



REFERENCE: 14/2/4/2/3/D3/8/0017/19

ENQUIRIES: Ziyaad Allie

REGISTERED MAIL

The Owner
P. O. Box 186
LADISMITH
6655

Tel: (082) 558 9779
Email: mlswart@telkomsa.net

Attention: Mr Matthys Swart (Snr)

Dear Sir

APPLICATION IN TERMS OF SECTION 24G OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998) ("NEMA"): UNLAWFUL EXPANSION AND CONSTRUCTION OF INSTREAM DAMS ON REMAINDER PORTION 64 AND PORTION 73 OF FARM BUFFELSKLOOF, NO. 97, LADISMITH

With reference to your application dated 06 September 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 as described in the application and environmental assessment dated 06 September 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

Mr Matthys Swart (Snr)

P.O. Box 186

LADISMITH

6655

Cell: 082 558 9779

Email: mlswart@telkomsa.net; mlbswart@gmail.com

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. R. 327 of 2014</i></p> <p>Activity Number: 12</p> <p>Activity Description:</p> <p><i>"The development of-</i></p> <p><i>(i) canals exceeding 100m² in size;</i></p> <p><i>(ii) channels exceeding 100m² in size;</i></p> <p><i>(iii) bridges exceeding 100m² in size;</i></p> <p><i>(iv) dams, where the dam, including infrastructure and water surface area, exceeds 100m² in size;</i></p> <p><i>or</i></p>	<p>Construction of a new instream dam adjacent to, and east of an existing dam (New Dam). The dam has a footprint of 2.2 ha (22 106m²), full supply level of 4.8m, board height of 2.4m, wall height of 7.3m, and capacity of 49 490m³.</p> <p>A New Dam was constructed, between the existing dam and the Buffelskloof River. The intention for the dam</p>

<p>(xii) infrastructure or structures with a physical footprint of 100m² or more; where such development occurs-</p> <p>(a) within a watercourse;</p> <p>(b) in front of a development setback; or</p> <p>(c) if no development setback exists, within 32m of a watercourse, measured from the edge of a watercourse."</p>	<p>construction was to increase water storage capacity. The channel from the Buffelskloof River currently feeding the older dam has been modified with floodgates to allow redirection of water to either dam in terms of the existing water allocation. Due to the proximity of the New Dam to the Buffelskloof River, as well as the location and dimensions of the channel, this dam is considered an instream-dam.</p> <p>A farm shed of more than 100m² was also constructed within 32 m of the Buffelskloof River.</p>
<p>Government Notice No. R327 of 2014 –</p> <p>Activity Number: 19</p> <p>Activity Description:</p> <p>"The infilling or depositing of any material of more than 10 m³ into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock of more than 10m³ from a watercourse; but excluding where such infilling, depositing, dredging, excavation, removal or moving—</p> <p>(a) will occur behind a development setback;</p> <p>(b) is for maintenance purposes undertaken in accordance with a maintenance management plan."</p>	<p>Same as above.</p> <p>Gabions were installed in 2008. Maintenance will be undertaken in accordance a Maintenance Management Plan was for the continued maintenance of the gabions to prevent erosion in the lower reaches of the Buffelskloof River.</p>

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

D. PROPERTY DESCRIPTION AND LOCATION

The listed activities commenced on RE/Portion 64 and Portion 73 of the Farm Buffelskloof No. 97, Ladismith

The SG digit code is: C06700000000057100007

The co-ordinates for the property boundary are:

Point	Latitude (S)	Longitude (E)
1	33° 29' 45.05" South	21° 13' 17.83" East
2	33° 29' 46.92" South	21° 12' 33.37" East
3	33° 29' 55.83" South	21° 12' 27.06" East
4	33° 29' 56.99" South	21° 12' 21.29" East

The co-ordinates for the site boundary are:

Point	Latitude (S)	Longitude (E)
New dam	33° 30' 1.35" South	21° 12' 9.10" East
Gabions	33° 30' 3.81" South	21° 12' 10.19" East
Farm shed	33° 30' 6.40" South	21° 12' 13.62" East
Expanded dam 1	33° 30' 17.85" South	21° 12' 47.58" East
Expanded dam 2	33° 30' 16.50" South	21° 13' 3.59" 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 Mr Pieter de Villiers

