



**REFERENCE:** 14/1/1/E3/8/2/3/L1280/22

**ENQUIRIES:** Raheem Dalwai

**BY EMAIL:** [rakel@mweb.co.za](mailto:rakel@mweb.co.za)

[tjaart@missionholdinggroup.co.za](mailto:tjaart@missionholdinggroup.co.za)

Managing Director  
Vivren Properties (Pty) Ltd  
6 Monaco Road  
Killarney Gardens  
7441

Attention: Mr Tjaart van der Walt

## COMPLIANCE NOTICE

Dear Sir

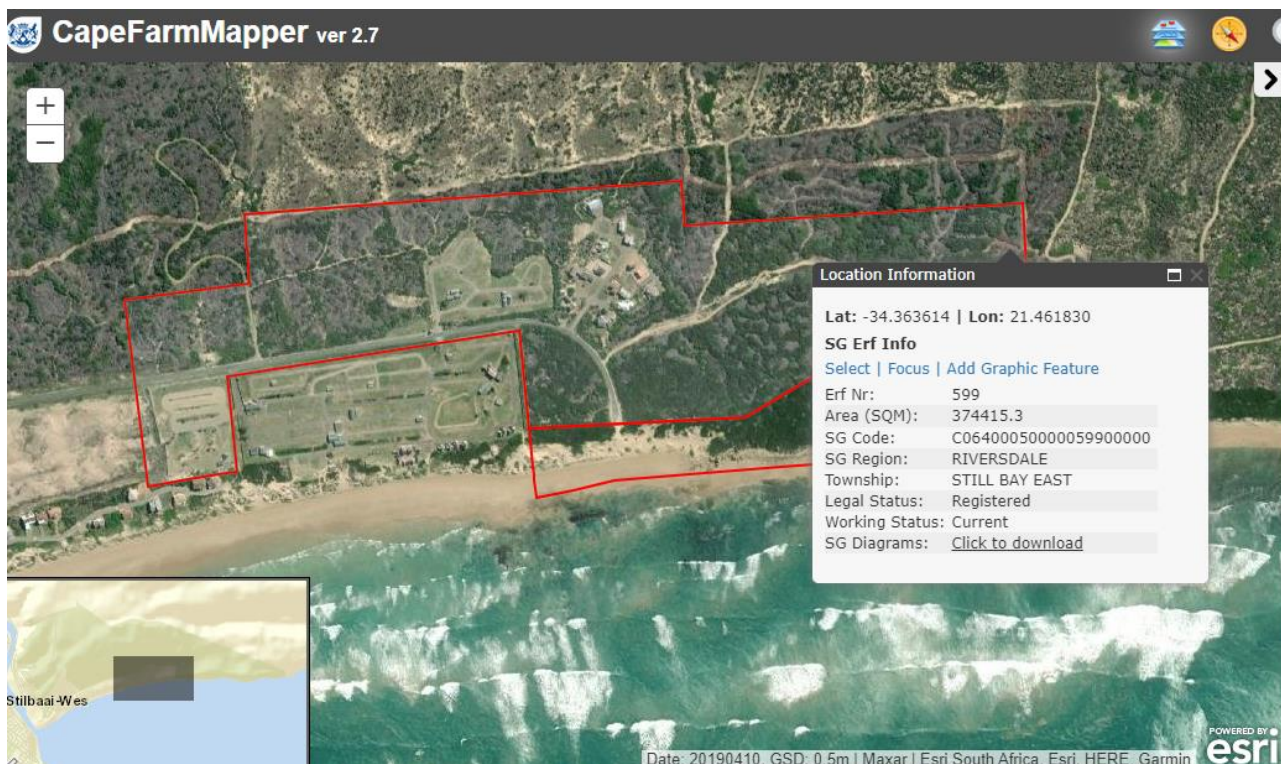
### COMPLIANCE NOTICE IN TERMS OF SECTION 31L OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998

1. The Department's Pre-Compliance Notice dated 20 January 2023, your Letter dated 30 January 2023, the Department's Response Letter dated 11 April 2023, and your representations in the form of a rehabilitation plan submitted on 15 May 2024 ("the rehabilitation plan"), has reference.

