



24G Application: 14/2/4/2/3/D1/14/0026/24

ADMINISTRATIVE FINE NOTICE

The Managing Director
The Shabby Fufu Lifestyle Farm
Portion 4 of the Farm Harkerville No. 428
PLETTENBERG BAY
6600

Email: irenever@live.co.za

Attention: Irene Vermeulen

ADMINISTRATIVE FINE IN TERMS OF SECTION 24G OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998) ("NEMA"): THE UNLAWFUL CHANGE OF LANDUSE FROM AGRICULTURE TO A COMMERCIAL DEVELOPMENT OF SHABBY FUFU LIFESTYLE FARM ON PTN 4 OF FARM HARKERVILLE NO. 428, PLETTENBERG BAY.

1. Your application in terms of section 24G of the NEMA ("the section 24G application"), the Report and Environmental Management Programme dated September 2024 have reference.
2. In order for the Department to process your application, you are required to pay an administrative fine of **R60 000 (Sixty thousand rand)** in accordance with section 24G(4) of the NEMA.
3. The above administrative fine is determined by the type of activity or activities undertaken and the impact or impacts it has on the environment.
4. Please note that the continued operation, conduct or undertaking of the activity or activities will remain unlawful and should an environmental authorisation be issued at the conclusion of the section 24G application process, it shall only take effect from the date on which it has been issued.

5. Please note that in terms of section 24G(4) of the NEMA you must pay the administrative fine **before** the competent authority may consider your report and thereafter issue or refuse an environmental authorisation.

Notification of the administrative fine decision

6. The applicant must in writing, within 14 days of the date of the administrative fine decision ("the decision") –
 - 6.1. notify all registered interested and affected parties ("I&APs") of –
 - 6.1.1. the amount of the administrative fine;
 - 6.1.2. the reasons for the decision as detailed in Annexure A; and
 - 6.1.3. the date of the decision;
 - 6.2. draw the attention of all registered I&APs to the manner in which they may access the decision; and
 - 6.3. provide the details of all registered I&APs (postal and/ physical address, contact number, facsimile and e-mail address) to all registered I&APs and the original decision-maker in the event that an appeal has been lodged in terms of the *National Appeal Regulations, 2014*.
7. Should the applicant intend to appeal the administrative fine, an appeal must be submitted to the appeal administrator in accordance with regulation 4 of the *National Appeal Regulations, 2014* within 20 (twenty) days from the date that the notification of the decision was sent to the applicant by the competent authority.
8. Should an interested and affected party intend to appeal the administrative fine, an appeal must be submitted to the appeal administrator within 20 (twenty) days from the date that the notification of the decision was sent to the registered interested and affected parties by the applicant.

Method of payment of the administrative fine

9. Please be advised that payment of the above administrative fine may be made by electronic transfer in the following manner:

Electronic Transfer

An electronic transfer may be made to the following bank account:

Name of Bank	:	NEDBANK
Name of Account	:	Provincial Government of the Western Cape: Department of Environmental Affairs and Development Planning

Account Type : Current Account
Account Number : 1452 045 003
Branch Name : NEDBANK CORPORATE
Branch Code : 145 209
Reference No. : **S24G00369**

10. Kindly forward a copy of **the proof of payment** (e.g. receipt, deposit slip, electronic transfer confirmation) to the Department and quote the abovementioned reference number to ensure that the Department may acknowledge payment of the administrative fine.
11. This proof of payment must also be accompanied by proof that the abovementioned administrative fine was brought to the attention of registered I&APs as required in paragraph 6 above.
12. The fine must be **paid within 30 (thirty) calendar days** from the date of this letter. **If no such payment is received** within the specified timeframe and no appeal has been lodged with the appeal administrator, **the said section 24G NEMA Application has lapsed. The matter to be referred for criminal investigation.**
13. You may apply for extension of the 30 (thirty) day period for payment of the administrative fine. Such request for extension must **fall within** the stipulated **30-day period. The request for extension must be supported by the following representation:**
 - 13.1. your financial circumstances, including financial disclosures;
 - 13.2. an indication of monthly instalments (if any) within a specified time period for full payment of the administrative fine; and
 - 13.3. any additional information you deem necessary to support your request for payment extension.
14. When applying for extension of payment of the administrative fine, the competent authority **may direct the ceasing of the activities being applied for** until such time that the section 24G NEMA Administrative Fine has been paid in full.
15. Should an extension for payment be granted and the administrative fine is not paid within the latest specified time period, **the section 24G NEMA Application lapses, and any partial amounts paid to the competent authority will not be refunded to the applicant.**

