



**REFERENCE:** 14/1/1/E1/6/3/3/0917/25

**ENQUIRIES:** Derryn Hirst

**BY EMAIL:** [ampspvd@gmail.com](mailto:ampspvd@gmail.com)

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Aaron Samuuls and Rachael Joseph

Portion 1 of Erf 974

Misty Cliffs

## PRE-COMPLIANCE NOTICE

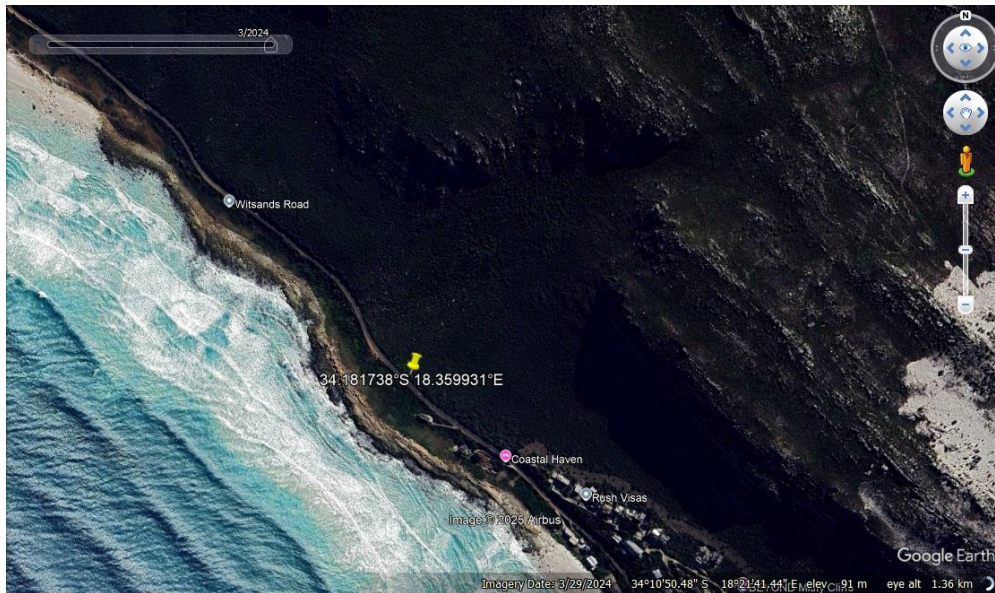
Dear Sir and Madam

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

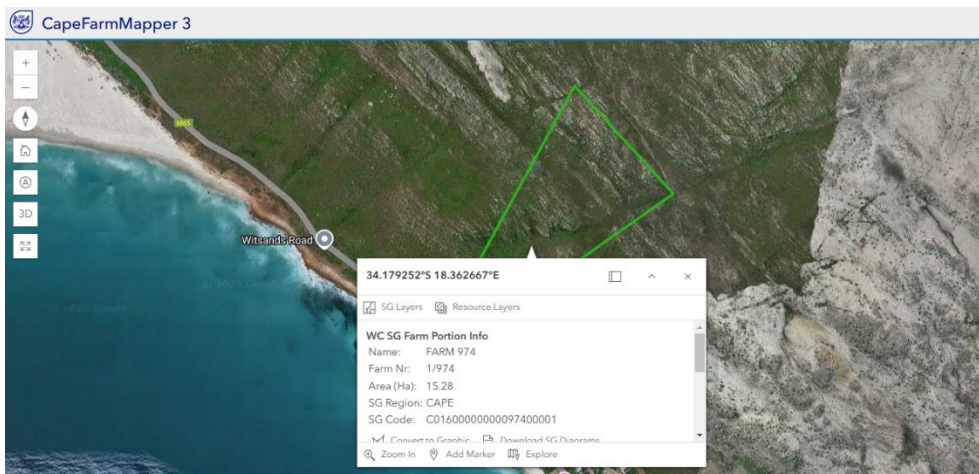
1. During an investigation into allegations of the commencement of a listed activity in contravention of section 24F of the National Environmental Management Act, 1998 ("NEMA"), the Department's Directorate: Environmental Law Enforcement together with the City of Cape Town Metropolitan Municipality and SANParks conducted an inspection on 10 February 2025 at Erf 1/974, Misty Cliffs, and it was confirmed that you have commenced with the clearance of indigenous vegetation, without the requisite environmental authorisation.

