



REFERENCE: 14/3/6/B4/45/0457/20

The Municipal Manager
Stellenbosch Municipality
P.O. Box 17
STELLENBOSCH
7600

Attention: Ms Myra Francis

Tel: (021) 808 8760
Email: Myra.Francis@stellenbosch.co.za

Dear Madam

APPEAL LODGED IN TERMS OF SECTION 43(2) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) AGAINST THE ENVIRONMENTAL AUTHORISATION GRANTED FOR THE UNLAWFUL EXCAVATION AND CONSTRUCTION OF A GABION WALL WITHIN A DRAINAGE LINE ON ERF NO.9445, IDAS VALLEY, STELLENBOSCH

1. The Appeal lodged against the Environmental Authorisation ("EA") granted on 31 January 2020, refer.
2. After careful consideration of the Appeal, as well as supporting documentation received, in terms of section 43(2) of the *National Environmental Management Act, 1998 (Act No. 107 of 1998)* ("NEMA") and regulation 7(3) of the *2014 National Appeal Regulations*, I have decided to dismiss the Appeal and confirm the abovementioned decision of the Competent Authority granted on 31 January 2020.
3. The abovementioned EA and the conditions under which the authorisation was granted must be complied with.
4. **AMENDMENTS/EXCLUSIONS TO THE ENVIRONMENTAL AUTHORISATION:**
 - 4.1. Section I of the abovementioned EA is excluded from this authorisation.
 - 4.2. Condition G7 of the EA is excluded from this authorisation.
 - 4.3. The following conditions of the EA are substituted and must be complied with:

SECTION E: CONDITIONS

Condition G2:

"The Environmental Authorisation is valid for a period of five (5) years from the date of this Appeal decision to continue, conduct or undertake the listed activity or activities as specified in Section C above."

Condition G6:

"The Applicant must, in writing, within 14 (fourteen) calendar days of the date of this decision notify registered Interested and Affected Parties ("I&APs") of-

- 6.1 The outcome of the Appeal;*
- 6.2 The reasons for the decision; and*
- 6.3 The date of the decision."*

5. **REASONS FOR THIS APPEAL DECISION:**

The reasons for dismissing the Appeal and confirming the Appeal EA are contained in the EA. Below find further reasons for dismissing the Appeal and confirming the decision of the Competent Authority:

Appeal ground 1: Introductory notes and comments

5.1. Section 24G of the NEMA states that:

"On application by a person... the ... MEC concerned, as the case may be, may direct the applicant to— (vii) compile a report containing—

(aa) a description of the need and desirability of the activity;

(bb) an assessment of the nature, extent, duration and significance of the consequences for or impacts on the environment of the activity, including the cumulative effects and the manner in which the geographical, physical, biological, social, economic and cultural aspects of the environment may be affected by the proposed activity;

(cc) a description of mitigation measures undertaken or to be undertaken in respect of the consequences for or impacts on the environment of the activity;

(dd) 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;

(ee) an environmental management programme ["EMP"]; or

(ff) provide such other information or undertake such further studies as the ... MEC, as the case may be, may deem necessary."

5.2. On 13 July 2018, an Application was received from the Applicant, in terms of section 24G of the NEMA, for the listed activities that have been commenced with prior to obtaining an EA. The following listed activities were commenced with when the excavation and construction of a gabion wall within a drainage line on Erf No. 9445, Idas Valley, Stellenbosch was undertaken without an EA, in contravention of section 24F of the NEMA:

Activity Number 19 (Government Notice No. R. 983 of 4 December 2014:

"The infilling and 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—

(a) 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."

