



**MINISTRY: ENVIRONMENTAL AFFAIRS AND TOURISM
REPUBLIC OF SOUTH AFRICA**

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Mr T Singleton
Eskom Holdings Limited: Generation Division
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Fax no. 011 800 5140

Dear Mr Singleton

**RE: RECORD OF DECISION FOR PROJECT REFERENCE 12/12/20/807: CONSTRUCTION OF
THE ESKOM GENERATION PROPOSED 5400MW COAL-FIRED POWER STATION, WITBANK**

The Minister of Environmental Affairs and Tourism, Mr Marthinus van Schalkwyk, has considered the appeals against the Department's decisions to grant authorisation to the applicant for the construction of the proposed 5400mw coal-fired power station, Witbank (Project Bravo).

After evaluating all the appeals and relevant information submitted to him, he has come to a decision as attached hereto.

Sincerely,

**RIAAN AUCAMP
ACTING: HEAD OF MINISTRY**

17 MAR 2008





MINISTRY FOR ENVIRONMENTAL AFFAIRS AND TOURISM

Ref: 12/12/20/807

APPEAL DECISION

MINISTER OF ENVIRONMENTAL AFFAIRS AND TOURISM

**APPEALS AGAINST THE ENVIRONMENTAL AUTHORISATION FOR THE
CONSTRUCTION OF A 5400MW COAL-FIRED POWER STATION IN WITBANK**

1. INTRODUCTION

The project in question involves the construction of a 5400MW coal-fired power station and associated infrastructure near Witbank, on approximately 2500ha of land on the Farm Hartbeesfontein 537 JR and the Farm Klipfontein 566 JR.

2. BACKGROUND

The development that is the subject of this appeal entails the erection of a 5400MW coal-fired power station and its components and associated infrastructure listed below:

2.1 Power Station Precinct

- i) Power station buildings;
- ii) Administrative buildings (control buildings, medical, security etc);
- iii) High voltage yard.

2.2 Associated Infrastructure

- i) Coal stock yard;
- ii) Coal and ash conveyors;
- iii) Water supply pipelines (temporary and permanent);
- iv) Water and wastewater treatment facilities;
- v) Ash disposal system;
- vi) Access roads (including haul roads);
- vii) Dams for water storage; and
- viii) Railway siding and/or line for sorbent supply.

2.3 The applicant in this project is Eskom Holdings Ltd, Generation Division (Eskom).

2.4 In terms of the environmental impact assessment (EIA) regulations conducted under the Environment Conservation Act, 1989 (Act 73 of 1989) [ECA], and which Act still governs this project, the construction of a facility of this nature is subject to EIA and an environmental authorisation.

2.5 The development was authorised by the Director-General and a positive record of decision (ROD) was granted in respect of this development on 5 June 2007. Two appeals, in terms of section 35(3) of the Environment Conservation Act, 1989, were received by my office against the proposed project.

3. APPEALS

3.1 The appellants

After the ROD in this matter was issued, my office received two appeals from Mr J.H. van der Merwe, a local landowner and farmer, and from the Kendal Poultry Farm (Pty) Ltd, represented by its attorneys, J B Hugo & Cronje, respectively.

3.2 Grounds of appeal

The grounds of appeal are briefly listed below:

- a) No consultation
According to Mr Van der Merwe, he was not consulted regarding the project.
- b) Impact of the ash dump
The same appellant referred to in (a) above submits that the ash dump will be detrimental to the health of his family and his farm animals.
- c) Impact on the appellant's normal way of life and living on the farm
Mr Van der Merwe avers that the proposed power station will impact on the normal way of life of his family on the farm.
- d) Cumulative environmental impact assessment (EIA) not done
It is the submission of Kendal Poultry that an assessment was not done with regard to the cumulative impact of the proposed power station and the proposed Anglo Coal Mine.
- e) Adverse air impact.
Kendal Poultry alleges that there will be adverse air impact on its poultry farm, which will detrimentally affect the health of its chickens.
- f) Socio-economic impacts
According to Kendal Poultry, there will be potential negative socio-economic impacts. The appellant states that its staff component of 110 persons and their many dependants are deeply affected and concerned as to their future jobs and their health, being in such close proximity to the proposed power station.

g) Impacts on water quality

Kendal Poultry submits that there will be impacts on the quality of the water from its boreholes, of which a large quantity is used on the poultry farm for various purposes.

