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FINAL OBJECTION AGAINST THE APPROVAL OF UNLAWFUL ACTIVITIES CARRIED OUT ON FARM PORTION 420 AND 373 OF OUTENIQUA GAME FARM, MOSSEL BAY DISTRICT MUNICIPALITY 24GCONSULTATION:14/2/4/1/D6/28/0004/20.

PLATINUM MILE INVESTMENTS 442 (PTY) LTD	**OBJECTOR**
OUTENIQUA GAME FARM CC	**APPLICANT**
ECO ROUTE	**EAP**

Subject of the objection:	Final objection against the approval of unlawful activities carried out on Farm Portion 420 and 373 of Outeniqua Game Farm, Mossel Bay District Municipality 24G Consultation: 14/2/4/1/D6/28/0004/20.

4 March 2026

TO: ECO ROUTE ENVIRONMENTAL CONSULTANCY
PER E-MAIL: claire@ecoroute.co.za

Dear Sir/Madam,

FINAL OBJECTION AGAINST THE APPROVAL OF UNLAWFUL ACTIVITIES CARRIED OUT ON FARM PORTION 420 AND 373 OF OUTENIQUA GAME FARM, MOSSEL BAY DISTRICT MUNICIPALITY 24G CONSULTATION: 14/2/4/1/D6/28/0004/20.

1. INTRODUCTION

1.1. We act on behalf of the Objector, Platinum Mile Investments 442 (Pty) Ltd. This document constitutes our client's final written objection to the application lodged in terms of section 24G of the National Environmental Management Act 107 of 1998 ("NEMA") in respect of the unlawful commencement of listed activities on Portions 420 and 373 of the Farm Outeniqua Game Farm, Mossel Bay.

1.2. We wish to place the following on record:

1.2.1. On 15 July 2025 we presented the Applicant with our **preliminary objections**, which consisted of 46 pages. With the Annexures the document consisted of 102 pages;

1.2.2. We asked pertinent questions and indicated that we would require you to provide us with details to those questions. Those concerns were not addressed;

1.2.3. These final objections should be considered **in conjunction** and **in addition** to the preliminary objections, which remain valid;

1.2.4. These objection therefore do not replace our preliminary objections but simply supplements same.

1.3. At the outset, it must be recorded that, in our client's considered view, the present Section 24G process is fatally flawed *in limine*. The application impermissibly conflates retrospective rectification of activities unlawfully commenced with the prospective authorisation of additional listed activities which were not historically commenced unlawfully. The statutory framework does not permit such consolidation.

1.4. Section 24G is expressly confined to the consequences of unlawful commencement of a listed activity. It does not authorise an applicant to incorporate additional listed activities that were not unlawfully commenced into the same rectification process, nor does it create a parallel authorisation pathway for advancement, intensification, or further development.

1.5. To do so collapses the distinction between retrospective rectification and prospective authorisation under section 24 of NEMA and the Environmental Impact Assessment Regulations.

1.6. The present application record demonstrates precisely such conflation. Listed activities that were not historically unlawfully commenced are brought within the ambit of the Section 24G process. That approach is *ultra vires* the empowering provision and renders the process fundamentally unlawful.

1.7. In these circumstances, our client is constrained to record that a detailed engagement with every aspect of the Final Section 24G Report and the Comments and Response Report (CCR) is procedurally compromised. Where the statutory foundation of the process is itself unlawful, any exhaustive engagement by our client with impact ratings, mitigation measures or specialist conclusions, and continued participation in the purported merits debate, risks

conferring a “veneer of legitimacy” on a process that is constitutionally and statutorily unsound.

1.8. The defects identified herein are not merely technical irregularities. They constitute material errors of law and misinterpretations of the empowering provisions. They implicate the legality principle and the rule of law entrenched in section 1(c) of the Constitution.

1.9. They raise concerns that any resultant authorisation would be taken for a reason not authorised by the empowering provision, in excess of the authority conferred, and on the basis of a materially incorrect interpretation of sections 24, 24F and 24G of NEMA.

1.10. In terms of section 6 of the Promotion of Administrative Justice Act 3 of 2000, administrative action is reviewable where the decision-maker:

1.10.1. was not authorised by the empowering provision;
1.10.2. acted under a material error of law;
1.10.3. took into account irrelevant considerations or failed to take into account relevant considerations;
1.10.4. exercised a discretion for an improper purpose;
1.10.5. reached a decision not rationally connected to the purpose of the empowering provision, the information before it, or the reasons given; or
1.10.6. reached a decision so unreasonable that no reasonable decision-maker could have so exercised the power.

