



24G Application: 14/2/4/2/2/E3/10/0002/21

ENVIRONMENTAL AUTHORISATION

The Trustees
Bruintjiesrivier Trust
PO Box 367
SWELLENDAM
6740

Email: henk@lando.co.za

Tel: (082) 557 3398

Attention: H.J.P van Zyl

Dear Sir

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 THE BRUINTJIESRIVIER DAM ON FARM BRUINTJIESRIVIER NO. 205, SWELLENDAM

With reference to your application dated 20 May 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 21 May 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

Bruintjiesrivier Trust
 c/o Hendrik Johannes Petrus van Zyl
 PO Box 367
 SWELLENDAM
 6740
 Cell: (082) 557 3398
 Email: henk@lando.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: 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 from a watercourse; but</i></p>	<p>The preparation for dam construction includes the movement of soil to create a basin area and embankment.</p> <p>Activity 19 is triggered as the existing dam is located within a drainage line / water course.</p>

<p><i>excluding where such infilling, depositing, dredging, excavation, removal or moving (a) will occur behind a development setback; (b) is for maintenance purposes undertaken in accordance with a management plan; (c) falls within the ambit of activity 21 in this Notice, in which case that activity applies.</i></p>	<p>Commencement occurred with moving the soil into a number of piles. The volume soil that was moved is unknown, but it far exceeds 5m³</p>
<p>Government Notice No. R327 of 2017 – Activity Number: 27 Activity Description: <i>The clearance of an area of 1 hectare or more, but less than 20 hectares of indigenous vegetation, except where such clearance of indigenous vegetation is required for – (iii) the undertaking of a linear activity; or (iv) maintenance purposes undertaken in accordance with a maintenance management plan.</i></p>	<p>The activities undertaken has resulted in the loss of approximately 1ha of Breed Shale Renosterveld.</p>

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

D. PROPERTY DESCRIPTION AND LOCATION

The listed activities commenced on Bruintjies River A No. 205, Swellendam

The SG digit code is: C07300000000020500000

The co-ordinate for the site is:

Point	Latitude (S)	Longitude (E)
1	34° 0.561'South	20°14.855'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")

The ECO Balance Planning Co

c/o Ms Susan de Kock

PO Box 1596

UPINGTON

8800

Tel: 082 679 6760

Email: susandekock@oranjenet.net

F. DETAILS OF THE ACTIVITIES UNDERTAKEN

The activities undertaken entail the clearance of vegetation for the proposed enlargement of an existing dam on the site. These works include tilling of the soil within the middle and northern dam footprint with heavy earth moving equipment. The soil was moved into elongated piles, crossing the area from east to west. No further work/construction was done. The existing dam has a footprint (including embankments and full supply level) of approximately 1200m² and a storage capacity of 1300m³. The dam is in a circular shape with the southern downstream embankment approximately 2m high (top to toe). The intention is to enlarge the existing water storage dam with 368 000m³ to a new storage volume of 370 000m³. The proposed enlarged Bruintjiesrivier Dam will have a U-shape and aligned across the valley with a spillway on the eastern side.

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 Alternative 2 described in the application and assessment report dated 21 May 2021 on the site as described in Section D above.
2. The development must be concluded within 3 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/development activities.
 - 5.1 The notice must make clear reference to the site details and 24G Reference number given above.

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") dated 20 May 2021 compiled by *The Eco Balance Planning co.* 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 phases of implementation.

PART V

Monitoring

10. The holder must appoint a suitably experienced Environmental Control Officer (“ECO”) before continuation of commencement of any land clearing or construction/development activities to ensure compliance with the EMPr and the conditions contained herein.

11. A copy of the Environmental Authorisation, EMPr, any independent assessments of financial provision for rehabilitation and environmental liability, 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).

12. 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

13. 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 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

14. 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.

15. 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.
16. The natural renosterveld patch located west of the proposed dam's full supply level footprint area be maintained. This area should be excluded from any development or disturbances. Natural elements should be encouraged to establish along the outer fringes of the FSL footprint area and the area should remain clear of alien vegetation.
17. The area in and around the new dam should be landscaped and vegetated to the effect that loose sediments washing down the drainage line along with storm water is limited to the minimum. Likewise, the newly constructed dam wall should be stabilised and not allowed to release sediments down the drainage line.
18. Access roads that have been used during construction and are no longer needed, should be rehabilitated. Disused access roads should not become sources of sediments that can end up in the aquatic environment.
19. The dam wall should continuously be inspected for integrity, leakages and erosion, with the focus on possible impacts in the downstream aquatic environment. This is apart from the usual DWS dam safety requirements.
20. The vegetation in the downstream drainage line should be inspected at least annually for changes due to the presence of the dam. If changes become apparent, the relevant authorities should be notified.

