



**Western Cape
Government**

Environmental Affairs and
Development Planning

**DIRECTORATE: ENVIRONMENTAL GOVERNANCE
SUB-DIRECTORATE: RECTIFICATION**

REFERENCE NUMBER: 14/2/1/3/C2/7/0009/16

ENQUIRIES: Shafeeq Mallick

BY REGISTERED MAIL

The Managing Director
Avondrust Boerdery Bk
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Attention: Mr Johannes Jurie Klue

Dear Sir

APPLICATION IN TERMS OF SECTION 24G OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998) ("NEMA"): UNLAWFUL COMMENCEMENT OF A LISTED ACTIVITY: UNLAWFUL CONSTRUCTION OF AN IN-STREAM DAM AND INFILLING / BLOCKING OF A WATERCOURSE ON FARM 178 KLAARSTROOM, PRINCE ALBERT

With reference to your application dated 23 April 2015 in terms of section 24G of the NEMA for the consequences of unlawful commencement of listed activities identified in terms of the NEMA, find below the decision in respect of your application.

ENVIRONMENTAL AUTHORISATION

A. DECISION

By virtue of the powers conferred by section 24G of the NEMA and the *Environmental Impact Assessment Regulations, 2014* ("EIA Regulations, 2014") (as amended), the competent authority herewith **grants environmental authorisation** to the applicant to continue with the listed activities specified in Section C below in accordance with the preferred alternative as described in the application and environmental assessment dated 17 July 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

Avondrust Boerdery Bk
c/o Mr Johannes Jurie Klue
PO Box 1
KLAARSTROOM
6932

Tel: (079) 987 9867
Fax: (086) 292 1033
Email: avondrust@pawireless.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
<p>Government Notice No. R. 983 of 4 December 2014</p> <p>Activity Number: 12</p> <p>Activity Description: <i>The development of- (iv) dams, where the dam, including infrastructure and water surface area, exceeds 100 square metres in size; where such development occurs-</i></p> <p><i>(a) within a watercourse;</i></p>	<p>The applicant commenced with the "cleaning" of the existing dam basin and increasing the height of the dam wall from 8m to 10.5m. The scrubbing and increasing of the dam wall by the new and current owner, commenced in August 2015.</p>

<p>Government Notice No. R. 983 of 4 December 2014</p> <p>Activity Number: 19</p> <p>Activity Description: <i>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></p> <p><i>(i) a watercourse;</i></p>	<p>The dam is located within a drainage line(watercourse).</p> <p>The dam wall was increased using all sediment (silt and shale) from the excavated dam basin and surrounds.</p>
<p>Government Notice No. R. 983 of 4 December 2014</p> <p>Activity Number: 66</p> <p>Activity Description: <i>The expansion of a dam where-</i></p> <p><i>(i) the highest part of the dam wall, as measured from the outside toe of the wall to the highest part of the wall, was originally 5 metres or higher and where the height of the wall is increased by 2,5 metres or more;</i></p>	<p>The "cleaning" of the dam resulted in increased dam capacity and a raised wall height from 8m to 10.5m.</p> <p>The dam capacity was increased from 90 000cm³ to 148 000cm³.</p>
<p>Similarly listed in Government Notice No. R. 327 of 7 April 2017</p> <p>Activity Number: 12</p> <p>Activity Description: <i>The development of-</i></p> <p><i>(iv) dams, where the dam, including infrastructure and water surface area, exceeds 100 square metres in size; where such development occurs-</i></p> <p><i>(a) within a watercourse;</i></p>	<p>As above</p>
<p>Similarly listed in Government Notice No. R. 327 of 7 April 2017</p> <p>Activity Number: 19</p> <p>Activity Description: <i>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 -</i></p> <p><i>(i) a watercourse;</i></p>	<p>As above</p>

<p>Similarly listed in Government Notice No. R. 327 of 7 April 2017</p> <p>Activity Number: 66</p> <p>Activity Description: <i>The expansion of a dam where-</i></p> <p><i>(i) the highest part of the dam wall, as measured from the outside toe of the wall to the highest part of the wall, was originally 5 metres or higher and where the height of the wall is increased by 2,5 metres or more;</i></p>	<p>As above</p>
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The abovementioned list is hereinafter referred to as "the listed activities".

