



Western Cape
Government
Environmental Affairs and
Development Planning

MINISTRY OF LOCAL GOVERNMENT,
ENVIRONMENTAL AFFAIRS AND
DEVELOPMENT PLANNING

14/3/6/D1/13/0284/17

Mr M Varoli
JC Pine Mills (Pty) Ltd
P.O. Box 2294
PLETTENBERG BAY
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Cell: 071 518 8734
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Dear Mr Varoli

APPEALS LODGED IN TERMS OF SECTION 43(2) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT NO. 107 OF 1998) ("NEMA") AGAINST THE ADMINISTRATIVE FINE DECISION ISSUED FOR THE UNLAWFUL CONSTRUCTION AND OPERATION OF A SAWMILL AND KILN ON THE REMAINDER OF FARM BUFFELSRIVIER NO. 288, PLETTENBERG BAY

Your appeal lodged against the Administrative Fine decision issued by the Department of Environmental Affairs and Development Planning on 31 August 2017, refers.

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)* (as amended) ("NEMA") I have decided to partially uphold your appeal. In terms of section 24G(4) of the NEMA you are hereby informed that in order for the competent authority to process your application further, an administrative fine of R150 000-00 (One hundred and fifty thousand Rand) must be paid.

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: S24G00202

Item: section 24G Administrative fine

809 Utilitas Building, Cape Town, 8001 Private Bag X9186, Cape Town, 8000
tel: +27 21 483 3721 fax: +27 21 483 4174 www.westerncape.gov.za/eacd

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 aforementioned 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.:	S24G00202

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 Mr Shafeeq Mallick (Tel: (021) 483 8339 and e-mail: Shafeeq.Mallick@westerncape.gov.za) and quote the abovementioned reference number to ensure that the case officer can acknowledge the payment of the administrative fine.

The administrative fine must be paid within sixty (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 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.

Please take note that the administrative fine is not an authorisation of the unlawful commencement of the listed activities according to the NEMA. Consideration of your application will only commence upon the payment of the administrative fine.

You are kindly requested to notify all registered interested and affected parties ("I&AP's") in writing, within 14 (fourteen) days of the date of the appeal decision of the outcome of the appeal and the reasons for the appeal decision.

REASONS FOR THE DECISION:

In addition to the reasons contained in the abovementioned administrative fine decision, the recommendation by the Department of Environmental Affairs and Development Planning and considering all relevant documentation, including additional information received from the appellant, the following are reasons to partially uphold your appeal.

- 1.1 The NEMA principles that apply to the actions of all organs of state that may significantly affect the environment specifically require *inter alia* that:
 - o Environmental management must place people and their needs at the forefront of its concern and serve their physical, psychological, developmental, cultural and social interests equitably;
 - o Development must be socially, environmentally and economically sustainable;
 - o That the disturbance of ecosystems and loss of biological diversity are avoided, or where they cannot be altogether avoided, are minimised and remedied;
 - o That a risk-averse and cautious approach is applied, which takes into account the limits of current knowledge about the consequences of decisions and actions; and
 - o The social, economic and environmental impacts of activities, including disadvantages and benefits, must be considered, assessed and evaluated, and decisions must be appropriate in the light of such consideration and assessment.
- 1.2 In February 2015, the unlawful construction and operation of a sawmill and kiln on the remainder of the Farm Buffelsrivier No. 288, Plettenberg Bay was commenced with in contravention of section 24F(1)(a) of the NEMA.
- 1.3 An Application form was submitted by the applicant i.e. JC Pine Mills (Pty) Ltd of its own in terms of section 24G of the NEMA to obtain a retrospective EA for the abovementioned unlawful construction and operation of a sawmill and kiln on the remainder of the Farm Buffelsrivier No. 288, Plettenberg Bay.

