



24G Application: 14/2/4/2/3/C3/13/0008/22

ENVIRONMENTAL AUTHORISATION

The Trustees

Email: admin@jmphof.co.za

J & JM Trust

Private Bag X25

WELKOM

9460

Attention: Mr Johannes Mans

APPLICATION IN TERMS OF SECTION 24G OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998) ("NEMA") FOR THE UNLAWFUL COMMENCEMENT OF A LISTED ACTIVITY: THE UNLAWFUL CLEARANCE OF INDIGENOUS VEGETATION AND THE DEVELOPMENT OF TWO NEW PIVOTS ON FARM HARMONIE 140, MURRAYSBURG

With reference to your application received by this Department on 12 April 2022 in terms of section 24G of the NEMA for the consequences of unlawful commencement of listed activities identified in terms of the NEMA, find below the decision in respect of your application.

A. DECISION

By virtue of the powers conferred by section 24G of the NEMA and the *Environmental Impact Assessment Regulations, 2014* ("EIA Regulations, 2014") (as amended), the competent authority herewith **grants environmental authorisation** to the applicant to continue with the listed activities specified in Section C below as described in the application and environmental assessment received by this Department on 12 April 2022.

The granting of this Environmental Authorisation is for the continuation, conducting or undertaking of the listed activities as described in Section C below and is subject to compliance with the conditions set out in Section G. This Environmental Authorisation shall only take effect from the date on which it has been issued.

The Environmental Authorisation does not exempt the holder thereof from compliance with any other applicable legislation.

B. DETAILS OF THE APPLICANT FOR THIS ENVIRONMENTAL AUTHORISATION

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The abovementioned applicant is the holder of this Environmental Authorisation and is hereinafter referred to as "the holder/applicant".

C. LIST OF ACTIVITIES AUTHORISED

Listed Activities	Activity/Project Description
<p>Government Notice No. R. 546 of 2010 –</p> <p>Activity Number: 14(a)(i)</p> <p>Activity Description: <i>"The clearance of an area of 5 hectares or more of vegetation where 75% or more of the vegetative cover constitutes indigenous vegetation"</i></p> <p><i>(a)(i) "All areas outside urban areas."</i></p>	<p>The clearance activities entailed approximately 7.7ha for the establishment orchards.</p>

<p>Government Notice No. R325 of 2017–</p> <p>Activity Number: 15</p> <p>Activity Description: <i>"The clearance of an area of 20 hectares or more of indigenous vegetation,"</i></p>	<p>The development of 2 lucerne pivots for a total combined size of 24 ha.</p>
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The abovementioned list is hereinafter referred to as "the listed activities".

D. PROPERTY DESCRIPTION AND LOCATION

The listed activities commenced on Farm Harmonie 140, remaining extent, Murraysburg.

The SG digit code is: C05200000000014000000

The co-ordinates for the property boundary are:

Point	Latitude (S)	Longitude (E)
1	32° 14' 15.13" South	23° 40' 11.85" East
2	32° 12' 38.70" South	23° 36' 14.58" East
3	32° 13' 33.68" South	23° 35' 59.52" East
4	32° 12' 54.32" South	23° 34' 22.09" East

The co-ordinates for the site boundary are: Orchards

Point	Latitude (S)	Longitude (E)
1	32° 16' 37.57" South	23° 37' 5.12" East
2	32° 16' 41.61" South	23° 37' 17.42" East
3	32° 16' 40.21" South	23° 37' 17.91" East
4	32° 16' 39.66" South	23° 37' 16.12" East

The co-ordinates for the site boundary are: Pivot 1

Point	Latitude (S)	Longitude (E)
1	32° 16' 20.11" South	23° 37' 37.59" East
2	32°16'23.64" South	23°37'47.06" East
3	32°16'32.00" South	23°37'43.13" East
4	32°16'28.25" South	23°37'33.06" East

The co-ordinates for the site boundary are: Pivot 2

Point	Latitude (S)	Longitude (E)
1	32°16'32.66" South	23°37'43.94" East
2	32°16'36.66" South	23°37'53.57" East
3	32°16'44.58" South	23°37'49.03" East
4	32°16'40.57" South	23°37'39.24" East

Refer to Annexure 1: Locality Plan and Annexure 2: Site Points.

Herein-after referred to as "the site".

