



**REFERENCE NUMBER:** 14/2/4/2/2/E4/5/0014/18

**ENQUIRIES:** Moe'mina Hoosain

**BY REGISTERED MAIL**

Erin de Vigne (Pty) Ltd  
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Attention: Mr. E. R. Adam

Dear Sir

**APPLICATION IN TERMS OF SECTION 24G OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998) ("NEMA"): THE UNLAWFUL CONSTRUCTION OF A PIPELINE AND A WEIR IN THE HUISKLOOF RIVER ON PORTION 1 AND 59 OF FARM NO. 781 AND REMAINDER OF FARM NO. 474, CALEDON**

With reference to your application dated 26 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") (as amended), the competent authority herewith **grants environmental authorisation** to the applicant to continue with the listed activities specified in Section C below and as described in the application dated 20 September 2018.

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

PHS Consulting  
 C/o Mr Paul Slabbert  
 PO Box 1752  
 HERMANUS  
 7200

Tel: (028) 312 1734  
 Fax: (086) 508 3249  
 Cell: (082) 566 1660  
 Email: paul@phsconsulting.co.za

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

## C. LIST OF ACTIVITIES AUTHORISED

Listed Activities	Activity/Project Description
<u>Government Notice No. R544 of 18 June 2010</u> <b>Activity Number: 11</b> Activity Description: <i>The construction of:</i> (i) canals; (ii) channels; (iii) bridges; (iv) dams; <b>(v) weirs;</b>	The activity entails the unlawful construction of a weir on the Huis Kloof River for the diversion of an allocated discharge of 130 000 cubic meters per annum. The approximate footprint of the weir is approximately 20m <sup>2</sup> . A pipeline with a diameter of 200mm, was laid across a distance of 3km

- (vi) bulk storm water outlet structures;
- (vii) marinas;
- (viii) jetties exceeding 50 square metres in size;
- (ix) slipways exceeding 50 square metres in size;
- (x) buildings exceeding 50 square metres in size; or
- (xi) infrastructure or structures covering 50 square metres or more -**

where such construction occurs within a watercourse or within 32 metres of a watercourse, measured from the edge of a watercourse, excluding where such construction will occur behind the development setback line.

**Activity Number: 18**

Activity Description:

The infilling or depositing of any material of more than 5 cubic metres into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock of more than 5 cubic metres from:

- (i) a watercourse;
- (ii) the sea;
- (iii) the seashore;
- (iv) the littoral active zone, an estuary or a distance of 100 metres inland of the high-water mark of the sea or an estuary, whichever distance is the greater-

but excluding where such infilling, depositing, dredging, excavation, removal or moving;

- (a) is for maintenance purposes undertaken in accordance with a management plan agreed to by the relevant environmental authority; or
- (b) occurs behind the development setback line.

from the weir to a storage dam on Portion 3 of Farm 781, Caledon.

A trench was constructed along the pipeline route with a minimum depth of approximately 1.5 m below the surface with a width of approximately 1m. Excavated material was placed alongside the trench; the pipe was laid within the trench and then the excavated material was backfilled to cover the pipe.

The pipeline carrying diverted runoff from the Huiskloof River leads from the weir structure towards the upper slopes along the southern bank of the Huiskloof River. It largely extends beyond the riparian edge of the Huiskloof River until it reaches the quarry near the R43.

Here the quarry encroaches into wetland habitat and the pipeline route abuts the outer edge of the quarry until it reaches the R43 road. At this point, the pipe crosses the active channel of the Huiskloof River via a concrete structure. Below the R43, the pipeline route heads away from the channel until it reaches a storage dam.

The development footprint of the pipeline is approximately 3000m<sup>2</sup>. According to the freshwater specialist

	<p>only about 600m<sup>2</sup> of the pipeline falls inside the wetland/watercourse. The activity commenced in January 2011 and was completed before the winter of 2011.</p>
<p><u>Government Notice No. R546 of 18 June 2010</u></p> <p><b>Activity Number: 16</b></p> <p>Activity Description:</p> <p>The construction of:</p> <p>(i) jetties exceeding 10 square metres in size;</p> <p>(ii) slipways exceeding 10 square metres in size;</p> <p>(iii) buildings with a footprint exceeding 10 square metres in size; or</p> <p>(iv) infrastructure covering 10 square metres or more where such construction occurs within a watercourse or within 32 metres of a watercourse, measured from the edge of a watercourse, excluding where such construction will occur behind the development setback line.</p> <p>In Western Cape:</p> <p>i. In an estuary;</p> <p>ii. Outside urban areas, in:</p> <p>(aa) A protected area identified in terms of NEMPAA, excluding conservancies;</p> <p>(bb) National Protected Area Expansion Strategy Focus areas;</p> <p>(cc) World Heritage Sites;</p> <p>(dd) Sensitive areas as identified in an environmental management framework as contemplated in chapter 5 of the Act and as adopted by the competent authority;</p> <p>(ee) Sites or areas identified 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</p>	<p>As described above.</p>

bioregional plans;

