



REFERENCE NUMBER: 14/2/4/2/1/FA/6/0007/18

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Attention: Ms Mariet Smit

Dear Madam

**APPLICATION IN TERMS OF SECTION 24G OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998) ("NEMA"): THE UNLAWFUL BUILDING OF A DWELLING AND ASSOCIATED INFRASTRUCTURE ON ERF 451, JACOBS BAY**

With reference to your application dated 16 May 2018 submitted 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.

**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 specified in Section C below in accordance with Section A, as described in the Environmental Impact Report ("EIR") dated 26 September 2018.

- (i) a watercourse;
- (ii) the seashore; or
- (iii) 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-**
  - (a) will occur behind a development setback;
  - (b) is for maintenance purposes undertaken in accordance with a maintenance management plan; or
  - (c) falls within the ambit of activity 21 in this Notice, in which case that activity applies.

As similarly listed in Government Notice No. R327 of 2014

Activity 19A

**Activity Description:**

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) the seashore;
  - (ii) the littoral active zone, an estuary or a distance of 100 metres inland of the highwater mark of the sea or an estuary, whichever distance is the greater; or**
  - (iii) the sea; —
- but excluding where such infilling, depositing, dredging, excavation, removal

double garage on the ground floor, with a flatlet on the first floor;

- A driveway, kitchen yard, stone covered area, chimney detail, thatched roof, and rounded gable ends and small openings.

The footprint of the unlawful development is approximately 336.4 m<sup>2</sup>.

A boundary wall on the eastern side of the erf (30 m long and 0.9 m high) is proposed.

The site is located inside an already serviced residential area. However, water, sewer and electricity connections were needed to link the dwelling with municipal services.

zone, whichever distance is the greater, excluding where such removal will occur behind the development setback line or even in urban areas; or

- iv. On land, where, at the time of the coming into effect of this Notice or thereafter such land was zoned open space, conservation or had an equivalent zoning.

As similarly listed in Government Notice No. R327 of 2014

#### Activity 12

##### **Activity Description:**

The clearance of an area of 300 square metres or more of indigenous vegetation except where such clearance of Indigenous vegetation is required for maintenance purposes undertaken in accordance with a maintenance management plan.

##### **i. Western Cape**

- i. Within any critically endangered or endangered ecosystem listed in terms of section 52 of the NEMBA or prior to the publication of such a list, within an area that has been identified as critically endangered in the National Spatial Biodiversity Assessment 2004;
- ii. Within critical biodiversity areas identified in bioregional plans;
- iii. Within the littoral active zone or 100 metres inland from high water mark of the

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

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## **F. DETAILS OF THE ACTIVITIES UNDERTAKEN**

The unlawful development comprises a West Coast style beach dwelling with a flatlet, which was constructed between August 2016 and December 2017. The dwelling included:

- 3 bedrooms with en-suite bathrooms, an open plan living area and kitchen;
- An undercover terrace and open terrace, enclosed courtyard and double garage on the ground floor, with a flatlet on the first floor;
- A driveway, kitchen yard, stone covered area, chimney detail, thatched roof, and rounded gable ends and small openings.

The footprint of the unlawful development is approximately 336.4m<sup>2</sup>. A boundary wall on the eastern side of the erf (30 m long and 0.9 m high) is proposed. The site is in an already serviced municipal residential area. However, water, sewer and electricity connections were needed to link the dwelling with municipal services.

## **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 above, on the site as described in Section D above.

- 6.2 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.
- 6.3 draw the attention of all registered I&APs to the manner in which they may access the decision.
- 6.4 provide the registered I&APs with:
  - 6.4.1 the name of the holder (entity) of this Environmental Authorisation;
  - 6.4.2 name of the responsible person for this Environmental Authorisation;
  - 6.4.3 postal address of the holder;
  - 6.4.4 telephonic and fax details of the holder;
  - 6.4.5 e-mail address, if any, of the holder; and
  - 6.4.6 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*.

7. The listed activities, including site preparation, may not continue to 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**

8. The draft Environmental Management Programme ("EMPr") of August 2018, as compiled by Mark Berry Environmental Consultants, submitted as part of the application for environmental authorisation, is hereby approved and must be implemented.
9. The EMPr must be included in all contract documentation for all phases of implementation.

#### **PART V**

##### **Monitoring**

10. The holder must appoint a suitably experienced Environmental Control Officer ("ECO") ensure compliance with the EMPr and the conditions contained herein.

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.

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.

**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](mailto: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](mailto: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: 27 February 2019

CC: (1) Mark Berry (EAP)

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