



**Western Cape  
Government**

Environmental Affairs and  
Development Planning

**DIRECTORATE: ENVIRONMENTAL GOVERNANCE  
SUB-DIRECTORATE: RECTIFICATION**

**24G APPLICATION REF:** 14/2/4/2/1/F5/16/0015/20

**ENQUIRIES:** Shafeeq Mallick

The Director  
LP Buhr Boerdery BK  
P. O. Box 732  
MALMESBURY  
7300

Tel: (021) 001 8890  
Cell: (082) 577 0045  
Email: lpbuhr@mweb.co.za

**Attention: Mr Lothar Peter Buhr**

Dear Sir

**APPLICATION IN TERMS OF SECTION 24G OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998) ("NEMA"): THE UNLAWFUL CONSTRUCTION OF A CHICKEN HOUSE ON PORTION 3 OF FARM MORGENWAGT 881, MALMESBURY**

With reference to your application dated 30 October 2020 (as signed 13 August 2020) 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.

**ENVIRONMENTAL AUTHORISATION**

**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 in accordance with the preferred alternative as described in the application and environmental assessment dated 30 October 2020.

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

LP Buhr Boerdery BK  
 C/o Mr Lothar Peter Buhr  
 P. O. Box 732  
 MALMESBURY  
 7300

Tel: (021) 001 8890  
 Fax: (082) 577 0045  
 Email: lpbuhr@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. 1182 of 1997 –  <b>Activity Number: 3</b>            Activity Description: <i>"The concentration of livestock, aquatic organisms, poultry and game in a confined structure for the purpose of commercial production, including aquaculture and mariculture."</i></p>	<p>Two chicken houses were constructed in 2000. The chicken houses together cover an area of about 4456.54 m<sup>2</sup>.            Before 1998 the chicken farm had a total of 715 000 chickens. With the unlawful expansions, the site has a total of 780 000 chickens.</p>

<p>As similarly listed in <i>Government Notice No. R. 327 of 7 April 2017</i></p> <p><b>Activity Number: 5</b></p> <p>Activity Description: <i>The development and related operation of facilities or infrastructure for the concentration of—</i></p> <p><i>(d) more than 1 000 poultry per facility situated within an urban area, excluding chicks younger than 20 days;</i></p> <p><i>(ii) more than 5 000 poultry per facility situated outside an urban area, excluding chicks younger than 20 days;</i></p> <p><i>(iii) more than 5 000 chicks younger than 20 days per facility situated within an urban area; or</i></p> <p><i>(iv) more than 25 000 chicks younger than 20 days per facility situated outside an urban area.</i></p>	<p>The chicken farm operates as a broiler farm. As such, it includes chicks from younger than 20 days as well as those that are older than 20 days. Each house has 32 500 chickens in total.</p>
<p><i>Government Notice No. R. 327 of 7 April 2017</i></p> <p><b>Activity Number: 40</b></p> <p>Activity Description: <i>The expansion and related operation of facilities for the concentration of poultry, excluding chicks younger than 20 days, where the capacity of the facility will be increased by—</i></p> <p><i>(d) more than 1 000 poultry where the facility is situated within an urban area; or</i></p> <p><i>(ii) more than 5 000 poultry per facility situated outside an urban area</i></p>	<p>Each of the two houses has a total of 32 500 chickens.</p>

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

#### **D. PROPERTY DESCRIPTION AND LOCATION**

The listed activities commenced on Portion 3 of Farm 881, Morgenwagt, Malmesbury.

The SG digit code is: C04600000000088100003

The co-ordinates for the property boundary are:

Point	Latitude (S)	Longitude (E)
1	33° 34' 6.50" South	18° 41' 54.22" East
2	33° 33' 40.01" South	18° 42' 45.85" East
3	33° 34' 3.14" South	18° 43' 19.78" East
4	33° 34' 22.85" South	18° 43' 22.82" East
5	33° 34' 22.99" South	18° 43' 12.92" East
6	33° 34' 26.58" South	18° 43' 1.47" East
7	33° 34' 36.28" South	18° 42' 51.23" East
8	33° 34' 48.33" South	18° 42' 43.91" East
9	33° 34' 57.33" South	18° 42' 43.74" East
10	33° 34' 58.84" South	18° 42' 36.66" East

The co-ordinates for the site boundary are:

Point	Latitude (S)	Longitude (E)
Chicken house 1		
1	33° 34' 22.90" South	18° 42' 45.35" East
2	33° 34' 25.92" South	18° 42' 48.97" East
3	33° 34' 26.29" South	18° 42' 48.53" East
4	33° 34' 23.29" South	18° 42' 44.77" East
Chicken house 2		
1	33° 33' 53.52" South	18° 42' 30.49" East
2	33° 33' 57.63" South	18° 42' 31.55" East
3	33° 33' 57.83" South	18° 42' 30.91" East
4	33° 33' 53.55" South	18° 42' 29.84" 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")**

GroenbergEnviro (Pty) Ltd

C/o Mr Pieter Badenhorst and Ms Therina Oberholzer

P.O. Box 1058

WELLINGTON

7654

Cell: (082) 776 3422 / (072) 089 5750

Fax: (086) 476 7139

Email: pieter@groenbergenviro.co.za / therina@groenbergenviro.co.za

#### **F. DETAILS OF THE ACTIVITY/IES UNDERTAKEN**

The application entails the unlawful construction and expansion of a chicken house facility on Portion 3 of Farm Morgenwagt 881, Malmesbury.

The farm was purchased in 1996 by the holder and included an established 22 chicken houses. In 2000 the holder built two additional chicken houses but was unaware that it would require authorisation under the then new Government Notice. R.1182.

Pre-NEMA (before 1998) the site had a total of 715 000 chickens. With the expansions the site now has a total of 780 000 chickens.

Each of the 24 chicken houses contains 32 500 chicks, giving a total of 780 000 chicks per cycle. With an estimated 7.5 cycles per year, the total is  $\pm 5\,850\,000$  chickens produced from the farm annually.

#### **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 activity/ies specified in Section C above in accordance with and restricted to Alternative 1 described in the application and assessment report dated 30 October 2020 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 of continuation of the listed 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 the following condition:  
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 Construction and Operational Management Programme (“C&OMPr”) (also referred to herein as the “EMPr”) of October 2020 compiled by GroenbergEnviro (Pty) Ltd

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 phases of implementation.

## **PART V**

### **Monitoring**

9. The holder must appoint a suitably experienced Environmental Control Officer ("ECO") before continuation of commencement of any maintenance/rehabilitation activities to ensure compliance with the EMPr and the conditions contained herein.

10. A copy of the Environmental Authorisation, EMPr, audit reports and compliance monitoring reports must be kept at the site of the authorised activities and must be made available to anyone on request.

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

## **PART VII**

### **Activity/ Development Specific Conditions**



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

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

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

## **H. GENERAL MATTERS**

1. Notwithstanding this Environmental Authorisation, the holder must comply with any other statutory requirements that may be applicable when undertaking the listed activities.
2. Non-compliance with a condition or term of this Environmental Authorisation or EMPr may render the holder liable to criminal prosecution.
3. 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

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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](mailto: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](mailto: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](mailto: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

