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26 March 2024

Dear MEC Bredell,

**Re: Appeal of environmental authorisation – REF:  
14/2/4/2/2/B5/14/0027/21**

Thank you for the opportunity to submit this appeal against the environmental authorisation for intensive chicken farming on De Hoop, in Tulbagh (REF: 14/2/4/2/2/B5/14/0027/21).

## Introduction

While the records, comments, studies, and other documents that were submitted as part of the appeal process were extensive, there are several glaring omissions from the application and decision notice. This taints the decision, which is irrational, unreasonable, and unlawful. The decision to approve the environmental authorisation application for five chicken houses, housing at least 100,000 layer chickens, must be overturned pursuant to this appeal.

The appeal presents a well-founded case, underlining several deficiencies and oversights that challenge the rationality and legality of the decision. The appeal serves as a formal objection to the recent decision granting environmental authorisation for the establishment of five chicken houses, with a capacity to house at least 100,000 layer chickens, at De Hoop Farm. This appeal articulates a multifaceted critique, grounded in a thorough examination of the application process, the environmental assessment conducted, and the subsequent decision-making

process. It raises profound concerns spanning environmental, legal, ethical, and socio-economic domains, challenging the adequacy, rationality, and legality of the authorisation granted.

Central to this appeal is the contention that the decision overlooks significant environmental impacts, particularly concerning waste management and biosecurity, potentially leading to substantial harm to local ecosystems and biodiversity. Moreover, the document underscores procedural inadequacies, including insufficient public participation and transparency, and potential misuse of environmental regulation processes. It also delves into the legal and regulatory framework, arguing that the application and approval process failed to adequately consider or adhere to essential regulatory requirements and environmental protection norms.

The appeal further questions the project's economic justifications, highlighting the potential negative impacts on local communities, property values, and existing economic activities, particularly tourism. Health risks associated with the project, alongside broader concerns regarding climate change and environmental sustainability, are also examined. Additionally, the document emphasises the legal implications of the project, particularly concerning animal welfare and the potential for disease transmission among both farmed and wild animal populations.

### **Incorrect Applicant**

The applicant is not the correct person to have applied. The applicant does not own farm 234 contrary to page 25 of the decision notice. The applicant applied as a natural person but all the relevant business activities are conducted through Bright Idea Trading 112 CC. Bright Idea Trading is the owner of De Hoop Farm 234. Bright Idea Trading is also the contracting party in the waste agreement with DNA Kompost BK and various other parties. This goes against the provisions in NEMA and its Regulations regarding alienation of property and the continuation of environmental responsibilities. Where there is a change in ownership of a property, an application for amended environmental authorisation must follow (reg 29 of the EIA Regulations). This provision is triggered when there is a change in ownership of a property. However, the applicant can circumvent this provision. Bright Idea Trading, a legal person, may be sold by the applicant. The owner of Bright Idea Trading will

be the new owner of De Hoop farm, as well, although such change in ownership will not be shown in the Deeds Registry. Thus, there will be a high probability that the obligations in terms of the environmental authorisation will not be transferred to the new owner of Bright Idea Trading. The application should have been submitted by Bright Idea Trading.

Further, environmental applications require clear identification of the applicant because responsibilities, liabilities, and compliance obligations will be tied to the entity (or individual) granted the authorisation. If the business is a separate legal entity (such as a company or a close corporation), applying as an individual (natural person) instead of in the name of the business the applicant does not have legal standing in the application.

Authorisations are issued to the applicant as the responsible party for complying with the conditions set forth in the authorisation. Applying as an individual could potentially place personal responsibility and liability on the individual applicant for environmental compliance, rather than on the business entity. This distinction can have significant legal and financial implications.

For regulatory clarity and to avoid confusion, it's important that the application reflects the actual operation and management of the listed activity. Applying as an individual when the activity is conducted by a business might be viewed as lacking transparency, potentially complicating processes.

## Waste

Chickens produce 29 litres for every 250 chickens.<sup>1</sup> The fact that nearly a billion are killed every year in South Africa<sup>2</sup> means that the waste produced by chickens is immense.

Waste disposal or treatment from industrialised livestock operations is notoriously difficult. Even the best manure management practices may not be sufficient to

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<sup>1</sup> Archer J R and Nicholson R J, Liquid Wastes from Farm Animal Enterprises, in Farm Animals and the Environment, ed. Phillips C and Piggins D, CAB International, Wallingford, 1992, p 325-343.

<sup>2</sup> <https://mg.co.za/article/2018-10-26-00-sky-has-fallen-on-chicken-lickens-head/>

adequately guard against waste pollution and “[b]ased on available data, generally accepted livestock waste management practices do not adequately or effectively protect water resources from contamination with excessive nutrients, microbial pathogens, and pharmaceuticals present in the waste.”<sup>3</sup>

In the Notice of Environmental Authorisation sent to the applicant on 09 February 2024 (‘the decision notice’), it was stated that:

*An I&AP claimed that a Waste Management Licence is required for this facility in terms of the NEMWA activity (10) “The storage, treatment or processing of animal manure, including the composting of animal manure, at a facility that has a throughput capacity in excess of 10 tonnes per month, including the construction of a facility and associated structures and infrastructure for such storage, treatment or processing.” The EAP indicated that the comment refers to old legislation, Schedule 1 has been replaced by newer legislation in 2013.*<sup>4</sup>

I concede this point. However, I reaffirm my submission that the applicant still requires a Waste Management Licence (WML) in terms of NEMWA. This is because the facility will likely handle hazardous waste and, further, will handle a large amount of general waste, triggering listed activities, requiring a WML.

### *General Waste*

Regulation 3(6) of the Waste Regulations (GN 921 of 29 November 2013) states:

*A person who wishes to commence, undertake or conduct a waste management activity listed under this Category, must conduct a basic assessment process set out in the Environmental Impact Assessment Regulations made under section 24 (5) of the National Environmental Management Act, 1998 (Act No. 107 of 1998) as part of a waste management licence application contemplated in section 45 read with section 20 (b)*

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<sup>3</sup> Burkholder, J., Libra, B., Weyer, P., Heathcote, S., Kolpin, D., Thorne, P. S., & Wichman, M. (2007). “Impacts of waste from concentrated animal feeding operations on water quality.” *Environmental health perspectives*, 115(2), 308–312. <https://doi.org/10.1289/ehp.8839>. Abstract.

<sup>4</sup> Pg 21 of the decision notice

...

*The treatment of general waste using any form of treatment at a facility that has the capacity to process in excess of 10 tons but less than 100 tons per day calculated as a monthly average, excluding the treatment of organic waste using composting and any other organic waste treatment.*

There are varying estimates on the amount of faecal waste produced by chickens. It is reliably found that laying hens produce an average of 150-160g of waste per day.<sup>5</sup> Other studies have also shown that chickens can produce 200g of waste per day. Therefore, with 20,000 chickens, it is estimated that De Hoop's current throughput of waste is at a minimum 90 tons per month. With 100,000 chickens, it is estimated that De Hoop's future throughput of waste will be at least 450 tons per month. The wording of the relevant listed activity<sup>6</sup> focuses on the capacity of the facility to create more than 10 tons of fecal matter (general waste) per day. Even at the minimum level, with five chicken houses, De Hoop will produce or, more importantly, has the capacity to at least 15 tons of general waste per day.

Therefore, the capacity to produce this amount of waste constitutes a Category A activity in terms of the waste activity listing notice. Thus, the applicant should have conducted a basic assessment and included such in its EIA and application. Further, the fact that the decision maker did not consider the above reasoning, accepted the bare statement that the applicant did not require a WML, and authorised the application, is a contravention of NEMA, NEMWA, and PAJA.

### *Hazardous Waste*

In terms of the Waste Regulations (GN 921 of 29 November 2013), any person who disposes of any quantity of hazardous waste to land must obtain a WML through scoping and EIA (reg 4(7)).

Section 1 of NEMWA states:

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<sup>5</sup> Tańczuk, Mariusz & Junga, Robert & Kolasa-Wiecek, Alicja & Niemiec, Patrycja. (2019). Assessment of the Energy Potential of Chicken Manure in Poland. *Energies*. 12. 1244. 10.3390/en12071244.

<sup>6</sup> reg 3(6) of GN 921 of 29 November 2013

*“hazardous waste” means any waste that contains organic or inorganic elements or compounds that may, owing to the inherent physical, chemical or toxicological characteristics of that waste, have a detrimental impact on health and the environment.*

The bodies of animals that are infectious or contain toxic chemicals (e.g. as a result of being euthanised) must be treated as hazardous waste and may only be disposed of at an authorised hazardous waste facility (and must comply with relevant hazardous waste storage, transport, record keeping and safety data sheet requirements prescribed in terms of NEM:WA and the regulations made under it).

On page 23 of the decision notice, it is stated:

*The Applicant must adhere to the Department’s 50% ban of organic waste from landfill by 2022 and a complete ban of organics from landfill by 2027. Please note that if infectious animal waste and carcasses (both are hazardous wastes) are mixed with general animal waste, the whole volume of waste will be regarded as hazardous.*

...

*Separate the infectious animal waste & carcasses from the general animal waste stream. This must be done in consultation with the local municipality. It is the responsibility of the applicant and the owner of the that the infectious agents within the waste streams are successfully treated in order to be considered as general waste.*

*Witzenberg Municipality indicated that the building activity may not commence without approved building plans. Additionally, the Applicant must submit a waste management plan clearly indicating disposal and handling of:*

- Solid waste.*
- Waste generated from poultry houses.*
- Industrial effluent generated from poultry houses.*
- The activity has no negative impact on the electrical connection of the farm.*

See further, a screenshot of the DEA&DP’s own “Hazardous Waste Status Quo report.” Infectious animal carcasses and waste is deemed to be hazardous and prohibited or restricted from landfill disposal.

#### 4. Waste Disposal

According to the National Standard for the Disposal of Waste to Landfill, 2013 there is waste that is currently, or will be prohibited from landfill disposal. Table 8 below shows some of the hazardous waste and their respective compliance timeframes:

Table 7: Waste prohibited or restricted from landfill disposal

Waste Prohibited or Restricted for Disposal	Timeframe
Waste which, in the conditions of a landfill, is explosive, corrosive, oxidizing (according to SANS 10234 or SANS10228).	Immediate - 2013
Waste with a pH value of <6 or >12	
Flammable waste with a closed cup flashpoint lower than 61°C	
Waste compressed gases (according to SANS 10234 or SANS 10228).	
Untreated Healthcare Risk Waste (HCRW).	
Infectious animal carcasses and animal waste	
Whole Waste tyres	
Lead acid batteries	Immediate- 2014
Hazardous waste Electric and Electronic Equipment (WEEE) – Lamps.	3 years - 2016

Therefore, it is clear that the decision-maker considers infected animal carcasses and waste to be hazardous and, further, that such hazardous waste would be held, handled and disposed of by the applicant. Crucially: there is no plan in the EMP, application, or decision notice for dealing with infected carcasses or waste beyond separating such from non-infected waste. There is no clear proposed or accepted method for doing this. Further, of extreme importance, there is no agreement with any waste disposal company for removing hazardous waste, in any form. The only waste disposal agreement is with DNA Kompost BK (dated 23 March 2022) for “Chicken Carcasses – non-hazardous and frozen.”<sup>7</sup>

The inescapable conclusion is: the applicant does not have a plan for dealing with hazardous waste. The inescapable conclusion is that disposal of hazardous waste to

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<sup>7</sup> To my knowledge, the applicant does not have any freezer capabilities on De Hoop farm.

land will occur. Further, the decision maker contemplated such and did not require the applicant to apply for a WML. This is fatal to the application and decision, which is irrational, unreasonable, and unreasonable as a result.

When the application was shown to another experienced EAP (name left out so that they remain anonymous), the following was their reply regarding the 24G application, which pertained mostly to the waste management issues:

1. *Hul gebruik 'n ou template*
2. *Basies niks oor al die operational en waste management van hoenderhokke – se net dit gaan direk landfill toe. Ek sien ook niks oor biosecurity, skoon maak of hoe die binnekant van die hokke lyk of enigiets soos dit. Dis asof dit nie in ag geneem word dat dit hoenderhokke is en nie net reghoekige geboue. Ons is baie meer deeglik.*
3. *Weereens, by waste se hul “quantities unknown at this stage” terwyl ons gewoonlik dit per hoender als uitwerk en darm +- getal aandui. Bietjie skokkend – ek vind ook niks bevestiging van munisipaliteit/landfills af nie.*
4. *Water se hul ook nie die hoeveelheid benodig terwyl ons ten minste estimate gee. Hul se net dit kom van boorgat.*

#### EMP

...

