



REFERENCE: 14/2/4/2/2/E4/27/0015/18

ENQUIRIES: Ziyaad Allie

The Members  
Lingenfelder Broers CC  
P.O. Box 150  
RUSTFONTEIN  
6848

**REGISTERED MAIL**  
Tel: 082 853 4971  
Email: office@rustfontein.co.za

Attention: AP Lingenfelder

Dear Sir

**APPLICATION IN TERMS OF SECTION 24G OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998) ("NEMA") FOR THE UNLAWFUL CONSTRUCTION OF THE NEW INSTREAM RUSTFONTEIN STORAGE DAM ON PORTION 13 OF FARM RUS VALLEY 81, CALEDON ROAD, VILLIERSDORP**

With reference to your application dated 19 September 2018 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 as described in the application and assessment report dated 19 March 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

Lingenfelder Broers CC

C/o Mr Albert Lingenfelder (Snr), Guillaume Lingenfelder & Francois Lingenfelder

P.O Box 150

RUSTFONTEIN

6848

Tel: (082) 853 4971

Email: office@rustfontein.co.za

The abovementioned applicants are the holder of this Environmental Authorisation and is hereinafter referred to as "the holder".

## C. LIST OF ACTIVITIES AUTHORISED

<p>Government Notice No. R. 327 of December 2014</p> <p><b>Activity Number: 12</b></p> <p>Activity Description: "The development of—</p> <p>(i) dams or weirs, where the dam or weir, including infrastructure and water surface area, exceeds 100 square metres; or</p> <p>(ii) infrastructure or structures with a physical footprint of 100 square metres or</p>	<p>The construction of an in-stream dam with a wall length of 400 meters, wall height of 10.3 meters storage capacity of 49 000m<sup>3</sup> at the adjusted spillway pipe and 53 800m<sup>3</sup> at the emergency spillway. This resulted in a surface area which exceeds 100m<sup>2</sup>.</p>
---	---

<p>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 32 metres of a watercourse, measured from the edge of a watercourse; —</p> <p>excluding—</p> <p>(dd) where such development occurs within an urban area;</p> <p>(ee) where such development occurs within existing roads, road reserves or railway line reserves; or</p> <p>(ff) the development of temporary infrastructure or structures where such infrastructure or structures will be removed within 6 weeks of the commencement of development and where indigenous vegetation will not be cleared."</p>	
<p>Government Notice No. 327 of December 2014</p> <p><b>Activity Number: 19</b></p> <p>Activity Description: "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 a watercourse;</p> <p>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</p>	<p>The construction of the dam resulted in the excavation, removal, moving of soil of more than 10m<sup>3</sup> from a small drainage line with associated wetland area (non-perennial watercourse) that drains from the hills on the south-east towards the Theewaterskloof dam basin.</p>

<p>undertaken in accordance with a maintenance management plan;  (c) falls within the ambit of activity 21 in this Notice, in which case that activity applies"</p>	
<p>Government Notice No. 324 of December 2014</p> <p><b>Activity Number: 12</b></p> <p>Activity Description: "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.</p> <p>1 Western Cape</p> <p>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;</p> <p>ii. Within critical biodiversity areas identified in bioregional plans;</p> <p>iii. Within the littoral active zone or 100 metres inland from high water mark of the sea or an estuarine functional zone, whichever distance is the greater, excluding where such removal will occur behind the development setback line on erven in urban areas;</p> <p>iv. On land, where, at the time of the coming into effect of this Notice or thereafter such land was zoned open space, conservation or had an</p>	<p>The construction of the dam resulted in the removal of more than 300m<sup>2</sup> of indigenous vegetation.</p>

