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Pri.Sci.Nat # 400045/08

BOTANICAL ASSESSMENT OF PORTION 22 OF FARM KLIPFONTEIN 82, VYEBOOM.

Submitted to: Department of Environmental Affairs & Development Planning, Western Cape

Client: Mr W Miller, Vyeboom

26 October 2017

DECLARATION OF INDEPENDENCE

In terms of Chapter 5 of the National Environmental Management Act of 1998 specialists involved in Impact Assessment processes must declare their independence and include an abbreviated Curriculum Vitae.

I, N.A. Helme, do hereby declare that I am financially and otherwise independent of the client and their consultants, and that all opinions expressed in this document are substantially my own, notwithstanding the fact that I have received fair remuneration from the client for preparation of this report.



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Abridged CV:

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University of Cape Town, South Africa. BSc (Honours) – Botany (Ecology & Systematics). 1990.

Since 1997 I have been based in Cape Town, and have been working as a specialist botanical consultant, specialising in the diverse flora of the great Cape Floristic Region. Since the end of 2001 I have been working on my own and trade as Nick Helme Botanical Surveys.

A selection of previous work undertaken in the region is indicated below:

- Baseline botanical assessment of Imhoff Farm, Kommetjie (Khula Environmental 2017)
- Botanical assessment of proposed sand mine near Brandvlei Dam (PHS Consulting 2017)
- Botanical assessment of Dragon's Nest, Hout Bay (Khula Environmental 2017)
- Specialist review of botanical IA studies for proposed Kapteinsklip development node, Mitchells Plain (Khula Environmental 2016)
- Botanical assessment of proposed development on farm Palmiet Valley 54, Wellington (Doug Jeffery Environmental Consultants 2015)

- Ecological assessment of proposed Arcelor Mittal power station, Saldanha (ERM 2015)
- Ecological assessment of proposed Globeleq power station, Saldanha (ERM 2015)
- Botanical assessment of proposed iGas pipeline Saldanha – Ankerlig (CES/ EOH 2015)
- Scoping and Impact Assessment of Proposed Wind Energy Facility near Swellendam (CSIR 2010)
- Scoping Assessment of Proposed Wind Energy Facility near Bredasdorp (CSIR 2010)
- Scoping and Impact Assessment of proposed Wind Energy Facility near Caledon (Savannah Environmental 2010)
- Scoping and Impact Assessment study of Proposed Wind Energy Facility near Caledon (Arcus Gibb 2009 & 2010)
- Impact Assessment of proposed Blue Crane Signature Golf Estate, Caledon (Doug Jeffery Environmental Consultants; 2010)
- Kogelberg Biosphere Reserve corridor study (CapeNature; 2008)
- Botanical Assessment of Erf 173, Hawston (PHS Consulting; 2008)
- Botanical Assessment of Farm 587/6, Cloud's End, Hemel & Aarde (Peter Dall Consultancy; 2007).
- Botanical Scoping and Impact Assessment of proposed Romansbaai development, Danger Point (Doug Jeffery Environmental Consultants; 2006 & 2007)
- Botanical Assessment of Erf 4574, Betty's Bay (Headland; 2006)
- Botanical Assessment of Erf 4570 and Erf 4576, Betty's Bay (Headland; 2006)
- Botanical Assessment of Erf 589 and Ptn. Erf 595, Greyton (DJ Environmental Conultants; 2006)
- Botanical Assessment of eastern portion of farm Afdaksrivier 575, Fisherhaven (Mr J. Carstens; 2006)

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1. INTRODUCTION

This botanical assessment was commissioned in order to comply with a Pre-Directive issued by the Department of Environmental Affairs and Development Planning (DEA&DP) in September 2017 (number 14/1/1/E2/5/9/3/0336/17), in which it was noted that unauthorised disturbance had taken place on Portion 22 of the Farm Klipfontein 82, Vyeboom (henceforth referred to as the study area). The study area is about 10ha in extent. The disturbance includes the digging (using heavy machinery) of approximately 1150m of subsoil drains (aka trenches; see Plates 1 -4), and the infilling of about 400m of associated roadway with fill from two of these drains (see Plates 2 & 4). These drains are generally 1-2m deep and 1-2m wide, with dumped fill covering an area about 5-6m wide, adjacent to each trench. All of this took place without an Authorisation from the DEA&DP, and such authorisation is required in terms of Section 49 of NEMA. The key triggers for this Pre-Directive were 1) the clearing of Critically Endangered vegetation and 2) excavation within a watercourse (wetland).

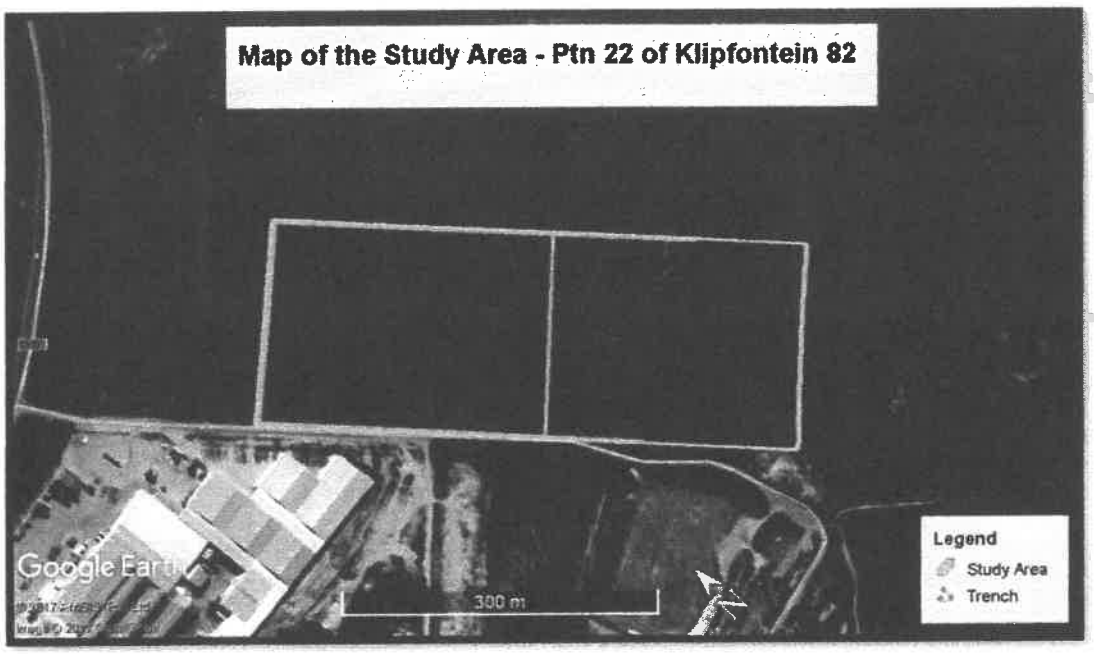


Figure 1: Google Earth image of study area, showing the study area, and where the trenches were dug and fill dumped alongside.



Plate 1: View of excavated trench on southwestern side of site, looking south.

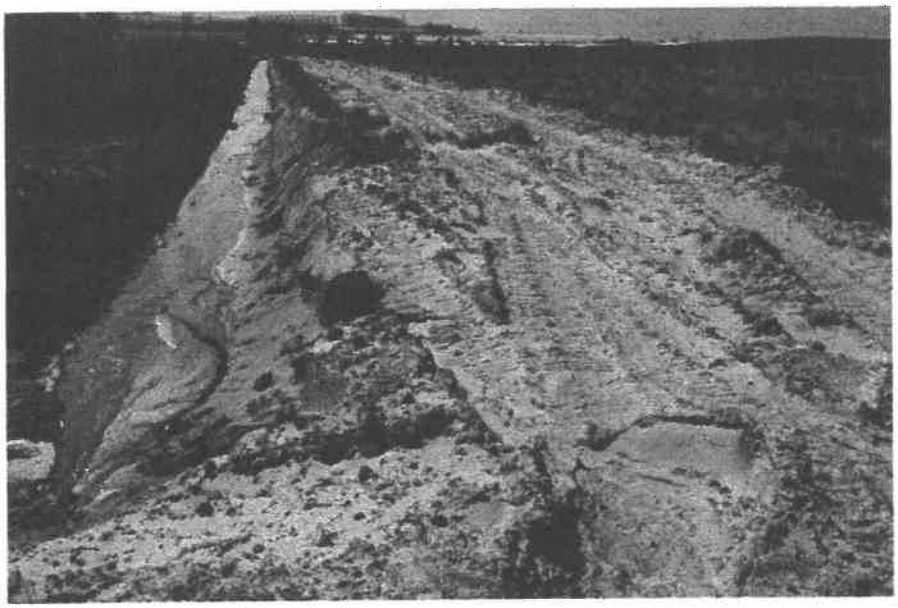


Plate 2: View of excavated trench on northwest side of site, looking north.



Plate 3: View of excavated trench on eastern side of site, looking north.



Plate 4: View of central trench crossing site, and adjacent infill, looking east. Note the draining effect that this trench is having.

