Cape Peninsula University of Technology

EVALUATING THE EFFECTIVENESS OF SECTION 24G OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT (107 OF 1998) AS AN ENVIRONMENTAL PROTECTION TOOL, USING THE WESTERN CAPE PROVINCIAL GOVERNMENT AS A CASE-STUDY, SOUTH AFRICA

by

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DECLARATION

I, Asiphe Malithi, declare that the contents of this thesis represent my own unaided work, and that the thesis has not previously been submitted for academic examination towards any qualification. Furthermore, it represents my own opinions and not necessarily those of the Cape Peninsula University of Technology.

Signed Date

ABSTRACT

Section 24G of the NEMA allows for the rectification of unauthorised commencement or continuation of a listed activity conducted in the absence of an EIA. Such rectification is done through the issuance of retrospective environmental authorisation. However, despite section 24G being promulgated in the interests of environmental protection, it has been associated with negative environmental effects. Both the private sector and governmental departments have misused section 24G as a means of securing quicker and cost-effective authorisation once the development has commenced. Such adverse effects have overshadowed the beneficial effects and legal motivation behind section 24G, with most interested and affected parties criticising the provisions as undermining the main environmental principles contained in section 2 of the NEMA. At present, there seems to be minimal literature that incorporates the positive effects of section 24G regarding commencements of development. The lack of such incorporation hinders the effective amendment or development of section 24G to properly address its shortcomings.

The study focused on providing a balanced, unbiased representation of section 24G, while highlighting both the adverse and beneficial effects associated with the provisions. This was done to evaluate the true effectiveness of section 24G. Such a balanced representation of section 24G is important for future development of section 24G.

The research study adopted a qualitative approach, using the Western Cape Provincial Government as a case-study. The study made use of purposive sampling. The data collection process included obtaining a sample of ten (10) section 24G applications from the Western Cape Department of Environmental Affairs and Development Planning to determine whether the granting of each retrospective authorisation was beneficial or detrimental to the environment. Semi-structured interviews were conducted with the DEADP personnel and private environmental consultants.

The findings of the research indicated that section 24G is overall beneficial to the environment and is effective as an environmental protection tool. The findings further indicated that section 24G does not promote the deliberate ignorance of the traditional environmental authorisation process. The study, however, noted that the section 24G process is not consistent with the principle of cooperative governance as outlined in Chapter 3 of the Constitution of the Republic of South Africa. The inconsistency is due to lack of consultation by the DEADP with other Departments that administer Environmental Authorisations prior to the granting of retrospective authorisation. Such lack of cooperative governance hinders the overall

effectiveness of section 24G. Based on the data collected and presented on the study, it was concluded that section 24G is an effective environmental protection tool. However, the section 24G process needs to adopt the Constitutional principle of cooperative governance and consult with other relevant National and Provincial Departments to enhance the effectiveness of the provisions.

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LIST OF ABBREVIATIONS AND ACRONYMS

DEADP	**Department of Environmental Affairs and Development Planning**
EA	**Environmental Authorisation**
EAP	**Environmental Assessment Practitioner**
ECA	**Environment Conservation Act (Act 73 of 1989)**
EIA	**Environmental Impact Assessment**
GG	**Government Gazette**
GN	**Government Notice**
NEMA	**National Environmental Management Act (Act 107 of 1998)**
NWA	**National Water Act (Act 36 of 1998)**
S24G	**Section 24G of NEMA**
SEMA	**Specific Environmental Management Act**

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CHAPTER 1: INTRODUCTION

1.1 BACKGROUND TO THE STUDY

The environmental right is one of the fundamental rights within a democratic society and it is entrenched in section 24 of the Constitution of the Republic of South Africa, 1996 (Jikijela, 2018). “Section 24 states that everyone has a right to an environment that is not harmful to their health or well-being and requires the government to take positive actions to secure the realisation of the right”. The NEMA is a legal framework that gives effect to section 24 of the Constitution. The NEMA ensures compliance to this Constitutional requirement by giving effect to the enactment of the Specific Environmental Management Acts (SEMAs) and environmental subordinate legislations. Section 24 of the NEMA contains measures to undertake an EIA and obtain environmental authorisation becomes relevant. When considering section 24 of the NEMA, “section 24(2) which allows the Minister to identify activities which may not commence without environmental authorisation from the competent authority, ensures compliance to the environmental right. “Section 24 (5) of the NEMA suggests that an EIA is a requirement when applying for environmental authorisation and allows the Minister to make regulations regarding such”. With the two sections therefore, it can be argued that the mechanisms in section 24 (2) and (5) of the NEMA are responsible for enabling everyone to have an environment that is protected.

The activities identified in 24 (2) of the NEMA have are likely to cause significant environmental degradation. Such potential environmental degradation creates the need to adopt a precautionary and anticipatory approach in managing the environment through the assessment of potential environmental impacts in accordance with section 2 (4) (i) of the NEMA. The primary tool in adopting such a precautionary and anticipatory approach is the undertaking of an EIA, which is prescribed in the EIA Regulations (2014) in terms of section 24 (5) of the NEMA. An EIA is an anticipatory planning tool which seeks to ensure that environmental considerations are considered before a development is authorised (Paschke & Glazewski, 2006). Before NEMA was enacted, EIA specifications were contained in the Environment Conservation Act (Act 73 of 1989) (ECA). Similarly to the NEMA, the EIA regulations were published under the ECA relating to activities which could not be undertaken without prior authorisation. After the promulgation of the NEMA, the EIA Regulations under the ECA remained in effect and were enforced through the NEMA until they were repealed by the 2006 EIA Regulations published under the NEMA.

Despite both the NEMA and the ECA prohibiting unlawful commencement of listed activities, there were many cases of unauthorised commencement of listed activities (Jikijela, 2018;

Paschke & Glazewski, 2006; and September, 2012). Both the ECA and the NEMA had no provisions to rectify such unauthorised commencement of listed activities (Paschke& Glazewski, 2006). The lack of a legislative remedy led to contradictory case-law as different courts reached different conclusions on cases dealing with unauthorised commencement of activities (Paschke & Glazewski, 2006; Jikijela, 2018). Many courts had different interpretations of both the NEMA and the ECA with regards to allowing ex post facto (retrospective) authorisation to rectify unauthorised commencement of listed activities (Jikijela, 2018).

Section 24G of the NEMA, which came into effect in 2005 and further underwent several amendments, was developed to rectify unauthorised commencement of listed activities, through the payment of a fine (Paschke & Glazewski, 2006). The inclusion of the new section 24G has been very controversial in South African environmental law, with some stakeholders considering such to undermine the main principles of the NEMA (Paschke & Glazewski, 2006). However, the literature reviewed in this study indicated more interest on the shortcomings of section 24G, with minimal data providing a balanced evaluation of both the shortcomings and success of the section 24G provisions. Such a balanced evaluation is crucial in highlighting the overall effectiveness of the section 24G provisions and identifying areas of future development in the provisions. This study seeks to evaluate section 24G authorisations to determine the overall effectiveness of section 24G as an environmental protection tool.

1.2 STATEMENT OF RESEARCH PROBLEM

The National Environmental Management Act (NEMA) 107 of 1998, through section 24 (2), “allows the Minister to identify activities (listed activities) which may not commence without environmental authorisation from the competent authority”. The identified activities have the

potential to cause significant environmental degradation, and include activities associated with the clearing of indigenous vegetation. Section 24F of the NEMA "prohibits the commencement of any listed activity without obtaining environmental authorisation". Similarly, the Environment Conservation Act, Act 73 of 1989 (ECA), through section 21 (1) "allowed for the Minister to identify activities which may not commence without authorisation". Section 22 (1) of the ECA "prohibited the commencement of activities identified in terms of section 21 (1) of the Act".

However, despite both the ECA and the NEMA prohibiting the commencement of listed activities without authorisation, many developers commenced with developments of listed activities without authorisation (Paschke & Glazewski, 2006). Neither the NEMA nor the ECA contained provisions for the rectification of unauthorised commencement of listed activities (Paschke & Glazewski, 2006). Section 24G of the NEMA came into effect in 2005 to "allow for the rectification of unauthorised commencement or continuation of a listed activity conducted in the absence of an EIA". Section 24G "permits the ex post facto authorisation of an activity that was undertaken without authorisation". Despite section 24G being promulgated in the interests of environmental protection, it has been associated with negative environmental effects (Paschke & Glazewski, 2006). Both the private sector and governmental departments have exploited section 24G as a means of securing quicker and cost-effective authorisation once the development has commenced (Paschke & Glazewski, 2006). Such adverse effects have overshadowed the beneficial effects and legal motivation of section 24G, with most interested and affected parties criticising the provisions as undermining the main principles contained in section 2 of the NEMA. At present, there seems to be minimal literature that incorporates the positive effects of section 24G regarding commencements of development. The lack of such incorporation hinders the effective amendment or development of section 24G to properly address its shortcomings. The study, therefore, aims to provide a balanced, unbiased representation of section 24G, and will highlight both the adverse and beneficial effects to evaluate the true effectiveness of section 24G. Such a balanced representation of section 24G is important for future development of Section 24G.

1.3 RESEARCH QUESTIONS

- To what extent does section 24G of the NEMA result in the ignorance of, and decline in, the traditional environmental authorisation process?
- What are the environmentally detrimental impacts associated with section 24G?

- What are the environmentally beneficial impacts associated with section 24G?
- Has section 24G been more environmentally beneficial or detrimental in the Western Cape Region? (overall effectiveness)
- What are the areas of future development regarding section 24G of the NEMA in ensuring that the provisions serve their full and intended purpose?

1.4 STUDY AIM AND OBJECTIVES

The study aims to evaluate the effectiveness of the section 24G provisions of the NEMA as an environmental protection tool using the Western Cape Region as a case-study, to identify areas for future development in the provisions.

To achieve the study aim, the following objectives will be executed:

- To determine whether section 24G has weakened the traditional environmental authorisation process in terms of section 24 (2) of the NEMA.
- To evaluate the environmentally adverse effects associated with section 24G of the NEMA.
- To assess the environmentally beneficial effects associated with section 24G of the NEMA.
- To determine the overall effectiveness of section 24G of the NEMA.
- To identify areas of future development regarding section 24G of the NEMA.

1.5 SIGNIFICANCE OF THE STUDY

Section 24G of the NEMA is an important environmental management tool that “seeks to prevent continued environmental degradation resulting from the unauthorised commencement of a listed activity”. Section 24G protects the environment through the EIA requirement which identifies and proposes mitigation measures for the impacts associated with a project. Once an environmental authorisation is granted in terms of section 24G, “the authorisation will be accompanied by conditions which seek to prevent further degradation of the environment by the said activity”. However, such positive impacts of section 24G have been overshadowed by how section 24G has been exploited by both the private sector and government. As such, much focus has been given to the exploitation of section 24G, leaving a gap in the amount of knowledge available regarding the environmentally beneficial effects of the provisions. This research aims to provide a balanced representation of the section 24G provisions. Such a

balanced representation will enable the evaluation of the actual effectiveness of section 24G and help identify areas for future development in the provisions.

1.6 DESCRIPTION OF STUDY AREA

The Western Cape Province of South Africa will be used as a study area for the project. The Western Cape Province was selected as the case study due to data accessibility. The Western Cape is one of South Africa's nine (9) provinces and is situated on the Southwest coast of the country (Western Cape Department of Agriculture, 2020). It borders the Northern Cape in the north, the Eastern Cape in the east, the Atlantic Ocean in the west and the Indian Ocean in the south (Figure 1.1). The Western Cape is made up of 25 municipalities grouped into 5 districts: The West Coast, the Cape Winelands, the Overberg, the Central Karoo and the Garden Route (Western Cape Department of Agriculture, 2020). The City of Cape Town is the metropolitan municipality of the province.

The Department of Environmental Affairs and Development Planning (DEADP) is the responsible authority for environmental management in the province. The Rectification sub-directorate which falls under the Environmental Governance, Policy Coordination& Enforcement Directorate, is responsible for section 24G applications in the province. The Sub-directorate is responsible for the administration of applications for the rectification of unlawfully commenced activities which refers to activities that have commenced without prior environmental authorisation. The rectification sub-directorate of the DEADP will, therefore, be used to assess section 24G authorisation data as well as traditional environmental authorisation data within the Western Cape Province.

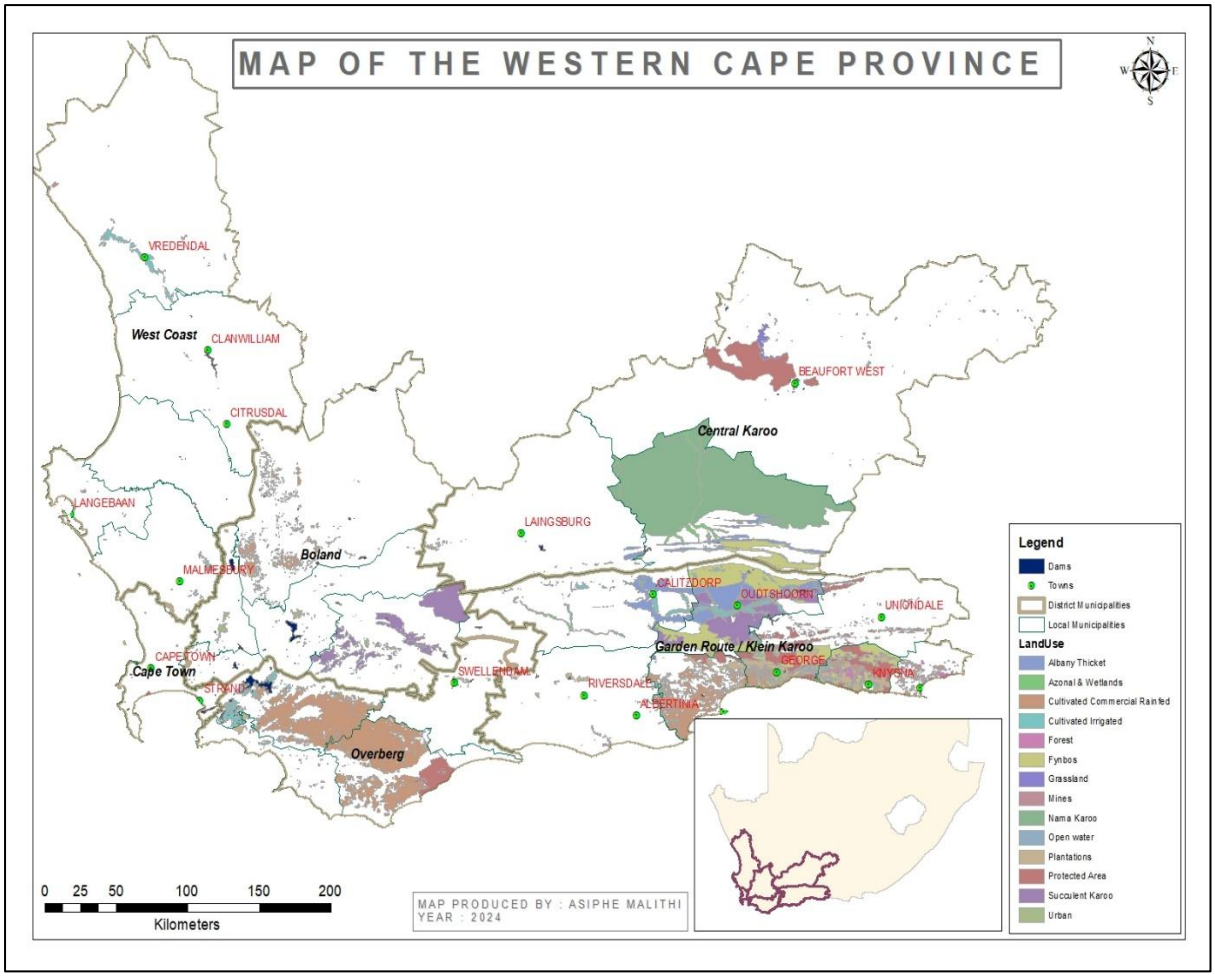

Figure 1.1: Map of the Western Cape Province.

1.6.1 The Economic Sectors of the Western Cape Province

It is important to look at the different sectors that make up the Western Cape economy, as these sectors determine the type of section 24G applications that were present at the DEADP. The Western Cape economy is driven by the services sector (also known as the tertiary sector) which is dominated by the finance, real estate, business services, trade, hotels and restaurants industries (in terms of Gross Value Added) (Wesgro, 2024). As such, it can be expected from the sample section 24G files obtained at the DEADP that some applications will be from one or more of the above-mentioned industries. The tertiary sector is then followed by the secondary sector, which is dominated by manufacturing and construction. Thereafter the primary sector, which is mostly made up of the agriculture, forestry and fishing industries (Wesgro 2024) (Figure 1.2). The overview of the Western Cape economic sectors, as presented in figure 1.2, gave an insight to the anticipated types of section 24G applications from the DEADP.

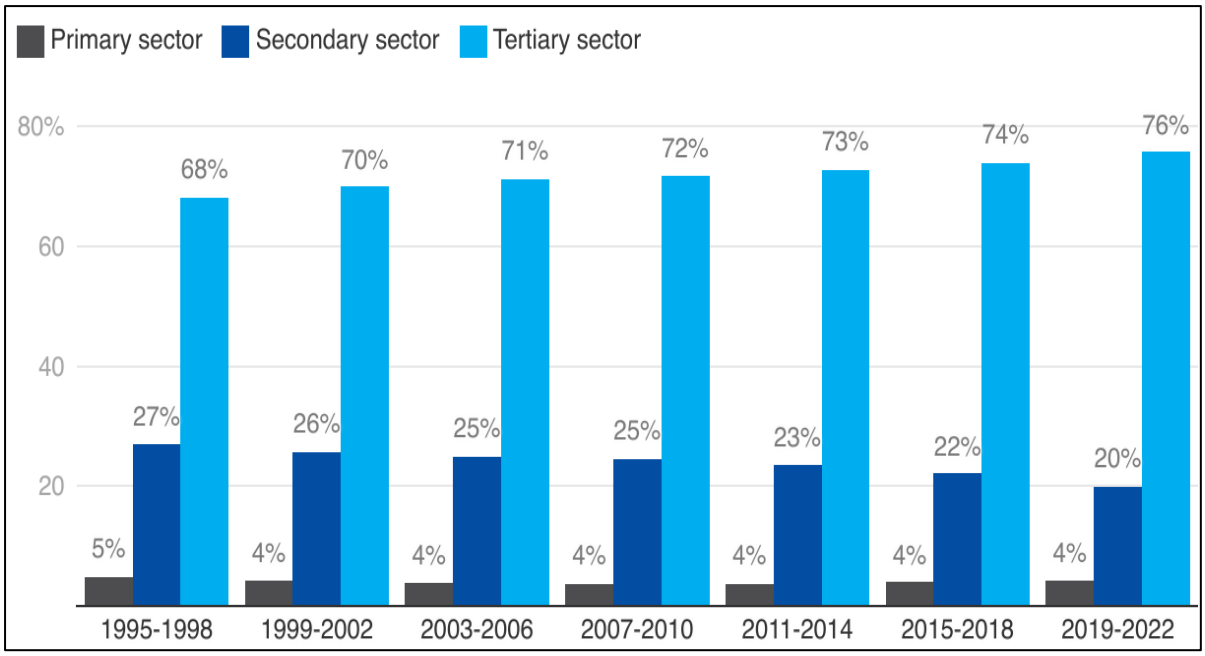

Figure 1.2: Overview of the Western Cape economic sectors (Source: Wesgro, 2024).

1.7 STUDY LAYOUT

Chapter One: Introduction

The Chapter introduces the research study focusing on evaluating the effectiveness of section 24G of the NEMA as an environmental protection tool, where the Western Cape Provincial Government is used as a case-study. The Chapter provides a background to the study and introduces environmental authorisations as well section 24G of the NEMA. The Chapter further gives a background to the study area. Also included in the Chapter is the research problem which explains the problem that needs to be addressed. The research questions, aim and objectives are also provided in the Chapter. The Chapter also presents the significance of evaluating the effectiveness of section 24G of the NEMA as an environmental protection tool.

Chapter Two: Literature Review

The Chapter discusses the existing literature regarding section 24G of the NEMA. The Chapter starts by giving a legislative background to environmental authorisations. The Chapter then discusses the legislative and environmental problems that existed before the promulgation of section 24G of the NEMA. The legislative problems are highlighted through case-law discussion. The promulgation of section 24G of the NEMA and its impact on both

environmental legislation and environmental protection is discussed. Lastly, the Chapter discusses the existing critique of section 24G of the NEMA, which forms the foundation of the research project.

Chapter Three: Research Design and Methodology

The Chapter provides a detailed description and motivation for the research design and methodology used in the study. The Chapter explains the research design and approach adopted in the study. The Chapter then details the sampling methods, the data collection methods, and the data analysis methods used in the study. Lastly, the Chapter discusses the limitations to the study and ethical considerations.

Chapter Four: Results and Discussion

The Chapter presents the findings as collected through the review of section 24G applications from different industries at the DEADP, conducting semi-structured interviews with DEADP staff, and through sending questionnaires to environmental consultants. The results presented in the Chapter address the research questions about the effectiveness of section 24G of the NEMA as an environmental protection tool. The Chapter evaluates the overall effectiveness of section 24G of the NEMA as an environmental protection tool in the Western Cape Region. The Chapter also discusses the study results within the broader context of South African environmental legislation.

Chapter Five: Conclusion and Recommendations

The Chapter provides a conclusion on the effectiveness of section 24G of the NEMA as an environmental protection tool in the Western Cape Region. The conclusion is based on the analysis and discussion of the study results. The chapter then presents recommendations aimed at addressing the matters discussed in Chapter Four.

CHAPTER TWO: LITERATURE REVIEW

2.1 INTRODUCTION

Chapter two reviews literature relating to ex post facto authorisation in The Western Cape Province, South Africa. The Chapter looks at the legality of ex post facto authorisation prior to the promulgation of section 24G of the NEMA through a review of the relevant legislative frameworks. The Chapter further discusses relevant case-law regarding ex post facto authorisation prior to the promulgation of section 24G, to clarify the legality of ex post facto authorisation prior to section 24G as interpreted by the courts. The Chapter then discusses the promulgation of section 24G, the concerns that were raised following its promulgation, the amendments it underwent and the current scholarly debate regarding section 24G.

2.2 ENVIRONMENTAL PROTECTION IN SOUTH AFRICA

Environmental protection is an increasingly urgent concern in South Africa, particularly due to the country's rapidly expanding population (Chauhan, 2025). Rapid population growth results in environmental problems such as environmental degradation, climate change and resource depletion (Chauhan, 2025). Vegetation is constantly being cleared to build infrastructure and to grow food for South Africa's growing population. Without proper environmental protection, such activities would result in severe environmental problems, including air and water pollution, loss of biodiversity, deforestation, resource depletion and climate change. Such problems would threaten the health and well-being of both ecosystems and human populations (Chauhan, 2025). It is for this reason that environmental protection in South Africa is necessary. One of the environmental protection measures adopted in South Africa, including the Western Cape Province, is the requirement to obtain environmental authorisation before undertaking any listed activity (Chauhan, 2025)..

2.3 LEGISLATIVE FRAMEWORK

Environmental Authorisation (EA) in South Africa is provided for under the broad framework of integrated environmental management in Chapter 5 of the NEMA (Jikijela, 2018). Since the first promulgation of the NEMA in 1998, Chapter 5 has undergone several amendments. One of the most significant amendments to Chapter 5 was the introduction of section 24G, which allows for ex post facto authorisation.

2.2.1 The Constitution of the Republic of South Africa, 1996

The Constitution of the Republic of South Africa was introduced in 1996 and signalled a positive change in South African environmental legislation. All South African environmental legislations are mandated by section 24 of the Constitution. The environmental legislations must be in line or consistent with the provisions of section 24- the environmental right. Section 24 of the Constitution states that "everyone has the right –

a) to an environment that is not harmful to their health or well-being; and
b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that-
    i. prevent pollution and ecological degradation;
    ii. promote conservation; and
    iii. secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development"

It can be argued that section 24 (b) is directly linked to the environmental authorisation process. The argument is based on the fact that "section 24 (b) (i) refers to the enactment of legislative measures that prevent pollution and ecological degradation". The EIA regulations can be qualified as some of the legislative measures that prevent pollution in terms of section 24 (b) i as it assesses impacts and prevents such impacts from negating the environment. Section 24 (b) (iii) of the Constitution introduces the concept of sustainable development which can also be directly linked to environmental authorisations. Section 24 (b) (iii) is linked to environmental authorisations through "listing potentially harmful activities and requiring that those activities must undergo an EIA". This ensures that all developments are done in a sustainable manner which will not negatively affect the future generation's ability to meet their own needs. The analysis of section 24 of the Constitution shows that the environmental authorisation process entrenched in the NEMA is directly linked to the environmental right.

2.2.2 The National Environmental Management Act (Act 107 of 1998)

One of the principles of the "NEMA, outlined in section 2 (4) (a), recognises a need for sustainable development (SD)". The recognition is also entrenched in section 24 of the Constitution as discussed under section 2.2.1 of the study. The sustainable development requires the integration of social, economic, and environmental factors in the planning, implementation, and evaluation of decisions to ensure that development serves present and

future generations. It is therefore apparent that the need for sustainable development in South Africa is both a constitutional and legislative obligation.

Furthermore, to ensure the realisation of sustainable development through a legislative framework, section 24 (2) of the NEMA "allows the Minister to identify activities which may not commence without environmental authorisation (listed activities)". The listed activities are contained in "Listing Notice 1, 2 and 3 of the EIA Regulations of 2014, as amended" (Table 2.1).

