

EIA REFERENCE NUMBER: 16/3/3/2/D7/10/0001/22
NEAS REFERENCE: WCP/EIA/0001151/2022
DATE OF ISSUE: 02 December 2022

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: PROPOSED DEVELOPMENT OF A DAM ON PORTION 1 OF THE FARM RUST EN VREDE NO. 25 AND REMAINDER OF THE FARM RUST EN VREDE NO. 25 (SPITZKOP), OUDTSHOORN

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, the Competent Authority herewith **grants Environmental Authorisation** to the applicant to undertake the listed activities specified in section B below with respect to **the Preferred Alternative**, described in the Final Environmental Impact Assessment Report ("FEIAR"), dated August 2022 as prepared and submitted by *Greenfire Enviro*, the appointed environmental assessment practitioner ("EAP"); and

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

LS Du Plessis BDY
Mr. L.S. du Plessis
P.O. Box 749
OUDTSHOORN
6620

Tel: 044 262 3934
E-mail: louis@duppies.co.za

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

B. LIST OF ACTIVITIES AUTHORISED

Listed Activities	Activity/Project Description
Environmental Impact Assessment Regulations Listing Notice 1 of 2014, Government Notice No. 983 of 4 December 2014	
<p>Activity Number: 12 Activity Description:</p> <p>The development of—</p> <ul style="list-style-type: none"> (i) dams or weirs, where the dam or weir, including infrastructure and water surface area, exceeds 100 square metres; or (ii) infrastructure or structures with a physical footprint of 100 square metres or more; <p>where such development occurs—</p> <ul style="list-style-type: none"> (a) within a watercourse; (b) in front of a development setback; or (c) if no development setback exists, within 32 metres of a watercourse, measured from the edge of a watercourse; — <p>excluding—</p> <ul style="list-style-type: none"> (aa) the development of infrastructure or structures within existing ports or harbours that will not increase the development footprint of the port or harbour; (bb) where such development activities are related to the development of a port or harbour, in which case activity 26 in Listing Notice 2 of 2014 applies; (cc) activities listed in activity 14 in Listing Notice 2 of 2014 or activity 14 in Listing Notice 3 of 2014, in which case that activity applies; (dd) where such development occurs within an urban area; (ee) where such development occurs within existing roads, road reserves or railway line reserves; or (ff) the development of temporary infrastructure or structures where such infrastructure or structures will be removed within 6 weeks of the commencement of development and where indigenous vegetation will not be cleared. 	<p>The development of a dam and associated infrastructure where the water surface area as well as the physical footprint will exceed 100 square metres respectively. The development will occur within a watercourse and infrastructure will be located within 32 metres from the edge of the watercourse.</p>
<p>Activity Number: 19 Activity Description:</p> <p>The infilling or depositing of any material of more than 10 cubic metres into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock of more than 10 cubic metres from a watercourse;</p> <p>but excluding where such infilling, depositing, dredging, excavation, removal or moving—</p> <ul style="list-style-type: none"> (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; (e) or 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. 	<p>The development of a dam and associated infrastructure require excavation and removal of soil of more than 10 cubic metres from a watercourse.</p>
<p>Activity Number: 27 Activity Description:</p>	<p>The clearance of an area of approximately more than 1 hectare but less than 20 hectares</p>

<p>The clearance of an area of 1 hectare or more, but less than 20 hectares of indigenous vegetation, except where such clearance of indigenous vegetation is required for—</p> <p>(i) the undertaking of a linear activity; or</p> <p>(ii) maintenance purposes undertaken in accordance with a maintenance management plan.</p>	<p>of indigenous vegetation for the construction of a dam.</p>
<p>Environmental Impact Assessment Regulations Listing Notice 2 of 2014, Government Notice No. 984 of 4 December 2014</p>	
<p>Activity Number: 16 Activity Description:</p> <p>The development of a dam where the highest part of the dam wall, as measured from the outside toe of the wall to the highest part of the wall, is 5 metres or higher or where the high-water mark of the dam covers an area of 10 hectares or more.</p>	<p>The proposed dam will have a dam wall higher than 5 metres, of which the dam wall will not exceed a height of 21 metres.</p>

The abovementioned list is hereinafter referred to as “**the listed activities**”.

The Holder is herein authorised to undertake the following alternative that includes the listed activities as it relates to the development and development footprint area:

The proposal entails the development of a dam on the Remainder of the Farm Rust en Vrede No. 25 (Spitzkop), Oudtshoorn, (hereinafter referred to as the “*Kloof Dam*”).

This will require the clearance of more than 1-hectare (but less than 20-hectares) of indigenous vegetation. Also, more than 10m³ of sand, soil and rock will be excavated from a watercourse. The Kloof Dam’s wall will not exceed a height of 21 metres. The crest will be 320 metres long and 4 metres wide. The total volume of the new storage capacity of the dam will not exceed 500 000 m³.

In addition, the following associated infrastructure will be constructed:

- Installation of a gravity fed pipeline between the Buffer Dam and the Kloof Dam which will cross a minor tributary (as seen in Annexure 2 of this Environmental Authorisation). The dimension of the pipeline will be 355mm (or less) in diameter along 100m length of the existing furrow and then 1.3km long to the Kloof Dam.
- Maintenance of the abstraction point in the upper reaches of Meul River.
- A pipeline between the Kloof Dam and the existing Square Dam (diameter not more than 250mm). The pipeline will be along the existing road.
- Re-alignment of a section of farm road around the high-water mark of the proposed Kloof Dam.
- Relocation of a section of the Eskom powerline and poles.

