



REFERENCE: 14/1/1/E3/5/2/3/L1181/21

ENQUIRIES: D Mouton

BY EMAIL

POWER CONSTRUCTION (PTY) LTD
PO Box 129
Blackheath
Cape Town
7580

Email: sbothma@powergrp.co.za

For Attention: Mr Stefan Bothma

COMPLIANCE NOTICE

Dear Sir

COMPLIANCE NOTICE IN TERMS OF SECTION 31L OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998

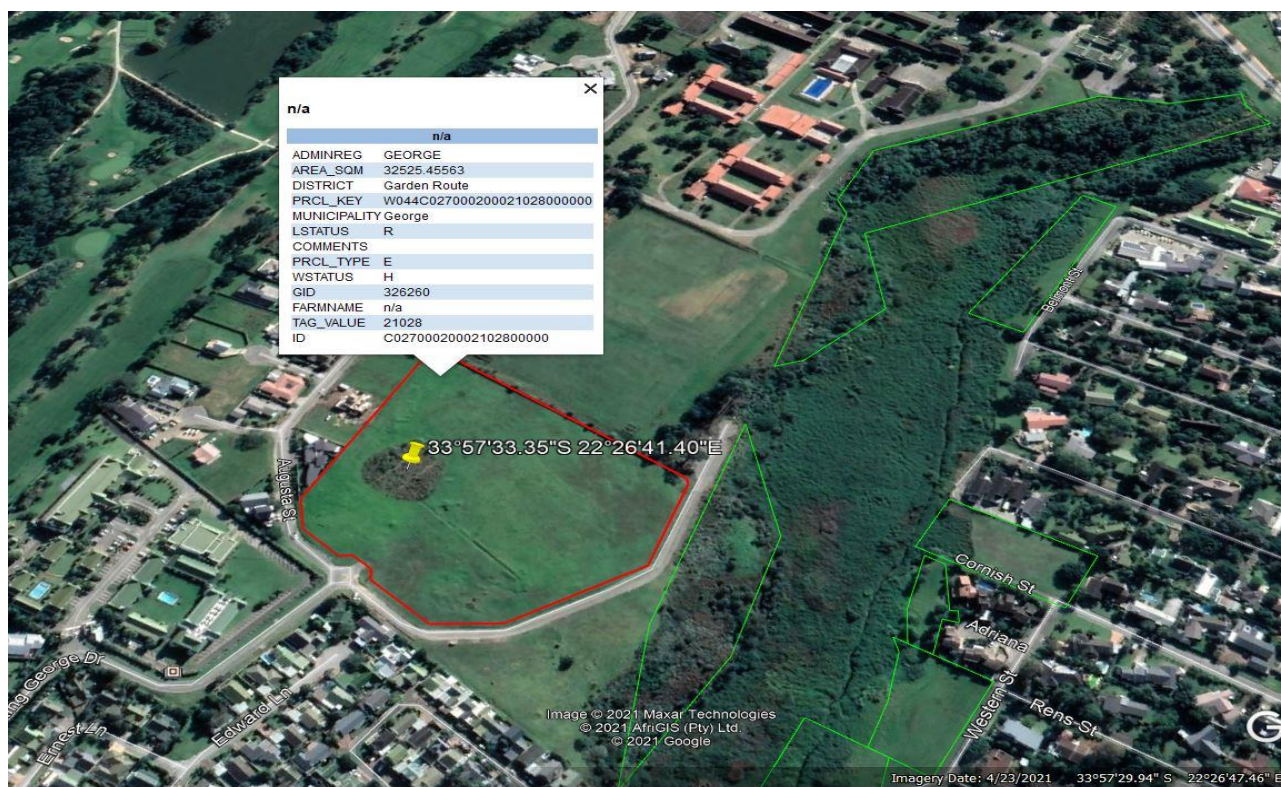
1. The following refers:

- 1.1 The Department's Directorate: Development Management ("D:DM") NEMA Applicability Checklist response letter issued 12 April 2019;
- 1.2 The NEMA Applicability Checklist dated 28 March 2018, submitted to the D:DM for the proposed housing development; and

