
Proj. Ref: 40727
Contact Person: Hanlie Stander
Date: 10 August 2021

NOTICE OF AN ADMINISTRATIVE FINE IN TERMS OF SECTION 24G OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998) ("NEMA") TO MANGAUNG METROPOLITAN MUNICIPALITY FOR THE ILLEGAL EXPANSION OF THE NALISVIEW CEMETERY

With reference to the above mentioned project, the following:

1. MDA was appointed as independent Environmental Assessment Practitioner responsible for managing the Public Participation Process as well as the Environmental Assessment Process in support of the above mentioned project. As you have registered as an Interested and / or Affected Party (IAP) during a Public Participation Process (2017) regarding the proposed cemetery on the Remainder of the farm Nalisview 2835, you are herewith notified of the relevant administrative fine as determined by DESTEA.
2. The construction of internal roads was undertaken on the Remainder of the farm Nalisview 2835, without the required authorisation.
3. Section 24G of the NEMA provides proponents with the opportunity to apply for the rectification of the unlawful commencement and / or continuation of listed activities. An application for the rectification of the unlawful commencement at the Remainder of the farm Nalisview 2835 was submitted to DESTEA.
4. On the 22nd of July 2021, DESTEA requested the applicant (Mangaung Metropolitan Municipality) to pay an administrative fine of R200 000 before DESTEA will process / consider the application. The administrative fine is determined by the type of activity or activities undertaken and the impact or impacts it has on the environment. Refer to Annexure A for the reasons for the decision taken by DESTEA.
5. A copy of the decision by DESTEA can be requested from MDA.
6. Should you wish to lodge an appeal with the appeal administrator against the administrative fine, you are advised that an appeal in accordance with Regulation 4 of the National Appeal Regulations, 2014 (Government Notice No. R. 993 in Government Gazette No. 38303 of 08 December 2014), should be submitted to the appeal administrator within 20 (twenty) days from the date of this letter. A copy of the appeal should be provided to the applicant, any registered IAPs, any organ of state with interest in the matter and the decision maker within 20 (twenty) calendar days from the date of this notice.
7. The responding statements (if any) should be submitted to the appeal authority and the appellant by the applicant (Mangaung Metropolitan Municipality) within 20 (twenty) calendar days from the date of receipt of the appeal submission.

8. An appeal application form must be submitted by means of one of the following methods:
- a) **By Post:** Free State Provincial Government: Department of Economic, Small Business Development, Tourism and Environmental Affairs, Private Bag X20801, Bloemfontein, 9300
 - b) **By Facsimile:** 051 400 4810
 - c) **By Hand:** Attention: Ms. Palesa Maureen Modise, Room 1, 3rd Floor, 113 Building, St Andrews Street, Bloemfontein, 9300
 - d) **By e-mail:** modisepm@destea.gov.za
9. A prescribed appeal application form as well as assistance regarding the appeal process is obtainable from the office of the MEC at: Tel: 051 400 4714 or molotsit@destea.gov.za
10. If there is any uncertainty regarding the above, please contact the following at DESTEA:

Ms G. Mkhosana 051 400 4812 mkhosana@destea.fs.gov.za	Dr. S. Fuku 051 400 4781 fukus@destea.gov.za
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We trust that you will find the above in order.

Please do not hesitate to contact us should you require additional information on the said project.

