



REFERENCE NO: 14/3/6/D1/13/0430/19

Mr Michael Mouat
Honeybush Investments (Pty) Ltd
Postnet Suite 55
Private Bay X1006
PLETTENBERG BAY
6600

Cell: 082 526 9806

Fax: (044) 535 9093

Email: mikem@bitouhoneybush.co.za

Dear Mr Mouat

APPEAL LODGED IN TERMS OF SECTION 43(2) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) AGAINST THE ADMINISTRATIVE FINE DECISION ISSUED FOR THE UNLAWFUL CLEARANCE OF VEGETATION ON PORTION 7 OF FARM WITEDRIFT NO. 306, PLETTENBERG BAY

1. Your Appeal lodged against the Administrative Fine decision issued by the Department of Environmental Affairs and Development Planning on 18 September 2019, refer.
2. After considering all relevant facts and supportive documents, I wish to advise that, in terms of Section 43(6) of the *National Environmental Management Act, 1998 (Act No. 107 of 1998)* ("NEMA"), I have decided to dismiss your Appeal and confirm the abovementioned decision of the delegated officer.
3. In terms of section 24G (4) of the NEMA you are hereby informed that for the Competent Authority to process your application further, an Administrative Fine of **R250,000** (Two hundred and fifty thousand rand) must be paid.
4. **Payment may be made by cash, cheque or electronic transfer as follows:**

Cash Payment:

The amount may be paid at the cashier's office of the Department of Environmental Affairs and Development Planning, 1st floor Utilitas Building, 1 Dorp Street, Cape Town from Mondays to Fridays between 8h00 and 12h30. The following allocations must be given to the cashier when making the payment:

Reference No: S24G00243
Item: section 24G Administrative fine
Company/ Individual Name:
ID No:

Cheque Payment:

The cheque must be crossed and made payable to the Department and may either be deposited at the cash office under the allocations mentioned above or deposited directly in the bank account. (See bank details below)

Electronic Transfer

An electronic transfer may be made to the following 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.: S24G00243

5. You are hereby requested to forward a copy of the proof of payment (e.g. receipt, deposit slip, electronic transfer confirmation) to the Sub-directorate: Rectification for the attention of Ms Jamie-Lee Van Zyl (Tel: (021) 483 8347 and Email: Jamie-Lee.vanZyl@westerncape.gov.za) and quote the abovementioned reference number to ensure that the case officer can acknowledge the payment of the Administrative Fine.
6. The Administrative Fine must be paid within **60 days** from the date of this letter. However, the payment of the Administrative Fine in instalments may be arranged with the Competent Authority. If no payment of the administrative fine is received and/or no extended period arrangement of the fine payment is made with the Competent Authority within the abovementioned timeframe, the Competent Authority will proceed with the law enforcement action.
7. Please take note that the Administrative Fine is not an authorisation of the unlawful commencement of the listed activities according to the NEMA. However, your voluntary submission of the Section 24G of the NEMA Application is acknowledged. Consideration of your Application will only commence upon the payment of the Administrative Fine.
8. **REASONS FOR THE DECISION:**
The following are reasons for dismissing your Appeal and confirming the original Administrative Fine issued by the delegated authority:
 - 8.1 The voluntary Application in terms of Section 24G of the NEMA is acknowledged but an unlawful activity has been commenced with without an EA prior to its commencement.
 - 8.2 The Competent Authority was correct in imposing an Administrative Fine as Section 24G(4) of the NEMA requires an Applicant that has commenced with an activity without an authorisation, in the rectification process of the unlawful activity, to pay an Administrative Fine which may not exceed R5 million.
 - 8.3 Section 24G(4) of the NEMA does not make provision for exemption from the payment of the Administrative Fine.

- 8.4 In the Application form, the listed activities which were commenced with without an EA are confirmed by the Applicant.
- 8.5 On 18 December 2013, sub- Sections 44 (1) (aC) and (1B) of the *National Environment Laws Second Amendment Act, 2013 (Act No. 13 of 2013)* ("NELSAA") came into effect. Section 44 (1) (aC) of the NELSAA stated that "The Minister may make regulations relating to the procedure and criteria to be followed in the determination of an administrative fine in terms of section 24G".
- 8.6 On 20 July 2017, the Regulations relating to the procedure to be followed and criteria to be considered when determining an appropriate fine in terms of Section 24G ("Fine Regulations") were promulgated in terms of Section 44(1)(aC) and (b) of the NEMA. Regulation 4(1) of the Fine Regulations states the following:

"The fine committee, when determining the proposed quantum of the fine, as well as the competent authority when determining the fine in terms of section 24G(4), must take the following considerations into account-

- (a) the information submitted by an applicant in terms of section 24G(1)(b)(vii)-(viii);*
- (b) the completed application form, including Section C of Annexure A, Part 1 of which is to be completed by the applicant's environmental assessment practitioner;*
- (c) the impacts or potential impacts, including the cumulative impacts, of the activity or activities namely-*
 - (i) the socio-economic impact;*
 - (ii) the biodiversity impact;*
 - (iii) the impact on sense of place and/or heritage; and*
 - (iv) any pollution and/or environmental degradation which has been, is being or may be caused by the activity or activities.*
- (d) any technical or specialist advice or information on local knowledge received pursuant to Regulation 3(3) above.*
- (e) the compliance history of the applicant, namely-*
 - (i) whether or not administrative enforcement notices, including pre-notices where appropriate, have previously been issued to the applicant in respect of a contravention of section 24F(1) of the Act and/or section 20(b) of the National Environmental Management Waste Act;*
 - (ii) whether or not the applicant has previously been convicted in respect of a contravention of section 24F(1) of the Act and/or section 20(b) of the National Environmental Management Waste Act; and*
 - (iii) whether or not the applicant has previously submitted a section 24G application in respect of an activity or activities which commenced prior to the activity or activities that are the subject of the current application.*
- (f) whether the applicant is a firm or a natural person; and*
- (g) any other representations made by the applicant in terms of Annexure A Section C in respect of the quantum of the fine."*

- 8.7 The Environmental Impact Assessment ("EIA") Report, as compiled by an independent EAP in terms of Section 24G of the NEMA states/found the following:

8.7.1 The Farm Wittedrift No. 306 is approximately 291.98ha in extent and the development footprint is approximately 43ha. The farm lies within a predominantly Critical Biodiversity Area, bordered by Ecological Support Areas. The project entails the following:

- 8.7.1.1 Cultivation of 40.28ha of Honeybush Tea – the planting of 20ha of Honeybush is complete. 20.28ha of Honeybush tea still needs to be planted. The National Department of Agriculture, Forestry and Fisheries authorised the cultivation of 40.28ha of virgin soil. 28.8ha of land was brush cut in preparation for planting. A further 11.48ha will need to be brush cut in preparation for the cultivation and planting of Honeybush Tea.
- 8.7.1.2 Expansion of an existing farm dam from 0.5ha to 1.88ha – this has been completed.
- 8.7.1.3 The proposed construction of two residential dwellings – the dwellings will be approximately 448m² each (Total 896m²). An extra 50m² working area has been allocated around each property for construction purposes. Vegetation had been previously brush cut to prepare for construction, although no construction has taken place to date. The total area of land that was brush cut for the proposed dwellings is approximately 2800m², which forms part of the 28.8ha as mentioned above.
- 8.7.1.4 The proposed construction of a shed - the shed will be approximately 200m² and will be situated next to the existing dam.
- 8.7.1.5 A temporary nursery – a temporary nursery was established on site. The nursery is 1200m² in size.
- 8.7.1.6 The nursery was placed in an area that was already brush cut.
- 8.7.1.7 The construction of a road – a road measuring approximately 480m in length and 4m wide, was constructed; except the top and bottom of the road, which are wider than 4m.
- 8.7.1.8 The proposed construction/reconstruction of a jetty - a jetty has been reconstructed at the site where the previously existing jetty was dilapidated. Previously, vegetation clearance had commenced for this activity at a site different from the original location. Less than 300m² of vegetation was removed; however, vegetation in this area has re-established itself.
- 8.7.2 According to the Vegetation of Southern Africa classification, the vegetation on site is Garden Route Shale Fynbos with an Endangered Ecological Status.
- 8.7.3 According to Section 52 of the *National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004)* ("NEM: BA") this vegetation type Garden Route Shale Fynbos is classified as Vulnerable. According to the Critical Biodiversity Areas ("CBAs") of the Garden Route Conservation Planning Report 2010, this vegetation type Garden Route Shale Fynbos is classified as Critically Endangered.
- 8.7.4 In terms of the applicable pre-commencement biodiversity planning categories of all areas on site, the area has both CBA and Ecological Support Areas identified on the property.
- 8.7.5 In terms of the habitat condition description on site:
 - 8.7.5.1 41.7ha of the site can be seen from Google imagery as a natural area and has not been disturbed.
 - 8.7.5.2 As the top soil on site was not disturbed in the preceding 10 years the Fynbos vegetation re-established itself on site.
 - 8.7.5.3 Rhodes grass was planted on the agricultural fields; however, the top soil has not been disturbed in the preceding 10 years. Fynbos re-established itself on site.
 - 8.7.5.4 Port Jackson is also found on site.

