



**REFERENCE NUMBER:** 14/2/1/2/E2/31/0018/16

**ENQUIRIES:** Jamie-Lee van Zyl

**BY REGISTERED MAIL**

The Owner  
P. O. Box 25  
NOORDHOEK  
7979

Tel: (021) 789 2911

Email: [Kevin.Egberink@vivoenergy.com](mailto:Kevin.Egberink@vivoenergy.com)

Attention: Mr Kevin Egberink

Dear Sir

**APPLICATION IN TERMS OF SECTION 24G OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998) ("NEMA") FOR THE UNLAWFUL COMMENCEMENT OF A LISTED ACTIVITY: THE CLEARANCE OF INDIGENOUS VEGETATION TO CREATE AN ACCESS ROAD ON PORTION 114 OF FARM HANGKLIP NO. 559, PRINGLE BAY**

With reference to your application dated 10 October 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") (GN No. R.326 of 7 April 2017), the competent authority herewith **grants environmental authorisation** to the applicant for the continuation, conducting or undertaking of the listed activities specified in Section C below in accordance with the Preferred Alternative as described in the Environmental Impact Assessment ("EIA") report dated 3 October 2017.

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

The Owner

c/o Mr Kevin Egberink

P. O. Box 25

NOORDHOEK

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Tel: (021) 789 2911

Email: [Kevin.Egberink@vivoenergy.com](mailto:Kevin.Egberink@vivoenergy.com)

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. 985 of 4 December 2014 -</i></p> <p><b>Activity Number: 12</b></p> <p><i>Activity Description: The clearance of an area of 300 square metres or more of indigenous vegetation except where such clearance of vegetation is required for maintenance purposes undertaken in accordance with a maintenance management plan."</i></p>	<p>The unlawful activity involves the clearing of pristine fynbos, mainly Kogelberg Sandstone Fynbos, classified as a Critically Endangered Ecosystem. In October 2015, the holder undertook maintenance work to a section of an old access road. This access road had not been used for several years and had become overgrown with invasive alien vegetation along and a variety of fynbos species.</p>

**(i) Within any critically endangered or endangered ecosystem listed in terms of section 52 of the NEM:BA or prior to the publication of such a list, within an area that has been identified as critically endangered in the National Spatial Biodiversity Assessment 2004;**

*(ii) Within critical biodiversity areas identified in bioregional plans;*

*(iii) Within the littoral active zone or 100 metres inland from high mark of the sea or an estuarine functional zone, whichever distance is the greater,*

*excluding where such removal will occur behind the development setback line on even in urban areas; or*

*(iv) On land, where, at the time of the coming into effect on this Notice or thereafter such land was zoned open space, conservation or had an equivalent zoning.*

This old access road served as a road between the residence site and the informal road exiting the south of Pringle Bay and linking to the R44 Provincial Road.

The Department of Transport and Public Works (DTPW) did not accept this access point to the R44, therefore the Overstrand Municipality closed the access point (with large boulders) at an unknown date.

The applicant therefore applied to the DTPW for an access road from the R44. This approval was granted on 3 March 2014 and involves a new road connecting to the section of the old access road leading to the residential site.

The existing road to the residential dwelling was upgraded by clearing vegetation, re-gravelling the road and placing concrete tracks along steep areas where required.

The new access road is about 990m<sup>2</sup>, the upgraded existing two-track access road is about 500m<sup>2</sup>, the three new road lay-bys are about 120m<sup>2</sup> in size.

The applicant also constructed a new residential dwelling adjacent the existing dwelling on the site as well as an extension to existing dwelling (totalling to

	<p>about 316m<sup>2</sup>).</p> <p>The physical footprint of the activity is about 1 926m<sup>2</sup>.</p>
<p>Government Notice No. 324 of 7 April 2017 -</p> <p><b>Activity Number: 12</b></p> <p>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></p> <p><b>i. Western Cape</b></p> <p><b>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;</b></p> <p>ii. <i>Within critical biodiversity areas identified in bioregional plans;</i></p> <p>iii. <i>Within the littoral active zone or 100 metres inland from high water mark of the sea or an estuarine functional zone, whichever distance is the greater, excluding where such removal will occur behind the development setback line on erven in urban areas;</i></p> <p>iv. <i>On land, where, at the time of the coming into effect of this Notice or thereafter such land was zoned open space, conservation or had an equivalent zoning; or</i></p> <p>v. <i>On land designated for protection or</i></p>	<p>As above.</p>

<p><i>conservation purposes in an Environmental Management Framework adopted in the prescribed manner, or a Spatial Development Framework adopted by the MEC or Minister.</i></p>	
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The abovementioned list is hereinafter referred to as "the listed activity".

**D. PROPERTY DESCRIPTION AND LOCATION**

The listed activity commenced on Portion 144 of Farm Hanglip No. 559, off the R44, Pringle Bay.

