



REFERENCE: 14/3/1/F4/5/0404/19

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Dear Mr Kleynhans

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 PROPOSED DEVELOPMENT OF CHICKEN HOUSES AND ASSOCIATED INFRASTRUCTURE ON ERF NO. 1772, HOPEFIELD

1. The appeal lodged against the Environmental Authorisation ("EA"), refers.
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 5 March 2019.
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 G of the abovementioned EA is excluded from this authorisation.
 - 4.2. Condition E8 & E9 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 E3:

"The holder must commence with the listed activities on site within a period of five (5) years from the date of issue of this Appeal Environmental Authorisation."

Condition E7:

"7. The holder of the appeal Environmental Authorisation must within fourteen (14) days of the appeal decision ensure, in writing, that all the registered interested and affected parties are provided with access to the appeal decision and the reasons for such a decision."

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

The reasons outlined in the original EA are applicable to the appeal decision and the following are additional reasons for my decision:

Introduction

- 5.1. As set out in the EA, it is concurred that the said EA involves the clearance of vegetation for the concentration of poultry which will be housed in six chicken houses and associated infrastructure.
- 5.2. I note, as detailed in the appeal, that:
 - 5.2.1. RCL FOODS is a fully integrated broiler chicken producer that breeds and rears its own livestock which it feeds from its own feed mills, and processes, distributes and markets its products, both in South Africa and internationally. Rearing of breeder pullets/ chickens is done at their Hopefield facility. The first site was established in 1983. Rainbow (Now RCL FOODS) purchased the farm from Bonny Bird in 1994.
 - 5.2.2. The RCL FOODS Hopefield farm has 5 sites with 19 chicken houses. Each house rears approximately 7500 pullets twice a year. The number of birds through the complex per year to stock the laying sites is 264 000 female birds and 33 000 male birds.
 - 5.2.3. Once at the laying site, each female bird has the potential to lay 167 eggs i.e. producing potentially 44 088 000 broiler chicks.
 - 5.2.4. These birds are extremely susceptible to diseases which result in natural mortality and/or forced culling. If a flock is infected by a disease at the rearing stage, it has a multiplier effect over all RCL FOODS value chain. The RCL FOODS bird stock from the Hopefield facility is valued at a revenue of R467 million per annum. RCL FOODS places 15% of its total national breeding flock at Hopefield annually.
 - 5.2.5. RCL FOODS' farm is situated 2.96 km away from the proposed free-range farm. RCL FOODS' facility will be placed at risk due to the lack of biosecurity and health risks posed by the proximity of the applicant's farm to its Hopefield operations. The site of the proposed free-range facility contravenes norms and standards for the positioning of poultry farms.
 - 5.2.6. RCL FOODS is of the view that the competent authority erred in its decision to award the EA due to the failure to properly consider the impacts of the proposed operations on RCL FOODS' already established operations.
- 5.3. In the matter between the Fuel Retailers Association of South Africa and the Department of Agriculture, Conservation and Environment, Mpumalanga Province in 2007, the Constitutional Court stated that *"... the environmental authorities [are obliged] to assess, among other things, the cumulative impact on the environment brought about by the proposed ... [development] and all existing ... [developments] that are in close proximity to the proposed one."*

Grounds 1 and 2: Failure to consider the submission of RCL FOODS dated 29 November 2018 and the EA's failure to take any cognisance of the RCL FOODS' submission

5.4. Regulation 40 (1) of the 2014 Environmental Impact Assessment ("EIA") Regulations states that:

"The public participation process to which the—

(a) basic assessment report ["BAR"] and EMPr, and where applicable the closure plan, submitted in terms of regulation 19; and

... was subjected to must give all potential or registered Interested and Affected Parties, including the competent authority, a period of at least 30 days to submit comments on each of the basic assessment report, EMPr, scoping report and environmental impact assessment report, and where applicable the closure plan, as well as the report contemplated in regulation 32, if such reports or plans are submitted at different times."

5.5. Regulation 41(2) of the 2014 EIA Regulations further states that the person conducting the public participation process may give notice to potential I&APs of an application *inter alia* by:

5.5.1. 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.

