



24G Application: 14/2/4/2/2/B4/45/0031/19

ENVIRONMENTAL AUTHORISATION

The Trustees
Dylan Property Trust
PO Box 1412
STELLENBOSCH
7599

Email: wayne@dylanart.co.za

Tel: (021) 880 0054

Attention: Mr Dylan Lewis

Dear Sir

APPLICATION IN TERMS OF SECTION 24G OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998) ("NEMA"): THE UNLAWFUL DEVELOPMENT OF A WEIR, BERMS, WALKWAY AND THE DIVERSION OF A WATERCOURSE INTO A DAM ON FARM 1314 AND 1315, STELLENBOSCH ROAD, STELLENBOSCH

With reference to your application dated January 2021, as signed 2 December 2019 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 in accordance with the preferred Alternative as described in the application and environmental assessment dated January 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

Dylan Property Trust

c/o Mr Dylan Lewis

PO Box 1412

STELLENBOSCH

7588

Tel: (021) 880 0054

Email: wayne@dylanart.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
<p>Government Notice No. R386 of 2006 –</p> <p>Activity Number: 1m</p> <p>Activity Description: <i>Any purpose in the one in ten flood line of river or stream, or within 32 metres from the bank of the river or stream where the flood line is unknown, excluding purposes associated with existing residential use, but including –</i></p> <ul style="list-style-type: none">(i) canals;(ii) channels;(iii) bridges;	<p>The dam on the property was enlarged during 2009. It is known exactly when the weir was built.</p>

<p>(iv) dams, and (v) weirs</p>	
<p>Government Notice No. R386 of 2006 – Activity Number: 4 Activity Description: <i>The dredging, excavation, infilling, removal or moving of soil, sand or rock exceeding 5 cubic metres from a river, tidal lagoon, tidal river, lake, in-stream dam, floodplain or wetland.</i></p>	<p>The dam on the property was enlarged during 2009. It is known exactly when the weir was built.</p>
<p>Government Notice No. R544 of 18 June 2010 – Activity Number: 11 Activity Description: <i>The construction of:</i> <i>(i) canals;</i> <i>(ii) channels;</i> <i>(iii) bridges;</i> <i>(iv) dams;</i> <i>(v) weirs;</i> <i>(vi) bulk storm water outlet structures;</i> <i>(vii) marinas;</i> <i>(viii) jetties exceeding 50 square metres in size;</i> <i>(ix) slipways exceeding 50 square metres in size;</i> <i>(x) buildings exceeding 50 square metres in size;or</i> <i>(xi) infrastructure or structures covering 50 square metres or more,</i> <i>where such construction occurs within a watercourse or within 32 metres of a watercourse, measured from the edge of a watercourse, excluding where such construction will occur behind the development setback line.</i></p>	<p>Construction of a weir, berms, a walkway, and diversion of the watercourse into a dam on Farm No. 1314, as well as construction of a berm on Farm No. 1315.</p>
<p>Government Notice No. R544 of 18 June 2010 – Activity Number: 18 Activity Description: <i>The infilling or depositing of any material of more than 5 cubic metres into, or the dredging,</i></p>	<p>Construction of a weir, berms, a walkway, and diversion of the watercourse into a dam on Farm No. 1314, as well as construction of a berm on Farm No. 1315.</p>

<p>excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock from</p> <ul style="list-style-type: none"> (i) a watercourse; (ii) the sea; (iii) the seashore; (iv) the littoral active zone, an estuary or a distance of 100 metres inland of the high-water mark of the sea or an estuary, whichever distance is the greater - but excluding where such infilling, depositing, dredging, excavation, removal or moving <p>(i) is for maintenance purposes undertaken in accordance with a management plan agreed to by the relevant environmental authority; or</p> <p>(ii) occurs behind the development setback line.</p>	
<p>Government Notice No. R. 983 of 4 December 2014</p> <p>Activity Number: 12</p> <p>Activity Description: <i>The development of-</i></p> <ul style="list-style-type: none"> (i) canals exceeding 100 square metres in size; (ii) channels exceeding 100 square metres in size; (iii) bridges exceeding 100 square metres in size; (iv) dams, where the dam, including infrastructure and water surface area, exceeds 100 square metres in size; (v) weirs, where the weir, including infrastructure and water surface area, exceeds 100 square metres in size; (vi) bulk storm water outlet structures exceeding 100 square metres in size; (vii) marinas exceeding 100 square metres in size; (viii) jetties exceeding 100 square metres in size; (ix) slipways exceeding 100 square metres in size; (x) buildings exceeding 100 square metres in size; 	<p>Further work on the weir, berms, walkway, and the diversion of the watercourse into the dam.</p>

