



**Western Cape
Government**

Environmental Affairs and
Development Planning

V5_2018/01

Directorate: Environmental Law Enforcement

REFERENCE: G14/1/1/E3/9/2/3/L820/16/VOL1

ENQUIRIES: D Mouton

VIA EMAIL

Mr JF Steenkamp

Email: production@nikwaflora.co.za

Nostranikwa (Pty) Ltd & Nikwaflora (Pty) Ltd

Executive Director

PO Box 756

Grootbrak River

6525

COMPLIANCE NOTICE

Dear Sir

COMPLIANCE NOTICE IN TERMS OF SECTION 31L OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 107 OF 1998

1. The Department's Directorate: Environmental Law Enforcement's Pre-Compliance Notice and Pre-Directive issued on 20 June 2016, the Directorate's letter dated 11 January 2017, the Environmental Assessment, Management and Rehabilitation Plan for ongoing farming and alien clearing activities on the farms 13/33, 9/38 and 10/33, Friemersheim dated May 2017, the Directorate's Notice in

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terms of section 31H(1)(a) dated 18 September 2017, the Directorate's letter dated 27 March 2018 and the Rehabilitation Plan for ongoing farming, alien clearing and fynbos management activities on the properties dated May 2018 has reference.

2. The Directorate cannot accept the latest Rehabilitation Plan dated May 2018 as the Plan is not site specific to the areas that have unlawfully been cleared of vegetation in the preceding 10 years (from 2006 to 2016) and has not included the issues as was explained in the Directorate's letter dated 27 March 2018.
3. Furthermore, it remains the Directorate's view that the objective of the Rehabilitation Plan is not to restore / rehabilitate the disturbed areas back to the natural indigenous vegetation as per its classification on Fine-scale vegetation maps of the region, and thus the activity is unlawful.
4. Having considered your representations and all the evidence in this matter, I, Mr Ayub Mohamed, in my capacity as an Environmental Management Inspector Grade 1, hereby issue Mr Japie Steenkamp representing Nostranikwa (Pty) Ltd & Nkwafloa (Pty) Ltd with a Compliance Notice in terms of section 31L of the National Environmental Management Act, 1998 ("NEMA").
5. 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.

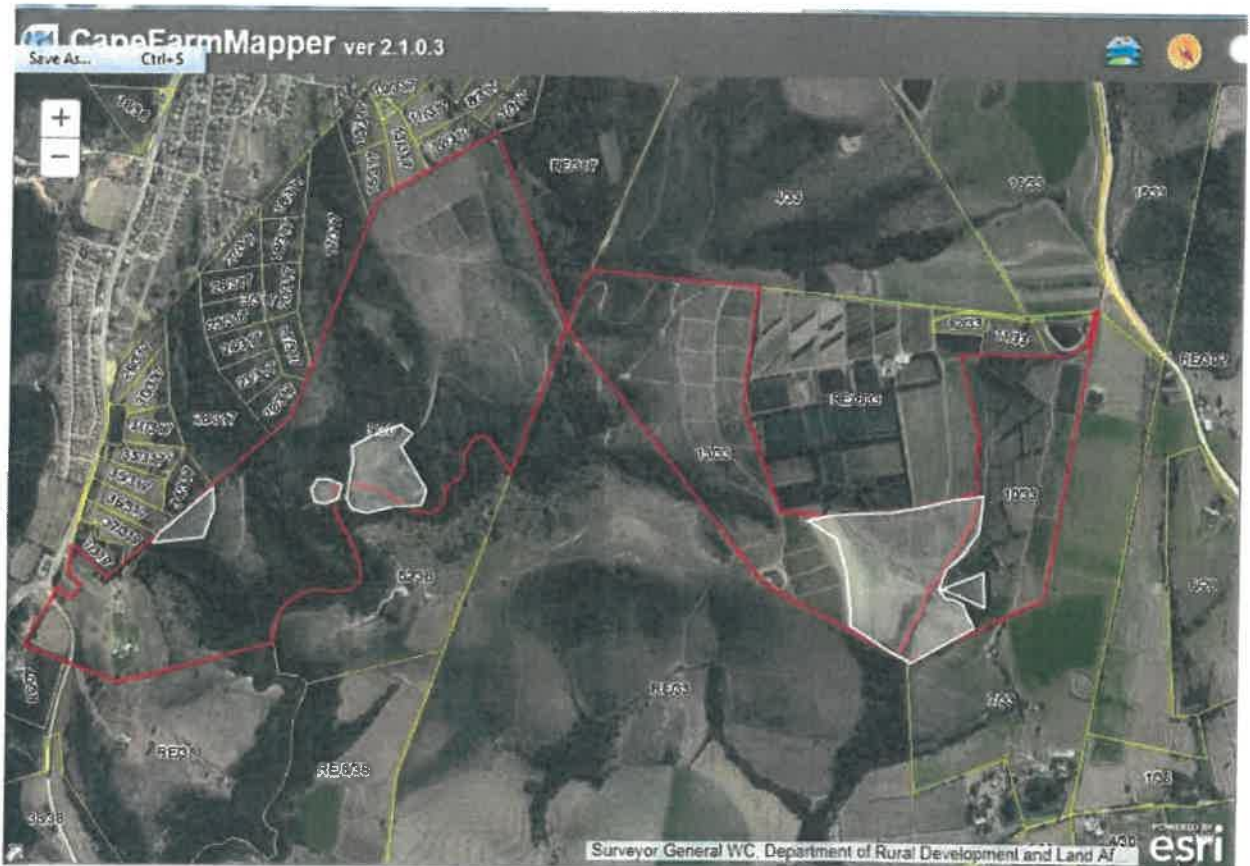
Details of conduct constituting non-compliance

