



REFERENCE: 14/1/1/E3/4/6/3/L1341/23

ENQUIRIES: Raheem Dalwai

BY EMAIL: brian.shabbyfufu@gmail.com
irenever@live.co.za

The Shabby Fufu Lifestyle Farm

Portion 4 of the Farm Harkerville No. 428

PLETTENBERG BAY

6600

Attention: Mr. Brian Harvie & Mrs. Irene Vermeulen

COMPLIANCE NOTICE

Dear Sir & Madam

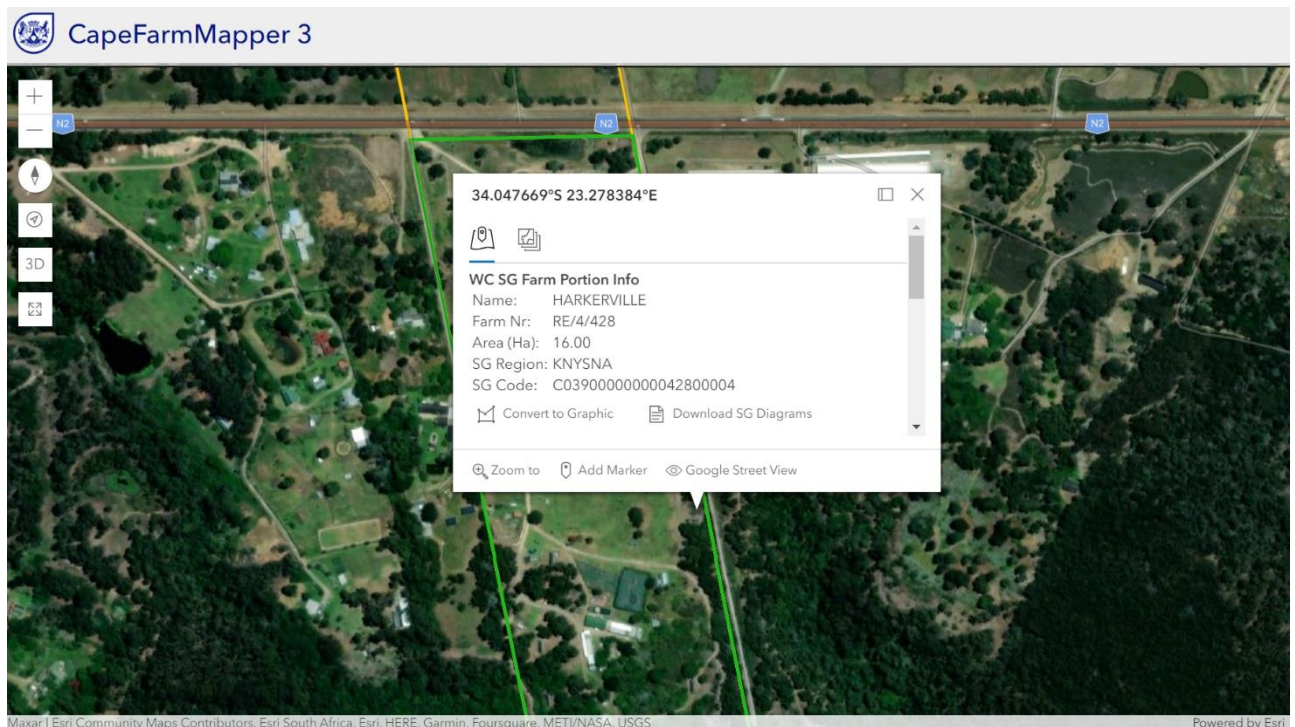
COMPLIANCE NOTICE IN TERMS OF SECTION 31L OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998

1. The Department's Pre-Compliance Notice dated, 17 November 2023, your representations dated, 24 November 2023 and the Department's response dated, 27 November 2023, has reference.

2. Having considered your representations and the evidence before me, I, Achmad Bassier, in my capacity as an Environmental Management Inspector Grade 1, hereby issues Mr. Brian Harvie & Mrs. Irene Vermeulen representing The Shabby Fufu Lifestyle Farm with a Compliance Notice in terms of section 31L of the National Environmental Management Act, 1998 ("NEMA").
3. This Compliance Notice relates to non-compliance with the provisions of section 24F of the NEMA, and your failure to adhere to the requests to submit the relevant documentation in order to correct the unlawful activities commenced with as stipulated in the Department's Pre-Compliance Notice (dated, 17 November 2023) and letter (dated, 27 November 2023). No activity listed in the Environmental Impact Assessment ("EIA") Regulations Listing Notice 1 of 2014 may commence without environmental authorisation from the competent authority.

