



REFERENCE NUMBER: 14/2/1/3/D7/9/0014/16

ENQUIRIES: Shafeeq Mallick

BY REGISTERED MAIL

The Managing Director
Vecto Trade 254 (Pty) Ltd
PO Box 4030
GEORGE EAST
6530

Tel: (044) 886 0006
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Attention: Mr Otto de Kock

Dear Sir

APPLICATION IN TERMS OF SECTION 24G OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998) ("NEMA"): THE UNLAWFUL CLEARANCE OF 1ha OR MORE OF VEGETATION WHERE 75% OR MORE OF THE VEGETATION COVER CONSTITUTES INDIGENOUS VEGETATION ON PORTION 1 OF FARM SMUTS KLOOF NO. 94, OUDTSHOORN

With reference to your application dated 23 June 2016, as well as the revised section 24G application dated 16 August 2016, 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 specified in Section C below in accordance with the preferred alternative as described in the application and environmental assessment dated 16 August 2016.

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.

B. DETAILS OF THE APPLICANT FOR THIS ENVIRONMENTAL AUTHORISATION

Vecto Trade 254 (Pty) Ltd

c/o Mr Otto de Kock

PO Box 4030

GEORGE EAST

6530

Tel: (044) 886 0006

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Email: vectotrade@etime.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
<p><i>Government Notice No. R. 983 of 4 December 2014</i></p> <p>Activity Number: 27</p> <p>Activity Description: <i>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—</i></p>	<p>Approximately 10ha of vegetation was cleared in 2015 to establish new agricultural lands on Portion 1 of Farm No. 94, Smutskloof.</p>

<p>(i) the undertaking of a linear activity; or (ii) maintenance purposes undertaken in accordance with a maintenance management plan.</p>	
<p>Government Notice No. 985 of 4 December 2014 - Activity Number: 12 Activity Description: <i>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.</i> (d) Western Cape i. Areas on the estuary side of the development setback line or in an estuarine functional zone where no such setback line has been determined; ii. In a Protected area identified in terms of NEMPAA; and iii. In an aquatic critical biodiversity area.</p>	<p>Approximately 10ha of vegetation was cleared in 2015 to establish new agricultural lands on Portion 1 of Farm No. 94, Smutskloof.</p>
<p>Similarly listed in Government Notice No. R. 327 of 7 April 2017 Activity Number: 27 Activity Description: <i>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—</i> (i) the undertaking of a linear activity; or (ii) maintenance purposes undertaken in accordance with a maintenance management plan.</p>	<p>As above</p>
<p>Similarly listed in Government Notice No.</p>	<p>As above</p>

R. 327 of 7 April 2017

Activity Number: 12

Activity Description: *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.*

(d) Western Cape

i. Areas on the estuary side of the development setback line or in an estuarine functional zone where no such setback line has been determined;

ii. In a Protected area identified in terms of NEMPAA; and

iii. In an aquatic critical biodiversity area.

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

D. PROPERTY DESCRIPTION AND LOCATION

The listed activities commenced on Portion 1 of Farm 94 Smutskloof, Oudtshoorn.

The SG digit code is: C02700000000009400001

The co-ordinates for the site are:

Point	Latitude (S)	Longitude (E)
1	33° 52' 32.51" South	22° 23' 5.31" East

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

Herein-after referred to as “the site”.

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

Andrew West Environmental Consultancy

C/o Mr Andrew West

P.O. Box 9187

GEORGE

6530

Tel: (044) 873 0228

Fax: (086) 658 0998

Email: andrewwest@isat.co.za

F. DETAILS OF THE ACTIVITY/IES UNDERTAKEN

The clearing of vegetation for agricultural purposes on Portion 1 of Farm 94, Smutskloof. Approximately 10ha of vegetation consisting mainly of alien invasive species was cleared to establish new agricultural lands. Subsequent erosion resulted in an adjacent watercourse due to the steepness of the slope. The Applicant had sowed wheat by hand to try and provide some means to bind the soil as an erosion prevention measure. Natural vegetative regrowth has occurred on the site.

