



24G Application: 14/2/4/2/3/D2/20/0023/22

ADMINISTRATIVE FINE NOTICE

The Managing Director
Power Construction (PTY) Ltd
P. O. Box 129
BLACKHEATH
7580

Email: slevey@powergrp.co.za

Attention: Steven Raymond Levey

Dear Sir

ADMINISTRATIVE FINE IN TERMS OF SECTION 24G OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998) ("NEMA"): THE UNLAWFUL INFILLING OF A WETLAND AND OR A WATERCOURSE ON ERF 21028 AND ERF 21029, NEAR CHAMPERSDRIFT RIVER, GEORGE

1. Your application in terms of section 24G of the NEMA ("the section 24G application") dated 8 September 2022 has reference.
2. In order for the Department to process your application, you are required to pay an administrative fine of **R250 000 (two hundred and fifty thousand Rand)**.
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 cash, cheque or electronic transfer in the following manner:

Cash Payment

The fine amount may be paid at the cashier's office of this Department, ground floor, Utilitas Building, 1 Dorp Street, Cape Town on Monday to Friday between 08h30 and 12h30.

The following allocations must be given to the cashier when making cash payment:

Reference No: **S24G00324**

Item: Section 24G administrative fine

Company/ Individual Name

ID No.

Cheque Payment

The cheque must be crossed and made payable to the Department of Environmental Affairs and Development Planning and may either be deposited at the aforementioned cash office under the allocations mentioned above or deposited directly in the Department's bank account (see bank details below).

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.	:	S24G00324

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: 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

ACTING DIRECTOR: ENVIRONMENTAL GOVERNANCE

CC: (1) Louise-Mari van Zyl (EAP)

Email: : louise@cape-eaprac.co.za

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 8 September 2022 with supporting environmental impact assessment and mitigation measures.
- The consideration of Alternatives
- Public participation conducted for the application by the Environmental Assessment Practitioner.
- The Environmental Management Programme dated 06 June 2022 submitted for the application.
- The Stormwater Management Plan dated 06 June 2022 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 3 February 2023, attended by Officials of this Directorate.

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 **George Herald** newspaper on 31 March 2022;
- A site notice was erected on 01 April 2022; and
- Letters were sent to interested and affected parties (“I&APs”) and the municipal ward councillor on 1 April 2022.
- I&APs were afforded the opportunity to provide comments on the application.

Mrs Charmaine Nunns, a registered I&AP, provided the following comments:

- The wetland area must be fenced to ensure that domestic animals and people do not access this sensitive area.
- How will littering into the wetland from the group housing be monitored?

The EAP indicated that the wetland will be fenced and not accessible to people/residents. Litter is therefore unlikely to find its way into the wetland. The area will be part of a CapeNature Biodiversity Agreement. Furthermore, stormwater is not directed to this wetland.

- It will be great if residents from Die Bult/King George Park can have access to enjoy the enclosed wetland with regards to a walkway around the wetland and some benches. The plan allows only access for residents of The Village Ridge.
- How can we be assured that none of the residents will be able to access the wetlands areas?

The EAP indicated that the central wetland will be permanently fenced to prevent unauthorised access.

- How will access to Camphersdrift wetland be secured?

The EAP confirmed that Camphersdrift is part of a greater municipal open space system which is accessible to the general public where access routes are provided. Roads through this development are open to the public and pedestrians can also walk to the Camphersdrift wetland corridor. The Camphersdrift corridor is not accessible with walkways all the way and care must be taken not to create informal walkways into this sensitive area.

- The old parking area will become a no-man's land which will attract vagrants who will enter the corridors and put the whole wetlands in jeopardy of foot traffic.

The EAP indicated that the area will be converted to an artificial stormwater detention wetland/pond.

- The shop/business is proposed too close to the wetland and can cause pollution. Who will take responsibility? Also, this will attract unwanted people which will cause a security risk for the neighbourhood.

The EAP indicated that all development around the wetland is setback by the recommended 19m buffer area specifically to protect the wetland (the retail will not encroach into this area).