- 5.3. In a correspondence dated 17 September 2018, the Decision-maker advised the Applicant to proceed with the Environmental Impact Assessment ("EIA") process and stated that the following activity may also have been commenced with without an EA and if applicable, must also be assessed:

Activity Number 12 (Government Notice No. R. 985 of 4 December 2014:

"The clearance of an area of 300 square metres or more of indigenous vegetation except where such clearance of indigenous vegetation is required for maintenance purposes undertaken in accordance with a maintenance management plan.

i. Western Cape

- i. Within any critically endangered or endangered ecosystem listed in terms of section 52 of the NEMBA or prior to the publication of such a list, within an area that has been identified as critically endangered in the National Spatial Biodiversity Assessment 2004;*
 - ii. Within critical biodiversity areas identified in bioregional plans;*
 - iii. Within the littoral active zone or 100 metres inland from high water mark of the sea or an estuarine functional zone, whichever distance is the greater, excluding where such removal will occur behind the development setback line on erven in urban areas;*
 - iv. On land, where, at the time of the coming into effect of this Notice or thereafter such land was zoned open space, conservation or had an equivalent zoning; or*
 - v. On land designated for protection or conservation purposes in an Environmental Management Framework adopted in the prescribed manner, or a Spatial Development Framework adopted by the MEC or Minister."*
- 5.4. The following history of the activity was provided in relation to the relevant listed activities:
- 5.4.1. On 2 September 2014, an Application (not the current section 24G of the NEMA Application) was submitted to the Department of Environmental Affairs and Development Planning's ("DEA&DP") Directorate: Development Management (Region 1) to obtain an EA (prior to the commencement of the listed activity) for a housing development on Erf No. 11330 and Erf No. 9445, Stellenbosch. It was then decided to split the project and complete two separate applications. Erf No. 11330 went on to be approved and the EA (EIA Reference No: 16/3/1/1/B4/45/1105/14) was granted in favour of Stellenbosch Municipality.
 - 5.4.2. The layout for Erf No. 9445 was amended to exclude the wetland from the development area to protect the environment. On 15 September 2016, a checklist for NEMA applicability was submitted to the DEA&DP. On 24 February 2017, the DEA&DP indicated that the proposed development would not require an EA. The infrastructure will be situated outside the non-perennial river and would not result in 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.
 - 5.4.3. The excavation and construction of the gabion wall within the drainage line resulted in the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock of more than 5 cubic metres.
 - 5.4.4. Activity Number 19 (Government Notice No. R. 983 of 4 December 2014) will also be triggered by the housing development as housing (25 erven) and roads are proposed within the delineated wetland.

- 5.4.5. Most of the development (excavation and construction of gabion wall) took place outside of the watercourse. However, 3 areas are within the watercourse.
- 5.4.6. The excavation and construction of the gabion wall resulted in the clearance of an area of more than 300 square metres of indigenous vegetation. The site was zoned public open space prior to November 2017.
- 5.4.7. Should the activity be authorised, further indigenous vegetation would be cleared on the site for the proposed housing development.
- 5.5. Considering the listed activities which were triggered at the time of the commencement of the listed activities, the EA authorised the listed activities, 19 and 27 (Government Notice No. R. 983 of 4 December 2014) and 12 (Government Notice No. R. 985 of 4 December 2014) based on the following:
 - 5.5.1. An incomplete gabion wall has been constructed within a tributary of the Krom River. It is the intention of the Applicant to establish a residential development on Erf No. 9445, Idas Valley. The infilling and excavation activities have affected an area of 8309m² comprising of the gabion wall and the southern river crossing.
 - 5.5.2. Part of the development entails the construction of housing and roads within a delineated wetland area.
 - 5.5.3. The commencement of the activity took place in June 2017 but is incomplete.
 - 5.5.4. The excavation and construction of the gabion wall resulted in the clearance of an area of more than 300 square metres of indigenous vegetation.
 - 5.5.5. The intended residential development will result in the clearance of additional indigenous vegetation. It is intended to construct 166 units, with associated infrastructure including:
 - 5.5.5.1. 3 public open space erven
 - 5.5.5.2. local authority erven (roads and substation)
 - 5.5.5.3. 600 m² retention pond (proposed for the south of the development, alongside the river)
 - 5.5.5.4. North river crossing: gabion mattress protection and two (2) 1500m and 1200m rectangular portal culverts.
 - 5.5.6. The total physical footprint of the development is approximately 5.2ha.
- 5.6. On 17 September 2018, to give effect to the requirement of a public participation process, the Decision-maker issued a Pre-Directive to the Applicant to make representations as to why a Directive should not be issued to *inter alia* conduct a public participation process in terms of Chapter 6 of the 2014 EIA Regulations (Government Notice No. R. 982 of 4 December 2014). On 28 September 2018, the EAP (on behalf of the Applicant) advised the Decision-maker that they will continue with the section 24G of the NEMA as per the requirements and guidance of the Department's Pre-directive.
- 5.7. The public participation process required in terms of Chapter 6 of the 2014 EIA Regulations includes *inter alia* the following:
 - 5.7.1. Regulation 40 (1) of the 2014 EIA Regulations states that:

"The public participation process to which the— ... [the section 24G of the NEMA EIA Report] must give all potential or registered interested and affected parties... a period of at least 30 days to submit comments."
 - 5.7.2. Regulation 41 (2) of the 2014 EIA Regulations further states that the person conducting the public participation process may give notice to potential Interested and Affected Parties of an application *inter alia* by:

- 5.7.2.1. Fixing a board at the place accessible by the public at the boundary, on the fence or along the corridor of the site where the activity will be undertaken.
- 5.7.2.2. Giving written notices to the occupiers of the site, occupiers of the land adjacent to the site where the activity is or is to be undertaken, the municipality, the municipal councillor, any organ of state having jurisdiction and any other party as required by the competent authority.
- 5.7.2.3. Placing a newspaper advertisement.
- 5.8. As detailed in the reasons for the EA, a public participation process was conducted by the EAP to meet the requirements of section 24G of the NEMA and Chapter 6 of the 2014 EIA Regulations. The public participation process conducted in terms of the 2014 EIA Regulations does not prescribe that a meeting must be conducted with the Interested and Affected Parties.

Appeal ground 2: Responses to some of the EAP's responses to the comments submitted on 10/12/2018

- 5.9. Section 24G(2) of the NEMA states that:
"The ... MEC concerned must consider any report or information submitted in terms of subsection (1) and thereafter may—
 - (a) refuse to issue an environmental authorisation; or*
 - (b) issue an environmental authorisation to such person to continue, conduct or undertake the activity subject to such conditions as the ... MEC may deem necessary, which environmental authorisation shall only take effect from the date on which it has been issued; or*
 - (c) direct the applicant to provide further information or take further steps prior to making a decision provided for in paragraph (a) or (b)."*
- 5.10. In terms of the allegations made by the Appellant that his comments submitted prior to the granting of the EA were not addressed and/or responded to, the Comments and Responses Reports submitted with the section 24G of the NEMA EIA Report addressed the Appellant's comments *inter alia* as follows:
 - 5.10.1. The section 24G documentation was not available on the Environmental Assessment Practitioner's ("EAP") website for approximately 3 hours: The EAP is not an Information Technology person and apologises for using incorrect terminology. The documentation was up for far longer than the allotted 30day commenting period and the fact that it was down for a 3-hour period did not prevent any Interested and Affected Party from commenting.
 - 5.10.2. Comments submitted by Mr. Cilliers were included in the Comments and Response Report and responded to as detailed on page 77 of Appendix G2 of the EIA Report.
 - 5.10.3. Applicability of Activity Number 12: The site is located within the urban edge of Stellenbosch and already consists of subdivided residential erven.
 - 5.10.4. In terms of the assumption that the approval of the section 24G of the NEMA process is a *fait accompli*, the EAP responded that he does not determine the outcome of the section 24G of the NEMA decision.
 - 5.10.5. In terms of the request for a copy of the Water Use Licence Application ("WULA"), the WULA assessment documents that were used to apply for the WULA were included in the reports that were circulated for comment.
 - 5.10.6. In terms of the differences of opinion between the reports, Scientific Aquatic Services is the suitably qualified and independent Freshwater Ecology Specialist appointed on the project and the specialist's document was used. CapeNature

and the Department of Water and Sanitation are satisfied with Scientific Aquatic Services' Report.