(gg) Core areas in biosphere reserves;

(hh) Areas within 10 kilometres from national parks or world heritage sites or 5 kilometres from any other protected area identified in terms of NEMPAA or from the core area of a biosphere reserve;

(ii) Areas seawards of the development setback line or within 1 kilometre from the high-water mark of the sea if no such development setback line is determined.

iii. Inside urban areas:

(aa) Areas zoned for use as public open space;

(bb) Areas designated for conservation use in Spatial Development Frameworks adopted by the competent authority or zoned for a conservation purpose;

(cc) Areas seawards of the development setback line or within 100 metres of the highwater mark where no setback line.

As similarly listed in Government Notice No. R. 327 of 4 December 2014, as amended

**Activity Number: 12**

Activity Description:

The development of—

dams or weirs, where the dam or weir, including infrastructure and water surface area, exceeds 100 square metres; or infrastructure or structures with a physical footprint of 100 square metres or more; where such development occurs—

(a) within a watercourse;

(b) in front of a development setback; or

(c) if no development setback exists, within 32 metres of a watercourse, measured from the edge of a watercourse; excluding—

(aa) the development of infrastructure or

As described above.

structures within existing ports or harbours that will not increase the development footprint of the port or harbour;

(bb) where such development activities are related to the development of a port or harbour, in which case activity 26 in Listing Notice 2 of 2014 applies;

(cc) activities listed in activity 14 in Listing Notice 2 of 2014 or activity 14 in Listing Notice 3 of 2014, in which case that activity applies;

(dd) where such development occurs within an urban area;

(ee) where such development occurs within existing roads, road reserves or railway line reserves; or

(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.

**Activity Number: 19**

**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;

but excluding where such infilling, depositing, dredging, excavation, removal or moving—will occur behind a development setback;

(b) is for maintenance purposes 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;  
 (d) occurs within existing ports or harbours that will not increase the development footprint of the port or harbour; or  
 (e) where such development is related to the development of a port or harbour, in which case activity 26 in Listing Notice 2 of 2014 applies.

Government Notice No. R. 324 of 4 December 2014, as amended

**Activity Number: 14**

Activity Description

The development of—  
 dams or weirs, where the dam or weir, including infrastructure and water surface area exceeds 10 square metres; or

(ii) Infrastructure or structures with a physical footprint of 10 square metres or more; where such development occurs—

(a) within a watercourse;

(b) in front of a development setback; or

(c) if no development setback has been adopted, within 32 metres of a watercourse, measured from the edge of a watercourse;

excluding the development of infrastructure or structures within existing ports or harbours that will not increase the development footprint of the port or harbour.

i. Western Cape

i. Outside urban areas:

(aa) A protected area identified in terms of NEMPAA, excluding conservancies;

(bb) National Protected Area Expansion Strategy

As described above.

Focus areas:

(cc) World Heritage Sites;

(dd) Sensitive areas as identified in an environmental management framework as contemplated in chapter 5 of the Act and as adopted by the competent authority;

(ee) Sites or areas listed in terms of an international convention;

(ff) Critical biodiversity areas or ecosystem service areas as identified in systematic biodiversity plans adopted by the competent authority or in bioregional plans;

(gg) Core areas in biosphere reserves; or

(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.

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

#### D. PROPERTY DESCRIPTION AND LOCATION

The listed activities commenced on Remainder Portion 1 of the Farm 781, Caledon, Portion 59 of the Farm 781, Caledon and Remainder of Farm 474, Caledon.

The SG digit code is RE/1/781 - C0130000000007810000

RE/474 - C01300000000047400000

Farm 59/781 - C01300000000078100059

The co-ordinates for the properties are:

Farm	Latitude (S)	Longitude (E)
Remainder Portion 1 of the Farm 781, Caledon	34° 15' 57.28" South	19° 09' 43.18" East
Remainder Farm 474, Caledon	34° 16' 13.332" South	19° 10' 1.6356" East
Portion 59 of the Farm 781, Caledon	34° 16' 2.8956" South	19° 10' 28.38" 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")**

PHS Consulting

C/o Mr Paul Slabbert/Jenna Theron

PO Box 1752

HERMANUS

7200

Tel: (028) 312 1734

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

The activity entails the unlawful construction of a weir on the Huiskloof River for the diversion of an allocated discharge of 130 000 cubic meters per annum. The approximate footprint of the weir is 20m<sup>2</sup>. A pipeline with a diameter of 200mm, was laid across a distance of 3km from the weir to a storage dam on Portion 3 of Farm 781, Caledon. A trench was constructed along the pipeline route with a minimum depth of approximately 1.5m below the surface with a width of approximately 1m. Excavated material was placed alongside the trench; the pipe was laid within the trench and then the excavated material was backfilled to cover the pipe.

