



REFERENCE: 14/1/1/E3/5/2/3/L1049/19

ENQUIRIES: H.van Schalkwyk

BY EMAIL : hein.jonker@opsa.co.za

Mr H. Jonker

P O Box 689

Oudtshoorn

6460

COMPLIANCE NOTICE

Dear Sir

COMPLIANCE NOTICE IN TERMS OF SECTION 31L OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 107 OF 1998

1. The Department's Pre-Compliance Notice dated 23 July 2019 and the representation received from your appointed Environmental Assessment Practitioner (EAP), Cape EAPrac, dated 05 September 2019 with the section 24G application Project Schedule (PS) has reference.
2. I, Achmad Bassier, in my capacity as an Environmental Management Inspector Grade 1, hereby issues Mr H.Jonker with a Compliance Notice in terms of section 31L of the National Environmental Management Act, 1998 (NEMA).

3. This Compliance Notice relates to non-compliance with the provisions of section 24F of the NEMA. No activity listed in the Environmental Impact Assessment ("EIA") Regulations Listing Notice 1 of 2014 may commence without environmental authorisation from the competent authority.

Details of conduct constituting non-compliance

1. During an investigation into allegations of the commencement of a listed activity in contravention of section 24F of the NEMA, a site inspection was conducted at Farm 108 Schoonberg, Herald (the property) by Environmental Management Inspectors (EMI's) from the Department's Directorate: Environmental Law Enforcement (this Directorate) and officials from the Breede Gourits Catchment Management Agency (BGCMA) on 03 July 2019, and it was confirmed that you have commenced with the clearance of vegetation of more than 1 hectare and the construction of dams as well as the moving of sand from a watercourse , without environmental authorisation.



Map 1: Location of the alleged unlawful activities conducted on the property.

4. On considering the evidence before me there are reasonable grounds to believe that you have commenced with the following activities without environmental authorisation:

EIA Regulations Listing Notice 1 of 2014 as amended in 2017:

Activity 12:

The development of-

- (i) Canals exceeding 100 square meters in size;*
- (ii) Channels exceeding 100 square meters in size;*
- (iii) Bridges exceeding 100 square meters in size;*
- (iv) Dams, where the dam, including infrastructure and water surface area, exceeds 100 square meters in size*
- (v) Weirs, where the weir, including infrastructure and water surface area, exceeds 100 square meters in size;*
- (vi) Bulk water outlet structures exceeding 100 square meters in size;*
- (vii) Marinas exceeding 100 square meters in size;*
- (viii) Jetties, exceeding 100 square meters in size;*
- (ix) Slipways exceeding 100 square meters in size;*
- (x) Buildings exceeding 100 square meters in size;*
- (xi) Boardwalks exceeding 100 meters in size;*
- (xii) Infrastructure or structures with a physical footprint of 100 square meters or more.*

Activity no. 19

The infilling or depositing of any material of more than 5 cubic meters into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock of more than 5 cubic meters from:

- (i) A watercourse*
- (ii) The seashore; or*
- (iii) The littoral active zone, an estuary or a distance of 100 meters inland from the high-water mark of the sea or estuary, whichever distance is the greater*

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, 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 3 of 2004 as amended in April 2017:

Activity 12:

The clearance of an area of 300 square meters 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

(a) In the Western Cape

- i. Within any critically endangered or endangered ecosystem listed in terms of section 52 of 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*



Photo 1: Photo of portion of area cleared.



Photo 2: Photo of construction within the dam



Photo 3: Photo of sand being moved within the stream.

6. In light of fact that you have decided to apply for the regularisation of the unlawful commencement of a listed activity in terms of section 24G of the NEMA and have submitted a section 24G PS, you are hereby instructed to:

6.1 Immediately cease the above listed activities;

6.2 Adhere to the section 24G PS and specified timeframes as received on 05 September 2019 (attached hereto); and

6.3 Inform the Department of any delays/changes in respect of the section 24G PS on the following details; Ms Zaidah Toefy (Head of SubDirectorate: Rectification) email: zaidah.toefy@westerncape.gov.za and Ms Harriet van Schalkwyk (Directorate: Environmental Law Enforcement) email: Harriet.vanSchalkwyk@westerncape.gov.za

7. Approval of the section 24G application PS by the Department does not remedy the unlawful commencement of the above activities which remain unlawful in terms of section 49A(1) (a) and/or (d) of the NEMA, until such time that environmental authorisation is granted.

8. Notwithstanding the section 24G application, the Department may commence criminal proceedings should circumstances so require.

Varying this Compliance Notice

9. If you would like me to vary this Compliance Notice or extend the period to which it relates, you may make representations to me, in writing, to do so.

Failure to comply with this Compliance Notice (section 31N of the NEMA) and related offences in terms of the NEMA

10. In terms of section 49A(1)(a) of the NEMA it is an offence to commence a listed activity without environmental authorisation. A person convicted of such an offence is liable to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.
11. Furthermore, failure to comply with a Compliance Notice is an offence in terms of section 49A(1)(k). A person convicted of such an offence is liable to a fine not exceeding R5 million or to imprisonment for a period not exceeding 5 years, and in the case of a second or subsequent conviction to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, and in both instances to both such fine and such imprisonment.
12. Any non-compliance with the Compliance Notice must be reported to the Minister, who may:
 - 12.1. revoke any permit or authorisation to which this Compliance Notice relates; and/or
 - 12.2. take any steps necessary to ensure compliance with the provisions of the law, permit or authorisation to which this Compliance Notice relates and recover from you the cost of doing so.

Procedure for lodging an objection to this Compliance Notice (section 31L and 31M of the NEMA)

13. If you wish to lodge an objection to this Compliance Notice, you may do so by making representations, in writing, to the Provincial Minister of Environmental Affairs and Development Planning ("the Minister") within 30 days of receipt of this Compliance Notice.

14. You may also make representations, in writing, to the Minister to suspend the operation of this Compliance Notice pending finalisation of the objection.
15. The objection must be in writing and forwarded to the Appeal Administrator, Mr Marius Venter at the contact details below and must be accompanied by a statement detailing the grounds of the objection and supporting documentation, if any.

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

By facsimile: (021) 483 4174

By hand: Attention: Mr Marius Venter (Tel: 021 483 3721)
Room 809
8th Floor Utilitas Building, 1 Dorp Street, Cape Town, 8001

By email: DEADP.Appeals@westerncape.gov.za

16. Irrespective of any representations you may make to me or to the Minister, you must comply with this Compliance Notice within the time period stated in the Compliance Notice, unless the Minister agrees to suspend the operation of this Compliance Notice.



Achmad Bassier

Director: Environmental Law Enforcement

Grade 1 Environmental Management Inspector

Date: 29/03/2021 Cc:

Ms Zaidah Toefy (DEA&DP - Sub-Directorate: Rectification)

Email: Zaidah.Toefy@westerncape.gov.za

Dr Jackie Dabrowski
Confluent Environmental
Via email: jackie@confluent.co.za

Dear Jackie,

BOSEDAM APPROVALS AND AUTHORISATIONS

BGCMA letter ref. WU16807 of 2021-02-19 on the water use license application (WULA) for the above dam, as well as our subsequent discussions on the matter refer. This letter seeks to confirm the legal requirements in terms of dam safety-related legislation and regulations.