5.5.2. Giving written notices to the occupiers of the site, occupiers of the land adjacent to 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.

5.5.3. Placing a newspaper advertisement.

5.6. Before the granting of the EA, the Environmental Assessment Practitioner ("EAP") responded to RCL FOODS' public participation process comments as follows:

5.6.1. It is disagreed that the comments and responses table is not a clear representation of the meeting held between the EAP and RCL FOODS.

5.6.2. It is correct that there are two other free-range poultry farms adjacent (just a few metres away) to Erf No. 1772 which have EAs for their activities. The sign for Hopefield Poultry Free-Range Eggs and Poultry on Erf No. 1770, was erected on the R45 about 8 years ago, only 2-km from the entrance to RCL FOODS. In addition to the neighbouring chicken poultry farms which have EAs, RCL FOODS was also provided with evidence of numerous other poultry farms within the vicinity of their facility.

5.6.3. Farmers may engage in poultry farming without an EA if their activities do not trigger a listed activity contained in Listing Notices 1, 2 and 3 of the 2014 EIA Regulations.

5.6.4. The objection alleges that there is a risk that the RCL FOODS' site may lose its "*compartmentalization status*" because other (unspecified) states exclude "*compartmentalization farms when located in a 10-km surveillance zone*". The objection does not provide any evidence that the RCL FOODS' site in question has compartmentalisation status or trades with parties in countries that require a 10-km separation. Even if their unsubstantiated allegations are correct, that risk already exists and cannot be a reason for objecting to the proposed development. Should RCL Foods wish to attain this status or continue registering, it is their duty to buy or lease property on which they can enforce this zone. It is not the burden of the neighbouring farmers to bear.

5.6.5. If RCL FOODS has a policy of not establishing a farm within 10-km of any other vector source of non-RCL FOODS farm then it should either purchase

all the land within the 10-km of this farm or enter into agreements with adjacent farms owners in which they agree not to farm chickens or allow disease vectors on their farms. RCL FOODS cannot unilaterally impose the cost of maintaining a 10-km buffer zone on third parties by expecting them to forgo their rights to farm chickens, without receiving any compensation.

- 5.7. As detailed in the reasons for the EA, the following public participation process was conducted by the independent EAP, to bring the proposed development to the attention of the I&APs:
 - 5.7.1. A pre-application draft Basic Assessment Report was posted or emailed to the I&APs.
 - 5.7.2. A notice was placed at the entrance to the site.
 - 5.7.3. An advertisement was placed in the "Weslander" newspaper.
 - 5.7.4. Stakeholders' notices were emailed to the relevant I&APs.
 - 5.7.5. Notification letters were also posted to the I&APs.
 - 5.7.6. A meeting was held with the competent authority.
- 5.8. A comments and responses report which demonstrates that the appellant's issues have been addressed during the abovementioned public participation process was submitted together with the EIA application which informed the EA.
- 5.9. The comments received during the public participation process are summarised as follows:
 - 5.9.1. RCL FOODS (Rainbow Chickens) stated inter alia that they are strongly opposed to the proposed development due to the following reasons:
 - a. RCL FOODS' rearing birds in Hopefield are extremely high value birds that produce 140 broiler chicks each in their lifetime. They have very strict biosecurity measures at their sites.
 - b. As part of conceptual biosecurity, their rearing farms are located as far as possible away from other poultry farms.
 - c. Small-scale farmers and even large producers that do not export their product do not undergo ZA audits and hence the Department of Agriculture, Forestry and Fisheries ("DAFF") will not have control over biosecurity at these farms.
 - d. The proposed development is within a 3-km radius from their Hopefield farms.
 - e. Should there be an outbreak of H5N8 Highly Pathogenic Avian Influenza (HPAI") at the proposed site, they will not be able to transfer their rearing birds to the laying farms and they will not be able to send eggs to the hatchery as this will be within the 3-km quarantine zone as enforced by the DAFF.
 - f. There is also a high risk of the transmission of the avian influenza virus (that can spread via the air) to their rearing farms, with disastrous consequences to meat supply and food security should they lose rearing birds due to HPAI or any other disease.
 - g. It is for these reasons that they strongly oppose any development or initiatives that place their livestock at risk or that pose a biosecurity threat to any of their operations.
 - h. Should there be no alternatives, they request that the proposed chicken farm be at least 10-km away from their farms and not next to any of major roads.
 - 5.9.2. The West Coast District Municipality stated that all poultry farming operations and related activities must be done in a manner which

prevents any nuisance as listed in the Municipal Health Bylaw (PN 6543 of 9 September 2008).

