



**REFERENCE NUMBER:** 14/2/4/2/2/B1/17/0006/19

**ENQUIRIES:** Shafeeq Mallick

**BY REGISTERED MAIL**

The Director  
Breedecom 003 (Pty) Ltd  
PO Box 92  
DE DOORNS  
6875

Tel: (023) 354 8340  
Email: wkbeukes@mweb.co.za

**Attention: Mr Wouter Kriegler Beukes**

Dear Sir

**APPLICATION IN TERMS OF SECTION 24G OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998) ("NEMA"): UNLAWFUL CONSTRUCTION OF A DAM ON FARM FAERIE GLEN REMAINDER 187, 1/187, 5/187 AND 14/187, WORCESTER**

With reference to your application dated 08 April 2019 in terms of section 24G of the NEMA for the consequences of unlawful commencement of listed activities identified in terms of the NEMA, find below the decision in respect of your application.

**ENVIRONMENTAL AUTHORISATION**

**A. DECISION**

By virtue of the powers conferred by section 24G of the NEMA and the *Environmental Impact Assessment Regulations, 2014* ("EIA Regulations, 2014") (as amended), the competent authority herewith **grants environmental authorisation** to the applicant to continue with the listed activities as specified in Section C below in accordance with

the preferred alternative as described in the application and environmental assessment dated 08 April 2019.

The granting of this Environmental Authorisation is for the continuation, conducting or undertaking of the listed activities as described in Section C below and is subject to compliance with the conditions set out in Section G. This Environmental Authorisation shall only take effect from the date on which it has been issued.

The Environmental Authorisation does not exempt the holder thereof from compliance with any other applicable legislation. In particular, the relevant sections and regulations of the *National Water Act, 1998 (Act 36 of 1998)*.

## B. DETAILS OF THE APPLICANT FOR THIS ENVIRONMENTAL AUTHORISATION

Breedecom 003 (Pty) Ltd.

C/o Mr Wouter Kriegler Beukes

PO Box 92

DE DOORNS

6875

Tel: (023) 354 8340

Email: wkbeukes@mweb.co.za

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

## C. LIST OF ACTIVITIES AUTHORISED

Listed Activities	Activity/Project Description
<i>Government Notice No. R. 327 of 7 April 2017</i> <b>Activity Number:</b> 12 Activity Description: <i>The development of – (i) dams or weirs, where the dam or</i>	This includes the proposed relocation of the DeWet Sloot by the botanical specialist. Additionally, the establishment of vineyards (poles and netting) would

<p><i>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; where such development occurs – (a) within a watercourse or (c) if no development setback exists, within 32 metres of a watercourse, measured from the edge of a watercourse.</i></p>	<p>constitute "infrastructure" which is more than 100m<sup>2</sup> in size within 32m of the Alskloof Stream.</p>
<p>Government Notice No. R. 327 of 7 April 2017</p> <p><b>Activity Number: 19</b></p> <p>Activity Description: <i>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;</i></p>	<p>The repair of the existing top dam and enlargement of the bottom dam.</p> <p>The road between top and bottom dam resurfaced and infill of the river crossing.</p> <p>The Alskloof River (southern tributary) has been infilled by the irrigation areas and diverted towards the bottom dam.</p> <p>Two proposed pipeline river crossings as part of the preferred alternative.</p> <p>Upgrades to Tierkloof, Alskloof and Vondelingskloof diversions.</p> <p>The realignment of the DeWet Sloot.</p>
<p>Government Notice No. R. 327 of 7 April 2017</p> <p><b>Activity Number: 48</b></p> <p>Activity Description: <i>The expansion of-</i></p> <p><i>(i) infrastructure or structures where the physical footprint is expanded by 100 square metres or more; or</i></p> <p><i>(ii) dams or weirs, where the dam or weir, including infrastructure and water surface area, is expanded by 100 square metres or more; where such expansion occurs -</i></p> <p><i>(a) within a watercourse;</i></p> <p><i>(c) if no development setback exists, within 32 metres of a watercourse, measured from the edge of a</i></p>	<p>The repair of the existing top dam and enlargement of the bottom dam.</p> <p>The road between top and bottom dam resurfaced and infill of the river crossing.</p> <p>The Alskloof River (southern tributary) has been infilled by the irrigation areas and diverted towards the bottom dam.</p> <p>Two proposed pipeline river crossings as part of the preferred alternative.</p> <p>Upgrades to Tierkloof, Alskloof and Vondelingskloof diversions.</p> <p>The realignment of the DeWet Sloot.</p>