Table 2.1: Listing Notices in terms of the Environmental Impact Assessment Regulations, 2014

Listing Notice	Regulation
"Listing Notice 1 of 2014 (As amended by Government Notice 327 of 2017)".	Environmental Impact Assessment Regulations.
"Listing Notice 2 of 2014 (As amended by Government Notice 325 of 2017)".	Environmental Impact Assessment Regulations.
"Listing Notice 3 of 2014 (As amended by Government Notice 324 of 2017)".	Environmental Impact Assessment Regulations.

The NEMA makes an EIA a primary requirement when applying for environmental authorisation. "The requirement is outlined in section 24 (5) of the NEMA, which describes the procedure to be followed when applying for, and when processing an application for environmental authorisation". Furthermore, "section 24F prohibits the commencement of a listed activity without the undertaking of an EIA as per the EIA regulations". However, "despite section 24F prohibiting the commencement of a listed activity without authorisation, there were cases of listed activities being undertaken without environmental authorisation in South Africa" (September, 2012). Such unauthorised commencement of listed activities led to the development of section 24G of the NEMA.

2.2.3 The Environment Conservation Act (73 of 1989)

Environmental authorisations in South African were introduced through the Environment Conservation Act (Act 73 of 1989). The environmental authorisations under the ECA are provided for by sections 21, 22 and 26, as well as the EIA regulations promulgated under the ECA. "Section 21(1) of the ECA provides for the Minister to identify activities in the Gazette, that have the potential to cause a significant detrimental effect on the environment". Acting under section 21 (1) of the ECA, the Minister promulgated the EIA regulations as follows:

Table 2.2: EIA Regulations promulgated in terms of the ECA

Regulation	Promulgation Date
"EIA Regulations (GNR 1182 and GNR 1183: Government Gazette No. 18261)".	05 September 1997.
"Amendment of the EIA Regulations (GNR 670 and GNR 672: Government Gazette No. 23401)".	10 May 2002.

"Section 22(1) of the ECA prohibits the undertaking of any listed activity, unless written authorisation has been issued by a competent authority (Department of Forestry, Fisheries and the Environment, and Provincial Environmental Departments)". The ECA was later repealed by the National Environmental Management Act (Act 107 of 1998), but remains relevant as some Sections of the NEMA such as section 24G applications are regarding activities which were undertaken when the ECA was still active.

2.3 RETROSPECTIVE AUTHORISATION UNDER THE ECA

In determining whether ex post facto authorisation was lawful under the ECA, it is crucial to determine whether the Act had any provisions that expressly prohibited or permitted the said ex post facto authorisation (Paschke & Glazewski, 2006). The ECA does not have a section that expressly prohibits ex post facto environmental authorisation (Paschke & Glazewski, 2006). Although that is the case, a fundamental principle of administrative law is that functionaries may only do what is permitted by enabling legislation (Paschke & Glazewski, 2006). This rule is contained in "section (6) (2) (f) (i) of the Promotion of Administrative Justice Act 3 of 2000 (PAJA), which provides that an administrative decision which is not authorised by the empowering provision is reviewable". Since administrative law focuses on what is permitted rather than what is prohibited, the proper approach would be to consider what ECA permits, rather than what is prohibits.

As previously stated, the ECA does not expressly permit ex post facto environmental authorisation (Paschke & Glazewski, 2006). Therefore, the problem arises when one asks whether the ECA can be interpreted as impliedly permitting ex post facto environmental authorisations. This question has been the main argument involved in a lot of environmental case law involving people who sought to obtain ex post facto environmental authorisations (Paschke & Glazewski, 2006). To answer the question, and to determine whether the courts' decisions on matters regarding ex post facto authorisation were correct or not, the question of

implied permitting by ECA will be explored. The above will be done by interpreting the language used in sections 22 and 26 of the ECA and the ECA regulations, and secondly the applicable requirements of the Constitution regarding statutory interpretation.

In interpreting the language used in section 22 of the ECA, section 22(1) requires an environmental authorisation in respect of listed activities. It is made clear that these activities may not commence without authorisation. “Section 22 (2) requires the consideration of reports before an environmental authorisation is issued by the competent authority”. The authorisation referred to in subsection (1) “shall only be issued after consideration of reports concerning the impact of the proposed activity and of alternative proposed activities on the environment, which shall be compiled and submitted by such persons and in such a manner as may be prescribed” (ECA, 1989). It is clear that section 22 of the ECA requires “the assessment (through an EIA) of possible effects of proposed activities, not completed or commenced activities, in order to ensure that an environmental authorisation is granted for the undertaking of such an activity”. Section 26 of the ECA provides for regulations regarding environmental impact assessment reports. The wording used in the section is clearly anticipatory in nature as it states “the regulations may require EIA reports to include the identification of the physical environment which may be affected by the development in question, and the estimation of the nature and extent of the effect of the activity in question on the environment”. In reading sections 22 and 26 together it is clear that the objective of the ECA is to allow for potential environmental impacts of proposed activities to be considered and environmental authorisation to be obtained before the commencement of the activity.

With regards to Constitutional requirements regarding statutory interpretation, the case gets complex (Paschke & Glazewski, 2006). Section 39 (2) of the Constitution states that “when interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport and objectives of the Bill of Rights”. The human right applicable to the ECA is the environmental right contained in Section 24 of the Constitution, which has been previously discussed. As section 24 calls for the enactment of reasonable legislative measures to give effect to the environmental right, the ECA is one such legislative measure. In order for the ECA to perform its constitutional function, it must be interpreted in manner that will make it effective in preventing pollution and ecological degradation, promoting conservation and securing ecologically sustainable development and use of natural resources, while promoting justifiable economic and social development. Should the ECA be interpreted as permitting ex post facto authorisation of activities which may cause damage to the environmental, it would undermine the purpose of the legislation in promoting

and fulfilling the fundamental right in section 24 of the Constitution (Paschke & Glazewski, 2006). However, a counterargument raises when one argues that allowing ex post facto environmental authorisation actually promotes and fulfils the environmental right because once a person is given ex post facto environmental authorisation, this ensures that the previously unlawful activity will now be monitored and will have conditions attached to the authorisation which will prevent any further degradation of the environment. The above discussed arguments both make sense in preventing environmental degradation and it would be difficult to support one while discrediting the other.

Having interpreted the provisions of the ECA with regards to EIAs and environmental authorisation, it is clear that the ECA requires that environmental assessment is done before the commencement of a listed activity so as to identify and mitigate potential environmental impacts of such an activity. It is also clear that ex post facto environmental authorisation was not permitted under ECA.

2.4 RETROSPECTIVE AUTHORISATION CASE-LAW BEFORE SECTION 24G

In South Africa, ex post facto environmental authorisation was first promulgated under the amended NEMA in 2005 which included section 24G. However, the need to deal with cases where listed activities were undertaken without environmental authorisation dates back before the promulgation of section 24G (Jikijela, 2018). Even before section 24G was promulgated, developers would undertake listed activities without obtaining the necessary authorisation. That would result in court cases where the courts had to interpret the legislations applicable at the time to determine whether ex post facto environmental authorisations were permitted. Chapter 2.4 looks at three (3) such cases to understand how the courts interpreted the pre-section 24G legislations with regards to ex post facto authorisations.

2.4.1 Silvermine Valley Coalition v Sybrand van der Spruy Boerdeye and Others 2002 (1) SA 478 (C)

The Silvermine case involved an applicant who objected the development and asked the court to compel authorities to commission an EIA, in terms of Section 21 of the ECA, even though the listed activity had already been undertaken.

Facts of the case: The first respondent in the case was a lessee of a portion of property. The second respondent was the lessor of the said property. The first respondent had commenced with earthworks in preparation for the planting of a vineyard. One of the members of the applicant group, acting in her then capacity as chairperson of the group, requested the first respondent to "undertake an EIA prior to the development, and went on to threaten legal action in the event of non-compliance with the request". A year after the request was not complied with, the applicant threatened to institute interdictory proceedings against the development. When the responded further refused to do the EIA, the applicant instituted legal proceedings.

Legal Question: The legal question that the court had to answer was whether an EIA could be commissioned in terms of the ECA and its Regulations after the listed activity had already been undertaken.

Judgement: The Court held that the purpose of conducting an EIA is to "identify potential threats to the environment and aid the relevant authority in deciding whether authorisation should be granted for that activity based on the anticipated impacts. The Court further held that an EIA ex post facto would hold no legal significance in terms of the legislative structure under which it was located".

Discussion: The decision reached by the Court supports the argument made earlier under Chapter 2.2 of the study where the interpretation of the sections 21, 22 and 26 of ECA was discussed. The Court held similarly to the discussion under the said Chapter that the purpose of the ECA is to "ensure that the potential environmental impacts of proposed activities are considered, and environmental authorisation is obtained before a listed activity is undertaken". The ex post facto undertaking of an EIA and granting of authorisation serves no legal significance as it does not achieve the main purpose of identifying and mitigation the environmental impacts associated with a certain activity before that activity is undertaken.

2.4.2 Eagles Landing Body Corporate v Molewa NO and Others 2003 (1) SA 412 (T)

The Eagles Landing case was a result of a dispute between an interested/ affected party on one side, and the authorities and developer on the other. The authorities had granted an authorisation to the developer who had already commenced undertaking a listed activity without environmental authorisation. The applicant, who was the neighbour, opposed the

decision made by authorities to grant ex post facto authorisation and sought the intervention of the Court.

Facts of the case: The applicant was the body corporate of the Tradewinds Sectional Title Scheme. The first and second respondents were, respectively, the MEC for, and the head of, the Department of Agriculture, Conservation and Environment of the Northwest Province (DACE). The third respondent was the developer of a golfing estate, who had commenced the development without the necessary environmental authorisation. Upon receiving a complaint from the applicant, the second respondent issued a "directive, in terms of section 28 of the NEMA, to the third respondent to cease its activities and undertake an EIA in terms of the ECA regulations". The third respondent complied and undertook the required EIA, which led to the third respondent being granted authorisation ex post facto to continue with the development. After unsuccessfully appealing the decision internally, the applicant approached the court.

Legal Question: The legal question that the court had to answer was whether or not the authorisation decision was contrary to the doctrine of legality, or alternatively, the authorities acted beyond their legal power or authority in terms of section 22 of the ECA and therefore the development had been undertaken unlawfully.

Judgement: The Court dismissed the application, holding that it was being invited to express a legal opinion, which it refused to give, holding that even if did give such a legal opinion, no benefit in practical and in real terms would be realised.

Discussion: Although the court refused to give an opinion on the matter, it can be deduced that the court saw no point in ordering the decommissioning of the construction and ordering the application of an environmental authorisation first, as such an order would serve no purpose to the objectives of the ECA and its regulations. It can be concluded, therefore, that the Court was of the view that ex post facto authorisation was permissible under the ECA, which is contrary to the decision reached in the Silvermine case.

2.4.3 Hichange Investments (Pty) Ltd v Cape Produce Company (Pty) Ltd t/a Pelt Products & Others 2004 JDR 0040 (E)

The cases discussed under 2.4.1 and 2.4.2 have held contrasting views on whether ex post facto authorisation is permissible under the ECA, and in doing so failed to make a unanimous precedent. The Hichange Investments case adds to the number of contradictory court rulings. The Court ruled in favour of the undertaking of an EIA ex post facto. It used section 28(4) of

the NEMA which provides for a “directive to be issued to someone who causes, has caused or may cause significant pollution or degradation of the environment to conduct an environmental assessment”. The Court held that “an EIA under section 28 may be required to prevent pollution continuing or recurring and is not solely to enable prior assessment for authorisation to be granted”. In this case, ex post facto authorisation was ruled as permissible (correctly so) to mitigate an ongoing pollution to protect the environment.

2.4.4 Summary on retrospective Environmental Authorisation Case-law pre-section 24G

The cases discussed above differ in judgements. In the first case discussed under Chapter 2.4.1 the Court found no provision in the ECA allowing for ex post facto environmental authorisation. It held that giving such an authorisation, or ordering an EIA to be conducted after the activity has commenced would not serve the objectives of the ECA, which is identifying and mitigating potential environmental damage before a listed activity commences. In the second case discussed under Chapter 2.4.2, the Court declined to rule ex post facto environmental authorisation as either permissible or not permissible under the ECA and the NEMA. The third case under Chapter 2.4.3 presented a different approach, using the NEMA, to allow for an EIA to be undertaken after the unauthorised commencement of an activity. In the case, however, the EIA was ordered to prevent or mitigate ongoing environmental pollution. The court ruling seems to be in line with the purpose and objectives of the NEMA.

From the three cases discussed under Chapter 2.4, different Courts had different interpretations of the ECA and the NEMA, resulting in different and inconsistent rulings on matters regarding unauthorised commencement of listed activities. Such inconsistent rulings created the need to develop a piece of legislation that brings uniformity on matters concerning unauthorised commencement of listed activities. Such legislation was promulgated in the form of section 24G of the NEMA.

2.5 THE PROMULGATION OF SECTION 24G OF THE NEMA

The ECA provisions were clear that “the commencement of listed activities without environmental authorisation from a competent authority was unlawful”. Despite what the ECA advocates for regarding commencement of listed activities, the literature suggest that developers continued to undertake listed activities without obtaining the necessary environmental authorisation first (Paschke & Glazewski, 2006). The unauthorised commencement of listed activities resulted in there being no remedy to rectify such

unauthorised commencement of listed activities under both the ECA and the NEMA. As a result, the Courts provided different and contradictory judgements on whether ex post facto environmental authorisation could be obtained as a means to rectify the unauthorised commencement of a listed activity (Jikijela, 2018). The solution to the problem was introduced in the form of section 24G of the NEMA through the NEMA Amendment Act 8 of 2004, which came into effect on 7 January 2005. The NEMA Amendment Act introduced the section 24G titled "Rectification of unlawful commencement or continuation of a listed activity". Section 24G was the major difference between the old NEMA and the amended NEMA. Section 24G allowed for the "rectification of unauthorised commencement of listed activities through ex post facto authorisations, subject to the payment of an administrative fine". Linked to section 24G was the then also new section 24F, titled "Offences relating to commencement or continuation of listed activity".

Section 24F read as follows:

1) "Notwithstanding the provisions of any other Act, no person may commence an activity listed in terms of section 24(2)(a) or (b) unless the competent authority has granted an environmental authorisation for the activity, and no person may continue an existing activity listed in terms of section 24(2)(d) if an application for an environmental authorisation is refused;
2) It is an offence for any person to contravene subsection (1) or the conditions applicable to any environmental authorisation granted for a listed activity;
3) ….
4) A person convicted of an offence in terms of subsection (2) is liable to a fine not exceeding R5 million or to imprisonment for a period not exceeding ten years, or to both such fine and such imprisonment."

Section 24G read that:

1) "On application by a person who has committed an offence in terms of section 24F (2) the Minister or MEC, as the case may be, may direct the applicant to:

a) compile a report containing-

i. an assessment of the nature, extent, duration and significance of the impacts of the activity on the environment, including cumulative effects;

ii. a description of mitigation measures undertaken or to be undertaken in respect of the impacts of the activity on the environment;

iii. 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;

iv. an environmental management plan; and

b) provide such other information or undertake such further studies or the Minister or MEC may deem necessary.

2) Upon the payment by the person of an administrative fine not exceeding R1 million as determined by the competent authority, the Minister or MEC concerned must consider the report contemplated in subsection (1) and therefore may-

3) Direct the person to cease the activity, either wholly or in part, and to rehabilitate the environment within such time and subject to such conditions as the Minister or MEC may deem necessary.

4) A person who fails to comply with a directive contemplated in subsection (2)(a) or who contravenes or fails to comply with a condition contemplated in subsection (2)(b) is guilty of an offence and liable on conviction to a penalty contemplated in section 24F (4)".

In observing the above provisions, it can be concluded that section 24G enables a person who has commenced with a listed activity without environmental authorisation (who is guilty of an offence) to apply to the Minister or MEC for a directive that they must compile a report containing certain information as specified in sections 24G (1)(a). After the person has paid an administrative fine not exceeding R1 million, the Minister or MEC must consider the report and may thereafter either direct the person to cease the activity or issue an environmental authorisation to allow the activity to continue lawfully, subject to conditions.

2.5.1 Challenges of section 24G of the NEMA

The promulgation of section 24G in 2005 allowed for the "rectification" of listed activities that had commenced without authorisation through ex post facto authorisation. The concept of allowing ex post facto authorisation raised concerns among environmental scholars. Paschke & Glazewski (2006) summarise the main concerns that came with the promulgation of section 24G in 2005 as follows:

a) "Section 2 of the NEMA contains the key principles of the Act, such as the preventive principle, precautionary principle, and the principle which requires that negative impacts on the environment are anticipated and prevented. The permitting of ex post facto environmental authorisation through section 24G undermines these

principles. The permitting of ex post facto environmental authorisation takes away the anticipatory approach of identifying potential impacts and their mitigation before the commencement of harmful activities. Ex post facto environmental authorisation is also inconsistent with the objective of integrated environmental management, as section 23(2)(d) of the NEMA provides for ensuring that the effects of activities on the environment receive adequate consideration before actions are taken in connection with them".

b) "Since section 24G can be viewed as inconsistent with the principles and objectives of the NEMA, it would be expected that the provisions for ex post facto environmental authorisation would cater only for exceptional circumstances (Paschke & Glazewski, 2006). However, section 24G does not specify which persons and under what circumstances they may apply for ex post facto authorisation. This has the potential of causing people to deliberately ignore the EIA regulations in order to explore the much easier option of ex post facto environmental authorisation, years later after the commencement of their activities or developments".

c) "Section 24G does not require that a person who has commenced a listed activity without obtaining environmental authorisation must stop the activities immediately, pending the outcome application under section 24G. The activities may only be stopped once the Minister or MEC has assessed the submitted reports (which might take years to compile) and issue such a directive for a person to cease their activities. This allows the person to continue with the unlawful commencement of a listed activity, potentially causing more damage to the environment".

d) "Section 24G (3), which states that the Minister has the power to direct a person to rehabilitate the environment is too vague. It does not specify whether such a power means that the Minister or MEC may order a person to demolish a building or constructed structure. In the case of a huge building development such as the building of properties for example, the rehabilitation mentioned in section 24G (3) would not be possible without demolishing those properties".

e) "A competent authority faced with an application for ex post facto environmental authorisation would generally have little basis to refuse the application- even in cases where the activity had a substantially detrimental effect on the environment (Paschke & Glazewski, 2006). This is because the damage would, in most cases, already have

been done and the competent authority would have little remaining grounds to refuse the application".

f) "The introduction of ex post facto environmental authorisation allows a person intending to undertake a listed activity to choose between the normal process of applying for an environmental authorisation before the commencement of the activity, or the ex post facto environmental authorisation if it is deemed as the cheaper option. This undermines the traditional environmental authorisation process of applying for an environmental authorisation before commencing a listed activity".

g) "In cases where there is uncertainty regarding whether the environmental authorisation will be granted if one follows the normal procedure, the person may opt to follow the ex post facto route and pay the R1 million (which might be lesser) administrative fine. This fine could prove to be not enough of a deterrent to well established companies, which might choose to opt with ex post facto environmental authorisation as a means to guarantee or better their chances of obtaining an authorisation".

2.5.2 Amendments to section 24G (2008, 2014 and 2022)

Since the promulgation of section 24G in 2005, the NEMA, including section 24G have undergone several amendments through the National Environmental Management Laws Amendment Act (NEMLA) (2008, 2014 and 2022). The amendments have sought to address some of the main concerns raised during the promulgation of section 24G in 2005. The changes brought by the amendments are as follows:

a) NEMLA 2008: Changing of the heading from "Rectification of unlawful commencement or continuation of listed activity" to "Consequences of unlawful commencement of activity". The changing of the heading, however, does not hold much power if the provisions remain the same.

b) NEMLA 2014: Section 24G (b) contains many significant changes that mitigate some of the challenges that were raised under the initial section 24G. Section 24G (b)(i) now allows "the Minister, Minister responsible for mineral resources (which is also new) or MEC concerned to order the applicant to immediately cease the activities pending a decision on the application". This is an improvement from the un-amended section 24G where the Minister only had powers to order an activity to cease only when the reports have been reviewed and a decision has been reached.

c) NEMLA 2014: Section 24(G) (3) (b) allows “the Minister to direct the applicant to take any other steps necessary under the circumstances”. This expands the options available for Minister or MEC rather than just requesting environmental rehabilitation.

d) NEMLA 2014: Section 24G (4) increases “the maximum administrative fine payable in terms of section 24G to R5 million. This is a significant change compared to the R1 million required in terms of the un-amended section 24G”. The increase in the administrative fine may serve as a deterrent to those who planned on avoiding the normal authorisation process and apply for the ex post facto environmental authorisation.

e) NEMLA 2014: Section 24G(6)(a) holds that “the submission of an application in terms of subsection 1 or the granting of an environmental authorisation shall in no way derogate from the environmental management inspector’s or South African Police Services’ authority to investigate any transgression in terms of NEMA”. It also holds that the National Prosecuting Authority’s legal authority to institute any criminal prosecution is not taken away. This provision is perhaps the biggest development or improvement regarding section 24G. Before this provision, section 24G was seen as an escape from liability because by submitting an application you were no longer liable for any environmental damage.

The National Environmental Management Laws Amendment Act (Act 2 of 2022) (NEMLA), which came into effect on 30 June 2023, contributed significant changes with regards to ex post facto environmental authorisations. The changes, outlined under section 5 of the NEMLA (Act 2 of 2002), are as follows:

a) “Increase in the administrative fine payable when submitting an application to a maximum of R10 million, doubling the previous maximum administrative fine of R5 million. This will act as a good deterrent to those planning on avoiding the normal route to an environmental authorisation in a bid to obtain less expensive section 24G authorisation”.

b) “The competent authority must – as opposed to may- direct the contravener to immediately cease their unlawful activities, pending a decision on the rectification application, except if there are reasonable grounds to believe that the cessation will result in serious harm to the environment”. This is a significant step because the stopping of a contravener’s operations may have a very big financial impact on the contravener’s business. When multi-million-rand projects are at stake, the stoppage of operations (either in construction or

operation) could cause costs to skyrocket. Developers would be wise to conduct proper due diligences to check what authorisations are required for a project and then ensure that the applications that they submit are robust and cover all listed activities required" (Rapson et al, 2022).

c) "Contraveners must undertake appropriate public participation to bring their unauthorised activity to the attention of interested and affected parties and give them a reasonable opportunity to comment". This is a significant change because interested and affected parties are now afforded a chance to comment on activities that may have possibly affected them for years during operation. Considering these comments, the responsible authority will now make a more informed decision regarding the granting/refusal of a section 24G application.

d) "Successors in title and persons in control of land on which a listed activity under the NEMA or the Waste Act has been unlawfully commenced will now be permitted to submit a rectification application". Previously only the guilty person who carried out the unauthorised activity without required environmental authorisation or waste management licence could apply. This is a positive change because it allows the successors in title, such the purchaser of a business, to clean up any historic irregularities they may have inherited from the previous owner. This provision, however, also has a downside. "This imminent amendment does not incentivize innocent successors in title to clean up someone else's unlawful conduct. Innocent successors will remain vulnerable to having operations shut down while the rectification application is being processes and to paying administrative fines" (Rapson et al, 2022).

2.6 SUMMARY

The promulgation of section 24G of the NEMA was meant to protect the environment from continued degradation resulting from unauthorised activities. However, the availability of section 24G also created some loopholes for continued undertaking of unauthorised listed activities. The NEMLA Acts (2008, 2014 and 2022) sought to address some of the loopholes. The NEMLA Acts sought to introduce changes that would act as a deterrent and prevent developers from viewing section 24G as a means of securing quicker environmental authorisation. However, developers continue to commence with listed activities without authorisation. Such continued unauthorised commencement of listed activities creates the need to evaluate the true effectiveness of section 24G, to identify areas for future

amendments. Such amendments would enable section 24G to effectively protect the environment without getting abused by developers.

CHAPTER THREE: RESEARCH DESIGN AND METHODOLOGY

3.1 INTRODUCTION

Chapter three of the study discusses the research methods used to answer the research questions, as well as to achieve the aim and objectives of the study. Research methodology is described as "…the procedures by which researchers go about their work of describing, explaining and predicting phenomena" (Rajaseker et al, 2006). Research methodology provides the focus and approach for the study and serves as the process through which researchers pinpoint the methods that will be used to address the research questions (Almaki, 2016). Research methodology is mainly divided into two categories: qualitative research and quantitative research. However, a third methodology exists in the form of a combination of both qualitative and quantitative research methodologies. The aim and objectives of the study, as well as the research questions determine the research design and methodology to be used. This is because the employed research design and methodology should be able to answer the research questions and achieve the study aim and objectives. The study evaluated the effectiveness of section 24G of the NEMA as an Environmental Protection Tool in the Western Cape Region. As such, the aim, objectives and research questions of the study determined the research design and methods used on the study. The two research methods available (qualitative and quantitative) are explained under Chapter 3.2 to outline the motivation for using the qualitative approach over the quantitative.

3.2 RESEARCH DESIGN

With the study aim in mind, as well the associated objectives and research questions as described in Chapter one of the study, a qualitative approach was deemed suitable for the study. Qualitative research is mainly concerned with gaining a perspective of issues from investigating them in their own specific context and the meaning that individuals bring to them (Denzin & Lincoln, 2005). Such research also allows collecting and analysing non-numerical data to understand concepts, opinions, or experiences, as well as data about lived experiences, emotions, or behaviours, with the meaning that people attribute to them

(Bhandari, 2016). As such, the qualitative approach allowed the researcher to go through existing, non-altered section 24G applications at the DEADP to answer the research questions.

The study focused on determining whether section 24G of the NEMA has had an overall positive or overall negative impact on the environment by reviewing existing section 24G applications, as well as by conducting semi-structured interviews. The qualitative approach is therefore suitable as it allows the researcher to evaluate each section 24G application separately in a descriptive, non-numerical manner to determine whether it has had a positive or negative impact on the environment. Furthermore, the qualitative approach allows the researcher to conduct interviews with the DEADP personnel and independent environmental consultants to understand the overall effectiveness that section 24G has had as an Environmental Protection Tool in the Western Cape.