The following listed activities in relation to the abovementioned development were commenced with and applied for:

Government Notice No. R. 983 of 4 December 2014 as amended by Government Notice No. R. 327 of 7 April 2017

Activity Number 12:

"The development of—

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

more;

where such development occurs—

(a) within a watercourse;

(b) in front of a development setback; or

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

excluding—

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

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

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

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

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

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

Activity Number 19:

"The infilling or depositing of any material of more than 10 cubic metres into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock of more than 10 cubic metres from a watercourse;

but excluding where such infilling, depositing, dredging, excavation, removal or moving—

(a) will occur behind a development setback;

(b) is for maintenance purposes undertaken in accordance with a maintenance management plan;

(c) falls within the ambit of activity 21 in this Notice, in which case that activity applies;

(d) occurs within existing ports or harbours that will not increase the development footprint of the port or harbour; or

(e) where such development is related to the development of a port or harbour, in which case activity 26 in Listing Notice 2 of 2014 applies."

Activity Number 27:

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

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

Government Notice No. R. 984 of 4 December 2014 as amended by Government Notice No. R. 325 of 7 April 2017

Activity Number 6:

"The development of facilities or infrastructure for any process or activity which requires a permit or licence or an amended permit or licence in terms of national or provincial legislation governing the generation or release of emissions, pollution or effluent, excluding—

- (i) activities which are identified and included in Listing Notice 1 of 2014;*
- (ii) activities which are included in the list of waste management activities published in terms of section 19 of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008) in which case the National Environmental Management: Waste Act, 2008 applies;*
- (iii) the development of facilities or infrastructure for the treatment of effluent, polluted*
- (iv) water, wastewater or sewage where such facilities have a daily throughput capacity of 2 000 cubic metres or less; or*
- (v) where the development is directly related to aquaculture facilities or infrastructure where the wastewater discharge capacity will not exceed 50 cubic metres per day."*

On 31 August 2017, an administrative fine of R312 500-00 (Three hundred and twelve thousand five hundred Rand) was issued to the applicant as required in terms of section 24G(4) of the NEMA.

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 to, in the rectification process of the unlawful activity, pay an administrative fine which may not exceed R 5 million. Section 24G(4) of the NEMA does not make provision for exemption from the payment of the administrative fine.

Determination of section 24G(4) Administrative fines

- i. On 20 June 2014, the National Department of Environmental Affairs developed the section 24G Standard Operating Procedure for the determination of section 24G(4) Administrative fines. This section 24G Standard Operating Procedure (which was made available for the applicant's consideration) included a calculator for the determination of the administrative fines.
- ii. The calculator is based on the following indexes which must be informed by the impacts that have resulted from the unlawful activities:
 - Social Benefit Index (e.g. intended only for Municipal Infrastructure);
 - Socio-Economic Impact Index;

- Biodiversity Impact Index;
 - Sense of Place &/ or Heritage Impact Index; and
 - Pollution Impact Index.
- iii. The abovementioned Standard Operating procedure states that the section 24G Calculator serves as a guideline for the determination of the quantum of the fine to be imposed and should therefore not be rigidly applied. The section 24G Standard Operating Procedure for the determination of administrative fines further states that a decision-maker may deviate from the administrative fine calculated based on the following reasons, *inter alia*:
- 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;
 - Mitigating circumstances, preventative measures, cooperation with the Department, self-reporting, immediate voluntary remediation and personal circumstances of the offender.
- iv. 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*". Section 44 (1)(1B) of the NELSAA further stated that "*Until such time that the regulations under subsection (1) come into effect, the existing standard operating procedure, adopted by the Minister for determining administrative fines in terms of section 24G, applies*".
- v. The *Constitution of Republic of South Africa, 1996 (Act No. 108 of 1996)* recognises the inter-relationship between the environment and development. It envisages that environmental considerations will be balanced with socio-economic considerations through the ideal of sustainable development. This is apparent from section 24(d)(iii) of the NEMA which provides that the environment will be protected by securing "*ecologically sustainable development and use of natural resources while promoting justifiable economic and social development*".

As stated above and in the fine letter of the decision-maker, the S24G fine calculator is a guide that is not rigidly applied and is used in order to reduce the maximum section 24G fine amount of R5 million to an appropriate fine based on applicable impacts resulting from the unlawful commencement activity/ies on the receiving environment. Each section 24G administrative fine is determined on its own merit and is dependent on the information provided in the application, as well as on appeal. The calculator is oversimplified and does not accurately assess impacts or provide correct values to these impacts. The recommended fine by the Appeal Administrator was also determined by the administrative fine calculator without any deviation from the calculator.

