



24G Application: 14/2/4/2/1/F5/16/0012/22

ENVIRONMENTAL AUTHORISATION

The Managing Director
Dundarach Investments (Pty) Ltd
PO Box 7077
NOORDER PAARL
7623

Email: jmlstuart@gmail.com/dundarachpf@gmail.com

Attention: James Stuart/Elizabeth Hacking

APPLICATION IN TERMS OF SECTION 24G OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998) ("NEMA"): UNLAWFUL COMMENCEMENT OF A LISTED ACTIVITY: THE UNLAWFUL CONSTRUCTION OF CHICKEN HOUSES ON PORTION 6 OF FARM 151, BERG RIVIER, MALMESBURY

With reference to your application dated 13 October 2021 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 in accordance with the preferred alternative as described in the application and environmental assessment dated 13 October 2021.

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

Dundarach Investments (Pty) Ltd
 C/o Mr James Stuart & Ms Elizabeth Hacking
 PO Box 7077
 NOORDER PAARL
 7623

Email: jmlstuart@gmail.com
 dundarachpf@gmail.com

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 7 April 2017</i></p> <p>Activity Number: 5</p> <p>Activity Description: <i>"The development and related operation of facilities or infrastructure for the concentration of— (i) more than 1 000 poultry per facility situated within an urban area, excluding chicks younger than 20 days; (ii) more than 5 000 poultry per facility situated outside an urban area, excluding chicks younger than 20 days; (iii) more than 5 000 chicks younger than 20 days per facility</i></p>	<p>The development entailed the construction of four chicken houses with more than 5000 poultry per facility (10000/chicken house).</p>

<i>situated within an urban area; or (iv) more than 25 000 chicks younger than 20 days per facility situated outside an urban area."</i>	
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The abovementioned list is hereinafter referred to as "the listed activity".

D. PROPERTY DESCRIPTION AND LOCATION

The listed activity commenced on Portion 6 of Farm 151, Berg Rivier, Malmesbury.

The SG digit code is: C04600000000015100006

The co-ordinates for the property boundary are:

Point	Latitude (S)	Longitude (E)
1	32° 55' 1.22" South	18° 37' 43.16" East
2	32° 56' 6.88" South	18° 37' 31.15" East
3	32° 55' 29.87" South	18° 39' 16.30" East
4	32° 55' 3.60" South	18° 39' 27.61" East

The co-ordinates for the site boundary are:

Point	Latitude (S)	Longitude (E)
1	32° 55' 10.89" South	18° 39' 0.47" East
2	32° 55' 18.05" South	18° 38' 46.04" East
3	32° 55' 20.47" South	18° 38' 48.03" East
4	32° 55' 13.01" South	18° 39' 2.07" 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")

GroenbergEnviro (Pty) Ltd
c/o Ms Therina Oberholzer & Mr Pieter Badenhorst
P. O. Box 1058
WELLINGTON
7654

Cell: 082 776 3422
072 089 5750
Fax: (086) 476 7139
Email: pieter@groenbergenviro.co.za
therina@groenbergenviro.co.za

F. DETAILS OF THE ACTIVITY/IES UNDERTAKEN

In September 2017 Avian Influenza was contracted on the holder's (Dundarach Investments (Pty) Ltd) main farm. It was spread to them directly from neighbouring farms that were infected. In the process the entire farm of 880,000 hens and pullets were culled as instructed by the state vet. The direct costs associated with the full culling of the farm was R 32 million. Additionally, a total of 88 staff members had to be retrenched.

The holder was compelled by their main customer to come up with an imminent plan in order to save their market for free-range eggs. The holder was also desperate to keep the rest of their staff from becoming unemployed. The new farm was subsequently commenced with and constructed in urgency to provide the holder with cash flow to help keep their remaining contingent of staff employed and prevent the company from entering bankruptcy.