P.O. Box 12606

DIE BOORD

7613

Tel: (021) 887 9099

Fax: (086) 435 2174

Cell: 083 243 0994

Email: pieter@cornerstoneenviro.co.za

F. DETAILS OF THE ACTIVITIES UNDERTAKEN

The unlawful activities undertaken on the property commenced from 2008 till 2018. The activities unlawfully commenced with are as follows:

- In January 2008 gabions were installed in the Buffelskloof River. The gabions varied in size, depending on the extent of erosion protection required in the river. The gabions were installed in the watercourse over approximately 280m and were installed as erosion control infrastructure – tyres were added to the gabions to protect them from passing rocks and other materials during flood event. No maintenance has been required to date, however, mitigation and management measures for the operational phase has been included in the EMPr, and maintenance measures have been included in the Maintenance Management Plan (MMP).
- In 2015 the construction of a workshop and general storage shed (Farm Shed) with a footprint of approximately 720m². The Farm Shed is located within 32m of the Buffelskloof River.
- Construction of a new instream dam adjacent to, and east of an existing dam (New Dam). The dam has a footprint of 2.2 ha (22 106m²), full supply level of 4.8m, board height of 2.4m, wall height of 7.3m, and capacity of 49 490m³. Upstream of the dam is an existing weir with floodgates and overflow capacity for flood events. The dam is intended to provide additional storage capacity in the event of further droughts, thereby preventing detrimental impacts to the farming practices. This dam is fed via an existing channel directly off the Buffelskloof River, in terms of an existing allocation. The channel is fitted with floodgates to allow water to be directed as needed.

G. CONDITIONS OF AUTHORISATION

The following are conditions of authorisation that are set and must be implemented for this Environmental Authorisation.

PART I

Scope of authorisation

1. The holder is authorised to undertake the listed activities specified in Section C above in accordance with and restricted to the implemented Alternative described in the application and assessment report dated 06 September 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

Notification and administration of an appeal

4. The holder must in writing, within 14 (fourteen) calendar days of the date of this decision–
 - 4.1 notify all registered Interested and Affected Parties (“I&APs”) of –
 - 4.1.1 the outcome of the application;
 - 4.1.2 the reasons for the decision as included in Annexure 3;
 - 4.1.3 the date of the decision; and
 - 4.1.4 the date when the decision was issued.

4.2 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.

4.3 draw the attention of all registered I&APs to the manner in which they may access the decision.

4.4 provide the registered I&APs with:

4.4.1 the name of the holder (entity) of this Environmental Authorisation;

4.4.2 name of the responsible person for this Environmental Authorisation;

4.4.3 postal address of the holder;

4.4.4 telephonic and fax details of the holder;

4.4.5 e-mail address, if any, of the holder; and

4.4.6 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*.

5. 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 III

Management of the activity/development

6. The draft Environmental Management Programme ("EMPr") and Maintenance Management Plan ("MMP") of October 2019 compiled by Cornerstone Environmental Consultants and submitted as part of the application for environmental authorisation is hereby approved and must be implemented.

7. The EMPr must be included in all contract documentation for all phases of implementation.

PART IV

Monitoring

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

9. A copy of the Environmental Authorisation, EMPr and audit reports and compliance monitoring reports must be kept at the site of the authorised activities, and must be made available to anyone on request, including a publicly accessible website (if applicable).
10. Access to the site referred to in Section D must be granted, and the environmental reports mentioned above must be produced, to any authorised official representing the competent authority who requests to see it for the purposes of assessing and/or monitoring compliance with the conditions contained herein.

PART V

Auditing

11. In terms of regulation 34 of the *EIA Regulations, 2014* the holder must conduct environmental audits to determine compliance with the conditions of the Environmental Authorisation and the EMPr and submit Environmental Audit Reports to the competent authority upon receiving such request in writing from the competent authority. The Audit Report must be prepared by an independent person and must consider all the information required in Appendix 7 of the *EIA Regulations, 2014*.