C. SITE DESCRIPTION AND LOCATION

The farm *Spitzkop* is located against the southern foot of the Grootswartberg, approximately halfway along district road R1317, also known as the Oudemuragie Road. The farm Spitzkop consists of various properties, of which only two cadastral units form part of the proposed development, which are:

Portion 1 of the Farm Rust en Vrede No. 25:	SG21 Code: C0540000000002500001
Remainder of the Farm Rust en Vrede No. 25 (Spitzkop):	SG21 Code: C0540000000002500000

The functional diversion weir for water abstraction is located on the Farm Spitzkop No. 11 which is a neighbouring property owned by the Oudtshoorn Municipality.

The proposed dam will have a dam wall of higher than 5 metres but will not exceed a height of 21 metres

The coordinates of the *Kloof Dam* site (situated on the Remainder of the Farm Rust en Vrede No. 25) are:

Dam	Latitude (S)	Longitude (E)
Kloof Dam	33° 25' 13" South	22° 23' 18" East

Refer to Annexure 1: Locality Plan and Annexure 2: Site Development Plan of this Environmental Authorisation.

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

D. DETAILS OF THE ENVIRONMENTAL ASSESSMENT PRACTITIONER (EAP)

GREENFIRE ENVIRO PTY LTD
% Mrs Desireé du Preez
17 Mountain Road, Glenbarrie
GEORGE
6530

Tel: 087 808 4823
E-mail: desiree@greenfireenviro.co.za
Website: www.greenfireenviro.co.za

E. CONDITIONS OF AUTHORISATION

Scope and Validity Period of authorisation

1. This Environmental Authorisation is granted for the period from date of issue until **30 November 2027**, the date on which all the listed activities, will be deemed to be concluded at the site. The activities include:
 - post construction rehabilitation;
 - monitoring;
 - rehabilitation requirements;
 - auditing; and
 - maintenance

Failing which, this Environmental Authorisation shall lapse, unless the environmental authorisation is amended in accordance with the relevant process contemplated in the Environmental Impact Assessment Regulations promulgated under the National Environmental Management Act, 1998 (Act no. 107 of 1998).

2. The Holder is authorised to undertake the listed activities specified in Section B above in accordance with the Preferred Alternative described in the FBAR dated August 2022 on the site as described in Section C above.

The proposal entails the development of a dam on the Remainder of the Farm Rust en Vrede No. 25 (Spitzkop), Oudtshoorn, (hereinafter referred to as the "*Kloof Dam*").

This will require the clearance of more than 1-hectare (but less than 20-hectares) of indigenous vegetation. Also, more than 10m³ of soil and sand will be excavated from a watercourse. The Kloof Dam will not exceed a height of 21 metres. The crest will be 320 metres long and 4 metres wide. The total volume of the new storage capacity of the dam will not exceed 500 000 m³.

In addition, the following associated infrastructure will be constructed:

- Installation of a gravity fed pipeline between the Buffer Dam and the Kloof Dam which will cross a minor tributary (as seen in Annexure 2 of this Environmental Authorisation). The dimension of the pipeline will be 355mm (or less) in diameter along 100m length of the existing furrow and then 1.3km long to the Kloof Dam.
- Maintenance of the abstraction point in the upper reaches of Meul River.
- A pipeline between the Kloof Dam and the existing Square Dam (diameter not more than 250mm). The pipeline will be along the existing road.
- Re-alignment of a section of farm road around the high-water mark of the proposed Kloof Dam.
- Relocation of a section of the Eskom powerline and poles.

3. The holder must adopt and implement the following development restrictions and measures to the proposed development:
 - 3.1. No development may take place (which triggers a listed activity, including phased activities) at the existing weir (Weir 1) on Farm Spitzkop No. 11 unless authorised by the competent authority.
 - 3.2. Once the Department of Water and Sanitation ("DWS") has authorised the dam and infrastructure, the final designs of the dam and infrastructure must be submitted to the competent authority prior to site preparation or construction activities commencing on site.
4. This Environmental Authorisation may only be implemented in accordance with an approved Environmental Management Programme ("EMPr").
5. 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.
6. 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.

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 decision reached on 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 Appeal Regulations, 2014 (as amended) detailed in Section G 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 the:
 - 7.4.1. 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. 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 (as amended).
- 7.5. The listed activities, including site preparation, must not commence within 20 (twenty) calendar days from the date the applicant notified the registered I&APs of this decision.
- 7.6. 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 i.e. the listed activities, including site preparation, must not commence until the appeal is decided.

Written notice to the Competent Authority

- 8. Seven calendar days' notice, in writing, must be given to the Competent Authority before commencement of any activities.
 - 8.1. The notice must make clear reference to the site details and EIA Reference number given above.
 - 8.2. The notice must also include proof of compliance with the following conditions described herein:
Conditions no.: 3, 7, 9, 11, 20, 21 and 22.

Management of activity

- 9. The draft or Environmental Management Programme ("EMPr") submitted as part of the application for Environmental Authorisation must be amended and submitted for approval, subject to the following requirements:
 - 9.1. The EMPr must be amended to incorporate the following —
 - 9.1.1. Environmental Control Officer compliance reports must be submitted to this Directorate on a monthly basis.
 - 9.1.2. Incorporate all the conditions contained in this Environmental Authorisation;
 - 9.1.3. The ECO must conduct weekly site inspections until the construction of the dam and pipelines are complete;
 - 9.1.4. Incorporate a monitoring plan in the maintenance management plan that details the role of an ECO during maintenance activities.
 - 9.1.5. A detailed plan outlining the filling strategy for the new storage dam during the high flow period and operating strategy for dams must be prepared prior to construction of the dam. The filling and operation strategy must be presented to the Kammanassie Stompdrift Irrigation Board and Breede Gouritz Management Agency for consideration and be included in the EMPr.
 - 9.2. The amended EMPr must be submitted to the Competent Authority and be approved, prior to the construction activities commencing on site.

