



REFERENCE: 16/3/3/6/7/1/D7/10/0125/23
ENQUIRIES: Dorien Werth
DATE OF ISSUE: 22 May 2023

Western Cape Government (WCG)
Department of Infrastructure: Transport infrastructure Branch
P.O. Box 2603
Cape Town
8000

Attention: Mr Anzi November

Tel: 021 483 0536

E-mail: Anzi.november@westerncape.gov.za

ACKNOWLEDGEMENT OF RECEIPT AND COMMENT ON THE NOTICE OF INTENT (NOI) TO SUBMIT AN APPLICATION FOR ENVIRONMENTAL AUTHORISATION FOR THE PROPOSED REHABILITATION OF THE ROAD TR75/1 (TRUNK ROAD/N12-HIGHWAY) NEAR OUDTSHOORN, GARDEN ROUTE DISTRICT MUNICIPALITY

1. The abovementioned document received by the Directorate: Development Management (Region 3), hereinafter referred to as "this Directorate" via electronic mail on 9 May 2023 refers.
2. It is understood that the proposal entails the rehabilitation of a portion of the road TR75/1, which is located near Oudtshoorn. The portion under consideration stretches for approximately 14.9km (starting in Oudtshoorn). The proposed project is located within the Oudtshoorn Local Municipality and forms part of the Garden Route District Municipality. The rehabilitation works will include the widening of existing cut and fill slopes at select locations. This will require the reconstruction of the existing pavement, subbase and base layers and a new surfacing seal. The road will be widened at selected locations and will also include the construction of auxiliary lanes at selected locations. The works will also include the rehabilitation of selected accesses to main and minor farm portions, as applicable. Further to these works, the maintenance of existing minor culvert inlet and outlet structures will be undertaken and will require the widening or raising head and wing walls of the major culverts where required. General maintenance to the major culverts will include the repair of the cracks which have developed in the culverts and the scouring which has occurred. Specific to the road B4691 over the Olifants River including repair of honeycombing in the concrete and the replacement of bridge joints. Residual works associated with the project will include the construction of concrete lined drains, the installation of road signs, the painting of road markings, the installation of guardrails and the installation of fencing, including the clearing of vegetation along the fence line.

3. The following advice or instructions of the nature and extent of any of the processes that may or must be followed or decision support tools that must be used, to comply with the Act and the Environmental Impact Assessment Regulations, 2014, is provided below:

3.1 *Environmental Impact Assessment Process*

Based on the listed activities which will be triggered, for which written Environmental Authorisation is required, a Basic Assessment process must be followed in order to apply for Environmental Authorisation. Only those activities applied for shall be considered for authorisation. The onus is on the applicant to ensure that all the applicable listed activities are applied for and assessed as part of the Basic Assessment process.

3.2 *National Web Based Environmental Screening Tool Report*

- It is noted that the National Web Based Environmental Screening Tool Report and Site Verification report has been attached to the Notice of Intent. In accordance with Regulation 16(1)(b)(v) the report must also be attached to the application for environmental authorisation.
- The findings of the screening tool report and the site verification report are noted.

3.3 *Protocols or Minimum Information Requirements*

Please be informed that the applicable protocols or minimum information requirements, which were published in Government Notice No. 320 of 20 March 2020 (Government Gazette No. 43110 of 20 March 2020 refers), which came into effect on 9 May 2020, must be applied to the impact assessment process that must be followed: Provided that if the specialist assessment affected by any of the protocols, was commissioned before 9 May 2020, then the applicant is allowed to continue and submit documents for decision-making, which do not need to comply with the requirements of the protocols. Proof that the specialist work was outsourced before 9 May 2020, is deemed to be sufficient to allow this on a case-by-case basis. In such instances, the specialist report need not comply with the applicable protocol but must comply with Appendix 6 of the Environmental Impact Assessment Regulations, 2014 (as amended).

Therefore—

- in accordance to the above, where the applicable protocol applies to any specialist performing work related to any of the fields of practice listed in Schedule I of the Natural Scientific Professions Act, 2003 (Act 27 of 2003) must be registered with the South African Council for Natural Scientific Professions ("SACNASP") ^[1] in any of the prescribed categories [Section 18] and further to this, only a person registered with the SACNASP may practise in a consulting capacity [Section 20]; or
- where a specialist assessment was commissioned prior to 9 May 2020, you are required to submit proof to the competent authority that the work was commissioned prior to the

[1] SACNASP – the legislated regulatory body for natural science practitioners in South Africa.

said date (e.g., approved quotation for specialist assessment and/or proof of work being carried out).

