



24G Application: 14/2/4/2/3/D7/9/0020/18

ENVIRONMENTAL AUTHORISATION

The Owner
Farm Buffelsdrift 1/115
Baron Van Reede Street (R328)
OUDTSHOORN
6620

Tel: (082) 575 3863

Email: dejager@scwireless.co.za

Attention: Mr Arnold de Jager

Dear Sir/ Madam

APPLICATION IN TERMS OF SECTION 24G OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998) ("NEMA"): UNLAWFUL COMMENCEMENT OF A LISTED ACTIVITY: THE UNLAWFUL DEVELOPMENT OF A TOURIST ACCOMMODATION AND RECREATIONAL FACILITY ON FARM BUFFELSDRIFT, PORTION 1 OF 115, OUDTSHOORN

With reference to your application dated 23 October 2018 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.

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 23 October 2018.

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

Mr Arnold de Jager
 Farm Buffelsdrift 1/115
 Baron Van Reede Street (R328)
 OUDTSHOORN
 6620

Tel: (082) 575 3863
 Email: dejager@scwireless.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>Government Notice No. R. 324 of 7 April 2017</p> <p>Activity Number: 6</p> <p>Activity Description: <i>The development of resorts, lodges, hotels, tourism or hospitality facilities that sleeps 15 people or more.</i></p> <p>(ii) Western Cape</p> <p><i>(iii) Inside a protected area identified in terms of NEMPAA;</i></p> <p>(iv) Outside urban areas;</p>	<p>The development of the 12 tented units and bar and swimming pool area on the portion of Portion 1 of Farm Buffelsdrift 115, Oudtshoorn, all fall within the 5km radius of the core area of the Gouritz Biosphere Reserve, such core area being the Grootkop Nature Reserve, thereby triggering activity 06 of the relevant EIA Regulations.</p>

<p>(aa) Critical biodiversity areas as identified in systematic biodiversity plans adopted by the competent authority or in bioregional plans; or</p> <p>(bb) Within 5km from National parks, world heritage sites, areas identified in terms of NEMPAA or from the core area of a biosphere reserve.</p>	
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The abovementioned list is hereinafter referred to as "the listed activity".

D. PROPERTY DESCRIPTION AND LOCATION

The activity commenced on Farm Buffelsdrift, Portion 1 of 115, Oudtshoorn.

The SG digit code is: C0540000000001150001

The co-ordinates for the property boundary are:

Point	Latitude (S)	Longitude (E)
1	33° 33' 40.54" South	22° 13' 00.33" East
2	33° 33' 02.85" South	22° 14' 03.32" East
3	33° 34' 15.55" South	22° 14' 03.16" East
4	33° 33' 21.02" South	22° 14' 40.88" East

The co-ordinates for the site boundary are:

Point	Latitude (S)	Longitude (E)
1	33° 33' 45.36" South	22° 13' 43.70" East
2	33° 33' 52.00" South	22° 13' 51.14" East
3	33° 33' 49.43" South	22° 13' 59.32" East
4	33° 33' 43.58" South	22° 13' 58.06" 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”)

Sharples Environmental Services CC

c/o Ms Betsy Ditcham

P. O Box 443

MILNERTON

7435

Tel: (021) 554 5195

Fax: (086) 575 2869

Email: betsy@sesc.net

F. DETAILS OF THE ACTIVITY/IES UNDERTAKEN

The unlawful development of a tourist accommodation and recreational facility on Farm Buffelsdrift, Portion 1 of 115, Oudtshoorn.

The facility consists of 12 tented units, approximately 55m² each, with the individual units all having a wooden deck/veranda of approximately 15m².

The bar and swimming pool area is approximately 300m² in extent, with a playground area of approximately 215m² located to the north thereof.

The development site was originally vacant land, utilised by free-roaming animals on the farm, most likely for grazing purposes.

The first 5 tented units were erected in November 2015. The next 3 tents were erected between November 2015 and November 2017, with 4 more tents were erected subsequently.

Several existing gravel access roads have been further delineated and improved and graded, to provide safer and easier access to the tented units.

Sewerage waste disposal is by means septic tanks with a “soak away” system. Waste is collected from flushing toilets in the tented units and kept in septic tanks, with approval from the Oudtshoorn Municipality. There are 6 such tanks, located nearby to pairs of tented units, to accommodate their usage.

Water is abstracted from the dam area, located directly to the north of the camp, pumped up the hill into 2 water tanks and then utilizes gravity to travel back down the same hill, towards the tented units for use therein. No municipal water is used. The water tanks are approx. 10 000L each, thus falling within the usage parameters for the region.