Note: The revised EMPr should be submitted to the Competent Authority at least 90-days prior to the construction activities commencing on site to ensure the competent authority is able to process / review the revised EMPr prior to the intended date of commencement.

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"), for the duration of the construction and rehabilitation phases of implementation contained herein.

12. The Holder must appoint a suitably experienced Environmental Control Officer ("ECO"), for each maintenance activity.

13. The ECO must–

13.1. be appointed prior to commencement of any works (i.e. removal and movement of soil and / or rubble or construction activities commencing;

13.2. ensure compliance with the EMPr and the conditions contained herein;

13.3. keep record of all activities on the site; problems identified; transgressions noted and a task schedule of tasks undertaken by the ECO;

13.4. remain employed until all development activities are concluded, and the post construction rehabilitation and monitoring requirements are finalised.

14. A copy of the Environmental Authorisation, EMPr, any independent assessments of financial provision for rehabilitation and environmental liability, closure plans, audit reports and compliance monitoring reports must be kept at the site of the authorised activities and be made available to anyone on request, and where the Holder has website, such documents must be made available on such publicly accessible website.

15. Access to the site referred to in Section C 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.

Environmental Auditing

16. The Holder must, for the period during which the environmental authorisation and EMPr remain valid ensure the compliance with the conditions of the environmental authorisation and the EMPr, is audited;

17. The frequency of auditing of compliance with the conditions of the environmental authorisation and of compliance with the EMPr, must adhere to the following programme:

17.1. During the period which the activities have been commenced with on site until the construction of the dam and pipelines has been completed on site, the Holder must undertake annual environmental audit(s) and submit the Environmental Audit Report(s) to the Competent Authority.

A final Environmental Audit Report must be submitted to the Competent Authority within **three (3)** months of completion of the construction of the dam and the post construction rehabilitation and monitoring requirements thereof.

Note: Only one (1) environmental audit will be required if the construction period is concluded within a one (1) year period.

17.2. After maintenance activities have been undertaken, the Holder must ensure that environmental audit(s) are performed annually and submit these Environmental Audit Report(s) to the Competent Authority.

18. The Environmental Audit Report(s), must –

18.1. be prepared and submitted to the Competent Authority, by an independent person with the relevant environmental auditing expertise. Such person may not be the ECO or EAP who conducted the EIA process;

18.2. provide verifiable findings, in a structured and systematic manner, on–

18.2.1. the level of compliance with the conditions of the environmental authorisation and the EMPr and whether this is sufficient or not; and

18.2.2. the ability of the measures contained in the EMPr to sufficiently provide for the avoidance, management and mitigation of environmental impacts associated with the undertaking of the activity.

18.3. identify and assess any new impacts and risks as a result of undertaking the activity;

18.4. evaluate the effectiveness of the EMPr;

18.5. identify shortcomings in the EMPr;

18.6. identify the need for any changes to the avoidance, management and mitigation measures provided for in the EMPr;

18.7. indicate the date on which the construction work was commenced with and completed or in the case where the development is incomplete, the progress of the development and rehabilitation;

18.8. indicate the date on which the operational phase was commenced with and the progress of the rehabilitation;

18.9. include a photographic record of the site applicable to the audit; and

18.10. be informed by the ECO reports.

19. The Holder must, within 7 calendar days of the submission of the audit report to the Competent Authority, notify all potential and registered I&APs of the submission and make the report available to anyone on request and on a publicly accessible website (if applicable).

Specific Conditions

20. No infilling or depositing of any material of more than 10 cubic meters into, or the dredging, excavation, removal or moving of soil, sand, shell grit, pebbles or rock, or the modification, extension, alteration or upgrading may be undertaken at the existing weir without prior approval or agreement from the relevant competent authority.

Note: Redevelopment or maintenance of the same structure in the same location, with the same capacity and footprint may be done to the existing weir (weir 1) located in the upper reaches of the Meul Rivier.

21. The final design for the abstraction point / weir in the upper reaches of the Meul River must be submitted to the competent authority with the amended EMPr.
22. The final design must ensure that at least 25% of the flow in the river should be allowed to continue downstream to provide for ecosystem needs.
23. No other infrastructure or abstraction points may be developed in or along the Meul River, located on Portion 1 of the Farm Rust en Vrede 25 and Remainder of Farm Rust en Vrede 25, to supplement the abstraction of and transportation of water from the Meul River for water storage in the Kloof Dam, unless authorised by the competent authority.
24. 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 may only be disturbed by a suitably qualified heritage specialist working under a directive from the relevant Heritage Resources Authority.

Heritage remains include: meteorites, archaeological and/or paleontological remains (including fossil shells and trace fossils); coins; indigenous and/or colonial ceramics; any articles of value or antiquity; marine shell heaps; stone artefacts and bone remains; structures and other built features with heritage significance; rock art and rock engravings; shipwrecks; and/or graves or unmarked human burials including grave goods and/or associated burial material.

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 activities.

Amendment of Environmental Authorisation and EMPr

2. If the Holder does not start with all listed activities and conclude the activities within the period referred to in Section E, this Environmental Authorisation shall lapse for those activities, and a new application for Environmental Authorisation must be submitted to the relevant Competent Authority.

If the Holder wishes to extend a validity period specified in the Environmental Authorisation, an application for amendment in this regard must be made to the relevant Competent Authority prior to the expiry date of such a period.

