



forestry, fisheries & the environment

Department:
Forestry, Fisheries and the Environment
REPUBLIC OF SOUTH AFRICA

Private Bag X447, Pretoria, 0001, Environment House, 473 Steve Biko Road, Pretoria, 0002 Tel: +27 12 399 9000, Fax: +27 86 625 1042

Ref: Erf 90, Wilderness
Enquiries: Thando Ngxingolo
Tel: 067 417 3866 Email: TNgxingolo@dfre.gov.za

The Pallister Trust
PO Box 455
WILDERNESS
6560

Dear Sir/Madam

NOTICE OF INTENTION TO ISSUE:

- A COASTAL PROTECTION NOTICE IN TERMS OF SECTION 59 OF THE NATIONAL ENVIRONMENTAL MANAGEMENT: INTEGRATED COASTAL MANAGEMENT ACT 24 OF 2008 (NEM: ICMA); AND/OR
- A REPAIR OR REMOVAL NOTICE IN TERMS OF SECTION 60 OF THE NEM: ICMA IN RESPECT OF UNLAWFUL ENCROACHMENT WITHIN THE COASTAL ZONE AT ERF 90, WILDERNESS, WESTERN CAPE PROVINCE

(Collectively "the Administrative Notices")

INTRODUCTION

1. I refer to a site inspection conducted on and around Sands Road, Wilderness on the 12 April 2024 by Environmental Management Inspectors (EMIs) from the Directorate Enforcement – Oceans and Coast within Department of Forestry, Fisheries, and the Environment: ("the Department").
2. A site inspection was conducted at Erf 90 (hereafter referred to as the "property") and EMIs observed clearing of coastal vegetation, erection/construction of a concrete pathway, placement of rock boulders outside your property boundary and within the coastal zone without an authorisation from the competent authority.

INTENDED ENFORCEMENT ACTION

3. I, Frances Craigie, in my capacity as a Grade 1 Environmental Management Inspector (EMI), having considered the unlawful nature of the activities conducted on or near your property, hereby give you, The Pallister Trust, a written notice of this Department's intention to issue you with a Coastal



Batho pele - Putting people first

The processing of personal information by the Department of Forestry, Fisheries and the Environment is done lawfully and not excessive to the purpose of processing in compliance with the POPI Act, any codes of conduct issued by the Information Regulator in terms of the POPI Act and/or relevant legislation providing appropriate security safeguards for the processing of personal information of others.

Protection Notice in terms of section 59 and/or a Repair or Removal Notice in terms of Section 60 of the NEM: ICMA.

4. The reasons for the intended enforcement actions are set out below.

FINDINGS AND OBSERVATIONS

5. The following observations provide the basis upon which the Department, as a custodian of the environment, is issuing this notice of intention:
- 5.1. You have cleared or alternatively, instructed the clearing of coastal vegetation outside your property boundary, and within the coastal zone without an authorisation from the competent authority;
 - 5.2. You have erected / constructed, or alternatively, instructed for the erection / construction of a concrete pathway outside your property boundary, and within the coastal zone without an authorisation from the competent authority;
 - 5.3. You have placed, or alternatively, instructed the placement of rock boulders outside your property boundary and within the coastal zone without an authorisation from the competent authority (See photographs attached as Annexure A); and
 - 5.4. It is believed that the encroachment that you are responsible for is in contravention of the NEM: ICMA, the Outeniqua Sensitive Coastal Area Regulation as well as Section 13 of National Building Regulation and Building Standards Act 103 of 1977.

