority as required by the EA. In addition, the ECO has made presentations to the EMC at the commencement of construction activities viz, 24/10/2018 prior to the temporary suspension of the works in November 2018 and on 26/02/2019. Moreover, a site visit to Berth 203 to 205 construction site was held prior to the temporary suspension of the works with the EMC members on 08/11/2018. The EMC (comprised of various stakeholders) and DFFE are already providing an oversight role to this project which this amendment applies. If the EMC wishes to arrange a site visit to Lot 10 site, it can be arranged with the EMC Chairperson at the resumption of the project activities.</p>	
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<p>Construction Regulations (2003) published under the Occupational Health and Safety Act (No. 85 Of 1993) apply to construction activities including “the moving of earth, clearing of the land, the making of an excavation, piling, or any similar type of work”. A “health and safety plan” which addresses hazards identified, and includes safe work procedures to mitigate, reduce or control the hazards identified, is required under this Act. I refer to amendment 4 – (e) No vehicles of machinery should be refuelled in the coastal zone and employees must be made aware of procedures to be followed should spills or leaks transpire. What documents, training for construction teams have been developed to ensure that they comply, who will monitor?</p>	<p>It is brought to the appellant’s attention that the conditions contained in the original EA dated 21/01/2015 are still applicable as contained in the approved amendment letter.</p> <p>It is brought to the Appellant’s attention that Transnet’s project team is comprised of a cross functional multidisciplinary team and the Safety Department is one of them.</p> <p>In addition, as part of Transnet’s Health and Safety Management systems which is in line with Occupational Health and Safety Act, Act 85 of 1993 and applicable regulations, Construction regulations 2003 have been repealed with 2014 regulation and Transnet developed a Health and Safety procedure to include the multifaceted safety resources that are involved in the project to enforce safety requirements as stipulated in Section 5 of Construction regulations 2014. The development of a Health and Safety plan is but</p>	
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	<p>one of the responsibilities that must be executed and enforced by the Safety resources of the project. In line with Construction R 7(1)(a). These requirements are entered into agreement between Transnet and the construction contractor prior to Contract award. The appellant must note that the Health and Safety functions are outside of the EAP scope however the previous EAP already highlighted high level relevant legislative requirements that must be complied with.</p> <p>As stated above, execution of a project is undertaken by a cross functional multidisciplinary team, the environmental management responsibilities are articulated in Section 8 and 10 of the approved EMPr. It provides for the roles and responsibilities of the project team and the environmental awareness plan that should be followed during construction. The training material</p>	
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	<p>incorporates all the environmental management requirements as stipulated in the EMPr, Central Sandbank mitigation plan and the EA. The induction material has already been developed for the project in 2018 however it will be updated to include the approved amendments to the project. The ECO, appointed Contractor, Transnet and EMC will monitor compliance to project environmental requirements as mentioned above.</p> <p>No refuelling will be undertaken within the coastal zone, this is included as a condition of the addendum to the EMPr and under Section 4.6 of the motivation report. The relevant environmental, Health and Safety training will be undertaken by the relevant personnel prior to resumption of construction activities.</p>	
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<p>ECA and Transnet are putting the cart before the horse, amendments are well and good but need to be thoroughly investigated, alternatives need to be explored, mitigation measures need to be determined before embarking on these amendments. Why is oversight not explicitly mentioned in these amendments? Transnet does not make adequate provision for protecting the environment from the dredging activities and the associated construction activities at Lot 10.</p>	<p>Alternative dredging options and mitigation measures have been considered and discussed in Section 4 of the motivation report. The potential impacts associated with dredging activities have been addressed in the original EIA application and as part of the Motivation Report relating to the proposed amendment at Lot 10 (Section 4 of the motivation report).</p> <p>The oversight role is explicitly articulated in the EA and approved EMPr. Both documents still form part of the project environmental specification. The appellant must refer to the conditions of the approved amendment letter.</p>	
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<p>The LRE will have significant impacts on the mud prawns in this area. What is also not clear is whether the existing caissons will be removed and replaced with the new ones? Or will the new caissons be placed next to the existing ones thereby utilizing more of the water space. This is a concern because it will reduce the size of the shipping channel and further add to the risk of damage to the centre bank. If this is the case, then this amendment application must be rejected completely.</p>	<p>The mud prawn is a benthic invertebrate. The potential impact on benthic invertebrates is discussed under Section 2 and 4.3 of the Marine Specialist report. The existing caisson will remain intact as stated in Section 6 of the motivation report.</p>	
<p>2. Amendment 3: Amendment to the Environmental Management Programme (EMPr).</p>		
<p>Nothing speaks to the sensitivity of the area. There are a number of environmental features, attributes and aspects, for which measures are included in the EMPr.</p> <ul style="list-style-type: none"> - Durban Bay Estuary - The Central Sandbank - The Little Lagoon - MMD1A1-02 (magnetometer hit within Area 1) – 30m long metal trawler known as Stuart’s wreck; and 	<p>The proposed amendment will not have any additional measures on the mentioned sensitive areas. As per page 24 of the motivation report - <i>"It is important to note that the activities proposed as part of this amendment application does not involve construction within sensitive environmental areas. The original EIR looked at the impacts of the berth deepening and widening on the sensitive areas. According to Anchor</i></p>	