Kind regards,

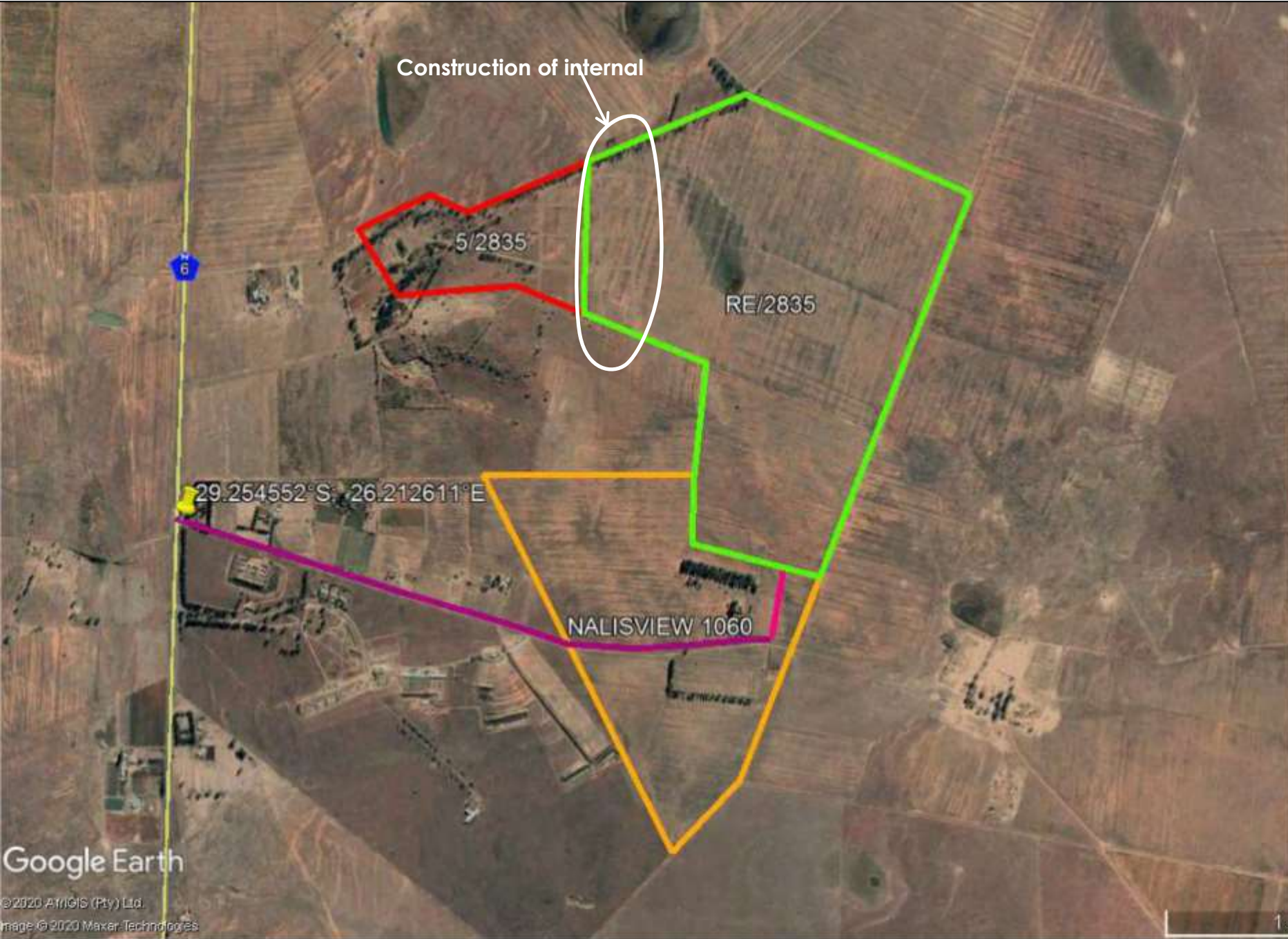
MDA



NEIL DEVENISH Pr. Pln A/1133/1999

Manager: Town Planning/Environmental

- Legend:**
- █ Approved Cemetery (Portion 5 of the farm Nalisview 2835)
 - █ Proposed Cemetery (Remainder of the farm Nalisview 2835)
 - █ Existing Road to be upgraded
 - █ Proposed Access Road to be Constructed



