



**Western Cape
Government**

Environmental Affairs and
Development Planning

Directorate: Development Management
(Region 1)

REFERENCE: 16/3/3/2/E3/10/1016/19
ENQUIRIES: BERNADETTE OSBORNE
DATE OF ISSUE: 2019 -11- 22

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Johannes Eksteen Familietrust
PO Box 372
SWELLENDAM
6740

Cell: (082) 316 2978/9
E-mail: napkysmond@swdconnect.co.za

Dear Sir

**APPLICATION IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998
(ACT 107 OF 1998) AND THE ENVIRONMENTAL IMPACT ASSESSMENT ("EIA")
REGULATIONS, 2014: THE CULTIVATION OF LAND ON PORTION 3 OF FARM MELK HOUTE
BOSCH NO. 497, SWELLENDAM.**

1. With reference to the above application, the Department hereby notifies you of its decision to **grant** Environmental Authorisation, attached herewith, together with the reasons for the decision.
2. In terms of Regulation 4 of the EIA Regulations, 2014, you are instructed to ensure, within 14 days of the date of the Environmental Authorisation, that all registered interested and affected parties ("I&APs") are provided with access to and reasons for the decision, and that all registered I&APs are notified of their right to appeal.
3. Your attention is drawn to Chapter 2 of the Appeal Regulations, 2014, which prescribes the appeal procedure to be followed. This procedure is summarised in the attached Environmental Authorisation.

Yours faithfully

MR ZAHIR TOEFY

DIRECTOR: DEVELOPMENT MANAGEMENT – REGION 1

Date of decision: 22/11/2019

CC: (1) Ms Jenna Theron (PHS Consulting)
(2) Mr Ron Brunings (Swellendam Municipality)
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REFERENCE: 16/3/3/2/E3/10/1016/19
NEAS REFERENCE: WCP/EIA/0000578/2019
ENQUIRIES: Bernadette Osborne
DATE OF ISSUE: 2019 -11- 2 2

ENVIRONMENTAL AUTHORISATION

APPLICATION FOR ENVIRONMENTAL AUTHORISATION IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998) AND THE ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, 2014: THE CULTIVATION OF LAND ON PORTION 3 OF FARM MELK HOUTE BOSCH NO. 497, SWELLENDAM.

With reference to your application for the abovementioned, find below the outcome with respect to this application.

DECISION

By virtue of the powers conferred on it by the National Environmental Management Act, 1998 (Act No. 107 of 1998) ("NEMA") and the Environmental Impact Assessment ("EIA") Regulations, 2014 (as amended), the Competent Authority herewith **grants Environmental Authorisation** to the applicant to undertake the listed activities specified in section B below with respect to Alternative 1 described in the Environmental Impact Assessment ("EIA") Report, dated August 2019.

The applicant for this Environmental Authorisation is required to comply with the conditions set out in section E below.

A. DETAILS OF THE APPLICANT FOR THIS ENVIRONMENTAL AUTHORISATION

Johannes Eksteen Familietrust
c/o Mr Hennie Eksteen
PO Box 372
SWELLENDAM
6740

Cell: (082) 316 2978/9

E-mail: napkysmond@swdconnect.co.za

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

B. LIST OF ACTIVITIES AUTHORISED

Listed Activities	Project Description
<p>Listing Notice 2 – Activity Number: 13 The physical alteration of virgin soil to agriculture, or afforestation for the purposes of commercial tree, timber or wood production of 100 hectares or more.</p>	<p>The development entails the physical alteration of more than 100ha of land which was not cultivated for the proceeding 10 years, with the establishment of new cultivation areas of approximately 444ha.</p>
<p>Listing Notice 2 – Activity Number: 15 The clearance of an area of 20 hectares or more of indigenous vegetation, excluding where such clearance of indigenous vegetation is required for – (i) the undertaking of a linear activity; or (ii) maintenance purposes undertaken in accordance with a maintenance management plan.</p>	<p>The development entails the clearance of more than 20ha of indigenous vegetation.</p>
<p>Listing Notice 3 – Activity Number: 12 <i>The clearance of an area of 300 square meters 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></p> <p>(f) Western Cape:</p> <p>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;</p> <p>ii. Within critical biodiversity areas identified in bioregional plans;</p>	<p>The indigenous vegetation present on the site is <i>Eastern Rûens Shale Renosterveld</i> vegetation, which is classified as critically endangered.</p>

<p>iii. Within the littoral active zone or 100 meters inland from the 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;</p> <p>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</p> <p>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.</p>	
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The abovementioned list is hereinafter referred to as **"the listed activities"**.

