



REFERENCE NUMBER: 14/2/1/1/F2/5/0024/16

ENQUIRIES: Jamie-Lee van Zyl

The Owner
P. O. Box 12
LEIPOLDTVILLE
8122

BY REGISTERED MAIL

Tel: (083) 655 5454

Email: zlouw@mylan.co.za

Attention: Mr HG Louw

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 CLEARING OF INDIGENOUS VEGETATION ON PORTION 1 OF FARM LOUWS KLIPHEUWEL NO. 227, ELANDS BAY

With reference to your application dated 15 November 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 B2 as described in the Environmental Impact Report ("EIR") dated 22 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 Owner

C/o Mr. H G Louw

PO Box 12

LEIPOLDTVILLE

8122

Cell: (083) 655 5454

Email: zlouw@mylan.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. R545 of 18 June 2010 –</p> <p>Activity Number: 16</p> <p>Activity Description: <i>The physical alteration of virgin soil to agriculture, or afforestation for the purposes of commercial tree, timber or wood production of 100 hectares or more.</i></p>	<p>A total of 123ha of intact Leipoldville Sand Fynbos was cleared for agricultural purposes, including the creation of centre-pivots (for potato farming), cultivated and uncultivated strip-cleared wheat cultivation (for cattlefeed production). The areas cleared were</p>

<p>Government Notice No. R546 of 18 June 2010–</p> <p>Activity Number: 12</p> <p>Activity Description: <i>The clearance of an area of 300 square metres or more of vegetation where 75% or more of the vegetative cover constitutes indigenous vegetation.</i></p> <p>(a) 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;</p> <p>(b) Within critical biodiversity areas identified in bioregional plans;</p> <p>(c) Within the littoral active zone or 100 metres inland from high water mark of the sea or an estuary, whichever distance is the greater, excluding where such removal will occur behind the development setback line on erven in urban areas.</p>	<p>The unlawful activity involves the clearance of indigenous vegetation consisting of 123ha of intact Leipoldville Sand Fynbos vegetation, categorised as Vulnerable in the <i>National Environmental Management: Biodiversity Act (Act 10 of 2004)</i> ("NEM: BA") list of threatened ecosystems. The vegetation clearance commenced in January 2014 and was undertaken for agricultural purposes in an area identified as a Critical Biodiversity Area ("CBA") in the <i>Western Cape Biodiversity Framework (CapeNature, 2014)</i>.</p> <p>The clearance of vegetation was undertaken to create the below:</p> <p><u>Centre-pivots:</u></p> <p>Three centre-pivots were cleared and converted to crops. The combined surface area equates to 40.5ha.</p> <p><u>Strip-cleared uncultivated areas:</u></p> <p>35 strips were cleared having a combined surface area of 40.5ha.</p> <p><u>Strip-cleared cultivated areas:</u></p> <p>21 strips were cleared having a combined surface area of 32ha.</p> <p><u>Roads and unknown use:</u></p> <p>Seven strips were cleared having a combined surface area of 10ha.</p>
<p>Government Notice No. R546 of 18 June 2010–</p> <p>Activity Number: 13</p> <p>Activity Description: <i>The clearance of an area of 1 hectare or more of vegetation</i></p>	<p>As above.</p> <p>The Elands Bay Nature Reserve is found south west of the site.</p>

<p>where 75% or more of the vegetative cover constitutes indigenous vegetation, except where such removal of vegetation is required for:</p> <p>(1) the undertaking of a process or activity included in the list of waste management activities published in terms of section 19 of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008), in which case the activity is regarded to be excluded from this list.</p> <p>(2) the undertaking of a linear activity falling below the thresholds mentioned in Listing Notice 1 in terms of GN No. 544 of 2010.</p> <p>Northern Cape and Western Cape:</p> <p>ii. Outside urban areas, the following:</p> <p>(ff) Areas within 10 kilometres from national parks or world heritage sites or 5 kilometres from any other protected area identified in terms of NEMPAA or from the core area of a biosphere reserve.</p>	
<p>As similarly listed in Government Notice No. 325 of 7 April 2017 –</p> <p>Activity Number: 13</p> <p>Activity Description: The physical alteration of virgin soil to agriculture, or afforestation for the purposes of commercial tree, timber or wood production of 100 hectares or more.</p>	<p>As above.</p>
<p>Government Notice No. R324 of 7 April 2017–</p> <p>Activity Number: 12</p>	<p>As above.</p>