4. *Aangaande inligting wat mens moet insit vir hoenderhok aansoeke voel dit my daar is bitter min. Al my kommentare is dusvêr generic want hul EMP is baie algemeen. Ons moet gewoonlik baie meer oor waste–mortality & waste management (wat gebeur? Freezer? Daily removals? Hoe word hul dan remove? Waar gaan hul? Waar is confirmation vir waar hul gaan?), Disease outbreak (disposal of infectious & non infectious), pest control (insect, rodent), odour control, biosecurity (???? Niks?????) etc etc etc insit. Hul het goed oor die bome en lig, maar oor die hoenders self is daar niks. Ek sal verbaas wees as hierdie authorisation kry.*



5. *Om hul manure en mortality management op te som (dis net die, 3 maal in. Dis dit.):*

### 3.2 WASTE MINIMISATION DURING OPERATION

Issue	Minimization Plan
General Considerations	
Removal of Manure and On-Site Mortalities	The Landowner will ensure that Manure and on-site mortalities should regularly be removed directly from poultry houses via trucks to an appropriate landfill site. No manure and mortalities should be stored on-site.

Again, the minimisation plan to remove carcasses ('mortalities') to landfill is unlawful.

### *Organic Waste*

Further, the treatment of organic waste (including the dry cleaning method proposed by the applicant and accepted by the decision maker) requires the applicant to comply with a variety of legislation, regulations, and norms & standards. The above should have been included in the application and decision notice but were not. This is fatal to the application and decision.

### *Failure to Consider Important Factors*

The bodies of non-infectious animals may however be disposed of at a Class B or equivalent (GLB+) landfill. Is the municipal landfill Class B or equivalent landfill? The decision maker does not seem to have taken this into account. It is not considered in the report.

This conclusion is reinforced by the following:

- There is no estimation of amount of waste to be held on the property at any one time or amount to be transported and disposed of per trip, per day, per week, etc.
- There is no contingency or plan for disposing of feed, crushed or spoiled eggs, or other kinds of probable waste from the facility.

Lastly, the authorisation was prematurely given. There is a requirement that the municipal dump must have provided assurance to the applicant that it could take it

on the additional waste from the facility. There is no evidence of such assurance. The municipal dump is not equipped to deal with the waste. See Annexure D – a news article describing the terrible state it is in. Further, I have received information from the Tulbagh Landbou Vereeniging that the local farmers take their waste to the dump, which provides three skips per week for such waste. It is unlikely that this arrangement will have the capacity to dispose of all of the applicant's waste from five chicken houses, 100,000 birds. The dump is closed to household waste because it has reached its capacity. The agreement is only for farmers and, it is assumed that the skips are transported to other dumps that still have capacity.

Lastly, no alternative disposal facilities have been identified.

The failure to consider the above is fatal to the application and decision – it is a contravention of PAJA, which requires all relevant factors to be considered.

### *Existing Non-Compliance*

NEMWA contains a general duty in respect of waste management section 16:

- (1) A holder of waste [such as the applicant] must, within the holder's power, take all reasonable measures to—*
- (a) avoid the generation of waste and where such generation cannot be avoided, to minimise the toxicity and amounts of waste that are generated;*
  - (b) reduce, re-use, recycle and recover waste;*
  - (c) where waste must be disposed of, ensure that the waste is treated and disposed of in an environmentally sound manner;*
  - (d) manage the waste in such a manner that it does not endanger health or the environment or cause a nuisance through noise, odour or visual impacts;*
  - (e) prevent any employee or any person under his or her supervision from contravening this Act; and*
  - (f) prevent the waste from being used for an unauthorised purpose.*

Further, NEMAQA, Section 35(2) imposes an obligation on the occupier of any premises to take all reasonable steps to prevent the emission of any offensive odour caused by any activity on such premises. 'Offensive odour' means any smell which is considered to be malodorous or a nuisance to a reasonable person.

I am well-known to be a strong objector to the development. As such, an anonymous person has provided me with evidence of current non-compliance with NEMWA. The photographs in Annexure E show that the applicant is currently disposing of waste – it is unclear whether this is faeces or feed – to a dump on the De Hoop property – a large hole in the ground. The waste is attracting a massive amount of pests – flies, maggots, etc. – and is emitting a terrible odour. I have also included videos of the pests in the faecal or feed waste – attached to the email. I can smell it from my property and when walking my dog on adjoining properties (with consent). Further, the dump is located about 10 metres from a seasonal watercourse. There is a high degree of danger – it is a high run-off zone. There is a high risk that, with rain, the pest-infested faeces or feed will contaminate the water source to the various dams surrounding De Hoop.

It is clear, therefore, that the applicant is not adhering to the general provisions of waste handling in NEMWA as well as the applicant's own EMP. This is an unlawful activity. Apart from being fatal to the application, it should also be investigated by the Department's Environmental Management Inspectors. This also reinforces the need for there to be a plan in place for feed waste, as stated above.

## Biosecurity

Highly related to waste is the issue of biosecurity. "The explosion in farm animal numbers, along with the geographical concentration of large-scale poultry and pig production, and the transport of animals over long distances, facilitates the emergence of new strains of influenza viruses that can give rise to human pandemics."<sup>8</sup> Such animal-derived influenza viruses include swine flu, bird flu, and COVID-19, which has killed nearly 6 million people and severely impacted the global economy.

Recent years have seen growing concern over animals as sources of disease with around 60 % of all historic diseases being zoonotic in origin, transmissible over species boundaries.<sup>9</sup> The World Health Organisation estimates that around 75% of

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<sup>8</sup> CIWF 2013, *Zoonotic Diseases, Human Health and Farm Animal Welfare*. [www.ciwf.org/ZoonoticDiseases](http://www.ciwf.org/ZoonoticDiseases)

<sup>9</sup> Jankielsohn, A. (2015). "The Hidden Cost of Eating Meat in South Africa." *J Agric Environ Ethics*. 28(6):1145-1157., p.1148

new diseases are originate from animals and animal products.<sup>10</sup> Pathogens may be sourced from food products of animal origin, through faecal contamination of plant-derived foods and water or through zoonotic diseases directly transmitted from animals to humans.<sup>11</sup> Animals that are kept in high welfare facilities are less likely to carry diseases.<sup>12</sup>

The One Health Approach acknowledges that human health is intrinsically linked to animal health and welfare. The Approach has become mainstream, with the World Health Organisation,<sup>13</sup> the Centers for Disease Control and Prevention,<sup>14</sup> and even our own Department of Forestry, Fisheries and the Environment<sup>15</sup> endorsing the doctrine. Given that many infectious diseases are of animal origin<sup>16</sup> and that 75% of new diseases are estimated to be zoonotic in nature,<sup>17</sup> the biosecurity of De Hoop should be a major consideration. However, there is negligible attention paid to biosecurity in the application, EMP or the decision notice.

I would like to echo the submission of Belinda Offord, made as part of the public participation period on 14 February 2024:

#### 6. BioSecurity

*This study is wholly inadequate in respect of bio-security management, the importance of which is essential to reduce losses for the producer and to minimise potential for disease spread to indigenous wildlife, more specifically, but not exclusively the potential impacts of Avian Influenza. The*

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<sup>10</sup> Dawkins, Marian. (2016). Animal welfare and efficient farming: Is conflict inevitable?. *Animal Production Science*. 57. 10.1071/AN15383. p.5:

<sup>11</sup> Jankielsohn, A. (2015). "The Hidden Cost of Eating Meat in South Africa." *J Agric Environ Ethics*. 28(6):1145-1157., p.1148

<sup>12</sup> Dawkins, Marian. (2016). Animal welfare and efficient farming: Is conflict inevitable?. *Animal Production Science*. 57. 10.1071/AN15383., p.5

<sup>13</sup> World Health Organisation. 2017. "One Health." <https://www.who.int/news-room/questions-and-answers/item/one-health>

<sup>14</sup> Centers for Disease Control and Prevention. N.d. "One Health" <https://www.cdc.gov/onehealth/index.html>

<sup>15</sup> GN870 of 14 September 2021. [https://www.dffe.gov.za/sites/default/files/gazetted\\_notices/dffe\\_drafttelephantlionrhinosustainableuse\\_policy\\_g45160gon870.pdf](https://www.dffe.gov.za/sites/default/files/gazetted_notices/dffe_drafttelephantlionrhinosustainableuse_policy_g45160gon870.pdf)

<sup>16</sup> Wolfe ND, Dunavan CP, Diamond J. 2012. "Origins Of Major Human Infectious Diseases." In: *Institute of Medicine (US). Improving Food Safety Through a One Health Approach: Workshop Summary*. Washington (DC): National Academies Press (US); A16. Available from: <https://www.ncbi.nlm.nih.gov/books/NBK114494/>

<sup>17</sup> Centers for Diseases Control and Prevention. 1 July 2021. "Zoonotic Diseases" <https://www.cdc.gov/onehealth/basics/zoonotic-diseases.html>

*frequency, disbursement and impacts of avian influenza in the Western Cape is rightly cause for concern at all levels of local government and all efforts initiated to curb this should be supported and at the very least adhered to.*

*I draw your attention to the guidance provided by the Poultry Disease Management Agency (PDMA) and referred to by the SA Poultry Association (SAPA) which states:*

*“Farms close to dams are a high risk of diseases such as avian influenza. Dams should be at least 5 kms away”. It further states that “density of vegetation around the farm and house” should be taken into account.*

*Further details of this guidance can be obtained at <https://sapa.jshiny.com/jdata/sapa/hpai2017/>.*

- a. The positioning of the proposed construction does not adhere to this guidance, being much closer than 5km from the nearest dam, and with the abundance of water on this property due to the existence of both wetland and drainage areas would suggest that it is an extremely inappropriate site for the envisaged activity.*
- b. The mitigation measures proposed in your report are also in direct contradiction with this guidance and contain potential to significantly increase the likelihood of avian influenza and possibly other diseases spreading between housed and wild birds. It does not appear that your report takes cognisance of the diverse, iconic and protected bird species within the area nor their value to the environmental, agricultural and tourism sectors.*
- c. The suggestion that carcasses will be disposed of in an unspecified landfill is entirely unacceptable. No confirmation of capacity at the surrounding landfill facilities is provided, nor the agreement of the relevant authorities that they have the capacity and infrastructure to manage such waste. There appear to be no protocols that would ensure that diseased carcasses do not end up in the human or wildlife food chain. Bear in mind that despite rigorous efforts people, including children, are frequently found trying to retrieve food or other items from landfill waste sites. Even in the event that human access is entirely*

*restrained, it is not possible to prevent wild birds from accessing these and the ingestion of diseased carcasses or manure are the primary drivers of avian influenza and other disease spread.*

- d. *I cannot establish how birds that reach the end of the productive years will be disposed of. Will they be slaughtered on site (no provision for this appears in this report), or will they be transported to an alternative facility (no provision in regards the transport impacts), or will they be sold live to the public (the impact of this option are also not considered). Each of the options will impact to some extent on the environment and on the neighbouring communities – therefore it is imperative that these be fully addressed.*

With the above-stated evidence of existing dangerous and environmentally unsound waste disposal methods, it is clear that a biosecurity risk is a major probability on De Hoop. The failure to adequately deal with such in the application and the decision is fatal to both. It renders the decision irrational, unreasonable, unlawful, and in contravention of PAJA, NEMA, and s24 of the Constitution.

## Water

On pages 23 and 24 of the decision notice, it is stated:

*It is noted that the new access road as well as the new poultry house development are located within the 500 m ZoR and therefore will require authorisation from the DWS in terms of Section 21(c) and (i) of the National Water Act, 1998 (Act No. 36 of 1998).*

...

*DWS confirmed that the activities triggers water uses in terms of Section 21 (c) “impeding or diverting the flow of water in a watercourse” and section 21 (i) “altering the bed, banks, course or characteristics of a watercourse” of the National Water Act, 1998 (Act 36 of 1998) (NWA). These activities commenced without prior authorisation from this Department and are thus considered to be unlawful in terms of NWA. This matter will therefore be*

*handed over to the DWS's Compliance and Enforcement Unit for further investigation.*

...

