



**EIA REFERENCE:** 16/3/3/2/B5/2/1029/21  
**NEAS REFERENCE:** WCP/EIA/0000923/2021  
**DATE:** 07 March 2022

The Board of Directors  
TSR Boerdery (Pty) Ltd.  
P. O. Box 86  
**KOUE BOKKEVELD**  
6836

**Attention: Mr. Theo van Rooyen**

Cell: (083) 275 7298  
E-mail: [tsr@howbill.co.za](mailto:tsr@howbill.co.za)

Dear Sir

**APPLICATION FOR ENVIRONMENTAL AUTHORISATION IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) ("NEMA") AND THE ENVIRONMENTAL IMPACT ASSESSMENT ("EIA") REGULATIONS, 2014 (AS AMENDED): THE PROPOSED DEVELOPMENT OF AN IN-STREAM DAM ON PORTION 1 OF THE FARM KLEINVLEI NO. 209, CERES**

1. With reference to the above application, the Department hereby notifies you of its decision to **refuse** Environmental Authorisation, attached herewith, together with the reasons for the decision.
2. In terms of Regulation 4 of the EIA Regulations, 2014 (as amended), you are hereby instructed to ensure, within fourteen (14) days of the date of the decision on the application, that all registered Interested and Affected Parties ("I&APs") are provided with access to and reasons for the decision, and that all registered I&APs are notified of their right to appeal.
3. Your attention is drawn to Chapter 2 of the Appeal Regulations, 2014 (as amended), which prescribes the appeal procedure to be followed. This procedure is summarized in the attached refusal of Environmental Authorisation.

Your interest in the future of the environment is greatly appreciated.

Yours faithfully

**MR. ZAAHIR TOEFY**  
**DIRECTOR: DEVELOPMENT MANAGEMENT – REGION 1**  
**DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING**

CC: Mr. C. Geyser (EnviroAfrica cc)  
Mr. D. Nasson (Witzenberg Municipality)

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## REFUSAL OF ENVIRONMENTAL AUTHORISATION

### APPLICATION FOR ENVIRONMENTAL AUTHORISATION IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) AND THE ENVIRONMENTAL IMPACT ASSESSMENT ("EIA") REGULATIONS, 2014 (AS AMENDED): THE PROPOSED DEVELOPMENT OF AN IN-STREAM DAM ON PORTION 1 OF THE FARM KLEINVLEI NO. 209, CERES

With reference to your application for the abovementioned, find below the outcome with respect to this application.

#### DECISION

By virtue of the powers conferred on it by the National Environmental Management Act, 1998 (Act No. 107 of 1998) ("NEMA") and the Environmental Impact Assessment ("EIA") Regulations, 2014 (as amended), the Competent Authority herewith **refuses Environmental Authorisation** to the applicant to undertake the Listed Activities specified in section B below with respect to the preferred Alternative that is described in the Environmental Impact Assessment Report ("EIAR") received by the Department on 27 October 2021.

#### A. DETAILS OF THE APPLICANT

TSR Boerdery (Pty) Ltd.  
C/O Mr. Theo van Rooyen  
P. O. Box 86  
**KOUE BOKKEVELD**  
6836

Cell: (083) 275 7298  
E-mail: [tsr@howbill.co.za](mailto:tsr@howbill.co.za)

The abovementioned applicant is the holder of this decision and is hereinafter referred to as "**the holder**".

#### B. LISTED ACTIVITIES REFUSED

Listed Activities	Project Description
<p>Listing Notice 1</p> <p><b>Activity Number:</b> 12 <b>Activity Description:</b> <i>"The development of—</i></p> <p>(i) <i>dams or weirs, where the dam or weir, including infrastructure and water surface area, exceeds 100 square metres; or</i></p> <p>(ii) <i>infrastructure or structures with a physical footprint of 100 square metres or more;</i></p>	<p>A proposed development of an in-stream dam with a footprint exceeding 100m<sup>2</sup> within a watercourse.</p>

