



REFERENCE: 14/1/1/E2/4/2/3/0057/14
ENQUIRIES: Mogammad Arshad Holliday

BY EMAIL

The Dylan Property Trust

Email: dylan@dylanart.co.za

PO Box 1412

Tel: 021 880 0054

Stellenbosch

7559

Attention: Mr Dylan Lewis (in your capacity as a Trustee of the Trust)

COMPLIANCE NOTICE

Dear Sir

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

1. The Department's Pre-Compliance Notice dated 08 May 2014 and your correspondence ("Rehabilitation Plan") compiled by Dragon Plants which was received by the Department on 25 September 2014, has reference.

2. Having considered your representations, I, Mr Achmad Bassier, in my capacity as an Environmental Management Inspector Grade 1, hereby issue to Mr Dylan Lewis representing the Dylan Property Trust a Compliance Notice in terms of section 31L of the National Environmental Management Act, 1998 ("NEMA"). The Directorate is not satisfied with the content of the rehabilitation plan as it does not make any provision for the rehabilitation of the watercourse which was diverted due to the construction of the berms, walkways and a cement weir. Furthermore, the rehabilitation plan was not compiled by a registered Environmental Assessment Practitioner ("EAP").

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

Details of conduct constituting non-compliance

4. During an investigation into allegations of the commencement of a listed activity in contravention of section 24F of the NEMA, a site inspection was conducted at Erven 1314 and 1315, Stellenbosch, by Environmental Management Inspector from the Department's Directorate: Environmental Law Enforcement on 13 September 2018 and it was confirmed that you have commenced with earth-moving, excavation and infilling works within a natural watercourse in order to construct a weir, berms and a walkway and divert a watercourse into a dam without the requisite environmental authorisation.



Aerial map: Location of alleged illegal activity.

5. On considering the evidence before me, there are reasonable grounds to believe that at the time you commenced with the activities it was listed in terms of Government Notice R544 of 18 June 2010 promulgated in terms of section 24(2) and 24D of the NEMA, which requires prior environmental authorisation:

Government Notice R544:

Activity No.11:

The construction of:

- (i) canals;*
- (ii) channels;*
- (iii) bridges;*
- (iv) dams;**
- (v) weirs;**

- (vi) bulk storm water outlet structures;
- (vii) marinas;
- (viii) jetties exceeding 50 square metres in size;
- (ix) slipways exceeding 50 square metres in size;
- (x) buildings exceeding 50 square metres in size; or
- (xi) infrastructure or structures covering 50 square metres or more,**

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.

Activity No.18:

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:

(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;

(a) is for maintenance purposes undertaken in accordance with a management plan agreed to by the relevant environmental authority; or

(b) occurs behind the development setback line.

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

EIA Regulations Listing Notice 1 of 2014:

Activity no. 12:

The development of—

- (i) dams or weirs, where the dam or weir, including infrastructure and water surface area, exceeds 100 square metres; or**
- (ii) infrastructure or structures with a physical footprint of 100 square metres or more;**

where such development occurs—

- (a) within a watercourse;**
- (b) in front of a development setback; or**
- (c) if no development setback exists, within 32 metres of a watercourse, measured from the edge of a watercourse; —**

excluding—

- (aa) the development of infrastructure or structures within existing ports or harbours that will not increase the development footprint of the port or harbour;*
- (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;*

- (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;
- (dd) where such development occurs within an urban area;
- (ee) where such development occurs within existing roads, road reserves or railway line reserves; or
- (ff) the development of temporary infrastructure or structures where such infrastructure or structures will be removed within 6 weeks of the commencement of development and where indigenous vegetation will not be cleared.

EIA Regulations Listing Notice 1 of 2014:

Activity no. 19:

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;

but excluding where such infilling, depositing, dredging, excavation, removal or moving—

- (a) will occur behind a development setback;
- (b) is for maintenance purposes undertaken in accordance with a maintenance management plan;
- (c) falls within the ambit of activity 21 in this Notice, in which case that activity applies;
- (d) occurs within existing ports or harbours that will not increase the development footprint of the port or harbour; or
- (e) where such development is related to the development of a port or harbour, in which case activity 26 in Listing Notice 2 of 2014 applies.



Photo 1: Construction of a walkway and sculpture display within a watercourse.



Photo 2: Close-up view of the walkway located within the watercourse.



Photo 3: Watercourse diverted into a small dam.



Photo 4: Artificial pond indicated by a white arrow and black arrow indicates water flow into the natural watercourse.



Photo 5: Concrete weir built within a watercourse.

7. You are hereby instructed to:

- 7.1 Immediately cease the above listed activities;
- 7.2 submit to the Department within **30 (thirty) calendar days** of receipt of this Compliance Notice a rehabilitation plan compiled by a suitably qualified and experienced independent EAP, which must include the following:
 - 7.2.1 assessment and evaluation of the impact on the environment;
 - 7.2.2 identification of proposed remedial and/or mitigation measures;
and
 - 7.2.3 method statements detailing rehabilitation methods with specific time-frames to rehabilitate the impacted area to its original condition.

8. Approval of the plan by the Department does not remedy the unlawful commencement of the above activities, which remain unlawful in terms of section 49A(1) (a) and/or (d) of the NEMA.
9. If the above plan is approved by the Department, you will be obliged to take the necessary remedial / mitigation measures at your own cost.
10. If you wish to continue with the listed activity you may apply for environmental authorisation by way of a section 24G application. However, such application does not constitute permission to continue with the listed activity, which remains unlawful unless environmental authorisation is granted.
11. Notwithstanding the section 24G application, the Department may commence criminal proceedings should circumstances so require.

Varying this Compliance Notice

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

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

13. In terms of section 49A(1)(a) of the NEMA it is an offence to commence a listed activity without environmental authorisation. A person convicted of such an offence is liable to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.
14. Furthermore, failure to comply with a Compliance Notice is an offence in terms of section 49A(1)(k). A person convicted of such an offence is liable to

a fine not exceeding R5 million or to imprisonment for a period not exceeding 5 years, and in the case of a second or subsequent conviction to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, and in both instances to both such fine and such imprisonment.

15. Any non-compliance with the Compliance Notice must be reported to the Minister, who may:

- 15.1 revoke any permit or authorisation to which this Compliance Notice relates; and/or
- 15.2 take any steps necessary to ensure compliance with the provisions of the law, permit or authorisation to which this Compliance Notice relates and recover from you the cost of doing so.

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

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

17. You may also make representations, in writing, to the Minister to suspend the operation of this Compliance Notice pending finalisation of the objection.

18. The objection must be in writing and forwarded to the Appeal Administrator, Mr Jaap de Villiers at the contact details below and must be accompanied by a statement detailing the grounds of the objection and supporting documentation, if any.

By post: Western Cape Ministry of Local Government, Environmental Affairs and Development Planning

Private Bag X9186
CAPE TOWN
8000

By facsimile: (021) 483 4174

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

By email: Jaap.DeVilliers@westerncape.gov.za

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



Achmad Bassier

Director: Environmental Law Enforcement

Grade 1 Environmental Management Inspector

Date: 15/02/2019

Cc: Schalk Van der Merwe (Stellenbosch Municipality)

Email: Schalk.VanderMerwe@stellenbosch.gov.za

Wayne (Pardus Fine Art)

Email: wayne@dylanart.co.za

Kristinet Van der Westhuizen (Pardus Fine Art)

Email: kristinet@dylanart.co.za