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 activity specified in Section C above in accordance with and restricted to the preferred Alternative described in the application and assessment report dated 23 October 2018 on the site as described in Section D above.
2. 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.
3. 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

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

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

4.2 The notice must also include proof of compliance with the following condition:
Condition 5

PART III

Notification and administration of an appeal

5. The holder must in writing, within 14 (fourteen) calendar days of the date of this decision–
 - 5.1 notify all registered Interested and Affected Parties (“I&APs”) of –
 - 5.1.1 the outcome of the application;
 - 5.1.2 the reasons for the decision as included in Annexure 3;
 - 5.1.3 the date of the decision; and
 - 5.1.4 the date when the decision was issued.
 - 5.2 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.
 - 5.3 draw the attention of all registered I&APs to the manner in which they may access the decision.
 - 5.4 provide the registered I&APs with:
 - 5.4.1 the name of the holder (entity) of this Environmental Authorisation;
 - 5.4.2 name of the responsible person for this Environmental Authorisation;
 - 5.4.3 postal address of the holder;
 - 5.4.4 telephonic and fax details of the holder;
 - 5.4.5 e-mail address, if any, of the holder; and
 - 5.4.6 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.
6. The listed activity, 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

7. The draft Environmental Management Programme ("EMPr") dated 12 July 2018 compiled by Sharples Environmental Services and submitted as part of the application for environmental authorisation is hereby approved and must be implemented.
8. The EMPr must be included in all contract documentation for all phases of implementation.

PART V

Monitoring

9. The holder must appoint a suitably experienced Environmental Control Officer ("ECO") before continuation and commencement of any maintenance activities to ensure compliance with the EMPr and the conditions contained herein.
10. A copy of the Environmental Authorisation, EMPr, audit reports and compliance monitoring reports must be kept at the site of the authorised activity and must be made available to anyone on request, including a publicly accessible website (if applicable).
11. 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

12. 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. 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

13. 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.

14. 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.

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 activity.
2. Non-compliance with a condition or term of this Environmental Authorisation or EMPr may render the holder liable to criminal prosecution.
3. 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.

4. 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, 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.

