

Annexure K: Environmental authorisation



## KWAZULU-NATAL PROVINCE

ECONOMIC DEVELOPMENT, TOURISM  
AND ENVIRONMENTAL AFFAIRS  
REPUBLIC OF SOUTH AFRICA

DIRECTORATE:  
ENVIRONMENTAL SERVICE

22 Dorothy Nyembe Street  
9<sup>th</sup> Floor, Marine Building, Durban, 4000  
Tel: 031-350 3021/ 032 461 7668  
Enquiries: Ms Vanessa Maclou  
Email: vanessa.maclou@kznedtea.gov.za

Reference: DM/S24G/0001/2016

Inkomba :

Verwysing:

Date : 12 November 2020  
Usuku :  
Datum :

### Email Transmission

Olde World Foundry cc

PO Box 10257

Ashwood

3606

Attention: Mr. Vincent Farrer

Email address: owf@telkomsa.netDear

Sir

**DM/S24G/0001/2016: ENVIRONMENTAL AUTHORIZATION FOR RECTIFICATION OF THE UNLAWFUL COMMENCEMENT OF A LISTED ACTIVITY FOR THE ESTABLISHMENT OF THE OLDE WORLD FOUNDRY, LOCATED AT 26 ANDERSON ROAD, SPURWING INDUSTRIAL PARK, HAMMERSDALE, WITHIN ETHEKWINI MUNICIPALITY.**

The KwaZulu-Natal Department of Economic Development, Tourism and Environmental Affairs has **authorized** the abovementioned project. A copy of the environmental authorization and reasons for the decision are attached herewith.

#### 1. ENQUIRIES

##### Please note:


- All queries regarding this application for environmental authorization (including the Department's decision) must be directed to the official of this Department with contact details provided on the letterhead above.
- Only queries regarding appeals must be submitted to the Office of the MEC (details provided below).

#### 2. TIMEFRAMES APPLICABLE TO THIS APPLICATION FOR ENVIRONMENTAL AUTHORIZATION

In accordance with Regulation 5(1)(a)(i) of Government Notice No. R. 439 dated 31 March 2020, the timeframes prescribed in the EIA Regulations 2014 have been extended by the number of days of duration of the lockdown period of the national state of disaster declared for the COVID-19 pandemic.

#### 3. NOTIFICATION OF DECISION ON APPLICATION

In accordance with regulation 4(2) of the EIA Regulations 2014, the applicant must in writing **within 14 days** of the date of this decision ensure that

Department of Economic Development, Tourism & Environmental Affairs, KwaZulu-Natal	Environmental Authorisation Cover Letter: DM/S24G/0001/2016	Page 1 of 2	 Initials
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- a. All registered interested and affected parties are provided with access to this decision and the reasons for the decision; and,
- b. The attention of all registered interested and affected parties is drawn to the fact that an appeal may be lodged against the decision in terms of the National Appeal Regulations 2014, if such appeal is available in the circumstances of the decision.

#### 4. APPEALS

In accordance with regulation 4(1) of the National Appeal Regulations, 2014 an appellant must submit an appeal to the appeal administrator and a copy of the appeal to the applicant, any registered interested and affected party and organ of state with interest in the matter with 20 days from the date of notification of this decision.

An appellant must comply with regulation 4(2) and submit the appeal in writing, on the form obtainable from the Appeal Administrator and **by post, fax, e-mail or hand delivery** to the following address:

**The Appeal Administrator,  
Office of the KwaZulu-Natal MEC for Economic Development, Tourism & Environmental Affairs**

POSTAL/ FAX/ E-MAIL:	PHYSICAL:
Private Bag X9152 PIETERMARITZBURG 3200 Tel: 033 264 2651	Room 218.23, 2 <sup>nd</sup> Floor 270 Jabu Ndlovu Street PIETERMARITZBURG 3201
E-Mail: <a href="mailto:haresh.inderlall@kznedtea.gov.za">haresh.inderlall@kznedtea.gov.za</a> (Haresh Inderlall)	

#### 5. COLLECTION OF ORIGINAL ENVIRONMENTAL AUTHORISATION

The original environmental authorization can be collected from the Head Office Registry, upon prior arrangement. Head Office contact details:

Physical address:  
270 Jabu Ndlovu Street  
PIETERMARITZBURG  
3201

Contact Person: Ms Zama Mbanjwa  
Telephone No: 033 - 264 2898  
Cellular No.: 081 - 271 9541  
Email: Zama.Mbanjwa@kznedtea.gov.za

Yours faithfully




for Head of Department

KZN Department of Economic Development Tourism and Environmental Affairs

Signed by: Ms. Vanessa Maclou

Designation: eThekweni District Manager

cc: Lee-Anne Fellowes Shangoni Management Services, 082 456 3208, email: [leeanne@shangoni.co.za](mailto:leeanne@shangoni.co.za)

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## KWAZULU-NATAL PROVINCE

ECONOMIC DEVELOPMENT, TOURISM  
AND ENVIRONMENTAL AFFAIRS  
REPUBLIC OF SOUTH AFRICA

# Environmental Authorisation

In terms of the requirements of Section 24G(2)(b) of the National Environmental Management Act (NEMA), Act No. 107 of 1998, as amended.

DM/S24G/0001/2016: RECTIFICATION OF THE UNLAWFUL COMMENCEMENT OF A LISTED ACTIVITY THROUGH THE ESTABLISHMENT OF THE OLDE WORLD FOUNDRY, LOCATED AT 26 ANDERSON ROAD, SPURWING INDUSTRIAL PARK, HAMMERSDALE, WITHIN ETHEKWINI MUNICIPALITY.