<p>where such development occurs—</p> <p>(a) within a watercourse;</p> <p>(b) in front of a development setback; or</p> <p>(c) if no development setback exists, within 32 metres of a watercourse, measured from the edge of a watercourse; — excluding—</p> <p>(aa) the development of infrastructure or structures within existing ports or harbours that will not increase the development footprint of the port or harbour;</p> <p>(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;</p> <p>(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;</p> <p>(dd) where such development occurs within an urban area;</p> <p>(ee) where such development occurs within existing roads, road reserves or railway line reserves; or</p> <p>(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."</p>	
<p>Listing Notice 1</p> <p><b>Activity Number:</b> 19</p> <p><b>Activity Description:</b></p> <p>"The infilling or depositing of any material of more than 10 cubic metres into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock of more than 10 cubic metres from a watercourse;</p> <p>but excluding where such infilling, depositing, dredging, excavation, removal or moving—</p> <p>(a) will occur behind a development setback;</p> <p>(b) is for maintenance purposes undertaken in accordance with a maintenance management plan;</p> <p>(c) falls within the ambit of activity 21 in this Notice, in which case that activity applies;</p> <p>(d) occurs within existing ports or harbours that will not increase the development footprint of the port or harbour; or</p> <p>(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."</p>	<p>The proposed development entails the infilling or depositing, dredging, excavation, removal or moving of more than 10m<sup>3</sup> of material from a watercourse.</p>
<p>Listing Notice 1</p> <p><b>Activity Number:</b> 27</p> <p><b>Activity Description:</b></p> <p>"The clearance of an area of 1 hectares or more, but less than 20 hectares of indigenous vegetation, except where such clearance of indigenous vegetation is required for—</p> <p>(i) the undertaking of a linear activity; or</p> <p>(ii) maintenance purposes undertaken in accordance with a maintenance management plan."</p>	<p>The proposed development entails the clearance of more than 1ha of indigenous vegetation.</p>
<p>Listing Notice 2</p> <p><b>Activity Number:</b> 16</p> <p><b>Activity Description:</b></p> <p>"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</p>	<p>A proposed in-stream dam with a wall height of approximately 8.5m and a high-water mark of the dam covering an area of more than 10ha.</p>

<i>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>	
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The abovementioned Listed Activities are hereinafter referred to as “**the Listed Activities**”.

### C. SITE DESCRIPTION AND LOCATION

The site where the Listed Activities were proposed is Portion 1 of the Farm Kleinvlei No. 209, Ceres.

The SG 21-digit codes comprising the site are:

Site	SG 21-digit code
Portion 1 of the Farm Kleinvlei No. 209, Ceres	C01900000000020900001

The co-ordinates of the site are given below:

Site	Latitude (S)	Longitude (E)
Portion 1 of the Farm Kleinvlei No. 209, Ceres	33° 04' 02.50" S	19° 19' 57.50" E

Refer to Annexure 1: Locality Map(s).

The above property is hereinafter referred to as “**the site**”.

### D. DETAILS OF THE ENVIRONMENTAL ASSESSMENT PRACTITIONER

EnviroAfrica CC  
Mr. Clinton Geysler  
P.O. Box 5367  
**HELDERBERG**  
7135

Tel.: (021) 851 1616  
Fax: (086) 512 0154  
E-mail: [clinton@enviroafrica.co.za](mailto:clinton@enviroafrica.co.za)

### E. LEGISLATIVE REQUIREMENTS

#### Administration of Appeal

1. In accordance with Regulation 46 of the EIA Regulations, 2014 (as amended), an applicant may not submit an application which is substantially similar to a previous application that has been refused, unless any appeals on such refusal have been finalised or the time period for the submission of such appeal has lapsed.
2. The holder must in writing, within fourteen (14) calendar days of the date of this decision–
  - 2.1. notify all registered Interested and Affected Parties (“I&APs”) of –
    - 2.1.1. the decision reached on the application;
    - 2.1.2. the reasons for the decision as included in Annexure 2;
    - 2.1.3. the date of the decision; and
    - 2.1.4. the date when the decision was issued.
  - 2.2. 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 Appeal Regulations, 2014 (as amended) detailed in Section F below;
  - 2.3. draw the attention of all registered I&APs to the manner in which they may access the decision;

- 2.4. provide the registered I&APs with the
  - 2.4.1. name of the holder (entity) of this Environmental Authorisation,
  - 2.4.2. name of the responsible person for this Environmental Authorisation,
  - 2.4.3. postal address of the holder,
  - 2.4.4. telephonic and fax details of the holder,
  - 2.4.5. e-mail address, if any, of the holder,
  - 2.4.6. 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 Appeals Regulations, 2014 (as amended).