4. DECISION

4.1 INFORMATION CONSIDERED

In reaching my decision, I have considered the following information:

- The project file in this matter, including the ROD granted on 5 June 2007;
- The appeals lodged against this development, the response thereto by Eskom's consultants and one appellant's reply thereto; and
- The department's responses to the grounds of appeal.

4.2 DECISION

4.1 I have, in terms of section 35(4) of ECA, decided to dismiss the appeals lodged against the decision to grant the environmental authorisation for the construction of the proposed power station and its associated infrastructure. The reasons for my decision are set out below.

4.2 I have further decided to vary the authorisation issued by the Department and attach the revised authorisation hereto as Annexure B. More specifically, I have added conditions to the following effect:

- (a) The applicant, in consultation with the relevant appellant must, on a quarterly basis, monitor the reproductive health of the poultry on the Appellant's farm and if it is conclusively established that there is a causal connection between

the emissions from the power station and any deterioration in the health of the chickens, corrective measures must be implemented by the applicant;

- (b) The applicant must establish an ambient air quality monitoring station to monitor the ambient air impact of the power station.

The revised ROD has been supplemented accordingly.

4.3 REASONS FOR THE DECISION

I indicate briefly the reasons for my decision to authorise this development. In doing so, I am satisfied that:

- (a) There was sufficient consultation in this matter and that the legislative requirements in this regard have been satisfied;
- (b) The need and desirability for the project has been adequately demonstrated. The proposed project is part of the applicant's new capacity installation programme and is intended to meet some of the pressing electricity demands of the country;
- (c) The Director-General adequately considered the major anticipated environmental impacts of this development before issuing the environmental authorisation on 5 June 2007;
- (d) The potential impacts on human and animal health from the ash dump can be mitigated to acceptable levels through the conditions set by the authorisation and other measures, but that additional measures must be put in place to ensure adequate monitoring of air quality. I have also taken note in my analysis of the information before me that the proposed power station will be located within the newly proclaimed Highveld Priority Area. It is therefore envisaged that detailed air quality management interventions will be made within the area to generally improve ambient air quality. In addition, I am satisfied that the technology utilized for this development conforms to international best practice standards and will set the standard for similar developments in this country in future;

- (e) The conditions included in the revised ROD are deemed adequate to provide for the mitigation of the identified impacts to acceptable levels;
- (f) The development will result in socio-economic benefits, not only to the Witbank area, but to the country as a whole.
- (g) By implementing the mitigation measures contained in this revised ROD, the principles contained in section 2 of the National Environmental Management Act, 1998 (Act 107 of 1998, NEMA) can be substantially complied with.

I however reserve the right to amplify my reasons for this decision should the need arise.

Martinus van Schalkwyk
MARTINUS VAN SCHALKWYK, MP

MINISTER OF ENVIRONMENTAL AFFAIRS AND TOURISM

DATE: 17 MAR 2000

RECORD OF DECISION

RECORD OF DECISION FOR PROJECT REFERENCE 12/12/20/807: CONSTRUCTION OF THE
ESKOM GENERATION PROPOSED 5400MW COAL-FIRED POWER STATION, WITBANK

By virtue of the power vested in me in terms of section 35(4) of the Environment Conservation Act, 1989 (Act 73 of 1989) ("the Act"), read with section 22(3) of the Act, I hereby authorise Eskom Holdings Limited to undertake the activities specified/ detailed below subject to the indicated conditions.

