



24G Application: 14/2/4/2/2/E4/26/0047/21

ENVIRONMENTAL AUTHORISATION

Botriver Hills Trading (Pty) Ltd
P.O. Box 499
KLEINMOND
7195

Tel: (028) 284 9865
Email: pieter@gabrielskloof.co.za

Attention: Mr Pieter Heyns

APPLICATION IN TERMS OF SECTION 24G OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998) ("NEMA"): UNLAWFUL COMMENCEMENT OF A LISTED ACTIVITY: UNLAWFUL ENLARGEMENT OF TWO INSTREAM DAMS AND CULTIVATION OF NEW VINEYARDS ON PTN 7 OF FARM AVONTUUR 429, AND THE CONSTRUCTION OF A WINE CELLAR AND HELIPAD ON FARM 10/429, THEWATERSKLOOF

With reference to your application dated 23 November 2021 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 dated 23 November 2021.

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

Botriver Hills Trading (Pty) Ltd

C/o Mr Pieter Heyns

PO Box 499

KLEINMOND

7195

Tel: (028) 284 9865

Email: pieter@gabrielskloof.co.za

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

C. LIST OF ACTIVITIES AUTHORISED

Listed Activities	Activity/Project Description
<p>Government Notice No. R. 1182 of 1997 – Activity Number: 1(d) Activity Description: <i>The construction or upgrading of roads, railways, airfields and associated structures.</i></p>	<p>Internal unsurfaced access roads, none wider than four metres were constructed on much of the farm to provide access to and around cultivated vineyards, orchards and firebreaks.</p>
<p>Government Notice No. R. 1182 of 1997 – Activity Number: 1(j) Activity Description: <i>The construction or upgrading of dams, levees and weirs affecting the flow of a river.</i></p>	<p>Expansion of the Olive shed dam, the lower of two instream dams on unnamed tributary of the Langhoogte stream by construction of a new dam wall approximately 1m in height and with a highwater mark of approximately 1ha, replacing an earlier lower instream dam. The expanded dam has a filled capacity of approximately 20 000m³.</p>

<p>Government Notice No. R. 1182 of 1997 – Activity Number: 2(d) Activity Description: <i>The change in land use from grazing to any other form of agricultural use.</i></p>	<p>Change of land use from grazing to cultivated vineyards covering approximately 5.2ha.</p>
<p>Government Notice No. R386 of 2006 Activity Number: 1(j) Activity Description: <i>The construction of facilities or infrastructure, including associated structures or infrastructure, for agri-industrial purposes, outside areas with an existing land use zoning for industrial purposes, that cover an area of 1 000 square metres or more.</i></p>	<p>Construction of a wine cellar and bottling facility on Farm 10/429, approximately 5 000 square metres in extent.</p>
<p>Government Notice No. R386 of 2006 Activity Number: 1(q) Activity Description: <i>The construction of facilities or infrastructure, including associated structures or infrastructure, for the landing, parking and maintenance of aircraft including - (i) helicopter landing pads, excluding helicopter landing facilities and stops used exclusively by emergency services.</i></p>	<p>Construction of a helipad on Farm 10/429, approximately 1050m² in extent with a disturbed footprint 2200m² in extent.</p>
<p>Government Notice No. R.386 of 2006 Activity Number: 19 Activity Description: <i>The development of a new facility or the transformation of an existing facility for the conducting of manufacturing processes, warehousing, bottling, packaging, or storage, which, including associated structures or infrastructure, occupies an area of 1 000 square metres or more outside an existing area zoned for industrial purposes.</i></p>	<p>Construction of a wine cellar and bottling facility on Farm 10/429, approximately 5000m² in extent.</p>
<p>As similarly listed in – Government Notice No. R.327 of 2017 Activity Number: 8 Activity Description: <i>The development and related operation of hatcheries or agri-industrial facilities outside industrial complexes where the development footprint covers an area of 2 000 square metres or more.</i></p>	<p>The wine cellar and associated facilities on farm 10/429 are an 'undertaking involving the beneficiation of agricultural produce' in excess of 2000m² in extent.</p>

