



REFERENCE: 14/2/1/1/A4/43/0060/14

ENQUIRIES: Ziyaad Allie

The Director
Ross Excavations (Pty) Ltd
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Attention: Robert Ross

Dear Sir

APPLICATION IN TERMS OF SECTION 24G OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998) ("NEMA"): THE UNLAWFUL INFILLING OR DEPOSITING OF ANY MATERIAL OF MORE THAN 5 CUBIC METRES INTO OR THE DREDGING, EXCAVATION, REMOVAL OR MOVING OF SOIL AND SHELLS, SHELL GRIT, PEBBLES OR ROCK ON PORTION 2 OF REMAINDER OF ERF 1, MFULENI

With reference to your application dated 30 October 2014 in terms of section 24G of the NEMA for the consequences of unlawful commencement of listed and waste management activities identified in terms of the NEMA, find below the decision in respect of your application.

ENVIRONMENTAL AUTHORISATION

A. DECISION

By virtue of the powers conferred by section 24G of the NEMA and the *Environmental Impact Assessment Regulations, 2014* ("EIA Regulations, 2014") (as amended), the competent authority herewith **grants environmental authorisation** to the applicant to continue with the listed activities detailed in Section A.1 below and **refuses environmental authorisation** to the applicant to continue with the activities detailed in Section A.2 below.

1. GRANTING OF LISTED ACTIVITIES

By virtue of the powers conferred by section 24G of the NEMA and the *Environmental Impact Assessment Regulations, 2014* ("EIA Regulations, 2014") (as amended), the competent authority herewith **grants environmental authorisation** to the applicant to continue with the listed activities specified in Section C.1 below as described in the Environmental Impact Report ("EIR") dated 17 September 2015.

The granting of this Environmental Authorisation is for the continuation, conducting or undertaking of the listed activities as described in Section C.1 below and is subject to compliance with the conditions set out in Section G. This Environmental Authorisation shall only take effect from the date on which it has been issued.

This granting of environmental authorisation of the listed activities specified in C.1 does not exempt the holder thereof from compliance with any other applicable legislation.

2. REFUSING OF LISTED ACTIVITIES

By virtue of the powers conferred by section 24 and section 24G of the NEMA, the competent authority herewith **refuses** environmental authorisation to the applicant to continue with the listed activities specified in Section C.2 below. The refusal in this environmental authorisation is for the continuation of the waste activities as specified in Section C.2 below and is also subject to compliance with the conditions set out in Section G.

B. DETAILS OF THE APPLICANT FOR THIS ENVIRONMENTAL AUTHORISATION

Ross Excavations (Pty) Ltd. T/A Ross Demolition
c/o Mr Robert Ross
P.O. Box 179
WOODSTOCK
7915

Tel: (021) 511 1204

Fax: (021) 511 1205

Email: John@rossdem.co.za and/or ivy@rossdem.co.za

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

C. 1. LIST OF ACTIVITIES AUTHORISED

Listed Activities	Activity/Project Description
<p>Government Notice No. R386 of 2006 –</p> <p>Activity Number: 4</p> <p>Activity Description: "The dredging, excavation, infilling, removal or moving of soil, sand or rock exceeding 5 cubic metres from a river, tidal lagoon, tidal river, lake, in-stream dam, floodplain or wetland."</p>	<p>In 2009 the commencement of activities included the infilling of approximately 5400m² portion of a wetland on Erf 1, Mfuleni. The material consisted of approximately 400-500m³ of clean builder's rubble.</p>
<p>Government Notice No. R544 of 18 June 2010 –</p> <p>Activity Number: 18</p> <p>Activity Description:</p> <p>"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:</p> <ul style="list-style-type: none"> (i) a watercourse; (ii) the sea; (iii) the seashore; (iv) 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; <p>(a) is for maintenance purposes</p>	<p>In 2013 the commencement of the unlawful activities continued and the holder removed some of the infilled material without the implementation of an approved rehabilitation plan.</p> <p>Of the 400-500m³ of material which was infilled on site, approximately 90m³ remains.</p> <p>The removal of the remaining 90m³ and the rehabilitation of the affected areas is herewith approved and must be undertaken in accordance with the approved rehabilitation plan.</p>