PART VI

Activity/ Development Specific Conditions

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

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

13. A qualified archaeologist and/or palaeontologist must be contracted where necessary (at the expense of the holder) to remove any heritage remains. Heritage remains can only be disturbed by a suitably qualified heritage specialist working under a directive from the relevant heritage resources authority.
14. The recommendations made by the Freshwater Specialist in the Freshwater Assessment of 13 March 2019 must be 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. The holder must submit an application for amendment of the Environmental Authorisation to the competent authority where any detail with respect to the Environmental Authorisation must be amended, added, substituted, corrected, removed or updated. If a new holder is proposed, an application for Amendment in terms of Part 1 of the *EIA Regulations, 2014* must be submitted.

Please note that an amendment is not required if there is a change in the contact details of the holder. In this case, the competent authority must only be notified of such changes.

4. The manner and frequency for updating the EMPr is as follows:
Amendments to the EMPr must be done in accordance with regulations 35 to 37 of the *EIA Regulations, 2014* or any relevant legislation that may be applicable at the time.

I. APPEALS

Appeals must comply with the provisions contained in the *National Appeal Regulations, 2014*.

1. An appellant (if the holder) must –
 - 1.1 submit an appeal in accordance with regulation 4 *National Appeal Regulations, 2014* to the Appeal Administrator and a copy of the appeal to any registered I&APs, any Organ of State with interest in the matter and the decision maker within 20 (twenty) calendar days from the date the holder was notified by the competent authority of this decision.

2. An appellant (if NOT the holder) must –
 - 2.1 submit an appeal in accordance with regulation 4 *National Appeal Regulations, 2014* to the Appeal Administrator, and a copy of the appeal to the holder, any registered I&APs, any Organ of State with interest in the matter and the decision maker within 20 (twenty) calendar days from the date the holder notified the registered I&APs of this decision.

3. The holder (if not the appellant), the decision-maker, I&APs and Organ of State must submit their responding statements, if any, to the Appeal Authority and the appellant within 20 (twenty) calendar days from the date of receipt of the appeal submission.

4. This appeal and responding statement must be submitted to the address listed below:

By post: Attention: Marius Venter
 Western Cape Ministry of Local Government, Environmental Affairs &
 Development Planning
 Private Bag X9186, Cape Town, 8000; or

By facsimile: (021) 483 4174; or

By hand: Attention: Mr Marius Venter (Tel: 021-483 3721)
 Room 809, 8th floor Utilitas Building
 1 Dorp Street, Cape Town, 8000; or

By e-mail: DEADP.Appeals@westerncape.gov.za

Note: You are also requested to submit an electronic copy (Microsoft Word format) of the appeal and any supporting documents to the Appeal Administrator to the address listed above and/ or via e-mail to DEADP.Appeals@westerncape.gov.za.

5. A prescribed appeal form, as well as assistance regarding the appeal processes is obtainable from the office of the appeal authority/ at: Tel. (021) 483 3721, E-mail DEADP.Appeals@westerncape.gov.za or URL <http://www.westerncape.gov.za/eadp>.

J. CONSEQUENCES OF NON-COMPLIANCE WITH CONDITIONS

Non-compliance with a condition or term of this Environmental Authorisation or EMPr may result in suspension or withdrawal of this Environmental Authorisation and may render the holder liable for criminal prosecution.

K. DISCLAIMER

The Western Cape Government, the Municipality, committees or any other public authority or organisation 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

