



## KWAZULU-NATAL PROVINCE

ECONOMIC DEVELOPMENT, TOURISM  
AND ENVIRONMENTAL AFFAIRS  
REPUBLIC OF SOUTH AFRICA

### DIRECTORATE: ENVIRONMENTAL SERVICES

F270 Jabu Ndlovu Street, Pietermaritzburg, 3201  
Tel: +27 (33) 264 2515, Fax: 033 264 2680  
Private Bag X 9152  
Pietermaritzburg, 3200  
[www.kznded.gov.za](http://www.kznded.gov.za)

Enquiries: Ms. N Ndebele  
Telephone: 033 347 1820  
Reference: SrC22/ums/ill/27  
Date: 26 September 2023

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

**EMAIL:** [seonaidgh.holt@fqml.com](mailto:seonaidgh.holt@fqml.com)

**BY HAND**

Dear Sir,

**RE: THE ALLEGED 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.**

### **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.

Economic Development, Tourism & Environmental Affairs	Pre-Compliance Notice: <b>OLD MAYOR'S HOUSE</b>	Ref No: SrC22/ums/ill/27	Initials: SAH	Page 1 of 5
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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.
- 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.

Economic Development, Tourism & Environmental Affairs	Pre-Compliance Notice: <b>OLD MAYOR'S HOUSE</b>	Ref No: SrC22/ums/ill/27	Initials: SAY	Page 2 of 5
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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.

1.6 Based on the information gathered a 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 was issued to you on 10 February 2023.

1.7 A correspondence requesting an extension to produce representation to the Department was received on 15 February 2023.

1.8 On 20 February 2023, the Department received an email notification from Mr Andrew Muir, Consultant with Mr Austen Smith, Attorneys Conveyancers Notaries informing the Department that the EAP, Ms Fundiswa Khumalo, Tsala Environmental Consultants no longer has a mandate to engage with the Department regarding the compliance/ non-compliance issues on site.

1.9 A meeting was held on 27 February 2023 with Mr Andrew Muir, Consultant with Austen Smith, Attorneys Conveyancers Notaries to discuss and provide clarity on what transpired during the initial inspection and communication with the previously appointed EAP.

1.10 A correspondence letter received 28 February 2023 from Mr Andrew Smith requesting that the Compliance process be temporarily suspended and he appoint an independent EAP.

Economic Development, Tourism & Environmental Affairs	Pre-Compliance Notice: <b>OLD MAYOR'S HOUSE</b>	Ref No: SrC22/ums/ill/27	Initials: SAK	Page 3 of 5
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- 1.11 A correspondence letter dated 16 May 2023 was sent to Mr Andrew Smith stating that the Department has no objection on the request to appointment an independent EAP who will adhere to the requirements of the issued Notice of Intention to issue a Compliance Notice and representations be submitted to the Department.
- 1.12 On 23 May 2023 a correspondence letter informing the Department of the appointed EnviroPro EAP, Ms Josette Oberthoizer, was received.
- 1.13 A Statement letter compiled by the appointed EAP Ms Josette Oberthoizer and a July 2023 draft Watercourse Investigation Report compiled by Dr Bruce Scott-Shaw, NatureStamp (Pty) Ltd was received on 18 August 2023.
- 1.14 An email correspondence was sent by the Department to the EAP querying whether the Final Report will be sent through.
- 1.15 A final Watercourse Investigation Report dated July 2023 compiled by Dr Bruce Scott-Shaw, NatureStamp (Pty) Ltd for Mr Andrew Muir and Austen Smith was received on 18 September 2023.
- 1.16 Based on the review findings of the above-mentioned information the Department is of the following opinion that the establishment of the dam at the Old Mayor's House situated at the Remainder of Erf 353, 60-62 Tomlinson Road, Prestbury **does not** need an Environmental Authorisation.
- 1.17 You are advised to comply and implement recommendations made in the final Watercourse Investigation Report dated July 2023 compiled by Dr Bruce Scott-Shaw, NatureStamp (Pty) Ltd for Mr Andrew Muir and Austen Smith was received on 18 September 2023.
- 1.18 Furthermore, you are advised to contact the Department of Water and Sanitation to ascertain compliance with the National Water Act (36 of 1998), as amended.

Economic Development, Tourism & Environmental Affairs	Pre-Compliance Notice: <b>OLD MAYOR'S HOUSE</b>	Ref No: SrC22/ums/ill/27	Initials: <i>SAYC</i>	Page 4 of 5
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- 1.19 This correspondence does not exempt you from compliance with any other relevant and applicable legislation.
- 1.20 Should you need any further clarity regarding this correspondence, kindly contact the person indicated for enquiries in writing.



**Signed for Head of Department**

**Ms. S.A.X. Mzulwini**

**Environmental Management Inspector Grade 2**

**Date: 26 September 2023**

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