

General Manager: Environmental Affairs  
Department of Economic Development  
Environment and Tourism

Email: [albert.mfenyana@dedea.gov.za](mailto:albert.mfenyana@dedea.gov.za)  
[ronel.debruin@dedea.gov.za](mailto:ronel.debruin@dedea.gov.za)

Our ref  
**Mr SK Gough/CDA/MAT28157**  
e-mail: [steveg@rushmere.co.za](mailto:steveg@rushmere.co.za)  
Direct Telephone: (041) 399 6759  
Fax No : (041) 374 3110  
Direct Fax : 086 633 9039

Your ref

Date

**19 April 2017**

Dear Sir

**RE: O'FEH INVESTMENTS PROPRIETARY LIMITED**

We refer to our letter dated 22 February 2017. For ease of reference a copy thereof is attached marked "A".

We have not heard further from you regarding this matter.

In the interests of facilitating the cooperative process as agreed at the meeting in January 2017 attended *inter alia* by the Director General of the Department of Environmental Affairs and the HoD of your Department and as discussed in further detail with you and Ms De Bruin in February 2017 and in order to enable our client to commence with the process of appointing an environmental practitioner and developing a rehabilitation plan, it is necessary that the steps discussed with you at our meeting in February in East London be implemented by the forwarding to our client by you of the envisaged Notice of Intention to Issue a Compliance Notice (the "Notice").

Notaries • Conveyancers • Administrators of deceased and insolvent estates

Rushmere Noach Inc

Reg No 2002/015382/21

Directors: SK Gough BA LLB (Managing),  
DJ Parker B Juris LLB, J Theron B Comm LLB, CD Arnold B Comm LLB,  
L Koorsse LLB, RJ Montgomery B Comm LLB, N Deschamps LLB  
Assisted By: S Roberts B Comm LLB, J Scott BA LLB  
Consultants: RO Jefferson B Comm B Proc, WS Allchurch BA  
General Manager: PC Theron B Comm B Compt-Hons CA(SA)

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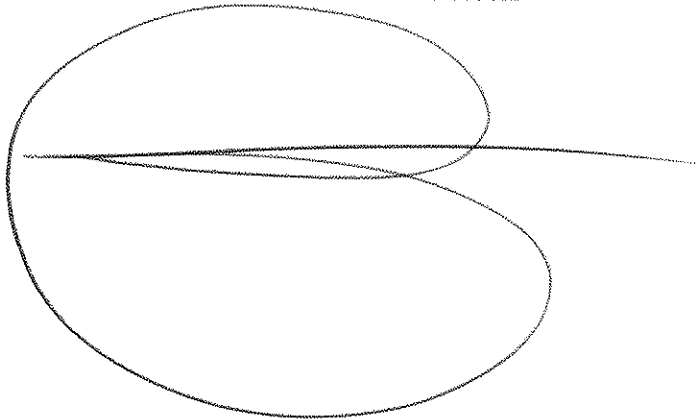
In order to give impetus to that process and in an attempt to avoid unnecessary delay, (and without in any way being prescriptive), we have prepared a draft form of Notice for your consideration, which is attached hereto marked "B".

Should a Notice in substantially the form of that attached be sent to our client, our client will accept it and immediately commence with the process set out therein.

We look forward to your positive response in the near future.

Yours faithfully,

**RUSHMERE NOACH INCORPORATED**



Department of Economic Development  
Environment and Tourism

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Direct Telephone: (041) 399 6759  
Fax No : (041) 374 3110  
Direct Fax : 086 633 9039

Your ref

Date

**22 February 2017**

Dear Sirs

**RE: O'FEH INVESTMENTS PROPRIETARY LIMITED**

We refer to the meeting held at the offices of the Department in East London on 18 February 2017 attended by your Mr Mfenyana and Ms de Bruin together with Advocate Richards and the writer.

We confirm that the meeting was held to explore the possible resolution of the dispute with the Department as to whether the work undertaken in 2012 on the road passing through certain farm properties contravened the provisions of the National Environmental Management Act, 1998 on the basis that it was carried out without the required environmental authorisation.

During the course of discussion it was recorded that this matter will be resolved at a provincial level with the Department, notwithstanding the issue of a pre-compliance letter by the National Department of Environment Affairs.