The dimensions of each chicken house building are 12m x 105m. The four chicken houses cover a building footprint of 4 x (12m x 105m) = 5 040m². A total area of approximately 37236m² was cleared for the development of the chicken house facility. Each of the four free range chicken houses has a capacity of 10 000 laying hens, resulting in a total of 40 000 chickens on the farm.

Water Use and Supply

The farm receives water from the municipal network and had existing water connection points pre-construction. Each of the four egg laying chicken houses has a water requirement of 2000l per day.

Access and Traffic

Access is gained via an existing unnamed gravel road, that provides access to the farm and chicken houses. A dedicated feed truck solely for use on the farm brings feed for the chicken houses once per week and eggs are collected twice per week by the same truck. The road is, as such, used infrequently and only for agricultural use.

Biosecurity

The development was built in response to the outbreak of avian influenza in 2017/2018 as a bio-secure site. The current houses are fully fenced off with shower in / shower out facilities. A dedicated feed truck solely for use on the farm, brings in feed once per week. The farm is fully self-sufficient so there is no movement of personnel or equipment between farms.

The farm has a dedicated set of vehicles that are routinely disinfected once per week. The entering feed truck is disinfected upon arrival and departure from the farm.

Waste and Manure Management

Manure is removed once per cycle, every 78 weeks. A deep litter system is used in which straw is routinely added to the manure which makes the manure friable and odourless and dry. Each house produces roughly 45m³ of dry manure per cycle. The applicant has an agreement with the previous landowner who is currently renting the remaining portion of the farm for winter cereal production to take the manure free of charge from site.

Mortalities

No chicken slaughtering takes place on the farm and mortalities are collected daily and put in a sealed 50-micron black bag and put into a municipal drum with a closed lid. Mortalities are then gathered once per week and taken to a licensed facility for processing.

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 13 October 2021 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 development 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:
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.

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

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

5.4 provide the registered I&APs with:

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

5.4.2 name of the responsible person for this Environmental Authorisation;

5.4.3 postal address of the holder;

5.4.4 telephonic and fax details of the holder;

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

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

6. The listed activity, 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 Operational Management Programme ("OMPr") of May 2022 compiled by GroenbergEnviro (Pty) Ltd and submitted as part of the application for environmental authorisation is hereby approved and must be implemented.

8. The OMPr must be included in all contract documentation for all phases of implementation.

PART V

Monitoring

9. The holder must appoint a suitably experienced Environmental Control Officer ("ECO") or site agent where appropriate, before continuation of commencement of development activities to ensure compliance with the OMPr and the conditions contained herein.

10. A copy of the Environmental Authorisation, OMPr audit reports and compliance monitoring reports must be kept at the site of the authorised activity and must be made available to anyone on request.
11. 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

12. 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 OMPr 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 and on a publicly accessible website (if applicable).

PART VII

Activity/ Development Specific Conditions

13. 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.

14. 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.
15. No runoff from the facility or septic tank must be directed to the Berg River.

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 activity.
2. Non-compliance with a condition or term of this Environmental Authorisation or OMPr 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 OMPr is as follows:
Amendments to the OMPr, 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 OMPr 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