The SG digit code is: C01300000000055900114

The co-ordinates for the site boundary are:

Point	Latitude (S)	Longitude (E)
1	34° 21' 10.83" South	18° 50' 56.51" East
2	34° 20' 59.82" South	18° 51' 15.77" 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")**

Duncan Heard Environmental Consulting  
 c/o Mr Duncan Heard  
 12 Sepia Avenue  
 VERMONT  
 Onrusrivier  
 7201

Tel: (028) 316 3386  
Fax: (086) 513 4462  
Email: [duncanheard@telkomsa.net](mailto:duncanheard@telkomsa.net)

## F. DETAILS OF THE ACTIVITY OR ACTIVITIES UNDERTAKEN

The holder cleared vegetation (~1110m<sup>2</sup>) to create a new access road to the residential dwelling area on Portion 116 of Farm Hangklip No. 559, Pringle Bay. The new 3m wide gravel access road is about 990m<sup>2</sup> and the upgraded existing two-track access road is about 500m<sup>2</sup>, the three new road lay-bys are about 120m<sup>2</sup> in size. The holder also undertook the construction of an extension to the existing residential dwelling (~16m<sup>2</sup>) and a new residential dwelling adjacent the existing dwelling (~300m<sup>2</sup>).

## 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 EIA report dated 3 October 2017 on the site as described in Section D above.
2. The Environmental Authorisation is valid for a period of **2 years** from the date of the decision to continue, conduct or undertake the listed activity or activities as specified in Section C above.
3. The holder shall be responsible for ensuring compliance with the conditions by any person acting on his 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 in order to evaluate the significance and impacts of such changes or deviations, and it may be necessary for the holder to apply for further authorisation in terms of the applicable legislation.

## **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 the listed 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 conditions 6, 7 and 10.

## **PART III**

### **Notification and administration of an appeal**

6. The holder must in writing, within 14 (fourteen) 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 activity including site preparation, may not commence within 34 (thirty-four) calendar days from the date 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 October 2017 compiled by Duncan Heard of Duncan Heard Environmental Consulting 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 Site Manager, 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 activity, 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 and submit Environmental Audit Reports to the competent authority 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. Sections G-H, I-J-K and J-L of the old two-track access road (as indicated in Appendix B2 of the EIA report) and other disturbed areas on the property must be rehabilitated.

17. Erosion control and alien eradication must be prioritised along the access road as an ongoing management concern, as recommended in the Botanical Assessment of March 2017 compiled by Mark Berry of Mark Berry Environmental Consultants.

## **H. RECOMMENDATION**

1. CapeNature should be approached for advice on the future management of the fynbos on the property as well as the need and maintenance of fire breaks. It does not appear that consideration was given for an effective fire break around the dwellings and/or property.

## **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 activity.
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. Should an appeal be lodged with the appeal administrator against the Environmental Authorisation, you are hereby advised of the following:
  - 1.1. An appellant (if the holder) must –
    - 1.1.1. submit an appeal in accordance with regulation 4 of the *National Appeal Regulations, 2014*, to the appeal administrator and a copy of the appeal to the decision maker, any registered I&APs and any organ of state with interest in the matter within 20 (twenty) days from the date that the notification of the decision was sent to the holder by the competent authority.

1.2. An appellant (if not the holder) must –

1.2.1 submit an appeal in accordance with regulation 4 of the *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 that the notification of the decision was sent to the registered interested and affected parties by the holder.

2. The holder (if not the appellant), the decision-maker, I&APs and organs of state must submit their responding statements, if any, to the appeal authority and the appellant within 20 (twenty) days from the date of receipt of the appeal submission.
3. This appeal and responding statement must be submitted to the address listed below:

By post:           Attention: Jaap de Villiers  
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 Jaap de Villiers (Tel: 021-483 3721)  
Room 809, 8th floor Utilitas Building  
1 Dorp Street, Cape Town, 8000; or

By e-mail:        [Jaap.DeVilliers@westerncape.gov.za](mailto:Jaap.DeVilliers@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 [Jaap.DeVilliers@westerncape.gov.za](mailto:Jaap.DeVilliers@westerncape.gov.za).

4. 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 [Jaap.DeVilliers@westerncape.gov.za](mailto:Jaap.DeVilliers@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



**ADV. CHARMAINE MARÉ**

**DIRECTOR: ENVIRONMENTAL GOVERNANCE**

DATE OF DECISION: 23 May 2018

Copied to:

(1) Duncan Heard (Duncan Heard Environmental Consulting)

(2) Tarron Dry (Overberg Municipality)

(3) Neville Michaels (Overberg Municipality: Protection Services)

(4) Mogammad Holliday (DEADP: Environmental Law Enforcement- Cape Town)

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