E. DETAILS OF THE ENVIRONMENTAL ASSESSMENT PRACTITIONER ("EAP")

Environmental Management Group (PTY) Ltd.

c/o Mr C.W. Vermeulen

P.O. Box 37473

Langenhovenpark

BLOEMFONTEIN

9330

Tel: 082 824 9308

Email: cwv@envmgrp.com

F. DETAILS OF THE ACTIVITIES UNDERTAKEN

The development entails the clearance of vegetation for the establishment of an orchard on a 7.7 ha area and the development of 2 pivots with an area of 24-ha for the cultivation of lucerne for grazing purposes. The area of proposed development (pivots) is situated on a relatively flat area surrounded in the distance by dolerite outcrops forming part of the Escarpment. The area pre-commencement of the activities was primarily used for the purpose of grazing livestock, which includes wildlife (primarily springbuck) and sheep. The existing orchards of 7.7ha was conducted on degraded/transformed areas previously used as sheep encampments and the preferred alternative for the 24-ha pivot development was ripped in the past but naturally recovered, thus classifying the area as disturbed. The orchards were developed on land that was previously degraded by the presence of a large sheep encampment. The natural vegetation on the sites was scarce or non-existing although it is classified as a Critical Biodiversity Area. Power cables will have to be installed from the main Eskom line to power the rotating pivots and to power the abstraction pumps. Water supply pipes will also have to be installed which lead to the pivot and orchard areas. Besides the power lines and pipes that need to be installed all other infrastructure is already present.

G. CONDITIONS OF AUTHORISATION

The following are conditions of authorisation that are set and must be implemented for this Environmental Authorisation.

PART I

Scope of authorisation

1. The holder is authorised to undertake the listed activities specified in Section C above in accordance with and restricted to the Preferred Alternative described in the application and assessment report on the site as described in Section D above.
2. The Environmental Authorisation is valid for a period of **five years** from the date of the decision to continue and complete the activities on site.
3. The holder shall be responsible for ensuring compliance with the conditions by any person acting on his/her behalf, including an agent, sub-contractor, employee or any person rendering a service to the holder.

4. Any changes to, or deviations from the scope of the alternative described in Section F above must be accepted or approved, in writing, by the competent authority before such changes or deviations may be implemented. In assessing whether to grant such acceptance/approval or not, the competent authority may request information to evaluate the significance and impacts of such changes or deviations, and it may be necessary for the holder to apply for further authorisation in terms of the applicable legislation.

PART II

Written notice to the competent authority

5. Seven (7) calendar days' notice, in writing, must be given to the competent authority before continuation of the development activities.
 - 5.1 The notice must make clear reference to the site details and 24G Reference number given above.
 - 5.2 The notice must also include proof of compliance with condition 6.

PART III

Notification and administration of an appeal

6. The holder must in writing, within 14 (fourteen) calendar days of the date of this decision—
 - 6.1 notify all registered Interested and Affected Parties ("I&APs") of –
 - 6.1.1 the outcome of the application;
 - 6.1.2 the reasons for the decision as included in Annexure 3;
 - 6.1.3 the date of the decision; and
 - 6.1.4 the date when the decision was issued.
 - 6.2 draw the attention of all registered I&APs to the fact that an appeal may be lodged against the decision in terms of the *National Appeals Regulations, 2014* detailed in Section I below.
 - 6.3 draw the attention of all registered I&APs to the manner in which they may access the decision.
 - 6.4 provide the registered I&APs with:
 - 6.4.1 the name of the holder (entity) of this Environmental Authorisation;

- 6.4.2 name of the responsible person for this Environmental Authorisation;
- 6.4.3 postal address of the holder;
- 6.4.4 telephonic and fax details of the holder;
- 6.4.5 e-mail address, if any, of the holder; and
- 6.4.6 the contact details (postal and/or physical address, contact number, facsimile and e-mail address) of the decision-maker and all registered I&APs in the event that an appeal is lodged in terms of the *National Appeal Regulations, 2014*.

7. In the event that an appeal is lodged with the Appeal Authority, the effect of this Environmental Authorisation is suspended until the appeal is decided.

PART IV

Management of the activity/development

8. The draft Environmental Management Programme ("EMPr") dated 26 January 2022 compiled by the Environmental Management Group and submitted as part of the application for environmental authorisation is hereby approved and must be implemented.