1. 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 the properties by an Environmental Management Inspector from the

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Department's Directorate: Environmental Law Enforcement on 10 May 2016 and it was confirmed that you have commenced with the clearing of indigenous vegetation on portions of the said farms, which in total amounted to more than a hectare, without environmental authorisation.



Aerial map 1: Location of farms 13/33, 9/38 and 10/33, Fremersheim, Grootbrak River ("the properties") and the areas (indicated as white polygons) where illegal vegetation clearing have taken place. Source: CapeFarmMapper 2010



Aerial map 2: Indication of specific portions on farms 9/38 and 10/33, Fremersheim, Grootbrak River that have been cleared of indigenous vegetation that amounts to approximately 8ha. Source: CapeFarmMapper 2016.



Aerial map 3: Indication of vegetation classification on the portions that have been unlawfully cleared on the properties.

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2. 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. 27:

The clearance of an area of 1 hectares or more, but less than 20 hectares of indigenous vegetation, except where such clearance of indigenous vegetation is required for—

- (i) the undertaking of a linear activity; or
maintenance purposes undertaken in accordance with a
maintenance management plan.*



Photo 1: Close-up aerial view of Area 1 on Farm 10/33 with the view of the actual vegetation clearing that was conducted with a bulldozer on the mentioned area.

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Photo 2: Another view of Area 1 on Farm 10/33 of the vegetation clearing that occurred.