<p>watercourse;</p>	
<p>Government Notice No. R. 327 of 7 April 2017</p> <p><b>Activity Number: 66</b></p> <p>Activity Description: <i>The expansion of a dam where –</i></p> <p><i>(i) the highest part of the dam wall, as measured from the outside toe of the wall to the highest part of the wall, was originally 5 metres or higher and where the height of the wall is increased by 2,5 metres or more; or</i></p> <p><i>(ii) where the high-water mark of the dam will be increased with 10 hectares or more.</i></p>	<p>The enlargement of the bottom dam would involve the raising of the dam wall by 9.6m and the full footprint of the dam would be 11ha.</p>
<p>Government Notice No. R. 325 of 7 April 2017</p> <p><b>Activity Number: 13</b></p> <p>Activity Description: 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 total footprint of the preferred alternative is 100.18 ha.</p>
<p>Government Notice No. R. 325 of 7 April 2017</p> <p><b>Activity Number: 15</b></p> <p>Activity Description: The clearance of an area of 20 hectares or more of indigenous vegetation.</p>	<p>46.9 ha of Critical Biodiversity Area (CBA) 1 semi-intact endangered vegetation has been cleared for the phased table grapes irrigation areas.</p>
<p>Government Notice No. R. 324 of 7 April 2017</p> <p><b>Activity Number: 12</b></p> <p>Activity Description: The clearance of an area of 300 square metres or more of indigenous vegetation</p>	<p>46.9 ha of CBA 1 semi-intact endangered vegetation has been cleared for the phased table grapes irrigation areas.</p> <p>Additional clearance of 1.33 ha of CBA 1 intact vegetation at the top dam.</p> <p>Further potential clearance and loss of</p>

<p>i. 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>CBA 1 at the top dam due to the proposed Tierkloof diversion upgrade, the pipeline installations from the Tierkloof diversion to the top dam, between the top and bottom dam and between the Vondelingskloof diversion and bottom dam.</p>
<p><i>Government Notice No. R. 324 of 7 April 2017</i></p> <p><b>Activity Number:</b> 14</p> <p>Activity Description: The development of —</p> <p>(ii) infrastructure or structures with a physical footprint of 10 square metres or more; where such development occurs—</p> <p>(a) within a watercourse;</p> <p>(b) in front of a development setback; or</p> <p>(c) if no development setback has been adopted, within 32 metres of a watercourse, measured from the edge of a watercourse;</p> <p>i. Western Cape</p> <p>i. Outside urban areas:</p> <p>(aa) A protected area identified in terms of NEMPAA, excluding conservancies;</p> <p>(bb) National Protected Area Expansion Strategy Focus areas;</p> <p>(cc) World Heritage Sites;</p> <p>(dd) Sensitive areas as identified in an environmental management framework as contemplated in chapter 5 of the Act and as adopted by the competent authority;</p>	<p>The installation of all proposed pipeline infrastructure would cover an area greater than 10m<sup>2</sup> within 32m of watercourses, within CBA areas.</p>

<p>(ee) Sites or areas listed in terms of an international convention;</p> <p>(ff) Critical biodiversity areas or ecosystem service areas as identified in systematic biodiversity plans adopted by the competent authority or in bioregional plans;</p> <p>(gg) Core areas in biosphere reserves; or</p> <p>(hh) Areas on the estuary side of the development setback line or in an estuarine functional zone where no such setback line has been determined.</p>	
<p><i>Government Notice No. R. 324 of 7 April 2017</i></p> <p><b>Activity Number: 23</b></p> <p>Activity Description: The expansion of –</p> <p>dams or weirs where the dam or weir is expanded by 10 square metres or more;</p> <p>or</p> <p>(ii) infrastructure or structures where the physical footprint is expanded by 10 square metres or more; where such expansion occurs –</p> <p>(a) within a watercourse;</p> <p>(c) if no development setback has been adopted, within 32 metres of a watercourse, measured from the edge of a watercourse;</p> <p>i. Western Cape</p> <p>i. Outside urban areas:</p> <p>(aa) A protected area identified in terms of NEMPAA, excluding conservancies;</p> <p>(bb) National Protected Area Expansion Strategy Focus areas;</p> <p>(cc) World Heritage Sites;</p> <p>(dd) Sensitive areas as identified in an</p>	<p>The expansion of the bottom dam and the upgrading of the top dam have included the expansion of 10m<sup>2</sup> or more within a watercourse and within 32m of a watercourse in areas demarcated as CBAs.</p> <p>The upgrades to the diversions would also cumulatively add up to 460m<sup>2</sup>, all within 32m of a watercourse, within CBA areas.</p>

<p>environmental management framework as contemplated in chapter 5 of the Act and as adopted by the competent authority;</p> <p>(ff) Critical biodiversity areas or ecosystem service areas as identified in systematic biodiversity plans adopted by the competent authority or in bioregional plans.</p>	
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The abovementioned list is hereinafter referred to as “the listed activities/development”.

#### D. PROPERTY DESCRIPTION AND LOCATION

The listed activities commenced on Farm Brandwacht RE/187, 1/187, 5/187 and 14/187, Worcester.

The SG digit codes are: RE/187: C08500000000018700000  
1/187: C08500000000018700001  
5/187: C08500000000018700005  
14/187: C08500000000018700014

The co-ordinates for the property boundary for 1/187 are:

Point	Latitude (S)	Longitude (E)
1	33° 33' 59.22" South	19° 25' 27.69" East
2	33° 34' 18.50" South	19° 25' 31.48" East
3	33° 34' 38.87" South	19° 25' 02.44" East
4	33° 34' 25.12" South	19° 24' 53.02" East

The co-ordinates for the property boundary for RE/187 are:

Point	Latitude (S)	Longitude (E)
1	33° 33' 58.16" South	19° 26' 26.23" East
2	33° 34' 32.62" South	19° 26' 14.70" East
3	33° 35' 00.64" South	19° 25' 15.41" East

4	33° 34' 38.87" South	19° 25' 02.44" East
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The co-ordinates for the property boundary for 5/187 are:

