



KWAZULU-NATAL PROVINCE

ECONOMIC DEVELOPMENT, TOURISM
AND ENVIRONMENTAL AFFAIRS
REPUBLIC OF SOUTH AFRICA

DIRECTORATE: ENVIRONMENTAL SERVICES

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Enquiries: Ms N Ndebele
Telephone: 033 347 1820
Reference: SrC22/ums/ill/27
Date: 10 February 2023

Mr Noel Kirk Smith
60-62 Tomlinson Road
Remainder of Erf 353
Prestbury

EMAIL: seonaidgh.holt@fqml.com

BY HAND

Dear Sir,

NOTICE OF INTENTION TO ISSUE A COMPLIANCE NOTICE IN TERMS OF SECTION 31L OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 of 1998) (“NEMA”) AS AMENDED IN RESPECT TO THE COMMENCEMENT OF A LISTED ACTIVITIES PRIOR TO OBTAINING AN ENVIRONMENTAL AUTHORISATION AT THE OLD MAYOR’S HOUSE SITUATED AT THE REMAINDER OF ERF 353, 60-62 TOMLINSON ROAD, PRESTBURY WITHIN UMGUNGUNDLOVU DISTRICT MUNICIPALITY.

1. I, Kim Lea van Heerden, in my capacity as a Grade 1 Environmental Management Inspector, having considered the matter and am of the view that Mr Noel Kirk Smith in his capacity as the land owner must be issued with a Compliance Notice in terms of Section 31L of the NEMA. The Compliance Notice that I intend to issue relates to your failure to adhere to the provisions of the law in respect of activities conducted at the Old Mayor’s House situated at the Remainder of Erf 353, 60-62 Tomlinson Road, Prestbury within uMgungundlovu District Municipality.

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|---|--|-----------------------------|------------------------|---------------------------|
| Economic Development, Tourism & Environmental Affairs | Pre-Compliance Notice: OLD MAYOR’S HOUSE | Ref No: SrC22/ums/ill/27 | Initials: <i>ML</i> | Page 1 of 11 <i>ML</i> |
|---|--|-----------------------------|------------------------|---------------------------|

BACKGROUND

- 1.1 A query was received by the Department of Economic Development, Tourism and Environmental Affairs (hereinafter referred to as “the Department”) on 1 December 2022 regarding the alleged construction of a dam within a watercourse.
- 1.2 On 9 December 2022, officials of the Department viz. Ms Nonhle Ndebele and Ms Syathokoza Hlophe conducted a site inspection.
- 1.3 During the site inspection, the following, *inter alia*, was observed:
 - 1.3.1 A dam/pond has been constructed.
 - 1.3.2 A watercourse (stream) crossing through the dam/pond.
 - 1.3.3 Stockpile of concrete cylinders stored adjacent to the dam/pond.
- 1.4 On site, the officials met with Ms Fundiswa Khumalo, Tsala Environmental Consultant, Mr Siyabonga Buthelezi, the site Supervisor and Mr Mfundiso Mthethwa, Capital Management employee, who advised of the following:
 - 1.4.1 The property is privately owned by Mr and Mrs Smith.
 - 1.4.2 Previously the site was the mayor’s house and is declared as a heritage site.
 - 1.4.3 Currently, the house is being renovated in consultation with Amafa into a Bed and Breakfast (BnB) as the owner wants it to remain as a heritage site.
 - 1.4.4 Whilst on site (Amafa) noticed the construction of a pond and requested that the Environmental Assessment Practitioner (EAP) cease construction and confirm with the Department whether there are any triggers in terms of NEMA.
 - 1.4.5 The Department was advised that there was a smaller pre-existing pond on site in the same location.
 - 1.4.6 Due to the dam/pond being clogged and old, the land owner requested the contractor to reconstruct it using a new design.
 - 1.4.7 The activity of clearing and construction of a dam/pond commenced in August 2022.