D. PROPERTY DESCRIPTION AND LOCATION

The listed activities commenced on Farm 178 Klaarstroom, Prince Albert.

The SG21 digit code is: C06100011780000000000

The co-ordinates for the site boundary are:

Point	Latitude (S)	Longitude (E)
1	33° 19' 23.32" South	22° 30' 35.65" East

Refer to Annexure 1: Locality Plan and Dam Layout
Herein-after referred to as "the site".

E. DETAILS OF THE ENVIRONMENTAL ASSESSMENT PRACTITIONER ("EAP")

Eco Route
c/o Ms Janet Ebersohn
PO Box 1252
SEDFIELD
6573

Tel: (044) 343 2232
Fax: (086) 402 9562
Email: janet@ecoroute.co.za

F. DETAILS OF THE ACTIVITY/IES UNDERTAKEN

The activities commenced/undertaken entailed the excavation and desilting of an instream dam resulting in the increase of the dam wall height from 8m to 10.5m and increasing the dam capacity from 90 000cm³ to 148 000cm³. The excavation and removal silt and shale occurred within a drainage line (watercourse) on Farm 178 Klaarstroom, Prince Albert.

The applicant commenced with the "cleaning" of the existing dam basin and increasing the height of the dam wall to make the steep dam slopes gentler and to increase the capacity of the dam. The date that the original dam was constructed is unknown as it was constructed by the previous owners of the farm. However, it is estimated to have been constructed between 2006 and 2007. The scrubbing and increasing of the dam wall by the new and current owner, commenced in August 2015.

G. CONDITIONS OF AUTHORISATION

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

PART I

Scope of authorisation

1. The holder is authorised to undertake the listed activity/ies specified in Section C above in accordance with and restricted to the preferred Alternative described in the application and assessment report dated 17 July 2018 on the site as described in Section D above.
2. The Environmental Authorisation is valid for a period of **five years** from the date of the decision.

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

PART II

Written notice to the competent authority

5. Seven (7) calendar days' notice, in writing, must be given to the competent authority before continuation of the listed activities.
 - 5.1 The notice must make clear reference to the site details and 24G Reference number given above.
 - 5.2 The notice must also include proof of compliance with the following condition 6.

PART III

Notification and administration of an appeal

6. The holder must in writing, within 14 (fourteen) calendar days of the date of this decision–
 - 6.1 notify all registered Interested and Affected Parties ("I&APs") of –
 - 6.1.1. the outcome of the application;
 - 6.1.2 the reasons for the decision as included in Annexure 3;
 - 6.1.3 the date of the decision; and
 - 6.1.4 the date when the decision was issued.

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

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

6.4 provide the registered I&APs with:

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

6.4.3 name of the responsible person for this Environmental Authorisation;

6.4.4 postal address of the holder;

6.4.5 telephonic and fax details of the holder;

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

6.4.7 the contact details (postal and/or physical address, contact number, facsimile and e-mail address) of the decision-maker and all registered I&APs in the event that an appeal is lodged in terms of the *National Appeal Regulations, 2014*.

7. 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

8. The draft Environmental Management Programme ("EMPr") of May 2018 compiled by Eco Route Environmental Consultancy and submitted as part of the application for environmental authorisation is hereby approved and must be implemented.

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

PART V

Monitoring

10. The holder must appoint a suitably experienced Environmental Control Officer ("ECO"), before continuation of the listed activities to ensure compliance with the EMPr and the conditions contained herein.

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

PART VI

Auditing

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

PART VII

Activity/ Development Specific Conditions

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

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

15. A qualified archaeologist and/or palaeontologist must be contracted where necessary (at the expense of the holder) to remove any heritage remains. Heritage remains can only be disturbed by a suitably qualified heritage specialist working under a directive from the relevant heritage resources authority.
16. All construction rubble downstream of the dam must be removed from the catchment/watercourse.

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. The reckoning of days in terms of this Environmental Authorisation, excludes the period between 15 December 2019 and 05 January 2020.
3. Non-compliance with a condition or term of this Environmental Authorisation or EMPr may render the holder liable to criminal prosecution.
4. 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.

5. 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.