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 16 August 2016 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 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.
4. 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

5. Seven (7) calendar days' notice, in writing, must be given to the competent authority before continuation of commencement of activities.
 - 5.1 The notice must make clear reference to the site details and 24G Reference number given above.
 - 5.2 The notice must also include proof of compliance with the following condition: Condition 6.

PART III

Notification and administration of an appeal

6. The holder must in writing, within 14 (fourteen) calendar days of the date of this decision–
 - 6.1 notify all registered Interested and Affected Parties ("I&APs") of –
 - 6.1.1 the outcome of the application;
 - 6.1.2 the reasons for the decision as included in Annexure 3;
 - 6.1.3 the date of the decision; and
 - 6.1.4 the date when the decision was issued.

6.2 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.

6.3 draw the attention of all registered I&APs to the manner in which they may access the decision.

6.4 provide the registered I&APs with:

6.4.1 the name of the holder (entity) of this Environmental Authorisation;

6.4.2 name of the responsible person for this Environmental Authorisation;

6.4.3 postal address of the holder;

6.4.4 telephonic and fax details of the holder;

6.4.5 e-mail address, if any, of the holder; and

6.4.6 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*.

7. The listed activities, including site preparation, may not continue to 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

8. The draft Environmental Management Programme ("EMPr") of December 2018 compiled by Andrew West Environmental Consultancy and submitted as part of the application for environmental authorisation is hereby approved and must be implemented.

9. The EMPr must be included in all contract documentation for all phases of implementation.

PART V

Monitoring

10. 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.

11. 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.

12. 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

13. 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 annually 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*.

PART VII

Activity/ Development Specific Conditions

14. 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.

15. 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.
16. A rehabilitation plan must be submitted to the competent authority within six (6) months of the date of this authorisation. The rehabilitation plan must follow the guidelines as proposed by the freshwater specialist report dated 5 December 2017.
17. A 30m buffer must be physically delineated with a fence to prevent livestock from accessing the sites earmarked for rehabilitation.

H. 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.

I. 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

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.

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 or URL <http://www.westerncape.gov.za/eadp>.

J. 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.

K. 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

ADV. CHARMAINE MARÉ
DIRECTOR: ENVIRONMENTAL GOVERNANCE

DATE OF DECISION: 27 August 2020

CC: (1) A. West (Andrew West Environmental Consultancy)

