



REFERENCE NUMBER: 14/2/4/2/1/F5/16/0001/19

ENQUIRIES: Shafeeq Mallick

BY REGISTERED MAIL

The Trustees
Eben Sadie Trust
P. O. Box 1019
MALMESBURY
7299

Cell: (083) 940 7407
Email: eben@thesadiefamily.com

Attention: Mr Eben Sadie

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: THE UNLAWFUL CONSTRUCTION OF A DAM ON PORTION 7 OF FARM NO. 842 MALMESBURY

With reference to your application dated 21 January 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 21 January 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

Eben Sadie Trust
 c/o Mr Eben Sadie
 P. O. Box 1019
 MALMESBURY
 7299

Cell: (083) 940 7407
 Email: eben@thesadiefamily.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. 984 of 4 December 2014 -</i></p> <p>Activity Number: 16</p> <p><i>Activity Description: The development of a dam where the highest part of the dam wall, as measured from the outside toe of the wall to the highest part of the wall, is 5 metres or higher, or where the highwater mark of the dam covers an area of 10 hectares or more.</i></p>	<p>In January 2017 the Applicant commenced with and completed the construction of a small dam, with a footprint of approximately 0.6ha, on the affected property. The dam has a wall height of 8.47m at its highest point due to the slope on which the dam was constructed. The dam has a storage capacity of 7130m³.</p>

<p>As similarly listed in Government Notice No. 325 of 7 April 2017 -</p> <p>Activity Number: 16</p> <p>Activity Description: <i>The development of a dam where the highest part of the dam wall, as measured from the outside toe of the wall to the highest part of the wall, is 5 metres or higher or where the highwater mark of the dam covers an area of 10 hectares or more.</i></p>	<p>As above</p>
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The abovementioned list is hereinafter referred to as "the listed activity".

D. PROPERTY DESCRIPTION AND LOCATION

The listed activity commenced on portion 7 of Farm 842, Malmesbury.

The SG digit code is: C04600000000084200007

The co-ordinates for the property boundary are:

Point	Latitude (S)	Longitude (E)
1	33° 31' 21.79" South	18° 48' 13.60" East
2	33° 31' 22.41" South	18° 48' 22.41" East
3	33° 31' 45.41" South	18° 48' 24.51" East
4	33° 31' 35.00" South	18° 48' 12.73" East

The co-ordinates for the site boundary are:

Point	Latitude (S)	Longitude (E)
1	33° 31' 33.44" South	18° 48' 14.06" East
2	33° 31' 33.50" South	18° 48' 16.66" East
3	33° 31' 36.17" South	18° 48' 16.68" East
4	33° 31' 36.38" South	18° 48' 14.38" 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")

Holland and Associates Environmental Consultants

C/o Mr Ross Holland

PO Box 31108

TOKAI

Tel: (021) 712 9120

Cell: (072) 601 0803

Email: ross@hollandandassociates.net

F. DETAILS OF THE ACTIVITY/IES UNDERTAKEN

The application entails the unlawful construction of a dam on portion 7 of Farm No. 842, Malmesbury.

In January 2017 the Applicant commenced with and completed the construction of a small dam with a footprint of approximately 0.6ha on the affected property. The dam has a wall height of 8.47m at its highest point due to the slope on which the dam was constructed. The storage capacity of the dam is 7130m³. The dam is filled by means of surface water run-off as well as rainwater from the roof of the farmstead to the north of the dam. The water in the dam will be used for domestic, non-commercial, purposes.

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 the preferred alternative described in the application and assessment report dated 21 January 2019 on the site as described in Section D above.

2. The Environmental Authorisation is valid for a period of **five years** from the date of the decision.
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 commencement of construction activities.

5.1 The notice must make clear reference to the site details and 24G Reference number given above.

5.2 The notice must also include proof of compliance with the following condition:
Condition 6

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. If 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 January 2019 compiled by Holland and Associates 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 any land clearing or construction activities to ensure compliance with the EMPr and the conditions contained herein.
11. 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.
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, the EMPr and submit Environmental Audit Reports to the competent authority every 5 years 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

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.

