



Western Cape
Government
Environmental Affairs and
Development Planning

DIRECTORATE: ENVIRONMENTAL GOVERNANCE
SUB-DIRECTORATE: RECTIFICATION

REFERENCE NUMBER: 14/2/1/1/A5/88/0021/16

ENQUIRIES: Moe'mina Hoosain

BY REGISTERED MAIL

The Board of Directors
J.H Blanckenberg (Edms) Bpk
PO Box 3874
DURBANVILLE
7551

Tel: (021) 971 1604
Fax: (021) 971 1180
Email: koos@jhblanck.co.za

Attention: Mr J.H Blanckenberg

Dear Sir

APPLICATION IN TERMS OF SECTION 24G OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998) ("NEMA"): THE UNLAWFUL CONSTRUCTION OF A STORAGE DAM ON FARM KLIPHEUWEL RE/52 AND FARM RE/1419, KLIPHEUWEL

With reference to your application dated 16 September 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 (Existing) Alternative as described in the Environmental Impact Report ("EIR") dated 8 May 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 Board of Directors
c/o Mr J.H Blanckenberg
P. O. Box 3874
DURBANVILLE
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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
<u>Government Notice No. R. 544 of 18 June 2010</u> Activity Number: 11 Activity Description: <i>The construction of:</i> <i>(i) canals;</i> <i>(ii) channels;</i>	 A water storage dam was unlawfully constructed within in an unnamed tributary of Mosselbank River, Klipheuwel.

- (iii) bridges;
- (iv) dams;
- (v) weirs;
- (vi) bulk storm water outlet structures;
- (vii) marinas;
- (viii) jetties exceeding 50 square metres in size;
- (ix) slipways exceeding 50 square metres in size;
- (x) buildings exceeding 50 square metres in size; or
- (xi) infrastructure or structures covering 50 square metres or more where such construction occurs within a watercourse or within 32 metres of a watercourse, measured from the edge of a watercourse, excluding where such construction will occur behind the development setback line.

Similarly listed as:

Government Notice No. R. 983 of 4
December 2014

Activity Number: 12

Activity Description:

*The development of—
dams or weirs, where the dam or weir,
including infrastructure and water surface
area, exceeds 100 square metres; or
infrastructure or structures with a physical
footprint of 100 square metres or more;
where such development occurs—*

(a) within a watercourse;

The size of the dam is approximately 210 000m³. The dam surface area is approximately 10ha at full capacity.

(b) in front of a development setback; or
(c) if no development setback exists, within 32 metres of a watercourse, measured from the edge of a watercourse; —

excluding—

(aa) the development of infrastructure or structures within existing ports or harbours that will not increase the development footprint of the port or harbour;

(bb) where such development activities are related to the development of a port or harbour, in which case activity 26 in Listing Notice 2 of 2014 applies;

(cc) activities listed in activity 14 in Listing Notice 2 of 2014 or activity 14 in Listing Notice 3 of 2014, in which case that activity applies;

(dd) where such development occurs within an urban area;

(ee) where such development occurs within existing roads, road reserves or railway line reserves; or

(ff) the development of temporary infrastructure or structures where such infrastructure or structures will be removed within 6 weeks of the commencement of development and where indigenous vegetation will not be cleared.

Government Notice No. R. 544 of 18 June 2010

Activity Number: 18

Activity Description:

The infilling or depositing of any material of more than 5 cubic metres into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock of more than 5 cubic metres from:

- (i) a watercourse;*
- (ii) the sea;*
- (iii) the seashore;*
- (iv) the littoral active zone, an estuary or a distance of 100 metres inland of the highwater mark of the sea or an estuary, whichever distance is the greater but excluding where such infilling, depositing, dredging, excavation, removal or moving:
 - (a) is for maintenance purposes undertaken in accordance with a management plan agreed to by the relevant environmental authority; or*
 - (b) occurs behind the development setback line.**

Similarly listed as:

Government Notice No. R. 983 of 4 December 2014

Activity Number: 19

Activity Description:

The infilling or depositing of any material of more than 10 cubic metres into, or the dredging, excavation, removal or moving of

A water storage dam was unlawfully constructed within in an unnamed tributary of Mosselbank River, Klipheuvel. The volume of material comprising the dam wall is estimated to be 11 710m³. The dam wall includes an overflow channel covering an area of ±300m².

soil, sand, shells, shell grit, pebbles or rock of more than 10 cubic metres from a watercourse but excluding where such infilling, depositing, dredging, excavation, removal or moving-

a. will occur behind a development setback;

b. is for maintenance purposes undertaken in accordance with a maintenance management plan;

c. falls within the ambit of activity 21 in this Notice, in which case that activity applies;

d. occurs within existing ports or harbours that will not increase the development footprint of the port or harbour; or

e. where such development is related to the development of a port or harbour, in which case activity 26 in Listing Notice 2 of 2014 applies.