MRS Z TOEFY

ACTING DIRECTOR: ENVIRONMENTAL GOVERNANCE

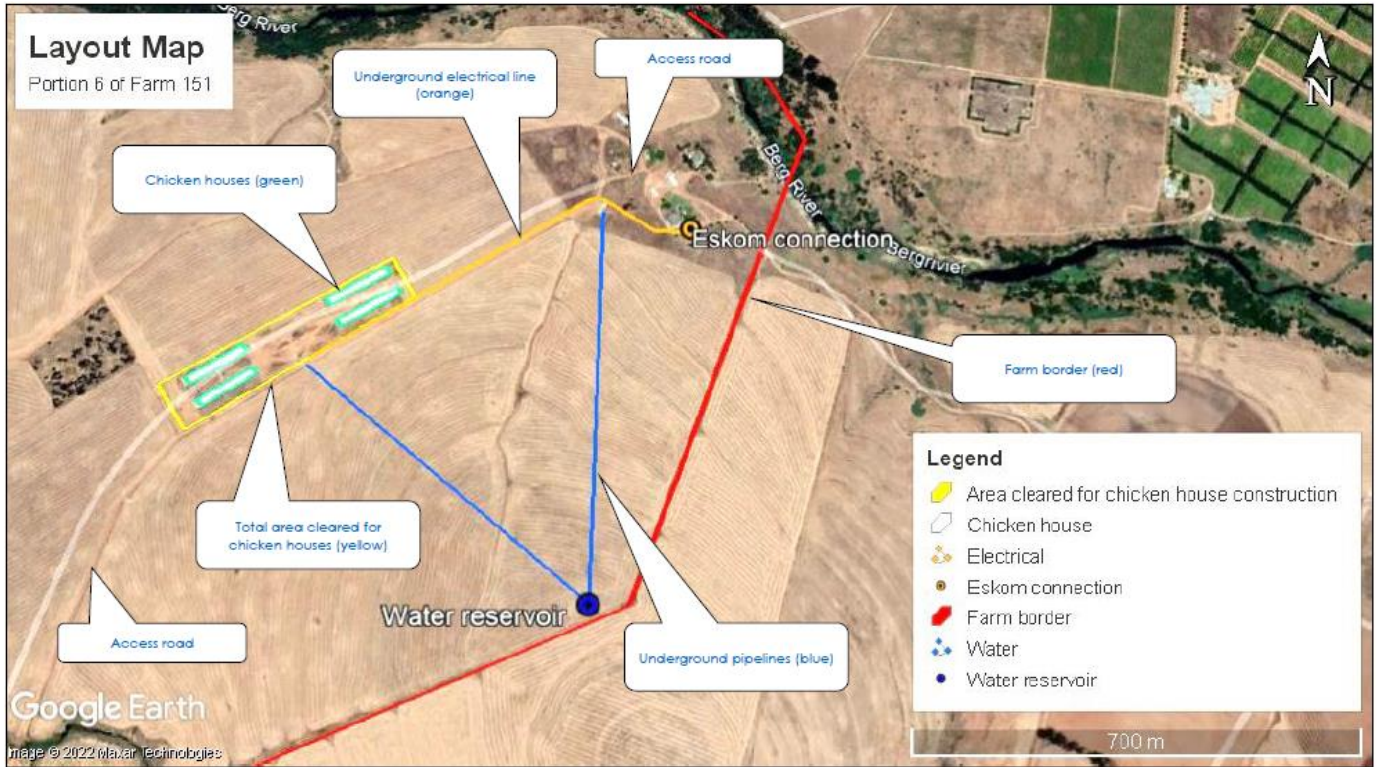
Copied to: (1) Pieter Badenhorst (EAP)

Email: pieter@groenbergenviro.co.za / therina@groenbergenviro.co.za

ANNEXURE 1: LOCALITY MAP



ANNEXURE 2: SITE PLAN



FOR OFFICIAL USE ONLY:

S24G REFERENCE:

14/2/4/2/1/F5/16/0012/22

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 information contained in the application form dated 13 October 2022 with supporting environmental impact assessment and mitigation measures.
- b) The Operational Management Programme ("OMPr") of May 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: 27 October 2022
Attended by: Officials of the 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:

- identification of and engagement with I&APs.
- fixing a notice board at the site where the listed activity unlawfully commenced on 2 November 2021.
- 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 activity.
- the placing of a newspaper advertisement in the **Swartland Gazette** on 2 November 2021.

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

The following organs of state provided comment on the application:

- Swartland Municipality (SM)
- This Department's Directorate: Pollution & Chemicals (D: PCM)
- Heritage Western Cape (HWC)
- Department of Agriculture (DoA)
- CapeNature (CN)
- This Department's Directorate: Waste Management Licensing (D: WML)

The SM confirmed that the chicken houses does not consist of land use approval in terms of the Planning By-law or building plan approval in terms of the National Building Regulations. A land use application needs to be made in terms of Section 25(2) of the Swartland Planning By-law in order to obtain land use rights for the chicken houses. Please note that the decision on the land use application can only be made once a decision has been issued on the 24G application.