<p>Government Notice No. R.327 of 2017 Activity Number: 12 Activity Description: <i>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</i></p>	<p>The expanded footprints of the two instream dams expanded in 2000-2003 and 2005, respectively, each exceed 100 square metres within a watercourse.</p>
<p>Government Notice No. R. 327 of 2017 Activity Number: 19 Activity Description: <i>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</i></p>	<p>The construction of the two instream dams would have required the placement of more than 10 cubic metres of fill in a watercourse, the unnamed tributary of the Langhoogte Stream.</p>
<p>Government Notice No. R.327 of 2017 Activity Number: 27 Activity Description: <i>The clearance of an area of 1 hectares or more, but less than 20 hectares of indigenous vegetation</i></p>	<p>The cultivation of pasture areas approximately 5.2 hectares in extent between 2000 and 2005, were it to occur today, would constitute this listed activity as the pastures would have supported some indigenous vegetation.</p>
<p>Government Notice No. R.327 of 2017 Activity Number: 48 Activity Description: <i>The expansion of— (i) infrastructure or structures where the physical footprint is expanded by 100 square metres or more; or (ii) dams or weirs, where the dam or weir, including infrastructure and water surface area, is expanded by 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</i></p>	<p>The expanded footprints of the two instream dams expanded in 2000-2003 and 2005, respectively, each exceed 100 square metres within a watercourse.</p>

<p>metres of a watercourse, measured from the edge of a watercourse</p>	
<p>Government Notice No. R.325 of 2017 Activity Number: 15 Activity Description: <i>The clearance of an area of 20 hectares or more of indigenous vegetation</i></p>	<p>A total of 24.4 hectares of indigenous vegetation was cleared between 2000 and 2009.</p>
<p>Government Notice No. R.325 of 2017 Activity Number: 16 Activity Description: <i>The development of a dam where the highest part of the dam wall, as measured from the outside toe of the wall to the highest part of the wall, is 5 metres or higher or where the highwater mark of the dam covers an area of 10 hectares or more.</i></p>	<p>Both instream dams – the Olive Shed Dam and the Top Dam, exceed 5 metres at the highest point of the wall. The Olive Shed Dam is approximately 10 metres in height and the Top Dam is approximately 10 metres at its highest point.</p>
<p>Government Notice No. R.324 of 2017 Activity Number: 12 Activity Description: <i>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. i. Western Cape i. 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; ii. Within critical biodiversity areas identified in bioregional plans; iii. 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 erven in urban areas; iv. 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;</i></p>	<p>2 200 square metres of indigenous vegetation in a critically endangered ecosystem, Western Rûens Shale Renosterveld, were cleared or disturbed to construct the helipad on farm 10/429. A total of 24.4 hectares of indigenous vegetation and a further 5.7 hectares were cleared for cultivation between 2000 and 2009 on farm 7/429. Vegetation was ecotonal between Overberg Sandstone Fynbos and Western Ruens Shale Renosterveld, both listed since 2011 as Critically Endangered</p>

<p><i>or v. On land designated for protection or conservation purposes in an Environmental Management Framework adopted in the prescribed manner, or a Spatial Development Framework adopted by the MEC or Minister.</i></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 Portion 7 and Portion 10 of the Farm Avontuur 429, Caledon.

The SG digit codes are:

C01300000000042900007

C01300000000042900010

Property boundary (Farm 7/429):

Point	Latitude (S)	Longitude (E)
1	34° 15' 30.53" South	19° 15' 9.25" East
2	34° 15' 18.58" South	19° 15' 24.48" East
3	34° 15' 9.65" South	19° 15' 37.66" East
4	34° 15' 12.17" South	19° 15' 38.95" East

Property boundary (Farm 10/429):

Point	Latitude (S)	Longitude (E)
1	34° 14' 8.84" South	19° 14' 44.68" East
2	34° 14' 1.72" South	19° 14' 49.63" East
3	34° 14' 2.47" South	19° 14' 52.57" East
4	34° 14' 2.47" South	19° 14' 52.57" East

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

Herein-after referred to as "the site".