<p>(xi) boardwalks exceeding 100 square metres in size; or</p> <p>(xii) infrastructure or structures with a physical footprint of 100 square metres or more;</p> <p>where such development occurs-</p> <p>(a) within a watercourse;</p> <p>(b) in front of a development setback; or</p> <p>(c) if no development setback exists, within 32 metres of a watercourse, measured from</p> <p>(c) the edge of a watercourse; - excluding-</p> <p>(aa) the development of infrastructure or structures within existing ports or harbours that will not increase the development footprint of the port or harbour;</p> <p>(bb) where such development activities are related to the development of a port or harbour, in which case activity 26 in Listing Notice 2 of 2014 applies;</p> <p>(cc) activities listed in activity 14 in Listing Notice 2 of 2014 or activity 14 in Listing Notice 3 of 2014, in which case that activity applies;</p> <p>(dd) where such development occurs within an urban area; or</p> <p>(ee) where such development occurs within existing roads or road reserves.</p>	
<p>Government Notice No. R. 983 of 4 December 2014</p> <p>Activity Number: 19</p> <p>Activity Description: The infilling or depositing of any material of more than 5 cubic metres into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock of more than 5 cubic metres from -</p> <p>(i) a watercourse;</p> <p>(ii) the seashore; or</p> <p>(iii) the littoral active zone, an estuary or a distance of 100 metres inland of the high-water mark of the sea or an estuary,</p>	<p>Further work on the weir, berms, walkway, and the diversion of the watercourse into the dam.</p>

<p><i>whichever distance is the greater but excluding where such infilling, depositing, dredging, excavation, removal or moving-</i></p> <p><i>(a) will occur behind a development setback;</i></p> <p><i>(b) is for maintenance purposes undertaken in accordance with a maintenance management plan; or</i></p> <p><i>(c) falls within the ambit of activity 21 in this Notice, in which case that activity applies.</i></p>	
<p>Government Notice No. 327 of 4 December 2014 (as amended) -</p> <p>Activity Number: 19</p> <p>Activity Description: <i>The infilling or depositing of any material of more than 10 cubic metres into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock of more than 10 cubic metres from a watercourse;</i></p> <p><i>but excluding where such infilling, depositing, dredging, excavation, removal or moving -</i></p> <p><i>(a) will occur behind a development setback;</i></p> <p><i>(b) is for maintenance purposes undertaken in accordance with a maintenance management plan;</i></p>	<p>Future maintenance work in the watercourses on the properties, including maintenance of the weir, berms, walkway, and the diversion of the watercourse into the dam to be undertaken (as per condition 8).</p>

The abovementioned list is hereinafter referred to as "the listed activities".

D. PROPERTY DESCRIPTION AND LOCATION

The listed activities commenced on Farm 1314 and Farm 1315, Stellenbosch Road, Stellenbosch.

The SG digit codes are: C06700000000131400000
C06700000000131500000

The co-ordinates for the property boundaries are:

Farm 1314, Stellenbosch Road			
Point	Latitude (S)		Longitude (E)
1	33°	58' 13.67"	18° 52' 21.52" East
2	33°	58' 14.36"	18° 52' 24.06" East
3	33°	58' 15.10"	18° 52' 29.67" East
4	33°	58' 17.28"	18° 52' 29.07" East
5	33°	58' 22.78"	18° 52' 30.10" East
6	33°	58' 22.37"	18° 52' 20.90" East
7	33°	58' 16.47"	18° 52' 20.57" East

Farm 1315, Stellenbosch Road			
Point	Latitude (S)		Longitude (E)
1	33°	58' 15.10"	18° 52' 29.67" East
2	33°	58' 15.19"	18° 52' 30.17" East
3	33°	58' 15.11"	18° 52' 33.34" East
4	33°	58' 16.42"	18° 52' 37.37" East
5	33°	58' 18.52"	18° 52' 40.63" East
6	33°	58' 22.91"	18° 52' 43.22" East
7	33°	58' 22.72"	18° 52' 30.10" East
8	33°	58' 17.28"	18° 52' 29.07" East

Refer to Annexure 1: Locality Plan.