Note:

- (a) Failure to lodge an application for amendment prior to the expiry of the validity period of the Environmental Authorisation will result in the lapsing of the Environmental Authorisation.
- (b) It is an offence in terms of Section 49A(1)(a) of NEMA for a person to commence with a listed activity if the competent authority has not granted an Environmental Authorisation for the undertaking of the activity.
- (c) An environmental authorisation may be amended where it relates to a change of ownership or transfer of rights and obligations.

- (d) On application, if the competent authority decides to grant environmental authorisation, the competent authority may issue a single environmental authorisation or multiple environmental authorisations in the name of the same or different applicants covering all aspects for which authorisation is granted.
3. The Holder is required to notify the Competent Authority where any detail with respect to the Environmental Authorisation must be amended, added, substituted, corrected, removed or updated.

In assessing whether to amend or correct the EA, the Competent Authority may request information to evaluate the significance and impacts of such changes or deviations, and it may be necessary for the Holder to apply for further authorisation in terms of the applicable legislation.

The onus is on the Holder to verify whether such changes to the environmental authorisation must be approved in writing by the relevant competent authority prior to the implementation thereof.

Note: An environmental authorisation may be amended or replaced without following a procedural requirement contained in the Regulations if the purpose is to correct an error and the correction does not change the rights and duties of any person materially

4. The manner and frequency for updating the EMPr is as follows:
- (a) Any further amendments to the EMPr, other than those mentioned above, must be approved in writing by the relevant competent authority.
- (b) An application for amendment to the EMPr must be submitted to the Competent Authority if any amendments are to be made to the impact management outcomes of the EMPr. Such amendment(s) may only be implemented once the amended EMPr has been approved by the competent authority.

The onus is however on the Holder to confirm the legislative process requirements for the above scenarios at that time.

5. Where an amendment to the impact management outcomes of an EMPr is required before an environmental audit is required in terms of the environmental authorisation, an EMPr may be amended on application by the Holder of the environmental authorisation.

Compliance with Environmental Authorisation and EMPr

6. Non-compliance with a condition of this environmental authorisation or EMPr is an offence in terms of Section 49A(1)(c) of the National Environmental Management Act, 1998 (Act no. 107 of 1998, as amended).
7. This Environmental Authorisation is granted for a set period from date of issue, during which period all the listed activities must be commenced with and concluded, including the post-construction rehabilitation; monitoring requirements, maintenance and environmental auditing requirements which must be concluded.

The validity period and conditions of the environmental authorisation has been structured to promote the effective administration of the environmental authorisation and guidance has been provided to ensure the compliance thereof within the validity period, for example:

- ❖ Failure to submit the revised EMPr to the Competent Authority at least 90-days prior to the construction activities commencing on site, may result in the competent authority not being able to process / review the revised EMPr prior to the intended date of commencement.
- ❖ Failure to complete the post construction rehabilitation and monitoring requirements at least six months prior to expiry of the validity period of an environmental authorisation may result in the Holder not being able to comply with the environmental auditing requirements in time.
- ❖ Failure to complete the auditing requirements and submit the final audit report at least three months prior to expiry of the validity period of the environmental authorisation may result in the Holder not being able to comply with all the environmental auditing and reporting requirements and may result in the competent authority not being able to process the audit timeously.

Note: it is advised that if any milestones as indicated above which may influence the validity period of the Environmental Authorisation, might not be achieved, the Holder must consider extending the validity period through an amendment process.

8. This Environmental Authorisation is subject to compliance with all the peremptory conditions (i.e. 3, 7, 9, 11 and 21). Failure to comply with all the peremptory conditions prior to the physical implementation of the activities (including site preparation) will render the entire EA null and void. Such physical activities shall be regarded to fall outside the scope of the Environmental Authorisation and shall be viewed as an offence in terms of Section 49A(1)(a) of NEMA.
9. In the event that the Environmental Authorisation should lapse, it is an offence in terms of Section 49A(1)(a) of NEMA for a person to commence with a listed activity, unless the competent authority has granted an Environmental Authorisation for the undertaking of the activity.
10. Offences in terms of the NEMA and the Environmental Impact Assessment Regulations, 2014, will render the offender liable for criminal prosecution.

G. APPEALS

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.
 - 1.3. Submit a copy of the appeal to the decision-maker (i.e. the Competent Authority that issued the decision) at:
 - Zaahir.Toefy@westerncape.gov.za and copied to
 - Gavin.Benjamin@westerncape.gov.za
 - DEADPEIAadmin.George@westerncape.gov.za
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.
- 2.3 Submit a copy of the appeal to the decision-maker (i.e. the Competent Authority that issued the decision) at:
Zaahir.Toefy@westerncape.gov.za and copied to
Gavin.Benjamin@westerncape.gov.za
DEADPEIAadmin.George@westerncape.gov.za
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 Appeal Administrator at 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: Appeal Administrator
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 Administrator at: Tel. (021) 483 3721, E-mail DEADP.Appeals@westerncape.gov.za or URL <http://www.westerncape.gov.za/eadp>.

