



**Western Cape  
Government**

Environmental Affairs and  
Development Planning

**DIRECTORATE: ENVIRONMENTAL GOVERNANCE  
SUB-DIRECTORATE: RECTIFICATION**

**REFERENCE NUMBER:** 14/2/1/2/B1/14/0011/16

**ENQUIRIES:** Shafeeq Mallick

**REGISTERED MAIL**

Tel: 082 964 4761

Saratoga Berry Estate (Pty) Ltd

PO Box 400

ROBERTSON

6705

Email: marc@sunnytoga.co.za

**Attention: Mr Marc Doms**

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 UNLAWFUL CLEARING OF AN AREA OF 1 HECTARE OR MORE, BUT LESS THAN 20 HECTARES OF INDIGENOUS VEGETATION ON PTN 4 OF FARM KLAAS VOOGDE RIVIER, FARM NO. 40 (BERG-EN DAL), ROBERTSON**

With reference to your application dated 23 May 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 Alternative 1 as described in the Environmental Impact Report ("EIR") dated 14 December 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

Saratoga Berry Estate (Pty) Ltd.

c/o Mr Marc Doms

PO Box 400

ROBERTSON

6705

Tel: 082 964 4761

Email: marc@sunnytoga.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>Listed in Government Notice No. R. 983 of 4 December 2014</p> <p><b>Activity Number:</b> 27</p> <p>Activity Description: <i>The clearance of an area of 1 hectare or more, but less than 20 hectares of indigenous vegetation, except where such clearance of</i></p>	<p>Two areas of indigenous vegetation were illegally cleared from a field found within a small valley on portion 4 of Farm 40 Klaas Voogde Rivier (Saratoga Farm). 1.0479ha of indigenous vegetation was cleared from the north side of the field and 0.9580ha was cleared from the south</p>



<p><i>indigenous vegetation is required for-</i>  <i>(i) the undertaking of a linear activity; or</i>  <i>(ii) maintenance purposes undertaken in accordance with a maintenance management plan.</i></p>	<p>side of the field, totalling 2.0059 ha of vegetation historically identified as Breede Shale Renosterveld vegetation (listed as vulnerable). This clearance was done for the purposes of planting blueberry orchards for commercial production.</p>
<p>Listed in Government Notice No. R. 983 of 4 December 2014</p> <p><b>Activity Number:</b> 67</p> <p>Activity Description: <i>Phased activities for all activities</i></p> <p><i>i. Listed in this Notice, which commenced on or after the effective date of this Notice; or</i></p> <p><i>ii. Similarly listed in any of the previous NEMA notices, which commenced on or after the effective date of such previous NEMA Notices;</i></p> <p><i>where any phase of the activity may be below a threshold but where a combination of the phases, including expansions or extensions, will exceed a specified threshold...;</i></p>	<p>As above</p>

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

#### D. PROPERTY DESCRIPTION AND LOCATION

The listed activities commenced on Portion 4 of Farm 40 (Berg-En Dal), Robertson.  
 The SG digit code is: C0650000000004000004

The co-ordinates for the site is:

Point	Latitude (S)	Longitude (E)
1	33° 47' 18.04" South	19° 59' 19.87" East

Refer to Annexure 1: Locality Plan.  
Herein-after referred to as "the site".

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

Guillaume Nel Environmental Consultants  
c/o Mr Guillaume Nel  
P.O. Box 2632  
PAARL  
7620

Tel: (021) 870 1874  
Fax: (021) 870 1873  
Email: guillaume@gnec.co.za

#### **F. DETAILS OF THE ACTIVITY OR ACTIVITIES UNDERTAKEN**

Two areas of indigenous vegetation were illegally cleared from a field found within a small valley on portion 4 of Farm 40 Klaas Voogde Rivier (Saratoga Farm). 1.0479ha of indigenous vegetation was cleared from the north side of the field and 0.9580ha was cleared from the south side of the field, totalling 2.0059 ha of vegetation historically identified as Breede Shale Renosterveld vegetation (listed as vulnerable). CapeNature inspected the clearing of the two patches in October 2015 on request by this Department. It was determined that the clearance was done for the purposes of planting blueberry orchards for commercial production.