<p><i>Activity Description: The clearance of an area of 300 square metres or more of indigenous vegetation except where such clearance of indigenous vegetation is required for maintenance purposes undertaken in accordance with a maintenance management plan.</i></p> <p><i>i. Western Cape</i></p> <p><i>ii. Within critical biodiversity areas identified in bioregional plans.</i></p>	
<p><i>Government Notice No. R325 of 7 April 2017–</i></p> <p>Activity Number: 15</p> <p><i>Activity Description: The clearance of an area of 20 hectares or more of indigenous vegetation, excluding where such clearance of indigenous vegetation is required for—</i></p> <p><i>(i) the undertaking of a linear activity; or</i></p> <p><i>(ii) maintenance purposes undertaken in accordance with a maintenance management plan.</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 1 of Farm Louws Klipheuwel No. 227, off Elands Bypass Road, Elands Bay.

The SG digit code is: C02000000000022700001

The co-ordinates for the site boundary are:

Point	Latitude (S)	Longitude (E)
1	32° 15' 42.16" South	18° 26' 28.09" East
2	32° 15' 18" South	18° 26' 45.70" East
3	32° 16' 23.46" South	18° 26' 48.08" East
4	32° 16' 23.73" South	18° 26' 32.34" 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")

Cornerstone Environmental Consultants (Pty) Ltd.

c/o Mr Pieter de Villiers

PO Box 12606

DIE BOORD

7613

Tel: (021) 887 9099

Fax: (086) 435 2174

Email: pieter@cornerstoneenviro.co.za

F. DETAILS OF THE ACTIVITY OR ACTIVITIES UNDERTAKEN

The holder commenced with the unlawful clearance of about 123ha of indigenous vegetation (Leipoldville Sand Fynbos categorised as Vulnerable) for the establishment of centre-pivots, roads and strip farming where vegetation is grown for cattlefeed. The activity commenced in January 2014.

The authorised activity: Alternative B2 found in the EIR dated 22 May 2017.

The uncultivated strip-cleared land and the cleared areas for roads (except for existing access roads to authorised activities) and unknown uses must be rehabilitated through natural and passive rehabilitation methods, as prescribed in the Botanical Impact Assessment ("BIA") Report of May 2017.

An outline of the activities undertaken and proposed is found below:

Centre-pivots: Three centre-pivots were cleared and converted to crops for potato farming. The combined surface area equates to 40.5ha. These areas will remain as is and may continue operating.

Strip-cleared uncultivated areas: 35 strips were cleared having a combined surface area of 40.5ha. Part of this area will be used for the creation of the three additional centre-pivots as depicted in Annexure 2. The remaining areas are to be kept free of development and left to rehabilitate naturally and through passive rehabilitation methods, as prescribed in the aforementioned BIA Report.

Strip-cleared cultivated areas: 21 strips were cleared having a combined surface area of 32ha. This area may continue to be cultivated. The holder currently uses this area for wheat planting to feed his cattle.

Roads and unknown use: Seven strips were cleared having a combined surface area of 10ha. It is proposed that these areas be included among the areas to be rehabilitated.

The proposed additional three centre-pivots is herewith authorised, in accordance with the site plan found in Annexure 2 of this document.

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 Alternative B2 described in the EIR dated 22 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 to continue, conduct or undertake the listed 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 of 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 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 IV

Management of the activity/development

8. The draft Environmental Management Programme ("EMPr") compiled by Cornerstone Environmental Consultants of May 2017 and submitted as part of the application for environmental authorisation is hereby approved and must be implemented.

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

PART V

Monitoring

10. The holder must appoint a suitably experienced Environmental Control Officer ("ECO"), before continuation of commencement of any land clearing or construction activities to ensure compliance with the EMPr and the conditions contained herein.
11. A copy of the Environmental Authorisation, EMPr, audit reports and compliance monitoring reports must be kept at the site of the authorised activities and must be made available to anyone on request.
12. Access to the site referred to in Section D must be granted, and the environmental reports mentioned above must be produced, to any authorised official representing the competent authority who requests to see it for the purposes of assessing and/or monitoring compliance with the conditions contained herein.