**Application number:** DM/S24G/0001/2016

**Date of issue:** 12 / 11 / 2020

**Holder of environmental authorisation:** Olde World Foundry

**Location of activity:** 26 Anderson Road, Spurwing Industrial Park, Hammersdale, within the eThekwini Municipality

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## ACRONYMS

COMPLIANCE MONITORING AND ENFORCEMENT	CME
ENVIRONMENTAL AUTHORISATION	EA
ENVIRONMENTAL IMPACT ASSESSMENT	EIA
GOVERNMENT NOTICE REGULATION	GNR
INTERESTED AND AFFECTED PARTIES	I&AP's
NATIONAL ENVIRONMENTAL MANAGEMENT ACT	NEMA

## Decision

By virtue of the powers conferred on it by the National Environmental Management Act (NEMA), Act No. 107 of 1998 and the Environmental Impact Assessment Regulations, June 2010, as amended the **KwaZulu-Natal Department of Economic Development, Tourism and Environmental Affairs** (hereafter referred to as the "Department") **grants environmental authorisation (EA) to:**

**Olde World Foundry cc**  
(hereafter referred to as the "holder of the EA")

### Details of Contact Person

Attention: Mr. Vincent Farrer  
PO Box 10257  
Ashwood  
3606

Tel : 031 736 1888  
E-mail : [owf@telkomsa.net](mailto:owf@telkomsa.net)

for the activities (hereafter referred to as "the activities") as described below. Details regarding the basis on which the Department reached this decision are set out in **Annexure 1**.

## 1 Background

- a. On 10 March 2016, the eThekweni Municipality issued the applicant with a Notice of Intent to Issue a Compliance Notice in terms of S31L of NEMA.
- b. On 08 April 2016 the Department together with officials from the eThekweni Municipality conducted a site visit to the facility.
- c. Based on the observations and discussions with it was determined that the operation commenced in 2005 without prior environmental authorisation.
- d. The unlawful establishment of a foundry which required a licence, is identified as a listed activity in terms of the EIA Regulations, GNR 327, dated December 2014, as amended the following activity was triggered:

**Activity 6:** *The development of facilities or infrastructure for any process that or activity which requires a permit or licence an amended permit or licence in terms of national or provincial legislation governing the generation or release of emissions pollution or effluent, excluding :*

- (i) *activities which are identified and included in Listing Notice 1 of 2014;*
- (ii) *activities which are included in the list of waste management activities published in authority is the Minister in terms of section 19 of the National Environmental Management: Waste Act, 2008 (Act responsible for mineral No. 59 of 2008) in which case the National Environmental Management: Waste Act, 2008 applies; or*
- (iii) *the development of facilities or infrastructure for the treatment of effluent, polluted water, wastewater or sewage where such facilities have a daily throughput capacity of 2 000 cubic metres or less; or*

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- (iv) where the development is directly related to aquaculture facilities or infrastructure where the wastewater discharge capacity will not exceed 50 cubic metres per day.*
- e. On 27 June 2016, this Department received a S24G application for the rectification of the unlawful commencement of a listed activity for the Olde World Foundry, situated 26 Anderson Road, Spurwing Industrial Park, Hammersdale, located within the eThekweni Municipality.
- f. On 11 August 2016 the Department issued the applicant with a directive in terms of Section 24g(1) of NEMA.
- g. On 04 October 2016 the applicant responded to the Directive.
- h. The Department commented on 24 October 2016 on the response from the applicant.
- i. The following documents were prepared by and received from Shangoni Management Services (Pty) Ltd:
- i. The final Impact Assessment Report dated September 2018, and amended June 2020
  - ii. The Environmental Management Programme dated April 2017 and amended June 2020.
- j. The administrative fine letter was issued to Messrs Olde World Foundry on 04 May 2019 with an administrative fine to the amount of R625 000 which was imposed.
- k. Following an appeal lodged by the applicant on 23 May 2019, the administrative fine was reduced to an amount of R25 000 on the 16 July 2019, as per an appeal decision issued to Olde World Foundry on 16 July 2019 (refer to Annexure 4).
- l. The administrative fine amount of R25 000 was paid on 20 August 2019.

## 2 Project description

Olde World Foundry is situated at 26 Anderson Road, Spurwing Industrial Park, Hammersdale, located within the eThekweni Municipality **Refer to Annexure 2: Locality Map and Annexure 3: Site layout plan.** The foundry produces iron, aluminum, brass- and bronze castings. The main operations in the production process include receiving and handling of raw materials, melting of metals, manufacturing of sand moulds, casting of metal into sand moulds, breaking of sand moulds, fettling (grinding/cleaning of castings), and dispatch of castings.

The production process is as follows:

### 2.1 Receiving and handling of raw materials

Raw materials used at the foundry include metallics (i.e. pig iron, cast iron scraps, aluminium, brass, bronze, etc.), additives (i.e. ferrosilicon, ferromanganese, ME85, ferrosilicon magnesium, sascarb, etc.), binders (i.e. sodium silicate, mould paint, coal dust, CO<sub>2</sub> gas, etc.) and fuels (i.e. Heavy Fuel Oil (HFO)). The materials are delivered by trucks and bakkies to the site, handled by hand and stored inside the factory area.



