



REFERENCE: 16/3/3/6/1/F5/16/2089/20
ENQUIRIES: Bernard Kgosana
DATE: 06 October 2020

The Board of Directors
Black Orchid Farming (Pty) Ltd.
PO BOX 6100
ROGGEBAAI
8012

Attention: Hannah Young

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Dear Sir or Madam

COMMENTS ON THE NOTICE OF INTENT TO SUBMIT AN APPLICATION (“NOI”) FOR SCOPING AND ENVIRONMENTAL IMPACT ASSESSMENT IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) (“NEMA”) AND ENVIRONMENTAL IMPACT ASSESSMENT (“EIA”) REGULATIONS, 2014 (AS AMENDED): THE PROPOSED DEVELOPMENT OF AN IN-STREAM DAM ON PORTION 2 AND 3 OF THE FARM NO. 1100, BONATHABA, MALMESBURY

1. Your 'Notice of Your 'Notice of Intent' and accompanying information, as received by this Department via electronic mail from Enviro Africa cc on 25 June 2020 and this Department's electronic mail correspondence dated 24 July 2020 I which your Public Participation Plan (“PPP”) was approved, refers.
2. This letter serves as an acknowledgement of receipt of the aforementioned documents by this Directorate.
3. Following a review of the information submitted to this Department, the following is hereby noted:
 - 3.1. The proposed development entails the development of an in-stream dam on Portion 2 and Portion 3 of the Farm No.1100, Bonathaba, Malmesbury. The proposed instream dam will have a wall of 18m in height and a spillway channel.
4. Applicable listed activities
 - 4.1. Based on the information submitted, your proposed development **will trigger** the following listed activities in terms of the NEMA and EIA Regulations, 2014 (as amended), namely:

Listing Notice 1 of the EIA Regulations, 2014 (as amended):

Activity Number: 9

Activity Description:

"The development of infrastructure exceeding 1 000 metres in length for the bulk transportation of water or storm water"—

- (i) with an internal diameter of 0,36 metres or more; or
 - (ii) with a peak throughput of 120 litres per second or more;
- excluding where—

- (a) such infrastructure is for bulk transportation of water or storm water or storm water drainage inside a road reserve or railway line reserve; or
- (b) where such development will occur within an urban area".

Listing Notice 1 of the EIA Regulations, 2014 (as amended):

Activity Number: 12

Activity Description:

"The development of -

- (i) **dams** or weirs, where the dam or weir, including infrastructure and water surface area, exceeds 100 square metres; or

- (ii) **infrastructure or structures with a physical footprint of 100 square metres or more;**

where such development occurs -

- (a) within a watercourse;
- (c) if no development setback exists, within 32 metres of a watercourse, measured from the edge of a watercourse;"

Listing Notice 1 of the EIA Regulations, 2014 (as amended):

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 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".

Listing Notice 1 of the EIA Regulations, 2014 (as amended):

Activity Number: 27

Activity Description:

"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"—

- (i) the undertaking of a linear activity; or
- (ii) maintenance purposes undertaken in accordance with a maintenance management plan".

Listing Notice 2 of the EIA Regulations, 2014 (as amended):

Activity Number: 16

Activity Description:

"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".

Listing Notice 3 of the EIA Regulations, 2014 (as amended):

Activity Number: 14

Activity Description:

"The development of—

(i) dams or weirs, where the dam or weir,

including infrastructure and water surface area exceeds 10 square metres; or

(ii) infrastructure or structures with a physical footprint of 10 square metres or more;

where such development occurs—

(a) within a watercourse;

(b) in front of a development setback; or

(c) if no development setback has been adopted, within 32 metres of a watercourse, measured from the edge of a watercourse;

excluding the development of infrastructure or structures within existing ports or harbours that will not increase the development footprint of the port or harbour.

i. Western Cape

i. Outside urban areas:

(aa) A protected area identified in terms of NEMPAA, excluding conservancies;

(bb) National Protected Area Expansion Strategy Focus areas;

(cc) World Heritage Sites;

(dd) Sensitive areas as identified in an environmental management framework as contemplated in chapter 5 of the Act and as adopted by the competent authority;

(ee) Sites or areas listed in terms of an international convention;

(ff) Critical biodiversity areas or ecosystem service areas as identified in systematic biodiversity plans adopted by the competent authority or in bioregional plans;

(gg) Core areas in biosphere reserves; or

(hh) Areas on the estuary side of the development setback line or in an estuarine functional zone where no such setback line has been determined".