<p>undertaken in accordance with a management plan agreed to by the relevant environmental authority; or (b) occurs behind the development setback line."</p>	
<p>Similarly listed in Government Notice No. R. 983 of 4 December 2014 - Activity Number: 19 Activity Description: "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 but excluding where such infilling, depositing, dredging, excavation, removal or moving— will occur behind a development setback; is for maintenance purposes undertaken in accordance with a maintenance management plan; falls within the ambit of activity 21 in this Notice, in which case that activity applies; occurs within existing ports or harbours that will not increase the development footprint of the port or harbour; or 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."</p>	<p>The removal of the remaining 90m³ and the rehabilitation of the affected areas is herewith approved and must be undertaken in accordance with the approved rehabilitation plan.</p>

C.2. LIST OF ACTIVITIES REFUSED

<p>Government Notice No. 718 of 2009 – Category A – Activity Number: 1 Activity Description: <i>"The storage, including the temporary storage, of general waste at a facility that has the capacity to store in excess of 100m³ of general waste at any one time, excluding the storage of waste in lagoons."</i></p>	<p>In 2009 the commencement of activities included the infilling of approximately 5400m² portion of a wetland on Erf 1, Mfuleni. The material consisted of approximately 400-500m³ of clean builder's rubble.</p>
<p>As similarly listed in terms of Government Notice No. 921 of 2014 – Category B – Activity Number: 8 Activity Description: <i>"The disposal of general waste to land covering an area in excess of 200m² and with a total capacity exceeding 25 000 tons."</i></p>	<p>The continuation of this waste management activity is herewith refused.</p>

The abovementioned list is hereinafter referred to as "the activities".

D. PROPERTY DESCRIPTION AND LOCATION

The activities commenced on a portion of Portion 2 of Remainder of Erf 1, Mfuleni, Cape Town

The SG digit code is: C01600070000000100002

The co-ordinates for the property boundary are:

Point	Latitude (S)	Longitude (E)
1	34° 00' 36.07" South	18° 40' 42.23" East

Refer to Annexure 1: Locality Map
Herein-after referred to as "the site".

E. DETAILS OF THE ENVIRONMENTAL ASSESSMENT PRACTITIONER ("EAP")

Sillito Environmental Consulting
c/o Mr Adrian Sillito
P.O. Box 714
TOKAI
7966
Tel: (021) 712 5060
Fax: (021) 712 5061
Email: info@nvironmentalconsultants.co.za

F. DETAILS OF THE ACTIVITIES UNDERTAKEN

The activities undertaken on the site commenced in 2009 and include the disposal of waste which resulted in the infilling of approximately 5400m² on a portion of a wetland situated on Portion 2 of Remainder of Erf 1, Mfuleni. The material consisted of approximately 400-500m³ of clean builder's rubble.

Subsequently in 2013, the holder removed some of the infilled material without the implementation of an approved rehabilitation plan. The original wetland infill would have comprised of transportation of the fill material to the site by heavy vehicle, and tipping onto the site. The removal of rubble was undertaken by excavator after which it was removed from site by a heavy vehicle.

Of the 400-500m³ of material which was disposed and infilled on site, approximately 90m³ remains. The removal of the remaining 90m³ and the rehabilitation of the affected areas must be undertaken in accordance with the approved rehabilitation plan.

G. CONDITIONS OF AUTHORISATION

The following are conditions of authorisation that are set and must be implemented for this Environmental Authorisation.

PART I

Scope of authorisation

1. The holder is authorised to undertake the listed activities specified in Section C.1 above -
 - 1.1 in accordance with the rehabilitation requirements detailed in conditions 9 and 10 below; and
 - 1.2 is restricted to the location alternative described in the EIR dated 14 September 2015 on the site as described in Section D above.
2. The Environmental Authorisation is valid for a period of **three years** from the date of the decision.
3. The rehabilitation must be concluded within **three years** from the date of this authorisation.
4. The holder shall be responsible for ensuring compliance with the conditions by any person acting on his/her behalf, including an agent, sub-contractor, employee or any person rendering a service to the holder.
5. Any changes to, or deviations from the scope of the alternative described in Section F above must be accepted or approved, in writing, by the competent authority before such changes or deviations may be implemented. In assessing whether to grant such acceptance/approval or not, the competent authority may request information in order to evaluate the significance and impacts of such changes or deviations, and it may be necessary for the holder to apply for further authorisation in terms of the applicable legislation.