1.11. Our client expressly records that, should the competent authority proceed to authorise the application notwithstanding the structural defects and statutory misinterpretations identified herein, such a decision would be susceptible to review on one or more of the aforesaid grounds.

1.12. Section 24 of the Constitution guarantees the right to an environment that is not harmful to health or well-being and obliges the state to secure ecologically sustainable development through reasonable legislative and other measures. NEMA gives effect to that right through a preventative system in which listed activities may not commence without prior environmental authorisation. Section 24G constitutes a narrow and exceptional deviation from that preventative framework. It must be strictly construed.

1.13. Where the rectification mechanism is transformed into a vehicle for consolidation, continuation or furtherance of development beyond the historical unlawful footprint, the integrity of the preventative regime is eroded, compliance discipline is weakened, and the rule of law is undermined.

1.14. Our client accordingly places the competent authority on formal notice that all rights are strictly reserved. Should authorisation nevertheless be granted on the present record, our client will consider all further lawful remedies available to it, including internal appeal and judicial review proceedings under PAJA.

2. SECTION 24G, PREVENTATIVE ENVIRONMENTAL GOVERNANCE AND THE RULE OF LAW: THE IMPERMISSIBLE EXPANSION OF A LIMITED REMEDIAL MECHANISM

2.1 This application raises issues that go beyond environmental impact assessment. It implicates the constitutional architecture of environmental governance, the proper interpretation of section 24G of the National Environmental Management Act 107 of 1998, as amended and the foundational principle of legality entrenched in section 1(c) of the Constitution.

2.2 In our client's considered view, the present Section 24G process has been impermissibly expanded beyond its lawful ambit. If endorsed, such expansion would materially distort the preventative structure of NEMA and undermine the rule of law.

2.3 Section 24 of the Constitution guarantees the right to an environment that is not harmful to health or well-being and requires the state to secure ecologically sustainable development through reasonable legislative and other measures. NEMA gives effect to that right through a preventative regime.

2.4 The Environmental Impact Assessment system is not designed to retrospectively justify development. It is structured to ensure that environmental consequences are identified, assessed and considered before listed activities commence. This preventative logic is the cornerstone of the statute.

2.5 Section 24F reflects this preventative imperative in uncompromising terms. No person may commence a listed activity without environmental authorisation. The prohibition is absolute and peremptory.

2.6 The legislature deliberately used the language of "*commence and continue*" only in relation to activities identified under section 24(2)(d) and governed by norms and standards. That formulation is absent from the regime applicable to listed activities requiring environmental authorisation.

2.7 The statutory distinction is clear and intentional. The Act does not recognise a lawful continuation regime for listed activities commenced without authorisation. Where commencement has occurred unlawfully, the activity remains unlawful until properly authorised.

2.8 Section 24G must therefore be understood for what it is: a narrow remedial provision triggered by unlawful commencement. It is not a parallel authorisation mechanism. It does not create a secondary development pathway. It does not permit the consolidation, expansion or intensification of development under the guise of rectification.

2.9 It merely empowers the competent authority to determine whether authorisation may be granted from the date of the decision onwards, after unlawful commencement has occurred and after the imposition of an administrative fine.

2.10 Section 24G represents a legislative compromise that necessarily attenuates the preventative character of the environmental authorisation regime. Because it constitutes a departure from the ex ante assessment framework established under section 24 of NEMA, it must be interpreted strictly and applied with restraint. It does not retrospectively legalise unlawful conduct. It does not convert illegality into legality. It does not validate past contraventions. It is not a transactional mechanism for purchasing compliance.

2.11 The amended section 24G reinforces this restrictive character by requiring the competent authority to direct immediate cessation of the unlawful activity pending a decision, unless cessation would result in serious environmental harm. The statutory default is cessation. Continuation is the exception and must be justified on narrow grounds. This legislative choice makes it plain that section 24G was never intended to operate as a mechanism for continuation or furtherance of development pending rectification.

2.12 Against this legislative framework, any attempt to characterise the present application as one for "*commencement and furtherance*" of activities constitutes a material and impermissible expansion of the

empowering provision. The term "*furtherance*" is foreign to sections 24, 24F and 24G.

2.13 In its ordinary meaning, it denotes advancement, progression or intensification. Section 24G confers no authority to approve advancement or expansion beyond the historical unlawful footprint. To import such a concept into the rectification process is to enlarge the statute by administrative formulation. That is impermissible.