The pipeline carrying diverted runoff from the Huiskloof River leads from the weir structure towards the upper slopes along the southern bank of the Huiskloof River. It largely extends beyond the riparian edge of the Huiskloof River until it reaches the quarry near the R43. Here the quarry encroaches into wetland habitat and the pipeline route abuts the outer edge of the quarry until it reaches the R43 road. At this point, the pipe crosses the active channel of the Huiskloof River via a concrete structure. Below the R43, the pipeline route heads away from the channel until it reaches a storage dam.

The development footprint of the pipeline is approximately 3000m<sup>2</sup>. According to the freshwater specialist only about 600m<sup>2</sup> of the pipeline falls inside the wetland/watercourse. The activity commenced in January 2011 and was completed before the winter of 2011.

## **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 and as described in the application dated 20 September 2018 on the site as described in Section D above.
2. The holder shall be responsible for ensuring compliance with the conditions by any person acting on his/her behalf, including an agent, sub-contractor, employee or any person rendering a service to the holder.
3. Any changes to, or deviations from the scope of the alternative described in Section F above must be accepted or approved, in writing, by the competent authority before such changes or deviations may be implemented. In assessing whether to grant such acceptance/approval or not, the competent authority may request information to evaluate the significance and impacts of such changes or deviations, and it may be necessary for the holder to apply for further authorisation in terms of the applicable legislation.

### **PART II**

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

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

- 4.1.3 the date of the decision; and
- 4.1.4 the date when the decision was issued.

4.2 draw the attention of all registered I&APs to the fact that an appeal may be lodged against the decision in terms of the *National Appeals Regulations, 2014* detailed in Section I below.

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

4.4 provide the registered I&APs with:

- 4.4.1 the name of the holder (entity) of this Environmental Authorisation;
- 4.4.2 name of the responsible person for this Environmental Authorisation;
- 4.4.3 postal address of the holder;
- 4.4.4 telephonic and fax details of the holder;
- 4.4.5 e-mail address, if any, of the holder; and
- 4.4.6 the contact details (postal and/or physical address, contact number, facsimile and e-mail address) of the decision-maker and all registered I&APs in the event that an appeal is lodged in terms of the *National Appeal Regulations, 2014*.

5. In the event that an appeal is lodged with the Appeal Authority, the effect of this Environmental Authorisation is suspended until the appeal is decided.

### **PART III**

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

6. The draft Environmental Management Programme ("EMPr") of August 2018 compiled by PHS Consulting and submitted as part of the application for environmental authorisation is hereby approved and must be implemented.

7. The completion of the minor works to the weir as per the EMPr and recommendations of the Specialist report: Aquatic Ecosystems of November 2017 (prepared by Freshwater Consulting cc) **must be undertaken within two (2) years** of this environmental authorisation.

8. The EMPr must be included in all contract documentation for the construction phase for implementation of the minor works to the weir.
9. Upon completion of the minor works to the weir, the operational and maintenance aspects associated with the weir and pipeline (as specified in the EMPr) must be revised as a maintenance management plan in accordance with this Department's Maintenance Management Plan ("MMP") for a watercourse in terms of the *National Environmental Management Act, 1998 (Act No. 107 of 1998), Environmental Impact Assessment Regulations, 2014*.
10. The MMP must be submitted for approval **within three (3) months** of completion of the minor works to the weir.

#### **PART IV**

##### **Monitoring**

11. The holder must appoint a suitably experienced Environmental Control Officer ("ECO") 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 the Department 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 V**

##### **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, 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*.

The holder must, within 7 (seven) days of the submission of the report to the competent authority, notify all potential and registered I&APs of the submission and make the report available to anyone on request.

## PART VI

### Activity/ Development Specific Conditions

15. The recommendations of the Specialist Report: Aquatic Ecosystems of November 2017 (prepared by Freshwater Consulting cc) related to the completion of the minor works on the weir must be **within two (2) years** of this environmental authorisation.

## H. GENERAL MATTERS

1. Notwithstanding this Environmental Authorisation, the holder must comply with any other statutory requirements that may be applicable when undertaking the listed activities.
2. Non-compliance with a condition or term of this Environmental Authorisation or EMPr may render the holder liable to criminal prosecution.
3. The holder must submit an application for amendment of the Environmental Authorisation to the competent authority where any detail with respect to the Environmental Authorisation must be amended, added, substituted, corrected, removed or updated. If a new holder is proposed, an application for Amendment in terms of Part 1 of the *EIA Regulations, 2014* must be submitted.

