



Western Cape
Government

Environmental Affairs and
Development Planning

MINISTRY OF LOCAL GOVERNMENT,
ENVIRONMENTAL AFFAIRS AND
DEVELOPMENT PLANNING

14/3/1/B2/32/0322/18

Mr Tebogo Mogashoa
Babirwa Breeding (Pty) Ltd
Postnet Suite 50
Private Bag X7
PARKVIEW
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E-mail: tebogo@talis-holdings.co.za

Dear Mr Mogashoa

APPEAL AGAINST A DIRECTIVE ISSUED FOR THE SIGNIFICANT ENVIRONMENTAL DEGRADATION CAUSED BY THE CLEARING OF INDIGENOUS VEGETATION, EXCAVATION OF SOIL WITHIN THE WATERCOURSE AND THE CONSTRUCTION OF A ROAD ON PORTION 74 AND THE REMAINDER PORTION 70 OF THE FARM AMBIANCE, BRANDWACHT, WORCESTER

Your appeal lodged against the Directive in the above regard and the correspondence received from Werksmans Attorneys, refer.

Based on the complaint received, the site inspections conducted by the Department of Environmental Affairs and Development Planning and Google Earth imagery, I have reasonable grounds to believe that significant environmental degradation resulted from the unlawful activities involving the clearing of indigenous vegetation, excavation and moving of soil within the watercourse and the construction of a road on Portion 74 and the remainder Portion 70 of the Farm Ambiance, Brandwacht, Worcester.

After a careful consideration of your appeal, as well as supporting documentation received, I have decided in terms of Section 43(11)(a) of the NEMA to cancel the abovementioned Directive of the Department's Director: Environmental Law Enforcement.

1. REASONS FOR THIS APPEAL DECISION:

The reasons for cancelling the aforementioned Directive are outlined below:

1. In terms of the section 28(4) Directive of the NEMA:

"The Director-General, the Director-General of the department responsible for mineral resources or a provincial head of department may, after having given adequate opportunity to affected persons to inform him or her of their relevant interests, direct any person who is causing, has caused or may cause significant pollution or degradation of the environment to-

(a) cease any activity, operation or undertaking;

(b) investigate, evaluate and assess the impact of specific activities and report thereon;

(c) commence taking specific measures before a given date;

(d) diligently continue with those measures; and

(e) complete those measures before a specified reasonable date;

Provided that the Director-General or a provincial head of department may, if urgent action is necessary for the protection of the environment, issue such directive, and consult and give such opportunity to inform as soon thereafter as is reasonable."

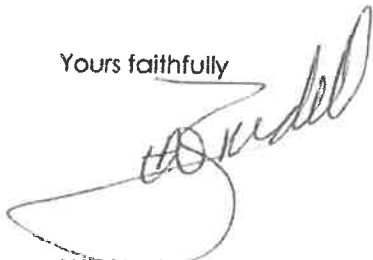
2. On 3 October 2017, a site inspection was conducted by the Department of Agriculture, Forestry and Fisheries ("DAFF").
3. On 4 October 2017, a site inspection was conducted by the Department's Sub-directorate: Environmental Law Enforcement, DAFF, Department of Water and Sanitation ("DWS") and the site owners.
4. On 12 October 2017, a further site inspection was conducted by the Department's Sub-directorate: Environmental Law Enforcement, DAFF, DWS, the site owners and Werksmans Attorneys on behalf of the site owners.
5. On 22 November 2017, as provided for under section 28(4) that a notice of intention to issue a Directive may not be issued under certain circumstances, the Department issued a Directive dated 22 November 2017 (regrettably which consisted of missing pages due to a technical error which occurred when the document was scanned and emailed for your consideration) to Babirwa Breeding (Pty) Ltd in terms of section 28(4) of the NEMA for the clearing of indigenous vegetation, the excavation and moving of soil within the watercourse and the construction of a road on Portion 74 and the remainder Portion 70 of the Farm Ambiance, Brandwacht, Worcester.
6. The abovementioned activities involved the clearing of approximately 38 hectares of the indigenous Breede Shale Fynbos and/or Breede Alluvium Fynbos vegetation for the planting of vineyards, the excavation and moving of more than 10 m³ of soil or rocks and the construction of a road on Portion 74 and the remainder Portion 70 of the Farm Ambiance, Brandwacht, Worcester in 2015 without an EA.
7. On 3 January 2018, a correspondence was received from Werksmans Attorneys stating *inter alia* that:
 - i. The right of their client has been violated since the Compliance Notice and Directive were issued without affording their client an opportunity to make representations. The *Promotion of Administrative Justice Act, 2000 (Act No. 3 of*