Fax: (086) 658 0998

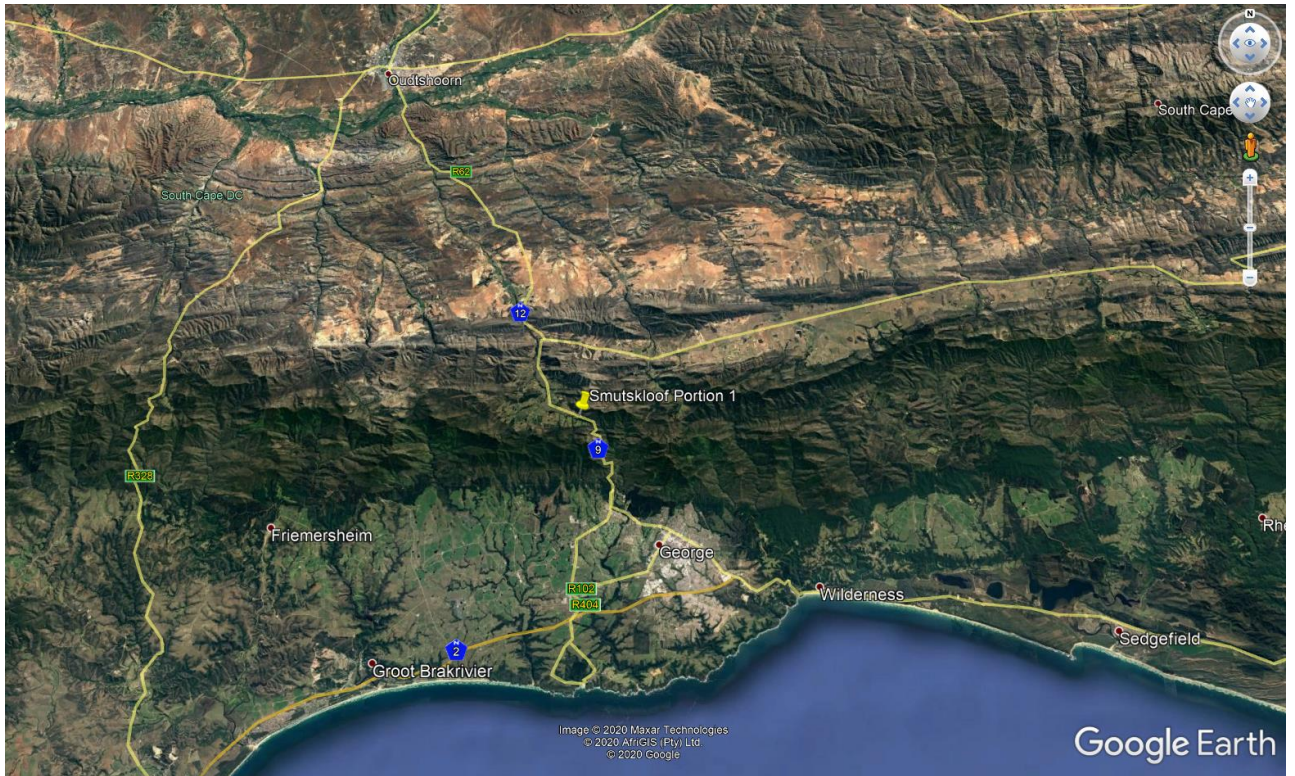
Email: andrewwest@isat.co.za

(2) G. Cairncross (Oudtshoorn Municipality)