The alternative research approach to qualitative research is quantitative research. Quantitative research involves the collection of numerical data and execution of statistical, mathematical, or computational techniques (Slevitch, 2011), all which were not applicable to the study at hand. A third methodology exists in the form of a mixed method approach. The mixed method approach is defined as a research approach "in which a researcher or team of researchers combine elements of qualitative and quantitative research approaches…for the broad purpose of breadth and depth of understanding and corroboration" (Johnson, 2007). Similarly, the mixed method approach was ruled out due to the lack of quantitative aspects on the study.

3.3 QUALITATIVE RESEARCH APPROACH

There is a variety of available approaches or methods under qualitative research. The most used methods include narrative research, case-study, grounded theory, phenomenology, and participatory action research. Choosing one method over the other depends on several factors.

The case study approach was considered to be the suitable approach as the approach allows for an in-depth examination of a single individual or single institution/organisation (Ibrahim, 2016). Case study research is a qualitative approach in which the investigator explores a bounded system (a case) or multiple bounded systems (cases) over time through detailed, in-depth data collection involving multiple sources of information (e.g., observations, interviews, audiovisual material, and documents and reports) and reports a case description and case-

based themes (Cresswell, 2007). Through the case study approach, the researcher explored section 24G cases within the DEADP. The cases included the following:

- the review of submitted section 24G applications,
- the review of submitted traditional environmental authorisation applications,
- semi-structured interviews with relevant DEADP staff members and relevant environmental consultants.

Within the main bounded system (the DEADP), bounded sub-systems existed in the form of different section 24G applications that were reviewed individually, with each application presenting its own unique set of data.

Interviews were undertaken with the DEADP officials to gain insights into the officials' experiences dealing with section 24G applications, and therefore, their professional opinions on the overall effectiveness of section 24G of the NEMA as an environmental protection tool in the Western Cape Region. The case study approach also provided the opportunity for the researcher to conduct in-depth interviews with independent environmental consultants to gain insights into their experiences dealing with section 24G applications, as well as their perceived effectiveness of section 24G in the Western Cape Region.

3.4 SAMPLING METHODS

It is not necessary, and sometimes not possible, to collect data from everyone in a community to get valid findings (Busetto et al, 2020). Both quantitative and qualitative research considers only a sample of a population to be examined. The study's research objectives and the characteristics of the study population (such as size and diversity) determine which and how many participants to select (Busetto et al, 2020). Three of the most common sampling methods used in qualitative research are purposive sampling, quota sampling, and snowball sampling.

Purposive sampling is applied when researchers pre-define which types of participants or cases they need to include to cover all variations that are expected to be of relevance, based on the literature, previous experience or theory (Busetto et al, 2020). Quota sampling is applied when the researcher decides while designing the study on how many people and with which characteristics to include as participants. Lastly, the snowball sampling method, also known as chain-referral sampling, is when participants or informants with whom contact has already been made use their social networks to refer the researcher to other people who could potentially participate in or contribute to the study (Busetto et al, 2020).

The study made use of the purposive sampling method to pre-define the types and number of section 24G applications relevant to the study. The method was applied in a manner that 5 applications per relevant economic sector in the Western Cape Region should be reviewed (e.g. mining, agriculture, agro-processing, and public infrastructure) to gain an overall better understanding of the effectiveness of Section 24G on the Western Cape Region. Purposive sampling was further used to pre-define the criteria for selecting interview participants from the DEADP, as well as selecting independent environmental consultants for interviews. All staff from the rectification sub-directorate participated in the interviews to add depth to the results obtained.

Five years of experience in dealing with section 24G applications was used to select independent environmental consultants. The five-year requirement was aimed at ensuring that participating consultants had section 24G working experience of both before and after section 24G was amended in 2023. It was assumed that consultants with five years or more working experience would at least provide reliable data, increasing the validity of the study. Moreover, consulting companies were pre-defined based on how often they submit section24G applications. The consulting companies responsible for submitting majority of the section 24G applications at the DEADP were deemed as the most suitable for the study.

There was no pre-defined number of independent environmental consultants to participate in interviews, as is usually the case with purposive sampling. A combination of participant availability and saturation determined the number of participants to the study. Saturation can be described as the process whereby the interviews no longer produce any new information, but rather a repetition of what has already been revealed (Busetto et al, 2020).

3.5 DATA COLLECTION METHODS

There are different data collection methods that can be employed when undertaking qualitative research. Such methods make use of primary and secondary sources such as interviews, focus groups, observation, questionnaires and document review (literature review) (Busetto et al, 2020). The study made use of both primary and secondary sources. Primary data sources for the study were observations and interviews. Literature review was the secondary data source for the study. Interviews can be divided into three categories, namely: structured, semi-structured, and unstructured. The study made use of semi-structured interviews (open-ended interviews).

3.5.1 Observation

To understand fully the complexities of many situations, direct participation in, and observation of, the phenomenon of interest may be the best research method. The data collected must be descriptive so that the reader can understand what happened and how it happened (Brikci & Green (2007).

In most applied projects, there is not enough time to carry out a detailed observational study, however, some observation, as part of your daily work, will help (Brikci & Green, 2007). Observations were the first form of data collection for the study. Observation is also what led to the realisation that there was a need for the study to be conducted. It was through observation that the researcher came to realise the magnitude of listed activities that were being undertaken without environmental authorisation, and the potential detrimental impacts that such unauthorised listed activities pose on the natural environment. Through observation it was also determined that even though the availability of section 24G as a method to rectify unauthorised commencement of a listed activity may present some benefits to the environment, it also presents the potential for increased environmental degradation. Through observation the researcher was also able to determine the number of DEADP participants to be included in the study due to the size of the rectification sub-directorate.

3.5.2 Review of Documented Materials

A wide range of documented material can produce qualitative data. Documented material can include policy documents, mission statements, annual reports, minutes of meetings, codes of conduct, web sites, series of letters or emails and case notes (Hancock, 2007). Documented material can also include publications such as research reports, journal articles, press articles and textbooks (Makabeni, 2018).

The review of documents was conducted to clearly understand and define the research problem. Literature was reviewed to understand the context of section 24G of the NEMA both on a regional and national level, as well as to identify and understand the existing gaps in knowledge, which this study aims to fill. The identification and understanding of the existing gaps in knowledge regarding section 24G also helped identify data needs for the study. Legislation (Acts, Regulations and Policies) and published articles were then reviewed to put the research problem into a broader context for a better and more refined understanding of the research problem.

3.5.3. Interviews

The interview is an important data gathering technique involving verbal communication between the researcher and the subject (participant). There is a range of approaches to interviewing, from completely unstructured in which the subject is allowed to talk freely about whatever they wish, to highly structured in which the subject responses are limited to answering direct questions (Fox, 2006). The study adopted a semi-structured interview approach. Semi-structured interviews are similar to structured interviews in that the topics or questions to be asked are planned in advance, but instead of using closed questions, semi-structured interviews are based on open-ended questions (Malithi, 2023). Semi-structured interviews are useful when collecting attitudinal information on a large scale, or when it is not possible to draw up a list of possible answers because little is known about the subject area. In the study, semi-structured interviews were used because there was little information known about the topic to be able to draw up a list of possible answers for the subjects (participants) to choose from. Semi-structured interviews would, therefore, allow the subject to describe their knowledge and experiences freely without having to collaborate with any pre-determined code or answer. Semi-structured interviews were conducted with two categories of participants as follows:

1. DEADP Officials in the rectification sub-directorate: Questions regarding the effectiveness of Section 24G of the NEMA as an environmental protection tool, the impact of Section 24G on the traditional environmental authorisation process, as well as other considerations regarding Section 24G. The interviews were conducted in person at the DEADP offices.
2. Section 24G consultants from various private organisations: Questions regarding the effectiveness of Section 24G of the NEMA as an environmental protection tool, the impact of Section 24G on the traditional environmental authorisation process, as well as other considerations regarding Section 24G. The interviews with consultants were conducted online as they were from different locations.

3.6 DATA ANALYSIS

Quantitative research techniques generate a mass of numbers that need to be summarised, described and analysed. Likewise, qualitative research techniques generate an extensive amount of words through interviews and observations which need to be transcribed and analysed (Lacey et al, 2007). Data analysis is the process through which the researcher continually reflects on collected data, moving deeper to understanding and representing the

data, and drawing an inference of a broader meaning of the data (Takwi, 2016). Data analysis describes a phenomenon in some or greater detail, comparing several cases on what they have in common or on the differences between them (Henderson et al, 2016). The most common qualitative data analysis methods include, but are not limited to, content analysis, narrative analysis, discourse analysis, thematic analysis, grounded theory (GT), and interpretive phenomenological analysis (IPA). The study made use of thematic data analysis. A thematic analysis is one that looks across all the data to identify the common issues that recur, and identify the main themes that summarise all the views you have collected. This is the most common method for descriptive qualitative projects (Brikci & Green, 2007). The thematic analysis process involved the following steps:

- Transcription: Since the interviews were recorded, the audio recordings had to be transcribed (put in writing) for more convenient analysis. Transcription is usually done in a group, or by a hired professional transcriber (Brikci & Green, 2007). However, due to limited resource availability, the transcription was done individually, which consumed a lot of time.
- Read and annotate transcripts: During this stage, the researcher gained familiarity with the data, but did not provide an overview. This was done so that the researcher could notice patterns and know what to look for during the later stages of the analysis process.
- Identify themes: The next step was to start looking in detail at the data to start identifying themes (Brikci & Green, 2007). During this stage, the researcher read the transcript in detail and started to take notes of recurring themes for classification purposed (Elo et al, 2007).
- Developing a coding scheme: During this stage of data analysis the initial themes were gathered together to begin developing a coding scheme.
- Categorising recurring themes: The identified similar themes were put under relevant categories.

3.7 LIMITATIONS OF THE STUDY

The qualitative study, and the case study approach in particular, present some strengths to the research project. One advantage of qualitative methods in exploratory research is that the use of open-ended questions and probing gives participants the opportunity to respond in their own words, rather than forcing them to choose from fixed responses (Malithi, 2023). Qualitative research, however, has shortcomings as well. The case-study approach presents

some limitations to the study because the study is not necessarily representative of similar cases and therefore the results of the study are not generalizable (Hancock, 2007). The case-study approach focused specifically on the effectiveness of section 24G of the NEMA as an environmental protection tool in the Western Cape Region. The results obtained from the study, therefore, cannot be interpreted as applicable to South Africa as a whole, as different Provinces might have different circumstances, leading to different results. To make the results generalisable, each Province in South Africa would have to undergo a separate case-study based research.

3.8 ETHICAL CONSIDERATIONS

Key ethical issues that were considered by the study were consent and confidentiality, as well as validity and reliability.

- Consent: Permission was obtained from DEADP to collect section 24G data in the form of reviewing section 24G applications and environmental authorisation applications, as well as conducting interviews with the DEADP personnel. A letter requesting permission to collect data was drafted by the CPUT Environmental and Occupational Studies Department and submitted to the DEADP. The DEADP acknowledged the letter and provided the required permission through a written letter of permission. Everyone who participated in the study freely consented to participation, without being coerced or unfairly pressurised (Brikci & Green, 2007). The researcher ensured that the participants were well-informed about what participation entails. All the DEADP participants were made aware of the granted permission to collect data so as to ensure them that participating in the study would not have any negative impacts on their workplace. The researcher also made sure to explain the details of the study to the participants so as to ensure that the participants know what their participation entails. Written consent was obtained from the approached private consultants. Furthermore, they were provided with an explanation of the scope of the study to ensure that they know what their participation would entail.
- Confidentiality: When collecting data from individuals, it is not always easy or even possible to measure the dangers of a certain context to a given population, let alone to individuals (Brikci & Green, 2007). Information that the researcher may deem relatively harmless may have serious impacts on the participants, especially with regards to their workplaces. Confidential information relating to section 24G applications may also pose potential harm to the applicants if released to the public.

As such, all confidential information relating to the section 24G applications was protected. No applicant names were revealed in the study, but rather the scope of the projects was discussed. Furthermore, the identities of all interview and questionnaire participants were protected.

- Validity and reliability: To ensure that the results produced by the study are valid and reliable, the researcher employed the Triangulation method. Triangulation is one method for increasing validity of findings, through deliberately seeking evidence from a wide range of sources and comparing findings from those different sources (Brikci & Green, 2007). The data obtained from the review of section 24G applications, environmental authorisation applications, interviews and questionnaires was compared with relevant literature review to confirm validity.

3.9 SUMMARY

The Chapter explained in detail the research methods used to achieve the aim and objectives of the study, as well as answer the research questions. The study was classified as qualitative and therefore, qualitative research methods were used in the study. The study adopted a case-study approach for a deeper examination of the study area. The study made use of purposive sampling. Purposive sampling was used to pre-define the criteria for data collection and participant selection.

The qualitative study made use of three data collection methods, namely: observation, review of documented materials, and semi-structured interviews. After data collection, the study employed the thematic analysis method to analyse the data in terms of recurrence of themes. The Chapter also discussed ethical considerations, outlining consent, confidentiality, validity and reliability of the study. The researcher explained how written consent was obtained from the participants before they could be interviewed, and from the DEADP before section 24G applications could be reviewed. Permission was also requested to record the interviews. Confidentiality emphasised the importance of protecting the identity of the participants. Validity and reliability explained triangulation, the method used to ensure that the data was valid and reliable by comparing it with relevant literature.

CHAPTER FOUR: RESULTS AND DISCUSSION

4.1 INTRODUCTION

Chapter four presents data collected from the public sector and private environmental consultants. In the public sector, data from the DEADP was collected and included information obtained through semi-structured interviews with the DEADP: rectification sub-directorate personnel. A sample of section 24G applications obtained from the DEADP for various industries was also used. Data from private consultants was also obtained through semi-structured interviews. The data presented in Chapter four is aimed at addressing the study's aim and objectives (Chapter one). The study aimed to evaluate the effectiveness of the section 24G provisions of the NEMA as an environmental protection tool using the Western Cape Region as a case-study, to identify areas for future development in the provisions.

4.2 SEMI-STRUCTURED INTERVIEWS

To evaluate the effectiveness of section 24G of the NEMA in the Western Cape Region of South Africa, semi-structured interviews were conducted with employees of the DEADP, as well as private environmental consultants with experience dealing with retrospective environmental authorisation (section 24G) to answer the research questions. As discussed in Chapter three, there was no predetermined number of private consultants to interview. The consultants were interviewed until no new information was coming out from new participants, a phenomenon known as saturation (Chapter 3.4). Furthermore, some of the consultants that were contacted to be part of the interviews did not respond. A total of fifteen (15) private consultants were interviewed. With regards to the DEADP, there were only two case officers responsible for assessing section 24G applications for the entire Western Cape Region. Both the case officers and their supervisor were interviewed, resulting in a total of three (3) participants from the DEADP.

4.2.1 Availability of Section 24G of the NEMA in relation to the EIA Regulations

The DEADP personnel and private environmental consultants were asked "whether, according to their experience, they believed that the introduction of section 24G of the NEMA had resulted in the ignorance of the traditional environmental authorisation process in favour of a quicker and sometimes cheaper retrospective authorisation process". 100% of the participants from both the DEADP and the private sector stated that "the availability of section 24G of the

NEMA does not result in the traditional environmental authorisation process being ignored (Figure 4.1), but rather provides a rectification mechanism to the unlawful commencement of listed activities by developers".

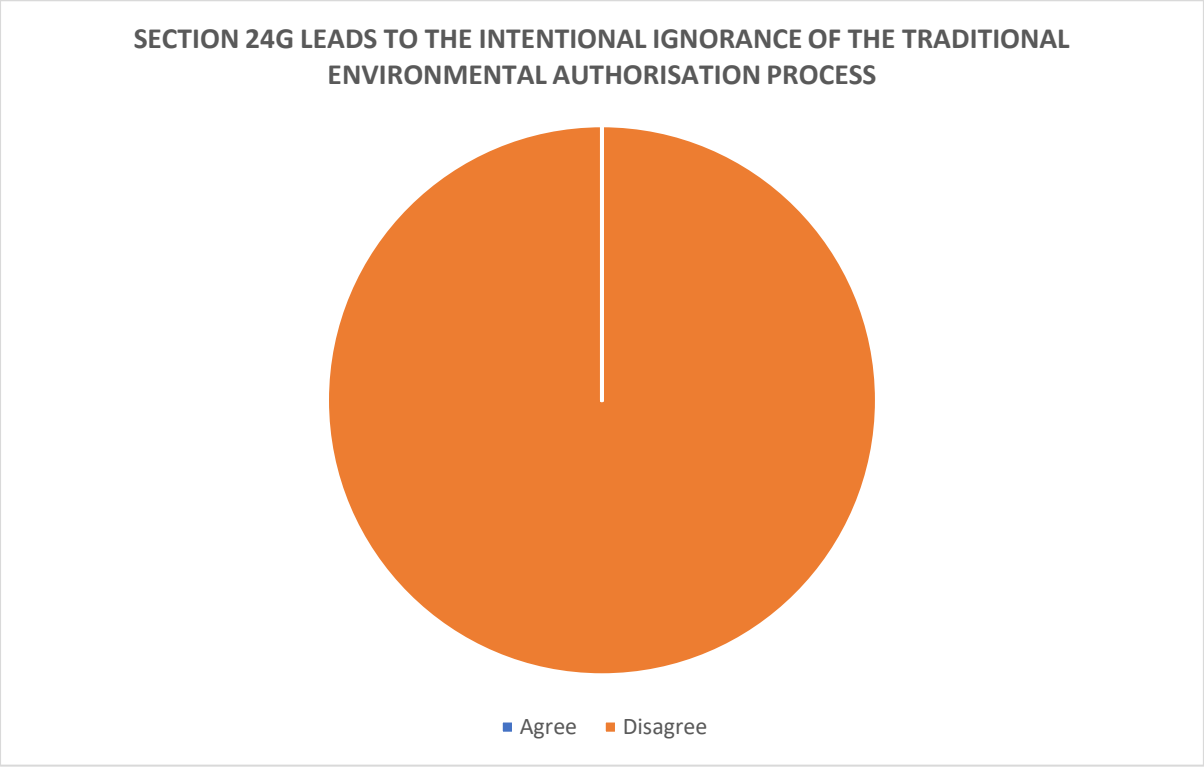

Figure 4.1: Summary of participants' responses.

The reasons provided by the participants (from both the DEADP and private consultancy) for being of the view that the availability of section 24G of the NEMA does not encourage ignorance of the traditional environmental authorisation process were categorised using thematic analysis, and are listed below:

- 60% of the private consultants indicated that "most applicants are usually not aware of the EIA Regulations at the time of commencement of their development. When they do find out about the need for an environmental authorisation, they then apply for section 24G of the NEMA".
- 20% of private consultants indicated that "some applicants are not interested on the environmental aspects of their developments but are rather interested on the financial aspects. Hence, the applicants would still undertake listed activities without authorisation even if section 24G of the NEMA did not exist".

- The remaining 20% of private consultants indicated that “the Western Cape law enforcement is proactive and developers who commence listed activities unlawfully usually get caught before they can fully complete the project”. Therefore, there is no benefit in intentionally avoiding the EIA Regulations with intentions to obtain retrospective authorisation.
- 33,3% of the DEADP participants indicated that “most section 24G applicants are first time offenders, which makes it difficult to say that they unlawfully undertook the listed activity on purpose with hopes of securing a section 24G authorisation”.
- 33,3% of the DEADP participants indicated that “section 24G cannot be used as an alternative because paying the administrative fine does not guarantee that the application will be successful, authorisation may still be declined”.
- 33,3% of the of the DEADP participants indicated that “the DEADP, upon review of the application, may request that the development (structure) be demolished, and that rehabilitation of the site is undertaken, resulting in additional costs to the administrative fine”. Therefore, the notion that section 24G authorisation is more cost-effective when compared to the traditional environmental authorisation process is incorrect.

From the responses obtained through semi-structured interviews from both the DEADP personnel and private environmental consultants, it can be concluded that they believe that section 24G of the NEMA does not encourage intentional non-compliance with the EIA Regulations in the Western Cape Region. The interview respondents believe that section 24G provides a rectification mechanism to those who unwillingly undertook listed activities without the required environmental authorisation.

4.2.2 A balanced overview of section 24G

The participants from both the DEADP and private environmental consultants with experience dealing with section 24G applications were asked to explain the negative and positive environmental impacts that may result from the issuance of a section 24G authorisation. The participants stated that “since damage to the environment has already been done by the time an applicant gets to apply for section 24G, no apparent impacts can be attributed to the issuance or availability of retrospective authorisation”. On the other hand, it was emphasised by all the DEADP participants that the issuance of retrospective authorisation supports all three aspects of sustainable development- Society, Economy, and the Environment, as broken down below:

- "Society: When a development is allowed to continue through the issuance of retrospective authorisation, job opportunities are created, benefiting society.
- Economy: The administrative fee payable on all section 24G applications supports the country's economy.
- Environment: Like traditional environmental authorisations, retrospective authorisations contain conditions aimed at protecting the environment. Typical conditions include those such as rehabilitation of the disturbed area during (ongoing) and after the project's lifespan".

Such integration of society, economy and the environment promotes section 2 (3) of the NEMA, which states that "Development must be socially, environmentally and economically sustainable"

4.3 SECTION 24G APPLICATIONS OBTAINED FROM THE DEADP

A sample of section 24G applications was obtained from the DEADP. The applications were analysed to determine whether the decision made regarding each application was more detrimental or beneficial to the environment. Such analysis would answer the research questions (Chapter one) and help determine the overall effectiveness of section 24G as an environmental protection tool in the Western Cape Region. During the planning stage of the research project, it was decided that five cases would be obtained from each relevant economic sector (Chapter three). However, due to personnel constraints, the DEADP was only able to provide ten (10) sample applications in total. The sample of section 24G applications received from the DEADP consists of various activities ranging from construction of tourist accommodation to the clearing of vegetation and establishment of a pilot wood chip burn-off plant. The activities involved in the applications are summarised in Table 4.1.

Table 4.1: Activities involved in the section 24G applications sample obtained from the DEADP

CASE NUMBER	ACTIVITY
1.	Unlawful development of a tourist accommodation and recreational facility.
2.	Unlawful upgrading of an informal settlement.
3.	Unlawful clearing of vegetation and creation of recreational tracks.
4.	Unlawful infilling of a wetland for a housing development.
5.	Unlawful enlargement and raising of dams.

6.	Unlawful construction of chicken houses.
7.	Unlawful construction of feedlots.
8.	Unlawful clearance of vegetation and development of a composting facility.
9.	Unlawful clearance of vegetation and the establishment of a pilot wood chip burn-off plant.
10.	Unlawful construction of a dwelling and additional infrastructure with the 100m high-water mark.

Each of the section 24G applications listed in Table 4.1 was analysed separately to highlight the activities involved, the environmental impacts of such activities, as well as evaluate whether the granting/refusal of retrospective authorisation for each application was beneficial or detrimental to the environmental.

4.3.1 Case 1: Unlawful development of tourist accommodation and recreational facility

Case 1 is a section 24G authorisation application for developing a tourist accommodation and recreational facility without environmental authorisation. The development consists of the following:

- 12 tented units, approximately 55m² each, with the individual units all having a wooden deck/veranda of approximately 15m²;
- A bar and swimming pool area which is approximately 300m²in extent;
- A playground of approximately 215m² in extent.

The development footprint is 3.45 hectares (ha), and the development site was originally vacant land, utilised by free-roaming animals on the farm. The triggered listed activities in terms of the EIA Regulations are presented in Table 4.2.

Table 4.2: Listed activities triggered by the development

LISTED ACTIVITIES	ACTIVITY/PROJECT DESCRIPTION
Government Notice No. R. 324 OF 7 April 2017 **Activity Number**: 6	The development of the 12 tented units and bar and swimming pool area all fall within a 5 Km of the core area of the Gouritz Biosphere Reserve, such as the Grootkop

Activity Description: The development of resorts, lodges, hotels, tourism or hospitality facilities that sleeps 15 people or more. (**ii) Western Cape** (iii)Inside a protected area identified in terms of NEMPAA; **(iv) Outside urban areas;** (aa) Critical Biodiversity areas as identified in systematic biodiversity plans adopted by the competent authority or in bioregional plans; or **(bb) Within 5KM from National Parks, world heritage sites, areas identified in terms of the NEMPAA or from the core area of a biosphere reserve.**	Nature Reserve, thereby triggering activity 06 of the relevant EIA Regulations.

4.3.1.1 Environmental impacts associated with the development

In compliance with the section 24G application process, the applicant submitted several technical documents, including an EIA as well as an Environmental Management Plan. According to the records, “the site appeared to have previously been disturbed, with large portions of the site having been cleared of any vegetation”. Most of the development site (demarcated in black) is covered in bare soil and sand (Figure 4.2).