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

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

## I. APPEALS

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

1. An appellant (if the holder) must –

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

2. An appellant (if NOT the holder) must –

2.1 submit an appeal in accordance with regulation 4 *National Appeal Regulations, 2014* to the Appeal Administrator, and a copy of the appeal to the holder, any registered I&APs, any Organ of State with interest in the matter and the decision maker within 20 (twenty) calendar days from the date the holder notified the registered I&APs of this decision.

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

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

By post:                   Attention: 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 Marius Venter/Jaap de Villiers (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 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: 14 November 2019

CC: (1) P. Slabbert (PHS Consulting)

Fax: (086) 508 3249 Email: [paul@phsconsulting.co.za](mailto:paul@phsconsulting.co.za)

ANNEXURE 1: LOCALITY MAP

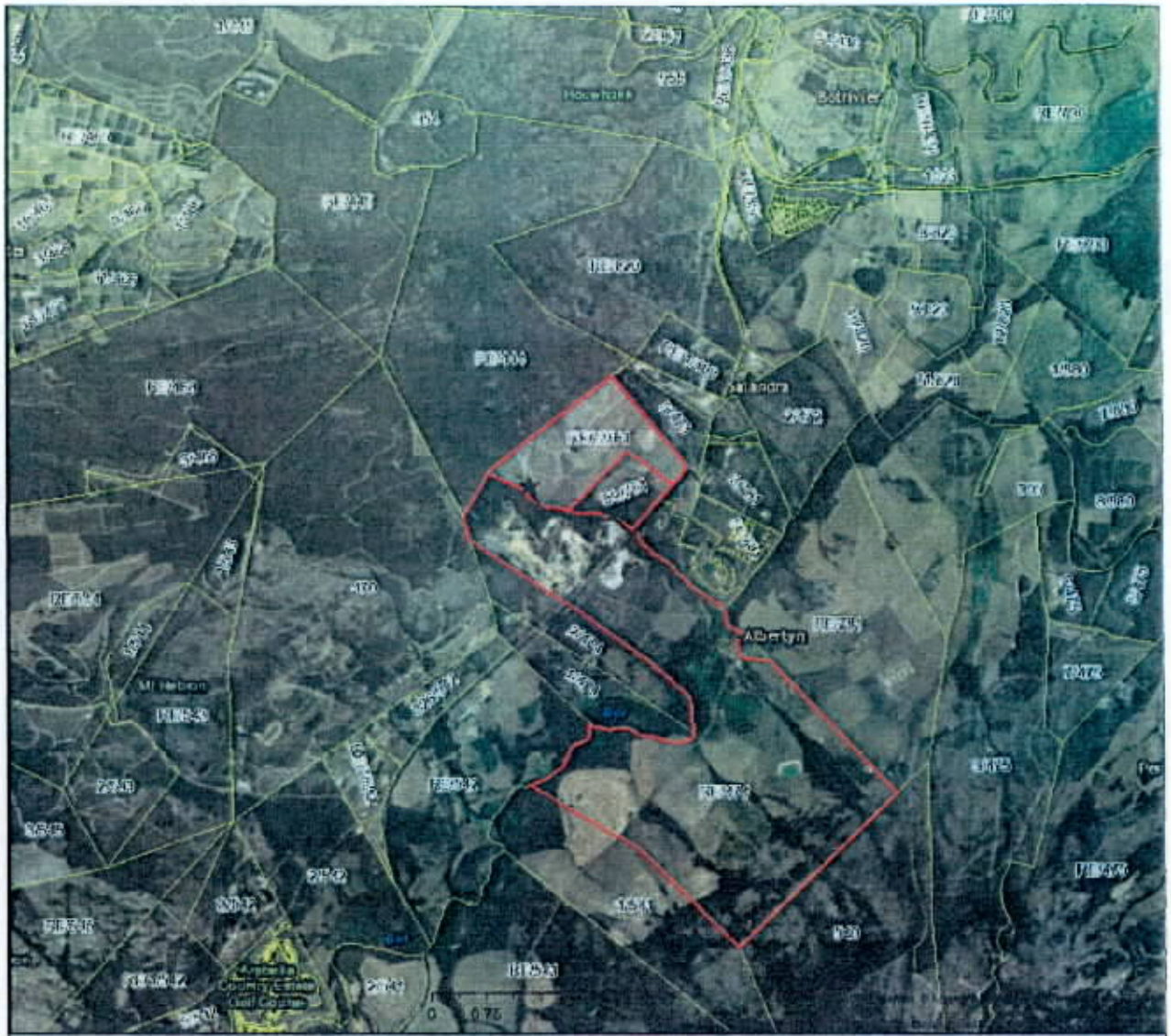


Figure 1: Remainder Portion 1 of the Farm 781, Caledon, Remainder Farm 474, Caledon and Portion 59 of the Farm 781, Caledon outlined by red boundary lines. Weir indicated by black star.