<p><i>equivalent zoning; or</i></p> <p><i>v. On land designated for protection or conservation purposes in an Environmental Management Framework adopted in the prescribed manner, or a Spatial Development Framework adopted by the MEC or Minister."</i></p>	
<p><i>Government Notice No. 324 of December 2014</i></p> <p><b>Activity Number: 14</b></p> <p><i>Activity Description: "The development of—</i></p> <p><i>(i) dams or weirs, where the dam or weir, including infrastructure and water surface area exceeds 10 square metres; or</i></p> <p><i>(ii) infrastructure or structures with a physical footprint of 10 square metres or more;</i></p> <p><i>where such development occurs—</i></p> <p><i>(a) within a watercourse;</i></p> <p><i>(b) in front of a development setback; or</i></p> <p><i>(c) if no development setback has been adopted, within 32 metres of a watercourse, measured from the edge of a watercourse</i></p> <p><i>i. Western Cape</i></p> <p><i>i. Outside urban areas:</i></p> <p><i>(aa) A protected area identified in terms of NEMPAA, excluding conservancies;</i></p> <p><i>(bb) National Protected Area Expansion Strategy Focus areas;</i></p> <p><i>(cc) World Heritage Sites;</i></p> <p><i>(dd) Sensitive areas as identified in an environmental management framework as contemplated in chapter 5 of the Act and as adopted by the competent</i></p>	<p>The construction of an in-stream dam with a wall length of 400 meters, wall height of 10.3 meters storage capacity of 49 000m<sup>3</sup> at the adjusted spillway pipe and 53 800m<sup>3</sup> at the emergency spillway. The dam exceeds 10m<sup>2</sup> and was built within an Ecological Support Area 2.</p>

<p>authority;</p> <p>(ee) Sites or areas listed in terms of an international convention;</p> <p>(ff) Critical biodiversity areas or ecosystem service areas as identified in systematic biodiversity plans adopted by the competent authority or in bioregional plans;</p> <p>(gg) Core areas in biosphere reserves; or</p> <p>(hh) Areas on the estuary side of the development setback line or in an estuarine functional zone where no such setback line has been determined."</p>	
---	--

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

**D. PROPERTY DESCRIPTION AND LOCATION**

The listed activities commenced on Portion 13 of the Farm Rus Valley No. 81, Caledon.

The SG digit code is: C01300000000008100013

The co-ordinates for the property boundary are:

Point	Latitude (S)	Longitude (E)
1	34° 1' 44.94" South	19° 11'37.86" East
2	34° 1'46.59" South	19° 11'30.29" East
3	34° 1'46.03" South	19° 11'23.75" East
4	34° 1'53.06" South	19° 11'0.55" East

The co-ordinates for the site boundary are:

Point	Latitude (S)	Longitude (E)
1	34° 1'44.94" South	19°11'37.86" East
2	34° 1'46.59" South	19°11'30.29" East
3	34° 1'46.03" South	19°11'23.75" East
4	34° 1'53.06" South	19°11'0.55" 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")**

Pieter Badenhorst Professional Services

c/o Pieter Badenhorst / Ms Therina Oberholzer

P.O Box 1058

WELLINGTON

7654

Tel: 082 776 3422

Fax: (086) 672 1916

Email: [pbps@iafrica.com](mailto:pbps@iafrica.com)/ [therina@pbps.co.za](mailto:therina@pbps.co.za)

#### **F. DETAILS OF ACTIVITIES UNDERTAKEN**

The construction of an in-stream dam (Rustfontein Dam) with a wall length of 400 meters, wall height of 10.3 meters storage capacity of 49 000m<sup>3</sup> at the adjusted spillway pipe and 53 800m<sup>3</sup> at the emergency spillway. The embankment slopes are ±1V:2H on the downstream side and ±1V:3H on the upstream side. The dam is filled by means of pumping from the Riviersonderend (Theewaterskloof Dam basin) and from boreholes.

Prior to the construction of the Rustfontein Dam, another dam on the farm, of similar size and capacity was demolished in 2014 due to dam safety and leakage concerns. According to the application, it would have been more costly to fix the existing dam than it would have been to demolish it and build a new dam. The Rustfontein Dam was constructed by Moreson Grondverskuiwers, with the construction completed in April 2018.

The total amount of water abstracted, as given in the Validation and Verification, amounts to 1 002 520m<sup>3</sup> and the water stored is 26 870m<sup>3</sup>. The purpose of the dam is to provide summer balancing storage and emergency water storage in case of power failures.

#### **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 the implemented alternative as described in the application and assessment report dated 19 March 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 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 in order 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 the recommended re-vegetation activities as outlined in the Freshwater Assessment of September 2018 compiled by *everWater Freshwater Consulting Services*.
- 4.1 The notice must make clear reference to the site details and 24G Reference number given above.