*DEA&DP: PCM indicated that the implementation of a storm water management plan for the site is considered integral for the site. It is acknowledged that confirmation has been provided that the poultry houses will use "dry cleaning" methods and that the platform constructed for the poultry houses has been levelled with a recommendation made for the installation of a berm, to limit runoff from the vicinity, however, a site-specific storm water management plan has not been compiled. It is recommended that, as minimum, a basic stormwater management plan be provided, clearly showing how runoff and any potentially polluted runoff, will be managed and handled.*

No such plan is in place. Further, the additional requirements from the DWS should have been made explicit conditions to the decision or the authorisation should have been withheld until the DWS approval is granted or denied.

## Highly Sensitive Areas

The EAP's Freshwater Assessment and its Screening Report – Footprint Environmental Sensitivity indicated that the De Hoop farm is located in areas of "very high sensitivity" in terms of agricultural (p.9), aquatic biodiversity (p.11), and terrestrial biodiversity (p.18). The decision-maker did not make reference to this. Seemingly, it did not consider these important factors, a contravention of NEMA and PAJA. If it did, it failed to uphold the precautionary principle and did not choose the best environmentally practicable environmental. Such is a contravention of NEMA.

## Socio-Economic Impact Assessment (SEIA)

The DEA&DP required an additional SEIA to be done. On page 43 of the SEIA, it was stated:

*Due to the extent of the comments received further consultation was not required with interested and affected parties. However, should further comments be received from a socio-economic perspective, Urban-Econ would be happy to address them.*

*The review of the net effects of the project and the trade-offs between positive and negative impacts across the construction and operation phase suggest that negative impacts would outweigh the positive net effects. However, it is important to note that the negative effects are localised to the site/ surrounding farms and would affect a significantly smaller number of households should they occur while the economic net benefits would accrue to the local and regional economy. Additionally, the likelihood and significance of resulting negative impacts can be significantly reduced following the implementation of mitigation measures. Positive net effect on the economy could be deemed to be greater than the negative net effects that can ensue from the project due to their intensity and higher probability of occurring.*

The SEIA is fatally flawed, for a variety of reasons:

1. No additional interviews were done with the most significantly affected I&APs – those living in close proximity to De Hoop. No statistical estimation or even simple financial models of profitability were done on the negative effects of the farm on the surrounding area and its businesses and inhabitants. No information regarding the employment statistics, capabilities or capacity for growth of the surrounding I&APs is included. The SEIA is extensive but omits these crucial details. It cannot achieve its aim – estimating the actual and potential impact of intensive chicken farming on De Hoop. It makes a variety of assumptions without using actual data.
2. The traffic statement only reviewed the impact of additional poultry houses. It did not consider the no-go option – no poultry houses. Further, the EAP did not consider traffic effects on the I&APs – only on the road.
3. The professed positive impact on the greater economy should be weighted less than impacts on surrounding community. This is the basis for having I&APs included in the public participation process: the impacts are more



felt more acutely by them while the positive economic impacts are diluted across the whole economy. It is therefore evident that the SEIA used a flawed matrix. Further, there is no estimation for the broader economic losses due to tourism.

4. There is no consideration of the socio-economic and environmental sustainability of sustainability of tourism versus that of poultry business over time. It is assumed that tourism and other activities will not grow or employ new people. The estimate is therefore, static, not dynamic and, therefore, is highly flawed.
5. Generally, there is a lack of acknowledgement of the negative economic impacts on tourism. The SEIA does not account for the opportunity cost in its evaluation.
6. The SEIA incorrectly frames the 'no-go' option. The no-go option is framed as there being no additional chicken houses being built. However, this is not just an application to increase the number of houses but an application to condone the existing house as well. The correct no-go option is the rehabilitation of the site and return it for other uses.

Once again, I endorse and echo Belinda Offord's submission as an I&AP on 14 Feb 2022:

8. *References to the Socio-Economic Impacts appear to be designed to confuse and/or mislead readers and must undergo a rigorous review by an appropriately qualified person, before being submitted. It appears that you have conflated the value and job creation opportunity of the entire provincial Windmeul Eggs/Passerini holdings and from there to disingenuously suggest that the benefits of these will be enjoyed within the Tulbagh/Witzenberg area and as a direct result of this construction. The facts that apply to this development within the area in consideration (or evidence to the contrary) have to clearly stated:*

*· **1 job has been created and at the very most a 2<sup>nd</sup> might be created once all 5 sheds are complete.***

*It would be interesting to know which of the entities involved in this project actually employ that 1 person.*

- *There is a high likelihood that a significant number of existing jobs in the neighbouring area may well be put at risk by this development and the job creation potential inherent in the supply of tourist related services will be severely reduced.*
- *Qualified and experienced estate agents have already confirmed that neighbouring property prices are likely be deflated as a direct result of this construction*
- *Construction personnel equates to existing jobs just being moved temporarily into the area. Note that Mr Passerini has previously advised that he faced challenges fitting in with the scheduling of the contractor (I believe he suggested they were fully booked for a year or more). This suggests that this construction has absolutely no bearing on the future sustainability of those construction jobs which are in any case not for residents or intended residents of Tulbagh/Witzenberg*
- *All other personnel associated with this project such as lorry drivers are employees of another entity – most likely Windmeul Eggs and are not based in or intend to be based in Tulbagh/Witzenberg*
- *All other suggested socio-economic benefits implied in this report appear to relate to or are added to those of Windmeul Eggs (province wide) and particularly its operations in Paarl*

Therefore, estimated that 93 construction jobs will be created during the construction phase (see page 49 of the SEIA) is dishonest and incorrect. Further, the SEIA study seems to state that construction will occur in the operational phase (page 52) but, just previously (page 50) states that construction will have been completed. It states that 13 jobs will be directly created in the operational stage. No other direct jobs will be created. No information is provided on how the job creation numbers were arrived at. The SEIA states blithely that 78 jobs will be created through the project but this is impossibly high. It is impossible for the decision maker, I&APs to make sense or properly interrogate the SEIA. We must take the findings on its word. This is improper.

It is clear that there is a huge overstatement of the number of jobs to be created by the applicant's activities. Further, as Belinda says, the information applies to the

entirety of Windmeul Eggs, not this one chicken farm. This would be a misrepresentation of a material fact, which is grounds for denying application.

GN 807 of 10 October 2012 (Publication of Public Participation Guideline) states that the following factor must be considered when evaluating an EIA: “Does the project have the potential to create unrealistic expectations (e.g. that a new factory would create a large number of jobs)?” The decision maker should have considered the above overstatement of jobs and denied the application on this basis. Further, the above-mentioned flaws in the SEIA should have come to the attention of the decision maker – they should have been considered. That they were not is fatal to the application.

## Alternative Land-Uses

On page 25 of the decision notice, it states that “No property alternatives were considered.” This is in contravention of section 1 of the NEMA EIA Regulations, which defined “alternatives” as:

*“alternatives”, in relation to a proposed activity, means different means of meeting the general purpose and requirements of the activity which may include alternatives to the—*

- 1. (a) property on which or location where the activity is proposed to be undertaken;*
- 2. (b) type of activity to be undertaken;*
- 3. (c) design or layout of the activity;*
- 4. (d) technology to be used in the activity; or*
- 5. (e) operational aspects of the activity;*

*and includes the option of not implementing the activity*

All alternatives were dismissed by the decision maker with a variation of the following statement: “the farm has been purchased with the activity of poultry production in mind and this activity has already commenced and is being applied for.”<sup>18</sup>

The existing unlawful activity and purchase cannot be used as a reason for dismissing alternatives – this is circular reasoning. Further, I endorse and echo the following submission by Belinda Offord:

4. **Alternative Use** provisions do not appear to be properly addressed in this EIA. Your proposed alternatives and reasons why they would not work are weak and you fail to take into account other very viable alternative uses including but not limited to:

- As per your submission the farm is being used as a guest farm and the associated infrastructure (cottages) already exists (the Witzenberg Municipality and the community have identified this area as containing high potential for agri and other tourism related activities and both the Municipality and the community have invested significantly in this area. De Hoop Farm Cottages would be immediately financially viable, with the minimal of investment and even less environmental impact on the back of the existing marketing and increasing visitor numbers;
- Indigenous or other flower farming – also not a unique in the valley;
- Free-range egg production – in keeping with other activities in the valley and particularly with in-line with the neighbouring farms; and
- Organic Vegetable production

*I am confident that with due consideration other significantly more environmentally sensitive uses would be identified and that they, as well as those above, would be more environmentally sensitive, would not have the same negative environmental impacts (visual, water, botanical) and particularly would not negatively impinge on the livelihoods of neighbouring farms and farm workers. Further, such alternatives provide*

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<sup>18</sup> See, for instance, page 28 of the decision notice.

*significantly more opportunity for job creation within the community. This issue need to be thoroughly investigated and a robust argument provided for why such alternative uses are not even considered let alone not preferable and viable.*

*To my knowledge the farm has for many years operated as a guest farm – please provide:*

- Date of site visit from which this professional opinion regarding its agricultural use is drawn;*
- Evidence of past agricultural activity including crop types, farming methods and the date when such activity last took place;*
- Evidence that the indicated lack of intact or semi-intact indigenous vegetation is no way caused or exacerbated by the unlawful construction or any other activities that have been or are being conducted by or under the instruction of the applicant.*
- Qualified professional opinion in respect of the likely time it would take for indigenous vegetation to re-establish itself should it not be, or have been, interfered with.*
- Evidence that supports your opinion that CBA1 has been completely transformed by agricultural activities and when such activities took place.*

The above submission is valid and was not adequately addressed by the EAP, applicant or decision maker.

The EAP relied on I&AP suggestions for all considered alternatives. The EAP did not suggest any alternatives, themselves. There was, thus, no true evaluation of possible alternatives on the property. The EAP, as an expert, clearly did not apply their minds to the issue.

he EAP summarily dismissed all suggestions without a proper study being done. No statistical estimation or even simple financial models of profitability were done on any possible alternatives. This unfairly biases the decision-maker in favour of the activity applied for.

The applicant should not be advantaged by the unlawful construction of the chicken farm. If he incurs financial harm from the no-go option, then that is the consequence of knowingly undertaking an unlawful listed environmentally, socially, and economically harmful activity that goes against the prescripts of NEMA. If the applicant is allowed to continue operating the currently built chicken house, he will not incur financial harm by not being allowed to build more chicken houses. At the very least, a middle-ground where the additional four houses are not allowed to be built should have been properly ventilated. It was not.

The above should have been considered by the decision maker but was not. Thus, the decision maker failed to consider a relevant factor. This is a ground for review and appeal in terms of PAJA.

### Lack of Important Tests

Although there was existing environmental harm flowing from the unlawful commencement of listed activities, no tests were done on the existing impact. There were no tests on the freshwater, no air pollution tests, no soil contamination tests done. This should have been done to estimate the impact of the commenced activities and to provide a baseline to assess ongoing impact for auditing such by the ECO, yet to be appointed.

### Eskom & Electricity

The Eskom wayleave letter is now out-of-date. The approval related to the construction of five poultry houses on De Hoop. However, per the letter, "This approval is valid for 12 months only, after which reapplication must be made if the work has not been completed." The wayleave approval is a crucial condition to the approval of the EIA. The fact that it is no longer valid was not considered by the EAP or the decisionmaker.

Further, I endorse the 14 February 2022 submission by Belinda Offord:

- *This facility and the welfare of the chickens is highly dependent on a consistent and ongoing power supply. It is a matter of record that the electricity supply in the country is limited fragile and subject to frequent*

*outages through load shedding. Further the area in which the farm is situated is frequently subjected to additional outages, some times of significant duration due to other factors such as damage to infrastructure from wildfire or vandalism. It is noted that NO environmentally sustainable power alternatives are considered or recommended within this report, despite the climate being ideal for solar options.*

- *It is important that the environmental impacts of the frequent and extensive reliance on the generator be identified as well as the noise pollution/impact on the neighbouring farms particularly those with a focus on tourism and which by their nature promote the quiet and peacefulness of the environment.*

The generator noise was dealt with by the EAP, applicant, and decision maker. However, the solution (housing the generator within its own structure) is insufficient. It can still be heard on the properties around the farm, including my own. It is still extremely loud and disturbing. The failure to consider the persistent objections by I&APs is a fatal flaw in the application and decision. It is a failure to accord with the public participation provisions in NEMA and in PAJA.