I have taken into account relevant case law, indicating that a decision-maker, informed by policy guidelines, must exercise his discretion with an open mind. Policies should therefore not be elevated into rules that are considered to be binding with the result that no discretion is exercised at all. The fine calculator is a predetermined calculator designed by the National Department of

Environmental Affairs for use by the competent authority when determining the administrative fine for an application submitted in terms of section 24G of the NEMA. The fine calculator was utilised as a guide in determining the fine amount. I have therefore deviated from the recommended fine of R312 500-00 to a fine of R150 000-00.

The S24G fine calculator distinguishes between the following two categories of offenders:

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

An amount of R625 000-00 was determined by the fine calculator for Category 1 offenders and R25 000-00 for Category 2 offenders for this application. The calculation of the administrative fine is based on the fact that the appellant in this matter is a Category 1 offender. The fines for individuals are excessively less in comparison with Category 1 offenders for the same offence.

The comment of the following organs of state has been noted and considered :-

- o CapeNature viewed the rehabilitation of the riparian area as a positive proposal.
- o The Directorate : Waste Management Licencing commented that a very small quantity of construction waste was disposed of.
- o Heritage Western Cape stated that the sawmill and kiln will have no impact on heritage resources.

I have also taken into account the appeal lodged by the Eco Route Environmental Consultancy who stated that:

- o The appellant provides valuable jobs in a community plagued by unemployment. The sawmill has helped to uplift the community in many ways, one was donating a large amount of wood to rebuild homes destroyed by the recent fires experienced in the area. Furthermore, they have donated wood for fire, valuable to the community during the very cold winter faced in the area.
- o The members of the Kurland community had stated during the public participation process that the sawmill provides employment either directly or indirectly to the community. The community relies on the employment offered by the sawmill.
- o The administrative fine amount must be reduced as the operation is very small and the community needs it.

An excessive fine would handicap this small industry uplifting the community and providing employment to them either directly or indirectly. It will unavoidably lead to downscaling and a lost of jobs.

3. Written representations on the section 24G standard operating procedure for the determination of Administrative fines

Furthermore, before making an informed appeal decision and to ensure a procedurally fair administrative action in the determination of the administrative fine I have on 28 February 2018, requested the appellant for written representations on various aspects in terms of the section 24G Standard Operating Procedure for the determination of Administrative fines including the section 24G Administrative fine calculator in order to determine whether there are reasons to deviate from the quantum of the fine calculated. These aspects include the following:

- Aggravating circumstances.
- Mitigating circumstances.
- Profile of Company.
- Previous offences
- Any other EIA application by Company.
- Consistency of the fine with the fines imposed on applicants for similar contraventions.
- The weighting allocated on each of the Impact Indexes of the calculator.
- Representations as to why an administrative fine of a category 1 or category 2 should not be issued by the appeal authority.

4. Written representations received from the applicant on 29 March 2018

Aggravating circumstances:

i. Blameworthiness:

1. The activity for which the administrative fine was determined was not undertaken in flagrant disregard of the law.
2. The appellant of its own accord requested the Environmental Assessment Practitioner ("EAP") to compile an Environmental Management Plan ("EMP"), during the compilation of which the EAP advised the appellant that it may be in contravention of section 24F and further advised it to submit an application in terms of section 24G, which advice the appellant followed without delay.
3. No Compliance Notice was served on the appellant and it voluntarily submitted the section 24G Application.
4. The appellant at no stage acted wilfully, has a history of environmental conservation and care for the environment and fully cooperated with the involved officials of the Department.

ii. Non-compliance history:

The appellant has no history of non-compliance with NEMA or any environmental law and is not a repeat- or habitual offender.

iii. Risk of environmental harm:

1. It is submitted that the area where the sawmill was constructed has no conservation value and according to the EIA Report it was 100% degraded and transformed.
2. In Paragraph 2.1.5 (page 11) of the Department's own assessment of impacts, it is stated that the activity will not give rise to any pollution.
3. In Paragraphs 34.5 to 41 of the appellant's appeal, the biodiversity impact was discussed in detail and the submission made that the impact which was regarded as significant by the decision-maker was inconsistent with the EIA Report.

iv. Ignoring previous advice from the Department:

The appellant has not received any previous advice from the Department.