## F. APPEALS

Appeals must comply with the provisions contained in the National Appeal Regulations, 2014 (as amended).

1. An appellant (if the holder of the decision) must, within twenty (20) calendar days from the date the notification of the decision was sent to the holder by the Competent Authority –
  - 1.1. Submit an appeal in accordance with Regulation 4 of the National Appeal Regulations, 2014 (as amended) to the Appeal Administrator; and
  - 1.2. Submit a copy of the appeal to any registered I&APs, any Organ of State with interest in the matter and the decision-maker, *i.e.*, the Competent Authority that issued the decision.
2. An appellant (if not the holder of the decision) must, within twenty (20) calendar days from the date the holder of the decision sent notification of the decision to the registered I&APs–
  - 2.1. Submit an appeal in accordance with Regulation 4 of the National Appeal Regulations, 2014 (as amended) to the Appeal Administrator; and
  - 2.2. Submit a copy of the appeal to the holder of the decision, any registered I&AP, any Organ of State with interest in the matter and the decision-maker, *i.e.*, the Competent Authority that issued the decision.
3. The holder of the decision (if not the appellant), the decision-maker that issued the decision, the registered I&AP and the Organ of State must submit their responding statements, if any, to the Appeal Authority and the appellant within twenty (20) calendar days from the date of receipt of the appeal submission.
4. The appeal and the responding statement must be submitted to the address listed below:
 

By post:                   Western Cape Ministry of Local Government, Environmental Affairs and  
Development Planning  
Private Bag X9186  
**CAPE TOWN**  
8000

By facsimile:           (021) 483 4174; or

By hand:                   Attention: Mr Marius Venter (Tel.: 021 483 2659)  
Room 809  
8<sup>th</sup> Floor Utilitas Building, 1 Dorp Street, Cape Town, 8001

**Note:** For purposes of electronic database management, you are also requested to submit electronic copies (Microsoft Word format) of the appeal, responding statement and any supporting documents to the Appeal Authority at the address listed above and/or via e-mail to [DEADP.Appeals@westerncape.gov.za](mailto:DEADP.Appeals@westerncape.gov.za).

5. A prescribed appeal form as well as assistance regarding the appeal processes is obtainable from the Appeal Authority at: Tel.: (021) 483 3721, E-mail: [DEADP.Appeals@westerncape.gov.za](mailto:DEADP.Appeals@westerncape.gov.za) or URL: <http://www.westerncape.gov.za/eadp>.

Your interest in the future of our environment is greatly appreciated.