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Notaries • Conveyancers • Administrators of deceased and insolvent estates    Rushmere Noach Inc    Reg No 2002/015382/21

Directors: SK Gough BA LLB (Managing),  
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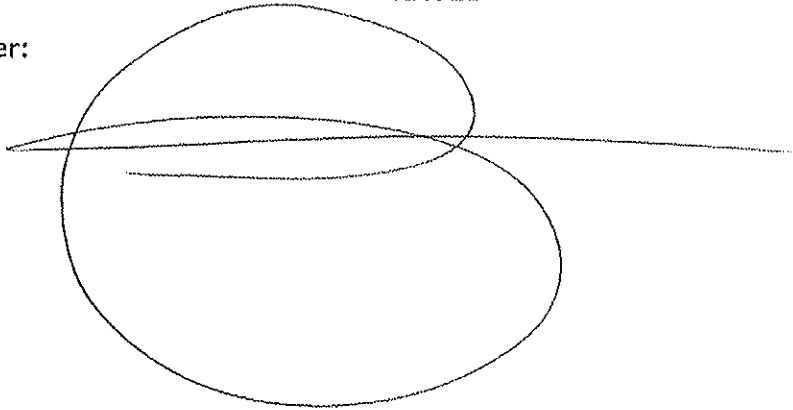
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The meeting concluded on the basis that for the purpose of resolving the above dispute O'Feh Investments Proprietary Limited (the landowner on whose behalf the said work was undertaken) accepted that to the extent that the work undertaken departed from the course of the provincial minor road (MR 46) such work constituted a listed activity for which no prior environmental authorisation was obtained. The said entity accordingly proposed that the Department take such concession into consideration when making any decision on the scope and extent of any pre-compliance or compliance notice it may issue.

We await to hear from you regarding any decision that the Department may take.

Yours faithfully,  
**RUSHMERE NOACH INCORPORATED**

Per:

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

B

Province of the Eastern Cape  
Department of Economic Affairs, Environment and Tourism  
Republic of South Africa

O'Feh Investments Proprietary Limited  
c/o Rushmere Noach Incorporated  
Port Elizabeth  
[christophera@rushmere.co.za](mailto:christophera@rushmere.co.za)

Dear Sirs

**RE: NOTICE OF INTENTION TO ISSUE A COMPLIANCE NOTICE IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 107 OF 1998 ("NEMA") IN RESPECT OF THE UNLAWFUL ALTERATION OF PORTIONS OF THE PATH OF A PROCLAIMED PROVINCIAL ROAD ("THE ROAD") ON THE FARMS WILDEPAARDEHOEK 245 AND ZWARTBOSCHPLAAT 245 ("THE PROPERTIES") O'FEH INVESTMENTS PROPRIETARY LIMITED**

1. I refer, *inter alia*, to the following:
  - 1.1. site inspections conducted by officials of this department ("DEDEAT") and of the Department of Environmental Affairs ("DEA") on various occasions during 2015 and 2016, in each instance including environmental management inspectors duly authorised under section 31B of NEMA;
  - 1.2. the notice of intention to issue a compliance notice dated 21 September 2016 ("the notice") addressed to Ronald James Watson ("Watson") by the Deputy Director General: Legal, Authorisations, Compliance and Enforcement of the DEA ("the DDG: LACE") and contending that certain work undertaken in 2012 on the road had been unlawful (and, *inter alia*, recording that "*the instructions contained therein were made in the interest of responsible environmental management and with a view to a cooperative resolution of the issue*");

- 1.3. subsequent correspondence from your legal representatives to the DEA taking issue with the assertions in the notice and requesting further particulars in regard thereto;
  - 1.4. the meeting held on 12 January 2017 ("the January meeting") at the homestead on the properties attended, *inter alia*, by representatives of O' Feh Investments Proprietary Limited ("the company") and its legal representatives, the DEA (including its Director General and the DDG: LACE), and DEDEAT (including its HOD) held in further pursuit of a cooperative resolution;
  - 1.5. the meeting held on 18 February 2017 ("the February meeting") at the offices of DEDEAT attended by its General Manager: Environmental Affairs, Mr Albert Mfenyana, and its legal officer, Ms Ronel de Bruin as well as the legal representatives of the company, Messrs Gough and Richards;
  - 1.6. the letter from Rushmere Noach Incorporated dated 22 February 2017 addressed to DEDEAT recording the outcome of the February meeting.
2. The January meeting was held to explore the possible resolution of the dispute as to whether the work done on the road during 2012 had been unlawful. Although discussion on the merits was without prejudice, a process was agreed upon for the above purpose. In this regard it was determined that the matter would be resolved at a provincial level (by DEDEAT), notwithstanding the prior issue by DEA of the notice and the HOD: DEDEAT accordingly delegated the responsibility for pursuing further discussions to Mr Mfenyana supported by Ms De Bruin.
  3. During the February meeting, the representatives of the company advised that for the purposes of resolving the dispute, the company (which conceded that the work on the road was undertaken on its behalf) accepted that to the extent that such work departed from the path of the road (Provincial Minor Road, MR 46), such work constituted a listed activity for which no prior environmental authorisation had been obtained. It was further proposed on behalf of the company that DEDEAT, in determining the scope of any notice of intention to issue a compliance notice, take those concessions into account.
  4. Against that background, I remind you that section 24F(1) of NEMA provides that: "*Notwithstanding any other Act, no person may (a) commence an activity listed or specified in terms of section 24(2)(a) or (b) unless the competent authority or the*