16. The Department may proceed with appropriate criminal investigative action which may result in criminal prosecution.
17. Please be advised that the notice of payment of the administrative fine is **not an authorisation** for the consequences of unlawful commencement of a listed activity/ies according to the NEMA.
18. Further consideration of your application will only continue upon receipt and acknowledgement of payment of the administrative fine.

Appeals

Appeals must comply with the provisions contained in the *National Appeal Regulations, 2014* (Government Notice No. R. 993 in Government Gazette No. 38303 of 08 December 2014). Please note the provisions of Regulation 1(2) of the National Appeal Regulations, 2014 when calculating the period of days.

19. Should an appeal be lodged with the appeal administrator against the administrative fine, you are hereby advised of the following:

19.1. An appellant (if the applicant) must –

19.1.1. submit an appeal in accordance with regulation 4 of the *National Appeal Regulations, 2014*, to the appeal administrator and a copy of the appeal to the decision maker, any registered I&APs and any organ of state with interest in the matter within 20 (twenty) calendar days from the date that the notification of the decision was sent to the applicant by the competent authority.

19.2. An appellant (if NOT the applicant) must –

19.2.1. submit an appeal in accordance with regulation 4 of the *National Appeal Regulations, 2014*, to the appeal administrator, and a copy of the appeal to the applicant, any registered I&APs, any organ of state with interest in the matter and the decision maker within 20 (twenty) calendar days from the date that the notification of the decision was sent to the registered interested and affected parties by the applicant.

19.3. The applicant (if not the appellant), the decision-maker, I&APs and organs of state must submit their responding statements, if any, to the appeal authority and the appellant within 20 (twenty) calendar days from the date of receipt of the appeal submission.

20. An appeal application form must be submitted by means of one of the following methods

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By post: Western Cape Ministry of Local Government, Environmental Affairs and
Development Planning
Private Bag X9186
CAPE TOWN
8000

By facsimile: (021) 483 4174; or

By hand: Attention: Mr Marius Venter
Room 809
8th Floor Utilitas Building, Dorp Street, Cape Town, 8001

By e-mail: DEADP.Appeals@westerncape.gov.za

20.1. A prescribed appeal application form as well as assistance regarding the appeal processes is obtainable from the office of the Minister at: Tel. (021) 483 3721, E-mail DEADP.Appeals@westerncape.gov.za or URL <http://www.westerncape.gov.za/eadp>



Zaidah Toefy

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MRS Z TOEFY

ACTING DIRECTOR: ENVIRONMENTAL GOVERNANCE

Copied to: (1) Clinton Geyser (EAP)
(2) Zandria Jordaan (EAP)
(3) Raheem Dalwai EMI (DEA&DP: ELE-George)

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ANNEXURE A: REASONS FOR THE DECISION

In determining the quantum of the administrative fine, the competent authority took, *inter alia*, the following into consideration:

- The section 24G application dated 30 September 2024 with supporting environmental impact assessment and mitigation measures.
- Public participation conducted for the application by the Environmental Assessment Practitioner.
- The Environmental Management Programme dated September 2024 submitted for the application.
- Relevant information contained in the Departmental EIA Guideline and Information Document Series (March 2013), including, the Guidelines on Need and Desirability, Public Participation and Alternatives.
- The site inspection conducted on 06 November 2024, attended by officials of the Directorate: Environmental Governance.

All relevant information presented to the competent authority was taken into account in the determination of the fine quantum. A summary of the issues which, according to the competent authority, were the most significant reasons for the decision is set out below.

