



**REFERENCE NUMBER:** 14/2/4/2/2/B5/14/0014/19

**ENQUIRIES:** Shafeeq Mallick

**BY REGISTERED MAIL**

The Trustees  
Bloubank Boerdery Trust  
Die Orffer Landgoed, Bloubank Plaas 1  
TULBAGH  
6820

Tel: (023) 230 0753  
Fax: (086) 574 5901  
Email: dol@bloubank.co.za

**Attention: Mr. Chris Orffer**

Dear Sir

**APPLICATION IN TERMS OF SECTION 24G OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998) ("NEMA"): THE CONSTRUCTION OF A ROAD AND ASSOCIATED BRIDGE INFRASTRUCTURE ON PORTION 1 OF FARM BLOUBANK NO. 52, TULBAGH**

With reference to your application dated 18 October 2019 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 18 October 2019.

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**

Bloubank Boerdery Trust  
 c/o Mr Chris Orffer  
 Die Orffer Landgoed, Bloubank Plaas 1  
 TULBAGH  
 6820

Tel: (023) 230 0753  
 Fax: (086) 574 5901  
 Email: dol@bloubank.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><i>Government Notice No. 327 of 4 December 2014 -</i>  <b>Activity Number: 19</b>            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-</i>  <i>(i) a watercourse...”</i></p>	<p>The excavation and construction of culvert bridge over the drainage line resulted in the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock of more than 10 cubic metres.</p>

The abovementioned list is hereinafter referred to as "the listed activity".

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

The listed activity commenced on Portion 1 of Farm Bloubank No. 52, Tulbagh.

The SG digit code is: C07500000000005200001

The co-ordinates for the site boundary are:

Point	Latitude (S)	Longitude (E)
1	33° 12' 34.32" South	19° 09' 32.83 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")**

Eco Impact Legal Consulting

C/o Ms Johmandie Pienaar

P.O. Box 45070

CLAREMONT

7735

Tel: (021) 671 1660

Fax: (021) 671 9976

Email: admin@ecoimpact.co.za

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

To facilitate the movement of larger vehicles within the servitude, in 2017 a road crossing was upgraded over a small unnamed stream on portion 1 of Farm Bloubank No. 52, Tulbagh. The crossing was constructed in a tributary of Klein Berg River (G10E

quaternary catchment) in the Berg River System. The crossing (bridge) was constructed using a box culvert and has a surface area of 9.6m<sup>2</sup>

## **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 the preferred alternative as described in the application and assessment report dated 18 October 2019 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 activities for maintenance purposes in accordance with the approved Environmental Management Programme of August 2019.

- 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. 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") dated 05 August 2019 compiled by Eco Impact Legal Consulting (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"), 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 activity 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 or 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. Vegetation removed during any phase of this project must be taken to a green/garden waste chipping facility for composting or be disposed at an appropriately licensed facility.
16. Waste may not be burned without prior authorization.
17. Building rubble must be reused or disposed of at a suitably licensed facility. Proof of end receipt of recipient must be provided for compliance monitoring purposes.

