



**REFERENCE NUMBER:** 14/2/1/F1/11/Mosselbaai Farm Portion 8+12 Piketberg

**ENQUIRIES:** Shafeeq Mallick

**BY REGISTERED MAIL**

The Managing Director  
Ranger Outback Promotions (Pty) Ltd  
Postnet Suite 138  
Private Bag X19  
MILNERTON  
7435

Tel: (021) 555 2279  
Fax: (021) 551 4263  
Email: parkin@7starsenergy.co.za

**Attention: Mr Parkin Emslie**

Dear Sir

**DECISION IN TERMS OF SECTION 24G (2)(A) READ WITH SECTION 24G (3)(A) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998) ("NEMA"): CONSTRUCTION OF A DWELLING AND ADDITIONAL INFRASTRUCTURE WITHIN THE 100m HIGHWATER MARK ON MOSSELBAAI FARM, PORTION 8/12 VERLORENVLEI, PIKETBERG**

With reference to your application dated 07 June 2012 in terms of section 24G of the NEMA for the consequences of unlawful commencement of listed activities identified in terms of the NEMA, find below the decision in respect of your application.

**A. DESCRIPTION OF THE ACTIVITY**

In 2011, Mr Parkin Emslie of Ranger Outback Promotions (Pty) Ltd, commenced with the construction of a house on the southern portion of Farm Mosselbaai, Portion 8/12, Verlorenvlei. An additional accommodation unit and social/recreational area was constructed between 2004 and 2006. Both the main house and the additional structure was constructed closer than 100m from the high-water mark of the sea as determined by the land surveyor. The structures were larger than 50m<sup>2</sup> in total. Combined, they totalled an area of approximately 1300m<sup>2</sup>.

The activity is identified in terms of Listing Notice 1 of Government Notice No. R544 of 18 June 2010, as follows as follows:

Listed Activities	Activity/Project Description
<p>Government Notice No. R544 of 18 June 2010 –</p> <p><b>Activity Number: 16</b></p> <p>Activity Description: <i>Construction or earth moving activities in the sea, an estuary, or within the littoral active zone or a distance of 100 metres inland of the high-water mark of the sea or an estuary, whichever is the greater, in respect of –</i></p> <ul style="list-style-type: none"> <li>(i) <i>fixed or floating jetties and slipways;</i></li> <li>(ii) <i>tidal pools;</i></li> <li>(iii) <i>embankments;</i></li> <li>(iv) <i>rock revetments or stabilising structures including stabilising walls;</i></li> <li>(v) <i>buildings of 50 square metres or more;</i> or</li> <li>(vi) <i>infrastructure covering 50 square metres or more –</i></li> </ul> <p><i>but excluding</i></p> <ul style="list-style-type: none"> <li>(a) <i>if such construction or earth moving activities will occur behind a development setback line; or</i></li> <li>(b) <i>where such construction or earth moving activities will occur within existing ports or harbours and the construction or earth moving activities will not increase the development footprint or throughput capacity of the port or harbour;</i></li> <li>(c) <i>where such construction or earth moving activities is undertaken for</i></li> </ul>	<p>In 2011, Mr Emslie commenced with the construction of a house on the southern portion of the site.</p> <p>An additional accommodation unit and social/recreational area was constructed between 2004 and 2006.</p> <p>Both the main house and the additional structure was constructed closer than 100m from the high-water mark of the ocean as determined by the land surveyor.</p> <p>The structures were larger than 50m<sup>2</sup> in total. Combined they totalled an area of approximately 1300m<sup>2</sup>.</p> <p>Subsequent to the submission of the 24G application; during the period that the environmental impact assessment, with specialist studies was being undertaken; the unlawfully constructed structures were burnt down, excluding the look-out deck and braai area.</p> <p>Following this burning incident, the development footprint where the main house had been built was cleared, except for the chimney. The area was subsequently infilled with shell material.</p>

