



24G Application: 14/2/4/2/3/D2/20/0017/20

ENVIRONMENTAL AUTHORISATION

The Estate Manager
Blue Mountain Village Homeowners Association
P. O. Box 12384
GARDEN ROUTE MALL
6546

Email: bmv@bmv.co.za

Attention: Mr PJ Schoeman

Dear Sir

APPLICATION IN TERMS OF SECTION 24G OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998) ("NEMA") FOR THE UNLAWFUL COMMENCEMENT OF ACTIVITIES: UNLAWFUL DEVELOPMENT OF A DAM ON ERVEN 23518 AND 23592 AT BLUE MOUNTAIN VILLAGE, GEORGE

With reference to your application dated 04 March 2021 in terms of section 24G of the NEMA for the consequences of unlawful commencement of listed activities identified in terms of the NEMA, find below the decision in respect of your application.

A. DECISION

By virtue of the powers conferred by section 24G of the NEMA and the *Environmental Impact Assessment Regulations, 2014* ("EIA Regulations, 2014") (as amended), the competent authority herewith **grants environmental authorisation** to the applicant to continue with the listed activities specified in Section C below as described in the application and environmental assessment dated 04 March 2021.

The granting of this Environmental Authorisation is for the continuation, conducting or undertaking of the listed activities as described in Section C below and is subject to compliance

with the conditions set out in Section G. This Environmental Authorisation shall only take effect from the date on which it has been issued.

The Environmental Authorisation does not exempt the holder thereof from compliance with any other applicable legislation.

B. DETAILS OF THE APPLICANT FOR THIS ENVIRONMENTAL AUTHORISATION

Blue Mountain Village Homeowners Association

c/o Mr Mr PJ Schoeman

P.O. Box 13284

GARDEN ROUTE MALL

6546

GEORGE

Tel: (044) 805 7119

Email: bmv@bmv.co.za

The abovementioned applicant is the holder of this Environmental Authorisation and is hereinafter referred to as "the holder".

C. LIST OF ACTIVITIES AUTHORISED

Listed Activities	Activity/Project Description
<i>Government Notice No. R. 327 of 2017-</i> Activity Number: 19 Activity Description: <i>The infilling or depositing of any material of more than 10m³ into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock of more than 10m³ from a watercourse.</i>	The development of the dam required the excavation of more than 10m ³ of material from the drainage line.
<i>Government Notice No. R324 of 2017 –</i> Activity Number: 12(i)(i) &(iv) Activity Description: <i>The clearance of an area of 300m² or more of indigenous</i>	Instream vegetation was cleared to create the attenuation dam. The

<p>vegetation except where such clearance of indigenous vegetation is required for maintenance purposes undertaken in accordance with a maintenance management plan.</p> <p><i>i. In the Western Cape</i></p> <p><i>(i) Within any critically endangered or endangered ecosystem listed in terms of section 52 of the NEM:BA 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. (iv) On land, where, at the time of the coming into effect of this Notice or thereafter such land was zoned open space, conservation or had an equivalent zoning.</i></p>	<p>vegetation listed for this area is Garden Route Granite Fynbos (SANBI BGIS 2018) which was gazetted in 2011 as Endangered.</p> <p>Furthermore, the properties were zoned as Open Space II as part of the final estate zoning.</p>
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The abovementioned list is hereinafter referred to as "the listed activities".

D. PROPERTY DESCRIPTION AND LOCATION

The listed activities commenced on Erf 23518 & Erf 23592 Blue Mountain Village, 149 Park Road, Mountain View, George.

The SG digit codes are: C02700020002351800000; C02700020002359200000

The co-ordinates for Erf 23518 are:

Point	Latitude (S)	Longitude (E)
1	33° 58' 57.68" South	22° 29' 13.76" East
2	33° 58' 59.19" South	22° 29' 14.96" East
3	33° 59' 00.33" South	22° 29' 13.58" East
4	33° 59' 00.79" South	22° 29' 13.58" East

The co-ordinates for Erf 23592 are:

Point	Latitude (S)	Longitude (E)
1	33° 58' 58.49" South	22° 29' 24.42" East
2	33° 58' 59.46" South	22° 29' 24.68" East

3	33° 58' 59.54" South	22° 29' 23.78" East
4	33° 59' 00.79" South	22° 29' 23.14" East

Refer to Annexure 1: Locality Plan and Annexure 2: Site Plan (A & B).