## GENERAL MATTERS

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

## H. 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](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>.

## **I. 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.

## **J. DISCLAIMER**

The Western Cape Government, 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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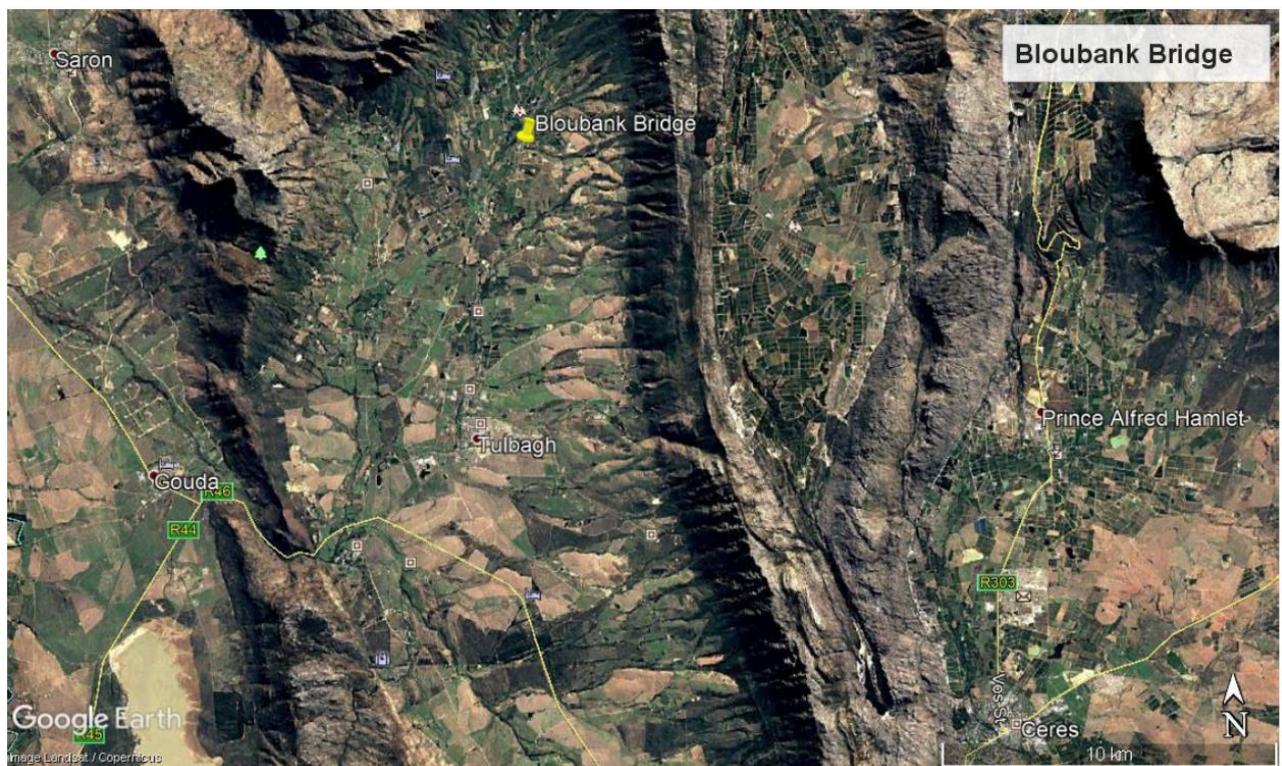
**ADV. CHARMAINE MARÉ**  
**DIRECTOR: ENVIRONMENTAL GOVERNANCE**

DATE OF DECISION: \_\_\_\_\_

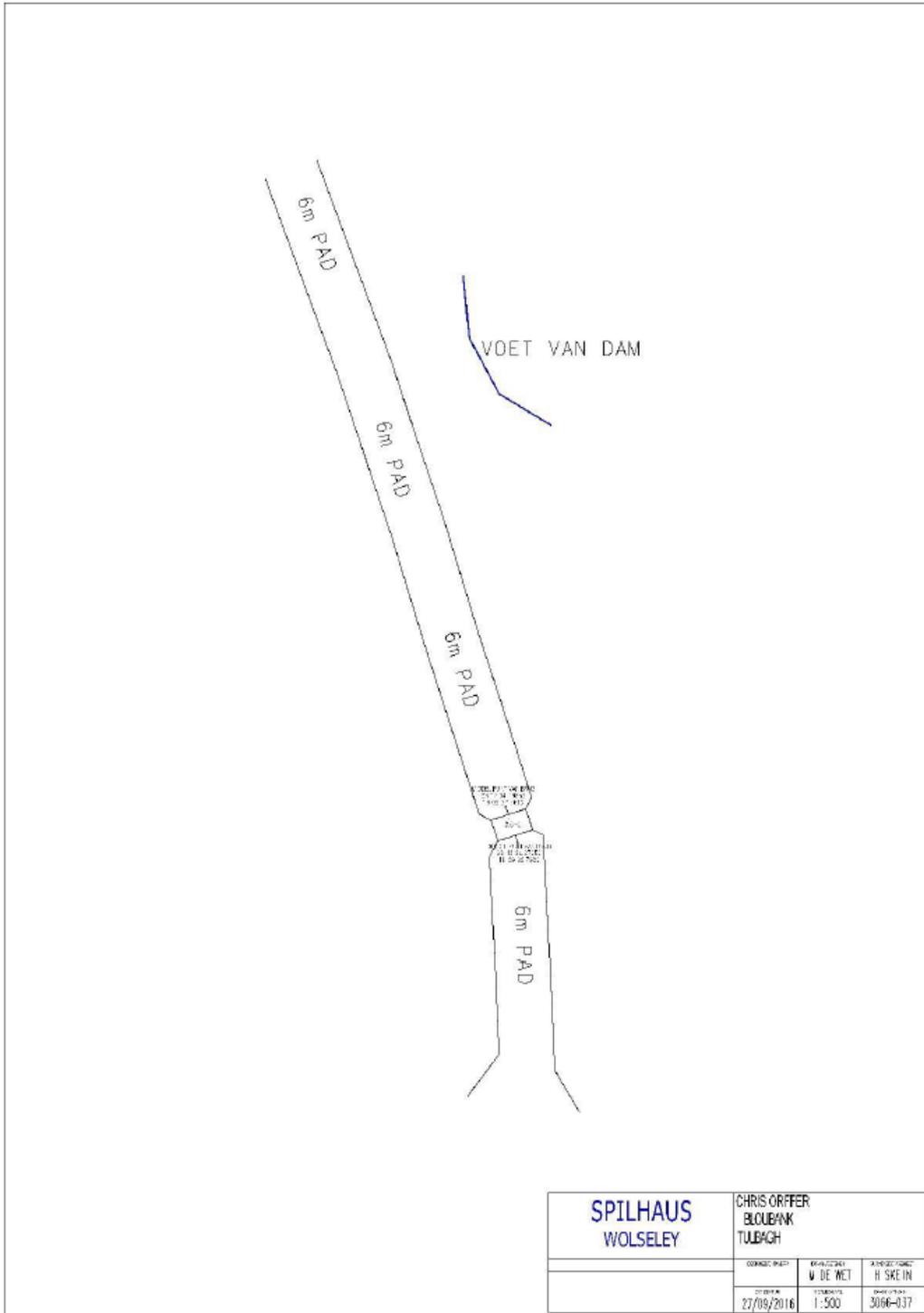
Copied to: (1) Ms. Jomandie Pienaar (EAP)

