



**REFERENCE: 14/3/1/E4/5/0454/20**

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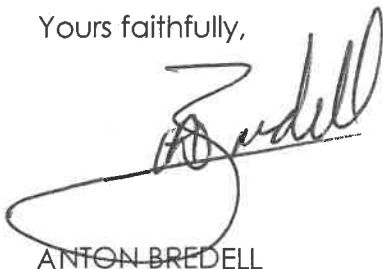
Dear Mr Miller

**APPEAL LODGED IN TERMS OF SECTION 43 OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) ("NEMA") AGAINST A DIRECTIVE ISSUED IN TERMS OF SECTION 28(4) OF THE NEMA FOR THE ALLEGED ILLEGAL CLEARING OF VEGETATION, EXCAVATION OF TRENCHES AND INFILLING OF A WETLAND: PORTION 22 OF FARM KLIPFONTEIN NO.82, CALEDON**

1. Your appeal lodged in terms of section 43 of the *National Environmental Management Act, 1998 (Act No. 107 of 1998)* ("NEMA") against a Directive issued on 10 October 2019, by the Department of Environmental Affairs and Development Planning's Director: Environmental Law Enforcement ("Department") for causing significant degradation of the environment by clearing Elgin Shale Fynbos, a Critically Endangered vegetation, the excavation of trenches and infilling within a functional wetland without the requisite environmental authorisation, has reference.
2. After careful consideration of the relevant information and available documentation, I have decided to dismiss your appeal and modify the Directive as follows:  
  
You are hereby instructed to:
  - (i) Submit to this Department's Director: Environmental Law Enforcement, within 30 (thirty) calendar days of receipt of this letter a detailed rehabilitation plan, compiled by a suitably qualified and experienced independent environmental assessment practitioner, which must include:
    - (a) an assessment and evaluation of the impact of the degradation;
    - (b) the identification of proposed remedial and/or mitigation measures; and
    - (c) rehabilitate the site as far as possible to its original condition.
3. The reason(s) for dismissing your appeal and modifying the Directive are listed below:
  - i. The Botanical Assessment conducted by Nick Helme Botanical Surveys dated 26 October 2017, confirms that the site falls within the Core Cape Sub-region of the Greater Cape Floristic Region.

- ii. The vegetation type present on the majority of the site is indicated as Elgin Shale Fynbos which is regarded as Critically Endangered on a national scale. Any loss of intact habitat must thus have a High negative impact.
- iii. The overall conservation value of the site is regarded as Very High at a regional scale, "as the site supports a largely pristine example of a Critically Endangered vegetation type, and potentially at least 14 plant Species of Conservation Concern, many of which are not formally conserved anywhere"
- iv. The extent of the damage done due to the excavations undertaken is estimated to cover an area of just under 1 hectare. The overall construction phase impact has been High negative but can be reduced to Low to Medium negative with appropriate mitigation.
- v. The mitigation measures were to be undertaken within 6 weeks of the report being completed and submitted, indicating a date of 6 December 2017.
- vi. CapeNature in a Wetland Report dated 12 October 2017, confirmed that the excavation and subsequent drainage occurred within a wetland area.
- vii. The transgressions took place within the seep and unchanneled valley bottom wetlands that are located on the majority of the site.
- viii. The impacts of the works undertaken were determined to be severe but not entirely irreversible. Rehabilitation of the site is considered possible.
- ix. Correspondence issued by the Directorate Development dated 29 November 2016 and the email submitted on 3 March 2020 confirming discussions with you clearly show that you were advised that the proposed development would trigger listed activities and that you would require environmental authorisation in order to proceed.
- x. There is no evidence on file to suggest that the matter had been referred for criminal prosecution at the time you made representations in respect of the Pre-Directive issued to you.
- xi. Referring a matter for criminal prosecution prior to considering representations made is not in line with the standard operating procedure and no evidence exists to support the allegation that the matter was referred for criminal prosecution prior to the period for representations having run out.
- xii. The conduct of CapeNature officials cannot be addressed in this appeal process.
- xiii. You had more than two years in which to undertake the recommended rehabilitation but failed to do so.
- xiv. As a result of your failure to rehabilitate the site as recommended, you were issued with a Directive.

Yours faithfully,



ANTON BREDELL

**WESTERN CAPE MINISTER OF LOCAL GOVERNMENT,  
ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING**

DATE:

3/7/2020

Copied to:  
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Environmental Law Enforcement

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