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|---|--|-----------------------------|------------------------|--------------|
| Economic Development, Tourism & Environmental Affairs | Pre-Compliance Notice: OLD MAYOR’S HOUSE | Ref No: SrC22/ums/ill/27 | Initials: <i>MA</i> | Page 2 of 11 |
|---|--|-----------------------------|------------------------|--------------|

- 1.4.8 The dam/pond is constructed within the watercourse and will be filled using this watercourse.
- 1.4.9 The EAP could not provide factual information on site regarding the pond, her reason was when the renovations project initially commenced she wasn't the appointed EAP.
- 1.4.10 She further stated that factual information regarding the history and proposed development regarding the pond was submitted in a file to the Environmental Impact Assessment (EIA) component.
- 1.4.11 The official instructed that the EAP cease operation until all factual information is received and assessed to conclude on the matter.

1.5 The Department's investigation revealed the following:

- 1.5.1 The information provided to the EIA component was insufficient as it contained limited information requested during the site inspection.
- 1.5.2 The email response dated 26 January 2023 from the EAP remains insufficient as it contains no information relevant to what was requested during the site inspection and proof thereof.
- 1.5.3 There is no environmental authorisation issued for this activity or Maintenance Management Plan approved by the provincial Department of Economic Development, Tourism and Environmental Affairs for the construction of a dam/pond within a watercourse.

DETAILS OF NON-COMPLIANCE

2. Following the site inspection conducted on 1 December 2022, I have reasonable grounds for believing that you, Mr Noel Kirk Smith have failed to adhere to the provisions of the law in respect of activities conducted at the Remainder of Erf 353, 60-62 Tomlinson Road, Prestbury, Pietermaritzburg as follows:

| | Condition number/section number | Condition/Legal Provision (i.e. wording of the section/condition) | Finding/Observation/Requisition |
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| a | National Environmental | Notwithstanding any other Act, no person | There are no records to show that an Environmental |

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| | Management Act, 1998 (Act 107 of 1998) (as amended) Section 24F (1)(a) | may - (a). commence an activity listed or specified in terms of section 24(2)(a) or (b) unless the competent authority or the Minister or Minerals and Energy, as the case may be, has granted an environmental authorisation for the activity. | Authorisation has been issued by this Department for the above-mentioned activities at the Remainder of Erf 353, 60-62 Tomlinson Road, Prestbury in Pietermaritzburg. |
| b | Environmental Impact Assessment Regulations, 2014 (as amended) Activity 12 of GNR 327 ("Listing Notice 1") dated 7 April 2017 | The development of— (i) Dams or weirs, where the dam or weir, including infrastructure and water surface area, exceeds 100 square metres; Where such development occurs- (a) within a watercourse | The dam/pond structure and water surface constructed exceeds the legislated threshold and is within a watercourse. |
| | Environmental Impact Assessment Regulations, 2014 (as amended) Activity 19 of GNR 327 ("Listing Notice | The infilling or depositing of any material of more than 10 cubic metres into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock of more | The infilling/ depositing of more than 10 (ten) cubic metres of material into a watercourse resulting from the activities that have been undertaken within the watercourse and there are no records to show that a |

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| | 1") dated 7 April 2017 | <p>than 10 cubic metres from a watercourse;</p> <p>but excluding where such infilling, depositing, dredging, excavation, removal or moving-</p> <p>(a) will occur behind a development setback;</p> <p>(b) is for maintenance purposes undertaken in accordance with a maintenance management plan;</p> <p>(c) falls within the ambit of activity 21 in this Notice, in which case that activity applies..."</p> | <p>Maintenance Management Plan was approved for such an activity at the Remainder of Erf 353, 60-62 Tomlinson Road, Prestbury Pietermaritzburg.</p> |
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INTENDED INSTRUCTIONS

3. In accordance with Regulation 8(2) of the EMI Regulations, you are afforded an opportunity to make written representations within **seven (7)** calendar days of receipt of this notification, if you are of the view that there are any compelling and substantial reasons for me not to exercise my powers in terms of Section 31L of the NEMA to issue a Compliance Notice which will require you to, inter alia:

3.1 Within **14 (fourteen) days** of issuing of the Compliance Notice, appoint at your cost, an independent and suitably qualified Environmental Assessment Practitioner (EAP) with expertise in hydrology to investigate, evaluate and assess the impact of the above mentioned activity on the watercourse and the environment, report thereon to this Department;

3.2 If there was a pre-existing dam the EAP/Hydrologist must:

3.2.1 Compile an Assessment Report which must be submitted within **forty-five (45)** days of the appointment of the Environmental Assessment Practitioner/Hydrologist, at the following address: 8