The letter requests information on the dam design and dam safety-related matters, specifically a:

- Civil Design Report
- Civil Designs
- Dam design drawings
- Dam safety classification report

The National Water Act (par. 120(1)) requires the owner of a dam with a safety risk to be registered as such. The Dam Safety Regulations (Government Notice R. 139 of 24 February 2012) further directs that the dam be classified based on its size and hazard classification (par. 2). This classification is done by the Dam Safety Office (DSO) at DWS.

It should be noted that the registration and classification of an existing dam is not dependent on the existence of a Water Use License (WUL), as the dam imposes risk on the downstream inhabitants, environment and infrastructure already, whether it is legal in terms of other sections of the Act or not. Form DW693 for the registration of the dam was submitted to the DSO in April 2020. Receipt was acknowledge via email in June 2020. The classification has not been confirmed.

Initial assessments of the dam were completed in 2019 (letter report JB2049-01) and updated (JB2049-03) after valuable comments from the BGCMA. The assessments indicated that minor improvements to the dam may be required to ensure its long term safety.

At this stage it is unknown whether the WUL will impose further changes to the dam and its operations. Before these are confirmed any further expenditure on design details and construction may prove wasteful. It is therefore submitted that the existing assessments, survey details and descriptions are sufficient for authorities to confirm the size and condition of the dam. All further design and construction expenditure should be deferred until the WUL is issued, or until further instructions are issued in terms of the Act and/or Regulations.

Notwithstanding the above, normal good maintenance and operations on the existing dam should continue. If any unexpected conditions arise, the undersigned may be contacted for advice.

We trust that you will find the above in order

Kind regards,



Jan Brink Pr Eng

Copied to: H Jonker (hein.jonker@opsa.co.za)



water & sanitation

Department:
Water and Sanitation
REPUBLIC OF SOUTH AFRICA

Enquiries: Mr C Abrahams
Telephone: 0233468031
Ref. No: WU16807
File No: 27/2/1/J534/1/1

Dr. J Dabrowski
Langkloof Plase (Pty) Ltd
50 Bokmakierie str. Eden George
6529

Dear Dr. J Dabrowski,

WATER USE LICENCE APPLICATION IN TERMS OF SECTION 40 OF THE NATIONAL WATER ACT, 1998 (ACT 36 of 1998), Breede Gouritz - Worcester.

The Department of Water and Sanitation has assessed your water use licence application that was submitted on 16 Oct 2020. In order for the Department to further process your application the following additional information is requested;

Technical Documentation
Civil Design Report
Civil Designs
Dam design drawings
Dam safety classification report
Environmental Authorisation/EIA report
Freshwater Study Report
Hydrological Report
Proof of payment of licence processing fee/Letter of waiver from DWS
Public Participation Advert Notice
Report/Information on historical use
Section 27 Motivation
Validation/Verification supporting documents for taking of water from water resources, Section 21 (a)
Water Use Licence Application Water Resource Report
Wetland Assessment Report
Wetland/ Water Resource Rehabilitation Plan

The information requested must be submitted to the Department by 30 May 2021.

Failure to submit the required information will result in the Department making a decision based on the available information.

Should you wish to make any further enquiries in this regard please do not hesitate to contact Mr C Abrahams at telephone number 0233468031.

Yours faithfully,

Recommend
Comments:

A handwritten signature in black ink, appearing to read 'J Van Staden', is written over the signature line.

I, Mr Jan Van Staden (Acting CEO: BGCMA) herewith electronically sign this document.

Electronic Signature Key : 5004269344243965040

Director: Institutional Establishment

Date: Feb 19 2021 12:32PM

14 August 2020

Ref: 4/9/2/J34E/Farm Schoonberg 108 &109, George

To: Breede-Gouritz Catchment Management Agency
101 York Street
3rd Floor, Room 302
George

By Email
nndlumbini@bgcma.co.za

Dear Nolutando,

On behalf of our client, Mr Hein Jonker, we acknowledge receipt of your correspondence dated 21 July 2020 titled:

RESPONSE TO THE ASSESSMENT REPORT FOR BOSSE DAM SUBMITTED IN RESPONSE TO A NOTICE OF INTENTION TO ISSUE A DIRECTIVE IN TERMS OF SECTION 53(1) OF THE NATIONAL WATER ACT; ACT NO 36 OF 1998: UNLAWFUL WATER USE "THE ACTIVITY" WITHOUT AUTHORISATION AT FARM SCHOONBERG 108 & 109, GEORGE

- 1) As instructed in point 3) of your correspondence, Confluent Environmental will proceed with a formal Water Use License Application (WULA) on behalf of Mr. Jonker. This license will be for the modified instream Bosse Dam and relates to the taking and storage of water, or Section 21 (a) and (b), and the impeding of flow and modification of the bed and banks of a watercourse, or Section 21 (c) and (i) of the National Water Act (NWA; Act 36 of 1998).
- 2) We concur with your point in 3c) regarding the dam safety risk. The appointed engineer (Mr. Jan Brink) compiled an assessment of the dam in 2019 in which he confirmed that the dam must be registered as a dam with a safety risk. Mr Brink submitted dam registration forms (DW693) to the Dam Safety Office (DSO) on 14 May 2020, and receipt was acknowledge by the DSO on 9 June. We

are awaiting further instruction from the DSO to proceed with the Dam Safety Evaluation.

- 3) A professional surveyor has been appointed on 12 August 2020 to provide a survey of the dam which will provide current and accurate figures for the revised storage volume and other parameters relevant to the WULA and registration with the DSO.
- 4) In terms of the storage of water as per Section 21 (b) of the NWA, point 5) of your correspondence states that storing of water in Bosse Dam is prohibited until the water use has been authorised. While you provide a sound legal basis for this instruction, we request that you reconsider this decision based on the following motivation:

- Mr. Jonker is running a commercial farming operation and would like to use water from the Bosse Dam to irrigate vegetable seed fields downstream of the dam. Failure to do so will result in loss of revenue for the farm and loss of work for 30 – 40 additional staff who assist with planting, maintaining and harvesting the vegetable seed fields.

- The dam has been present at this location since the early 1900s as indicated in the farm subdivision from 1923 which accommodates the dam in the farm boundary (Appendix 1). We understand that the modifications have resulted in the forfeiture of the Existing Lawful Use. However, it does not seem unreasonable to allow Mr. Jonker to store an amount that would be similar to what was stored in the dam prior to the modifications. This arrangement could be ammended once appropriate authorisation has been obtained. The proposed storage volume is not straightforward to determine, but historical documents from Water Affairs indicate that the dam's capacity was 59 450 m³ (Appendix 2, Page 4). These documents are dated 1989, and according to Mr. John Robers from Water Affairs they are based on a topographic survey and are the most reliable estimate in the document. They are the best available indication of the dam's capacity prior to modification, and Mr. Ashwin Seetal from the CSIR who has been appointed to conduct the Validation and Verification of ELUs in this area agrees that it is the best available indication of the dam's capacity. The archived documentation in Appendix 1 includes a range of information related to water uses (storage and taking) on Schoonberg 1/108, and any reference to Dam 3 (D3) relates to Bosse Dam.

- Should the BGCMA grant permission to provisionally store the requested volume of water the spillway could be excavated to the lower supply level as indicated by the professional surveyor. In this way, Mr. Jonker would ensure that no water in excess of this amount would be stored. Once the water use

authorisation has been finalised the spillway could be modified to accommodate the revised full supply capacity.