- 8.7.6 In terms of the vegetation and/or aquatic ecosystem(s) present on site that have been affected by the commencement of the listed activities:
- 8.7.6.1 28.08ha of Garden Route Shale Fynbos has been brush cut. Remnants of Rhodes grass and Smuts Finger grass are present on the site because of the area being cultivated approximately 22 years ago.
- 8.7.6.2 With the expansion of the dam approximately 1.2ha of vegetation was cleared. The aquatic and wetland section of the property were not impacted upon.
- 8.7.6.3 The rehabilitation of the road resulted in approximately 2886m² of vegetation being cleared.
- 8.7.7 The property is zoned agriculture and was previously used for agricultural practises. The property will continue to exercise its agricultural rights by farming with Honeybush tea.
- 8.7.8 According to the Bitou Integrated Development Plan ("IDP") the Agricultural sector employs 506 people; therefore, 3.6% of Bitou's population is employed through agricultural practises. The IDP's economic objective is to strengthen and improve the economy of Bitou for sustainable growth and job creation. The proposed Honeybush tea farm will create an additional 40 employment opportunities and the product will be exported out of South Africa. The activity has created 15 employment opportunities and will create an additional 28 new employment opportunities. However, the cultivation of Honeybush Tea is not an activity of importance/concern when investigating types of agricultural needs South Africa faces. Nevertheless, the sale of Honeybush Tea both within South Africa and abroad will contribute to increasing the country's economic value.
- 8.7.9 The activity has resulted in the loss of the fynbos vegetation due to the brush-cutting that has taken place, the cultivation of Honeybush Tea, the expansion of the existing dam and the construction of the road leading to the plateau area. The activity also caused severe soil erosion around the dam area, as well as along the road embankments. However, rehabilitation works have significantly reduced the severity of the soil erosion and natural fynbos regrowth is evident in areas which were previously disturbed.
- 8.7.10 The significance of the environmental impacts that resulted during the construction phase of the activities include the following:
- 8.7.10.1 The significance rating of soil erosion caused by the construction of the road and expansion of the existing dam is "high" and "low" before and after the implementation of the mitigation measures respectively.
- 8.7.10.2 The significance rating of sedimentation of the dam caused by the clearance of the dam is "medium- high" and "low" before and after the implementation of the mitigation measures respectively.
- 8.7.10.3 The significance rating of erosion of the river bank caused by the construction of a jetty is "high" and "low" before and after the implementation of the mitigation measures respectively.
- 8.7.10.4 The significance rating of the clearance of vegetation caused by the construction of the road; brush-cutting for Honeybush tea cultivation, temporary nursery, shed and proposed two dwellings; clearance for the expansion of the dam; and clearance for the construction of a jetty is "high" and "low-medium" before and after the implementation of the mitigation measures respectively.