The land-use of the surrounding area is also predominantly utilised for commercial agricultural purposes. The farm is located outside the urban edge (appropriately zoned agricultural zone 1) and falls under the jurisdiction of the Langeberg Local Municipality.

## **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 recommendations as described in the EIR dated 14 December 2016 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 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 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**

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

4. The holder must in writing, within 14 (fourteen) days of the date of this decision–
  - 4.1 notify all registered Interested and Affected Parties ("I&APs") of –
    - 4.1.1 the outcome of the application;
    - 4.1.2 the reasons for the decision as included in Annexure 3;
    - 4.1.3 the date of the decision; and
    - 4.1.4 the date when the decision was issued.



- 4.2 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.
- 4.3 draw the attention of all registered I&APs to the manner in which they may access the decision.
- 4.4 provide the registered I&APs with:
- 4.4.1 the name of the holder (entity) of this Environmental Authorisation;
  - 4.4.2 name of the responsible person for this Environmental Authorisation;
  - 4.4.3 postal address of the holder;
  - 4.4.4 telephonic and fax details of the holder;
  - 4.4.5 e-mail address, if any, of the holder; and
  - 4.4.6 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*.
5. The listed activities, 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 III**

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

6. The draft Environmental Management Programme ("EMPr") dated 11 November 2016 compiled by Guillaume Nel Environmental Consultants and submitted as part of the application for environmental authorisation is hereby approved and must be implemented.
7. The EMPr must be included in all contract documentation for all phases of implementation.

#### **PART IV**

##### **Monitoring**

8. 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.
  
9. 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 V**

##### **Auditing**

10. 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 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 VI**

##### **Activity/ Development specific conditions**

11. 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.



12. 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.
13. Operational activities on site must remain within normal working hours in order to ensure noise levels are in keeping with the relevant local by laws.
14. All fencing on site must be managed in terms of the *Fence Act, 1963 (Act No. 31 of 1963)*.
15. All maintenance and repair work must be done in accordance with *National Building Regulations and Standards Act, 1977 (Act 103 of 1977)*.

#### **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. 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. 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 applicant) 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 applicant by the competent authority.

- 1.2. An appellant (if NOT the applicant) 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 applicant, 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 applicant.

2. The applicant, 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:

Department of Environmental Affairs and Development Planning  
Directorate: Environmental Governance

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>.

#### **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,



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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