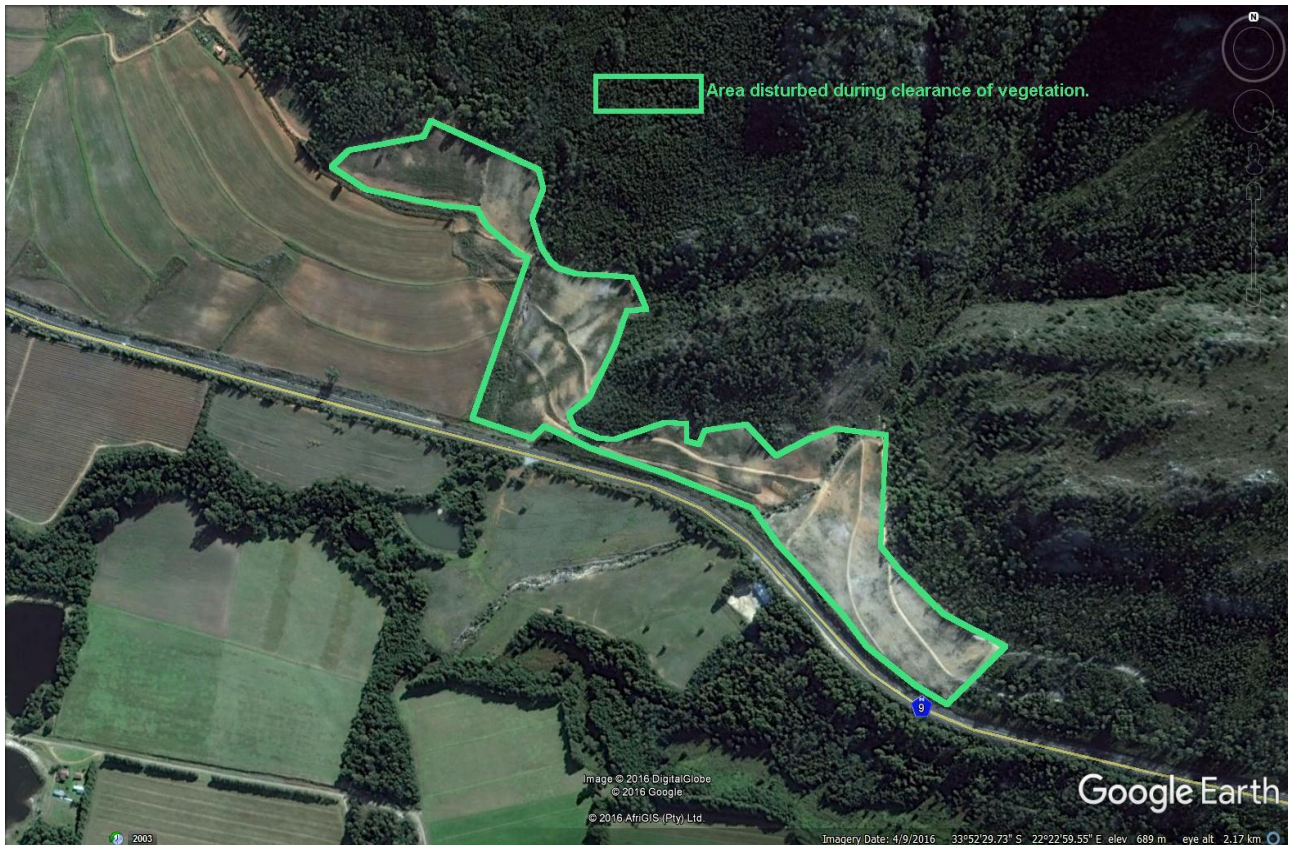
Fax: (044) 203 7027

Email: gilbert@oudtmun.gov.za

ANNEXURE 1: LOCALITY MAP



ANNEXURE 2: SITE PLAN



FOR OFFICIAL USE ONLY:

S24G REFERENCE:

14/2/1/3/D7/9/0014/16

ANNEXURE 3: 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 R125 000 (One hundred and twenty-five 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 24G application dated 23 June 2016, the revised section 24G application dated 16 August 2016; with supporting environmental impact assessment and mitigation measures, as well as the Environmental Management Programme of December 2018 ("EMPr") submitted for the 24G application.
- 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 13 March 2018 attended by 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:

- identification of and engagement with I&APs.
- giving written notice to the owners and occupiers of land adjacent to the site where the listed activities were undertaken, the municipality and ward councillor, and the various organs of state having jurisdiction in respect of any aspect of the listed activities on 22 February 2017, 19 April 2017 and 16 August 2018.
- the placing of a newspaper advertisement in the **George Herald** on 27 February 2019.

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

The following organs of state provided comment on the application:

Breede-Gouritz Catchment Management Agency ("BGCMA")

CapeNature

Department of Transport and Public Works

Department of Agriculture

The BGCMA stated that the provisions of the *National Water Act, 1998* (Act 36 of 1998) ("NWA"), especially that which pertains to water use, must be adhered to. Should work have been undertaken within a watercourse, a General Authorisation in terms of section 21 (c) and (i) of the NWA will apply. Furthermore, should clearing of alien plants take place within the 1:100-year flood line, authorization would be required. The BGCMA stated a freshwater habitat risk matrix should be compiled, and no groundwater or surface water is to be polluted. The freshwater habitat risk matrix and freshwater assessment were provided to BGCMA and was accepted. It was also stated that the applicant must ensure compliance with the recommendations made therein.

CapeNature stated that they agree with the findings of the botanical specialist report, however, cognizance must be taken of the *Conservation of Agricultural Resources Act, 1983* (Act No. 43 of 1983) ("CARA") and the Alien and Invasive Species

Regulations, 2014, in terms of the legal requirements for the removal of invasive alien plants. CapeNature stated that the freshwater systems should still be considered as being heavily impacted on by the proposed illegal activities.

