



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

DATE: 08/02/2021

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

Attention: Ms. Mine van Wyk

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Dear Madam

COMMENT ON THE DRAFT BASIC ASSESSMENT REPORT 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 Draft Basic Assessment Report ("BAR") dated January 2021, as received by this Department via electronic mail correspondence on 11 January 2021 and this Department's correspondence dated 20 January 2021, acknowledging receipt of the Draft BAR, refer.
2. Having considered the information contained in the BAR, this Department in accordance with Regulation 7 (5) of the Environmental Impact Assessment ("EIA") Regulations, 2014 (as amended), hereby provides the following comments:

- 2.1. It is stated on page 9 of the Draft BAR that the expansion of the dam is required in order to double the productive hectares of the farm(s). It is therefore this Department's understanding that agricultural expansion for the cultivation of citrus and grapes will take place, page 17 of the BAR indicates "*the water stored will be used for the irrigation of orchards (table grapes & citrus) ...*"

Please note that it was previously requested in this Department's letter dated 31 January 2020 (comments on the pre-application BAR), that the impacts of agricultural expansions must be assessed. The Draft BAR does not provide the assessment of impacts relating to the proposed cultural expansions. Since new agricultural activities are proposed, you must assess the impacts thereof, including the measures to avoid and if not possible, mitigate such impacts. Furthermore, the assessment must include, *inter alia* the assessment and/or confirmation of the suitability of the soil for cultivation of citrus and grapes, as proposed.

- 2.2. Please ensure that you provide detailed information on the proposed layout of irrigation areas. This information must be accompanied by maps, which spatially illustrate the proposed layout of irrigation areas.
- 2.3. It is noted that separate Impact Assessment Tables, as included in Appendix J.2.1 and Appendix J2.2. were provided which includes the impact assessment of the identified impacts. It is however requested that this Department's BAR Template be used to include the impact assessment of the identified impacts. This information must be included in the Final BAR.

- 2.4. The Impact Assessment Tables, as included in Appendix J.2.1 and Appendix J.2.2. does not provide an assessment of the socio-economic impacts (positive and negative) nor the measures to avoid/mitigate any negative impacts. Please be reminded to provide this information, as previously also requested in this Department's letter dated 31 January 2020.
- 2.5. Please be reminded to provide all co-ordinates of the proposed linear infrastructure (i.e. new access road and irrigation pipeline), i.e. starting, middle and end points.
- 2.6. It is hereby acknowledged that while comments were obtained from key authorities during the pre-application process for the proposed development (16/3/3/6/7/1/F5/16/2037/19), please be reminded to provide the comments from the following relevant authorities, which were obtained during the Public Participation Process undertaken post the submission of the Basic assessment application:
- CapeNature;
 - Department of Water and Sanitation;
 - Swartland Municipality;
 - Heritage Western Cape;
 - Eskom; and
 - Western Cape Department of Agriculture.
- 2.7. Please be reminded to provide the reasons why each alternative is either preferred or rejected.
- 2.8. The Freshwater Impact Assessment indicates that certain maintenance activities may be necessary. It is therefore recommended that a Maintenance Management Plan ("MMP") should be compiled and form part of this Basic Assessment application, so that the MMP be approved as part of this application. Should you decide to compile the said MMP, please include the MMP as part of the Environmental Management Programme ("EMPr") and provide all registered I&APs with an opportunity to provide comment on the revised BAR.
- 2.9. The recommendations and mitigation measures proposed throughout the BAR and specialist studies must be included in the EMPr.
- 2.10. Your attention is drawn to 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 No. 320 as published in Government Gazette No. 43110 on 20 March 2020) which came into effect on **9 May 2020**. It is noted that the following specialist reports were provided:
- Fresh Water Report dated June 2020, compiled by Watsan Africa;
 - Botanical Statement Report dated 18 June 2020, compiled by PB Consult Environmental Management Services; and
 - Geophysical survey dated 13 March 2020, compiled by GEOSS South Africa (Pty) Ltd
- 2.10.1. The Fresh Water Report dated June 2020 does not provide proof of having complied with the requirements of the environmental theme, i.e. Aquatic Biodiversity for the site's rating as very high, as detailed in the Screening Tool Report dated 24 November 2020. The specific requirements that must be met includes:
- contact details of the specialist, their SACNASP registration number, their field of expertise and a curriculum vitae;
 - a signed statement of independence by the specialist;
 - the location of areas not suitable for development, which are to be avoided during construction and operation, where relevant;
 - additional environmental impacts expected from the proposed development;
 - a suitable construction and operational buffer for the aquatic ecosystem, using the accepted methodologies;
 - proposed impact management actions and impact management outcomes for inclusion in the EMPr;
 - a motivation must be provided if there were development footprints identified that were identified as having a "low" aquatic biodiversity sensitivity and that were not considered appropriate;

- a substantiated statement, based on the findings of the specialist assessment, regarding the acceptability or not of the proposed development and if the proposed development should receive approval or not; and
- any conditions to which this statement is subjected.

Please ensure that the Fresh Water Report is updated so that these requirements are met.

- 2.10.2. The Botanical Statement Report dated 18 June 2020 does not provide proof of having complied with the requirements of the environmental theme, i.e. Terrestrial Biodiversity Theme for the site's rating as very high, as detailed in the Screening Tool Report dated 24 November 2020.