- 5.10.7. In terms of how South African National Standards ("SANS") 10400-XA relate to energy usage in buildings, building plans will be approved and buildings will be done in accordance with the National Building Regulations and Building Standards Act and SANS 10400.
- 5.10.8. In terms of the request to obtain comments from CapeNature specifically regarding the presence of the frog *Breviceps gibbosus* on site, CapeNature was requested to comment on the proposed development and documents including the public participation report.
- 5.10.9. In terms of the allegation that Dr Van Driel's reports which were used in the application that was subject to public participation have since been removed from the final report, Dr Van Driel's Reports were used in the application and even included in the final report. His report on the wetlands was used to demonstrate why it was determined that the development was not listed as the Applicant based its layout on this delineation. It is also used to show the differences between the findings of Mr. Dirk van Driel and Ms. Kim Marais of Scientific Aquatic Services.
- 5.10.10. Porous gabion wall: Kim Marais' (Scientific Aquatic Services) delineation is supported by CapeNature and the Department of Water and Sanitation. It is true that a porous gabion wall cannot stop water from flowing through it. The gabions will however stabilise the western embankment and allow for stormwater protection.
- 5.10.11. Subdivision Application: A zoning and development approval was granted by the Stellenbosch Municipality during a process followed in terms of that legislation and the approval granted. Please take note that the area was already subdivided for residential development long ago. This process resulted in changes to the subdivided area to improve the situation. A Geotechnical Investigation has determined that the site is suitable for development. According to the structural engineer, civil engineers on the project will be using road and storm water design to drain drainage along the roads that will dry the area. The foundations are designed with steel reinforcement in all foundations. Houses are provided according to building regulations.
- 5.10.12. Whether or not the Memorandum of Understanding has been signed with the Department of Water and Sanitation: The specialist report has been accepted by the Department of Water and Sanitation and CapeNature. Timeframes of the Maintenance Management Plan and Environmental Management Programme ("EMP") will be according to an EA, if it is issued.
- 5.10.13. Comments have not been answered to in terms of this application: This comment was responded to in Appendix G2 of the EIA Report. A Phase 1 Geotechnical Site Report indicates that the site is broadly suitable for the project linked subsidy housing development, if aspects of concern relating to the geotechnical character of the site are addressed. The houses will comply with SANS 10400 XA and a structural engineer and geotechnical consultant are appointed.
- 5.10.14. Practical implementation of the EMP: The EMP was drafted using the NEMA EIA 2014 Regulations. The Appellant's comment that it is not practical how things work contractually is noted. However, there is no prescribed standard, other than the regulated requirements. The EMP in this format is implemented and used on several development projects currently under construction and does work.

- 5.10.15. The very tall lamp-post recently erected adjacent to the site: The EAP contacted the Stellenbosch Municipality and the Applicant regarding the lamp post and they were not aware of it. It is not linked to the proposed development.
- 5.10.16. Whilst the newspaper advert was for the section 24G of the NEMA listed activities, the housing development is dependent on the outcome of the section 24G of the NEMA process: The newspaper advert is in terms of the section 24G of the NEMA Application. The rezoning for the housing application was a separate process followed by the Stellenbosch Municipality. The housing development, although authorized in terms of zoning, cannot be developed if the section 24G of the NEMA and NEMA EIA listed activities are not authorized.
- 5.10.17. Considering the requirements of section 24G(2) of the NEMA, there was no *fait accompli* with regards to the granting of the EA. The EA was granted based on the EIA Report which was undertaken by an independent EAP and informed by specialist studies which were conducted by independent specialists. The section 24G of the NEMA EIA concluded and recommended that the listed activities that were applied for should be authorised on the site on condition that the recommended mitigation measures are implemented.
- 5.11. The Competent Authority was satisfied that the following specialist studies, amongst other information, were made available for comment to the Interested and Affected Parties for a period of 30 days as required by sections 24G and 24O of the NEMA and the Chapter 6 of the 2014 EIA Regulations:
- 5.11.1. Freshwater Ecological Information
- 5.11.2. Freshwater Resource Rehabilitation and Implementation Plan for the Proposed Idas Valley Residential Development on Erf No. 9445, Stellenbosch, Western Cape Province
- 5.11.3. Freshwater Resource Verification and Offset Calculations for the Proposed Development on Erf 9445, Idas Valley, Stellenbosch Western Cape
- 5.12. The Competent Authority was satisfied that only a proof of the submission of a WULA and the acknowledgement of the receipt thereof has been submitted with the section 24G of the EIA Report. Should access to the WULA submitted in terms of the *National Water Act, 1998 (Act No. 36 of 1998)* be required, an Application for access information must be submitted to the relevant Department of Water and Sanitation in terms of the *Promotion of Access to Information Act, 2000 (Act No. 2 of 2000)*. The One Environmental System process is still work in progress and not yet fully implemented. The differences of opinion in reports submitted in an EIA process is welcomed but the submission of a WULA is not required in terms of the requirements of section 24G of the NEMA.