DATE OF DECISION: 30 SEPTEMBER 2020

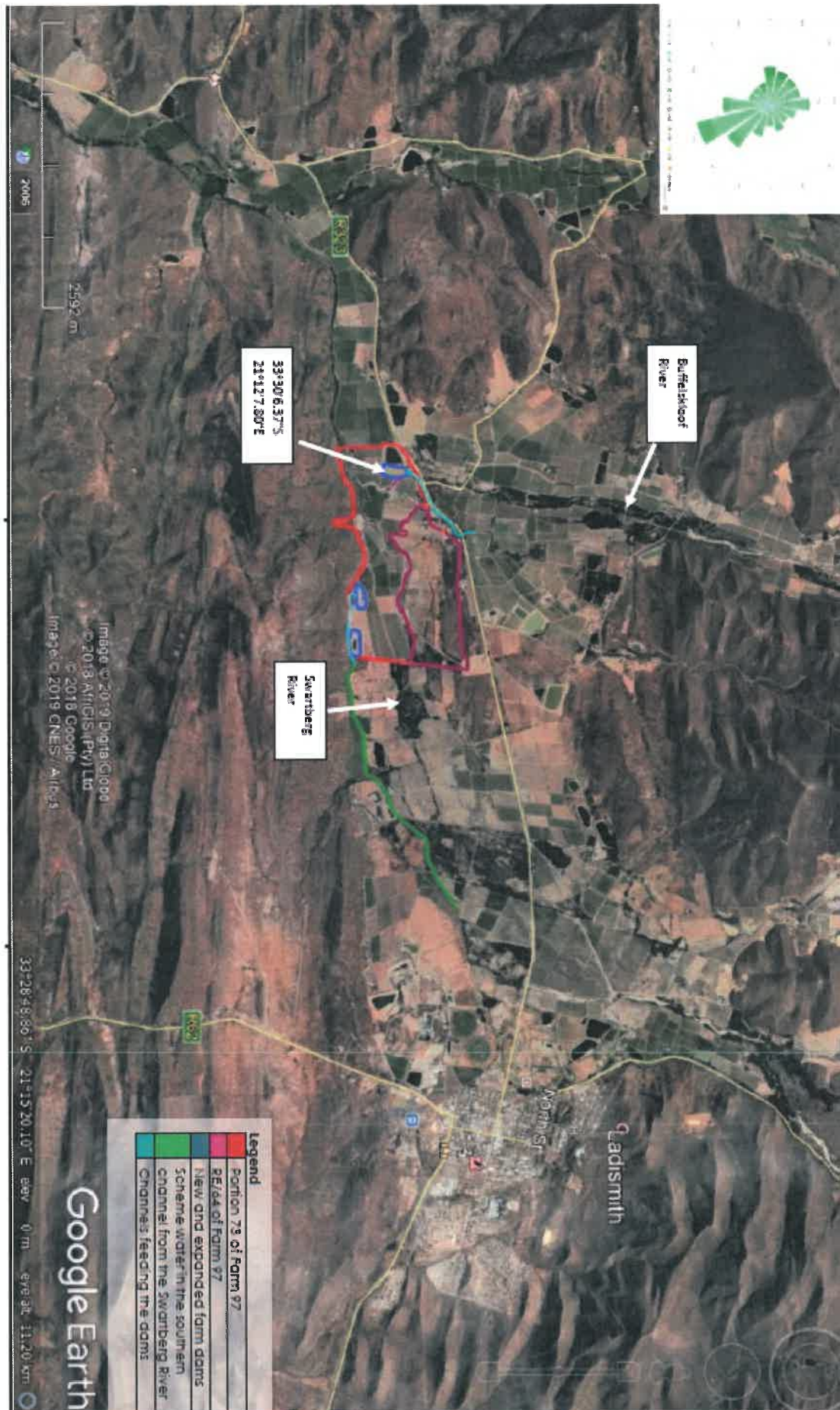
Copied to: (1) A Danhauser (EAP)