- 8.7.10.5 The significance rating of the loss of natural habitat is "*medium-high*" and "*low*" before and after the implementation of the mitigation measures respectively.
- 8.7.10.6 The significance rating of the water quality caused by the construction of the jetty is "*medium-high*" and "*low*" before and after the implementation of the mitigation measures respectively.
- 8.7.10.7 The significance rating of the negative visual impact to motorists along Hoof Road and parts of the R340 is "*low-medium*" and "*low*" before and after the implementation of the mitigation measures respectively.
- 8.7.11 The significance rating of the environmental impacts that resulted during the operational phase of the activities include the following:
 - 8.7.11.1 The significance rating of soil erosion caused by the construction of the road and dam is "*high-very high*" and "*low*" before and after the implementation of the mitigation measures respectively. The cumulative impact is the loss of soil fertility and the formation of erosion runnels.
 - 8.7.11.2 The significance rating of the sedimentation of the dam caused by cleared and bare soil is "*medium-high*" and "*low*" before and after the implementation of the mitigation measures respectively.
 - 8.7.11.3 The significance rating of the erosion of the river bank caused by the jetty is "*medium*" and "*low*" before and after the implementation of the mitigation measures respectively. The cumulative impacts resulted or results in the hydrological and morphological changes to the river.
 - 8.7.11.4 The significance rating of the decreased water flowing along natural drainage lines due to the expanded dam and constructed drainage furrows is "*low-medium*" and "*low*" before and after the implementation of the mitigation measures respectively. The cumulative impact resulted or results in the decreased natural water flow into downstream wetland area and Bitou River.
 - 8.7.11.5 The significance rating of the pollution of water if a chemical wood treatment is used is "*medium-high*" and "*low*" before and after the implementation of the mitigation measures respectively. The cumulative impact resulted or results in the aquatic fauna and flora that may be eradicated due to contamination.
 - 8.7.11.6 The significance rating of the negative visual impact to motorists travelling along Hoof Road and the R340 is "*low-medium*" and "*low*" before and after the implementation of the mitigation measures respectively. The cumulative impact resulted or results in the decreased visual aesthetics.
- 8.7.12 The Applicant provided the following representations in the EIA Report in respect of the calculation of the quantum of the Administrative Fine and as to why the Competent Authority should not issue a maximum fine of R5 million:

Aggravating circumstances such as blameworthiness (was the activity committed in flagrant disregard of the law), non-compliance history (repeat or habitual offender), risk of environmental harm and ignoring previous advice from the Department:

- 8.7.12.1 Honeybush Investments Pty Ltd, hereafter referred to as Honeybush Investments; is not a habitual offender.
- 8.7.12.2 Although a Compliance Notice was issued to the Applicant by the Department of Environmental Affairs and Development Planning's Director:

Environmental Law Enforcement, it is worth noting that the Applicant had not undertaken the activities in flagrant disregard of the law as the Applicant believed that no EIA listed activities were triggered.

- 8.7.12.3 The dam and dam wall were enlarged to aid future agricultural activities undertaken on the farm for Honeybush tea cultivation. Agriculture plays an important role within the economy of South Africa and therefore, the use of the dam could be viewed as a contributing positive impact for the economy.
- 8.7.12.4 The dam is situated within an area zoned for agriculture and specialists' assessments have found that the dam has played only a minor role in causing environmental harm. On the contrary; if mitigation measures are strictly adhered to, the dam could benefit the ecological status of the farm.
- 8.7.12.5 According to the previous owner of the property and the road specialist on the project, there was a previously existing road which was used to gain access to the top portion of the farm. However, the Applicant widened the road in some areas and the route required cut and fill.
- 8.7.12.6 In addition, Honeybush tea seedlings were purchased prior to the EIA process and due to the threatened health of the seedlings and the cost associated with their purchase, the Applicant had no choice but to move forward with the planting of the seedlings prior to the granting of an EA.

Mitigating circumstances, preventative measures, cooperation with the Department, self-reporting, immediate voluntary remediation and personal circumstances of the offender:

- 8.7.12.7 The Applicant has wilfully cooperated with the Department throughout the Section 24G of the NEMA process.
- 8.7.12.8 In addition, mitigation measures proposed by the EAP and specialists are being carried out on the property. This is a step which proves the Applicant's willingness to cooperate to rehabilitate the environment.

Profile of Company such as the information in the form of financial statements (revenue made and /losses), persons employed due to the unlawful activity, etc. and all relevant information that may be crucial to motivate for deviation from the Administrative Fine calculated with the Section 24G Calculator

- 8.7.12.9 A list of persons employed by Honeybush Investments and financial statements were provided. The financial statements which have been submitted with the EIA Report indicate that the company has been running at a loss and no revenue has been generated for the periods of the financial statements.

Previous offences such as the fines already issued due to the unlawful activity in terms of NEMA and/or specific environmental management acts and other applicable legislation

- 8.7.12.10 Honeybush Investments has no previous offences.

Any other EIA applications by Company - Consistency of the fine with other fines imposed on applicants for similar contraventions

- 8.7.12.11 The Applicant responded that there are none.

Written representations must be provided as to why an Administrative Fine of a Category 1 or Category 2 offender should not be issued by the Appeal Authority

- 8.7.12.12 Whilst Honeybush Investments applied as a Category 1 offender, it should be emphasized that Honeybush Investments is not a conglomerate and the future of the company/livelihood of the farm and its farmer would not be able to withstand the maximum fine of a Category 1 offender.