→ The pipe that has been put in underneath the access road

2. TERMS OF REFERENCE

No terms of reference (ToR) were supplied, but the standard CapeNature recommended TOR for biodiversity specialists are broadly followed, and are as follows:

- Produce a baseline analysis of the botanical attributes of the study area as a whole.
- This report should clearly indicate any constraints that would need to be taken into account in considering the development proposals further.
- The baseline report must include a map of the identified sensitive areas as well as indications of important constraints on the study area. It must also:
    - Describe the broad ecological characteristics of the site and its surrounds in terms of any mapped spatial components of ecological processes and/or patchiness, patch size, relative isolation of patches, connectivity, corridors, disturbance regimes, ecotones, buffering, viability, etc.
    - In terms of biodiversity pattern, identify or describe:

      Community and ecosystem level

      a. The main vegetation type, its aerial extent and interaction with neighbouring types, soils or topography;
      b. The types of plant communities that occur in the vicinity of the site
      c. Threatened or vulnerable ecosystems (*cf. DEA 2011/SA vegetation map/National Spatial Biodiversity Assessment, etc).*

      Species level

      a. Plant Species of Conservation Concern (SCC; provide location if possible)
      b. The viability of and estimated population size of the SCC that are present (include the degree of confidence in prediction based on availability of information and specialist knowledge, i.e. High=70-100% confident, Medium 40-70% confident, low 0-40% confident)
      c. The likelihood of other SCC occurring on the site (include degree of confidence).

      Other pattern issues

a. Any significant landscape features or rare or important vegetation associations such as seasonal wetlands, alluvium, seeps, quartz patches or salt marshes in the vicinity.
b. The extent of alien plant cover of the site, and whether the infestation is the result of prior soil disturbance such as ploughing or quarrying (alien cover resulting from disturbance is generally more difficult to restore than infestation of undisturbed sites).
c. The condition of the site in terms of current or previous land uses.

- In terms of **biodiversity process**, identify or describe:
  a. The key ecological "drivers" of ecosystems on the site and in the vicinity, such as fire.
  b. Any mapped spatial component of an ecological process that may occur at the site or in its vicinity (i.e. *corridors* such as watercourses, upland-lowland gradients, migration routes, coastal linkages or inland-trending dunes, and *vegetation boundaries* such as edaphic interfaces, upland-lowland interfaces or biome boundaries)
  c. Any possible changes in key processes, e.g. increased fire frequency or drainage/artificial recharge of aquatic systems.
- What is the significance of the potential impact of the proposed project – with and without mitigation – on biodiversity pattern and process at the site, landscape, and regional scales?
- Indicate limitations and assumptions, particularly in relation to seasonality.

In addition, the Pre-Directive requires the consultant to provide suitable rehabilitation recommendations to restore the vegetation in the impacted area.

3. LIMITATIONS, ASSUMPTIONS AND METHODOLOGY

The study area was visited on 22 October2017, which is late in the optimal winter - spring flowering season in this winter rainfall region. This is likely to have resulted in an underestimation of the total site flora (perhaps by about 15%). Most, but not all perennial plant species were identifiable, but only certain bulbs or annuals were identifiable at this time of the year. It is very possible, and in fact likely, that certain plant Species of Conservation Concern may have been overlooked due to the seasonal constraints, and the cryptic nature of many

species. However, the author believes that sufficient information was available to make an accurate assessment of the vegetation and its significance, and the confidence level in the accuracy of the findings is high.

All plant species were noted in the field, and various digital photographs and plant specimens were taken. The GIS based South African National Biodiversity Institute (SANBI) vegetation map for South Africa (Mucina & Rutherford 2006 and 2012 update) was consulted, along with the National List of Threatened Ecosystems (DEA 2011), and other relevant references noted in the text. Conclusions were drawn based on this documentation and professional experience in the area and the region.

Google Earth satellite imagery dated April 2017 (and earlier) was used to verify vegetation patterns, and for mapping purposes. Google Earth Pro was used to measure areas. For purposes of this report the terms site and study area are used interchangeably.

It is assumed that the polygon shown in Figure 1 showing the study area is reasonably accurate. It is also assumed that all rehabilitation recommendations made in this report will be included in future documentation from the DEA&DP, and that they will be adequately and timeously implemented.

Note that this assessment does not refer to the proposed development of the entire site, but just to the unauthorised development already undertaken. The No Go alternative is assumed to be a continuation of the *status quo,* prior to the recent disturbance or any further development.

4. STUDY AREA CONTEXT

The study area is located near the western edge of the Overberg Ruens region, and is within the Core Cape Subregion (CCR) of the Greater Cape Floristic Region (GCFR; Manning & Goldblatt 2012). The study area is part of the Fynbos biome. The GCFR is one of only six Floristic Regions in the world, and it is also by far the smallest floristic region. The Core Cape Subregion occupies only 0.1% of the world's land surface, and supports about 9400 plant species, almost half of all the plant species in southern Africa, and some 20% of the plant species in sub-Saharan Africa. About 68% of all the species in the CCR do not occur elsewhere, and many have very small home ranges (these are known as narrow endemics). Most of the lowland habitats are under pressure from agriculture, urbanisation

and alien plants, and thus many of the range restricted species are also under severe threat of extinction, as habitat is reduced to extremely small fragments. Data from the Red Data Book listing process undertaken for South Africa is that 67% of the threatened plant species in the country occur only in the Fynbos biome, and these total over 1800 species (Raimondo *et al* 2009)! It should thus be clear that the southwestern Cape is a major national and global conservation priority, and is quite unlike anywhere else in the country in terms of the number of threatened plant species. Developments in this area thus need to take this into account.

The study area could be considered to have elements of both the Southwest Fynbos and East Coast Renosterveld bioregions (Mucina & Rutherford 2006). The latter is renowned as one of the most heavily agricultural regions in both the Western Cape and the country, and consequently very little natural vegetation remains, and virtually all remnants support large numbers of threatened plant species (Raimondo *et al* 2009).

The Overberg Renosterveld Fine Scale Conservation Plan (von Hase *et al* 2003) identified all remaining Renosterveld (the name used prior to the concept of Shale Fynbos) within the Vyeboom valley as key Renosterveld remnants.

The CapeNature Spatial Biodiversity Plan (Pence 2017; see Figure 2) shows that the entire site is either CBA1 (wetland) or CBA2 (terrestrial). CBAs are Critical Biodiversity Areas, and should not be developed, lost or impacted, as they support critical habitat and species, and appropriate land uses should be low impact and biodiversity sensitive. The CBA mapping for this site is supported by my site observations. It is thus clear form this mapping that any development in this area needs to be both limited and very sensitive to the environment.

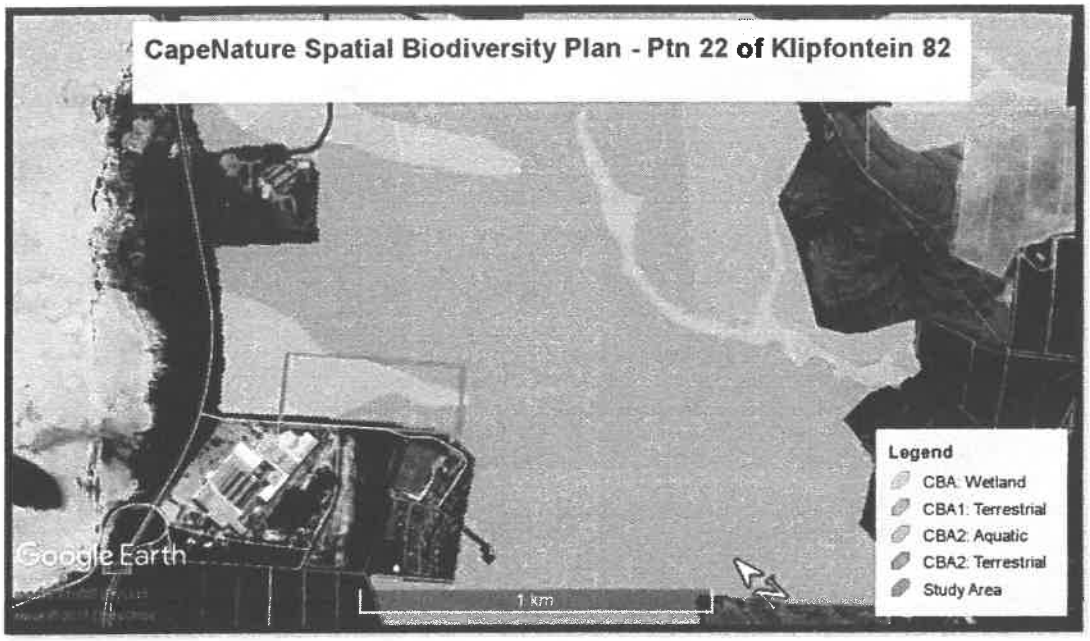


Fig 2: Extract of the CapeNature Spatial Biodiversity Plan (Pence 2017), showing that the entire site is either CBA1 (wetland) or CBA2 (terrestrial).

5. DESCRIPTION OF THE VEGETATION IN THE STUDY AREA

5.1 Description of the Study Area

The site is relatively flat, with a slight rise to the northeast, and the southeast corner being the highest part of the site. The site thus slopes gradually from south to north (towards the Theewaterskloof dam). The soils on site are deep, loamy sands, with underlying shales, and no sign of bedrock. There is thus something of a perched water table in the area (as sands are permeable but clays are not), and significant, flowing groundwater is evident in parts of the excavated trenches. The soils range from white sands to almost peaty, black loams, and the latter are strongly indicative of wetland conditions. The sandier parts of the site are better drained than the peaty, loamy soils, and slowly grade into each other. The vegetation on site was burned about two years ago (late 2015), and has not been previously disturbed, apart from the creation of an infilled dirt track in the central area (partly obscured by the latest road into the site made by the machinery that excavated the trenches).