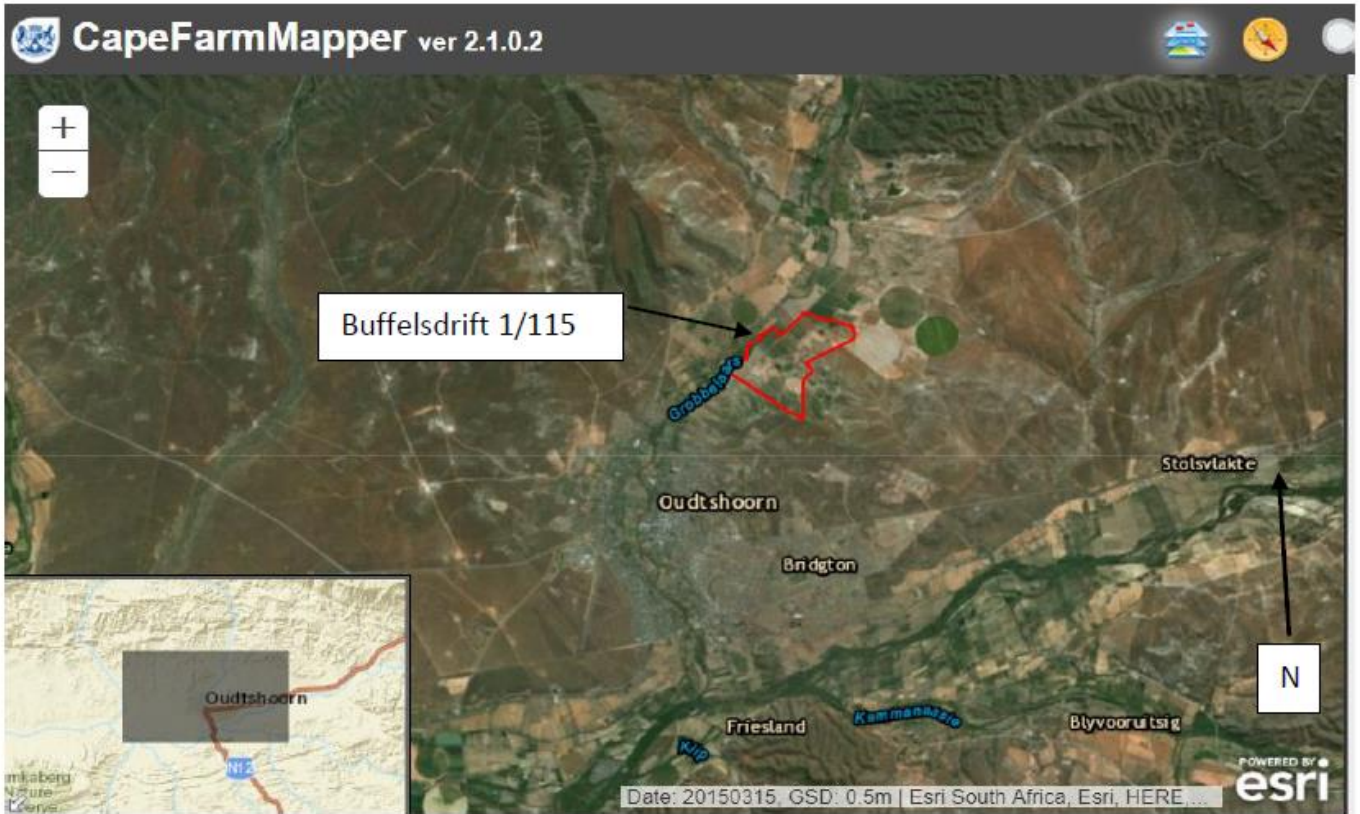
Yours faithfully

ZAIDAH TOEFY
ACTING DIRECTOR: ENVIRONMENTAL GOVERNANCE

Copied to: (1) Betsy Ditcham (EAP)

Email: Betsy@sescc.net

ANNEXURE 1: LOCALITY MAP



ANNEXURE 2: SITE PLAN



FOR OFFICIAL USE ONLY:

S24G REFERENCE: 14/2/4/2/3/D7/9/0020/18
ENFORCEMENT REFERENCE : 14/1/1/E3/10/5/3/L913/17

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 R35 000 (Thirty 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 application dated 12 February 2020 with supporting environmental impact assessment and mitigation measures.
- b) The Environmental Management Programme ("EMPr") dated 12 July 2018 submitted together with the application form.
- c) Relevant information contained in the Departmental information base, including, the Guidelines on Public Participation and Alternatives.
- d) The objectives and requirements of relevant legislation, policies and guidelines, including section 2 of the NEMA.
- e) The comments received from Interested and Affected Parties ("I&APs") and the responses provided thereto.
- f) The sense of balance of the negative and positive impacts and proposed mitigation measures.
- g) The site visit conducted on 9 July 2019 attended by officials of the Directorate: Environmental Governance.

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.
- fixing a notice board at the site where the listed activity unlawfully commenced.
- giving written notice to the owners and occupiers of land adjacent to the site where the listed activity were undertaken, the municipality and ward councillor, and the various organs of state having jurisdiction in respect of any aspect of the listed activity on 29 October 2018 and 26 April 2019, respectively.
- the placing of a newspaper advertisement in the **Oudtshoorn Courant** on 15 June 2018.
- I&APs were afforded the opportunity to provide comments on the application.

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

The following organs of state provided comment on the application:

- CapeNature
- Eden District Municipality
- Oudtshoorn Local Municipality
- Department of Agriculture

At the end of the public participation process, response was received from the Department of Agriculture indicating that that have no comment on this matter.

2. Alternatives

2.1 Location Alternatives

No feasible property or location alternatives were found to exist at the time of assessment.

The area utilised for the development site was chosen as it was previously overgrazed,

which resulted in large portions being stripped of vegetation, thereby exacerbating the potential for increased soil erosion. The potential influx of alien vegetation establishing itself in place of indigenous vegetation was also identified.

An alternative location would require more intricate and potentially invasive methods and means of obtaining water for the development, such as digging trenches and excavations for a more extensive pipeline and associated water use infrastructure and as the dam provides an adequate water resource for the development in the near vicinity, it is logical to locate the accommodation facilities as close as possible to such water resource. This would then require a simple and easy to maintain access point to a water resource.

Other areas of the property are also located closer and/or within land mapped as Other Natural Areas and portions of land mapped as Ecological Support Areas (ESAs), meaning that had these locations been chosen to be developed instead of the current location of the tented Units and recreational area, they would have the potential to have increased the negative impacts to these specific areas.

The chosen location does not directly impact upon these specified areas, namely the ESA and Other Natural Areas.

2.2 Activity Alternatives

No activity alternatives were considered at the time of assessment, as the only other alternative was a "No-Go" option, in which the status quo would be maintained, and no development would have occurred.

2.3 Design/Layout Alternatives

The design and layout of the tented units and recreational area maximises the favourable location factors, namely that the development is positioned in such a manner so as to maximise the visual aspect of the surroundings to best effect, thus contributing to the enjoyment factor of visitors to the facility, while maintaining the least impactful layout to the surrounding areas.

The layout is considered to be the best to avoid negative impacts, provides mitigation to the unavoidable negative impacts, such as soil erosion, and maximises positive impacts.