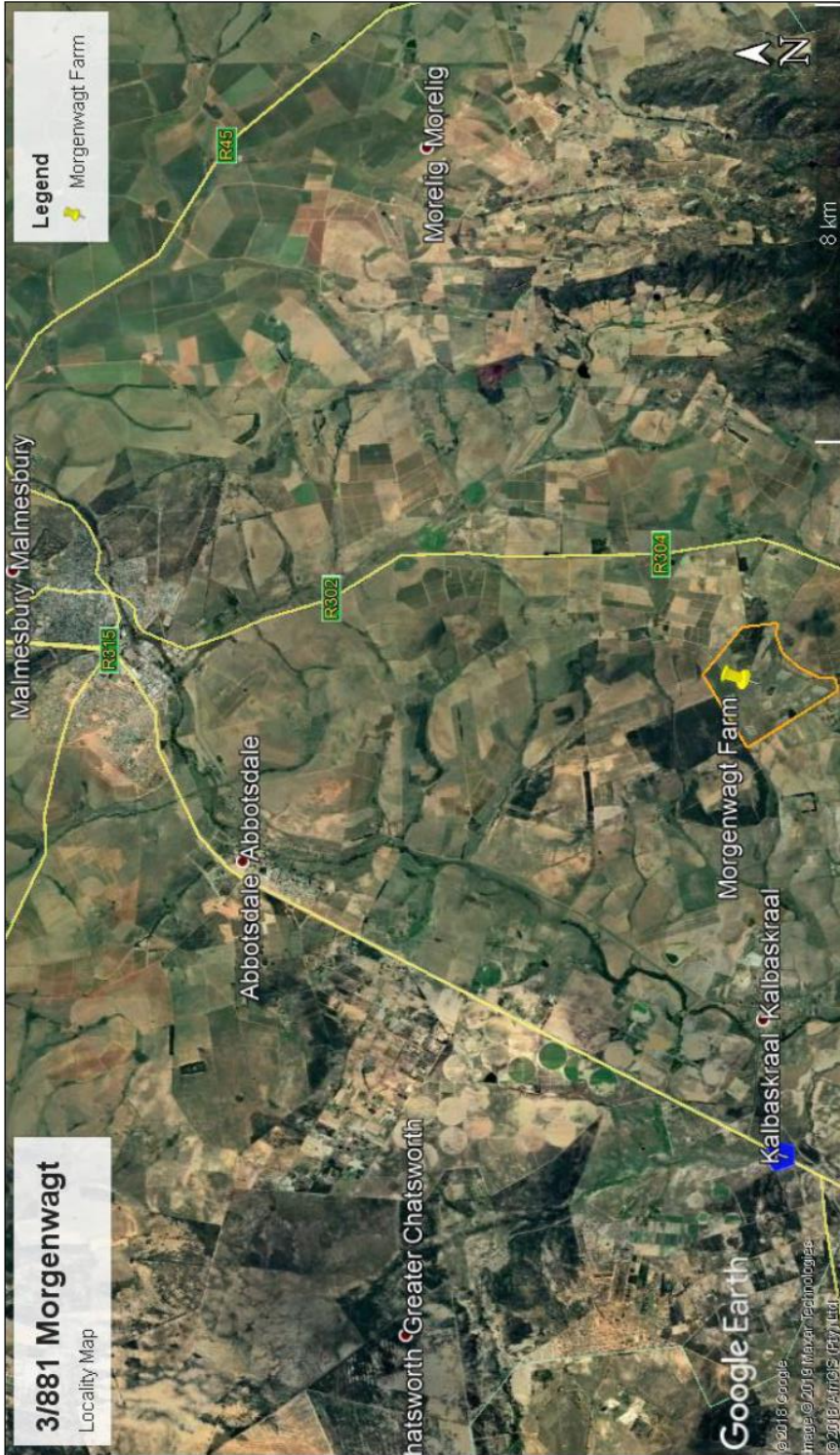
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**ADV. CHARMAINE MARÉ**  
**DIRECTOR: ENVIRONMENTAL GOVERNANCE**

CC: (1) Therina Oberholzer (GroenbergEnviro (Pty) Ltd)

Fax: (086) 476 7139  
Email: [therina@groenbergenviro.co.za](mailto:therina@groenbergenviro.co.za)

ANNEXURE 1: LOCALITY MAP



**ANNEXURE 2: SITE PLAN**



**FOR OFFICIAL USE ONLY:**

**S24G REFERENCE:**

**14/2/4/2/1/F5/16/0015/20**

**ANNEXURE 3: REASONS FOR THE DECISION**

This Environmental Authorisation is in respect of the consequences of commencement of the afore-mentioned illegal activities. An Environmental Assessment Practitioner ("EAP") was appointed to submit a section 24G Environmental Impact Assessment ("EIA") to the Department to obtain this Environmental Authorisation. The EIA was considered adequate for informed decision-making. In addition, the holder paid an administrative fine of 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 section 24G application dated 30 October 2020 with supporting environmental impact assessment and mitigation measures.
- b) Public participation conducted for the application by the Environmental Assessment Practitioner.
- c) The Construction and Operational Management Programme (C&OMPr/EMPr) of October 2020 submitted for the application.
- d) Relevant information contained in the Departmental EIA Guideline and Information Document Series (March 2013), including, the Guidelines on Need and Desirability, Public Participation and Alternatives.
- e) The site inspection conducted on 19 April 2021 attended by officials of this directorate.
- f) The sense of balance of the negative and positive impacts and proposed mitigation measures.

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 **Swartland Gazette** newspaper on 19 November 2019;
- A site notice was erected on site; and
- Letters were sent to interested and affected parties ("I&APs") and the municipal ward councillor on 14 August 2020.
- I&APs were afforded the opportunity to provide comments on the application.