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

I. APPEALS

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

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

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

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

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

By facsimile: (021) 483 4174; or

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

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

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

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


J. CONSEQUENCES OF NON-COMPLIANCE WITH CONDITIONS

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

K. DISCLAIMER

The Western Cape Government, the Municipality, committees or any other public authority or organisation appointed in terms of the conditions of this Environmental Authorisation shall not be responsible for any damages or losses suffered by the holder, developer or his/her successor in any instance where construction or operation subsequent to construction is temporarily or permanently stopped for reasons of non-compliance with the conditions as set out herein or any other subsequent document or legal action emanating from this decision.

Yours faithfully



ZAIDAH TOEFY

ACTING DIRECTOR: ENVIRONMENTAL GOVERNANCE

DATE OF DECISION: 20 DECEMBER 2019

CC: (1) Janet Ebersohn (EAP)

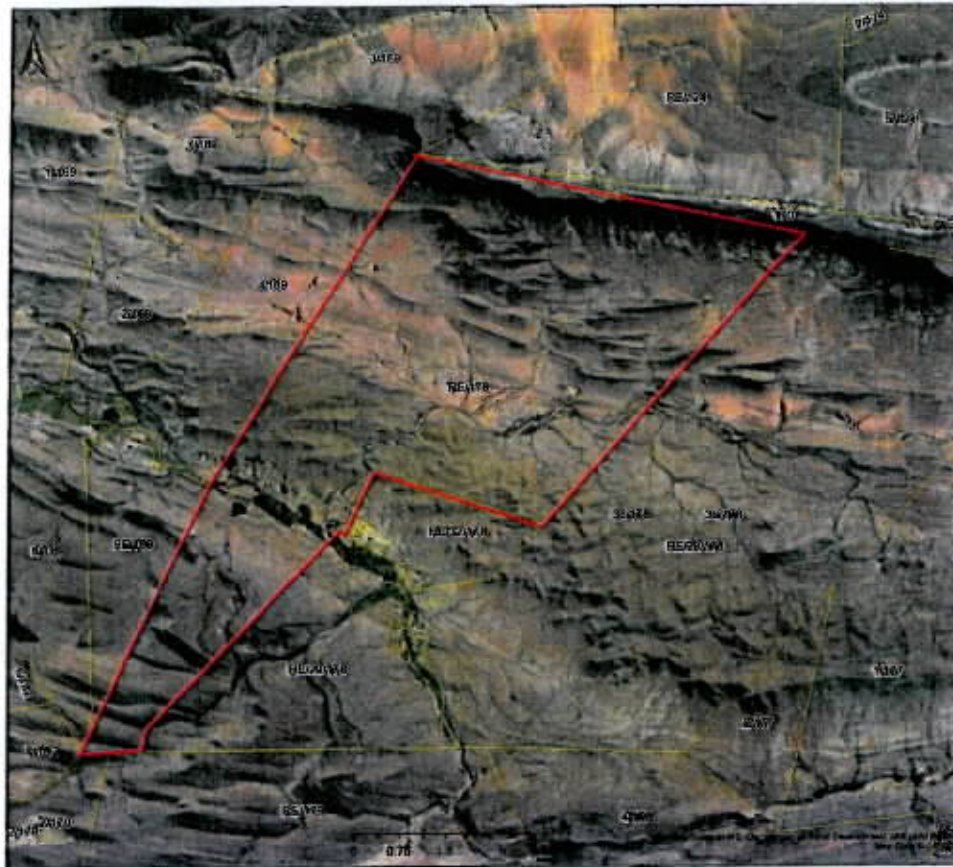
Email: janet@ecoroute.co.za

Fax: (086)402 9562

ANNEXURE 1: LOCALITY MAP and DAM LAYOUT

Farm RE/178 33 19'
21°S 22 30' 37"E

Legend
 Farm Portions



Scale: 1:72 224
 Date created: February 7, 2017

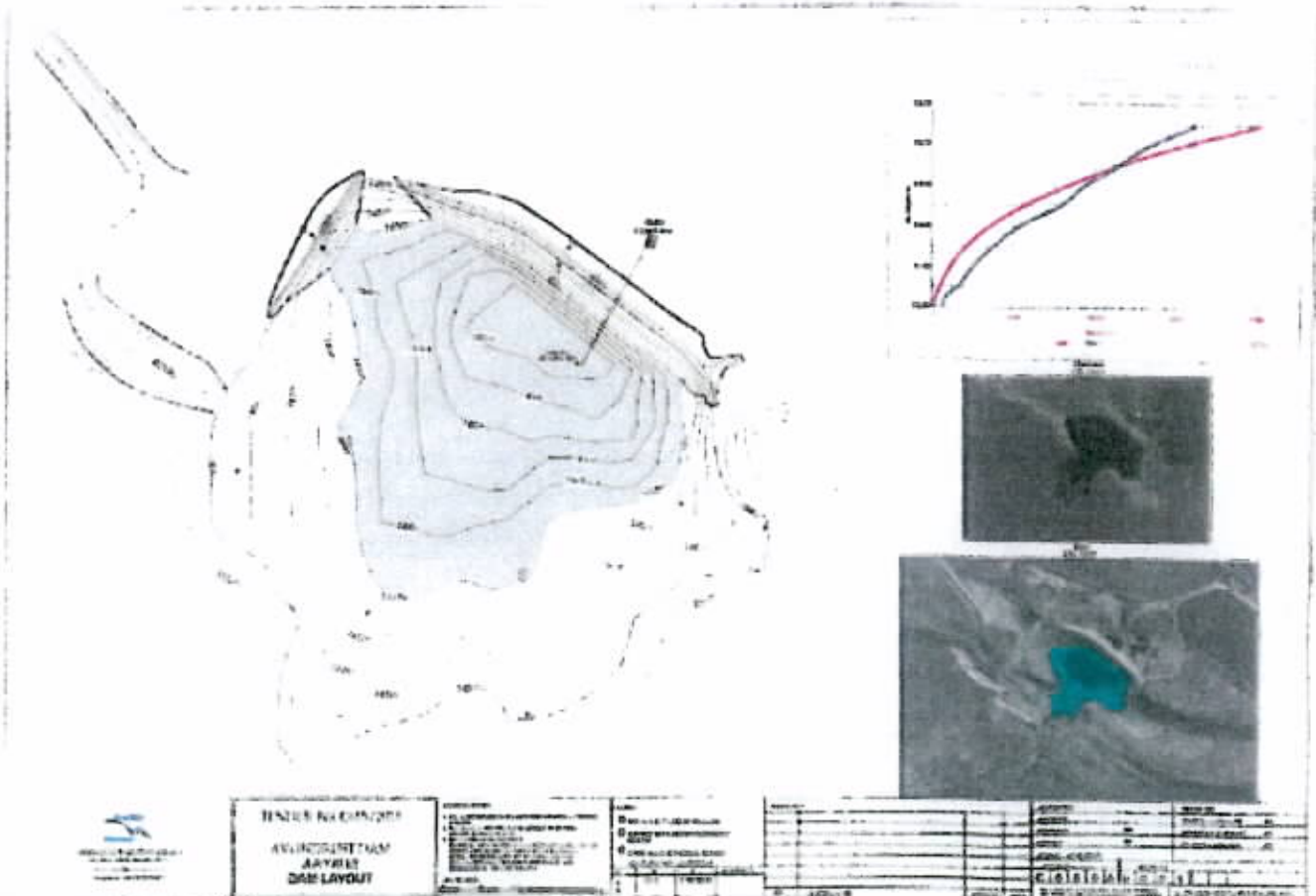


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S24G REFERENCE: 14/2/1/3/C2/7/0009/16
APPEAL REFERENCE : 14/3/6/C2/7/0416/19

ANNEXURE 3: REASONS FOR THE DECISION

This Environmental Authorisation is in respect of the consequences of commencement of the afore-mentioned illegal activities. An Environmental Assessment Practitioner ("EAP") was appointed to submit a section 24G Environmental Impact Assessment ("EIA") to the Department to obtain this Environmental Authorisation. The EIA was considered adequate for informed decision-making. In addition, the holder paid an administrative fine of R100 000 (One hundred thousand Rand) to meet the requirements of section 24G of the *National Environmental Management Act, 1998* ("NEMA").

