



24G Application: 14/2/4/2/1/A3/53/0024/21

ENVIRONMENTAL AUTHORISATION

The Owner
P.O. Box 5280
Helderberg
SOMERSET WEST
7130

Email: alberto@bottegafamilywine.co.za
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Attention: Alberto Bottega

APPLICATION IN TERMS OF SECTION 24G OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998) ("NEMA"): UNLAWFUL COMMENCEMENT OF A LISTED ACTIVITIES: THE UNLAWFUL CONSTRUCTION OF A DAM WITHIN A WATERCOURSE ON FARM NO. 1548, KNORHOEK ESTATE, SIR LOWRY'S PASS

With reference to your application dated 27 July 2022 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.

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 as described in the application and environmental assessment dated 27 July 2022.

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

Mr. Alberto Bottega

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

C. LIST OF ACTIVITIES AUTHORISED

Listed Activities	Activity/Project Description
<p><i>Government Notice No. R. 327 of 2017 –</i></p> <p>Activity Number: 12</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 100 square metres or</i></p> <p><i>(ii) infrastructure or structures with a physical footprint of 100 square metres or more 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 exists, within 32 metres of a watercourse, measured from the edge of a watercourse excluding no exclusions.</i></p>	<p>The physical footprint of the dam (i.e. disturbed area), which is located within a watercourse, is ± 110 m².</p>

<p>Government Notice No. R327 of 2017 – Activity Number: 19 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 a watercourse; but excluding where such infilling, depositing, dredging, excavation, removal or moving— (b) is for maintenance purposes undertaken in accordance with a maintenance management plan.</i></p>	<p>During the construction of the dam, the amount of sand, soil and rock that was excavated and moved exceeded 10m³.</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 1548 Idiom Wine Estate, Sir Lowry's Pass Village, Knorhoek Estate

The SG digit code is: C06700000000154800000

The co-ordinates for the property boundary are:

Point	Latitude (S)	Longitude (E)
1	34° 06' 33.34" South	18° 57' 34.84" East
2	34° 06' 19.75" South	18° 56' 54.24" East
3	34° 06' 04.43 " South	18° 56' 48.79" East
4	34° 06' 08.79" South	18° 57' 40.82" East

The co-ordinates for the dam are:

Point	Latitude (S)	Longitude (E)
1	34° 06' 17.75" S South	18° 57' 10.55" East

Refer to Annexure 1: Locality Plan

Herein-after referred to as “the site/development site”.

E. DETAILS OF THE ENVIRONMENTAL ASSESSMENT PRACTITIONER (“EAP”)

Cornerstone Environmental Consultants (Pty) Ltd.

c/o Mr Pieter de Villiers

P.O. Box 12606

DIE BOORD

7613

Tel: 083 243 0994

Email: pieter@cornerstoneenviro.co.za

F. DETAILS OF THE ACTIVITIES UNDERTAKEN

In 2015 the holder constructed a small dam/impoundment on an unnamed tributary of the Cottage stream. This was done after alien vegetation clearing and affected an area of approximately 110m². The impoundment is fed from water diverted from the Cottage stream by means of a sandbag weir in the Cottage stream with a PVC pipe inserted to transport water from the weir to the impoundment dam on the unnamed tributary. The Cottage stream is perennial and the unnamed tributary non perennial. The construction of the impoundment was undertaken in a Critical Biodiversity Area, containing both, aquatic and terrestrial in endangered species of Boland Granite Fynbos. The purpose of the impoundment is to serve as a fire pool, using water from the Cottage stream as it is perennial and therefore a guaranteed water source. The small earth wall dam has a footprint of between 100m² to 110m². The access road leading to the dam has a footprint of 280m².

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 and restricted to the implemented Alternative described in the application and assessment report dated 27 July 2022 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

Written notice to the competent authority

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

PART III

Notification and administration of an appeal

5. The holder must in writing, within 14 (fourteen) calendar 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.

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

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

7.3 provide the registered I&APs with:

- 7.3.1 the name of the holder (entity) of this Environmental Authorisation;
- 7.3.2 name of the responsible person for this Environmental Authorisation;
- 7.3.3 postal address of the holder;
- 7.3.4 telephonic and fax details of the holder;
- 7.3.5 e-mail address, if any, of the holder; and
- 7.3.6 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 issue 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 Environmental Management Programme ("EMPr") of July 2022 compiled by Cornerstone Environmental Consultants 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 activity/ies, 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. 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.