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

The following organs of state provided comment on the application:

- Heritage Western Cape (HWC)
- Swartland Municipality (SM)
- DEA&DP: Waste Management (D:WM)

Since there is no reason to believe that the proposed expansion of a chicken farm on Portion 3 Farm 881, Malmesbury will impact on heritage resources, HWC indicated that no further action under Section 38 of the *National Heritage Resources Act (Act 25 of 1999)* is required. However, should any heritage resources, including evidence of graves and human burials, archaeological material and paleontological material be discovered during the execution of the activities above, all works must be stopped immediately, and Heritage Western Cape must be notified without delay.

The SM indicated that Portion 3 of the Farm Morgenwagt No. 881, Division Malmesbury is zoned Agricultural zone 1 in terms of Schedule 2 of the Swartland Planning By-law (PG 8226 of 25 March 2020). The SM does not have records pertaining to land use approvals or building plan approvals for any of the chicken houses on the farm. A land use application in terms of Section 25(2) of the Swartland Planning By-law (PG 8226 of 25 March 2020) needs to be made in order to obtain land use rights for the proposed chicken houses. Final consideration of the land use application can only be made

once a decision has been reached in terms of the NEMA: EIA Regulations application. Once land use approval has been obtained, building plans for the chicken houses needs to be submitted to the SM for consideration.

The D:WM indicated that the development does not require an application for a waste management license in terms of the *National Environmental Management: Waste Act, 2008* (Act No. 59 of 2008).

Any diesel, lubricants and/or other oils should be managed to prevent spillage. An Environmental Management Programme (EMPr) must address this as a potential source of environmental impact and should include measures for preventing and/or mitigating such impacts. Fuel and any other hazardous liquids must be stored in suitably bunded areas and appropriate containers which are clearly marked. Waste contaminated with such liquids must therefore be stored in hazardous waste containers for its eventual disposal at a hazardous waste facility (i.e. it may not be disposed of with non-hazardous construction waste). Waste disposal certificates must be made available to the Competent Authority upon request.

Operations must be such that noise and dust are kept to a minimum. All additional waste that will be generated by the Facility must be addressed in the EMPr.

Please note that mixed chicken manure and wood shavings may not be temporarily stored for a period exceeding 90 (ninety) days without adherence to the *National Norms and Standards for the Storage of Waste, Government Notice (GN) No. 926 of 29 November 2013*, if the volumes stored exceed 80m<sup>3</sup> of hazardous waste or 100m<sup>3</sup> of general waste. The D:WM will monitor compliance to those Norms and Standards.

## **2. Alternatives**

### **2.1 Location Alternatives**

Due to the fact that the two additional houses were built and completed in 2000, no alternatives were considered or deemed applicable for this application. The activity has already occurred. Since the site was already transformed by the existing chicken houses when the holder bought the property, the two new houses was built next to it, to limit impact to the environment, as well as integrate with the existing operations. No other property alternative was considered.

### **2.2 Activity Alternatives – Preferred alternative**

This alterative entails all activities in their current position.



This alternative was considered preferred since all the areas have been disturbed for a long period of time (prior to the construction in 2000). The chicken houses were also effectively positioned for their intended use.

## 2.2 The option of not implementing the activity ("No-Go" Alternative)

The No-Go alternative entails the demolishing of the chicken houses and rehabilitating the affected sites. This alternative has been considered but is not a viable option for the following reasons:

- By destroying the two chicken houses, it would lower food security of the province.
- The applicant will not be gaining financial benefits.
- No job security for existing workers and future workers.

Therefore, this alternative is not deemed preferred.

### **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. Socio-Economic Impact

The activities on site consists of the construction and operation of two chicken houses. These are part of the agricultural activities on-site and have resulted in positive socio-economic impacts.

#### 3.2. Biodiversity Impact

The activity took place on a farm which already had 22 chicken houses. The two unlawful chicken houses were constructed in close proximity to these. As the development occurred on transformed land, it did not give rise to impacts on biodiversity.

#### 3.3. Sense of Place / Heritage Impacts

The activities are in keeping with the surrounding environment, as it is located on agricultural land.

#### 3.4. Pollution Impacts

The chicken houses have not resulted in pollution of the environment.

#### 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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