The holder is herein authorised to undertake the following development that includes the listed activities as it relates to the preferred alternative:

The proposal entails the cultivation of approximately 444ha of previously ploughed land for the planting of crops that require no irrigation. A conservation area of approximately 450ha will also be established on Portion 3 of Farm Melk Houe Bosch No. 497, Swellendam.

SITE DESCRIPTION AND LOCATION

The listed activities will be undertaken on Portion 3 of Farm Melk Houe Bosch No. 497, Swellendam, at the following co-ordinates:

	Latitude (S)	Longitude (E)
Coordinates:	34° 16' 10.43" South	20° 30' 03.58" East

The SG digit code is: C07300000000049700003

Refer to Annexure 1: Locality Map and Annexure 2: Site Plan.

The above is hereinafter referred to as **"the site"**.

D. DETAILS OF THE ENVIRONMENTAL ASSESSMENT PRACTITIONER

PHS Consulting
c/o Jenna Theron
PO Box 1752
HERMANUS

7200

Tel: (028) 312 1734

Fax: (086) 508 3249

E. CONDITIONS OF AUTHORISATION

Scope of authorisation

1. The holder is authorised to undertake the listed activities specified in Section B above in accordance with and restricted to Alternative 1, described in the EIA Report, dated August 2019 on the site as described in Section C above.
2. The holder must commence with the listed activities on the site within a period of **five years** from the date of issue of this Environmental Authorisation.
3. The development must be concluded within **ten years** from the date of commencement of the listed activities.
4. 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.
5. Any changes to, or deviations from the scope of the alternative described in section B 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 in order 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.

Written notice to the Competent Authority

6. Seven calendar days' notice, in writing, must be given to the Competent Authority before commencement of construction activities.
 - 6.1 The notice must make clear reference to the site details and EIA Reference number given above.
 - 6.2 The notice must also include proof of compliance with the following conditions described herein:

Conditions: 7, 8, 11 and 17

Notification and administration of appeal

7. The holder must in writing, within 14 (fourteen) calendar days of the date of this decision–
 - 7.1 notify all registered Interested and Affected Parties ("I&APs") of –
 - 7.1.1 the outcome of the application;
 - 7.1.2 the reasons for the decision as included in Annexure 3;
 - 7.1.3 the date of the decision; and
 - 7.1.4 the date when the decision was issued.
 - 7.2 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 F below;
 - 7.3 draw the attention of all registered I&APs to the manner in which they may access the decision;
 - 7.4 provide the registered I&APs with:
 - 7.4.1 the name of the holder (entity) of this Environmental Authorisation,
 - 7.4.2 name of the responsible person for this Environmental Authorisation,
 - 7.4.3 postal address of the holder,
 - 7.4.4 telephonic and fax details of the holder,
 - 7.4.5 e-mail address, if any, of the holder,
 - 7.4.6 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 2014 National Appeals Regulations.
8. The listed activities, including site preparation, may not commence within 20 (twenty) calendar days from the date the applicant notified the registered I&APs of this decision. 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.

Management of activity

9. The draft Environmental Management Programme ("EMPr") submitted as part of the application for Environmental Authorisation is hereby approved and must be implemented.
10. The EMPr must be included in all contract documentation for all phases of implementation.

Monitoring

11. The holder must appoint a suitably experienced environmental control officer ("ECO"), or site agent where appropriate, before commencement of any land clearing or construction activities to ensure compliance with the provisions of the EMPr and the conditions contained herein.
12. A copy of the Environmental Authorisation, EMPr, 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, including a publicly accessible website.
13. Access to the site referred to in Section C above 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.

Auditing

14. In terms of Regulation 34 of the NEMA EIA Regulations, 2014, the holder must conduct environmental audits to determine compliance with the conditions of the Environmental Authorisation, the EMPr and submit Environmental Audit Reports to the Competent Authority. The Environmental Audit Report must be prepared by an independent person and must contain all the information required in Appendix 7 of the NEMA EIA Regulations, 2014 (as amended).

The holder must undertake an environmental audit quarterly for the duration of the construction phase and submit Environmental Audit Reports to the Competent Authority once every six months during the construction phase. The final Environmental Audit Report must be submitted to the Competent Authority six months after operation commenced.

The holder must, within 7 days of the submission of each of the above-mentioned reports 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).

Specific Conditions

15. 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 palaeontological remains (including fossil shells and trace fossils); coins; indigenous and/or colonial ceramics; any articles of value or antiquity; marine shell heaps; stone artifacts 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.