<p>purposes of maintenance of the facilities mentioned in (i)-(vi) above; or</p> <p>(d) where such construction or earth moving activities is related to the construction of a port or harbour, in which case activity 24 of Notice 545 of 2010 applies.</p>	
<p>Government Notice No. R544 of 18 June 2010 –</p> <p><b>Activity Number: 18</b></p> <p>Activity Description: <i>The infilling or depositing of any material of more than 5 cubic metres into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock of more than 5 cubic metres from:</i></p> <ul style="list-style-type: none"> <li>(i) <i>a watercourse;</i></li> <li>(ii) <i>the sea;</i></li> <li>(iii) <i>the seashore;</i></li> <li>(iv) <i>the littoral active zone, an estuary or a distance of 100 metres inland of the high- water mark of the sea or an estuary, whichever distance is the greater- but excluding where such infilling, depositing, dredging, excavation, removal or moving;</i></li> </ul> <p>(a) <i>is for maintenance purposes undertaken in accordance with a management plan agreed to by the relevant environmental authority; or</i></p> <p>(b) <i>occurs behind the development setback line.</i></p>	<p>As described above.</p>

## B. PROPERTY DESCRIPTION AND LOCATION

The listed activities commenced on Mosselbaai Farm, Portion 8/12 Verlorenvlei, Piketberg.

The SG digit code is: C05800060000000800012

The co-ordinates for the site is:

Point	Latitude (S)	Longitude (E)
1	32° 20' 38.8" South	18° 19' 11.2" East

Refer to Annexure 1: Locality Plan

Herein-after referred to as "the site".

## C. DETAILS OF THE APPLICANT

Ranger Outback Promotions (Pty) Ltd

C/o Mr Mr Parkin Emslie

Postnet Suite 138

Private Bag X19

MILNERTON

7435

Tel: (021) 555 2279

Fax: (021) 551 4263

Email: parkin@7starsenergy.co.za

The abovementioned applicant is the holder of this decision and is hereinafter referred to as "the holder".

## D. DETAILS OF THE ENVIRONMENTAL ASSESSMENT PRACTITIONER ("EAP")

Guillaume Nel Environmental Consultants (GNEC)

C/o Mr Guillaume Nel

P. O. Box 2632

PAARL

7620

Tel: (021) 870 1874

Fax: (021) 870 1873

Email: [guillaume@gnec.co.za](mailto:guillaume@gnec.co.za)

## **E. DECISION**

In terms of section 24G(2)(a) of the NEMA (as amended), I, Charmaine Maré, as the delegated competent authority, have decided not to grant an Environmental Authorisation for the continuation of the activity as specified in Section A above. The key reasons for this decision is stated in Annexure 2 of this decision.

Additionally, in terms of section 24G(3)(a) of the NEMA (as amended), I hereby direct you, as the holder of this decision, to immediately cease and refrain from continuing with the activity indicated in section A above. The conditions outlined in section F below must be strictly adhered to and the site must be rehabilitated in accordance with section G of this decision.

## **F. COMPLIANCE WITH EIA REGULATIONS, 2014 AND NOTICE OF DECISION TO INTERESTED AND AFFECTED PARTIES**

1. Regulation 46 of the *EIA Regulations, 2014* promulgated in terms of the NEMA stipulate that an applicant may not submit an application which is substantially similar to a previous application that has been refused, unless any appeals on that decision have been finalised or the time period for the submission of an appeal has lapsed.

2. The holder must in writing, within 14 (fourteen) calendar days of the date of this decision –

2.1 notify all registered Interested and Affected Parties ("I&APs") of –

2.1.1 the outcome of the application;

- 2.1.2 the reasons for the decision as outlined in Annexure 2;
  - 2.1.3 the date of the decision; and
  - 2.1.4 the date when the decision was issued.
- 2.2 draw the attention of all registered I&APs to the fact that an appeal may be lodged against the decision in terms of *National Appeals Regulations, 2014* detailed in Section H below;
- 2.3 draw the attention of all registered I&APs to the manner in which they may access the decision;
- 2.4 provide the registered I&APs with:
- 2.4.1 the name of the holder (entity) of this decision,
  - 2.4.2 name of the responsible person for this decision,
  - 2.4.3 postal address of the holder,
  - 2.4.4 telephonic and fax details of the holder,
  - 2.4.5 e-mail address, if any, of the holder,
  - 2.4.6 the contact details (postal and/or physical address, contact number, facsimile and e-mail address) of the decision-maker and all registered I&APs in the event that an appeal is lodged in terms of the *National Appeals Regulations, 2014*.