- 5) Finally, the Water Use License Application will be further informed by the outcome of the Validation and Verification process. Once Mr. Jonker has received the Section 35 letter from the BGCMA and CSIR we can determine whether the ELUs that have been validated are in line with current water uses on the farm, and whether additional water uses need to be included in the WULA. Therefore the WULA will be slightly delayed while this process is concluded.

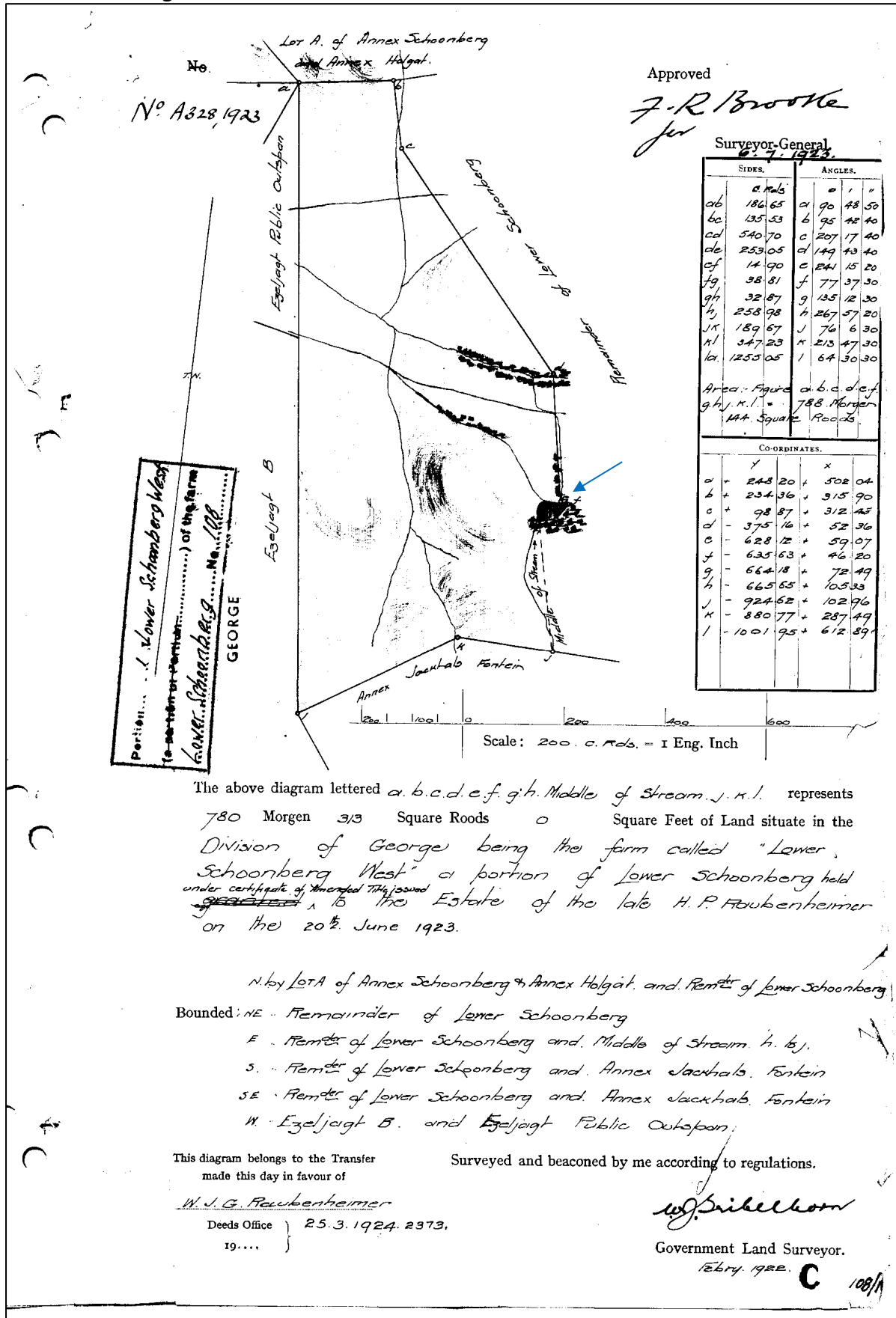
Thank-you for attending to this application and for your consideration of our requests.

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'J Dabrowski', with a stylized, cursive script.

Jackie Dabrowski
(Ph.D.; Pr.Sci.Nat. Aquatic Science)

Appendix 1: 1923 sub-division of Lower Schoonberg Farm indicating the boundary accommodating Bosse Dam (blue arrow)



Appendix 2: Archived material for Lower Schoonberg Farm 1/108 obtained by Zimu Mkhanyiseni (BCMA) from Mr. Retief Kleynhans (Gorra Water, George)

ONDERWERP • SUBJECT

1. SCHOOLBOERSCATFICKELINGES (Pty) LTD

2. LOWER SCHOOLBOERS 108-00

3. J. de Vries - Skryf A. J. de Vries

4. J. de Vries - Skryf A. J. de Vries

5. J. de Vries - Skryf A. J. de Vries

6. J. de Vries - Skryf A. J. de Vries

7. J. de Vries - Skryf A. J. de Vries

8. J. de Vries - Skryf A. J. de Vries

VERWYSINGS • REFERENCES

TYDPERK • PERIOD

BESKIKKING • DISPOSAL

TOT • TO

KANTOOR • OFFICE

DEPARTEMENT • DEPARTMENT

VOL

2003/10/2

VRAAG 5-6

DYNAMIEK

BESPROEINGSPRAKTYK

14 8 89

CIENDOM NO	ITEM NO	KODI
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108 50/1

26

VOLGENS EIENAAR

Stelsel nommer	Spurba
Gewaskode	Antoppel
Plantdatum	16-3-89
Oesdatum	11-7-89
Sikluslengte (dae)	
Besproeiingstyd/Opstelling (uur)	2"
n Opstellings/dag	24 Spurba per dag
n Besproeiingsdae/week	
n Opstellings/Besproeiingsiklus	4 week per week
n Besproeiingsiklusse/jaar	
Toediening/Besproeiing (mm)	2"

BEREKENINGS

Totale Oppervlakte (ha)	5
Oppervlakte/Opstelling (ha)	
n Opstellings/Besproeiingsiklus	
Besproeiingstyd/Siklus (uur)	
Besproeiingstyd/jaar (uur)	
Toediening/jaar (mm)	
Besproeiingsbehoefte (mm)	
Waterverbruik/jaar (Ml)	
(mm x ha ÷ 100)	

NOTAS

1. Aantal besproeiingsiklusse: Rekords/betaming/skatting*

4 week om 2" per ha te besproei
 24 ha ~~per~~ 1 ha per week besproei
 3 dae om 5 ha te besproei
 2 aanplantings per jaar

* Skrup wel nie van toepassing is nie
 n = Aantal

2003/10/2

DEPARTEMENT VAN WATERWESE
OLIFANTSRIVIER (OUDSHOORN) SWBG
DAM VOLUMES EN KAPASITEITSKURWES

WERK : 108GE/0D1

Kontoer: (a)	Area: (Ha)	Volume: (Ml)	Kun Vol: (Ml)	Totale Vol: (Ml)
94	.04	.2	.2	
95	.14	1.4	1.6	
96	.41	4.1	5.7	
97	1.04	10.4	16.1	
98	2.21	22.1	38.2	
99	2.79	27.9	66.1	
100	3.37	16.65	82.95	82.95