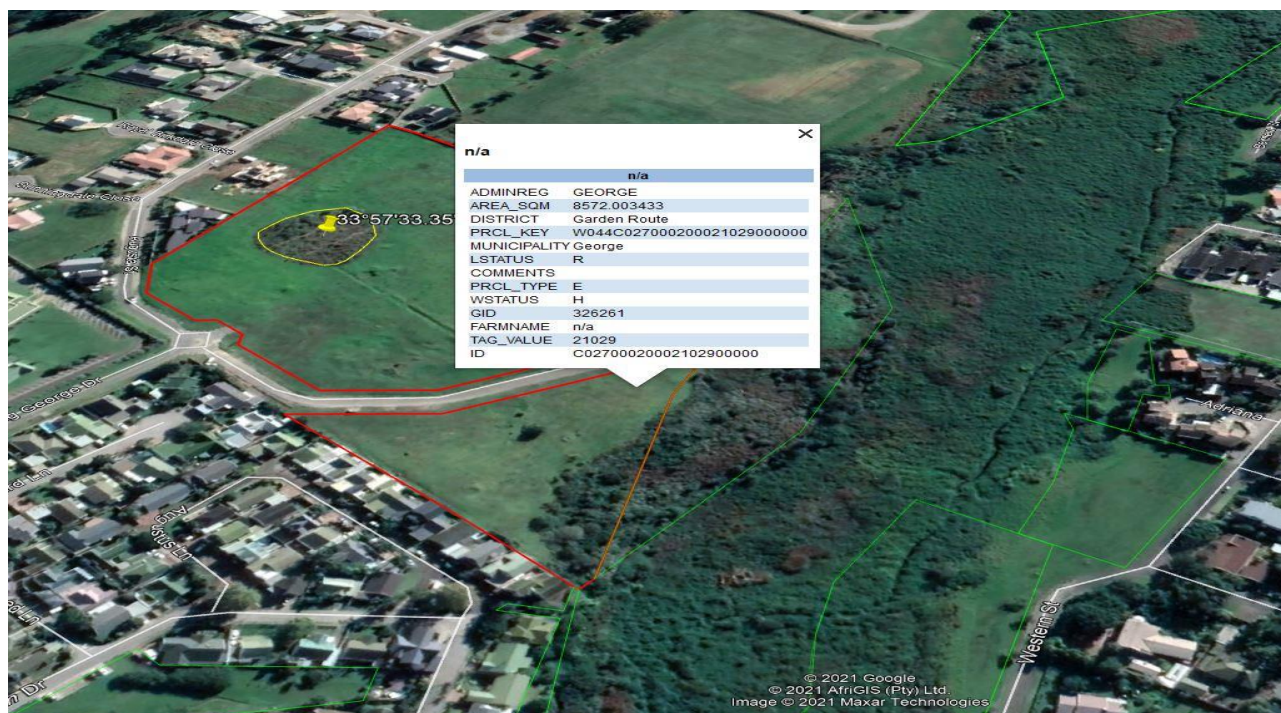
- 1.3 The Environmental Baseline Report dated February 2014, which was included in the NEMA Applicability Checklist.
2. I, Achmad Bassier, in my capacity as an Environmental Management Inspector Grade 1, hereby issues Mr Stefan Bothma, representing Power Construction (Pty) Ltd, with a Compliance Notice in terms of section 31L of the National Environmental Management Act, 1998 ("NEMA").
3. This Compliance Notice relates to non-compliance with the provisions of section 24F of the NEMA. No activity listed in the Environmental Impact Assessment ("EIA") Regulations Listing Notice 1 and 3 of 2014 may commence without environmental authorisation from the competent authority.

Details of conduct constituting non-compliance

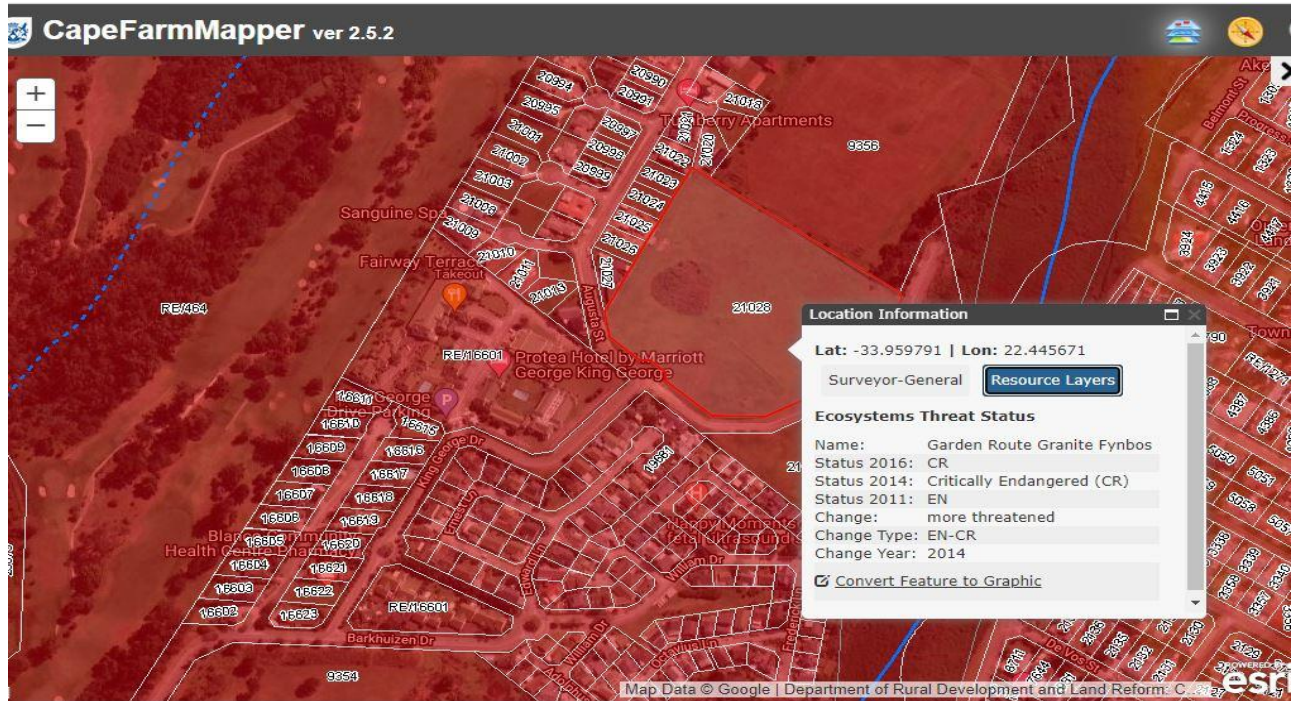
4. During an investigation into allegations of the commencement of a listed activity in contravention of section 24F of the NEMA, a site inspection was conducted at Erf 21028 and Erf 21029, George ("the property") by an Environmental Management Inspector from the Department's Directorate: Environmental Law Enforcement on 27 May 2021 and it was confirmed that you have commenced with the alleged unlawful infilling of a wetland and or watercourse without environmental authorisation and furthermore causing significant and irreversible harm to the environment.
5. Furthermore, the Department's letter and decision issued on 12 April 2019, relating to the NEMA Applicability Checklist, was based on the fact that no dredging or infilling will occur in a wetland or watercourse on the abovementioned property and surrounding environment, and that a buffer of 30m will be created around these areas due to it's ecological importance to the freshwater ecosystem. It further stated that the wetland area will form part of the "NO-GO" area of the development.