5.9.3. An independent Environmental Control Officer ("ECO") must be appointed to oversee the construction and operational phases of the development. Monitoring must be done according to the approved Environmental Management Programme ("EMPr") and monthly reports must be submitted to the competent authority by the ECO indicating compliance or non-compliance with the conditions of the EA.

5.9.4. CapeNature stated that:

a. The proposed development site is covered by Hopefield Sand Fynbos, which is listed as a vulnerable ecosystem and which has a very little formal protection. As part of the analysis done for the 2017 Western Cape Biodiversity Spatial Plan, the site determined as being part of an ecological support area ("ESA"). ESAs assist in supporting protected areas and critical biodiversity areas providing functions such as buffering and connectivity.

b. The implications of this for any development proposal means that it needs to be sensitively sited and the footprint kept to an absolute minimum to reduce the impacts on the natural vegetation and to maintain ecological connectivity across the property and linkages to ecological corridors on adjacent properties.

c. The botanical specialist has identified areas of high sensitivity and although some effort has been made to avoid these areas it would be preferable, from a biodiversity perspective, if the chicken houses were to be located more towards the south-western part of the site.

5.10. The EAP responded to the abovementioned issues as follows:

5.10.1. In terms of RCL FOODS' comments:

a. The EAP and the Rainbow (RCL FOODS) representatives (which included their specialist veterinarian) attended a meeting on 27 June 2018 at the Rainbow rearing farm in Hopefield to discuss potential risks as well as effective solutions.

b. The EAP provided the Rainbow team with a background to the proposed project and put forward the proposed site plan for discussion. The veterinarian enquired as to what the distance is between the applicants' proposed houses and the Rainbow farm. He then explained their biosecurity concerns and indicated that an avian influenza outbreak within a 3-km radius would mean that their entire operation would be quarantined.

c. The biosecurity mitigation measures that will be undertaken at the farm were detailed including enclosing the outside roaming areas, limited access due to the nature of the business being run by family, water and food to be located inside the houses, etc. However, it was explained that the level of biosecurity which is undertaken at a commercial farm can only be implemented to a certain level at a small-scale operation due to cost constraints.

d. The EIA is accompanied by an EMPr which is auditable and enforceable through the conditions of the EA. All operational biosecurity measures will then be detailed in the EMPr and audited by the ECO.

5.10.2. In terms of CapeNature's comments, the more southerly area is located on the dunes. If construction were to occur here, the impact would be

increased due to the earthworks required. There would be an increase in the loss of topsoil. In addition, the aspect of the poultry houses had to be considered. The poultry houses cannot have their heads and tails facing east and west due to the topography of the dunes. From an operational and financial point of view the heads and tails of the sheds should face north/south as it will result in less excavation if the sheds are built in the same direction of the dunes instead of running through them. The net houses have been split from a single net house on the one side of the shed to act as smaller net houses on either side of the shed. This will allow less congestion of the hens and no direct sunlight on the sides of the buildings which will allow the buildings in a north/south direction.