Point	Latitude (S)	Longitude (E)
1	33° 34' 09.08" South	19° 27' 05.39" East
2	33° 34' 32.10" South	19° 26' 15.57" East
3	33° 34' 24.22" South	19° 26' 05.46" East
4	33° 33' 58.18" South	19° 26' 26.45" East

The co-ordinates for the property boundary for 14/187 are:

Point	Latitude (S)	Longitude (E)
1	33° 34' 40.77" South	19° 26' 25.40" East
2	33° 35' 21.21" South	19° 26' 25.60" East
3	33° 35' 30.35" South	19° 25' 51.78" East
4	33° 34' 53.23" South	19° 25' 42.94" East
5	33° 35' 00.97" South	19° 25' 15.83" East
6	33° 35' 32.41" South	19° 26' 15.54" East

The co-ordinates for the site boundary (excluding the RE/2/187 servitude) are:

Point	Latitude (S)	Longitude (E)
1	33° 33' 41.35" South	19° 26' 11.49" East
2	33° 34' 09.36" South	19° 27' 04.02" East
3	33° 35' 19.60" South	19° 26' 25.90" East
4	33° 35' 29.81" South	19° 25' 51.63" East
5	33° 34' 52.81" South	19° 25' 43.13" East
6	33° 35' 02.19" South	19° 25' 16.66" East
7	33° 34' 24.55" South	19° 24' 52.63" East
8	33° 33' 55.36" South	19° 25' 33.32" East

Refer to Annexure 1: Locality Plan.

Herein-after referred to as "the site".



## **E. DETAILS OF THE ENVIRONMENTAL ASSESSMENT PRACTITIONER (“EAP”)**

Holland and Associates Environmental Consultants

C/o Ross Holland/Emily Herschell

P.O. Box 31108

TOKAI

7966

Tel: (021) 914 2833

Fax: (086) 723 1643

Email: ross@hollandandassociates.net

emily@hollandandassociates.net

## **F. DETAILS OF THE ACTIVITY/IES UNDERTAKEN**

The unlawful clearing of vegetation and the upgrading of two dams on Farm Faerie Glen Remainder 187, 1/187, 5/187 and 14/187, Worcester.

In 2017, Breedecom 003 (Pty) Ltd (“the applicant”), purchased the adjoining agricultural properties north of Worcester in the Western Cape, with the intention of cultivating vineyards for table grape production and securing a sustainable water supply for the farm. This was to be achieved through the repair and enlargement of two dams on site (known as the ‘top’ and ‘bottom’ dams) and associated infrastructure, and through the clearance of virgin land for cultivation.

In December 2017, the applicant initiated significant works in furtherance of the aforementioned activities.

Work completed on site to date:

- The clearing of land for proposed establishing of vineyards - 46.9 ha of CBA 1 semi-intact endangered vegetation has been cleared for the phased table grapes, as well as the clearance of 1.33 ha of CBA 1 intact vegetation at the top dam;
- Repair works were done to the top dam;
- The enlarging of the bottom dam;

- The resurfacing of the road; and
- The Infilling and rerouting of a tributary

Still to be completed on site:

- The upgrading of the bottom dam by raising of the dam wall by 9.6m (the full footprint of the dam would be 11 ha);
- The proposed relocation of the DeWet Sloot;
- The establishment of vineyards (i.e. poles and netting);
- The construction of the packhouse; and
- Upgrades to Tierkloof, Alskloof and Vondelingskloof diversion channels (potential further clearance of CBA vegetation)

## **G. CONDITIONS OF AUTHORISATION**

The following are conditions of authorisation that are set and must be implemented for this Environmental Authorisation.

### **PART I**

#### **Scope of authorisation**

1. The holder is authorised to undertake the listed activities specified in Section C above in accordance with and restricted to the preferred Alternative described in the application and assessment report dated 08 April 2019 on the site as described in Section D above.
2. The Environmental Authorisation is valid for a period of **five years** from the date of the decision.
3. The development must be concluded within 5 years from the date of continuation of the first listed activity.
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 F 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 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.

## **PART II**

### **Written notice to the competent authority**

6. Seven (7) calendar days' notice, in writing, must be given to the competent authority before continuation of commencement of construction activities.

6.1 The notice must make clear reference to the site details and 24G Reference number given above.

6.2 The notice must also include proof of compliance with the following condition:  
Condition 7

## **PART III**

### **Notification and administration of an 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 2;

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 I 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; and
- 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 *National Appeal Regulations, 2014*.

8. The listed activities, including site preparation, may not commence within 34 (thirty-four) calendar days from the date of issue of this Environmental Authorisation. 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.

#### **PART IV**

##### **Management of the activity/development**

9. The draft Environmental Management Programme ("EMPr") compiled by Holland and Associates Environmental Consultants of April 2019 and 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.

#### **PART V**

##### **Monitoring**

11. The holder must appoint a suitably experienced Environmental Control Officer ("ECO"), before continuation of commencement of any land clearing or construction activities to ensure compliance with 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 activities, and must be

made available to anyone on request, including a publicly accessible website (if applicable).

13. Access to the site referred to in Section D 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.

## **PART VI**

### **Auditing**

14. In terms of regulation 34 of the *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 bi-annually for the first 3 years of operation and annually thereafter, and upon receiving such request in writing from the competent authority. The Audit Report must be prepared by an independent person and must consider all the information required in Appendix 7 of the *EIA Regulations, 2014*.