Herein-after referred to as "the site".

E. DETAILS OF THE ENVIRONMENTAL ASSESSMENT PRACTITIONER ("EAP")

Cape Environmental Assessment Practitioners (Cape EAPrac)

c/o Ms Ms Melissa Mackay / Ms Louise-Mari van Zyl

P.O. Box 2070

GEORGE

6530

Cell: 071 603 4132

Email: mel@cape-eaprac.co.za

F. DETAILS OF THE ACTIVITIES UNDERTAKEN

The activities undertaken entailed the development of a dam which required the excavation of more than 10m³ of material from a drainage line. Construction of the dam took place during March and April of 2019. Instream vegetation was cleared to create the dam. The vegetation listed for this area is Garden Route Granite Fynbos. Furthermore, the properties were zoned as Open Space II as part of the final estate zoning. The dam was built in an area where stormwater is discharged into a drainage line from the existing estate. There are five (5) stormwater headwalls approved in the catchment area of the dam, of which four (4) are upstream of the dam and the fifth daylight at the dam spillway. The principal purpose of the dam is to protect the estate security fence on the western boundary from damage caused by stormwater, and to collect the stormwater for use as irrigation on the estate for the open space area. The site was previously a pine plantation before being authorised as the Blue Mountain Village estate.

G. CONDITIONS OF AUTHORISATION

The following are conditions of authorisation that are set and must be implemented for this Environmental Authorisation.

PART I

Scope of authorisation

1. The holder is authorised to undertake the listed activities specified in Section C above in accordance with and restricted to Alternative 1 described in the application and assessment report dated 04 March 2021 on the site as described in Section D above.
2. The rehabilitation of the areas affected by the development must be concluded within 3 years from the date of this environmental authorisation.
3. The holder shall be responsible for ensuring compliance with the conditions by any person acting on his/her behalf, including an agent, sub-contractor, employee or any person rendering a service to the holder.
4. Any changes to, or deviations from the scope of the alternative described in Section F above must be accepted or approved, in writing, by the competent authority before such changes or deviations may be implemented. In assessing whether to grant such acceptance/approval or not, the competent authority may request information to evaluate the significance and impacts of such changes or deviations, and it may be necessary for the holder to apply for further authorisation in terms of the applicable legislation.

PART II

Written notice to the competent authority

5. Seven (7) calendar days' notice, in writing, must be given to the competent authority before continuation of commencement in accordance with the rehabilitation activities.
 - 5.1 The notice must make clear reference to the site details and 24G Reference number given above.
 - 5.2 The notice must also include proof of compliance with conditions 8 and 15 of this environmental authorisation.

PART III

Notification and administration of an appeal

6. The holder must in writing, within 14 (fourteen) calendar days of the date of this decision–
 - 6.1 notify all registered Interested and Affected Parties (“I&APs”) of –
 - 6.1.1 the outcome of the application;
 - 6.1.2 the reasons for the decision as included in Annexure 3;
 - 6.1.3 the date of the decision; and
 - 6.1.4 the date when the decision was issued.
 - 6.2 draw the attention of all registered I&APs to the fact that an appeal may be lodged against the decision in terms of the *National Appeals Regulations, 2014* detailed in Section I below.
 - 6.3 draw the attention of all registered I&APs to the manner in which they may access the decision.
 - 6.4 provide the registered I&APs with:
 - 6.4.1 the name of the holder (entity) of this Environmental Authorisation;
 - 6.4.2 name of the responsible person for this Environmental Authorisation;
 - 6.4.3 postal address of the holder;
 - 6.4.4 telephonic and fax details of the holder;
 - 6.4.5 e-mail address, if any, of the holder; and
 - 6.4.6 the contact details (postal and/or physical address, contact number, facsimile and e-mail address) of the decision-maker and all registered I&APs in the event that an appeal is lodged in terms of the *National Appeal Regulations, 2014*.
7. The listed activities, including site preparation, may not commence within 34 (thirty-four) calendar days from the date of issue of this Environmental Authorisation. In the event that an appeal is lodged with the Appeal Authority, the effect of this Environmental Authorisation is suspended until the appeal is decided.