- 4.3 A Scoping and EIR process must be followed in order to apply for Environmental Authorisation. Only those listed activities applied for shall be considered for authorisation. The onus is on the applicant to ensure that all the applicable listed activities are applied for and assessed as part of the Scoping and EIA process.

5. Screening Tool

- 5.1. This Directorate notes that a Screening Report was not submitted and that confirmation of the relevant specialist studies or motivation as to why certain specialist studies will not be conducted has not been provided.
- 5.2. The Screening Tool Report provides an indication of the specialist assessments that should be conducted for proposed developments and your NOI contains only information relating to Heritage Notice of Intent to Develop ("NID"). Please submit a Screening Tool Report for the proposed development so that issues relating to the specialist assessments identified as necessary in the Screening Tool Report can be addressed during the pre-application process.
- 5.4. The "Procedures for the Assessment and Minimum Criteria for Reporting on identified Environmental Themes in terms of Sections 24(5)(a) and (h) and 44 of the National Environmental Management Act, 1998, when applying for Environmental Authorisation" ("the Protocols") (Government Notice No. 320 as published in Government Gazette No. 43110 on 20 March 2020) came into effect on 9 May 2020. These protocols must be taken into account regarding all proposed developments.
- 5.7.1. According to the Protocols, before commencing with a specialist assessment, the current use of the land and environmental sensitivity of the site under consideration identified by the screening tool must be confirmed by undertaking a site sensitivity verification.
- 5.7.2. Where an assessment is prescribed for one of the environmental themes included in the Protocol (for example agriculture, terrestrial and aquatic biodiversity), the specialist assessment must comply with the protocol.

- 5.7.3. Where applicable, a signed copy of the compliance statement for an applicable theme (for example agriculture) must be appended to the EIA Report.
- 5.7.4. Where a specialist assessment is required, but no specific environmental theme protocol has been prescribed, the level of assessment must be based on the findings of the site verification and must comply with Appendix 6 of the NEMA EIA Regulations, 2014 (as amended).
6. Please note the following pertaining to the 'NOI':
- 6.1. Consultation with State Departments/Organs of State:
In terms of Section 24O of the NEMA, the competent authority must consult with every State Department that administers a law relating to a matter affecting the environment when the competent authority considers an application for an environmental authorisation.
- 6.2. Confirmation of availability of services:
Confirmation of the availability of services where relevant, from the relevant service providers must be provided together with the Scoping Report and/or EIA Report.
- 6.3. Application fee:
This Department hereby reminds you that the "Request for a specific fee reference number" form must be completed and submitted to this Department prior to submission of the formal application. Upon receipt of the specific fee reference number, the reference number must be inserted into the Application Form and proof of payment of the applicable fee attached when the Application Form is submitted to this Department.
7. This Department notes that you do not intend to apply for exemption from any of the requirements of the Public Participation Process as stipulated by Regulation 41, from any other provisions contained in the EIA Regulations, 2014 (as amended) or the NEMA. Please note that should you fail to meet a requirement of the NEMA or EIA Regulations, 2014 (as amended) and if no exemption from that provision was applied for, your application for environmental authorisation may be refused.
8. Be advised that in terms of the EIA Regulations, 2014 (as amended) and the NEMA, the investigation of alternatives is mandatory. All alternatives identified must therefore be investigated to determine if they are feasible and reasonable. In this regard it must be noted that this Department may grant authorisation for an alternative as if the alternative has been applied for or may grant authorisation in respect of all or part of the activity applied for as specified in Regulation 20 of the NEMA and EIA Regulations, 2014 (as amended). Alternatives are not limited to activity alternatives, but include layout alternatives, design, activity, operational and technology alternatives.
9. You are hereby reminded that it is mandatory to investigate and assess the option of not proceeding with the proposed activity (i.e., the "no-go" option) in addition to other alternatives identified. Every EIA process must therefore identify and investigate alternatives, with feasible and reasonable alternatives to be comparatively assessed. If, however, after having identified and investigated alternatives, no feasible and reasonable alternatives were found, no comparative assessment of alternatives, beyond the comparative assessment of the preferred alternative and the option of not proceeding, is required during the assessment. What would, however, be required in this instance is proof that the investigation was undertaken and motivation indicating that no reasonable or feasible alternatives other than the preferred option and the 'no-go' option exist.
10. Public Participation
- 10.1. This Department has reviewed and approved the abovementioned Public Participation Plan that was submitted together with your 'NOI'. Please continue with the public consultation process as per the approved Public Participation Plan.
- 10.4. Should a Public Participation Process, which includes the circulation of the pre-application Scoping Report for comment, be undertaken prior to the submission of an Application Form to this Department, in terms of Regulation 40, the pre-application Scoping Report may also