## **PART III**

### **Notification and administration of an appeal**

5. The holder must in writing, within 14 (fourteen) days of the date of this decision—
  - 5.1 notify all registered Interested and Affected Parties ("I&APs") of –
    - 5.1.1 the outcome of the application;
    - 5.1.2 the reasons for the decision as included in Annexure 3;
    - 5.1.3 the date of the decision; and
    - 5.1.4 the date when the decision was issued.
  - 5.2 draw the attention of all registered I&APs to the fact that an appeal may be lodged against the decision in terms of the *National Appeals Regulations, 2014* detailed in Section I below.
  - 5.3 draw the attention of all registered I&APs to the manner in which they may access the decision.
  - 5.4 provide the registered I&APs with:
    - 5.4.1 the name of the holder (entity) of this Environmental Authorisation;
    - 5.4.2 name of the responsible person for this Environmental Authorisation;
    - 5.4.3 postal address of the holder;
    - 5.4.4 telephonic and fax details of the holder;
    - 5.4.5 e-mail address, if any, of the holder; and
    - 5.4.6 the contact details (postal and/or physical address, contact number, facsimile and e-mail address) of the decision-maker and all registered I&APs

in the event that an appeal is lodged in terms of the *National Appeal Regulations, 2014*.

6. The listed activities, including site preparation, may not commence within 34 (thirty-four) calendar days from the date of this Environmental Authorisation. In the event that an appeal is lodged with the Appeal Authority, the effect of this Environmental Authorisation is suspended until the appeal is decided.

#### **PART IV**

##### **Management of the activity/development**

7. The draft Rustfontein Dam - Environmental Management Programme - Construction, Operational and Maintenance of March 2019 ("EMPr") and compiled by Pieter Badenhorst Professional Services 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. A copy of the Environmental Authorisation, EMPr, any independent assessments of financial provision for rehabilitation and environmental liability, closure plans, 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 VI**

##### **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 VII**

### **Activity/ Development specific conditions**

12. The recommendations and mitigation measures of the specialist, as stipulated in the Freshwater Assessment report of September 2018, must be adopted and implemented. This includes the following:
  - 12.1 A buffer zone of 10m must be established around the upstream wetland area as well as the sloop downstream of the dam towards the Theewaterskloof Dam basin.
  - 12.2 The dam banks and dam wall as well as the sloop downstream of the dam must be re-vegetated with appropriate indigenous vegetation.
  - 12.3 Some erosion control measures must be put in place at the spillway outlet pipe.

## **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. 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 EMP is as follows:  
Amendments to the EMP 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. 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: 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).

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 [DEADP.Appeals@westerncape.gov.za](mailto:DEADP.Appeals@westerncape.gov.za) or URL <http://www.westerncape.gov.za/eadp>.

#### J. CONSEQUENCES OF NON-COMPLIANCE WITH CONDITIONS

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

#### K. DISCLAIMER

The Western Cape Government, 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



