



forestry, fisheries & the environment

Department:
Forestry, Fisheries and the Environment
REPUBLIC OF SOUTH AFRICA

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NOTICE OF INTENTION TO ISSUE A DIRECTIVE IN TERMS OF SECTION 73(3) OF THE NATIONAL ENVIRONMENTAL MANAGEMENT: BIODIVERSITY ACT, 2004 (ACT NO.10 OF 2004) ("NEM: BA"): IN RESPECT OF THE FAILURE OF HDS XXXX PTY LTD TO COMPLY WITH THE PROVISIONS OF THE LAW IN RESPECT OF THE ACTIVITIES CONDUCTED AT ONVERWAGS XXXX

INTRODUCTION

1. I refer to the above matter and to the inspection conducted on xxxxx at your property by Environmental Management Inspectors ("EMIs") from Department of Forestry, Fisheries, and the Environment ("DFFE") designated in terms of the 31B of the National Environmental Management Act, 1998 (Act No. 108 of 1998) ("NEMA"). The EMI's were accompanied by officials from Natural Resources Management ("DFFE").
2. I have reasonable grounds to believe that you, XXXXX, have failed to comply with its duties as the owner of the sites, as set out in section 71(1) and section 73(2) of the NEM: BA.

INTENDED ENFORCEMENT ACTION

3. I, XXXX, in my capacity as XXXXXX having considered the failure to adhere to the provisions of the law, hereby give you, XXXX in your capacity as the owner of the property, written notice of my intention to issue you with a Directive in terms of Section 73(3) of the NEMBA.
4. The Directive that I intend to issue relates to your non-compliance with the provisions of the NEM:BA, read with the Alien and Invasive Species Regulations (GNR 1020 dated 25 September 2020 issued under the NEM: BA which came into effect on 1 March 2021) and the Alien and Invasive Species Lists, 2020 (GNR 1003 dated 18 September 2020 issued under the NEM: BA which came into effect on 1 March 2021).

OBSERVATIONS, FINDINGS AND DETAILS OF NON-COMPLIANCE

5. The observations set out in the table below, together with the species listed in XXX, form the basis for the DFFE's intended enforcement action.
6. The Directive that DFFE intends to issue relates to the following:

Section 71 of NEM: BA provides:

- (1) *A person may not carry out restricted activity involving a specimen of a listed invasive species without a permit issued in terms of Chapter 7.*



Batho pele- putting people first

The processing of personal information by the Department of Forestry, Fisheries and the Environment is done lawfully and not excessive to the purpose of processing in compliance with the POPI Act, any codes of conduct issued by the Information Regulator in terms of the POPI Act and / or relevant legislation providing appropriate security safeguards for the processing of personal information of others.

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Section 73 of the NEM: BA provides:

- (1)
- (2) A person who is the owner of land on which a listed invasive species occurs must-
- (a) notify any relevant competent authority, in writing, of the listed invasive species occurring on that land;
 - (b) take steps to control and eradicate the listed invasive species and to prevent it from spreading; and
 - (c) take all the required steps to prevent or minimise harm to biodiversity.
- (3) A competent authority may, in writing, direct any person who has failed to comply with subsection (1) or (2), or who has contravened section 71(1), to take such steps-
- (a) as may be necessary to remedy any harm to biodiversity caused by-
 - (i) the actions of that person; or
 - (ii) the occurrence of the listed invasive species on land of which that person is the owner; and
 - (b) as may be specified in the directive;

7. I have noted the following observations relative to the relevant provisions in the law:

NEM:BA		
Section	Provision	Application to the facts
1	<i>“Restricted activity” means inter alia as “having in possession or exercising physical control over any specimen of an alien or listed invasive species”; spreading or allowing the spread of, any specimen of a listed invasive species”</i>	The EMIs observed listed invasive plant species at your properties during the site inspection and as such, XXXX is in possession of and is exercising physical control over such species (refer to Appendix A).
71	<i>(1)A person may not carry out a restricted activity involving a specimen of a listed invasive species without a permit.</i>	Permitting database indicates that no permit has been issued for the restricted activity conducted at these properties, nor has an application been made for such a permit.
73	<i>(2) A person who is the owner of land on which a listed invasive species occurs must-</i> <i>(a) notify any relevant competent authority, in writing, of the listed invasive species occurring on that land;</i> <i>(b) take steps to control and eradicate the listed invasive species and to prevent it from spreading; and</i> <i>(c) take all the required steps to prevent or minimise harm to biodiversity</i>	XXXXX has failed to: <ul style="list-style-type: none"> - notify DFFE of the invasive species on the land; - take steps to control the invasive species or prevent the species from spreading and - take all required steps to prevent harm to biodiversity.
Government Notice R1020 issued under NEM:BA: Alien and Invasive Species Regulations		
3(2)	<i>(2) A person in control of a Category 1 b Listed Invasive Species must control the listed</i>	XXXXX has failed to control the Category 1b listed invasive species (detailed in Appendix A) on the site.

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	<i>invasive species in compliance with sections 75(1), (2) and (3) of the Act.</i>	
4(2)	<i>Unless otherwise indicated in the Notice, no person may carry out a restricted activity in respect of a Category 2 Listed Invasive Species without a permit.</i>	XXXXX has failed to obtain a permit for Category 2 listed invasive species (detailed in Appendix A) on the site.