PART IV

Management of the activity/development

8. The draft Environmental Management Programme ("EMPr") dated 09 November 2020 compiled by CAPEA Prac and submitted as part of the application for environmental authorisation is hereby approved and must be implemented.
9. The EMPr must be included in all contract documentation for all phases of implementation.

PART V

Monitoring

10. A copy of the Environmental Authorisation, EMPr, any independent assessments of financial provision for rehabilitation and environmental liability, closure plans, audit reports and compliance monitoring reports must be kept at the site of the authorised activities, and must be made available to anyone on request, including a publicly accessible website (if applicable).
11. Access to the site referred to in Section D must be granted, and the environmental reports mentioned above must be produced, to any authorised official representing the competent authority who requests to see it for the purposes of assessing and/or monitoring compliance with the conditions contained herein.

PART VI

Auditing

12. In terms of regulation 34 of the *EIA Regulations, 2014* the holder must conduct environmental audits to determine compliance with the conditions of the Environmental Authorisation, the EMPr and the closure plan (where applicable) and submit Environmental Audit Reports to the competent authority upon receiving such request in writing from the competent authority. The Audit Report must be prepared by an independent person and must consider all the information required in Appendix 7 of the *EIA Regulations, 2014*.

PART VII

Activity/ Development Specific Conditions

13. Should any heritage remains be exposed during excavations or any other actions on the site, these must immediately be reported to the Provincial Heritage Resources Authority of the

Western Cape, Heritage Western Cape. Heritage remains uncovered or disturbed during earthworks must not be further disturbed until the necessary approval has been obtained from Heritage Western Cape.

Heritage remains include meteorites, archaeological and/or paleontological remains (including fossil shells and trace fossils); coins; indigenous and/or colonial ceramics; any articles of value or antiquity; marine shell heaps; stone artefacts and bone remains; structures and other built features with heritage significance; rock art and rock engravings; and/or graves or unmarked human burials including grave goods and/or associated burial material.

14. A qualified archaeologist and/or palaeontologist must be contracted where necessary (at the expense of the holder) to remove any heritage remains. Heritage remains can only be disturbed by a suitably qualified heritage specialist working under a directive from the relevant heritage resources authority.
15. A status report for the implementation of the Short-Term Rehabilitation Method Statement of June 2020 must be submitted to this Department within 30 days of the date of this Environmental Authorisation.

H. GENERAL MATTERS

1. Notwithstanding this Environmental Authorisation, the holder must comply with any other statutory requirements that may be applicable when undertaking the listed activities.
2. Non-compliance with a condition or term of this Environmental Authorisation or EMPr may render the holder liable to criminal prosecution.
3. The holder must submit an application for amendment of the Environmental Authorisation to the competent authority where any detail with respect to the Environmental Authorisation must be amended, added, substituted, corrected, removed or updated. If a new holder is proposed, an application for Amendment in terms of Part 1 of the *EIA Regulations, 2014* must be submitted.

Please note that an amendment is not required if there is a change in the contact details of the holder. In this case, the competent authority must only be notified of such changes.

4. The manner and frequency for updating the EMPr is as follows:

Amendments to the EMPr must be done in accordance with regulations 35 to 37 of the *EIA Regulations, 2014* or any relevant legislation that may be applicable at the time.

I. APPEALS

Appeals must comply with the provisions contained in the *National Appeal Regulations, 2014*.

1. An appellant (if the holder) must –

1.1 submit an appeal in accordance with regulation 4 *National Appeal Regulations, 2014* to the Appeal Administrator and a copy of the appeal to any registered I&APs, any Organ of State with interest in the matter and the decision maker within 20 (twenty) calendar days from the date the holder was notified by the competent authority of this decision.

2. An appellant (if NOT the holder) must –

2.1 submit an appeal in accordance with regulation 4 *National Appeal Regulations, 2014* to the Appeal Administrator, and a copy of the appeal to the holder, any registered I&APs, any Organ of State with interest in the matter and the decision maker within 20 (twenty) calendar days from the date the holder notified the registered I&APs of this decision.

3. The holder (if not the appellant), the decision-maker, I&APs and Organ of State must submit their responding statements, if any, to the Appeal Authority and the appellant within 20 (twenty) calendar days from the date of receipt of the appeal submission.