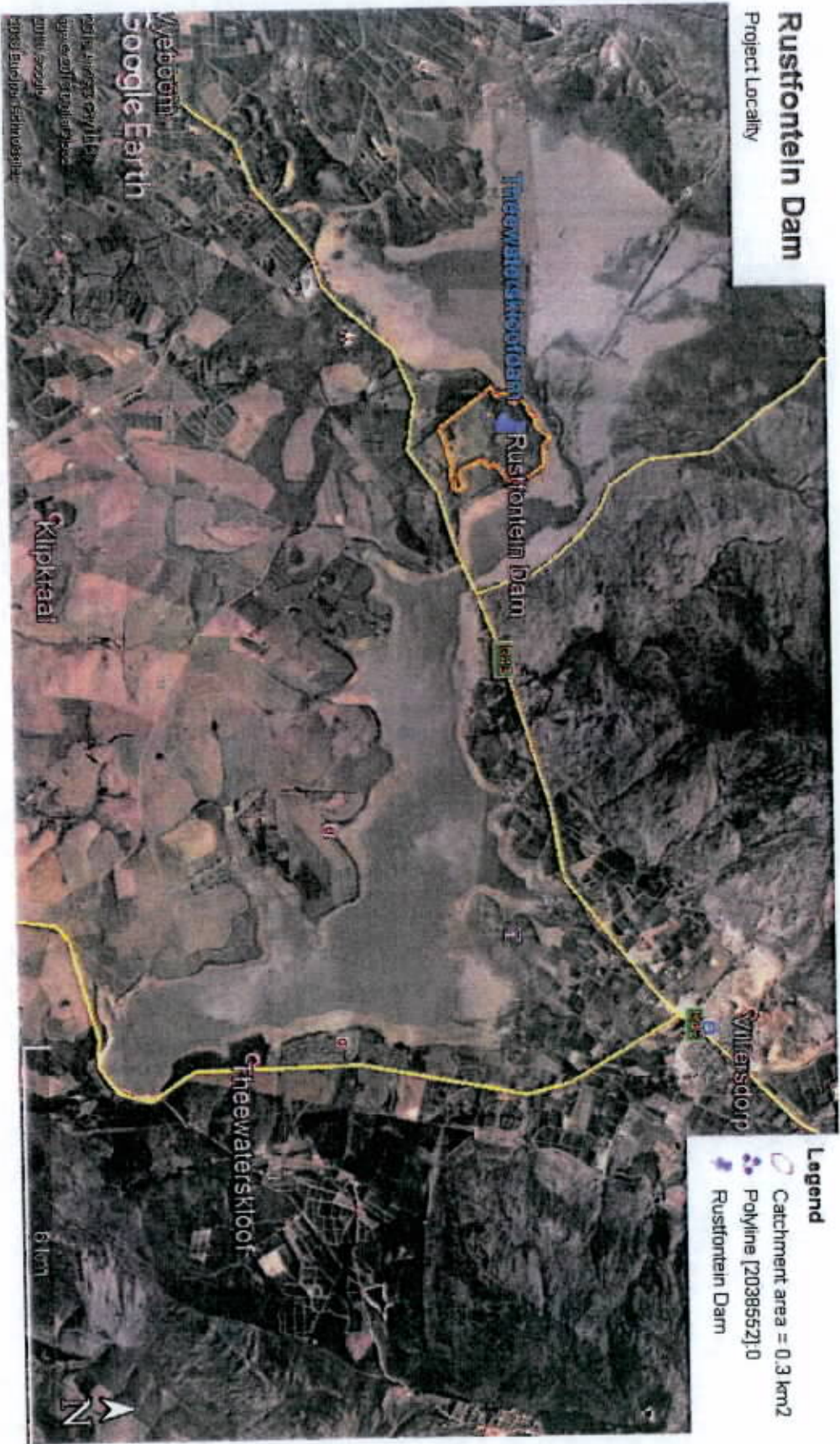
**ADV. CHARMAINE MARÉ**  
**DIRECTOR: ENVIRONMENTAL GOVERNANCE**

DATE OF DECISION: 5 July 2019

Copied to: (1) Therina Oberholzer (EAP)  
(2) Municipal Manager (Theewaterskloof Municipality)