DEPARTEMENT VAN WATERWESE
OLIFANTSRIVIER (OUDSHOORN) SWBG
DAM VOLUMES EN KAPASITEITSKURWES

WERK : 108GE/0D2

Kontoer: (a)	Area: (Ha)	Volume: (Ml)	Kun Vol: (Ml)	Totale Vol: (Ml)
96	.02	.1	.1	
97	.07	.7	.8	
98	.53	5.3	6.1	
99	1.08	10.8	16.9	
100	1.81	9.05	25.95	25.95

DEPARTEMENT VAN WATERWESE
OLIFANTSRIVIER (OUDSHOORN) SWBG
DAM VOLUMES EN KAPASITEITSKURWES

WERK : 108GE/0D3

Kontoer: (a)	Area: (Ha)	Volume: (Ml)	Kun Vol: (Ml)	Totale Vol: (Ml)
94	.02	.1	.1	
95	.08	.8	.9	
96	.45	4.5	5.4	
97	1.01	10.1	15.5	
98	1.48	14.8	30.3	
99	1.83	18.3	48.6	
100	2.17	10.85	59.45	59.45

SUPERVISOR: (CITY) KENNEDY, BUD + CO- COORDINATE W/ANALYST					10866/11	PLANT 1
NO:	VAL:		NO:		LEVERAGE	STATUS
1	10866/0/Kf		D3		1883	1
2	Grant		K1		Bank	1
3	K1		K1		572	1
4	K1		D1		572	1
5	D3		10866/0/Kf		223	1
6	10866/0/Kf		10866/0/11		223	1
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30						

2003/10/2

105/0

D1. Word gevast d.m.v. Stormwater. 8 late 1, 2, 3
Word kan 3 slags, een was een jong gebruikt
kan beproven worden met.

D2. Word gevast met D3 d.m.v. slant
en wordt een beproeven van L1 (105/0) ^{L1+}_(105/)
met behulp van P1

D3. Word gevast met Keenwal en kan ^{L1+2}
en wordt een beproeven van L1 (105/0) ^{L1+}_(105/)
gebruikt met P1.

D3(105/1) Word gevast met Keenwal en hang
Dezelfde en beproeven beproeven.

K1 en K2 1 1/2 m diep 1/2 wgt.

S1, 2 + 3 1 m diep 2 m wgt.

S4 1/2 m diep 1 m wgt.

By alle demure is keane

P1 Cast. van type 4" onder de demure.

Geen een meer in steking.

L1 L1 ¹⁻³_(105/1) word ~~to~~ aartappel, geplant

L3 ^(105/1) word beproeven van B1 + B2

Alle beproevening en kan beproeven
1" en 2" en - 40' uitbreiden

L1 en L1 ¹⁻³_(105/1) word beproeven 3" word 2 1/2"

L3 word beproeven met P.V.C. keane

105/1

L1 \pm 6 Hn 108/0
 L1 \pm 3 Hn } 108/1
 L2 \pm 6 Hn }
 L3 \pm 5 Hn }

Alle ander land is droeland - Haver en
 weiding en aar (kyl vaelys)

B3 verland met sanderden met sark
 Fonten en keng met $\frac{3}{4}$ " klea B plantak (8.10.10)
 pyp quaed - slyp sanderden te gelyk
 200 g.p.c. - lewening - permanent.

P1 - ward ene lewening by D2 + D3, gelyk
 en D3 (108/1)

Trek 36 spincken gelyk-gelyk

Spincken 40' int makaa

alle op 108/1

Alle dander land 12

2003/10/2

DEPARTEMENT VAN WATERWESE : WATERTOEDELING

OPNAME DEUR : SCHOONH EN VAN DER MERWE

VORM A : BASIESE INLIGTING

DIE INLIGTING VAN DIT OORDEEL IS VERLEENDE WATERSKOPPEL OF WATERSKOPPEL VAN DIE
 DIE INLIGTING VAN DIT OORDEEL IS VERLEENDE WATERSKOPPEL OF WATERSKOPPEL VAN DIE

EIENDOM : 10000 LOMER SCHOONBERG 10000/1 GROEP : 1 ITEM : 24 KODE : 42

PROKLAMASIE

2179 VAN 1967/10/02 BLUFANTSRIVIER (OUDTSHOORN)

EIENDOM- EN EIENAARSBESONDERHEDE : BEHEER EN OPNAME

BESKRYWING VAN EIENDOM : BED 1 VAN 10000 LOMER SCHOONBERG

GROOTTE 668,5418 ha

LEWIS

TRANSPORT AKTE

NOMMER DATUM

395 1977/01/25

FAANDEEL

1,0000

GEB. DATUM

-

NAAM VAN EIENAR

SCHOONBERG ONTWIKKELINGS (PTY) LTD

ADRESSE

HOOFDSTAD

EIENAR

ADRES

SCHOONBERG ONTWIKKELINGS (PTY) LTD, BESTER

TELEFOON 0441 X 8 1723

POSBUS 35

HERDE

6615

ALGEMEEN

FETIS

0644703

06/94/04

KAART

3322EC

TOESIG

TSO-100

*hades water 2?
 gebouwe
 dan see aus*

PERSON	ONKOPPELBAAR	EIENAR OF GEWAGHTIGDE	VERTEGENWOORDIGER	INGENIEUR
GETEKEN				
NAAM				
DATUM				

2003/10/2

1. PARTEMENT VAN WATERWESE : WATERTOEDELING

10NAME DEUR : SCHOEMAN EN VAN DER MERWE

VORM C : WATERWERKE

Die toelating om die afreel te verskuldig is nie enige mate van aanspraak tot so 'n reg nie
 hierin is onderneem om die uitdaging en/of goedkeuring van die
 toelating te verskuldig, te verskuldig en/of te verskuldig.

EIENDOM : 100GE LOMER SCHOENBERG 100GE/1 GROEP : 1 STEN : 26 KODE : 42

100GE/1D1

ANNOUËNDE VESUITING STATUS BEHEER/OPNAME OPSIGERIS LOMER TERUG KONTRAKTEUR WITSE ETERNAAR

BRONNE

WERK/BRON INTREKKING 1/6 STATUS BEHEER/OPNAME
 100GE/1D1 572,00

BESKRYWING VAN DAM

TYPE MATERIAAL AFMETINGS KAPASITEIT M3
 OPSAAR (D) GROND 240m x 14m x 240m 74,200

2003/10/2

PERSON : ONDERSOEKBEHEER : EIGENAR OF VERPLAGTER : VERTEGENWOORTIGER : INGENIEUR
 GETEKEN : : : : :
 NAAM : : : : :
 DATUM : : : : :

DEPARTEMENT VAN WATERWESE : WATERTOEDELING

(OPNAME BEUR : SCHOENMAN EN VAN DER MEER)

VORM C : WATERWERKE

1. The following is a list of the names of the persons who are known to be in the possession of the information requested in the above captioned letter. The names are listed in alphabetical order of the last name. The names are listed in the order in which they were received by the Bureau. The names are listed in the order in which they were received by the Bureau. The names are listed in the order in which they were received by the Bureau.