H. 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. ZAAHIR TOEFY
DIRECTOR: DEVELOPMENT MANAGEMENT
DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING

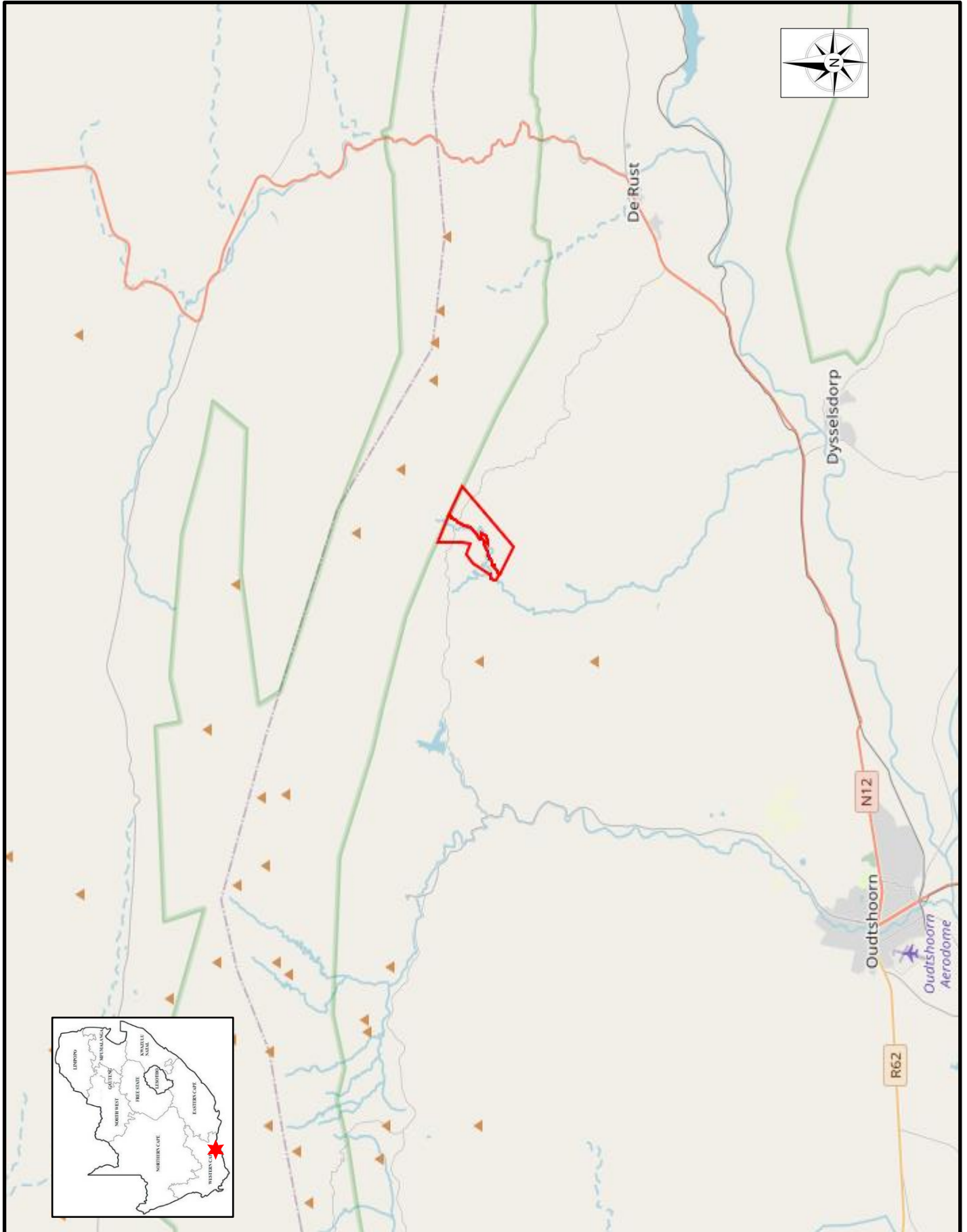
DATE OF DECISION: 02 DECEMBER 2022

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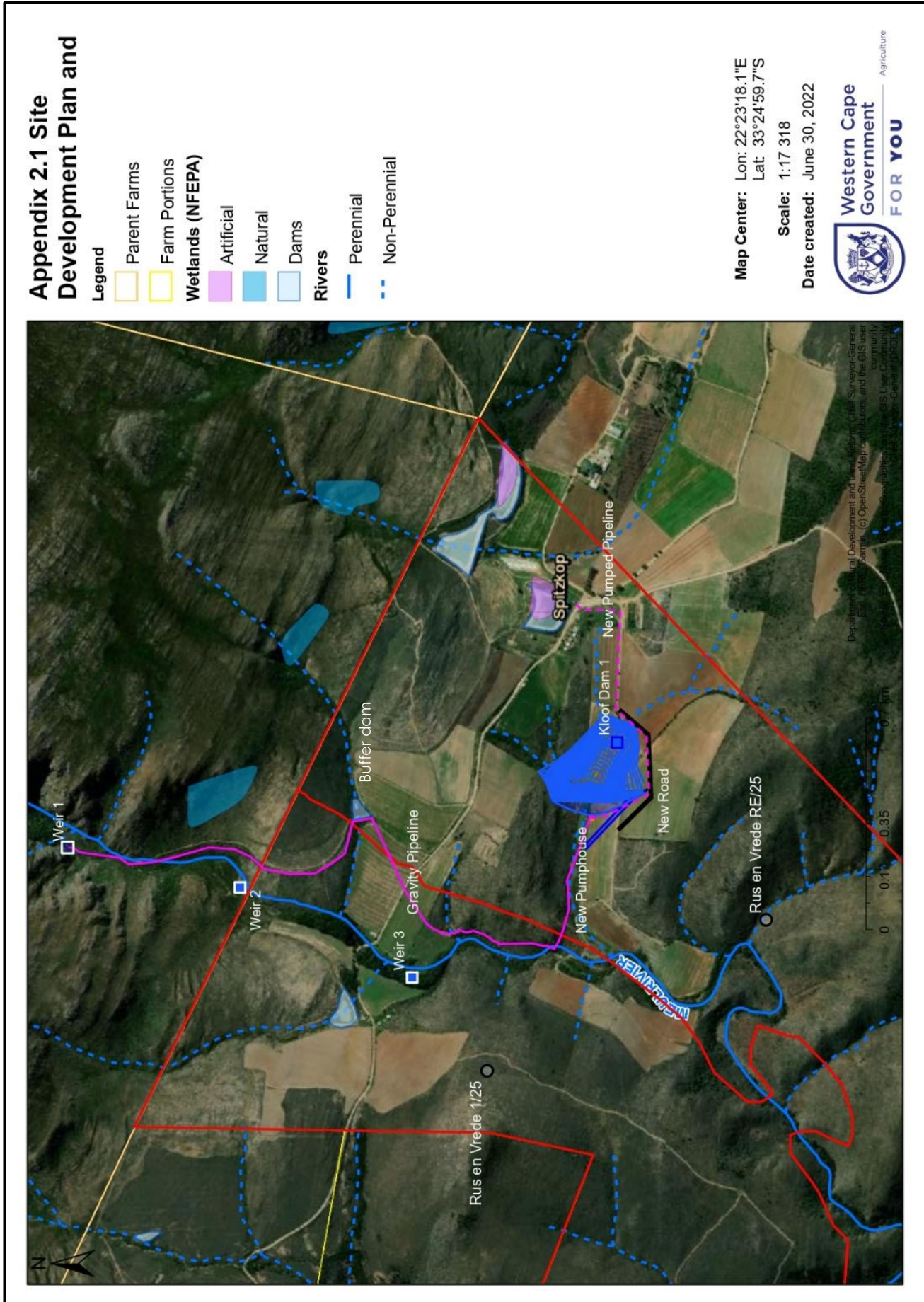
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NEAS REFERENCE: WCP/EIA/0001151/2022

