



REFERENCE: 16/3/3/1/F5/16/2002/21

DATE: 20/01/2021

The Board of Directors
Black Orchid Farming Pty (Ltd).
P. O. Box 6100
ROGGEBAAI
8012

Attention: Ms. M. van Wyk

Tel.: (021) 421 2129

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Dear Madam

ACKNOWLEDGEMENT OF RECEIPT OF THE APPLICATION FORM FOR BASIC ASSESSMENT IN TERMS OF THE ENVIRONMENTAL IMPACT ASSESSMENT ("EIA") REGULATIONS, 2014 (AS AMENDED) FOR THE PROPOSED EXPANSION OF AN INSTREAM DAM ON THE REMAINDER OF FARM ZWARTFONTEIN NO. 792 AND PORTION 8 OF THE FARM ZWARTFONTEIN NO. 792, ZWARTFONTEIN, MALMESBURY.

1. The application form, as received by this Department *via* electronic mail correspondence on 11 January 2021 and the additional information (which included the Application Public Participation Plan and Project Plan) received from Mr Anthony Mader of EnviroAfrica cc, as received by this Department *via* electronic mail correspondence on 15 January 2021, refer.
2. This letter serves as an acknowledgement of receipt of the aforementioned document and additional information by this Department.
3. Following a review of the information submitted to this Department, the following is noted:
 - 3.1 The proposed development entails the expansion of the existing dam and associated infrastructure as follows:
 - increasing the existing storage capacity of 150 000m³ to a total storage capacity of 915 000m³;
 - raising the dam wall height of 11.7m to the height of 22.5m;
 - increasing the existing dam footprint of 36 000m² to a total of approximately 109 000 m²;
 - construction of a new access road around the new dam footprint;
 - relocation of pumphouse;
 - replacement and extension of the existing outlet pipeline;
 - relocation of existing Eskom Infrastructure; and
 - relocation of irrigation pipelines.
 - 3.2 The expansion works will amount to approximately of 145 000m².
 - 3.3 The site is zoned Agriculture.

4. Applicable Listed Activities:

4.1 After considering the information provided in the application form, the Department concurs that the proposed development constitutes the following listed activities defined in terms of the EIA Regulations, 2014, (as amended), namely:

4.1.1 Activities 12, 19, 27, 31, 45, 48, 50 and 66 of Listing Notice 1 of the EIA Regulations, 2014 (as amended).

4.1.2 Activities 4 and 12 of Listing Notice 3 of the EIA Regulations, 2014 (as amended).

4.2 A Basic Assessment process must be followed in order to apply for Environmental Authorisation. Only those 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 Basic Assessment process.

5. Screening Tool:

5.1 This Directorate notes that a Screening Report dated 24 November 2020 and confirmation of the relevant specialist studies required were provided.

5.1.1 The following specialist studies were identified in the abovementioned Screening Report-

5.1.1.1 Agricultural Impact Assessment;

5.1.1.2 Landscape/Visual Impact Assessment;

5.1.1.3 Archaeological and Cultural Heritage Impact Assessment;

5.1.1.4 Palaeontology Impact Assessment;

5.1.1.5 Terrestrial Biodiversity Impact Assessment;

5.1.1.6 Aquatic Biodiversity Impact Assessment;

5.1.1.7 Hydrology Assessment;

5.1.1.8 Socio-Economic Assessment;

5.1.1.9 Plant Species Assessment; and

5.1.1.10 Animal Species Assessment.

5.2 It is indicated in the abovementioned application form that the following specialist studies will not form part of the basic assessment process, given the reasons provided:

5.2.1 Landscape/Visual Impact Assessment;

5.2.2 Agricultural Impact Assessment;

5.2.3 Archaeological and Cultural Heritage Impact Assessment;

5.2.4 Palaeontological Impact Assessment;

5.2.5 Terrestrial Biodiversity Impact Assessment;

5.2.6 Aquatic Biodiversity Impact Assessment;

5.2.7 Hydrology Assessment;

5.2.8 Socio-Economic Assessment;

5.2.9 Plant Species Assessment; and

5.2.10 Animal Species Assessment.

5.3 Instead, it is indicated that a Botanical Assessment and a Freshwater Assessment were already undertaken. Please note that should relevant commenting authorities require any additional specialist assessments, the relevant specialist assessment will need to be undertaken.

6. Protocols:

6.1 Since specialist studies, *i.e.* the Botanical Assessment and Freshwater Assessment were undertaken (as mentioned in paragraph 5.3) and the screening tool has identified a number of assessments to be undertaken, your attention is drawn to the following:

6.1.1 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 (Act No. 107 of 1998)

("NEMA"), when applying for Environmental Authorisation" ("the Protocols") (Government Notice ("GN") No. 320 as published in Government Gazette No. 43110 on 20 March 2020) came into effect on 9 May 2020.

- 6.1.2 Be advised that the Protocols must be complied with for every new application that is submitted after **9 May 2020**.
- 6.1.3 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 which must be recorded in the form of a Site Sensitivity Verification Report ("SSV") Report. **As such, please submit the SSV Report to the Department as soon as possible, in order for the Department to confirm whether any of the other applicable Protocols need to be complied with.**
- 6.1.4 Where assessment protocols are prescribed for the identified environmental themes included in the Protocols (for example Aquatic Biodiversity and Terrestrial Biodiversity Theme), the specialist studies must therefore comply with these Protocols.
- 6.1.5 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 EIA Regulations, 2014 (as amended).