## 2.2 Melting of metals

The foundry has four furnaces that can be categorised into three types. An electric coil furnace for the melting of aluminium, two crucible/pot furnace for the melting of brass and bronze and aluminium and an induction furnace for the melting of iron.

## 2.3 Manufacturing of sand moulds

Moulds are frames used for shaping the exterior of castings. The moulds are usually prepared in two halves and then assembled to form the complete shape of the casting. Olde World Foundry prepares sand moulds by mixing sand with a sodium silicate binder/resin, compacting the mixture into steel moulding frames and pumping CO<sub>2</sub> gas into the mould until it hardens. The moulding frame is extracted, the mould is painted and then assembled with the other half.

## 2.4 Casting of metal into sand moulds

The molten metal from the furnaces is poured (using hand shanks or a ladle) into the assembled sand moulds and allowed to cool naturally overnight.

## 2.5 Breaking of sand moulds

The casts are broken out of the sand moulds using hammers.

## 2.6 Fettleing

The casts are grinded and cleaned, and then stored on pallets or shelves in the dispatch area. Storage of final products does not happen regularly. The operation prioritizes immediate dispatch as soon as the fettleing is done.

## 2.7 Dispatch of castings

The castings are either delivered to clients or collected by clients using bakkies and/or small trucks.

# 3 Activities authorised

The following activities in Government Notice Number Regulation (GNR) 983 dated 04 December 2014, as amended on 07 April 2017 is triggered by the abovementioned project:

## 3.1 Description of Activity and location

Listing Notice / Activity No.	Activity description	Component of the project
Activity 6 of Listing Notice 1 of the Government Notice Regulations, December 2014 as amended.	<p><i>The development of facilities or infrastructure for any process that or activity which requires a permit or licence an amended permit or licence in terms of national or provincial legislation governing the generation or release of emissions pollution or effluent :</i></p> <p>(i) activities which are identified and included in Listing Notice 1 of 2014; in which case the competent</p>	The development and operation of the Foundry requires an Air Emission License (AEL) as per National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004), As a result activity 6 of Listing Notice 2 is triggered. Therefore the Olde World Foundry required an environmental authorisation prior to the commencement of development and operation in 2005.

	<p>(ii) activities which are included in the list of waste management activities published in authority is the Minister in terms of section 19 of the National Environmental Management: Waste Act, 2008 (Act responsible for mineral No. 59 of 2008) in which case the National Environmental Management: Waste Act, 2008 applies; or</p> <p>(iii) the development of facilities or infrastructure for the treatment of effluent, wastewater or sewage where such facilities have a daily throughput capacity of 2000 cubic metres or above does not apply to the less.</p>	
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**Location**

**Province** : KwaZulu-Natal  
**Magisterial District** : eThekweni Municipality  
**Physical Address** : 26 Anderson Road, Spurwing Industrial Park, Hammersdale  
**Co-ordinates** : 29° 47' 46.73" S and 30° 39' 57.98"E  
**Development footprint** : 191.9m<sup>2</sup> and factory 1156m<sup>2</sup>  
**Extent of property** : 0.60 hectares

The granting of the EA for the construction and operation of the Olde World Foundry is situated at 26 Anderson Road, Spurwing Industrial Park, Hammersdale is subject to the conditions set out below and are binding on the holder of the EA. In the event of any dispute concerning the significance of a particular impact, the opinion of the Department in respect of its significance will prevail. **This EA is applicable for the rectification of unlawful construction and operation of the Olde World Foundry.**

## 4 Scope of environmental authorisation

### 4.1 Compliance with the conditions of this EA:

In terms of section 24F of the National Environmental Management Act, 1998 (Act No. 107 of 1998), as amended no person may commence with an activity listed in terms of section 24(2) (a) or (b) of the Act, unless the competent authority has granted an environmental authorisation (EA). This refers to other activities that may require authorisation that do not fall within the ambit of this EA.

### 4.2 Interpreting and understanding the conditions of this EA:

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It is the responsibility of the holder of the EA to ensure that he/she fully understands the conditions of this EA. Should the holder of the EA, require assistance in interpreting a condition contained in this EA then he/she must contact the following component within this Department in writing:

KZN Department of Economic Development, Tourism and Environmental Affairs  
Private Bag X54321  
Durban  
4000

Physical Address: 22 Dorothy Nyembe, Marine Boiling 9<sup>th</sup> Floor, Durban, 4001

Attention: The Control Environmental Officer –

Component	Email Address	Telephone No.	Cell. No.
Compliance, Monitoring & Enforcement (CME)	Yugeshni.Govender@kznedtea.gov.za	031 – 350 3024	082 9219340
Environmental Impact Assessment (EIA)	Natasha.Brijlal@kznedtea.gov.za	031 – 350 3015	079 898 0491
Pollution & Waste Management (P&W)	Shireen.Mahabeer@kznedtea.gov.za	031 – 350 3025	082 322 1871

*Table 3: eThekweni District office component contact email addresses and telephone numbers*

- 4.3 The holder of the EA is to acknowledge in writing that he/she understands and will comply with the conditions contained in this EA within **thirty (30) calendar days** of receipt of this Department's decision to authorise the activity. This correspondence must be forwarded to the Control Environmental Officer: Compliance Monitoring and Enforcement (CME) Component as per the contact details specified in condition 4.2.

