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Department of Environmental Affairs and Development Planning

Directorate: Environmental Law Enforcement

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PRE-COMPLIANCE NOTICE – ERVEN 3303 AND 3304; MANDALAY

1. Introduction and Mandate

This submission serves as the formal response to the Pre-Compliance Notice (PCN) issued by the Department on 29 April 2026. Extension to respond by 27 May 2026 was formally granted on 7 May 2026.

PHS Consulting has been legally appointed by both Communicare NPC (the current Environmental Authorisation holder) and I H S Social Housing Company SA (Pty) Ltd through its subsidiary Mandalay Social Housing Company (Pty) Ltd (the current property owner) to submit this representation.

2. Independent Audit Findings & Admissions

An independent environmental audit conducted on-site noted three specific technical deviations from the approved Environmental Authorisation (EA):

- Wetland 7: Piped beyond the scope approved in the original EA.
- Wetland 3: Encroachment into the recommended 30-metre buffer zone by housing and road developments.
- Maintenance Management Plan (MMP): No MMP was finalized or submitted to DEA&DP during the development phase.

The EA holder and the landowner are fully committed to finalizing and implementing an MMP, they do however submit that the only option of rehabilitation is neither technically feasible nor environmentally rational.

3. Substantiated Grounds against Rehabilitation

The current site layout cannot be reverted to the original EA specifications due to the following legal, technical, and safety realities:

- **Irreversible Urban Infrastructure (Wetland 3 Buffer):** The infrastructure encroaching on the 30m buffer was completed in 2018. It forms part of an established, fully functional urban residential zone. It cannot be demolished or relocated. Future impacts will be actively mitigated via the pending MMP.
- **Stormwater System Integrity & Flood Risk (Wetland 7):** The piping of Wetland 7 was completed between 2017 and 2018 at the instruction of the City of Cape Town (CoCT) to align with their Master Stormwater Management Plan. Retaining open-channel sections within a piped network creates extreme localized flooding hazards, due to hydraulic bottlenecks, restricting stormwater flow during major rainfall events. This risk also results in an irreversible scenario. Open channel sections would have remained susceptible to sediment build-up, vegetation growth, illegal dumping, and debris blockages. Engineering rationales and historical timelines are attached under Appendix 1.
- **Ambiguity in Original EA:** The original EA issued in October 2011 failed to clearly define, map, or illustrate which specific sections of Wetland 7 were to remain open versus piped. According to our records, since the initial commencement of land clearance in 2013 until the last ECO involvement in November 2017 no non-compliances were flagged, confirming the uncertainty.
- **Prior Legislative Alignment & Offsets:** A March 2015 specialist report by Blue Science (Appendix 2) classified Wetland 7 as a highly degraded, largely artificial stormwater channel. The condition of the wetlands on site was therefore clear. Consequently, a Water Use Licence (WUL) was successfully obtained in November 2015 (Appendix 3) under the National Water Act, which approved the piping and established a formal ecological wetland offset. An April 2017 Blue Science Water Quality Monitoring report (Appendix 4) echoed that the piping of wetland 7 will contribute to the reduction in the dumping of solid waste on the site and contribute to water quality. The EA holder and owner are legally compelled to uphold the WUL in its current form.
- **Ecological and Hydraulic Stability:** The functional stormwater infrastructure and its corresponding ecological offset have been established for eight years. Reversing this layout poses a severe, quantifiable risk to both the surrounding environment and the physical safety of urban occupants. Keeping the status quo is the only viable alternative (Appendix 1). The piped section of wetland 7 is no longer a wetland and it is not rational to return to one.

4. Proposed Regulatory Pathway forward

As landowner, I H S Social Housing Company SA (Pty) Ltd through its subsidiary Mandalay Social Housing Company (Pty) Ltd is currently finalizing the process to transfer the EA into their name. Furthermore, CoCT has approved a Site Development Plan (SDP) for residential densification on the property, and the owner has paid the required Development Contributions to initiate construction.

Because the historical clearing and piping of Wetland 7 directly underpins the footprint of this approved densification, the parties cannot undertake rehabilitation. It also serves no purpose to rehabilitate a site only to apply for it to be piped again. The socio-economic need for the CoCT approved SDP to proceed outweighs the intended instruction to rehabilitate the minor transgressions that had a very low impact. Instead, the EA holder and landowner propose to regularize the site conditions through one of the following mechanisms:

1. Section 24G Application: A retrospective application under Section 24G of the National Environmental Management Act (NEMA) to regularize the historical un-authorized commencement of activities that laid the platform for the materially linked densification scheme.
2. Part 2 EA Amendment Application: A substantive amendment process to update the EA layout to reflect the operational, CoCT-approved stormwater and housing reality.

5. Conclusion & Relief Sought

The EA holder and landowner respectfully request that the Department:

- Accept this representation in response to the PCN dated 29 April 2026.
- Consider during the issuance of a formal Compliance Notice under Section 31L of NEMA the options to submit either a Section 24G application or a Part 2 EA Amendment to formally regularize the site layout as per CoCT approved stormwater plan and revised SDP.

Yours truly



PAUL SLABBERT

List of Appendices

- Appendix 1: CoCT Stormwater Rational, Historical Timeline, and Flooding Risk Statement.
- Appendix 2: Approved Department of Water and Sanitation Water Use Licence (WUL) (November 2015).
- Appendix 3: Blue Science Specialist Wetland Assessment Report (March 2015).