Government Notice No. R. 545 of 18 June 2010

Activity Number: 19

Activity Description:

The construction of a dam, where the highest part of the dam wall, as measured from the outside toe of the wall to the highest part of the wall, is 5 metres or higher or where the high-water mark of the dam covers an area of 10 hectares or more.

Similarly listed as:

Government Notice No. 984 of 4 December

A water storage dam was unlawfully constructed within in an unnamed tributary of Mosselbank River, Klipheuwel. The height of the dam wall is approximately 9m at its highest point.

In order to supplement the run-off supply to the dam, water is abstracted from the Mosselbank River from two abstraction

<p><u>2014</u></p> <p>Activity Number: 16</p> <p>Activity Description:</p> <p><i>The development of a dam where the highest part of the dam wall, as measured from the outside toe of the wall to the highest part of the wall, is 5 metres or higher or where the high-water mark of the dam covers an area of 10 hectares or more.</i></p>	<p>points. The first point comprises of a pipeline and a portable water pump downstream of the dam wall at the Mosselbank River.</p> <p>The second abstraction point consists of a formally constructed pump house, a JoJo tank and associated pipework, on the same farm east of Klipheuwel Road.</p>
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The abovementioned list is hereinafter referred to as "the listed activities".

D. PROPERTY DESCRIPTION AND LOCATION

The listed activity commenced on Farm Klipheuwel RE/52 and Farm RE/1419, Klipheuwel, City of Cape Town.

The SG digit code is C0160000000005200000 and C01600000000141900000

The co-ordinates for the property boundary of Farm Klipheuwel Remainder No. 52 are:

Point	Latitude (S)	Longitude (E)
1	33° 41' 37.27" South	18° 41' 16.31" East
2	33° 42' 32.65" South	18° 40' 17.56" East
3	33° 43' 26.36" South	18° 41' 54.31" East
4	33° 43' 2.20" South	18° 42' 37.75" East

The co-ordinates for the site boundary are:

Point	Latitude (S)	Longitude (E)
1	33° 41' 40.99" South	18° 40' 48.81" East
2	33° 41' 41.06" South	18° 40' 52.84" East
3	33° 41' 55.36" South	18° 40' 52.65" East
4	33° 41' 01.24" South	18° 40' 40.43" 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")

Khula Environmental Consultants
c/o Nick Steytler
P. O. Box 22761
SCARBOUROUGH
7975

Tel: (021) 783 4565
Fax: (086) 694 6901
Email: steytler@gmail.com

F. DETAILS OF THE ACTIVITY UNDERTAKEN

The unlawful activity entails the construction of a dam within an unnamed tributary of the Mosselbank River, Klipheuwel. The capacity of the dam is approximately 210 000m³ and the height of the dam wall at its highest point is approximately 9m. The total surface area of the dam is approximately 10ha at full capacity. While rainfall from within the catchment is captured in the dam the balance is abstracted from the Mosselbank River.

In order to supplement the run-off supply to the dam, water is abstracted from the Mosselbank River from two abstraction points. The first point comprises of a pipeline and a portable water pump downstream of the dam wall at the Mosselbank River. The second abstraction point consists of a formally constructed pump house, a JoJo tank and associated pipework, on the same farm east of Klipheuwel Road.

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 as described in the EIR dated 8 May 2017 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 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 commencement of construction 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 of 6, 7, 8, 9 and 10.

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 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

8. The draft Environmental Management Programme ("EMPr") of February 2017 compiled by Khula Environmental Consultants 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") 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, and must be made available to anyone on request, including a publicly accessible website (if applicable).
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 and the EMPr and must 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*.

The holder must, within 7 (seven) days of the submission of the report to the competent authority, notify all potential and registered I&APs of the submission and make the report available to anyone on request and on a publicly accessible website (if applicable).

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; shipwrecks; 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.

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 EMP is as follows:

Amendments to the EMP, other than those mentioned above, 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: 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

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.

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 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, 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: 20 July 2018

CC: (1) Mr N. Steytler
(2) Ms P. Tilmuss

(Khula Environmental Consulting)
(City of Cape Town)

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