1. DESCRIPTION, EXTENT AND LOCATION OF THE ACTIVITY:

The proposed development will include the construction of a 5400MW coal-fired power station and associated infrastructure near Witbank, on approximately 2500ha of the Farm Hartbeestfontein 537 JR and the Farm Klipfontein 566 JR. Site X, as indicated on page 2 of the Final Environmental Impact Report (Ninham Shand Report No. 4284/401281, dated February 2007), was identified as the preferred site for the proposed coal-fired power station. The proposed site falls within the jurisdiction of Delmas Local Municipality within the Mpumalanga Province.

The proposed project will consist of the establishment of the following components:

- Power station precinct:
 - Power station buildings;
 - Administrative buildings (control buildings, medical, security, etc); and
 - High voltage yard.
- Associated infrastructure:
 - Coal stock yard;
 - Coal and ash conveyors;

- Water supply pipelines (temporary and permanent);
- Water and wastewater treatment facilities;
- Ash disposal systems;
- Access roads (including haul roads);
- Dams for water storage; and
- Railway siding and / or line for sorbent supply.

2. CONDITIONS

2.1 Description of the activity

The authorisation applies in respect of the following activities as listed in Schedule 1, regulation R. 1182 and described in Plan of Study for Scoping dated April 2006:

- Item 1: The construction, erection or upgrading of-
 - (a) facilities for commercial electricity generation with an output of at least 10 megawatts and infrastructure for bulk supply;
 - (c) with regard to any substance which is dangerous or hazardous and is controlled by national legislation-
 - (i) infrastructure, excluding road and rails, for the transportation of any such substance; and
 - (ii) manufacturing, storage, handling, treatment or processing facilities for any such substance;
 - (d) roads, railways, airfields and associated structures;
 - (g) structures associated with communication networks, including masts, towers and reflector dishes;
 - (l) schemes for the abstraction or utilisation of ground or surface water for bulk supply purposes;
 - (n) sewage treatment plants and associated infrastructure;
- Item 2: The change of land use from-
 - (c) agricultural or zoned undetermined use or an equivalent zoning to any other land use.
- Item 8: The disposal of waste as defined in section 20 of the Act, excluding domestic waste, but including the establishment, expansion, upgrading or closure of facilities for all waste, ashes and building rubble.

3. SPECIFIC CONDITIONS

3.1 Water quality management

- 3.1.1 All risk reduction recommendations made in the Hydrogeological Assessment, GCS (Pty) Ltd, dated 14 November 2007, must be considered and implemented during the planning and construction of the new power station.
- 3.1.2 The coal stockyard must be established on top of a suitably prepared surface to prevent leaching into the groundwater.
- 3.1.3 The area where the ash dump is to be established must be lined to prevent leaching into the groundwater.
- 3.1.4 Dams with a higher groundwater pollution risk must be sited on appropriate underlying geological strata or these dams must be lined.
- 3.1.5 All polluted water must be recycled until all pollutants are captured as waste for disposal with the ash deposition.
- 3.1.6 Eskom must ensure that the metering procedure of water supplied to the proposed power station must measure to a level of accuracy of 0,5%. Water and salt balances must be carried out once a month to verify performance and identify potential problems.
- 3.1.7 Leak detections and inspections, on site and along pipelines must be implemented.
- 3.1.8 The cooling water sludge from the cold lime softening process must be co-disposed with the ash.
- 3.1.9 The sludge removed from raw water storage dams and reservoirs must be used as fill material for borrow pits or to cover for waste sites.
- 3.1.10 The "dirty" water generated on site and considered for irrigation must be tested to determine its suitability in terms of salinity and sodium absorption ratio (SAR).
- 3.1.11 Eskom must continuously monitor the ground water quality and implement measures to ensure that pollution of the resource does not occur. The monitoring programme for ground water quality and measures to control and prevent pollution of the ground water resource shall be included in the operational EMP.
- 3.1.12 A water use licence must be applied for in terms of Section 32 (g) of the National Water Act to adequately deal with the storage of ash from the ash dump and the disposal of wet waste from the Flue Gas Desulphurisation process.