- 2000) ("PAJA") requires an administrative action to be lawful, reasonable and procedurally fair.
- ii. The urgency that is alleged with regards to the Compliance Notice and Directive is entirely self-created and without merit considering the lengthy delay in issuing the decision since the site inspection and the fact that the clearing of vegetation which is alleged had already been undertaken.
8. On 6 March 2018, a correspondence was issued to respond to Werksmans Attorneys' correspondence dated 3 January 2017 stating *inter alia* that:
- i. The activities on the site were causing significant and irreversible harm to the environment.
 - ii. As the EMIs were completing their inspection of the property it was observed that one of the excavators on the site was in the process of clearing additional indigenous vegetation. This occurred after the EMIs made it clear to the farm manager that no new or further clearance of indigenous vegetation was to take place, but rather the activities may continue on land which had already been disturbed for agricultural purposes.
 - iii. The clearing of endangered vegetation is ongoing and the largest part of the new area being cleared is mapped as Breede Alluvium Fynbos, which is classified as an Endangered Ecosystem. The regulated extent is 1 hectare in terms of the 2014 Environmental Impact Assessment ("EIA") Regulations' listed activities but the development on the site has resulted in the clearance of 30 hectares (30 times that extent).
 - iv. Given the drought conditions currently being experienced in the Western Cape, it has been decided by the Department to refer all cases regarding water related offences to the National Prosecuting Authority for prosecution.
9. On 17 July 2018, a site inspection was conducted by officials from the Department's Sub-directorate: Environmental Appeals Management, Department's Sub-directorate: Environmental Law Enforcement, Werksmans Attorneys on behalf of Babirwa Breeding (Pty) Ltd and Mr Doug Jeffery of Doug Jeffery Environmental Consultants on behalf of Babirwa Breeding (Pty) Ltd.
10. The NEMA principles that apply to the actions of all organs of state that may significantly affect the environment specifically require *inter alia* that:
- i. Environmental management must place people and their needs at the forefront of its concern and serve their physical, psychological, developmental, cultural and social interests equitably;
 - ii. Development must be socially, environmentally and economically sustainable;
 - iii. That the disturbance of ecosystems and loss of biological diversity are avoided, or where they cannot be altogether avoided, are minimised and remedied;
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- iv. That a risk-averse and cautious approach is applied, which takes into account the limits of current knowledge about the consequences of decisions and actions; and
 - v. The social, economic and environmental impacts of activities, including disadvantages and benefits, must be considered, assessed and evaluated, and decisions must be appropriate in the light of such consideration and assessment.
11. During the abovementioned issuing of the Directive the abovementioned NEMA principles were considered since the farm manager was instructed to ensure that no new or additional clearance of indigenous vegetation must take place, but rather the activities may continue on land which had already been disturbed for agricultural purposes.
 12. Should a further meeting be required with the Department, a request must be submitted directly to the relevant officials who will, depending on their time availability schedules, gladly oblige to such a request.
 13. In terms of the incomplete, undated and unsigned Directive due to pages 2, 4, 6 and 8 that are missing to the Directive that was issued to Babirwa Breeding (Pty) Ltd, the Department has advised that it regrets that a technical error occurred during the scanning and emailing process of the Directive.
 14. In light of the above, the Directive issued in terms of section 28(4) of the NEMA must be cancelled in terms of section 43(8) of the NEMA.

Due to the urgency of the matter, it is advisable to address a correspondence to the Department, immediately after the issuing of the appeal decision, providing representations in terms of why a Directive should not be issued since the Department may still not provide any opportunity prior to the issuing of a further Directive (if any will be further issued).

Yours faithfully



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

DATE: 14/9/2019

Copied to:

Mr Justin Truter (Werksmans Attorneys)
Mr Achmad Bassier (DEA&DP)
Ms Annamariem Martin (Department of Agriculture, Forestry and Fisheries)
Mr Siyabulela Lupa (BGCMA)

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MINISTRY OF LOCAL GOVERNMENT,
ENVIRONMENTAL AFFAIRS AND
DEVELOPMENT PLANNING

14/3/1/82/32/0322/18

Ms Jody Wentzel
Department of Agriculture, Forestry and Fisheries

Email: jodyf@elseburg.com

Dear Ms Wentzel

APPEAL AGAINST A DIRECTIVE ISSUED FOR THE SIGNIFICANT ENVIRONMENTAL DEGRADATION CAUSED BY THE CLEARING OF INDIGENOUS VEGETATION, EXCAVATION OF SOIL WITHIN THE WATERCOURSE AND THE CONSTRUCTION OF A ROAD ON PORTION 74 AND THE REMAINDER PORTION 70 OF THE FARM AMBIANCE, BRANDWACHT, WORCESTER

Your complaint lodged in terms of the abovementioned matter and the appeal lodged against the Directive, refer.