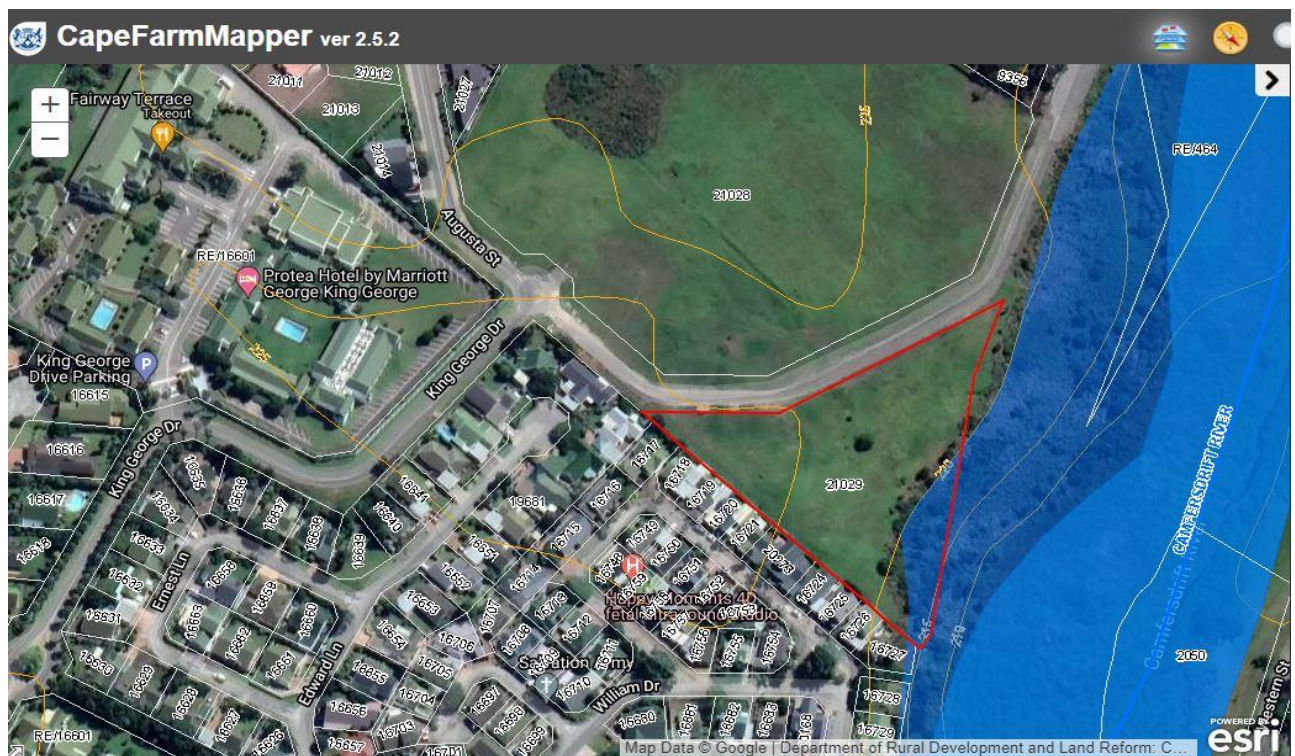
Aerial map 1: Location of alleged unlawful infilling within a depression wetland and surrounding degradation occurring on Erf 21028, George.



Aerial map 2: Location of Erf 21029, George where significant harm is believed to be occurring close to a wetland and or watercourse with the site preparation of the housing development.



Aerial map 3: View of the properties and Ecosystem Status classified as Critical Endangered Garden Route Granite Fynbos.