## 5 Conditions of environmental authorisation

### General

- 5.1 The granting of this EA does not exempt the holder of the EA from compliance with any other relevant and applicable legislation and bylaws.
- 5.2 The EA must be produced to any authorised official of the Department who requests to see it.
- 5.3 Where any of the contact details change, including the name of the responsible person, the physical or postal address and/or telephonic details; the holder of the EA must notify the Department in writing as soon as the new details become known. This correspondence must be sent to the Control Environmental Officer: Environmental Impact Assessment (EIA) Component as per the contact details specified in condition 4.2.
- 5.4 The holder of this EA must ensure that all contact details as provided for in this EA are correct and/or updated before contacting the relevant components within this Department.
- 5.5 This EA pertains only to the activities as described on page 5 and excludes any other activity which, on its own, is subject to the EIA process and the impacts of which, have not been assessed in terms of the reports submitted in respect of this S24G application.

5.6 The holder is responsible for compliance with the provisions for *Duty of care and remediation of damage* in accordance with Section 28 of National Environmental Management Act (NEMA), Act no. 107 of 1998 as amended. Determination of damage vests in this Department.

5.7 All correspondence pertaining to this application must clearly include the reference number: DM/S24G/0001/2016.

#### 5.8 Notification to interested and affected parties

5.8.1 The holder of the EA must notify all registered interested and affected parties, in writing and within **fourteen 14 calendar days from date of** the Department's decision to authorise the activity.

5.8.2 The notification referred to must –

5.8.2.1 Specify the date on which the authorisation was issued;

5.8.2.2 Inform the interested and affected party of the appeal procedure provided for in the National Appeal Regulations, 2014 as amended on 07 April 2017; and,

5.8.2.3 Advise the interested and affected party that a copy of the authorisation will be furnished on request.

#### 5.9 Environmental Management Programme (EMPr)

5.9.1 The Environmental Management Programme (EMPr) prepared by Shangoni Management Services (Pty) Ltd, dated April 2017 and amended June 2020 for the operation of the project complies with section 24N of NEMA and Appendix 4 of the EIA Regulations, 2014. This EMPr is hereby **approved** and must be implemented.

5.9.2 The mitigation measures recommended in all the specialist studies undertaken must be adhered to and included in the EMPr.

5.9.3 The EMPr must be kept on site during all phases of the development.

5.9.4 Non-compliance with the approved EMPr will constitute non-compliance with the conditions of this EA.

5.9.5 The EMPr is considered as an extension of the EA. Each official and/or worker operating on site must be educated about the EMPr and made aware of his/her responsibilities. Proof of this must be attached to the first audit report.

5.9.6 The approved EMPr must be:

5.9.6.1 Made binding on all parties operating on the sit; and,

5.9.6.2 Included in all contractual documentation for the operational phase of the development.

#### Monitoring

5.10 Authorised officials from this Department retain the right to inspect the development on an adhoc basis.

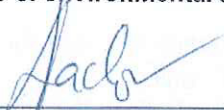
#### Operation of the activity

5.11 The recommendations as contained in the Atmospheric Impact Report, prepared by Shangaoni Management Services (Pty) LTD dated June 2016 must be implemented on site.

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- 5.12 Measures must be implemented such that emissions are minimised throughout the lifespan of the project. These measures may include:
- 5.12.1 the suitable use of filters for particulates;
  - 5.12.2 the prompt repair of abatement equipment; and
  - 5.12.3 Continuous maintenance programme to avoid break downs or diminished performance.
- 5.13 Should the need arise to install/construct any further structures on site, then the holder of the EA must contact the Control Environmental Officer: Environmental Impact Assessment Component in writing within **fourteen (14) days** prior to commencement of the activity to determine requirements, if any as per contact details provided in condition 4.2 herewith.

Date of environmental authorisation: 12 November 2020



for Head of Department

KZN Department of Economic Development Tourism and Environmental Affairs

Signed by: Ms. Vanessa Maclou

Designation: District Manager

District: eThekweni

## Annexure 1: Reasons for Decision

### 1) Project description

Olde World Foundry is a non-ferrous and ferrous foundry is situated at 26 Anderson Road, Spurwing Industrial Park, Hammersdale, located within the eThekweni Municipality Refer to **Annexure 2: Locality Map** and **Annexure 3: Site layout plan**. The foundry produces iron, aluminium, brass- and bronze castings. The main operations in the production process include receiving and handling of raw materials, melting of metals, manufacturing of sand moulds, casting of metal into sand moulds, breaking of sand moulds, fettling (grinding/cleaning of castings), and dispatch of castings.

Olde World Foundry was established in 2005. At the time of establishment the applicant did not obtain and environmental authorisation nor an Air Emission Licence.

### 2) Information considered in making the decision

In reaching its decision, the Department took, *inter alia*, the following into consideration:

- a) The information contained in the S24G application form, prepared by Shangoni Management Services, dated 13 June 2016;
- b) The information contained in the S24G Report, prepared by by Shangoni Management Services, dated September 2018;
- c) Response to eThekweni Municipality Health Unit submitted by Mssers Coex Environmental Planners dated 11 March 2019;
- d) Comments from the eThekweni Municipality, dated 10 August 2017;
- e) Comments from the Department of Water and Sanitation dated 26 September 2017 and,
- f) The objectives and requirements of relevant legislation, policies and guidelines, including section 2 of the National Environmental Management Act, Act No. 107 of 1998, as amended.