13. 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.
14. The recommendations of the freshwater specialist contained in the freshwater impact assessment report of June 2021 must be implemented.

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: Marius Venter
 Western Cape Ministry of Local Government, Environmental Affairs &
 Development Planning
 Private Bag X9186, Cape Town, 8000; or
 - By facsimile: (021) 483 4174; or
 - By hand: Attention: Mr Marius Venter (Tel: 021-483 3721)
 Room 809, 8th floor Utilitas Building
 1 Dorp Street, Cape Town, 8000; or
 - By e-mail: DEADP.Appeals@westerncape.gov.za

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

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

J. CONSEQUENCES OF NON-COMPLIANCE WITH CONDITIONS

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

K. DISCLAIMER

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

Yours faithfully

ZAIDAH TOEFY

ACTING DIRECTOR: ENVIRONMENTAL GOVERNANCE

Copied to: (1) Pieter de Villiers (EAP)

(2) Ms. Azanne van Wyk (City of Cape Town)

Email: Pieter@cornerstoneenviro.co.za

Email: azanne.vanwyk@capetown.gov.za

ANNEXURE 1: LOCALITY MAP



FOR OFFICIAL USE ONLY:

S24G REFERENCE: 14/2/4/2/1/A3/53/0024/21

ANNEXURE 2: 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 R25 000 (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 27 July 2022.
- b) The Environmental Management Programme ("EMPr") of July 2022 submitted together with the application.
- c) Relevant information contained in the Departmental information base, including, the Guidelines on Public Participation and Alternatives.
- d) The objectives and requirements of relevant legislation, policies and guidelines, including section 2 of the NEMA.
- e) The comments received from Interested and Affected Parties ("I&APs") and the responses provided thereto.
- f) The sense of balance of the negative and positive impacts and proposed mitigation measures.
- g) The site visit conducted on
Date/s: 10 March 2022
Attended by: Officials from this Directorate: Environmental Governance.

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 **District Mail** newspaper;
- A site notice was erected; and
- Letters were sent to interested and affected parties ("I&APs") and the municipal ward councillor.
- I&APs were afforded the opportunity to provide comments on 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:

- CapeNature
- City of Cape Town - Environmental and Heritage Management
- City of Cape Town- Water and Sanitation

A summary of the comments and the EAP's responses thereto follows below.

CapeNature

CapeNature stated that noted that the alien vegetation clearing activities of the holder have allowed the regrowth of granite fynbos. It was concluded that the impact on indigenous vegetation prior to construction would have been medium negative considering that construction took place after alien vegetation clearing when indigenous regrowth was likely to be sparse and considering the endangered nature of the vegetation type. CapeNature further stated that, in principle, instream dams are not supported by CapeNature, because free-flowing river ecosystems are changed into an artificial slack-water reservoir habitat, which could undermine the river's natural communities of fauna and flora.

Regarding flow modification impact in the freshwater assessment – the mitigation measure to allow seasonal flows on the unnamed tributary to overflow the impoundment, would mean that the flow in the tributary would be impeded up to the point where the extra volume created by the impoundment is exceeded. This means the flow of the small tributary will be highly impeded depending on the time taken for the impoundment to fill, which will depend

on flow. The longer the time it takes the impoundment to fill, the more a slack-water habitat forms.

Flow modification for the unnamed tributary could therefore be high negative without mitigation (no overflow) and medium negative with mitigation (with overflow). The mitigation significance ratings would be dependent on the time taken for the impoundment to fill, with higher negative significance levels with increased time. The mitigation measure to use low flows from the Cottage stream only to fill the impoundment in summer is understood, but the fire pool would need to be filled every time the water evaporates. A mechanism would need to be put in place whereby water could be released into the fire pool as required.

Further to this, CapeNature stated that the sandbags used for the weir on the Cottage stream are a concern as there is a risk of localised siltation as the bags degrade as well as concern over *Galaxias Zebratus* ("GZ") which occurs in the Sir Lowry's pass river that is fed by the Cottage stream. It is a concern that the weir in the Cottage stream and abstraction to the impoundment could impede GZ that might be travelling down the Cottage stream. These impacts need to be adequately mitigated.