## **G. CONDITIONS OF THE DECISION**

1. The holder must ensure that rehabilitation is completed within one year of this decision.
2. The holder must appoint a suitably experienced Environmental Control Officer ("ECO")/Coastal Ecological Specialist ("CES") within one month of this decision and before starting with any rehabilitation.
3. The duties of the appointed ECO/CES must include, but not be limited to, the following:
  - 3.1. Monitor compliance to the conditions and rehabilitation instructions of this decision.
  - 3.2. Facilitate the implementation of rehabilitation of the disturbed areas of the site.

- 3.3. Facilitate the appointment of additional relevant specialist(s) to assist in achieving rehabilitation of the activities on site, if required.
- 3.4. Compile and submit the rehabilitation progress reports, as determined by the ECO/CES.
- 3.5. Compile and submit final report confirming the rehabilitation process has been completed.
4. All permanent and temporary structures and infrastructure that were constructed by the holder must be removed and vegetation must be allowed to re-establish on the disturbed areas.
5. The shell material deposited at the site of the burnt dwelling must be removed and the area must be allowed to return to its original vegetated state prior to construction of the dwelling.
6. All previously undisturbed, natural areas of the site must be designated as 'No-Go' areas to prevent activities which may result in degradation during the rehabilitation process.
7. All other natural areas surrounding the site of the structures and infrastructure must be maintained to remain intact and protected.
8. All alien vegetation species found on site must be eradicated and disposed of at a registered landfill site. Control measures to prevent further spread of the alien vegetation species must also be put in place.
9. Only indigenous plant species, preferably species that are indigenous to the naturally occurring vegetation of the area, should be used for rehabilitation.
10. Upon completion of the rehabilitation of the site, a detailed final report must be compiled and submitted to the Department within thirty (30) days of completion. The report must include, but not be limited to the following information:
  - 10.1. Confirmation that the site has been rehabilitated in accordance with this
  - 10.2. Details of any environmental incident encountered during the rehabilitation process.

10.3. Details of any deviations from the approved plan (if any) and reasons thereof.

10.4. Confirmation of appropriate disposal of waste generated on site.

## H. APPEALS

Appeals must comply with the provisions contained in the *National Appeal Regulations, 2014*.

1. An appellant (if the holder) must –

1.1 submit an appeal in accordance with regulation 4 *National Appeal Regulations, 2014* to the Appeal Administrator and a copy of the appeal to any registered I&APs, any Organ of State with interest in the matter and the decision maker within 20 (twenty) calendar days from the date the holder was notified by the competent authority of this decision.

2. An appellant (if NOT the holder) must –

2.1 submit an appeal in accordance with regulation 4 *National Appeal Regulations, 2014* to the Appeal Administrator, and a copy of the appeal to the holder, any registered I&APs, any Organ of State with interest in the matter and the decision maker within 20 (twenty) calendar days from the date the holder notified the registered I&APs of this decision.

3. The holder (if not the appellant), the decision-maker, I&APs and Organ of State must submit their responding statements, if any, to the Appeal Authority and the appellant within 20 (twenty) calendar days from the date of receipt of the appeal submission.

4. This appeal and responding statement must be submitted to the address listed below:

By post:                   Attention: Marius Venter  
Western Cape Ministry of Local Government, Environmental Affairs &  
Development Planning  
Private Bag X9186, Cape Town, 8000; or

By facsimile:           (021) 483 4174; or

By hand:                 Attention: Mr Marius Venter (Tel: 021-483 3721)



Room 809, 8th floor Utilitas Building

1 Dorp Street, Cape Town, 8000; or

By e-mail: [DEADP.Appeals@westerncape.gov.za](mailto:DEADP.Appeals@westerncape.gov.za)

**Note:** You are also requested to submit an electronic copy (Microsoft Word format) of the appeal and any supporting documents to the Appeal Administrator to the address listed above and/ or via e-mail to [DEADP.Appeals@westerncape.gov.za](mailto:DEADP.Appeals@westerncape.gov.za).

5. A prescribed appeal form, as well as assistance regarding the appeal processes is obtainable from the office of the appeal authority/ at: Tel. (021) 483 3721, E-mail [DEADP.Appeals@westerncape.gov.za](mailto:DEADP.Appeals@westerncape.gov.za) or URL <http://www.westerncape.gov.za/eadp>.