3.2. Management of fauna and flora

- 3.2.1 A site specific wetland assessment and a rare and endangered species survey must be undertaken during the appropriate season. This must inform the identification of less sensitive areas, for the positioning of corridors for pipelines, roads, railways and coal conveyors. These corridors should be planned in a way that avoids or minimises the impacts on wetlands.
- 3.2.2 All unavoidable construction within wetland areas must be done so as to minimise disturbance of the pedology which would directly affect subterranean hydrology in wetlands systems.
- 3.2.3 A revised layout must be submitted indicating how the proposed corridors for the pipelines, roads, railways and coal conveyors have taken the wetlands into consideration during the planning stage of the proposed alignment of these routes. This revised layout must also indicate where the proposed dams for water storage will be constructed.

3.3 Visual impact management

- 3.3.1 The following design measures must be implemented at the power station to ensure that visual intrusion is kept to the minimum:
- Treat building facades and roofs with a muted, mat paint that is similar to the prevailing colour of the landscape.
 - Avoid very light or dark finishings that will increase colour contrast with the foreground and background.
 - Reduce the use of reflective building materials such as glass to avoid glare and visual discomfort to viewers.
 - Screen planting should be introduced along perimeter roads passing the site, around the coal stockyard and the ash dump to screen views of these project components.
 - Avoid over-illumination of outdoor spaces. Low pressure sodium lights are regarded as highly energy efficient and suitable for security lighting.
- 3.3.2 The existing vegetation cover of the site should be retained through selective clearing. This will ensure that screening takes place during the construction and operational phases of the development.
- 3.3.3 The ash dump's final slope configuration should avoid sharp angles and straight lines. The slope typically consists of benches and rises. The edges that will be created as a result of these changes in slope should be rounded to create an even light distribution over the edge and avoid distinct, straight shadow lines.

3.4 Noise impact management

- 3.4.1 The Gauteng and the National Noise Control Regulations, as well as SANS 10103:2004 must be used as the main guidelines to manage the noise impact of this project.

3.4.2 Buildings housing noisy machinery must be insulated in order to minimise the transmission of noise through the walls and roof.

3.4.3 Measures to mitigate noise emanating from the cooling fans must be investigated by an acoustics engineer. Proposed mitigation measures, including the potential to shield the cooling fans must be included in the operational EMPs for consideration and approval by the Department.

3.5 Social risk management

3.5.1 A Quantitative Risk Assessment must be undertaken in terms of the Major Hazardous Installation (MHI) Regulations (July 2001) prior to construction. This risk assessment must be undertaken once the detailed engineering designs and layouts have been developed. The findings of the assessment must be incorporated into the construction Environmental Management Plan (EMP).

3.6 Heritage impact management

3.6.1 All recommendations made and mitigation measures proposed in the Heritage Impact Assessment, National Cultural History Museum, dated October 2006, must be implemented for the nine culturally important identified sites on the property.

3.6.2 The South African Heritage Resource Agency (SAHRA) must be informed if any of these identified culturally important sites are going to be impacted upon by the proposed development.

3.7 Air quality management

3.7.1 Eskom must install, commission and operate any required SO₂ abatement equipment that may be necessary to ensure compliance with any applicable emission or ambient air quality standards published in terms of the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004).

3.7.2 Particulate abatement measures such as bag filters or electrostatic precipitators must be implemented at the power station to reduce PM₁₀ emissions.

3.7.3 Eskom must initiate a programme of support for initiatives aimed at improving air quality in the Witbank residential area. This programme must be included in the operational EMP.

3.7.4 The power station must be operated in compliance with any related Registration Certificate issued in terms of the Atmospheric Pollution Prevention Act, Act 45 of 1965, and any related Atmospheric Emission License issued in terms of the National Environment Management: Air Quality Act, Act 39 of 2004.