Although the Botanical Statement Report dated 18 June 2020 report does indicate that "*botanically speaking the proposed dam is not expected to have any long term impacts on vegetation...*", the said report does not contain the following information -

- a description of the assumptions made and any uncertainties or gaps in knowledge or data as well as a statement of the timing and intensity of site inspection observations;
- a location of the areas not suitable for development, which are to be avoided during construction and operation (where relevant);
- additional environmental impacts expected from the proposed development;
- any direct, indirect and cumulative impacts of the proposed development;
- the degree to which impacts, and risks can be mitigated;
- the degree to which the impacts and risks can be reversed;
- the degree to which the impacts and risks can cause loss of irreplaceable resources; and
- a motivation must be provided if there were development footprints identified as having a "low" terrestrial biodiversity sensitivity and that were not considered appropriate.

Please ensure that the Botanical Statement Report is updated so that these requirements are met.

- 2.10.3. You are advised to ensure that the Geophysical survey dated 13 March 2020 is updated to meet the following requirements of Appendix 6 of the EIA Regulations, 2014 (as amended):

Regulation (1):

"(1) A specialist report prepared in terms of these Regulations must contain—

- (a) details of—
 - (ii) the expertise of that specialist to compile a specialist report including a curriculum vitae;
- (b) a declaration that the specialist is independent in a form as may be specified by the competent authority;
- (cA) an indication of the quality and age of base data used for the specialist report;
- (cB) a description of existing impacts on the site, cumulative impacts of the proposed development and levels of acceptable change; and
- (i) a description of any assumptions made and any uncertainties or gaps in knowledge
- (n) a reasoned opinion—
 - (i) whether the proposed activity, activities or portions thereof should be authorised;
 - (iA) regarding the acceptability of the proposed activity or activities; and
 - (ii) if the opinion is that the proposed activity, activities or portions thereof should be authorised, any avoidance, management and mitigation measures that should be included in the EMPr, and where applicable, the closure plan".

2.11. According to the Screening Tool Report dated 9 March 2020, the following site sensitivities are indicated:

- Agriculture Theme – Very High sensitivity;
- Animal Species Theme - Medium Sensitivity;
- Aquatic Biodiversity Theme - Very High sensitivity;
- Civil Aviation Theme – High sensitivity;
- Defence Theme - Low Sensitivity;
- Paleontology Theme - Low Sensitivity;
- Plant Species Theme - Medium Sensitivity; and
- Terrestrial Biodiversity Theme - Very High sensitivity.

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. The submission of a SSV was requested in this Department's correspondence dated 20 January 2021. Although the motivation was included in the BAR as to why the remaining specialist studies were not compiled, a SSV Report is still required. This Directorate notes that Agricultural land will not be impacted (other than the proposed irrigation pipelines to be developed within previously ploughed areas. Further, there are no impacts from a heritage, civil aviation and defence theme. However, this must be reported in a SSV Report, with an indication of the significance rating for each environmental theme.

Please ensure that the SSV Report is submitted to this Department prior to the compilation and submission of the Final BAR. You are reminded that should the results of the SSV Report reveal that additional specialist studies are indeed required, and other applicable Protocols need to be complied with, then these requirements must be met prior to the submission of the Final BAR to this Department. In accordance with Regulation 40 (2) of the EIA Regulations, 2014 (as amended), registered Interested and Affected Parties ("I&APs") must also be provided with additional opportunities to view and comment on the additional studies, if so required.

2.12. Your attention is drawn to Appendix 1 of the EIA Regulations, 2014 (as amended), for the requirements with respect to the '*Content of basic assessment reports*'. Please ensure that these requirements are met.

2.13. Your attention is drawn to Appendix 4 of the EIA Regulations, 2014 (as amended), for the requirements with respect to the '*Content of Environmental Management Programme*'. Please ensure that the following additions are included in the EMPr:

- page number 26 of the EMPr must be amended to reflect that an Environmental Control officer ("ECO") must be appointed for the duration of the construction phase;
- although the ECO will compile ECO monitoring reports, the Final Environmental Audit Report after project completion, must be compiled an appointed Environmental Auditor who will be required to submit the Audit Report to the Competent Authority (as specified in section 7.7 Auditing Programme, below).
- a final Audit Report must be compiled by an independent and suitably qualified auditor as appointed by the holder of the Environmental Authorisation.
- Any proposed changes to the EMPr, must be submitted to this Department (with reference to point 9 of section 7.9. of the EMPr)
- emergency provisions in terms of Section 30 of the NEMA must be included (with reference to point 7.11.20 of the EMPr.

The EMPr must also be amended to reflect the roles and responsibilities in terms of the actions included in the EMPr, including the parties responsible to ensure compliance with the said actions.

2.14. Please be reminded that 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. 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).

3. Please note that it is prohibited in terms of the National Environmental Management Act, 1998 (Act No. 107 of 1998) 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 million or to imprisonment for a period not exceeding 10 years, or to both such fine and imprisonment.
4. Kindly quote the abovementioned reference number in any future correspondence in respect of your application.
5. This Department reserves the right to revise its initial comments and request further information from you based on any new or revised information received.

Yours faithfully

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

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