



EIA REFERENCE: 16/3/3/2/E4/5/1058/21
NEAS REFERENCE: WCP/EIA/0000992/2021
DATE: 09 September 2022

The Trustees
Klipfontein Agricultural Trust
P O Box 1643
GRABOUW
7160

Attention: Mr. Derich Priga

Tel: 021 300 1634
Email: marketing@dmfresh.co.za

Dear Sir

APPLICATION FOR ENVIRONMENTAL AUTHORISATION IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998) AND THE ENVIRONMENTAL IMPACT ASSESSMENT ("EIA") REGULATIONS, 2014: THE PROPOSED CONSTRUCTION OF AN IN-STREAM DAM ON PORTION 23 OF FARM KLIPFONTEIN NO. 82, VYEBOOM, CALEDON

1. With reference to the above application, the Department hereby notifies you of its decision to **refuse** Environmental Authorisation, attached herewith, together with the reasons for the decision.
2. In terms of Regulation 4 of the EIA Regulations, 2014 (as amended), you are hereby instructed to ensure, within fourteen (14) days of the date of the decision on the application, 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 (as amended), which prescribes the appeal procedure to be followed. This procedure is summarized in the attached refusal of Environmental Authorisation.

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

Yours faithfully

MR. ZAAHIR TOEFY

DIRECTOR: DEVELOPMENT MANAGEMENT – REGION 1

DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING

CC: (1) Ms A Hurter (Cornerstone Environmental Consultants (Pty) Ltd) Email: annemarie@cornerstoneenviro.co.za
(2) Pieter de Villiers (Cornerstone Environmental Consultants (Pty) Ltd) Email: pieter@cornerstoneenviro.co.za
(3) Mr. Johan Viljoen (Theewaterskloof Municipality) Email: johanvi@twk.org.za
(4) Ms A Duffel-Canham (CapeNature) Email: aduffel-canham@capenature.co.za



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REFUSAL OF ENVIRONMENTAL AUTHORISATION

APPLICATION FOR ENVIRONMENTAL AUTHORISATION IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) AND THE ENVIRONMENTAL IMPACT ASSESSMENT ("EIA") REGULATIONS, 2014 (AS AMENDED): THE PROPOSED DEVELOPMENT OF AN IN-STREAM DAM ON PORTION 23 OF FARM KLIPFONTEIN NO. 82, VYEBOOM, CALEDON

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 **refuses Environmental Authorisation** to the applicant to undertake the Listed Activities specified in section B below with respect to the preferred Alternative that is described in the Environmental Impact Assessment Report ("EIAR") received by the Department on 23 May 2022.

A. DETAILS OF THE APPLICANT

Klipfontein Agricultural Trust
c/o Mr Derich Priga
P O Box 1643
GRABOUW
7160

Tel: 021 300 1634
Email: marketing@dmfresh.co.za

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

B. LISTED ACTIVITIES REFUSED

Listed Activities	Project Description
Listing Notice 1 Activity Number: 19 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;	The construction of the proposed in-stream dam would require the moving of more than 10m ³ of material into and from the tributary of the Riviersonderend.

<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; or (e) where such development is related to the development of a port or harbour, in which case activity 26 in Listing Notice 2 of 2014 applies. 	
<p>Listing Notice 1</p> <p>Activity Number: 27 The clearance of an area of 1 hectares or more, but less than 20 hectares of indigenous vegetation, except where such clearance of indigenous vegetation is required for—</p> <ul style="list-style-type: none"> (i) the undertaking of a linear activity; or (ii) maintenance purposes undertaken in accordance with a maintenance management plan. 	<p>The proposed activity would result in clearing an area of approximately 2.5ha, which contains critically endangered indigenous vegetation, during the establishment of the dam.</p>
<p>Listing Notice 2</p> <p>Activity Number: 16 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 development would have a dam wall of 16 m high.</p>
<p>Listing Notice 3</p> <p>Activity Number: 12 The clearance of an area of 300 square metres or more of indigenous vegetation except where such clearance of indigenous vegetation is required for maintenance purposes undertaken in accordance with a maintenance management plan.</p> <ul style="list-style-type: none"> i. Western Cape <ul style="list-style-type: none"> i. Within any critically endangered or endangered ecosystem listed in terms of section 52 of the NEMBA or prior to the publication of such a list, within an area that has been identified as critically endangered in the National Spatial Biodiversity Assessment 2004; ii. Within critical biodiversity areas identified in bioregional plans; iii. Within the littoral active zone or 100 metres inland from high water mark of the sea or an estuarine functional zone, whichever distance is the greater, excluding where such removal will occur behind the development setback line on erven in urban areas; 	<p>The proposed development would result in the clearance of more than 300 m² of critically endangered indigenous vegetation.</p>

<ul style="list-style-type: none"> iv. On land, where, at the time of the coming into effect of this Notice or thereafter such land was zoned open space, conservation or had an equivalent zoning; or v. On land designated for protection or conservation purposes in an Environmental Management Framework adopted in the prescribed manner, or a Spatial Development Framework adopted by the MEC or Minister. 	
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The abovementioned Listed Activities are hereinafter referred to as **“the Listed Activities”**.

