

24G Application: 14/2/4/2/2/B4/45/0025/21

ENVIRONMENTAL AUTHORISATION

The Owner
Farm Rust en Vrede
PO Box 46
STELLENBOSCH
7599

Email: abri.dewitt@mweb.co.za
Tel: (083) 609 1193

Attention: Abraham Johannes de Witt

Dear Sir

APPLICATION IN TERMS OF SECTION 24G OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998) ("NEMA"): UNLAWFUL CONSTRUCTION WITHIN A WATERCOURSE ON PORTION 421 OF FARM RUST EN VREDE NO.124, STELLENBOSCH

With reference to your application of June 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 of June 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

Mr Abraham Johannes de Witt
PO Box 46
STELLENBOSCH
7599

Tel: 083 609 1193
Email: abri.dewitt@mweb.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. 327 of 2017 –</p> <p>Activity Number: 12</p> <p>Activity Description: <i>The development of (ii) infrastructure or structures with a physical footprint of 100 square metres or more; where such development occurs;</i></p> <p><i>(a) within a watercourse;</i></p> <p><i>(b) in front of a development setback; or</i></p>	<p>The holder constructed a residential dwelling and associated infrastructure within/ adjacent to a small seasonal stream and realigned a section of the stream. The dwelling is situated within 32m from the stream and has a footprint of more than 100m².</p>

<i>(c) if no development setback exists, within 32 metres of a watercourse, measured from the edge of a watercourse.</i>	
<p>Government Notice No. 327 of 2017 –</p> <p>Activity Number: 19</p> <p>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; but excluding where such infilling, depositing, dredging, excavation, removal or moving -</i></p> <p><i>(a) will occur behind a development setback;</i></p> <p><i>(b) is for maintenance purposes undertaken in accordance with a maintenance management plan;</i></p>	<p>The holder constructed a residential dwelling and associated infrastructure within/ adjacent to a small seasonal stream and realigned a section of the stream. More than 10m³ material (such as soil, sand, pebbles or rock) would have been infilled into or removed from the watercourse during these construction activities.</p>

The abovementioned list is hereinafter referred to as “the listed activities” or “development”.

D. PROPERTY DESCRIPTION AND LOCATION

The listed activities commenced on Portion 421 of the Farm Rust and Vrede No. 124, Stellenbosch Registration Division.

The SG digit code is: C0670000000012400421

The co-ordinates for the site boundary are:

Point	Latitude (S)	Longitude (E)
1	33° 54' 21.96" South	18° 56' 36.67" East
2	33° 54' 31.64" South	18° 56' 45.32" East
3	33° 54' 32.23" South	18° 56' 42.45" East
4	33° 54' 31.19" South	18° 56' 40.50" 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")

Cornerstone Environmental Consultants (Pty) Ltd.

c/o Mari de Villiers

PO Box 12606

DIE BOORD

7613

Tel: 083 235 8733

Email: mari@cornerstoneenviro.co.za

F. DETAILS OF THE ACTIVITIES UNDERTAKEN

The holder acquired the property in 2013. Up to 2013, the property formed part of the Hillcrest Berry Orchards farm and was used for agricultural purposes. During March 2020, the holder commenced with the site preparation for the planned construction of a second residential dwelling and associated infrastructure within/near a non-perennial watercourse on the property and realigned a section of the stream. The construction of the second residential dwelling and associated infrastructure (such as paved areas) of about 600m² (~0.06ha) in extent, and realignment of a section of the stream, was commenced with in March 2020 and was completed during the first quarter of 2021. To realign the stream, a stone-packed channel was created around the dwelling. It is proposed to cover the watercourse at the dwelling with a wooden deck. The works were undertaken immediately downstream of a diversion works in the watercourse that pipes water to the adjacent property. The remainder of the flow in the watercourse continues down the realigned watercourse channel.

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 of June 2021 on the site as described in Section D above.
2. The development must be concluded within five years from the date of continuation of the first listed activity.
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 commencement of the construction 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 the condition 6 of this EA.

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. 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

8. The draft Environmental Management Programme ("EMPr") of June 2021 compiled by Cornerstone Environmental Consultants 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, any independent assessments of financial provision for rehabilitation and environmental liability, closure plans, 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, the EMPr and the closure plan (where applicable) 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.
15. The recommendations contained in the Aquatic Freshwater report of May 2021 must be adhered to and strictly implemented.
16. The Maintenance Management Plan dated 24 June 2021 must be adhered to and strictly implemented.