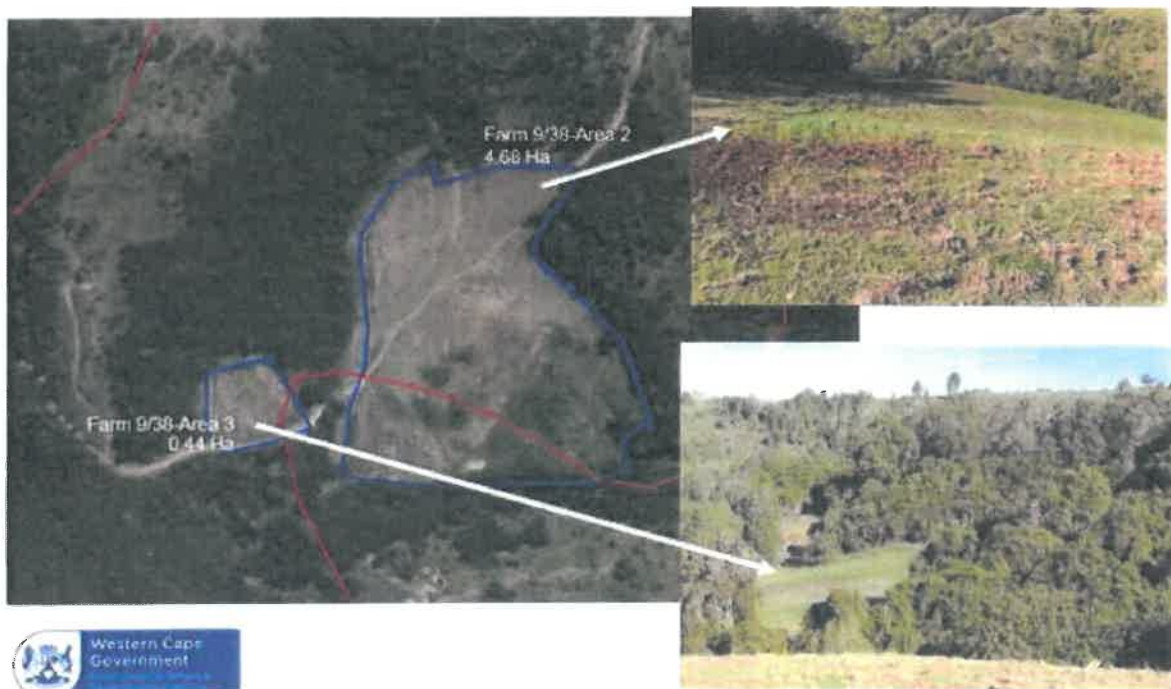


Photo 3: Close-up aerial view of Area 2 and Area 3 on Farm 9/38 with the views of the actual vegetation clearing that was conducted with a bulldozer on the mentioned areas.

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Photo 4: Close-up view of Area 2 on Farm 9/38 where clearing of vegetation occurred and the topsoil has been stabilised with grass.

3. You are hereby instructed to:

- a. Immediately cease the above listed activity;
- b. submit to the Department within **30 (thirty) calendar days** of receipt of this Compliance Notice an amended rehabilitation plan compiled by a suitably qualified and experienced independent environmental assessment practitioner, which must include the following:
- c. assessment and evaluation of the impact on the environment on only the areas that have been affected (refer to Aerial map 2 & 3 / unlawfully clearing of vegetation);
- d. identification of proposed remedial and/or mitigation measures;

- e. amend the Rehabilitation Plan to only deal with the actual restoration and rehabilitation of the affected / unlawfully cleared areas on the properties as determined by this Directorate;
- f. incorporate and amend accordingly the Rehabilitation Plan with the points as mentioned in the Directorate's letter dated 27 March 2018;
- g. the following recommendations as received from CapeNature dated 1 August 2018 must be implemented:
 - i. Include and show the Critical Biodiversity Areas (CBA1), Ecological Support Areas (ESA1), vegetation ecosystems and explain the relevant practical restoration back to the natural vegetation for only the affected areas on the properties;
 - ii. According to the fine scale vegetation map compiled for the Riversdale Coastal Plain the natural vegetation of the affected / cleared areas have been identified as Wolwedans Thicket Forest, Wolwedans Grassy Fynbos and Groot Brak River and Floodplain, therefore the restoration of the affected areas on the properties must mimic the structure and species composition of these vegetation types;
 - iii. The amended plan must address the rehabilitation and restoration back to the indigenous biodiversity that used to occur naturally on these properties;
 - iv. The objective is to restore the biodiversity back to what used to occur naturally in the area, therefore local species need to be planted and / or grown from cuttings and / or seed collected from a local genetic stock and form part of the rehabilitation plan criteria;

- v. Recommendations as to which species and the process that need to be followed to restore the affected areas with these species must be included in the plan; and
 - vi. The use of fire as a rehabilitation / restoration tool is concerning as the prospered burning within the Grassy Fynbos unit at a 7-9 cycle would result in selecting for and promoting re-sprouting species and fast-growing 'fire-weedy' species, furthermore is the affected areas mostly situated within the Thicket-Forest and River-Floodplain vegetation units (view Aerial Map 3) that needs fire to be kept out and active planting back of species for successful rehabilitation of these vegetation units.
4. Approval of the plan by the Department does not remedy the unlawful commencement of the above activity, which remains unlawful in terms of section 49A(1) (a) and/or (d) of the NEMA.
 5. If the above plan is approved by the Department, you will be obliged to take the necessary remedial / mitigation measures at your own cost.
 6. 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.
 7. Notwithstanding the section 24G application, the Department may commence criminal proceedings should circumstances so require.

Varying this Compliance Notice

8. 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

9. 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.
10. 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.
11. Any non-compliance with the Compliance Notice must be reported to the Minister, who may:
 - a. revoke any permit or authorisation to which this Compliance Notice relates; and/or
 - b. 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)

12. 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.
13. You may also make representations, in writing, to the Minister to suspend the operation of this Compliance Notice pending finalisation of the objection.
14. 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

15. 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.



Ayub Mohamed

Chief Director: Environmental Governance, Policy, Co-ordination and Enforcement

Grade 1 Environmental Management Inspector

Date: 30/08/2018

Cc: HillLand Environmental cc cathy@hilland.co.za