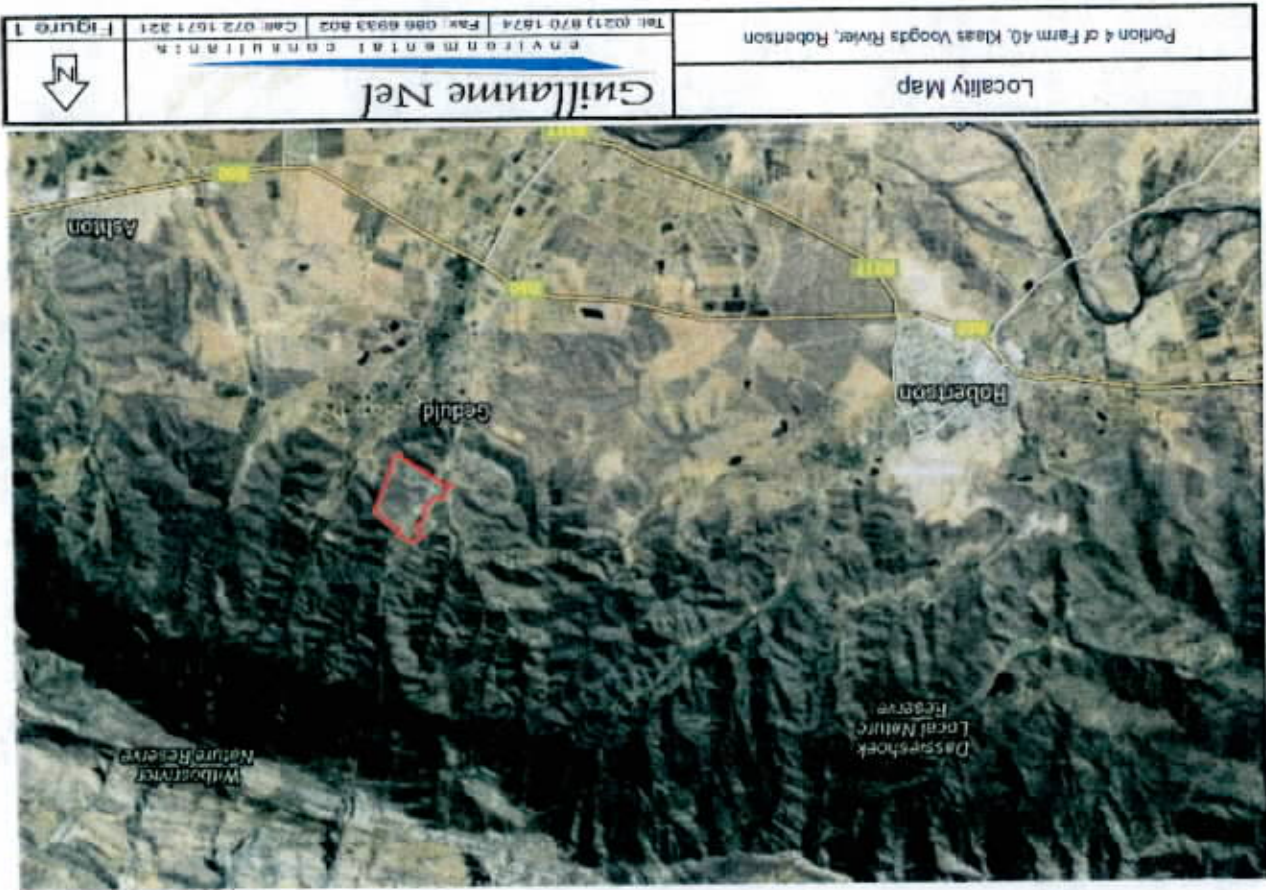
**ADV. CHARMAINE MARÉ**  
**DIRECTOR: ENVIRONMENTAL GOVERNANCE**

DATE OF DECISION: 28 MAY 2019

CC: (1) Guillaume Nel (EAP)

Fax: (021) 870 1873  
Email: guillaume@gnec.co.za

ANNEXURE 1: LOCALITY MAP





**FOR OFFICIAL USE ONLY:**

**S24G REFERENCE:**

**14/2/1/2/B1/14/0011/16**

**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 R175 000 (One hundred and seventy-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 Form dated 23 May 2016, the Environmental Impact Assessment Report (EIR) received by the competent authority on 15 December 2016 and the Environmental Management Programme (EMPr) dated 11 November 2016.
- 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 11 May 2017, attended by officials of this directorate.
- g) The appeal decision on the 24G administrative fine dated 20 February 2018.

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 activities unlawfully commenced on 12 July 2016.
- 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 12 July 2016.
- the placing of a newspaper advertisement in the **Breederivier Gazette Newspaper** on 12 July 2016.

Pat Busch Mountain Reserve (PBMR), a neighbouring property and registered I&AP, raised concerns regarding the proximity of the farming expansion activities to the PBMR hospitality business. The netting used to protect the blueberries from environmental damage are unsightly, and have a negative visual impact. It was also mentioned that dormant fynbos seeds will be affected by the planting of blueberry orchards.

The EAP indicated that the activity falls within the land use of the farm and is in line with the provincial and Municipal Spatial Development Frameworks as it promotes agricultural activities and job creation.

### Consultation with Organs of State in terms of section 24O of the NEMA

The following Organs of State provided comment on the application:

- CapeNature
- Department of Agriculture



CapeNature has indicated that they agree with the findings of the botanist. While the vegetation has been mapped as Breede Shale Renosterveld, which is a Least Threatened but rapidly declining and poorly protected vegetation type, the findings of the botanical specialist indicated that the vegetation on the site was most likely South Langeberg Sandstone Fynbos, which is a Least Threatened and well protected vegetation type.

CapeNature does not consider a biodiversity offset to be necessary for this application. However, all future agricultural expansion will need to go through an application in terms of the NEMA, and the biodiversity importance of any site will be evaluated independently of whether the site is viable for conservation purposes.

The Department of Agriculture indicated that consent must be obtained from the Department of Agriculture, Forestry and Fisheries in terms of *Conservation of Agricultural Resources Act, 1983* (Act No. 43 of 1983) in order to determine suitability of the land for the intended proposed usage. Additionally, irrigation requirements and registered water rights need to be determined. The EAP has informed the applicant of this requirement.

