



REFERENCE: 14/1/1/E3/9/10/3/L1248/22

ENQUIRIES: Leigh Kelly

BY EMAIL: jpbluebulls@gmail.com

Mr John Peens
John Trust
Erf 4735
Seebederfie
Tergniet
Great Brak River
6525

PRE-COMPLIANCE NOTICE

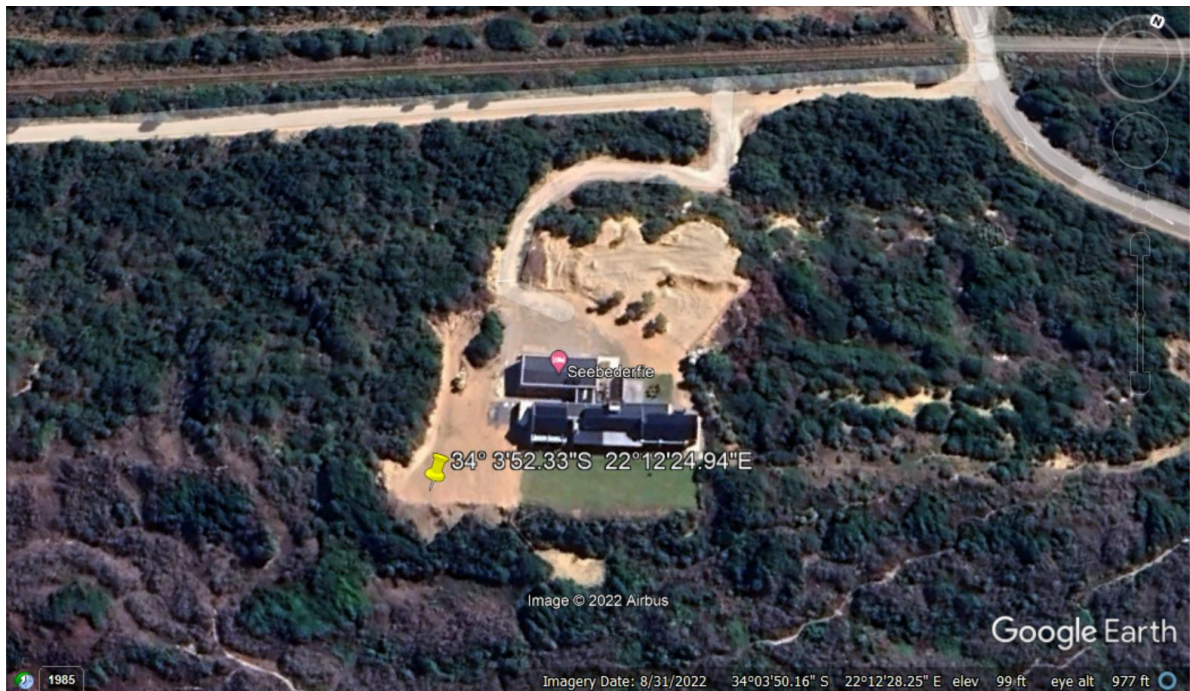
Dear Sir

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

1. During an investigation into allegations of the commencement of a listed activity in contravention of section 24F of the National Environmental Management Act, 1998 ("NEMA"), a site inspection was conducted at Erf 4735, Seebederfie, Tergniet, Grootbrak River, by Environmental Management Inspectors from the Department's Directorate: Environmental Law Enforcement on 10 August 2022, it was confirmed that you have commenced with the

unlawful clearance of endangered indigenous vegetation, flattening of the frontal dune and moving more than 5m³ of soil within the 100m of the high water mark ("HWM") of the sea without the pre-requisite environmental authorisation.

