



forestry, fisheries & the environment

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

Private Bag X447, Pretoria, 0001, Environment House, 473 Steve Biko Road, Pretoria, 0002 Tel: +27 12 399 9000, Fax: +27 86 625 1042

Ref: EDMS No.

Enquiries: Mr Karl Naude

Tel: 012 399 9558 Email: knaude@dff.gov.za

Mr G Bestbier
NASCOM Chair
South African Civil Aviation Authority
Private Bag x73
HALFWAY HOUSE
1685

Email: bestbiereg@caa.co.za

Dear Mr Bestbier

RE: ENFORCEMENT OF 2500FT HEIGHT RESTRICTION ON NON PROCLAIMED AREAS

I refer to your mail of 28 February 2022 and the attached letter dated 5 May 2021.

The system of protected areas in South Africa in terms of the National Environmental Management Protected Areas Act (Act 57 of 2003)(NEMPAA) consists of the following kinds of protected areas:

- special nature reserves, national parks, nature reserves (including wilderness areas) and protected environments
- world heritage sites;
- marine protected areas;
- specially protected forest areas, forest nature reserves and forest wilderness areas declared in terms of the National Forests Act, 1998 (Act No. 84 of 1998); and
- mountain catchment areas declared in terms of the Mountain Catchment Areas Act, 1970 (Act No. 63 of 1970).

Amongst the declared areas, the NEMPAA section 47 only restricts flying over a **special nature reserve, national park or world heritage site** at a level of less than 2500 feet above its highest point. Other kinds of protected areas including nature reserves are not restricted in terms of section 47 of NEMPAA.



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.

RE: ENFORCEMENT OF 2500FT HEIGHT RESTRICTION ON NON PROCLAIMED AREAS

It must be noted that provincial legislation, and its implementation cannot be affected with the application of NEMPAA, and this protection is guaranteed in terms of section 8 of NEMPAA.

8. *Status of provincial legislation on provincial and local protected areas*

This Act does not affect the implementation of provincial legislation regulating matters with regard to provincial or local protected areas to the extent that such legislation-

- (a) regulates matters not covered by this Act;*
- (b) is consistent with this Act; or*
- (c) prevails over this Act in terms of section 146 of the Constitution.*

Thus, it may be crucial to determine the provincial legislation used by the officials in the Mpumlanga region to issue fines. In terms of NEMPAA it is not an offence to fly over a **nature reserve** at a level of less than 2500 feet above its highest point and therefore NEMPAA cannot be used to issue fines for flying over nature reserves.

Also note that the legal status of the protected area (kind of protected area) determines if an offence has been committed and the ownership of the area such as privately owned or state owned or management, either by national or provincial or private, is not the determining factor.

Yours sincerely



Ms Nomfundo Tshabalala

Director-General

Department of Forestry Fisheries and the Environment

Letter signed by: Mr Karl Naude

Designation: Director: Protected Areas Planning and Management Effectiveness

Date: 13/05/2022