- 5.11. All the information that has been received with regards to the application for an EA under the reference number 16/3/3/1/F4/5/3029/18 was placed before the decision-maker prior to the granting of the EA. The reasons for the decision states that "*[i]n reaching the decision, the competent authority, inter alia, considered the following:*
- ... (b) The information contained in the application form dated 25 July 2018 and received by the competent authority on 06 August 2018, the BAR received by the competent authority on 06 November 2018 and the EMPr submitted together with the BAR and the additional information (proof of public participation process and updated comments and response report) received by this Directorate on 18 February 2019 and 20 February 2019, respectively."* The information referred to, as received by the Department on 18 February 2019 and 20 February 2019, includes inter alia the comments received from Eversheds Sutherland (on behalf of RCL FOODS) and the detailed responses of the EAP which are concurred with.
- 5.12. The applicant's Responding Statement is concurred with in terms of the following:
- 5.12.1. Changes were made to the layout as mentioned in the RCL FOODS' appeal letter and submitted rightly so as the Final BAR for further comment. The EIA process is an iterative one and the progression of reports moves from Draft to Final. Despite attempts to elicit comment from RCL FOODS during the process, substantial comments were only received from their legal representatives, Eversheds Sutherland, on the Final BAR.
- 5.12.2. The EAP responded to the comments received on the Final BAR and circulated the comments received from RCL FOODS as a matter of transparency in the public participation process and for information sharing purposes. This was stated in the circulated email and as such, RCL FOODS comments were responded to and circulated over and above the requirements of the NEMA 2014 EIA Regulations.
- 5.12.3. The RCL FOODS statement that the decision-maker was not made aware of their comments on the Final BAR is false. Their letter was submitted to both the EAP as well as the Department via email.
- 5.12.4. The fact that the EA does not refer to the RCL FOODS' comment on the Final BAR has no bearing on its consideration.
- 5.12.5. RCL FOODS was not entitled to comment on the EAPs comment on the Final BAR. The EAP provided comment and circulated both responses to the I&APs for information sharing and transparency purposes only.
- 5.12.6. All the information which was provided by all the I&APs was presented to the competent authority for decision making.
- 5.12.7. Should physical isolation be of such paramount importance to RCL FOODS, RCL FOODS' own standards and biosecurity measures must be

questioned given that the following poultry houses are located within their 3km quarantine radius, namely:

- a. Broiler houses located on Northlink Road.
- b. Poultry farm, funded by the local government for a small-scale start up Black Economic Empowerment farmer which is adjacent to RCL FOODS and visible from their premises.
- c. Backyard poultry farming which is evident all around the RCL FOODS facility as the area is an agricultural area.

5.12.8. In terms of biosecurity, the EAP responded that small-scale chicken farmers cannot install the same levels of biosecurity which are undertaken at large scale commercial chicken farms due to financial reasons. However, as biosecurity is not only in the interest of RCL FOODS but all those who are involved in the industry, it is of paramount importance for all farmers to monitor and ensure biosecurity.

5.12.9. The cumulative impacts have been assessed and mitigated against to the satisfaction of all commenting authorities.

5.12.10. The EAP practices as an objective impact assessor and therefore confirmed that the basic assessment process which informed the EA was undertaken in accordance with the NEMA and its 2014 EIA Regulations.

5.12.11. The audit checklist is not the only document which comprises of the EMPr. As such, the EMPr is sufficient, compliant and was authorized by the competent authority as it complies with the NEMA EIA Regulations for EMPrs. RCL FOODS was afforded an opportunity to suggest amendments to improve the applicant's biosecurity measures.

5.13. In this appeal process, the applicant, as required by the appeal authority, afforded the registered I&APs (including RCL FOODS) an opportunity to comment on the additional information as well.

5.14. Considering the above, a comprehensive public participation process which meets the requirements of section 24O of the NEMA and regulation 41 of the 2014 EIA Regulation has been undertaken. The comments of the appellant as submitted before the granting of the EA and during this appeal process have been adequately addressed and the appellants' comments informed the granting of the EA. Should the appellant not be convinced that their comments were placed before the decision-maker, an application for access to information may be submitted in terms of the *Promotion of Access to Information Act, 2000* (Act No. 2 of 2000) to view the information on the files.

Ground 3: Increased threat of the transmission of diseases affecting the poultry industry was not considered by the EAP and the competent authority

5.15. The EAP acknowledged the biosecurity risks which could impact both the welfare of the animals and human health, should the activities not be adequately managed. Therefore, the EAP identified impacts on biosecurity aspects amongst the impacts that may result from the operational phase of the activity and rated the significance of the biosecurity impacts to be "high" before and "medium" after the implementation of the mitigation measures.