2. The rehabilitation plan has been reviewed, and considering Mr. Withers' proposal that the respective 10m, 12m and 14m peaks will be adequate to achieve the outcome of preventing environmental degradation and safeguard the properties to be built, this Directorate hereby supports this proposal, **and grants approval of the rehabilitation plan to be implemented.**
3. Having considered your representations and the evidence before me, and the fact that you have submitted a rehabilitation plan for the site, I, Achmad Bassier, in my capacity as an Environmental Management Inspector Grade 1, hereby issues Mr Tjaart van der Walt representing Vivren Properties (Pty) Ltd with a Compliance Notice in terms of section 31L of the National Environmental Management Act, 1998 ("NEMA").
4. This Compliance Notice relates to non-compliance with the provisions of section 24F of the NEMA, specifically, non-compliance with several conditions of an environmental authorisation granted for the commencement of certain listed activities. Additionally, this serves to hold you responsible to implement the aforesaid rehabilitation plan.

### **Details of conduct constituting non-compliance**

5. During an investigation into allegations of non-compliance with Environmental Authorisation ("EA") 16/3/3/1/D5/18/0001/17 conditions, site inspections were conducted at Erf 1028 and Erf 599 by Environmental Management Inspectors from the Department's Directorate: Environmental Law Enforcement on 06 December 2022, 5 June 2023, and 21 September 2023 whereby it was confirmed that you have not complied with conditions of the abovementioned EA.



Map 1: Location of alleged unlawful activity.

6. On considering the evidence before me there are reasonable grounds to believe that you have not complied with the following conditions of your EA:

**Condition 4:**

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.*

**Condition 5:**

5. *Any changes to, or deviations from the scope of the alternative described in section B 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.*

**Condition 7:**

*7. Seven calendar days' notice, in writing, must be given to the Competent Authority before commencement of construction activities.*

*7.2. The notice must also include proof of compliance with the following conditions described herein: Condition no.: 6, 8, 10, 17 and 21.*

**Condition 8:**

*8. The draft or Environmental Management Programme ("EMPr") submitted as part of the application for Environmental Authorisation must be amended to address the following aspects and must then be re-submitted to the Competent Authority and approved prior to commencement of construction.*

*8.1. Incorporate all the conditions given in this Environmental Authorisation;*

*8.2. Comply with section 24N of the National Environmental Management Act, 1998 and Appendix 4 of the Environmental Impact Assessment Regulations, 2014;*

*8.3. Clearly list the impact management outcomes and impact management actions for the proposed development;*

*8.4. Incorporate the recommendations from specialist reports (i.e. Botanical, HIA, Visual & Traffic)*

*8.5. Include detail on soil protection and rehabilitation measures that can be installed in areas where erosion may occur.*

*8.6. Include a site plan that —*

*(a) indicates the services on the site in terms of the sewer pipelines, water supply and electrical infrastructure; and*

*(b) provides a distinction between the private open space and the public open space.*

*8.7. Include a detailed Storm Water Management Plan that shows exactly where the specific water features / ponds will be located and associated infrastructure will be constructed.*

*8.8. Include a rehabilitation plan for the Frontal Dune System on Erf 1028.*

*The “Rehabilitation Guidelines” for the Frontal Dune System on Erf 1028 may serve as reference for such a plan. The plan must inter alia address the following:*

- (a) Only locally indigenous vegetation species may be planted on exposed sand surfaces, dunes or blow-out areas. This must clearly include locally indigenous dune vegetation.*
- (b) Planting Marram Grass (Ammophila arenaria) or any other identified alien invasive species must be strictly forbidden.*
- (c) The irrigation plan during the non-operational phase must be detailed. The irrigation of the frontal dune with effluent must be prohibited. Only potable water or effluent treated to potable standard may be used and only for the initial establishment of the planted vegetation.*

*8.9. Include an Alien Vegetation Management / Eradication plan for the removal of alien invasive species and on-going management of the open space areas on the property. This plan must include targets that must be achieved. This plan must include fire management too;*

*8.10. Operational Aspects –*

- 8.10.1. Provide an implementation plan with clear impact management outcomes and which highlights when each phase of the development will be handed over to a Homeowner’s Association or Body Corporate for management of the open spaces etc.*
- 8.10.2. Incorporate a schedule for the ECO to conduct site inspections during the operational phase of the development to monitor compliance with the Environmental Management Programme and the Environmental Authorisation.*
- 8.10.3. Include a conservation management plan for the private open space area in the estate and Erf 593; and*

8.10.4. An indication of the persons who will be responsible for the implementation of the impact management actions.

**Condition 18:**

18. The holder must ensure that vehicular and pedestrian access to the Geelkrans Nature Reserve is established and maintained across the property during all phases of the proposed Preekstoel Coastal Estate. Further to this—