CapeNature concluded by stating that in considering the CBA 1 nature of the site, the endangered ecosystem and flow mediation that has occurred, the feasibility of removing the impoundment by manual labour with minimal disturbance to the site must be indicated. If it is not feasible, then the mitigation measures and recommendations as per the freshwater assessment must be implemented and consider installing a tank system in a low sensitivity area, that can be filled with low flow from the Cottage stream in summer months, which will ensure slack water habitat not created in the unnamed tributary.

The EAP responded by stating that the freshwater specialist assigned a Low significance rating with mitigation for flow modification during the operational phase of the activity. The following mitigation measures, that have been included in the S24G Report and EMP, to keep the fire pool full are as follows:

- The low flows within the Cottage Stream, upstream of the location of the fire pool, must not be diverted out of the stream in summer, other than maintaining a full supply in the fire pool for firefighting.
- The low flows in the small tributary, in which the fire pool is located, must not be diverted out of the small stream, or Cottage stream, in summer, but must be allowed to overflow the fire pool and continue down the cottage stream, i.e., the flow in the small tributary must be allowed to flow through the dam, and overflow the concrete chute, and enter the natural flow path down the cottage stream.

- The size of the fire pool is very small (in relation to the potential runoff) and will not impede low flows to overtop the structure. It is therefore conditional that no summer flows may be diverted or pumped or used from the location of the fire pool or the diversion point upstream of the location of the fire pool.

City of Cape Town - Environmental and Heritage Management (COCT-EHM)

The COCT-EHM noted from the freshwater specialist report prepared by BlueScience, dated June 2021, that the removal of the earth dam wall will result in significant adverse impacts on the surrounding aquatic system. The specialist recommends that the small earth wall dam be left in its current state and be maintained in accordance with the Knorhoek Estate Maintenance and Management Plan (MMP). This approach, as well as the mitigation measures outlined in the abovementioned freshwater specialist report, is supported by the COCT-EHM.

City of Cape Town- Water and Sanitation

Water and Sanitation notes that the activity in question does not affect the City of Cape Town's Water and Sanitation infrastructure. There is no water or sewer infrastructure running on or near the dam.

Conditions:

- Water-saving measures to be incorporated into the development.
- It is the responsibility of the developer to acquire a water use license from the National Department of Water and Sanitation.
- Stormwater ingress to be eliminated from the sewer system.

Stormwater bylaw:

- No water besides rainwater will be permitted into the stormwater system.

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/Activity Alternatives

Alternative 1 (Herewith authorised)

This entails the construction of a small dam/impoundment on an unnamed tributary of the Cottage stream. The purpose of the impoundment is to serve as a fire pool, using water from the Cottage stream as it is perennial and therefore a guaranteed water source. The small earth wall dam has a footprint of between 100m² to 110m². The access road leading to the dam has a footprint of 280m². The current site of the impoundment / fire pool was considered the best option because there was an existing drainage line to fill the dam and it was close to an existing access road to enable access. No other site alternatives were considered viable by the landowner.

Alternative 2

No other activity alternatives were considered as the activity that was performed (the construction of an impoundment), resulted from a problem that had to be addressed, namely the establishment of a place where water can be collected for fire-fighting purposes on the farm.

Alternative 3

No design or layout alternatives are being considered as the activity has been completed.

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

Decommissioning the impoundment is likely to have more negative impacts than the initial construction activities have caused, and it is therefore not advised that the impoundment be removed. This is due to the significant disturbance that will be caused by accessing the site and removing the earthen wall.

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 and Regional/ Planning Context

The property is zoned Agricultural Zone and the impoundment / fire pool fits into this land use. The development of the impoundment / fire pool as supporting infrastructure on the wine farm was in line with the Agricultural zoning of the property.

3.2. Biophysical and Biodiversity Impacts

The activities undertaken have resulted in the loss of indigenous vegetation as well as disturbance to the watercourse. The area is classified as a CBA, however, considering the fact that the area previously contained large amounts alien vegetation, which was cleared, this has resulted in the opportunity for regrowth of indigenous vegetation. The findings of the botanical assessment concluded that the unlawful activities have resulted in a localised impact on biodiversity through the loss of indigenous vegetation and disturbance to the watercourse.

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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