Herein-after referred to as "the site".

E. DETAILS OF THE ENVIRONMENTAL ASSESSMENT PRACTITIONER (“EAP”)

Cornerstone Environmental Consultants (Pty) Ltd

c/o Ms Mari de Villiers

P.O. Box 12606

DIE BOORD

7613

Tel: (021) 887 9099

Fax: (086) 435 2174

Email: mari@cornerstoneenviro.co.za

F. DETAILS OF THE ACTIVITY/IES UNDERTAKEN

The unlawful development of a weir, berms, walkway and the diversion of a watercourse into a dam on Farm 1314, Stellenbosch Road, Stellenbosch.

The Dylan Property Trust acquired Farm No. 1314, Stellenbosch Registration Division (RD) during 2008, where it was previously used for agricultural purposes. The Dylan Lewis Sculpture Garden on Farm No. 1314 was created gradually over time, mostly between 2009 and 2017. The main freshwater feature within the study area consists of the Paradyskloof Tributary of the Blaauwklippen River, a tributary of the Eerste River. During the gradual establishment of the garden, a weir, berms, and a walkway were constructed, and a watercourse was diverted into a small dam and artificial pond.

The applicant furthermore rents the neighbouring property, Farm No. 1315, Stellenbosch RD, from the Mulberry Farm (Pty) Ltd. Mr Lewis and his family lives in the house on Farm No. 1315, Stellenbosch RD. An earthen berm was developed on Farm No. 1315 during 2013 to provide privacy screening between the Lewis family home on Farm No. 1315 and the sculpture garden on Farm No. 1314.

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 the preferred alternative described in the application and assessment report dated January 2021 on the site as described in Section D above.
2. The Environmental Authorisation is valid for a period of **five years** from the date of the decision.
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 the activities on site.
 - 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 condition 6.

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 2;
 - 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 and Maintenance Management Plan ("EMPr") of January 2021 compiled by Cornerstone Environmental Consultants 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. The holder must appoint a suitably experienced Environmental Control Officer ("ECO") before continuation of commencement of activities to ensure compliance with the EMPr and the conditions contained herein.
11. A copy of the Environmental Authorisation, EMPr, 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.
12. 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

13. 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 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

14. 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; [shipwrecks](#); and/or graves or unmarked human burials including grave goods and/or associated burial material.

15. 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.

16. The invasive kikuyu *Pennisetum clandestinum* grass cover on the embankment must be removed and revegetated with indigenous vegetation. In particular, the banks of the stream where there is a bend in the watercourse should be vegetated, and if necessary stabilised with larger boulders to prevent undercutting of the embankment by the stream.

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 activity/ies.
2. Non-compliance with a condition or term of this Environmental Authorisation or EMPr may render the holder liable to criminal prosecution.

Note that:

(1) In terms of regulation 28(1A) of the *EIA Regulations, 2014* the competent authority shall not accept or process an application for amendment of an environmental authorisation if such environmental authorisation is not valid on the day of receipt of such amendment application but may consider an application for environmental authorisation for the same development.

(2) In terms of regulation 28(1B) of the *EIA Regulations, 2014* an environmental authorisation which is the subject of an amendment application remains valid pending the finalisation of the amendment application.

(3) It is an offence in terms of section 49A(1)(a) of the NEMA for a person to commence with a listed activity if the competent authority has not granted an environmental authorisation for the undertaking of the activity.

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

CC: Mari de Villiers (EAP)

Email: mari@cornerstoneenviro.co.za

ANNEXURE 1: LOCALITY MAP



FOR OFFICIAL USE ONLY:

S24G REFERENCE:

14/2/4/2/2/B4/45/0031/19

ANNEXURE 2: 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 R50 000 (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 January 2021.
- b) The Environmental Management Programme ("EMPr") and Maintenance Management Plan of January 2021 submitted together with the application.
- c) Relevant information contained in the Departmental information base, including, the Guidelines on Public Participation and Alternatives.
- d) The objectives and requirements of relevant legislation, policies and guidelines, including section 2 of the NEMA.
- e) The comments received from Interested and Affected Parties ("I&APs") and the responses provided thereto.
- f) The sense of balance of the negative and positive impacts and proposed mitigation measures.
- g) The site visit conducted on 2 February 2021
Attended by: Officials of this Directorate

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:

- identification of and engagement with I&APs.
- fixing a notice board at the site where the listed activities unlawfully commenced on 12 November 2019.
- giving written notice to the owners and occupiers of land adjacent to the site where the listed activities were undertaken, the municipality and ward councillor, and the various organs of state having jurisdiction in respect of any aspect of the listed activities on 8 November 2019.
- the placing of a newspaper advertisement in the **Eikestad News** on 28 March 2019 and 14 January 2021.