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

ADV. CHARMAINE MARÉ
DIRECTOR: ENVIRONMENTAL GOVERNANCE

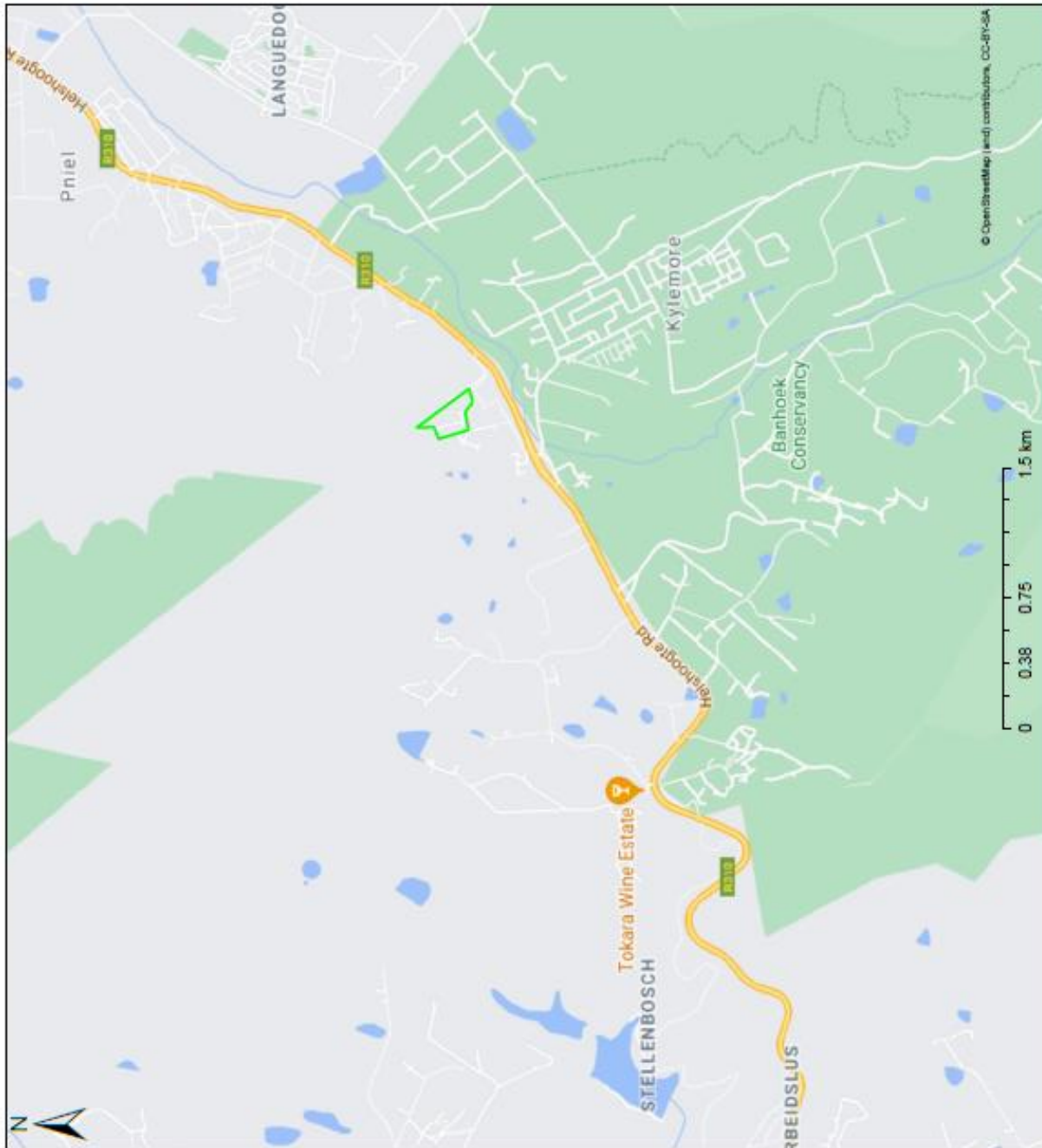
Copied to: (1) Pieter de Villiers (EAP)