5.16. When the Interested and Affected Parties raised concerns about biosecurity during the basic assessment process and before the granting of the EA, the EAP responded to RCL FOODS' comments issued during the public participation process as follows:

- 5.16.1. The impacts of biosecurity have been adequately addressed in the Final BAR and the implementation thereof as incorporated into the EMPr. The threat of the HPAI is an existing threat- it is not caused by the proposed development. Every chicken farmer has a very strong incentive to take whatever measures they can, particularly smaller operators like the applicant, who could lose their business if there is an outbreak.
- 5.16.2. The statements made under this point imply that the import dumps of poultry meat are a result of the impacts of the HPAI only, whereas they are a result of a lack of regulation on imports in South Africa. The loss of jobs which is referred to by RCL FOODS in their objection should state that RCL FOODS themselves were not able to compete with the increase in imported poultry meat and as such, they made 1300 positions redundant in 2017.
- 5.17. When additional information was requested during this appeal process, the Western Cape Department of Agriculture's State Veterinarian did not object to the proposed development and commented as follows regarding the biosecurity measures which have been included in the EMPr:
*"I did go through the EMP and on page 6 the Animal Diseases Act, Act 35 of 1984 is not listed.
I do not know much about free range layers (besides that they require a lot more medication than battery hens as they pick up coccidian, worms and mites in their environment) so I have asked a colleague to comment.
Also shade cloth does not keep rodents out – I don't think anything keeps them out as they can get through the smallest of holes, or they burrow to get where they want to be.
I will get back to you with the general biosecurity measures when I receive them."*

Ground 4: Lack of controls

- 5.18. I noted, as detailed in the appeal, that RCL FOODS want the EA to be set aside due to the proposed site which is located in their 10-km buffer area.
- 5.19. Section 24(4)(b)(i) of the NEMA, in terms of the procedures for the investigation, assessment and communication of the potential consequences or impacts of activities on the environment, require with respect to every application for EA *"investigation of the potential consequences or impacts of the alternatives to the activity on the environment and assessment of the significance of those potential consequences or impacts, including the option of not implementing the activity"*.
- 5.20. In terms of the criteria to be considered by the competent authorities when considering applications, section 24O(1)(b)(iv) of the NEMA further states that if the competent authority considers an application for an EA, it must consider *"where appropriate, any feasible and reasonable alternatives to the activity which is the subject of the application and any feasible and reasonable modifications or changes to the activity that may minimise harm to the environment."* Therefore, the alternatives must be considered as reasonable and feasible for inclusion in the EIA process.
- 5.21. The definition and assessment requirements relating to "alternatives" makes it clear that the obligation to consider alternatives may be achieved in a variety of different ways including site locations, types of activities, design or layout; and technological or operational aspects of undertaking the activity (either in combination or in isolation of each other).