1. PUBLIC PARTICIPATION

A public participation process as outlined in section 24G(1)(vii)(dd) of the NEMA, "...a description of the public participation process followed during the course of compiling the report, including all comments received from interested and affected parties and an indication of how issues raised have been addressed..." was undertaken.

The public participation process conducted by the EAP comprised of the following:

- An advertisement was placed in the **Bitou News** newspaper on 16 February 2024.
- Initial letters were sent to interested and affected parties ("I&APs") on 16 February 2024.
- A site notice was erected on 14 August 2024; and
- Letters were sent to interested and affected parties ("I&APs") and the municipal ward councillor on 14 August 2024.
- I&APs were afforded the opportunity to provide comments on the application.

1.1 Consultation with organs of state in terms of section 24O of the NEMA

The following organs of state provided comment on the application:

- Department of Agriculture
- CapeNature
- Department of Water and Sanitation
- BOCMA
- DEADP Biodiversity and Coastal Management
- Heritage Western Cape
- WC Department of Public Works and Transport
- Department of Rural Development and Land Reform (Knysna)
- Department of Economic Development (Knysna)
- SANRAL
- Bitou Local Municipality
- Garden Route District Municipality
- Department of Environmental Affairs Development Planning

At the end of the public participation process, comments from BOCMA and two interested and affected parties were raised. BOCMA stated that the commencement of the water uses activities by the applicant without a water use authorisation is a contravention in terms of section 151(1)(a) of the National Water Act, 1998 (Act no. 36 of 1998) (NWA). The BOCMA through the CM&E will thus initiate the relevant Compliance Monitoring and Enforcement administrative processes on the matter in terms of the NWA. Additionally, no water use activities may commence without authorisation in terms of NWA as per section 22 of the Act.

The I & APs had no concerns to raise but requested to be updated on the process.

2. **CALCULATION OF THE ADMINISTRATIVE FINE**

Section 44(1)(aC) of the NEMA makes provision for the “*Minister to make regulations relating to the procedure and criteria to be followed in the determination of an administrative fine in terms of section 24G.*”

The Section 24G Fine Regulations, 2017 (“the regulations”) as referred to above have come into effect on 20 July 2017 which stipulate the procedure to be followed and criteria for the determination of a section 24G administrative fine. All applications submitted after the

promulgation date are subject to the aforesaid regulations which stipulate the maximum fine applicable to an application is R5 million, as per the NEMA amendments.

The S24G fine calculator is a guide that is not rigidly applied and is used to determine an appropriate fine (to the maximum of R5 million) based on applicable impacts resulting from the unlawful commencement activity/ies on the receiving environment. The determination of a fine is based on the assessment undertaken for the section 24G application and the significance of impacts of the activity/ies on the environment. Each section 24G administrative fine is determined on its own merit and is dependent on the information provided in the application. The section 24G fine is not a criminal sanction and the section 24G process is distinct and not punitive in nature.

In accordance with section 24(4) of the *National Environmental Management Act, 1998 (Act No. 107 of 1998)* ("NEMA") the application contains, *inter alia*, an assessment of the consequences and impacts on the environment, including cumulative impacts, and the manner in which the geographical, physical, biological, social, economic and cultural aspects of the environment may be affected by the activity as well as a description of the mitigation measures that will be undertaken.

2.1 ASSESSMENT OF IMPACTS, BENEFITS AND MITIGATION MEASURES

The determination of the administrative fine is based on the administrative fine calculator which was developed by the National Department of Environmental Affairs. The fine calculator (which is a guide that is not applied rigidly) was based on the following indexes that were informed by the environmental assessment practitioner as specified in the section 24G application:

- Socio-Economic Impact Index
- Biodiversity Impact Index
- Sense of Place &/ or Heritage Impact Index
- Pollution Impact Index.

The administrative fine decision and the reasons for the decision were informed by the section 24G application with supporting information, submitted by the environmental assessment practitioner, which stated *inter alia* the following:

2.1.1 Socio-economic Impact

The **Socio-Economic Impact Index** was rated by the EAP that *"The activity is not giving, has not given and will not give rise to any negative socio-economic impacts"*.