Fax: (021) 671 9976  
Email: admin@ecoimpact.co.za

## ANNEXURE 1: LOCALITY MAP



# ANNEXURE 2: SITE PLAN



<b>SPILHAUS WOLSELEY</b>	<b>CHRIS ORFFER BLOUBANK TUURBACH</b>	
	<small>DATE</small> 27/09/2016	<small>SCALE</small> 1:500

**FOR OFFICIAL USE ONLY:**

**S24G REFERENCE:**

**14/2/4/2/2/B5/14/0014/19**

**APPEAL REFERENCE:**

**14/3/6/B5/14/0466/20**

**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 R10 000 (Ten 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 18 October 2019 and the Environmental Management Programme ("EMPr") dated 05 August 2019 submitted together with the application form.
- b) Relevant information contained in the Departmental information base, including, the Guidelines on Public Participation and Alternatives.
- c) The objectives and requirements of relevant legislation, policies and guidelines, including section 2 of the NEMA.
- d) The comments received from Interested and Affected Parties ("I&APs") and the responses provided thereto.
- e) The sense of balance of the negative and positive impacts and proposed mitigation measures.
- f) The site visit conducted on 11 March 2020  
Attended by: Officials of the directorate Environmental Governance.
- g) The appeal decision on the 24G administrative fine dated 05 October 2020.

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:

- identification of and engagement with I&APs.
- fixing a notice board at the site where the listed activity unlawfully commenced on 14 August 2019.
- giving written notice to the owners and occupiers of land adjacent to the site where the listed activity was undertaken, the municipality and ward councillor, and the various organs of state having jurisdiction in respect of any aspect of the listed activity on 08 August 2019.
- the placing of a newspaper advertisement in the **Witzenberg Herald** on 09 November 2018.

Mr FC Orffer, an I&AP, highlighted the fact that the construction of the road was not in line with what the owners of FC Orffer Trust and Bloubank Boerdery Trust as originally agreed upon. The EAP indicated that the google earth imagery is off, and that, although it is not constructed on the approved log 0.16km line, it is only off by approximately 4m and not 25m as he alleges. Similarly, the culvert bridge centre line is only off by approximately 3m. From the agreed plan, more than 90% of the constructed road is aligned with the servitude as per the original proposed layout.