9. The EMPr must be included in all contract documentation for all relevant phases of implementation.

PART V

Monitoring

10. A copy of the Environmental Authorisation, EMPr, audit reports and compliance monitoring reports must be kept at the site of the authorised activities, and must be made available to anyone on request, including a publicly accessible website (if applicable).

11. Access to the site referred to in Section D must be granted, and the environmental reports mentioned above must be produced, to any authorised official representing the competent authority who requests to see it for the purposes of assessing and/or monitoring compliance with the conditions contained herein.

PART VI

Auditing

12. In terms of regulation 34 of the *EIA Regulations, 2014* the holder must conduct environmental audits to determine compliance with the conditions of the Environmental Authorisation, and the EMPr and submit Environmental Audit Reports to the competent authority upon receiving

such request in writing from the competent authority. The Audit Report must be prepared by an independent person and must consider all the information required in Appendix 7 of the *EIA Regulations, 2014*.

PART VII

Activity/ Development Specific Conditions

13. Should any heritage remains be exposed during excavations or any other actions on the site, these must immediately be reported to the Provincial Heritage Resources Authority of the Western Cape, Heritage Western Cape. Heritage remains uncovered or disturbed during earthworks must not be further disturbed until the necessary approval has been obtained from Heritage Western Cape.

Heritage remains include: meteorites, archaeological and/or paleontological remains (including fossil shells and trace fossils); coins; indigenous and/or colonial ceramics; any articles of value or antiquity; marine shell heaps; stone artefacts and bone remains; structures and other built features with heritage significance; rock art and rock engravings; and/or graves or unmarked human burials including grave goods and/or associated burial material.

14. A qualified archaeologist and/or palaeontologist must be contracted where necessary (at the expense of the holder) to remove any heritage remains. Heritage remains can only be disturbed by a suitably qualified heritage specialist working under a directive from the relevant heritage resources authority.

H. GENERAL MATTERS

1. Notwithstanding this Environmental Authorisation, the holder must comply with any other statutory requirements that may be applicable when undertaking the listed activities.

2. Non-compliance with a condition or term of this Environmental Authorisation or EMPr may render the holder liable to criminal prosecution.

3. If the holder does not continue, conduct or undertake listed activities within the period referred to in Condition 2 of Section G, this Environmental Authorisation shall lapse for that activity or activities, and a new application for Environmental Authorisation must be submitted to the competent authority. If the holder wishes to extend the validity period of the Environmental

Authorisation, an application for amendment must be made on condition that the environmental authorisation is valid on the date of receipt of such amendment application.

Note that:

(1) In terms of regulation 28(1A) of the *EIA Regulations, 2014* the competent authority shall not accept or process an application for amendment of an environmental authorisation if such environmental authorisation is not valid on the day of receipt of such amendment application but may consider an application for environmental authorisation for the same development.

(2) In terms of regulation 28(1B) of the *EIA Regulations, 2014* an environmental authorisation which is the subject of an amendment application remains valid pending the finalisation of the amendment application.

(3) It is an offence in terms of section 49A(1)(a) of the NEMA for a person to commence with a listed activity if the competent authority has not granted an environmental authorisation for the undertaking of the activity.

4. The holder must submit an application for amendment of the Environmental Authorisation to the competent authority where any detail with respect to the Environmental Authorisation must be amended, added, substituted, corrected, removed or updated. If a new holder is proposed, an application for Amendment in terms of Part 1 of the *EIA Regulations, 2014* must be submitted.

Please note that an amendment is not required if there is a change in the contact details of the holder. In this case, the competent authority must only be notified of such changes.

5. The manner and frequency for updating the EMPr is as follows:

Amendments to the EMPr must be done in accordance with regulations 35 to 37 of the *EIA Regulations, 2014* or any relevant legislation that may be applicable at the time.

I. APPEALS

Appeals must comply with the provisions contained in the *National Appeal Regulations, 2014*.

1. An appellant (if the holder) must –

- 1.1 submit an appeal in accordance with regulation 4 *National Appeal Regulations, 2014* to the Appeal Administrator and a copy of the appeal to any registered I&APs, any

Organ of State with interest in the matter and the decision maker within 20 (twenty) calendar days from the date the holder was notified by the competent authority of this decision.