2.4 Technology/Design Alternatives

The development utilises natural materials where-ever possible, such as wood and recycled containers for offices and the recreational area, to reduce resource demand. Renewable energy sources, such as solar power, were not installed, owing to the initial financial burden, high maintenance costs, negative impacts to the area in terms of sense

of place and visual impact, as well as the fact that the tented units are made of a material which is unlikely to be able to safely and adequately support the weight of such units, should they be installed. "Soak Aways" are used and positioned in such a manner as to maximise the gradient of slope and utilise the force of gravity to allow them to be filled. The tented units are positioned so as to obtain the best visual aspect of the area, providing the tented units with natural light, thereby reducing power demands. As such, no other technological alternatives were considered for the development.

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

Should this alternative be implemented, it would result in negative socio-economic impacts. The revenue stream generated by this development is in the tourism and ecotourism sector and provides reasonable employment opportunities for the local communities. Approximately 10-15 job opportunities during the operational phase and 15-20 during the construction phase was created. The development was a means of offsetting the agricultural economic impact that the recent avian bird flu crises which occurred in the Western Cape and the resultant job losses to ensure the continued operation of this portion of the site.

Should the activity cease and rehabilitation of the site be implemented it would impact heavily on the ability of the operator to provide local employees with remuneration, many of whom are the breadwinners for their families. The cumulative impact felt to these families is difficult to quantify, but it is assumed that many would be without income for a period of time, should the facility cease operations immediately.

Tourism and ecotourism as an industry in the region is a vital part of the social-economic climate and fulfils a valuable and dynamic role in providing many people with a source of income.

A separate and additional factor to consider if the development is instructed to cease operation and rehabilitate the site, is that it will result in the area being re-instated to what it was previously, which was an area largely denuded of vegetation and prone to soil erosion. This would result in a site in poorer condition than it is now, as the applicant has started to revegetate the denuded areas adjacent to the tented units and recreational area, with naturally-occurring drought-resistant indigenous vegetation, thereby contributing to improving and re-establishing the natural biodiversity of the area and encouraging the usual influx of fauna that is associated with and accompanies such increase in flora. The applicant's business depends on ecotourism and the enjoyment of the natural setting the visitors to the accommodation will experience.

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 current recreational facility fulfils a valuable role in providing a recreational and leisure area for users thereof. It also provides job opportunities for 10-15 people from the region.

The tourist facility and accommodation are used by visitors to the region of Oudtshoorn and surrounds, to access the natural resources and ecotourism of the district. This is currently still possible, but it is likely that should the decision be to remove the development, in terms of the contribution to the local economy, this may decrease.

3.2. Regional/ Planning Context

The Spatial Development Framework (SDF) of the local municipality is aligned with the Provincial SDF in the following manner; *"Maximisation of Oudtshoorn's status as an identified regional centre; Benefitting from Oudtshoorn's strategic location on a regional connector route (N12) and a significant tourism route (R62), as well as its location relative to a priority urban functional region, namely Mossel Bay-George emerging regional centre and the strategic harbour at Mossel Bay"*. It is thus arguable that the development of tourist accommodation facilities on the development site area falls within both documents' focus and is therefore in alignment with the provisions thereof.

3.3. Pollution Impacts

The maximum number of people the resort can accommodate is 60 people (5 ppl x 12 units). As such, the pollution impacts from the quantity of people on site at any one time could result in a low impact pollution potential. The management of the resort would need to monitor and manage any such pollution that may be created, with the appropriate level of care needed to mitigate and minimise any such impacts from occurring. This would be implemented through an action plan incorporated into the EMPr for any environmental authorisation.

It was concluded that the potential waste and pollution created by such a development, if managed with the normal mitigatory actions; as is required; will not have an impact that will result in pollution.

3.4. Biodiversity Impacts

Having regard to the vegetation on the site, there were and will be minimal localised biodiversity impacts to the areas adjacent to and surrounding the tented units. Considering the relatively small size of each tented unit (approximately 70m² in total) and the fact that the entire area surrounding the units has been largely re-vegetated with indigenous flora, it would appear that the development has given rise to minimal localised biodiversity impacts and, in some instances, provided a positive impact in the form of some minor erosion mitigation. The re-planting of the vegetation has improved some of the areas which were previously devoid of any vegetation, alien or indigenous, thus providing a measure of improvement to the site and receiving environment.

3.5. Visual / Sense of Place

The development consists of tented units, approximately 70m² in total, mainly positioned in the near vicinity of a dam. As the entire area is largely re-vegetated, this development is not in keeping with the surrounding environment and will thus have a localised impact on the sense of place. However, the tented units have a small size (approximately 70m² in extent, with an attached wooden deck) and are similar in colour to the surrounding landscape. Indigenous vegetation has been replaced with tented units where it was removed and indigenous vegetation has been replanted adjacent to the various units, thereby minimising the effect such units may have on the receiving environment.

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 activity 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 activity can be mitigated to acceptable levels.

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