



REFERENCE NUMBER: 14/2/1/DR7/Farm 258

ENQUIRIES: Jamie-Lee van Zyl

BY REGISTERED MAIL

The Trustees
Melkboom Duminy Trust
P.O. Box 94
HEIDELBERG
6665

Cell: (082) 562 5973

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Attention: Mr Willem Gerhardus Duminy

Dear Sir

APPLICATION IN TERMS OF SECTION 24G OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998) ("NEMA") FOR THE UNLAWFUL COMMENCEMENT OF CLEARING OF CRITICALLY ENDANGERED VEGETATION ON FARM 258, RIVERSDALE

With reference to your application dated 05 June 2013 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") (GN No. R.326 of 7 April 2017), the competent authority herewith **grants environmental authorisation** to the applicant for the continuation, conducting or undertaking of the listed activities specified in Section C below in accordance with Preferred Alternative as described in the Environmental Impact Report ("EIR") dated 18 February 2014.

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

Sharples Environmental Services cc
c/o Mr. John Sharples
P.O. Box 9087
GEORGE
6530

Tel: (044) 873 4923
Fax: (044) 874 5953
Email: info@sescs.net

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. R546 of 18 June 2010 –</p> <p>Activity Number: 12</p> <p>Activity Description: <i>The clearance of an area of 300 square metres or more of vegetation where 75% or more of the vegetative cover constitutes indigenous vegetation.</i></p>	<p>The applicant hired a contractor to clear ±3ha patch of Renosterveld to establish additional arable land. An area of 2.5ha of the farm (situated to the east of the fence) was cleared and the biomass ploughed into the soil. The applicant proposes to clear an additional ±0.6ha area.</p>

<p>(a) Within any critically endangered or endangered ecosystem listed in terms of section 52 of the NEMBA or prior to the publication of such a list, within an area that has been identified as critically endangered in the National Spatial Biodiversity Assessment 2004.</p>	
<p>As similarly listed in Government Notice No. 324 of 7 April 2017-</p> <p>Activity Number: 12</p> <p>Activity Description: <i>The clearance of an area of 300 square metres or more of indigenous vegetation except where such clearance of indigenous vegetation is required for maintenance purposes undertaken in accordance with a maintenance management plan.</i></p> <p>i. Western Cape</p> <p><i>i. Within any critically endangered or endangered ecosystem listed in terms of section 52 of the NEMBA or prior to the publication of such a list, within an area that has been identified as critically endangered in the National Spatial Biodiversity Assessment 2004.</i></p>	<p>As above</p>

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

D. PROPERTY DESCRIPTION AND LOCATION

The listed activity commenced on Farm Melkhoutekraal No. 258, Riversdale.

The SG digit code is: C0640000000025800000

The co-ordinates for the site are:

Point	Latitude (S)	Longitude (E)
1	34° 6' 36.41" South	21° 4' 56.05" 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")

Melkboom Duminy Trust

c/o Mr Willem Gerhardus Duminy

P.O. Box 94

HEIDELBERG

6665

Cell: (082) 562 5973

Fax: (028) 722 2204

Email: willieduminy@easycoms.co.za

F. DETAILS OF THE ACTIVITY OR ACTIVITIES UNDERTAKEN

The applicant hired a contractor to clear ±3ha patch of Renosterveld in order to establish additional arable land. An area of 2.5ha of the farm cleared and the biomass ploughed into the soil. The applicant proposes to clear an additional ±0.6ha area.

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 specified in Section C above in accordance with and restricted to the Preferred Alternative described in the EIR dated 18 February 2014 on the site as described in Section D above.

2. The Environmental Authorisation is valid for a period of **3 (three) years** from the date of the decision to continue, conduct or undertake the listed activity as specified in Section C above.
3. The development must be concluded within 1 years from the date of continuation of the first listed activity.
4. The holder shall be responsible for ensuring compliance with the conditions by any person acting on his behalf, including an agent, sub-contractor, employee or any person rendering a service to the holder.
5. 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

6. Seven (7) calendar days' notice, in writing, must be given to the competent authority before continuation of commencement of the listed activities.
 - 6.1 The notice must make clear reference to the site details and 24G Reference number given above.
 - 6.2 The notice must also include proof of compliance with conditions of 7, 8, 9 and 11.