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|---|--|-----------------------------|------------------------|--------------|
| Economic Development, Tourism & Environmental Affairs | Pre-Compliance Notice: OLD MAYOR'S HOUSE | Ref No: SrC22/ums/ill/27 | Initials: <i>ML</i> | Page 5 of 11 |
|---|--|-----------------------------|------------------------|--------------|

Warwick Road, Oak Park, Pietermaritzburg; or, Private Bag X07, Cascades, Pietermaritzburg, 3202; and must:

- i) confirm and provide proof of the pre-existing structures including the dam design and its dimension,
- ii) confirm and provide proof of the stream location and flow before and after conducting the maintenance/expansion activities;
- iii) confirm the dimension and final structure of the dam constructed within a watercourse;
- iv) assess and evaluate all the impacts and provide appropriate mitigation, remediation measures required to avoid and/or minimize these environmental impacts and which may include rehabilitation;
- v) establish time frames for these measures to be implemented, and include ongoing monitoring process to evaluate the effectiveness of these measures and the impact on the watercourse and environment;
- vi) Consult and obtain correspondence with the Department of Water and Sanitation and Msunduzi Environmental Management Unit regarding the dam/pond maintenance/expansion activities conducted on site and incorporate their comments into the Assessment Report.
- vii) Upon approval of the Assessment Report by the Department, diligently adhere to and implement the recommendations of the Assessment Report within **fourteen days (14)** of receipt of approval.

3.3 If the dam is a new activity the appointed EAP/ Hydrologist must:

3.3.1 Compile a Rehabilitation Plan which must be submitted within **forty-five (45) days** of the appointment of the Environmental Assessment Practitioner/Hydrologist, at the following address: 8 Warwick Road, Oak Park, Pietermaritzburg; or, Private Bag X07, Cascades, Pietermaritzburg, 3202; and must:

- i) confirm the dimension and final structure of the dam/pond;
- ii) confirm and provide proof of the stream location and flow before and after conducting the activities


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| Economic Development, Tourism & Environmental Affairs | Pre-Compliance Notice: OLD MAYOR'S HOUSE | Ref No: SrC22/ums/ill/27 | Initials: <i>ll</i> | Page 6 of 11 |
|---|--|-----------------------------|------------------------|--------------|

- iii) provide methodology to be used for decommissioning of the constructed dam/pond;
- iv) establish time frames for these measures to be implemented, and include ongoing monitoring process to evaluate the effectiveness of these measures and the impact on the watercourse and environment;
- vi) Consult and obtain correspondence with the Department of Water and Sanitation and Msunduzi Environmental Management Unit regarding the dam/pond construction activities conducted on site and incorporate their comments into the Rehabilitation Plan.
- vii) Upon approval of the Rehabilitation Plan by the Department, diligently adhere to and implement the recommendations of the Rehabilitation Plan within **fourteen days (14)** of receipt of approval.

3.3 Furthermore, you are prohibited from continuation with the construction activities or undertaking any activities which may require Environmental Authorisation and the usage of unlawfully constructed structures is strictly prohibited pending your response to this pre-compliance notice.

PROCEDURAL ARRANGEMENTS

4. In the compliance notice, should you wish me to vary the compliance notice, including extending the period to which it relates, you may make representations to me as Environmental Management Inspector Grade 1 to do so within **forty-eight (48) hours** of receipt of the compliance notice, at the following address: **KZN Department of Economic Development, Tourism & Environmental Affairs**, 8 Warwick Road, Oak Park, Pietermaritzburg; or, Private Bag X07, Cascades, Pietermaritzburg, 3202.
5. In the compliance notice, if you wish to lodge an objection to the compliance notice, you may do so by making representations in writing, to the MEC within **30 days** of receipt of the compliance notice.

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|---|--|-----------------------------|--|--------------|
| Economic Development, Tourism & Environmental Affairs | Pre-Compliance Notice: OLD MAYOR's HOUSE | Ref No: SrC22/ums/ill/27 | Initials:  | Page 7 of 11 |
|---|--|-----------------------------|--|--------------|

6. You may also make representations to the MEC to suspend the operation of the compliance notice pending finalisation of the objection, at the following address:
**Department of Economic Development, Tourism & Environmental Affairs,
 Private Bag X 9152, Pietermaritzburg 3200 or hand delivered to no. 270
 Jabu Ndlovu Street, and Pietermaritzburg 3200.**
7. Irrespective of any representations you may make to me or to the MEC, you must comply with the compliance notice when it has been issued to you unless the MEC agrees to suspend the operation of the compliance notice.