Details of conduct constituting non-compliance

4. During an investigation into allegations of the commencement of a listed activity in contravention of section 24F of the NEMA, a site inspection was conducted at Portion 4 of the Farm Harkerville No. 428, Plettenberg Bay, by an Environmental Management Inspectors from the Department's Directorate: Environmental Law Enforcement on 23 October 2023, which confirmed that you have commenced with the clearance of indigenous vegetation, construction of a dam within a watercourse, and the transformation of land without environmental authorisation.



Map 1: Location of the property.

5. On considering the evidence before me there are reasonable grounds to believe that you have commenced the following activities without environmental authorisation:

EIA Regulations Listing Notice 1 of 2014:

Activity 12:

The development of—

- (i)** *dams or weirs, where the dam or weir, including infrastructure and water surface area, exceeds 100 square metres; or*
- (ii)** *infrastructure or structures with a physical footprint of 100 square metres or more;*

where such development occurs—

- (a)** *within a watercourse;*
- (b)** *in front of a development setback; or*

(c) if no development setback exists, within 32 metres of a watercourse, measured from the edge of a watercourse; —

excluding—

(aa) the development of infrastructure or structures within existing ports or harbours that will not increase the development footprint of the port or harbour;

(bb) where such development activities are related to the development of a port or harbour, in which case activity 26 in Listing Notice 2 of 2014 applies;

(cc) activities listed in activity 14 in Listing Notice 2 of 2014 or activity 14 in Listing Notice 3 of 2014, in which case that activity applies;

(dd) where such development occurs within an urban area;

(ee) where such development occurs within existing roads, road reserves or railway line reserves; or

(ff) the development of temporary infrastructure or structures where such infrastructure or structures will be removed within 6 weeks of the commencement of development and where indigenous vegetation will not be cleared.

Activity 19:

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 a watercourse;

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;

- (c) falls within the ambit of activity 21 in this Notice, in which case that activity applies;
- (d) occurs within existing ports or harbours that will not increase the development footprint of the port or harbour; or
- (e) 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.

Activity 27:

The clearance of an area of 1 hectares or more, but less than 20 hectares of indigenous vegetation, except where such clearance of indigenous vegetation is required for—

- (i) the undertaking of a linear activity; or
- (ii) maintenance purposes undertaken in accordance with a maintenance management plan.

Activity 28:

Residential, mixed, retail, commercial, industrial or institutional developments where such land was used for agriculture, game farming, equestrian purposes or afforestation on or after 01 April 1998 and where such development:

- (i) will occur inside an urban area, where the total land to be developed is bigger than 5 hectares; or
- (ii) will occur outside an urban area, where the total land to be developed is bigger than 1 hectare;**

excluding where such land has already been developed for residential, mixed, retail, commercial, industrial or institutional purposes.



Map 2: One watercourse runs through the property, and an instream dam is also observed.



Map 3: View of the property from 2004. The land appears to be agricultural in 2004 and remained unmanaged till 2016. A small accommodation unit is observed in 2016.



Map 4: Further clearance observed for the development of more accommodation units, a dam and other infrastructure between 2017 and 2022.



Photograph 1: View of the Shabby Fufu Farmstall.



Photograph 2: View of the dam constructed within a watercourse.



Photograph 3: View of the picnic and kids play area.

6. You are hereby instructed to:

6.1 submit to the Department within **40 (forty) calendar days** of receipt of this Compliance Notice a rehabilitation plan compiled by a suitably qualified and experienced independent environmental assessment practitioner, which must include the following:

6.1.1 an assessment and evaluation of the impact caused on the environment;

6.1.2 identification of proposed remedial and/or mitigation measures.

7. Approval of the plan by the Department does not remedy the unlawful commencement of the above activities, which remain unlawful in terms of section 49A(1) (a) and/or (d) of the NEMA.
8. If the above plan is approved by the Department, you will be obliged to take the necessary remedial / mitigation measures at your own cost.
9. If you wish to continue with the listed activities you may apply for environmental authorisation by way of a section 24G ("s24G") application. However, such application does not constitute permission to continue with the listed activity, which remains unlawful unless environmental authorisation is granted.
10. Should you choose to apply in terms of s24G of the NEMA, you must submit to the Department for approval, **within 40 (forty) calendar days** of receipt of this Compliance Notice, a project schedule compiled by a suitably qualified and experience independent environmental assessment practitioner. The project schedule must clearly stipulate the time frames in terms of the s24G process and by when a s24G application will be submitted to the Sub-Directorate: Rectification.

11. Notwithstanding the section 24G application, the Department may commence criminal proceedings should circumstances so require.

Varying this Compliance Notice

12. 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

13. 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.

14. 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.

15. Any non-compliance with the Compliance Notice must be reported to the Minister, who may:

- 15.1 revoke any permit or authorisation to which this Compliance Notice relates; and/or
- 15.2 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)

16. 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.
17. You may also make representations, in writing, to the Minister to suspend the operation of this Compliance Notice pending finalisation of the objection.
18. 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

19. 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: 04/01/2024