A summary of comments from I&APs are provided below:

- Landowners that commence with building and earth moving activities, prior to approval, should be penalized financially as well as mitigating damages done on site.
- Corrective work should be done, so that the landowners and municipal ground on the downhill side do not suffer the consequences of diverted water, and that the river, and the ecosystem do not suffer because of their activities.
- The Freshwater Specialist Report as the centrepiece of the present process is in many ways correct and pertinent, but it is also '*a shoddy piece of work*', including multiple grammatical errors and at least one duplicate paragraph. Some important assessment tools and scores are not explained.
- The Freshwater Specialist Report also contains at least one material error in that the layers superimposed in its Figure 13 on a 1938 air photo are clearly incorrect. The northern

cadastral boundary is aligned with the curving dirt road which splits into two on the upper right of the figure. The cadastral lines should therefore be shifted by 20m -30m westwards.

- The Freshwater Specialist Report completely missed the fact that the downstream runoff from the rivers is not just “degraded” but traverses and serves ecologically critical areas in a very good condition. The tributary associated with the site concerned passes through agricultural areas immediately downstream of the site where the agricultural activities have significantly degraded the watercourse.
- Both the Freshwater Specialist Report and the Draft Impact Assessment Report (IAR) focus almost exclusively on the area immediately on or surrounding the various ponds and watercourses, its diversions, rehabilitation, tourist potential etc. It appears that neither the water specialists nor the EAP visited the peripheries of the properties or considered the various issues of impact, invasive, species chosen for rehabilitation etc. from the viewpoint of the abovementioned neighbouring nature area on Farm 369.
- No attempt was made to address the crucial issue of the water tank, the visual impact and the risk imposed on the surrounding nature area. Their world view and assessment were limited strictly to the area around the watercourses.
- Both the Freshwater Specialist Report and the IAR fail to mention or take into account the fact that the runoff from Farms 1314/15 and perhaps 1313 traverses the lower part of Farm 369, now comprising critically endangered renosterveld as well as the stream thickets shown as the red and blue A1 and A2 areas in the Boucher vegetation map. According to Boucher, the *Olea europaea subsp africana* thicket represents a relic of this once common vegetation type and must be cleared of woody alien invasive species and be afforded very high conservation status. A copy of the Boucher report can be provided on request.
- The amount of runoff and the water quality emitted downstream from Farms 1313/14/15 matter a great deal. Statements in both the Freshwater Specialist Report and the IAR such as the quote below are patently false: “Given the degraded condition of the watercourse downstream of the site, and the fact that the stream along its length appears to have a baseflow contribution from groundwater that sustains the aquatic ecosystem during the dry summer period, the impact of the dam on the downstream flow and aquatic ecosystem is considered of a low significance.” (Freshwater Specialist Report, Section 9.2).
- The Freshwater Specialist Report quotes annual evaporation figure of 1115mm compared to mean annual rainfall of 781mm (Section 6.2), so the total open water surface matters. However, no estimate has been made by either the specialist or the EAP of the increase in evaporation resulting from the enlargement of evaporative surface from the original single dam to the present multiple ponds and enlarged dams. From the IAR: “The Applicant has indicated that the dam on the property was an existing lawful dam, and that its capacity

did not change as a result of the work done. He indicated that a dam wall was removed, which resulted in an increase in the extent of the dam, and a decrease in its depth. The capacity therefore remained unchanged." Mr Eggers indicated that the capacity may not have changed, but surface area has, but the increased evaporation as a cause of reduced runoff is simply ignored.