- It is the responsibility of the Environmental Assessment practitioner (EAP) to confirm this list and to motivate in the assessment report, the reason for not including any of the identified specialist studies, including the provision of photographic evidence of the footprint situation. Such motivation must be submitted to this Department as soon as possible, preferably before the submission of the application form.

3.4 In light of the protocols, the screening tool, and the site verification report, please note the following:

Agricultural theme

The agricultural theme is rated as "high sensitivity" and according to the protocol, where the site indicates high agriculture sensitivity, a specialist assessment by a specialist registered with SACNASP with the expertise in agriculture must be done. It is noted that a site verification was done by a specialist, and it was determined that the sensitivity should be "low". This Directorate is in agreement that an **Agriculture Compliance Statement** should be done.

Animal species theme

The animal species theme was rated as "high". According to the protocol the presence or likely presence of the species of conservation concern (SCC) identified by the screening tool must be investigated through a site inspection by a specialist registered with the SACNASP with a field of practice relevant to the taxonomic groups ("taxa") for which the assessment is being undertaken. It is noted that after the site verification the specialist stated that there are areas where habitats are of high quality, however no species of conservation concern were found on site. This Directorate is in agreement that an **Animal Biodiversity Compliance Statement** must be done.

Aquatic sensitivity theme

The aquatic sensitivity theme is rated as "very high" and according to the protocol, where the site indicates very high aquatic sensitivity, a specialist assessment by a specialist registered with SACNASP with the expertise in aquatic. It is noted that an **Aquatic Biodiversity Assessment** will be undertaken.

Archaeological and Cultural Heritage theme

The Archaeological Sensitivity Theme is rated as "very high", This Directorate does take note that Heritage Western Cape (HWC) will be consulted and a Notice of Intend (**NID**) will be submitted to HWC.

Civil Aviation theme

The sensitivity of the civil aviation theme is rated as "high sensitivity". The proposed development will be located approximately 3km from the Oudtshoorn Airport and will not require licensing in terms of the Civil Aviation Regulations of 2011, as amended, in terms of the Civil Aviation Act, 2009. This Directorate is in agreement that the Civil Aviation Authority (CAA) must be included as an Interested and Affected Party to obtain their comment and recommendations.

Palaeontology theme

The Palaeontology Theme sensitivities is rated as "high sensitivity". It is noted that a Palaeontological Impact Assessment specialist will be appointed to evaluate the impact of the proposed development on the palaeontological resources potentially occurring within the proposed development. This Directorate does agree that an **NID** must be submitted to the HWC for consideration.

Plant species theme

The Plant Species Theme sensitivities is rated as "medium". According to the protocol the presence or likely presence of the species of conservation concern (SCC) identified by the screening tool must be investigated through a site inspection by a specialist registered with the SACNASP with a field of practice relevant to the taxonomic groups ("taxa") for which the assessment is being undertaken. It is noted and agreed to that a **plant species impact assessment** will be conducted and submitted in the Final Basic Assessment report.

Terrestrial Biodiversity sensitivity theme

The Terrestrial Biodiversity sensitivity theme sensitivity is rated "very high". According to the protocols, an assessment by specialist registered with the SACNASP with practice relevant experience in terrestrial biodiversity. However, it is noted and agreed to that a Terrestrial Impact Assessment will be undertaken, and Cape Nature will be included as an Interested and Affected Party for comments and recommendations.

Socio-economic assessment

The Screening Tool stated that a Socio-economic assessment be completed. However, it is noted and agreed to that the proposal aims to rehabilitate an existing national highway and therefore a full socio-economic assessment will not be done and rather a detailed description of the socio-economic situation of the area will be described and the impacts on road users from a socio-economic perspective will also be identified.

Noise Impact Assessment

Based on the Screening Tool a Noise Impact Assessment is required. This Directorate also noted and agrees that the proposed project entails the upgrading of the existing infrastructure and it's not anticipated that the proposed development will generate additional traffic during the operational phase and as such no Noise Impact Assessment needs to be undertaken.