- 5.22. As detailed in the reasons for the EA, the alternatives that were considered met the requirements of the NEMA and its 2014 EIA Regulations. The BAR confirmed that there are no site alternatives that are considered feasible or reasonable as the applicant owns the proposed property and no other agricultural land.
- 5.23. When the Interested and Affected Parties raised concerns about biosecurity during the basic assessment process and before the granting of the EA, the EAP responded to RCL FOODS' comments issued during the public participation process as follows:
- 5.23.1. Due to the potential for biosecurity risks, an extensive EMPr (which forms part of the conditions of the EA) was compiled. During a meeting with RCL FOODS, the EAP offered RCL FOODS an opportunity to review the EMPr and provide comments for their concerns to be addressed. Biosecurity is in the interest of the applicant as well as RCL Foods as the implications of an outbreak (loss of income and loss of flock) are the same for both parties. RCL FOODS verbally agreed to this approach during the meeting, but later declined to make any comments on the EMPr.
 - 5.23.2. The prevailing wind direction in this area is from the southeast. As such, RCL FOODS facility must ensure that their operation is fully compliant with all the relevant regulations and guidelines for biosecurity as their farm is upwind of Erven 1772, 1770 and 1769 where free-range chicken farming is conducted. As such, it is RCL FOODS' farm that poses the biosecurity risk.
 - 5.23.3. As the applicant will be funding his farming operation solely from his personal funding, RCL FOODS can be assured that no negligence in the form of maintenance would jeopardize the applicant's flock.
 - 5.23.4. Rats and mice as vector risks are not a high risk because the maximum distance that a rodent will travel is approximately 900m.
 - 5.23.5. The use of used poultry bedding as fertilizer is the most popular means of fertilising agricultural land due to the organic nature of the material and high levels of nitrogen which it contains.
 - 5.23.6. The concerns regarding the regulation of the free-range industry by RCL FOODS exist possibly because none of their farming operations adhere to this way of farming. It is known that free range eggs and chickens achieve a higher commodity price and the product is of a higher quality to human consumption due to the lack of injection of antibiotics, routine medication, etc. which are all transferred to humans after consumption.
 - 5.23.7. The EMPr is not deficient. It is reiterated that RCL FOODS had an opportunity to review and comment on the EMPr to address concerns- it chose not to do this voluntarily. The EMPr audit checklist is not a wish list. The purpose and legal implications of an EMPr are detailed in the NEMA and its 2014 EIA Regulations and guidelines developed by the competent authority.
 - 5.23.8. Compliance with the approved EMPr is a condition of the EA. As such, the EMPr and the checklist must be audited by an ECO. The findings of such an audit are submitted to the Department. The entire audit checklist is part of a management plan and it does address the vectors, water removal, etc.
 - 5.23.9. The document that RCL FOODS provided as Annexure C of their comments is the DAFF' Standard for Inspection of Poultry Farms for Export which only provides for a 400m exclusion zone between export facilities

and free-range chicken farms. There is no mention of a 3-km or 10-km radius protection/ surveillance zone referred to by RCL FOODS' objection.

5.24. The BAR stated that:

Mortalities

5.24.1. Mortalities will be removed daily and will be frozen. When a sufficient quantity is reached, the carcasses will be transported to a registered class B waste facility.

Cracked eggs

5.24.2. Cracked eggs will also be removed daily and will be supplied to a distributor or local pig farmer. Cracked eggs amount to approximately 5% of the total number of eggs per day.

General water/refuse

5.24.3. General waste produced on the farm will be removed to a general waste dumping facility in Hopefield.

Sewage

5.24.4. Sewage is connected to a septic tank on the site which will be removed quarterly by an independent registered company.

Manure:

5.24.5. In the first phases of the project the manure will be sold to the surrounding vegetable or pig farmers.

5.24.6. The nest boxes and floor of the poultry houses will be covered with straw which acts as litter for the chickens. Manure will be removed at the end of each cycle and taken by local farmers as chicken manure is rich in nutrients and can be used for fertilizers. At the end of the cycle, the houses will be cleaned out using only water.

5.24.7. Poultry litter can either be sold to compost farmers or pig farmers. The high levels of nitrogen make poultry litter a good fertilizer but it must be managed in the poultry houses as it can also become a hindrance to bird health and performance if the ammonia levels can build up too high. The ammonia levels in the poultry houses can be managed by ensuring constant ventilation and the cleaning out of the poultry houses should the levels of manure become too high.

5.25. The EA contains a condition *inter alia* which requires the applicant to implement and comply with the mitigation measures which have been proposed for the following environmental impacts (amongst others):

5.25.1. Increased noise generation during the construction and operational phases of the activities.

5.25.2. Dust generation.

5.25.3. Health and biosecurity risk during the operational phase of the activities.

5.25.4. Increased waste generation.

5.25.5. Increased odour during the operational phase of the activities.

Ground 5: The EA fails to give proper weight to the economic effects of any spread of disease on RCL FOODS' operations