Yours faithfully

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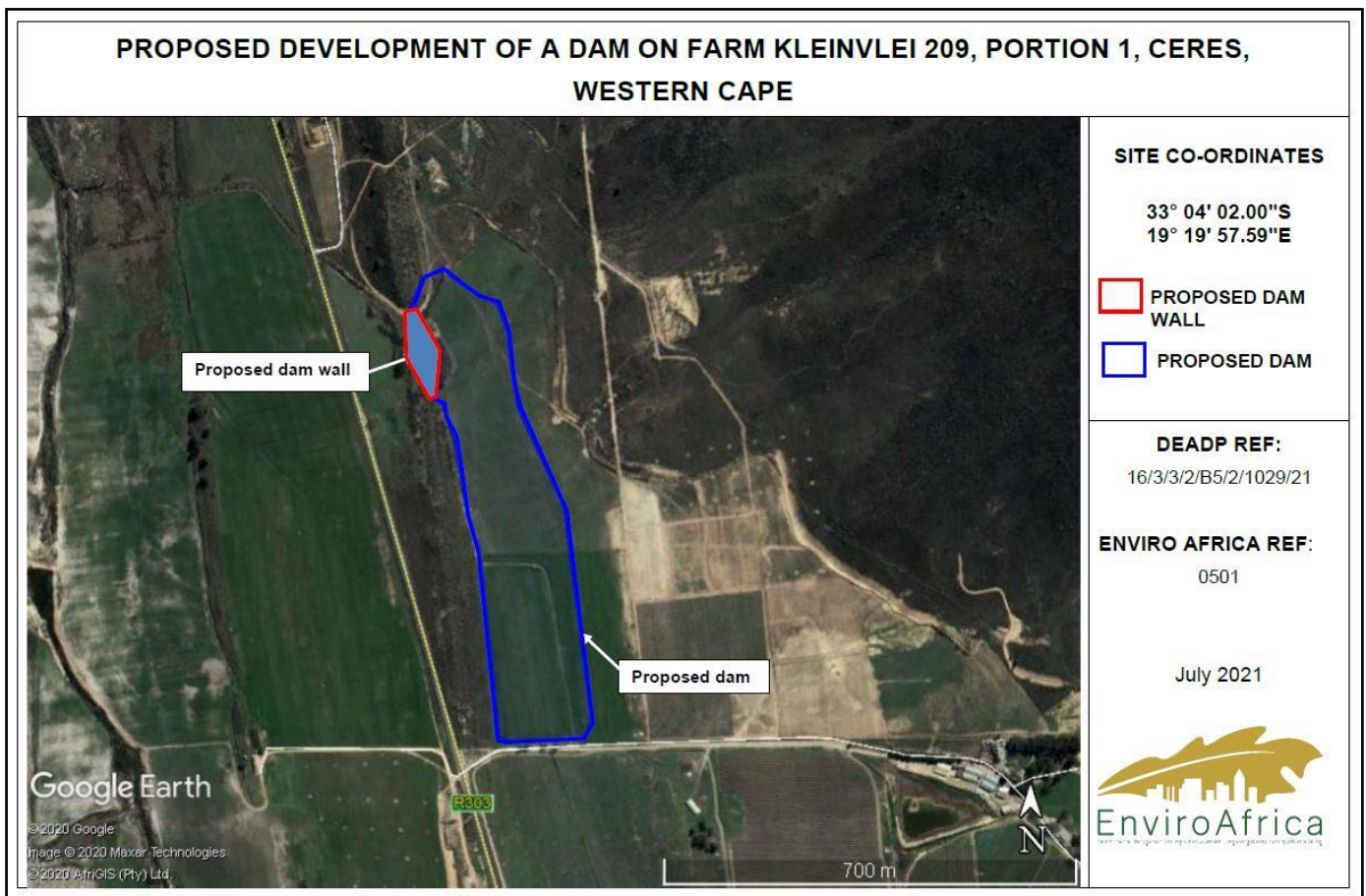
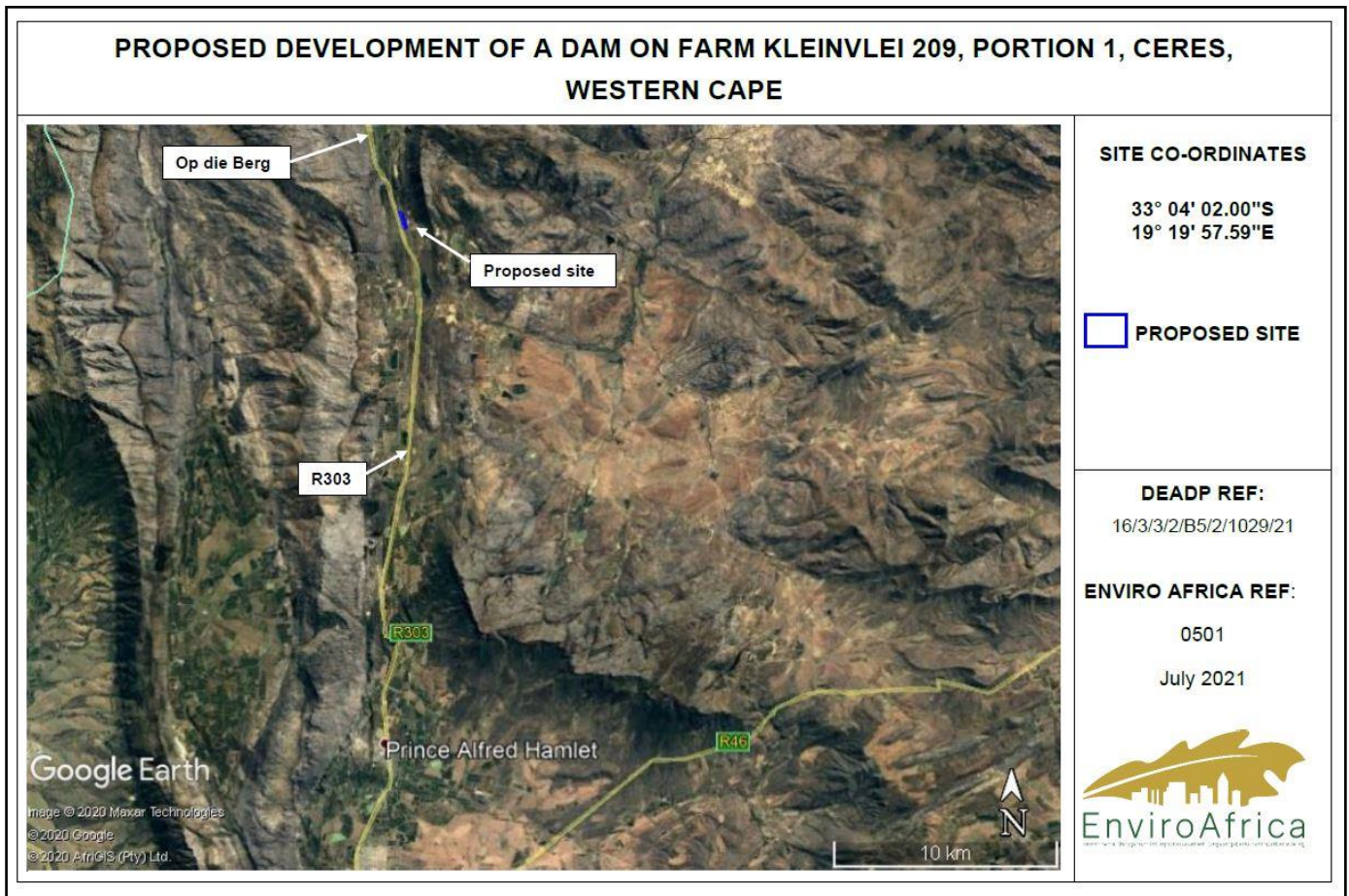
**MR. ZAAHIR TOEFY**  
**DIRECTOR: DEVELOPMENT MANAGEMENT – REGION 1**  
**DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING**  
**DATE OF DECISION: 07 MARCH 2022**