ANNEXURE 1: LOCALITY MAP



ANNEXURE 2: SITE DEVELOPMENT 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 received on 24 February 2022, the Final Environmental Impact Assessment Report (FEIAR) and the EMPr submitted together with the FEIAR on 29 August 2022;
- b) Relevant information contained in the Departmental information base, including the Guidelines on Public Participation, 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 FEIAR dated September August 2022;
- e) The balancing of negative and positive impacts and proposed mitigation measures; and
- f) A site inspection was attended on 7 June 2019 by Ms Jessica Christie (DEA&DP), Mr Francois Naudé (DEA&DP), Ms Desireé du Preez (Greenfire Enviro), Mr Deon Haasbroek (Consultant) and Mr Jan Brink (Engineer).

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. Legislative Requirements

The landowner (applicant) currently utilises the existing weir located in the upper reaches of the Meul River on the Farm Spitzkop No. 11 as an abstraction point; however, this structure is in need of maintenance. This weir however occurs on municipal land and lies within the Grootswartberg Nature Reserve and the water catchment area. The Swartberg Complex is also a World Heritage site and as such, the National Department of Forestry, Fisheries and the Environment (DFFE) is the identified competent authority to consider the authorisation of any listed activities which may be triggered within the protected area, whether for maintenance or construction. In this regard Condition 20 is included in Section E; however, it not anticipated that any listed activities are proposed at this site.

The Kloof dam is likely to be prone to siltation as it is regarded as an instream dam. Maintenance of the Kloof dam can be undertaken during the post construction and rehabilitation of the dam within the validity period of the environmental authorisation. Any further maintenance after the validity period of this Environmental Authorisation will be subject to an additional environmental authorisation, however, the adoption of a separate Maintenance Management Plan ("MMP") may be considered.

2. Public Participation

A sufficient public participation process was undertaken, and the applicant has satisfied the minimum requirements as prescribed in the EIA Regulation 2014 for public involvement. The public participation process included:

- identification of and engagement with interested and affected parties (I&APs) including organs of state which have jurisdiction in respect of the activity to which the application relates;
- fixing a notice board at the various site on 8 March 2022;
- giving written notice to the owners and occupiers of land adjacent to the site and any alternative site where the listed activities are to be undertaken, the municipality and ward councillor, and the various organs of state having jurisdiction in respect of any aspect of the listed activities on 24 February 2022 to comment on the Draft Scoping Report;

- the placing of a newspaper advertisement in the 'Oudtshoorn Courant' on 25 February 2022; and
- making the draft Environmental Impact Assessment Report available to I&APs for public review from 5 July 2022 till 8 August 2022.

The following Organs of State provided comment on the proposal:

- Breede Gouritz Catchment Management Agency ("BGCMA");
- WCG: Department of Agriculture – Land Use Management
- Department of Agriculture, Land Reform and Rural Development – Land and Soil Management;
- General Public / Interested & Affected Parties (I&APs) included:
 - Stadler & Swart Attorneys o.b.o. Stompdrift-Kamanassie Watergebruikersvereniging
 - A neighbouring property owner (Name withheld due to Protection of Personal Information Act, 2013) ("POPIA")

Key issues identified by I&APs and stakeholders:

- Synchronisation of EIA process and WULA process:
An application for a Water Use Licence ("WUL") in terms of Section 21(i) and (c) of the National Water Act (Act No. 36 of 1998), was initiated as a result of this Department's advice on the "One Environmental System" principle that must be applied to applications of this nature (i.e., the synchronisation of the processes). The EAP was referred to this Department's circular: EADP 0028/2014 in this regard. The WUL application was initiated and the BGCMA confirmed that sufficient information was submitted to them to consider the application in terms of the National Water Act, 1998.
- Water Court Ruling of 1944:
It is understood that the judgement made by the Water Court under the Irrigation Act of 1912 which bound all the successors in title to the allocation of water to the different farms around the Spitzkop Mountain from the Hazenjacht River. The decision maker concurs with the comment made by Stadler & Swart Attorneys that this Department does not have the authority to overrule a Court Order. Stadler & Swart Attorneys is of the view that the court order is more than a title condition and that it can only be amended or rescinded on application to the Water Court or to a High Court. This Department/Competent Authority in no way intends to overrule, amend or rescind this court order, but the Department must fulfil its statutory mandate. Notwithstanding the EIA process and this Environmental Authorisation, the Holder must comply with any other statutory requirements that may be applicable when undertaking the listed activities (including court orders).