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

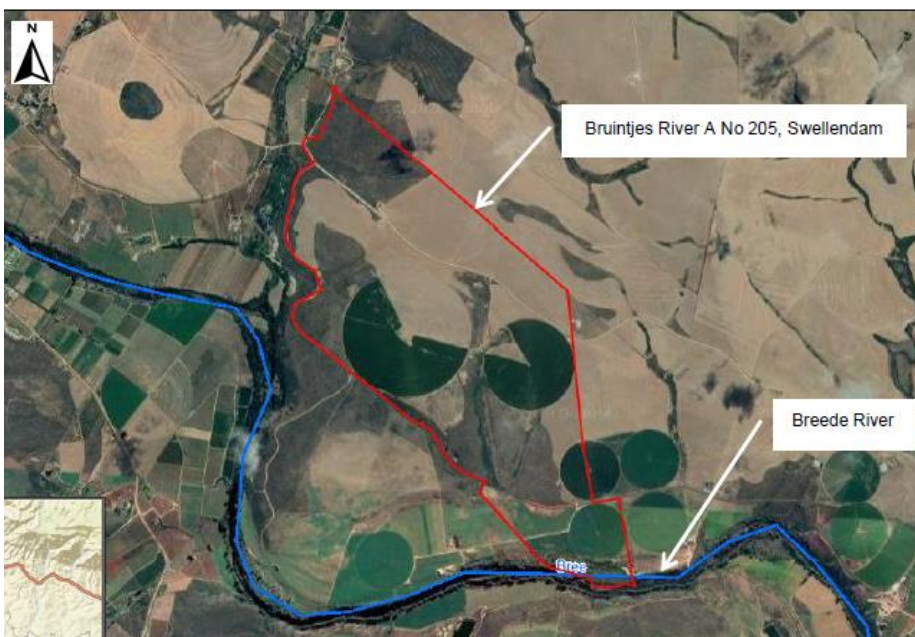
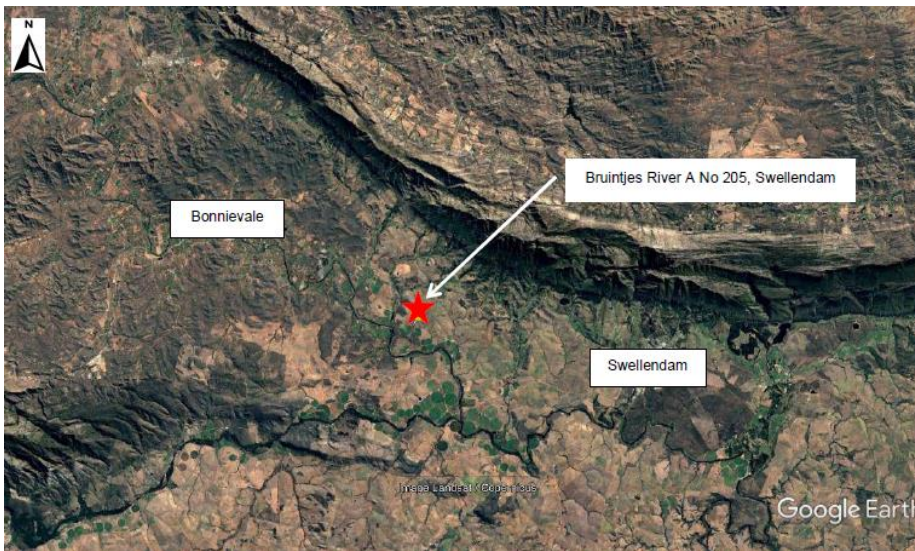
ADV. CHARMAINE MARÉ

DIRECTOR: ENVIRONMENTAL GOVERNANCE

Copied to: (1) Susan de Kock (EAP)

Email: susandekock@oranjenet.net

ANNEXURE 1: LOCALITY MAP AND PROPERTY BOUNDARY



ANNEXURE 2: SITE PLAN



The proposed dam footprint (red circle) with the current existing dam located within the proposed footprint.