Mitigating circumstances:

The introduction of the sawmill has created 40 permanent jobs for unskilled workers and has opened up opportunities for small informal businesses that manufacture broomsticks, pallets and picket fencing, all hand-made from the off-cuts of the sawed timber. The providing of waste wood to the surrounding community was discussed in the Department's assessment and it is believed that it should also be considered under the heading of merits. It is evident that the sawmill provides essential services and infrastructure to the community and 40 jobs are created. An excessive administrative penalty fine of R312 500-00, will knock the operation of the sawmill to such an extent, that it will unavoidably lead to downscaling and a loss of jobs.

v. Immediate voluntary remediation:

1. Although the noise level of the sawmill's wood chipper was tested and was found not to constitute a disturbing noise as defined in the Western Cape Noise Control Regulations, 2013 the appellant has decommissioned the wood chipper in order to reduce the noise audible to neighbours.
2. The fact that the noise level was not found to constitute a disturbing noise was taken into account by the Department when weighting the Pollution Impact Index, but the immediate voluntary remediation of the appellant was not considered.
3. As part of the EIA Report, a Rehabilitation Plan and Stormwater and Erosion Plan was submitted.

vi. Profile of company:

The applicant is a small company with two directors hence the applicant should be treated as an individual. . As mentioned above, the S24G fine calculator distinguishes between the following two categories of offenders:

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

The fine amount of R312 500-00 was determined by the fine calculator for Category 1 offenders and R25 000-00 for Category 2 offenders for this application. The calculation of the administrative fine is based on the fact that the appellant in this matter is a Category 1 offender. The fines for individuals are excessively less in comparison with Category 1 offenders for the same offence.

1. Due to the recent devastating fires in the region, the company expects to have a decrease in income for at least the following 2 years. It will require prudent preservation of its capital to navigate through the expected shortage due to limited raw material supply.
2. The appellant is not in a position to pay the administrative fine of R312 500-00 and if this fine is not drastically reduced it is foreseen that the saw mill will not be able to afford all of the current employee's salaries and/or continue with the donations the surrounding community and businesses are accustomed to.

vii. Previous offences:

The appellant has no previous offences and hasn't received any previous fines issued in terms of the NEMA, specific environmental management acts or other applicable legislation.

viii. Any other EIA applications by the Appellant:

The appellant's application in this matter was its first EIA application submitted.

Standard Operating Procedure and Calculator

- ix. The appellant confirms its statements regarding the section 24G Standard Operating Procedure for the determination of the Administrative fines and calculator in its appeal and adds the further representations hereunder.
- x. The issues considered in the decision maker's reasons for deviation according to the calculator all fall under the coat of the Biodiversity Impact Index and while referring to paragraphs 34.5 to 41 of the appellant's appeal, the variable in this index should be changed to that of an activity that will not give rise to any impacts on biodiversity with deviation from the calculation to a positive impact.
- xi. The appellant herewith submits that the following deviations should also be considered by the decision maker:

1. Section 1 of the regulations relating to the procedure to be followed and criteria to be considered when determining an appropriate fine in terms of section 24G defines "socio economic impact" as the impact or potential impact that an activity has, has had, or may have on the surrounding community's social and economic wellbeing, including changes in demographics, housing, employment, income opportunities and demand for public services.
2. The socio-economic impact index of the calculator makes no provision for a positive socio-economic impact, although the definition thereof does not exclude the positive impact.
3. The operation of the sawmill holds pertinent socio-economic benefits for the affected community and area which is in dire need of employment opportunities.
4. The socio-economic impact has to be completed and the best option available has a weighing of 0.5. This calculates to 10 points, (1% of R 5million) and a fine amount of R50,000 with which the appellant is penalised even though the activity will not rise to any negative socio-economic impacts as described in the calculator, but clearly the activity will give rise to positive socio-economic impacts.
5. It is submitted that a deviation be applied to reflect this positive impact.
6. The appellant's immediate voluntary remediation by shutting down its chipper machine in reaction to the EIA Report justifies a deviation on the Pollution Impact Index, alternatively when considering the merits of the case.
- xii. The calculator constitutes an unlawful restriction on the exercise of the discretion of a decision maker and constitutes a mechanical dictate on how administrative fines must be determined.
- xiii. The appellant submits that it is clear that the calculator was not applied as a guide only but as a rigid method to calculate the Administrative Fine.
- xiv. The appellant submits that the calculator is from a legal perspective fatally flawed in the following respects:
 1. The calculator does not at all take any cognizance of the compliance history of the applicant.
 2. The calculator is restricted to only four impact indices which leave the application of the calculator very limited. The appellant submits that all impacts or potential impacts, including positive impacts, must be considered by the decision maker.
 3. The description of the variables is again limited in the sense that four arbitrary variables are selected for purposes of weighting the impacts of the activities. It is