EIENDOM : LOBBE	LEVER SCHONNERS	SUBJE : 1	GRAD : 1	ITEM : 26	KODE : 42
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1086E/1D2

ADDITIONAL READING

STATUS

DP6ER16

KONTAKTEUR

WEEKS LIP TING

NEW TOPPERS

OF SEATING
LEASE TERMS

CONTRACTOR
VIRGE EICHMAN

BESKRYWING VAN DAM

TYPE

WATER: 1681

AFMEVCS5

KAPASITEIT MI

OPTICAR 400

ESSAY

185mL, 5mL 50m

72.400

PERSON :	ONDERSOEKERNAAM :	ETENAR OF GEVOLGAGTIGE :	VERTEENWAARDIGER :	INGENIEUR :
GETEKEN :				
NAAM :				
DATUM :				

2003/10/2

OLIFANTS RIVER (OUDTSHOORN)OPNAMEVRAELYS: 1 **SCHOENAK & VAN DER MERWE VJR WATERWES EIGENDOM : 108KA/1****ALGEMEEN**PROK 2174 VAN 1969/10/02 NAW OLIFANTS RIVER (OUDTSHOORN) ITEM : 26 KODE : 2
GROEP : 1 GOM : -**EIGENDOM - EN EIENAARSBESONDERHEDE TYDENS ONDERSOEK**EIGENDOM : 108KA/1 GED : 1 GROOT : 668,5418 ha
GEBESONDERHEDE TYDENS ONDERSOEK
GROEP : 1 NAWER : - ANDEEL : 668,5418 EIGENAAR :
TRANSPORT AKTE SPS 1976/1/25 1,0000 SCHOENAK & VAN DER MERWE (PTY) LTD
WYSIGINGS OF VERBETERINGS AAN
EIGENDOM SEDERT ONDERSOEK
DATUM NAW BESKRYWING AAKETTE NOTA**EIENAARS SEDERT ONDERSOEK**

DATUM TRANSAKTE NAWER DATUM ANDEEL GED. ANTAL EIGENAAR (VAN NA PROK)

ADRESSE

HOOFDSTAD NAW (VOORLETTERS & VAN)

ADRES (VOLLEST)

TEL.

SKOONHEID & TOEGANG

EIGENAARSchoenak & Van der Merwe (Pty) Ltd
108KA/1
H. van der Merwe**ANDER WATERGEBRUIKE (Besproeiing uitgesluit)**

WILS EN VERSTALLE STATUS GROOTHEID ALEINIGE OPSTALLE WINDING ANDEEL SPESIFIEER MI PER JAAR PERMIT

2 1x 100 200 2000

WATERREGTE

BOUW STATUS VERWYSING HOEWELHEID EIGENAAR GEMID

2 1x 100 200 2000

INLYSTING

GARS BOUW STATUS VERWYSING L/w/ha ha BELYE ha BESP

OPNAME 1971/05/14 HERBESOEK 19/1/1 19/1/1 BEAMTE

NOTAS

Naw

BLAD 15/20

GETIJDEN

GROND-, GEWAS- EN BESPROEINGSREGIST

14.8.89

EENDOM NO	ITEM NO	KODE
10875/1	26	

OPPERVLAKTES IN HA.

Foto No	Land No	Dem No	Limiet	DB Status	DB Fakt	Skeel Totaal	Elen Area	Baan	Bespr Status	Gewas Kode	Stels Kode	Bron Fakt	Wissel Fakt	Werk
694	L1		43	1	1	1000	303	304	1	7	34	1	1	10875/1
694	L2		43	1	1	1000	304	304	1	7	34	1	1	10875/1
694	L3		43	1	1	1000	305	304	1	7	34	1	1	10875/1
694	L3		3	1	1	1000	179,67	3						
694	L4		3	1	1	1000	24,31							
694	L5		1	1	1	1000	3,88							
694	L6		2	1	1	1000	25,12							
694	L7		2	1	1	1000	1,78							
694	L8		2	1	1	1000								
694	L9		2	1	1	1000	21,59							
694	L10		3	1	1	1000	100,88							
694	L11		3	1	1	1000	22,61							

VERWYSING

NOTAS


$$\leftarrow 2$$

OF
DW

$$\begin{array}{r} 272 \\ 148 \\ \hline 1,48 \end{array}$$

2003/10/2



DEPARTEMENT VAN WATERWES : WATERTOEDIENING

NAAM : DEUR : SCHOENEN EN VAN DER MERSE

VORM C : WATERWERKE

Die inligting op hierdie afskrif verteenwoordig nie enige waterreël of aanspraak tot en 'n reg nie
 die inligting op hierdie afskrif verteenwoordig nie enige waterreël of aanspraak tot en 'n reg nie
 DEPARTEMENT VAN WATERWES : DEPARTEMENT VAN WATERWES : DEPARTEMENT VAN WATERWES

EIENDOM : 1006E LOWER SCHOENEN 1006E/1 GROEP : 1 ITEM : 26 KODE : 42

1006E/1U1

AANKOMING STATUS OORSTIG KONTRAKTEUR
 VESUITING BERR/OPNAME CARR TERUG PORTIE EENNAAR

BRONNE

WATERSKOP ONTTREKING 1/4 STATUS
 SPRUIT 0,00 BERR/OPNAME

LEWER AAN

WERKSTELSEL LEWERTING 1/4 STATUS
 1006E/1U1 372,90 BERR/OPNAME

BESKRYWING VAN DAM

TIPPE MATERIAAL AFMETINGS
 UITKEER (U) GROND 83481.947107m

KAPASITEIT Ml

0,000

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PERSON : 1	ONDERSOEKBEAMTDE	ETENNAAR OF GEVOCHTIGDE	VERTEENWOORDIGDE	UNGENIGDE
GETEKEN :				
NAAM :				
DATUM :				

2003/10/2

2003/10/2

DEPARTEMENT VAN WATERWES : WATERTOEDIELING

OPNAME DEUR : SCHRIJVEN EN VAN DER MERWE

VORM C : WATERWERKE

Die inligting op hierdie afskrif verteenwoordig nie enige waterreël of ontwerp tot so ver as die
die inligting op die oorspronklike ontwerp is gebaseer op die oorspronklike ontwerp en/of goedkeuring van die
staatsreëlregering : DEPARTEMENT VAN WATERWES OF OF GOEDKEURING.

EINDOM : 108GE LEWER SCHONBERG 108GE/1 GROEP : 1 ITEM : 26 KODE : 42

108GE/1K1

AANWENDING STATUS OORLEEF KONTRAKTEUR
VEESTUPEL BEHOORLIK LANK TERS VERTIG ETERNA

BRONNE

WEEK/BOON ONTTREKING 1/s STATUS
108GE/101 572,99 BEHOORLIK

LEWER AAN

WEEK/STELSEL LEWERING 1/s STATUS
108GE/101 572,00 BEHOORLIK

BESKRYWING VAN KANAAL

TIPE MATERIAAL PROFIEL AERTINGS
TOERDER 1K1 GROND BEHOORLIK 1.5821.56
ALDES 1/4
572,0

POSSOON : KANDEKKEKKEKKE : EINDOM OF GOEDKEURING : VERTEENWOORDIGER : INGENIEUR

GETEKEN : : : : :
NAAM : : : : :
DATUM : : : : :