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 activity.
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

DATE OF DECISION: 26 MARCH 2020

CC: (1) Ross Holland (Holland and Associates Environmental Consultants)

(2) Joggie Scholtz (Swartland Municipality)

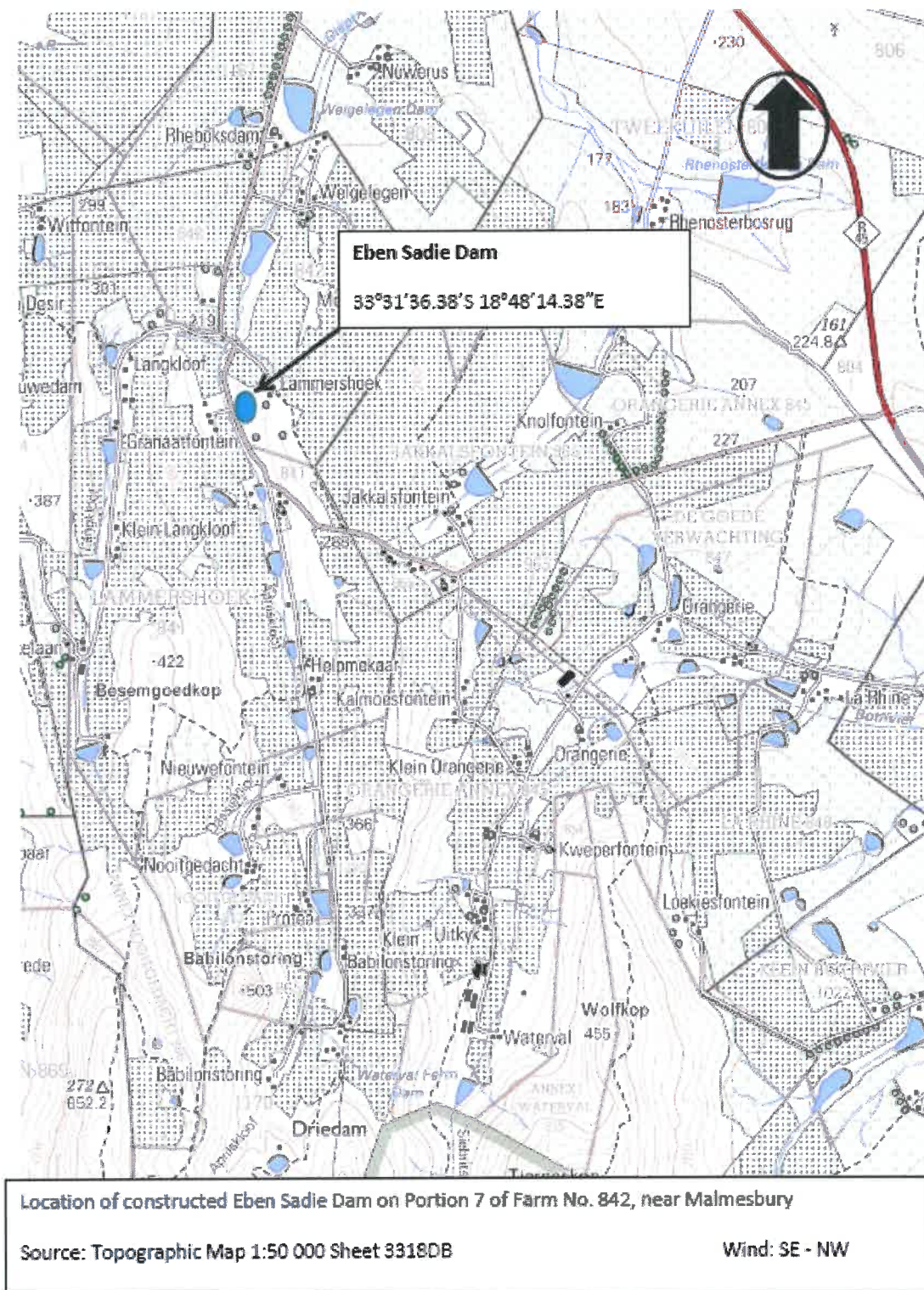
(3) Dale Wakefield (DEADP: Environmental Law Enforcement (Region 1))