The motivation for this rating by the EAP was that *the activity is considered to have positive socio-economic impacts, through direct, indirect, temporary and permanent employment opportunities.*

Having regard to the impacts caused by the activities, I am in agreement with the fine committee's recommendation that the administrative fine calculator be scored consistent with the score of the application that: *"The activity is not giving, has not given and will not give rise to any negative socio-economic impacts"*.

The motivation for this rating is that the development does have positive socio-economic impacts, creating permanent work opportunities for 14 local people, as well as temporary jobs for maintenance and alien vegetation clearing. The development also makes the farm viable and creates tourism opportunities for the area which also contributes to the local economy. Plettenberg Bay is a major tourism hub right through the year.

2.1.2 Biodiversity Impacts

The **Biodiversity Impact Index** was rated by the EAP that *"The activity is giving, has given or could give rise to localised biodiversity impacts"*.

The motivation for this rating by the EAP was that *the proposed study area is considered of low sensitivity in terms of terrestrial biodiversity, but some mitigation recommendations is still appropriate. Impact minimisation focuses on the protection of the remaining and recovering indigenous vegetation to the south of the site and the protection of a potential suitable habitat for an endangered frog species.*

Having regard to the impacts caused by the activities, I am in agreement with the fine committee's recommendation that the administrative fine calculator be scored consistent with the score of the section 24G application that: *"The activity is giving, has given or could give rise to localised biodiversity impacts"*.

The motivation for this rating is that development has not caused significant impacts. The development had low impact on biodiversity. The property was cultivated land prior to the current development. According to 2017 Western Cape Biodiversity Spatial Plan

(WCBS) for Bitou Municipality, the dam might have impacted on an aquatic ecological support area (ESA1). Due to the size and nature of the development, it is not expected that the development had, or will continue to have, any significant impacts on any other biological aspects. In the Terrestrial Biodiversity Report, it seems that the original watercourse had been impacted and even transformed as a result of past agricultural practices. Impact minimisation for the development focuses on the protection of the remaining and recovering indigenous vegetation to the south of the site and the protection of a potential suitable habitat for an endangered frog species. There was no red-listed or protected plant species observed and there was no loss of vulnerable or endangered vegetation and associated habitat.

2.1.3 Sense of place and Heritage Impacts

The **Sense of place and Heritage Impacts Index** was rated by the EAP that *“The activity is in keeping with the surrounding environment and / or does not negatively impact on the affected area's sense of place and /or heritage”*.

The motivation for this rating by the EAP was that a *Notice of Intent* was submitted to Heritage Western Cape on 01 June 2024. No further action under Section 38 of the National Heritage Resources Act (Act 25 of 1999) is required.

Having regard to the impacts caused by the activities, I am in agreement with the fine committee's recommendation that the administrative fine calculator be scored consistent with the score of the section 24G application that: *“The activity is in keeping with the surrounding environment and / or does not negatively impact on the affected area's sense of place and /or heritage”*.

The motivation for this rating is that no further action under Section 38 of the National Heritage Resources Act (Act 25 of 1999) was required. The development is in line with the surrounding environment and the municipal Spatial Development Framework. Plettenberg Bay is a major tourism hub right through the year therefore the development is within the sense of place.

2.1.4 Pollution Impact

The **Pollution Impact Index** was rated by the EAP that *“The activity is not giving, has not given and will not give rise to any pollution”*.

The motivation for this rating by the EAP was that *there is no reason to believe that the development, especially of its relatively small size and type, is creating any significant pollution that would be harmful to the environment.*

Having regard to the impacts caused by the activities, I am in agreement with the fine committee's recommendation that the administrative fine calculator be scored consistent with the score of the section 24G application that: "The activity is not giving, has not given and will not give rise to any pollution".

The motivation for this rating is that the development is not giving rise to any pollution. Minimal amount of domestic waste is produced by the development. No pollution was observed on site during the departments site inspection.

The indices contained in the section 24G application submitted by the EAP were used in the determination of the fine. This was assessed, reviewed and confirmed by observations obtained during the site inspection on 06 November 2024.