5.2 The Vegetation on Site

The vegetation map of South Africa (Mucina & Rutherford 2006) indicates that the original vegetation type present on the majority of the site is Elgin Shale Fynbos (Figure 3). This vegetation type is restricted to nutrient rich, shale derived soils in

the relatively high rainfall Elgin and Vyeboom areas. Due to the high winter rainfall, the rich soils, and the relatively gentle topography the area has a long history of intensive agriculture (mostly for fruit trees). This vegetation type is in fact one of the twenty most heavily transformed in the entire country, having lost about 94% of its original extent. With only 6% of its original extent remaining, and an unreachable national conservation target of 30% of original total extent (Rouget *et al* 2004), all remaining viable patches of this habitat are regional and national conservation priorities, and no further loss of habitat should be allowed. Elgin Shale Fynbos is regarded as **Critically Endangered** on a national scale (Rouget *et al* 2004; DEA 2011), and any loss of intact habitat must thus have a High negative impact (DEA 2011).

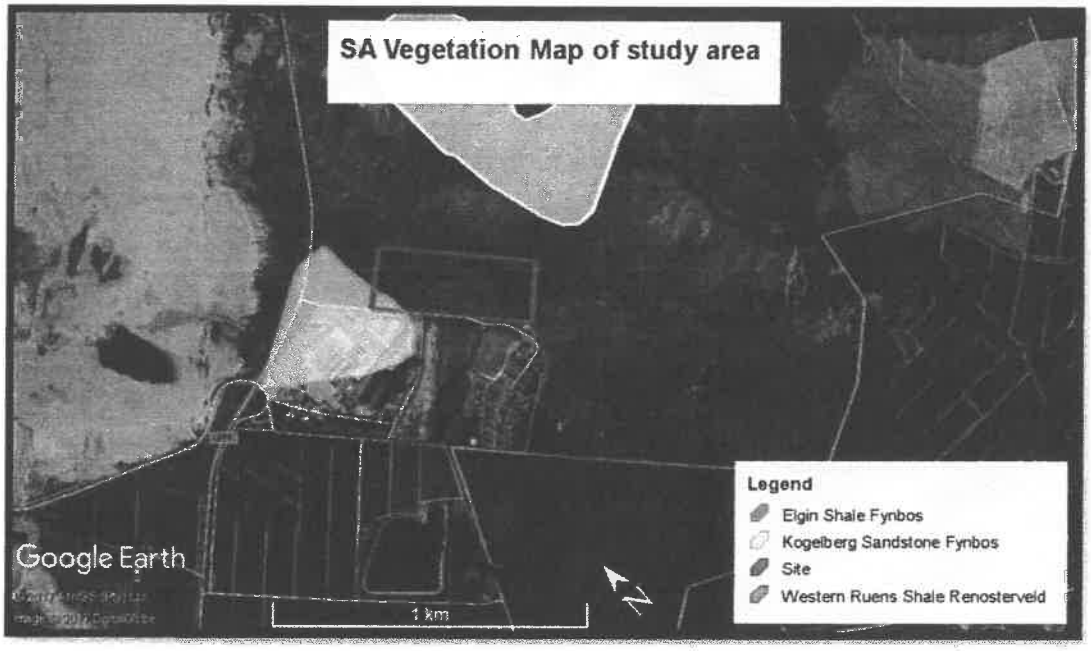


Figure 3: Extract of the SA Vegetation Map (Mucina & Rutherford) showing that the primary vegetation type on site is mapped is Elgin Shale Fynbos. Although some Kogelberg Sandstone Fynbos is shown on site, in reality there is no semblance of this vegetation type on site.

Although some Kogelberg Sandstone Fynbos is shown on site, in reality there is no semblance of this vegetation type on site. It should however be noted that Kogelberg Sandstone Fynbos is also regarded as Critically Endangered on a national basis, due to the very high number of rare and localised plant species that it supports, not because the habitat is inherently threatened (DEA 2011).

Indigenous plant diversity on site is high (likely to be over 200 plant species), and only a portion is described below. The vegetation is in very good condition (notwithstanding the recent impacts), and very limited invasive alien vegetation is present on site. There are a few plants of *Acacia mearnsii* (black wattle; centre of site), *Casuarina equisetifolia* (beefwood; on northern edge) and a few pines (*Pinus* sp). but these are easily removed.

Some of the indigenous species observed on site include *Stoebe plumosa* (slangbos), *Phylica gracilis, Anthospermum spathulatum, A. aethiopicum, A. galioides, Diospyros glabra, Crassula sp., Passerina corymbosa, Helichrysum patulum* (kooigoed), *H. teretifolium, Ehrharta calycina, Leucadendron salignum, Protea repens, Oxalis commutata* (pink suuring), *O. polyphylla, O. obtusa, O. lanata, Cliffortia ruscifolia* (steekbos), *C. polygonifolia, Elegia squamosa, Restio capensis, Restio dispar, R. triflorus, R. papillosus, R. tetragonus, Staberoha distachyos, Thamnochortus lucens, T. cinereus, Willdenowia humilis, Elytropappus rhinocerotis* (renosterbos), *Eriospermum* sp., *Babiana patersoniae, Ficinia indica, Aspalathus nigra, A. hispida, A. acuminata, A. angustifolius, Diosma hirsuta, Centella villosa, Pentameris pallida, Pentameris sp., Tenaxia stricta, Tribolium uniolae, Themeda triandra* (rooigras), *Imperata cylindrica, Corymbium villosum, Erica setacea, Watsonia meriana, Carpanthea cf. pomeridiana, Freesia caryophyllacea, Micranthus tubulosus, Berkheya herbacea, Empodium plicatum* (herfsterretjie), *Vellereophyton dealbatum, Cotula turbinata, Ornithogalum thyrsoides, Rafnia* sp., *Xiphotheca reflexa, Wachendorfia paniculata* (butterfly flower), *Searsia rosmarinifolia, Tetraria ustulata, Gerbera piloselliifolia, Pelargonium triste, P. proliferum, Moraea lewisiae, M. bellendenii, Crossyne guttata, Muraltia rhamnoides* and *Agathosma sp.*

The primary wetland elements include *Mariscus thunbergii, Zantedeschia aethiopica, Plecostachys serpyllifolia, Pennisetum macrourum, Restio paniculatus, Juncus acutus, Cyperus sp., Elegia nuda* and *Conyza scabrida*.

5.2.1 Plant Species of Conservation Concern (SCC)

The site, plus adjacent areas of natural vegetation, is well known in botanical circles as a hotspot of threated plant species. In fact, the area has been proposed as formal conservation since the Jarman report way back in 1986, but sadly the State has done nothing to pursue this!

Table 1 is a list of the 14 plant Species of Conservation Concern (SCC) that have been recorded from or very close to this site (pers. obs.; CREW data). Species that have to date been recorded nearby are also fairly likely to be present on this site, and surveys at the appropriate times of the year would be needed to confirm, and in the appropriate period since the last fire. This is a significant number of SCC, and confirms the importance of the habitat on site.

Species	**Redlist Status**	**On site or nearby**
Elegia squamosa	Endangered	Site
Freesia caryophyllacea	Declining	Site
Leucadendron elimense ssp vyeboomense	Critically Endangered	Site
Protea burchellii	Near Threatened	Site
Geissorhiza erosa	Endangered	Nearby
Aristea cantharophila	Vulnerable	Site
Metalasia plicata	Endangered	Nearby
Wurmbea inusta	Vulnerable	Site
Moraea barnardiella	Endangered	Nearby
Sparaxis grandiflora ssp violacea	Endangered	Site
Pauridia minuta	Near Threatened	Nearby
Restio papillosus	Vulnerable	Site
Xiphotheca reflexa	Endangered	Site
Willdenowia purpurea	Endangered	Site (id not yet confirmed)

Table 1: A list of the 14 plant Species of Conservation Concern that have been recorded from or very close to this site.

The likelihood of there being undetected Species of Conservation Concern on this site is deemed to be Medium to High, notably in the form of geophytes (bulbs), some of which may only be evident in the first few spring seasons after a fire.

5.6 Botanical Conservation Value

The botanical conservation value of a site is a product of plant species diversity, plant community composition, rarity of habitat, degree of habitat degradation, rarity of species, ecological viability and connectivity, vulnerability to impacts, restoration potential and reversibility of threats.

Overall conservation value (botanical sensitivity) of this site is **Very High** at a regional scale, **as the site supports a largely pristine example of a Critically Endangered vegetation type, and potentially at least 14 plant Species of Conservation Concern, many of which are not formally conserved**

anywhere. No map is shown as the entire site is of Very High conservation value.

The conservation of the site would materially contribute to meeting species and habitat conservation target.

6. IMPACT ASSESSMENT

6.1. Identification and assessment of existing botanical impacts

Botanical impacts associated with the development of an area may be both direct and indirect, with the former occurring mostly at the construction stage and the latter mostly at the operational stage. Direct impacts may be both permanent and long term. All impacts in this case are negative.

Construction Phase Impacts (Direct Impacts)

In the case of this project the primary direct impact has been loss and damage to the Critically Endangered natural vegetation within the disturbance footprints (trenches and adjacent infilled areas, plus areas damaged by heavy machinery movement). The extent of the area badly damaged is estimated at just under 1ha. Note that this assessment does not refer to the proposed development of the entire site, but just to the unauthorised development already undertaken.

It is not possible to say how many plant Species of Conservation Concern may have been impacted by the development thus far, but it is fairly safe to say that up to 10% of the site populations of many of these species may have been impacted (given that up to 10% of the site has been disturbed).

The magnitude of the impacts will be High (by definition, in that ecological functioning previously present in the development footprints has been largely eliminated), duration will be long term (5-15 yrs to recovery), and extent will be site specific (local).

The overall construction phase impact has been **High negative**, before mitigation. Adequate and appropriate mitigation could reduce this to Low to Medium negative.

The required mitigation is discussed in Section 7 of this report.