The Department of Environmental Affairs and Development Planning and specifically the Environmental Impact Management Services fulfils the role of the competent authority in considering applications for development in terms of the NEMA Environmental Impact Assessment Regulations 2014 (Government Notice No. R982 of 4 December 2014, as amended). The purpose of the Environmental Impact Assessment Process is to provide information on the potential environmental impacts of a proposed development, the consequences and proposed mitigation measures in line with the mitigation hierarchy. In this way, these processes inform the decision-making process by the competent authority. In no way, does the EIA process change a Water Court ruling, but can rather serve to inform or support procedures when considering an amendment to such a ruling. Similarly, the processes and requirements set out in the National Water Act, 1998 (Act No. 36 of 1998) regarding the required Water Use Licence, may also inform the Water Court ruling. The Holder of this Environmental Authorisation may not undertake the activities without all the necessary approvals.

The FEIAR has provided sufficient information on this matter for this decision. Even if I am wrong on this aspect, the competent authority must fulfil its mandate in terms of NEMA and the application that has been considered.

All other comments and issues raised by the respective Organs of State and registered I&APs that were captured in the Comments and Responses Report were adequately responded to by the EAP.

3. Alternatives

Layout Alternatives:

- Preferred Layout Alternative (herewith approved):

The proposal entails the development of a dam on the Remainder of the Farm Rust en Vrede No. 25 (Spitzkop), Oudtshoorn, (hereinafter referred to as the "Kloof Dam").

This will require the clearance of more than 1-hectare (but less than 20-hectares) of indigenous vegetation. Also, more than 10m³ of soil and sand will be excavated from a watercourse. The Kloof Dam's wall will not exceed a height of 21 metres. The crest will be 320 metres long and 4 metres wide. The total volume of the new storage capacity of the dam will not exceed 500 000 m³.

In addition, the following associated infrastructure will be constructed:

- Installation of a gravity fed pipeline between the Buffer Dam and the Kloof Dam which will cross a minor tributary (as seen in Annexure 2 of this Environmental Authorisation). The dimension of the pipeline will be 355mm (or less) in diameter along 100m length of the existing furrow and then 1.3km long to the Kloof Dam.
- Maintenance of the abstraction point in the upper reaches of Meul River.
- A pipeline between the Kloof Dam and the existing Square Dam (diameter not more than 250mm). The pipeline will be along the existing road.
- Re-alignment of a section of farm road around the high-water mark of the proposed Kloof Dam.
- Relocation of a section of the Eskom powerline and poles.

This Environmental Authorisation does not include the development / expansion of a water abstraction point at Weir 3, as shown on Appendix 2 appended hereto.

- Original Proposal Alternative:

The original proposal, was to construct three dams. The dams are named Upper Kloof Dam (Kloof Dam 1), Lower Kloof Dam (Kloof Dam 2) and Buffer Dam. with a total capacity of 727 000 m³ as well as the repair of at least one additional weir for repair of the water abstraction capacity to what it was before 2017. The combined capacity (old and new) would be 823 000 m³.

The associated infrastructure requirements for the operation of these dams include a pipeline between the Buffer Dam and the Kloof Dams (approximately 300 mm diameter) and a pipeline between the Kloof Dams and the existing Square Dam. In addition, a section of Eskom powerline and a section of farm road need to be relocated to accommodate the dams. The landowner would repair and improve the supply from the existing diversion weir by placing a pipe (most likely a 350 mm diameter pipe) in the open weir and potentially also repairing a damaged weir (weir 3) on the farm. This alternative was not authorised as one dam with the desired capacity was deemed the best practicable environmental option as the impact of the construction of 3 dams was found unacceptable.

"No-Go" Alternative

The option of not implementing the activity means that the landowner will have to plant winter crops only since he will not be able to store his allocated water from the Meul River. The landowner wants to plant almonds, and this requires irrigation over an extended period which requires storage of an adequate supply of water. As such, the no go alternative was not found to be suitable as it would require the constant abstraction of water from the Meul River and no Ecological Reserve ("EWR") would need to be implemented under the existing lawful water use.

4. Impact Assessment and Mitigation Measures

4.1 Activity need and desirability

The applicant wants to store his allocated water from the Meul River for different crops that require irrigation on a more regular basis. As the rainfall is more during the winter months, the dam will provide the storage requirements for this water so that it can be used as irrigation in the drier summer months. Irrigating plants during the dry season allows for increased, stabilised yields, that are more efficient per hectare of land and litre of water.

The landowner is restricted by a Water Court order to only abstract water during specified periods. This application is not to increase abstraction frequency or volume of water, but rather for the storage of the water that may be lawfully abstracted. Should the frequency and volume of abstraction be disputed, said Water Court order, would need to be amended. By taking the EWR into consideration, a positive hydrological impact on the ecology of the Meul River can be anticipated as all the water may currently be abstracted from the Meul River during the abstraction of a water allocation turn ("lei beurt"). For a favourable consideration of the Water Use Licence, it is a legal requirement to ensure that the EWR is excluded from the volume of water abstracted from a river.

4.2 Biophysical Impacts

Impacts on the biophysical environment of the preferred alternative are anticipated. The expected impact on the biophysical environment through the lifecycle of the proposed development is considered to fall within acceptable levels as the construction of the dam is needed for the ongoing agricultural activities on the farm.