PART II

Written notice to the competent authority

6. Seven (7) calendar days' notice, in writing, must be given to the competent authority before commencement of rehabilitation activities.

- 6.1 The notice must make clear reference to the site details and 24G Reference number given above.
- 6.2 The notice must also include proof of compliance with condition 7.

PART III

Notification and administration of an appeal

7. The holder must in writing, within 14 (fourteen) calendar days of the date of this decision–
 - 7.1 notify all registered Interested and Affected Parties ("I&APs") of –
 - 7.1.1 the outcome of the application;
 - 7.1.2 the reasons for the decision as included in Annexure 3;
 - 7.1.3 the date of the decision; and
 - 7.1.4 the date when the decision was issued.
 - 7.2 draw the attention of all registered I&APs to the fact that an appeal may be lodged against the decision in terms of the *National Appeals Regulations, 2014* detailed in Section I below.
 - 7.3 draw the attention of all registered I&APs to the manner in which they may access the decision.
 - 7.4 provide the registered I&APs with:
 - 7.4.1 the name of the holder (entity) of this Environmental Authorisation;
 - 7.4.2 name of the responsible person for this Environmental Authorisation;
 - 7.4.3 postal address of the holder;
 - 7.4.4 telephonic and fax details of the holder;
 - 7.4.5 e-mail address, if any, of the holder; and
 - 7.4.6 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 Appeal Regulations, 2014*.
8. The listed activities, including site preparation, may not commence within 34 (thirty-four) calendar days from the date of issue of this Environmental Authorisation. In the event

that an appeal is lodged with the Appeal Authority, the effect of this Environmental Authorisation is suspended until the appeal is decided.

PART IV

Management of the activity/development

9. The Environmental Management Programme ("EMPr") of September 2015 compiled by Sillito Environmental Consulting, submitted as part of the application for environmental authorisation is hereby approved and must be implemented.
10. The Method Statement of June 2014 and the Rehabilitation Recommendations of December 2013 submitted as part of the application for environmental authorisation is hereby approved and must be implemented.
11. Rehabilitation must be undertaken with the guidance of an Environmental Control Officer and in consultation with a freshwater ecologist.
12. The holder must ensure that rehabilitation is concluded within 3 years of the date of this authorisation.
13. The EMPr, Method Statement and Rehabilitation Recommendations (as stated above) must be included in all contract documentation for the implementation thereof.

PART V

Monitoring

14. A copy of the Environmental Authorisation, EMPr, any independent assessments of for rehabilitation, audit reports and compliance monitoring reports must be kept at the head office of the holder for the authorised activities, and must be made available to anyone on request, including a publicly accessible website (if available).
15. Access to the site referred to in Section D must be granted, and the environmental reports mentioned above must be produced, to any authorised official representing the competent authority who requests to see it for the purposes of assessing and/or monitoring compliance with the conditions contained herein.

PART VI

Auditing

16. In terms of regulation 34 of the *EIA Regulations, 2014* the holder must conduct environmental audits to determine compliance with the conditions of the Environmental Authorisation, the EMPr and the Rehabilitation.
- 16.1 The holder must submit Annual Environmental Audit Reports to the competent authority; and
- 16.2 Upon receiving such request in writing from the competent authority, submit additional Audit Reports as may be required.
17. The Audit Report must be prepared by an independent person and must consider all the information required in Appendix 7 of the *EIA Regulations, 2014*.

PART VII

Activity/ Development Specific Conditions

18. Should any heritage remains be exposed during excavations or any other actions on the site, these must immediately be reported to the Provincial Heritage Resources Authority of the Western Cape, Heritage Western Cape. Heritage remains uncovered or disturbed during earthworks must not be further disturbed until the necessary approval has been obtained from Heritage Western Cape.