The Section 24G Administrative Fine Calculator approved by the Western Cape Department of Environmental Affairs and Development Planning forms part of the abovementioned Standard Operating Procedure which stipulates that the determination of fine is based on the following five indices:

- **Social Benefit Index;**
- **Socio Economic Impact Index;**
- **Biodiversity Impact Index;**
- **Pollution Impact Index; and**
- **Sense of Place / Heritage Impact Index.**

Written representations are requested in terms of the weightings of the Administrative Fine Calculator.

- 8.7.12.13 The indices have been appropriately assessed within this Section 24G EIA Report and were used to inform the Administrative Fine decision.

The calculator will automatically determine the quantum of the fine for an individual and a company/government/parastatal. Consistent with the abovementioned, the Section 24G Administrative Fine Calculator which divides the applicants into the following two categories of offenders:

- **Category 1 offenders are companies, parastatals and government departments; and**
- **Category 2 offenders are individual persons.**

Written representations must be provided as to why an Administrative Fine of a Category 1 or Category 2 offender should not be issued by the Appeal Authority.

- 8.7.12.14 Although the methods of calculation for Category 1 and Category 2 offenders are understood, it would be wrongful in this case to apply the maximum fine of a Category 1 offender to the Applicant. In this case the financial status/circumstances of the Applicant are immensely different to those of major conglomerates that fall within the same category of offenders.

- 8.8 Considering the findings of the EIA Report, the ratings of the Administrative Fine Calculator were weighted as follows:

Social Benefit Index

The **Social Benefit Index** was rated in the EIA Report that "[t]he activity provides no social service / infrastructure to the affected community".

The motivation for this rating is that "[t]he cultivation of Honeybush Tea and associated activities do not provide a social service to the affected community".

I concur with the rating of the EAP as per the reasons for the Administrative Fine decision, that "[t]he activity provides no social service / infrastructure to the affected community".

The objective of any EIA is to find the best practicable option that will ensure the maintenance of ecological integrity while promoting justifiable social and economic development. The Department's Guideline on Need and Desirability (March 2013) speaks to balancing the need of the individual or applicant and the desirability of the activity from an environmental and social/economic point of view.

In this regard, the assessment notes that although the activity is in-line with the property zoning (agriculture), the Bitou Spatial Development Plan has earmarked the farm for conservation. The activity does however contribute to a relatively new farming sector in South Africa (honeybush cultivation).

Socio-Economic Impact Index

The **Socio-Economic Impact Index** was rated in the EIA Report that "[t]he activity will not give rise to any negative socio-economic impacts".

The motivation for this rating by the EAP was that "[t]he cultivation of Honeybush Tea and associated impacts only give rise to positive socio-economic impacts. The activity provides approximately 40 employment opportunities to the local community and Honeybush Tea will be sold to South African retailers. In addition, the activity may contribute to the export market."

As per the reasons of the Administrative Fine decision, I concur with the rating of the EAP that "[t]he activity will not give rise to any negative socio-economic impacts".

Biodiversity Impact Index

The **Biodiversity Impact Index** was rated by the EAP that "[t]he activity could give rise to localised biodiversity impacts".

The motivation for this rating by the EAP was that: "[t]he activities (cultivation of Honeybush Tea, construction of the road, expansion of the dam, two dwellings, shed, and jetty) include the clearance of indigenous fynbos vegetation. It is unknown whether protected species were eradicated during the clearance of vegetation; however, due to the resilience of fynbos it is likely that vegetation will be rehabilitated through natural processes. This does not include vegetation that is permanently lost due to hard structures.

It is also to be noted that the cultivation of Honeybush Tea also gives rise to positive biodiversity impacts. The species of Honeybush Tea used (*Cyclopia Longifolia* and *Cyclopia Subternata*) are both part of the Fynbos group. With specific reference to the *Cyclopia Longifolia* species; cultivation would increase the growth of this species that is currently enlisted as Critically Endangered. In addition, the farming method that will be used on Farm no. 306 Wittedrift will ensure that Fynbos naturally occurring in the area will be allowed to grow between each row of cultivated Honeybush Tea."