It should also be noted that the section 24G fine calculator distinguishes between the following two categories of offenders:

- Category 1 offenders are (firm) trusts, body corporates, close corporations, companies, parastatals and government departments.
- Category 2 offenders are individual/natural persons.

The calculation of the administrative fine is also based on the fact that the applicant in this matter is a category 2 offender. Nevertheless, the amounts determined by the section 24G fine calculator for both categories were analysed to assess whether it is appropriate to regard the applicant under the abovementioned category, given the personal circumstances of the applicant. I am of the opinion that it is appropriate to regard the applicant in this matter is a category 2 offender.

The applicant's operation and merits of the application were considered, and the persons was fined as an individual even though the application was submitted under the company (firm). The applicant is considered a natural person given that according to the CK2A form the applicant, Ms. Irene Vermeulen is the sole and active member of 9 Provinces Crematoria cc.

2.2 OTHER CONSIDERATIONS AND REPRESENTATIONS

Further to the above, the following factors were taken into account in determining whether the fine recommended by the fine calculator is appropriate in the circumstances of this matter and whether there are reasons to deviate from the quantum of the fine recommended:

2.2.1 **Aggravating factors, or the absence thereof, such a blameworthiness, non-compliance history and ignoring previous advice.**

In this regard, the fact that the applicant and/or its director was issued with an administrative action in respect of a contravention of section 24F(1) of the National Environmental Management Act (Act 107 of 1998) for the commencement of a listed activity including the clearance of indigenous vegetation, construction of a dam within a watercourse, and the transformation of land without environmental authorisation. A Compliance Notice was issued to the applicant on 04 January 2024.

2.2.2 **Mitigation factors such as preventative measures, co-operation with the environmental authority, immediate voluntary remediation and restoration and personal circumstances.**

In this regard, I have considered the applicants conduct and personal circumstance and am of the view that the applicant be considered an individual as according to the CK2A form states that the applicant is the sole director of 9 Provinces Crematoria CC. Additionally, where negative impacts could not be avoided, mitigation measures have been proposed, to reduce the anticipated impacts to acceptable levels. Impact minimisation for the development focuses on the protection of the remaining and recovering indigenous vegetation to the south of the site and the protection of a potential suitable habitat for an endangered frog species.

2.2.3 **The potential costs that the applicant will incur in complying with directions as to remedial measures.**

In this regard, the contents of the Application, together with the assessment report and suggested mitigation/rehabilitation measures are noted.

2.2.4 **Social/Public benefit factors resulting from activities.**

In this regard, I am of the opinion that the applicant's activities provide a positive impact by providing permanent employment to 14 employees and other socio-economic benefits include the contribution to the local economy for the municipality.

It is acknowledged that the National Environmental Management Principles (set out in section 2 of the NEMA) which apply to the actions of all organs of state, serve as guidelines by reference to which any organ of state must exercise any function when taking any decision, and which must guide the interpretation, administration and implementation of any other law concerned with the protection or management of the environment. In terms of the NEMA Principles, the effects of decisions on all aspects of the environment are to be taken into account. I am satisfied that the NEMA principles, including the consideration, assessment and evaluation of the social, economic and ecological impacts of activities (disadvantages and benefits), have been correctly applied in this application and this fine is appropriate in the light of such consideration and assessment.

In all the circumstances, and after weighing all the above factors including the impact on the fine amount recommended by the fine calculator when the activities in relation to a specific index had no adverse impact upon the environment in that specific regard, I am of the view that a fine of **R60 000 (Sixty thousand rand)** is an appropriate fine. Please find attached a copy of the calculated fine (Appendix A).