[34° 03' 52.2" S 22° 12' 26.0" E]



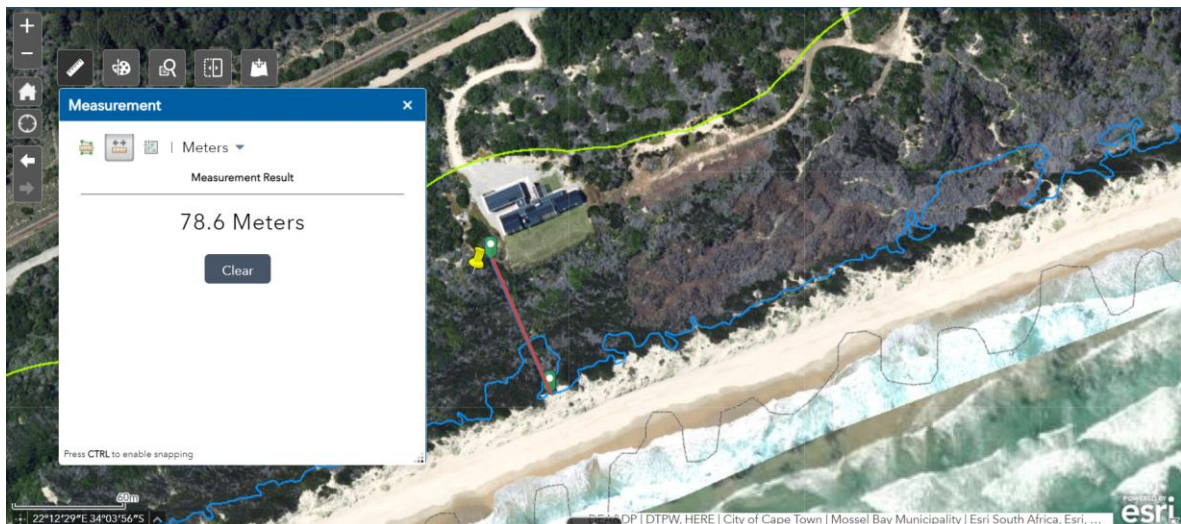
Aerial Map 1: Location of alleged illegal activity.



Aerial Map 2: The alleged transgression was undertaken within an endangered ecosystem, mapped as Grootbrak Dune Strandveld.



Aerial Map 3: The High-Water Mark ("HWM") and 100m Buffer zone in relation to the HWM indicated.



Aerial Map 4: The disturbed area falls within the 100m Buffer zone in relation to the HWM , and measured from the edge of the vegetation.

2. In terms of section 24F of the NEMA, no activity listed in the Environmental Impact Assessment ("EIA") Regulations Listing Notice 1 and 3 of 2014 may commence without environmental authorisation from the competent authority.
3. On considering the evidence before me, there are reasonable grounds to believe that you have commenced the following listed activities without environmental authorisation:

EIA Regulations Listing Notice 1 of 2014:

Activity no. 17:

Development—

- (i) *in the sea;*
- (ii) *in an estuary;*
- (iii) *within the littoral active zone;*
- (iv) *in front of a development setback; or*
- (v) ***if no development setback exists, within a distance of 100 metres inland of the high-water mark of the sea or an estuary, whichever is the greater;***

in respect of—

- (a) *fixed or floating jetties and slipways;*
- (b) *tidal pools;*
- (c) *embankments;*
- (d) *rock revetments or stabilising structures including stabilising walls; or*
- (e) **infrastructure or structures with a development footprint of 50 square metres or more —**

but excluding—

- (aa) *the development of infrastructure and structures within existing ports or harbours that will not increase the development footprint of the port or harbour;*
- (bb) *where such development is related to the development of a port or harbour, in which case activity 26 in Listing Notice 2 of 2014 applies;*
- (cc) *the development of temporary infrastructure or structures where such structures will be removed within 6 weeks of the commencement of development and where coral or indigenous vegetation will not be cleared; or where such development occurs within an urban area.*

EIA Regulations Listing Notice 1 of 2014:

Activity no. 19A:

The infilling or depositing of any material of more than 5 cubic metres into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock of more than 5 cubic metres from—

- (i) *the seashore;*

(ii) the littoral active zone, an estuary or **a distance of 100 metres inland of the high-water mark of the sea** or an estuary, whichever distance is the greater; or

(iii) the sea; —

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

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

EIA Regulations Listing Notice 3 of 2014:

Activity no. 12:

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

a. Western Cape

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

- iii. **Within the littoral active zone or 100 metres inland from high water mark of the sea** or an estuarine functional zone, whichever distance is the greater, excluding where such removal will occur behind the development setback line on erven in urban areas;
- iv. On land, where, at the time of the coming into effect of this Notice or thereafter such land was zoned open space, conservation or had an equivalent zoning; or

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



Photo 1: Cleared area for the development of the entrance road to the property.



Photo 2: The cleared area used for the construction of the dwelling.



Photo 3: The extent of the area cleared of indigenous vegetation at the front section of the property.



Photo 4: The extent of the area cleared of indigenous vegetation adjacent to the dwelling.



Photo 5: The frontal dune that was cleared of vegetation, flattened and the soil deposited/infilled within the 100m High Water Mark of the sea.



Photo 6: The area cleared for the construction of the wooden staircase and the bonfire area.

4. In terms of section 49A of the NEMA it is an offence to commence a listed activity without environmental authorisation. A person convicted of such an offence is liable to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.
5. As such, you are hereby given notice of the Department's intention to issue you with a Compliance Notice in terms of section 31L of the NEMA, which will instruct you to:
 - 5.1 immediately cease the above listed activity;
 - 5.2 investigate, assess and evaluate the impact that the listed activity has / has had on the environment;
 - 5.3 rehabilitate the entire site to its original condition; and
 - 5.4 carry out any other measure necessary to rectify the effects of the unlawful activity.

6. Furthermore, failure to comply with a Compliance Notice is an offence in terms of section 49A(1)(k). A person convicted of failing to comply with a Compliance Notice is liable to a maximum fine of R5 million or 5 years' imprisonment or both such fine and such imprisonment.
7. You are afforded a period of **7 (seven) calendar days** from the date of receipt of this Pre-Compliance Notice to make written representations to the Department as to why a Compliance Notice should not be issued.
8. If you inform the Department, in respect of paragraph 7 above that you intend to rectify the non-compliance, you must cease the above listed activity and submit to the Department for approval, **within 30 (thirty) calendar days** of receipt of this Pre-Compliance Notice, a rehabilitation plan compiled by a suitably qualified and experienced independent environmental assessment practitioner, which must include the following:
 - 8.1 assessment and evaluation of the impact on the environment; and
 - 8.2 identification of proposed remedial and/or mitigation measures.
9. If the above plan is approved by the Department, you will be obliged to take the necessary remedial / mitigation measures at your own cost.
10. Approval of the above plan by the Department does not remedy the unlawful commencement of the above activity, which remains unlawful in terms of section 49A(1) (a) and/or (d) of the NEMA.
11. If you wish to continue with the listed activity you may apply for environmental authorisation by way of a section 24G ("s24G") application. However, such application does not constitute permission to continue with the listed activity, which remains unlawful unless environmental authorisation is granted.

12. Should you choose to apply in terms of s24G on the NEMA, you must submit to the Department for approval, **within 30 (thirty) calendar days** of receipt of this Pre-Compliance Notice, a project schedule compiled by a suitably qualified and experience independent environmental assessment practitioner. The project schedule must clearly stipulate the time frames in terms of the s24G process and by when a s24G application will be submitted to the Sub-Directorate: Rectification.
13. Notwithstanding the section 24G application, the Department may issue a Compliance Notice and/or commence criminal proceedings should circumstances so require.



Achmad Bassier

Director: Environmental Law Enforcement

Grade 1 Environmental Management Inspector

Date: 29/09/2022

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