- The vegetation on the aforementioned property has been confirmed by Nick Helme Botanical Surveys as **Peninsula Sandstone Fynbos** which is classified as **Critically Endangered** according to Government Gazette #47526 [18 November 2022].

**34.181738 S 18.359931 E**



Aerial map 1: Location of alleged illegal activity.



Aerial map 2: SG information of the property.

3. In terms of section 24F of the NEMA, no activity listed in the Environmental Impact Assessment ("EIA") Regulations, Listing Notice 3 of 2014 (as amended) may commence without environmental authorisation from the competent authority.
4. On considering the evidence before me, there are reasonable grounds to believe that you have commenced the following listed activities, without environmental authorisation:

Listing Notice 3

Activity No. 12

*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 sea or an estuarine functional zone, whichever distance is the greater, excluding where such removal will occur behind the development setback line on erven in urban areas;*
- 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; or*

- v. *On land designated for protection or conservation purposes in an Environmental Management Framework adopted in the prescribed manner, or a Spatial Development Framework adopted by the MEC or Minister*



Photograph 1: View of cleared area.



Photograph 2: View of the cleared area and stacked vegetation.



Photograph 3: Reference site of vegetation above the cleared area.

5. In terms of section 49A 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.
6. As such, you are hereby given notice of the Department's intention to issue you with a Compliance Notice in terms of section 31L of the NEMA, which will instruct you to:
  - 6.1 investigate, assess and evaluate the impact that the listed activity has / has had on the environment;
  - 6.2 rehabilitate the site to its original condition; and
  - 6.3 carry out any other measure necessary to rectify the effects of the unlawful activity.
7. Furthermore, failure to comply with a Compliance Notice is an offence in terms of section 49A(1)(k). A person convicted of failing to comply with a

Compliance Notice is liable to a maximum fine of R5 million or 5 years imprisonment or both such fine and such imprisonment.

8. You are afforded a period of **7 (seven) calendar days** from the date of receipt of this Pre-Compliance Notice to make written representation to the Department as to why a Compliance Notice should not be issued.
9. If you inform the Department, in respect of paragraph 8 above that you intend to rectify the non-compliance, **you must undertake the following:**
  - 9.1 **cease the above listed activity and confirm such in writing to this Department within 7 (seven) calendar days** of receipt of this notice; and
  - 9.2 **submit to the Department for approval, within 30 (thirty) calendar days** of receipt of this Pre-Compliance Notice, a rehabilitation plan compiled by a suitably qualified and experienced independent environmental assessment practitioner, which must include the following:
    - 9.2.1 assessment and evaluation of the impact on the environment; and
    - 9.2.2 identification of proposed remedial and/or mitigation measures.
10. If the above plan is approved by the Department, you will be obliged to take the necessary remedial / mitigation measures at your own cost.
11. Approval of the above plan by the Department does not remedy the unlawful commencement of the above activity, which remains unlawful in terms of section 49A(1) (a) and/or (d) of the NEMA.
12. If you wish to continue with the listed activity, 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.

13. Should you choose to apply in terms of s24G on the NEMA, you must submit to the Department for approval, **within 30 (thirty) calendar days** of receipt of this Pre-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.
  
14. Notwithstanding the section 24G application, the Department may issue a Compliance Notice and/or commence criminal proceedings should circumstances so require.