Aerial map 4: View of the Wetland / Watercourse traversing onto Erf 21029, George

6. On considering the evidence before me there are reasonable grounds to believe that you have commenced the following activities without environmental authorisation:

EIA Regulations Listing Notice 1 of 2014:

Activity no. 19:

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 than 10 cubic metres from a watercourse; but excluding where such infilling, depositing, dredging, excavation, removal or moving—

- (a) will occur behind a development setback;*
- (b) is for maintenance purposes undertaken in accordance with a maintenance management plan;*
- (c) falls within the ambit of activity 21 in this Notice, in which case that activity applies;*
- (d) occurs within existing ports or harbours that will not increase the development footprint of the port or harbour; or*
- (e) where such development is related to the development of a port or harbour, in which case activity 26 in Listing Notice 2 of 2014 applies.*

EIA Regulations Listing Notice 3 of 2014:

Activity no. 12:

The clearance of an area of 300 square metres or more of indigenous vegetation except where such clearance of indigenous vegetation is required for maintenance purposes undertaken in accordance with a maintenance management plan

i. Western Cape

- i. Within any critically endangered or endangered ecosystem listed in terms of section 52 of the NEMBA or prior to the publication of such a list, within an area that has been identified as critically endangered in the National Spatial Biodiversity Assessment 2004;***

- ii. *Within critical biodiversity areas identified in bioregional plans;*
- iii. *Within the littoral active zone or 100 metres inland from high water mark of the sea or an estuarine functional zone, whichever distance is the greater, excluding where such removal will occur behind the development setback line on erven in urban areas;*
- iv. **On land, where, at the time of the coming into effect of this Notice or thereafter such land was zoned open space,** conservation or had an equivalent zoning; or
- v. *On land designated for protection or conservation purposes in an Environmental Management Framework adopted in the prescribed manner, or a Spatial Development Framework adopted by the MEC or Minister.*



Photo 1: View of site preparation being continued on the wetland area on Erf 21028, George.



Photo 2: View of the depression wetland and surrounding area that have been filled in completely.



Photo 3: Another view of the depression wetland area that have been totally disturbed on Erf 21028, George.



Photo 4: View of the vegetation clearing occurring on Erf 21029 believed to be causing significant harm to the environment as clearing occurring within wetland / floodplain.



Photo 5: Another view of the vegetation clearing occurring on Erf 21029 for the housing development without any buffer zone towards the Wetland / Watercourse area.

7. **You are hereby instructed to:**

- 7.1 Immediately cease the above listed activities;
 - 7.2 Immediately demarcate the wetland area as a No-Go area to prevent any further site preparation and/or development to take place inside No-Go area;
 - 7.3 Immediately obtain and demarcate a **30 meters buffer area** around the depression wetland;
 - 7.4 Appoint a suitably qualified and experienced, independent wetland specialist within **2 (two) calendar days** to assist you in the above demarcation process to guide you on the best mitigation measures to be implemented, and to submit to the Department **within 10 (ten) calendar days** of the appoint of the wetland specialist, a rehabilitation plan for the wetland area which must include the following:
 - 7.4.1. assessment and evaluation of the impact on the environment;
and
 - 7.4.2. identification of proposed remedial and/or mitigation measures with adequate timeframes;
8. Approval of the plan by the Department does not remedy the unlawful commencement of the above activities, which remain unlawful in terms of section 49A(1) (a) and/or (d) of the NEMA.
9. If the above plan is approved by the Department, you will be obliged to take the necessary remedial / mitigation measures at your own cost.
10. If you wish to continue with the listed activity you may apply for environmental authorisation by way of a section 24G ("s24G") application. However, such application does not constitute permission to continue with the listed activity, which remains unlawful unless environmental authorisation is granted.

11. Should you choose to apply in terms of s24G of the NEMA, you must submit to the Department for approval, **within 30 (thirty) calendar days** of receipt of this Compliance Notice, a project schedule compiled by a suitably qualified and experience independent environmental assessment practitioner. The project schedule must clearly stipulate the time frames in terms of the s24G process and by when a s24G application will be submitted to the Sub-Directorate: Rectification.
12. Notwithstanding the section 24G application, the Department may commence criminal proceedings should circumstances so require.

Varying this Compliance Notice

13. The NEMA makes provision for the criminal prosecution of officials of an organ of state, such as national or provincial government departments, municipalities or public entities.

Failure to comply with this Compliance Notice (section 31N of the NEMA) and related offences in terms of the NEMA

14. In terms of section 49A(1)(a) of the NEMA it is an offence to commence a listed activity without environmental authorisation. A person convicted of such an offence is liable to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.
15. Furthermore, failure to comply with a Compliance Notice is an offence in terms of section 49A(1)(k). A person convicted of such an offence 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.

16. Any non-compliance with the Compliance Notice must be reported to the Minister, who may:

- 16.1 revoke any permit or authorisation to which this Compliance Notice relates; and/or
- 16.2 take any steps necessary to ensure compliance with the provisions of the law, permit or authorisation to which this Compliance Notice relates and recover from you the cost of doing so.