ANNEXURE 2: SITE PLAN

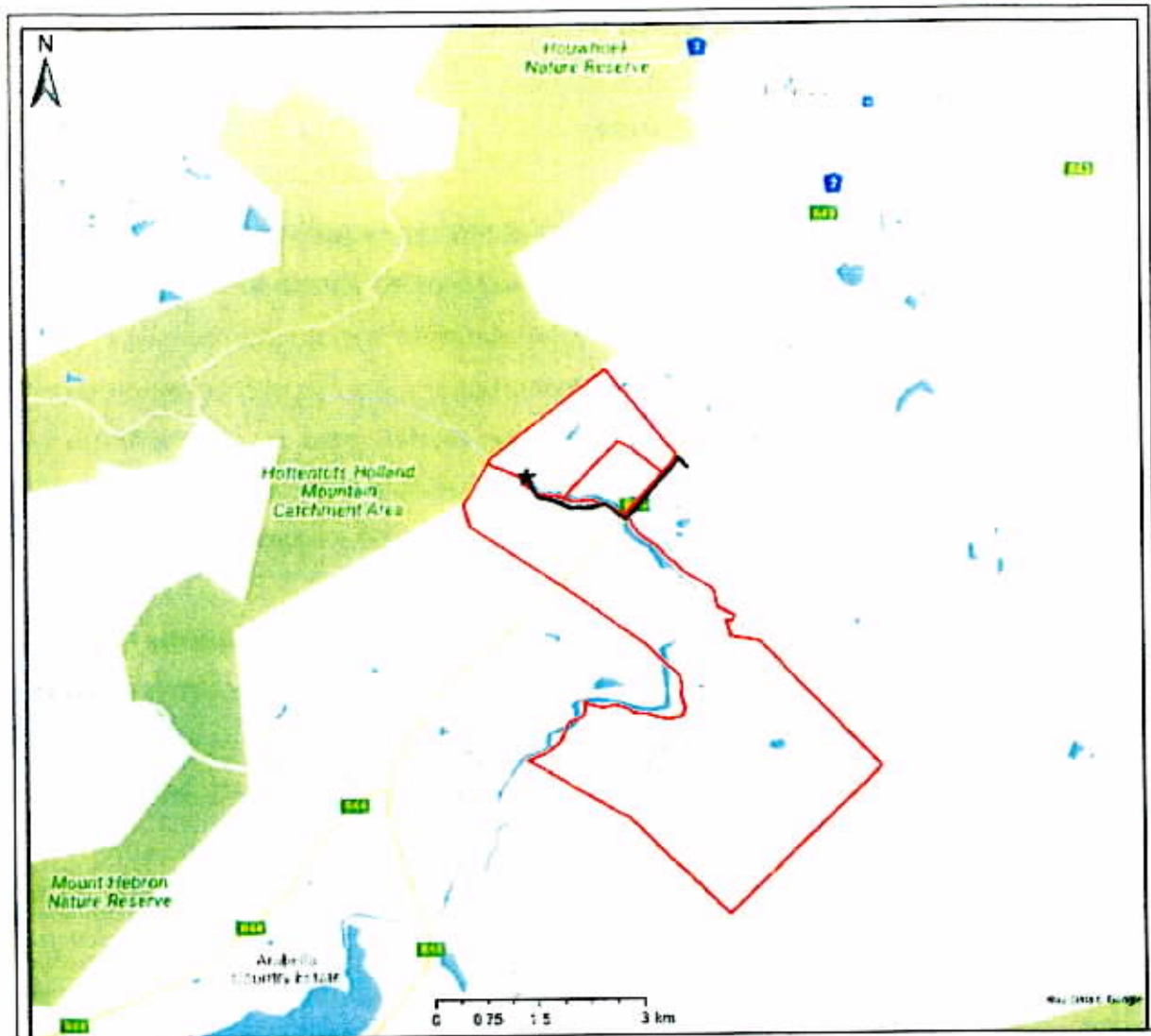


Figure 2: Unlawfully constructed weir in the Huis Kloof River and pipeline traversing affected properties and the R43 road.