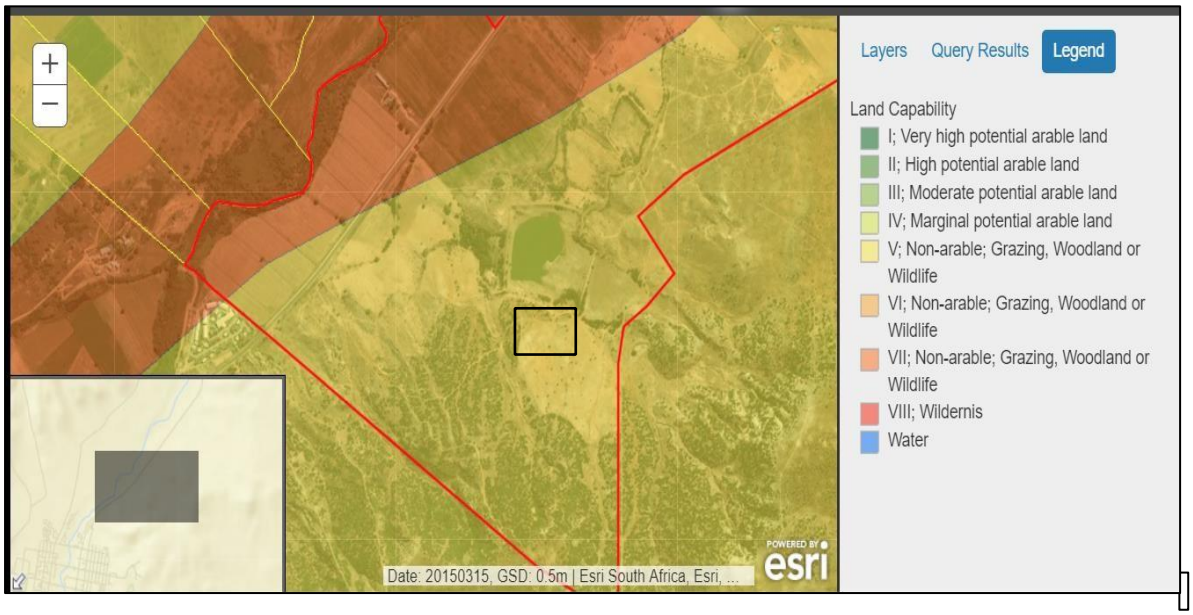

Figure 4.2: Development site vegetation cover (Source: DEADP)

Section 4 (b) of the NEMA states that “environmental management must be integrated, acknowledging that all aspects of the environment are linked and interrelated”. Even though the NEMA does not regulate the country’s water resources, it ensures their protection through the EIA and Basic Assessment Report (BAR) processes. Both the EIA and the BAR reporting processes require the “identification of any water uses that may be triggered” in terms of section 21 of the National Water Act (Act No 36 of 1998). If any water use is triggered, then the applicant is required to “submit a Water Use Authorisation Application to the Department of Water and Sanitation and attach proof of such application as part of the environmental authorisation process”.

The development site (Figure 4.3) is located on a sensitive site and falls within 100 metres from the buffers of the nearby watercourses (called the regulated area). “Any development that occurs within 100 metres of a watercourse triggers a water use” in terms of section 21 (c) and section 21 (i) of the National Water Act (Act No. 36 of 1998) (NWA) as follows:

- 21 (c) “impending or diverting the flow of water in a watercourse”; and
- 21 (i) “altering the bed, banks, course or characteristics of a watercourse”.

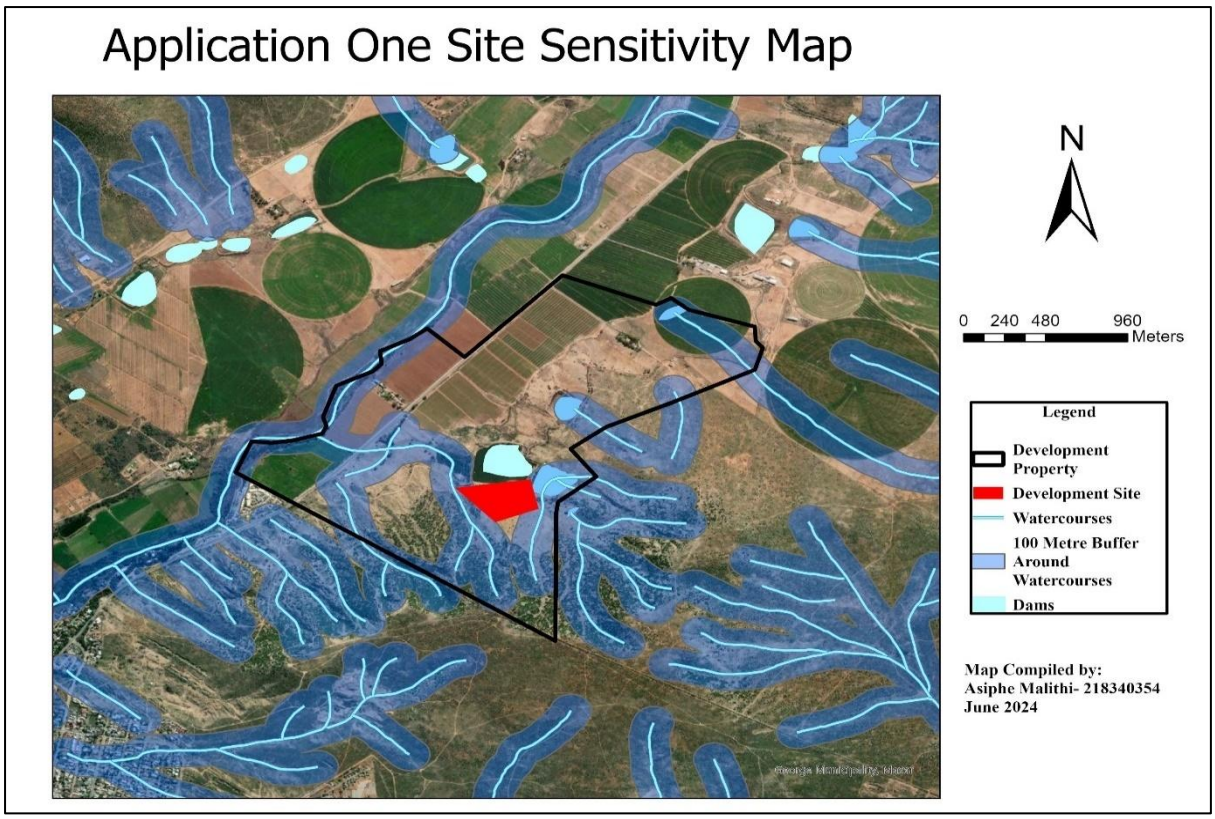

Figure 4.3: Site Sensitivity Map.

Furthermore, it is stated on the Environmental Management Programme (EMPr) accompanying the application that the site makes use of six (6) septic tanks for wastewater disposal. Such use of septic tanks triggers a water use in terms of the NWA as follows:

- 21 (g) “Disposing of waste in a manner which may detrimentally impact on a water resource”.

Failure of the DEADP to compel the applicant to get the necessary authorisation for the septic tanks in terms of the NWA prevented proper groundwater pollution prevention, as such authorisation would have been accompanied by conditions aimed at groundwater protection. When septic tank system failure occurs, it seeps through the subsoil and contaminates groundwater (Doku et al, 2023). Such groundwater contamination poses waterborne diseases such as diarrhoea and dysentery to humans (Doku et al, 2023).

Figure 4.3 shows the site has a dam, which according to the application documents is used for drinking water. Such use triggers two water uses as follows:

- 21(a) “Taking of water” and,
- 21(b) “Storing water”.

The documents submitted by the applicant incorrectly stated that the activity triggered no water uses in terms of the NWA, thus being inconsistent with the principle of integrated environmental management.

4.3.1.2 Findings of the DEAP

Upon review of the application, the DEADP noted that “the environmental impacts associated with the development included soil disturbance and vegetation removal”. The excavation of topsoil and removal of vegetative cover resulted in a small loss of such vegetation. It was further stated that “it is foreseen that soil erosion at the facility will be minimal if the applicant continues with revegetation of the area using naturally occurring indigenous vegetation”.

The DEADP further found that “there were, and will be, localised biodiversity impacts on the areas adjacent to and surrounding the tented units. Low negative visual impacts during the construction and the operational phase of the development were also found to have resulted from the development. As a result, an administrative fine of R35 000 was recommended, and environmental authorisation was granted after paying the administrative fine”.

4.3.1.3 Case 1 Summary

The development resulted in clearing of vegetation, slightly increasing the risk of soil erosion, and causing some localised biodiversity and visual impacts. The granting of the environmental authorisation, in this case, allowed the DEADP to attach the necessary conditions to direct the applicant to follow the necessary rehabilitation measures, as contained in the Environmental Management Programme (EMPr), to minimise the existing and prevent any potential environmental impacts.

However, failure of the DEADP to notice the impacts on nearby water resources and the associated water uses triggered, has resulted in negative environmental impacts. The six (6) septic tanks on site could pollute groundwater and cause human health risks. Based on such observations, the issuing of retrospective authorisation was more detrimental than beneficial to the environment. As an environmental protection tool, section 24G was ineffective in this case.

4.3.2 Case 2: Unlawful upgrading of an Informal Settlement

The application involved the construction of an informal settlement on a portion of land with an approximate area of 3.09 ha. The applicant, a municipality, had commenced upgrading the informal dwellings into a formal residential area. The upgrading of the informal dwellings forms part of an initiative known as the National Upgrading Support Programme (NUSP). The

initiative is a supporting mechanism for the Department of Human Settlements in its implementation of the Upgrading of Informal Settlements Programme (UISP). The listed activities triggered by the above activity are listed in Table 4.3.

Table 4.3: Listed Activities triggered by the development

LISTED ACTIVITIES	ACTIVITY/PROJECT DESCRIPTION
Government Notice No. R386 of 2006 – **Activity Number: 1(m)** "Activity Description: The construction of facilities or infrastructure, including associated structures or infrastructure, for – (m) any purpose in the one in ten-year flood line of a river or stream, or within 32 metres from the bank of a river or stream where the flood line is unknown".	Informal houses and structures constructed within 32m of minor drainage features on the site.
Government Notice No. R386 of 2006 – **Activity Number: 12** Activity Description: "The transformation or removal of indigenous vegetation of 3 hectares or more or of any size where the transformation or removal would occur within a critically endangered or an endangered ecosystem listed in terms of section 52 of the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004)".	Informal houses constructed on an area where vegetation is listed as endangered on a national level.

Government Notice No. R544 of 18 June 2010 – **Activity Number: 11** Activity Description: "The construction of: (x) buildings exceeding 50 square metres in size; (xi) infrastructure or structures covering 50 square metres or more – where such construction occurs within a watercourse or within 32 metres of a watercourse, measured from the edge of a watercourse, excluding where such construction will occur behind the development setback line".	Informal houses and structures with a footprint exceeding 50m^2 constructed within 32m of minor drainage features on the site.
Government Notice No. R546 of 18 June 2010 – **Activity Number: 12** Activity Description: "The construction of: (x) buildings exceeding 50 square metres in size; (xi) infrastructure or structures covering 50 square metres or more – where such construction occurs within a watercourse or within 32 metres of a watercourse, measured from the edge of a watercourse, excluding where such construction will occur behind the development setback line".	Informal houses constructed on area where vegetation comprised of more than 75% indigenous and is listed as endangered on a national level and in an area identified as a CBA.
Government Notice No. R546 of 18 June 2010 – **Activity Number: 16 (iii)(ii)(14)** "Activity Description: The construction of: (iii) buildings with a footprint exceeding 10 square metres in size –	Informal houses with a footprint exceeding 10m^2 constructed within 32m of minor drainage features on the site and within an area identified as a CBA.

where such construction occurs within a watercourse or within 32 metres of a watercourse, measured from the edge of a watercourse, excluding where such construction will occur behind the development setback line. (d) In Western Cape: ii. Outside urban areas – (ff) Critical biodiversity areas or ecosystem service areas as identified in systematic biodiversity plans adopted by the competent authority or in bioregional plans".	
Government Notice No. R546 of 18 June 2010 – **Activity Number: 11** Activity Description: "The construction of: (x) buildings exceeding 50 square metres in size; (xi) infrastructure or structures covering 50 square metres or more – where such construction occurs within a watercourse or within 32 metres of a watercourse, measured from the edge of a watercourse, excluding where such construction will occur behind the development setback line".	Informal houses and structures with a footprint exceeding 50m^2 constructed within 32m of minor drainage features on the site.
Government Notice No. R. 327 of 7 April 2017 **Activity Number: 12(ii)(c)** "Activity Description: The development of – (ii) infrastructure or structures with a physical footprint of 100 square metres or more; where such development occurs – (c) if no development setback exists, within 32 metres of a watercourse, measured from the edge of a watercourse"	Informal houses with a footprint exceeding 100m^2 constructed within 32m of minor drainage features on the site.

Government Notice No. 984 of 4 December 2014 - **Activity Number: 27** Activity Description: “The clearance of an area of 1 hectares or more, but less than 20 hectares of indigenous vegetation”.	Informal houses with a footprint exceeding 100m^2 constructed within 32m of minor drainage features on the site.

4.3.2.1 Environmental impacts associated with the development

The negative environmental impact of the proposed development is the loss of sensitive near-pristine Critical Biodiversity Area (CBA) vegetation that has a threatened status on the national and regional level (Vlok, 2018) (Figure 4.4). The proposed development area intersects an Ecological Support Area (ESA1) and a Critical Biodiversity Area (CBA1). The vegetation on most of the site is in a reasonably healthy ecological condition, with only moderate transformation through grazing impacts and with only a few alien plants present (Vlok, 2018). The upper northern part of the area is more severely disturbed where informal housing is rapidly being established. The upgrade of the informal settlements into a formal residential area ensures that the common environmental impacts such as solid waste and sewage disposal, as well as surface and groundwater contamination associated with informal areas

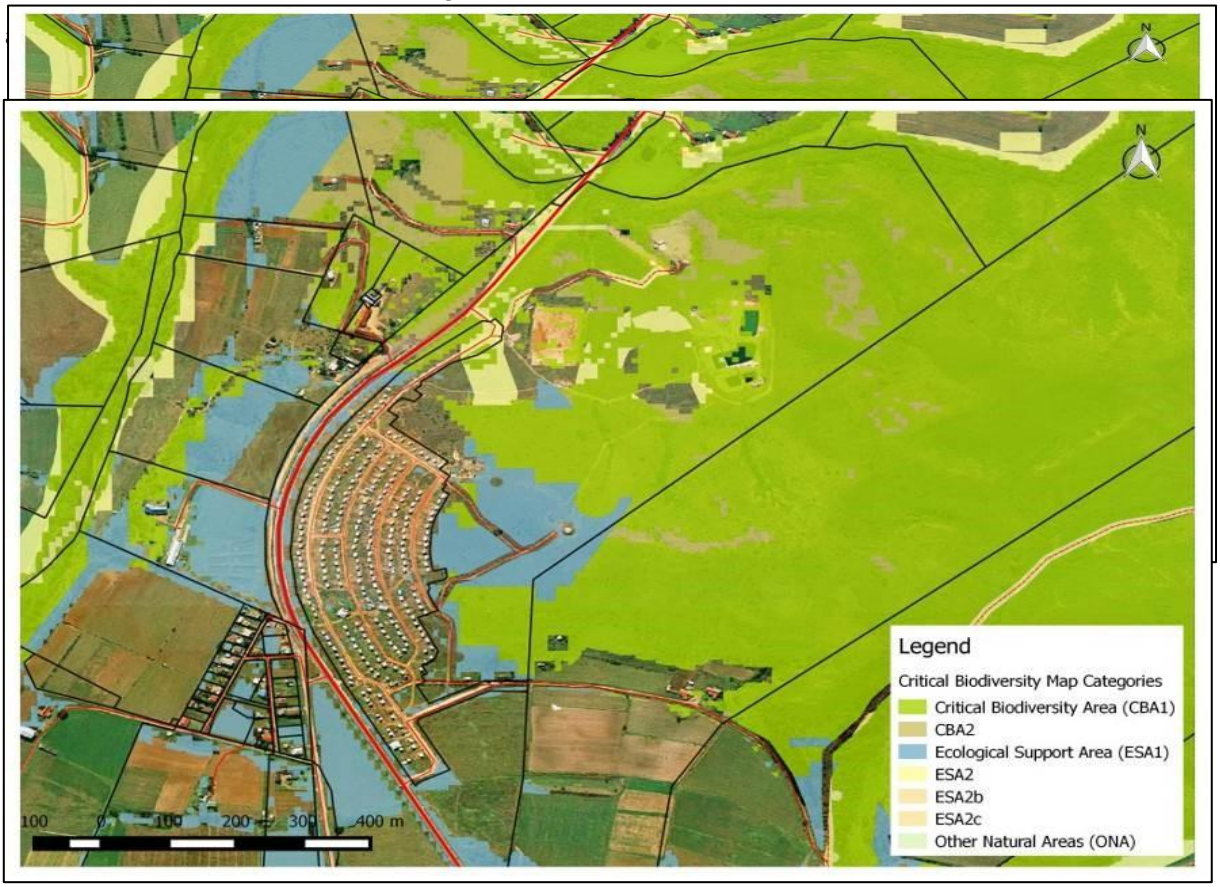

Figure 4.4: Vegetation Cover Map of the Development Area (Source: DEADP).

Furthermore, the houses that were built fall outside the 100 metre buffer of any nearby watercourse (Figure 4.5). This was also confirmed by an aquatic study that was submitted by the applicant to the DEADP. As such no additional authorisations were required from the applicant as part of the section 24G application process.

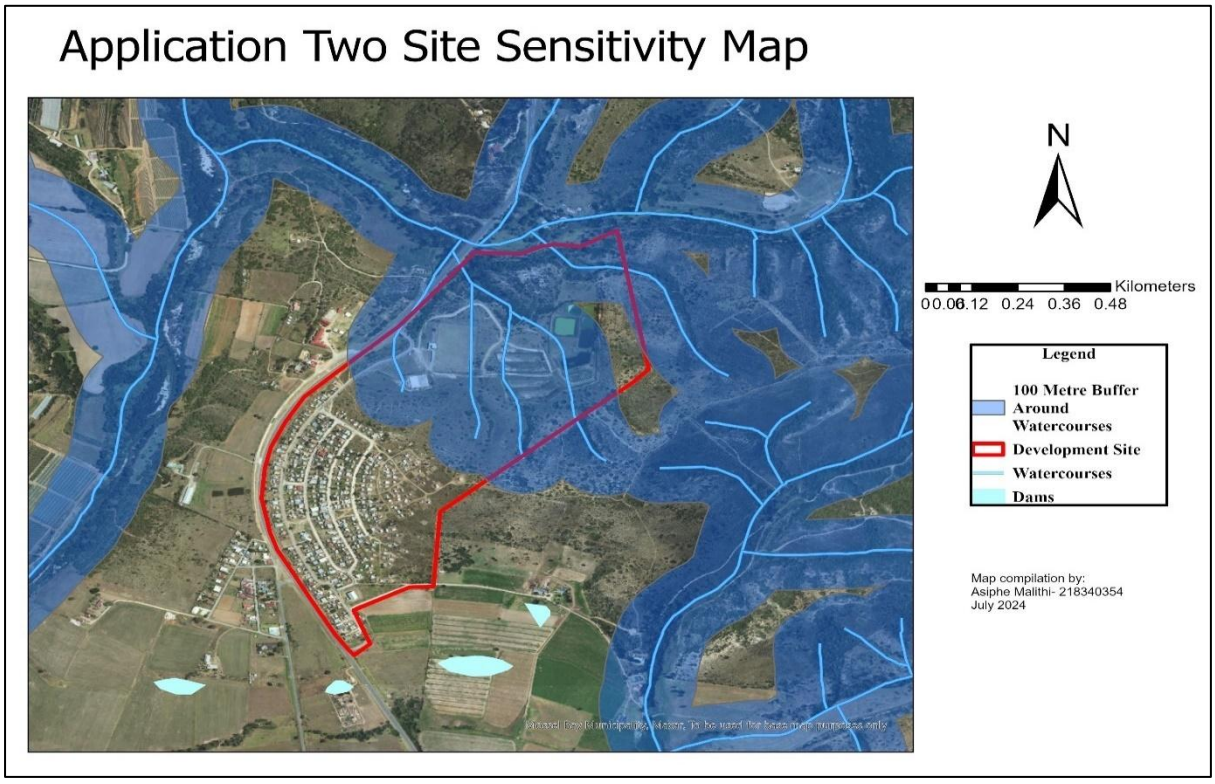

Figure 4.5: Development sensitivity map.

4.3.2.2 Findings of the DEADP

According to the DEADP, “the erection of informal housing within the development area indicated an urgent need for additional housing. The applicant’s activities provide large, direct social services to the affected community and will positively impact job creation and poverty alleviation in the area. As such, retrospective environmental authorisation was granted to the applicant. The calculated administrative fine by the DEADP was R625 000”. However, due to the project’s merits, a recommendation was made “to deviate from the calculated fine amount and agree on a R50 000 fine”.

4.3.2.3 Case 2 Summary

The development of the site was done on an already disturbed (but sensitive) land by the informal settlements. The upgrade of the informal settlements into a formal residential area ensures that the common environmental impacts such as solid waste and sewage disposal, as well as surface and groundwater contamination associated with informal areas are avoided. The granting of the environmental authorisation, in this case, protects the environment by ensuring that the informal settlements are turned into formal residential areas with access to basic services such as solid waste removal as well as sanitation, which eliminates the risk of continued environmental degradation. It is therefore concluded that Section 24G was effective as an environmental protection tool in this case.

4.3.3 Case 3: Unlawful clearing of vegetation and creation of recreational tracks

The application involved the creation of tracks by the applicant during alien vegetation clearing, which are now used for recreational purposes such as educational bike rides and a mini-train track. An additional train track for recreational rides was created. The train track was created on land that was previously transformed agricultural land. The new tracks and the use of the tracks for recreational activities constituted a listed activity and as such a section 24G rectification was required. The listed activities triggered by the activity are listed in Table 4.4.

Table 4.4: Listed activities triggered by the development

LISTED ACTIVITIES	ACTIVITY/PROJECT DESCRIPTION
Government Notice No. R. 324 of 7 April 2017 **Activity Number: 11** "Activity Description: The development of tracks or routes for the testing, recreational use or outdoor racing of motor-powered vehicles excluding conversion of existing tracks or routes for the testing, recreational use or outdoor racing of motor-powered vehicles". **i. Western Cape** iv. "Areas on the estuary side of the development setback line or in an estuarine	New tracks were developed within areas where no pre-existing tracks were found. The tracks were developed for alien clearing as well as being used for recreational purposes as a quad bike track. A portion of the tracks lie within the estuarine functional zone of the Hartenbos River (under the 5m contour level). The landowner would like to retain the existing tracks for recreational purposes (educational quadbike and train tours).

functional zone where no such setback line has been determined; v. Seawards of the development setback line or within 200 metres of the high-water mark of the sea if no such development setback line is determined; or vi. Areas of indigenous vegetation outside urban areas".	
Government Notice No. R. 324 of 7 April 2017 **Activity Number: 12** "Activity Description: The clearance of an area of 300 square metres or more of indigenous vegetation except where such clearance of indigenous vegetation is required for maintenance purposes undertaken in accordance with a maintenance management plan". **i. Western Cape** iv." Within the littoral active zone or 100 metres inland from high water mark of the sea or an estuarine functional zone, whichever distance is the greater, excluding where such removal will occur behind the development setback line on erven in urban areas".	New tracks were developed within areas where no pre-existing tracks were found. The tracks were developed for alien clearing as well as being used for recreational purposes as a quad bike track. A portion of the tracks lie within the estuarine functional zone of the Hartenbos River (under the 5m contour level). The landowner would like to retain the existing tracks for recreational purposes (educational quadbike and train tours).

4.3.3.1 Environmental impacts associated with the development

According to the documents received from the DEADP, the site is located within a listed Endangered Ecosystem, which is the Groot Brak Dune Strandveld, and includes floodplain areas on the margins of the Hartenbos River. The most recent version of the national vegetation map defines the area as Mossel Bay Shale Renosterveld, assessed as Critically Endangered, although not yet gazetted as such, with areas closer to the river defined as non-terrestrial (estuarine) vegetation (Hoare, 2022).

Except for the estuarine salt marsh vegetation on the banks of the Hartenbos River, no intact indigenous fynbos or renosterveld occurs on site. The entire terrestrial portion of the site (excluding the estuarine zone) consists of secondary vegetation in previously disturbed areas. It is dominated by alien invasive species and species typical of previously disturbed areas, including the woody shrubs, Osteospermum moniliferum, Searsia crenata, Searsia glauca, Grewia occidentalis, Gymnosporia buxifolia, Euclea undulata, and Vachellia karroo, the low shrub, Nidorella ivifolia, the succulent, Carpobrotus edulis, and the grasses, Eragrostis curvula, Hyparrhenia hirta, Megathyrsus maximus, Melinis repens, Paspalum dilatatum and Sporobolus africanus. This species composition does not resemble the expected species composition for Groot Brak Dune Strandveld, or for Mossel Bay Shale Renosterveld. It is therefore assessed that the original terrestrial vegetation that occurred historically on the site no longer occurs on site (Hoare, 2022). From the above description, it can be concluded that no significant terrestrial environmental impacts occurred during the undertaking of the project. The main type of vegetation cleared during the construction of the tracks was alien. This can only be described as beneficial to the environment.

The entire development site is located on an area that is classified as a wetland, as indicated in Figure 4.6. “Any activity conducted within a 500-metre radius of a wetland triggers a Water Use” in terms of sections 21 (c) and 21 (i) of the NWA as follows:

- “section 21 (c): Impeding or diverting the flow of water in a watercourse”;
- “section 21 (i): Altering the bed, banks, course or characteristics of a watercourse”.