The holder must, within 7 (seven) days of the submission of the 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.

## **PART VII**

### **Activity/ Development 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 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; 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. The area identified and earmarked for the conservation agreement, as indicated in the letter from Breedecom 003 (Pty) Ltd dated 06 May 2020, must be formalized in the form of a Conservation Management Plan (CMP) and submitted to the Department within six months from date of this decision.
18. This CMP must be made available for comment from CapeNature and is subject to approval from the Department.
19. All relevant sections and regulations of the *National Water Act, 1998* (Act 36 of 1998) regarding water use must be adhered to.
20. No pollution of surface water or ground water resources may occur.
21. Storm water management must be addressed and applied both in terms of flooding and pollution potential.
22. The boreholes on site must be concrete plugged and be sealed off with welded capping plates.
23. The pipeline, constructed to enable the use of the boreholes, must be removed.
24. In terms of this environmental authorisation, the total irrigated area allowed on the properties must be limited to 75 hectares, in accordance with the preferred alternative.

## H. RECOMMENDATIONS

1. All conditions and control measures relating to the water usage on site, included as measures suggested for the preferred alternative, should be considered as conditional in the water use license application to ensure compliance.
2. All water resource abstraction points need to be equipped with a water meter and reported to the BGCMA and the Brandwag Irrigation Board on a monthly basis.

## I. 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.
2. Non-compliance with a condition or term of this Environmental Authorisation or EMPr may render the holder liable to criminal prosecution.
3. If the holder does not continue, conduct or undertake listed activities within the period referred to in Condition 2 of Section G, this Environmental Authorisation shall lapse for that activity or activities, 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 must be made on condition that the environmental authorisation is valid on the date of receipt of such amendment application.

Note that:

(1) In terms of regulation 28(1A) of the *EIA Regulations, 2014* the competent authority shall not accept or process an application for amendment of an environmental authorisation if such environmental authorisation is not valid on the day of receipt of such amendment application, but may consider an application for environmental authorisation for the same development.

(2) In terms of regulation 28(1B) of the *EIA Regulations, 2014* an environmental authorisation which is the subject of an amendment application remains valid pending the finalisation of the amendment application.

(3) It is an offence in terms of section 49A(1)(a) of the 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.

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, 2014* 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* or any relevant legislation that may be applicable at the time.

## **J. APPEALS**

Appeals must comply with the provisions contained in the *National Appeal Regulations, 2014*.

1. An appellant (if the holder) must –
  - 1.1 submit an appeal in accordance with regulation 4 *National Appeal Regulations, 2014* to the Appeal Administrator and a copy of the appeal to any registered I&APs, any Organ of State with interest in the matter and the decision maker within 20 (twenty) calendar days from the date the holder was notified by the competent authority of this decision.
2. An appellant (if NOT the holder) must –
  - 2.1 submit an appeal in accordance with regulation 4 *National Appeal Regulations, 2014* to the Appeal Administrator, and a copy of the appeal to the holder, any registered I&APs, any Organ of State with interest in the matter and



the decision maker within 20 (twenty) calendar days from the date the holder notified the registered I&APs of this decision.

3. The holder (if not the appellant), the decision-maker, I&APs and 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. This appeal and responding statement must be submitted to the address listed below:

By post: Attention: Marius Venter  
Western Cape Ministry of Local Government, Environmental Affairs &  
Development Planning  
Private Bag X9186, Cape Town, 8000; or

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, 8000; or

By e-mail: [DEADP.Appeals@westerncape.gov.za](mailto:DEADP.Appeals@westerncape.gov.za)

**Note:** You are also requested to submit an electronic copy (Microsoft Word format) of the appeal and any supporting documents to the Appeal Administrator to the address listed above and/ or via e-mail to [DEADP.Appeals@westerncape.gov.za](mailto:DEADP.Appeals@westerncape.gov.za).

5. A prescribed appeal form, as well as assistance regarding the appeal processes is obtainable from the office of the appeal authority/ at: Tel. (021) 483 3721, E-mail [DEADP.Appeals@westerncape.gov.za](mailto:DEADP.Appeals@westerncape.gov.za) or URL <http://www.westerncape.gov.za/eadp>.

## **K. CONSEQUENCES OF NON-COMPLIANCE WITH CONDITIONS**

Non-compliance with a condition or term of this Environmental Authorisation or EMPr may result in suspension or withdrawal of this Environmental Authorisation and may render the holder liable for criminal prosecution.

## L. DISCLAIMER

The Western Cape Government, the Municipality, 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.