Email: Pieter@cornerstoneenviro.co.za

ANNEXURE 1: LOCALITY MAP

Ptn 421 of Farm No. 124: Locality Map

Legend



Scale: 1:36 112

Date created: June 23, 2021

Compiled with CapeFarmMagger



**Western Cape
Government**

Agriculture

FOR OFFICIAL USE ONLY:

S24G REFERENCE: 14/2/4/2/2/B4/45/0025/21

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 R50 000 (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 of June 2014 and the Comments and Responses report of October 2021.
- b) The Environmental Management Programme ("EMPr") of June 2021 submitted together with the application.
- c) The Aquatic specialist report of May 2021.
- d) The Maintenance Management Plan dated 24 June 2021.
- e) Relevant information contained in the Departmental information base, including, the Guidelines on Public Participation and Alternatives.
- f) The objectives and requirements of relevant legislation, policies and guidelines, including section 2 of the NEMA.
- g) The comments received from Interested and Affected Parties ("I&APs") and the responses provided thereto.
- h) The sense of balance of the negative and positive impacts and proposed mitigation measures.
- i) The site visit conducted on 25 November 2021 attended by officials from this Department.

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 **Eikestad News** on 6 May 2021,
- A site notice was erected,
- Letters were sent to interested and affected parties ("I&APs") and the municipal ward councillor, and
- 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

- CapeNature
- Department of Agriculture
- Department of Water and Sanitation

A summary of their comments follows below.

CapeNature

CapeNature stated that the development site was historically covered by Boland Granite Fynbos. According to the latest National Biodiversity Assessment (NBA 2018) Boland Granite Fynbos qualifies as Endangered largely because of alien infestations despite it being relatively well protected. However, the site was previously transformed by agricultural activities. The permanent structures in and adjacent to streams and further modification should generally not be supported. Had this application gone through an EIA process prior to construction we would have requested that the applicant explore alternative with a greater setback from the stream. The stream has been confined by a stone packed channel. Although the stream is seasonal with much of its flow already been taken off upstream of the site, it is important that some flow downstream is maintained and that the already modified condition of the stream does not worsen.

CapeNature noted that the aquatic specialist has provided several mitigation measures and that a Maintenance Management Plan of June 2021 ("MMP") has been drawn up. These mitigation measures indicate that at least 10% of the flow must be allowed to go downstream. In terms of erosion, of high importance is that the site is consistently monitored for erosion and blockages and that remedial measures are put in place immediately to

prevent this. The MMP primarily deals with repairs, removal of sediment and clearing of alien vegetation and does not allow for additional structures and CapeNature supports the implementation of the EMPr together with operational monitoring.

Comments were received from the Department of Water and Sanitation ("DWS") prior to the submission of the section 24G application. In their comments they indicated that the DWS will not be proceeding with any further investigations on the matter.

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 Location/Site Alternatives

Alternative 1 (Herewith authorised)

The activity entails the commencement of the construction of a residence and associated infrastructure within/adjacent to the small seasonal stream, and the associated realignment of the stream with a development footprint size of approximately 600m². To realign the stream, a stone-packed channel was created around the dwelling. The works were undertaken immediately downstream of a diversion works in the watercourse that pipes water to the adjacent property. The remainder of the flow in the watercourse continues down the realigned watercourse channel. No other alternatives were considered as the applicant purchased the property with the intention of building a second residential dwelling.

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/ Regional Planning context

The property is zoned "Agricultural and Rural Zone". The Applicant has received municipal approval to construct a second residential dwelling on the property. The local authority (Stellenbosch Municipality) has approved the building plans for the main house as well as the second dwelling on the property. The approval for the second dwelling is valid for completion within a one-year period.

3.2. Biophysical and Biodiversity Impacts

The activities undertaken on the site have resulted in a localised impact on biodiversity. The assessment concluded that *"The freshwater impacts associated with the works undertaken are the physical disturbance and loss of aquatic habitat during construction. Some alteration to the hydraulics in the watercourse within the realigned channel may also take place. Associated with the disturbance is the potential for erosion of the watercourse channel downstream of the works and the invasion with alien vegetation."* With proper mitigation, the impacts may be managed to acceptable levels, however the negative impacts upon the receiving environment cannot be ignored.

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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