- 5.26. The NEMA principles that apply to the actions of all organs of state that may significantly affect the environment specifically require *inter alia* that:
- 5.26.1. Environmental management must place people and their needs at the forefront of its concern and serve their physical, psychological, developmental, cultural and social interests equitably;
 - 5.26.2. Development must be socially, environmentally and economically sustainable;
 - 5.26.3. The disturbance of ecosystems and loss of biological diversity are avoided, or where they cannot be altogether avoided, are minimised and remedied;
 - 5.26.4. A risk-averse and cautious approach is applied, which considers the limits of current knowledge about the consequences of decisions and actions; and
 - 5.26.5. The social, economic and environmental impacts of activities, including disadvantages and benefits, must be considered, assessed and evaluated, and decisions must be appropriate in the light of such consideration and assessment.
- 5.27. The Applicant's proposed chicken houses represent an ecological sustainable development and this project will promote sustainable development. The potential impacts of the proposed project were documented in the Final BAR and the corresponding mitigation measures have been provided for in the EMPr.
- 5.28. I note, as detailed in the appeal, that:
- 5.28.1. RCL FOODS is the second largest poultry provider in the country. Its facilities are large and form a major component of its value chain.
 - 5.28.2. To understand the potential implications arising from the spread of a disease such as HPAI, RCL FOODS' Hopefield operations cannot be considered in isolation, but rather against the backdrop of the entire value chain to understand the strategic position which the Hopefield facility holds.
 - 5.28.3. The facility supplies almost all the retail stock to KFC, Nandos and Chicken Licken. RCL FOODS has significant contracts with these companies who audit their facilities. Any compromise on biosecurity will result in those contracts being cancelled.
- 5.29. The granting of the EA was an appropriate decision since:
- 5.29.1. The BAR recommended that the proposed chicken houses must be authorised subject to compliance with the conditions of the EA. The conditions which have been imposed in the EA, including an EMPr, are considered adequate to mitigate the potential environmental impacts of the activities.
 - 5.29.2. The Applicant already owns the farm whose surroundings are characterised by agricultural activities including poultry farming and other agriculturally related activities.
 - 5.29.3. As much as the Appellant has invested significant amounts of money into its large commercial scale Hopefield poultry operations, the Applicant will also expend significant amount of money into the proposed small-scale poultry farming development.
 - 5.29.4. The proposed chicken houses will generate employment during the construction and operational phases of the activities.

- 5.29.5. The two existing chicken houses which are directly bordered (and others in the neighbourhood) have lodged no objection or appeal against the proposed development although RCL FOODS, located 3km away from the site, has lodged an Appeal against the EA.
 - 5.29.6. RCL FOODS has confirmed that they are implementing stringent biosecurity and health risk management measures in their Hopefield poultry operations.
 - 5.29.7. Therefore, RCL FOODS must implement its rigorous biosecurity and health risk amelioration measures and the applicant will also be required to comply with the conditions of the EA, including the EMPr.
- 5.30. When the I&APs raised concerns about biosecurity during the basic assessment process and before the granting of the EA, the EAP responded to RCL FOODS' comments issued during the public participation process as follows:
- 5.30.1. RCL FOODS' submission deals with the potential impacts of an outbreak of HPAI rather than the economic impacts of the proposed free-range chicken farm. HPAI outbreaks have severe economic implications but this is not a reason to prevent the establishment of chicken farms.
 - 5.30.2. The risk of HPAI to RCL FOODS' operation already exist and in fact RCL FOODS' operations pose a mutual risk to other chicken farming operations in the area. Should RCL FOODS be able to dictate the land use in the surrounding area, the impact on many chicken farmers will be devastating. The applicant purchased Erf No. 1772 to farm free-range chicken eggs- the only activity permitted on the erf under the title deed. Furthermore, it is speculative to blame a (future) HPAI outbreak at RCL FOODS facility on the applicant's operations and it would be unjust to deny the applicant a means of making a living based on a speculation.
 - 5.30.3. The allegation is disputed that the project does not "... *have the potential to sterilise the poultry industry to a significant extent*".
 - 5.30.4. The implication that a chicken farmer (or anyone else) is under a duty to provide a financial guarantee to a third party such as RCL FOODS to compensate it for loses sustained because of a disease outbreak, is incorrect.
 - 5.30.5. RCL FOODS does not have any right under South African law to prevent private farm owners within 10-kms of RCL FOODS' facilities from operating free-range chicken farms.
 - 5.30.6. The only South African policy relating to biosecurity only requires a 400m exclusion zone between export facilities and free-range chicken farms. The applicant is located approximately 3-km from RCL FOODS.