## **Air Quality and Climate Change**

### *Air Pollution – Faecal Particles*

A little-known impact of industrial livestock operations is large-scale air pollution of surrounding areas. Besides the nuisance and social impacts of the stench from industrial livestock operations, “air-borne particulate matter” from animal waste have been found to severely affect local peoples’ health. In a study of externalities from industrialised animal operations, it was found that an increase of 100,000 animal units (one animal unit is equal to 250 layer chickens, 1.14 fattened cattle, or 2.67 breeding hogs) in an area “corresponds to 123 more deaths of infants under one year per 100,000 births, and 100 more deaths of infants under twenty-eight days per 100,000 births.”<sup>19</sup> This study has is supported by many others.<sup>20</sup>

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<sup>19</sup> Stacy Steering. 2009. “Does Animal Feeding Operation Pollution Hurt Public Health? A National Longitudinal Study of Health Externalities Identified by Geographic Shifts in Livestock Production.” *Amer. J. Agr. Econ.* 124-147., p.124

<sup>20</sup> *Ibid*, p.128

Infant mortality associated with livestock farming is primarily driven by airborne pollutants rather than waterborne pollution.<sup>21</sup>

Livestock are also responsible for almost 64 % of anthropogenic ammonia emissions, which contribute significantly to acid rain and acidification of ecosystems.<sup>22</sup>

The decision notice, at page 33, states “The unlawful poultry house has not given rise to pollution.” The EAP and decision maker could not have concluded this as no air quality tests were done. Further, despite the high likelihood of particulate faecal matter being polluted into the air, such was not canvassed in the EIA and was not considered by the decision maker. This is a major ground of appeal (and review).

### *Climate Change*

A major rise in sea level, ocean acidification, changes in average rainfall patterns, increased flooding and droughts have been identified as some of the impacts of climate change, which also seeps into different aspects of existence and negatively affects "lives, livelihood, health, ecosystems, economies, societies, cultures, services, and infrastructures."<sup>23</sup>

The UN Food & Agriculture Organisation estimates that the livestock sector is responsible for 18% of human produced emissions,<sup>24</sup> which is higher than the entire transport industry.<sup>25</sup> The volume of emissions is set to rise with increasing intensification of livestock production.<sup>26</sup> Studies show that it is unlikely that global temperature increases can be contained below 2 degrees Centigrade without changes in global meat and dairy consumption.<sup>27</sup> Increasingly, the negative consequences of

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<sup>21</sup> Ibid, p.125

<sup>22</sup> Jankielsohn, A. (2015). “The Hidden Cost of Eating Meat in South Africa.” *J Agric Environ Ethics*. 28(6):1145-1157., p.1150

<sup>23</sup> Ndlela TS and Murcott MJ "Innovative Regulation of Meat Consumption in South Africa: An Environmental Rights Perspective" *PER / PELJ* 2021(24) - DOI <http://dx.doi.org/10.17159/1727-3781/2021/v24i0a7519>

<sup>24</sup> Food and Agriculture Organization of the United Nations (FAO). (2006). *Livestock's long shadow: Environmental Issues and options*. <http://www.fao.org/docrep/010/a0701e/a0701e00.htm>.

<sup>25</sup> Rob Bailey, Antony Froggatt and Laura Wellesley. (2014). “Livestock – Climate Change’s Forgotten Sector.” *Chatham House: Energy, Environment and Resources*, p.2

<sup>26</sup> Bajželj B. Et al, 2014. Importance of food-demand management for climate mitigation, *Nature Climate Change*

<sup>27</sup> Rob Bailey, Antony Froggatt and Laura Wellesley. (2014). “Livestock – Climate Change’s Forgotten Sector.” *Chatham House: Energy, Environment and Resources.*, p.2.



industrialised livestock production on food security, economic development, health and social justice are being understood, and resulting in calls for reform of the sector.<sup>28</sup> Worldwide, livestock are likely to be the greatest anthropogenic contribution to methane emissions and beef cattle contribute at least half of livestock-related methane emissions.<sup>29</sup> Nitrous oxide and phosphorous emissions are also substantially sourced from livestock, directly or indirectly.<sup>30</sup> Deforestation caused by livestock farming is also responsible for driving climate change due to emissions from burning and clearing land and from the lost carbon-uptake potential from covered land.<sup>31</sup>

According to the National Response Climate Change White Paper of South Africa, "Conventional, commercial input-intensive agriculture has a range of negative environmental, social and economic externalities, which increasingly render it an unsustainable model."<sup>32</sup>

Historically, agriculture has contributed around 41% of methane emissions in SA.<sup>33</sup> Methane emissions from South African livestock have been estimated at 1255 Gg/year.<sup>34</sup> Methane has 25 times the global warming potential as carbon dioxide.<sup>35</sup>

The cumulative impact of methane and other greenhouse gas emissions from the listed activities were not considered by the EAP or the decision maker.

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<sup>28</sup> See for example the Interim report of the Special Rapporteur on the right to food, UN General Assembly, 5 August 2015

<sup>29</sup> Subak "Full Cycle Emissions from Extensive and Intensive Beef Production in Europe" 145.

<sup>30</sup> Coetzee, A. 2018. "What makes free range chicken 'free.'" *Stellenbosch University Master's Thesis.*, p.13

<sup>31</sup> Garnett, T. 2014. "What is a sustainable healthy diet?" *FCRN*.  
<https://assets.publishing.service.gov.uk/media/57a089dfe5274a27b20002df/FCRN-sustainable-healthy-diet.pdf>

<sup>32</sup> GN757 in GG 34695 of 19 October 2011.

<sup>33</sup> World Bank. N.d. "Agricultural methane emissions (% of total) - South Africa."  
<https://data.worldbank.org/indicator/EN.ATM.METH.AG.ZS?end=2008&locations=ZA&start=1970&view=chart>

<sup>34</sup> Milk South Africa. N.d. "Methane emissions of South African livestock."  
<https://milksa.co.za/research/research-column/methane-emissions-are-interest-because-concern-climate-change-beginning-0>

<sup>35</sup> Matthew Brander. 2012. "Greenhouse Gases, CO<sub>2</sub>, CO<sub>2</sub>e, and Carbon: What Do All These Terms Mean?" *Ecometrica*.  
<https://ecometrica.com/assets/GHGs-CO2-CO2e-and-Carbon-What-Do-These-Mean-v2.1.pdf>

## Animal Welfare

The harmonisation of human and nonhuman animal interests has been ruled to be a core concern of government. The Gauteng High Court, in *National Council of the Society for Prevention of Cruelty to Animals v Minister of Environmental Affairs and Others*,<sup>36</sup> stated unequivocally that, when environmental authorities evaluate whether to permit the export of lion bones, they must consider the welfare of the lions implicated.<sup>37</sup> The Court based its reasoning on the fact that, despite there being no legislated mandate for the Department of Forestry, Fisheries and the Environment (DFFE) to consider welfare, nonhuman animal welfare was a relevant factor in the decision-making process and that the PAJA deems that a decision should be set aside if “irrelevant considerations were taken into account or relevant considerations were not considered.”<sup>38</sup> Given the Court’s reasoning, the inescapable ramification is as follows: where nonhuman animal welfare is relevant to an administrative decision, the decision-maker must take nonhuman animal welfare into account, no matter the identity of the administrator. This is particularly the case of 100,000 battery chickens.

This is grounded in jurisprudence developed after the advent of the Constitution<sup>39</sup> has changed this position, developing our understanding of nonhuman animal protection. Per the Supreme Court of Appeal (SCA), our “[c]onstitutional values dictate a more caring attitude towards fellow humans, animals and the environment in general.”<sup>40</sup> Nonhuman animals are now protected not as a conduit to our own moral security or for improving their productive capacity for economic gain but, rather, to protect their own individual interest. The Constitutional Court has decreed that “[t]he rationale behind protecting nonhuman animal welfare has shifted from merely safeguarding the moral status of humans to placing intrinsic value on nonhuman animals as individuals.”<sup>41</sup>

This change was motivated by the recognition of nonhuman animal sentience. First, in the SCA, a minority judgment by Cameron J in 2008 stated that nonhuman animals

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<sup>36</sup> 2020 (1) SA 249 (GPD)

<sup>37</sup> *National Council of the Society for Prevention of Cruelty to Animals* at 74

<sup>38</sup> PAJA s 6(2)(e)(iii)

<sup>39</sup> The Constitution of the Republic of South Africa, 1996

<sup>40</sup> *S v Lemthongthai* 2015 (1) SACR 353 (SCA) at 20

<sup>41</sup> *National Society for Prevention of Cruelty to Animals v Minister of Justice and Constitutional Development and Another* 2017 (4) BCLR 517 (CC) at 56

“are sentient beings that are capable of suffering and of experiencing pain.”<sup>42</sup> This re-evaluation of nonhuman animals’ capabilities has been confirmed in a variety of subsequent cases at national level.<sup>43</sup>

The impact of this change is subtle but substantial. In *The Trustees for the Time Being of the Humane Society International – Africa Trust and Others v The Minister of Forestry, Fisheries and the Environment*.<sup>44</sup> In this case, the Western Cape High Court temporarily interdicted the trophy hunting of elephants, rhinos and leopards in South Africa because of the harm trophy hunting will do to these nonhuman animals. Gamble J motivated his decision on the basis that the envisaged trophy hunting would “totally destroy the number of nonhuman animals affected by [the trophy hunting]... and, most crucially, there is nothing that can be done to replace that destruction in future if the review is successful.”<sup>45</sup> Thus, he treated nonhuman animals as non-fungible beings with protectable interests of their own. Whereas before, he may have been forced to pit the interests of the human applicants against the human respondents, the Judge was able to pit the interests of the nonhuman animals against the interests of the human respondents (and hunters).

The failure of the applicant, EAP, and decision maker to consider animal welfare impacts of the listed activity falls foul of the above-stated jurisprudence. As in the *Lion Bone* judgment, the decision maker failed to consider relevant factors, which is a contravention of PAJA.

## Applicant Ignoring Laws and Directives

The EMP and the decision notice (see page 26) require “strict adherence of mitigation measures” regarding myriad environmental and social sustainability procedures. There is an assumption that the applicant is willing and able to comply with these stipulated measures.

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<sup>42</sup> *National Council of Societies for the Prevention of Cruelty to Animals v Openshaw* 2008 (5) SA 339 (SCA) at 38

<sup>43</sup> Such as: *South African Predator Breeders Association v Minister of Environmental Affairs and Tourism* [2011] 2 All SA 529 (SCA); *Lemthongthai* supra n40; *Minister of Justice and Constitutional Development* supra n41

<sup>44</sup> [2022] 3 All SA 616 (WCC)

<sup>45</sup> *The Trustees for the Time Being of the Humane Society International – Africa Trust* (nX) at 83-89

NEMA s24O states that:

*If the Minister, the Minister responsible for mineral resources or an MEC considers an application for an environmental authorisation, the Minister, Minister responsible for mineral resources or MEC must—*

*(b) take into account all relevant factors, which may include*

*...*

*(iii) the ability of the applicant to implement mitigation measures and to comply with any conditions subject to which the application may be granted;*

However, there are significant indicators that such compliance will not occur, which should have been considered by the EAP and the decision maker.

### *Ignoring building inspectors*

Constructed of the existing building in early Feb 2021. This was before ownership of the property had transferred to the applicant. The building plans were only finalised on 18<sup>th</sup> Feb 2021 and, thus, were only submitted thereafter (22 Feb 2021). The building inspector's first visit was on 15<sup>th</sup> of Feb 2021 after I alerted him to the unlawful construction. The building inspector, Mr Alroy Daniels, instructed the applicant to stop construction on that date. Mr Daniels visited again and issued another directive for the construction to stop on 22 Feb 2021 or earlier. The applicant failed to comply with this explicit directive. See Annexure A – an email chain with the building inspector – for evidence of the above.

It is clear that the applicant intentionally disobeyed two directives from the building inspector. There is good reason to believe, therefore, that he may not comply with the mitigation measures as directed by the decision maker and as per the EMP.

### *Contravention of EMP and NEMWA*

The applicant has already contravened the EMP and NEMWA by disposing of chicken waste or feed in an open hole, as shown above. The applicant has already

shown, soon after the approval of his application, that he is willing to contravene the EMP and NEMWA.

### *Knowing Non-Compliance with NEMA*

As stated in the decision notice (page 21):

*An I&AP once more highlighted the possible misuse of the 24G process, however according to the EAP no comment was provided on the possible misuse of the 24G process. GNEC reiterated that they have been appointed as independent EAP to conduct the impact assessment, not defend the applicant. The unlawful activity already commenced and therefore, the appropriate route is to follow is the 24G process.*

However, Annexure C shows proof that applicant knew he had contravened the law, stated that he would only place 5000 birds (so as to avoid such contravention), before he actually placed 20 000 (at least) in the illegally built chicken house. It also shows that he knew that he was acting illegally when he started construction without building permission (not to mention environmental authorisation).