16. 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.
17. A Conservation Easement and an associated conservation management plan with the Overberg Renosterveld Conservation Trust ("ORCT") for the proposed conservation area on the property must be finalised before cultivation commences. A copy of the signed Conservation Easement and associated conservation management plan must be submitted to the Department for record purposes, prior to commencement of any site clearing or cultivation on the site.
18. The conservation management plan for the conservation area must include fire management, alien vegetation management, erosion control and must describe conservation requirements for managing buffer areas and the natural and agricultural interface.
19. A 5m buffer wide buffer zone must be implemented as a transition area between the natural areas and agricultural areas.

F. 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 of this Environmental Authorisation or EMPr may render the holder liable to criminal prosecution.
3. If the holder does not commence with a listed activity within the period referred to in Condition 2, this Environmental Authorisation shall lapse for that activity, and a new application for Environmental Authorisation must be submitted to the Competent Authority. If the holder wishes to extend the validity period of the Environmental Authorisation, an application for amendment in this regard must be made to the Competent Authority prior to the expiry date of the Environmental Authorisation.
4. 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 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.

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

APPEALS

Appeals must comply with the provisions contained in the National Appeal Regulations 2014 (as amended).

1. An appellant (if the holder of the decision) must, within 20 (twenty) calendar days from the date the notification of the decision was sent to the holder by the Competent Authority –
 - 1.1. Submit an appeal in accordance with Regulation 4 of the National Appeal Regulations 2014 (as amended) to the Appeal Administrator; and
 - 1.2. Submit a copy of the appeal to any registered I&APs, any Organ of State with interest in the matter and the decision-maker i.e. the Competent Authority that issued the decision. -
2. An appellant (if NOT the holder of the decision) must, within 20 (twenty) calendar days from the date the holder of the decision sent notification of the decision to the registered I&APs–
 - 2.1. Submit an appeal in accordance with Regulation 4 of the National Appeal Regulations 2014 (as amended) to the Appeal Administrator; and
 - 2.2 Submit a copy of the appeal to the holder of the decision, any registered I&AP, any Organ of State with interest in the matter and the decision-maker i.e. the Competent Authority that issued the decision.
3. The holder of the decision (if not the appellant), the decision-maker that issued the decision, the registered I&AP and the 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. The appeal and the responding statement must be submitted to the address listed below:

By post: Western Cape Ministry of Local Government, Environmental Affairs
and Development Planning
Private Bag X9186
CAPE TOWN
8000

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, 8001

Note: For purposes of electronic database management, you are also requested to submit electronic copies (Microsoft Word format) of the appeal, responding statement and any supporting documents to the Appeal Authority 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 Appeal Authority at: Tel. (021) 483 3721, E-mail DEADP.Appeals@westerncape.gov.za or URL <http://www.westerncape.gov.za/eadp>.

G. DISCLAIMER

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

Your interest in the future of our environment is appreciated.

Yours faithfully



MR. ZAHIR TOEFY

DIRECTOR: DEVELOPMENT MANAGEMENT (REGION 1)
DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING

Date of decision: 22/11/2019

CC: (1) Ms Jenna Theron (PHS Consulting)
(2) Mr Ron Brunings (Swellendam Municipality)
(3) Ms Chanel Rampartab (CapeNature)