CapeNature stated that the freshwater specialist listed the lack of detailed engineering specialist designs as a limitation of the study but stated that it does not impact the findings as these details are directly related to mitigation. CapeNature subsequently recommended that these designs and the appropriate engineering specialist study be obtained by the transgressor and a suitable rehabilitation plan be drawn up (based on the rehabilitation guidelines supplied by the specialist), to ensure effective rehabilitation and stabilisation of both impacted freshwater systems. The said rehabilitation plan must include a timeline. It was recommended that a 30m buffer be physically delineated, with a fence to prevent livestock from accessing this vegetation, especially during the rehabilitation phase.

CapeNature recommended that an Environmental Control Officer ("ECO") be appointed to ensure compliance with all mitigation measures proposed by the various specialist reports. The rehabilitation of the aquatic systems is considered imperative. CapeNature further stated that all material used in the specialist engineer's erosion report must be sourced from a legal licensed source, and should the landowner wish to source the material from another area on his property, that area must be assessed accordingly. The use of pesticides and herbicides must also be restricted.

CapeNature queried the EAP's low rating of visual impacts, especially with regards to an eroded drainage line/wetland. It was argued that, if the landowner didn't clear the vegetation, soil erosion of the western watercourse\wetland would not have occurred. Furthermore, various specialist reports and a rehabilitation plan would not have been required.

The Department of Transport and Public Works stated that they have no objection provided that there is no washing of debris onto the Trunk Road following vegetation clearing (presumably the N9 road that intersects the farm).

The Department of Agriculture had no comment.

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 Location Alternatives

The clearing operation was completed on a preferred area of the property due to the amount of invasive alien vegetation that could be removed over a period. Due to this reason, no alternative sites were available. There is no large-scale environmental degradation as per the Freshwater Assessment. The ecological impacts related to the watercourse can be mitigated for as per the specialist recommendations.

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. Socio-economic

The activity is not expected to result in any negative socio-economic impacts.

3.2. Biodiversity Impacts

The landowner of Portion of Farm No. 94, Smutskloof cleared approximately 10ha of vegetation in 2015 to establish agricultural lands (wheat was sown by hand to bind the soil). The site is nationally mapped as South Outeniqua Sandstone Fynbos (Vulnerable) and regionally mapped as Doornrivier Mesic Proteiod Fynbos (Least Threatened).

The activity resulted in the loss of vegetation and soil erosion, along the two watercourses (Jansmitsrivier and a hillslope seep wetland). The watercourses are fed by the Outeniqua Mountains, through surface/ groundwater seepage. The area where the vegetation clearance and infilling occurred is not classified as a Freshwater Ecological Protection Area (FEPA) or considered as a Critical Biodiversity Area, but it is classified as an Ecological Support Area.

Subsequent to clearance, the indigenous vegetation re-established themselves in the drainage lines. This has curbed soil erosion on the open, exposed slopes but has accelerated soil erosion in the drainage lines. Due to the gullying, the drainage system is not functioning as a wetland. The affected vegetation was not regarded by the botanical specialist as sensitive, however, the two watercourses that intersect the disturbed area are considered more sensitive. A 30m buffer on either side of the watercourses was recommended.

According to the Freshwater Habitat Risk Assessment dated 14 December 2018, there is no obvious indication of any attempt made to manage the alien trees. It was stated there has been complete disregard for the freshwater habitat and possibly intent to eliminate it entirely. Throughout 2014 the clearance continued, resulting in a catchment largely of bare ground and it continues to impact the watercourses through erosion and sedimentation and loss of habitat. It is unlikely that any sensitive biota associated with these systems survived this clearing period, and in the upper catchments the alien trees remain dominant.

3.3. Visual / Sense of Place

Although the watercourses have been affected by the clearance of vegetation, the area's sense of place had already been affected by the alien vegetation that was present on the site.

3.4. Pollution Impacts

The activity is not likely to give rise to pollution impacts.

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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