- No botanical survey was conducted - A copy of a full list of plant species for Farm 369, as determined by Boucher and verified by SANBI, can be provided on request. The EAP indicated that the listed activities that are being applied for mainly relates to impacts on the watercourse, hence the inclusion of only a Freshwater Ecologist on the project team.
- The use of fynbos species in the rehabilitation of the area is supported as a general principle. However, simply "indigenous" may not be good enough. The distinction between indigenous fynbos and locally occurring fynbos matters because of possible migration from Farms 1314/15 into Farm 369, mixing and hybridisation. There is therefore a need to consider the plant species planted in detail.
- The reports make a recommendation that kikuyu planted on the embankments of watercourses should be removed but recommended that kikuyu planted elsewhere should be "controlled". Kikuyu is a Category 1b invasive, and "control" is extremely difficult. There are several sites on Farm 369 where kikuyu has become invasive, decades after the historical homesteads which led to its planting have disappeared. The recommendation regarding kikuyu should therefore be extended to a general ban on kikuyu throughout the properties. Kikuyu should also be included in the risk assessment.
- The presence, control and problem of invasive alien plants receives only a passing mention in the IAR. which focused exclusively on the watercourses and fails to consider the wider implications of the non-watercourse invasive stands.
- A large zincplate water storage tank with an estimated capacity of 500 to 1000 cubic metres was constructed in the northeastern extremity of Farm 1314.
- The following additional questions were asked:
 - What is the annual total water volume used for irrigation on Farms 1314/15?
 - Where does the water stored in the tank originate? from the rivers/ponds? the Winelands Irrigation scheme? a borehole? all of the above?
 - How much water is obtained from which source?
 - If water is obtained from the Winelands Water Users Association (Appendix F1): How is that water piped to the property? How much of the maximum annual quota (8000 cubic metres per year for each of 1314 and 1315) is actually obtained from WWUA? At what cost? Is there a separate metered system for this water? Are there separate WWUA accounts and invoices supporting these numbers?

- Are water rights and/or physical water transferred across the cadastral boundaries of Farms 1314/1315?
- Is there a pipe linking the ponds and the water tank?
- If there is a borehole: How would it and the volumes of water derived from it affect the long-term water table and thereby the river runoff in question? See references to baseflow contributions in both the Freshwater Specialist Report and IAR purporting to mitigate the effect of the ponds on river runoff.
- The DEADP compliance notice of 15 February 2019 and the DEADP pre-directive of 28 March 2019 both correctly mention not only Farm No. 1314 but also Farm No. 1315. These two cadastral units are adjacent and are being managed as a single entity. It would therefore be appropriate for DEADP to assess and include not only Farm No. 1314 but also Farms 1315 and to some extent Farm 1313 in all considerations and decisions.
- For assessment of impacts, risks and management actions, it is important to understand the spatial context of. The smallholdings of Farms 1314/5 are surrounded on three sides by Farm 369, owned by the Municipality of Stellenbosch. Farm 369 and the abutting Farm 366 represent some 400 hectares of nature areas comprising critically endangered renosterveld, fynbos and one remaining pine plantation. Apart from Farm 366 being a declared Mountain Catchment Area, the area has no formal conservation status; however, the Stellenbosch SDF does envisage some kind of conservation status, and an Environmental Management Plan was approved by Council in 2019.
- If seen from the surrounding nature areas of Farm 369, the visual impact of the properties 1314/15 is quite negative. Impacts include large parking areas, berms of dumped soil, stands of uncontrolled alien invasive plants and unauthorised access to Farm 369 via unauthorised gates.
- Decisions and management actions taken on Farms 1314/15 entail a large influence on the Farm 369 nature area. Wildfires are the most obvious close link, but the spreading of alien invasives, the abstraction and storage of water, the visual impact and issues of access are all intimately tied to the proximity of Farms 1314/15 to Farm 369.
- It is acknowledged that the owners of Farm No. 1314/15 have made efforts to rehabilitate the watercourses and planted “indigenous” vegetation around the ponds and dams. The general feedback from visitors to the area is positive. It is also acknowledged that tourism and low-impact events represent a positive contribution to the local economy. The IAR repeats these positive aspects many times but fails to see or mention the associated negative impacts and risks.

Consultation with organs of state in terms of section 24O of the NEMA

The following organs of state provided comment on the application:

- CapeNature
- Department of Agriculture
- Department of Water and Sanitation

CapeNature (CN) indicated, according to the South African Vegetation Map, the development site is in an area which supports Cape Winelands Shale Fynbos, which is listed as a Vulnerable vegetation type. Some remnants of this habitat type are still present on the site, especially adjacent to the watercourses. Parts of the site have been determined as Critical Biodiversity Area (CBA). The main reasons for this determination are linked to watercourse and wetland protection as well as protection of indigenous vegetation.