*Minister of Minerals and Energy, as the case may be, has granted an environmental authorisation for the activity;..."*

5. With reference to section 24F of NEMA, I am of the view that the activities referred to hereunder as promulgated in GNR 544 ("Listing notice 1") and GNR 546 ("Listing notice 2"), both dated 18 June 2010, were triggered by the construction of the road to the extent that such construction departed from the path of the road as proclaimed (the extent of which is more fully described below):
  - 5.1. Listing Notice 1: Activity 22(ii): *"The construction of a road, outside urban areas, where no reserve exists where the road is wider than 8 m";*
  - 5.2. Listing Notice 3: Activity 4(a)(ii): *"The construction of a road wider than 4 m with a reserve less than 13.5 m in the Eastern Cape (bb) outside urban areas and (gg) 5 km from any protected area identified in terms of NEMPAA".*
6. The activity in question is the construction of those portions of the road which depart from the path of the proclaimed Provincial Minor Road (MR 46) as are more specifically identified and marked in yellow on the aerial photographic images annexed hereto marked A to E.
7. In the light of the foregoing reasons and taking into account the concession of the company referred to above, this Department is of the view that the activities which have been undertaken at the site have not been conducted in accordance with the provisions of the law. I, Albert Mfenyana , in my capacity as a Grade 1 Environmental Management Inspector, having considered the unlawful commencement of activities that have been conducted, hereby give you written notice of my intention to issue you, O' Feh Investments Proprietary Limited, with a Compliance Notice in terms of section 31L of NEMA which will require you to do the following:
  - 7.1. within 21 days of receipt of the final Compliance Notice, to appoint an independent specialist to manage the process set out below;
  - 7.2. within 40 days of receipt of the final Compliance Notice to submit a report to DEDEAT to include:

- 7.2.1. an assessment of the impact of the unauthorised road construction as defined above on the environment;
- 7.2.2. a recommendation regarding the necessary steps to rehabilitate the area affected by the unauthorised road construction as defined above, with clear timeframes and milestones, including what species to use for re-vegetation;
- 7.2.3. an environmental management plan to guide the contractor appointed to execute the rehabilitation process;
- 7.3. within 180 days of receipt of the final Compliance Notice, to complete the rehabilitation process;
- 7.4. annually at the onset of the dry season, for each of the five years succeeding the completion of the rehabilitation process, to conduct a follow up on the success of rehabilitation and submit a report thereon to DEDEAT during the last week of May of each such year.
8. It is emphasised that the proposed directions set out above are made in the interests of responsible environmental management and in continuation of efforts to achieve a cooperative resolution of the issue. Depending on the outcome of the response of the company to this letter (which given the concession referred to above, will presumably be to accede to the steps in 7.1 to 7.4 above) DEDEAT will decide upon such further actions as may be necessary.
9. I accordingly await to hear from you.

Yours faithfully

ALBERT MFENYANA  
GENERAL MANAGER: ENVIRONMENTAL AFFAIRS  
GRADE 1 ENVIRONMENTAL MANAGEMENT INSPECTOR

DATE:



A

Untitled Map  
Write a description for your map.

Legend

- 80m
- Feature 1



B

**Untitled Map**  
Write a description for your map.

**Legend**  
60m  
Feature 1



700 ft

C

**Untitled Map**  
Write a description for your map.

**Legend**  
60m  
Feature 1



A



E



Untitled Map

Write a description for your map.

Legend

80m

Feature 1



300 ft

Google Earth

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