FAILURE TO COMPLY

8. I am of the view that you have failed to comply with the statutory provisions contemplated in Column 1, which carry the sanction or penalty contemplated in Column 2, of the following Table:

| Act / Regulation name and Section / Regulation Number | Offence and penalty |
|---|---|
| Section 49A (1))(a) of the National Environmental Management Act, 1998 (Act 107 of 1998) (as amended) | A person is guilty of an offence if that person- (a) commences with an activity in contravention of section 24F (1); |
| Section 49A (1))(e) of the National Environmental Management Act, 1998 (Act 107 of 1998) (as amended) | (e) unlawfully and intentionally or negligently commits any act or omission which causes significant pollution or degradation of the environment or is likely to cause significant pollution or degradation of the environment; |
| Section 49A (1))(k) of the | (k) fails to comply with or contravenes a |

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| National Environmental Management Act, 1998 (Act 107 of 1998) (as amended) | compliance notice issued in terms of section 31L; |
| Section 49B of the National Environmental Management Act, 1998 (Act 107 of 1998) (as amended) | (1) A person convicted of an offence in terms of section 49A (1) (a), (b), (c), (d), (e), (f) or (g) is liable to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, or to both such fine or such imprisonment. |
| Section 49B of the National Environmental Management Act, 1998 (Act 107 of 1998) (as amended) | (2) A person convicted of an offence in terms of section 49A (1) (i), (j) or (k) is liable to a fine not exceeding R5 million or to imprisonment for a period not exceeding 5 years, and in the case of a second or subsequent conviction to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, and in both instances to both such fine and such imprisonment. |

9. Should you fail to comply with section 3 of this pre-compliance notice above, which is to make representations in writing to me within **seven (7)** calendar days of receipt of this notice of intention; a compliance notice will be issued.
10. Please be reminded that failure to comply with a Compliance Notice when it has been issued, you will have committed an additional offence in terms of section 49A(1)(k) of the NEMA.
11. We wish to make it clear that the instructions contained herein are made in the interest of responsible environmental management and with a view to a co-operative resolution of the issue. Depending on the outcome of the representations made in this regard, the Department will decide upon a way

forward regarding this matter. The submission of the requested information above does not imply that no further action may or will be taken against you.

12. If you are unclear about any aspect of this notice of intention to issue a compliance notice, kindly contact the person indicated for enquiries in writing as soon as possible.
13. You may avail yourself of the remedies contemplated in the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) if you wish to do so, in light of the above adverse finding on your matter.

Signed at Pietermaritzburg on this 10 day of February 2023

 (Signature)

Grade 1 Environmental Management Inspector

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|-------------------|--|
| Name | Kim Lea van Heerden |
| Address | 8 Warwick Road, Oak Park, Pietermaritzburg; or, Private Bag X07, Cascades, Pietermaritzburg, 3202 |
| Contact No | 0824617695 |

ACKNOWLEDGEMENT OF RECEIPT:

Received by Mr. /Ms. _____ on behalf of _____
at _____, on this ___ day of _____ 2023

Signature: _____

NOTICE OF INTENTION TO ISSUE A COMPLIANCE NOTICE IN TERMS OF SECTION 31L OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 of 1998) ("NEMA") IN RESPECT TO THE COMMENCEMENT OF A LISTED ACTIVITIES PRIOR TO OBTAINING AN ENVIRONMENTAL AUTHORISATION AT THE OLD MAYOR'S HOUSE SITUATED AT THE REMAINDER OF ERF 353, 60-62 TOMLINSON ROAD, PRESTBURY WITHIN UMGUNGUNDLOVU DISTRICT MUNICIPALITY.

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|---|--|-----------------------------|---------------------------------|---------------|
| Economic Development, Tourism & Environmental Affairs | Pre-Compliance Notice: OLD MAYOR'S HOUSE | Ref No: SrC22/ums/ill/27 | Initials: <i>[Signature]</i> | Page 11 of 11 |
|---|--|-----------------------------|---------------------------------|---------------|