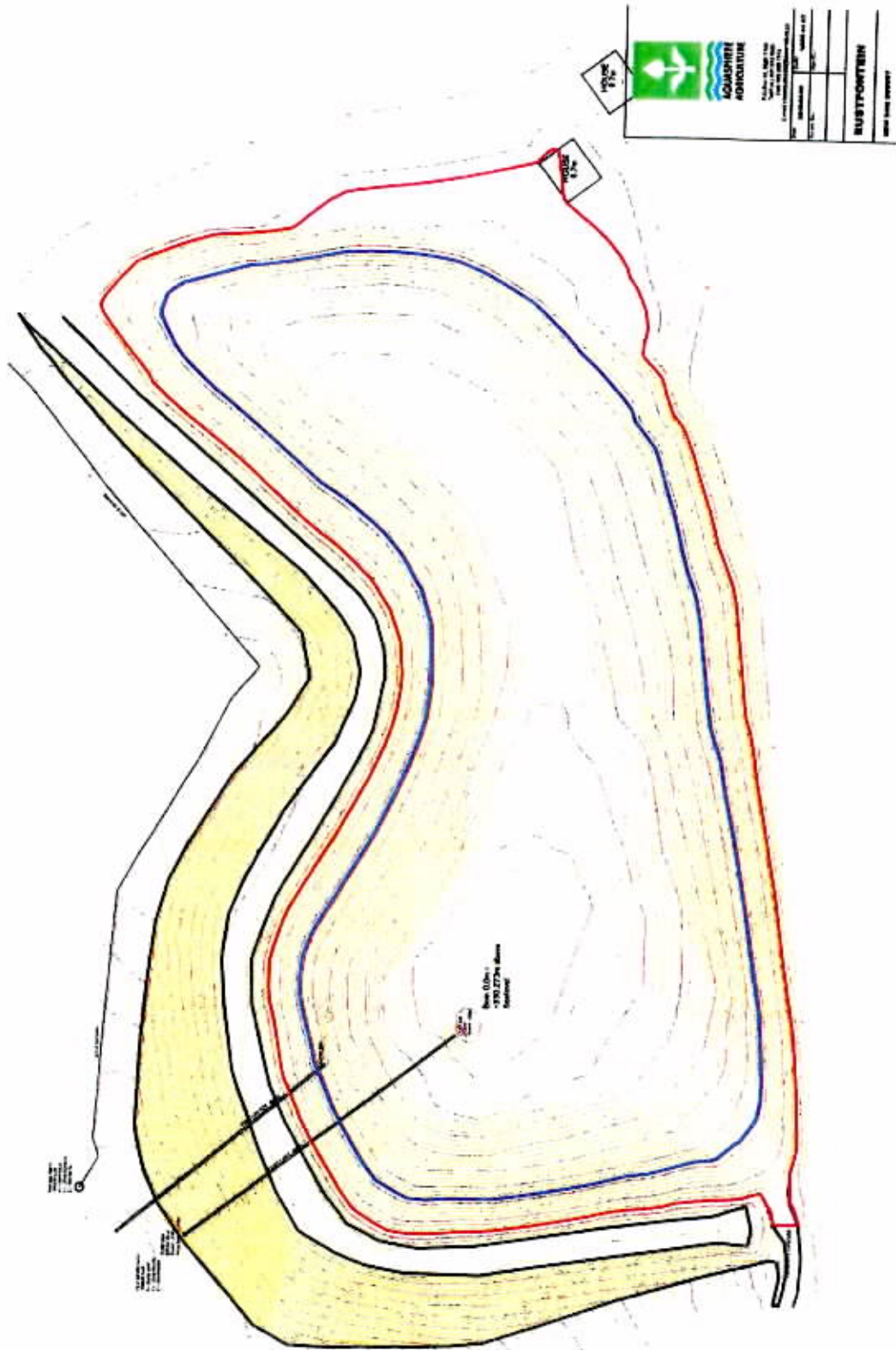
Fax: (086) 672 1916  
Email: [therina@pbps@iafrica.com](mailto:therina@pbps@iafrica.com)  
Fax: (028) 214 3300

ANNEXURE 1: LOCALITY MAP



ZAG Reference: 14/214/212/E4/27/0015/18

# ANNEXURE 2: SITE PLAN





**FOR OFFICIAL USE ONLY:**

**S24G REFERENCE: 14/2/4/2/2/E4/27/0015/18**

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 R125 000 (One hundred and twenty-five 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 19 September 2018, the application and assessment report received by the competent authority on 20 March 2019 and the Rustfontein Dam - Environmental Management Programme - Construction, Operational and Maintenance ("EMPr") of March 2019.
- 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 3 May 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:

- An advertisement was placed in the "**Theewaterskloof & Kaap Agulhus**" newspaper on 5 June 2018;
- A site notice was erected; and
- Letters were sent to interested and affected parties ("I&APs") and the municipal ward councillor on 06 November 2018.
- I&APs were afforded the opportunity to provide comments on the draft and final assessment reports for 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-Gouritz Catchment Management Agency (BGCMA)
- CapeNature (CN)
- Heritage Western Cape (HWC)
- Overberg District Municipality (ODM)

#### BGCMA

The BGCMA provided comments relating to the Water Use of the property and stated that the dam currently does not have a Water Use Licence. The EAP responded by stating that the Water Use Licence Application is currently in process.

#### CapeNature

CN stated that the dam is constructed in a non-perennial tributary of the Sonderend River, approximately 1km south of the Theewaterskloof dam. The dam and the riparian environment have been classified as National Freshwater Ecosystem Priority Area (NFEPA) and are part of the Theewaters Nature Reserve. According to the *Western Cape Biodiversity Spatial Plan, 2017* the dam falls within in an Ecological Support Area with restoration potential (ESA2) and serves as (i) *water source protection for the Breede River; and (ii) watercourse protection for*

*the Southern Coastal belt.* CN further stated that although critically endangered Elgin Shale Fynbos would have occurred naturally, the site has however been historically transformed to agricultural land, and the drainage line in which the dam is built has been canalised. The freshwater specialist ground-truthed two seep wetlands; one within the dam footprint that has been degraded, and another just upstream of the dam which has a low sensitivity. Three indigenous riparian vegetation species were recorded; however, the geophytes were not identified to species level and therefore no Species of Conservation Concern were recorded. Both the wetlands and the drainage line will experience low negative impacts from the construction of the dam. The freshwater specialist recommended a 10m buffer around the wetlands and drainage line, and revegetation of the dam banks with locally indigenous vegetation as a soil erosion mitigation measure. CN supports these recommendations.