- Scattered reefs to the northeast of Area 1	Environmental (2020), <i>'There are no additional</i>	
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<p>What are the anticipated impacts on the above sensitive environmental features? What is the status of these with regards to the proposed amendments?</p> <p>What will the impact on the biodiversity of the Central Sandbank, in the channel and at Little Lagoon? What mitigation measures are planned? How exactly does Transnet propose to amend Section 8.5 of the EMPr to 'support the structuring and resourcing of smaller entities?</p>	<p><i>or incremental impacts expected on the Central Sandbank as a result of this amendment. If anything, impacts to the Central Sandbank will be reduced as a result of this amendment.'</i></p> <p><i>No additional impact to the central sandbank is foreseen as a result of this amendment, and with reference to the results noted for using this technology at Maydon wharf."</i> LRE was used during the construction of Maydon Wharf quaywall for Dredging. As can be seen from the sample of monitoring reports attached as Appendix 6 of the motivation report, turbidity levels were generally low and the disturbance of sediments from dredging operations was not causing any ecological threat to sensitive habitats. It is also extremely unlikely that the dredge plume from dredging activities at Lot 10 will affect the turbidity of the water at the mangroves." Page 118 provides measures in</p>	
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	<p>the original EIA report to protect these areas. Mitigation measures are discussed in detail in the original EMPr attached as Appendix 6 of the motivation report. The amendment to section 8.5 of the EMPr is discussed under Section 1.2d of the motivation report.</p>	
<p>What control will there be over the activities of these smaller entities to ensure they abide by all the mitigation measures?</p>	<p>All controls that are applicable to the main construction contractor will be applicable to the smaller entities. The amendment applied for relates to the number of environmental resources required for smaller entities due to one activity that will be undertaken in this instance, Transnet Dredging services. All other relevant controls contained in the EA, EMPr and CSMP are enforceable.</p>	
<p>Will the role of the ECO need to be amended? What will be the role of the Environmental monitoring committee be?</p>	<p>The ECO responsibilities will be amended to include the conditions contained in the approved amendment letter. Similarly, the approved amendment letter will be shared</p>	

	<p>with the EMC members through the EMC Chairperson. In addition, all EMC members are registered I & APs to the Deepening, Lengthening and Widening of Berth 203 to 205 Deepening project and they have all been notified of the positive amendment letter.</p> <p>The appellant must refer to section 41 of the EA. The role of the EMC is stipulated therein. The role of the EMC will also extend to the approved project amendments upon the conclusion of the appeal process. As specified in the approved amendment letter, all conditions contained in the original EA remain applicable. The role of the ECO will not be amended. The role of the Environmental Monitoring Committee is discussed under Section 8,3 of the EMPr.</p>	
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<p>The South Durban Community Environmental Alliance (SDCEA), a member of the Environmental Monitoring Committee. We would like to bring your attention to a further notice was issued on the 20 April 2021 that the temporary work suspension: Deepening, lengthening and widening of the berths 203 to 205 at pier 2, Durban Container terminal, port of Durban. If this process has been suspended until the resumption of construction activities commence again why are you proceeding with no oversight? The EMPr should manage objectives that will enhance benefits and minimise adverse environmental impacts; provide targets for management objectives, in terms of desired performance; describe actions required to achieve management objectives; and lastly the roles required to implement the EMPr.</p>	<p>There is no specific requirement to provide an oversight role when there is no construction activities taking place. The EMPr cannot be implemented when the project is temporarily suspended. An oversight role will resume closer to the time of construction works.</p>	
<p>3. Amendment 4: Inclusions of specific conditions</p>		
<p>The following in this amendment is lacking:</p> <p>a) An integrated Waste Management Approach that is based on waste minimisation and incorporates reduction, recycling and reuse options.</p>	<p>According to page 73 of the EMPr, a waste management approach is available as well as a climate change adaption monitoring and evaluation plan (as approved by DEA).</p>	

b) A Monitoring and Evaluation Plan with regards to climate change adaptation.	<p>Compliance against these plans will be monitored during the construction phase and they form part of the information pack for the EMC Chairperson and independent ECO.</p> <p>Baseline monitoring at WQ3, WQ4 and WQ5 stations was conducted prior to the approval of the Central Sandbank Mitigation Plan. The Marine Specialist recommendations do not relate to the mentioned stations however reference is made to WQ2 and new WQ21. Baseline monitoring will be undertaken at WQ21 prior to dredging activities since it is a newly introduced station that did not form part of the initial baseline monitoring that informed the Central Sandbank Mitigation Plan. WQ2 will be designated as an impact station at least for the period while dredging is taking place at Lot 10.</p>	
c) Requisite mitigation measures which is informed by the baseline monitoring of the water quality stations.		
WQ3, WQ4, and WQ5 must commence prior to dredging not the same time as dredging commences. In order to assess the impacts of dredging this must be done. We note that the consultants have no prior experience with construction in a marine environment. In our view this is quite a serious concern especially since this is a vital estuarine environment.		
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ARR comments by Case Officer

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Date:

Signature:

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Approved by Supervisor

Name & Surname:

Date:

Signature:

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