Alternative	Extent of impact	Duration of impact	Intensity	Probability of occurrence	Degree of confidence	Significance before mitigation	Significance after mitigation
Trenches dug	Site	Long term	High	Definite	High	High -ve	Low to Medium -ve
No Go	Site	None	None	High	High	Neutral	Not Applicable

Table 2: Summary table for the direct botanical impacts (loss of existing natural in the development footprint) associated with the current trenching.

Operational Phase Impacts

The primary indirect botanical impact (post construction of the trenches) is likely to take place over the coming dry season, and relates to the draining effect of the trenches dug around and through the site. These trenches will cause much more rapid draining of the adjacent areas, and are likely to impact on vegetation up to 30m away from the trenches (both sides – and thus also outside this site), thus potentially impacting on about 75% of the site, plus adjacent areas. The impacts could be severe, as many of the plants are adapted to relatively high soil water conditions, and the drying out of the soil could lead to extensive mortality of many plants (especially in the second year of a drought, such as we are experiencing at present), including some of the Species of Conservation Concern. The expected significance of this impact is **High negative**, but could be mitigated by timeous rehabilitation (to Low negative).

Additional indirect impacts could include increased habitat fragmentation, and invasion of alien species, which is facilitated by soil disturbance. Both these can be successfully mitigated by proper rehabilitation. Expected significance of these impacts is **Medium negative** before mitigation, and Very Low negative after mitigation.

Alternative	Extent of impact	Duration of impact	Intensity	Probability of occurrence	Degree of confidence	Significance before mitigation	Significance after mitigation
Current trenches	Site	Long term	High	Very likely	High	High -ve	Low -ve
No Go	Site	None	None	None	High	Neutral	Not Applicable

Table 3: Summary table for operational phase botanical impacts associated with the current impacts. The primary impacts considered are drying out of the adjacent habitat due to the trenches, loss of ecological connectivity, and a local increase in alien invasive vegetation.

6.2 The No Go Alternative

The No Go alternative is usually considered to mean a continuation of the status quo, which in this case is taken to mean no habitat loss, as per the situation prior to April 2017 (Neutral significance), and the No Go alternative would thus be the environmentally strongly preferred alternative.

It should be noted that until this and adjacent priority areas are declared formal nature reserves there is no guarantee that the site will not be developed at some stage.

6.3 Cumulative Impacts

The cumulative botanical impacts are understood to be equivalent to the regional botanical impacts, in that the vegetation types impacted by the development have been, and will continue to be, impacted by numerous developments and other factors (the cumulative impacts) within the region. The overall botanical impacts as outlined in previous sections are thus deemed to be similar to the cumulative botanical impacts – *i.e.* High negative, without mitigation, and Low – Medium negative with appropriate mitigation.

7. REQUIRED MITIGATION

All mitigation noted below is regarded as feasible, reasonable and essential. **All required mitigation must be undertaken within 6 weeks of this report being completed and submitted (thus by 6 December 2017).**

- All woody invasive alien vegetation on the site must be felled, using appropriate CapeNature approved methodology. No heavy machinery may be used, and stems should be cut at close to ground level and immediately painted with a suitable herbicide such as Garlon.
- The trenches need to be completely filled in, as soon as possible, in order to prevent long term damage due to drying out of the habitat. All excavated material (mostly now adjacent to the trenches) needs to be placed back in the trenches from whence it came, without further damaging the underlying or adjacent vegetation. This means that the use of heavy machinery on site should not be allowed, and thus the work needs to be done by hand. A large group of labourers will thus be required, and must be supervised at all times. They will have to use spades and wheelbarrows to transfer the material into the trenches.
- If adequately filled in the areas should revegetate naturally, and no specific revegetation program is required.
- Follow-up alien vegetation removal must be undertaken on site again in April 2018 and October 2018, specifically in the disturbed areas, and targeting alien grasses and herbs that are likely to establish in the disturbed soils.
- The pipe that has been put in under the new road must be removed.
- If adequate loose material is not available to fill the trenches to within 10cm of the original surface then additional steps will have to be taken to prevent these areas becoming watercourses and drains. These will include placement of geotextile fences every 5m, across the trenches, supported by wooden or plastic stakes.
- No fill or soil may be brought in from off site.
- A temporary toilet must be provided off site for the labourers.
- The implementation of all mitigation must be independently audited on or before 10 December 2017, and if the rehabilitation is not completed by then, to the satisfaction of the auditor, they must specify a schedule of tasks still to be completed, and by when. Auditing should either be undertaken by CapeNature or by an ecologist approved by CapeNature and by the current author, and the auditors must sign off on the work

when adequately completed, and must report to the DEA&DP. The landowner must coordinate and liase with the auditors.

- If final rehabilitation is not completed to the satisfaction of the auditors, by 30 January 2018 at the latest, then the DEA&DP must follow due legal processes in terms of potential prosecution (under NEMA).
- All costs associated with the required rehabilitation and auditing of this site must be borne by the current landowner.

8. CONCLUSIONS AND RECOMMENDATIONS

- The vegetation on site is of Very High conservation value, and is confirmed as Elgin Shale Fynbos, a Critically Endangered vegetation type (DEA 2011).
- At least 14 plant Species of Conservation Concern are likely to occur on this site.
- The trenching of two thirds of the site perimeter, and right across the centre of the site, has caused significant direct impact, and likely long term damage to the vegetation on site.
- The trenching will certainly cause significant long term - permanent damage to much of the remaining vegetation on site, and also on the adjacent natural areas, unless fully rehabilitated, and soon.
- The botanical impact of the disturbance undertaken thus far has a High negative botanical impact. After mitigation this could be reduced to Low – Medium negative.
- All mitigation noted in Section 7 must be implemented by the landowner, according to the schedule provided, with a target date of 10 December 2017. The rehabilitation of the site must be reviewed and monitored by either CapeNature, or by a suitable, experienced consultant approved by CapeNature and the author of this report.
- No further disturbance or development of this site should be authorised, and conservation options for the site and adjacent priority natural areas should be investigated by the authorities.

9. REFERENCES

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Western Cape Government
Environmental Affairs and Development Planning

Directorate: Environmental Law Enforcement

REFERENCE: 14/1/1/E2/5/9/3/0336/17
ENQUIRIES: Nicholas Kearns

BY EMAIL

Mr Miller
P O Box 25
ELGIN
7180

Billy.Miller@fruitways.co.za

PRE-COMPLIANCE NOTICE

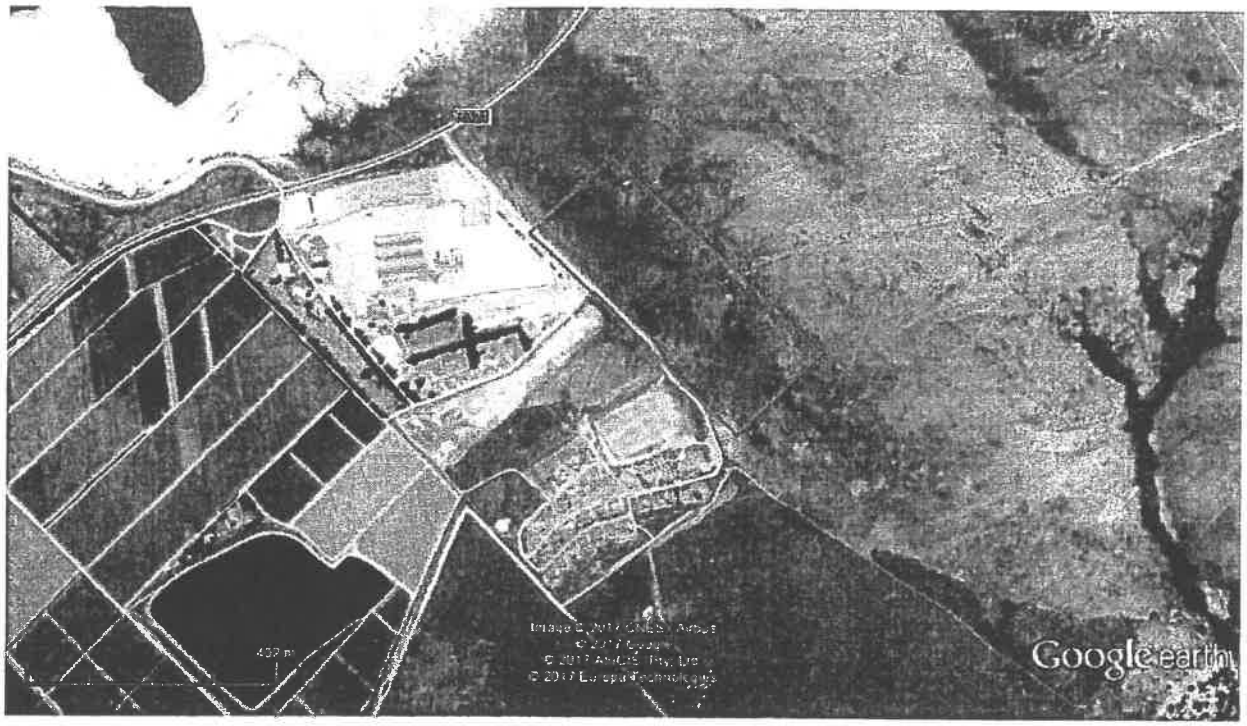
Dear Sir

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

1. During an investigation into allegations of the commencement of a listed activity in contravention of section 24F of the National Environmental Management Act, 1998 ("NEMA"), a site inspection was conducted at Portion 22 of the Farm Klipfontein No. 82, Caledon, by Environmental Management Inspectors from the Department's Directorate: Environmental Law Enforcement on 16 August 2017 and it was confirmed that you have commenced with the clearance of critically endangered vegetation and conducting earthmoving activities (trenches) within a watercourse (Wetland) without the prerequisite environmental authorisation.