Appeal ground 3: Previous comments submitted in terms of the Basic Assessment process

- 5.13. The visual character of the open space has been slightly impacted and will affect approximately 17 households which face directly onto the site. The visual character will be changed and views impacted upon. Due to the topography of the site the visual impact is limited to nearby neighbours. The houses are not considered hideous or unsightly but rather in keeping with the surrounding area. Houses in Bartlett Rise and Cornelly Roads area are of similar typologies as the houses proposed.
- 5.14. The concerns raised by the Appellant in respect of the ecological aspects have been assessed and the layout of the development with regards to the wetland

offset area has been informed by the assessments conducted during the NEMA section 24G Application.

Appeal ground 4: Comments related to Appendix H2.2 freshwater resource verification and offset calculations

- 5.15. The Comments and Responses Reports submitted with the section 24G of the NEMA EIA Report addressed the Appellant's comments *inter alia* as follows:
 - 5.15.1. The full ecological context was assessed when the wetland offset area was calculated and accepted by the Department of Water and Sanitation and CapeNature. Conservation listed species are used when an area of conservation status is classified. If species conservation is important, such an area will be classified as a Critical Biodiversity Area.
 - 5.15.2. No evidence connected to surface flow was encountered during the field assessment between the depressions and the river to the east of the study area. A high-water table does not mean that there would be surface flow. A high-water table does not automatically mean wetland presence. Furthermore, the Geotechnical report did not delineate the water table.
 - 5.15.3. The Applicant as per the Memorandum of Understanding in terms of the Offset agreement accepted by the Department of Water and Sanitation will manage the biodiversity offsets.
 - 5.15.4. The specialist, Kim Marais, has indicated that no Species of Conservation Concern were identified on the site. In terms of the frogs alleged to be found on the site, the EMP states that:
 - 5.15.4.1. The animals must not be injured or killed on the site.
 - 5.15.4.2. The supervisor or manager must be asked before the removal of animals on the site.
 - 5.15.5. Litter will be managed on the site according to the EMP and the Maintenance Management Plan.
 - 5.15.6. The layout of the development was changed to accommodate the wetland offset areas and fencing requirements were included.
- 5.16. The EMP, which has been approved for implementation in the conditions of the EA, requires *inter alia* the following:
 - Pollution, odours and nuisances**
 - 5.16.1. No solid waste may be incinerated on the property.
 - 5.16.2. All vehicles transporting waste must be closed to avoid possible pollution of waste on transport routes.
 - 5.16.3. Waste needs to be sorted and recycled where necessary.
 - 5.16.4. All waste types to be handled, stored, transported and disposed of according to relevant legislation.
 - 5.16.5. Domestic waste not suitable for compost or bio-electricity generation needs to be stored in skips for transport to the registered Landfill site.
 - 5.16.6. Squatting and rubble dumping adjacent to the new development must be controlled and regular inspections must be conducted to ensure control.
 - 5.16.7. An integrated waste management approach must be implemented on site, based on waste minimisation, reduction, recycling, re-use and disposal where possible.
 - Water Quality and Storm Water Management Measures**
 - 5.16.8. Ensure no pollution of any water resources, including surface water, storm water and ground water takes place as a result of any activities on the site.