#### **I. CONSEQUENCES OF NON-COMPLIANCE**

Non-compliance with the conditions of this decision may render the holder liable for criminal prosecution.

#### **J. DISCLAIMER**

The Western Cape Government, appointed in terms of the conditions of this decision shall not be responsible for any damages or losses suffered by the holder, developer or his/her successor in any instance where construction or operation subsequent to construction is temporarily or permanently stopped for reasons of non-compliance with the conditions as set out herein or any other subsequent document or legal action emanating from this decision.

Yours faithfully



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**ADV. CHARMAINE MARÉ**

**DIRECTOR: ENVIRONMENTAL GOVERNANCE**

DATE OF DECISION: 21 July 2020

Copied to: (1) Guillaume Nel (Guillaume Nel Environmental Consultants)

Fax: (021) 870 1873

# ANNEXURE 1: LOCALITY MAP



**FOR OFFICIAL USE ONLY:**

**S24G REFERENCE: 14/2/1/F1/11/MOSSELBAAI FARM PORTION 8+12 PIKETBERG**

**ANNEXURE 2: REASONS FOR THE DECISION**

This decision is in respect of the consequences of commencement of the aforementioned illegal activities. An Environmental Assessment Practitioner ("EAP") was appointed to submit a section 24G Environmental Impact Assessment ("EIA") to the Department to obtain a decision. The EIA was considered adequate for informed decision-making. In addition, the holder paid an administrative fine of R175 000 (One hundred and seventy-five thousand Rand) to meet the requirements of section 24G of the *National Environmental Management Act, 1998* ("NEMA").

In reaching its decision, the competent authority, *inter alia*, considered the following:

- a) The information contained in the application form dated 07 June 2012, the Environmental Impact Assessment and Mitigation (EIA) report dated 4 December 2015, the Environmental Management Programme (EMPr) submitted together with the EIA report, and the requested additional information dated 24 April 2018 and 18 July 2019, respectively.
- b) Due consideration of the objectives and principles as outlined in section 2 of the NEMA.
- c) The comments received from Interested and Affected Parties ("I&APs") and the responses provided thereto. In particular, the comments received from organs of state, such as CapeNature, Heritage Western Cape and West Coast District Municipality.
- d) Due consideration of the sense of balance of the negative and positive impacts of the activity/ies on the receiving environment.
- e) The site visit conducted on 10 June 2016 and 26 February 2019 attended by officials of this Directorate.
- f) Consideration that the main dwelling and infrastructure has burnt down subsequent to the submission of the Final EIR.
- g) Compliance history of the applicant.

All information presented to the competent authority was considered in the determination of the application for environmental authorisation. A summary of the issues which, according to the competent authority, were the most significant reasons for the decision is set out below.

## 1. Public Participation Process

In terms of section 24G(1)(vii)(dd) of the NEMA, "...a description of the public participation process followed during the course of compiling the report, including all comments received from interested and affected parties and an indication of how the issues raised have been addressed ...", is required.

The public participation process conducted by the EAP comprised of the following:

- identification of and engagement with I&APs.
- fixing a notice board at the site where the listed activities unlawfully commenced.
- the placing of a newspaper advertisement in the **Weslander** on 19 June 2012.
- giving written notice to the owners and occupiers of land adjacent to the site where the listed activities were undertaken, the municipality and ward councillor, and the various organs of state having jurisdiction in respect of any aspect of the listed activities on 16 May 2014.
- Commenting periods on the assessment reports on 19 July 2012 and 16 May 2014.

### Consultation with organs of state in terms of section 24O of the NEMA

The following organs of state provided comment on the application:

- CapeNature
- West Coast District Municipality
- Heritage Western Cape
- Department of Environmental Affairs: Oceans and Coasts

CapeNature (CN) indicated that they do not support any development within the coastal management zone. The new structures are as close as 30-35m from the high-water mark and are built unacceptably close to the frontal dunes. CN would not have supported the use of the development site had this development been applied for through a regular EIA application process.

In their comment CapeNature recommended the following should the main dwelling and infrastructure remain:

- Property owner must accept all risks and liabilities associated with potential and actual damage to property.
- No additional structures can be built below 90m above the High Water Mark (HWM).
- The farm is not being used for agriculture, therefore the need for additional staff accommodation is minimal. All additional buildings (including shacks, sheds and hard standing areas) containers, caravans etc. closer than 100m from the HWM should be removed.
- No resort zoning or consent use for tourism should be allowed.