4. This appeal and responding statement must be submitted to the address listed below -

By post: Attention: Marius Venter
Western Cape Ministry of Local Government, Environmental Affairs &
Development Planning
Private Bag X9186, Cape Town, 8000; or

By facsimile: (021) 483 4174; or

By hand: Attention: Mr Marius Venter (Tel: 021-483 3721)
Room 809, 8th floor Utilitas Building
1 Dorp Street, Cape Town, 8000; or

By e-mail: DEADP.Appeals@westerncape.gov.za

Note: You are also requested to submit an electronic copy (Microsoft Word format) of the appeal and any supporting documents to the Appeal Administrator to the address listed above and/ or via e-mail to DEADP.Appeals@westerncape.gov.za.

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

J. CONSEQUENCES OF NON-COMPLIANCE WITH CONDITIONS

Non-compliance with a condition or term of this Environmental Authorisation or EMPr may result in suspension or withdrawal of this Environmental Authorisation and may render the holder liable for criminal prosecution.

K. DISCLAIMER

The Western Cape Government, appointed in terms of the conditions of this Environmental Authorisation, shall not be responsible for any damages or losses suffered by the holder, developer or his/her successor in any instance where construction or operation subsequent to construction is temporarily or permanently stopped for reasons of non-compliance with the conditions as set out herein or any other subsequent document or legal action emanating from this decision.

Yours faithfully

ADV. CHARMAINE MARÉ

DIRECTOR: ENVIRONMENTAL GOVERNANCE

Copied to: (1) Ms Melissa Mackay (EAP)

(2) Ms Delia Power (George Municipality)

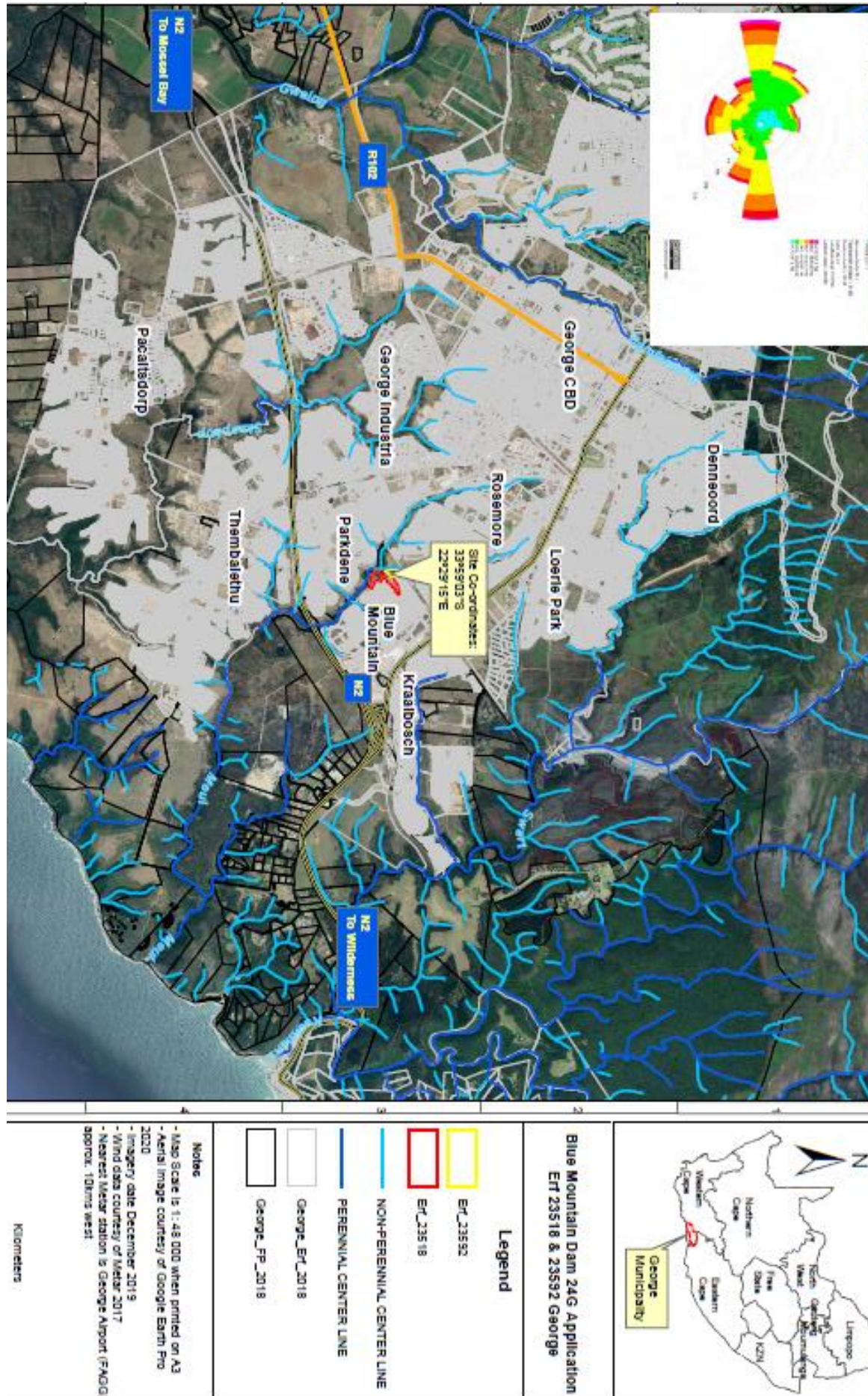
(3) Diana Mouton (DEA&DP: Environmental Law Enforcement – Region 3)