Email: pleter@cornerstoneenviro.co.za

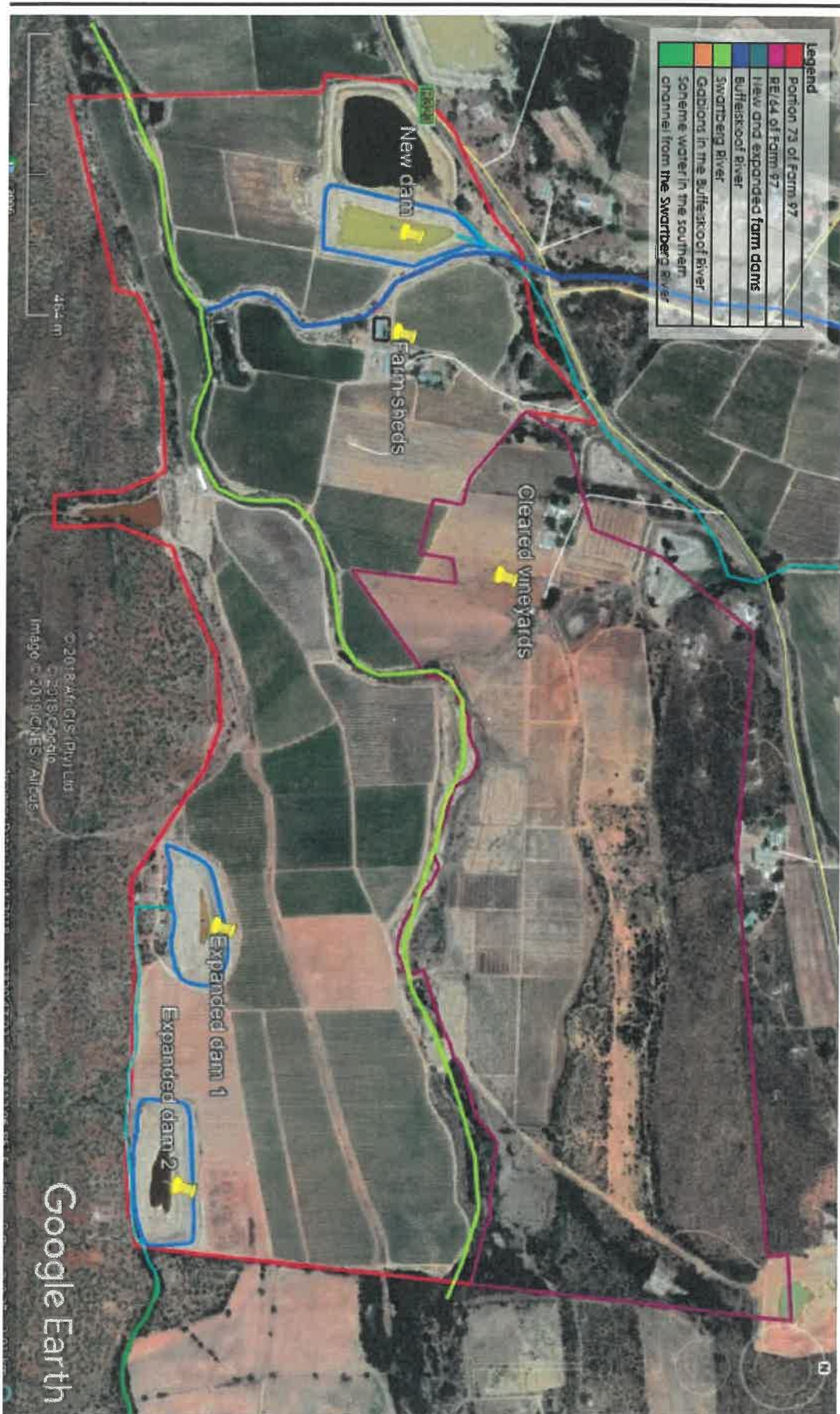
(2) Wilmie Viljoen (Municipality)

Email: wilmie@kannaland.gov.za

ANNEXURE 1: LOCALITY MAP



ANNEXURE 2: SITE PLAN



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 R40 000 (Forty 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 06 September 2019, the report dated 28 October 2019 and the Environmental Management Programme and Maintenance Management Plan ("EMPr") submitted together with the application.
- 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 28 January 2020 attended by officials from this Department.
- g) The appeal decision on the 24G administrative fine dated 10 September 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:

- An advertisement was placed in the **Hoorn** newspaper on 14 February 2019;
- A site notice was erected; and
- Letters were sent to interested and affected parties and the municipal ward councillor on 12 September 2019.
- I&APs were afforded the opportunity to provide comments on the application.

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

The following organs of state provided comment on the application:

- Breede Gourtiz Catchment Management Agency ("BGCMA")
- Department of Agriculture, Forestry and Fisheries ("DAFF")

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

BGCMA

The BGCMA noted that two existing off channel dams as well as the new dam were enlarged without the approval of the BGCMA. The BGCMA also requested that the River Maintenance Management Plan must be submitted as part of the Water Use Licence Application ("WULA"). The EAP responded by stating that a WULA was submitted on 5 September 2019 and that the Environmental Management Programmes is a combined document with the Maintenance Management Plan which was distributed to the BGCMA.