PART VI

Auditing

13. In terms of regulation 34 of the *EIA Regulations, 2014* the holder must conduct environmental audits to determine compliance with the conditions of the Environmental Authorisation and the EMPr and submit Environmental Audit Reports to the competent authority **annually** for the first two years after the issuing of this EA and upon receiving such request in writing from the competent authority. The Audit Report must be prepared by an independent person and must consider all the information required in Appendix 7 of the *EIA Regulations, 2014*.

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; 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. No additional development may take place on site that will trigger a listed activity(ies) without prior environmental authorisation in terms of the NEMA EIA Regulations, 2014.
17. All strip-cleared areas (except cultivated areas and existing access roads to cleared areas) must be rehabilitated through natural and passive rehabilitation methods, as prescribed in the BIA Report of May 2017. Please refer to Annexure 2 for the Site Plan.
18. The rehabilitation methods as described in CapeNature's comment dated 7 April 2017 has been incorporated in the BIA of May 2017 and must be implemented, as follows:
 - 18.1. *"With regard to rehabilitation of the strip areas, passive rehabilitation should be allowed to take place initially and these areas should not undergo any disturbance including grazing for at least **five years**."*
 - 18.2. *These areas should be monitored annually for the first two years and if there has not been adequate recovery of indigenous vegetation (Leipoldtville Sand Fynbos) after two years, an active rehabilitation plan will need to be drawn up which may involve seed harvesting or other means of re-establishing natural plant cover."* [bold added for emphasis]

H. RECOMMENDATIONS

1. CapeNature should be consulted regarding facilitating the conservation of the remaining indigenous vegetation on the site as well as the areas to be rehabilitated. In

its comments on the application dated 7 April 2017, CapeNature advises that the site should be presented at a stewardship review meeting so that an appropriate mechanism can be decided, dependent on the site's conservation value and capacity. It must be noted that all associated management costs and costs of entering into the agreement with CapeNature will be for the EA holder's account.

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 activities.
2. Non-compliance with a condition or term of this Environmental Authorisation or EMPr may render the holder liable to criminal prosecution.
3. If the holder does not continue, conduct or undertake listed activities within the period referred to in Condition 2 of Section G, this Environmental Authorisation shall lapse for that activity or activities, and a new application for Environmental Authorisation must be submitted to the competent authority. If the holder wishes to extend the validity period of the Environmental Authorisation, an application for amendment must be made on condition that the environmental authorisation is valid on the date of receipt of such amendment application.

Note that:

(1) In terms of regulation 28(1A) of the *EIA Regulations, 2014* the competent authority shall not accept or process an application for amendment of an environmental authorisation if such environmental authorisation is not valid on the day of receipt of such amendment application, but may consider an application for environmental authorisation for the same development.

(2) In terms of regulation 28(1B) of the *EIA Regulations, 2014* an environmental authorisation which is the subject of an amendment application remains valid pending the finalisation of the amendment application.

(3) It is an offence in terms of section 49A(1)(a) of the NEMA for a person to commence with a listed activity if the competent authority has not granted an environmental authorisation for the undertaking of the activity.

4. The holder must submit an application for amendment of the Environmental Authorisation to the competent authority where any detail with respect to the Environmental Authorisation must be amended, added, substituted, corrected, removed or updated. If a new holder is proposed, an application for Amendment in terms of Part 1 of the *EIA Regulations, 2014* must be submitted.

Please note that an amendment is not required if there is a change in the contact details of the holder. In this case, the competent authority must only be notified of such changes.

5. The manner and frequency for updating the EMPr is as follows:

Amendments to the EMPr must be done in accordance with regulations 35 to 37 of the *EIA Regulations, 2014* or any relevant legislation that may be applicable at the time.

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

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.

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

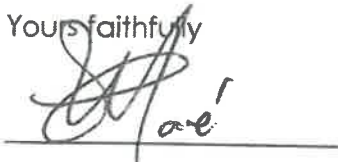
K. CONSEQUENCES OF NON-COMPLIANCE WITH CONDITIONS

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) P de Villiers (Cornerstone Environmental Consultants)

(2) A Booyesen (Cederberg Municipality)

(3) A Yasin (DEA&DP: Environmental Law Enforcement- Region 1)

Fax: (086) 435 2174

Email: pieter@cornerstoneenviro.co.za

Fax: (027) 482 8600

Email: gibooyesen@cederbergraad.co.za

Email: Aqueel.Yasin@westerncape.gov.za