- There appears to be too few parking spaces which will cause congestion in the streets and the public open space areas will be taken over by parked vehicles.

The EAP confirmed that the parking ration has been approved by the George Municipality as part of the land use planning in line. The site parking complies with municipal requirements for on-street parking. Parking for units have dedicated off-street on each erf. Commercial will have its own parking on-street.

- Where would a removal truck for erf 1 or 88 stop? Will the bridge be able to take heavy loads such as refuse removal trucks or moving trucks?

The EAP confirmed this and the minimum turning circles are adhered to already. The municipality would not approve if not adhering to minimum standards. Bridge final design will be designed to accommodate loads with culverts that don't have cement bottom or have cement covered with natural substrate.

- Can Power Construction Adopt the Wetland Area as part of the Municipality's Adopt-a-Spot initiative?

Consultation with CapeNature and the George Municipality regarding long-term management confirmed that the central wetland will be subject to the new Adopt-a-Spot programme. Power Construction will not be the entity implementing the Adopt-a-Spot, it will be aquatic and environmental specialists for the initial phases of operation.

The George Sustainability Forum (GSF) are in support of the amendments (layout/development) but continue to have concerns that the necessary checks and balances could have failed. Further comments:

- This type of higher density development in George is necessary and the resultant delays could easily have been avoided.
- Why did the initial EIA not trigger the wetlands? Who undertook the EIA? Why did the DEADP allow the authorisation (missing the wetland trigger)? Who authorised the development in DEADP.

The EAP confirmed that no EIA was undertaken at the time (2018) given that the Department of Environmental Affairs, in response to an Applicability Checklist, confirmed that there was no requirement for an EIA. It appears that this conclusion was incorrect and seemingly based on a lack of clear and detailed information.

- How could the Mayor over-ride the request for further detailed investigations by the rate-payers association?

The EAP indicated that the S24G application process is a retrospective investigation of environmental conditions and as a result it is not possible to reflect on decisions taken in terms of a separate (planning) application by different consultants.

- Who authorised the development within the George municipality?

The EAP indicated that various directorates within the municipality considers and authorises a land use planning application, so not an individual.

- What further checks and balances could the municipality have set in place to prevent that this transgression does not happen again.

The EAP indicated that the municipality has a dedicated environmental directorate now who assist Town Planner with development applications to determine applicability and ensure compliance. Developments of this nature located in proximity to sensitive ecosystems and especially open space areas such as Camphersdrift must be identified by the municipality as needing consultation with DEADP, CapeNature and BGCMA to obtain their comment prior to municipal approvals.

- What was the cost of the total S24G process? Ratepayers has the right to know the cost for not getting the EIA process right the first time.

The EAP indicated that the cost of investigations is not public information. The cost for the process has not been carried by the municipality, it is for Power Construction which is a private company.

The Garden Route Dam Action Group (GRDAG) were concerned that the freshwater ecological aspects of the site were made to fit into a development with perceived rights. Without an EA and WULA there were no development rights.

GARDAG is satisfied that qualified freshwater ecologists and other specialists were consulted to address the conservation of freshwater resources on the affected properties. GARDAG agrees with the methods proposed to protect the freshwater habitats. The recommendation by specialist that the wetland must not be lit up (prevent night pollution) and that it should be fenced are supported.

The Highlands/ King George Park Residents Association (HKGPPRA) Strongly supports the recognition of the wetlands and that it be protected by a durable fence preferably Nylofor Medium (also called beta fencing).

Additionally, the corridor must be fenced in as well with security lights around the wetlands and the corridor. Reasonable access for members of the public to the wetlands must be ensured. Benches at the periphery of the wetland for the public to enjoy the natural beauty of this feature is of utmost importance. Visible security to ensure the safety and protection of fauna and flora inside the wetlands will be an added precautionary measure.