Traffic Impact Assessment

According to the Screening Tool it is noted that a Traffic Impact Assessment would be required, however it is noted and agreed to that the Environmental Impact Assessment will be aligned with the principles of the Need and Desirability Guidelines, DEA, 2017 and will evaluate the feasibility of the proposed works. Due to the nature of the works, it is not anticipated that a Traffic Impact Assessment would be required, however it is stated that a Traffic Management Plan will be submitted.

Geotechnical Impact Assessment

It is noted that the Screening tool suggested a Geotechnical Impact Assessment, this Directorate does take note that an assessment of stability is in process and the findings will be communicated to the appointed specialist and its not anticipated at this stage that a full Geotechnical Impact Assessment would be required.

Ambient Air Quality Impact Assessment

According to the Screening Tool it is noted that an Ambient Air Quality Impact Assessment would be required. This Directorate agrees that the proposal involves upgrades to an existing highway, and it is not expected that the upgrades will lead to additional ambient air quality impacts.

1.1 Public Participation Process

- ❖ A public participation process ("PPP") that meets the requirements of Regulation 41 of the EIA Regulations, 2014 (as amended) must be undertaken. You are advised that a public participation may be undertaken, prior to the submission of the application, although this is not mandatory. It is the Environmental Assessment Practitioner's discretion at what stage the requirements of Regulation 41 are met, whether during the proposed application (pre-application) process or formal application process. You are reminded that a period of at least 30 days must be provided to all potential or registered interested and affected parties to submit comment on the BAR and EMPr.
- ❖ Should a public participation process, which includes the circulation of the pre-application BAR for comment, be undertaken prior to submission of an Application Form to the Department, in terms of Regulation 40, the pre-application BAR may also be submitted to the Department for commenting purposes. Please ensure a minimum of one electronic

version of the pre-application BAR is submitted to this Directorate for commenting purposes.

- ❖ In terms of Section 24O (2) and (3) of NEMA and Regulations 7(2) and 43(2) of the EIA Regulations, 2014, any State Department that administers a law relating to a matter affecting the environment relevant to the application must be requested to comment within 30 days. Please note that the EAP is responsible for such consultation. Therefore, it is requested that the EAP include proof of such notification to the relevant State Departments in terms of Section 24O (2) and (3) of NEMA in the BAR, where appropriate.
- ❖ Your list of State Departments that will be included in the PPP is noted and supported.
- ❖ Delivery of reports/documents must be done in a manner provided for in section 47D of the NEMA and the Directions: Provided that all registered I&APs have access to such facilities. Electronic versions of reports may be made accessible through any of the following non-exhaustive list of methods: websites, Zero Data Portals, community or traditional authorities, Cloud Based Services.
- ❖ The timeframes regarding comment period must be specified. All potential interested and affected parties including I&APs and organs of state identified in Section 3 of the Public Participation plan, must be afforded a minimum of three (3) calendar days from date of notification before the 30-day commenting period on the Basic Assessment Report (Pre-Application or formal process report). However, where the third day falls on a Saturday, Sunday or public holiday, it must be extended to the end of the next day which is not a Saturday, Sunday or public holiday.
- ❖ It must be possible to cross-reference the proposed delivery of documents to the preferences indicated in the I&AP Register.
- ❖ Appropriate access to information must be provided, hence reports must be made available at any public places or premises that are close to the public, as contemplated in the Regulations.

4. Pre- Application Consultation

- 4.1 This Directorate avails itself for a pre-application meeting engagement to provide further guidance and advice in terms of Regulation 8 on the process requirements and the administration of your application.
- 4.2 Please note that the pre-application consultation is an advisory process and does not pre-empt the outcome of any future application, which may be submitted to the Department.
- 4.3 No information provided, views expressed and/or comments made by officials during the pre-application consultation should in any way be seen as an indication or confirmation:
 - that additional information or documents will not be requested
 - of the outcome of the application.

5. One Environmental System

The NOI indicates that a Water Use License is required. It is noted that a General Authorisation application is applicable. Your attention is once again drawn to the provisions of the one environmental system, which states that it is now a requirement to synchronise the EIA and WULA processes in order to ensure that both processes are duly informed by one another. You are also reminded that the duty of the Environmental Assessment Practitioner ("EAP") to take note of the timeframes and synchronise the two processes. Failure to give effect to the one environmental system may prejudice the success of the application.