C. SITE DESCRIPTION AND LOCATION

The site where the Listed Activities were proposed is on Portion 23 of Farm Klipfontein No. 82, Vyeboom, Caledon and has the following co-ordinates:

	Latitude (S)	Longitude (E)
Co-ordinates of centre point:	34° 2' 31" South	19° 10' 24" East

The SG digit codes are: C0130000000008200023

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

The above property is hereinafter referred to as **“the site”**.

D. DETAILS OF THE ENVIRONMENTAL ASSESSMENT PRACTITIONER

Cornerstone Environmental Consultants (Pty) Ltd
 c/o Ms A Hurter
 PO Box 12606
STELLENBOSCH
 7613

Tel: 021 887 9099
 Email: annemarie@cornerstoneenviro.co.za

E. LEGISLATIVE REQUIREMENTS

Administration of Appeal

1. In accordance with Regulation 46 of the EIA Regulations, 2014 (as amended), an applicant may not submit an application which is substantially similar to a previous application that has been refused, unless any appeals on such refusal have been finalised or the time period for the submission of such appeal has lapsed.
2. The holder must in writing, within fourteen (14) calendar days of the date of this decision–
 - 2.1. notify all registered Interested and Affected Parties (“I&APs”) of –
 - 2.1.1. the decision reached on the application;
 - 2.1.2. the reasons for the decision as included in Annexure 3;
 - 2.1.3. the date of the decision; and
 - 2.1.4. the date when the decision was issued.

- 2.2. 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 F below;
- 2.3. draw the attention of all registered I&APs to the manner in which they may access the decision;
- 2.4. provide the registered I&APs with the
 - 2.4.1. name of the holder (entity) of this Environmental Authorisation,
 - 2.4.2. name of the responsible person for this Environmental Authorisation,
 - 2.4.3. postal address of the holder,
 - 2.4.4. telephonic and fax details of the holder,
 - 2.4.5. e-mail address, if any, of the holder,
 - 2.4.6. 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 National Appeals Regulations, 2014 (as amended).

F. 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 twenty (20) 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 twenty (20) 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 twenty (20) 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 2659)
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 at 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>.

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

Yours faithfully

MR. ZAAHIR TOEFY
DIRECTOR: DEVELOPMENT MANAGEMENT – REGION 1
DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING
DATE OF DECISION: 09 SEPTEMBER 2022

CC: (1) Ms A Hurter (Cornerstone Environmental Consultants (Pty) Ltd) Email: annemarie@cornerstoneenviro.co.za
(2) Pieter de Villiers (Cornerstone Environmental Consultants (Pty) Ltd) Email: pieter@cornerstoneenviro.co.za
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ANNEXURE 1: LOCALITY MAP(S)



Figure 2: Topographic map indicating the location of Klipfontein Farm, south of the Theewaterskloof Dam.

ANNEXURE 2: SITE PLAN



Appendix A2

Aerial image indicating the No-Go Areas around the watercourse at Klipfontein Farm and the proposed dam footprint.

Scale: As per Google Image



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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 by the Department on 20 October 2021, the final Scoping Report and Plan of Study ("SR&PoS") received by the Department on 8 December 2021, the EMPr and MMP submitted together with the final EIAR for decision-making on 23 May 2022; and the additional information received on 2 and 6 September 2022;
- b) Relevant information contained in the Departmental information base, including the Guidelines on Public Participation, Need and Desirability and Alternatives (dated March 2013);
- c) The objectives and requirements of relevant legislation, policies and guidelines, including section 2 of the NEMA;
- d) The comments received from I&APs and the responses thereto, included in the EIAR;
- e) The balancing of negative and positive impacts and proposed mitigation measures; and
- f) A site visit was conducted by officials of the Department on 8 September 2022.