Mr FC Orffer also highlighted the fact that the size of the culvert was intended to be 6m wide, but a narrower culvert was used. The EAP indicated that to remove the culvert and replace with a different one would result in further damage/harm to the tributary. The specialist indicated that the width of the culvert is adequate for hydrological functioning of the watercourse.

Mr FC Orffer also raised concerns regarding the implementation of the rehabilitation measures relating to the section 24G 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)
- CapeNature (CN)
- Department of Transport and Public Works (D:TPW)
- This Department's Directorate: Waste Management

HWC indicated that, since there is no reason to believe that the proposed road rehabilitation and maintenance will impact on heritage resources, thus no further action is required. However, if any heritage resources or evidence of human burials or archaeological material are found, work must be stopped and HWC must be contacted immediately.

CN acknowledges the activities on site, as well as the descriptions of the receiving environment and impacts highlighted within the section 24G application assessment. CN agrees and accepts the recommendations made for the rehabilitation of the site.

This Department's Waste Management directorate stated that vegetation removed during any phase of this project must be taken to a green/garden waste chipping facility for composting or be disposed of at an appropriately licensed facility. Waste may not be burned without prior authorization and building rubble must be reused or disposed of at a suitably licensed facility.

D: TPW indicated that the access road was to be located at km0.16 on Divisional road 1474, however on aerial photography the access is located km0.185, which is 25m east of where it was approved.

The EAP indicated that the google earth imagery is not accurate. Although the road is not constructed on the approved log km0.16 line, it is only off by approximately 4m and not 25m. Similarly, the culvert bridge centre line is only off by approximately 3m. From the diagram of the current layout plan, more than 90% of the constructed road servitude is in line with the original proposed layout. However, the EAP indicated that it is the responsibility of the applicant to obtain a new formal approval from D: TPW for the current layout. This must be included as a condition of the Environmental Authorisation.

The competent authority shall not be held responsible for non-compliance in respect of any other legislation. It is the responsibility of the applicant to obtain all necessary approvals for the activity.

## **2. Alternatives**

### 2.1 Location alternatives

No other property alternatives were assessed as no feasible or reasonable property alternative exists. The owners have agreed to register a servitude over Portion 1 of Farm No.52, Tulbagh at the location of an existing road. To facilitate the movement of larger vehicles within this servitude, the road crossing over a small unnamed stream was upgraded.

### 2.2 Activity alternatives

No other activity alternatives were assessed as no feasible or reasonable activity alternative exists.

### 2.3 Design alternatives

The design and layout of the bridge was done by an engineer and took in consideration the flow of the river to prevent flooding and erosion and to not obstruct or divert the flow of the river.

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

The no-go alternative entails the removal of the bridge (road crossing) and rehabilitation of the area, leading to an informal road crossing being used again through the watercourse. This may lead to further stream degradation.

## **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. Biodiversity Impacts

The ecological condition of the stream at the site is considered to be moderately modified within the channel and seriously modified along the riparian areas due largely to the surrounding agricultural activities. The ecological importance and

sensitivity of the stream is moderate. Aerial images taken within the past 50 years show that there has been very little alteration to the channel course or the surrounding land cover for this period. The small farm dam on the northern bank of the stream was constructed after 1966 but before 1980. An informal crossing has been used from time to time through the stream at the site.

The works associated with the culvert structure that has been constructed at the road crossing has largely only resulted in limited change to the bed and banks of the unnamed stream at the site. Considering the history of modification of the river channel as a result of the surrounding agricultural activities and the existing ecological state of the stream, this impact is of a low significance. The structure has sufficient capacity that it is unlikely that it will result in any impedence or diversion of flow in the stream.

The main impacts of the works undertaken are thus a modification/loss of aquatic habitat. With some rehabilitation of the site, this impact could be reduced to being of a very low significance with the potential for a positive impact on the existing ecological condition of the watercourse at the site. Recommendations are provided in the report for the rehabilitation as well as the longer-term maintenance and management measures for the site.

### 3.2. Visual / Sense of Place

The road and bridge structures were existing structures in an already transformed landscape.

### 3.3. Need & Desirability

The purpose of the road servitude and bridge structure is to facilitate the movement of larger vehicles within the servitude.

### 3.4. Pollution

There is no physical evidence visible on site that the activity caused any environmental pollution nor is it expected to cause any future pollution.

## **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 activity 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 activity can be mitigated to acceptable levels.

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