### 3) Key factors considered in making the decision

All information presented to the Department was taken into account in the Department's consideration of the application. A summary of the issues which, in the Department's view, were most significant is set out below:

### 4) NEMA EIA Regulations and NEMAQA (AEL) Link

The Department has considered the air quality impacts in the decision making process and is satisfied that pollutants associated with the project will be adequately addressed. The emission of pollutants is subject to the National Environmental Management: Air Quality Act: Act No. 39 of 2004, as amended and therefore these impacts will be managed under the Atmospheric Emission Licence.

### 5) Objectives of integrated environmental management

The Department is satisfied that, subject to compliance with the conditions contained in the EA, the general objectives of integrated environmental management laid down in Chapter 5 of the National Environmental Management Act (NEMA), Act No. 107 of 1998) will be met and that any potentially detrimental environmental impacts resulting from the activity can be mitigated to acceptable levels.

**6) Need and desirability**

- a. The ecological impacts of the construction of the Spurwing Industrial park took place when it was initially constructed in the late 1900's, Olde World Foundry is a tenant within the Spurwing Industrial park and moved into the building in 2005 (after construction of the Spurwing Industrial park). Therefore the Foundry operation is suitably located within an industrial complex. The establishment of the Olde World Foundry
- b. The Department of Trade and Industry (dti), has confirmed that the National Foundry Technology Network (NFTN) is an initiative of the dti aimed at development of the foundry industry. As part of the Industrial Policy Action Plan (IPAP), the dti has prioritised the foundry industry as key in the resuscitation of the local manufacturing sector.
- c. Olde World Foundry, will result in equitable (intra and inter- generational), impact distribution as the socio-economic impact will be sustainable in the short and long term, as the foundry is supported by the dti.

**7) Public Participation**

It is the opinion of the Department that the requirements of the public participation process have been complied with adequately and the comments received from organs of state and interested and affected parties have been included in the Amended S24G Assessment report received by the Department, dated 04 May 2018.

**8) Emission Inventory Results**

The emission inventory for Olde World Foundry identifies the fettling area as the primary source for fugitive Particulate Matter 10 (PM10). This supports the observations made during the site visit on 12 May 2016.

An emission monitoring survey was conducted by VR Environmental Consultants on Olde World Foundry's stack. The emission monitoring survey found that emissions from the stack were compliant to the minimum emission standards as specified under Category 4: Metallurgical Industry, Subcategory 4.10: Foundries, Part 3 of General Notice (GN) 893, published on the 22nd of November 2013 in Government Gazette (GG).

**9) Findings**

After consideration of the information and factors listed above, the Department made the following findings –

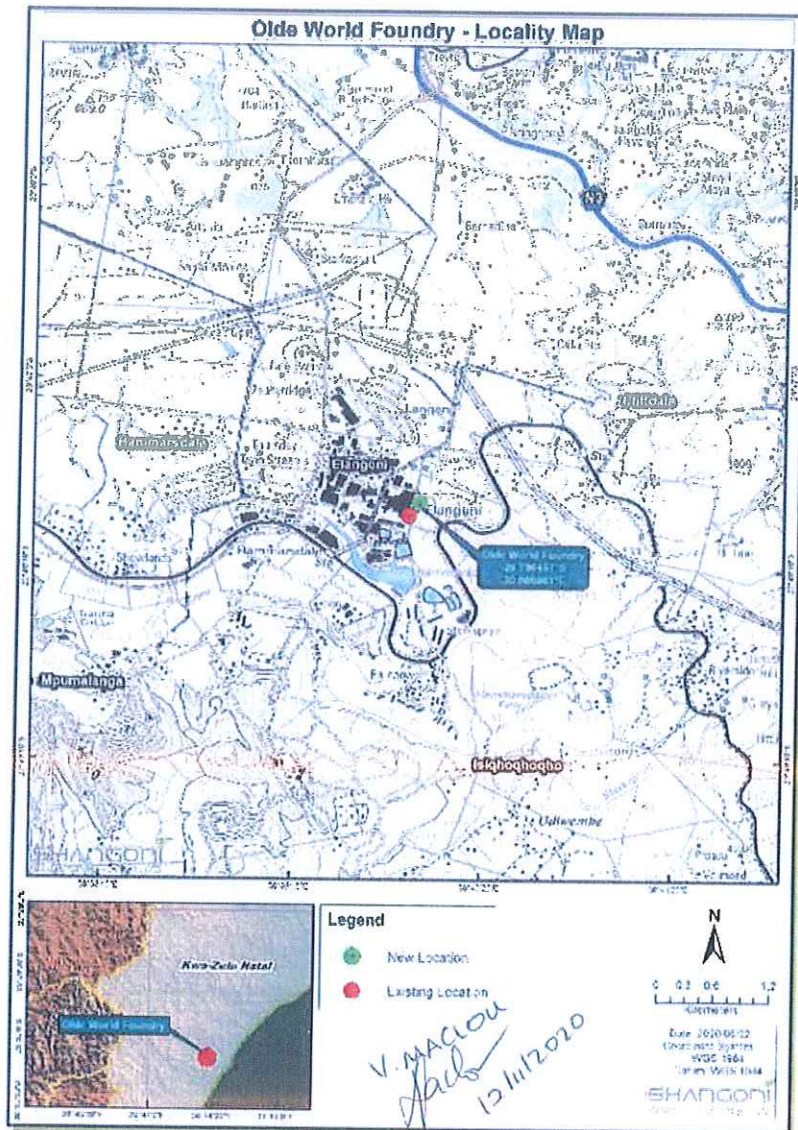
- a) The identification and assessment of impacts are detailed in the S24G Assessment report received by the Department, dated 04 May 2018 prepared by Ms. Adrienne Edgson is sufficient in terms of the assessment of the key identified issues and impacts have been completed.
- b) Additional information received by this Department 26 March 2019;
- c) The information contained in the Report and additional information as stated above is accurate and credible. The mitigation measures for identified and assessed impacts are adequate.
- d) The methodology used in assessing the potential impacts identified in the Scoping Report received by the Department, dated 01 November 2017 has been adequately indicated.
- e) The need and desirability has been identified is acceptable and the public participation process was adequately addressed.
- f) All recommendations by the specialists will be adopted, implemented and adhered during the operational phases of the development.