Yours faithfully

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**ADV. CHARMAINE MARÉ**  
**DIRECTOR: ENVIRONMENTAL GOVERNANCE**

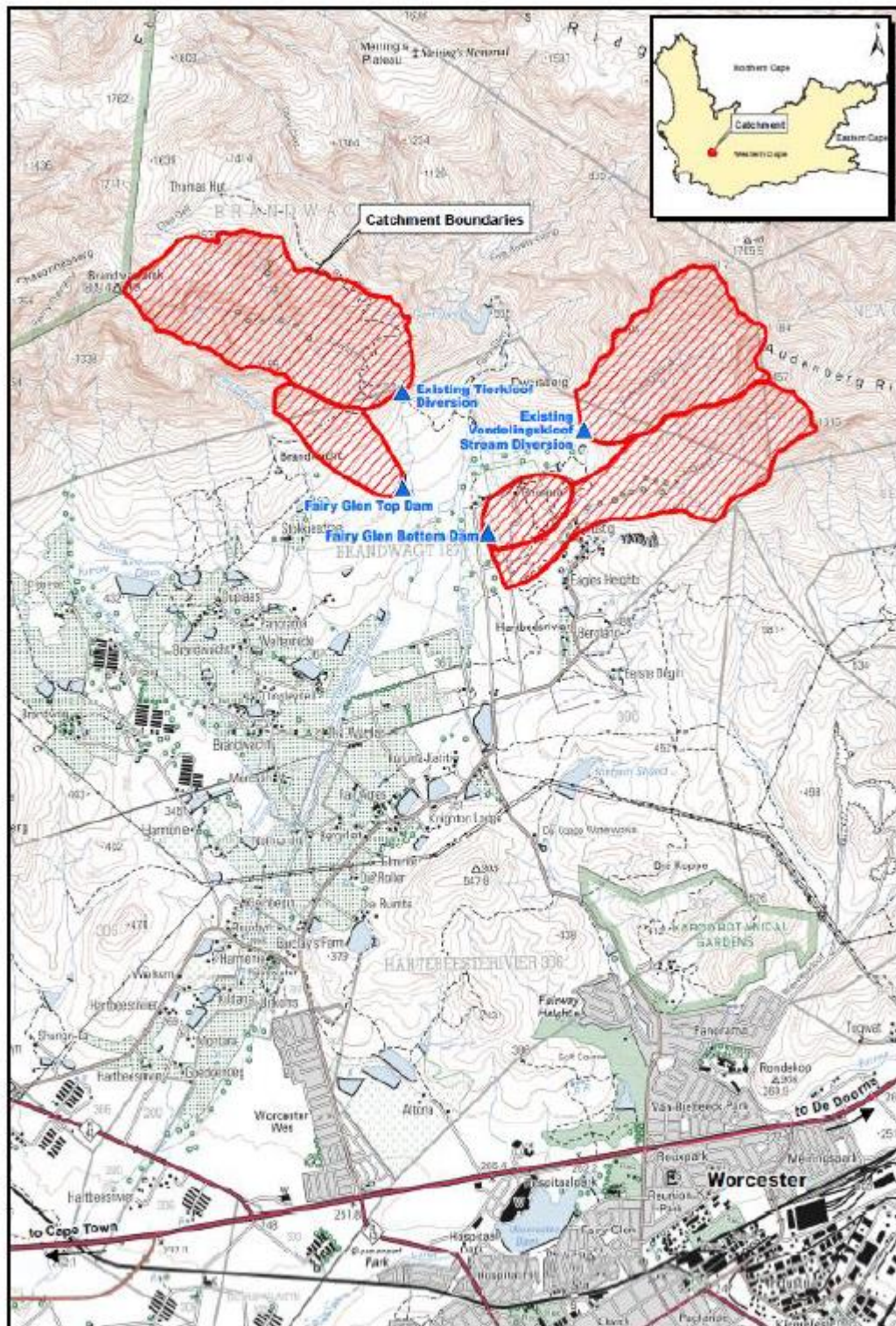
DATE OF DECISION: 27 August 2020

CC: Ross Holland (Holland & Associates Environmental Consultants)

Fax: (086) 653 1765

Email: [Ross@hollandandassociates.net](mailto:Ross@hollandandassociates.net)

# ANNEXURE 1: LOCALITY MAP



**FOR OFFICIAL USE ONLY:**

**S24G REFERENCE:**

**14/2/4/2/2/B1/17/0006/19**

**ANNEXURE 2: REASONS FOR THE DECISION**

This Environmental Authorisation is in respect of the consequences of commencement of the afore-mentioned illegal activities. An Environmental Assessment Practitioner ("EAP") was appointed to submit a section 24G Environmental Impact Assessment ("EIA") to the Department to obtain this Environmental Authorisation. The EIA was considered adequate for informed decision-making. In addition, the holder paid an administrative fine of R500 000 (Five hundred thousand Rand) to meet the requirements of section 24G of the *National Environmental Management Act, 1998* ("NEMA").

In reaching its decision, the competent authority, *inter alia*, considered the following:

- a) The information contained in the application form dated 08 April 2019 with supporting environmental impact assessment and mitigation measures, the EMPr of April 2019 submitted together with the application form and the additional information received by the competent authority on 08 April 2020, 09 April 2020 and 6 May 2020, respectively.
- b) Relevant information contained in the Departmental information base, including, the Guidelines on Public Participation and Alternatives.
- c) The objectives and requirements of relevant legislation, policies and guidelines, including section 2 of the NEMA.
- d) The comments received from Interested and Affected Parties ("I&APs") and the responses provided thereto.
- e) The sense of balance of the negative and positive impacts and proposed mitigation measures.
- f) The site visit conducted on 19 December 2019 attended by the EAP and officials of this Department.

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

which, according to the competent authority, were the most significant reasons for the decision is set out below.