Email: mel@cape-eaprac.co.za

Email: dpower@george.gov.za

Email: Diana.Mouton@westerncape.gov.za

ANNEXURE 1: LOCALITY MAP



Blue Mountain Dam 24G Application
ET 23518 & 23592 George

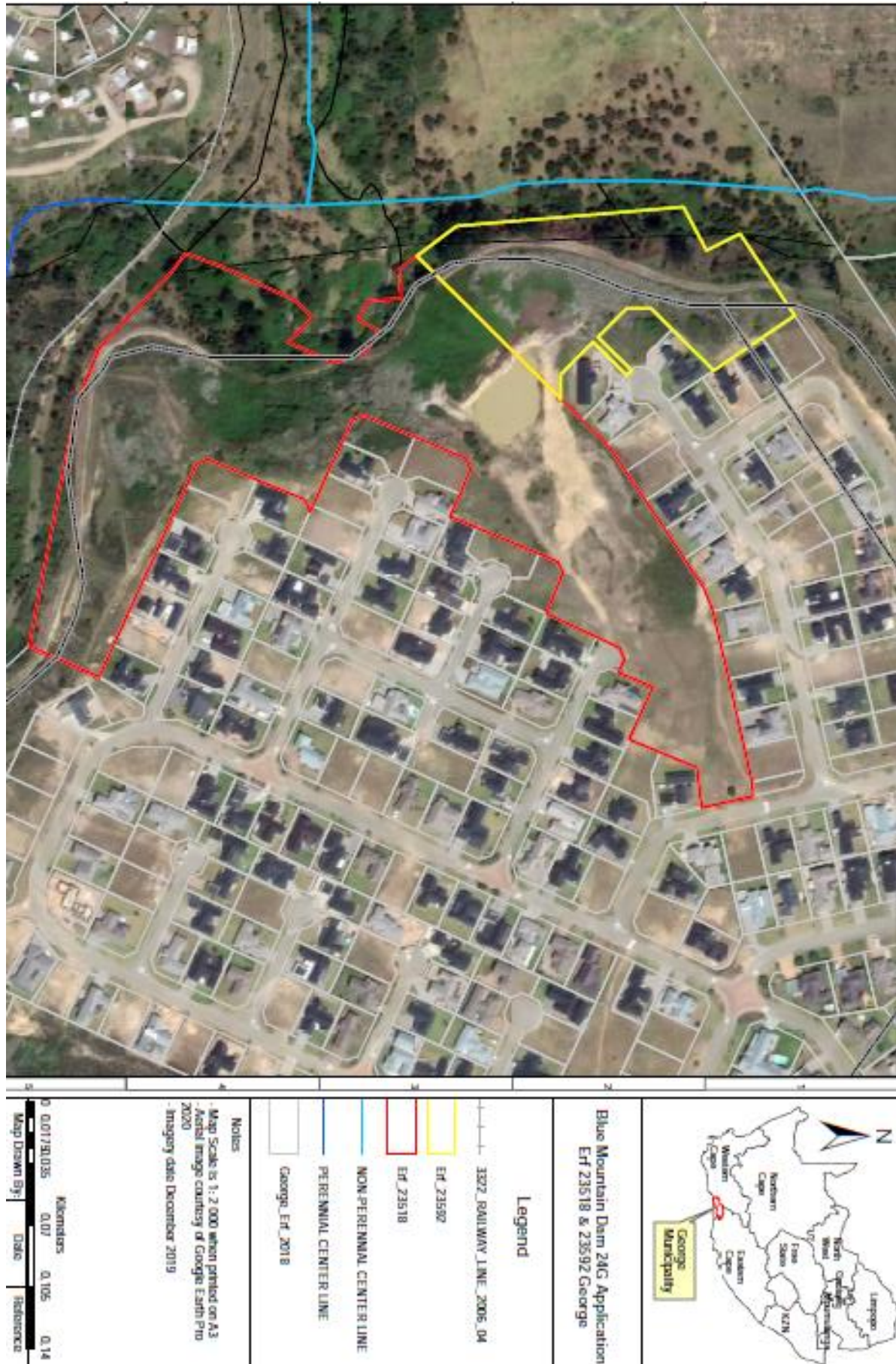
Legend	
	ET_23592
	ET_23518
	NON-PERENNIAL CENTER LINE
	PERENNIAL CENTER LINE
	George_ET_2018
	George_FP_2018