PART III

Notification and administration of an appeal

7. The holder must in writing, within 14 (fourteen) days of the date of this decision–
 - 7.1 notify all registered Interested and Affected Parties ("I&APs") of –
 - 7.1.1 the outcome of the application;

- 7.1.2 the reasons for the decision as included in Annexure 3;
- 7.1.3 the date of the decision; and
- 7.1.4 the date when the decision was issued.

7.2 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.

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

7.4 provide the registered I&APs with:

- 7.4.1 the name of the holder (entity) of this Environmental Authorisation;
- 7.4.2 name of the responsible person for this Environmental Authorisation;
- 7.4.3 postal address of the holder;
- 7.4.4 telephonic and fax details of the holder;
- 7.4.5 e-mail address, if any, of the holder; and
- 7.4.6 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*.

8. The listed activity, including site preparation, may not commence within 34 (thirty-four) calendar days from the date 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

9. The draft Environmental Management Programme ("EMPr") dated 13 September 2013 compiled by Sharples Environmental Services cc and submitted as part of the application for environmental authorisation is hereby approved and must be implemented.

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

PART V

Monitoring

11. The holder must appoint a suitably experienced Environmental Control Officer ("ECO"), before continuation of commencement of any land clearing activities to ensure compliance with the EMPr and the conditions contained herein.
12. 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.
13. 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

14. 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 VII

Activity/ Development specific conditions

15. 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.

16. 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. RECOMMENDATIONS

1. CapeNature should be consulted regarding facilitating the conservation of the indigenous vegetation found north-west of the area cleared of Renosterveld (see **Annexure 2** in this regard) through a stewardship agreement. It must be noted that all the associated management costs and costs of entering into the stewardship agreement with CapeNature will be for the EA holder's account.

I. 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.

J. APPEALS

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

1. Should an appeal be lodged with the appeal administrator against the Environmental Authorisation, you are hereby advised of the following:

1.1. An appellant (if the applicant) must –

- 1.1.1. submit an appeal in accordance with regulation 4 of the *National Appeal Regulations, 2014*, to the appeal administrator and a copy of the appeal to the decision maker, any registered I&APs and any organ of state with interest in the matter within 20 (twenty) days from the date

that the notification of the decision was sent to the applicant by the competent authority.

1.2. An appellant (if NOT the applicant) must –

1.2.1 submit an appeal in accordance with regulation 4 of the *National Appeal Regulations, 2014*, to the appeal administrator, and a copy of the appeal to the applicant, 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 that the notification of the decision was sent to the registered interested and affected parties by the applicant.

2. The applicant (if not the appellant), the decision-maker, I&APs and organs of state must submit their responding statements, if any, to the appeal authority and the appellant within 20 (twenty) days from the date of receipt of the appeal submission.

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

By post: Attention: Jaap de Villiers
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 Jaap de Villiers (Tel: 021-483 3721)
Room 809, 8th floor Utilitas Building
1 Dorp Street, Cape Town, 8000; or

By e-mail: Jaap.DeVilliers@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 Jaap.DeVilliers@westerncape.gov.za.

4. 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 Jaap.DeVilliers@westerncape.gov.za or URL <http://www.westerncape.gov.za/eadp>.


K. 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.

L. 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: 5 June 2019

Copied to:

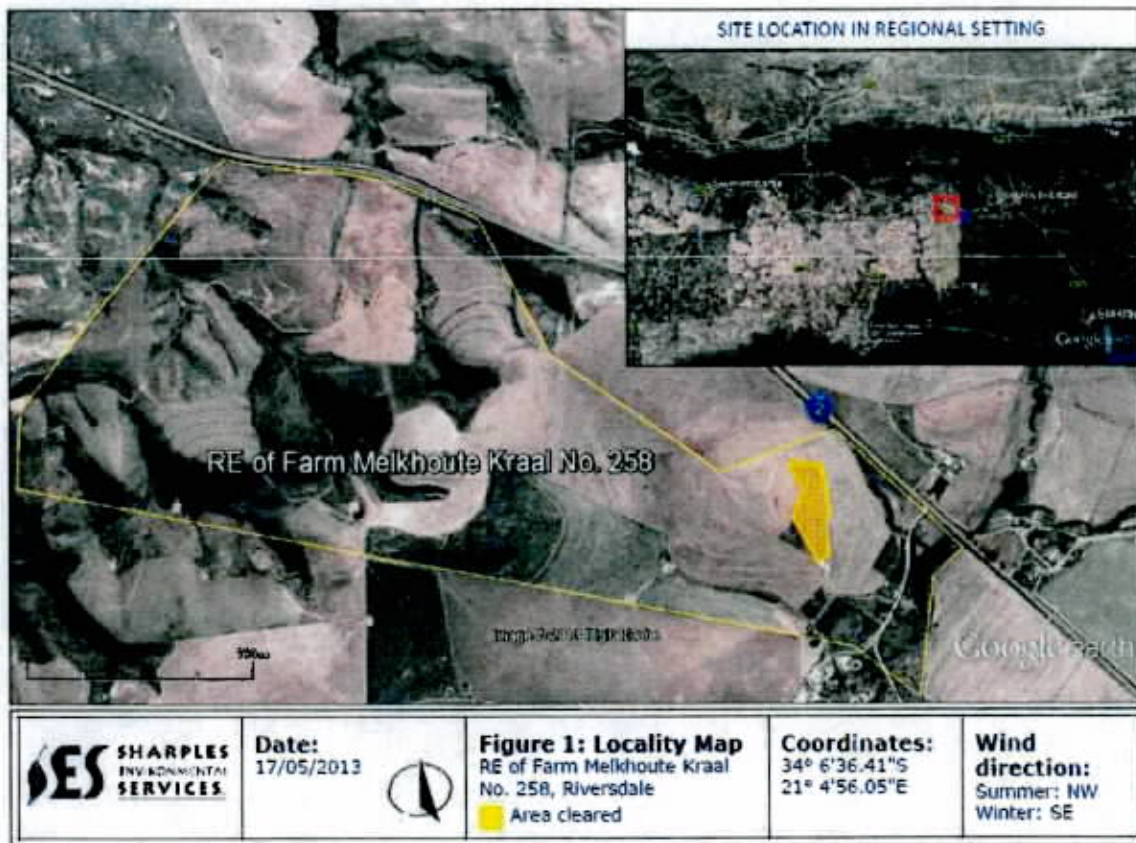
(1) John Sharples/ Cara Nieuwoudt (Sharples Environmental Services cc)

(2) Johan Jacobs (Hessequa Municipality)

Fax: (044) 874 5953
Email: info@sescs.net

Fax: (028) 713 3146
Email: mm@hessequa.gov.za

ANNEXURE 1: LOCALITY MAP



ANNEXURE 2: SITE PLAN



Farm Melkhoutekraal No. 258, Riversdale, showing the farm boundary in red, the cleared area in white, the remaining 0.6ha Renosterveld patch (proposed to be cleared) in pink and other conserved Renosterveld areas on the farm in yellow.

FOR OFFICIAL USE ONLY:

S24G REFERENCE:

14/2/1/DR7/FARM 258

ENFORCEMENT REFERENCE :

14/1/1/DR7/FARM MELKHOUTKRAAL 258, L537

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 information contained in the application form dated 5 June 2013, the EIA report received by the competent authority on 25 March 2014 and the Environmental Management Programme 13 September 2013 received with the EIA report.
- 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 13 May 2014, attended by officials from this department.
- g) The appeal decision on the 24G administrative fine dated 21 July 2015 and the Correction Notice to the appeal decision dated 3 April 2019.

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.
- The farm is located along a national road— the N2. The applicant was therefore granted with deviation from having to erect a site notice, as motorists pass by at too great a speed to be able to see the notice from the N2.
- 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 31 October 2013.
- the placing of a newspaper advertisement in the **George Herald, Knysna-Plett Herald, Mossel Bay Advertiser, Oudtshoorn Courant** and the **South Cape Forum** newspapers on 08 November 2013.

Consultation with Organs of State in terms of section 24O of the NEMA

The following Organs of State provided comment on the application:

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

The DWS concurs with the mitigation measures and recommendations made by the EAP and Specialist. If no authorisation exists for additional irrigation, then the applicant has to obtain authorisation in terms of section 40 of the *National Water Act, 1998 (Act 36 of 1998)*.