Further, Annexure H shows that the applicant continued with his unlawful activities after submitting the s24G application. In June 2021, he stocked the farm with chickens even after he was aware that the activities were illegal. It was within his power to avoid part of the unlawful activities, as the actual holding of chickens had not yet commenced. It was well within his knowledge and power to avoid part of the illegality by waiting to commence such activities after the application process had concluded. However, he did not do so. This is a clear indication that the applicant knowingly misused the s24G process to avoid compliance with environmental laws.

Windmeul is a very large egg producer in the Western Cape with many facilities and the Passerini family has been involved in the poultry business for many decades. It is inconceivable that they did not know that an environmental authorisation would be required for the establishment of the proposed poultry facility. However, what is apparent from the above is that the applicant at all relevant times intended to

develop and operate a poultry facility housing more than 5000 birds unlawfully, i.e. without first having obtained the environmental authorisation required to do so.

This is compounded by the statement by Mr Gigi Passerini, the applicant's father, that the applicant was correct to commence with the listed activities without environmental authorisation – "Under normal circumstances I would not believe in trying to speed up the process but in extreme situations I can be justified or at least condoned (sic)." See Annexure B.

Worryingly, also in Annexure H, the applicant states that the DEA&DP knew of his continuing illegal activity but did not issue a directive to cease such activity.

## Public Participation

While there were multiple public participation periods, the comments were often dismissed wholeheartedly. Further, insufficient attention was paid to the alternatives suggested by I&APs, as shown above. The EAP also failed to interrogate the true impact of the listed activities on the directly affected I&APs and their businesses'.

Further, the father of the applicant and previous owner of the business, Mr Gigi Passerini, intimidated I&APs, including me. See Annexure B for evidence of this. While I was exercising my constitutional right to public participation and a healthy environment, he told me "I will not hesitate (sic) to resort to use ANY action" to stop me in my attempts to halt the unlawful commencement of listed activities. Further, he stated, "Contrary to my son who spends sleepless nights trying to protect his business and his young family from you and diseases I have plenty of time and the necessary resources to fight his battle for him." This is a clear threat against me, attempting to intimidate me. He was trying to make me desist from protecting my own rights and interests.

The applicant also called me, on 22 February 2021, after he became aware of my reporting his unlawful construction. He was irate and attempted to convince me that he was not doing anything illegal and that I should stop my opposition.

The public participation process was tainted by this conduct.

In the Public Participation Guidelines the following is stated:

*Public and environmental sensitivity of the project:*

*Are there widespread public concerns about the potential negative impacts of the project? ...*

*Will the project impact on private land other than that of the applicant?*

The EAP and the decision maker failed to take into account the extensive objections and number of I&APs objecting to the application. This is exacerbated by the petition against the development. The petition – see Annexure F – was signed by 2801 people.

Further, I have received extensive support for this appeal from other I&APs. This is included as Annexure I.

## Decision Maker's Non-Compliance with NEMA – Possible Bias

S24G of NEMA was not complied with. The legislation states as follows:

*24G. Consequences of unlawful commencement of activity.—(1) On application by a person who—*

*(a) has commenced with a listed or specified activity without an environmental authorisation in contravention of section 24F (1);*

*The Minister, Minister responsible for mineral resources or MEC concerned, as the case may be— (aa) must direct the applicant to—*

*(A) immediately cease the activity pending a decision on the application submitted in terms of this subsection, except if there are reasonable grounds to believe the cessation will result in serious harm to the environment;*

The DEA&DP failed to direct the applicant to immediately cease the activities. This is a contravention of NEMA.

Were made aware of the possibility of bias. As can be seen from Annexure G, on 24 June 2021, Ms Nicolette Carolus told Ms Zaidah Toefy of the DEA&DP that “the owner of the De hoop poultry farm indicated that he has received special permission from the minister to continue or make use of De Hoop farm poultry house.” Other I&APs were also told by the applicant that the WC Premier, Mr Alan Winde, had approved the activities. This was brought up in the public participation period but was not addressed. The potential involvement of the Premier or the MEC would be unlawful and indicates bias on the part of the decision maker.

## Conclusion

In conclusion, this appeal against the environmental authorisation for the establishment of five chicken houses at De Hoop Farm, capable of housing at least 100,000 layer chickens, is predicated on a thorough and critical evaluation of multiple fundamental concerns. These issues span across incorrect applicant identification, substantial environmental and biosecurity risks, inadequate waste management, and disregard for both local community and animal welfare.

Furthermore, the appeal raises serious questions about the applicant's commitment to legal and procedural compliance, highlighting instances of prior non-compliance and a propensity to proceed with development in defiance of regulatory directives and legal prescripts.

The document underscores the applicant's flawed approach, from initiating construction without the necessary permits to a lack of transparency in the public participation process. It demonstrates that the project, in its current form and conduct, significantly undermines environmental protection laws, poses a danger to public health, and threatens the socioeconomic fabric of the surrounding community. The misrepresentation of facts, particularly concerning waste management and the potential spread of diseases, only exacerbates these concerns.

Moreover, this appeal articulates a profound critique of the decision-making process, asserting that it failed to adequately consider the cumulative environmental impact, alternative land uses, and the broader implications of intensified livestock farming on climate change. It also highlights the project's failure to adequately address animal welfare, a concern increasingly recognised as intrinsic to sustainable development

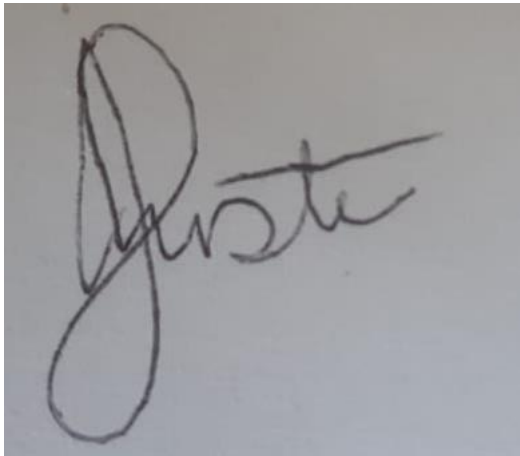


practices. The indication of possible bias in the decision making process is also extremely worrying.

In light of these considerations, the totality of evidence and grounds of appeal, I appeal strongly contend that the decision to grant environmental authorisation for the chicken housing project at De Hoop Farm is not only misguided but in contravention of national environmental management laws, administrative justice laws, and the Constitution, warranting immediate revocation.

Thank you for considering this appeal. I look forward to hearing from you.

Yours sincerely,

A handwritten signature in black ink on a light grey background. The signature is written in a cursive style and appears to read 'Joanna Lister'.

Joanna Lister

## **Annexure A**

Proof of applicant disobeying directives by building inspector.

**From:** Alroy Daniels [<mailto:bouinsp@witzenberg.gov.za>]  
**Sent:** Monday, 22 February 2021 12:20  
**To:** [lister.joanna@gmail.com](mailto:lister.joanna@gmail.com); Hennie Taljaard  
**Cc:** [Labruyerefarm@gmail.com](mailto:Labruyerefarm@gmail.com); 'Susanne Neubert'  
**Subject:** RE: Illegal building activity on Farm de Hoop RE/234

Hi Jo,

I've spoken to Pierre and the builder to **STOP** with the illegal activities with immediate effect.

I will do a follow up inspection to see if activities still continues.

Regards

Alroy

**From:** Jo Lister [<mailto:lister.joanna@gmail.com>]  
**Sent:** Monday, 22 February 2021 11:56  
**To:** Alroy Daniels <[bouinsp@witzenberg.gov.za](mailto:bouinsp@witzenberg.gov.za)>; Hennie Taljaard <[htaljaard@witzenberg.gov.za](mailto:htaljaard@witzenberg.gov.za)>  
**Cc:** [Labruyerefarm@gmail.com](mailto:Labruyerefarm@gmail.com); 'Susanne Neubert' <[susanne.neubert@gmail.com](mailto:susanne.neubert@gmail.com)>  
**Subject:** Illegal building activity on Farm de Hoop RE/234

Good morning Hennie and Alroy.

Thank you for your assistance in this matter.

Alroy - the building has continued since your email, including over the weekends, the contractors are continuing to work today.

Below are some questions we have as neighbours, can you please clarify, not sure if these pertain to Hennie or Alroy .

1. What sanction do they potentially face for ignoring municipal instructions?
2. Do we need to report the illegal building to any other authority to prevent this illegal activity?
3. We understand that the title deeds are still in the original owners name (Stilwaters Trust) there has been no recent transfer on this property. Who is therefore responsible for the illegal activity?
4. The property in question (De Hoop RE/234) is zoned Agriculture 1. We understand this allows for extensive agriculture and associated buildings, Intensive Agriculture would require rezoning to Agriculture 3 or at the very least consent use?

We appreciate your assistance in this matter.

Kind regards

Jo Lister

CC'd Neighbours of Propert RE/234

**From:** Alroy Daniels [<mailto:bouinsp@witzenberg.gov.za>]

**Sent:** Monday, 15 February 2021 12:36

**To:** [lister.joanna@gmail.com](mailto:lister.joanna@gmail.com)

**Subject:** RE: Building permissions on farm

Ho Jo,

I visited the farm this morning and found a portal frame construction of about 600m<sup>2</sup>.

I stopped the work and spoke to the owner telephonically to inform him about the infringement.

The infringement is illegal building works without written approval as per Section 4 of the Act.

They will apply for building plan approval as soon as they receive the title deed.

I will however follow up.

Regards

Alroy

**From:** Jo Lister [<mailto:lister.joanna@gmail.com>]

**Sent:** Friday, 12 February 2021 12:14

**To:** Hennie Taljaard <[htaljaard@witzenberg.gov.za](mailto:htaljaard@witzenberg.gov.za)>

**Cc:** Alroy Daniels <[bouinsp@witzenberg.gov.za](mailto:bouinsp@witzenberg.gov.za)>; [Labruyerefarm@gmail.com](mailto:Labruyerefarm@gmail.com)

**Subject:** RE: Building permissions on farm

Thank you Hennie – I believe then the only thing to verify from a municipal point, is if they have got building plans and permissions? Can you please confirm if they do have and if any inspection from municipal offices will be done?

We will take up the environmental issues at a provincial level.

Thank you

Jo

**From:** Hennie Taljaard [<mailto:htaljaard@witzenberg.gov.za>]

**Sent:** Friday, February 12, 2021 11:03 AM

**To:** [lister.joanna@gmail.com](mailto:lister.joanna@gmail.com)

**Cc:** Alroy Daniels

**Subject:** RE: Building permissions on farm

Hi Jo, neighbours are not consulted as part of the building plan process. Hence it will not be possible to object against the erection of the building.

By virtue of the zoning the owners has the "right" to practice the land use.

Smells, flies, waste water etc are environmental issues that fall under the Provincial Authority. I have Google'd and found the following site that might help:

<https://www.westerncape.gov.za/eadp/report-environmental-crimes>

Regards

Hennie Taljaard Pr. PIn (A/065/2008)

Senior Manager: Town Planning and Building Control

Witzenberg Municipality

023 316 8554 (tel)

023 312 3472 (fax)

Disclaimer: In using this response regard must be had to the provisions of the relevant legislation. This response contains the sender's professional opinion and is not intended to be definitive or represent the final view of the Witzenberg municipal Council. Kindly note that this guidance is subject and limited to the information provided in the query. This guidance is supplied on the basis that it is for the sole use of the parties to whom it is addressed. No party other than those to whom it is addressed may rely upon the information in this email for any purpose whatsoever.

**From:** Jo Lister [<mailto:lister.joanna@gmail.com>]

**Sent:** Friday, 12 February 2021 10:56

**To:** Hennie Taljaard <[htaljaard@witzenberg.gov.za](mailto:htaljaard@witzenberg.gov.za)>

**Cc:** Alroy Daniels <[bouinsp@witzenberg.gov.za](mailto:bouinsp@witzenberg.gov.za)>

**Subject:** RE: Building permissions on farm

Thank you Hennie, as far as we can ascertain, they have not submitted any building plans?

I did speak to Alroy yesterday to verify. The building is going ahead at some speed.

As neighbours we are concerned about the smell, flies and also how they propose to avoid contaminating water downstream and waste removal – are these areas we raise with municipality or at provincial level?