2.14 Permissive reliance on section 24G carries serious systemic consequences. Unlawful commencement generates economic momentum. Infrastructure is erected. Capital is invested. Operational realities become entrenched. If section 24G is applied expansively so as to consolidate those benefits, the deterrent purpose of section 24F is neutralised.

2.15 The administrative fine imposed under section 24G is punitive and deterrent. It is not a licence fee and cannot be treated as a cost of doing business. Scholarly analysis warns that if rectification becomes routine or predictable, unlawful commencement becomes a rational development strategy rather than an exceptional contravention. That outcome would hollow out the preventative regime.

2.16 The Constitutional Court in *Fuel Retailers Association of Southern Africa v Director-General: Environmental Management, Department of Agriculture, Conservation and Environment, Mpumalanga Province* 2007 (6) SA 4 (CC) affirmed that environmental authorisation is preventative in character and that sustainable development requires environmental consequences to be integrated into decision-making before development proceeds. The Court rejected a purely economic or consequentialist approach to authorisation. An interpretation of section

24G that allows unlawful development to crystallise into practical inevitability is inconsistent with that jurisprudence.

2.17 The rule of law demands that public power be exercised strictly within the bounds of the empowering provision. Administrative authorities may not assume powers not conferred by statute. Section 24G must therefore be construed narrowly and applied only within its textual limits. To use it as a vehicle for authorising additional listed activities not unlawfully commenced, or to legitimise continuation and furtherance of development beyond the historical contravention, constitutes a material error of law.

2.18 Any decision premised on such an expansive interpretation would be vulnerable to review under section 6 of the Promotion of Administrative Justice Act 3 of 2000. It would be reviewable on the basis that the decision-maker was not authorised by the empowering provision, that the decision was materially influenced by an error of law, that relevant considerations were ignored, that the decision was not rationally connected to the purpose of section 24G, and that the discretion was exercised unreasonably and for an improper purpose.

2.19 This is not a technical objection. It goes to the structural integrity of the environmental governance system. If Section 24G is allowed to be expanded beyond its limited remedial function, the preventative architecture of NEMA is compromised. Compliance discipline is weakened. Regulatory certainty is eroded. Equality before the law is undermined. The environmental right entrenched in section 24 of the Constitution is diluted.

2.20 The competent authority is therefore obliged to approach this application with strict statutory discipline and constitutional fidelity. Section 24G must not be transformed into a parallel development pathway. It must

remain what the legislature intended: a narrow, exceptional and strictly controlled remedial mechanism addressing unlawful commencement and nothing more.

2.21 Should authorisation nevertheless be granted on the basis of an expanded interpretation of section 24G, our client will consider all further remedies available to it, including internal appeal and judicial review proceedings. All rights are expressly reserved.

3. CONCLUSION

3.1 For the reasons set out above, the present Section 24G application is fundamentally misconceived in law. Section 24G is a narrow and exceptional remedial mechanism confined to the consequences of unlawful commencement of listed activities. It does not constitute a parallel authorisation pathway. It does not permit the consolidation, expansion or introduction of additional listed activities under the guise of rectification. It does not empower the competent authority to convert retrospective enforcement into prospective development approval, especially where it is common cause that the owner knew as far back as 2019 that approval was required, that he intended to apply for approval, and then abandoned the intended applications after certain objections were received. He deliberately circumvented the provisions of environmental authorisation and to make things worse, capatalised on such unlawfull actions. Any positive consideration of this application would nullify prescriptive legislation in totality.

3.2 The inclusion of new listed activities, including the proposed dam and any associated development not historically and unlawfully commenced, falls outside the jurisdiction conferred by section 24G. Such activities must, as a matter of law, be subject to the ordinary prospective environmental authorisation regime under section 24 of NEMA and the

applicable Environmental Impact Assessment Regulations. To consider or authorise them within the present rectification process would constitute an assumption of power not conferred by the empowering provision.

3.3 The competent authority is a creature of statute. It may exercise only those powers expressly or impliedly conferred upon it. Section 24G does not authorise the approval of new development. It does not authorise advancement or intensification beyond the historical unlawful footprint. Any decision purporting to do so would be ultra vires, vitiated by jurisdictional error and reviewable under section 6 of the Promotion of Administrative Justice Act 3 of 2000.

Yours faithfully,

VAN DER MERWE ATTORNEYS
PER: PIETER VAN DER MERWE