## 1. Public Participation Process

In terms of section 24G(1)(vii)(dd) of the NEMA, "...a description of the public participation process followed during the course of compiling the report, including all comments received from interested and affected parties and an indication of how the issues raised have been addressed ...", is required.

The public participation process conducted by the EAP comprised of the following:

- An advertisement was placed in the **Worcester Standard** newspaper on 11 April 2019;
- A site notice was erected on 16 April 2019; and
- Letters were sent to interested and affected parties ("I&APs") and the municipal ward councillor on 15 April 2019.
- I&APs were afforded the opportunity to provide comments on the application.

I&APs raised concerns regarding the activities on site and particularly related to water usage on the farm. The following is a summary of issues/concerns raised:

- Stockpiled rubble is unsightly and must be dealt with.
- The new location of the packing shed is supported.
- Staff using neighbouring properties as toilets must be addressed. However, this was highlight as a municipal related issue.
- It is highlighted that the removal of vegetation on site is potentially irreversible and the landscape has been permanently changed.
- The tourism and game reserve activities are highly dependent on natural water resources, and these activities will negatively affect neighbouring businesses.
- The applicant sacrificed Fynbos to protect grapes from physical damage and markings using shade netting protection.

*The EAP indicated that the netting provides various benefits including protections against frost, sunburn, bird damage as well as reducing water usage due to limited evaporation.*

- The use of shade netting has a visual impact on the beautiful landscape of the area, affecting the iconic look of Worcester.



*The EAP indicated that the use of netting was documented in the Notice of Intent to Develop submitted to Heritage Western Cape (HWC), however HWC (as the relevant competent authority for landscape consideration) did not highlight any concerns regarding heritage or sense of place impacts.*

- Concerns surrounding the storage capacity of the applicant's dams compared to the annual runoff was mentioned, as well as the effects upstream users have on water users lower down the river.
- The Brandwag Irrigation Board proposed the following mitigation measures:
  - The pipeline and electricity line that was constructed to enable the use of the boreholes, said to be discontinued, needs to be removed.
  - The boreholes, said to be discontinued, need to be sealed off to permanently disable the use of the said boreholes.
  - Storage capacity of the bottom dam be limited to 560 000 cubic meters.
  - Storage capacity of the top dam be limited to 49 000 cubic meters.
  - The total abstraction on the property per annum from surface and groundwater during November – October (12-month period) of each water year may not exceed the total volume of 604 500 cubic meters.
  - The Irrigation Board proposes that a permanent diversion structure is constructed in the Tierkloof that will permanently divert 1/3 of the flow to downstream water users and the environment during the months May - October, further that 100% of the stream is diverted to the catchment during the low flow months November - April.
  - The Irrigation Board proposes that a permanent diversion structure is constructed in the Vondelingskloof that will permanently divert 1/3 of the flow to downstream water users and the environment during the months May - October, further that 100% of the stream is diverted to the catchment during the low flow months November - April.
  - The Irrigation Board proposes that a permanent diversion structure is constructed in the Alskloof that will permanently divert 1/5 of the flow to downstream water users and the environment during the months May - October, further that 100% of the stream is diverted to the catchment during the low flow months November - April.
  - Every water resource abstraction needs to be equipped with a water meter and reported to the BGCMA and the Brandwag Irrigation Board on a monthly basis.
  - The total irrigated area allowed on the properties be limited to 77.5 hectares and that no further expansion will be allowed.

## Consultation with organs of state in terms of section 24O of the NEMA

The following organs of state provided comment on the application:

- CapeNature (CN)
- Department of Agriculture (DoA)
- Breede Gouritz Catchment Management Agency (BGCMA)

CN noted all activities on site, as well as all biodiversity impacts related to the activities and agreed with the specialist study conducted in that the loss of vegetation is not desirable nor best practice. The proposed rehabilitation plan by the specialist is therefore supported, provided the rehabilitation process is implemented under supervision of a botanist with knowledge of the geography and vegetation types present in the region. CN also suggested a suitable offset for the vegetation lost as rehabilitation of an area is not always successful. The EAP indicated they will do so if the Department deems it necessary.

DoA raised concerns regarding the limited amount of diversion to the proposed waterway (20% of the 1:10 year stream diversion) as this negatively affect downstream users. This was amended according to the updated user list submitted by the Brandwag Irrigation Board. The rock bed is not erosion resistant and it is suggested that annual monitoring and evaluation of the bedrock be done. This recommendation has been included in the EMPr. DoA indicated that no *Conservation of Agricultural Resources Act, 1983 (Act 43 Of 1983)* "CARA" application was submitted. *The EAP indicated that the CARA application will be initiated prior to submission of the final S24G report.*

Areas of the farm earmarked for the second phase of agricultural expansion should be avoided for future development and alien clearing must follow an Invasive Alien Clearing Program. This must be done for the whole property and not just the 24G related areas.

Audit reports and ECO requirements must be done regularly. Sub-surface drainage needs must follow approved drainage plan which is CARA compliant and all farming activities on site must follow CARA guidelines.

During the site visit as well as subsequent meetings with the Applicant, the BGCMA required that all water users downstream of the application be involved in the planning of the additional water abstraction. The BGCMA also met with the Water Users Association and provided area specific water uses to the applicant for

consideration in the WULA. BGCMA is therefore satisfied that the applicant did his best to incorporate all impacted water users in this process and considered all registered uses in the water balance for the catchment as well as the required Ecological Water Reserve releases to be made within the designs of the dams.