7. Exemptions:

The 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 EIA Regulations, 2014 (as amended) or the NEMA and if no exemption from that provision was applied for, your application for environmental authorisation may be refused.

8. Alternatives:

- 8.1 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 the Department may grant authorisation for an alternative as if it 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 EIA Regulations, 2014 (as amended). Alternatives are not limited to activity alternatives, but include layout alternatives, design, activity, operational and technology alternatives.
- 8.2 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 basic assessment 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.

9. Public Participation:

9.1 According to the information contained in the above-mentioned application form, the following processes as part of pre-application Public Participation Process (ref. 16/3/3/6/7/1/F5/16/2037/19) were already undertaken:

9.1.1 Identification of Interested and Affected Parties ("I&APs").

9.1.2 Landowners adjacent to the proposed site, relevant organs of state, organisations, ward councillors and the Local and District Municipality were added to this database.

9.1.3 Posters were displayed on the site entrance as well as the Du Vlei farmstall on R46, Die Rooi Spens, Hermon; Agrimark Wellington and Midway Superette, Wellington.

9.1.4 Notification letters were sent to the municipal ward councilor at the Swartland Local Municipality, Swartland Local Municipality, West Coast District Municipality,

9.1.5 Notification letters were sent to the Department of Environmental Affairs and Development Planning, Department of Water Affairs and Sanitation, Cape Nature, Heritage Western Cape, Western Cape Department of Agriculture and Land Use Management.

9.1.6 Notification letters were sent to neighbours.

9.1.7 An advert was placed in the Swartland Gazette on 26 March 2019.

9.1.8 A register of I&APs was opened and maintained.

9.1.9 A pre-Application BAR was circulated for comment to all identified I&APs.

9.2 The abovementioned Public Participation Plan outlined the following process which was already commenced with:

9.2.1 All registered I&APs have been given the opportunity to provide comment on the Draft BAR for the period of 11 January 2021 to 12 February 2021.

9.3 This Directorate agrees to the abovementioned Public Participation Plan, provided that electronic copies of the Draft BAR be distributed as well as alternative access to copies of the Draft BAR be made available to I&APs who may indicate that they cannot access electronic copies.

9.4 In accordance with Regulation 40(3), a copy of the Draft BAR must be made available to the Department, for commenting. Please note the BAR must be submitted via email to the case officer, with attached pdf versions of the report or, if too large to attach to an e-mail, to be made available via an electronic link provided in the email that is accessible by the Directorate. The Directorate may require that a hard copy of the BAR also be submitted to the Department by a certain date but will advise you accordingly.

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

10. In accordance with Section 24N of NEMA and Regulation 19 the Department hereby requires the submission of an Environmental Management Programme ("EMPr"). The contents of such an EMPr must meet the requirements outlined in Section 24N of the NEMA (as amended) and Regulation 19 of the EIA Regulations, 2014 (as amended). The EMPr must address the potential environmental impacts of the activity throughout the project life cycle including an assessment of the effectiveness of monitoring and management arrangements after implementation (auditing). The EMPr must be submitted together with the BAR. The

Department would like to advise that in compiling the EMP the Department's Guideline for Environmental Management Plans (June 2005), available on the Department's website must be taken into account.

11. You are referred to Appendix 1 of the NEMA EIA Regulations, 2014 (as amended) for the requirements with respect to the 'Content of basic assessment reports'. You are advised that when undertaking the application process, you must take into account 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 the Department.
12. In terms of the NEMA EIA Regulations, 2014 (as amended), when considering an application, the 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 BAR. The BAR must reflect how the strategic context of the site in relation to the broader surrounding area, has been considered in addressing need and desirability.
13. 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 must also show how the proposed development meets the requirements of sustainable development.
14. Project Plan
Your Project Plan submitted on 15 January 2021 is acknowledged and hereby confirmed to be in order with respect to the allocated timeframes regarding your basic assessment application.
15. In accordance with Regulation 19(1) of the EIA Regulations, 2014 (as amended), the Final BAR must be submitted within 90 days of receipt of the application by the Department, calculated from 11 January 2021. If, however, significant changes have been made or significant new information has been added to the BAR, the applicant/EAP must notify the Department that an additional 50 days (i.e. 140 days from receipt of the application) would be required for the submission of the BAR. The additional 50 days must include a minimum 30-day commenting period to allow registered I&APs to comment on the revised report/additional information.

Further note, in terms of Regulation 45 of the EIA Regulations, 2014 (as amended), an application in terms of the EIA Regulations, 2014 (as amended) lapses and the competent authority will deem the application as having lapsed, if the applicant fails to meet any of the timeframes prescribed in terms of these Regulations, unless extension has been granted in terms of Regulation 3(7).

16. Please note the BAR must be submitted *via* email to the case officer, with attached pdf versions of the report or, if too large to attach to an e-mail, to be made available via an electronic link provided in the email that is accessible by the Directorate. The Directorate may require that a hard copy of the BAR also be submitted to the Department by a certain date but will advise you accordingly.
17. Kindly quote the abovementioned reference number in any future correspondence in respect of the application.

18. 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. A person convicted of an offence in terms of the above is liable for a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, or to both such fine and imprisonment.

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

Yours faithfully

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MR. ZAAHIR TOEFY
DIRECTOR: DEVELOPMENT MANAGEMENT (REGION 1)

Copied to: (1) Mr. A. Mader (EnviroAfrica)
(2) Mr. A. Zaayman (Swartland Municipality)

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