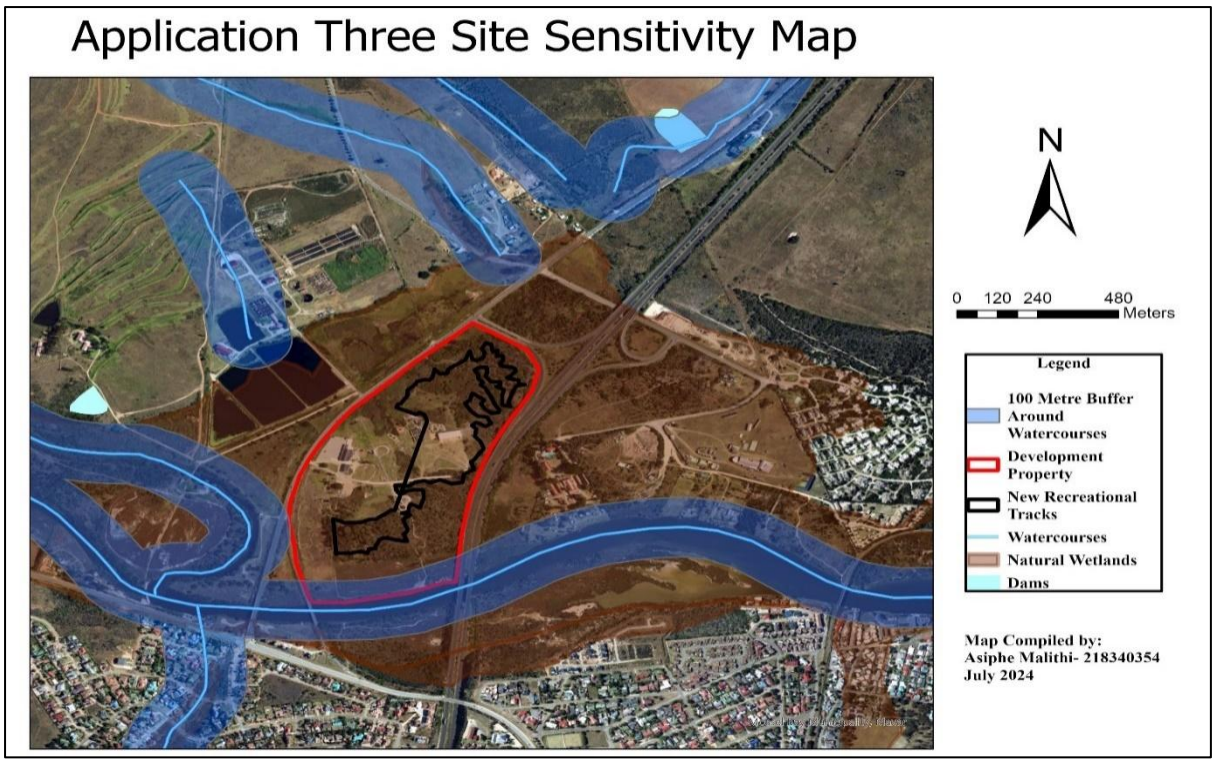

Figure 4.6: Development sensitivity map showing the wetland (in brown) on which the site is located.

According to the information submitted to the DEADP, the Environmental Assessment Practitioner (EAP) for the project did mention that the site is located on a wetland, but incorrectly stated that there was no need to apply for any further authorisations.

4.3.3.2 DEADP Findings

According to the DEADP, “the vegetation clearance had been assessed by a biodiversity specialist that concluded that the activity did not result in any negative biodiversity impacts”. This was because the vegetation on site was considered as secondary vegetation, and not indigenous vegetation found within the development area vegetation type. “An administrative fine of R250 000 was issued to the applicant, and the authorisation was granted after the payment of such fine”.

4.3.3.3 Case 3 Summary

Similarly to the previous applications, the DEADP in this application failed to ensure that all relevant authorisations in terms on National Legislations are obtained prior to issuance of the retrospective authorisation. Such an approach is detrimental to the environment as it fails to consider all the effected aspects of the environment in a holistic manner. In this case it can be argued that the granting of retrospective authorisation was not beneficial to the environment. There are no apparent ongoing terrestrial environmental impacts that the granting of the

authorisation sought to address. Furthermore, it can be argued that the granting of the authorisation was more detrimental to the environment as it allowed the applicant to “lawfully” carry on with their activities without obtaining the full scope of authorisations from different national environmental acts as may be necessary.

4.3.4 Case 4: Unlawful infilling of a wetland for a housing development

The applicant had commenced with construction activities on the site. However, according to an aquatic investigation that was conducted, “the development was undertaken over and in proximity to an on-site wetland and the Camphersdrift wetland system”. The development was inclusive of earthworks, development of roads and infrastructure associated with a housing development (Figure 4.7).

Figure 4.7: Google Earth image showing the earthworks, as well as the wetland area (Source: DEADP, 2024).

Earthworks had commenced across the entire site with benches/platforms having been created for placement of some erven. Areas for erven had been compacted. Access road

works had commenced with excavation, compacting and layer works. Internal services (water, sewer, electricity, stormwater) were still to be connected to the existing municipal network. No buildings had been erected yet. The development would include 99 Single Residential, 86 General Residential (group/town housing), business sections, roads and open spaces proposed with associated services. The triggered activities in terms of the EIA Regulations of 2017 (as amended) are summarised in Table 4.5.

Table 4.5: Listed activities triggered by the development

LISTED ACTIVITIES	ACTIVITY/ PROJECT DESCRIPTION
Government Notice No. R. 327 of 2017 – **Activity Number: 19** "Activity Description: 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	Construction activities commenced within close proximity to an on-site wetland and riparian area along Camphersdrift system.

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".	
Government Notice No. R. 324 of 2017 – **Activity Number: 12** Activity Description: "The clearance of an area of 300 square metres or more of indigenous vegetation except where such clearance of indigenous vegetation is required for maintenance purposes undertaken in accordance with a maintenance management plan". **i. Western Cape** i. "Within any critically endangered or endangered ecosystem listed in terms of section 52 of the NEMBA or prior to the publication of such a list, within an area that has been identified as critically endangered in the National Spatial Biodiversity Assessment of 2004; ii. Within critical biodiversity areas identified in bioregional plans".	The property falls into areas that were identified in the Western Cape Biodiversity Spatial Plan (WCBSP) 2017 as being part of a terrestrial Critical Biodiversity Area.

4.3.4.1 Environmental impacts associated with the development

According to the botanical study submitted by the applicant to the DEADP, "even though the initial clearing and infilling of the wetland impacted on biodiversity in a negative manner, the wetland's rehabilitation has become a vehicle for the protection of biodiversity, with the wetland flat now being in an improved condition and larger than what it was before" (Figure

4.8). 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.

.Figure 4.8: The rehabilitated wetland (Source: DEADP, 2024).

“The infilling of a wetland and the undertaking of activities within the 500-metre radius of a wetland (Figure 4.9) triggers a Water Use” in terms of section 21 (c) and 21 (i) of the NWA. As part of the section 24G application, an application was lodged to the Department of Water and Sanitation.

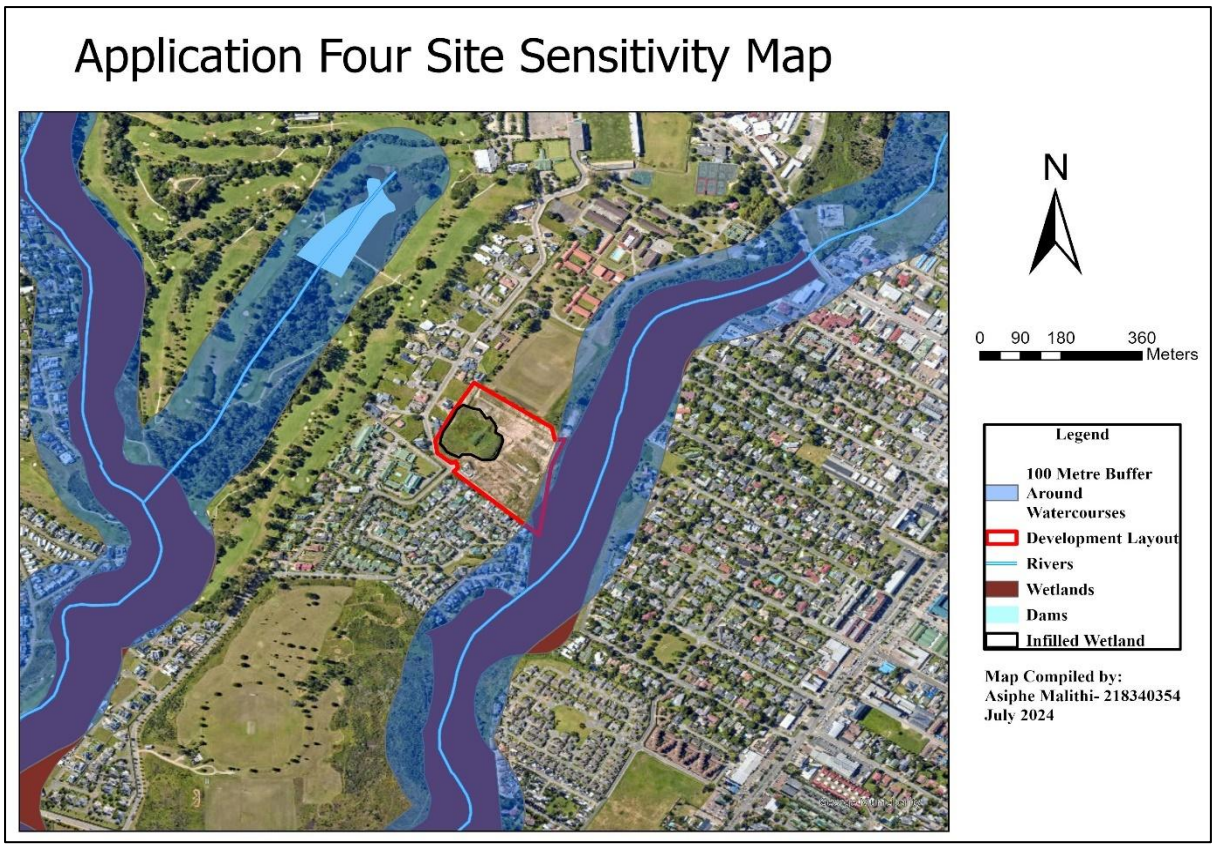

Figure 4.9: Sensitivity map showing the affected wetland (demarcated in black) on site.

4.3.4.2 DEADP Findings

The DEADP held that "an Environmental Assessment Practitioner (EAP) was appointed to submit a section 24G Environmental Impact Assessment (EIA) to the Department to obtain retrospective Environmental Authorisation". The EIA was considered adequate for informed decision-making. In addition, the holder paid an administrative fine of R250 000 (Two hundred and fifty thousand Rand) to meet the requirements of section 24G of the NEMA.

Other information considered during the decision-making process includes:

a) The section 24G application dated 8 September 2022 with supporting environmental impact assessment and mitigation measures.

b) The Environmental Management Programme ("EMPr") dated 06 June 2022 submitted for the application.

c) The Stormwater Management Plan dated 06 June 2022 submitted for the application.

d) Relevant information contained in the Departmental information base, including the Guidelines on Public Participation and Alternatives.

e) The objectives and requirements of relevant legislation, policies and guidelines, including section 2 of the NEMA.

f) The comments received from Interested and Affected Parties ("I&APs") and the responses provided thereto.

g) The sense of balance of the negative and positive impacts and proposed mitigation measures.

h) The site visit conducted on 3 February 2023 attended by officials of the Directorate: Environmental Governance.

4.3.4.3 Case 4 Summary

The development included the infilling of a wetland that was present on site, as well as conducting construction activities in close proximity to such wetland. "Environmental impact assessment studies conducted in compliance with the section 24G application process resulted in the rehabilitation and fencing off the wetland". The wetland was rehabilitated to an improved state than it was initially, and was further protected from human activities through fencing. The section 24G application also led to the applicant applying for a Water Use License in terms of section 21 (c) and 21 (i) of the NWA for working within a 500-metre radius of a wetland. It can be safely concluded that the granting of the section 24G retrospective authorisation in this case was beneficial to the environment.

4.3.5 Case 5: Unlawful enlargement of Dam One and the raising of Dam Two

The development entails the unlawful enlargement of Dam One and raising of Dam Two (Figure 4.10). In 2018, the applicant upgraded the existing Dam Two on the farm by clearing its diversion channel and the dam of sediment. Up to 1000m^3 of sediment has been removed. The dam wall was raised by 1m during the upgrade, and the new dam wall height is 4.2m. The original storage capacity was increased from 4451m^3 to 7070m^3. Work on this project component had been completed at the time of application.

The applicant also initiated the expansion of Dam One, a dam within what used to be a sand-mine pit. The placement of the sand for the dam wall was done in furtherance of the dam enlargement which, at the time of application, was currently being used as a cattle watering point.

The completion of the scheme would include:

- Completion of Dam One (500 000m³ total storage capacity and 17.7m high embankment); and
- Completion of two 315 mm diameter water supply pipelines (0.4 km and 0.5 km respectively).

Water would gravitate from the existing pump station at Dam Three (not part of the application) to the incomplete Dam One via a 315mm diameter water supply pipeline (approximately 0.4km). An additional pipeline, 315mm diameter (approximately 0.5km) would be connected to the Dam One outlet pipe to gravitate water to the existing pump station at Dam Two. Borrow areas are to be located within the existing dam basin (previously a sand mine). The total construction footprint would thus be 10.8 ha, and the operational footprint would be 10.2 ha.

Table 4.6: Listed activities triggered by the development

LISTED ACTIVITIES	ACTIVITY/ PROJECT DESCRIPTION
Government Notice No. R. 327 of 7 April 2017 **Activity Number:** 19 Activity Description: "The infilling or depositing of any material of more than 10 m3 into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock of more than 10 m from a watercourse."	<u>Dam Two</u> • Clearing the diversion channel of sediment and vegetation (completed) • Removal of 1000 m^3 of sediment within dam basin (completed). • Raising of the dam wall by 1m (completed). <u>Dam One</u> • Deposition of material for the dam wall (not complete).

Government Notice No. R. 327 of 7 April 2017 **Activity Number:** 48 Activity Description: "The expansion of infrastructure or structures where the physical footprint is expanded by 100 m^2 or more; or(ii) dams or weirs, where the dam or weir, including infrastructure and water surface area, is expanded by 100m^2 or more; where such expansion occurs (a) within a watercourse; or (c) if no development setback exists, within 32m of a watercourse, measured from the edge of a watercourse."	<u>Dam One</u> • Deposition of material for the dam wall (not complete).
Government Notice No. R. 324 of 7 April 2017 **Activity Number:** 4 Activity Description: "The development of a road wider than 4 m with a reserve less than 13.5 m (i) Western Cape (ii) Areas outside urban areas (aa) areas containing indigenous vegetation.	The realignment of the existing farm road (300m of this road would be inundated by the proposed dam). The existing road is 5m in width. The road would be realigned to an area containing disturbed Western Rûens Shale Renosterveld.
Government Notice No. R. 324 of 7 April 2017 **Activity Number:** 12 Activity Description: "The clearance of an area of 300 m2 or more of indigenous vegetation except where such clearance of indigenous vegetation is required for maintenance purposes undertaken in accordance with a maintenance management plan (i) Western Cape (i) Within any critically	The existing farm road would need to be realigned as 300m of this road would be inundated by the proposed dam. The road would be realigned to an area containing disturbed Western Rûen Shale Renosterveld which has the conservation status of Critically Endangered A1. The development of the road would affect a small area of Critical Biodiversity Area 1 (CBA1) and CBA2 area east of the gravel road.

endangered or endangered ecosystem listed in terms of section 52 of the NEMBA or prior to the publication of such a list, within an area that has been identified as critically endangered in the National Spatial Biodiversity Assessment 2004; (ii) Within critical biodiversity areas identified in bioregional plans".	
Government Notice No. R. 324 of 7 April 2017 **Activity Number:** 23 Activity Description: "The expansion of dams or weirs where the dam or weir is expanded by 10m^2 or more; or ii) infrastructure or structures where the physical footprint is expanded by 10m^2 or more; where such expansion occurs (a) within a water course"	The completion of the enlargement of Dam One would allow for a total storage capacity of 500 000 m³ and a 17.7m high embankment. The repair of Dam Two has been completed within 32 m of a watercourse.

4.3.5.1 Environmental impacts associated with the development

According to the section 24G Application Report submitted by the applicant to the DEADP, "the activities associated with the development, both completed and proposed, would have very low negative environmental impacts on the environment". Additionally, the direct impacts of the pipelines for the preferred scheme layout would also be very low and no mitigation is necessary. Increasing Dam Two capacity would have had a small impact on the flow of the river, given that more water could be diverted into the dam from the river. There may also have been a localised water quality impact during the works, associated with the additional available sediment during the activities. However, this is likely to have taken place during the dry season, when no impact would have occurred. According to the specialist studies submitted as part of the section 24G application, "the significance of the potential impact of the enlargement of Dam One, the relocation of the diversion structure at the dam and construction

of the pipelines would be of a low negative significance due to the existing degraded condition of the Spes Bona Tributary".

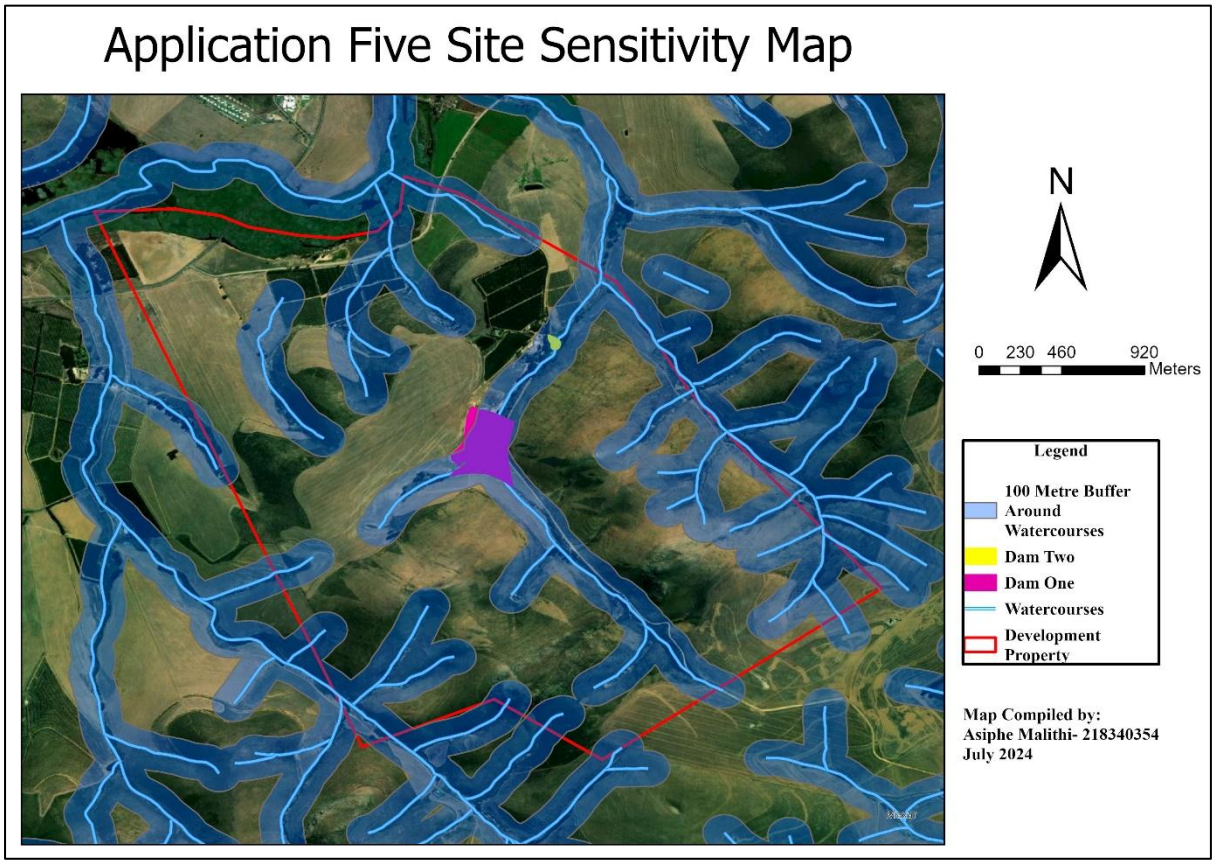

Figure 4.10: Sensitivity Map showing the two dams in relation to nearby watercourses.

The two dams associated with the project are instream dams (located along a river) (Figure 4.10). Instream dams trigger a Water Use in terms of section 21 (c) and 21 (i) of the NWA. It is mentioned in the section 24G Application Report that as part of the public participation process, "the Breede-Gouritz Catchment Management Agency (BGCMA) indicated that the above Water Use requires a Water Use Authorisation in terms of the National Water Act, 1998 (Act 36 of 1998). The available information indicates that the water user does not have a confirmed Water Use Authorisation and is therefore unlawful. The matter was therefore referred for Compliance, Monitoring and Enforcement".

4.3.5.2 DEADP Decision

In reaching their decision, the DEADP, amongst other things, considered the following:

a) "The information contained in the application form dated 26 March 2021 with supporting environmental impact assessment and mitigation measures.

b) The Environmental Management Programme of March 2021 submitted together with the section 24G application.

c) The Maintenance Management Plan of March 2021 submitted for the application.

d) Relevant information contained in the Departmental information base, including, the Guidelines on Public Participation and Alternatives.

e) The objectives and requirements of relevant legislation, policies and guidelines, including section 2 of the NEMA.

f) The comments received from Interested and Affected Parties and the responses provided thereto.

g) The sense of balance of the negative and positive impacts and proposed mitigation measures.

h) The site visit conducted on 21 October 2020 attended by officials of the Directorate: Environmental Governance".

The section 24G application was successful and retrospective environmental authorisation was granted. The DEADP held that "an Environmental Assessment Practitioner was appointed to submit a section 24G Environmental Impact Assessment to the Department to obtain Environmental Authorisation". The "EIA was considered adequate for informed decision-making. In addition, the holder paid an administrative fine of R250 000 (Two hundred and fifty thousand Rand) to meet the requirements of section 24G of the NEMA" (DEADP, 2021). The administrative calculated using the fine calculator was originally R625 000. However, based on the limited impacts associated with the project, the fine committee agreed with the recommended deviated fine amount of R250 000.

4.3.5.3 Case 5 Summary

The two dams under development are both instream dams, meaning they are built on or along a river. The enlargement of Dam One and the raising of Dam Two means that the capacity of both dams was increased. An increase in both dams' capacities translates to a direct increase in the amount of water taken from the river. Such increase could have a detrimental effect on downstream water users by limiting the amount of water reaching downstream water users. Furthermore, the construction of instream dams causes flooding upstream of the dam, resulting in the permanent destruction of terrestrial ecosystems through inundation (Mccartney et al, (2001). Instream dams also have the potential to affect downstream aquatic ecosystems

by causing changes in thermal regime, water quality and land-water interactions, resulting in changes in primary production (Mccartney et al, 2001). This has long term implications for fish and other fauna higher up the food chain.

“To mitigate the impacts associated with the development, the DEADP should have ordered the applicant to apply for Water Use Authorisation from the DWS in terms of Section 21 (c) and 21 (i)” of the NWA. Such an application would have forced the applicant to undertake an aquatic impact assessment study, identifying all the potential impacts on aquatic life and downstream water users, and coming up with sound mitigation measures. Only after such studies and after a Water Use Authorisation had been issued should the DEADP have issued the retrospection Section 24G authorisation. It is hereby concluded that the issuing of the retrospection authorisation in this case was detrimental to the environment and to the people relying on the river for their water supply downstream.

4.3.6 Case 6: Unlawful construction of chicken houses

In September 2017 Avian Influenza was contracted on the applicant’s main farm. Avian influenza, also known as bird flu, is a disease caused by certain flu viruses that usually spreads between birds. Infected birds can spread the virus through their mucous, saliva, or faeces (Centre for Disease Control and Prevention, 2022). The virus had spread to the applicant’s main farm directly from neighbouring farms that were infected. In the process the entire farm of 880,000 hens and pullets were culled as instructed by the state vet. The direct costs associated with the full culling of the farm was R32 million. Additionally, a total of 88 staff members had to be retrenched.

The holder was compelled by their main customer to come up with an imminent plan to save their market for free-range eggs. The holder was also desperate to keep the rest of their staff from becoming unemployed. The new farm was subsequently commenced with and constructed in urgency to provide the holder with cash flow to help keep their remaining contingent of staff employed and prevent the company from entering bankruptcy.

The dimensions of each chicken house building are 12m x 105m. The four chicken houses (Figure 4.11) cover a building footprint of 4 x (12m x 105m) = 5 040m^2. A total area of approximately 37236m² was cleared for the development of the chicken house facility. Each of the four free-range chicken houses has a capacity of 10 000 laying hens, resulting in a total of 40 000 chickens on the farm. The listed activities triggered by the development are summarised in Table 4.7.

Table 4.7: Listed activities triggered by the development

LISTED ACTIVITIES	ACTIVITY/ PROJECT DESCRIPTION
"Government Notice No. R. 327 of 7 April" 2017 **Activity Number:** 5 Activity Description: "The development and related operation of facilities or infrastructure for the concentration of— (i) more than 1 000 poultry per facility situated within an urban area, excluding chicks younger than 20 days; (ii) more than 5 000 poultry per facility situated outside an urban area, excluding chicks younger than 20 days; (iii) more than 5 000 chicks younger than 20 days per facility situated within an urban area; or (iv) more than 25 000 chicks younger than 20 days per facility situated outside an urban area."	The development entailed the construction of four chicken houses with more than 5000 poultry per facility (10000/chicken house).

4.3.6.1 Environmental impacts associated with the development

According to the application documents, "the development did not have any significant environmental impacts on biodiversity". The land on which the chicken houses were built had already been disturbed as it was previously used for the cultivation of wheat for the past ten (10) years. As a result, no natural vegetation was impacted upon. The site is also not within 100m of any watercourse (Figure 4.12). The only pollution created by the construction of the chicken houses was some construction rubble, which was taken to a landfill site. All manure is used for composting, and mortalities are handled and transported to a licensed facility. The construction occurred on an area that was already being used for agricultural practices for more than 10 years. The chicken houses did not impact the sense of place or any heritage sources as the development occurred on previously disturbed land.