As per the reasons for the Administrative Fine decision, I concur with the rating of the EAP that "[t]he activity could give rise to localised biodiversity impacts". The

motivation for this rating is that the activities have and will have biodiversity impacts due to the following reasons:

- Indigenous Fynbos vegetation has been cleared to allow for the activities which include the cultivation of Honeybush Tea, construction of a road, expansion of a dam, the construction of two dwellings, a shed, a nursery, solar panels and a jetty with a boardwalk. The development activity will result in the loss of indigenous vegetation and habitat, with possible negative impacts on the connectivity of ecological corridors. According to the EIA Report, 28.8ha of land was brush-cut in preparation for planting and a further 11.48ha needs to be brush-cut for ultimate cultivation of 40.28ha of Honeybush. The expansion of the dam resulted in 1.2ha of vegetation being cleared and the road construction activities resulted in the clearance of approximately 2886m² of vegetation. The development footprint is approximately 43ha. The vegetation type affected is Garden Route Shale Fynbos, classified as vulnerable according to Section 52 of the *National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004)*. The assessment assigns this impact a negative rating of low-medium significance.
- The hydrological patterns (flow rate and volume) have been altered by the expansion of the dam. The contour furrows dug to divert rain water into the dam may result in water deprivation of the natural drains on site that feed into the wetlands and Bitou River; however, this would be a very limited volume.
- Due to the clearance of vegetation for the construction of the road and the expansion of the dam, soil erosion has manifested although rehabilitation measures of the areas surrounding the dam have been implemented. Erosion runnels have been filled with fertile soil and the areas re-vegetated with indigenous Fynbos vegetation. The road embankments have been re-vegetated.
- The assessment also notes the risk of erosion near the jetty area. The jetty was reconstructed in the existing jetty area (replacing the old jetty).
- Due to the greatly reduced level of vegetation surrounding the dam, sedimentation of the dam is occurring. Sedimentation reduces the dam's capability to store as much water as intended. To reduce sedimentation of the dam, the areas surrounding the dam have been rehabilitated.

Sense of Place and/or Heritage Impact Index

The **Sense of Place and/or Heritage Impact Index** was rated in the EIA Report that "*[t]he 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 "*[t]he activity is compliant with the land use zoning; however, associated activities (road and proposed two dwellings) will negatively affect the visual impact of the area*".

As per the reasons of the Administrative Fine decision, I concur with the rating of the EAP that "*[t]he 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 the property is zoned agriculture and the activities undertaken on the site are in keeping with the zoning of the site.

Pollution Impact Index

The **Pollution Impact Index** was rated in the EIA Report that "*[t]he activity could give rise to pollution with low impacts*".

The motivation for this rating by the EAP was that "[t]he cultivation of Honeybush Tea will not produce pollution. However, construction machinery and any machinery used to transport the Honeybush Tea off-site may provide an insignificant amount of noise pollution. In addition, the construction of the two dwellings would produce a small amount of waste. This waste will be correctly disposed of and/or recycled".

As per the Administrative Fine decision, I do not concur with the rating of the EIA Report that "[t]he activity could give rise to pollution with low impacts". The EAP's rating should be changed to state "[t]he activity will not give rise to any pollution" due to the following reasons:

- It is not expected that pollution will arise from the development activity.
- The Applicant will not use pesticides as part of the honeybush cultivation process, with harvesting to be carried out manually (by hand).
- The two houses have not been commenced with.

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

- Category 1 offenders are companies, parastatals and government departments.
- Category 2 offenders are individual persons.

The amounts determined by the Section 24G Administrative Fine Calculator for categories of offenders were considered and it was deemed appropriate to regard the Applicant as a Category 1 offender.

8.10 I concur with the Department's Responding Statement that:

8.10.1 Honeybush Investments (Pty) Ltd is identified as a Category 1 offender in the Application dated 10 May 2017 and the EIA Report dated 28 November 2018, which include representations in respect of the calculation of the quantum of the administrative fine.

8.10.2 Both Category 1 and Category 2 Administrative Fine amounts were placed before the Department when deciding on an appropriate fine for the Section 24G Application. A reduction of the Administrative Fine from R625,000 demonstrates that the Department has applied discretion for the determination of an appropriate fine for the Application.

8.10.3 Given the information which was placed before the Department in the Application, the Applicant cannot be considered as a Category 2 offender (an individual).