DETAILS OF NON-COMPLIANCE

6. The **Coastal Protection Notice** and **Repair or Removal Notice** that the Department intends to issue relates to the following:
- 6.1. Section 59(1) of NEM: ICMA provides that, *"If the Minister or MEC has reason to believe that a person has, either prior to or after the commencement of this Act, carried out, is carrying out, or intends to carry out, an activity that has, is having, or likely to have, an adverse effect on the coastal environment then, subject to subsection (2), he or she may issue a written coastal protection notice to the person responsible for that activity-*
 - (a) *prohibiting the activity if it is not already prohibited in terms of this Act; and*
 - (b) *instructing that person-*
 - (i) *to take appropriate steps in terms of this Act or any other applicable legislation to protect the environment;*

- (ii) *to investigate and evaluate the impact of an activity on an of the coastal environment in accordance with Chapter 5 of the National Environmental Management Act; or*
- (iii) *to skip or postpone the activity for a reasonable period to allow for the investigation to be carried out and for the Minister or MEC to evaluate the report”.*

6.2. Section 60 of the NEM: ICMA provides that *“The Minister or MEC, may issue a written repair or removal notice to any person responsible for a structure on or within the coastal zone if that structure–*

- (a) *Is having or likely to have an adverse effect on the coastal environment by virtue of its existence, because of its condition or because it has been abandoned; or*
- (b) *Has been erected, constructed, or upgraded in contravention of this Act or any other law”.*

6.3. Section 15 (1) of the NEM: ICMA provides that;

- 1) *“No person, owner or occupier of land adjacent to the seashore or other Coastal Public Property capable of erosion or accretion may require any organ of state or any other person to take measures to prevent the erosion or accretion of the seashore or such other Coastal Public Property or of land adjacent to Coastal Public Property, unless the erosion is caused by unintentional act or omission of that organ of state or other person”.*
- 2) *“No person may construct, maintain or extend any structure, or take other measure on Coastal Public Property to prevent or promote erosion or accretion of the seashore except as provided in this Act, the National Environmental Management Act or any other specific environmental management Act”.*

6.4. Section 59(2) and/or section 60(2) requires that I provide you with notice of my intention to issue a coastal protection notice and repair or removal notice and afford you the opportunity to make representations.

6.5. The power to issue Coastal Protection Notices and Repair or Removal Notice has, in terms of section 89(1)(a) of the NEM: ICMA, been delegated to grade 1 EMIs.

6.6. Section 13 of National Building Regulation and Building Standards Act 103 of 1977 provides that;

- (1) Any building control officer, may in respect of the erection of a building defined in the national building regulations as a minor building work, in writing-
 - (a) exempt the owner of such building from the obligation to submit a plan in terms of the Act to the local authority in question for approval;
 - (b) grant authorisation for the erection of such building in accordance with the conditions and directions specified in such authorisation.

- 6.7. This Notice of the Minister of Environmental Affairs and Tourism, made under section 26 of the Environment Conservation Act, 1989, concerns approval of undertaking of activities which are identified in GN. R. 1526 in respect of the Outeniqua Sensitive Coastal Area referred to in that Government Notice. Those activities include disturbance of vegetation, dredging, dune stabilisation and earthworks. The Notice concerns the application by local authorities or a department of the provincial administration or national government for authorization of activities and the preparation and submission of environmental impact reports. It also concerns the recording of decisions and appeals against decisions. Implements: Identification of activities which may have detrimental effect on environment: Outeniqua Sensitive Coastal Area: Extension (G.N. R. 1526 of 1998).
- 6.8. In light of the foregoing, it is my view that you have conducted activities unlawfully which are causing, have caused or are likely to cause an adverse effect on the coastal environment in contravention of section 59 and section 60 of the NEM: ICMA.
- 6.9. I have reached this conclusion as a result of the following:
- 6.9.1. The erection/construction of a concrete pathway, placement of rock boulders outside the property boundary, and within the coastal zone are unlawful;
 - 6.9.2. In addition, the clearing of coastal vegetation within the coastal zone is causing, has caused and is likely to cause habitat destruction for the species that occur indigenously in that area.
- 6.10. It is recorded that you have cleared vegetation, erected/constructed concrete pathway and placed rock boulders on:
- 6.10.1. land zoned as public property, which is state-owned land and also forms part of coastal zone in terms of Section 7 of the NEM: ICMA;
 - 6.10.2. Further to this, no authorisation was given by the local authority in terms of Government Notice No R879 dated 31 May 1996, for the undertaking of activities which are identified in GNR 1526 of 27 November 1998, which may have a detrimental effect on the environment; Outeniqua Sensitive Coastal Area Extension.
- 6.11. The above have been undertaken in the absence of any lawful right or title by you to the land upon which the activities have occurred.