E. DETAILS OF THE ENVIRONMENTAL ASSESSMENT PRACTITIONER (“EAP”)

Infinity Environmental (Pty) Ltd

c/o Mr Jeremy Rose

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MOWBRAY

7705

Tel: 084 055 5678

Email: jeremy@infinityenv.co.za

F. DETAILS OF THE ACTIVITIES UNDERTAKEN

The development entails various farming related activities undertaken on the properties since 2003. Historical aerial and satellite imagery confirm that Farm 7/429 was from at least 1938 under cultivation for grain crops and for grazing of livestock. Grain was cultivated on the deeper shale soils of the lower slopes, and pastures were present on the higher sandstone slopes where soils are shallower. Farm 10/429 was also cultivated for grain and canola until its purchase by the current owner. In 2003 the land was acquired by current owner, a family-owned and operated entity registered as Botriver Hills Trading. The landowner commenced developing the farms to produce wine and olives. The two farms are managed as a unit although separated by 1.6 kilometres. Parts of Farm 7/429 were between 2000 and 2004 converted from pasture and to cultivated vineyards, with associated internal access roads. Two existing instream dams were expanded to allow for the storage of irrigation water. A wine cellar was constructed, and a helipad was established on Farm 10/429.

Enlargement of the top dam

The top dam appears to have been present by 2000 but was much smaller in extent. A new dam wall was constructed across the valley between 2000 and 2004, to provide storage for pumped groundwater as well as surface flows. The dam has a filled capacity of approximately 35 000m³. The wall is constructed of earth fill and is approximately 190 metres long and 10 metres high. The dam is used for irrigation purposes and is filled partly from surface flows and partly by groundwater pumped from boreholes.

Enlargement of the olive shed dam

The olive shed dam was present by 1989 but was much smaller in extent. A new dam wall was constructed across the valley downstream of the old wall in 2005, to provide storage for pumped groundwater as well as surface flows. The dam has a filled capacity of approximately 20 000 cubic metres but is not filled beyond 8000m³ due to structural concerns. The wall is constructed of earth fill and is approximately 105 metres long and 10 metres high. The dam is used for irrigation purposes and is filled primarily from boreholes.

Change of land use of pasture areas

A total of 5.2 hectares of pasture were ploughed and planted for vineyards between 2000 and 2005. These areas were primarily in the southwestern parts of the site and had been used as pasture since 1989 or earlier.

Construction of internal access roads along the boundaries of new cultivated land

Unsurfaced access roads were constructed within the site, less than four metres in width, to provide access to and around new cultivated vineyards and orchards.

Construction of a wine cellar, restaurant and ancillary buildings

A complex of buildings including a wine cellar, restaurant, tasting room, administrative offices, and ancillary buildings was constructed between 2008 and 2009 on Farm 10/429. It was constructed within formerly cultivated land, and includes facilities for processing, maturation, and bottling of wines. It is therefore an agro-processing or agri-industrial facility. The total footprint of this complex of buildings and surrounding parking and lawns is approximately 1.3 hectares.

Construction of a helicopter landing pad

A helicopter landing pad was constructed on Farm 10/429, which involved the clearing or disturbance of approximately 2200m² of vegetation, placement of fill material, levelling, and planting with kikuyu grass.

Clearing of indigenous vegetation

A total of 24.4 hectares of indigenous vegetation were cleared, ploughed and planted for vineyards and orchards between 2000 and 2009 on Farm 7/429. The new orchards are located on the lower (northern) parts of the site, and the vineyards on the upper slopes. These activities took place in three phases, with approximately 17.5 hectares being cleared for cultivation between 2000 and July 2004, a further 6.9 hectares between July 2004 and October 2006, and 1.1 hectares between November 2006 and October 2009.