1st Floor, Leeusig Building, 1 Dorp Street, Cape Town, 8001
Tel: +27 21 483 0761 Fax: +27 21 483 2797
www.westerncape.gov.za/eadp

Private Bag X9086, Cape Town, 8000
Email: Nicholas.Kearns@westerncape.gov.za
Complaints: Law.Enforcement@westerncape.gov.za



Aerial map: Location of alleged illegal activity - **34 03' 00.29" S; 19 09' 49.30" E.**

2. In terms of section 24F of the NEMA, no activity listed in the Environmental Impact Assessment ("EIA") Regulations Listing Notice 1 & 3 of 2014 may commence without environmental authorisation from the competent authority.

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

   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

where such development is related to the development of a port or harbour, in which case activity 26 in Listing Notice 2 of 2014 applies."

Listing Notice 1 of 2014:

Activity no. 27:

"The clearance of an area of 1 hectares or more, but less than 20 hectares of indigenous vegetation, except where such clearance of indigenous vegetation is required for—

(i) the undertaking of a linear activity; or

maintenance purposes undertaken in accordance with a maintenance management plan."

Listing Notice 3 of 2014:

Activity no. 12:

"The clearance of an area of 300 square metres or more of indigenous vegetation except where such clearance of indigenous vegetation is required for maintenance purposes undertaken in accordance with a maintenance management plan.

a. Western Cape

i. Within any critically endangered or endangered ecosystem listed in terms of section 52 of the NEMBA or prior to the publication of such a list, within an area that has been identified as critically endangered in the National Spatial Biodiversity Assessment 2004;

ii. Within critical biodiversity areas identified in bioregional plans;

iii. Within the littoral active zone or 100 metres inland from high water mark of the sea or an estuarine functional zone, whichever distance is the greater, excluding where such removal will occur behind the development setback line on erven in urban areas;

iv. On land, where, at the time of the coming into effect of this Notice or thereafter such land was zoned open space, conservation or had an equivalent zoning; or

On land designated for protection or conservation purposes in an Environmental Management Framework adopted in the prescribed manner, or a Spatial Development Framework adopted by the MEC or Minister."

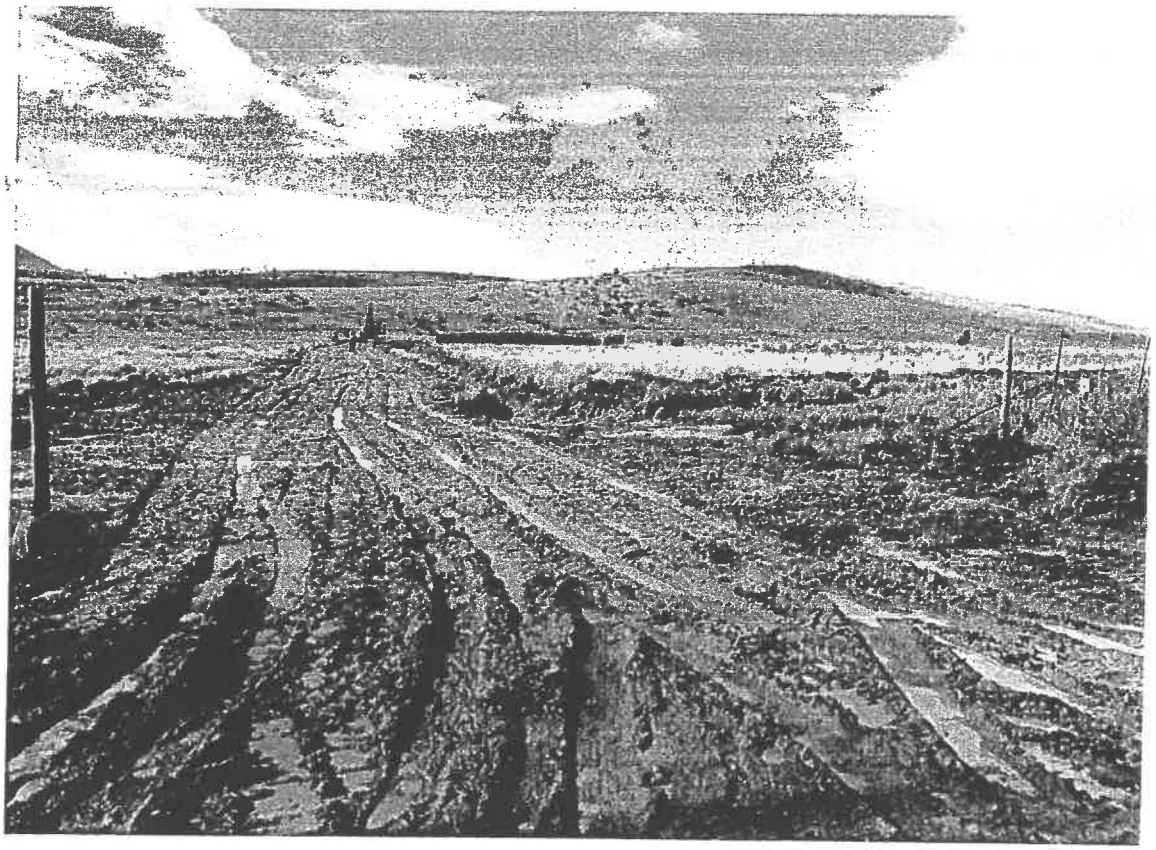


Photo 1: Clearance of vegetation on portion 22 of the Farm Klipfontein No. 82, Caledon

4. In terms of section 49A of the NEMA it is an offence to commence a listed activity without environmental authorisation. A person convicted of such an offence is liable to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

5. As such, you are hereby given notice of the Department's intention to issue you with a Compliance Notice in terms of section 31L of the NEMA, which will instruct you to:

    5.1 immediately cease the above listed activities;

    5.2 investigate, assess and evaluate the impact that the listed activity has / has had on the environment;

    5.3 rehabilitate the entire site to its original condition; and

    5.4 carry out any other measure necessary to rectify the effects of the unlawful activity.

6. Furthermore, failure to comply with a Compliance Notice is an offence in terms of section 49A(1)(k). A person convicted of failing to comply with a Compliance Notice is liable to a maximum fine of R5 million or 5 years' imprisonment or both such fine and such imprisonment.

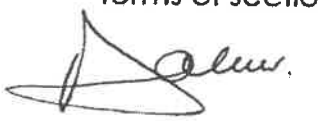
7. You are afforded a period of **7 (seven) working days** from the date of receipt of this Pre-Compliance Notice to make written representations to the Department as to why a Compliance Notice should not be issued.

8. If you inform the Department, in respect of paragraph 7 above that you intend to rectify the non-compliance, you must cease the above listed activities and submit to the Department for approval, **within 30 (thirty) working days** of receipt of this Pre-Compliance Notice, a report compiled by a suitably qualified and experienced independent environmental assessment practitioner, which must include the following:

   8.1 assessment and evaluation of the impact on the environment; and
   8.2 identification of proposed remedial and/or mitigation measures;

9. If the above report is approved by the Department, you will be obliged to take the necessary remedial / mitigation measures at your own cost.

10. Approval of the above report by the Department does not remedy the unlawful commencement of the above activity, which remains unlawful in terms of section 49A(1) (a) and/or (d) of the NEMA.