BREED-GOURITZ

CATCHMENT MANAGEMENT AGENCY

101 York Street 3rd Floor Rm 302 George 6530, P.O. Box 1205 George 6530

Enquiries: Ms N Ndlumbini

Tel: 023 346 8051

Fax: 044 873 2199

E-mail: nndlumbini@bgcma.co.za

Ref: 4/9/2/J34E/Farm Schoonberg 108 &109, George
Date: 21/07/2020

Confluent Aquatic Consulting and Research

50 Bokmakierie Street
George
6529

By Email

jackie@confluent.co.za

Attention: Dr Jackie Dabrowski

Dear Sir

RESPONSE TO THE ASSESSMENT REPORT FOR BOSSE DAM SUBMITTED IN RESPONSE TO A NOTICE OF INTENTION TO ISSUE A DIRECTIVE IN TERMS OF SECTION 53(1) OF THE NATIONAL WATER ACT; ACT NO 36 OF 1998: UNLAWFUL WATER USE "THE ACTIVITY" WITHOUT AUTHORISATION AT FARM SCHOONBERG 108 & 109, GEORGE

1. The abovementioned assessment report dated 12 December 2019 in response to the Pre-Directive notice dated 21 August 2019 issued by Breede-Gouritz Catchment Management Agency (BGCMA) has reference; Including a site visit dated 12 March 2020 and technical assessment by BGCMA Engineer.
2. BGCMA would like to bring it to your attention that the response and decisions taken below are made based on available facts and are meant for the best protection and management of water resources.
3. BGCMA would like to bring it to your client's attention that, a formal Water Use Licence Application (WULA) is required in terms of Section 40 of the National Water Act of 1998 (Act 36 of 1998);

should your client wish to apply for authorisation which should include dam safety requirements based on the following:

- a) The BGCMA has concluded that the dam capacity was enlarged as a result of the unauthorised activity based on submitted information and own investigation.
 - b) The recently enlarged capacity has not been authorised according to the National Water Act (Act 36 of 1998), and cannot be regarded as Existing Lawful Use as contemplated in section 35 of the Act (Act 36 of 1998).
 - c) The modified Bosse Dam, after the unauthorized activity can be classified as a dam with a safety risk and is subject to dam safety regulations; compliance with dam safety regulations is required before storage can be permitted.
 - d) Please note the exclusion from General Authorisation in terms of subsection 3(d) of General Authorisation notice 509 published Government Gazette no. 40229 dated 26 August 2016; where storage of water results in the impeding or diverting of flow or altering the bed, banks, course or characteristics of a watercourse.
 - e) Kindly note that in terms of section 34(a) of the National Water Act (Act 36 of 1998) a person may continue with an existing lawful water use activity provided that it is still on its existing condition. Since the condition of the dam or storing conditions have been changed, Schoonerberg 108 have forfeited their historical storage capacity.
4. In light of the above, BGCMA would like to bring it to your attention that any dam increase in the catchment affects the flow of the water down stream and a proper application process should be followed prior to undertaking any water use activities.
 5. Given that, any storing of water in the enlarged dam should be prohibited until the dam is authorized to store water. Please provide BGCMA with Section 9B permit and any additional evidence in dispute or mitigation of this outcome **within 30 working days** of receipt of this letter.
 6. It should be noted that the water use activities on your client's property remain unlawful and the water use license application does not guarantee an entitlement to use water without authorisation. Therefore, any storing of water in the enlarged dam should be prohibited until the dam is authorized to store water.
 7. In terms of Section 151(2) of the National Water Act (Act 36 of 1998) any person who contravenes any provision of Section 151 (1) of the NWA is guilty of an offence and liable on first conviction to a fine or to imprisonment for a period not exceeding 5 (five) years or to both such fine and such

imprisonment and, in the case of a second or subsequent conviction, to a fine or imprisonment for a period not exceeding ten years or to both a fine and such imprisonment

8. We wish to make it clear that the instructions contained in this letter are made in the interest of responsible water resource management, and with a view to a co-operative resolution of the issue.
9. Should BGCMA deem it necessary to enforce the law, a Directive notice in terms of section 53(1) and 118 of the National Water Act (Act 36 of 1998) will be issued to fully comply with the legislation
10. Should you have any further queries, please contact the relevant official of the details above.

Yours faithfully

p.p. 

MR. JAN VAN STADEN

CHIEF EXECUTIVE OFFICER (ACTING)

DATE: 21 July 2020

Cc: Mr. Hein Jonker, email: hein.jonker@opsa.co.za

Louise-Mari van Zyl (Cape Eaprac EAP) Email: louise@capeeaprac.co.za

Tessa Rouillard, email: tess@confluent.co.za

Acknowledgement of Receipt:

Received by Mr/Ms _____

On behalf of the company _____

on this _____ day of _____ 2020, at _____

Signature: _____



29 October 2019

Our Ref: **4/9/2/J34E/Schoonberg 109&108, George**

Your Ref: GEO601/02

Attention: Nolutando Ndlumbini
BGCMA

VIA: Email

RE: REPRESENTATION IN TERMS OF THE PRE-DIRECTIVE FOR SCHOONBERG 1/108,
GEORGE DISTRICT

Refence is made to our site inspection this morning to the 'Bosse Dam' on Portion 1 of Farm Lower Schoonberg 108, as well as the outstanding information with respect to the pre-Directive issued by the BGCMA on 21 August 2019.

It is noted that Langkloof Plase responded to the pre-Directive on 26 August 2019, confirming that investigations by relevant parties were already underway i.e. environmental consultant, dam engineer, surveyor etc and that a combined meeting between BGCMA and DEADP would be arranged once all the relevant information has been obtained.

It is furthermore noted that a due date was not confirmed for said submissions and meeting, which is understandable given that appointments were still being finalised.

We hereby confirm that the relevant project team members were appointed on 3 October 2019 with instructions to conduct and complete the necessary technical and specialist studies. Investigative work is therefore progressing to inform both the BGCMA and DEADPs requirements in a holistic and integrated manner.

Attached please find the approved timeframe for the Section 24G application process which details when what information will be available and the steps that will be followed.

As per the programme, the technical investigation, inclusive of final surveys, flood hydrology, as-built designs and overflow capacity will be available by 15 November 2019 and the aquatic impact assessment by 29 November 2019.

On behalf of Langkloof Plase this office kindly requests an extension till 28 November 2019 to submit a comprehensive representation as part of the ongoing investigation. In considering this request for an extension, please keep in mind the time it takes to

source specialist quotes, to finalise appointments and then for the necessary work to be undertaken. Such cannot be completed within the prescribed 30-days.

For the interim, please find attached the following:

- SG diagram (note that the Bosse Dam is indicated on the plan confirming that it has been in existence since before 1922 which is the date of the SG Diagram);
- Copy of the WARMS certificates for the property listing three (3) storage dams;
- Location plan for Portion 1 of Lower Schoonberg 108 on which the dam is positioned.

Further details will follow with the more comprehensive representation submission.

As a matter of information, I hereby also refer the BGCMA to the following comparative images for your records:



Figure 1: Images taken during construction showing the widening of the existing dam wall to strengthen and seal it, as well as excavation of silt from the dam basin.



Figure 2: Top image taken during maintenance work undertaken early 2019 and the bottom image of the dam in 2016 prior to maintenance (note that they experienced a fire end of 2018 that burned mostly along the blue gum lines).



Figure 3: Aerial image dated 2017 (note blue gum density above and below the dam).

Confluent Consulting (freshwater specialists) have been appointed to facilitate the necessary aquatic impact assessment, risk assessment and WULA if applicable. Until such time as their assessment is complete, should the BGCMA require any additional information in the interim, please do not hesitate to contact this office directly.

Kind regards,

A handwritten signature in black ink, appearing to read 'Louise-Mari van Zyl'.