In view of the above, the Department is satisfied that, subject to compliance with the conditions contained in the environmental authorisation, the activity will not conflict with the general objectives of integrated environmental management laid down in Chapter 5 of the National Environmental Management Act, 1998 and

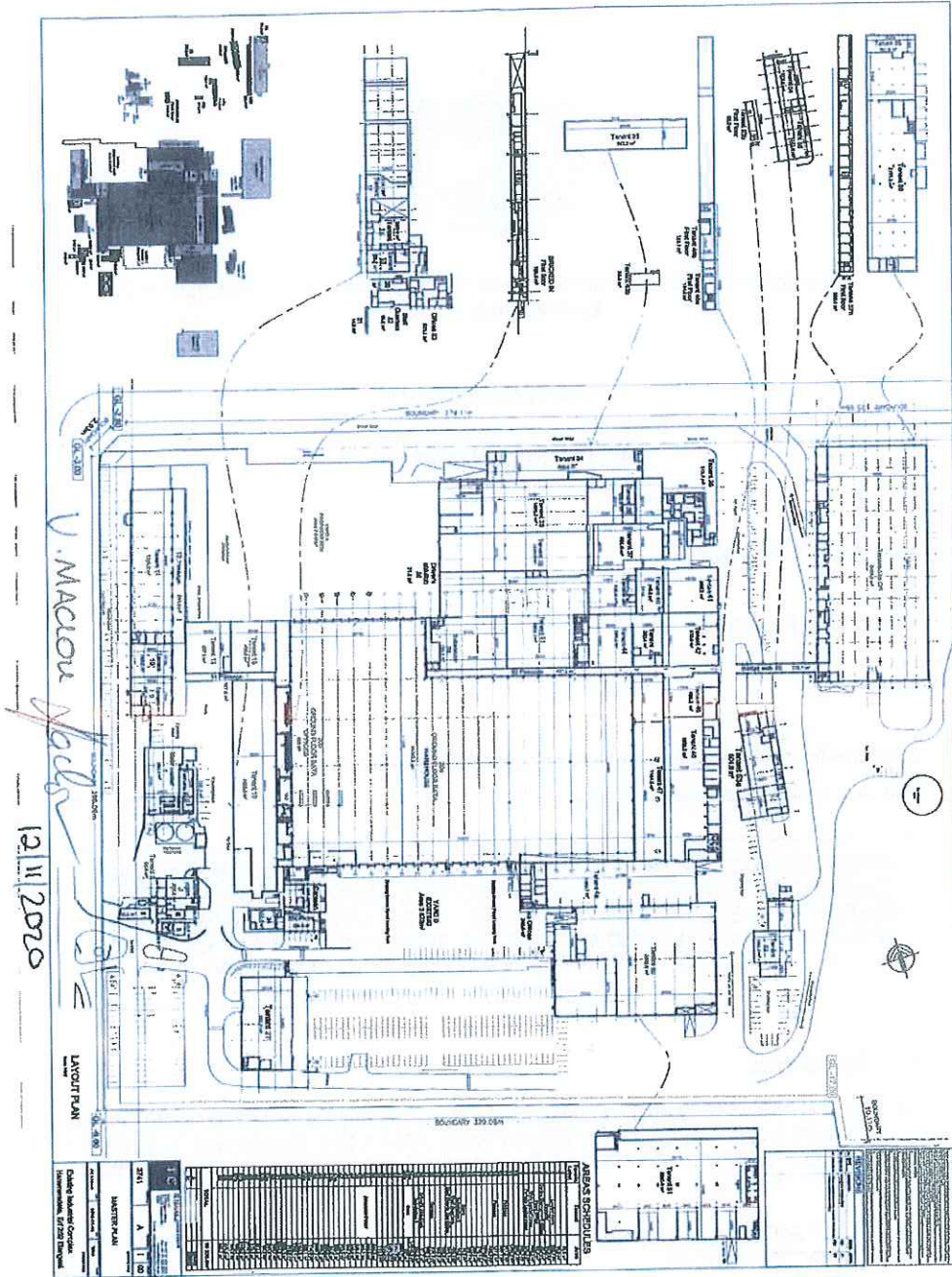
that any potentially detrimental environmental impacts resulting from the activity can be mitigated to acceptable levels. **The rectification of unlawful installation of crematorium infrastructure is accordingly granted.**



## Annexure 2: Locality Map



### Annexure 3: Site layout plan



## Annexure 4: Appeal Decision



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

**DM/S24G/0001/2016**

### **APPEAL DECISION**

**In the matter between:**

**Olde World Foundry cc**

**Appellant**

**and**

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

**Respondent**

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**APPEAL DECISION OF THE HONOURABLE MEC FOR ECONOMIC DEVELOPMENT,  
TOURISM AND ENVIRONMENTAL AFFAIRS KWA ZULU-NATAL IN THE APPEAL  
AGAINST THE SECTION 24G ADMINISTRATIVE FINE ISSUED IN RESPECT OF THE  
APPLICATION FOR RECTIFICATION OF THE UNLAWFUL COMMENCEMENT OF A  
LISTED ACTIVITY ON PORTION 8 OF ERF 50, CATO RIDGE.**