CC: Mr. C. Geyser (EnviroAfrica cc)  
Mr. D. Nasson (Witzenberg Municipality)

E-mail: [clinton@enviroafrica.co.za](mailto:clinton@enviroafrica.co.za)  
E-mail: [David@witzenberg.gov.za](mailto:David@witzenberg.gov.za)

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**ANNEXURE 1: LOCALITY MAP(S)**



## ANNEXURE 2: REASONS FOR THE DECISION

In reaching its decision, the Competent Authority considered, *inter alia*, the following:

- a) The information contained in the Application Form received by the Department on 7 June 2021, the final Scoping Report and Plan of Study ("SR&PoS") received by the Department on 15 July 2021, and the EMPr submitted together with the final EIAR for decision-making on 27 October 2021;
- b) Relevant information contained in the Departmental information base, including the Guidelines on Public Participation, Need and Desirability and Alternatives (dated March 2013);
- c) The objectives and requirements of relevant legislation, policies and guidelines, including section 2 of the NEMA;
- d) The comments received from I&APs and the responses thereto, included in the EIAR;
- e) The balancing of negative and positive impacts and proposed mitigation measures; and
- f) A site visit was conducted by officials of the Department on 23 December 2021.

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 that were considered to be the most significant for the decision is set out below.

### 1. Public Participation

- identification of and engagement with I&APs;
- Notice boards were placed at the site where the listed activities are to be undertaken, public library and community notice boards on 18 November 2021;
- giving written notice to the owners of the land and owners and occupiers of land adjacent to the site where the Listed Activities are to be undertaken, the Municipality, Organs of State and State Departments having jurisdiction in respect of any aspect of the proposed development;
- the placing of a newspaper advertisement in the 'Witzenberg Herald' on 15 November 2021; and
- making the pre-application Scoping Report and Plan of Study ("SR and PoS") available to I&APs for comment from 06 July 2020 to 08 September 2020, the in process draft SR and PoS from 9 June 2021 to 11 July 2021 and the in process draft EIAR from 13 September 2021 to 15 October 2021.

### 2. Alternatives

Three different storage capacities, *i.e.*, 168 000m<sup>3</sup>, 212 000m<sup>3</sup> or 235 000m<sup>3</sup>, for the proposed development of the in-stream Kleinvlei Dam on Portion 1 of the Farm Kleinvlei No. 209, Ceres, were considered and assessed during the EIA process.

#### 2.1 The Preferred Alternative (hereby refused)

The Preferred Alternative (hereby refused) entails the development of an in-stream dam on Portion 1 of the Farm Kleinvlei No. 209, Ceres comprising the following:

The proposed dam will have total storage capacity of approximately 235 000m<sup>3</sup>, a wall height of approximately 8.4m and water surface area at Full Supply Level of approximately 12ha. the proposed development will also include the development of an outlet pipeline of approximately 250mm in diameter and 55m in length.

#### 2.2 'No-Go' Alternative

The "No-Go" alternative of not proceeding with the proposed development is preferred, as there is no confirmation of existing water use rights for the property to support the development of an in-stream dam on Portion 1 of the Farm Kleinvlei No. 209, Ceres.



### 3. Key Factors Affecting the Decision

In reaching its decision to refuse the proposed development, the Competent Authority took into account the information provided in the final EIAR, as prescribed in terms of Appendix 3 of the EIA Regulations, 2014 (as amended).

In terms of Appendix 3 (1)(v) “An environmental impact assessment report must contain the information that is necessary for the competent authority to consider and come to a decision on the application, and must include — any specific information that may be required by the competent authority”.

An incomplete final EIAR has been submitted, since proof of the existing water use rights has not been included in the final EIAR. This specific information is required by the Competent Authority in consideration of the EIA application for the development of a water storage dam. Since no proof of existing water use rights was submitted with the final EIAR, the applicant failed to comply with Appendix 3(1) (v), i.e., the specific information requirements relevant to the EIA application for the proposed development of an in-stream dam on Portion 1 of the Farm Kleinvlei No. 209, Ceres. In light of the above Environmental Authorisation is refused.

### 4. Your attention is drawn to Regulation 21(2)(d) of the EIA Regulations, 2014 (as amended), which states that –

*“Subject to regulation 46, and if the findings of the scoping report is still valid and the environmental context has not changed, the submission of a scoping report as contemplated in subregulation (1) need not be complied with—*

- (a) in cases where a scoping report was accepted as part of a previous application for environmental authorisation and the application has lapsed or was refused because of insufficient information;*
- (b) on condition that regulation 16 is complied with and that such application is accompanied by proof that registered interested and affected parties, who participated in the public participation process conducted as part of the previous application, have been notified of this intended resubmission of the application prior to submission of such application;*
- (c) if the application contemplated in paragraph (b) is submitted by the same applicant for the same development, as applied for and lapsed or refused as contemplated in paragraph (a); and*
- (d) if an environmental impact assessment report inclusive of specialist reports and an EMPr, which must have been subjected to a public participation process of at least 30 days and which reflects the incorporation of comments received, including any comments of the competent authority, is submitted within a period of two years from the date of the acceptance of the scoping report contemplated in paragraph (a).”*

### 5. National Environmental Management Act, 1998 (Act No. 107 of 1998) 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 activity (disadvantages and benefits), and for decisions to be appropriate in the light of such consideration and assessment;
- the co-ordination and harmonisation of policies, legislation and actions relating to the environment;
- the resolving of actual or potential conflicts of interest between Organs of State through conflict resolution procedures; and
- the selection of the best practicable environmental option.

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