Ms Louise-Mari van Zyl
Director: Cape EAPrac
071 603 4132

REFERENCE: 14/2/4/1/D2/28/0024/19

ENQUIRIES: Nabeelah Khan

The Managing Director
Langkloof Plase (Pty) Ltd
PO Box 689

Email: h.jonker@opsa.co.za

Tel: (044) 203 3220

HEROLD

6620

Attention: H Jonker & P Schoeman

Dear Sir/Madam

**TO ADVISE ON THE APPLICABILITY OF THE S24G APPLICATION PROCESS FOR THE UNLAWFUL
CLEARANCE OF VEGETATION AND CONSTRUCTION OF DAMS ON PORTION 1 OF FARM 108
LOWER SCHOONBERG, HEROLD, GEORGE**

The consultation form received by this Department on the 10 October 2019, is hereby acknowledged.

1. Please be advised that the Section 24G Fine Regulations, 2017 (hereafter referred to as "the fine regulations") require that **public participation be conducted prior to the submission** of an application, as outlined in Regulation 8 of the fine regulations. A section 24G application form must also include the information as set out in **Annexure A of the fine regulations**.
2. The Department will consider the information herein and advise you accordingly.
3. Kindly quote the abovementioned reference number in any future correspondence in respect of the pre-application/consultation process.



Mrs Z Toefy
Head of Rectification
Directorate: Environmental Governance

Date: 2019 -10- 23

CC: (1) Louise-Mari van Zyl (EAP)
(2) Shafeeq Mallick (Rectification)
(3) Harriet van Schalkwyk (ELE: Region 3)

Email: louise@cape-eaprac.co.za
Email: Shafeeq.mallick@westerncape.gov.za
Email: harriet.vanschalkwyk@westerncape.gov.za



BREED-GOURITZ
CATCHMENT MANAGEMENT AGENCY

101 York Street 3rd Floor Rm 302 George 6530, P.O. Box 1205 George 6530

Enquiries: Ms N Ndumbini Tel: 023 346 8070 Fax: 044 873 2199 E-mail: ndlumbini@bgcma.co.za

REFERENCE: 4/9/2/J34E/Schoonberg 109&108, George

Date: 21/08/2019

Langkloof Plase
PO Box 689
Oudsthoorn
6620

BY EMAIL

Email: hein.jonker@opsa.co.za

For Attention: Mr Hein Jonker

Dear Sir

NOTICE OF INTENTION TO ISSUE A DIRECTIVE IN TERMS OF SECTION 53(1) OF THE NATIONAL WATER ACT; ACT NO 36 OF 1998: UNLAWFUL WATER USE ("THE ACTIVITY" WITHOUT AUTHORISATION AT SCHOONBERG 109 & 108, GEORGE

1. I, Jan Van Staden in my capacity as Chief Executive Officer (Acting) of Breede-Gouritz Catchment Management Agency (BGCMA) and duly authorised in terms of powers delegated to me by the Minister of Water and Sanitation, hereby give you, Mr Hein Jonker in your capacity as the property owner a written a notice of intention to issue a Directive in terms of Section 53 (1) (a) of NWA for contravening with Section 22(1) of NWA.
2. The Directive that I intend to issue relates to contravention of the provision of chapter 4 of the NWA section 22.
 22. (1) *A person may only use water*
 - (a) *without a licence*
 - (i) *if that water use is permissible under Schedule 1;*
 - (ii) *if that water use is permissible as a continuation of an existing lawful use; or*
 - (iii) *if that water use is permissible in terms of a general authorisation issued under section 39;*
 - (b) *if the water use is authorised by a licence under this Act; or*
 - (c) *if the responsible authority has dispensed with a licence requirement under subsection (3)*

3. I have reasonable grounds for believing that you have commenced with the activity defined as water uses in terms of Section 21 (a), (b) (c) and (i) of the NWA without a water use authorization:

The BGCMA has reached this opinion as a result of the following:

4. During a site investigation conducted by the officials of the BGCMA, on 3 July 2019 at farm Schoonberg 108, George it was confirmed that you have commenced with the activity defined as water use in terms of Section 21 of the NWA without a water use authorization as stipulated in paragraph 3 above. An expansion of the instream dam activities within a water resource was observed in your property and there was no form of authorisation that was provided to the officials during the investigation.
5. In light of the above, In accordance to Section 3 of the Promotion of Administrative Justice Act, Act no 3 of 2000 you are hereby afforded an opportunity to make written representation to the BGCMA within **14 (fourteen) working days** upon receipt of this notice if you believe there are any compelling reasons for this office not to exercise its powers in terms of Section 53(1)(a) of the NWA and issue a directive requiring you to:
 - 5.1. Cease storing and taking water in the dam until you acquire an authorization.
 - 5.2. Submit an action plan within **14 (fourteen) working days** upon receipt of this directive, which must include a detailed time schedule on how you will release the water from the dam and maintain that it stays dry until you obtained an authorization to store water.
 - 5.3. Appoint an Independent Environmental Consultant to compile and submit an Environmental Management Plan with mitigation measures for BGCMA's approval in order to maintain the ecological standard of the environment. This plan must be submitted with the technical report requested in paragraph 5.4 below.
 - 5.4. Undertake a survey of the dam and submit a technical report for the dam in pdf and MAL format in order to comply with dam safety regulations published on a Government Gazette Notice No 35062 of 24 February 2012 within **30(thirty) working days** upon receipt of this directive that will include but not limited to the following:
 - (a) Dam location Map;
 - (b) Dam Capacity Curve;
 - (c) Hydrological Study;
 - (d) Current water storage on the farm;
 - (e) Spillway capacity calculations
 - (f) As build drawings or alternatively preliminary design drawings if some more work is intended on the dam.
6. In terms of Section 151(2) any person who contravenes any provision of Section 151 (1) of the NWA is guilty of an offence and liable on first conviction to a fine or to imprisonment for a period not exceeding 5 (five) years or to both such fine and such imprisonment and , in the case of a second or subsequent conviction, to a fine or

imprisonment for a period not exceeding ten years or to both a fine and such imprisonment.

7. We wish to make it clear that the instructions contained in this letter are made in the interest of responsible water resource management, and with a view to a co-operative resolution of the issue.

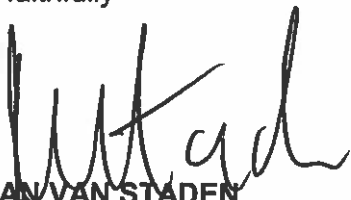
THIS LETTER SHALL NOT BE CONSTRUED AS CONFERRING EXEMPTION FROM COMPLIANCE WITH THE FOLLOWING:

8. The provisions and regulations of the National Environmental Management Act, 1998 (Act No. 107 of 1998) regarding control over activities which may have a detrimental effect on the environment.
9. Should you have any further queries, please contact the relevant official whose name appears under enquiries.
10. Representations must be forwarded for the attention of Mr Jan van Staden and delivered to:

Ms Nolutando Ndlumbini
Breede- Gouritz Catchment Management Agency
Private Bag X 1205
GEORGE
6530

Fax No: 044 873 2199

Yours faithfully


MR. JAN VAN STADEN
CHIEF EXECUTIVE OFFICER (ACTING)

DATE:

21/08/2019

**NOTICE OF INTENTION TO ISSUE A DIRECTIVE IN TERMS OF SECTION 53(1) OF
THE NATIONAL WATER ACT; ACT NO 36 OF 1998: UNLAWFUL WATER USE
("THE ACTIVITY" WITHOUT AUTHORISATION AT SCHOONBERG 109
&108,GEORGE**

Acknowledgement of Receipt:

Received by Mr/Ms _____

On behalf of the company _____

on this _____ day of _____ 2019, at _____

Signature: _____



REFERENCE: 14/1/1/E3/5/2/3/L1049/19

ENQUIRIES: H.van Schalkwyk

BY EMAIL: hein.jonker@opsa.co.za

Mr H. Jonker
PO Box 689
Oudtshoorn
6460

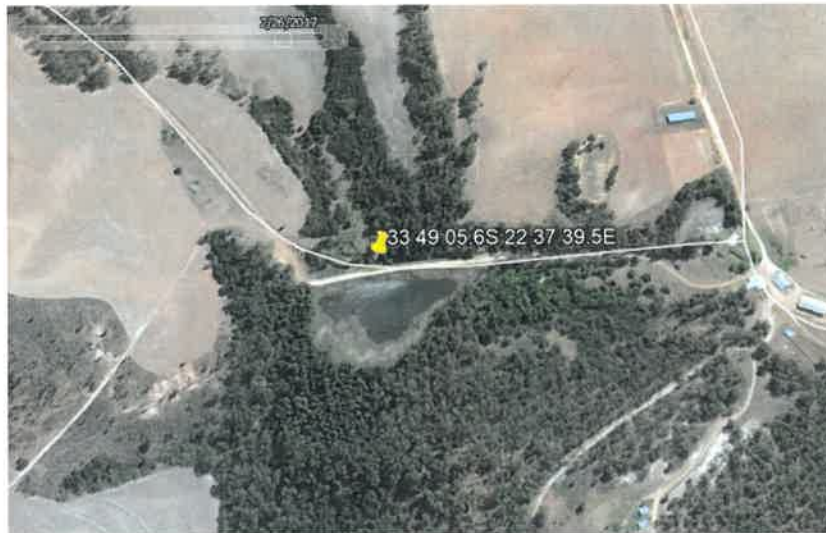
PRE-COMPLIANCE NOTICE

Dear Sir

INTENTION TO ISSUE A COMPLIANCE NOTICE IN TERMS OF SECTION 31L OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998

1. During an investigation into allegations of the commencement of a listed activity in contravention of section 24F of the National Environmental Management Act, 1998 ("NEMA"), a site investigation was conducted at Farm 108 Schoonberg, Herald, by an Environmental Management Inspector from the Department's Directorate: Environmental Law Enforcement and officials from the Breede Gourits Catchment Management Agency (BGCMA) on 03 July 2019 and it was confirmed that you have commenced with the clearance of vegetation of more than 1 hectare and the construction of dams, as well

as the moving of sand from a watercourse, without environmental authorisation.



Aerial map: Location of alleged illegal activity.

2. In terms of section 24F of the NEMA, no activity listed in the Environmental Impact Assessment ("EIA") Regulations Listing Notice 1 of 2014 may commence without environmental authorisation from the competent authority.
3. On considering the evidence before me, there are reasonable grounds to believe that you have commenced the following listed activity without environmental authorisation:

EIA Regulations Listing Notice 1 of 2014 as amended in 2017:

Activity 12:

The development of-

- (i) Canals exceeding 100 square meters in size;
- (ii) Channels exceeding 100 square meters in size;
- (iii) Bridges exceeding 100 square meters in size;
- (iv) **Dams, where the dam, including infrastructure and water surface area, exceeds 100 square meters in size**

- (v) Weirs, where the weir, including infrastructure and water surface area, exceeds 100 square meters in size;
- (vi) meters in Bulk water outlet structures exceeding 100 square size;
- (vii) Marinas exceeding 100 square meters in size;
- (viii) Jetties, exceeding 100 square meters in size;
- (ix) Slipways exceeding 100 square meters in size;
- (x) Buildings exceeding 100 square meters in size;
- (xi) Boardwalks exceeding 100 meters in size;
- (xii) Infrastructure or structures with a physical footprint of 100 square meters or more.

Activity no. 19

The infilling or depositing of any material of more than 5 cubic meters into, or

the dredging, excavation, removal or moving of soil, sand, shells, shell grit,

pebbles or rock of more than 5 cubic meters from:

(i) A watercourse

- (ii) The seashore; or
- (iii) The littoral active zone, an estuary or a distance of 100 meters inland from the high-water mark of the sea or estuary, whichever distance is the greater

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, 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 3 of 2004 as amended in April 2017:

Activity 12:

The clearance of an area of 300 square meters 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

- (a) *In the Western Cape*
 - i. *Within any critically endangered or endangered ecosystem listed in terms of section 52 of 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*

4. The Department wishes to advise that on 4 December 2014, the Minister of Environmental Affairs promulgated the 2014 EIA Regulations. These Regulations came into effect on 8 December 2014 and was amended on 7 April 2017. Accordingly, activities which commenced prior to 7 April 2017 and which are similarly listed in the 2014 Regulations require prior environmental authorisation.



Photo 1: Photo of portion of area cleared.



Photo 2: Photo of construction within the dam



Photo 3: Photo of sand being moved within the stream.

5. In terms of section 49A of the NEMA it is an offence to commence a listed activity without environmental authorisation. A person convicted of such an offence is liable to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.
6. As such, you are hereby given notice of the Department's intention to issue you with a Compliance Notice in terms of section 31L of the NEMA, which will instruct you to:
 - 5.1 immediately cease the above listed activities;
 - 5.2 investigate, assess and evaluate the impact that the listed activities has / has had on the environment;
 - 5.3 rehabilitate the entire site to its original condition;
 - 5.4 carry out any other measure necessary to rectify the effects of the unlawful activities; and
7. Furthermore, failure to comply with a Compliance Notice is an offence in terms of section 49A(1)(k). A person convicted of failing to comply with a Compliance Notice is liable to a maximum fine of R5 million or 5 years imprisonment or both such fine and such imprisonment.

8. You are afforded a period of **7 (seven) calendar days** from the date of receipt of this Pre-Compliance Notice to make written representations to the Department as to why a Compliance Notice should not be issued.
9. If you inform the Department, in respect of paragraph 8 above that you intend to rectify the non-compliance, you must cease the above listed activity and submit to the Department for approval, **within 30 (thirty) calendar days** of receipt of this Pre-Compliance Notice, a rehabilitation plan compiled by a suitably qualified and experienced independent environmental assessment practitioner, which must include the following:
 - 8.1 assessment and evaluation of the impact on the environment; and
 - 8.2 identification of proposed remedial and/or mitigation measures;
10. If the above plan is approved by the Department, you will be obliged to take the necessary remedial / mitigation measures at your own cost.
11. Approval of the above report by the Department does not remedy the unlawful commencement of the above activity, which remains unlawful in terms of section 49A(1) (a) and/or (d) of the NEMA.
12. If you wish to continue with the listed activity you may apply for environmental authorisation by way of a section 24G application. However, such application does not constitute permission to continue with the listed activity, which remains unlawful unless environmental authorisation is granted.

13. Notwithstanding the section 24G application, the Department may issue a Compliance Notice and/or commence criminal proceedings should circumstances so require.



Achmad Bassier

Director: Environmental Law Enforcement

Grade 1 Environmental Management Inspector

Date: 23/07/2019
