



**REFERENCE:** 14/1/1/E2/1/5/3/0329/17

**ENQUIRIES:** Mogammad Arshad Holliday

**BY EMAIL**

Middelrivier Plaas (Pty) Ltd

PO Box 277

BONNIEVALE

6730

Email: [corine.jaco@gmail.com](mailto:corine.jaco@gmail.com)

Tel: 082 404 0443

Attention: Mr Jacques Smit (in your capacity as a Director)

## COMPLIANCE NOTICE

Dear Sir

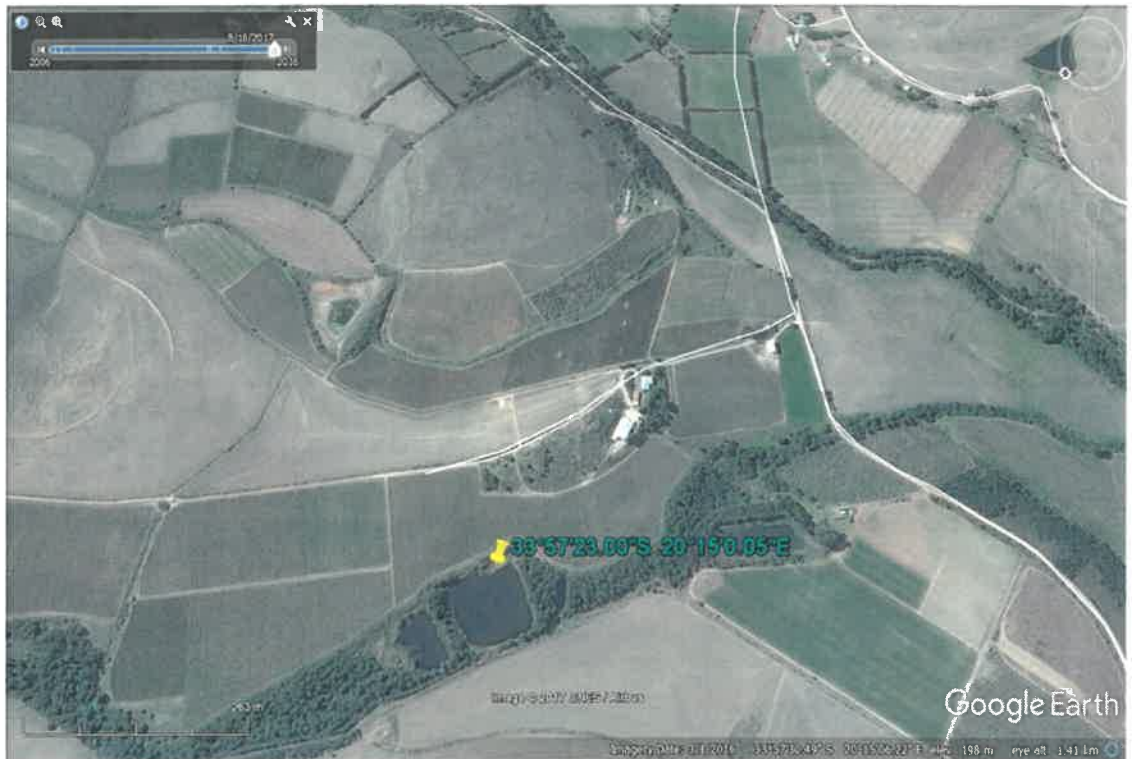
### COMPLIANCE NOTICE IN TERMS OF SECTION 31L OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998

1. The Department's Pre-Compliance Notice dated 21 August 2017 and your representations from Powell Kelly Veldman Attorneys received by the Department on 20 November 2017 and the Department's Letter dated 06 March 2018, has reference.

2. Having considered your representations, I, Mr Achmad Bassier, in my capacity as an Environmental Management Inspector Grade 1, hereby issue Mr Jacques Smit representing Middlerivier Plaas (Pty) Ltd 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 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 joint site inspection was conducted at Farm Middel Rivier No. 180 Portion 4, Bonnievale, by Environmental Management Inspectors from the Department's Directorate: Environmental Law Enforcement in conjunction with officials from the Breede-Gouritz Catchment Management Agency on 02 August 2018 and it was confirmed that you have commenced with excavation works to remove sediment build-up within an in-stream dam located within a watercourse (Koringlands River) and to repair a section of the dam wall without the requisite environmental authorisation.



Aerial map: Location of alleged illegal activity.

5. On considering the evidence before me there are reasonable grounds to believe that you have commenced the following activity 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.*



Photo 1: The extent of the dam as viewed from the eastern direction.



Photo 2: Location of the Koringlands River indicated by blue arrow.



Photo 3: The dam wall which was repaired.





Photo 4: The dam overflow/spillway.

**You are hereby instructed to:**

- 5.1 Immediately cease the above listed activity;
- 5.2 submit to the Department within **30 (thirty) calendar days** of receipt of this Compliance Notice a rehabilitation plan compiled by a suitably qualified and experienced independent environmental assessment practitioner, which must include the following:
  - 5.2.1 assessment and evaluation of the impact on the environment;
  - 5.2.2 identification of proposed remedial and/or mitigation measures;
  - 5.2.3 method statements detailing rehabilitation methods with specific time-frames to rehabilitate the impacted area to its original condition; and

- 5.2.4 mitigation measures to prevent soil erosion within the dam's overflow/spillway and further downstream which may result during periods of heavy rainfall.
6. Approval of the plan by the Department does not remedy the unlawful commencement of the above activity, which remain unlawful in terms of section 49A(1) (a) and/or (d) of the NEMA.
  7. If the above plan is approved by the Department, you will be obliged to take the necessary remedial / mitigation measures at your own cost.
  8. If you wish to continue with the listed activity you may apply for environmental authorisation by way of a section 24G application. However, such application does not constitute permission to continue with the listed activity, which remains unlawful unless environmental authorisation is granted.
  9. Notwithstanding the section 24G application, the Department may commence criminal proceedings should circumstances so require.

### **Varying this Compliance Notice**

10. If you would like me to vary this Compliance Notice or extend the period to which it relates, you may make representations to me, in writing, to do so.

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

11. 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.

12. 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.
13. Any non-compliance with the Compliance Notice must be reported to the Minister, who may:
  - 13.1 revoke any permit or authorisation to which this Compliance Notice relates; and/or
  - 13.2 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)**

14. 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.
15. You may also make representations, in writing, to the Minister to suspend the operation of this Compliance Notice pending finalisation of the objection.
16. The objection must be in writing and forwarded to the Appeal Administrator, Mr Jaap de Villiers 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 Jaap de Villiers (Tel: 021 483 3721)  
Room 809  
8th Floor Utilitas Building, 1 Dorp Street, Cape Town, 8001

By email: [Jaap.DeVilliers@westerncape.gov.za](mailto:Jaap.DeVilliers@westerncape.gov.za)

17. 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.



**Mr Achmad Bassier**

**Director: Environmental Law Enforcement**

**Grade 1 Environmental Management Inspector**

**Date:** 28/03/2019

CC: Elkerine Rossouw (BGCMA)

Email: [erossouw@bgcma.co.za](mailto:erossouw@bgcma.co.za)

Siyabulela Lupa (BGCMA)

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Powel Kelly Veldman Prokureurs

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