The EAP responded by stating that according to the Freshwater Ecologist Specialist under normal circumstances a rehabilitation plan would have been suggested for both the wetland areas as well as the drainage line but considering the small scale of all these freshwater features as well as their highly modified state, this would not have any significant effect on the larger freshwater system.

Additionally, it is proposed that the dam banks and wall, as well as the sloop downstream of the dam be revegetated with appropriate vegetation, and that some erosion control measures are put in place at the spillway outlet pipe. No abstraction of the dam's catchment surface water is proposed, as the dam will be filled from the enlistment water and boreholes. Provided that the enlistment water and borehole water is pumped into the dam, the dam will naturally overflow. In order to ensure that the dam overflow early, it is proposed that the dam must be full at the end of May each year.

CN then further stated that Alternative 2 (expansion of the existing dam) would have been a more ecologically-sensible means of additional water storage as this location would have been off-stream, outside of an ESA2, and located further south from the sensitive Theewaterskloof Dam where soil erosion could induce sedimentation downstream. In conclusion, CN supports the recommendations of the freshwater specialist and requests that the Breede-Gouritz Catchment Management Agency is contacted for input.

### HWC

HWC stated that there is no reason to believe that the proposed construction of the in-stream storage dam on Portion 13 of Farm Rus Valley 81, outside of Villiersdorp, will not impact on heritage resources. No further action under Section 38 of the *National Heritage Resources Act (Act 25 of 1999)* is required.

### ODM

The ODM noted that the development took place on agricultural land thus not impacting on the critically endangered Elgin Shale Fynbos ecosystem. The DOM then stated that in terms of water-use rights, the applicant may store 26 870m<sup>3</sup>/annum and therefore has the right to make provision for such storage capacity in a lawful manner. It is however noted that the storage capacity, by creating the Rustfontein storage dam (49 000m<sup>3</sup>), does now exceed the allocated storage amount. Based on the evaluation of the site by the freshwater consultant the impact of the development on the surrounding environment is low, long term and local due to the degraded state of the site. It is however important that the buffer areas as highlighted in the freshwater report be maintained in order to conserve the remaining freshwater habitats on the property.

The EAP responded by stating that according to the Validation and Verification, the Existing Lawful Use on the farm amounts to 1 002 520m<sup>3</sup> (taking) and 26 870 m<sup>3</sup> (storing). There are two dams on the farm, the Rustfontein storage dam with a storage capacity of 49 000m<sup>3</sup>, as well as an existing balancing dam with a capacity of 8 600m<sup>3</sup>. An application for the *Section 21 (b)* (storing of water) water use licence application ("WULA") is required to cover the shortfall for the water need of the farm which amounts to  $\{(49000\text{m}^3 + 8600\text{m}^3)\} - 26870\text{m}^3 = 30\,730\text{m}^3$ . The WULA is currently underway and is being done by HDL Consulting.

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 Location Alternatives

#### Alternative 1 (Herewith authorised)

The construction of an in-stream dam with a wall length of 400 meters, wall height of 10.3 meters storage capacity of 49 000m<sup>3</sup> at the adjusted spillway pipe and 53 800m<sup>3</sup> at the emergency spillway. The embankment slopes are  $\pm 1V:2H$  on the downstream side and  $\pm 1V:3H$  on the upstream side. The dam is filled by means of pumping from the Riviersonderend (Theewaterskloof Dam basin) and from boreholes. The total amount of water abstracted as given in the Validation and Verification amounts to 1 002 520m<sup>3</sup> and the water stored is 26 870m<sup>3</sup>.

#### Alternative 2- Expansion of the existing dam.

This alternative was not considered preferred, since the enlargement would entail the loss and disturbance of existing orchards. This will in turn lead to less profit for the applicant. The spillway would have also required more space and disturbance of agricultural land. The alternative was therefore disregarded.