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 EMPr, 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:**

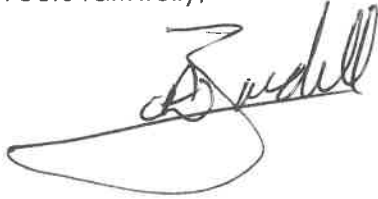
The Western Cape Government, the Local Authority, committees or any other public authority or organisation appointed in terms of the conditions of this EA shall not be responsible for any damages or losses suffered by the holder, developer or his/her successor in any instance where construction or operation 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.

Since I have discharged my decision-making powers when making the decision I am *functus officio* in this regard. My decision is final and your only recourse, should you still be aggrieved by my decision, is to apply to the Western Cape High Court to review my decision.

Your interest in the future of our environment is appreciated.

Yours faithfully,



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

DATE: 10 . 12 . 2019

Copied to:

Ms V. Read (Victoria Read Environmental Consulting)
Mr Zahir Toefy (Directorate: Development Management)
Ms N. Duarte (Saldanha Bay Municipality)

Email: victoria@readenvironmental.co.za
Email: Zahir.Toefy@westerncape.gov.za
Email: Nazeema.Duarte@sbm.gov.za



REFERENCE: 14/3/1/F4/5/0404/19

Ms A Armstrong
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DURBAN
4019

Tel: (031) 940 0501

Email: AldineArmstrong@eversheds-sutherland.co.za
pascaledefroberville@eversheds-sutherland.co.za

Dear Ms Armstrong

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 PROPOSED DEVELOPMENT OF CHICKEN HOUSES AND ASSOCIATED INFRASTRUCTURE ON ERF NO. 1772, HOPEFIELD

Your appeal lodged on behalf of RCL FOODS Consumer (Pty) Ltd against the Environmental Authorisation ("EA") in the above regard refers.

After considering all relevant facts and supportive documents, I wish to advise that, in terms of section 43(6) of the *National Environmental Management Act, 1998 (Act No. 107 of 1998)*, I have decided to dismiss the appeal and confirm the abovementioned decision of the delegated officer. The original Environmental Authorisation ("EA") granted on 05 March 2019 and the conditions under which the authorisation was granted are therefore still valid, however Condition E8, E9 and section G are excluded from this appeal decision and Conditions E3 and E7 have been amended.

Attached please find a copy of my appeal decision addressed to the applicant containing the reasons for my appeal decision.

Your interest in the future of our environment is greatly appreciated.

Yours faithfully,

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

DATE: 10.12.2019

CC: Ms V. Read (Victoria Read Environmental Consulting)

Email: victoria@readenvironmental.co.za

Marius Venter

From: DEADP Appeals
Sent: Tuesday, December 17, 2019 12:28 PM
To: aldineArmstrong@eversheds-sutherland.co.za
Cc: victoria@readenvironmental.co.za; PascaleDefroberville@eversheds-sutherland.co.za
Subject: Appeal: Environmental Authorisation: Development of Chicken Houses and Associated Infrastructure on Erf No. 1772, Hopefield
Attachments: Applicant Letter 1772.pdf; Appellant Letter 1772.pdf

Good Morning Ms Armstrong,

Attached please find the decision on the above mentioned appeal made by Mr Anton Bredell, Provincial Minister of Local Government, Environmental Affairs and Development Planning.

The original letter will be posted to you.

Kind regards,
Marius Venter Pr.Sci.Nat
Deputy Director
Environmental and Planning Appeals Coordinator
Department of Environmental Affairs and Development Planning

8th Floor, Utilitas Buidling, 1 Dorp Street, Cape Town

Tel: 021 483 3721/2659

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