Google Earth

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TYPE OF PLAN: LOCALITY PLAN

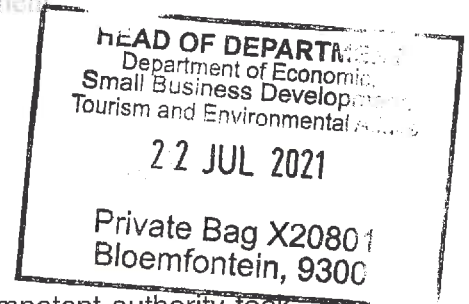
mda Town & Regional Planners,
 Environmental &
 Development Consultants

T: 051 447 1583 | P.O. Box 20298, Willows, Bloemfontein, 9320
 F: 086 455 2568 | 9 Barnes Street, Westdene, Bloemfontein, 9301

PROJECT:
 THE PROPOSED EXPANSION OF THE NALISVIEW CEMETERY AS WELL AS THE PROPOSED CONSTRUCTION OF AN ACCESS ROAD TO THE SAID CEMETERY

PROJECT BY:
 MANGAUNG METROPOLITAN MUNICIPALITY

DRAWN BY:
 HS



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 and Environmental Impact Assessment and Mitigation Measures as outlined in the section 24G Environmental Impact Assessment (“EIA”) Report dated 7th July 2020
- Public participation conducted for the application by the Environmental Assessment Practitioner.
- The Environmental Management Programme submitted for the application dated 7th July 2020

Contraventions with NEMA EIA Regulations

- (a) Mangaung Metropolitan Municipality has unlawfully commenced with listed activities without environmental authorization
- (b) The expansion of cemeteries by 2 500 square meters or more
 - (ii) The development of infrastructure or structure with physical footprint of 100 square meter or more where such development setback exist, within 32 m of a watercourse, measured from the edge of a watercourse excluding where such development occurs within an urban area

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.

CHIEF DIRECTORATE: ENVIRONMENTAL QUALITY & PROTECTION
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The public participation process conducted by the EAP comprised of the following:

- Placement of two site notices at the entrance to the cemetery and on neighbouring farms fences
- Placement of an advertisement in the "Volksblad" newspaper on the 20 February 2020

1.1 Consultation with organs of state in terms of Section 240 of the NEMA

The following organs of state provided comment on the application:

- Department of Water & Sanitation
- DoA
- SAHRA
- Department of Roads and Transport
- Mangaung Metro Municipality

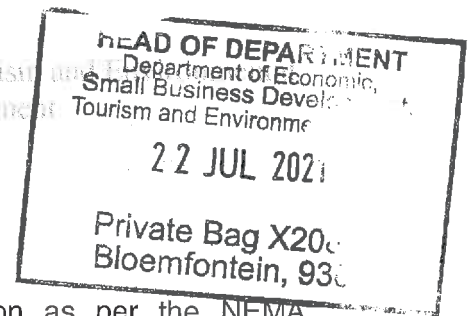


2. CALCULATION OF THE ADMINISTRATIVE FINE

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."

Section 44(1)(B) goes on to stipulate that "Until such time that the regulations made under subsection (1) have come into effect, the existing standard operating procedure, adopted by the Minister for determining administrative fines in terms of section 24G, applies."

The regulations as referred to above have not come into effect but the current standard operating procedure was however adopted in June 2014. All applications submitted after that date are subject to the aforesaid standard operating procedure which



stipulates that the maximum fine applicable 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.

A report as outlined in section 24G(1)(vii) of the National Environmental Management Act, 1998 (Act No. 107 of 1998) ("NEMA") that 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, has been submitted.

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 under section 9: Impact Summary of Activity of the Final Environmental Impact Assessment ("EIA") Report that were informed by the environmental assessment practitioner on the section 24G EIA Report:

- Social Benefit Index (e.g. intended only for Municipalities (and other organs of state) in terms of their respective service delivery mandates);

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

The administrative fine decision and the reasons for the decision were informed by the EIA Report submitted by the environmental assessment practitioner.

HEAD OF DEPARTMENT
Department of Economic,
Small Business Development,
Tourism and Environmental Affairs
22 JUL 2021
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Bloemfontein, 9300

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