be submitted to this Department for commenting purposes. **Please ensure that an electronic copy of the pre-application Scoping Report is submitted to this Department for commenting purposes. A hard copy submission may be required at a later stage. This Department will advise you when a hard copy submission will be required.**

10.5. In terms of good environmental practice, you are encouraged to engage with State Departments and other Organs of State in the pre-application phase or early in the Scoping process to solicit their inputs on any of their requirements to be addressed in the EIA process. Please note that this does not replace the requirement of making the Scoping as well as EIA Reports available to State Departments as stipulated above.

10.6. The person conducting the Public Participation Process must fulfil the requirements outlined in Chapter 6 of the EIA Regulations, 2014 (as amended) and must take into account any applicable guidelines published in terms of Section 24J of the NEMA, the Department's Circular EADP 0028/2014 on the "One Environmental Management System" and the EIA Regulations, 2014 (as amended) as well as any other guidance provided by this Department.

11. Collapsing of Scoping and EIA Report

Please be advised that the Scoping and EIA Phase of the EIA process are two distinctly separate phases, with each having its own requirements and reports to be submitted. This Directorate will not accept Scoping and EIA reports where the process or information of the two phases were collapsed into a single process or report. You are hereby advised that the Scoping Report must contain all the information outlined in Appendix 2 of the EIA Regulations, 2014 (as amended) and the EIA report must contain all the information outlined in Appendix 3 of the EIA Regulations, 2014 (as amended).

12. Mandatory Plan of study for EIA

You are hereby reminded that a plan of study for EIA which sets out the approach to the EIA of the application in accordance with Appendix 2(2)(i) must be compiled and submitted together with the Scoping Report.

13. You are referred to Appendix 2 of the EIA Regulations, 2014 (as amended) for the requirements with respect to the 'Content of the scoping report'. You are advised that when undertaking the scoping process, you must take into account the applicable guidelines, including the guidelines developed by this Department.

14. You are referred to Appendix 3 of the EIA Regulations, 2014 (as amended) for the requirements with respect to the 'Content of environmental impact assessment reports'. You are advised that when undertaking the EIA process, you must take into account the applicable guidelines, including the guidelines developed by this Department.

15. In terms of the EIA Regulations, 2014 (as amended) when considering an application, this Department must take into account a number of specific considerations including *inter alia*, the need for and desirability of any proposed development. As such, the need for and desirability of the proposed activity must be considered and reported on in the Scoping report as well as in the EIA report. The Scoping report and EIA report must reflect how the strategic context of the site in relation to the broader surrounding area, has been considered in addressing need and desirability.

16. In addition to the above, you must clearly show how the proposed development complies with the principles contained in Section 2 of the NEMA and how the proposed development meets the requirements of sustainable development.

17. It is prohibited in terms of Section 24F of the NEMA for a person to commence with a listed activity unless the competent authority has granted an environmental authorisation for the undertaking of the activity. Failure to comply in terms of this prohibition will result in the matter being referred to the Environmental Law Enforcement Directorate of this Department for possible prosecution. A person convicted of an offence in terms of the above is liable for a fine not exceeding R5 000 000 or to imprisonment for a period not exceeding 10 years, or to both such fine and imprisonment.

18. This Department awaits the submission of the pre-application Scoping Report and/or the application form for environmental authorisation.
19. Please note that the pre-application consultation is an advisory process and does not pre-empt the outcome of any future application which may be submitted to this Department.

No information provided, views expressed and/or comments made by officials during the pre-application consultation should in any way be seen as an indication or confirmation:

- that additional information or documents will not be requested; or
- the outcome of the application.

This Department reserves the right to revise initial comments and request further information based on any new or revised information received.

Yours faithfully



pp HEAD OF DEPARTMENT

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