The dam will be located in moderately to severely disturbed riverine vegetation and the proposed development is expected to have a negligible impact on the lower riverine vegetation.

Further to this, it is acknowledged that the construction of the dam will require earthworks and the required clearance of vegetation will expose soil to wind and water action, which could potentially result in soil erosion. These activities could also increase storm water runoff during a rain episode. The impacts associated with these activities are considered to be of low significance as they may occur within the dam basin. The materials for the dam wall will be sourced from the new dam basin.

The significance of potential reduced flows to downstream users can be regarded as medium prior to mitigation but low with mitigation as not all the water will be abstracted out of the Meul River during the specific abstraction times. The percentage of water that should freely flow in the river (i.e. EWR) has been determined and must be adhered to. By taking the EWR into consideration a positive hydrological impact on the ecology of the Meul River can be anticipated. The risks and impacts associated with the construction can be mitigated to acceptable levels through the implementation of the EMP construction phase management requirements as well as adhering to the recommendations made by the Freshwater Ecologist.

4.3 Animal Species

The National Web-based Screening tool report indicated a high sensitivity for a number of Species of Conservation Concern (SCC) and as such specialist input was obtained in the form of an Avifaunal and Entomological Reports.

The Avifaunal specialist focussed on the birds that could be impacted on by the development of the new dam. The results indicated that the Striped Flufftail, that could be impacted upon were not located and therefore, impact is not anticipated.

The entomologist investigated the possible sighting of the *Aneuryphymus montanus* and *Physemacris papillosa* grasshoppers. Sampling of three sites at Spitzkop resulted in six different species of grasshoppers being found. However, no *Aneuryphymus montanus* nor *Physemacris papillosa* was encountered. Its preferred host plant *Pentzia dentata* was equally not present in landscape. The impact therefore not anticipated.

4.4 Agricultural

It is anticipated that the proposed development will impact the agricultural resources. The negative impact is a loss of approximately 9.9 hectares of cultivated production land within the footprint of the dam. A positive impact is that the existence of the dam will enable summer irrigation, which will increase the overall agricultural production of the farm. The positive impact will be greater than the negative impact and there will therefore be a net increase in overall production and therefore a net positive agricultural impact.

4.5 Social Impacts

The establishment of the storage dam will enable the owner of Spitzkop to intensify the current farming operations and produce higher value crops. The production of higher value crops will benefit the owner of the farm and also create potential benefits for third parties, including employment and skills development.

However, the findings of the SIA also indicate that the downstream farming operations located along the Kango River are dependent on water from the Kango River for both farming and domestic use. This report states that any activity that has the potential to reduce the flow of the Meul and Kango River would have a negative impact on the existing farming operations. This would result in job losses and impact on livelihoods and the local economy. The government supported farming projects located near Dysseidorp would also be negatively impacted and result in job losses and impact on livelihoods. Given the history of forced removal and dispossession, this would represent an additional unwanted social impact on the Dysseidorp community.

This issue must be considered in the context of the existing water abstraction regime which allows for proportional abstraction of water from the Meul River and which should still be implemented. It is understood that under current water legislation, it is a requirement for the water user to record the volume of water that is abstracted from the Meul River and that this information be reported to the relevant water authority. It is reasonable to expect that the volume of water to be abstracted and stored will not exceed the volume allocated to the specific properties. Furthermore, the Environmental Authorisation requires that provision be made for the release of the EWR requirements.

4.6 Heritage / Archaeological Aspects

A response was issued by Heritage Western Cape ("HWC") on 14 March 2019 whereby Heritage Western Cape confirmed that there is no reason to believe that the proposed development of a dam will impact on heritage resources and therefore no further action under Section 38 of the National Heritage Resources Act (Act 25 of 1999) is required.

The competent authority is satisfied that the evaluation fulfils the requirements of the relevant heritage resources authority in terms of the National Heritage Resources Act, 1999 and the comments and recommendations of the relevant heritage resources authority with regard to the proposed development have been taken into account.

4.7 Other Impacts

No other impacts of significance are anticipated.

5. **Scope and Validity Period of authorisation**

This environmental authorisation does not define specific operational aspects. The applicant has indicated that the construction activities (non-operational aspects) should be completed within 9 months. The environmental authorisation's validity period has been granted for a period of five (5) years, (which includes maintenance activities according to the maintenance management plan) during which period the construction activities must commence and be concluded, including the post-construction rehabilitation and monitoring, maintenance activities, and submission of the final environmental audit. In light of the proposed implementation programme, the monitoring and post-construction rehabilitation can be adequately incorporated in the construction phase. Where the activity has been commenced with, the EIA Regulations, 2014 allow that (upon application) the period for which the environmental authorisation is granted may be extended for a further period of 5-years.

6. **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.

7. **Conclusion**

After consideration of the information and factors listed above, the Department made the following findings:

- (a) The identification and assessment of impacts are detailed in the FEIAR dated August 2022 and sufficient assessment of the key identified issues and impacts have been completed.
- (b) The procedure followed for the impact assessment is adequate for the decision-making process.
- (c) The proposed mitigation of impacts identified and assessed, curtails the identified negative impacts.
- (d) The EMPr proposed mitigation measures for the pre-construction, construction and rehabilitation phases of the development and were included in the FEIAR. The mitigation measures will be implemented to manage the identified environmental impact during the construction phase.

In view of the above, the NEMA principles, compliance with the conditions stipulated in this Environmental Authorisation, and compliance with an approved EMPr, the Competent Authority is satisfied that the proposed listed activities 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 activities can be mitigated to acceptable levels.

----- **END** -----