Appendix A

14/2/4/2/3/D1/14/0026/24				
2016 SECTION 24G CALCULATOR				
IMPACT INDEX CALCULATOR				
1		Socio Economic Impact Index	Weighting	20
	Description of variable		Selection	Score
a	The activity will not give rise to any negative socio-economic impacts		X	10
b	The activity could give rise to negative socio-economic impacts, but highly localised			0
c	The activity could give rise to significant negative socio-economic and regionalized impacts			0
d	The activity could result in wide-scale socio-economic impacts.			0
Notes: The development does have positive socio-economic impacts, creating permanent work opportunities for 14 local people, as well as temporary jobs for maintenance and alien vegetation clearing. The development also makes the farm viable, and creates tourism opportunities for the area which also contributes to the local economy.				
2		Biodiversity Impact Index	Weighting	30
	Description of variable		Selection	Score
a	The activity will not give rise to any impacts on biodiversity			0
b	The activity could give rise to localised biodiversity impacts		X	90
c	The activity could give rise to significant biodiversity impacts			0
d	The activity is likely to permanently / irreversibly transform/ destroy a recognised biodiversity 'hot-spot' or threaten the existence of a species or sub-species.			0
Notes: No significant impacts were caused by the development. The development had low impact on biodiversity. The property was cultivated land prior to the current development. According to 2017 Western Cape Biodiversity Spatial Plan (WCBSP) for Bitou Municipality, the dam might have impacted on an aquatic ecological support area (ESA1). Due to the size and nature of the development, it is not expected that the development had, or will continue to have, any significant impacts on any other biological aspects. In the Terrestrial Biodiversity Report, it seems that the original watercourse had been impacted and even transformed as a result of past agricultural practices. Impact minimisation for the development focuses on the protection of the remaining and recovering indigenous vegetation to the south of the site and the protection of a potential suitable habitat for an endangered frog species. There was no red-listed or protected plant species observed and there was no loss of vulnerable or endangered vegetation and associated habitat.				
3		Sense of Place & / or Heritage Impact Index	Weighting	20
	Description of variable		Selection	Score
a	The activity is in keeping with the surrounding environment and / or does not negatively impact on the affected area's sense of place and /or heritage		X	10
b	The activity is not in keeping with the surrounding environment and will have a localised impact on the affected area's sense of place and/or heritage			0
c	The activity is not in keeping with the surrounding environment and will have a significant impact on the affected area's sense of place and/ or heritage			0
d	The activity is completely out of keeping with the surrounding environment and will have a significant impact on the affected area's sense of place and/ or heritage			0
Notes: No further action under Section 38 of the National Heritage Resources Act (Act 25 of 1999) is required. The development is in line with the surrounding environment. The development is in line with the municipal Spatial Development Framework. Plettenberg Bay is a major tourism hub right through the year.				
4		Pollution Impact Index	Weighting	30
	Description of variable		Selection	Score
a	The activity will not give rise to any pollution		X	15
b	The activity could give rise to pollution with low impacts.			0
c	The activity could give rise to pollution with moderate impacts.			0
d	The activity could give rise to pollution with high impacts.			0
e	The activity could give rise to pollution with major impacts.			0
Notes: Minimal amounts of domestic waste is produced by the development. No pollution was observed on site.				
TOTAL SCORE				125
IMPACT INDEX				12.50%
Applicant				
Individual				25,000.00
Company , Government & Parastatal.				625,000.00

Committee Reasons for Deviation (only when relevant)

Taking into cognisance the information presented the biodiversity weighting of 3, waste/pollution weighting of 0.5, socio-economic weighting of 0.5, heritage impact weighting of 0.5 was afforded for the application. This resulted in a calculated fine amount of R 625 000 to be paid by the firm.

A deviation of R 60 000 was applied for the following reasons, the applicant's operation and merits of the application were considered and the persons was fined as an individual even though the application was submitted under the company. The applicant was considered a natural person, considering that the CK2A form states that Ms. Irene Vermeulen, is the only active member of 9 Provinces Crematoria cc. The applicant has never submitted a section 24G application previously. Where negative impacts could not be avoided, mitigation measures have been proposed, to reduce the anticipated impacts to acceptable levels. Socio-economic benefits from the operations include employment and contribution to the economy. No previous convictions in terms of section 24F(1) of the National Environmental Management Act and/or section 20(b) of the National Environmental Management Waste Act were taken against the applicant but previous administrative action was issued to the applicant in respect of a contravention of section 24F(1) of the National Environmental Management Act on the 04 January 2024. I am in agreement with the committee and concur with the recommendation that the administrative fine be R 60 000.

Fine Amount

60 000