- 5.16.9. Ensure that no water other than storm water is discharged in the storm water system.
- 5.16.10. The proposed storm water channels/ detention ponds must be monitored and maintained on a regular basis by the municipality.
- 5.16.11. All waste within the channels/detention ponds must be removed.
- 5.16.12. If any erosion and/or degradation of the storm water channel or surrounds are noticed immediate action must be taken by the municipality to rectify the situation. Corrective and preventative measures taken will depend upon the type and extent of erosion and/or degradation occurring.

Relevant Objectives and Control Measures to be implemented as part of the planning phase

- 5.16.13. The neighbouring property must be correctly zoned as an open conservation servitude and no future developments may be allowed. The title deed should ideally indicate that the site has been utilised for an offset.
- 5.17. The EA has imposed the following conditions with regards to the wetland offset:
 - Condition G16:**
"The rehabilitation measures and recommendations identified in the Freshwater Resource Rehabilitation and Implementation Plan of September 2018 compiled by Scientific Aquatic Services CC must be implemented."
 - Condition G17:**
"The Maintenance Management Plan dated 30 July 2018 is hereby approved and must be implemented."
 - Condition G18:**
"The Memorandum of Agreement regarding the wetland offset between the Department of Water and Sanitation and the Stellenbosch Municipality signed by the parties on 21 September 2018 and 28 September 2018, respectively, must be implemented."

Appeal ground 5: Comments related to Appendix 1-12.1 Wetland rehabilitation and management plan

- 5.18. The Comments and Responses Reports submitted with the section 24G of the NEMA EIA Report addressed the Appellant's comments *inter alia* as follows:
 - 5.18.1. The Wetland Rehabilitation and Management Plan was drafted by a qualified and independent Freshwater Specialist and the report and mitigation measures were accepted by the relevant authorities.
 - 5.18.2. The Wetland Rehabilitation and Management Plan is very specific, includes maps and areas and specific actions to be undertaken. The plan has been accepted by CapeNature and the Department of Water and Sanitation.
 - 5.18.3. The plan prescribes the Environmental Control Officer ("ECO") to audit and monitor compliance with the conditions of the authorisation. It is correct that this function is fulfilled by the independent ECO.
 - 5.18.4. Environmental auditing and its frequency are described in the EA conditions, should it be granted.
 - 5.18.5. The ECO does not approve certain tasks. He/she oversees and monitor compliance with the conditions of the EA and the mitigation measures of the EMP independently. Method statements must be approved by the ECO as per the guidelines.
 - 5.18.6. Litter traps (grids) should also be provided at the inlets to the stormwater system (i.e. off roads): The EAP recommended that the Competent Authority should consider

this mitigation measure for inclusion into the conditions of the EA. The litter traps mitigation measures form part of the EMP which will be implemented to comply with the conditions of the Appeal EA.

- 5.19. The EMP, which has been approved for implementation in the conditions of the EA, states that the ECO will be responsible for monitoring, reviewing and verifying compliance with the EMP and/or EA by all contractors and site management during site visits. The ECO duties in this regard will include the following:
 - 5.19.1. With the assistance, where necessary of the Engineer's Representative, to ensure all necessary EAs and permits have been obtained and are available and visible on site at the site offices.
 - 5.19.2. Monitor and verify that the EMP and/or EA is adhered to at all times and by taking action if the specifications are not followed.
 - 5.19.3. Monitor and verify that environmental impacts are kept to a minimum.
 - 5.19.4. Review and approve construction method statements, with input as appropriate from the Engineer's Representative.
 - 5.19.5. Assist the contractor in finding environmentally responsible solutions to problems.
 - 5.19.6. Report on the environmental issues at the site meetings and other meetings that may be called regarding environmental matters, if requested by Engineer's Representative.
 - 5.19.7. Inspect the site and surrounding areas regularly regarding compliance with the EMP and/or EA.
 - 5.19.8. Monitor the environmental awareness training for all personnel coming onto site.
 - 5.19.9. Advise management on the removal of person(s) and/or equipment not complying with the specifications, after collaboration with the Engineer's Representative. Recommendations must be recorded by the Engineer's Representative in a Site Instruction Book.
 - 5.19.10. Ensure that activities on site comply with known legislation of relevance to the environment.
 - 5.19.11. Recommend the issuing of penalties via the developer for contraventions of the EMP and/or EA.
 - 5.19.12. Keep a photographic record of progress on site from an environmental perspective.
 - 5.19.13. Undertake a continual internal review of the EMP and/or EA and submit a report to the developer and the responsible DE&DP Environmental Official according to EA conditions.
- 5.20. The holder of the EA is responsible for ensuring compliance with the conditions of the EA and the Competent Authority will be responsible with the monitoring and enforcement of compliance with the conditions of the EA.