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 implemented alternative described in the application and assessment report dated 23 November 2021 on the site as described in Section D above.
2. 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.
3. 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

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

PART III

Notification and administration of an appeal

5. The holder must in writing, within 14 (fourteen) calendar days of the date of this decision–
 - 5.1 notify all registered Interested and Affected Parties (“I&APs”) of –
 - 5.1.1 the outcome of the application;
 - 5.1.2 the reasons for the decision as included in Annexure 3;
 - 5.1.3 the date of the decision; and
 - 5.1.4 the date when the decision was issued.
 - 5.2 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.
 - 5.3 draw the attention of all registered I&APs to the manner in which they may access the decision.
 - 5.4 provide the registered I&APs with:
 - 5.4.1 the name of the holder (entity) of this Environmental Authorisation;
 - 5.4.2 name of the responsible person for this Environmental Authorisation;
 - 5.4.3 postal address of the holder;
 - 5.4.4 telephonic and fax details of the holder;
 - 5.4.5 e-mail address, if any, of the holder; and
 - 5.4.6 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*.
6. The listed activities, including site preparation, may not commence within 34 (thirty-four) calendar days from the date of issue of this Environmental Authorisation. 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

7. The draft Environmental Management Programme ("EMPr") of November 2021 compiled by Infinity Environmental and submitted as part of the application for environmental authorisation is hereby approved and must be implemented.
8. The EMPr must be included in all contract documentation for all relevant phases of implementation.

PART V

Monitoring

9. 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).
10. 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

11. 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

12. 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.

13. 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.
14. The mitigation measures outlined in section 8 of the Botanical Assessments of January 2021 and May 2021 must be adhered to.
15. The mitigation measures outlined in section 10 of the Aquatic Assessment of March 2021 and must be adhered to.
16. The EA holder's commitment document (**Annexure 4**) received together with the application stated that a commitment will be made to the Overberg Conservation Trust for purpose of securing a biodiversity offset (in the form of a financial offset to the sum of R112 200 (One hundred and twelve thousand two hundred rand). As per the commitment document, proof of adherence and compliance with the commitment must be submitted to the Department within 6 months of date of this EA.

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. 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.

4. 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.