3.7.5 Low NOx burners must be included in the design of the boilers to reduce the NOx levels.

- 3.7.6 Eskom must indicate the technology to be installed to reduce the emission of mercury into the atmosphere. The percentage and minimum of by how much this reduction will take place must be provided in the construction EMP.
- 3.7.7 Eskom must install an ambient air quality monitoring station to measure the ambient air impact of the power station. The location of the station and the pollutants to be monitored will be determined in consultation with the Department.
- 3.7.8 End of pipe measures need to be specific to address the sulphur dioxide and particulates emissions. These measures must include the following:
 - For sulphur dioxide – FGD unit
 - For particulates – ESP or bag filters
 - For carbon dioxide – carbon capture readiness (the Applicant is required to submit to DEAT a report detailing the preferred technology, for approval, before proceeding with construction)

3.8 Traffic impact management

- 3.8.1 The future proposed alignment of the K29/1 intersects the proposed site. This road alignment must be verified with the Mpumalanga Roads Department before the commencement of the design of access roads to the site.
- 3.8.2 The internal road network utilised for access to the site must be resurfaced, upgraded or reconstructed as required. Special attention must be given to providing adequate drainage and subsurface drainage systems on all roads.

3.9 Socio-economic impact management

- 3.9.1 Community forums and communication channels between the local communities, construction companies / contractors and Eskom must be established and maintained.
- 3.9.2 Assistance must be provided to the inhabitants on site through skills development and job opportunities. Information with regards to this must be included in the environmental compliance report to be undertaken by the Environmental Control Officer (ECO)(refer to 3.2.13.4 below).

3.10 Agricultural impact management

- 3.10.1 Eskom must provide the Department with an action plan related to the surplus land, not occupied by infrastructure related to the power station which could be leased to farmers for agricultural production. This action plan must be included in the operational EMP.
- 3.10.2 In order to establish whether the operation of the power station has adverse impacts on the health and reproduction of the chickens of the Kendal Poultry Farm (hereinafter called Kendal Poultry), situated on Portions 30, 31, 62, 27 and 28 of the farm Klipfontein near Witbank, the ECO appointed in terms of paragraph 3.2.13 below must:

- (1) During the construction period compile baseline information, in consultation with Kendal Poultry, on chicken fatality and reproduction rates on a quarterly basis. This information must indicate the number of fatalities per 1 000 chickens and the number of new chickens per 1 000 hens. This baseline information must represent statistics for a period of at least one year.
- (2) Once the power station has come into operation, resume and continue this quarterly compilation of statistics for at least two years. After expiry of the two year period, Eskom must:
 - (a) Analyse the pre-operation (baseline) data and the post-operation data to establish whether there has been any increase in chicken fatality or decrease in their reproduction rate.
 - (b) Undertake appropriate studies, should there be evidence of such increases and decreases, to establish whether there is a causal relation between the fertility and mortality fluctuations and the emissions emanating from the power station. These studies must be undertaken within six months after completion of the gathering of the post-operational data.

3.10.3 Should these studies confirm that such a causal relation exists, Eskom must, within two months after completion of the studies referred to in (2)(b), submit to the Department for approval:

- (a) A management plan to mitigate the impacts of the losses (if any), including but not limited to, compensation for such loss.

3.11 Environmental Monitoring Committee (EMC)

- 3.11.1 This development is authorised on condition that the developer establishes an EMC with clear terms of reference as described in 3.2.11.6.
- 3.11.2 Amongst others the EMC shall consist of the following members:
 - (a) A chairperson as described in 3.2.11.3,
 - (b) The ecologist that participated in the EIA process, or any other suitably qualified and experienced ecologist approved for this purpose by the Department,
 - (c) Representatives from the public (at least two people),
 - (d) Environmental Control Officer (ECO) (once appointed in terms of 3.2.13 below),
 - (e) A senior site manager from the main contractor, and
 - (f) An air quality specialist.
- 3.11.3 The EMC must appoint an independent chairperson who has appropriate people and project management skills.
- 3.11.4 The EMC must meet on a bi-monthly basis from the inception of the project.
- 3.11.5 The EMC must report to the Director: Environmental Impact Evaluation of the Department on a bi-monthly basis and the report must include matters as described in 3.2.11.6 below.