2. An appellant (if NOT the holder) must –

2.1 submit an appeal in accordance with regulation 4 *National Appeal Regulations, 2014* to the Appeal Administrator, and a copy of the appeal to the holder, any registered I&APs, any Organ of State with interest in the matter and the decision maker within 20 (twenty) calendar days from the date the holder notified the registered I&APs of this decision.

3. The holder (if not the appellant), the decision-maker, I&APs and Organ of State must submit their responding statements, if any, to the Appeal Authority and the appellant within 20 (twenty) calendar days from the date of receipt of the appeal submission.

4. This appeal and responding statement must be submitted to the address listed below -

By post: Attention: Marius Venter
Western Cape Ministry of Local Government, Environmental Affairs &
Development Planning
Private Bag X9186, Cape Town, 8000; or

By facsimile: (021) 483 4174; or

By hand: Attention: Mr Marius Venter (Tel: 021-483 3721)
Room 809, 8th floor Utilitas Building
1 Dorp Street, Cape Town, 8000; or

By e-mail: DEADP.Appeals@westerncape.gov.za

Note: You are also requested to submit an electronic copy (Microsoft Word format) of the appeal and any supporting documents to the Appeal Administrator to the address listed above and/ or via e-mail to DEADP.Appeals@westerncape.gov.za.

5. A prescribed appeal form, as well as assistance regarding the appeal processes is obtainable from the office of the appeal authority/ at: Tel. (021) 483 3721, E-mail DEADP.Appeals@westerncape.gov.za or URL <http://www.westerncape.gov.za/eadp>.

J. CONSEQUENCES OF NON-COMPLIANCE WITH CONDITIONS

Non-compliance with a condition or term of this Environmental Authorisation or EMPr may result in suspension or withdrawal of this Environmental Authorisation and may render the holder liable for criminal prosecution.

K. DISCLAIMER

The Western Cape Government, appointed in terms of the conditions of this Environmental Authorisation, shall not be responsible for any damages or losses suffered by the holder, developer or his/her successor in any instance where construction or operation subsequent to construction is temporarily or permanently stopped for reasons of non-compliance with the conditions as set out herein or any other subsequent document or legal action emanating from this decision.