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

This alternative would entail demolishing the dam and rehabilitating the site. According to the EAP, this alternative has been considered but is not a viable option for the following reasons:

- Availability of water for irrigation during the summer months will be of great concern.
- The applicant will not be gaining financial benefits.
- Better management of both water resources and water use will not be achieved.
- No job security for existing workers and future workers.

Therefore, this alternative is not deemed to be feasible.

## 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 construction of the dam is in line with the existing agricultural use. The dam was constructed within a non-perennial stream in order to contain water and is located on cultivated agricultural land. The purpose of the dam is to provide summer balancing storage and emergency storage in the case of power failures.

### 3.2. Regional/ Planning Context

The development is located outside the Urban Edge and is situated on agricultural land. The current location of the dam therefore falls in line with its existing land use as the dam is an associated agricultural activity.

### 3.3. The following Cumulative Impacts were identified by the assessment

Negative Impacts:

- Impact on non-perennial stream
- Biodiversity and vegetation loss
- Destruction of wetland

Positive Impacts:

- Water availability for irrigation of existing crops
- Job security
- Job creation
- Food security

### 3.4. Biophysical and biodiversity related Impacts

The development of the storage dam resulted in the alteration of a wetland (albeit significantly degraded), loss of vegetation and loss of biodiversity. Flow-related impacts could also arise from the existence of the new dam. According to the freshwater specialist, the largest impact caused by the construction of the new Rustfontein dam is loss of vegetation; biodiversity and wetland function at the bottom wetland area (which was completely destroyed) and possibly some future erosion issues downstream of the dam. Water quality impacts such as sedimentation could have occurred during the construction phase.

#### 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.

---

END

**Nabeelah Khan**

---

**From:** Microsoft Outlook  
**To:** Ziyaad Allie  
**Sent:** Friday, July 5, 2019 12:17 PM  
**Subject:** Delivered: 14/2/4/2/E4/27/0015/18 - Environmental Authorisation Farm Rus Valley Villiersdorp

**Your message has been delivered to the following recipients:**

[Ziyaad Allie \(Ziyaad.Allie@westerncape.gov.za\)](mailto:Ziyaad.Allie@westerncape.gov.za)

Subject: 14/2/4/2/E4/27/0015/18 - Environmental Authorisation Farm Rus Valley Villiersdorp



**Nabeelah Khan**

---

**From:** Microsoft Outlook  
**To:** Therina Oberholzer  
**Sent:** Friday, July 5, 2019 12:16 PM  
**Subject:** Relayed: 14/2/4/2/2/E4/27/0015/18 - Environmental Authorisation Farm Rus Valley Villiersdorp

**Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:**

[Therina.Oberholzer \(therina@pbps.co.za\)](mailto:Therina.Oberholzer@pbps.co.za)

Subject: 14/2/4/2/2/E4/27/0015/18 - Environmental Authorisation Farm Rus Valley Villiersdorp

**Nabeelah Khan**

---

**From:** Microsoft Outlook  
**To:** [office@rustfontein.co.za](mailto:office@rustfontein.co.za)  
**Sent:** Friday, July 5, 2019 12:16 PM  
**Subject:** Relayed: 14/2/4/2/2/E4/27/0015/18 - Environmental Authorisation Farm Rus Valley Villiersdorp

**Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:**

[office@rustfontein.co.za](mailto:office@rustfontein.co.za) ([office@rustfontein.co.za](mailto:office@rustfontein.co.za))

**Subject:** 14/2/4/2/2/E4/27/0015/18 - Environmental Authorisation Farm Rus Valley Villiersdorp

**Nabeelah Khan**

---

**From:** Microsoft Outlook  
**To:** Shafeeq Mallick  
**Sent:** Friday, July 5, 2019 12:09 PM  
**Subject:** Delivered: 14/2/4/2/3/D4/16/0010/19 - Pre-Directive Farm Elandskraal Knysna

**Your message has been delivered to the following recipients:**

[Shafeeq Mallick \(Shafeeq.Mallick@westerncape.gov.za\)](mailto:Shafeeq.Mallick@westerncape.gov.za)

Subject: 14/2/4/2/3/D4/16/0010/19 - Pre-Directive Farm Elandskraal Knysna