Please find attached the appeal decision regarding this matter as issued to Babirwa Breeding (Pty) Ltd i.e. the transgressor on the abovementioned property.

Your interest in the future of our environment is appreciated.

Yours faithfully

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

DATE: 14/5/2019



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Environmental Affairs and
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MINISTRY OF LOCAL GOVERNMENT,
ENVIRONMENTAL AFFAIRS AND
DEVELOPMENT PLANNING

14/3/9/B2/32/0323/18

Ms Jody Wentzel
Department of Agriculture, Forestry and Fisheries

Email: jodyf@elseburg.com

Dear Ms Wentzel

WITHDRAWAL OF THE OBJECTION LODGED AGAINST A COMPLIANCE NOTICE ISSUED FOR THE UNLAWFUL LISTED ACTIVITIES INVOLVING THE CLEARING OF INDIGENOUS VEGETATION, EXCAVATION OF SOIL WITHIN THE WATERCOURSE AND THE CONSTRUCTION OF A ROAD ON PORTION 74 AND THE REMAINDER PORTION 70 OF THE FARM AMBIANCE, BRANDWACHT, WORCESTER

Your complaint lodged in terms of the abovementioned matter and the objection lodged against the Compliance Notice issued by the Department, refer.

Please find attached the acceptance of the withdrawal of the Objection lodged against the abovementioned Compliance Notice as issued to Babirwa Breeding (Pty) Ltd i.e. the transgressor on the abovementioned property.

Your interest in the future of our environment is appreciated.

Yours faithfully

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

DATE: 14/5/2019

14/3/9/E2/2/0323/18

Mr Tebogo Mogashoa
Babirwa Breeding (Pty) Ltd
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E-mail: tebogo@talis-holdings.co.za

Dear Mr Mogashoa

WITHDRAWAL OF THE OBJECTION LODGED AGAINST A COMPLIANCE NOTICE ISSUED FOR THE UNLAWFUL LISTED ACTIVITIES INVOLVING THE CLEARING OF INDIGENOUS VEGETATION, EXCAVATION OF SOIL WITHIN THE WATERCOURSE AND THE CONSTRUCTION OF A ROAD ON PORTION 74 AND THE REMAINDER PORTION 70 OF THE FARM AMBIANCE, BRANDWACHT, WORCESTER

Your objection lodged against the Compliance Notice in the above regard and the correspondence on your behalf regarding the withdrawal of the abovementioned Objection lodged against the Compliance Notice, refer.

I hereby accept your abovementioned withdrawal of your Objection against the Compliance Notice. However, requirements of the abovementioned Compliance Notice dated 22 November 2017, as issued by the Department must be complied with.

A completed application in terms of section 24G of the *National Environmental Management Act, 1998 (Act No. 107 of 1998)* ("NEMA") may be submitted to the Department's Sub-directorate: Rectification and when it is submitted it must also contain the following information:

1. An affidavit must be submitted to confirm whether or not the following listed activity and/or other additional listed activities was/ were also commenced with without an EA:

Activity Number 19:

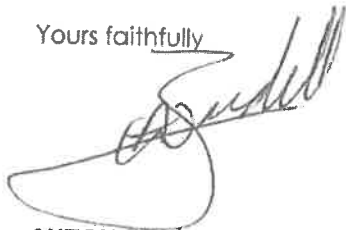
"The infilling or depositing of any material of more than 10 cubic metres into, the dredging, removal or moving of soil, sand, shells, shell grit, pebbles, or rock of more than 10 cubic metres from a watercourse:

but excluding where such infilling, depositing, dredging, excavation, removal or moving-

- (a) will occur behind a development setback line;
 - (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;
 - (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."
2. An affidavit must be submitted to confirm whether or not additional listed activities were also commenced with without an EA when the so-called brush-cutting of natural vegetation occurred in the southern area of the site.

Your interest in the future of our environment is appreciated.

Yours faithfully



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

DATE: 14/5/2019

Copied to:

Mr Justin Truter (Werksmans Attorneys)
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Ms Annamarie Martin (Department of Agriculture, Forestry and Fisheries)
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