Yours faithfully

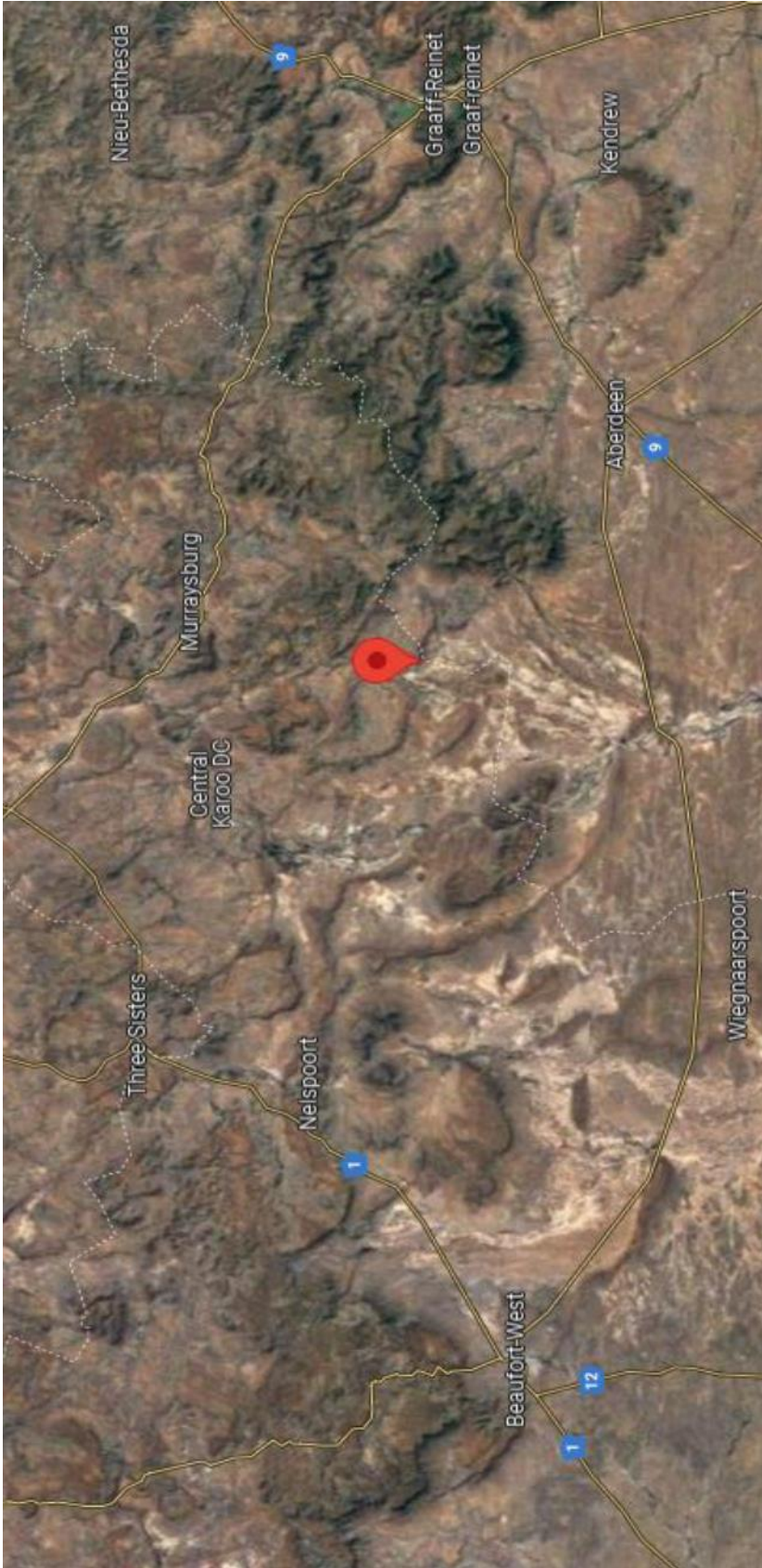
ZAIDAH TOEFY

ACTING DIRECTOR: ENVIRONMENTAL GOVERNANCE

Copied to: (1) C.W. Vermeulen (EAP)