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ANNEXURE 1: LOCALITY MAP

Locality Map

The Site

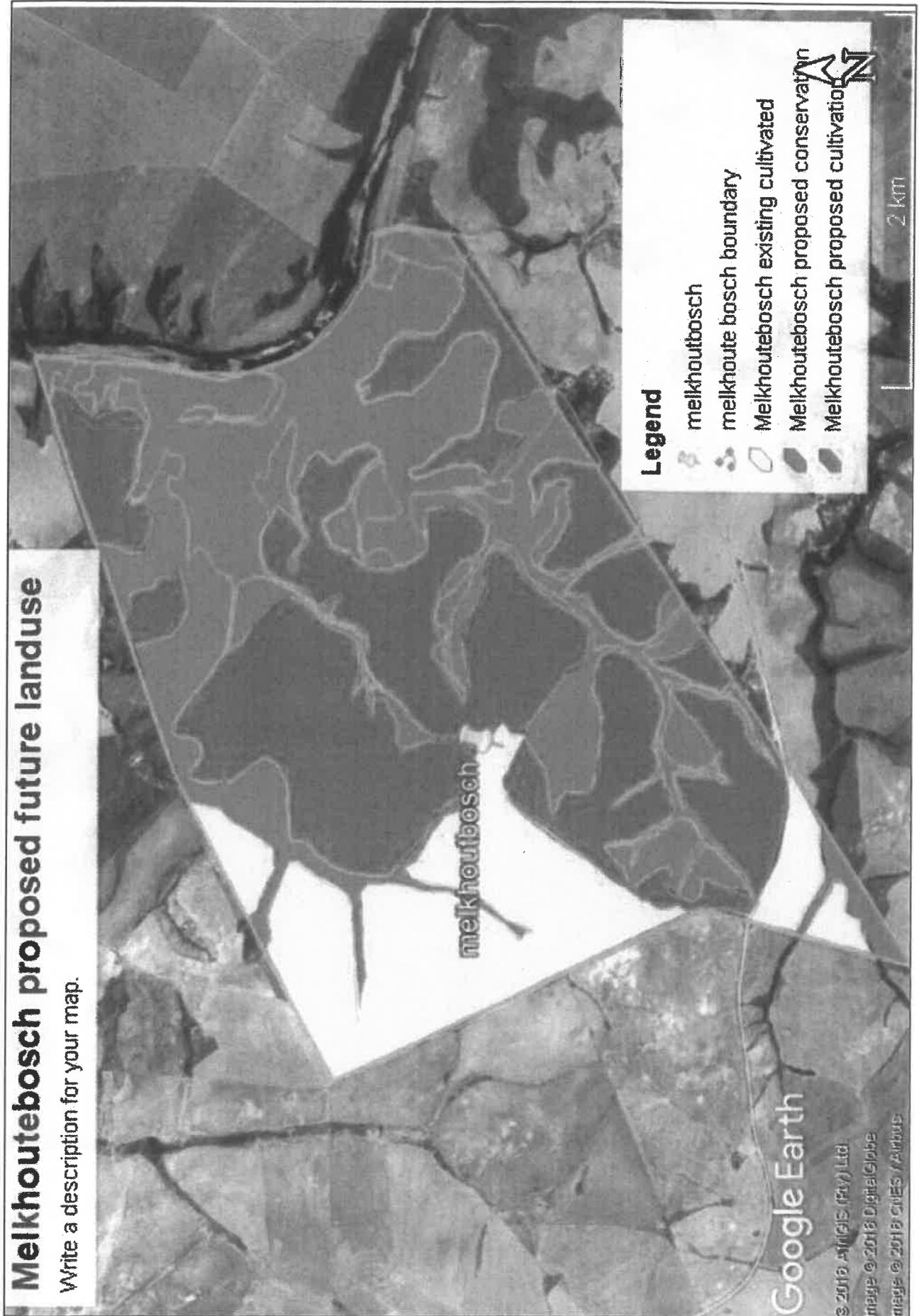


Scale: 1:288 895
Date created: October 16, 2018

S 34° 16' 10.43"
E 20° 30' 03.58"



ANNEXURE 2: SITE PLAN



ANNEXURE 3: REASONS FOR THE DECISION

In reaching its decision, the Competent Authority considered, inter alia, the following:

- a) The information contained in the Application Form dated 20 March 2019, the final Scoping Report received by the Department on 3 May 2019, the EMPr submitted together with the final EIA Report on 19 August 2019 and the additional information received on 16 October 2019;
- b) Relevant information contained in the Departmental information base, including the Guidelines on Public Participation and Alternatives (dated March 2013);
- c) The objectives and requirements of relevant legislation, policies and guidelines, including section 2 of the National Environmental Management Act, 1998 (Act No. 107 of 1998);
- d) The comments received from I&APs and responses to these, included in the final EIA Report received on 19 August 2019 and the additional information received on 16 October 2019; and
- e) The balancing of negative and positive impacts and proposed mitigation measures.

No site visits were conducted. The Competent Authority had sufficient information before it to make an informed decision without conducting a site visit.

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 that were considered to be the most significant for the decision is set out below.

1. Public Participation

The public participation process included:

- identification of and engagement with I&APs;
- site notices were placed at the site where the listed activities are to be undertaken;
- giving written notice to the owners and occupiers of land adjacent to the site the listed activities are to be undertaken, the municipality and ward councilor, and the various organs of state having jurisdiction in respect of any aspect of the listed activities on 30 October 2018 and 1 November 2018;
- the placing of a newspaper advertisement in the *Langeberg Bulletin* newspaper on 1 November 2018;
- making the pre-application draft Scoping Report available to I&APs for public review from 5 November 2018;
- making the in-process draft Scoping Report available to I&APs for public review from 20 March 2019; and
- making the draft EIA Report available to I&APs for public review from 1 July 2019.