- 3.11.6 The purpose of the EMC is to execute the following:
- (a) To monitor and audit compliance with the conditions of this ROD, with environmental legislation and with specific mitigation requirements as stipulated in the environmental impact report and the Environmental Management Plans.
 - (b) To make recommendations to the Director: Environmental Impact Evaluation on issues related to the monitoring and auditing of the project.
 - (c) To decide on the frequency of meetings, should a need arise to review the prescribed frequency. This change should be communicated to the Department for acceptance.
- 3.11.7 All costs associated with the EMC shall be borne by the applicant. The terms of reference for the EMC must, in addition to the scope of work as detailed in 3.2.11.6, clearly define roles and responsibilities related to logistical arrangements, administration and financial arrangements associated with the EMC.
- 3.11.8 Upon completion of construction, the roles, responsibilities and constitution of the EMC shall be reconsidered and the EMC shall be re-established with new terms of reference for the operational phase of the development.

3.212 Environmental Management Plan (EMP)

- 3.12.1 Eskom must submit a site specific construction EMP to the relevant authorities for acceptance before commencement of any of the activities related to this authorisation. The EMP must include, but shall not be limited to the following aspects:
- Rehabilitation of all areas disturbed during the construction phase of the project excluding those areas where permanent structures are erected.
 - Siting and management of construction camps, sanitation, ablution and housing facilities as well as material storage areas used by the contractor. All work areas must be supplied with proper sanitation facilities.
 - Management and rehabilitation of access roads to individual construction areas that will not become permanent roads upon completion of construction. Any new road constructed for any purpose not authorised as part of this ROD, must comply with the relevant SANS codes and permission for construction must be obtained from the Department as required by Schedule 1, item 1 (d) of R. 1182.
 - Waste avoidance, minimisation and disposal of waste at an appropriate facility.
 - Protection of any heritage sites likely to be impacted on by the development, should such sites be found during any phase of the development of the project.
 - Provisions for harvesting of any medicinal plants that may occur on site prior to site clearance.
 - Protection of indigenous vegetation where such is not affected by the physical footprint of the power station, ancillary infrastructure or associated construction works.
 - Provision for plant search and rescue of protected and endangered species which should be done before commencement of any construction related activity.
 - Management of traffic during the construction phase where the site access roads and other transportation networks intersect.
 - Measurement, monitoring and management of noise and dust pollution levels during the construction phase.

- A fire control management plan for implementation on site.
 - Implementation of site specific erosion, sediment and dust control measures during the construction phase.
 - The implementation, as part of the EMP, of all recommendations and mitigation measures contained in the final environmental impact report dated February 2007.
- 3.12.2 Once accepted by the Department, the revised construction EMP will be seen as a dynamic document. However, any changes to the EMP, must be submitted to the Department for acceptance before such changes could be effected. Such a submission for consideration by the Department must be accompanied by recommendations of the EMC.
- 3.12.3 Compliance with the accepted construction EMP must form part of all tender documentation for all contractors working on the project and must be endorsed contractually.
- 3.12.4 Eskom must submit an EMP for the operational phase of the development to the Department and other relevant provincial and local authorities for acceptance prior to the completion of the construction phase and the inception of the operational phase of the development. The revised operational EMP will be seen as a dynamic document. However, any substantial changes to the operational EMP, which is environmentally defensible, must be submitted to the Department for acceptance before such changes are effected.
- 3.13 Environmental Control Officer (ECO)**
- 3.13.1 The developer must appoint a suitably qualified Environmental Control Officer (ECO) who would, on behalf of the EMC, on a daily basis monitor the project compliance with conditions of this ROD, with environmental legislation and with the recommendations of the EMP. The cost of the ECO shall be borne by the applicant.
- 3.13.2 The ECO must be appointed one month before the start of construction and the relevant authorities must be notified of such an appointment for communication purposes.
- 3.13.3 The ECO shall ensure that periodic environmental performance audits are undertaken on the project implementation.
- 3.13.4 The ECO shall submit an environmental compliance report on a two-monthly basis, in writing, to the Director: Environmental Impact Evaluation of the Department, copied to the Mpumalanga Department of Agriculture and Land Administration.
- 3.13.5 The ECO shall maintain the following on site:
- A daily site diary
 - A non-conformance register
 - A public complaint register
 - A register of audits

3.13.6 The ECO shall remain employed until all rehabilitation measures as required, caused by construction damage, are completed and the site is handed over to Eskom by the contractor for operation.