Email: cwv@envmgp.com

ANNEXURE 1: LOCALITY MAP



ANNEXURE 2: SITE POINTS

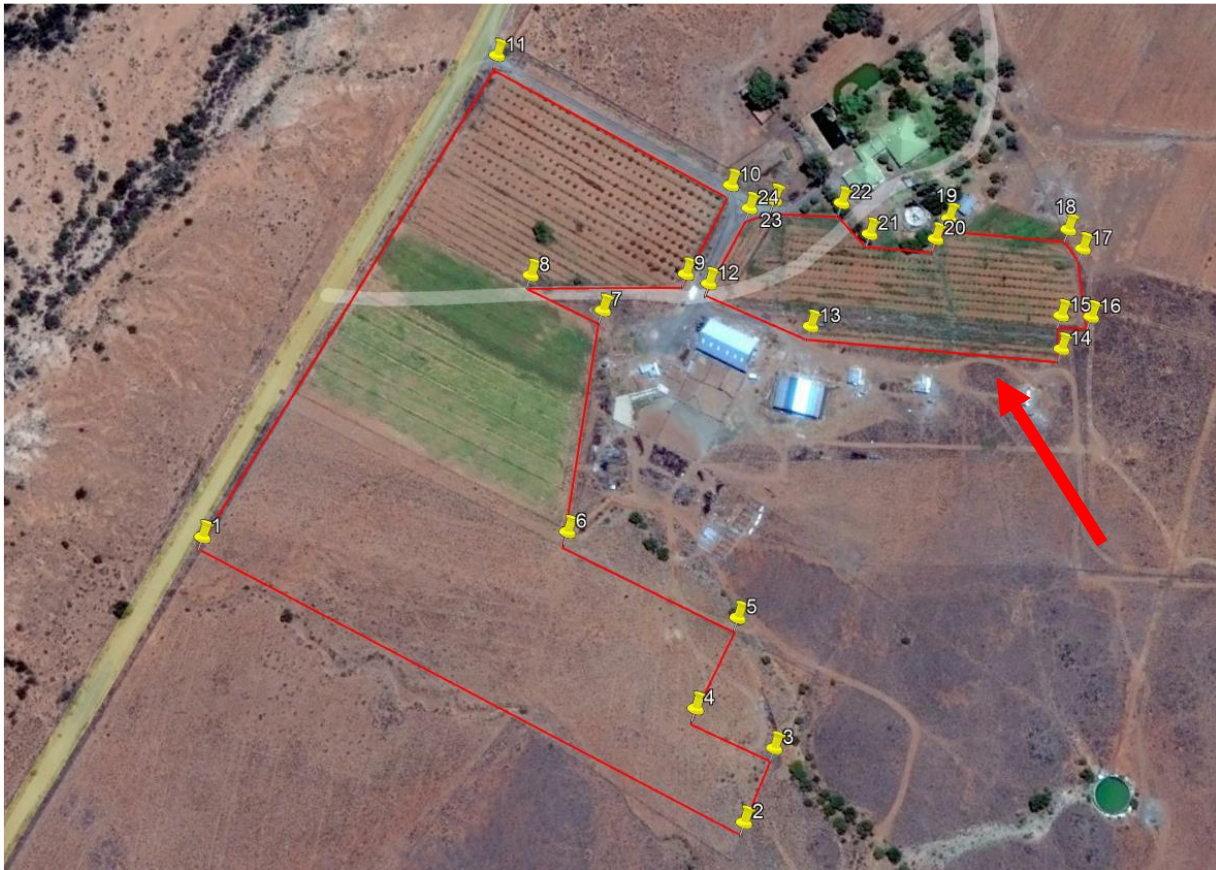


Figure 1: The red arrow indicates the cleared area (orchards) of 7.7ha

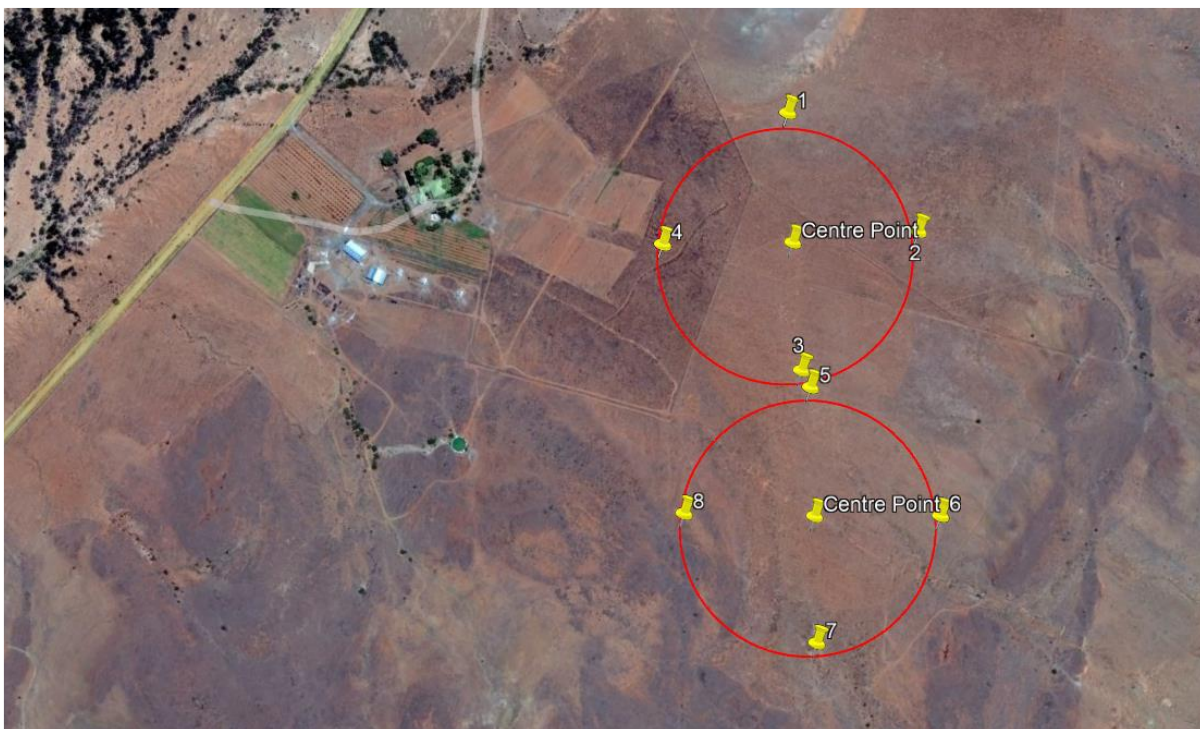


Figure 2: Centre Pivots

FOR OFFICIAL USE ONLY:

S24G REFERENCE: 14/2/4/2/3/C3/13/0008/22

ENFORCEMENT REFERENCE: 14/1/1/E3/3/2/3/L1102/20

ANNEXURE 3: REASONS FOR THE DECISION

This Environmental Authorisation is in respect of the consequences of commencement of the afore-mentioned illegal activities. An Environmental Assessment Practitioner ("EAP") was appointed to submit a section 24G Environmental Impact Assessment ("EIA") to the Department to obtain this Environmental Authorisation. The EIA was considered adequate for informed decision-making. In addition, the holder paid an administrative fine of **R25 000 (Twenty-five thousand Rand)** to meet the requirements of section 24G of the *National Environmental Management Act, 1998* ("NEMA").

In reaching its decision, the competent authority, *inter alia*, considered the following:

- a) The information contained in the application received by the competent authority on 12 April 2022, and the Comments and Responses report received by the competent authority on 20 June 2022.
- b) The Environmental Management Programme ("EMPr") dated 26 January 2022 submitted together with the application.
- c) Relevant information contained in the Departmental information base, including, the Guidelines on Public Participation and Alternatives.
- d) The objectives and requirements of relevant legislation, policies and guidelines, including section 2 of the NEMA.
- e) The comments received from Interested and Affected Parties ("I&APs") and the responses provided thereto.
- f) The sense of balance of the negative and positive impacts and proposed mitigation measures.
- g) No site inspection was undertaken for the application as the information contained in the application and appendices was deemed sufficient for decision making.

All information presented to the competent authority was taken into account in the consideration of the application for environmental authorisation. A summary of the issues which, according to the competent authority, were the most significant reasons for the decision is set out below.

1. Public Participation Process

In terms of section 24G(1)(vii)(dd) of the NEMA, "...a description of the public participation process followed during the course of compiling the report, including all comments received from interested and affected parties and an indication of how the issues raised have been addressed ...", is required.

The public participation process conducted by the EAP comprised of the following:

- An advertisement was placed in the Oudtshoorn Courant / Graff-Reinet Advertiser;
- A site notice was erected;
- Letters were sent to interested and affected parties ("I&APs") and the municipal ward councillor;
- I&APs were afforded the opportunity to provide comments on the application.

1.1 Consultation with organs of state in terms of section 24O of the NEMA

The following organs of state provided comment on the application:

- Department of Water and Sanitation (DWS)
- Heritage Western Cape (HWC)

At the end of the public participation process, only two comments from the DWS and HWC were received. The DWS stated that General Authorisation in terms of the *National Water Act (Act 36 of 1998)* was issued for the property. HWC believe that the activities will result in not negative impacts in terms of heritage resources.

All the concerns raised by I&APs were responded to and adequately addressed during the public participation process. Specific management and mitigation measures have been considered in this Environmental Authorisation and in the EMPr to adequately address the concerns raised.

The competent authority concurs with the EAP's responses to the issues raised during the public participation process and has included appropriate conditions in this Environmental Authorisation and in the EMPr.

2. Alternatives

2.1 Site Alternatives

Alternative 1 (Herewith authorised)

The preferred alternative is situated directly East of the Farmhouse at around 650m away with the topography increasing in an Easterly direction. This site also contains the required soils to establish a pivot point for the cultivation of lucerne. The development entails the planting of crops (Lucerne) on a 24ha area as well as the already established orchard on a 7.7 ha area. The area of proposed development (pivots) is situated on a relatively flat area surrounded in the distance by dolerite outcrops forming part of the Escarpment. This site has more environmental advantages to Alternative 2 and are as follows:

- The ecological value of the preferred alternative is much lower than that of Alternative 2 and would protect the environmental significance of the area.
- The area is situated against declining topography and thus allows for "free" draining by gravitational force. Any leachate resulting from agricultural fertilizer and pesticides would have time to naturally remediate itself before reaching the river downstream.
- The area also contains the necessary soil for the development of lucerne pivots.