Procedure for lodging an objection to this Compliance Notice (section 31L and 31M of the NEMA)

17. If you wish to lodge an objection to this Compliance Notice, you may do so by making representations, in writing, to the Provincial Minister of Environmental Affairs and Development Planning ("the Minister") within 30 days of receipt of this Compliance Notice.

18. You may also make representations, in writing, to the Minister to suspend the operation of this Compliance Notice pending finalisation of the objection.

19. The objection must be in writing and forwarded to the Appeal Administrator, Mr Marius Venter at the contact details below and must be accompanied by a statement detailing the grounds of the objection and supporting documentation, if any.

By post: Western Cape Ministry of Local Government, Environmental
Affairs and Development Planning
Private Bag X9186
CAPE TOWN
8000

By facsimile: (021) 483 4174

By hand: Attention: Mr Marius Venter (Tel: 021 483 3721)

Room 809

8th Floor Utilitas Building, 1 Dorp Street, Cape Town, 8001

By email: DEADP.Appeals@westerncape.gov.za

20. Irrespective of any representations you may make to me or to the Minister, you must comply with this Compliance Notice within the time period stated in the Compliance Notice, unless the Minister agrees to suspend the operation of this Compliance Notice.

21. **Please note, a Pre-Compliance Notice has not been issued prior to this Compliance Notice as there is reason to believe that giving such notice will cause a delay resulting in significant and irreversible harm to the environment.**



Achmad Bassier

Director: Environmental Law Enforcement

Grade 1 Environmental Management Inspector

Date: 27/05/2021

Cc:

Mr Scholtz Bruwer

Email: scholtz@bruwerlegal.co.za

(Scholtz Bruwer Attorneys)

Mr Steven Levey

Email: slevey@powergrp.co.za

(Power Construction (Pty) Ltd)

Mr Heinrich Mostert

Email: Heinrich.Mostert@westerncape.gov.za

(Department of Human Settlements)

Mrs Nolutando Ndumbini

Email: nndumbini@bgcma.co.za

(BGCMA)

Mrs Shireen Pullen

Email: Shireen.pullen@westerncape.gov.za

(Directorate: Development Management)



REFERENCE: 16/3/3/6/1/D2/20/0041/18
ENQUIRIES: Shireen Pullen
DATE OF ISSUE: 2018 -04- 12

PER REGISTERED MAIL

The Director
EnviroQuest (Pty) Ltd
PO Box 426
SOMERSET WEST
7129

Attention: Mr. Quinton Terhoven

Email: quinton@djec.co.za

Dear Sir

RE: NEMA APPLICABILITY CHECKLIST: PROPOSED RESIDENTIAL DEVELOPMENT ON ERF 21028 AND ERF 21029, GEORGE

1. The abovementioned-mentioned Checklist received by this Department on 14 March 2018 refers.
2. It is understood that the proposal entails the establishment of a "affordable" housing development and associated infrastructure on erven 21028 and 21029, which has a combined size of 4,1- hectares. The proposed site used to form part of erf 9356 and is currently zoned "general residential", which supports the proposal.
3. Based on the information that was presented and considered by this Department, the abovementioned proposal does **not** trigger any listed activities identified in terms of Government Notice 983, 984 or 985 of 4 December 2014 of the NEMA EIA Regulations, as amended.
4. Written authorisation is therefore **not** required from the competent authority prior to the undertaking of the said activity.
5. This determination is based on the following:
 - 5.1 Both sites are completely transformed and contains kikuyu grass which has been consistently mowed over a long period and therefore will not result in the removal of more than 1 hectare indigenous vegetation;
 - 5.2 The property does not contain any critically endangered or endangered vegetation;
 - 5.3 The proposal will not result in the dredging or infilling of more than 10 cubic meters of sand or soil from into any watercourses on the site or within close proximity of the site.

6. Notwithstanding the above, the proponent must still comply with any other statutory requirements that may be applicable to the undertaking of the proposed activity.
7. The proponent is further reminded of his/her general duty of care towards the environment in terms of section 28(1) of NEMA which states: *"Every person who causes, has caused or may cause significant pollution or degradation of the environment must take reasonable measures to prevent such pollution or degradation from occurring, continuing or recurring, or in so far as such harm to the environment is authorised by law or cannot reasonably be avoided or stopped, to minimise and rectify such pollution or degradation of the environment."*
8. This Department reserves the right to revise its initial comments and request further information from you based on any new or revised information received.

Yours faithfully



HEAD OF DEPARTMENT

Copy:

Clinton Pietersen
Dudley Janeke

George Municipality
EnviroQuest

Email: clinton@george.org.za
Email: dudley@djec.co.za



REFERENCE: 14/1/1/E3/5/2/3/L1181/21

ENQUIRIES: D Mouton

BY EMAIL

POWER CONSTRUCTION (PTY) LTD
PO Box 129
Blackheath
Cape Town
7580

Email: sbothma@powergrp.co.za

For Attention: Mr Stefan Bothma

DIRECTIVE

Dear Sir

**DIRECTIVE IN TERMS OF SECTION 28(4) OF THE NATIONAL
ENVIRONMENTAL MANAGEMENT ACT, 1998**

1. The following refers:

- 1.1 The Department's Directorate: Development Management ("D:DM") NEMA Applicability Checklist response letter issued 12 April 2019;
- 1.2 The NEMA Applicability Checklist dated 28 March 2018, which was submitted to the D:DM for the proposed housing development; and
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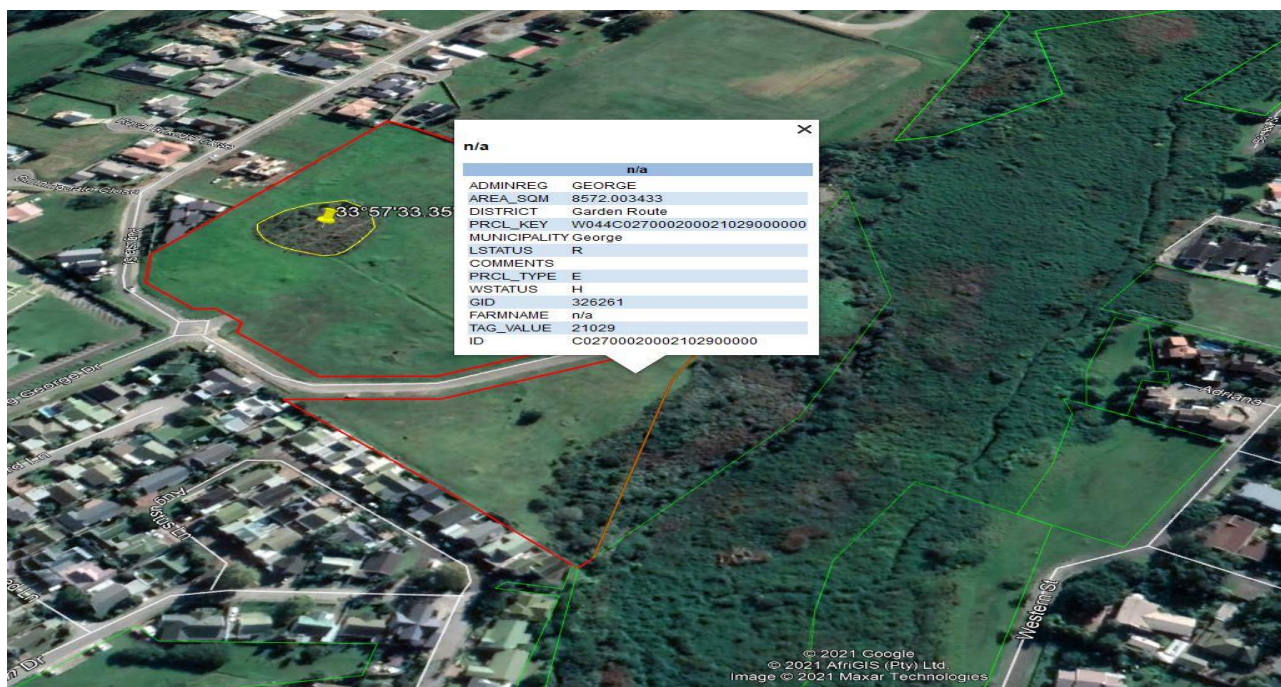
2. Having considered the evidence before me, I, Mr Achmad Bassier, in my capacity as Director: Environmental Law Enforcement, hereby issue Mr Stefan Bothma, representing Power Construction (Pty) Ltd, with a Directive in terms of section 28(4) of the NEMA, as you are causing significant degradation of the environment.
3. This Directive relates to non-compliance with section 28(1) of the NEMA.