HWC indicated that no further comment will be provided as the record of decision on the case already submitted to the applicant still stands. No Heritage impacts were identified.

The D: PCM indicated that no runoff from the facility or septic tank be directed to the Berg River. It is recommended that the proposed mitigation measures be implemented and strictly adhered to at all times. The EAP confirmed that the facility is managed in such a way that no run-off is produced. The septic tank is regularly emptied by the municipality.

CN agrees that the development area was transformed by agricultural activity at the time of construction. Biodiversity impacts of the development are therefore at most negligible to very low-negative. Considering that the development area is/was transformed, and that manure is used for fertiliser for crop fields which is understood to have been a standard practice, CN does not find any biodiversity concerns with the development. The EAP reiterated that no natural vegetation was impacted upon as the site was previously a wheat field.

D: WML stated that the manure generated at the farm will be taken by another farmer on the same property and used for composting. The applicant was required to elaborate and indicate whether the manure will be applied directly to land or if the manure will undergo composting. If composting is involved, confirmation that the farmer has the appropriate authorisations in place, if needed, was required. The EAP responded that the manure will be applied directly to the land and used as fertiliser and not for commercial purposes.

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 OMPr 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 OMPr.

2. Alternatives

2.1 Activity Alternatives

Alternative 1 (Herewith authorized)

Development of all activities in their current position.

This alternative was considered preferred since all the areas have been disturbed for a long period of time (prior to the construction). The chicken houses were also effectively positioned next to existing roads for their intended use. The development not only aided economic growth in the area but provided job assurances for employees, greater food security for the region and allowed the company to continue operating during the 2017/2018 Avian influenza outbreak and onwards.

This alternative is considered preferred for the following reasons:

- There is no impact to indigenous vegetation as the construction occurred on a wheat field.

- The diversification for the farm is positive for the company as well as the local economy.
- No heritage impacts were anticipated.
- The development provides job security for permanent workers.

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

This alternative would require demolishing the chicken houses and rehabilitating the affected sites. This alternative has been considered but is not a viable option for the following reasons:

- By destroying the four chicken houses, it would lower food security of the region.
- The applicant will not be gaining financial benefits.
- Employment for existing workers and future workers would be lost.
- The area where the chicken houses are located is not deemed as sensitive, therefore no biodiversity gains will be achieved.

Therefore, this alternative is not deemed preferred.

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 development required the construction of four new chicken houses with bio-security infrastructure, in response to the 2017/2018 Avian influenza outbreak. The applicant had experienced significant production losses at other facilities, due to the bird flu outbreak, which resulted in 88 employees losing their jobs. Through the construction of these chicken houses the applicant was able to generate an income and keep some workers permanently employed who would otherwise have lost their jobs as well. Temporary employment opportunities were also created during the construction phase, in an area that has a high unemployment rate. The chicken houses are located far from the residential areas, therefore the minimal noise, dust and visual impact experienced during the construction phase would have had a minimised significance.

3.2. Biodiversity Impacts

No natural vegetation was impacted on. No watercourse lies within close proximity to the facility and the site was constructed on previously disturbed agricultural land.

3.3. Visual / Sense of Place

The construction of the chicken houses occurred on an area that was already being used for agricultural practices for more than 10 years. The chicken houses do not impact the sense of place or any heritage sources as it is also an agricultural activity.

3.4. Pollution Issues

the facility operates following strict bio-security measures. Additionally, as confirmed by the assessment, the only pollution created by the construction of the chicken houses was some construction rubble. Manure is used for composting, and mortalities handled and transported to a licensed facility.

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 OMPr, the competent authority is satisfied that the listed activity will not conflict with the general objectives of integrated environmental management stipulated in Chapter 5 of the NEMA and that any potentially detrimental environmental impacts resulting from the listed activity can be mitigated to acceptable levels.

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