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#### **1. Background**

- 1.1. This is an appeal against an administrative fine levied by the Department of Economic Development, Tourism and Environmental Affairs (the Department) in terms of section 24G(4) of the National Environmental Management Act (Act No. 107 of 1998) (NEMA).
- 1.2. The Appellant has a non-ferrous and ferrous foundry situated in Spurwing Industrial Park, Hammarsdale.
- 1.3. The Appellant approached the eThekweni Municipality in 2015 for an Air Emissions License (AEL) and were informed by the Municipality that they required an AEL for the listed activity: Category 4: Metallurgical Industry, Subcategory 4.10: Foundries.\*

\* GN 883 of 22 November 2013 in terms of NEMA: Air Quality Act 39 of 2004 as amended by GN551 of 12 June 2015 and GN 1207 of 31 October 2018.

- 1.4. The Department confirmed in 2016 that the Appellant had commenced a listed activity without authorisation and advised the Appellant to commence the rectification process in terms of S24G of NEMA.
- 1.5. The Appellant then proceeded to appoint Shangoni Management Services (Pty) Ltd as their EAP to prepare the AEL application and the application in terms of Section 24G of NEMA.
- 1.6. The activity alleged to have commenced unlawfully is:  
Activity 6 of Listing Notice 2:  
*"The development of facilities or infrastructure for any process or activity which requires a permit or license or an amended permit or license in terms of national or provincial legislation governing the generation or release of emissions, pollution or effluent....."*
- 1.6. In response thereto and in accordance with section 24G(2) of NEMA, the Department notified the Appellant on the 6<sup>th</sup> May 2019 that they would have to pay an administrative fine of R625 000 (Six hundred and twenty five thousand rand) prior to the reviewing of their application.
- 1.6. An appeal was lodged by the Appellant on the 23 May 2019. The Appellant has lodged an appeal against the amount of the administrative fine and has requested that it be reviewed and reduced to an affordable amount.

## 2. Grounds for appeal

The Appellant makes the following submissions in support of their appeal:

- 2.1 With regard to environmental impact, the Appellant states that:
  - 2.1.1 Both the S24G assessment report and atmospheric impact assessment report have found the mitigation measures that will be implemented will ensure manageable low and medium impacts. The Appellant provided proof of this by attaching the impact assessment report, the geohydrological study, the wetland study and the storm water management plan to their Appeal;
  - 2.1.2 The Appellant also provided proof of stack emissions and samples for dust, respirable dust and metals which were below the minimum emission standards.
- 2.2 In respect of social and economic benefits of the operation the Appellant submits that:
  - 2.2.1 The Department of Trade and Industry (DTI) has prioritised the foundry industry as key in boosting the local manufacturing industry and because of its labour intensity is critical for employment creation. The Appellant provided a letter from the DTI dated 22<sup>nd</sup> May 2019 confirming this. The DTI has also confirmed that close to R400 000 has been spent on environmental consultancy fees and specialist studies by the National Foundry Technology Network as part of its commitment to environmental compliance. The DTI points out that the Appellant's business is located in an economically depressed area and that the fine that has been levied represents a significant portion of the company's turnover and closure of the business would be unavoidable if it were imposed. This would result in significant job loss. In light of this the DTI has requested the review of the administrative fine.

\* R. 884 Listing notice 2: List of activities and competent authorities identified in terms of sections 24 (2) and 24 D.

- 2.2.2 The business employs nineteen permanent employees who support more than a hundred dependents and this is within an area where there is a 60% unemployment rate.
- 2.2.3 The Appellant points out that other socio-economic benefits include the fact that both local suppliers and local customers benefit from the businesses quick turnaround times which has a positive knock on effect to other business.
- 2.3 The Appellant requests that the following mitigating circumstances be considered:
- 2.3.1 The unlawful operation of the foundry without the necessary environmental authorisation is a *bona fide* oversight and not a deliberate flouting of the law.
- 2.3.2 Upon finding out that the business was not compliant; the Appellant immediately put steps in place to rectify the situation.
- 2.3.3 There has been no construction on site as the foundry operates within an existing industrial complex.
- 2.3.4 The Appellant submits it is a legally compliant business with all necessary statutory payments such as VAT, PAYE, SDL and UIF up to date.
- 2.4 Finally, the Appellant submits that it is committed to sustainable development and to this end has embarked on a number of measures to improve the environment such as:
- 2.4.1 The installation of a sand plant to recycle and reduce sand wastage;
- 2.4.2 The installation of a dust extraction system to reduce dust emissions and particulates;
- 2.4.3 Contracting a waste removal company to remove sand waste;
- 2.4.4 Implemented storm water management measures on site.
- 2.5 The Appellant has further committed to maintaining a close relationship with authorities as well as its environmental consultants in order to ensure no future transgressions occur on site.

### **3. Submissions made by the Department**

The Department submitted the following comments on the fine levied:

- 3.1 The Appellant only became aware of the necessity of an environmental authorisation when they applied for an AEL and upon doing so has been very cooperative with the Department and willing to comply with all instructions in order to rectify the situation;
- 3.2 The Appellant operates a small concern and the impacts on the environment are minimal. The purpose of the assessment and necessity for the AEL is precautionary in order to monitor and mitigate any emissions from the site but currently these are seen to be negligible.
- 3.3 The fine that was levied against the business was in accordance with that pertaining to a company as the business operates in a close corporation and this is why the fine is large. The Department agrees that such a large fine will have a crippling effect on the business but they were bound by the provisions of the fine calculator.