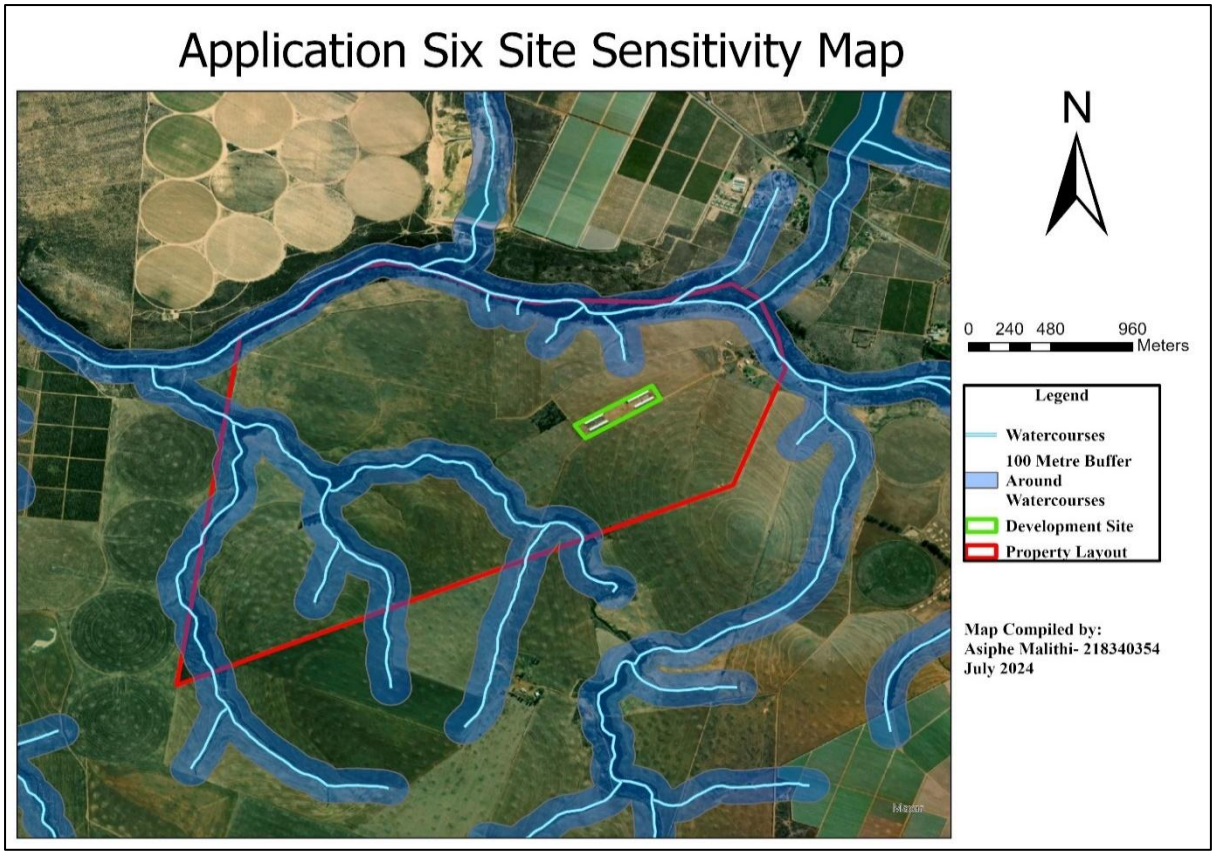

Figure 4.11: Sensitivity Map showing that the chicken houses are not located in a sensitive area.

It is indicated on the supporting documents submitted to the DEADP that “grey water from the premises is disposed of into septic tanks, which are then emptied regularly by the municipality”. The installation of septic tanks triggers a Water Use in terms of section 21 (g) of the NWA as follows:

- “section 21 (g): disposing of waste in a manner which may detrimentally impact on a water resource”.

Since the installation of the septic tanks was not authorised, possible contamination of groundwater cannot be ruled out. And since there is no authorisation, there is no ongoing groundwater monitoring on site, meaning continued groundwater pollution could be ongoing with no one noticing.

4.3.6.2 DEADP Decision

In reaching its decision, the competent authority, amongst other things, considered the following:

a) “The information contained in the application form dated 13 October 202 with supporting environmental impact assessment and mitigation measures.

b) The Operational Management Programme (“OMPr”) of May 2022 submitted together with the application.

c) Relevant information contained in the Departmental information base, including, the Guidelines on Public Participation and Alternatives.

d) The objectives and requirements of relevant legislation, policies and guidelines, including section 2 of the NEMA.

e) The comments received from Interested and Affected Parties (I&APs) and the responses provided thereto.

f) The sense of balance of the negative and positive impacts and proposed mitigation measures.

g) The site visit conducted on 27 October 2022 by officials of the Directorate: Environmental Governance”.

The section 24G application submitted by the applicant was successful and retrospective authorisation was granted for the continuation of the listed activities. The DEADP concluded that the EIA submitted by the appointed EAP was considered adequate for informed decision-making. In addition, the applicant paid an administrative fine of R100 000 (One hundred thousand Rand) to meet the requirements of section 24G of the NEMA.

4.3.6.3 Case 6 Summary

The construction of the four (4) chicken houses did not have any significant impacts on biodiversity as the site had previously been used for the cultivation of wheat. There were no ongoing impacts on land or watercourses that the authorisation sought to address or mitigate. As such, the granting of the authorisation had no beneficial environmental impacts. The granting of the authorisation, however, did have a negative impact on groundwater in that it allowed the continuation of the activities without any assessment of the potential contamination of groundwater by the septic tanks used on site. As is the norm with the traditional environmental authorisation process, applicants are required to attach on the application form proof of application to the NWA for any Water Uses triggered by the development. This ensures that all studies required for the protection of water resources are

undertaken and that the necessary mitigation measures are employed. It can therefore be concluded that the granting of retrospective environmental authorisation in this case was detrimental to the environment.

4.3.7 Case 7: Unlawful Construction of Feedlots

The application involves the construction of feedlots. The applicant initially constructed and completed feedlots of approximately 7 380 m^2 for 1 600 units of small stock (lambs). The applicant then completed the construction of additional feedlots of 6 680 m^2. The constructed feedlots increased the concentration of the small stock units from 1 600 to 3 600. The feedlots can, however, hold up to approximately 5 000 lambs. An area of approximately 1,1 hectares was cleared for the establishment of the feedlots. The triggered listed activities are shown in Table 4.8.

Table 4.8: Listed activities triggered by the development

LISTED ACTIVITIES	ACTIVITY/ PROJECT DESCRIPTION
"Government Notice No. R. 327 of 7 April" 2017 **Activity Number: 4** Activity Description: "The development and related operation of facilities or infrastructure for the concentration of animals in densities that exceed— (i) 20 square metres per large stock unit and more than 500 units per facility; (ii) 8 square meters per small stock unit and; *a.* more than 1 000 units per facility excluding pigs where (b) applies; or *b.* more than 250 pigs per facility excluding piglets that are not yet weaned;	The applicant has constructed and completed feedlots of 7 380 m^2 for 1 600 units of small stock (lambs). The applicant has also completed the construction of two additional feedlots of 4 480 m^2 and 2 400 m^2 respectively. The constructed feedlots increased the concentration of the small stock units from 1 600 to 3 600. The feedlots can however hold up to 5 000 lambs.

(iii) 30 square metres per crocodile and more than 20 crocodiles per facility; (iv) 3 square metres per rabbit and more than 500 rabbits per facility; or (v) 250 square metres per ostrich or emu and more than 50 ostriches or emus per facility".	
"Government Notice No. R. 327 of 7 April" 2017 **Activity Number: 27** Activity Description: "The clearance of an area of 1 hectare 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".	An area of approximately 1,1 hectares had been cleared for the establishment of the feedlots.

4.3.7.1 Environmental impacts associated with the development

According to the Environmental Impact Assessment done as part of the application, construction of the feedlots had no significant environmental impacts. The site cleared for construction of the feedlots was previously used for the cultivation of potatoes using the centre-pivot irrigation system. Historically, the site would have consisted of Lambert's Bay Strandveld which has a Least Concern (LC) Threat Status according to the National Vegetation Map (2018). The National Vegetation Map (NVM) is a spatial model of the historical extent of South Africa's vegetation types and is a key surrogate data set for the terrestrial ecosystem types (Dayaram et al, 2019). The development does not have any negative impacts on water resources as it is not situated in a sensitive area (Figure 4.12), and does not undertake any water abstraction or wastewater disposal.

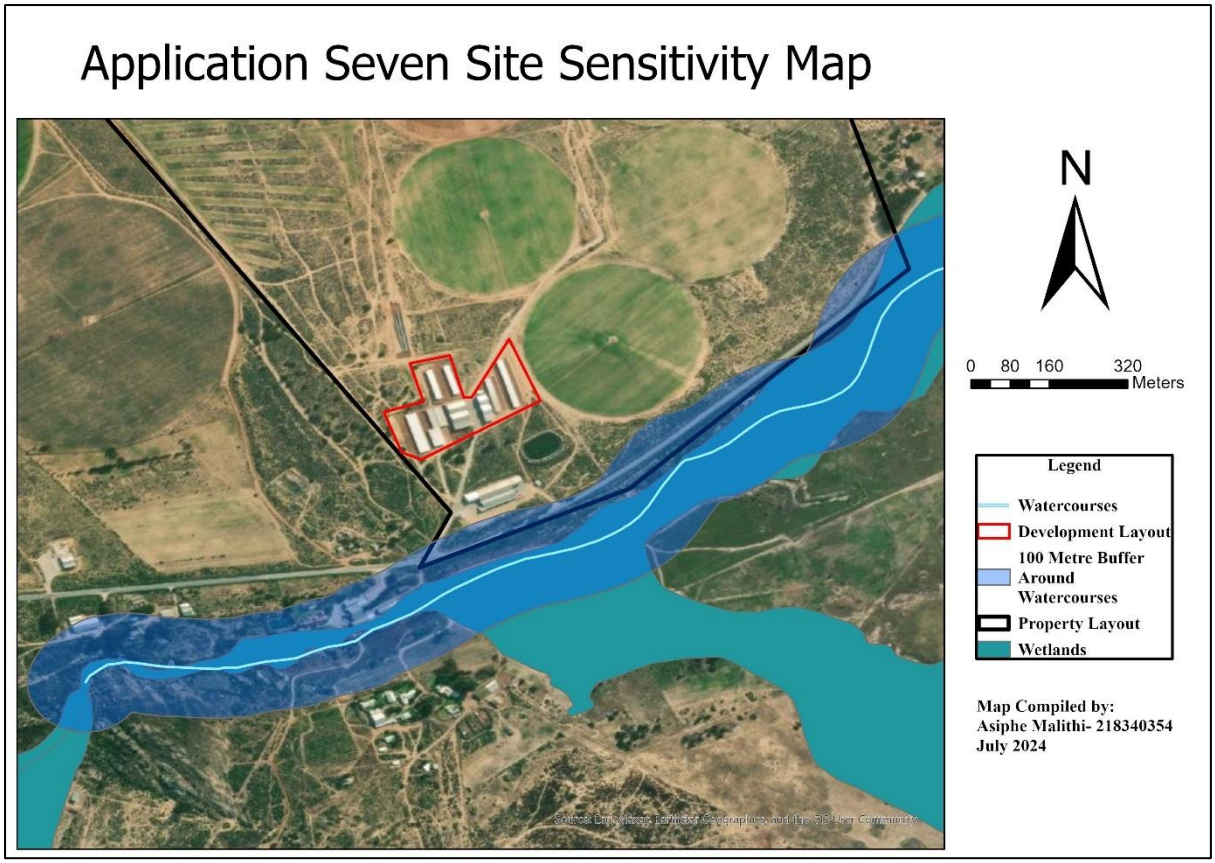

Figure 4.12: Sensitivity map showing that the development is not located in a sensitive area

4.3.7.2 DEADP Decision

In reaching their decision, the DEADP, amongst other things, considered the following:

a) "The information contained in the application form dated 25 July 2022 and the additional information received by the competent authority on 16 February 2023.

b) An Environmental Management Programme dated 29 July 2022 submitted together with the application form.

c) Relevant information contained in the Departmental information base, including, the Guidelines on Public Participation and Alternatives.

d) The objectives and requirements of relevant legislation, policies and guidelines, including section 2 of the NEMA.

e) The comments received from Interested and Affected Parties and the responses provided thereto.

f) The sense of balance of the negative and positive impacts and proposed mitigation measures.

g) The site visit conducted on 27 October 2022 by officials of the Directorate: Environmental Governance".

After the above was considered, the application submitted by the applicant was successful and retrospective environmental authorisation was granted to the applicant for the continuation of activities at the feedlots. The applicant paid an administrative fine of R10 000.

4.3.7.3 Case 7 Summary

The development did not have any negative environmental impacts since the site had previously been disturbed and used for the cultivation of potatoes. The site was also not situated in a sensitive area and did not threaten any water resources. Through the public participation process of the section 24G application, the applicant engaged with different stakeholders such as Cape Nature, the relevant Local and District Municipality, and the Department of Health. Comments from these stakeholders ensured that the activities will be carried out in a manner that is not detrimental to the environment nor to the livestock. It was also emphasised that the applicants' activities should not impact the nearby river. It can be concluded in this case, therefore, that the granting of the retrospective environmental authorisation was beneficial to the environment.

4.3.8 Case 8: Unlawful composting facility

The application entails the unlawful clearance of vegetation and the development of infrastructure for the operation of a composting facility. The site was historically used for vegetable production and is located within the Philippi Horticultural area. At the time of the section 24G application, the applicant was in the process of applying for the town planning rights to establish and operate an organic waste processing and composting facility.

The DEADP: Environmental Law Enforcement had issued the applicant with a Pre-Compliance Notice for the unlawful clearing of indigenous vegetation and site preparation without the necessary Environmental Authorisation at the proposed Waste Composting Facility. Remnants of dune thicket of the False Bay sub-type of Cape Flats Dune Strandveld were cleared on site.

The following had already been completed in terms of the activity and associated infrastructure:

• “The site had been prepared for the receiving, storing, screening and chipping of general organic waste.

• The refurbishment of two existing structures on the site.

• Establishment of a parking area for Waste Carrier vehicles on site.

• Construction of an Administrative building”.

The following was still to be completed in terms of the activity and associated infrastructure:

• “Formalizing the entrance area to the facility (The entrance gate would be set back into the site to allow for a receiving / standing area for trucks entering / leaving the site).

• Construction of a weigh bridge.

• Formalization of a chipped green area.

• Construction of a mixing slab.

• Development of a leachate pond and detention pond.

• Establishment of areas for active composting, compost curing, and in-vessel composting.

• Formalization of a product storage area, loading area, equipment yard, workshop and service area”.

The composting facility, as per the preferred alternative, would make use of windrow composting techniques in combination with two in-vessel composting units. The composting facility would primarily process chipped garden waste mixed with manures, food and food processing wastes. Some green waste chipping would occur on site. The facility would also process untreated chipped timber waste, sawdust and other carbon rich materials. In addition to the chipped garden waste, the facility would also process other organic wastes, including abattoir waste. It was not anticipated that the facility would process hazardous wastes. Abattoir waste received and processed would be less than 1 ton of raw materials per day. As such, this activity listed in the National Environmental Management: Air Quality Act, 2004 (Act 39 of 2004) (NEM: AQA) would not be triggered and an atmospheric emissions licence would thus not be required, according to the issued section 24G authorisation.

Table 4.9: Listed activities triggered by the development

LISTED ACTIVITIES	ACTIVITY/ PROJECT DESCRIPTION
"Government Notice No. R. 983 of 4" December 2014 **Activity Number: 8** Activity Description: "The development and related operation of hatcheries or agro-industrial facilities outside industrial complexes where the development footprint covers an area of 2 000 square metres or more".	A formal composting facility which utilizes and receives organic agricultural and industrial waste material was established. The facility is located outside an industrial complex and within the Philippi Horticultural area.
"Government Notice No. R. 983 of 4" December 2014 **Activity Number: 12** Activity Description: "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; *(a)* within a watercourse; *(b)* in front of a development setback; or if no development setback exists, within 32 metres of a watercourse, measured from the edge of a watercourse".	A dirty water detention pond with a capacity of 1100m³ and a clean water detention pond with a capacity of 375m³ will be required for the facility. This is based on the 24hr, 1:50 year rainfall event.

"Government Notice No. R. 983 of 4" December 2014 **Activity Number:** 27 Activity Description: "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".	DEA&DP: Environmental Law Enforcement issued the applicant with a Pre-Compliance Notice for the unlawful clearing of indigenous vegetation and site preparation without the necessary Environmental Authorisation at the proposed Organic Waste Composting Facility. Remnants of dune thicket of the False Bay sub-type of Cape Flats Dune Strandveld were cleared on site. On the east side there has been significant mechanical clearing of vegetation to the foot of the dune for at least the northern two-thirds of the length of the dune.
"Government Notice No. 984 of 4" December 2014 **Activity Number: 28** Activity Description: "Residential, mixed, retail, commercial, industrial or institutional developments where such land was used for agriculture, game farming, equestrian purposes or afforestation on or after 01 April 1998 and where such development: (i) will occur inside an urban area, where the total land to be developed is bigger than 5 hectares; or (ii) will occur outside an urban area, where the total land to be developed is bigger than 1 hectare; excluding where such land has already been	A formal composting facility which utilizes and receives organic agricultural and industrial waste material. The facility is located outside an industrial area and within the Philippi Horticultural area.

developed for residential, mixed, retail, commercial, industrial or institutional purposes".	
"Government Notice No. 985 of 4" December 2014 **Activity Number: 12** Activity Description: "The clearance of an area of 300 square metres or more of indigenous vegetation except where such clearance of indigenous vegetation is required for maintenance purposes undertaken in accordance with a maintenance management plan. i. Western Cape i. Within any critically endangered or endangered ecosystem listed in terms of section 52 of the NEMBA or prior to the publication of such a list, within an area that has been identified as critically endangered in the National Spatial Biodiversity Assessment 2004; *ii*. Within critical biodiversity areas identified in bioregional plans; *iii*. Within the littoral active zone or 100 metres inland from high water mark of the sea or an estuarine functional zone, whichever distance is the greater, excluding where such removal will occur behind the development setback line on erven in urban areas;	DEA&DP: Environmental Law Enforcement issued the applicant with a Pre-Compliance Notice for the unlawful clearing of indigenous vegetation and site preparation without the necessary Environmental Authorisation at the proposed Organic Waste Composting Facility. Remnants of dune thicket of the False Bay sub-type of Cape Flats Dune Strandveld were cleared on site. On the east side there has been significant mechanical clearing of vegetation to the foot of the dune for at least the northern two-thirds of the length of the dune.

iv. On land, where, at the time of the coming into effect of this Notice or thereafter such land was zoned open space, conservation or had an equivalent zoning; or *v*. On land designated for protection or conservation purposes in an Environmental Management Framework adopted in the prescribed".	
"Government Notice No. 985 of 4" December 2014 **Activity Number: 14** Activity Description: "The development of— (i) dams or weirs, where the dam or weir, including Infrastructure and water surface area exceeds 10 square metres; or (ii) infrastructure or structures with a physical footprint of 10 square metres or more; where such development occurs— *(a)* within a watercourse; in front of a development setback; or (c) if no development setback has been adopted, within 32 metres of a watercourse, measured from the edge of a watercourse; i. Western Cape i. Outside urban areas: (dd) Sensitive areas as identified in an environmental management framework as	A dirty water detention pond with a capacity of 1100m³ and a clean water detention pond with a capacity of 375m³ is required for the facility. This is based on the 24hr, 1:50 year rainfall event.

contemplated in chapter 5 of the Act and as adopted by the competent authority; (ff) Critical biodiversity areas or ecosystem service areas as identified in systematic biodiversity plans adopted by the competent authority or in bioregional plans";	

4.3.8.1 Environmental impacts associated with the development

The commencement of the activity has impacted upon approximately 3 - 5m^2 of an area mapped as Cape Flats Dune Strandveld and a Critical Biodiversity Area (CBA): Terrestrial. Critical Biodiversity Areas are areas required to meet biodiversity targets for ecosystems, species, and ecological processes, as identified in a systematic biodiversity plan (South African National Biodiversity Institute, 2024). Critical Biodiversity Areas are located on the site; however, a botanical specialist who was consulted found no species of conservation concern and supported the clearing of remnant natural vegetation to allow for the proposed development. In terms of the latest layout and plans, the vegetated dune will be substantially retained.

The limited activities that were commenced with have not produced any pollution. The activity will not give rise to any pollution, given that the applicant (as the holder of the environmental authorisation) will implement all necessary recommendations by the specialists, as well as in the Construction and Operational EMPr's for the site. These mitigation measures relate to management of stormwater to prevent the pollution of freshwater and groundwater resources, as well as recommendations to prevent any noise and atmospheric pollution. The dirty water detention pond will contain stormwater that has passed through the composting operations but has not been used in the operation itself. Such water is not classified as wastewater but rather stormwater still because it has not been used in the operation. As such, no Water Use is triggered in terms of section 21 (g) of the NWA.

The site is located in a sensitive area which falls within a 500-metre radius of a wetland (Figure 4.13). As such, the activity triggers section 21 (c) and 21 (i) of the NWA. The applicant was issued a General Authorisation for section 21 (c) and (i) by the DWS. The General Authorisation was submitted to the DEADP as part of the supporting documents.

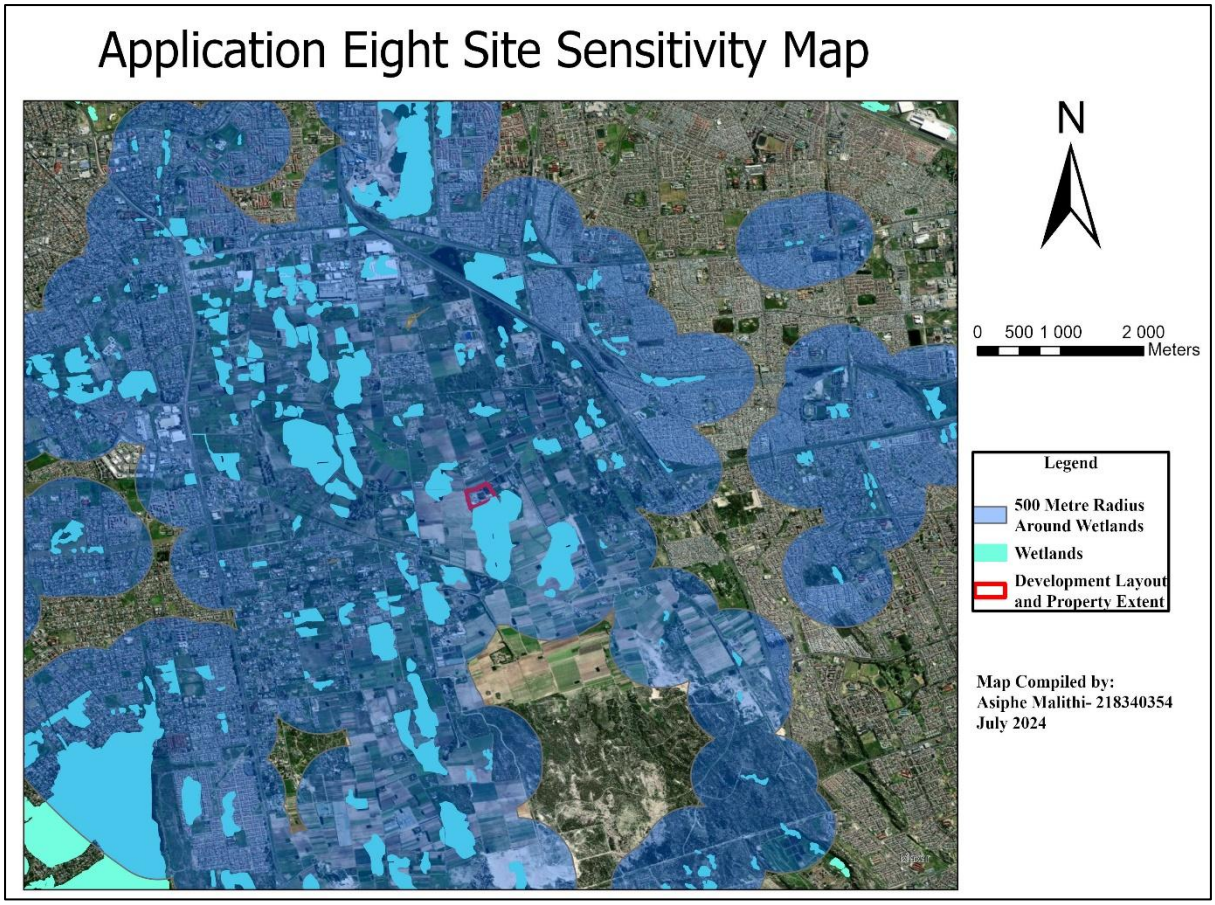

Figure 4.13: Sensitivity Map showing that the development site is in a sensitive area with wetlands.

The entire area within which the development site is located (demarcated in red in Figure 4.13) is a sensitive site surround by wetlands. As such, it is crucial that all the specialist recommendations submitted as part of the section 24G application are strictly adhered to.

4.3.8.2 DEADP Decision

In reaching its decision, the DEADP, amongst other things, considered the following:

a) "The information contained in the section 24G application dated 22 October 2021 with supporting environmental impact assessment and mitigation measures.

b) The Construction Environmental Management Programme of October 2021 submitted for the application.

c) The Operational Environmental Management Programme of October 2021 submitted for the application.

d) The Dune Restoration Plan and Odour Management Plan of August 2021 respectively, submitted for the application.

e) Relevant information contained in the Departmental information base, including, the Guidelines on Public Participation and Alternatives.

f) The objectives and requirements of relevant legislation, policies and guidelines, including section 2 of the NEMA.

g) The comments received from Interested and Affected Parties and the responses provided thereto.

h) The sense of balance of the negative and positive impacts and proposed mitigation measures.

i) The site visit conducted on 18 November 2021 attended by Officials of the Department".

After the above was considered, the application submitted by the applicant was successful and retrospective environmental authorisation was granted to the applicant for the continuation of activities at the composting facility. The applicant paid an administrative fine of R50 000.