### **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 R125 000 (One hundred and Twenty 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 dated 26 September 2018 with supporting environmental impact assessment and mitigation measures.
- b) The consideration of Alternatives as outlined in the section 24G application dated 26 September 2018.
- c) Public participation conducted for the application by the Environmental Assessment Practitioner ("EAP").
- d) The Environmental Management Programme of August 2018 ("EMPr") submitted for the application.
- e) Relevant information contained in the Departmental EIA Guideline and Information Document Series (March 2013), including, the Guidelines on Need and Desirability, Public Participation and Alternatives.
- f) The site visit conducted on -  
Date: 31 January 2019  
Attended by: Ms Moe'mina Hoosain, and Ms Jamie-lee van Zyl of this Department;  
and the EAP, Mr Paul Slabbert from PHS Consulting.

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 Agulhas Gazette** newspaper on 21 August 2018;
- Letters and emails were sent to interested and affected parties ("I&APs") and the municipal ward councillor on 15 August 2018 and 18 August 2018 respectively;
- I&APs were afforded the opportunity to provide comments on the application.

### 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")
- Department of Transport and Public Works
- CapeNature
- Overberg District Municipality
- Theewaterskloof Municipality

BGCMA stated that the activities require authorization in terms of the *National Water Act, 1998 (Act 36 of 1998)*, to which the EAP responded that all water uses will be registered.

The Department of Transport and Public Works recommended that an application for a wayleave for crossing underneath the R43 needs to be submitted; which must provide details about how the pipeline is secured to the culvert.

CapeNature ("CN") agrees with the recommendation that a detailed Maintenance Management Plan ("MMP") be included to ensure that sensitive habitats are not adversely affected. This is particularly applicable to the specialist's recommendation to remove vegetation immediately upstream of the weir and the periodic discharge of sediments. Raising of the weir wall and abstraction during summer months was strongly recommended.

CN also stated that the alien invasive plants are dense on site and acknowledged that the applicant is not the owner, however, an agreement must be signed between the two parties. Furthermore, they noted that the vegetation types on site are all classified as Critically Endangered. The EAP responded that the alien clearing has been addressed to an extent in the EMPr, however, the applicant has a registered servitude in his favour for the pipeline route and will be responsible for alien clearing within the servitude area. CN recommends that the specialist's mitigation measures be implemented, an MMP be provided for comment, and that BGCMA be consulted regarding the ecological reserve. The EAP responded that the BGCMA was consulted and has provided comment on this application.

The Overberg District Municipality stated that the ecosystem conservation status as allocated in the Freshwater Specialist Report of November 2017, Kogelberg Sandstone Fynbos (Least threatened) and Elim Ferricrete Fynbos (Endangered), does not align with the *Western Cape Biodiversity Spatial Plan* of 2017. The EAP responded that the Freshwater Specialist Report of November 2017 has been updated in the application to address this error.

The Overberg Municipality's main concern with the construction of the weir, was the impact it had on the wetlands flow regime. It was mentioned in the Freshwater Specialist Report of November 2017 that very limited data was available on the state of the Huisvloof River and associated wetlands prior to commencement of the activity. It was proposed that a monitoring system be put in place to collect data to inform the management and functionality of the wetland. The Overberg Municipality stated that commitment from the landowner is crucial for long-term management and to ensure rehabilitation of the wetland. The EAP responded that according to the Freshwater Specialist Report of November 2017, it is likely that the majority of impacts can be mitigated. While habitat fragmentation is the only residual impact of medium significance, it was recommended that the weir be retained as removal thereof could result in impacts of higher significance. It was strongly recommended that all measures identified to offset impacts, be implemented accordingly.

The waterskloof Municipality supported comments of the EAP.

All the concerns raised by I&APs were responded to and adequately addressed during the public participation process. Specific management and mitigation measures have been considered in this Environmental Authorisation and in the EMPr to adequately address the concerns raised.

The competent authority concurs with the EAP's responses to the issues raised during the public participation process and has included appropriate conditions in this Environmental Authorisation and in the EMPr.

## **2. Alternatives**

### **2.1 Site Alternatives**

The current location of the weir is located immediately downstream of the point where three tributaries of the Huiskloof River merge to form a single channel. This location was preferred as it was at the highest and most stable point of the river for a gravity feed to ensure water is transported through the pipeline towards its destination. Furthermore, the weir was constructed on bedrock within the channel which forms a rocky outcrop characterising a distinct inflection in channel slope. Due to its location on a rocky outcrop there is less risk of bank collapse compared with more erodible river banks.

### **2.2 Activity Alternatives**

No activity alternatives were considered.

### **2.3 Technology Alternatives**

No technology alternatives were considered.

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

This option entails ceasing the activity and rehabilitating the site to pre-construction conditions. This alternative is not preferred as it would result in insufficient water being supplied to the property of the applicant, which will be less than the amount allocated to the farm. It was strongly recommended that all mitigation measures identified to offset impacts be implemented accordingly.