Insufficient parking space is provided for visitors. This was also raised as a point in our previous appeal. Increase in traffic volumes, as highlighted in our previous appeal, will increase noise levels, traffic congestion at the various intersections and will inhibit pedestrian traffic with so many residents walking around with their children and dogs. Continuous sewage blockages in the area which the Municipality does not attend to or resolved over the years will be exacerbated and will negatively impact on the Camphersdrift wetland.

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:

- CapeNature (CN)
- Heritage Western Cape (HWC)

CN indicated that an Environmental Control Officer (ECO) must monitor construction and operational phases to ensure recommended mitigation measures of specialist studies are implemented and that sensitive areas and no-go areas are treated as such.

Waste generated must be stored onsite until it is removed to a registered facility.

CN agrees with the mitigation measures proposed by the various specialists which must be implemented. Further loss of biodiversity must be prevented by implementing the management recommendations for conservation and open space areas.

CN supports the ecological link between the wetland and the river. A restoration plan must be compiled for the corridor between the wetland the river. The wetland must be protected, its conservation is supported. Alien Plant species management plan must be compiled and must form part of the Environmental Management Plan. Suitable indigenous vegetation must be used during rehabilitation of all open space areas.

The Applicant is reminded that flooding events can change watercourses within a short period of time, and it must be mitigated. Construction must be done during the drier periods of the year. Topsoil must be stored separately and should not be contaminated. Stabilising of cleared areas must be done to prevent erosion.

Areas susceptible to erosion must be protected by installing the necessary temporary structures. Strictly adhere to stormwater management controls to avoid negative impacts on erosion.

Search and rescue of plants must allow for a nursery until such time as they can be Replanted. Construction activities must remain outside of the 19m buffer zone and heavy machinery must remain outside the watercourse and their buffers. The site will be conserved as a Biodiversity Agreement.

HWC indicated that comment submitted in 2018 stated that no further studies are required for the proposed mixed use development of Erven 21028 & 21029. The comment has not changed.

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 giving, has given, or could give rise to negative socio-economic impacts, but highly localised"*.

The motivation for this rating by the EAP was that *"Although a change in sense-of-place is anticipated due to the development being aimed at affordable housing within an otherwise medium-high income area, the site is earmarked for Group Housing and forms part of the greater subdivisional area of Die Bult. Group Housing as a land use is a higher density development (compared to the existing single residential development) and such a development would impact on the sense-of-place to a certain degree as a given. The social benefit of providing for affordable housing in this location, compared to the potential for impacting on the sense-of-place has been considered by the local Authority and Appeals Authority when they approved the development in 2020. Architectural design for the proposed development has been provided to ensure that it does not detract from the surrounding areas as a whole, despite it being aimed at a more affordable market."*

Having regard to the impacts caused by the activities, I am in agreement with the fine committee's recommendation that the rating be reduced, and the administrative fine calculator be scored 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 social benefit of providing for affordable housing in this location was compared to the potential for impacting on the sense-of-place and it was determined that the benefit the affording housing scheme provided outweighs the impact due to the need for group housing within the greater area.

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 No-Go alternative (group housing) did not require prior Environmental Authorisation as it formed part of an already established township area which was approved prior to the Environmental Regulations coming into effect. Under these rights the central wetland flat and Camphersdrift riparian corridor are likely to have been destroyed. By changing the designated zoning, the development went beyond the primary rights of the property necessitating the environmental investigation albeit in the form of a S24G Rectification Application. As a direct result thereof the preferred Alternative 1 has been informed by several specialist assessment and will avoid the sensitive features and will ensure that these conservation areas are assured long-term management and protection, then the impact on biodiversity (aquatic/amphibian and botanical) is deemed a significant improvement from what it would have been under the Status Quo. Although the initial clearing impacted on biodiversity in a negative manner, it has become a vehicle for its protection with the wetland flat now being in an improved condition and larger than what it was before. The riparian corridor has been rehabilitated and will be managed and monitored under a Biodiversity Agreement between George Municipality and CapeNature with further Adopt-a-Spot initiative to support skills development at the Municipality to ensure that after the minimum three-year monitoring period they will know how to ensure that these features are protected into the future."*

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 based on the initial clearing which impacted on the sensitive wetland area identified on site. The botanical report indicated that the transformed fynbos vegetation around the wetland should be regarded as sensitive as it acts as an important ecological buffer area that links the wetland and the Rooi River. Although the clearance has been dealt with in a positive matter through rehabilitation, the initial damage should not be ignored.