Details of conduct constituting non-compliance

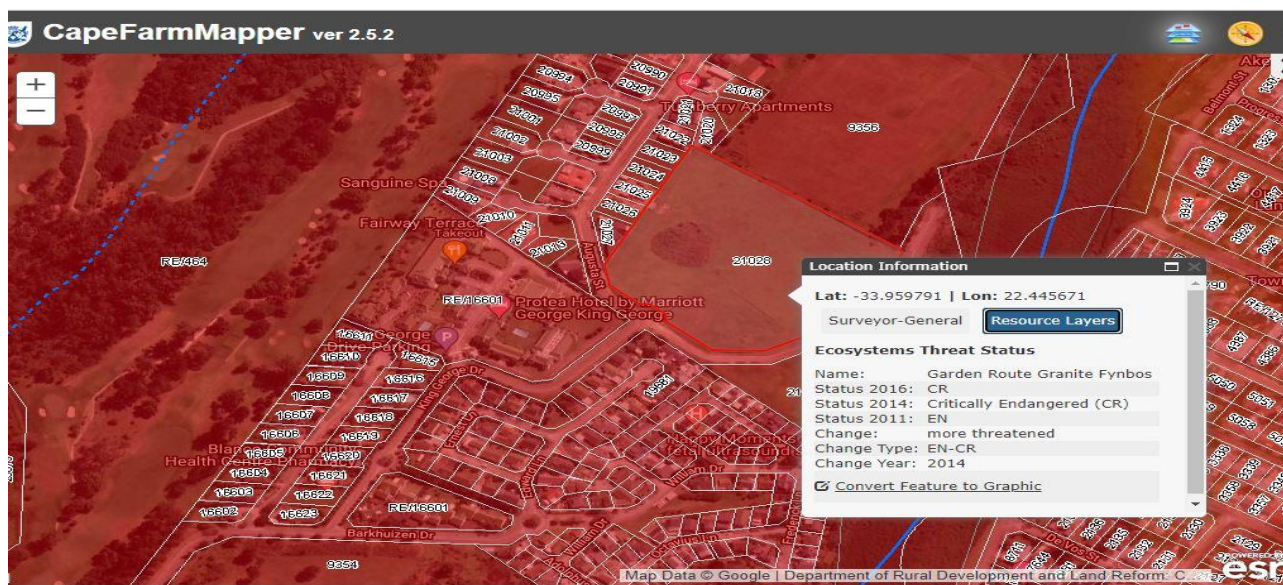
4. During an investigation into allegations of degradation of the environment, a site inspection was conducted at Erf 21028 and Erf 21029, George ("the property") by an Environmental Management Inspector from the Department's Directorate: Environmental Law Enforcement on 27 May 2021, and it was confirmed that you have commenced with the alleged unlawful infilling of a wetland and or watercourse without environmental authorisation and furthermore are causing significant and irreversible harm to the environment.
5. Furthermore, the Department's letter and decision issued on 12 April 2019, relating to the NEMA Applicability Checklist, was based on the fact that no dredging or infilling will occur in a wetland or watercourse on the abovementioned property and surrounding environment, and that a buffer of 30m will be created around these areas due to it's ecological importance to the freshwater ecosystem. It further stated that the wetland area will form part of the "NO-GO" area of the development.



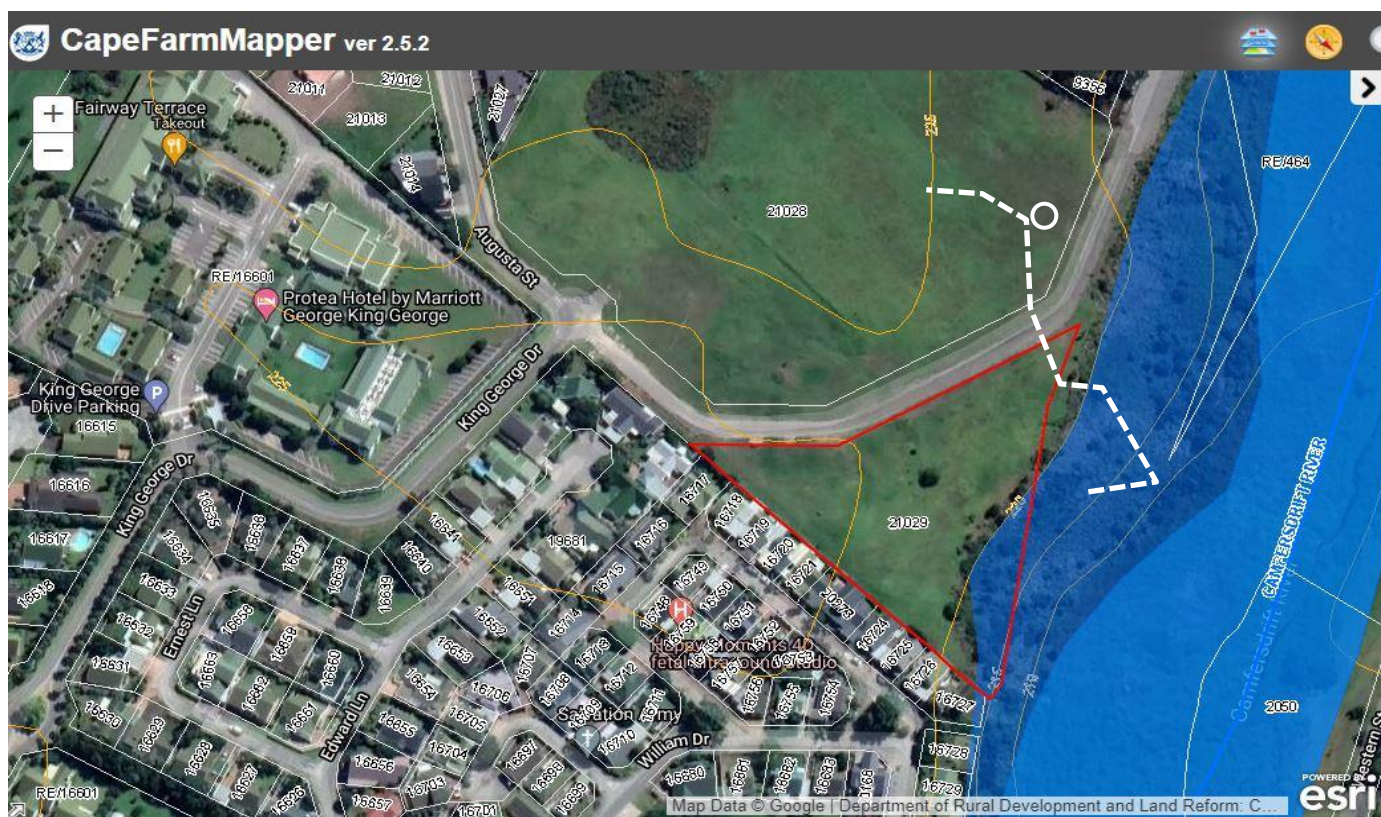
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Photo 1: View of site preparation being continued on the wetland area on Erf 21028, George.