**Mr A. Bassier**

**Director: Environmental Law Enforcement**

**Grade 1 Environmental Management Inspector**

**Date: 05/03/2025**

CC:

(1) Joy Garman (CoCT)

Email: [joy.garman@capetown.gov.za](mailto:joy.garman@capetown.gov.za)

(2) Victor de la Cour (Architect)

Email: [victorscarbs@gmail.com](mailto:victorscarbs@gmail.com)



**24G Application: 14/2/4/2/1/A6/70/0011/25**

## SECTION 24G PRE-DIRECTIVE

The Proponent  
262 Delphinus Street, Unit C  
Waterkloof Ridge  
**PRETORIA**  
0181

**Attention: Mr. A. Samuels / Ms. R. Joseph**

Email: [amspvd@gmail.com](mailto:amspvd@gmail.com)

**PRE-DIRECTIVE IN TERMS OF SECTION 24G OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998) ("NEMA"): THE UNLAWFUL CLEARANCE OF VEGETATION ON PORTION 1 OF FARM 974, MISTY CLIFFS. (SCARBOROUGH)**

1. Section 24G of the NEMA provides for the consequences of unlawful commencement, and upon application to the competent authority, applies to any person who has commenced a listed or a specified activity without environmental authorisation in contravention of section 24F(1) of the NEMA.
2. The Department has received your application on 02 May 2025 regarding the unlawful clearance of vegetation on Portion 1 of Farm No. 974, Misty Cliffs, Scarborough
3. Having considered the information in respect of your application, you are hereby given notice of the delegated authority's intention to issue you with a Directive in terms of section 24G of the NEMA (as amended), which will direct you to:
  - 3.1 Provide such other information or undertake such further studies as the relevant competent authority may deem necessary, and
  - 3.2 Compile a report containing a description of the public participation process followed during the course of compiling the application and assessment report, including all comments received from interested and affected parties and an indication of how the issues raised have been addressed.
    - 3.2.1 You are advised that an unredacted version of the public participation report must be provided to the delegated authority for decision-making purposes.
4. Kindly be reminded of the NEMA public participation requirements for applications for environmental authorisation:

- (i) Section 24(1A) and 24(4)(a) of the NEMA stipulate the minimum requirements for applications for environmental authorisation and includes the requirement for public participation to be undertaken.
  - (ii) Please refer to Chapter 6 of the *Environmental Impact Assessment Regulations, 2014* (as amended G.N. No 326 of 7 April 2017) for detail on the public participation process to be followed for applications for environmental authorisation.
  - (iii) In terms of section 24O of the NEMA, the Environmental Assessment Practitioner ("EAP") must consult with every State department that administers a law relating to a matter affecting the environment when such authority considers an application for an environmental authorisation.
  - (iv) Based on the information contained in the section 24G application form, this Directorate is in agreement with the list of organs of state / State departments to be consulted as included in the section 24G application.
5. You are reminded that the application must be made available to registered Interested and Affected Parties (I&APs) and State Departments for a **30-day commenting period**.
  6. The applicant / EAP is required to inform this Department, in writing, upon submission of the application to the relevant State Departments.
  7. In terms of the public participation process ("PPP") to be undertaken, kindly be advised that the EAP must record and respond to all comments received during the public participation process. The comments and responses must be captured in a Comment and Response Report ("C&RR") and must also include a description of the PPP followed.
  8. Following the initial 30-day commenting period, the application and the C&RR must be made available to registered I&APs and State Departments for an **additional 21-days** for review and/or comment, if any, advising them how their issues or concerns have been addressed, before it is submitted to the Department for consideration. Proof of notification of the additional 21-day commenting period must be appended to the final C&RR.
  9. Together with a public participation process, that comprises of comments and responses, the section 24G application process includes the issuing and payment of an administrative fine, prior to deciding on the application.
  10. Additionally, this Directorate has considered the information contained in the draft Section 24G application / assessment report, and provide the following comments:

#### 10.1. Development Footprint

- 10.1.1. Confirmation as to whether the areas to be demarcated for use as stock yards / laydown areas for building materials and dedicated parking for construction vehicles (i.e. including turning circles etc.) have been included as part of the total development footprint of the site must be provided.