CN notes that part of the activities that have taken place on site included revegetation and rehabilitation of aquatic features. Our main concern initially was around the diversion of the watercourse as generally this should not be supported. However, it is apparent that the site was already degraded, and the previous dam was impeding flow.

CN therefore agree with the findings and the recommendations of the freshwater specialist report. Some additional rehabilitation and on-going monitoring must be implemented on site. The diversion of the watercourse can be left in place on condition that the downstream habitat integrity is monitored annually. If it appears that base flow has declined and there has been deterioration of instream and riparian habitat, then in addition to allowing spill-over, a means of releasing flow periodically must be implemented. This monitoring can possibly be included as part of the Maintenance Management Plan to be approved as part of this application.

The Western Cape Department of Agriculture: Land Use Management has no comment.

The Department of Water and Sanitation perused the report for the above activity and noted that the construction of a weir, berms and a walkway on both Farm No. 1314 and Farm No. 1315 was unlawful. The mentioned activities triggered the following water uses in terms of the *National Water Act, 1998* (Act No36 of 1998) Section 21(c) *impeding or diverting the flow of water in the watercourse* and Section 21 (i) *altering the bed, banks, course or characteristics of a watercourse* for which authorisation is required.

2. Alternatives

2.1 Activity Alternatives

The Dylan Property Trust acquired Farm No. 1314, Stellenbosch RD during 2008, with the specific intention of using it as an “open air” gallery for Lewis’ world-famous sculptures in a naturally beautiful setting. Up to 2008, the property was used for agricultural purposes. The Sculpture Garden was created gradually over time, mostly between 2009 and 2017. Development of the garden on this site has resulted in an overall improvement of the site condition, especially through revegetation with indigenous vegetation and removal of alien vegetation. This site was therefore specifically chosen and is ideally suited for its setting/location and scenic natural surroundings. The EAP is not aware of any reasonable or feasible site alternatives that were considered at the time of purchasing this property more than 10 years ago.

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

The Dylan Property Trust has already invested heavily into the sculpture garden, including the development and maintenance of the garden, and as such, it is not considered viable to cease their operations/activities. The activities on site have resulted in an overall improvement of the site condition, through revegetation with indigenous vegetation and alien vegetation removal. If the operation is ceased, no further maintenance of the garden will take place, which will result in the reestablishment of alien vegetation on the site and the overall degradation of the rehabilitated areas.

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 Dylan Lewis Sculpture Garden provides a localised improvement in the economy by providing jobs and procuring goods from local businesses. The jobs provided to the employees has a further knock-on effect as more money is available to be spent in the region. The garden contributes to the local economy and therefore has a positive socio-economic impact.

If the activity cannot continue, i.e., the no-go option is implemented, people will lose their work and the applicant will lose any potential future income from the garden, and sales from this “open air gallery”. This will not only have a negative impact on these

individuals but will have a knock-on effect in terms of impacts on their families, who rely on these individuals for financial support.

3.2. Biodiversity Impacts

Agricultural activities have taken place along the Eerste River since the 17th century and, as a result, most of the rivers in this system have been previously modified. Past aerial photographs indicate that the site was already significantly disturbed. However, the watercourses appeared to still be relatively undisturbed, within their natural watercourses and the dam had not yet been constructed. Four alleged illegal and unlawful activities were assessed: Construction of a walkway and sculpture display within a watercourse, Diversion of the watercourse into a small dam and artificial pond; Construction of a weir within a watercourse and construction of a low berm adjacent to the watercourse. It was confirmed by the freshwater specialist that the activities and management thereof resulted in an overall improvement of the ecological condition of the affected site through revegetation with indigenous vegetation, addressing of erosion issues, and removal of alien vegetation. Additionally, no heritage features were disturbed due to the establishment of the Dylan Lewis Sculpture Garden and the garden does not deter from the visual nature of the surrounding area.

3.3. Visual / Sense of Place

The garden does not deter from the visual nature of the surrounding area. It was confirmed by the freshwater specialist that the management of the site has resulted in an overall improvement of the site condition through revegetation with indigenous vegetation and removal of alien vegetation. Additionally, no heritage features were disturbed due to the establishment of the Dylan Lewis Sculpture Garden.

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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