Dr E Palmer

Director: Environmental Law Enforcement

Grade 1 Environmental Management Inspector

Date: 7/9/2017

Cc: Andrie Sommers Asommers@capenature.co.za

Western Cape Government
Environmental Affairs and Development Planning

Directorate: Environmental Law Enforcement

REFERENCE: 14/1/1/E2/5/9/3/0336/17
ENQUIRIES: Nicholas Kearns

BY EMAIL

Billy.Miller@fruitways.co.za

Mr Miller

P O Box 25

ELGIN

7180

PRE-DIRECTIVE

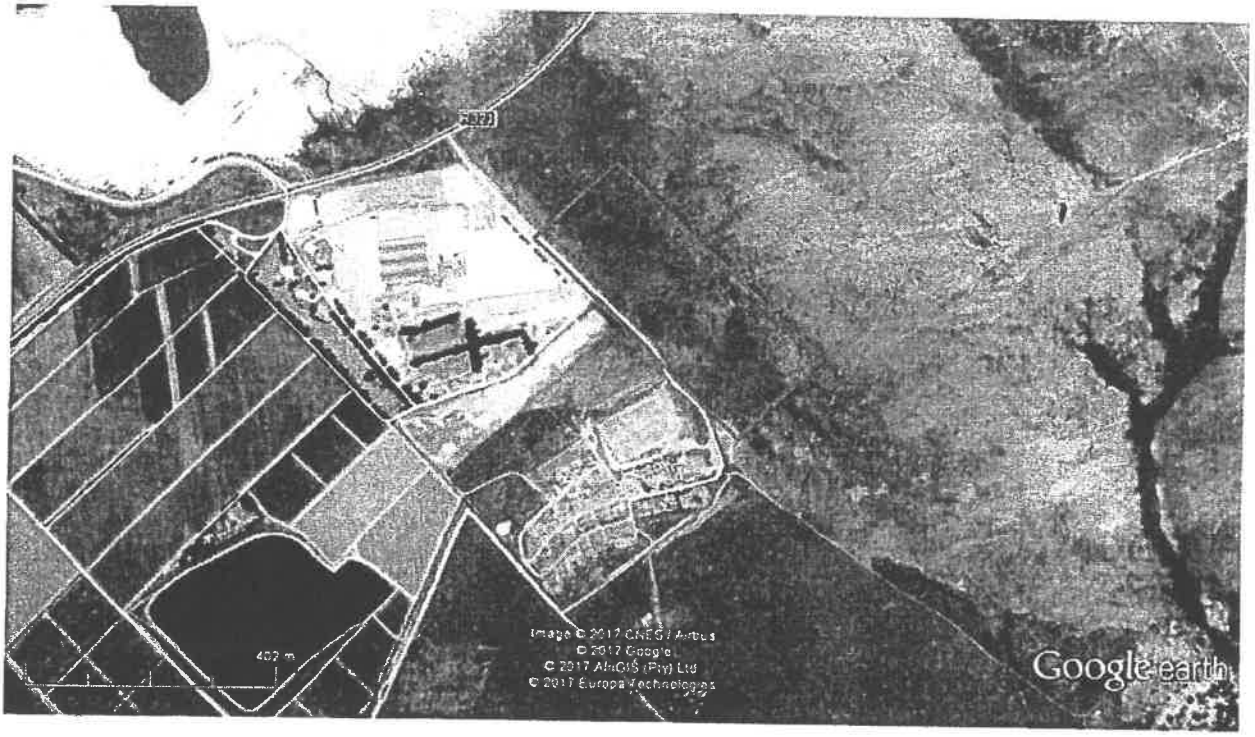
Dear Sir

INTENTION TO ISSUE A DIRECTIVE IN TERMS OF SECTION 28(4) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT; 1998

1. During an investigation into allegations of degradation of the environment a site inspection was conducted at Portion 22 of the Farm Klipfontein No. 82, Caledon, by Environmental Management Inspectors from the Department's Directorate: Environmental Law Enforcement on 16 August 2017 and it was confirmed that you have commenced with the clearance of critically endangered vegetation and conducting earthmoving activities (trenches) within a watercourse (wetland).

1st Floor, Leeusig Building, 1 Dorp Street, Cape Town, 8001
Tel: +27 21 483 0761 Fax: +27 21 483 2797
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Private Bag X9086, Cape Town, 8000
Email: Nicholas.Kearns@westerncape.gov.za
Complaints: Law.Enforcement@westerncape.gov.za



Aerial map: Location of alleged illegal activity - **34 03' 00.29" S; 19 09' 49.30" E.**

2. Section 28(1) of the National Environmental Management Act, 1998 ("NEMA") provides that every person who causes, has caused or may cause significant pollution or degradation of the environment must take reasonable measures to prevent such pollution or degradation from occurring, continuing or recurring, or, in so far as such harm to the environment is authorised by law or cannot reasonably be avoided or stopped, to minimise and rectify such pollution or degradation of the environment.

3. On considering the evidence before me there are reasonable grounds to believe that you have caused / may cause significant degradation of the environment and that you have not taken reasonable measures to prevent such degradation from occurring.



Photo 1: Clearance of vegetation on portion 22 of the Farm Klipfontein No. 82, Caledon.

4. In terms of section 49A(1)(e) or (f) of the NEMA it is an offence to unlawfully and intentionally or negligently commit any act or omission which causes significant pollution or degradation of the environment or is likely to cause significant pollution or degradation of the environment.

5. As such, you are hereby given notice of the Department's intention to issue you with a Directive in terms of section 28(4) of the NEMA, which will direct you to:

   5.1 investigate, assess and evaluate the impact on the environment;

   5.2 inform and educate employees about the environmental risks of their work and the manner in which their tasks must be performed in order to avoid causing significant degradation of the environment;

   5.3 cease, modify or control any act, activity or process causing the degradation; or

5.4 remedy the effects of the degradation.

6. In terms of section section 49A(1)(g) of the NEMA failure to comply with a Directive is an offence.

7. A person convicted of the above offences 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.

8. You are afforded a period of **7 (seven) working days** from the date of receipt of this Pre-Directive to make written representations to the Department as to why a Directive should not be issued.

9. Should you inform the Department, in respect of paragraph 8 above that you intend to remedy the degradation you must cease the activity causing the degradation and submit to the Department for approval, **within 30 (thirty) working days** of receipt of this Pre-Directive, a report compiled by a suitably qualified and experienced independent environmental assessment practitioner, which must include the following:

   9.1 assessment and evaluation of the impact on the environment; and
   9.2 identification of proposed remedial and/or mitigation measures.

10. If the above report is approved by the Department, you will be obliged to take the necessary remedial / mitigation measures at your own cost.

Dr E Palmer
Director: Environmental Law Enforcement
Date: 7/9/2017

Cc: Andrie Sommers Asommers@capenature.co.za

Billy Miller

To: marbe.coetzee@westerncape.gov.za
Subject: 16/3/3/6/1/E4/5/1298/16

2017

Goeie More Mev. Coetzee, Ek was aan die begin van die jaar by U terwyl ek nog op krukke was. Ek is baie bly dat ek dit nou nie meer nodig het nie. Ek het na ons gesels alles gedoen soos U gese het en ons het die eerste besoek op die stuk grond gehad saam met Natuurbewaring. Ek moet nou begin bou om November te kan intrek want ek gaan Februarie op pensioen. Die hoof van Nuweberg Natuurbewaring vra dat U asseblief vir my voorsien van n "waver" of so iets want sy se ek moet iets op skrif he. Kan U my help want ek het nou genoeg befondsing om te begin en ons het nou regtig nie meer tyd om uit te stel nie. Ek is jammer dat ek nie persoonlik kon kom vra nie want ek sal ook graag weet hoe gaan dit met jou man se bediening. By voorbaat dank. Baie groete Billy

fruitways
Farm Fresh. Always

Billy Miller
Fruitways Farming

Phone: (028) 841 4380 (Ext 218)
Cell: 082 8860830
Fax: 086 506050

Disclaimer and confidentiality note -- refer to our website for further details - www.fruitways.com
A member of the Melsetter Group

Western Cape Government
Environmental Affairs and Development Planning

Directorate: Development Management
(Region 2)

REFERENCE: 16/3/3/6/1/E4/5/1298/16
ENQUIRIES: Lorretta Osborne/Marbé Coetzee
DATE OF ISSUE: 2016 -11- 29

Mr. and Mrs. Miller
P.O. Box 25
ELGIN
7180

Cell: 082 886 0830
E-mail: Billy.miller@fruitways.co.za

Dear Sir/Madam

REQUEST TO CONFIRM THE APPLICABILITY OF THE ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, 2014 IN TERMS OF CHAPTER 5 OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) FOR THE PROPOSED VYEBOOM UPLIFTMENT CENTRE AND ASSOCIATED INFRASTRUCTURE ON PORTION 21 OF FARM KLIPFONTEIN NO. 82, VYEBOOM.

1. The request to confirm the applicability of the Environmental Impact Assessment ("EIA") Regulation, 2014 in terms of the National Environmental Management Act, 1998 (Act No. 107 of 1998) ("NEMA"), dated 30 September 2016, refers.

2. It is this Department's understanding that:
   2.1 You intend to an upliftment centre on the above mentioned farm.
   2.2 You intend to clear a total area of 10ha for the proposed development.
   2.3 Solid waste will be disposed of at the Fruitways Farming: Graymead Farm's fully operational waste recycling depot.
   2.4 Effluent will be disposed of via septic tanks and soakaways.
   2.5 Water will be obtained from the Vyeboom Irrigation Board.
   2.6 Electricity will be bought and or gained from the neighbour
   2.7 The land is fallow and comprises of indigenous vegetation with scattered aliens.

3. Your attention is drawn to the NEMA EIA Regulations, 2014. Please note, that the proposed development may constitute the following listed activities in terms of the aforementioned Regulations. Written Environmental Authorisation is thus required form this Department prior to the commencement of construction activities.

GN No. R. 983

Activity 27
The clearance of an area of 1 hectares or more, but less than 20 hectares of indigenous vegetation, except where such clearance of indigenous vegetation is required for-
(i) the undertaking of a linear activity; or
(ii) maintenance purposes undertaken in accordance with a maintenance management plan,

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Tel: +27 21 483 3696 Fax: +27 21 483 3633
E-mail: lorretta.osborne@westerncape.gov.za

Private Bag X9086, Cape Town, 8000
www.westerncape.gov.za/eadp

GN No. R. 985

Activities 12

The clearance of an area of 300 square metres or more of indigenous vegetation except where such clearance of indigenous vegetation is required for maintenance purposes undertaken in accordance with a maintenance management plan.

(a) In Western Cape provinces:

i. Within any critically endangered or endangered ecosystem listed in terms of section 52 of the NEMBA or prior to the publication of such a list, within an area that has been identified as critically endangered in the National Spatial Biodiversity Assessment 2004;
ii. Within critical biodiversity areas identified in bioregional plans;
iii. Within the littoral active zone or 100 metres inland from high water mark of the sea or an estuarine functional zone, whichever distance is the greater, excluding where such removal will occur behind the development setback line on erven in urban areas; or
iv. On land, where, at the time of the coming into effect of this Notice or thereafter such land was zoned open space, conservation or had an equivalent zoning.

5. The above is based on:
   - 10ha of indigenous vegetation will be removed for the proposed establishment of the upliftment centre.

4. Please note, an application form must be submitted to this Department for Environmental Authorisation. The application form, as well as other relevant forms and guidelines, are available from this Department's website http://eadp-westerncape.kznsshf.gov.za/your-resource-library.

5. The applicant must comply with any other statutory requirements that may be applicable to the undertaking of the activity.

6. Please note that the activity may not commence prior to an environmental authorisation being granted by the Department. It is an offence in terms of Section 49A of the National Environmental Management Act, 1998 (Act 107 of 1998) ("NEMA") for a person to commence with a listed or specified activity unless the competent authority has granted an Environmental Authorisation for the undertaking of the activity(ies). Failure to comply with the requirements of Section 49A of the NEMA, 1998 will result in the matter being referred to the Directorate: Environmental Governance of this Department for prosecution.