### 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

When the applicant purchased Portion 3 of Farm 781 the allocation of water to the farm was confirmed to ensure a feasible purchase. It was verified by the Department of Water and Sanitation ("DWS") that an allocation of 130 000m<sup>3</sup> of water per annum is allocated to the farm. A Notarial Deed in favour of the farm further describes that 15% of the water from the Huiskloof River is tied to Portion 3 of Farm 781. This verification ensured the purchase and the owner was advised by the DWS to implement the water allocation.

As part of the sales agreement a water allocation was verified and tied to the farm. This water allocation was captured in a Notarial Deed that served as an agreement between the parties on how water will be divided. It determined that a weir be constructed in the Huiskloof River for the diversion of the allocated discharge of 130 000 cubic meters of water per annum (i.e. 15% of the MAR). Therefore, in order to secure these water rights, the Applicant undertook the construction of a weir and pipeline as described in this application.

#### 3.2. Regional/ Planning Context

The draft Western Cape Provincial Spatial Development Framework ("PSDF") states that the Western Cape Government recognizes the need for fiscal investment to promote infrastructural growth. The activity was undertaken for agricultural purposes does not contravene the goals of the PSDF and Integrated Development Plan ("IDP") of the municipality. The properties on which the activities occurred are zoned as Agricultural Zone 1.

#### 3.3. Services/ Bulk Infrastructure

The activity involved the construction of a weir and a pipeline to transport water, via gravity, from the weir inland. No municipal services were required for the activity.

### 3.4. Physical/Geographical Impacts

The activity may have resulted in geographical/physical impacts during the construction phase due to excavation of vegetation and topsoil, considering that the development footprint of the activity is approximately 3000m<sup>2</sup>. At the weir, a berm was constructed along the left back of the channel to create a dam within the valley bottom. This area is however invaded with alien beef wood trees (*Casuarina cunninghamiana*) and was also affected by isolated impacts at the site prior to construction activities.

### 3.5. Biodiversity Impacts

According to the information provided in the application, the activity resulted in disturbance and loss of wetland habitat to accommodate the footprint of the pipeline. The construction of the pipeline across the active channel and immediately upstream of the culvert below the R43 resulted in a local change in channel hydraulics as well as alteration of the channel banks and bed. The immediate area surrounding the site of the weir was previously impacted by the dirt road that crosses the tributaries as they merge to form the Huiskloof River.

The channelled valley bottom wetland between the weir and the R43 road was rated overall as a Category B in terms of its Present Ecological State, which is indicative of a system that is largely intact. Every two years, sediments are flushed from the pipeline into the Huiskloof River channel immediately downstream of the culvert below the R43 road. This results in excessive inputs of sediment in the river system that smothers the natural habitat. This is likely to affect a considerable length of river downstream, and the impact would be of medium intensity because natural functions would be altered.

While habitat fragmentation is the only residual impact of medium significance, it is recommended that the weir be retained as removal of the pipeline could result in impacts of higher significance. It was recommended that all measures identified to offset impacts be implemented accordingly. In particular, it was recommended that the weir structure be altered to ensure default provision of environmental flows to the downstream system during the dry summer months.

### 3.6. Visual Impacts/ Sense of Place

The activity may have resulted in visual impacts during the construction phase due to construction vehicles and machinery. The activity has also resulted in a permanent visual impact with low significance in terms of the weir structure only, as the pipeline is situated underground.

### 3.7. Noise Impacts

The activity resulted in noise impacts during the construction phase due to construction vehicles and machinery.

### 3.8. Heritage Impacts

The activity does not impact on cultural/heritage aspects.

### 3.9. Socio-economic Impacts

The activity resulted in temporary job creation during the construction phase. It is the intention of the applicant to pursue agricultural development on the farm, using existing water rights. It is envisaged that this will create more permanent employment opportunities for the local community.

## 4. **NEMA Principles**

The National Environmental Management Principles (set out in section 2 of the NEMA), which apply to the actions of all organs of state, serve as guidelines by reference to which any organ of state must exercise any function when taking any decision, and which must guide the interpretation, administration and implementation of any other law concerned with the protection or management of the environment), *inter alia*, provides for:

- the effects of decisions on all aspects of the environment to be taken into account;
- the consideration, assessment and evaluation of the social, economic and environmental impacts of activities (disadvantages and benefits), and for decisions to be appropriate in the light of such consideration and assessment;
- the co-ordination and harmonisation of policies, legislation and actions relating to the environment;



- the resolving of actual or potential conflicts of interest between organs of state through conflict resolution procedures; and
- the selection of the best practicable environmental option.