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Photo 3: Another view of the depression wetland area that have been totally disturbed on Erf 21028, George.



Photo 4: View of the vegetation clearing occurring on Erf 21029 believed to be causing significant harm to the environment as clearing occurring within wetland / floodplain.



Photo 5: Another view of the vegetation clearing occurring on Erf 21029 for the housing development without any buffer zone towards the Wetland / Watercourse area.

6. Section 28(1) of the NEMA provides that every person who causes, has caused or may cause significant pollution or degradation of the environment must take reasonable measures to prevent such pollution or degradation from occurring, continuing or recurring, or, in so far as such harm to the environment is authorised by law or cannot reasonably be avoided or stopped, to minimise and rectify such pollution or degradation of the environment.
7. The provisions contained in section 28(5) of the NEMA were considered when determining the measures and timeframes included in this Directive.

8. You are hereby directed to:

- 8.1 Immediately cease the above activities described in paragraph 4 above, which are causing the above degradation;
- 8.2 Immediately demarcate the wetland area as a No-Go area to prevent any further site preparation and/or development to take place inside No-Go area;
- 8.3 Immediately obtain and demarcate a **30 meters buffer area** around the depression wetland;
- 8.4 Appoint a suitably qualified and experienced, independent wetland specialist within **2 (two) calendar days** to assist you in the above demarcation process to guide you on the best mitigation measures to be implemented, and to submit to the Department **within 10 (ten) calendar days** of the appointment of the wetland specialist, a rehabilitation plan for the wetland area which must include the following:
 - 8.5.1. assessment and evaluation of the impact on the environment; and
 - 8.5.2. identification of proposed remedial and/or mitigation measures with adequate timeframes;
9. If the above plan is approved by the Department, you will be obliged to take the necessary remedial / mitigation measures at your own cost.

Offences and penalties, including failure to comply with this Directive

10. In terms of section 49A(1)(e) of the NEMA it is an offence to unlawfully and intentionally or negligently commit any act or omission which causes significant pollution and/or degradation of the environment or is likely to cause significant pollution and/or degradation of the environment.

11. According to section 49A(1)(f) of the NEMA it is an offence to unlawfully and intentionally or negligently commit any act or omission detrimentally affects or is likely to detrimentally affect the environment.
12. A person convicted of the above offences is liable to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.
13. Furthermore, in terms of section 49A(1)(g) of the NEMA failure to comply with a Directive is an offence. A person convicted of failing to comply with a Directive is liable to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.
14. Furthermore, in terms of section 28(7) of the NEMA, if you fail to comply or inadequately comply with this Directive, the Provincial Head of Department may take reasonable measures to remedy the situation or apply to a competent court for appropriate relief.
15. In terms of section 28(8) of the NEMA, the Provincial Head of Department may recover costs for reasonable remedial measures undertaken to remedy the situation from, amongst others, you.

Appeal against this Directive

16. You may appeal against the decision to issue this Directive to the Minister of Local Government, Environmental Affairs and Development Planning ("the Minister") within **30 (thirty) calendar days** from the date of receipt of this Directive.

17. The appeal must be in writing and forwarded to the Appeal Administrator, Mr Marius Venter at the contact details below and must be accompanied by a statement detailing the grounds of the objection and supporting documentation, if any.

By post: Western Cape Ministry of Local Government, Environmental
Affairs and Development Planning

Private Bag X9186

CAPE TOWN

8000

By facsimile: (021) 483 4174

By hand: Attention: Mr Marius Venter (Tel: 021 483 3721)

Room 809

8th Floor Utilitas Building, 1 Dorp Street, Cape Town, 8001

By email: DEADP.Appeals@westerncape.gov.za

18. For purposes of electronic database management, you are requested to submit an electronic copy (Microsoft Word format) of the appeal form and any supporting documents.

19. The appeal form as well as assistance regarding the appeal procedure is obtainable from the Appeals Administrator.

20. Please note, a Pre-Directive has not been issued prior to this Directive as there is reason to believe that giving such notice will cause a delay resulting in significant and irreversible degradation.



Achmad Bassier

Director: Environmental Law Enforcement

Date: 27/05/2021

Cc:

Mr Scholtz Bruwer

(Scholtz Bruwer Attorneys)

Email: scholtz@bruwerlegal.co.za

Mr Steven Levey

(Power Construction (Pty) Ltd)

Email: slevey@powergrp.co.za

Mr Heinrich Mostert

(Department of Human Settlements)

Email: Heinrich.Mostert@westerncape.gov.za

Mrs Nolutando Ndlumbini

(BGCMA)

Email: nndlumbini@bgcma.co.za

Mrs Shireen Pullen

(Directorate: Development Management)

Email: Shireen.pullen@westerncape.gov.za