Notes

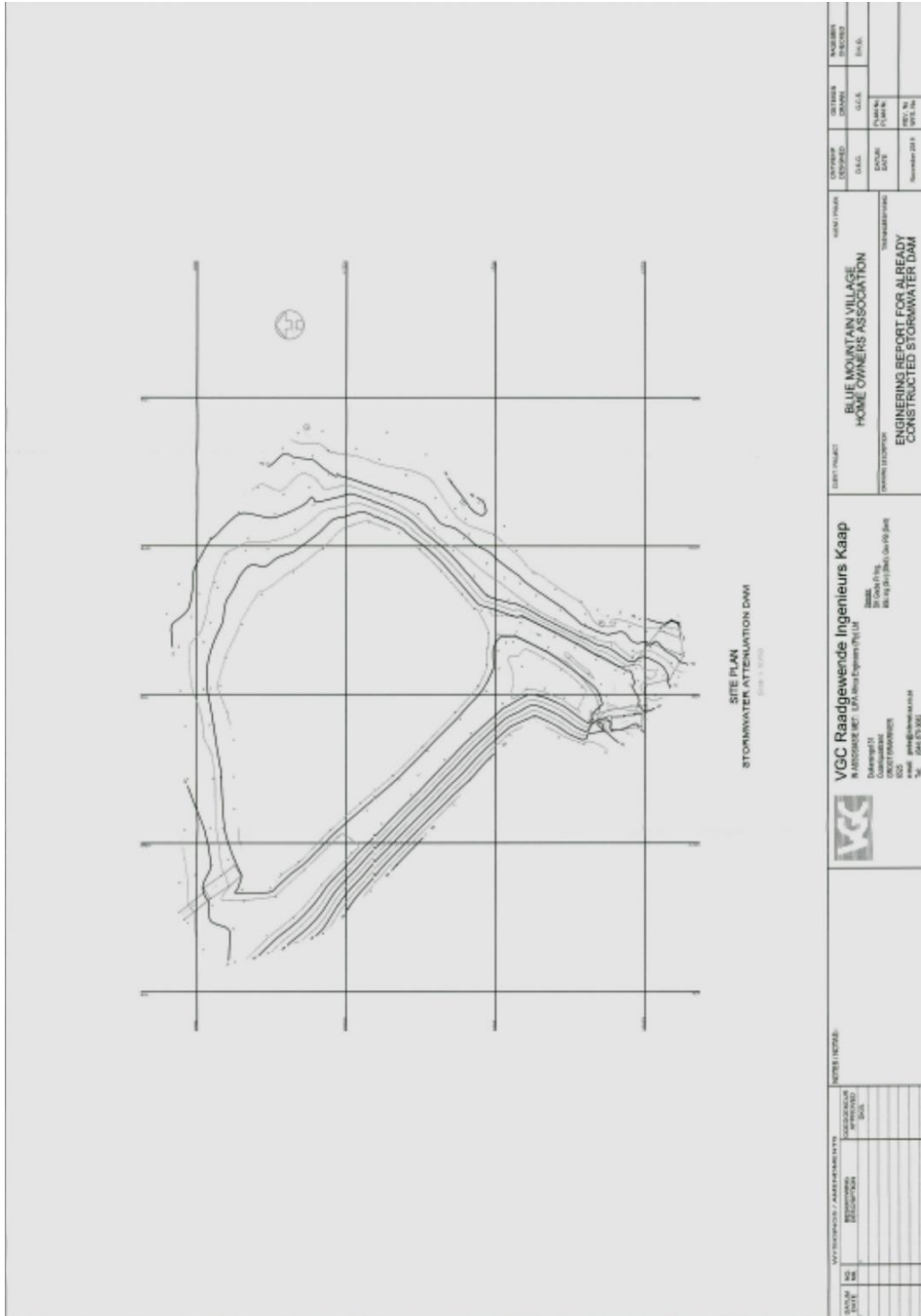
- Map Scale is 1:48 000 when printed on A3
- Aerial image courtesy of Google Earth Pro 2020
- Imagery date December 2019
- Wind data courtesy of Meter 2017
- Nearest Meteor station is George Airport (FAGG) approx. 10km west