The impact on the watercourses were considered and the proposed mitigation measures stated within the EMPr is sufficient. The BGCMA therefore supports the application for Environmental Authorisation with the storage of water dependent (and only allowed to continue) once both the Water Use License has been awarded and the License to Construct from the Dam Safety Office of DWS.

The following general conditions remain relevant for this application:

- All relevant sections and regulations of the *National Water Act, 1998 (Act 36 of 1998)* regarding water use must be adhered to.
- No pollution of surface water or ground water resources may occur.
- Storm water management must be addressed and applied both in terms of flooding and pollution potential.

All the concerns raised by I&APs were responded to and adequately addressed during the public participation process. Specific management and mitigation measures have been considered in this Environmental Authorisation and in the EMPr to adequately address the concerns raised.

The competent authority concurs with the EAP's responses to the issues raised during the public participation process and has included appropriate conditions in this Environmental Authorisation and in the EMPr.

## **2. Alternatives**

### **2.1 Preferred Alternative**

Areas for irrigation/cultivation: The botanist identified areas on the farm which would need to be rehabilitated by the applicant, no-go areas upon which no development is to take place and areas that may be cultivated. In total, a new preferred alternative area of 77.51 ha is available for cultivation.

Bottom dam storage capacity: The reduced cultivation area meant that the originally proposed dam storage capacities were no longer necessary. Based on



the reduced irrigation areas, the annual irrigation water requirement is much less and the new preferred alternative storage requirement is only 600 000m<sup>3</sup> for the bottom dam.

Top dam storage capacity: The existing top dam would be repaired to its original storage capacity of 49 000m<sup>3</sup> with a 11.5m high dam wall. In order to address dam safety requirements, the gradient of the slope of the downstream face of the dam wall will be flattened relative to the current profile, to 1V:2H, including sand filters and a rock toe.

Amendments to diversion works: The freshwater ecologist prescribed the necessary Ecological Water Requirements (EWR) as part of the assessment. As such, design alterations were made to the diversion works to accommodate the EWR. An additional low flow allowance of 1l/s would be included in the Tierkloof and Vondelingskloof Streams. A 50mm diameter galvanised pipe would be installed through each diversion works below the invert level of the proposed pipelines so that the low flow release would have preference. The Vondelingskloof diversion works and upgraded pipeline would discharge into the bottom dam and the Tierkloof diversion works would discharge into the top dam.

The proposed Alskloof Stream diversion works would have a reinforced concrete weir to allow for the 20% EWR release. The EWR release would bypass the bottom dam via an excavated channel into *in-situ* clay material and would discharge into the Hartbees River. The diversion channel to bypass the bottom dam would be designed to divert the 1 in 10-year recurrence interval flood (or 20% thereof) which equates to an approximate flow of 3.5 m<sup>3</sup>/s flood. The remaining 80% of flow would be diverted into the bottom dam.

Four pipelines and a preferred pipeline alignment: The new pipeline routes would include -

- 1.37 km, 315 mm Vondelingskloof diversion via existing dam 2 to bottom dam;
- 0.94 km 315 mm top dam to bottom dam;
- 160 mm Tierkloof diversion to bottom dam along fence line (complete); and
- 0.85 km 315 mm from Tierkloof diversion to top dam to bottom dam.

Relocation of the DeWet Slood: The freshwater ecology assessment's recommendation of a 100m wide buffer to the west of the top of bank of the DeWet Slood would cause a loss of irrigation area which the botanist has determined is a developable area. A relocated DeWet Slood would entail a 15m wide buffer on the northern section and would include the wetland area situated next to the property boundary at the southern end. The size of the relocated DeWet Slood would be 3m wide and 1m deep. The side slopes of the channel would be grassed line to provide erosion protection.

Details of the road upgrade to the top dam: The road connecting the bottom and the top dams has been upgraded by resurfacing and the existing pipeline route where it crosses the Hartbees River has been infilled. Approximately 100m<sup>3</sup> of fill has been placed within 32m of the watercourse as part of the road upgrade. This material is to be removed from the stream bed, and the crossing formalized in a manner that does not obstruct streamflow and protects against erosion.

New preferred alternative location of one packhouse: The botanical specialist did not support the originally proposed locations of either of the two packhouses on the farm. A new location is proposed on developable area which has been deemed acceptable by the botanist.

## 2.2 The option of not implementing or continuing with the activity ("No-Go" Alternative)

As stated in the 24G application:

*"In the context of the Section 24G process, the no-go alternative is understood as being the reinstatement of the pre-commencement condition of the site. While this is not a practically feasible option, it is the baseline against which impacts are assessed. The no-go alternative implies that the applicant re-instates the vegetation and freshwater ecosystems to the condition they were in before the commencement of activities. This would involve removing all established infrastructure and rehabilitating damaged vegetation/freshwater ecosystems.*

*The botanical specialist has noted that the intact vegetation that has already been removed would not be able to be fully restored to its original state due to soil disturbance causing the loss of the seed bank, geophytes and microbiological functioning. Moderately successful restoration of some areas would be possible. Permanent loss of ecological functionality, vegetation type and Critical*