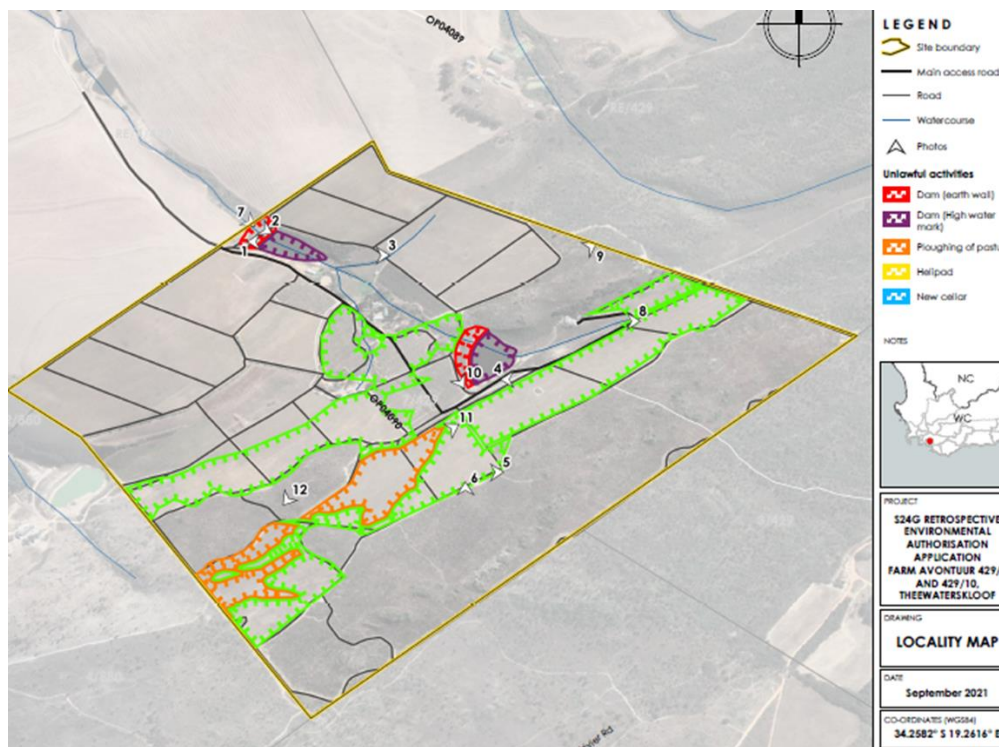
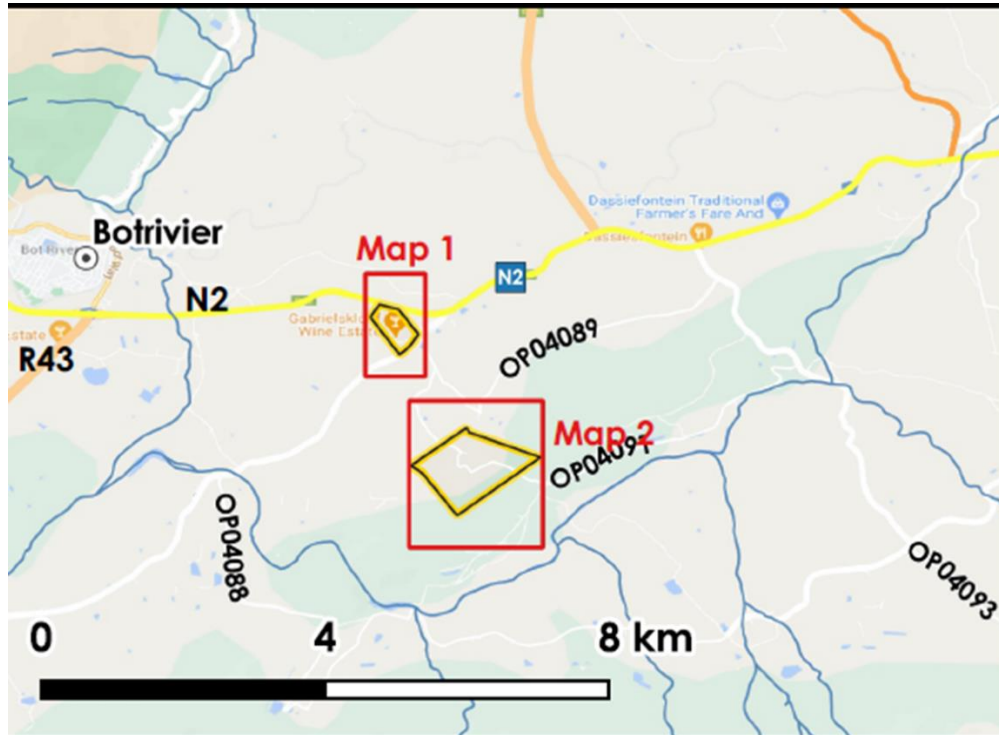
Yours faithfully

ZAIDAH TOEFY
ACTING DIRECTOR: ENVIRONMENTAL GOVERNANCE

Copied to: (1) Jeremy Rose (EAP)
(2) Rhett Smart (CapeNature)