clear that the calculator therefore has not been constructed to consider all relevant factors.

4. The weightings attached to each variable have been arbitrarily selected as multiples of 0.5, 3, 7 and 10 of the total weighting of a specific index. Again, the aforementioned selection of weightings is irrational, arbitrary and restricts the discretion of the decision maker in material respects.
5. The total score calculated in terms of the calculator is then expressed as a total score out of 1000, which then determines the percentage of the fine calculated with reference to the maximum fine of R5 million. The aforementioned method of calculation is irrational and therefore unlawful for the following reasons:
 - It is based upon the incorrect premise that all activities may potentially carry the maximum fine of R 5 million. This position is not consistent with a correct interpretation of section 24G(4).
 - Section 24G(4) does not grant a decision maker the power to determine an Administrative Fine on the basis of assumptions.
- xv. The fact that the activities in this matter were undertaken by a company is of no relevance as far as the environmental impacts of the activities are concerned. From the section 24G Standard Operating Procedure for the determination of the Administrative Fines and calculator, it is clear that a total irrational and unexplained differentiation is made between individuals on the one hand and Companies, Government and Parastatals on the other hand. Should exactly the same activities have been undertaken by an individual, the fine would have been an amount of R25 000-00 and not R625 000-00. The basis of this differentiation is unknown to the appellant, but it is inconceivable that there can be any rational explanation therefore.
- xvi. A brief synopsis of the key financial contributions that JC Pine Mills (Pty) Ltd has made to the community since it began operating in The Kurland/Crags area on 2 May 2015 indicate the following:
 1. Although the business reflects a cumulative profit of R1,593,401-00, this has not translated into a healthy cashflow balance as the profit has been utilized to pay income tax of R422 715-00 and R1,167 000 -00 towards the start-up business loan of R1,485 000-00, this loan has now been reduced to R318 000-00. Due to the cashflow restrictions and the need to hold finished stock and carry trade debtors, the business has not yet been able to purchase its own plant and machinery and leases plant and machinery on a 5-year revolving basis.
 2. JC Pine Mills operates under very strict Health and Safety Regulations and holds regular Health and Safety updates along with ad-hoc training sessions to keep employees informed and skilled to deal with Health and Safety

issues at the plant. Staff are also given regular hearing tests and their protective gear is kept up to standard. Safety gear is also checked and replaced regularly.

3. JC Pine Mills has added value to the Greater Garden Route area, by way of procurement of supplies, transport and specialist services for the business operation. The Kurland and Craggs communities have benefited the most as a result of JC Pine Mills offering employment to 40 unskilled workers, with the total salaries and wages bill since its trading inception being R4,491 344-00. Not only has the basic standard of living of 40 families been uplifted, but peripheral informal and formal businesses that rely on their trade have also benefited. There have also been a few business offshoots as a result of value being added to the reject and waste products of the mill a few examples being- informal construction, pallet construction, compost production amongst others. Kurland brickyard also utilizes the offcuts of the bark to fire up their brick kilns, thus waste management is optimal as nearly all waste is converted into a usable resource of sorts.
4. During its 2.5 years of trading, JC Pine Mills has contributed to the fiscus by way of income tax, value added tax and statutory levies.
5. In summary, JC Pine Mills has during this period of trading expended cash outputs of R37,774 727-00, a rather handsome contribution to their region.

xvii.