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 Site Alternatives**

There are no site alternatives other than the one authorised as the site has already been cleared.

Alternative 1 (Herewith authorized)

Two areas of indigenous vegetation were illegally cleared from a field found within a small valley on portion 4 of Farm 40 Klaas Voogde Rivier (Saratoga Farm). 1.0479ha of indigenous vegetation was cleared from the north side of the field and 0.9580ha was cleared from the south side of the field, totalling 2.0059 ha of vegetation.

The development of a new blueberry orchard will however have a positive socio-economic impact and not result in further negative impacts on the physical environment.

The construction of the blueberry orchard will allow for a more effective utilization of the current land parcel situated in an agricultural environment. There has been an increase in the demand for speciality fruit such as blueberries, where the industry shows tremendous growth of up to 30% per annum, resulting in a need for more growing facilities.

2.2 Option of not implementing the activity or activities ("No-Go" Alternative)

No direct rectification in terms of Section 24G (NEMA) is possible as the site has already been cleared. Additionally, the newly constructed blueberry orchards will lead to the creation of 5 permanent and 20 seasonal jobs all of which will be given to previously disadvantaged individuals. It is therefore in the opinion of GNEC that the refusal to construct the proposed orchard not be considered due to the positive socio-economic impacts associated with the new orchard.

**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. Social Benefit

The farm provides employment opportunities for 40 permanent and 200 seasonal staff, all of which are previously disadvantaged individuals.

The newly developed blueberry orchards will lead to the creation of 5 permanent and 20 seasonal jobs all of which will be afforded to previously disadvantaged individuals.



### 3.2. Biodiversity Impacts

This botanical study indicated that the vegetation is South Langeberg Sandstone Fynbos, which is listed as a Least Threatened vegetation type. The vegetation impacted on was not seen to be in a pristine state, as alien plant species were scattered throughout the area. Additionally, the cleared areas were located on either side of an existing agricultural field (pasture field) and confined to the periphery which did not introduce any fragmentation of indigenous vegetation.

### 3.3. Visual / Sense of Place

The vegetation cleared for the planting of the blueberry orchards is not expected to alter the sense of place and character of the site, as it fits into the current land use being utilized for agriculture. However, blueberry orchards have netting used to protect the blueberries from environmental damage which can be considered unsightly.

### 3.4. Pollution Impact

The maintenance and operation of the blueberry orchards are not expected to produce any waste.

## 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;

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Directorate: Environmental Governance

- 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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## Shafeeq Mallick

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**From:** Guillaume <guillaume@gnec.co.za>  
**Sent:** 29 May 2019 12:09 PM  
**To:** Shafeeq Mallick; marc@sunnytoga.co.za  
**Cc:** Nabeelah Khan  
**Subject:** RE: Farm Klaas Voogte Vegetation clearance

Thank you for this Shafeeq.  
Much appreciated!  
Kind regards

**Guillaume Nel**  
For GNEC



45 Fabriek Street  
Paarl  
7646

Tel: 021 870 1874  
Mobile: 072 1571 321  
Fax: 021 870 1873

[guillaume@gnec.co.za](mailto:guillaume@gnec.co.za)  
[www.gnec.co.za](http://www.gnec.co.za)

**From:** Shafeeq Mallick <Shafeeq.Mallick@westerncape.gov.za>  
**Sent:** Wednesday, May 29, 2019 11:04 AM  
**To:** 'marc@sunnytoga.co.za' <marc@sunnytoga.co.za>  
**Cc:** 'guillaume@gnec.co.za' <guillaume@gnec.co.za>; Nabeelah Khan <Nabeelah.Khan@westerncape.gov.za>  
**Subject:** EA: Farm Klaas Voogte Vegetation clearance

Good morning

Please see attached Environmental Authorisation for the unlawful clearing of an area of 1 hectare or more, but less than 20 hectares of indigenous vegetation on portion 4 of Farm Klaas Voogde Rivier, Farm No. 40 (Berg-En Dal), Robertson.

Thank you

Shafeeq Mallick

Specialised Environmental Officer  
Sub- Directorate: Rectification  
Directorate: Environmental Governance  
Department of Environmental Affairs and Development Planning

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