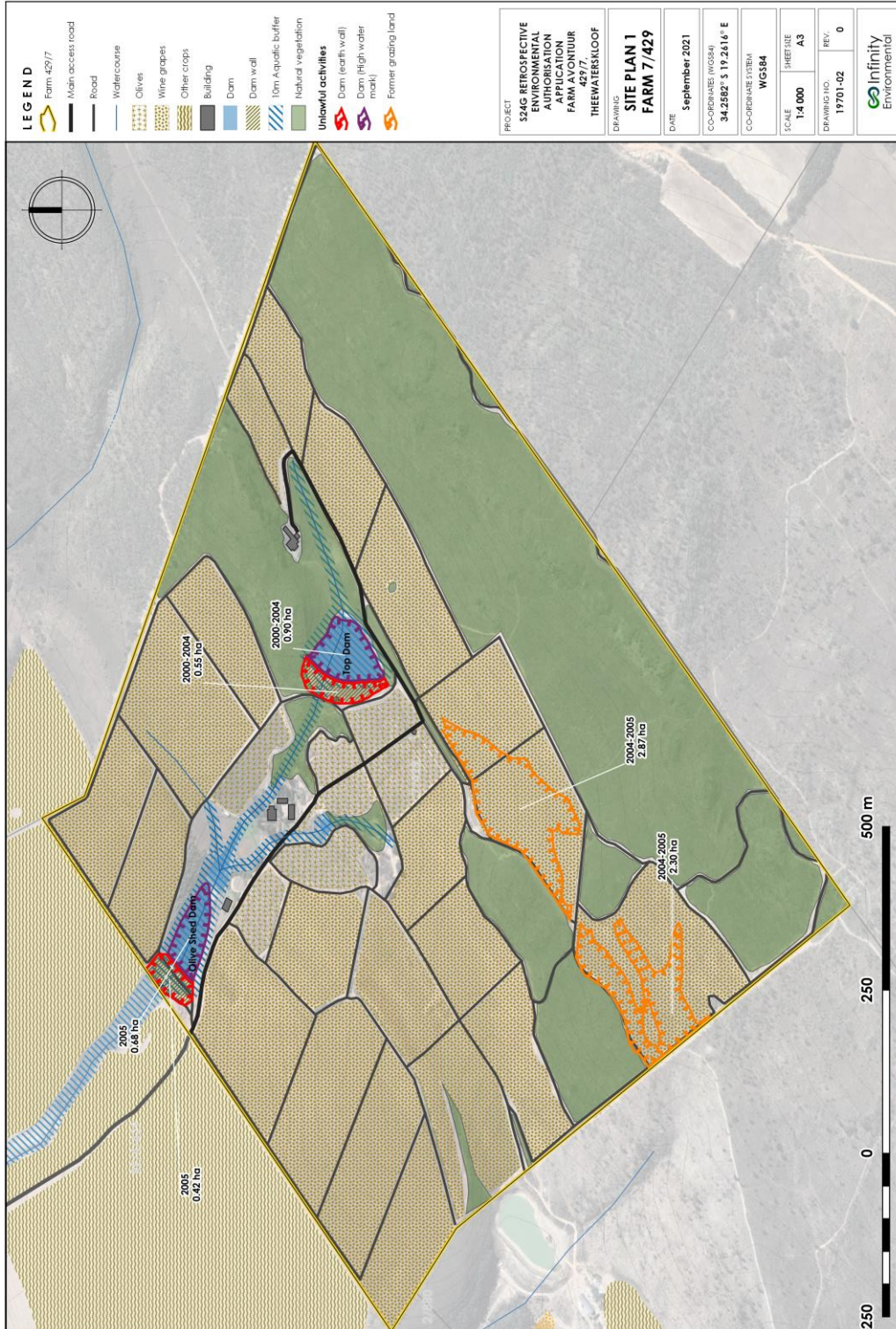
Email: jeremy@infinityenv.co.za
Email: rsmart@capenature.co.za

ANNEXURE 1: LOCALITY MAPS



ANNEXURE 2: SITE PLANS

FARM 7/429



FARM 10/429



FOR OFFICIAL USE ONLY:

S24G REFERENCE: 14/2/4/2/2/E4/26/0047/21

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 R250 000 (Two hundred and fifty 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 form dated 23 November 2021 with supporting environmental impact assessment and mitigation measures.
- b) The Environmental Management Programme ("EMPr") of November 2021 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) The site visit conducted on
Date/s: 10 March 2022
Attended by: Officials from the Directorate: Environmental Governance.
- h) The appeal decision on the 24G administrative fine dated 17 October 2022.

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 reason 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 Hermanus Times;
- 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:

- Breede Gouritz Catchment Management Agency ("BGCMA")
- CapeNature ("CN")
- Overberg District Municipality ("ODM")

A summary of the comments received follows below.

Breede Gouritz Catchment Management Agency

The BGCMA confirmed that water uses were applicable in terms of the *National Water Act, 1998 (Act 36 of 1998)* and is the subject of a current water use licence application pending approval.

CapeNature

CN stated that they agree with the proposed mitigation measures, including the biodiversity offset in its proposed form as a financial contribution, and requested that the applicant confirm its intention to implement the offset. CN recommended that the authority deviate from the offset calculator to reduce the administrative fine to a minimum in light of the

proposed biodiversity offset. Furthermore, CN required the applicant to an in-principle agreement regarding the biodiversity offset prior to the consideration of the administrative fine.