As adequately detailed in the reasons for the Administrative Fine decision under appeal, the section 24G EIA Report which meets the requirements of section 24G of the NEMA stated that:

1. The **Social Benefit Index** should be weighted on the administrative fine calculator that: "*The activity provides indirect social service / infrastructure to the affected community*". The motivation provided for this weighting states that the activity of the sawmill does not provide a social service.
2. The **Socio-Economic Impact Index** should be weighted on the administrative fine calculator that: "*The activity will not give rise to any negative socio-economic impacts*". The motivation provided for this weighting states that the activity give rise to positive socio-economic impacts, employment opportunities for the local community and the production of non-treated timber which is sold to surrounding industries.
3. The **Biodiversity Impact Index** should be weighted on the administrative fine calculator that: "*The activity could give rise to localised biodiversity impacts*". The motivation provided for this weighting states that according to the relevant biodiversity reports the property falls within a Critical Biodiversity Area. The drainage lines, river tributary and the dam are of high ecological importance.
4. The **Sense of Place &/ or Heritage Impact Index** should be weighted on the administrative fine calculator that: "*The activity is in keeping with the*

surrounding environment and / or does not negatively impact on the area's sense of place and/or heritage". The motivation provided for this weighting states that the property is currently zoned as Agriculture Zone 1. An application for a temporary departure has been made to the relevant municipality as the activity is classified as light industrial. However, due to the surrounding areas being classified as light industrial and agriculture, the activity does not impact negatively on the area's sense of place.

5. The **Pollution Impact Index** should be weighted on the administrative fine calculator that: *"The activity could give rise to pollution with low impacts"*. The motivation provided for this weighting states that the activity produces a small volume of air pollution due to the kiln and water heater which are used for the drying of wood. The activity also produces noise pollution which is of a small scale.

Response from the Department

Based on the abovementioned indices the Department responded that the 2014 section 24G calculator which calculated the fine in the amount of R625 000-00 was not applied thoughtlessly or rigidly. In the first instance, the competent authority issued an administrative fine decision of R312 500-00 as determined through the calculator.

The EIA Report found that:

- xviii. The utilization of the property for a sawmill is consistent with the applicable Spatial Development Framework of the local municipality.
- xix. The operation of a sawmill holds pertinent socio-economic benefits for the affected community and area which is in dire need of employment opportunities.
- xx. The Fresh Water Specialist Study merely stated that storm water runoff can (i.e. possibly) lead to a decrease in the water quality downstream of the site. However, the following important qualification of the aforementioned potential is recorded in the report:
"When considering the current moderately to largely transformed state of the Upstream Buffels River catchment and dam area, and with no evidence that the newly constructed sawmill is having any direct impact on the downstream state, the activity within 32m of this watercourse is deemed to be acceptable with full implementation of the stormwater and erosion plan."
- xxi. The following environmental impacts have resulted from the unlawful activities:
 1. Soil Erosion with a medium significance.
 2. Sedimentation of the dam with a high significance.
 3. Clearance of vegetation with a medium-high significance.
 4. Decreased presence of alien invasive plant species due to land clearance with a medium significance.

5. Increased dust pollution with a low significance.
6. Noise pollution caused by machinery with a low significance.

After considering all the above factors and relevant documentation, I am of the view that a deviated fine of R150 000-00, is an appropriate fine. However, I wish to advise the appellant to approach in future an environmental assessment practitioner and/or the Department of Environmental Affairs and Development Planning for advice prior to commencement of an activity/activities which may require an environmental authorisation in terms of the National Environmental Management Act, 1998 ("NEMA").

Yours faithfully



ANTON BREDELL
WESTERN CAPE MINISTER OF LOCAL GOVERNMENT,
ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING

DATE: 6/7/2018

CC: (1) Ms Samantha Robertson (Eco Route Environmental Consultancy) Email : samantha@ecoroute.co.za
(2) Mrs Zaidah Toefy (Sub-directorate: Rectification) Email: Zaidah.Toefy@westerncape.gov.za
(3) Ms Siposake Mstia (Sub-directorate: Financial Accounting) Email: Siposake.Mstia@westerncape.gov.za
(4) Mr Andre Swart Email: andre@stadlers.co.za
(5) Mr Creswel Basson (Bitou Municipality) Email: cbasson@plet.gov.za