4.3.8.3 Case 8 Summary

The issuing of the retrospective environmental authorisation in this case was beneficial to the environment. The specialist studies and public participation process that were undertaken in compliance with the section 24G application process ensured the identification of all potential environmental impacts, both terrestrial and aquatic. The studies led to the development of a EMPr that contains mitigation measures. The conditions attached to the environmental authorisation, the EMPr, and the comments from interested and affected parties, will prevent any potential environmental impacts that the development would have caused in the future had the section 24G application not been lodged.

4.3.9 Case 9: Unlawful clearance of vegetation and establishment of pilot wood chip burn-off plant

The entire development property was cleared to establish a waste management facility for the recycling of general waste, initially a pilot plant for the wood chip burn-off process. The area of the pilot plant, including all equipment, storage areas and portacabin- and shipping-container type structures (storage container, laboratory, office), is approximately 2552m^2 in extent.

According to the section 24G application documents, wood chip is a product sourced from ore mines. It's composed mostly of ore fines that are lost during the mining process and is recovered from haulage drains. It is contaminated with wood present as fine splinters, that comes from the wood pack roof supports destroyed during blasting and related mining activities. The initial purpose of the facility was to burn off the wood content present in the wood chip feedstock and to screen and resize the resulting product. The product is then returned to the mine for metal recovery.

After the initiation of the section 24G application and the ceasing of operations at the pilot plant in July 2021, the applicant determined, based on analysis of the plant output, that the processing of the wood chip is not commercially viable. The site and pilot plant infrastructure will therefore be utilised for the processing of alternative waste and product streams.

Table 4.10: Listed activities triggered by the development

LISTED ACTIVITIES	ACTIVITY/ PROJECT DESCRIPTION
"Government Notice No. R. 327 of 7 April" 2017 **Activity Number: 27** Activity Description: "The clearance of an area of 1 hectare 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".	The entire development property was cleared for the purposes of establishing the wood chip burn-off pilot plant. About 75% of the site falls within the Atlantis Sand Fynbos ecosystem (Endangered), and about 25% falls within the Cape Flats Dune Strandveld ecosystem (Endangered).

"Government Notice No. R. 324 of 7 April" 2017 **Activity Number: 12** Activity Description: "The clearance of an area of 300 square metres or more of indigenous vegetation except where such clearance of indigenous vegetation is required for maintenance purposes undertaken in accordance with a maintenance management plan. i. Western Cape i. Within any critically endangered or endangered ecosystem listed in terms of section 52 of the NEMBA or prior to the publication of such a list, within an area that has been identified as critically endangered in the National Spatial Biodiversity Assessment 2004".	The entire development property was cleared for the purpose of establishing a waste management facility for the recycling of general waste. Initially the intention was a wood chip burn-off pilot plant. About 75% of the site falls within the Atlantis Sand Fynbos ecosystem (Endangered), and about 25% falls within the Cape Flats Dune Strandveld ecosystem (Endangered).
"Government Notice No. 921 of 2014" Category A – **Activity Number: 3** Activity Description: "The recycling of general waste at a facility that has an operational area in excess of 500m^2, excluding recycling that takes place as an integral part of an internal manufacturing process within the same premises".	The development property was cleared for the establishment of a waste management facility for the recycling of general waste. The "wood chip" burn-off process yielded a raw material which was transported to third parties for further processing.
"Government Notice No. 921 of 2014" Category A – **Activity Number: 12** Activity Description: "The construction of a facility for a waste management activity listed in Category A of this Schedule".	The development entails the construction of a facility for a listed waste management activity.

4.3.9.1 Environmental impacts associated with the development

According to the Botany Specialist Report submitted as part of the application, “the activity resulted in the levelling and removal of approximately 0.25 hectares (ha) medium sensitivity vegetation and faunal habitat; and loss of about 0.75 ha of low sensitivity vegetation and faunal habitat”. All vegetation was of Endangered type. It was further stated, however, that the indigenous vegetation on the site is not regionally significant, it is a very small site, partly degraded, representative of a type that is still fairly extensive in the region, adjacent to development and does not support any significant populations of plant or vertebrate Species of Conservation Concern. The overall cumulative ecological impact of the loss of all vegetation and faunal habitat in the study area is concluded to be Very Low negative. No special mitigation was therefore required as a result of the clearance.

With regards to water abstraction and wastewater disposal, the City of Cape Town had confirmed that it has the capacity to provide connections for water supply and sewerage reticulation to the development property. As such, there are no anticipated impacts on water resources.

According to the Atmospheric Impact Report (AIR) submitted in support of the application the AIR had been conducted in accordance with an approved regulatory air dispersion model, being AERMOD. A Level 2 assessment was conducted, in accordance with the requirements for the site activities.

National Ambient Air Quality Standards were predicted to be exceeded at the fence line, for the following pollutants: - Nitrogen dioxide (NO2); Particulate Matter (PM10) & (PM2.5). These exceedances had been attributed to the use of onsite power Generators for the power supply to run the plant. In addition, the Kiln Baghouse stack was deemed a significant contributor to the NO2 emissions. Multiple sources of fugitive dust emissions from the site and activities being undertaken also contribute to the PM exceedances.

In response to the above, it was suggested by the City of Cape Town: Specialised Environmental Health Services that “the root causes for the ambient air quality standards being exceeded will need to be addressed for the application to be positively considered from an Air Quality Management perspective”. In this regard, an alternative source of electricity supply will need to be provided to avoid the emissions emitted by the Generator. The AIR should model scenarios with the generator in operation; and an alternative scenario should be modelled showing the predicted ground level concentrations of pollutants, without the generator being operated and the facility running on grid supplied electricity.

According to the Freshwater Risk Assessment (FRA) “the site lies approximately 300 metres away from a wetland depression but does not fall within the wetland area”. According to the (FRA) “no significant impacts were found other than potential groundwater contamination due to inadequate handling and storage of diesel on-site”. A stormwater Management Plan was then developed for the site whereby dirty stormwater was proposed to be diverted by swales and berms to a lined detention basin.

The development site falls within a 500-metre radius of a wetland (Figure 4.14). Any activity happening with a 500-metre radius of a wetland requires authorisation in terms of section 21 (c) and 21 (i) of the NWA. Such an authorisation was never applied for as part of the section 24G application process.

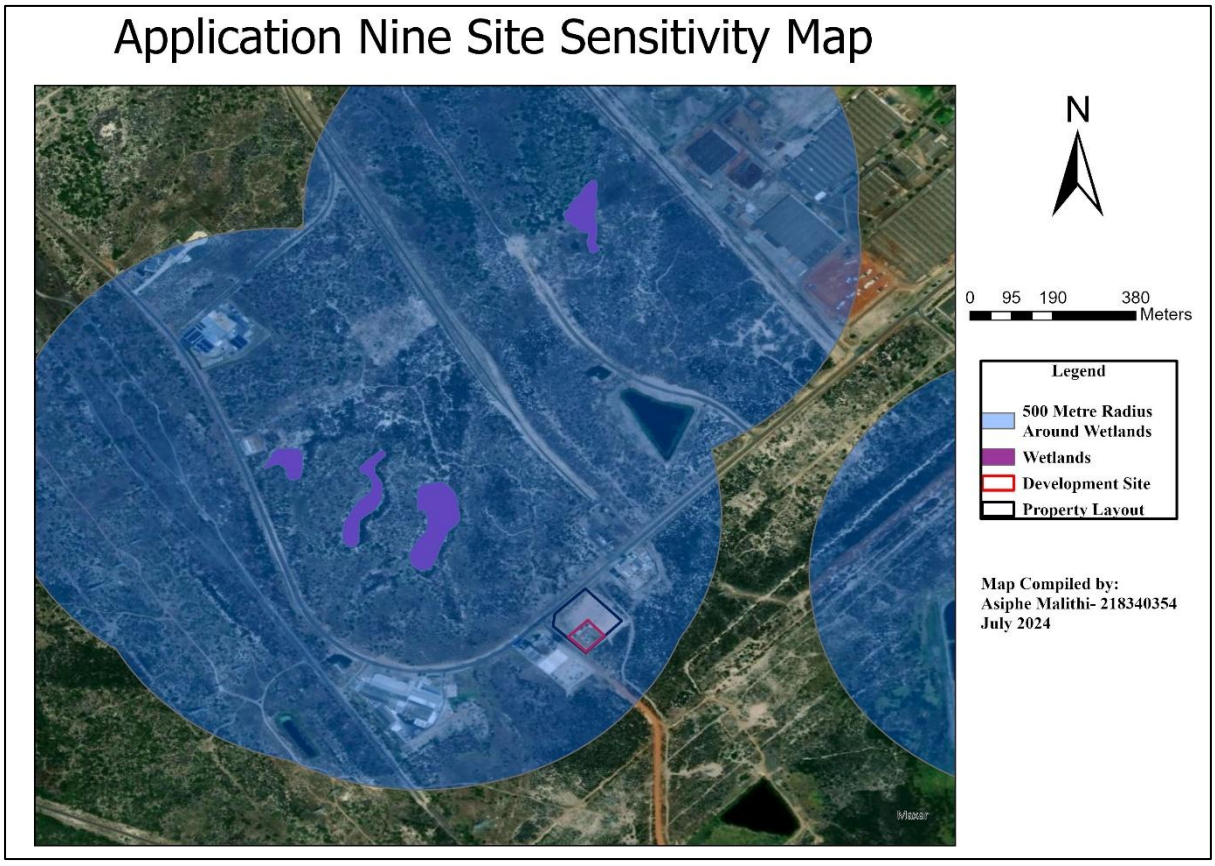

Figure 4.14: Sensitivity Map showing that the wetland falls within a 500-meter radius of a wetland

4.3.9.2 DEADP Decision

In reaching their decision, the DEADP, amongst other things, considered the following:

a) “The information contained in the initial application and assessment report dated 29 July 2022 and the revised section 24G application dated 13 April 2023 with supporting environmental impact assessment and mitigation measures.

b) The Environmental Management Programme dated 04 November 2022 submitted together with the section 24G application.

c) Relevant information contained in the Departmental information base, including, the Guidelines on Public Participation and Alternatives.

d) The objectives and requirements of relevant legislation, policies and guidelines, including section 2 of the NEMA.

e) The comments received from Interested and Affected Parties and the responses provided thereto.

f) The sense of balance of the negative and positive impacts and proposed mitigation measures.

g) The site visit conducted on 27 October 2022 by officials of the Directorate: Environmental Governance”.

After the above was considered, the application submitted by the applicant was successful and retrospective environmental authorisation was granted to the applicant for the continuation of activities at the composting facility. The applicant paid an administrative fine of R100 000.

4.3.9.3 Case 9 Summary

The granting of the environmental authorisation in this case had a lot of benefits to the environment from all aspects of the environment: air quality, waste management, biodiversity conservation, and water resource protection. The section 24G application process triggered specialist studies focusing on emissions, solid and hazardous wastes, biodiversity impacts, as well as water resource impacts emanating from the project. Such studies were incorporated in the conditions attached to the section 24G authorisation granted to the applicant, which helped ensure that mitigation measures are undertaken to minimise any potential impacts to the environment. The applicant, however, failed to apply for authorisation for working within a 500-metre radius of a wetland, and the section 24G authorisation was granted, nonetheless. Overall, the granting of the section 24G environmental authorisation was beneficial to the environment.

4.3.10 Case 10: Unlawful construction of a dwelling and additional infrastructure within the 100m Highwater Mark

In 2011, the applicant had commenced with the construction of a house within the 100m highwater mark. An additional accommodation unit and social/recreational area was previously constructed between 2004 and 2006. Both the main house and the additional structure were constructed closer than 100m from the high-water mark of the sea as determined by the land surveyor. The structures were larger than 50m^2 in total. Combined, they totalled an area of approximately 1300m^2. The activity is identified in terms of Listing Notice 1 of Government Notice No. R544 of 18 June 2010, as shown in Table 4.11

Table 4.11: Listed activities triggered by the development

LISTED ACTIVITIES	ACTIVITY/ PROJECT DESCRIPTION
"Government Notice No. R544 of 18 June" 2010- **Activity Number: 16** Activity Description: "Construction or earth moving activities in the sea, an estuary, or within the littoral active zone or a distance of 700 metres inland of the high-water mark of the sea or an estuary, whichever is the greater, in respect of — fixed or floating jetties and slipways; (ii) tidal pools; (iii) embankments; (iv) rock revetments or stabilising structures including stabilising walls; (v) buildings of 50 square metres or more; (vi) infrastructure covering 50 square metres or more — but excluding (a) if such construction or earth moving activities will occur behind a development setback line; or	In 201 1, Mr Emslie commenced with the construction of a house on the southern portion of the site. An additional accommodation unit and social/recreational area was constructed between 2004 and 2006. Both the main house and the additional structure was constructed closer than 100m from the high-water mark of the ocean as determined by the land surveyor. The structures were larger than 50m ^{2} in total. Combined they totalled an area of approximately 1 300m ^{2}. Subsequent to the submission of the 24G application; during the period that the environmental impact assessment, with specialist studies was being undertaken; the unlawfully constructed structures were burnt down, excluding the look-out deck and braai area. Following this burning incident, the development footprint where the main

(b) where such construction or earth moving activities will occur within existing ports or harbours and the construction or earth moving activities will not increase the development footprint or throughput capacity of the port or harbour; where such construction or earth moving activities is undertaken for purposes of maintenance of the facilities mentioned in (i)-(vi) above; or (d) where such construction or earth moving activities is related to the construction of a port or harbour, in which case activity 24 of Notice 545 of 20 70 applies".	house had been built was cleared, except for the chimney. The area was subsequently infilled with shell material.
"Government Notice No. R544 of 78 June" 2010 **Activity Number: 18** Activity Description: "The infilling or depositing of any material of more than 5 cubic metres into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock of more than 5 cubic metres from: (i) a watercourse; (ii) the sea; (iii) the seashore; (iv) the littoral active zone, an estuary or a distance of 100 metres inland of the high- water mark of the sea or an estuary, whichever distance is the greaterbut excluding where such infilling, depositing, dredging, excavation, removal or moving;	In 2011, the applicant commenced with the construction of a house on the southern portion of the site. An additional accommodation unit and social/recreational area was constructed between 2004 and 2006. Both the main house and the additional structure was constructed closer than 100m from the high-water mark of the ocean as determined by the land surveyor. The structures were larger than 50m ^{2} in total. Combined they totalled an area of approximately 1 300m ^{2}. Subsequent to the submission of the 24G application; during the period that the environmental impact assessment, with specialist studies was being undertaken; the unlawfully constructed structures were

(a) is for maintenance purposes undertaken in accordance with a management plan agreed to by the relevant environmental authority; or (b) occurs behind the development setback line".	burnt down, excluding the look-out deck and braai area. Following this burning incident, the development footprint where the main house had been built was cleared, except for the chimney. The area was subsequently infilled with shell material.

4.3.10.1 Environmental impacts associated with the development

Around the dwelling, the vegetation was cleared to varying degrees. Also important is the proximity of the development to the High-Water Mark (HWM) (within 30-35m of the HWM) and it being located close to the frontal dunes, within the coastal management zone (Figure 4.15). A High-Water Mark is defined as the highest line reached by coastal waters, but excluding any line reached as result of exceptional or abnormal weather or sea conditions, or an estuary being close to the sea (Williams, 2021). Due to the undisturbed nature of the vegetation on site, and the coastal impacts thereof, a localised biodiversity impact has been identified. The structures constructed on site indicates the lack of consideration given to the effects of climate change, as well as the impacts of such structures on the coastal environment.

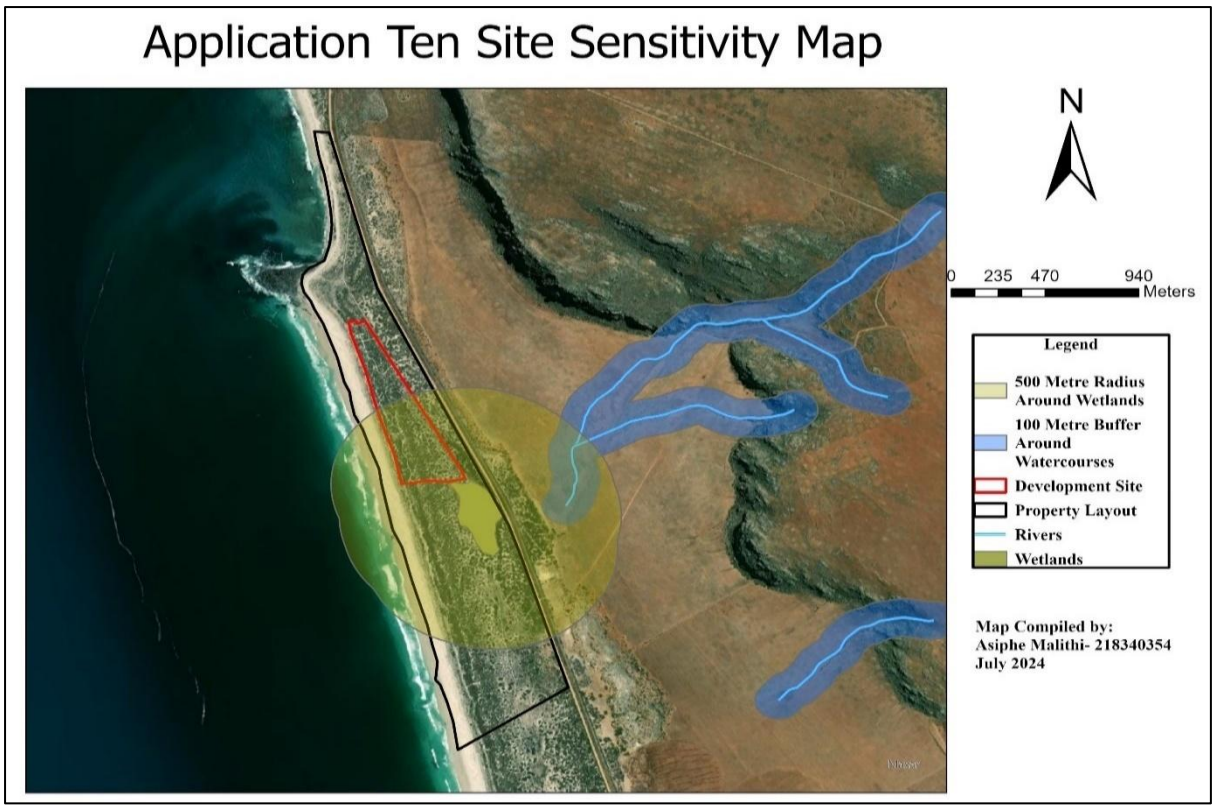

Figure 4.15: Development Layout and Sensitivity Map

Additionally, the environment was further altered subsequent to the submission of the section 24G application, with the infilling of shell material on the site of the burnt dwelling in 2018. This was confirmed to have triggered a listed activity in terms of the NEMA 2014 regulations.

The development also had some visual and sense of place impacts. The sense of place impact relates to the Mike Taylors Midden, which was declared a Provincial Heritage Site. The development had a low visual impact on the midden and there were concerns that increasing the size of height of the cabins and the creation of further caravan sites would have a negative aesthetic impact. Any increase in the size and bulk of structures and camps had the potential to increase the visual impacts and reduce the aesthetic qualities of the Provincial Heritage Site.

4.3.10.2 DEADP Decision

In reaching their decision, DEADP, amongst other things, considered the following:

a) “The information contained in the application form dated 07 June 2012, the Environmental Impact Assessment and Mitigation Report dated 4 December 2015, the Environmental Management Programme submitted together with the EIA report,

and the requested additional information dated 24 April 2018 and 18 July 2019, respectively.

b) Due consideration of the objectives and principles as outlined in section 2 of the NEMA.

c) The comments received from Interested and Affected Parties and the responses provided thereto. In particular, the comments received from organs if state, such as CapeNature, Heritage Western Cape and West Coast District Municipality.

d) Due consideration of the sense of balance of the negative and positive impacts of the activities on the receiving environment.

e) The site visit conducted on 10 June 2016 and 26 February 2019 attended by DEADP officials.

f) Consideration that the main dwelling and infrastructure has burnt down subsequent to the submission of the Final EIR.

g) Compliance history of the applicant".

After the above was considered, the section 24G application was unsuccessful and retrospective authorisation was refused by the DEADP. In processing the application, the DEADP had required that the applicant pays an administrative fine of R175 000. After the retrospective authorisation had been refused by the DEADP, the applicant was ordered to comply with the following:

1. "Ensure that rehabilitation of the site is completed within one (1) year of the refusal decision.
2. Appoint a suitably experienced Environmental Control Officer (ECO) or Coastal Ecological Specialist (CES) within one (1) month of the refusal decision and before starting with any rehabilitation.
3. The duties of the appointed ECO or CES must include, but not be limited to, the following:
   3.1 Monitor compliance to the conditions and rehabilitation instructions of the refusal decision.
   3.2 Facilitate the implementation of rehabilitation of the disturbed areas of the site.
   3.3 Facilitate the appointment of additional relevant specialist(s) to assist in achieving rehabilitation of the activities on site, if required.

3.4 Compile and submit the rehabilitation progress reports, as determined by the ECO/CES.

3.5 Compile and submit final report confirming the rehabilitation process has been completed.

4. All permanent and temporary structures and infrastructure that were constructed by the applicant must be removed, and vegetation must be allowed to re-establish on the disturbed areas.
5. The shell material deposited at the site of the burnt dwelling must be removed and the area must be allowed to return to its original vegetated state prior to construction of the dwelling.
6. All previously disturbed, natural areas of the site must be designated as “NO-GO” areas to prevent activities which may result in degradation during the rehabilitation process.
7. All other natural areas surrounding the site of the structures and infrastructure must be maintained to remain and intact and protected.
8. All alien vegetation species found on site must be eradicated and disposed of at a registered landfill site. Control measures to prevent further spread of the alien vegetation species must also be put in place.
9. Only indigenous plant species, preferably species that are indigenous to the naturally occurring vegetation of the area, should be used for rehabilitation.
10. Upon completion of the rehabilitation of the site, a detailed final report must be compiled and submitted to the Department within thirty (30) days of completion. The report must include, but not be limited to the following information:

    10.1 Confirmation that the site has been rehabilitated in accordance with these conditions.

    10.2 Details of any environmental incident encountered during the rehabilitation process.

    10.3 Details of any deviations from the approved plan (if any) and reasons.

    10.4 Confirmation of appropriate disposal of waste generated on site”.

4.3.10.3 Case 10 Summary

The development was undertaken in an area that was zoned as a development area, but rather as a Provincial Heritage Area. Since the area was not zoned for any developments, the land had not previously been disturbed and contained important indigenous vegetation. The clearing of such vegetation for the establishing of a dwelling by the applicant had a

detrimental impact on the environment. Had the section 24G application been granted, then such a decision would set a precedent that would encourage people to set up more structures within 100 metres of a High-Water Mark and in areas not zoned for developments. That would result in large scale destruction of coastal vegetation. The conditions attached to the refusal decision ensured that the disturbed vegetation on site will be rehabilitated to its original state and that environmental impacts associated with the project would be minimised. It is therefore concluded that the refusal of the section 24G authorisation in this case was beneficial to the environment.

4.4 THE OVERALL EFFECTIVENESS OF SECTION 24G AS AN ENVIRONMENTAL PROTECTION TOOL

The aim of the study was to determine the effectiveness of section 24G of the NEMA as an environmental protection tool in the Western Cape Region. Such determination would be achieved through conducting interviews with DEADP personnel and private environmental consultants with experience dealing with section 24G applications, as well as by reviewing a set of section 24G applications obtained from the DEADP. The review of the section 24G applications would enable the determination of whether the granting/refusal of retrospective authorisation in each application was beneficial or detrimental to the environment. From the findings obtained from all the applications reviewing, it would then be possible to look at the applications holistically and determine the overall effectiveness of section 24G of the NEMA.

From the interviews that were conducted, 100% of the participants (from both DEADP and private sector) responded that based on their experiences, they are of the view that section 24G is beneficial to the environment and is effective as an environmental protection tool (Chapter 4.2). With regards to the ten (10) section 24G applications that were reviewed, it was concluded that the section 24G was beneficial to the environment only on six (6) applications, while on the other four (4) applications it was concluded that the granting of the section 24G authorisation had adverse effects on the environment.

Table 4.12: Summary of findings on the sample section 24G applications

CASE	DECISION	IMPACT ON THE ENVIRONMENT	SECTION 24G EFFECTIVENESS
1. Unlawful development of a	Authorisation Granted.	The granting of the authorisation led to the	The granting of section 24G was

tourist accommodation and recreational facility.		possible contamination of groundwater through the use of six septic tanks, and possible impacts on surface water since the project is located in close proximity to wetlands. No studies were undertaken to address these concerns.	detrimental to the environment, and section 24G was not effective as an Environmental Protection Tool.
2. Unlawful upgrading of an informal settlement.	Authorisation Granted.	The granting of the authorisation allowed for the upgrade of informal settlements into formal houses with sewer reticulation systems and solid waste collection services. This has prevented the possible contamination of the environment with sewage and solid waste improperly disposed of from the informal settlements.	The granting of section 24G authorisation was beneficial to the environment and section 24G in this case was effective as an environmental protection tool.
3. Unlawful clearing of vegetation and creation of recreational racetracks.	Authorisation Granted.	The activity was created on an area that is classified as a wetland. However, no authorisation was applied for in terms of the NWA, which would have required an aquatic impact study to be conducted. The effects of the development on the wetland remain unaddressed.	The issuing of the authorisation in this case was detrimental to the environment and section 24G was not effective in protecting the environment.