The applicant has provided written confirmation of its intention to implement the proposed offset in mitigation of the biodiversity impacts. This in-principle agreement has been completed and is included in the 24G application.

Overberg District Municipality

The ODM confirmed its agreement with the proposed mitigation measures and recommended the applicant apply for rezoning of the remaining natural areas to "Natural Environment Zone" on the properties.

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 Activity Alternatives

Alternative 1 (Herewith authorised)

The applicant acquired the site, Portions 10 and 7 of the Farm Avontuur 429, in 2001 and 2003 respectively, with the intention of establishing a wine and olive farm. The farms were at the time used primarily for wheat and canola cultivation and livestock grazing. Design or layout alternatives are of limited application as the activities were undertaken in response to the terrain, soils and topography of the site. The two dams were expanded from existing smaller dams on the single watercourse on the property, and the cultivation took place on and adjacent to existing pastures. The cellar was constructed with easy access from the N2 and the helipad on a flat section of the site outside of the cultivated lands.

The development entails various farming related activities undertaken on the properties since 2003. Historical aerial and satellite imagery confirm that Farm 7/429 was from at least

1938 under cultivation for grain crops and for grazing of livestock. Grain was cultivated on the deeper shale soils of the lower slopes, and pastures were present on the higher sandstone slopes where soils are shallower. Farm 10/429 was also cultivated for grain and canola until its purchase by the current owner ("the holder" of this EA). In 2003 the land was acquired by the holder, a family-owned and operated entity registered as Botriver Hills Trading. The landowner commenced developing the farms to produce wine and olives. The two farms are managed as a unit although separated by 1.6 kilometres. Parts of Farm 7/429 were between 2000 and 2004 converted from pasture and to cultivated vineyards, with associated internal access roads. Two existing instream dams were expanded to allow for the storage of irrigation water. A wine cellar was constructed, and a helipad was established on Farm 10/429.

Enlargement of the top dam

The top dam appears to have been present by 2000 but was much smaller in extent. A new dam wall was constructed across the valley between 2000 and 2004, to provide storage for pumped groundwater as well as surface flows. The dam has a filled capacity of approximately 35 000m³. The wall is constructed of earth fill and is approximately 190 metres long and 10 metres high. The dam is used for irrigation purposes and is filled partly from surface flows and partly by groundwater pumped from boreholes.

Enlargement of the olive shed dam

The olive shed dam was present by 1989 but was much smaller in extent. A new dam wall was constructed across the valley downstream of the old wall in 2005, to provide storage for pumped groundwater as well as surface flows. The dam has a filled capacity of approximately 20 000 cubic metres but is not filled beyond 8000m³ due to structural concerns. The wall is constructed of earth fill and is approximately 105 metres long and 10 metres high. The dam is used for irrigation purposes and is filled primarily from boreholes.

Change of land use of pasture areas

A total of 5.2 hectares of pasture were ploughed and planted for vineyards between 2000 and 2005. These areas were primarily in the southwestern parts of the site and had been used as pasture since 1989 or earlier.

Construction of internal access roads along the boundaries of new cultivated land

Unsurfaced access roads were constructed within the site, less than four metres in width, to provide access to and around new cultivated vineyards and orchards.

Construction of a wine cellar, restaurant and ancillary buildings

A complex of buildings including a wine cellar, restaurant, tasting room, administrative offices, and ancillary buildings was constructed between 2008 and 2009 on Farm 10/429. It was constructed within formerly cultivated land, and includes facilities for processing,

maturation, and bottling of wines. It is therefore an agro-processing or agri-industrial facility. The total footprint of this complex of buildings and surrounding parking and lawns is approximately 1.3 hectares.

Construction of a helicopter landing pad

A helicopter landing pad was constructed on Farm 10/429, which involved the clearing or disturbance of approximately 2200m² of vegetation, placement of fill material, levelling, and planting with kikuyu grass.