CapeNature noted that the abundant presence of the threatened plant species, i.e. the critically endangered *Haworthia magnifica var. acuminata* on the remaining patch requires attention and urgent conservation protection. According to the EAP, this vegetation type is abundantly found on the remaining intact patch of Renosterveld found on the farm which will be conserved.

HWC noted that there are no heritage resources affected by the activity.

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 Preferred Alternative (herewith authorised)

The preferred alternative entails the clearing of about 3ha virgin land in order to expand arable land on Farm No. 258, Riversdale. Approximately 2.5ha of Eastern Rûens Shale Renosterveld has already been cleared. It's the EA holder's intention to clear the remainder of the patch (about 0.6ha) and to continue with the proposed incorporation of the fragment into the existing crop field that entirely surrounds the site.

2.2 Option of not implementing the activity or activities ("No-Go" Alternative)

The "No-Go" alternative would require the applicant to rehabilitate the area to its original condition (or as close to it as is possible), while also restoring the Renosterveld that would have occurred on the cleared portion of the property. According to the EIA report, Renosterveld restoration is difficult and has been limited success with restoration attempts, especially those in abandoned agricultural fields. The site will remain vulnerable in the long term as the restored areas would be isolated from areas with similar habitat and vegetation on the farm. This alternative is not feasible as it is considered expensive with a low chance of success in the long run.

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

The property is zoned for agricultural use and forms part of a working farm that has historically and is currently being used for crop production. The clearance of vegetation was done in order to expand the total arable area on the farm. The cleared area is surrounded by an active dryland crop field.

3.2. Regional/ Planning Context

The activities undertaken are in line with the zoning of the property. Environmental authorisation was however not received before the vegetation clearing activities were commenced with. Furthermore, the EA holder did not consult the Hessequa Municipality with regards to transforming "virgin" land to arable.

3.3. Biophysical Impacts

According to the EIA report, the clearing of the vegetation may lead an increased risk to soil erosion and an increase in runoff velocities. The proposed mitigation measures involve the implementation of appropriate runoff control measures (e.g. cut-off berms, contour ploughing and shaping) to reduce sheet-flow and associated soil erosion. It is also noted that the activity has changed the drainage regime of the site in the long term and that the chemical composition of the soil will be altered through the use of soil fertilizers for crop production. The proposed mitigation measure involves the conservation of intact virgin land found on the farm outside the cleared area, as habitat for Eastern Rûens Shale Renosterveld vegetation.

3.4. Biodiversity Impacts

The assessment notes that a patch of approximately 2.5ha vegetation classed as critically endangered Eastern Rûens Shale Renosterveld has been irreplaceably lost. Findings from the botanical assessment ("BA") undertaken show that indicated that the affected area was in ecological decline and had little value in the long term due to its small size, isolation and the surrounding land use. It is further noted that the cleared and remaining part of the patch is completely

isolated from other Renosterveld patches which means that without connectivity, no or very limited genetic "renewal" was/is possible within the patch. The Renosterveld area that is proposed to be protected is connected by way of small valleys and drainage lines to other extensive Renosterveld patches on adjoining properties and represents a significant and connected Renosterveld conservation area that has a potential for long term conservation. The BA recommends that this viable Renosterveld conservation potential be viewed as an "offset" for the area that was cleared illegally and that the landowner be given the tools (guidance, help, encouragement) to make amends by actively conserving the larger Renosterveld area by means of a specially prepared management plan.

3.5. Visual / Sense of Place

Given that the end land use (cultivated land/agriculture) associated with the activity is in keeping with the surrounding land use (cultivated land/agriculture), the visual impacts associated with the activity are minimal.

3.6. Socio-economic Impacts

The assessment notes that the vegetation clearing activity provided a short-term piece job opportunity to one contractor.

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.

—END—

Jamie-Lee Van Zyl

From: Jamie-Lee Van Zyl
Sent: 05 June 2019 11:43 AM
To: Annemare Duminy
Cc: 'info@sescs.net'; mm@hessequa.gov.za
Subject: s24G Environmental Authorisation: 14/2/1/DR7/Farm 258
Attachments: s24G Environmental Authorisation_Clearance of critically endangered vegetation_Farm 258_Riversdale.pdf

Good day Mr Duminy

Please find attached the decision on your section 24G application.

Kind regards

Jamie-Lee van Zyl

Sub-directorate: Rectification

Directorate: Environmental Governance

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BETTER TOGETHER.