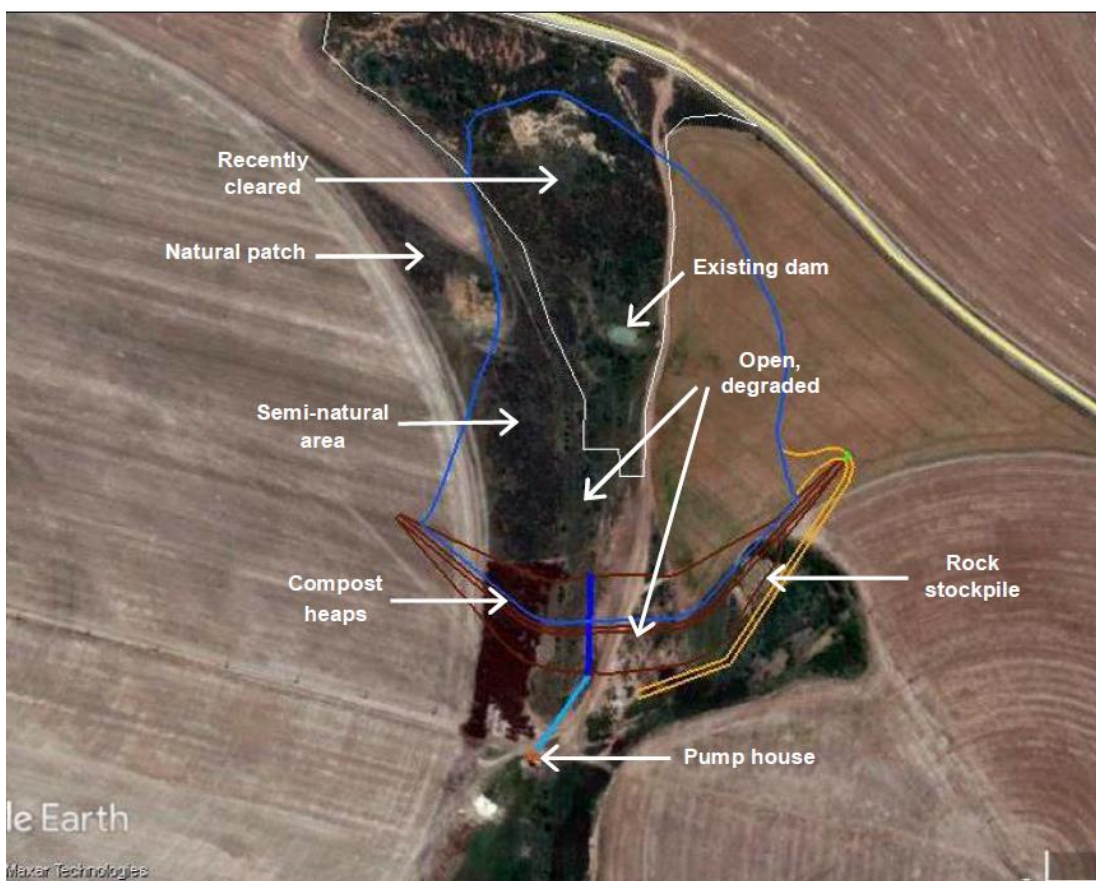


Image showing the area that was recently cleared (white polygon) as well as the habitat condition within the proposed expanded dam footprint area.

FOR OFFICIAL USE ONLY:

S24G REFERENCE: 14/2/4/2/2/E3/10/0002/21

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 (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 21 May 2021 with supporting documentation.
- b) The Environmental Management Programme ("EMPr") dated 20 May 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: 23 June 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 "Breederivier Gazette" newspaper of 24 March 2020.
- A site notice was erected; and
- 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

- Breede Gouritz Catchment Management Agency ("BGCMA")
- CapeNature
- Department of Agriculture
- Department of Agriculture, Forestry & Fisheries ("DAFF")

At the end of the public participation process, comments were received from the BGCMA and DAFF. A summary of their comments follows below.

The BGCMA confirmed that the application is supported. The application was also reviewed for a water use licence and special conditions were included in addition to the general conditions of a water use licence. Furthermore, the BGCMA stated that the Water Use Licence was recommended by the internal water use allocation committee and has been forwarded to the delegated authority for consideration and signature.