#### 10.2. Confirmation of the Consequences of unlawful commencement of listed activities

- 10.2.1. This Directorate notes the Environmental Assessment Practitioner ("EAP") has indicated that the unlawful activities undertaken on Portion 1 of Farm 974, Misty Cliffs have caused damage to indigenous vegetation on the adjacent property (i.e. Portion 9 of Farm No. 979, Misty Cliffs) which form part of the Table Mountain National Park ("TMNP"), a

declared World Heritage Site. It is further noted that the damage caused **does not constitute clearance activities** on the adjacent property (i.e. TMNP).

10.2.1.1. In addition, it is noted that the botanical specialist confirmed the "accidental clearing" on the adjacent property to be of a Very Low negative impact and no further intervention / mitigation is required.

### 10.3. Environmental Management Programme ("EMPr")

10.3.1. This Directorate notes the draft section 24G application report includes the freshwater specialist recommendations "adequate stormwater measures" as mitigation measures. Since the site (i.e. Portion 1 of Farm No. 974, Misty Cliffs) is located within an area along a steep slope and may be susceptible to erosion, clarification as to whether site specific engineering designs concerning dissipation measures (i.e. vegetated swales, riprap apron etc.) have been provided. It is imperative that such specific recommendations be included in the section 24G application report.

### 10.4. Compliance History


10.4.1. Please note that previous administrative action has been taken against the applicant in respect of a contravention of section 24F(1) of the NEMA (Ref. No. 14/1/1/E1/6/6/3/0917/25 **Pre-Compliance Notice** dated 05 March 2025 and **Compliance Notice** 31 March 2024). **Please correct this error.**

10.4.1.1. In light of the above, the relevance of Appendix J as indicated in Part 3 of the draft section 24G application is deemed applicable to this application. The relevant supporting documentation must be appended to the section 24G application to be submitted for decision-making.

11. The EAP must ensure that the section 24G application be submitted as a **standalone** document, separate to the accompanying appendices, and that each of the appendices is saved separately (in PDF format) and not scanned / merged into a single document.
12. Reports must be submitted via email to the case officer, with attached pdf versions of the report or, if too large to attach to an email, to be made available via an electronic link provided in the email that is accessible by the Directorate: Environmental Governance. The Directorate may require that a hard copy of the reports also be submitted to the Department by a certain date but will advise you accordingly.
13. In addition to any representations made in the application, you are afforded a period of **7 (seven) calendar days** from the date of receipt of this Pre-directive to make written representations to the Department as to why a Directive should not be issued.
14. Please note that if you fail to comply with a Directive, you will have committed a criminal offence in terms of 49A(1)(g) of the NEMA.
15. In addition, section 49B of the NEMA stipulates that a person convicted of an offence in terms of section 49A(1)(g) 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.

16. Kindly quote the abovementioned reference number in any future correspondence in respect of this application.

*This Department reserves the right to revise or withdraw comments or request further information based on any information received.*

  
Zaidah  
Toefy  
(53677480)

Digitally signed  
by Zaidah Toefy  
(53677480)  
Date: 2025.06.04  
11:26:16 +02'00'

**MRS Z TOEFY**  
**HEAD OF RECTIFICATION**  
**DIRECTORATE: ENVIRONMENTAL GOVERNANCE**  
**DATE: 04 JUNE 2025**

CC: (1) Mr. J. Rose (Infinity Environmental)  
(2) Mr. A. Greenwood (CCT: Environment and Heritage Management)

Email: [Jeremy@infinityenv.co.za](mailto:Jeremy@infinityenv.co.za)  
Email: [Andrew.Greenwood@capetown.gov.za](mailto:Andrew.Greenwood@capetown.gov.za)