*Biodiversity Area is certain. Even post-rehabilitation of the areas that can be rehabilitated would experience a disruption of ecological functioning and this would have an impact on the ability of the conservation target for the Breede Alluvium Fynbos to be met. The significance of the no-go alternative remains high negative and no mitigation measures have been proposed.*

*In terms of freshwater ecology, none of the works that have already been undertaken have been found to have any freshwater impacts which justify the reinstatement of the pre-commencement condition. The no-go alternative would have a medium negative significance prior to mitigation and post mitigation. Mitigation would include rehabilitation to the pre-commencement state, controlling invasion alien vegetation and undertaking works in watercourses in terms of the Freshwater Ecosystems Maintenance Management Plan.*

*Implementing the no-go alternative would involve a low level of expenditure and some temporary jobs and these would be minor in comparison to the expenditure and jobs which would be associated with either the preferred alternative or the originally proposed alternative. The no-go would entail fewer risks in terms of impacts on surrounding landowners, tourism, and impacts associated with the presence of new temporary and permanent workers. As these negative impacts are expected to be of a lower significance than the positive impacts resulting from expenditure and job creation (both for the preferred alternative and the originally proposed alternative), the no-go alternative is not preferred from a socio-economic perspective.*

*Should the no-go alternative be authorised, none of the following potential socio-economic benefits would be realised:*

- There is a need and desirability for the project in terms of forward planning for the region. The completion of the project would contribute to the region's policies of protecting agricultural land, increasing food security and employment in the agricultural sector.*
- The projected spending injections have led and would lead to increased economic activity in the area.*
- Positive direct and indirect/induced employment impacts e.g. employment on the farm and in downstream industries.*
- Positive skills development impacts.*

- *Increased agricultural production in the region, revenue generation, foreign exchange earnings and contributions to municipal finances.*
- *Equal opportunities for employment of women, assisting to address gender inequality.*

*The positive impacts listed above, the context of high levels of socio-economic need in the area and the limited availability of alternative development options result in the no-go alternative not being a preferred option in terms of socio-economic considerations."*

### **3. Environmental Impact Assessment (EIA) and Mitigation Measures**

In reaching its decision, the competent authority, considered the following in respect of the EIA and mitigation measures:

#### **3.1. Activity Need and Desirability**

The Breede Valley Municipality Integrated Development Plan (IDP) and Spatial Development Framework (SDF) provide detailed planning guidance to inform project appraisal from a local perspective. Both these documents recognise the importance of agriculture as a driver of the overall municipal economy. Moreover, they recognise the primacy of agriculture, agri-industry and tourism in driving the area's economy along with its potential to provide further benefits if supported and managed wisely. The proposed project should prove largely compatible with relevant socio-economic development and associated spatial planning for the area provided environmental impacts can be kept to an acceptable minimum. The need and desirability for the kind of economic growth which will be provided by the project is clearly outlined in development and spatial planning documents.

#### **3.2. Pollution Impacts**

No air, soil nor water pollution is anticipated. Dust and sedimentation impacts would be negligible if all mitigation is implemented.

#### **3.3. Biodiversity Impacts**

The following principal findings were concluded by the specialist botanical assessment:

Vineyards have been established on previously uncultivated and grazed land. The vegetation would have recovered to a good condition had the grazing been halted. There has thus been a loss of 46.9ha of Endangered vegetation (CBA 1) of previously moderate condition. 44.1ha has been established with vineyards and a further 2.8ha has been ploughed. The above represents a permanent irreversible loss of Endangered Vegetation.

Areas to the north, south and west of the new vineyards have been bush-cut (all shrubs cleared) but not ploughed. 33.5ha have been disturbed in endangered vegetation (CBA 1).

The expansion of the top dam footprint has been expanded causing a loss of 3.6ha of vegetation, 1.33ha of which was intact vegetation within a CBA 1 area. There has been a loss of 10.4ha of previously highly disturbed vegetation in the area to the south of the bottom dam.

There has been a loss of < 0.5ha of intact endangered vegetation (CBA 1) with the construction of a new access road up to the top dam. 6. An additional loss of 2.24ha of brush cut area earmarked for rehabilitation as a result of clearing (in 2019) for the installation of shade netting."

#### 3.4. Heritage / Archaeological / Built Environment Aspects

The heritage specialist has confirmed that no sense of place/heritage impacts are anticipated and that no further study is required. This has been confirmed by Heritage Western Cape in their response to the Notice of Intent to Develop.

#### 3.5. Biodiversity Offsets Considered

the Applicant submitted a written agreement, dated 06 May 2020, indicating their willingness to enter into a Conservation Agreement in respect of an approximately 137ha piece of land on the Western part of the Site, that covers those areas of natural land on the site that fall outside of the Development Footprint around the Top Dam. From the EAPs perspective, the area put forward by the Applicant is predominantly in good condition and can be considered to be conservation worthy, according to the findings of the Botanical Report, and to some extent, also the Freshwater Report (for those areas around the watercourses). The majority of the proposed area is mapped as CBA-1 Terrestrial, with some areas of CBA2 Terrestrial, CBA-1 Aquatic and some ESA-1 in the northern area.

#### 4. NEMA 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.

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 listed activities will not conflict with the general objectives of integrated environmental management stipulated in Chapter 5 of the NEMA and that any potentially detrimental environmental impacts resulting from the listed activities can be mitigated to acceptable levels.

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