The DAFF stated that the s24G application report indicates the expanded dam footprint would cover cultivated land and will be located in a watercourse which can result in soil erosion. DAFF advised the landowner to commence with the proposed activities prior to the start of the rainy season to prevent excessive soil erosion through the action of water and wind. The landowner must protect the cultivated land on his farm effectively against excessive soil loss as a result of erosion through the action of water and wind.

The DAFF provided measures that may be applicable to erosion control.

- A suitable soil conservation work to be constructed and thereafter be maintained in order to divert runoff water from other land or to restrict the speed of runoff water.
- The land concerned or sites shall be cultivated in accordance with such methods or be laid out in such a manner that the runoff speed of runoff water is restricted and that the surface movement of soil particles be restricted.
- To establish permanent cover vegetation to prevent soil erosion, suitable wind breaks shall be constructed or suitable vegetation to be established to serve as a wind break.
- The landowner must ensure the completed Bruintjiesrivier Dam are impermeable, to prevent excessive soil erosion and sedimentation down the drainage line.

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

Originally Location Alternative 1 (upstream) was the preferred alternative location due to the favourable storage ration and economics thereof. Subsequently, the requirements changed, and a larger storage capacity became necessary, thus the Alternative 2 became the preferred option.

Alternative 2(Herewith authorised)

This entails the expansion of an existing dam on the site. The existing dam has a footprint (including embankments and full supply level) of approximately 1200m² and a storage capacity of 1300m³. The dam is in a circular shape with the southern downstream embankment approximately 2m high (top to toe). The intention is to enlarge the existing water storage dam with 368 000m³ to a new storage volume of 370 000m³. The proposed enlarged Bruintjiesrivier Dam will have a U-shape and aligned across the valley with a spillway on the eastern side.

The specifications of the dam are as follows:

- Max wall height (m) 15.5
- Crest Length (m) 420
- Total earthworks (m³) 100 500
- Nett storage capacity (m³) ± 370 000
- Full supply level (ha) 8.0
- Estimate cost (R) ± R6.2 mill

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

The purpose of the proposed enlarged Bruintjiesrivier Dam is to:

- Store water for the cultivation of 28ha lucern (at 10 000m³ per annum = 280 000m³) on existing cultivated land, and;
- To use another 175 000m³ for stock (cattle and sheep) drinking water.

The current Bruintjiesrivier Dam has a storage capacity of 1300m³. The Holder uses parts of Bruintjies Rivier A No. 205 for his dairy cattle. In the past and especially during the severe drought of 2017, the Holder had to transport water to the farm for the dairy cattle. It is estimated that a cow drinks approximately 100 litre water per day and thus the current storage of 1300m³ is not sufficient. For this reason, the no-go alternative is not sustainable, and a larger storage facility is urgently required.

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 Planning Context

The specific dam site was chosen as it is the highest area above sea level to accommodate a dam with sufficient storage capacity. The property is zoned Agriculture I and thus the activity is within the land use rights.

3.2. Biophysical and Biodiversity Impacts

It is estimated that an area of approximately 4.5ha was recently cleared and post-commencement can be best described as an area with no vegetation present. Approximately 1ha of Breede Shale Renosterveld was removed as part of commenced construction activities. The proposed expanded dam footprint falls within an aquatic Critical Biodiversity Area ("CBA") associated with a small drainage line in which the dam

enlargement will commence. Some very small patches of terrestrial CBA are also evident on site.

The geographical and physical aspects of the existing dam basin were altered as material from within the dam basin was used to construct the dam wall/embankment. There is a possibility that the dam structure could fail which would result in inundation and erosion of land downstream. Considering the remaining natural vegetation within the immediate vicinity of the cleared site, it is evident that the recent land clearing impacted on Breede Shale Renosterveld which is considered Least Threatened. Much of this 4.5ha cleared site was already transformed by rock stockpiles, dense stands of Port Jackson trees and subjected to disturbances from adjacent cultivation. It is therefore most likely that the recent clearing impacted on semi-natural and degraded areas.

The proposed dam expansion FSL footprint will further impact on an additional ± 1 ha of semi-natural renosterveld habitat. Due to the degraded and isolated nature of the site it is unlikely that the cleared areas contributed significantly to the preservation of Breede Shale Renosterveld vegetation.

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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