INTENDED INSTRUCTIONS

7. I, Frances Craigie, in my capacity as a Grade 1 Environmental Management Inspector (EMI), having considered the unlawful nature of the activities conducted on or near your property, hereby give you, The Pallister Trust, a written notice of this Department's intention to issue you with a Coastal

Protection Notice in terms of section 59 and a Repair or Removal Notice in terms of Section 60 of the NEM: ICMA.

8. You are afforded a period of fourteen (14) calendar days from the date of receipt of this notification to make representations as to why we should not issue you as the owner of the property and responsible for the unlawful activities, with a Coastal Protection Notice in terms of Section 59 and/or Repair or Removal Notice in terms of Section 60 of the NEM: ICMA which will require you to do the following:

- 8.1. Immediately (within twenty-four hours (24) hours) upon receipt of the final notice, cease any further unauthorised activities within the coastal zone;
- 8.2. Within thirty (30) calendar days of receipt of the final notice, demolish and remove the concrete pathway and remove the rock boulders within the coastal zone;
- 8.3. Within twenty one (21) working days upon receipt of the final notice, appoint an appropriately qualified independent specialist / environmental assessment practitioner ("EAP") to oversee steps 8.4 and 8.5 below, and forward his/her credentials to the Department;
- 8.4. Within two (2) months upon receipt of the final notice, the appointed independent Specialist / EAP should in consultation with the local municipality and SANParks submit to the Department for approval, a comprehensive rehabilitation/restoration plan to restore the encroached area of the coastal zone as far as reasonably possible, back to its original state;
- 8.5. Within two (2) months upon approval by the Department, the plan should be implemented which would include the final removal of all structures and associated infrastructure that you are responsible for that occurs beyond your cadastral boundary as well as the rehabilitation of the affected area; and
- 8.6. Within seven (7) days upon completion of the rehabilitation and restoration plan, a report with photographic evidence must be submitted to confirm that all instructions as mentioned above have been complied with.

OFFENCES AND PENALTIES

9. With regards to the offences and penalties, your attention is drawn to the fact that, if a decision is made by the Department to issue a final notice in relation to this matter, the different Acts provide various mechanisms (including offences) for failure to comply with the final notice. These serious implications will be set out in detail in the final notice, should a decision be made to issue such final notice.
10. I wish to make it clear that the instructions contained herein are made in the interest of responsible environmental management and with a view to a co-operative resolution of the issue. Depending on

the outcome of the representations made in this regard, the Department will decide upon a way forward regarding this matter.

11. If you should be unclear about any aspect of this notice, kindly contact the person indicated for enquiries in writing as soon as possible.

Yours sincerely



Frances Craigie

Chief Director: Sector Enforcement

Grade 1 Environmental Management Inspector

Branch: Regulatory Compliance and Sector Monitoring

Date: 2/8/24

Acknowledgement of Receipt:

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(Collectively “the Administrative Notices”)

Served by.....

On behalf of Department of Forestry, Fisheries, and the Environment

On this day of..... 2024, at.....

Signature

Received by

Mr/Ms.....

On behalf of

On this day of..... 2024, at

Signature

Annexure A



Photograph 1: Showing vegetation clearing outside property boundary at ERF 90



Photograph 2: Showing concrete pathway outside property boundary at ERF 90

[Handwritten mark]



Photograph 3: Showing rock boulders erected outside property boundary at ERF 90



Photograph 4: Showing illegal encroachment at Erf 90

[Handwritten signature]