Clearing of indigenous vegetation

A total of 24.4 hectares of indigenous vegetation were cleared, ploughed and planted for vineyards and orchards between 2000 and 2009 on Farm 7/429. The new orchards are located on the lower (northern) parts of the site, and the vineyards on the upper slopes. These activities took place in three phases, with approximately 17.5 hectares being cleared for cultivation between 2000 and July 2004, a further 6.9 hectares between July 2004 and October 2006, and 1.1 hectares between November 2006 and October 2009.

Alternative 2

The unlawful activities having been fully implemented more than 11 years before this application it is not feasible at this stage to consider alternatives to the primary activities (i.e. construction of dams and cultivation of land). Measures to mitigate the operational impacts of these activities have however been proposed and will be implemented by the applicant.

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

The applicant has invested heavily in the farm, including the planting and maintenance of orchards and vineyards, the development of a wine cellar and restaurant and related brand, and the employment over many years of local staff. It is noted in the botanical and aquatic studies that ceasing the activity would not reverse the changes to the site and that rehabilitation back to the pre-commencement state is not feasible. Ceasing the activities would result in the farm becoming unviable in the absence of a water source and cellar, which would in all likelihood result in further degradation of remaining natural vegetation and uncontrolled invasion by alien species.

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 site is zoned for Agriculture Zone 1; the activities are permitted in terms of the property's existing land use rights. It is not known whether the land use rights at the time permitted the activities. The properties are zoned for Agriculture Zone 1 in terms of the Theewaterskloof Municipality's 2020 Integrated Zoning Scheme. Farm 10/429 has 'agriculture' as a primary use right and consent uses for Agricultural Industry, Wine tasting facilities, wine sales, restaurant, conference room, and storage facilities. A further consent use may be required for retention of the helicopter landing pad. It is not known whether consent uses would have been required under the zoning scheme applicable at the time of the activities.

3.2. Biophysical Biodiversity Impacts

The unlawful activities have resulted in the loss of indigenous vegetation in areas mapped as Critical Biodiversity Areas (CBAs) as well as having impacts on the watercourse. In terms of aquatic impacts, the expansion of the dams would have impacted on the flow in the watercourse, with flow likely to overtop the dams only during the wet winter period. This had the effect of extending the period during which there is little or no surface flow in the watercourse. The increase in the size of the dams may result in the direct disturbance of aquatic habitat in the tributary within the dam footprints.

3.3. Biodiversity Offsets Investigated and Considered

A biodiversity offset equivalent to 6.6 hectares of renosterveld is required in order to mitigate the loss of biodiversity associated with the unlawful helipad construction to an acceptable level. The costs for securing and managing an offset site of the required size for a ten-year period have been estimated based on the implementation being undertaken by the Overberg Renosterveld Conservation Trust as part of a larger, 100 ha easement in a similar vegetation type. The holder will therefore make a financial contribution of R 112 200 to the Overberg Renosterveld Contribution Trust as an offset for the loss of critically endangered renosterveld during the construction of the helipad. The contribution should be made within 6 months of this environmental authorisation.

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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ANNEXURE 4



GABRIËLSKLOOF

Department of Environmental Affairs and development planning
Utilitas Building
1 Dorp
Street Cape Town
8001

To the members of the relevant assessment committee,

Having regard to the draft environmental impact assessment undertaken for the unlawful development in 2008 of, inter alia, a helicopter landing pad on portion 10 of Farm Avontuur 749, and to the mitigation measures proposed therein for loss of biodiversity associated with the development, the company Botriver Hills Trading hereby confirms its commitment to making a financial contribution to the Overberg Renosterveld Conservation Trust (the Trust) for the purposes of securing a biodiversity offset.

The calculated contribution of R 112 200 will be made within six months of receipt of an environmental authorization for the development from the Department of Environmental Affairs and Development Planning, should this be granted, and will be paid to the Trust via electronic bank transfer to the Trust's nominated account. These funds are to be used for the sole purpose of securing and managing a biodiversity offset in Western Ruens Shale Renosterveld or another critically endangered renosterveld ecosystem occurring in the Overberg District

Yours Truly

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BN. Heyns – Founder and Chairman