8.10.4 The Department is therefore satisfied in regarding Honeybush Investments (Pty) Ltd as a Category 1 offender.

8.10.5 The Department considered the information contained in the Section 24G of the NEMA Application, including the representations in respect of the calculation of the quantum of the Administrative Fine and has deviated from the amount calculated with the Administrative Fine Calculator to a reduced fine.

8.10.6 Ignorance of the law cannot be considered as a mitigation factor in determining the fine quantum. The NEMA gives effect to the environmental right as enshrined in Section 24 of the Constitution of the Republic of South Africa, 1996 to ensure that "everyone" has a right to an environment that is not harmful to their wellbeing.

- 8.10.7 Section 24 of the NEMA makes provision for the promulgation of listed activities that may have a detrimental impact on the environment and for which prior approval is required before such listed activities may be commenced with. The NEMA 2014 EIA Regulations regulate the process for the granting of EAs with regards to listed activities. Thus, the intention of the NEMA is very clear. It is an offence in terms of Section 49A of the NEMA for a person to commence with a listed activity unless the Competent Authority has granted an EA for the undertaking of the activity.
9. In the additional information received on 28 November 2019, the Appellant answered to the Responding Statement as follows:
- 9.1 Honeybush Investments should be classified as a Category 2 offender.
- 9.2 Mr Mike Mouat is the only shareholder of the company which is a small enterprise.
- 9.3 The annual income of approximately R20,830,000 referred to in the Responding Statement is not the income that Honeybush Investments will receive. It was an overestimate made in October 2016 due to inexperience of Honeybush farming. The crop that will be produced is far less than projected and the capital spent is greater. Honeybush Investments is running at a considerable loss and to date, has made no sales. A correspondence from independent Auditors (Mazars) was also received indicating that Honeybush Investments (Pty) Ltd has made no sales since inception until 30 September 2019.
- 9.4 The weightings of the impact calculator are not agreed with as the Appellant believes that impacts should not be scored if it is not going to affect the environment. This applies to the:
- 9.4.1 Socio-Economic Impact Index
- 9.4.2 Sense of place and/or Heritage Impact Index
- 9.4.3 Pollution Impact Index
- 9.5 In terms of the loss of vegetation, it was not cleared but mowed for the cultivation of Honeybush Tea. The vegetation has re-grown in-between the rows of Honeybush.
- 9.6 In terms of the construction of the road, it was estimated that approximately 2886m² was cleared. However, this was not the case as the road was an existing road, which is the only access to the farm and was repaired to measure 4m wide including the water drainage except for a small waiting area and the intersection of 8m². The embankments have been replanted. Pictures of the pre-existing road on the site and an excavator used to clear the overgrown vegetation on the pre-existing road footprint were submitted.
- 9.7 In terms of the expansion of the dam, a 1.2ha area was cleared.
- 9.8 The jetty work is a repair of an existing jetty which measures 1.2m wide and 6m long.
- 9.9 No vegetation was cleared for the nursery with only shade cloth erected and the same for the solar panels which were erected on a frame.
- 9.10 The two dwellings and shed have not been built and therefore no vegetation has been cleared.
- 9.11 The continued operations of the farm will be threatened by the Administrative Fine which they cannot afford.
- 9.12 The appellant requested the Appeal Authority to please consider reducing the Administrative Fine.
10. Considering the above, the Appeal must be dismissed and the Administrative Fine decision must be confirmed in terms of Section 43(6) of the NEMA as the Administrative

Fine which was determined with the calculator was already reduced from R625 000 to R250,000.

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 considered. As such, the consideration, assessment and evaluation of the social, economic and ecological impacts of activities (disadvantages and benefits) must be undertaken, and decisions are to be appropriate in the light of such consideration and assessment.

Yours faithfully



ANTON BREDELL

**PROVINCIAL MINISTER OF LOCAL GOVERNMENT,
ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING**

DATE: 20/1/2020

CC: (1) Dr J Ebersohn (Eco-Route Environmental Consultant (Pty) Ltd)
(2) Directorate: Financial Management (DEA&D)
(3) D Baartman (Bitou Municipality)
(4) J Oelofse (DEA&DP: Environmental Law Enforcement- George)
(5) Mrs Zaidah Toefy (Sub-directorate:Rectification)

Email: janet@ecoroute.co.za
Email: DEADP.Banking@westerncape.gov.za
Email: dbaartman@plett.gov.za
Email: Johan.Oelofse@westerncape.gov.za
Email:Zaidah.Toefy@westerncape.gov.za