The Department is satisfied that the Public Participation Process that was followed met the minimum legal requirements and all the comments raised and responses thereto were included in the comments and response report.

Specific alternatives, management and mitigation measures have been considered in this Environmental Authorisation and EMPr to adequately address the concerns raised.

2. Alternatives

Alternative 1 (herewith authorised)

This alternative entails the cultivation of approximately 444ha of previously ploughed land for the planting of crops that do not require irrigation. A conservation area of approximately 450ha will be established on Portion 3 of Farm Melk Houe Bosch No. 497, Swellendam. This alternative was preferred for the following reasons:

- The type of crops which will be planted do not require irrigation and therefore no associated infrastructure is required.
- No roads will be constructed as existing two-track roads will be utilised to gain access, where necessary.
- The areas to be utilised for grazing of any livestock will be fenced to ensure no livestock have access to conservation areas.
- This option includes a conservation area of approximately 450ha, as recommended by the Botanical Assessment dated 7 June 2018 compiled by Fynbos Escapes Botanical Consulting, and supported by CapeNature and the ORCT.

No-go Alternative

This alternative represents the current *status quo*, which is the majority of the site not being cultivated for more than ten years. This alternative was not preferred from a socio-economic perspective for the applicant and does not allow the opportunity for the establishment and formal protection of a conservation area of approximately 450ha.

3. Impact Assessment and Mitigation measures

3.1 Activity need and desirability

The site is zoned for agricultural purposes and is surrounded by agricultural land. The development will therefore be consistent with the existing land use on the farm, as well as the surrounding areas. The development will increase workable agricultural land and agricultural produce, which will be beneficial from a socio-economic perspective for the applicant. In addition, the development will allow the opportunity for the establishment and formal protection of a conservation area of approximately 450ha.

3.2 Biophysical Impacts

The Botanical Impact Assessment dated 7 June 2019, compiled by Fynbos Escapes Botanical Consulting, indicated that *Eastern Rûens Shale Renosterveld* is present on the site, which is classified as critically endangered. The entire area which will be used for cultivation has been ploughed and worked in the past, but not in the last ten years. The

assessment concluded that no Species of Conservation Concern were present in these previously ploughed areas. While the remaining indigenous vegetation on the property is of very high regional and national conservation value and is designated as a Critical Biodiversity Area, the previously ploughed areas have low conservation value, but do contribute to ecological functioning within the intact, natural areas on the property. The direct and indirect impact associated with clearing the land for cultivation will be offset by establishing an approximately 450ha conservation area on the property that links all remaining natural Renosterveld vegetation on the property with the riverine vegetation corridor along the Breede River. The establishment of this formal conservation area on the property with the implementation of an associated conservation management plan will safeguard the farm's unique biodiversity and maintain ecological processes and functioning. Overall the direct impact will be medium with mitigation and the indirect impact medium-low with mitigation. The study also recommended that the conservation management plan for the natural areas on the property must include fire management, alien vegetation management, erosion control and must describe conservation requirements for managing buffer areas and the natural and agricultural interface. A 5m wide buffer zone will also be implemented as a transition area between natural areas and agricultural areas. The above was supported by CapeNature and will be implemented in conjunction with the ORCT.

The recommended mitigation measures made by the Botanical Impact Assessment were effectively addressed in the preferred alternative, EMPr and included as Condition 17, 18 and 19 under Section E of this Environmental Authorisation.

The development will result in both negative and positive impacts.

Negative Impacts:

The development will have a negative biophysical impact due to the loss of indigenous vegetation present on the site. These impacts will however be mitigated to a satisfactory level with the implementation of the Conservation Easement and the associated conservation management plan (which is a suspensive condition in this Environmental Authorisation), the preferred alternative and the EMPr (refer to Conditions 9, 18, 19 and 20 under Section E of this Environmental Authorisation)

Positive impacts:

- The development will increase workable agricultural land and agricultural produce, which will be beneficial from a socio-economic perspective for the applicant and the local community.
- The development will ensure the establishment and formal protection of an approximately 450ha conservation area on the property.

4. National Environmental Management Act 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.

5. Conclusion

In view of the above, the NEMA principles, compliance with the conditions stipulated in this Environmental Authorisation, and compliance with the EMPr, the Competent Authority is satisfied that the proposed listed activity will not conflict with the general objectives of integrated environmental management stipulated in Chapter 5 of the National Environmental Management Act, 1998 (Act No. 107 of 1998) and that any potentially detrimental environmental impacts resulting from the listed activity can be mitigated to acceptable levels.

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