### **4. Consideration of grounds of appeal**

- 4.1 I have considered the submissions made by the Appellant and base my decision set out in paragraph 5 hereunder on certain key issues unique to this appeal.

- 4.2 The S24G fine imposed by the Department was calculated using the "S24G fine calculator", a calculator developed by the National Department of Environment and applied by all provinces.
- 4.3 The fine calculator distinguishes between "Individuals" and "Companies, Government and Parastatal". The fines for the latter category, comprising juristic entities are substantially more than for "Individuals" who are defined as natural persons.
- 4.4 The Appellant is a close corporation comprising two persons through which corporation the Appellant intends to operate the foundry. This has been confirmed by perusing the CK2 documents of the CC which confirm the only members of the CC to be Mr Brad Marals and Mr Vincent Farrar.
- 4.5 As a close corporation is a juristic person with limited liability it is treated as a company in terms of the fine calculator for the purposes of levying a S24G fine. This is what has resulted in the hefty fine that has been issued to the Appellant.
- 4.6 The intention of the differentiation between fines for individuals and companies could not have been to yield the result that has occurred in this particular case where such a small entity has been fined what a large corporation with an extensive turnover and operation would have been fined.
- 4.7 I am of the view that in such circumstances the categorisation of the Appellant's close corporation as a "company" in terms of the S24G calculator should be considered with some circumspect. Factors considered should include:
- 4.7.1 The company in question is a close corporation with only two members. The CC intends operating a foundry which will have a limited turnover;
- 4.7.2 The Appellant is neither a private company or close corporation with a multimillion rand turnover nor a public company with many directors and shareholders;
- 4.7.3 The Appellant only operates in a close corporation and not as an individual presumably as this entity is the most practical for the purposes of limited liability and taxation relating to a close corporation. A copy of the Appellant's CK2 document reveals that the Appellant comprises a close corporation with only two members;
- 4.7.4 The implementation of a fine of the magnitude imposed will in all likelihood have dire financial consequences on such a small operation;
- 4.7.5 A bankrupt CC would fail to pay the administrative fine imposed by the Department; and the purpose of the S24G process is not to punish Applicants to such an extent that they are likely to lose their business. This would indeed defeat the object of applying for rectification of the activity in the first place.
- 4.7.6 Given what I have stated in paragraph above, I believe it would be far fairer to fine the Appellant as an individual. The fine for an individual in the circumstances would be the sum of R25 000.
- 4.8 In addition, my decision below is also based on the following factors:
- 4.8.1 The Appellant's intentions appear *bona fide* in that they would not have approached the municipality with the intention of obtaining an AEL if they intended to flout the law;
- 4.8.2 The Appellant acted immediately to rectify the situation by pursuing a S24G application upon hearing that they were conducting an activity without authorisation and have spent a considerable amount of time and effort in pursuing the correct course of action and obtaining the necessary specialist reports and assessments in order to ensure compliance;

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- 4.8.3 The Department has confirmed both the Appellant's cooperation as well as the fact that the Appellant has to date had little impact on the receiving environment;
- 4.8.4 The Appellant has embarked on a number of measures in the interim to ensure that there site is as environmentally compliant as possible and undertakes to continue to liaise with the relevant authorities to ensure that it continues to be compliant.

**5. Appeal Decision**

Therefore, having regard to the submissions made above and having reconsidered the fine accordingly, the following is concluded:

- 5.1. The administrative fine of R625 000 (Six hundred and twenty five thousand rand) imposed by the Department is hereby reduced to the sum of R25 000 (Twenty Five thousand rand) for the reasons contained in paragraph 4 above.

SIGNED AT PIETERMARITZBURG ON THIS 16 DAY OF July 2019.

  
Ms. NOMUSA DUBE-NCUBE, MPL  
MEC FOR ECONOMIC DEVELOPMENT, TOURISM AND ENVIRONMENTAL AFFAIRS  
KWAZULU-NATAL

Annexure L: Heritage impact assessment (not applicable as the site is an existing site in Spurwing Industrial Park)





**FNB**

## **NOTIFICATION OF PAYMENT**

To Whom It May Concern:

First National Bank hereby confirms that the following payment instruction has been received:

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Date Actioned : 2021/11/10  
Time Actioned : 09:15:04  
Trace ID : CXVWLJXH

### **Payer Details**

Payment From : Olde World Foundry Cc  
Cur/Amount : 800.00

### **Payee Details**

Recipient/Account No : . . 356024  
Name : KZN Amafa (24G)  
Bank : ABSA Bank  
Branch Code : 630330  
Reference : OWF Section 24G rectification

*END OF NOTIFICATION*

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To authenticate this Payment Notification, please visit the First National Bank website at [fnb.co.za](http://fnb.co.za), select the "Verify Payments" link and follow the on-screen instructions.

Our customer (the payer) has requested First National Bank Limited to send this notification of payment to you. Should you have any queries regarding the contents of this notice, please contact the payer. First National Bank Limited does not guarantee or warrant the accuracy and integrity of the information and data transmitted electronically and we accept no liability whatsoever for any loss, expense, claim or damage, whether direct, indirect or consequential, arising from the transmission of the information and data.

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