Heritage remains include: meteorites, archaeological and/or paleontological remains (including fossil shells and trace fossils); coins; indigenous and/or colonial ceramics; any articles of value or antiquity; marine shell heaps; stone artefacts and bone remains; structures and other built features with heritage significance; rock art and rock engravings; and/or graves or unmarked human burials including grave goods and/or associated burial material.

19. A qualified archaeologist and/or palaeontologist must be contracted where necessary (at the expense of the holder) to remove any heritage remains. Heritage remains can only be disturbed by a suitably qualified heritage specialist working under a directive from the relevant heritage resources authority.
20. The holder must submit a waste disposal certificate from Vissershok landfill site (or equivalent hazardous waste disposal facility) for the disposal of asbestos.
21. The disposal of asbestos must be removed in accordance with the applicable regulations for the handling and disposal of asbestos waste.

22. A post rehabilitation report must be submitted to this Department upon completion of the rehabilitation activities.

H. GENERAL MATTERS

1. Notwithstanding this Environmental Authorisation, the holder must comply with any other statutory requirements that may be applicable when undertaking the listed activities.
2. Non-compliance with a condition or term of this Environmental Authorisation or EMPr may render the holder liable to criminal prosecution.
3. If the holder does not continue, conduct or undertake listed activities within the period referred to in Condition 2 of Section G, this Environmental Authorisation shall lapse for that activity or activities, and a new application for Environmental Authorisation must be submitted to the competent authority. If the holder wishes to extend the validity period of the Environmental Authorisation, an application for amendment must be made on condition that the environmental authorisation is valid on the date of receipt of such amendment application.

Note that:

- (1) In terms of regulation 28(1A) of the EIA Regulations, 2014 the competent authority shall not accept or process an application for amendment of an environmental authorisation if such environmental authorisation is not valid on the day of receipt of such amendment application, but may consider an application for environmental authorisation for the same development.
- (2) In terms of regulation 28(1B) of the EIA Regulations, 2014 an environmental authorisation which is the subject of an amendment application remains valid pending the finalisation of the amendment application.
- (3) It is an offence in terms of section 49A(1)(a) of the NEMA for a person to commence with a listed activity if the competent authority has not granted an environmental authorisation for the undertaking of the activity.

4. The holder must submit an application for amendment of the Environmental Authorisation to the competent authority where any detail with respect to the Environmental Authorisation must be amended, added, substituted, corrected, removed or updated. If a new holder is proposed, an application for Amendment in terms of Part 1 of the *EIA Regulations, 2014* must be submitted.

Please note that an amendment is not required if there is a change in the contact details of the holder. In this case, the competent authority must only be notified of such changes.

5. The manner and frequency for updating the EMPr is as follows:

Amendments to the EMPr must be done in accordance with regulations 35 to 37 of the *EIA Regulations, 2014* or any relevant legislation that may be applicable at the time.

I. 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: Jaap de Villiers
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 Jaap de Villiers (Tel: 021-483 3721)
Room 809, 8th floor Utilitas Building
1 Dorp Street, Cape Town, 8000; or

By e-mail: Jaap.DeVilliers@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 Jaap.DeVilliers@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 Jaap.DeVilliers@westerncape.gov.za or URL <http://www.westerncape.gov.za/eadp>.

J. CONSEQUENCES OF NON-COMPLIANCE WITH CONDITIONS

Non-compliance with a condition or term of this Environmental Authorisation or EMPr may result in suspension or withdrawal of this Environmental Authorisation and may render the holder liable for criminal prosecution.

K. DISCLAIMER

The Western Cape Government, the Municipality, committees or any other public authority or organisation appointed in terms of the conditions of this Environmental

Authorisation 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



ADV. CHARMAINE MARÉ

DIRECTOR: ENVIRONMENTAL GOVERNANCE

DATE OF DECISION: 11.05.2018

Copied to:

(1) Adrian Sillito/Colleen McCreadie

(2) Alexander Forbes

(Sillito Environmental Consultants)

(City of Cape Town)

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