DAFF

The DAFF stated that soil erosion will be possible along the access routes to the dam walls and spillways and that proper management must be implemented with regards to possible soil erosion. The DAFF further stated that the dam wall must be sealed in order to prevent saturation of agricultural soil in the lower lying areas surrounding the dam. If water is to seep through the dam wall, cut off drainage pipes must be

installed. Furthermore, the landowner must protect all areas susceptible to erosion by preventing storm water from concentrating in rivulets and securing slopes and banks. Permanent vegetation such as grasses can be planted to mitigate erosion at the bank of the dam. In conclusion the DAFF stated that they support the application.

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 Site/Activity Alternatives

Alternative 1 (Herewith authorised)

This entails the construction of a workshop and general storage shed (Farm Shed) with a footprint of approximately 720m². The Farm Shed is located within 32m of the Buffelskloof River. The Farm Shed was constructed in close proximity to similar storage and processing infrastructure on the farm. Since the Farm Shed was also used for erecting the solar panels, it needed to be in close proximity to the infrastructure that would require a connection to the solar panels, either as direct power supply or as back-up power supply.

Construction of a new instream dam adjacent to, and east of an existing dam (New Dam). The dam has a footprint of 2.2 ha (22 106m²), full supply level of 4.8m, board height of 2.4m, wall height of 7.3m, and capacity of 49 490m³. Upstream of the dam is an existing weir with floodgates and overflow capacity for flood events. The site for the New Dam was chosen based on its proximity to an existing dam, to act as an extension of the existing dam, as well as the proximity of the diversion channel from the Buffelskloof River. No other location was considered for the New Dam.

Alternative 2

No activity alternatives were considered, as the activities undertaken were those required at the relevant time on the farm to improve farming practices, reduce dependency on seasonal streamflow, and to undertake erosion protection in the Buffelskloof River.

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

According to the application, the holder has already invested heavily into the operations of the farm, and as such, it is not considered viable to cease these activities / operations. Decommissioning these activities is also likely to negatively impact the environment and the availability of jobs on the farm and would result in an unnecessary waste of resources and generation of waste materials.

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 property is zoned for agriculture. The activities conducted on the property are all related to agriculture and as such is within the property's existing land use rights. The farm produces fruit for the export market, contributing to the South African economy. The farm also employs a number of permanent and temporary (seasonal) workers. During the 2015-2018 drought, some of the cultivated areas on the farm had to be cleared to enable other crops to survive, which impacted on the productivity of the farm as well as the number of jobs available. The increased water storage capacity in the form of the newly constructed dam at the farm aims to reduce the dependency on availability of water in the rivers, providing a more robust irrigation source, and subsequently reducing the threat to cultivated lands and jobs.

3.2. Biophysical and Biodiversity Impacts

Physical disturbances occurred during the excavations for the New Dam. Bedrock was excavated, and a dam wall built to a height of 7.3m (from the lowest level of the dam). The rock and other materials were used to shape the

dam wall, and for other earthworks on the farm. Ecological Support Areas ("ESA") have been mapped along the Buffelskloof River, which were affected by the New Dam, the Farm Shed and the gabions. According to the Freshwater Assessment, *"The instream and riparian habitat of the watercourse is considered largely modified primarily due to the flow and channel alterations of the river. Despite these modifications the watercourse is still considered to be of ecological importance and sensitivity as the watercourse is providing regionally significant aquatic habitat throughout the year; and fulfils a number of functional roles within the catchment (e.g. collection and transport of storm water runoff, and flood alleviation; water and food provision during the wet season, contributing to biodiversity maintenance); and the watercourse acts as a corridor for the movement of fauna and/or flora; and the watercourse is likely to support fauna that are characteristic of the region and provides important habitat to indigenous flora and fauna.*

The watercourse is degraded relative to their presumed natural state (largely as a result of agricultural activities) but has potential for rehabilitation.

The construction of the dam and the shed have impacted on an already severely impacted aquatic ecosystem. No additional water allocation is required due to the construction activities. The impacts associated with the construction activities are low and can be mitigated to reduce the impact to very-low. Provided that the proposed mitigation measures and rehabilitation are employed and included as a condition of approval, then the impacts of the construction will be reduced to satisfactory level. It is, therefore, the professional opinion of the specialist that there are no constraints from a freshwater ecological perspective that preclude against the construction."

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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