4. Unlawful infilling of a wetland for a housing development.	Authorisation Granted.	The section 24G application process resulted in the rehabilitation, improvement, and fencing off the wetland. It also resulted in the application of a Water Use Authorisation for working within a 500-metre radius of a wetland.	The section 24G process was beneficial to the environment and effective in protecting the environment.
5. Unlawful enlargement and raising of dams.	Authorisation Granted.	The granting of the section 24G authorisation allowed the applicant to continue with the enlargement and raising of the dams. Since the dams are instream, the development has the potential to reduce the quantity and quality of water available to downstream water users dependant on the affected river. No studies were undertaken to mitigate the above.	The issuing of the authorisation was detrimental to the environment and was not effective as an environmental protection tool in this case.
6. Unlawful construction of chicken houses.	Authorisation Granted.	The granting of the authorisation allowed the applicant to continue with their activities, which include the use of septic tanks on the property, without any studies to determine the potential impacts of the septic tanks on groundwater.	The issuing of the authorisation was detrimental to the environment and was not effective as an environmental protection tool in this case.

7. Unlawful construction of feedlots.	Authorisation Granted	The public participation aspect of the section 24G application process led to the incorporation of comments from various stakeholders such as Cape Nature, the Local and District Municipality, as well as the Department of Health into the issued environmental authorisation conditions. Such conditions will ensure that the activities are carried out in a manner that does not harm the environment.	The section 24G process was beneficial to the environment and effective in protecting the environment
8. Unlawful clearance of vegetation and development of a composting facility.	Authorisation Granted.	The specialist studies, the EMPr and public participation process that were undertaken in compliance with the section 24G application process ensured that all potential environmental impacts associated with the project were identified and addressed.	The section 24G process was beneficial to the environment and effective in protecting the environment.
9. Unlawful clearance of vegetation and the establishment of a pilot wood chip burn-off plant.	Authorisation Granted.	The granting of the environmental authorisation in this case had a lot of benefits to the environment from all aspects of the environment: air quality, waste management,	The section 24G process was beneficial to the environment and effective in protecting the environment.

		biodiversity conservation, and water resource protection. The section 24G application process triggered specialist studies focusing on emissions, solid and hazardous wastes, biodiversity impacts, as well as water resource impacts emanating from the project. Such studies were incorporated in the conditions attached to the section 24G authorisation granted to the applicant, which helped ensure that mitigation measures are undertaken to minimise any potential impacts to the environment	
10. Unlawful construction of a dwelling and additional infrastructure within the 100m High-Water Mark.	Authorisation Refused.	The clearing of vegetation at the area resulted in a localised biodiversity impact due to the undisturbed nature of the vegetation. The refusal of the section 24G authorisation by the DEADP allowed the DEADP to request the applicant to demolish all the structures that were constructed and request that the applicant rehabilitates the disturbed area.	The section 24G process was beneficial to the environment and effective in protecting the environment.

4.5 SECTION 24G AND COOPERATIVE GOVERNANCE

The Constitution of the Republic of South Africa is the supreme law of the country. As such, all environmental legislations of the country (or their application therefore) must be consistent with the provisions of the Constitution. Chapter 3, section 40 of the Constitution states that:

1. "In the Republic, government is constituted of national, provincial and local spheres of government which are distinctive, interdependent and interrelated.
2. All spheres of government must observe and adhere to the principles in this Chapter and must conduct their activities within the parameters that the Chapter Provides".

Section 41 further provides that:

1. "All spheres of government and all organs of state within each sphere must-

   h. co-operate with one another in mutual trust and good faith by-

   iii. informing one another of, and consulting one another on, matters of common interest;

   iv. Co-ordinating their actions and legislation with one another".

The provisions of Chapter Three (3) of the Constitution have been incorporated into Regulation 7 of the EIA Regulations as follows:

- "7 (2) The competent authority or EAP must consult with every organ of state that administers a law relating to a matter affecting the environment relevant to that application for environmental authorisation when such competent authority considers the application and unless agreement to the contrary has been reached the EAP will be responsible for such consultation.
- 7 (3) Where an applicant submits an application for environmental authorisation in terms of these Regulations and an application for an authorisation, permit or license in terms of a specific environmental management Act or any other legislation, the competent authority and the authority empowered under such specific environmental management Act or other legislation must manage the respective processes in a cooperative governance manner".

Section 24G of the NEMA was promulgated in the interest of ensuring that people who had unlawfully commenced with listed activities could be afforded an opportunity to rectify such unlawful commencement, while at the same time protecting the environment from further degradation. As such, the section 24G application process should be viewed as an opportunity

by the competent authority (DEADP in this case) to ensure that the activity under application does not only get authorised in terms of the NEMA, but in terms of all the relevant Specific Environmental Management Acts (SEMAs). For example, if an activity that is under consideration for section 24G also triggers an Atmospheric Emission License (AEL) in terms of section 22 of the NEM:AQA, the competent authority should request the applicant to apply for an AEL and provide evidence of such application before a section 24G authorisation can be granted. This would promote co-operative governance as required by Chapter Three of the Constitution.

The section 24G application process for the reviewed applications has been deemed inconsistent with both the provisions of Chapter Three of the Constitution and Regulation Seven of the EIA Regulations. From the ten (10) applications that were reviewed, a total of Seven applications triggered a Water Use Authorisation in terms of Section 21 of the NWA. From the seven (7) applications, only two (2) applicants had submitted Water Use Authorisation application as part of the section 24G applications.

Table 4.13: Section 24G applications triggering the NWA

Application	NWA Section Triggered	Submitted WUA Application?	Section 24G Authorisation Granted?
1. Unlawful development of tourist accommodation.	Section 21 (a), (c), (g) and (i).	No	Authorisation Granted.
2. Unlawful clearing of vegetation and creation of recreational tracks.	Section 21 (c) and (i).	No	Authorisation Granted.
3. Unlawful infilling of a wetland for a housing development.	Section 21 (c) and (i).	Yes	Authorisation Granted.
4. Unlawful enlargement of and raising of two dams.	Section 21 (c) and (i).	No	Authorisation Granted.

5. Unlawful construction of chicken houses.	Section 21 (g).	No	Authorisation Granted.
6. Unlawful composting facility.	Section 21 (c) and (i).	Yes	Authorisation Granted.
7. Unlawful clearance of vegetation and establishment of pilot wood chip burn-off plant.	Section 21 (c) and (i).	No	Authorisation Granted.

Table 4.13 shows that the section 24G application process is not consistent with Chapter 3 of the Constitution, nor with Regulation 7 of the EIA Regulations. Such inconsistency prevents a holistic environmental protection approach. Complying with the principle of co-operative governance would allow the DEADP, or any other competent authority dealing with section 24G applications, to ensure that all applicants obtain any other authorisations as may be required by the SEMAs before a section 24G authorisation is approved. By granting the section 24G authorisation without ensuring that all other required authorisations in terms of the SEMAs have been obtained, the competent authority is allowing the applicants to continue degrading the environment. Such degradation could be in the form of air pollution activities as listed in Government Notice No. 839 of 2013, or in the form of water resources degradation through the undertaking of Water Uses as listed in section 21 of the NWA.

4.6 THE COMMONLY HELD VIEW THAT THE AVAILABILITY OF SECTION 24G OF THE NEMA LEADS TO THE IGNORANCE OF THE TRADITIONAL ENVIRONMENTAL AUTHORISATION PROCESS

Many interested and affected parties are of the view that the availability of section 24G of the NEMA results in some applicants ignoring the traditional environmental authorisation process in favour of a quicker and sometimes more financially efficient section 24G application (Chapter 1). Chapter 4.6 aims to prove the accuracy of the above view using the results presented in Chapter 4.3 and the relevant legislations.

The Regulations Relating to the Procedure to be Followed and Criteria to be Considered When Determining an Appropriate Fine in Terms of section 24G (Government Notice Number 698 of 2017) (hereinafter referred to as the section 24G Regulations) are responsible for guiding the competent authority in the process of determining a fine for section 24G applications. Regulation 9 of the section 24G Regulations, titled “Repeat Contraveners” states that:

- 9 (1). “Where an application is submitted by a repeat contravener, the fine committee must, notwithstanding the quantum calculated pursuant to regulation 4, recommend to the competent authority that the applicant pay the maximum fine amount as specified in section 24G (4) of the Act.
- 9 (2). For the purposes of this regulation, the competent authority may consider the applicant’s conduct since 7 January 2005”.

An applicant who deliberately ignores the traditional environmental authorisation process in favour of the section 24G process would most likely leave behind a pattern of repeat contraventions. It is very unlikely that someone who deliberately ignores the traditional environmental authorisation process to pursue section 24G would do such as a once-off. As such, applicants deliberately ignoring the traditional environmental authorisation process would have been noticed from the reviewed sample of section 24G applications by being repeat contraveners. As such, repeat contraveners would have received the maximum fine of R10 million, or at least the fine committee would have recommended such maximum fine. From the ten (10) section 24G applications reviewed, no applicant had received the maximum fine (and there were no applications recommended for the maximum fine by the fine committee). This shows that there were no repeat contraveners. As such, there is no evidence to suggest that the availability of section 24G leads to the deliberate ignorance of the traditional environmental authorisation process.

CHAPTER 5: CONCLUSION AND RECOMMENDATIONS

5.1 INTRODUCTION

The study evaluated the effectiveness of section 24G of the NEMA as an environmental protection tool using the Western Cape Provincial Government as a case study.

The significance of the study is that section 24G of the NEMA is an important environmental management tool that seeks to prevent continued environmental degradation resulting from the unauthorised commencement of a listed activity. Section 24G protects the environment through the EIA requirement which identifies and proposes mitigation measures for the impacts associated with a development. Once an environmental authorisation is granted in terms of section 24G, the authorisation will be accompanied by conditions that seek to prevent further degradation of the environment by the said development.

The conditions attached to the authorisation are also aimed at remedying the existing environmental degradation caused by the said listed activity. However, such positive impacts of section 24G have been overshadowed by how section 24G has been exploited by both the private sector and the government. As such, much focus has been given to the exploitation of section 24G, leaving a gap in the amount of knowledge available regarding the environmentally beneficial effects of the provisions. The study provides a balanced representation of both the environmentally detrimental as well beneficial effects of the section 24G provisions. Such a balanced representation enables the evaluation of the actual effectiveness of section 24G and helps identify areas for future development.

Based on the results discussed in Chapter 4, it was concluded that section 24G of the NEMA is an effective environmental protection tool. Although there were cases where the granting of section 24G of the NEMA was deemed detrimental to the environment, such detriments were minimal when compared to the overall environmental benefits.

5.2 THE EFFECTIVENESS OF SECTION 24G OF THE NEMA AS AN ENVIRONMENTAL PROTECTION TOOL

The determination of the effectiveness of section 24G as an environmental protection tool was achieved through conducting interviews with the DEADP personnel and private environmental consultants, as well as by reviewing a set of section 24G applications obtained from the DEADP. The review of section 24G applications enabled the determination of

whether the granting/refusal of retrospective authorisation in each application was beneficial or detrimental to the environment.

From the findings obtained from all the applications reviewed, it was possible to look at the applications holistically and determine the overall effectiveness of section 24G of the NEMA.

The research employed interviews with 18 stakeholders (15 private consultants and 3 DEADP personnel) and reviewed 10 section 24G applications. All interviewees agreed that section 24G remains beneficial to the environment, providing a means to regularise unauthorised developments while enforcing environmental safeguards. Of the ten reviewed applications, six were found to have positive environmental outcomes, while four had adverse environmental effects. Overall, this study concluded that section 24G is effective as an environmental protection tool in the Western Cape Region.

Both the DEADP personnel and private environmental consultants were asked whether, based on their experience, section 24G of NEMA encourages intentional avoidance of the traditional environmental authorisation process in favour of a faster, potentially cheaper retrospective route. All respondents (100%) from both sectors agreed that section 24G does not promote deliberate non-compliance but rather serves as a rectification tool for the unlawful commencement of listed activities. Additionally, the absence of repeat offenders among the ten section 24G applications reviewed suggests no pattern of intentional disregard. If such deliberate avoidance were common, repeat contraventions and maximum penalties of R10 million would likely have been observed and effected, as prescribed in section 24G regulations (Chapter 4.6).

5.3 SECTION 24G ON THE PRINCIPLE OF COOPERATIVE GOVERNANCE

While section 24G of NEMA functions effectively as a tool for environmental protection, this study argues that its application process does not align with the principle of cooperative governance, as outlined in Chapter 3 of the South African Constitution and Regulation 7 of the EIA Regulations. Chapter 3 of the Constitution of the Republic of South Africa promotes cooperative governance between different organs of state. Regulation 7 of the EIA Regulations provides that, when an application is made in terms of the Regulations and any other SEMA, such applications should be considered in a cooperative governance manner. This means that when a competent authority considers an authorisation in terms of any environmental legislation, they must consider that application in a holistic manner, taking into

account all the other environmental legislations that might be triggered by the activity in question.

However, in the review of the ten section 24G applications, seven triggered the need for a Water Use Authorisation under Section 21 of the National Water Act (NWA), yet only two included such applications. This selective compliance suggests a fragmented approach, undermining cooperative governance principles. Although the case would be stronger with evidence of neglect concerning other licenses, such as Waste Management Licenses or Atmospheric Emission Licenses, the omission of required Water Use Authorisations alone indicates inconsistency with the cooperative governance framework.

5.4 RECOMMENDATIONS

The recommendations provided below suggest measures to enhance the effectiveness of section 24G of the NEMA as an environmental protection tool, while minimising the negative impacts associated with the provisions. The recommendations are as follows:

5.4.1 Amendment of Section 24G of the NEMA

Section 24G (4) of the NEMA requires that any person who initiates a listed activity without prior environmental authorisation, thereby contravening section 24F, must pay an administrative fine of up to R10 million. Such an administrative fine is to be determined by a fine committee established in terms of Regulation 3 of the section 24G Regulations. The criteria for calculating fines are applied uniformly to all individuals or entities, regardless of their size or financial capacity. However, this uniform approach raises concerns about its effectiveness. While a fine of up to R10 million may serve as a significant deterrent for small or emerging companies, it may have little impact on large, well-established corporations. For such entities, even the maximum fine, which is seldom imposed, may not be a sufficient deterrent against non-compliance.

A more effective deterrent to unlawful environmental activities would be to revise section 24G (4) of the NEMA to impose fines based on a percentage of an applicant's total financial turnover, rather than a fixed cap of R10 million. For instance, setting the administrative fine at 10% of the total turnover generated from the commencement of the unauthorised activity to the date of application would ensure proportional accountability. Under this model, an applicant with a R1 billion turnover would pay R100 million, while one with a R1 million turnover would pay R100,000. This proportional approach would create a fair and consistent deterrent

across all applicants, regardless of size or financial capacity, making section 24G a less attractive alternative to the traditional environmental authorisation process.

5.4.2 Incorporation of Cooperative Governance into the section 24G application assessment process

Chapter 3 of the Constitution, Section 24O (2) of the NEMA, and Regulation 7 of the section 24G Regulations all emphasise the importance of cooperative governance, specifically, the need for consultation among relevant organs of state when assessing applications that impact the environment. Since the environment consists of the land, the air and water, all related legislation under NEMA and its SEMAs must be considered collectively during the assessment of a section 24G application. Therefore, competent authorities should not assess section 24G applications in isolation, focusing solely on the listed activity. Instead, they must identify and address all additional authorisations triggered under SEMAs, such as Waste Management Licenses, Water Use Licenses, or Atmospheric Emission Licenses, by actively consulting with other relevant regulatory bodies. This should be standard procedure, with applicants required to obtain all necessary environmental authorisations before a section 24G decision is issued. For example, if an application triggers a Waste Management License, an Atmospheric Emissions License, or a Water Use License, it is crucial that the competent authority directs the applicant to first obtain such a license before a Section 24G authorisation is granted. Granting a section 24G authorisation without consulting with other organs of state administering environmental law only partially protects the environment. However, consulting with the different organs of state administering environmental law ensures a holistic approach to environmental protection, thus enhancing the overall effectiveness of section 24G as an environmental protection tool.

5.4.3 Capacity Constraints in Section 24G Application Processing

A key challenge affecting the effectiveness of section 24G in the Western Cape is the limited number of case officers assigned to assess applications at the DEADP. During data collection, it was discovered that the DEADP only had two (2) case officers assessing section 24G applications for the entire Western Cape Region. Having only two case officers for such a big region means that a lot of section 24G applications only get to be assessed after a very long time. This was raised through the interviews conducted with the private environmental consultants, who indicated that some section 24G applications take as long as two years to be finalised. This would mean that the delay in finalising the section 24G application allows the unauthorised listed activity to continue degrading the environment. Increasing the number

of case officers at the DEADP (and all other organs of state dealing with section 24G applications) would enable efficient administration of section 24G applications. This would enhance the effectiveness of Section 24G as an environmental protection tool.

6.5 SUMMARY

The study suggests that section 24G of the NEMA is an effective environmental protection tool and is beneficial to the environment. However, the study revealed that there are some key factors that hinder the overall effectiveness of the provisions. Such factors include the lack of incorporation of cooperative governance in the section 24G application process, the shortage of case officers, as well as the approach used in the determination of the administrative fine. The study, therefore, concludes that even though section 24G is an effective environmental protection tool, the incorporation of the cooperative governance principle, the amendment of section 24G, as well as adding additional capacity on case officers, could enhance the overall effectiveness of the provisions.

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Appendix A: Request for permission to collect data at the DEADP

Cape Peninsula University of Technology

Department of Environmental and Occupational Studies
PO Box 652
Cape Town
8000
Tel: +27 21 460 9009
01 Sept 2023

Ms Mariana Kroese
Department of Environmental Affairs and Development Planning
Western Cape Government
1 Dorp Street
Cape Town
8000

Dear Ms/Mrs Kroese

Re: REQUEST FOR PERMISSION TO COLLECT DATA FOR MALITHI ASIPHE (Mr), STUDENT NUMBER 218340354

The above named is a Master's Degree student at the Cape Peninsula University of Technology whose research topic is "Evaluating the effectiveness of section 24G of the National Environmental Management Act (107 of 1998) as an Environmental Protection Tool, using the Western Cape Provincial Government as a case-study, South Africa".

The data collection is meant to answer the research questions:

- Does section 24G of the NEMA result in the deliberate ignorance of the Environmental Authorisation process?
- What are the environmentally detrimental impacts associated with section 24G?
- What are the environmentally beneficial impacts associated with section 24G?
- What is the overall effectiveness of section 24G in the Western Cape Region?
- What are the areas of future development to ensure that section 24G serves its full and intended purpose?

The candidate will therefore need access to section 24G applications, as well as data showing the number of section 24G and Environmental Authorisations applications received yearly by the Department. The candidate will also need to conduct interviews with the Rectification Department. This is to request the Department to enable the candidate to collect the above-mentioned data. The data gathered will be used for academic purposes only. Your kind assistance will be greatly appreciated.

Yours Faithfully,

Mr T. Marazula (Supervisor)

marazulat@cput.ac.za

Dr. N.Malaza

HoD
malazan@cput.ac.za

Appendix B: Data Collection Permission Letter from the DEADP

Western Cape Government

Department of Environmental Affairs and Development Planning
Corporate Relations Unit
Mariana Kroese
Mariana.Kroese@westerncape.gov.za

Reference: 3/3/3/5/2/W4

Asiphe Malithi
Cape Peninsula University of Technology

Dear Asiphe

PERMISSION TO CONDUCT RESEARCH: EVALUATING THE EFFECTIVENSS OF SECTION 24G OF THE NATIONAL ENVIRONEMNTAL MANAGEMENT ACT (107 OF1998) AS AN ENVIRONMENTAL PROTECTION TOOL, USING THE WESTERN CAPE PROVINCIAL GOVERNMENT AS A CASE STUDY, SOUTH AFRICA

On behalf of the Western Cape Department of Environmental Affairs and Development Planning, I herewith confirm the Department's awareness of the research for your Master of Environmental Management degree regarding **"Evaluating the effectiveness of section 24G of the National Environmental Management Act (107 of 1998) as an environmental protection tool, using the Western Cape Provincial Government as a case study, South Africa.**

As confirmed in your email dated 1 September 2023, your proposed research study will be towards a Master of Environmental Management degree at the Department of Environmental and Occupational Studies, at the Cape Peninsula University of Technology.

The topic of this research is **"evaluating the effectiveness of section 24G of the National Environmental Management Act (107 of 1998) as an environmental protection tool, using the Western Cape Provincial Government as a case study, South Africa"** and the research methodology will involve the gathering of data. The data collected will be analysed for statistical composites while allowing the identity of respondents to remain fully anonymous. The data will furthermore be viewed by the supervisory panel, editors and proof-readers assigned by the University, in order to validate the legitimacy of my thesis.

We agree that any information that will be provided to you should strictly be used for academic purposes and no reference will be made to the information of private companies and representatives involved.

As the Head of Department, I grant you permission to conduct interviews with the relevant officials in the Directorate within the Department to interpret their view on the above research focus areas.

Please contact Zaldiah Toefy at 021-483 2701 or Zaldiah.Toefy@westerncape.gov.za for assistance.

Sincerely,

Gerhard Gerber
Digitally signed by Gerhard Gerber
Date: 2023.09.07

GERHARD GERBER
HEAD OF DEPARTMENT

Appendix C: Ethics Approval Letter from the CPUT

Cape Peninsula University of Technology

Statement of Permission

Reference no.	218340354/11/2023
Surname & name	Asiphe Malithi
Student Number	218340354
Degree	Master of Environmental Management
Title	The effectiveness of section 24G of the South African National Environmental Management Act (no. 107 of 1998) as an environmental protection tool, using the Western Cape as a case study
Site permit	Not included
Supervisor(s)	Mr T. Marazula
FRC Signature	
Date	07-11- 2023

Cape Peninsula University of Technology

P.O. Box 1906 · Bellville 7535 South Africa ·Tel: +27 21 953 8677 (Bellville), +27 21 460 4213 (Cape Town)

Ethics Approval Letter **Reference no: 218340354/11/2023**

Office of the Chairperson **Research Ethics Committee**	**Faculty of Applied Sciences**

On 7 November 2023, the Faculty Research Ethics Committee of the Faculty of Applied Sciences granted ethics for the below project at the Cape Peninsula University of Technology.

Title of project:	The effectiveness of section 24G of the South African National Environmental Management Act (no. 107 of 1998) as an environmental protection tool, using the Western Cape as a case study

Comments (Add any further comments deemed necessary, e.g. permission required)

1. Humans are involved in the study.
2. This permission is granted for the duration of the study.
3. Research activities are restricted to those detailed in the research proposal.
4. The research team must comply with conditions outlined in AppSci/ASFREC/2015/1.1 v1, CODE OF ETHICS, ETHICAL VALUES AND GUIDELINES FOR RESEARCHERS.

	**07/11//2023**
Prof Sjirk Geerts **Chairperson: Research Ethics Committee**	**Date**

Appendix D: Interview Questions for both the DEADP personnel and private environmental consultants

INTERVIEW QUESTIONS

1. How long have you been dealing with section 24G applications?

2. Existing literature suggests that many interested and affected parties are of the view that even though section 24G was promulgated in the interests of environmental protection, it has been widely abused, causing more environmental damage rather than protection. Based on your experience, do you think this view is correct?

3. Section 24G has also been criticised as allowing a developer to choose between following the traditional environmental authorisation process, or the section 24G process if it is deemed to be the most efficient and cost effective to the developer? Do you think this is true? Please elaborate.

4. Based on your experience, how does the availability of section 24G as an option lead to increased environmental degradation?

5. Based on your experience, how does section 24G contribute to environmental protection?

6. Overall, would you say section 24G is more beneficial or more detrimental to the environment? Please elaborate.

7. Section 24G has been amended several times since its first promulgation in 2005, through the 2008, 2014 and 2022 NEMLA Acts. Based on your experience, what amendments do you think still need to be made in order to strengthen the effectiveness of section 24G as an Environmental Protection Tool?

8. Are there any other measures, besides an amendment, that you think could be made to strengthen the effectiveness of section 24G? Please elaborate.

Appendix E: Consent Form for the Interviews

Consent Form

Evaluating the effectiveness of section 24G of the South African National Environmental Management Act (No. 107 of 1998) as an environmental protection tool, using the Western Cape Provincial Government as a case study

Researcher: Asiphe Malithi

Please mark with an X each box

1. I confirm that I have read and have understood the information sheet explaining the above research project and I have had the opportunity to ask questions about the project. ☐

2. I understand that there is no payment for participating in this research. ☐

3. I understand that my participation is voluntary and that I am free to withdraw at any time without giving any reason and without there being any negative consequences. ☐

4. I understand that I may withdraw from the study at any time without consequences of any kind. I may also refuse to answer some questions and still remain in the study. ☐

5. I understand my responses and personal data will be kept strictly confidential. ☐

6. I give permission to Asiphe Malithi to have access to my anonymised responses. ☐

7. I understand that my name will not be linked with the research materials, and I will not be identified or identifiable in the reports or publications that result for the research. ☐

10. I understand that I may decline to be audio-recorded at any point. ☐

11. I agree that the data collected from me may be used in future research. ☐

12. I agree to take part in the above research project. ☐

_____ _____ _____

Name of Participant (or legal representative) Date Signature

_____

Name of person taking consent Date_____ Signature_____

(If different from lead researcher)

Asiphe Malithi_____ Date_____

Lead Researcher: Signature _____

(To be signed and dated in presence of the participant)

IDENTIFICATION OF INVESTIGATORS

If you have any questions or concerns about the research, please feel free to contact me, Asiphe Malithi, (0717498582/218340354@mycput.ac.za), or my supervisors, Mr T. Marazula: marazulat@cput.ac.za and Dr N Malaza: malazan@cput.ac.za

A copy of this will be filed and kept in a secure location for research purposes only.

Researcher:	**Supervisor:**	**HOD:**
Asiphe Malithi 0717498582 218340354@mycput.ac.za	Mr T. Marazula marazulat@cput.ac.za Dr N Malaza malazan@cput.ac.za	Dr N. Malaza malazan@cput.ac.za