7. This Department reserves the right to revise its initial comments and request further information from you based on any new or revised information received.

Yours faithfully

HEAD OF COMPONENT
DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING

CONSTITUTION

Vyeboom Upliftment Centre

---

1. Name and Legal Status

1.1 The organisation hereby constituted will be called Vyeboom Upliftment Centre (hereinafter referred to as the organisation).

1.2 Its shortened name will be Vyeboom Mission.

1.3 The organisation shall have its own legal identity, and shall:

- Exist in its own right, separately from its office bearers and members.
- Continue to exist even when its membership changes and there are different office bearers.
- Be able to own property and other possessions.
- Be able to sue and be sued in its own name.

1.4 The organisation will apply to the Commissioner for the South African Revenue Service for approval as a Public Benefit Organisation in terms of section 30 of the Income Tax Act 1962, and will be administered in compliance with the provisions of section 30.

2. Objectives

Vyeboom Upliftment Centre is a non-profit organisation, established to carry on the following charitable or public benefit objectives:

2.1 Strengthen communities through effective philanthropy and convening based on intimate knowledge of the community.

Commented [A1]: Convening who? Must this be assemble/assembly?

Commented [A2]: Which community? To be PBO and NPO, the resources must be available to the public or a specific sector, not just a small group

2.2 To ensure that the strategic and effective use of resources respond to local needs, and help people to better their own lives by supporting organisations and programmes that:

Commented [A3]: Where do you get the resources? Will you be raising funds?

- Assist children in need, by fulfilling their emotional and physical needs
- Amplify access to quality education and skills development.
- Combat addiction in both adults and children
- Help to improve the moral fibre of our community through spiritual formation.
- Provide leadership and strategy to enhance effectiveness and integration of resources across communities.
- Provides a safe environment for children to learn social skills
- Empower young and old with providing opportunities for skills training and

Initial: _____

farming activities
- Providing a safe haven for those in need of spiritual counselling
- Influencing thought patterns, changing lives and creating a platform for people to live better lives.

Commented [A4]: What facilities will you use to do this?

3. Income and property

3.1 The organisation will keep accurate records of everything it owns.

3.2 The income and property of the organisation shall be used solely for the promotion of its stated objectives and shall not be paid or distributed directly or indirectly to any person, or to any member or office bearers of the organisation, except as reasonable compensation for services actually rendered to the organisation or reimbursement of actual costs or expenses reasonably incurred on behalf of the organisation. The payment made in such a capacity must be a reasonable, having regard to what is generally reasonable in the sector and in relation to the service rendered.

3.3 Members and office bearers of the organisation do not have any rights in the property or other assets of the organisation solely by virtue of their being members or office bearers.

3.4 The organisation will take reasonable steps to ensure that any provisions made to any association of persons as contemplated in paragraph 10(iii) of Part 1 of the Ninth Schedule of the Income Tax Act 1962 are utilised for the purpose for which they are provided.

3.5 The organisation has not and will not use any of its resources, directly or indirectly, to support, advance or oppose any political party.

4. Powers of the organisation

4.1 The organisation shall have the power to do all such things as are required and incidental or conductive to the pursuit or attainment of the objects of the organisation as set out in paragraph 2 above. The organisation also has the same powers as that of a company under the Companies Act 2008. Such powers include:

4.1.1 To institute or defend any legal or other proceedings and to settle any claims;
4.1.2 To prudently invest funds of the organisation, subject to clause 9.6 of the constitution;
4.1.3 To buy, attain, maintain, manage, lease, sell, or in any way deal with property and assets of the organisation;
4.1.4 To donate and transfer the property and assets of the organisation to public benefit organisations with similar objectives;
4.1.5 To borrow and to use the property or assets of the organisation as security for borrowing;

Initial: _____

4.1.6 To execute any act or deed in any deeds registry, mining titles or other public office;

4.1.7 To exercise all the management and executive powers ordinarily vested in a Board of Directors of a Company,

4.1.8 To carry out all the powers and authority of the organisation in South Africa and in any other part of the world,

4.1.9 To accept donations, but is prohibited from accepting any donation which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and conditions of such donation, including any misrepresentation with regard to the tax deductibility thereof in terms of section 18A; provided that a donor may not impose conditions which could enable such donor or any connected person in relation to such donor to derive some direct or indirect benefit from the application of such donation.

4.1.10 To ensure that it is not knowingly a party to, and does not knowingly permit itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy, which, but for such transaction, operation or scheme, would have been or would have become payable by any person under the Act or any other Act administered by the Commissioner.

5. Management

5.1 Powers: A Management committee shall manage the affairs of the organisation in accordance with the resolutions of members in General Meeting. All members of the organisation have to abide by decisions that are taken by the Management committee in terms of, but not limited to, the following:

5.1.1 The Management committee may take on the power and authority that it believes it needs to be able to achieve the objectives as stated in paragraph 2 above. The activities of the Management committee must abide by the law, and the Management committee must accept the fiduciary responsibility of the organization and act in that capacity;

5.1.2 The Management committee has the power and authority to raise funds or to invite and receive contributions;

5.1.3 The Management committee has the power to buy, hire or exchange for any property that it needs to achieve its objectives;

5.1.4 The Management committee has the right to make by-laws for proper management, including procedure for application, approval and termination of membership.

5.2 Number and Portfolios: A minimum of seven members shall serve on the Management committee bearing the following portfolios: the Chairperson, the Vice-Chairperson, the Treasurer, the Secretary and the Vice-Secretary. These members will act as the office bearers of the organisation, and the organisations will decide on the powers and functions of office bearers. The organisation can include any other office bearers it

Initial: _____

deems appropriate. By appointing a minimum of seven office bearers it ensures that the decision making powers relating to the organisation are not controlled, directly or indirectly, by any single person.

5.3 Election: All members of the Management committee shall be members of the organisation. The Management committee shall be elected by the members of the organisation at an Annual General Meeting by simple majority vote. At least three members of the Management committee must not be connected person in relation to each other.

5.4 Term of office: Office bearers of the Management committee will serve for one year, but after that term has expired can stand for re-election by the members of the organisation. There is no limitation on the amount of terms that an office bearer can serve the organisation.

5.5 Vacancies: The Management committee must, as soon as reasonable possible, appoint someone to fill any vacancy that reduced the number of board members to less than seven. The next General Meeting must confirm the office of any board member appointed, otherwise it will lapse.

5.6 Co-option: The Management committee may co-opt additional non-voting members as it may consider appropriate.

5.7 Resignation, Disqualification and Removal:

5.7.1 A Management committee member may resign from office in writing.
5.7.2 A Management committee member shall be disqualified from office upon termination of membership to the organisation, or becoming incapable by reason of mental illness.
5.7.3 A Management committee member can be removed from office through a resolution of two-thirds of the remaining Management committee members. The Management committee member must be notified of the intention of the Management committee to remove him from office, and given an opportunity to make written or verbal representations at a meeting of the Management committee pertaining to the proposed termination.
5.7.4 If a member of the Management committee does not attend three Management committee meetings in a row, without having applied for and obtaining leave of absence from the Management committee, the Management committee may proceed to remove such member from office.

5.8 Delegation of Powers: The Management committee may delegate any of its powers or functions to a subcommittee or member(s) of the organisation provided that:

5.8.1 Such delegation and conditions are reflected in the minutes for that meeting;
5.8.2 At least one Board member serves on the subcommittee;
5.8.3 The Board in advance approves all expenditure incurred by the subcommittee or

Initial: _____

member; and

5.8.4 The Management committee may revoke the delegation or amend the conditions;

5.8.5 The decisions of any sub-committees must be given to the Management committee for final approval.

5.9 Procedures at Meetings: The Management committee may regulate its meetings and proceedings as it finds fit, subject to the following:

5.9.1 The Chairperson shall chair all meetings of the Management committee.

5.9.2 Meetings of the Management committee may be conducted face-to-face or electronically, which would allow Management committee members to be present and participate through electronic means.

5.9.3 If the Chairperson is not present within fifteen minutes of the appointed time of the meeting, the Vice-Chairperson shall chair such meeting. In both their absence, the Board members present at the meeting shall elect a chairperson for that meeting.

5.9.4 The Chairperson shall convene a meeting of the Management committee at least monthly, and at the written request of any two members of the Management committee.

5.9.5 The chairperson, or two members of the committee, can call a special meeting by giving the other Management committee members not less than 21 (twenty one) days notice before the special meeting is due to take place. The notice must state the issues that will be discussed at the meeting. If, however, one of the matters to be discussed is to appoint a new Management committee member, then those calling the meeting must give the other committee members not less than 30 (thirty) days notice.

5.9.6 The quorum for a meeting of the Management committee shall be two-thirds of the serving Management committee members.

Commented [A5]: One half majority is not enough to constitute a quorum and ensure decisions are fairly made. A two thirds quorum is more fair.

5.9.7 If no quorum is present, the Management committee may make no decision, except to preserve the assets of the organisation and to call a meeting of the general members.

5.9.8 Each Management committee member present or represented through written proxy shall have one (1) vote.

5.9.9 Questions arising shall be decided by a majority of votes. Should there be an equality of votes the Chairperson shall have a casting or second vote.

5.9.10 Proper minutes and attendance records must be kept of all meetings of the Management committee. The chairperson for the meeting shall sign the minutes as a true record of the proceedings, which shall be available at all times for inspection or copying by any member of the organisation on two days' notice to the Secretary or the Vice-Secretary. The minutes of each meeting will be given to Management committee members at least two weeks before the next meeting.