3.13.7 The ECO shall report to and be accountable to the EMC.

3.14 Monitoring and auditing

3.14.1 Records relating to monitoring and auditing must be made available for inspection to any relevant authority in respect of this development.

3.14.2 The Department reserves the right to monitor and audit the development throughout its full life cycle to ensure that it complies with the conditions stipulated in the record of decision and to ensure implementation of all the mitigation measures contained in the final environmental impact report dated February 2007, and of the construction and operational EMPs.

3.15 Transportation and handling of hazardous materials.

3.15.1 During the construction of the power station, an effective monitoring system must be put in place to ensure safety and to detect any leakage or spillage of coolants from all oil containing equipment during their transportation, handling and installation.

3.15.2 The transportation and handling of hazardous substances must comply with all the provisions of the Hazardous Substances Act (Act No.15 of 1973) and its regulations as well as with SABS codes 0228 and 0229.

3.16 Rehabilitation after construction

3.16.1 No exotic plant species may be used for rehabilitation purposes. Only indigenous plants may be used.

3.16.2 Measures aimed at controlling invasive plant species and weeds must be implemented and must form part of the relevant EMP.

3.16.3 No disturbance of the land on the edge of any stream, river or wetland is allowed unless such disturbance complies with relevant legislation and conforms to strict design parameters.

3.17 Compliance with other legislation

3.17.1 Archaeological remains, artificial features and structures older than 60 years are protected in terms of the National Heritage Resources Act, 1999 (Act No. 25 of 1999). Should any archaeological artefacts be exposed during excavation for the purpose of laying foundations, construction in the vicinity of the finding must be stopped. An archaeologist must be called to the site for inspection. Under no circumstances shall any

artefacts be destroyed or removed from the site. SAHRA must be contacted to this effect. Their recommendations should be included in the construction EMP and be adhered to.

- 3.17.2 All provisions of the Occupational Health and Safety Act, 85 of 1993, and any other applicable legislation must be adhered to by the holder of this authorisation.
- 3.17.3 All provisions of the National Water Act, Act 36 of 1998, must be adhered to by the holder of this authorisation.
- 3.17.4 All provisions of the National Environment Management: Air Quality Act, Act 39 of 2004, must be adhered to by the holder of this authorisation.
- 3.17.5 All provisions of the Atmospheric Pollution Prevention Act, Act 45 of 1965, must be adhered to by the holder of this authorisation.
- 3.17.6 All provisions of the National Environment Management: Biodiversity Act, Act 10 of 2004, must be adhered to by the holder of this authorisation.
- 3.17.7 Should fill material be required for any purpose, the use of borrow pits must comply with the provisions of the Minerals and Petroleum Resources Development Act, 28 of 2002 administered by the Department of Minerals and Energy.
- 3.17.8 A permit shall be obtained from the provincial department of nature conservation for the removal of indigenous protected and endangered plant and animal species.

3.18 GENERAL CONDITIONS

- 3.18.1 This ROD is issued only in terms of section 22 of the Act and does not exempt the holder thereof from compliance with any other legislation.
- 3.18.2 This ROD only refers to the activities as specified and described in the final environmental impact report dated February 2007. Any other activity listed under section 24(2) of the National Environmental Management Act, 1998 (Act 107 of 1998), which is not specified above, is not covered by this ROD.
- 3.18.3 This ROD is subject to the approval of the relevant local authorities in terms of any legislation administered by those authorities.
- 3.18.4 One week's written notice must be given to the Department before commencement of construction activities. Such notice shall make clear reference to the site location details and reference number given above.
- 3.18.5 One week's written notice must be given to the Department before commencement of operational activities. Such notice shall make clear reference to the site location details and reference number given above.