INTENDED INSTRUCTIONS

8. You are accordingly afforded a period of ten (10) working days from the date of receipt of this notice to make written representations as to why I should not issue you with a Directive in terms of Section 73(3) of NEM:BA which will require you to do the following:

8.1. Within sixty (60) working days of receipt of the final Directive, submit to this Department’s Directorate: Biodiversity Enforcement, a detailed Invasive Species Monitoring, Control and Eradication Plan for approval (similarly to the example attached as Appendix B), compiled by a qualified specialist in this field indicating, *inter alia*:

- a. a map/ distribution range of the current alien and/or invasive plant infestations on your property. This must include the age classes of each of the invasive plant species occurring on the properties;
- b. a systematic manner of approaching the areas [identified in paragraph 8.1(a) above] on your property, which would need to be cleared of alien and/or invasive plants. All fire hazards in the priority areas must be significantly reduced before the area can be cleared of the listed invasive plant species;
- c. timeframes within which the areas that were identified in paragraph 8.1(a) above would need to be cleared;
- d. all the health and safety requirements that must be implemented (inclusive of protective clothing);
- e. a control and maintenance plan (inclusive of timeframes) indicating the manner in which your property will be maintained, prioritising areas and species on urban edge boundaries that are high-risk in terms of wildfires, including how the recommendations made by this specialist will be implemented after the initial clearing work has been completed;
- f. the appropriate cut of fire breaks (including timeframes);
- g. the mitigation of fire risk in accordance with the relevant and applicable Fire Protection Association (“FPA”);
- h. the approach to dealing with the felled biomass after clearing has been undertaken; and
- i. all of the treatment options that must be applied to each of the species that were identified in each of the areas identified in paragraph 8.1 above.

8.2. All measures, clearing and eradication mentioned must be completed within timeframe approved by the DFFE as provided for in 8.1 above.

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- 8.3. Within twenty (20) working days after receipt of the final Directive, submit application(s) to DFFE to possess the following Category 2 species: XXXXXXXX The permit application must comply with all the relevant requirements of NEM: BA and AIS Regulations and permit application hereto attached.
- 8.4. Should the period have mentioned in paragraph 8.3. above lapses and the above-mentioned permit application has not been submitted to the Department, you must forthwith cease and desist from all unpermitted activities relating to the listed invasive species.
- 8.5. Immediately (no later than 24 hours) upon receipt of the notice of intention cease with propagating, spreading, moving, conveying, translocating, selling/trading; buying, receiving, giving donating or accepting as a gift, or in any acquiring or disposing of any specimen of category 3 listed invasive species (including those species observed at your property namely; XXXXX
9. Please note that certain offences and penalties are applicable to the illegal activities being conducted on the site, which are detailed in Appendix C.
10. Kindly be advised to contact DFFE: Environmental Programmes component XXXXX if you need assistance for controlling alien invasive species occurring within riparian zones (32m from edge of the river). Please, note that the assistance will depend on availability of the funds in their budget. It remains the owner legal responsibility to control listed invasive plant species in his property.
11. I wish to make it clear that the instructions contained herein are made in the interest of responsible environmental management and with a view to a co-operative resolution of the issue. The DFFE will decide upon a way forward regarding this matter depending on the outcome of your representations.
12. If you should be unclear about any aspect of this notice, kindly contact the person indicated for enquires as soon as possible. You are kindly requested to sign the acknowledgement of receipt below and email it back to the Department at

Yours sincerely

XXXX

Acknowledgement of Receipt:

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APPENDIX A: LISTED ALIEN AND INVASIVE SPECIES

GNR1003	Category	Requirement in terms of AIS Regulations
<i>Eucalyptus camaldulensis</i> (Red River gum)	1b within riparian area	Control the listed invasive species in compliance with sections 75(1), (2) and (3) of the Act.
<i>Arundo donax</i> (Giant reeds)	1b	Control the listed invasive species in compliance with sections 75(1), (2) and (3) of the Act.
<i>Sesbania punicea</i> (Red sesbania)	1b	Control the listed invasive species in compliance with sections 75(1), (2) and (3) of the Act.
<i>Acacia mearnsii</i> (Black wattle)	2	No restricted activity without a permit. In possession of permit, ensure no spreading outside of area specified on permit
<i>Populus canescens</i> (Grey poplar)	2	No restricted activity without a permit. In possession of permit, ensure no spreading outside of area specified on permit
<i>Casuarina cunninghamiana</i> (Beefwood)	2	No restricted activity without a permit. In possession of permit, ensure no spreading outside of area specified on permit
<i>Pinus canariensis</i> (Canary pine)	3	Control the listed invasive species in compliance with sections 75(1), (2) and (3) of the Act.

APPENDIX C: PENALTIES AND OFFENCES

In terms of section 101(1) (a) of NEM: BA, a person is guilty of an offence if that person carries out a restricted activity involving a specimen of an alien species or a specimen of a listed invasive species without a permit issued in terms of Chapter 7; and in terms of section 101(1) (c) a person is guilty of an offence if that person fails to comply with a directive issued in terms of section 73(3) of NEM: BA. It is also an offence in terms of section 101(3) (e) to permit or allow any other person to do, or to omit to do, anything which is an offence in terms of the above. Upon conviction, such a person is liable to a fine not exceeding ten-million-rand (R 10 000 000) or to imprisonment for a period not exceeding ten (10) years, or to both such fine or such imprisonment; or to a fine equal to the estimated cost associated with the control of the specimen in respect of which the offence was committed or both.

Regulation 36(2) of GNR 1020 issued under the NEM: BA provides that a person is guilty of an offence if that person fails to comply with the Regulations contained therein. Upon conviction, such a person is liable to a fine not exceeding five-million-rand (R 5 000 000), or in the case of second or subsequent conviction, to a fine of ten-million-rand (R 10 000 000) or to imprisonment for a period not exceeding ten (10) years, or to both such fine or such imprisonment.