5.9.11 A resolution signed by all members of the Management committee shall be as valid as if passed at a duly convened meeting of the Management committee.

5.9.12 The Management committee may appoint employees upon such lawful terms

Initial: _____

and conditions as it may deem necessary.

5.10 Conflicting Interests: Any actual, potential or perceived conflict of interest on the part of any member of the Management committee, on a matter pertaining to the organisation, must be disclosed in writing to the Management committee which shall record such conflict of interest in the minutes of the Board meeting. Such member may be requested by the Management committee to state his/her position in the matter or to respond to pertinent questions, but shall not vote or use his/her influence on the matter and shall not be counted for purposes of determining a quorum for the meeting where the voting takes place.

5.11 Confidentiality: All matters pertaining to litigation, security measures, contractual negotiations, employment matters and any other matters deemed confidential by the Management committee must be treated as confidential and only the actual decisions may be disclosed to the general public.

6. Membership

6.1 First and Subsequent Members: The first members of the organisation shall sign Schedule A of this Constitution. The Management committee may admit natural persons over eighteen, and legal persons, as members to the organisation.

Commented [A6]: Do you wish to have other organizations as members?

6.2 Conditions and Criteria: The Management committee may determine the conditions and criteria for membership, including the membership fee to be paid to the organisation. Applications for membership that do not comply with such conditions and criteria may be refused by the Management committee.

6.3 Transfer of Membership: Membership is personal and is not transferable.

6.4 Register of Members: The Management committee must keep a register with the names and addresses of all the members.

6.5 Automatic Termination of Membership: Membership automatically terminates upon the receipt by the organisation of a notification of the death of a natural member or dissolution of an organisational member, or written resignation.

6.6 Termination by Management committee: Membership terminates if a member is removed by a resolution of the Management committee. The member must be notified of the intention of the Management committee to remove him as member, and given an opportunity to make written or verbal representations at a meeting of the Management committee pertaining to the proposed termination. The Management committee's decision to terminate membership must then be confirmed by a resolution of two-thirds of the members present at the next general meeting, otherwise the decision to terminate membership will be void and membership will be restored.

Initial: _____

7. Meetings of Members

7.1 Annual General Meetings: All Annual General Meetings (AGMs) must be held within six months of the organisation's financial year-end, and must be attended by all the members of the organisation in order to exercise their right to determine the policies that govern the organisation. At least 21 (twenty-one) days written notice must be given to all members stating the date, time, place and business of the AGM, which business must include:

- 7.1.1 Confirmation of the minutes of the previous AGM, and discussion of any matters arising from such minutes;
- 7.1.2 Any items that the members have requested must form part of the agenda;
- 7.1.3 The Chairperson's report;
- 7.1.4 The presentation of the organisation's Annual Financial Statements;
- 7.1.5 The Treasurer's report;
- 7.1.6 The election of Management committee members and office bearers;
- 7.1.7 The appointment of Auditors;
- 7.1.8 Discussion of changes to the constitution that the members wish to make;
- 7.1.9 Other appropriate matters.

7.2 Special General Meetings: The Management committee or not less than one-third of the members may call a Special General Meeting (SGM) of the organisation. At least 14 (fourteen) days written notice must be given to all members stating the date, time, place and business of the Special General Meeting. If the Management committee fails to give notice within 7 (seven) days of the request of one-quarter of the members, such members shall be entitled to give notice of and to convene the meeting themselves.

7.3 Powers of the General Meetings: The members in a properly convened General Meeting of the organisation are the highest decision-making structure of the organisation as set out in this Constitution. The members in General Meeting may review, approve or amend any decision taken by the Management committee, but no such resolution of the organisation shall nullify any earlier resolution taken by the Management committee in accordance with the provisions of this Constitution.

7.4 Procedures at General Meetings: The Members may regulate their meetings and proceedings as it finds fit, subject to the following:

- 7.4.1 The Chairperson shall chair all General Meetings.
- 7.4.2 General Meetings of the organisation may be conducted face-to-face or electronically, which would allow members to be present and participate through electronic means.
- 7.4.3 If the Chairperson is not present within fifteen minutes of the appointed time of the meeting, the Vice-Chairperson shall chair such meeting. In both their absence, the members present at the General Meeting shall elect a chairperson for that meeting.

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7.4.4 The quorum for General Meetings of the organisation shall be one half of the members of the organisation.

7.4.5 If a quorum is not present within fifteen minutes of the appointed time of the meeting, the meeting must be adjourned to another date, within fourteen days thereafter. Notice, as provided for under the constitution, must be given to all members of the organisation of such adjournment.

7.4.6 If no quorum is present at the reconvened meeting within fifteen minutes of the appointed time, the members present, or represented by written proxy, shall deem to constitute a quorum for that meeting.

7.4.7 A resolution put to the vote shall be decided by means of a show of hands or by ballot. A vote by ballot can be demanded by not less than one third the members present, or represented by written proxy.

7.4.8 Each member present or represented by written proxy shall be entitled to 1 (one) vote.

7.4.9 Except where this constitution requires a higher threshold, questions arising shall be decided by a majority of votes. Should there be an equality of votes the Chairperson shall have a casting or second vote.

7.4.10 Proper minutes and attendance records must be kept of all General Meetings. The chairperson for the meeting must sign the minutes as a true record of the proceedings, which shall be available at all times for inspection or copying by any member of the organisation on two days' notice to the Secretary or the Vice-Secretary.

8. Notice of Meetings

8.1 All notices in terms of this constitution must be given to members in writing (personally, post or electronic communication) to the address provided by the members from time to time.

8.2 The accidental omission to address notices to any member shall not nullify the proceedings of any meeting.

8.3 A member present in person at any meeting shall be deemed to have received notice of such meeting.

8.4 If posted by registered post, notices shall be deemed to have been received seven days after posting.

9. Finance and reports

9.1 The Management committee must open a bank account in the name of the organisation with a registered Bank, into which all funds of the organisation must be deposited. Any withdrawal or payment of funds from the bank account of the organisation must be approved by two members of the Management committee. The

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Treasurer controls the day to day finances of the organisation.

9.2 Cheques and other documents requiring signature on behalf of the organisation shall be signed by at least two persons authorised by the Management committee.

9.3 The financial year end of the organisation shall be end of February.

9.4 The Management committee, and more specifically the Treasurer, must ensure that proper records and books of accounts are kept which fairly reflect the financial affairs of the organisation. Within six months of its financial year end, annual financial statements must be drawn up for the organisation, and a report compiled by an independent practicing auditor, registered in terms of the Auditing Profession Act and appointed at the last AGM held by the organisation, stating whether or not the financial statements of the organisation are consistent with its accounting records, whether the accounting policies are appropriate and have been appropriately applied with in preparing the financial statements and whether the organisation has complied with the financial provisions of this constitution. The accounts of the organisation shall be open for inspection by any member on giving reasonable notice to the Treasurer.

9.5 The organisation's annual financial statements and reports must be submitted to the Director of Non-profit Organisations at the Department of Social Development and to the South African Revenue Service within six months after the financial year end.

9.6 If the organisation has funds that can be invested, the funds may only be invested with registered financial institutions. These institutions are listed in Section 1 of the Financial Institutions (Investment of Funds) Act, 1984. Or the organisation can get securities that are listed on a licensed stock exchange as set out in the Stock Exchange Control Act, 1985. The Management committee may consult a registered financial adviser and service provider to seek advice regarding the best investment options.

10. Changes to the constitution

10.1 This constitution may be amended or the name of the organisation changed by a resolution of the members. This resolution has to be agreed upon and passed by not less than two-thirds of the members of the organisation, which must be personally present or represented by written proxy at the AGM or SGM convened for that purpose.

10.2 A written notice stating the nature of the resolution must be provided to the members not less than 21 (twenty one) days before the AGM or SGM meeting at which the changes to the constitution are going to be proposed. The notice must also indicate the proposed changes to the constitution that will be discussed at the meeting.

10.3 Should any amendments be made to the constitution of the organisation, a copy of such amended constitution must be submitted the South African Revenue Service and the Department of Social Development.

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11. Dissolution/Winding-up

11.1 The organisation may dissolve if at least two-thirds of the members of the organisation are in favour of winding up the organisation, and are present or represented by written proxy and voting at a meeting convened for the purpose of considering such a matter.

11.2 Upon the dissolution of the organisation, after all debts and commitments have been paid, any remaining assets shall not be paid to or distributed amongst members, but shall be transferred by donation to some other non-profit organisation which the Management committee (and failing which the members at an AGM) considers appropriate and which has objectives the same or similar to the objectives of the organisation, and should the organisation be exempt from the payment of any taxes and duties, to:

11.1.1 Any similar public benefit organization which has been approved in terms of section 30 of the Income Tax Act,

11.1.2 Any institution, board or body which is exempt from tax under the provisions of section 10 (1)(cA)(i) of the Income Tax Act, which has its sole or principal object the carrying on of any public benefit activity,

11.1.3 Any department of state or administration in the national or provincial or local sphere of government of the Republic.

12. Indemnity

12.1 Subject to the provisions of any relevant law, members, office-bearers or appointed delegates of the organisation shall be indemnified by the organisation for all acts done by them in good faith on its behalf.

12.2 Subject to the provisions of any relevant law, no member of the organisation or office bearers shall be liable for the acts, receipts, neglects or defaults of any other member or office bearer, or for any loss, damage or expense suffered by the organisation, which occurs in the execution of the duties of his or her office, unless it arises as a result of his or her dishonesty, or failure to exercise the degree of care, diligence and skill required by law.

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This constitution was approved and accepted by members of Vyeboom Upliftment Centre.

Signed at _____ on the _____ day of _____.

_____ _____

Chairperson **Secretary**

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