Kilometers

ANNEXURE 2: SITE PLAN (A)



ANNEXURE 2: SITE PLAN (B)



FOR OFFICIAL USE ONLY:

S24G REFERENCE: 14/2/4/2/3/D2/20/0017/20
ENFORCEMENT REFERENCE : 14/1/1/E3/5/10/3/L1047/19

ANNEXURE 3: REASONS FOR THE DECISION

This Environmental Authorisation is in respect of the consequences of commencement of the afore-mentioned illegal activities. An Environmental Assessment Practitioner ("EAP") was appointed to submit a section 24G Environmental Impact Assessment ("EIA") to the Department to obtain this Environmental Authorisation. The EIA was considered adequate for informed decision-making. In addition, the holder paid an administrative fine of R250 000 (Two hundred and fifty thousand Rand) to meet the requirements of section 24G of the *National Environmental Management Act, 1998* ("NEMA").

In reaching its decision, the competent authority, *inter alia*, considered the following:

- a) The information contained in the application form dated 04 March 2021 with supporting environmental impact assessment.
- b) The Environmental Management Programme ("EMPr") of November 2020 submitted together with the application.
- c) The Short-Term Rehabilitation Method Statement of June 2020.
- d) Relevant information contained in the Departmental information base, including, the Guidelines on Public Participation and Alternatives.
- e) The objectives and requirements of relevant legislation, policies and guidelines, including section 2 of the NEMA.
- f) The comments received from Interested and Affected Parties ("I&APs") and the responses provided thereto.
- g) The sense of balance of the negative and positive impacts and proposed mitigation measures.
- h) The site visit conducted on 22 October 2020 attended by officials from this Department.

All information presented to the competent authority was taken into account in the consideration of the application for environmental authorisation. A summary of the issues which, according to the competent authority, were the most significant reasons for the decision is set out below.

1. Public Participation Process

In terms of section 24G(1)(vii)(dd) of the NEMA, "...a description of the public participation process followed during the course of compiling the report, including all comments received from interested and affected parties and an indication of how the issues raised have been addressed ...", is required.

The public participation process conducted by the EAP comprised of the following:

- An advertisement was placed in the George Herald newspaper on 12 November 2020;
- A site notice was erected;
- Letters were sent to interested and affected parties ("I&APs") and the municipal ward councillor on 09 November 2020;
- I&APs were afforded the opportunity to provide comments on the application.

The following organs of state provided comment on the application:

- Breede Gouritz Catchment Management Agency ("BGCMA")
- CapeNature ("CN")

A summary of the comments received follows below:

The BGCMA has reiterated that a Water Use License is required and must be completed. CapeNature stated that they object to the introduction of any alien fish species. Alien invasive species that germinate must be removed and rehabilitated using suitable indigenous species. CapeNature further stated that the mitigation measures as proposed in the Freshwater report must be strictly implemented. CapeNature concluded by stating that they do not object to the retention of the dam, given that the stormwater management is improved and any disturbance to the wetlands or within the buffer zone must be avoided.

All the concerns raised by I&APs were responded to and adequately addressed during the public participation process. Specific management and mitigation measures have been considered in this Environmental Authorisation and in the EMPr to adequately address the concerns raised.

The competent authority concurs with the EAP's responses to the issues raised during the public participation process and has included appropriate conditions in this Environmental Authorisation and in the EMPr.