Many thanks

Jo

**From:** Hennie Taljaard [<mailto:htaljaard@witzenberg.gov.za>]

**Sent:** Thursday, February 11, 2021 1:35 PM

**To:** [lister.joanna@gmail.com](mailto:lister.joanna@gmail.com)

**Subject:** RE: Building permissions on farm

Yes.

**From:** Jo Lister [<mailto:lister.joanna@gmail.com>]

**Sent:** Thursday, 11 February 2021 10:10

**To:** Hennie Taljaard <[htaljaard@witzenberg.gov.za](mailto:htaljaard@witzenberg.gov.za)>

**Subject:** RE: Building permissions on farm

Thank you Hennie,

Just to confirm, they do still need to submit building plans before they start building correct?

Thank you

Jo

**From:** Hennie Taljaard [<mailto:htaljaard@witzenberg.gov.za>]

**Sent:** Thursday, February 11, 2021 9:14 AM

**To:** [lister.joanna@gmail.com](mailto:lister.joanna@gmail.com)

**Subject:** RE: Building permissions on farm

Hi Jo,

Our Zoning Scheme is fairly new. So I have had to dig a bit.

The 1000m<sup>2</sup> rule does not apply.

“Intensive animal farming” is permitted under Agriculture. It is in fact not an agricultural industry but a land use on its own. See definitions below.

So your neighbours can in fact develop a chicken broiler of any size.

But if they are processing the chickens they will be confined to 1000m<sup>2</sup>.

“agriculture”

Land use description: “agriculture” means the cultivation of land for raising crops and other

plants, including plantations, the keeping and breeding of animals, birds or bees, stud farming, game

farming, intensive horticulture, intensive animal farming, a riding school or natural veld,

“intensive animal farming”

Land use description: “intensive animal farming”—

(a) means the breeding, feeding and keeping, on an intensive basis, of animals or poultry

confined to buildings, or structures; and

(b) does not include the breeding, feeding and keeping of wildlife.

Regards

Hennie Taljaard Pr. Pln (A/065/2008)

Senior Manager: Town Planning and Building Control

Witzenberg Municipality

023 316 8554 (tel)

023 312 3472 (fax)

Disclaimer: In using this response regard must be had to the provisions of the relevant legislation. This response contains the sender's professional opinion and is not intended to be definitive or represent the final view of the Witzenberg municipal Council. Kindly note that this guidance is subject and limited to the information provided in the query. This guidance is supplied on the basis that it is for the sole use of the parties to whom it is addressed. No party other than those to whom it is addressed may rely upon the information in this email for any purpose whatsoever.



## **Annexure B**

Proof of applicant's father harassing I&APs.

**From:** Gigi Passerini [<mailto:gigip@windmeuleggs.co.za>]

**Sent:** Monday, August 23, 2021 8:40 AM

**To:** [lister.joanna@gmail.com](mailto:lister.joanna@gmail.com)

**Subject:** DE HOOP

Dear madam,

I am the 80 year old dad of Pierluigi whom you so doggedly try to destroy. Myself and 3 partner started Windmeul Eggs in 1979 . we became sole supplier to Pick'n Pay Western Cape not by purchasing other suppliers but by hard work and consistent quality and service.

We piloted in collaboration whit Pick'n Pay the introduction of GAP and GMP to eggs production and voluntary submit to monthly inspection and yearly audit. I am very proud of having my son running the company after my retirement . I feel he is more competent that I ever was and has maintained the culture that made Windmeul the bench mark of the industry. Unfortunately in 2017 the Company lost a million birds to the Avian Flu which coincidentally is a Corona type virus. The Company was forced to retrench 50% of the work force and barely manage to survive.

Contrary to the Covit pandemic the poultry industry is not allowed to vaccinate the birds. the only protection suggested beside strict biosecurity is the physical distance between production sites .

It was never his intention to bypass the existing regulations till the re-emergence of Avian flu in the country and particularly in the Western Cape which accelerated the process in order to protect the Company.

You have every right to object to the venture provided that you do so in accordance to those regulations and ethics to which so constantly refer. but I seriously object to the underhand manner on which you try to sour the Company relation with our customers that has taken a lifetime to cement.

As you can understand I am extremely proud of that achievement and contrary to my son I will not estate to resort to use ANY action to protect it. My suggestion in that you restrict your opposition to the avenue allowed by the system and abandon the cheap defamatory campaign or face the consequences.

Contrary to my son who spend sleepless night trying to protect is business and is young family from you and diseases I have plenty of time and the necessary resources to fight his battle for him. Not far from you there is a big Rainbow production facility but obviously it is much easy to achieve your day to fame by attacking a young farmer rather than a big public Company .Keep your fight above board and we will respect your opinion. Forgive my spelling but I am an immigrant and have not quite assimilated the language and “modus operandi” of this Country.  
Regards

Gigi Passerini

**From:** Gigi Passerini <[gigip@windmeuleggs.co.za](mailto:gigip@windmeuleggs.co.za)>  
**Date:** 24 August 2021 at 11:56:39 GMT+2  
**To:** Kit Fizzer <[christophercharlesnormann@gmail.com](mailto:christophercharlesnormann@gmail.com)>  
**Subject: RE: La Bruyere Farm**

Dear Christopher,

Thanks for your mail and I appreciate your stand point. I do not wish to discuss the specific of this matter anymore. Just a bit of background on the situation as it is in our Country.

I was and still am involved in organized poultry farming for 40 year and the problem of locating intensive animal unit has been and still is a subject of many negotiations with national as well as provincial governments. Needless to say whit no progress. The problem has been aggravated by the Avian Flu and the existing ban on vaccine. To contain contamination we are forced to distance production unit as far from each other as practical and possible. The remote area usually have no water and are subjected to a moratorium by Eskom on power supply.

A prospective poultry farmer has to purchase land and only then initiate the process of approval. At best it can take anything from 18 months to years. Add to that the time to erect facility and obtain stock and you will see the loss of income on the investment during the time.

Keeping in mind that there is still no certainty of the application being successful  
.That is one of the main reasons why poultry farms are concentrated in the hands of  
public Companies.

Under normal circumstances I would not believe in trying to speed up the process  
but in extreme situations I can justified or at least condoned.

Regards

Gigi Passerini

### **Annexure C**

Proof that applicant knew he had contravened the law, stated that he would only place 5000 birds (so as to avoid such contravention), before he actually placed 10 000 (at least) in the illegally built chicken house. It also shows that he knew that he was acting illegally when he started construction without building permission (not to mention environmental authorisation).

**From:** Pier Luigi Passerini [<mailto:pier.passerini@windmeuleggs.co.za>]

**Sent:** Wednesday, February 24, 2021 2:51 PM

**To:** [lister.joanna@gmail.com](mailto:lister.joanna@gmail.com)

**Cc:** [Labruyerefarm@gmail.com](mailto:Labruyerefarm@gmail.com)

**Subject:** RE: Development de Hoop RE234

RE: Email dated 24/02/2021 – Dev. De Hoop Farm:

Concerned Neighbours of De Hoop RE234,

Thank you for the correspondence, I will answer each point individually:

1. **and point 4.** Regarding the EIA, as stated in our meeting last week, according to our information, 10,000 birds are allowed in controlled environment housing without an EIA. We have in the meantime appointed our consultant to start the process which will include a projected number of housing of 3 units for the future. As soon as I have clarity on the hen numbers allowed I will respond, and if our assumptions are incorrect, will only place 5000 birds. The future housing, if the economy and markets allow, will then be subject to the completed EIA. Correspondence on this will follow in due course.
2. Regarding the question as to how many barns, it was never my intention to put a minimum or be forced now, to put a maximum number on the quantity. I will therefore try to explain, within my capabilities to foresee the future as to what my intentions are on De Hoop. As stated, this was

always going to be a farm where my family and I can enjoy weekends in nature away from our daily routines and my commitments as a business owner. I also wanted to build an asset for my daughters that will generate income for them when we are no longer able to and give them a sense of responsibility. My views on this however are personal of nature but for the sake of clarity I share this with you. It is very difficult to make projections, the maximum houses that will be built over time will be 5 houses. This was always going to be a niche project and not a major commercial one. When I stated that "this was it", I really meant this as I cannot see us building a second house for the foreseeable future, but I also cannot state that we will never build another barn. Can anyone paint themselves into such a corner i.e. Guesthouses, domes etc? I certainly can't, but definitely not more than 5. The EIA will however only be for 3.

3. We are a reputable and law abiding company, I say this with conviction. Our documentation will be in order and the only issue that caused us to transgress was the holdup at the deeds office due to COVID, which we could not foresee. When we purchased the farm in Sept 2020, I did not think that the transfer will take 5 months. I calculated that the contractors would be able to start in the new year and therefore booked and paid deposits in order for them to be committed to the time schedule. They have another project starting in April and would have only been available from October 2021 onwards. This backfired obviously as we could not get planning permission before transfer, I therefore transgressed and I take responsibility for that. The plans were submitted last week.
4. Regarding rodent control and wild birds – there will be no bait stations at the barn. We do not eradicate wild birds. To make that assumption based on your 30 minute visit to Koplande farm is unfair. This is not possible and certainly not something we even attempt doing.

I have stated that we envisage having a good relationship with our neighbours from the start. I also understand that for a very long time the farm was dormant, and had no effect on the neighbours as nothing was really farmed. I come with the intention of making a honest living and doing it in a smart efficient manner to enhance the value of my property and making the surroundings a more pleasant site to look at and

enjoy. We are proud of all our properties and feel it is an extension of who we are as a farming family. De Hoop will not be any different. I am sorry you feel that we are not forthcoming in our dealings. Inviting you all to some of our facilities was a way to showcase that we are not a 'threat' to the neighbourhood.

We are excited to be part of the community and be a positive addition. I am sorry that you feel that we will have a different effect in the area. Change will always be difficult. You are within your rights to be concerned, I hope in time my family and I can convince you otherwise.

Pier Passerini

**From:** Jo Lister <[lister.joanna@gmail.com](mailto:lister.joanna@gmail.com)>

**Sent:** Wednesday, 24 February 2021 10:58

**To:** [pier.passerini@windmeuleggs.co.za](mailto:pier.passerini@windmeuleggs.co.za)

**Cc:** [Labruyerefarm@gmail.com](mailto:Labruyerefarm@gmail.com)

**Subject:** Development de Hoop RE234

Good day Pier,

Your WhatsApp to me and telecom with Danie on 22 Feb refers. For the sake of transparency and efficiency, we would prefer to communicate via email and keep concerned parties on copy.

Our aim is not to be difficult neighbours, however we do have concerns with regards to the discrepancies in assurances given by yourself and non-compliance to local or provincial regulations. These discrepancies lead us to be apprehensive of the true future plans and how the development on de Hoop RE/234 will impact us as immediate neighbours, not only livelihoods, property values and lifestyle of your immediate neighbours, but also on the surrounding area. Below are a few of our concerns which lead us to believe there has been a lack of transparency.

1. Of principal concern is the lack of EIA and your repeated insistence that this is not required. As confirmed by the SA Poultry Association and Department of Environmental Affairs and Development Planning, National Regulation states above 5 000 chickens triggers an EIA regardless of the housing system. See correspondence below. Should you have different regulations – please forward to us.
2. Telecom between Pier and Jo of 15 Feb @12.35 refers. My first concern and question was how many barns you were planning, you assured me that “this is it”. Similar assurances were given to Danie and Jenny when you met with them at their home. However at our meeting at your offices on the 17<sup>th</sup> of February, you alluded to 5, possibly more over the next few years.
3. With regards to your concern that I felt you had transgressed (WhatsApp of 22.02.2021), this is not a matter decided by me or other neighbours. You assured us that all your documentation is in order, on verifying laws around establishing an intensive agriculture system in our area, the municipality found that you had started without building permission and yet you continued to build when instructed to stop. The Witzenberg Municipality advised you to stop building on the 15<sup>th</sup> of February “The infringement is illegal building works without written approval as per Section 4 of the Act”
4. There is also some question and concern as to how many chickens you are planning to house in the barn currently under construction.
5. What steps do you take to avoid the potential spread of Avian flu to wild bird populations that are found in the immediate vicinity of De Hoop RE234? We noted with concern what appeared to be a complete absence of any birds at the barns or near the cattle when we visited your farm. Whilst we realise wild birds can spread Avian Flu, being in close proximity to a wild life area can obviously lead to considerable impact on wild fauna. Rodent poison, especially the continual use of bait stations, are proven to have a detrimental effect on birds of prey – the renosterveld surrounding the small holding is home to many birds of prey, including the endangered Black Harrier, but rodenticides would also have a direct impact on other wildlife in the area. Whilst the use of poison is not always illegal, it is of considerable concern, particularly due to proximity to natural and protected area.