Alternative 2

Alternative 2 is situated directly North of the farmhouse at 2.7km away in the current alluvial flood. This was considered an alternative as it contained crucial topsoil to establish a pivot point on. Another advantage of this alternative was that it was situated very close to the boreholes which will be supplying the pivots with water, which in turn will keep electricity costs down and minimize water loss. It was identified by the EAPs (specialist recommendations) and later decided that this area contained too much environmental significance for the following reasons:

- It would be developed in the floodplain and calculated that 2 weeks of the year the pivot would be under water costing the applicant large amounts of resources.
- It would be in a pristine undisturbed area as well as in the riparian vegetation zone. This would cause permanent damage to the flora and the fauna that relies on the vegetation diversity when the area is cleared.
- If cultivation started in this area, it would have a high chance of leaching nitrates (fertilizer and pesticides) directly into the river which would most certainly affect the downstream ecology and introduce waterborne alien species.
- The overall environmental damage caused would be too high to justify the development of pivot points in this area.

In conclusion, although the area was ideal for the cultivation of lucerne, the environmental loss would have been too great and was thus promptly rejected and only kept as a last resort.

2.2 The option of not implementing or continuing with the activity ("No-Go" Alternative)

Orchards

If the activity is ceased and rehabilitated, the land will then continue to be used as a camp of the preparation of livestock and revert back to a degrade vegetation status, which in no circumstance contribute to the agricultural beneficiation of the farm and could in reality only encourage loss of topsoil and the formation of erosion channels. In terms of the socio-economic impact, the major concern for this area is that a loss of unskilled labour will be experienced (at least 6 people) as well as a loss of agricultural land, where both factors are marked as large objectives in the local authority's Spatial Development Framework and Integrated Development Plan. Furthermore, a small but significant loss of income and economic growth will be experienced with the loss of the orchards.

Pivots

The land where the pivots are preferred, has a lower environmental significance than the surrounding environment. If the proposed activity was not to be authorised a major loss of unskilled labour as well as skilled labour (equipment) will result. As well as a loss of permanent employment opportunities the ability to cost effectively feed cattle a will have a direct impact on the economic growth of the applicant and as a result affect the local growth of the community. A main reason for the Lucerne Pivot points to be developed, is to provide high quality feed to livestock to remove the grazing stress of the natural surrounding environment, thus enabling more sustainable agricultural practices for the farm. Ceasing these activities would continue to put stress on the environment's vegetation due to overgrazing.

3. Environmental Impact Assessment (EIA) and Mitigation Measures

In reaching its decision, the competent authority, considered the following in respect of the EIA and mitigation measures:

3.1. Activity Need and Desirability and Regional/Planning context

The land was zoned for agricultural use and the surrounding environment have been used for agricultural activities and the neighbouring farms. The orchard of 7.7ha and the

pivot points of 24ha will not only increase agricultural capacity but also increase work opportunities for both the temporary and permanent types. Besides the agricultural activities which require a work force throughout its lifetime (planning, construction and operational phases) it provides stability for the region through job creation and the opportunity for the work force to develop their skills in agricultural sciences as well as operating heavy equipment.

3.2. Biophysical and Biodiversity Impacts

The unlawful land clearance for crop cultivation and livestock production has led to an overall loss of habitat and local species diversity. However, the significance hereof is negligible as the site was previously used as a livestock encampment area. Furthermore, the rest of the landscape features an overall low species diversity and relative uniform species composition. No species of particular conservation concern was recorded, and the likelihood of their occurrence is considered low.

4. NEMA Principles

The National Environmental Management Principles (set out in section 2 of the NEMA), which apply to the actions of all organs of state, serve as guidelines by reference to which any organ of state must exercise any function when taking any decision, and which must guide the interpretation, administration and implementation of any other law concerned with the protection or management of the environment), *inter alia*, provides for:

- the effects of decisions on all aspects of the environment to be taken into account;
- the consideration, assessment and evaluation of the social, economic and environmental impacts of activities (disadvantages and benefits), and for decisions to be appropriate in the light of such consideration and assessment;
- the co-ordination and harmonisation of policies, legislation and actions relating to the environment;
- the resolving of actual or potential conflicts of interest between organs of state through conflict resolution procedures; and
- the selection of the best practicable environmental option.

In view of the above, the NEMA principles, compliance with the conditions stipulated in this Environmental Authorisation, and compliance with the EMPr, the competent authority is satisfied that the listed activities will not conflict with the general objectives of integrated environmental management stipulated in Chapter 5 of the NEMA and that any potentially detrimental environmental impacts resulting from the listed activities can be mitigated to acceptable levels.

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