



14/3/1/D7/10/0365/18

Mr A H Swart
Stadler Swart Attorneys
P.O Box 46
GEORGE
6530

Dear Mr Swart

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 TO THE OUDTSHOORN MUNICIPALITY: PORTION 2 OF THE FARM DE CANGO 26, OUDTSHOORN

The appeal lodged on behalf of your client in the above regard refers.

After careful consideration of the relevant information and available documentation, I have decided to dismiss the appeal and modify the Directive as follows.

"8. You are hereby directed to:

- 8.1 ensure the cessation of the activities described in paragraph 4 and 5 above, which have caused the above pollution and/or degradation;
- 8.2 ensure that a rehabilitation plan compiled by a suitably qualified and experienced independent environmental assessment practitioner is submitted to this Department for approval within **30 (thirty) calendar days**. The plan must include the following:
 - 8.2.1 an assessment and evaluation of the impact of the pollution and/or degradation;
 - 8.2.2 the identification of proposed remedial and/or mitigation measures;
- 8.3 ensure that a Maintenance Management Plan ("MMP") is compiled and submitted for approval by this Department, prior to any further clearing/cleaning of the opening of the Efflux Cave within the watercourse; and
- 8.4 include such approved MMP in all contractual agreements concluded with tenants for this property."

The reason(s) for dismissing the appeal against the Directive are listed below:

- (i) The property description as indicated in the Directive was provided Mr Ambrose Carelse of the Oudtshoorn Municipality in a complaint submitted to the Department on 12 September 2017. Further, a deeds search confirmed that with the exception of two portions of land owned by Mr C.J Dawson, the remainder, including the site where the activity was undertaken, is owned by the municipality.
- (ii) The Directive does not allege the commencement of any listed activities in this matter.
- (iii) Section 28(2) clearly stipulates that "*Without limiting the generality of the duty in subsection (1), the persons on whom subsection (1) imposes an obligation to take reasonable measures, include an owner of land or premises, a person in control of land or premises or a person who has a right to use the land or premises on which or in which-*
 - (a) *any activity or process is or was performed or undertaken; or*
 - (b) *any other situation exists,*

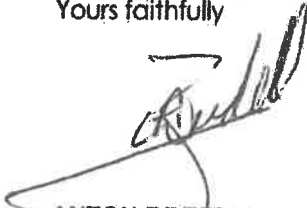
which causes, has caused or is likely to cause significant pollution or degradation of the environment."
- (iv) Thus, in terms of section 28(2) of NEMA, the persons on whom subsection (1) imposes an obligation to take reasonable measures, include an owner of land or premises. This position was confirmed in the court order issued by Judge Desai in Case No: 25951/10 on 3 March 2011. The owners of Erf 549, Schaapkraal were ordered to install jersey barriers to prevent illegal dumping on a property they owned. The property had been occupied by informal settlers and building rubble had been disposed of on the site. The owners did not authorise the occupation of the land nor permit dumping thereupon but they had been issued a Directive as they had failed to take reasonable measures to prevent environmental pollution and degradation. Having failed to comply with the directive, the court order was issued.
- (v) The complaint submitted by the municipal official stated that TBI requested authorisation to open one of the caves blocked due to recent floods and that they be permitted to use machinery to open said cave. The municipality does not have an approved Maintenance Management Plan, nor is the municipality the competent authority to grant authorisation for such works to be undertaken. The degree to which TBI exceeded the authorisation granted by the municipality is therefore a moot point.
- (vi) A Directive had been served on both the municipality and TDI. In response to said Directive, Mr JW Joubert of VZLR Attorneys, furnished correspondence dated 5 September 2018, which had been submitted to Stadler & Swart Attorneys inclusive of a

quotation to procure the services of Andrew West Environmental Consultants to conduct an assessment together with a request that the parties each pay 50% of the cost. The person who in this matter has a right to use the land has acknowledged the duty of care to protect the environment and demonstrated a willingness to undertake the necessary corrective actions.

- (vii) The Chief Director, considered all the information on file which includes the complaint, site inspection information and all correspondence submitted in this matter and concluded that the Directive be issued to the municipality. Having considered all available information, I concur.

Your interest in the future of our environment is appreciated.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Anton Brede', is written over a large, light-colored scribble or stamp.

ANTON BREDELL
PROVINCIAL MINISTER OF LOCAL GOVERNMENT,
ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING

DATE: 21/2/2019