We trust that the above can be resolved to the benefit of all parties.

Regards

Jo Lister

On behalf of Concerned Neighbours of De Hoop RE234

Below is are excerpts from SA Poultry email and from Department of Environmental Affairs and Development Planning

Dated 18 Feb 2021 "...good afternoon

I have just confirmed with a producer and Egg Board member, that has just gone through the process, and he has informed me that in terms of National Regulation 5000 birds triggers an EIA regardless of the environment they are in open or closed. Where it gets tricky is the Municipal usage of the land and whether it is zoned agricultural and what zoning it is as it will have to be High density Animal production. There are also aspects such as water rights and usage."

And Department of Environmental Affairs and Development Planning (dated 23 Feb 2021)

"As a minimum the following listed activity would be activated that would require environmental authorisation .

With more detail it is possible that there are further activities that would require authorisation.

Another quotation would be whether the planning regulations allow chicken farming – or whether a Consent Use application would be required.



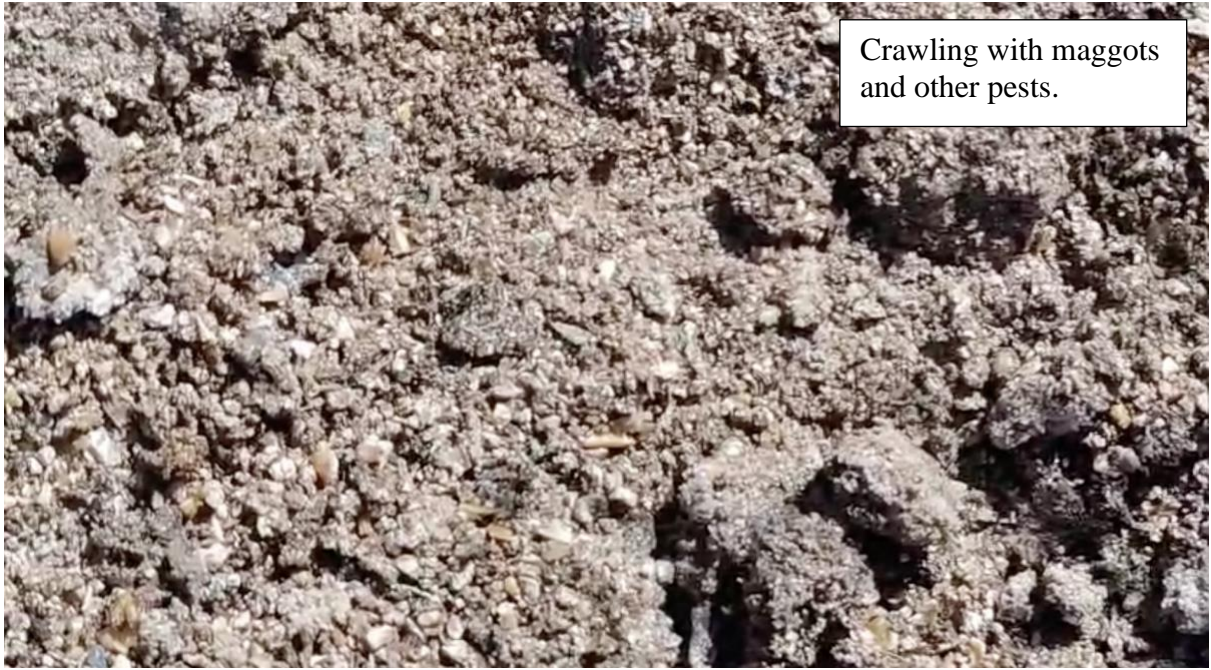
5	<p>The development and related operation of facilities or infrastructure for the concentration of—</p> <ul style="list-style-type: none"><li data-bbox="427 309 1490 398">(i) more than 1 000 poultry per facility situated within an urban area, excluding chicks younger than 20 days;</li><li data-bbox="427 416 1490 506">(ii) more than 5 000 poultry per facility situated outside an urban area, excluding chicks younger than 20 days;</li><li data-bbox="427 524 1490 613">(iii) more than 5 000 chicks younger than 20 days per facility situated within an urban area; or</li><li data-bbox="427 631 1490 721">(iv) more than 25 000 chicks younger than 20 days per facility situated outside an urban area.</li></ul>
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**Annexure E:**





Faeces/feed



Crawling with maggots and other pests.

## **Annexure G**

Email chain showing possible bias – approval from ‘Minister’

**From:** Nicolette Snyders Carolus <[Nicolettec@capewinelandsgov.za](mailto:Nicolettec@capewinelandsgov.za)>  
**Date:** Thursday, 24 June 2021 at 12:32  
**To:** [danie@labruyerefarm.com](mailto:danie@labruyerefarm.com) <[danie@labruyerefarm.com](mailto:danie@labruyerefarm.com)>, [labruyerefarm@gmail.com](mailto:labruyerefarm@gmail.com) <[labruyerefarm@gmail.com](mailto:labruyerefarm@gmail.com)>  
**Subject:** FW: Call For Comment: Section 24G Application for the Unlawful Poultry House and Access Road Through a Watercourse on Farm 234, Tulbagh, Western Cape.

**From:** Zaidah Toefy <[Zaidah.Toefy@westerncape.gov.za](mailto:Zaidah.Toefy@westerncape.gov.za)>  
**Sent:** Thursday, 24 June 2021 11:25  
**To:** Nicolette Snyders Carolus <[Nicolettec@capewinelandsgov.za](mailto:Nicolettec@capewinelandsgov.za)>  
**Cc:** Nabeelah Khan <[Nabeelah.Khan@westerncape.gov.za](mailto:Nabeelah.Khan@westerncape.gov.za)>; Mogammad Holliday <[Mogammad.Holliday@westerncape.gov.za](mailto:Mogammad.Holliday@westerncape.gov.za)>  
**Subject:** RE: Call For Comment: Section 24G Application for the Unlawful Poultry House and Access Road Through a Watercourse on Farm 234, Tulbagh, Western Cape.

Dear Nicolette

According to our records, we have not received an application as yet. It is apparent from the emails below, specifically from the Environmental Assessment Practitioner (EAP), that the process is still underway and that the alleged transgressor intends to submit a section 24G application.

Currently, we have not yet issued any correspondence regarding the section 24G process for this matter.

Kind regards

Zaidah Toefy  
Head of Rectification  
Directorate: Environmental Governance  
Department Environmental Affairs & Development Planning  
Western Cape Government

Tel: 021 483 2701 Fax: 021 483 4033  
Website: [www.westerncape.gov.za](http://www.westerncape.gov.za)

**From:** Nicolette Snyders Carolus <[Nicolettec@capewinelandsgov.za](mailto:Nicolettec@capewinelandsgov.za)>  
**Sent:** Thursday, 24 June 2021 09:40  
**To:** Zaidah Toefy <[Zaidah.Toefy@westerncape.gov.za](mailto:Zaidah.Toefy@westerncape.gov.za)>; Nabeelah Khan <[Nabeelah.Khan@westerncape.gov.za](mailto:Nabeelah.Khan@westerncape.gov.za)>

**Subject:** FW: Call For Comment: Section 24G Application for the Unlawful Poultry House and Access Road Through a Watercourse on Farm 234, Tulbagh, Western Cape.

Good Morning

My name is Nicolette Snyders-Carolus environmental health practitioner in Ceres.

I have received a complaint of De Hoop farm where chickens are being transported from mooreesburg to Tulbagh on a premise that is currently awaiting to complete the 24G process and is currently operational chickens are being kept at the poultry house. Yesterday chickens were offloaded and today.

As municipal health Ceres we have not received a document for comment as the complaints are of nature that the De Hoop farm have not gotten permission to operate already and the owner of the De hoop poultry farm indicated that he has received special permission from the minister to continue or make use of De Hoop farm poultry house and we would like to request if there is however any document that stipulates that the operation can continue although the 24G is not completed.

Kind regards

**From:** Bernardus Bosman <[intern1@gnec.co.za](mailto:intern1@gnec.co.za)>

**Sent:** Thursday, 24 June 2021 09:13

**To:** Nicolette Snyders Carolus <[Nicolettec@capewinelandsgov.za](mailto:Nicolettec@capewinelandsgov.za)>

**Subject:** RE: Call For Comment: Section 24G Application for the Unlawful Poultry House and Access Road Through a Watercourse on Farm 234, Tulbagh, Western Cape.

Good day Nicolette,

Hope this email find you well.

No Pre-Directive or Compliance Notice was issued to the land owner. Mr Passerini, in his own capacity, confirmed that the structure is illegal and that he will follow a S24G Process and therefore contact was directly made with the S24G Directorate. He therefore never received a stop order from any directorate as no notice was issued by the Department. We were appointed then to facilitate this S24G process and it is currently in the public participation phase.

The 24G Directorate has been included in the call for comments and we are awaiting their response. (Response foreseen before the 14<sup>th</sup> of July).

I have added a *OneDrive* link to this email containing the Section 24G Report for ease of access.

Please find the Executive Summary of the report attached to this email. The commenting period will run from the **11<sup>th</sup> of June 2021** until the **14<sup>th</sup> of July 2021** to accommodate the legislated minimum 30-day commenting period. We can allow extra time for the Cape Winelands Districts Municipality to issues comments on the 24G Report.

Link: [24 G Poultry Houses Farm 234 De Hoop Tulbagh](#)

Kind Regards,

**Nardus Bosman**  
for GNEC

Tel: 021 870 1874  
Fax: 021 870 1873  
E-Mail: [intern1@gnec.co.za](mailto:intern1@gnec.co.za)

45 Fabriek Street  
Paarl  
7646

**From:** Nicolette Snyders Carolus <[Nicolettec@capewinelands.gov.za](mailto:Nicolettec@capewinelands.gov.za)>  
**Sent:** Thursday, 24 June 2021 08:53  
**To:** Bernardus Bosman <[intern1@gnec.co.za](mailto:intern1@gnec.co.za)>  
**Subject:** RE: Call For Comment: Section 24G Application for the Unlawful Poultry House and Access Road Through a Watercourse on Farm 234, Tulbagh, Western Cape.

Nicolette Snyders -OGP Tulbagh

**From:** Fernando F. Kelly <[kelly@capewinelands.gov.za](mailto:kelly@capewinelands.gov.za)>  
**Sent:** Wednesday, 23 June 2021 11:33  
**To:** Nicolette Snyders Carolus <[Nicolettec@capewinelands.gov.za](mailto:Nicolettec@capewinelands.gov.za)>  
**Subject:** FW: Call For Comment: Section 24G Application for the Unlawful Poultry House and Access Road Through a Watercourse on Farm 234, Tulbagh, Western Cape.

**From:** Bernardus Bosman <[intern1@gnec.co.za](mailto:intern1@gnec.co.za)>  
**Sent:** Wednesday, 23 June 2021 11:24  
**To:** Fernando F. Kelly <[kelly@capewinelands.gov.za](mailto:kelly@capewinelands.gov.za)>  
**Cc:** Euonell Visagie <[eg@gnec.co.za](mailto:eg@gnec.co.za)>  
**Subject:** Call For Comment: Section 24G Application for the Unlawful Poultry House and Access Road Through a Watercourse on Farm 234, Tulbagh, Western Cape.

Dear Interested and Affected Party,

Hope this email finds you well.

You were identified as a possible interested and affected party on the following NEMA EIA Application due to your position in a relevant state department, or your proximity to the proposed development site:

**RECTIFICATION APPLICATION FOR THE UNLAWFUL POULTRY HOUSE AND ACCESS ROAD THROUGH A WATERCOURSE AS WELL AS THE APPLICATION FOR 4 ADDITIONAL POULTRY HOUSES ON FARM 234, TULBAGH, WESTERN CAPE**

Guillaume Nel Environmental Consultants (GNEC) were appointed by Mr. Pier Passerini, to facilitate the Environmental Impact Assessment for the rectification process in terms of Section 24G of the National Environmental Management Act, 1998 (Act 107 of 1998). This email serves as notification of the availability of the Section 24G Report, which will be available on our website later today.

Additionally, I have added a *OneDrive* link to this email containing the Section 24G Report for ease of access. Please let me know if you are having trouble accessing the file, so I can send you an alternative link via *WeTransfer*.

