



**COMPLIANCE MONITORING & ENFORCEMENT: ETHEKWINI DISTRICT**

**To :** Messrs AKR Property Development (Pty) Ltd  
14 Inkanyezi Close,  
Umhlanga Ridge  
Durban  
4319

**For Attention :** Mr. Rabindra Dukhi  
**Email :** [accounts@akrgroup.co.za](mailto:accounts@akrgroup.co.za)

Dear Sir,

**DIRECTIVE IN TERMS OF SECTION 24G(1) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) FOLLOWING AN APPLICATION FOR THE RECTIFICATION OF THE UNLAWFUL COMMENCEMENT AND CONTINUATION OF A LISTED ACTIVITY FOR AKR PROPERTY DEVELOPMENT (PTY) LTD SITUATED AT 56 OCEANS TERRACE, ISIPINGO LOCATED WITHIN ETHEKWINI MUNICIPALITY.**

**REFERENCE: DM/S24G/0004/2017**

1. Your application for authorisation in terms of Section 24G of the National Environmental Management Act 107 of 1998 (NEMA), for the continuation of the below listed activity which commenced, was undertaken and/or unlawfully conducted, dated 24 October 2017 and received by this Department on 31 October 2017 ("the application"), bears reference.

2.

Govt. Notice	Activity No.	Activity Description
GNR.983	19	<i>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> <i>(i) a watercourse;</i> <i>(ii) the seashore; or</i> <i>(iii) the littoral active zone, an estuary or a distance of 100 metres inland of the high-water mark of the sea or an estuary, whichever distance is the greater- but excluding where such infilling, depositing, dredging, excavation, removal or moving-</i> <i>(a) will occur behind a development setback;</i> <i>(b) is for maintenance purposes undertaken in accordance with a maintenance management plan; or</i> <i>(c) falls within the ambit of activity 21 in this Notice, in which case that activity applies.</i>

3. As is evidenced by the application, AKR Property Development (Pty) Ltd commenced with the afore-mentioned activity, which was, at all relevant times, listed pursuant to section 24(2) of NEMA as an activity that requires environmental authorisation prior to commencement.
4. Section 24G of the NEMA, without affecting any criminal liability of a person who has acted in contravention of, makes provision for that person to submit an application to the relevant MEC/Minister, which, if successful, will enable that person lawfully to continue with the listed or specified activity and/or legalise an otherwise unlawful structure, with effect from the date on which the authorisation is issued.
5. Before the MEC may take a decision in respect of the application, the applicant is required to pay an appropriate administrative fine, determined by the competent authority, which fine may not exceed ten million Rand (R 10 000 000.00).
6. It is the responsibility of the applicant to familiarise himself with all the possible consequences associated with the submission of this application including, but not limited to, the following:
  - 6.1. The application (including a positive decision in respect hereof) in no way affects any criminal liability that the applicant may have incurred in respect of the activities which were undertaken unlawfully as listed in 1 above.
  - 6.2. The further processing of the application may be deferred pending the outcome of criminal proceedings, should criminal proceedings be instituted against the applicant in respect of the abovementioned activities; or where criminal proceedings are pending against the applicant in respect of section 24F of NEMA.
  - 6.3. Before the competent authority may take a decision on the application, an administrative fine determined by the competent authority must be paid, in full, by the applicant.
  - 6.4. Neither the submission of the application, nor the payment of the administrative fine implies that environmental authorisation will be issued for the continuation of an activity that commenced unlawfully. This decision will depend on the merits of the application itself.

## 7. FINDINGS

- 7.1. On 18 May 2017 the Department was informed regarding the construction of a multi-storey residential dwelling, located at 56 Ocean Terrace, Isipingo, within the eThekweni Municipality, that was constructed within 100 metres of the high water mark of the sea.
- 7.2. On 18 July 2017, the Department conducted a site visit and the following was observed and discussed:
  - 7.2.1. The site is currently under construction
  - 7.2.2. Two levels of the building were erected/
  - 7.2.3. The surrounding land use contained residential dwellings.
- 7.3. On 11 September 2017, the Department issued a "Warning Letter in respect of the Unlawful Construction of a Multi-Storey Residential Dwelling, Situated at 56 Oceans Terrace, Isipingo" informing you of the unlawful commencement of a listed activity and the available recourse for you to obtain compliance with the law.
- 7.4. On 31 October 2017, this Department received a Section 24G application for the above-mentioned activity.
- 7.5. On 12 December 2017, the Compliance Monitoring & Enforcement Unit of the Department conducted a site visit and meeting with you and the appointed Environmental Assessment