6. **CONCLUSION:**

In view of the above, the NEMA principles, compliance with the conditions stipulated in the Appeal EA and compliance with the conditions of the EMP, the proposed activities will not conflict with the general objectives of integrated environmental management stipulated in Chapter 5 of the NEMA and any potentially detrimental environmental impacts resulting from the activities can be mitigated to acceptable levels.

7. **DISCLAIMER:**

The Western Cape Government, the Local Authority, committees or any other public authority or organisation appointed in terms of the conditions of this EA 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,



ANTON BREDELL
**PROVINCIAL MINISTER OF LOCAL GOVERNMENT,
ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING**

DATE: 26/8/2020

Copied to:

Mr Nicolaas Hanekom (Enviro-EAP Environmental Consultants)
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REFERENCE: 14/3/6/B4/45/0457/20

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Dear Mr Cilliers

APPEAL LODGED IN TERMS OF SECTION 43(2) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) AGAINST THE ENVIRONMENTAL AUTHORISATION GRANTED FOR THE UNLAWFUL EXCAVATION AND CONSTRUCTION OF A GABION WALL WITHIN A DRAINAGE LINE ON ERF NO.9445, IDAS VALLEY, STELLENBOSCH

Your Appeal lodged against the Environmental Authorisation ("EA") granted on 31 January 2020, refers.

After careful consideration of all the appeal, as well as supporting documentation received, I have decided in terms of section 43(6) of the National Environmental Management Act, 1998, ("NEMA") to dismiss your Appeal and confirm the decision of the competent authority.

The original Environmental Authorisation granted on 31 January 2020 and the conditions under which the authorisation was granted are still valid, however condition G7 and section I of the abovementioned EA are excluded from this authorisation and conditions G2 and G6 are amended.

Attached herewith please find a copy of my letter addressed to the applicant containing the abovementioned amendments and the reasons for my appeal decision.

Your interest in the future of our environment is appreciated.

Yours faithfully,

ANTON BREDELL
PROVINCIAL MINISTER OF LOCAL GOVERNMENT,
ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING

DATE: 26/8/2020

Copied to:

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Dear Madam

APPEAL LODGED IN TERMS OF SECTION 43(2) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) AGAINST THE ENVIRONMENTAL AUTHORISATION GRANTED FOR THE UNLAWFUL EXCAVATION AND CONSTRUCTION OF A GABION WALL WITHIN A DRAINAGE LINE ON ERF NO.9445, IDAS VALLEY, STELLENBOSCH

Your Responding statement lodged against the appeal of the Environmental Authorisation ("EA") granted on 31 January 2020, refers.

After careful consideration of the appeal, as well as supporting documentation received, I have decided in terms of section 43(6) of the *National Environmental Management Act, 1998*, ("NEMA") to dismiss the Appeal and confirm the decision of the competent authority.

The original Environmental Authorisation granted on 31 January 2020 and the conditions under which the authorisation was granted are still valid, however condition G7 and section I of the abovementioned EA are excluded from this authorisation and conditions G2 and G6 are amended.

Attached herewith please find a copy of my letter addressed to the applicant containing the abovementioned amendments and the reasons for my appeal decision.

Yours faithfully,

ANTON BREDELL
**PROVINCIAL MINISTER OF LOCAL GOVERNMENT,
ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING**

DATE: 26/8/2020

Copied to: Mrs Zaidah Toefy (Sub-directorate: Rectification)

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