In the meantime, please find the Executive Summary of the report attached to this email. The commenting period will run from the **11<sup>th</sup> of June 2021** until the **14<sup>th</sup> of July 2021** to accommodate the legislated minimum 30-day commenting period. All written comments must reach our office by no later than **14 July 2021**.

Link: [24 G Poultry Houses Farm 234 De Hoop Tulbagh](#)

Do not hesitate to contact me should you have any questions.

**Nardus Bosman**  
for GNEC

Tel: 021 870 1874  
Fax: 021 870 1873  
E-Mail: [intern1@gnec.co.za](mailto:intern1@gnec.co.za)

45 Fabriek Street  
Paarl  
7646

**Fernando Kelly**  
Environmental Health Practitioner  
Cape Winelands District Municipality

 27 Munnik Street, Ceres, 6835,  
 023 316 8409  
  
 023 312 3177  
 [kelly@capewinelands.gov.za](mailto:kelly@capewinelands.gov.za)  
 [www.capewinelands.gov.za](http://www.capewinelands.gov.za)



## Annexure H

Applicant continued illegal activities after submitting s24G application, exacerbating the problem, even when he was aware of the illegality. It was within his power to avoid part of the unlawful activities, as the actual holding of chickens had not yet commenced.

**From:** jenny normann [<mailto:labruyerefarm@gmail.com>]  
**Sent:** Wednesday, 23 June 2021 12:41  
**To:** Joanna Lister  
**Subject:** Fwd: illegal chicken farm on De Hoop.

FYI

Sent from my iPhone

Begin forwarded message:

**From:** jenny normann <[labruyerefarm@gmail.com](mailto:labruyerefarm@gmail.com)>  
**Date:** 23 June 2021 at 12:37:46 SAST  
**To:** [danie@labruyerefarm.com](mailto:danie@labruyerefarm.com)  
**Subject:** Fwd: illegal chicken farm on De Hoop.

Sent from my iPhone

Begin forwarded message:

**From:** Pier Luigi Passerini <[pier.passerini@windmeuleggs.co.za](mailto:pier.passerini@windmeuleggs.co.za)>  
**Date:** 23 June 2021 at 11:51:45 SAST  
**To:** [gavinbrewer@breede.co.za](mailto:gavinbrewer@breede.co.za)  
**Cc:** [labruyerefarm@gmail.com](mailto:labruyerefarm@gmail.com)  
**Subject:** RE: illegal chicken farm on De Hoop.

Good morning Gavin,

Thank you for your note.

I am aware that we are stocking De Hoop farm today and that this is running concurrent with our application for poultry housing on that specific farm. As you will see from our application we are using the most modern equipment available which is on European standards and manufactured in Germany and will in no way impact our neighbours negatively.

It was never our intention to place birds before the process had run its course, but due to unforeseen circumstances, which the Department of Agriculture and Environmental Affairs are aware of, we had to move the birds which were ready for lay to this site.

Our other farms are under complete lockdown due to the threat of Avian Influenza in the Western Cape and therefore we had to make this decision.

You are more than welcome to come and meet with me at our Head Office to discuss the matter in depth, as we really do want to have a good relationship with all affected parties. Please find below my contact details.

We are all trying our best to keep our businesses going and every industry has their challenges. We will however follow the letter of the law as we are doing now with the 24G process.

Kind Regards/Vriendelike Groete

**From:** [gavinbrewer@breede.co.za](mailto:gavinbrewer@breede.co.za) <[gavinbrewer@breede.co.za](mailto:gavinbrewer@breede.co.za)>

**Sent:** Wednesday, 23 June 2021 09:27

**To:** [pier.passerini@windmeuleggs.co.za](mailto:pier.passerini@windmeuleggs.co.za)

**Cc:** [labruyerefarm@gmail.com](mailto:labruyerefarm@gmail.com)

**Subject:** illegal chicken farm on De Hoop.

Dear Pier,

I notice that you have started stocking your chicken farm this morning. This is illegal and I was wondering what the Ackerman family would think, considering that you are one of their egg suppliers.

I am aware that you have applied for retrospective planning permission as per the notice on La Bruyere farm. I shall respond to this before the due date, once I have fully investigated this application.

Before I copy Pick n Pay with this email for their comment on your illegal activity. I am giving you the opportunity to comment in writing.

Yours sincerely,

Gavin Brewer

## Annexure I

**From:** Belinda Edmonds [mailto:belinda.edmonds@gmail.com]

**Sent:** Monday, 25 March 2024 12:09

**To:** info@horseabout.co.za

**Subject:** Re: Appeal: EA: Farm 234, de Hoop, Tulbagh

Dear Jo

Thank you for below with the details of the appeal.

Don't have a lot to add to the appeal, which seems very comprehensive.

My concerns remain that the threat of avian flu and it's potential to impact the free roaming avian populations is not addressed and is in fact contrary to guidance issued by SA Poultry Association.

*"Poultry Disease Management Agency (PDMA) and referred to by the SA Poultry Association which states that such facilities should not be constructed within 5kms of dams or other water ways and should not be sited in areas with a high number of trees - this is entirely logical as both attract wild birds. De Hoop is situated well within the 5km radius of several dams and in fact has waterways (already unlawfully damaged) and wetlands both within and alongside its boundaries."*

<https://www.poultrydiseases.co.za/1199-2/>

Please note the check list

<http://www.poultrydiseases.co.za/wp-content/uploads/2020/07/Bio-security-checklist.pdf>

Mr Passerini is an experienced poultry farmer and would know this risk and has chosen to ignore it.

The Witzenberg Municipality does not have safe or effective waste disposal. The Tulbagh dump site has been closed for some time and Ceres/Prince Alfred Hamlet are overflowing. I also don't recall all details relating to disposal of both dead birds and end of production birds - I think dead birds is covered in the municipal dump use but I don't recall if end of production live birds was adequately covered.

And I still don't think that the use of renewable energy has been adequately addressed. A New build in that environment should plan for solar even if installation is later

As per my comments already submitted, this application should be submitted by either the owner of Farm 234, Tulbagh – a Closed Corporation, or, by the business to which it is inextricably linked and on which the financial viability of the proposed business is dependent – Windmeul Eggs. The proposed buildings and alterations to the land are not moveable and cannot be separated from the owner of this property – the CC – and the impacts (financial, environmental and community related) have potential to significantly outlast any operational arrangement with Mr Passerini.

You may contact me via e.mail on Belinda.edmonds@gmail.com

Regards

Belinda Offord

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**From:** philiphills@gmail.com [mailto:philiphills@gmail.com]

**Sent:** Monday, 25 March 2024 13:36

**To:** info@horseabout.co.za

**Subject:** RE: Appeal: EA: Farm 234, de Hoop, Tulbagh

Hi Jo,

Thank you for sharing the progress on the project. I believe your comments below are thoroughly and clearly stated, and indicate a frightening disregard of due process and indeed set a dangerous precedent for further environmentally destructive activities in

the future. I do not have any additional points to add, but I strongly support your appeal on the basis of all the reasons stated below. The envisaged economic benefit of the chicken farm simply does not justify the clear risk to a well-established tourism industry, the environment, and the overall wellbeing of the local community. Furthermore, the actions to date of the proprietor cast significant doubt on any assurances he may provide regarding the mitigating actions that have been proposed.

Regards,  
Philip

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**From:** BellaReathe Jewellery [mailto:bellareathe.jewellery@gmail.com]

**Sent:** Monday, 25 March 2024 11:28

**To:** info@horseabout.co.za

**Subject:** Re: Appeal: EA: Farm 234, de Hoop, Tulbagh

To Whom it may concern,

The grounds for the appeal has my full support.

As the financial fine is just rather pathetic for a company clearly experienced in factory production of chickens. And as the Environmental Impact Assessment wasn't professionally done it is evident to see that it was half-heartedly performed and the proper interviews and nothing about the impact to the environment has been properly assessed.

Regards

Phoebe

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**From:** Jodi Meiring [mailto:jodi.meiring@gmail.com]

**Sent:** Monday, 25 March 2024 10:41

**To:** info@horseabout.co.za

**Subject:** Re: Appeal: EA: Farm 234, de Hoop, Tulbagh

Hi Jo

I believe the chicken farm debacle is still ongoing.

I'm concerned for a number of reasons and I fear this is another case of the rich and powerful getting their own way at the expense of everything else.

During the recent fires, as you know I worked with Lions Tulbagh to secure an evacuation area for animals displaced by fire, I had to come up with a plan that could accommodate up to 100 large breeds, plus dogs, cats etc. What is their plan for their barns in the event of the ever frequent wild fires?

Let the animals burn?

You know how sudden the threat was, how to evacuate that number of chickens?

Letting them burn is cruel and disgusting and the chicken/ egg production business model will come to a grinding halt.

I'm concerned about the impact on the water, and the disposal of bodies, I'm sure their death rate is high, and egg laying time is limited. Where do the bodies go?

If incineration is the option that raises questions regarding the air pollution too.

Animals can't be run by computer programs, they need care, who monitors the skeleton staff?

This whole thing just stinks of greed and we all know how big business operates.

How did this get pushed through when there are so many red flags. ( who's buddies with who!)

Just another corporate using up our resources and shipping the money out of the valley. The community does not benefit at all, no extra jobs, no cheap eggs as Rhode does with their reject cans.

Jodi

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**From:** Ulf Teske [<mailto:Ulf.Teske@outlook.com>]  
**Sent:** Tuesday, 26 March 2024 12:05  
**To:** [info@horseabout.co.za](mailto:info@horseabout.co.za)  
**Subject:** AW: Appeal: EA: Farm 234, de Hoop, Tulbagh

Dear Jo,  
thank you for sharing below.  
As an 'affected Party' GNel kept us apprised of the formal process.

Please have our comments herewith, which you are more than welcome to use and share:

We fully support and agree to the points risen by Jo Lister.

Further, please allow us some personal comments on the matter:

- We do not understand, how an approval for an energy-sucking facility located in the Witzenberg area can be given.  
In the last IDP meetings organized by the Witzenberg Municipality, it was clearly pointed out – and repeated – that 'no additional industrial venture is to open in the Witzenberg Valley due to ESKOM being unable to provide more power to the municipal area'.  
Having the illegally built unit connected to the energy-net is one thing, to approve the building of four more is completely against this guideline.  
**Who at the Witzenberg Municipality was consulted and approved this extension, which is clearly not mentioned in the IDP and, therewith not signed off?**

FYI: other ventures planned for the Witzenberg area were STOPPED, or had to put forward a community-approved 'energy-plan' – like the NEW Lotus Factory in Wolseley.

We cannot risk to have even more pressure on the power grid.

- We still feel that building the first house without any permission sets a precedence. An example that encourages other persons to follow suit.  
To have a fine of R30.000 issued is a joke and does not gel with the Laws and Rules that were overstepped

Will this be increased?  
A fine of R3million is sufficient.

- Mr. Passerini is an expert in his field.  
He has advisors, staff and an entire legal department.  
To claim that 'he did not know' is, mildly speaking, a joke.

We would like to re-iterate that the location and process followed for these buildings is completely unacceptable and cannot be understood.

We, still, oppose the first building and any future plans.

As Chairman of Tulbagh Tourism, I cannot explain, how a illegally built chicken farm has an impact to our valley – damaging the reputation of Tulbagh as a whole, and the Witzenberg Municipality, too.

The process-stakeholders should all be ashamed and step down from their positions as they are clearly incapable.

**From:** Emile Theart [<mailto:emiletheart@gmail.com>]  
**Sent:** Tuesday, 26 March 2024 13:46  
**To:** [info@horseabout.co.za](mailto:info@horseabout.co.za)  
**Subject:** Re: FW: Appeal: EA: Farm 234, de Hoop, Tulbagh

Good afternoon

I strongly oppose the development of a chicken farm just outside Tulbagh.

Tulbagh does not have the required disposal facilities to process the waste and animal mortalities for a facility like this. The municipal dump site has been closed for a while now and what's more it is situated a mere 1km from the center of town.

The facility is also situated close to a number of guest farms and it will negatively impact on a thriving tourist industry in the Tulbagh Valley. Not to mention increased large vehicle traffic and noise.

As the facility is highly automated and minimal labour would be required there is no real benefit for the community at large.

From my understanding, the 1st phase of the project was started without the required approvals and EIA. A R 30 000 fine and permission to continue the development is totally preposterous.

Kind regards

Emile Theart  
cell +27 82 567 7445

<http://www.wix.com/emiletheart/sculpture>

**FAILURE IS NOT PERMANENT, IT'S JUST PART OF THE PROCESS.**