Practitioner, Ms Roschel Maharaj of Messrs 1World Consulting where the following was discussed:

- 7.5.1. The site construction is near completion and will be ready to be sold as sectional titles from February 2018;
  - 7.5.2. A Stormwater Management Plan must be designed and approved by eThekweni Municipality as the banks show signs of erosion;
  - 7.5.3. Full public participation as per the EIA regulations must be conducted;
  - 7.5.4. Impacts assessed must include construction phase impacts but focus must be placed on the operational phase impacts and rehabilitation (i.e. including Environmental Management Programme).
8. S24G (1) reads: *On application by a person who- has commenced, undertaken or conducted a waste management activity without a waste management license in terms of S20 (b) of the National Environmental Management Waste Act, 2008 (Act 59 of 2008), the MEC concerned, as the case may be, may direct the applicant to immediately cease the activity pending a decision on the application submitted in terms of this subsection.*
9. The Department has considered your request to continue and so brings to your attention that whilst the MEC has discretionary powers to decide on the continuation of the operation nothing precludes you from doing so at your own risk.
10. This Department would further like to bring to your attention that should the outcome of your S24G process be unfavorable, you may be instructed to decommission<sup>1</sup> the site amongst other conditions.

#### 11. INSTRUCTIONS

I, Ms Vanessa Maclou, in my capacity as a Deputy Manager: eThekweni District and Environmental Management Inspector Grade 1, hereby issue you with a Directive in terms of S24G (1) of NEMA which requires you to do the following:

- 11.1. Compile a S24G Assessment report containing-
  - 11.1.1. A description of the need and desirability of the activity;
  - 11.1.2. An assessment of the nature, extent, duration and significance of the consequences for or impacts on the environment of the activity, including the cumulative effects and the manner in which the geographical, physical, biological, social, economic and cultural aspects of the environment may be affected by the proposed activity;
  - 11.1.3. A description of mitigation measures undertaken or to be undertaken in respect of the consequences for or impacts on the environment of the activity;
  - 11.1.4. A description of the public participation process followed during the course of compiling the report, including all comments received from interested and affected parties and an indication of how issues raised have been addressed;
  - 11.1.5. An environmental management programme and rehabilitation Plan.
12. You are further reminded that should the property or any part of the property be sold/transferred/change of ownership, the new owner must be informed of this application and the Department must be informed of the change of ownership.

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<sup>1</sup> *Decommission- in relation to waste treatment, waste transfer or waste disposal facilities, means the planning for and management and remediation of the closure of a facility that is in operation or that no longer operates;*

13. Upon review of the report, the Department reserves the right to request for additional information.
14. The report must be submitted to the Department within ninety (90) days of receipt of the directive to: **Mr. Nazeer R Jamal, Grade 2 Environmental Management Inspector (EMI), eThekweni District, Private Bag X54321, Durban, 4000 or by delivery to: 40 AB Xuma St, Commercial Street Building, 17<sup>th</sup> floor.**
15. Please note that should the Department not receive the requested information **within the ninety (90) days** provided and you fail to contact the Department within that time period, either to make representations or to request additional time within which to submit the information, your section 24G application will be closed. The matter will then be dealt with by enforcement for further investigation and prosecution.

Yours faithfully,



*for Acting Head of Department*

**KwaZulu-Natal Department of Economic Development, Tourism and Environmental Affairs**

**Signed by: Ms. Vanessa Maclou**

**Date** : 19/01/2018

**Acknowledgement of Receipt in lieu of the following:**

**DIRECTIVE IN TERMS OF SECTION 24G(1) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) FOLLOWING AN APPLICATION FOR THE RECTIFICATION OF THE UNLAWFUL COMMENCEMENT AND CONTINUATION OF A LISTED ACTIVITY FOR AKR PROPERTY DEVELOPMENT (PTY) LTD SITUATED AT 56 OCEANS TERRACE, ISIPINGO LOCATED WITHIN ETHEKWINI MUNICIPALITY.**

**Attention** : Mr. NR Jamal, Grade 2 EMI, eThekwini District

**E-mail** : nazir.jamal@kznedtea.gov.za

Received by Mr. /Mrs. \_\_\_\_\_

On behalf of the company \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_ 2017, at \_\_\_\_\_

Signature: \_\_\_\_\_