The West Coast District Municipality (WCDM) highlighted concerns for precedent setting and that approval of the application will lead to unbridled development in rural areas with dire consequences for the environment. The site is currently zoned as Private Open Space III with existing rights for 10 residential units.

Heritage Western Cape (HWC) highlighted that the EIA Report, EMPr and EIA: Heritage Report addressed some of the heritage constraints. However, the report was considered to be insufficient and inadequate for the protection of archaeological resources. HWC requested submission of a Conservation Management Plan ("CMP"). This plan was submitted in April 2018 and indicated that HWC resolved to approve the CMP subject to the following that must be adhered to: The applicant must take into consideration that he will not be allowed to build any structure on the coastal public property to protect his property from erosion and accretion.

Department of Environmental Affairs: Oceans and Coasts (DEA:O&C) highlighted that fact that the applicant must take into consideration that he will not be allowed to build any structure on the coastal public property to protect his property to prevent erosion and accretion.

DEA:O&C made the following recommendations for the 24G application:

- No further clearing of vegetation on the property.
- None of the existing illegal structures that were constructed and placed on the coastal zone must be formalized.



- No additional structures must be constructed.
- In terms of section 60 of the *Integrated Coastal Management Act, 2008 (Act 24 of 2008)* ("ICM Act"), a person who erect, construct or upgrade a structure within the coastal zone in contravention of ICM Act or any other law can be issued with repair and removal notice. Therefore, a removal and repair notice should be issued to the applicant, and the affected area must be rehabilitated.
- The National Department of Environmental Affairs: Oceans and Coast recommends that the 24G application be rejected, and the above-mentioned recommendation be implemented as soon as possible.

No additional structures must be placed or constructed in the coastal zone without an authorization from the responsible authority.

## **2. Environmental Impact Assessment (EIA) and Mitigation Measures**

In reaching its decision, the competent authority, considered the following in respect of the EIA and mitigation measures:

### **2.1. Biodiversity Impacts**

Around the dwelling, the vegetation has been cleared to varying degrees. Also taken into consideration is the proximity of the development to the HWM (within 30-35m of the HWM) and it being located close to the frontal dunes, within the coastal management zone. Due to the undisturbed nature of the vegetation on site, and the coastal impacts thereof, a localised biodiversity impact has been identified. The structures constructed on site indicates the lack of consideration given to the effects of climate change, as well as the impacts of such structures on the coastal environment.

Additionally, the environment was further altered subsequent to the submission of the 24G application, with the infilling of shell material on the site of the burnt dwelling in 2018. This was confirmed to have triggered a listed activity in terms of the NEMA 2014 regulations.

### **2.2. Visual / Sense of Place**

The sense of place impact of the unlawful activities relates to the Mike Taylors Midden, which was declared a Provincial Heritage Site. The development has a low visual impact on the midden and there are concerns that increasing the size of height of the cabins and the creation of further caravan sites will have a negative aesthetic impact. The CMP concluded that any increase in the size

and bulk of structures and camps has the potential to increase the visual impacts and reduce the aesthetic qualities of the Provincial Heritage Site.

### **3. NEMA Principles**

The National Environmental Management Principles (set out in section 2 of the NEMA), which apply to the actions of all organs of state, serve as guidelines by reference to which any organ of state must exercise any function when taking any decision, and which must guide the interpretation, administration and implementation of any other law concerned with the protection or management of the environment), *inter alia*, provides for:

- the effects of decisions on all aspects of the environment to be taken into account;
- the consideration, assessment and evaluation of the social, economic and environmental impacts of activities (disadvantages and benefits), and for decisions to be appropriate in the light of such consideration and assessment;
- the co-ordination and harmonisation of policies, legislation and actions relating to the environment;
- the resolving of actual or potential conflicts of interest between organs of state through conflict resolution procedures; and
- the selection of the best practicable environmental option.

The Department applied a risk-averse and cautious approach with respect to this application. The Department therefore took into consideration the potential negative impacts (as identified above), the comments received during the PPP as well as the fact that the unlawful dwelling in question was destroyed during a fire incident. Although some impacts can be minimised, it cannot altogether be prevented.

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