Email: ross@hollandandassociates.net

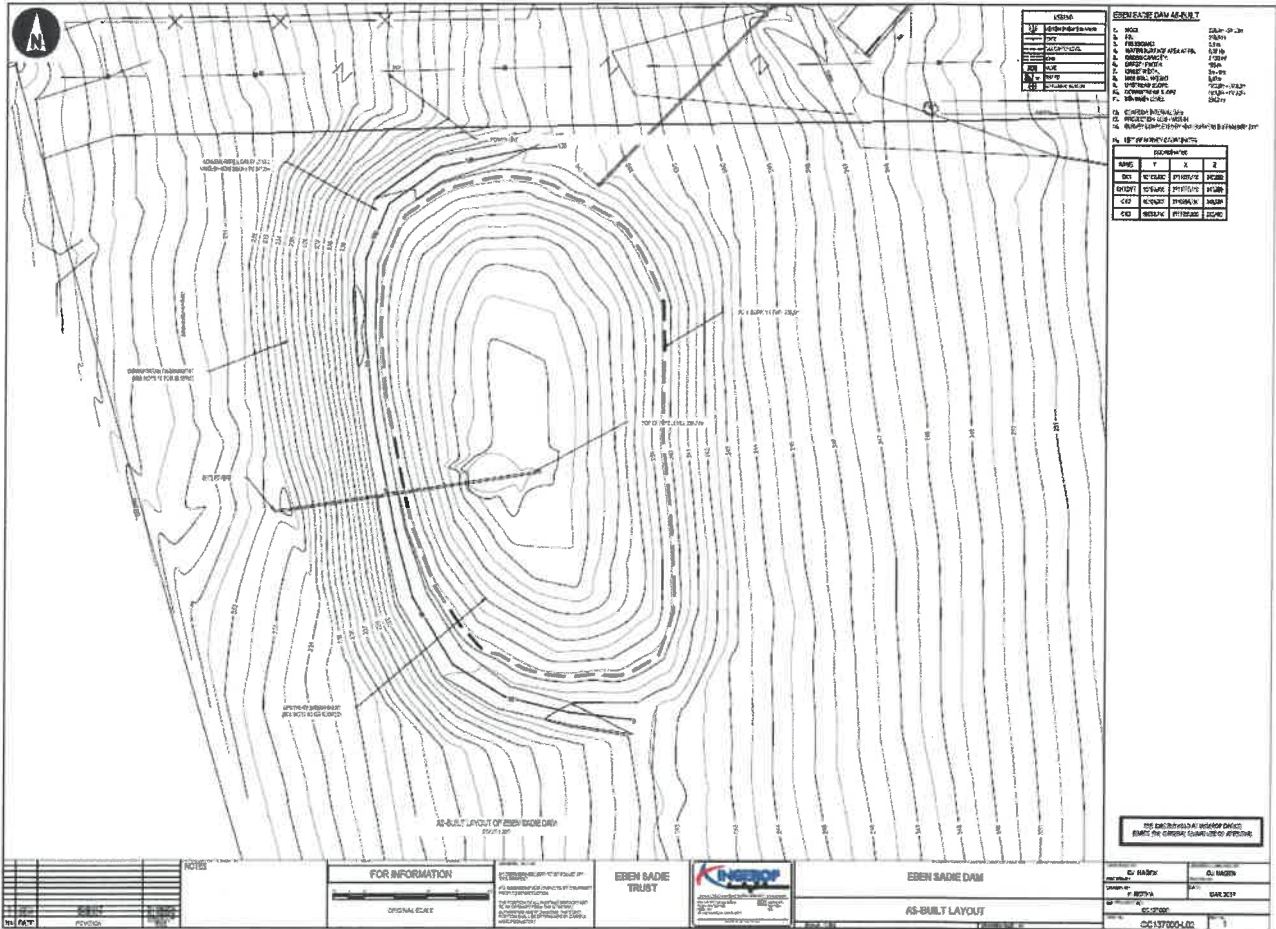
Fax: (022) 487 9440

Email: Dale.Wakefield@westerncape.gov.za

ANNEXURE 1: LOCALITY MAP



ANNEXURE 2: SITE PLAN



FOR OFFICIAL USE ONLY:

S24G REFERENCE:

14/2/4/2/1/F5/16/0001/19

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 section 24G application and Environmental Impact Assessment and Mitigation Measures as outlined in the section 24G application dated 21 January 2019.
- b) The Environmental Management Programme of January 2019 submitted for 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 29 November 2019, 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:

- identification of and engagement with I&APs.
- fixing a notice board at the site where the listed activity unlawfully commenced on 19 September 2018.
- 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 18 and 19 September 2018, 14 November 2018, and 16 April 2019.
- the placing of a newspaper advertisement in the **Swarland** newspaper on 18 September 2018.