2. Alternatives

2.1 Site Alternatives

Alternative 1 (Herewith authorised)

Alternative 1 entails the retention of the attenuation dam, but with the addition of a series of 3 earthen berms / small embankments at intervals downstream of stormwater outflow points. The aim is to retain small volumes of stormwater while allowing excess water to discharge more or less equally on either side of the berm when it reaches capacity, before finally flowing into the recently constructed attenuation dam.

In addition, the following is required:

- Removal of one of the compacted pathways (show in red below) to prevent erosion and allow the re-establishment of the wetland vegetation and water movement.
- Fill in excavated channels (from outflow points) with soil so that water is more evenly spread as opposed to concentrated.
- Re-contour the outflow from point 3 to be wider and less confined (less V-shaped) to encourage reduced channelling.
- Where pathways intersect stormwater flow paths either raise the pathway onto a boardwalk or use grass pavers in that section of pathway, which should follow natural contours as far as possible.
- Re-vegetate the area around the dam.

There are five (5) stormwater headwalls approved in the catchment area of the dam, of which four (4) are upstream of the dam and the fifth daylight at the dam spillway. The principal purpose of the dam is to protect the estate security fence on the western boundary from damage caused by stormwater, and to collect the stormwater for use as irrigation on the estate for the open space area. The preferred Alternative 1 takes into account the mitigation measures proposed by the aquatic specialist and the dam engineer.

Alternative 2

This alternative entails retaining of the current attenuation dam without implementing any of the mitigation requirements that have been provided. This option is not suitable from an

aquatic and environmental perspective as it will create ongoing degradation to the wetland environment and will be a visually unesthetic and potentially hazardous site for the estate.

2.2 The option of not implementing or continuing with the activity ("No-Go" Alternative)

This alternative proposes the removal of the dam. The aquatic specialist has predicted that the removal of the dam will cause more damage and will not improve the wetland. Furthermore, the risk of stormwater damage to the security fence will remain, given that the stormwater headwalls will remain in operation and are approved in terms of previous decisions.

3. Environmental Impact Assessment (EIA) and Mitigation Measures

In reaching its decision, the competent authority, considered the following in respect of the EIA and mitigation measures:

3.1. Activity Need and Desirability

The property is zoned as Open Space II which allows for utility services within private open space. The dam was constructed to collect and dissipate the stormwater that was leading to damage to the security fence on the western boundary.

3.2. Regional/ Planning Context

The property was given approval for the current development in 2005. The dam is a continuation of the development. The dam is located inside the urban edge of George and within the fenced estate of Blue Mountain Village.

3.3. Biophysical and Biodiversity Impacts

Prior to construction of the dam, the wetland areas had been cleared of alien trees and vegetation was in a partial state of regeneration. Hydrology had been impacted by the inputs of stormwater, drainage of water along the fence-line and the altered vegetation. The stormwater inputs would have resulted in increased flood peaks, as described by the Homeowners when their fence line was partially washed away by stormwater. Vegetation was impacted by construction of houses (with associated infilling) in areas of the wetland, conversion of natural vegetation to grass and planted gardens, and alien vegetation scattered throughout the wetland.

4. NEMA Principles

The National Environmental Management Principles (set out in section 2 of the NEMA), which apply to the actions of all organs of state, serve as guidelines by reference to which any organ of state must exercise any function when taking any decision, and which must guide the interpretation, administration and implementation of any other law concerned with the protection or management of the environment), *inter alia*, provides for:

- the effects of decisions on all aspects of the environment to be taken into account;
- the consideration, assessment and evaluation of the social, economic and environmental impacts of activities (disadvantages and benefits), and for decisions to be appropriate in the light of such consideration and assessment;
- the co-ordination and harmonisation of policies, legislation and actions relating to the environment;
- the resolving of actual or potential conflicts of interest between organs of state through conflict resolution procedures; and
- the selection of the best practicable environmental option.

In view of the above, the NEMA principles, compliance with the conditions stipulated in this Environmental Authorisation, and compliance with the EMPr, the competent authority is satisfied that the listed activities will not conflict with the general objectives of integrated environmental management stipulated in Chapter 5 of the NEMA and that any potentially detrimental environmental impacts resulting from the listed activities can be mitigated to acceptable levels.

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