- 3.18.6 The applicant shall be responsible for ensuring compliance with the conditions contained in this ROD by any person acting on its behalf, including but not limited to, an agent, servant, or employee or any person rendering a service to the applicant in respect of the activity, including but not limited to, contractors and consultants.
- 3.18.7 The applicant must notify the Department in writing, within 24 hours, if any condition of this ROD cannot, or is not, adhered to. The notification must be supplemented with reasons for such non-compliance.
- 3.18.8 A copy of this ROD shall be available on site during construction and all staff, contractors and sub-contractors shall be familiar with or be made aware of the contents thereof.
- 3.18.9 Compliance/non-compliance records must be kept and shall be made available on request from the authorities within five days of receipt of the request.
- 3.18.10 Any changes to, or deviations from, the project description set out in this ROD must be approved, in writing, by the Department before such changes or deviations may be effected. In assessing whether to grant such approval or not, the Department may request such information as it deems necessary to evaluate the significance and impacts of such changes or deviations.
- 3.18.11 This Department may review the conditions contained in this ROD from time to time and may, by notice in writing to the applicant, amend, add or remove a condition.
- 3.18.12 In the event of impacts exceeding the significance predicted by the independent consultant in the final environmental impact report dated February 2007, this authorisation may be withdrawn after proper procedures have been followed.
- 3.18.13 In the event of any dispute concerning the significance of a particular impact, the opinion of the Department will prevail.
- 3.18.14 The applicant must notify the Department, in writing, at least ten days prior to the change of ownership, project developer or the alienation of any similar rights for the activity described in this ROD. The applicant must furnish a copy of this document to the new owner, developer or person to whom the rights accrue and inform the new owner, developer or person to whom the rights accrue that the conditions contained herein are binding on them.
- 3.18.15 Where any of the applicant's contact details change, including the name of the responsible person, the physical or postal address and/or telephonic details, the applicant must notify the Department as soon as possible.
- 3.18.16 National, provincial or local government institutions or committees appointed in terms of the conditions of this authorisation or any other public authority shall not be held responsible for any damages or losses suffered by the applicant or his successor in title in any instance where construction or operation subsequent to construction is temporarily or permanently stopped for reasons of non-compliance by the applicant with the conditions of approval as

set out in this document or any other subsequent document emanating from these conditions of approval.

3.18.17 If any condition imposed in terms of this authorisation is not complied with, the authorisation may be withdrawn after 30 days written notice to the applicant in terms of section 22(4) of the Act.

3.18.18 Failure to comply with any of these conditions shall also be regarded as an offence and may be dealt with in terms of sections 29, 30 and 31 of the Act, as well as in terms of any other appropriate legislation.

3.18.19 The applicant shall be responsible for all costs necessary to comply with the above conditions unless otherwise specified.

3.18.20 Any complaint from the public during construction must be attended to as soon as possible to the Satisfaction of the parties concerned. A complaints register must be kept up to date and shall be produced upon request.

3.18.21 Departmental officials shall be allowed access at all reasonable times to the properties earmarked for construction activities for the purpose of assessing and/or monitoring compliance with the conditions contained in this document.

3.18.22 All outdoor advertising associated with this activity, whether on or off the property concerned, must comply with the South African Manual for Outdoor Advertising Control (SAMOAC), which is available from the Department.

4 DURATION OF AUTHORISATION

If the activity authorised by this letter does not commence within four years from the date of signature of this ROD, the authorisation will lapse and the applicant will need to reapply for exemption or authorisation in terms of the above legislation or any amendments thereto or any subsequent new legislation.

5. CONSEQUENCES OF NON-COMPLIANCE

The applicant must comply with the conditions set out in this ROD. Failure to comply with any of the above conditions may result in, *inter alia*, the withdrawal of the authorisation, the issuing of directives to address the non-compliance – including an order to cease the activity – as well as the institution of criminal and/or civil proceedings to enforce compliance.

6. APPLICANT:

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7. **CONSULTANT:**

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Martinus van Schalkwyk

MARTHINUS VAN SCHALKWYK
MINISTER OF ENVIRONMENTAL AFFAIRS AND TOURISM
DATE: 17 MAR 2008