Most I&APs had no objection to the application. One I&AP noted however that the dam is sometimes used by animals for water consumption and was concerned that seepage from the dam can affect the water quality in the borehole. To this the EAP advised that the dam is clay-lined therefore making it relatively impermeable; any seepage is expected to be minimal.

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

The following organs of state provided comment on the application:

- CapeNature
- Department of Agriculture (DoA)
- Heritage Western Cape (HWC)
- Department of Water and Sanitation (DWS)

CapeNature advised that the dam site supported Swartland Granite Renosterveld (a critically endangered vegetation type). They noted that recent research shows that renosterveld on areas cleared of Eucalyptus trees showed “recovery of important growth forms”. To this the EAP advised that prior to the dam construction activities, the Eucalyptus plantation had been in existence for more than 40 years. The botanical assessment notes that Eucalyptus trees sterilize soil, therefore preventing indigenous vegetation from naturally returning after the removal of the alien vegetation species. The dam is therefore currently located entirely within a disturbed area, and no indigenous vegetation was impacted by the construction of the dam.

CapeNature further advised that any remaining remnants of natural vegetation should be clearly demarcated on a georeferenced map and on the ground. The EAP responded that this recommendation has been included in the EMPr.

The DoA advised that they have no comment on the application.

The HWC advised that there is no reason to believe that the dam will impact on heritage resources, therefore no further action is required in terms of Section 38 of the *National Heritage Resources Act (Act 25 of 1999)*.

The DWS commented that no Water Use License is required for the construction of the dam.

2. Alternatives

2.1 Location/Site Alternatives

No site/location alternatives were considered for construction of the dam due to the favourable location. The dam that does not impact on any indigenous vegetation and is further than 35m from the nearest watercourse, i.e. the Diep River to the west of the site. The dam is located downstream of the farm buildings and cultivated areas on the property, therefore enabling rainwater from the roof of the buildings, and overland runoff from irrigation areas to be gravity fed into the dam.

2.2 Design Alternatives

No design alternatives were considered. Due to the small size of the dam and the purpose of the dam (storing rainwater and overland runoff for household use), the

dam design was considered optimal for the proposed location. The construction of the dam did not result in any significant negative environmental impacts.

2.3 Operational Alternatives

Whilst no operational alternatives were proposed to avoid negative impacts, mitigation measures were included in the EIA report, as well as in the EMPr for the operational phase of the project.

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

The "No Go" alternative for the unlawful construction of the dam implies the decommissioning of the dam and restoring the site to its pre-commencement state, i.e. returning the site an area for cultivation, as the dam was constructed on an agricultural area which was formerly occupied by a Eucalyptus plantation. The unlawful activity has already been completed, the dam constructed, and no additional activities form part of this application.

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. Pollution Impacts

construction of the dam and the dam itself will not cause pollution in the affected area. The dam is filled through gravity via pipes fed by rainwater harvesting, etc.

3.2. Biodiversity Impacts

The Botanical Assessment dated 1 August 2017 concludes that due to the Eucalyptus plantation, no fynbos, renosterveld or other natural indigenous vegetation persisted under the canopy of trees. As such, any natural vegetation that may have been present on the footprint of the former plantation disappeared decades ago, including within the footprint of the dam site.

Freshwater ecologist input dated 8 June 2018 advises that the dam is located at the top of a hillslope on the eastern bank of the Diep River. The foot of the dam wall, at its closest point is at least 35m outside of the riparian zone of the Diep

River. There is a gravel road, row of Eucalyptus trees and grass embankment between the top of bank of the river and the foot of the dam. Therefore, the freshwater ecologist concludes that the construction of the dam has not altered the bed, banks or characteristics of the Diep River.

In addition, the dam is being filled from runoff coming from the built areas within the property. The dam is therefore not impeding or diverting the flow of the Diep River, nor is water being abstracted from the river to fill the dam.

3.3. Sense of Place & Heritage Impacts

A Heritage Consultant was appointed to assess the site and submit a Notice of Intent to Development form to Heritage Western Cape (HWC). HWC responded on 8 June 2018 to confirm that "the project will not impact upon the heritage resources, and that no further action is required in terms of S38 of the National Heritage Resources Act" (sic).

The construction activities on the visual aesthetics of the surrounding environment would have been minimal. The dam is in line with the surrounding area's sense of place. There are numerous dams and other agricultural infrastructure surrounding the site. The dam does not detract from the rural agricultural nature of its surrounds.

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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