In reaching its decision, the competent authority, *inter alia*, considered the following:

- a) The section 24G application and Environmental Impact Assessment and Mitigation Measures as outlined in the section 24G Environmental Impact Assessment ("EIA") Report dated 17 July 2018 as well as the Environmental Management Programme ("EMPr") of May 2018.
- 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 9 May 2018
Attended by: Officials of this department
- g) The appeal decision on the 24G administrative fine dated 12 September 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.
- fixing a notice board at the site where the listed activities unlawfully commenced.
- giving written notice to the owners and occupiers of land adjacent to the site where the listed activities were undertaken, the municipality and ward councillor, and the various organs of state having jurisdiction in respect of any aspect of the listed activities on 28 April 2017.
- the placing of a newspaper advertisement in the **Prince Albert Friend** in May 2017.

Comments were received from the Swartberg Family Trust ("SFT") who registered as an I&AP. The main concerns raised by the SFT was the effect the dam construction and associated water usage has on water availability for the people of Klaarstroom, specifically the poor and underprivileged. They advised that the applicants water usage infringes on the local communities' constitutional rights, and that due to the applicant's actions, the Municipality of Prince Albert does not have enough access to water through borehole pumping. Comment was subsequently obtained from the municipality in an attempt to address these concerns, however, the municipality did not raise any concerns regarding a possible lack of water availability in their comment dated 1 February 2019.

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

The following organs of state provided comment on the application:

- This Department's directorate: Development Management ("DM")

- Department of Agriculture, Forestry and Fisheries ("DAFF")
- Breede Gouritz Catchment Management Agency ("BGCMA")
- CapeNature ("CN")
- Heritage Western Cape ("HWC")

The DM highlighted a variety of concerns during the draft phase of the EIA Report, such as lack of adequate descriptions within the report and a lack of linkage between the specialist recommendations and the EMPr, as well as specialist conclusions and impact ratings. This was corrected by the EAP and updated in the Final EIA Report.

DAFF recommended that the farm be registered to become a member of the Southern Cape Fire Protection Association as this would be in the best interest of the farm.

HWC commented that there is no reason to believe that the proposed dam will impact on heritage resources.

BGCMA indicated that there are some management conditions that needs to be met by the applicant. These management conditions included that construction rubble must be removed downstream of the dam, alien vegetation must be properly managed, specifically in the disturbed areas around the dam and the Groot River should be maintained as natural land or rehabilitated to a near natural state.

CN does not object to the findings of the EIA Report, provided that all mitigation measures and recommendations listed in the Freshwater Specialist Study and Biodiversity Impact Assessment are adhered to.

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

Alternatives were limited in that it was an existing dam that was "cleaned" out /desilted increasing the height of the dam wall.

2.1 Location/Site/Activity/Design Alternatives

Location/site alternatives

The site is an existing dam that appears to have been constructed to provide the easiest option to collect and store water. Due to the low rainfall experienced within the Karoo, it would be unfeasible to have an off-stream dam.

Activity alternatives

No activity alternatives exist as the industry requires a water source for the irrigation of agricultural lands.

Design alternatives

No design alternatives exist as due to the low rainfall experienced within the Karoo, it would be unfeasible to have an off-stream dam.

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

The "no-go" alternative of ceasing and removing the dam would result in the loss of a water source to irrigate the crops, leading to crops dying out; as well as the loss of drinking water for livestock. Loss of agricultural lands and livestock would leave the farmer without income, as well as the unemployment of farmworkers.

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 activities were motivated by the fact that water supply in the Karoo is extremely limited. The dam and its expansion was required to enable increased production and to provide drinking water for the livestock on the farm.

3.2. Biodiversity Impacts

Both terrestrial and aquatic vegetation were removed during the construction and the subsequent upgrading of the dam. This resulted in the loss of habitat and the modification of the natural flow of water down the catchment area. The property falls within a Critical Biodiversity Area according to Cape Farm Mapper. Ground-truthing, however could not give any credit to the classification. It wa

confirmed that the vegetation on site is classified as Prince Albert Succulent Karoo which has a conservation value of 'least threatened'.

3.3. Visual / Sense of Place

The dam is in keeping with the agricultural landscape.

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—