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 *"Heritage Western Cape in their comment on the application confirmed that no further studies are required, and the development may be implemented."*

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 heritage impacts were identified and was confirmed by Heritage Western Cape.

2.1.4 Pollution Impact

The **Pollution Impact Index** was rated by the EAP that *"The activity is giving, has given or could give rise to pollution with low impacts."*

The motivation for this rating by the EAP was that *"Potential dust and noise pollution during construction can be mitigated through the management plan"*.

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 pollution with low impacts.”*

The motivation for this rating is that the activity does not produce any pollution other than that linked to construction, i.e. dust and noise pollution which will be mitigated through the Environmental Management Programme.

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 3 February 2023.

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 1 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 1 offender.

2.2 CONSIDERATION OF DEVIATION FROM THE CALCULATED FINE

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 have not previously been advised that conduct such as occurred in the present matter constituted an offence and required prior environmental authorisation.

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 am of the view that mitigating factors exist which justify a deviation from the recommended fine amount.

Although the initial clearing impacted on biodiversity in a negative manner, it has become a reason for its protection, with the wetland flat now being in an improved condition and larger than what it was before. The riparian corridor has been rehabilitated and will be managed and monitored under a Biodiversity Agreement between George Municipality and CapeNature.

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 direct social service to the affected community and will have a positive impact on job creation or poverty alleviation in the area which justifies a deviation from the recommended fine amount.

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, I am of the view that a deviated fine of R250 000 (Two hundred and fifty thousand rand) is an appropriate fine. Please find attached a copy of the calculated fine (Appendix 1)

APPENDIX 1

14/2/4/2/3/D2/20/0023/22

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	0.5	X	10
b	The activity could give rise to negative socio-economic impacts, but highly localised	3		0
c	The activity could give rise to significant negative socio-economic and regionalized impacts	7		0
d	The activity could result in wide-scale socio-economic impacts.	10		0
Notes:				
2	Biodiversity Impact Index	Weighting	30	
Description of variable			Selection	Score
a	The activity will not give rise to any impacts on biodiversity	0.5		0
b	The activity could give rise to localised biodiversity impacts	3	X	90
c	The activity could give rise to significant biodiversity impacts	8		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.	10		0
Notes: x				
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	0.5	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	3		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	8		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	10		0
Notes:				
4	Pollution Impact Index	Weighting	30	
Description of variable			Selection	Score
a	The activity will not give rise to any pollution	0.5		0
b	The activity could give rise to pollution with low impacts.	3	X	90
c	The activity could give rise to pollution with moderate impacts.	5		0
d	The activity could give rise to pollution with high impacts.	8		0
e	The activity could give rise to pollution with major impacts.	10		0
Notes:				
			TOTAL SCORE	200
			IMPACT INDEX	20.00%
Applicant				
Company , Government & Parastatal.			1,000,000.00	
Committee Reasons for Deviation (only when relevant)				
<p>As a direct result of the wetland identification, the preferred Alternative has been informed by several specialist assessments and will avoid the sensitive features and will also ensure that these conservation areas are assured long-term management and protection. The impact on biodiversity (aquatic/amphibian and botanical) is therefore deemed a significant improvement from what it would have been under the status quo.</p> <p>Although the initial clearing impacted on biodiversity in a negative manner, it has become a vehicle for its protection with the wetland flat now being in an improved condition and larger than what it was before. The riparian corridor has been rehabilitated and will be managed and monitored under a Biodiversity Agreement between George Municipality and CapeNature. Due to the above reasons, a deviated and reduced fine amount of R250 000 has been imposed.</p>				
Fine Amount			R250 000	