- 18.1. any member of the public must be allowed to gain vehicular or pedestrian access to the Geelkrans Nature Reserve across the site;
- 18.2. the holder of the authorisation must have an access servitude registered across the portion of Erf 599 for the access road along the proposed alignment. Such servitude must be registered against the title deed of the portion of land of Erf 599 and must be applicable to the successors in title of the portion of Erf 599;
- 18.3. the holder must formalise the road access to the Geelkrans Nature Reserve at his own cost;
- 18.4. the Geelkrans Nature Reserve must be accessible to the public (both vehicular and pedestrian access) at all times during the construction phase of the development.

**Condition 21:**

21. The holder must, prior to the activities commencing on site, register the following legally binding provisions or obligations on the land between the development setback line and the high water mark of the sea (i.e. private and public open space) to limit the use of the proposed open space area for a conservation use.

Such provisions must as a minimum be a —

21.1. “Non-User Conservation Servitude” The holder is required to register, in favour of the Hessequa Municipality and the Home



Owners Association, a conservation servitude over the identified land which requires protection from development in perpetuity and in order to secure the conservation of the site. The conditions of the conservation servitude must inter alia address the following measures

- (a) No earthworks or any form of development is permitted within the area, except if environmental authorisation is granted and in accordance with an approved conservation management plan;
- (b) No landscaping; encroachment by gardens (albeit deliberate or inattentive) or planting except for rehabilitation in terms of an approved management plan;
- (c) No collection or damaging of fauna and flora;
- (d) No vehicles of any type are permitted, unless ORV permit has been issued by the competent authority for the purpose thereof;
- (e) Access points and access control.



Photograph 1: An excavator clearing indigenous vegetation.



Photograph 2: Construction in progress in area cleared in 2022.

## 7. You are hereby instructed to:

- 7.1 Implement the rehabilitation plan submitted on 15 May 2024, **within 5(five) calendar days** from receipt of this notice and confirm such in writing to this Directorate immediately following the date of implementation.
- 7.2 Notify this Directorate **within 5(five) calendar days** of the completion of the rehabilitation of the site.
- 7.3 Submit **weekly** rehabilitation audit reports for the duration of the site rehabilitation, as well as a final audit report **within 30 (thirty) calendar days** upon completion of the rehabilitation of the site.



- 7.4 The implementation of the abovementioned plan must be physically overseen by an appointed ECO during the entire rehabilitation process of the site.
- 7.5 Submit an **action plan** to this Directorate, for approval within 30 days of receipt of this Compliance Notice outlining how and by when compliance with the above-mentioned conditions will be achieved, as follows:
- 7.5.1 If compliance with the conditions above have been achieved, then evidence for this must be submitted.
- 7.5.2 If compliance with the condition above is yet to be achieved, the action plan must clearly outline how and by when this will be achieved.
- 7.5.3 If compliance with the conditions above is not possible, an amendment to the EA must be requested, and this must be clearly outlined in the action plan how and by when this amendment will be requested.
8. Please note, ad hoc inspections may be conducted by this Directorate to monitor the rehabilitation process.
9. On 8 December 2023, this Directorate issued a letter in response to your request to allow some construction on the site in the interim while compliance with the EA was in the process of being achieved. The said letter approved the construction of the sewage package plant, the semi-permanent nursery and 2 of the 7 houses requested. Considering that the rehabilitation plan has been approved, **construction of the remaining 5 houses may commence once you have provided the notification that the rehabilitation of the site has commenced.**

10. Once the action plan is approved, development of the rest of the site may commence, in line with the requirements set out in the approved EMPr dated 30 November 2023.

### **Varying this Compliance Notice**

11. 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**

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

- 14.2 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)**

15. 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.
16. You may also make representations, in writing, to the Minister to suspend the operation of this Compliance Notice pending finalisation of the objection.
17. The objection must be in writing and forwarded to the Appeal Administrator, Mr Marius Venter 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 Marius Venter (Tel: 021 483 3721)

Room 809

8th Floor Utilitas Building, 1 Dorp Street, Cape Town, 8001

By email: [DEADP.Appeals@westerncape.gov.za](mailto:DEADP.Appeals@westerncape.gov.za)

18. 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. A Bassier**

**Director: Environmental Law Enforcement**

**Grade 1 Environmental Management Inspector**

**Date: 30/05/2024**