In view of the above, the NEMA principles, compliance with the conditions stipulated in this Environmental Authorisation, and compliance with the EMPr, the competent authority is satisfied that the listed activities will not conflict with the general objectives of integrated environmental management stipulated in Chapter 5 of the NEMA and that any potentially detrimental environmental impacts resulting from the listed activities can be mitigated to acceptable levels.

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END

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## Moe'mina Hoosain

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**From:** Moe'mina Hoosain  
**Sent:** Thursday, November 14, 2019 11:42 AM  
**To:** ted@hermanus.co.za; Brett Adam; 'brettadam@hermanus.co.za'  
**Cc:** Paul Slabbert; Jenna  
**Subject:** Environmental Authorisation - Farm 781, Caledon (14/2/4/2/2/E4/5/0014/18)  
**Attachments:** Environmental Authorisation\_Farm 781 Caledon\_0014\_Issued 14 November 2019.pdf

Good day,

Please see attached correspondence from this Department for your attention.

Kind regards,  
Moe'mina

Moe'mina Hoosain  
Specialised Environmental Officer  
Sub- Directorate: Rectification  
Directorate: Environmental Governance  
Department of Environmental Affairs and Development Planning  
Fax: 021 483 4033  
Email: [Moe'mina.Hoosain@westerncape.gov.za](mailto:Moe'mina.Hoosain@westerncape.gov.za)  
Website: [www.westerncape.gov.za/eadp](http://www.westerncape.gov.za/eadp)

**Moe'mina Hoosain**

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**From:** Microsoft Outlook  
**To:** Brett Adam  
**Sent:** Thursday, November 14, 2019 11:42 AM  
**Subject:** Relayed: Environmental Authorisation - Farm 781, Caledon (14/2/4/2/2/E4/5/0014/18)

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

[Brett Adam \(brett@adamconsulting.co.za\)](mailto:brett@adamconsulting.co.za)

Subject: Environmental Authorisation - Farm 781, Caledon (14/2/4/2/2/E4/5/0014/18)



Environmental  
Authorisation - ...

## Moe'mina Hoosain

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**From:** Microsoft Outlook  
**To:** ted@hermanus.co.za; 'brettadam@hermanus.co.za'  
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[ted@hermanus.co.za](mailto:ted@hermanus.co.za) (ted@hermanus.co.za)

'brettadam@hermanus.co.za' (brettadam@hermanus.co.za)

Subject: Environmental Authorisation - Farm 781, Caledon (14/2/4/2/2/E4/5/0014/18)



Environmental  
Authorisation - ...

Addressee	Start Time	Time	Prints	Result	Note
*00865083249	14-11 13:12	00:02:43	002/026	OK	
*00283123273	14-11 13:26	00:00:57	000/026	No Ans	

Note THB:Timer TX, PDL:Polling, ORG:Original Size Setting, FME:Frame Erase TX, DPS:Page Separation TX, MIX:Mixcd Original TX, CALL:Manual TX, CSRC:CSRC, FWD:Forward, DC:DC-FAX, BND:Double-Sided Binding Direction, SP:Special Original, FCODE:F-code, RTX:Re-TX, RLV:Relay, MBX:Confidential, BUL:Bulletin, SIP:SIP Fax, IPADR:IP Address Fax, I-FAX:Internet Fax

Result OK: Communication OK, S-DK: Stop Communication, PW-OFF: Power Switch OFF, TEL: RX FROM TEL, NS: Other Error, CONT: Continue, NO ANS: NO ANSWER, Refuse: Receipt Refused, Busy: Busy, M-Full:Memory Full, LOVR:Receiving length Over, PDVR:Receiving page Over, FIL:File Error, DC:Decode Error, MDN:MDN Response Error, DSN:DSN Response Error, PRINT:Compulsory Memory Document Print, DEL:Compulsory Memory Document Delete, SEND:Compulsory Memory Document Send.



DIRECTORATE: ENVIRONMENTAL GOVERNANCE  
SUB-DIRECTORATE: RECTIFICATION

REFERENCE NUMBER: 14/2/4/2/2/E4/5/0014/18

ENQUIRIES: Moe'mina Hoosain

BY REGISTERED MAIL

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HERMANUS  
7200

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Cell: (082) 772 3135

Attention: Mr. F. R. Adam

Dear Sir

**APPLICATION IN TERMS OF SECTION 24G OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998) ("NEMA"): THE UNLAWFUL CONSTRUCTION OF A PIPELINE AND A WEIR IN THE HUISKLOOF RIVER ON PORTION 1 AND 59 OF FARM NO. 781 AND REMAINDER OF FARM NO. 474, CALEDON**

With reference to your application dated 26 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") (as amended), the competent authority herewith **grants environmental authorisation** to the applicant to continue with the listed activities specified in Section C below and as described in the application dated 20 September 2018.