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 that was conducted for this application included the following:

- identification of and engagement with I&APs;
- placing of notice boards at the site where the listed activities were to be undertaken, the public library and community notice boards on 9 September 2021;
- giving written notice to the owners of the land and owners and occupiers of land adjacent to the site where the Listed Activities were to be undertaken, the Municipality, and Organs of State and State Departments having jurisdiction in respect of any aspect of the proposed development, on 14 October 2021;
- the placing of a newspaper advertisement in the 'Hermanus Times' on 20 October 2021; and
- making the in-process Scoping Report and Plan of Study ("SR and PoS") available to I&APs for comment from 20 October 2021 and the in-process draft EIAR from 12 April 2022.

2. Alternatives

Two different storage capacities, *i.e.*, 75 000m³ or 49 000m³, for the proposed development of the in-stream dam on Portion 23 of Farm Klipfontein No. 82, Vyeboom, Caledon, were considered, but only the preferred alternative was assessed during the EIA phase of the process. The main motivation for the proposed development is to provide sufficient irrigation water for the established fruit orchards on the Klipfontein Farm and the dam with the bigger storage capacity is preferred from an engineering and financial perspective. It is proposed to store water during the rainy season, to be utilised during the dry summer season when water is scarce.

2.1 The Preferred Alternative (hereby refused)

The Preferred Alternative entails the development of an in-stream dam on Portion 23 of the Farm Klipfontein No. 82, Vyeboom, Caledon comprising the following:

The proposed dam will have a total storage capacity of approximately 75 000m³, a wall height of approximately 16m and water surface area at Full Supply Level of 14.6ha.

This alternative is refused, based on insufficient information being available regarding the consideration of alternatives, the need and desirability of the proposed dam and the water availability to meet the farm's irrigation needs.

2.2 'No-Go' Alternative

The "No-go" alternative of not proceeding with the proposed development would result in the proposed dam not being constructed, thereby not providing security of water storage during the drier summer months. This could have a negative impact on the possibility to irrigate the existing cultivated areas, due to a lack of sufficient water availability.

3. **Key Factors Affecting the Decision**

In reaching its decision to refuse the proposed development, the Competent Authority took into account all the information submitted in support of the application, and specifically the information provided in the final EIAR, as prescribed in terms of Appendix 3 of the EIA Regulations, 2014 (as amended).

In terms of Appendix 3 (1)(v) *"An environmental impact assessment report must contain the information that is necessary for the competent authority to consider and come to a decision on the application, and must include — any specific information that may be required by the competent authority"*.

A number of issues were not sufficiently dealt with in the final EIR, resulting in insufficient information being available for the purposes of making an informed decision.

The need and desirability of the proposed dam has not been sufficiently explained. In addition, the alternatives that were considered did not address the environmental impacts identified through the application process, were not adequately investigated or comparatively assessed.

Proof of the existing water use rights was not included in the final EIAR. The Competent Authority consulted directly with the Breede-Gouritz Catchment Management Agency regarding the latter and it was subsequently confirmed that the existing water use rights are sufficient to support the development of the proposed dam. This matter has therefore been resolved. However, it was indicated that additional water would be required for the irrigation of the cultivated areas on the property and the applicant was advised to apply for such additional rights.

Since the final EIR does not sufficiently address the issues highlighted above, it does not comply with Appendix 3(1) (v), i.e., the specific information requirements relevant to the EIA application for the proposed development of an in-stream dam on Portion 23 of the Farm Klipfontein No. 83, Vyeboom, Caledon.

In light of the above, Environmental Authorisation is therefore refused based on insufficient information to make an informed decision with respect to the merit of the application.

4. **Your attention is drawn to Regulation 21(2)(d) of the EIA Regulations, 2014 (as amended), which states that –**

"Subject to regulation 46, and if the findings of the scoping report are still valid and the environmental context has not changed, the submission of a scoping report as contemplated in subregulation (1) need not be complied with—

- (a) in cases where a scoping report was accepted as part of a previous application for environmental authorisation and the application has lapsed or was refused because of insufficient information;*
- (b) on condition that regulation 16 is complied with and that such application is accompanied by proof that registered interested and affected parties, who participated in the public participation process conducted as part of the previous application, have been notified of this intended resubmission of the application prior to submission of such application;*
- (c) if the application contemplated in paragraph (b) is submitted by the same applicant for the same development, as applied for and lapsed or refused as contemplated in paragraph (a); and*
- (d) if an environmental impact assessment report inclusive of specialist reports and an EMP, which must have been subjected to a public participation process of at least 30 days and which*

reflects the incorporation of comments received, including any comments of the competent authority, is submitted within a period of two years from the date of the acceptance of the scoping report contemplated in paragraph (a)."

5. **National Environmental Management Act, 1998 (Act No. 107 of 1998) 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 activity (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.

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