6. Need and Desirability

In terms of the NEMA EIA Regulations, when considering an application, the Directorate must take into account a number of specific considerations including *inter alia* the need for and desirability of any proposed development. As such, the need for and desirability of the proposed activity must be considered and reported on in the BAR. The BAR must reflect how the strategic context of the site in relation to the broader surrounding area, has been considered in addressing need and desirability. Refer to the Department's Guideline on Need and Desirability (March 2013).

7. National Heritage Resources Act, 1999 (Act No. 25 of 1999) ("NHRA")

Section 38 of the NHRA sets out the requirements regarding the integration of the decision-making process with that of the EIA Regulations 2014, however, under the provision that the necessary information is submitted and any comments and recommendations of the relevant heritage resources authority (HWC) with regard to such development have been provided and taken into account prior to the granting of the authorisation. Further to the above:

- An application for Environmental Authorisation, must include, where applicable, the investigation, assessment and evaluation of the impact of any proposed listed or specified activity on any national estate referred to in section 3(2) of the National Heritage Resources Act, 1999 (Act No. 25 of 1999), excluding the national estate contemplated in section 3(2)(i)(vi) and (vii) of that Act.
- Where Section 38 of the NHRA is triggered, the Standard Operating Procedure between Heritage Western Cape and this Department must be followed. If Section 38 is applicable to the proposed development, then the proponent/applicant is required to submit a Notice of Intent to Develop ("NID") to Heritage Western Cape and attach a copy to thereof to the EIA application form. If Heritage Western Cape requires a Heritage Impact Assessment, the Heritage Impact Assessment must be undertaken as one of the specialist studies of the EIA process to be undertaken in terms of the NEMA EIA Regulations, 2014. It is reasonable to suspect that the proposed activity triggers an activity identified in section 38 of the NHRA and it is likely that the national estate may be impacted. Comment from Heritage Western Cape must be obtained to substantiate this.

8. You are advised that when undertaking the Basic Assessment process, you must take into account applicable guidelines, including the circulars and guidelines developed by the

Department. These can be provided upon request. In particular, the guidelines that may be applicable to the proposed development include, *inter alia*, the following:

- Guideline for the Review of Specialist Input in the EIA process (June 2005).
- Guideline for Environmental Management Plans (June 2005).
- Guideline on Alternatives (March 2013).
- Guideline on Generic Terms of Reference for EAPs and Project Schedules (March 2013)
- Guideline for determining the scope of specialist involvement in EIA processes, June 2005.
- Guideline for involving visual and aesthetic specialists in the EIA process, June 2005.
- DEA (2017), Guideline on Need and Desirability, Department of Environmental Affairs.

9. Please ensure the Basic Assessment Report ("BAR") and Environmental Management Programme ("EMPr") contain all information requirements outlined in Appendices 1 and 4 respectively of the Environmental Impact Assessment Regulations, 2014 (GN No R.326 as amended 7 April 2017).

General

10. Note that all applications, reports and documents, which include all signatures and Annexures which are included as part of the application and subsequent reports, must be submitted via e-mail to the relevant official, with attached PDF versions of letters and reports. If the documents are too large to attach to an e-mail, the competent authority must be notified per e-mail and provided with an electronic link to such documents that is accessible by the relevant authority.

Note: The Directorate: Development Management (Region 3), has created a generic e-mail address to centralise its administration within the component (i.e. notifying clients of decisions and receiving EIA applications, Notice of Intent form; request for fee reference numbers, etc.) Please make use of the new e-mail address too when submitting such documents:

DEADPEIAAdmin.George@westerncape.gov.za

11. Kindly note that this Directorate requires that when the pre-application BAR is submitted, one (1) electronic version of the document be submitted to the Department for consideration. Hard copies of the document are no longer required, but must be made available upon request.

12. Please note that the activity may not commence prior to an environmental authorisation being granted by this Directorate.

13. Also note that it is an offence in terms of Section 49A(1)(a) of the NEMA for a person to commence with a listed activity unless the Competent Authority has granted an Environmental Authorisation for undertaking it. Failure to comply with the requirements of Section 24F of the NEMA shall result in the matter being referred to the Environmental Compliance and Enforcement Directorate of this Department. A person convicted of an offence in terms of the above is liable to a fine not exceeding R10 million or to imprisonment for a period not exceeding 10 years, or to both such fine and imprisonment.

14. This Department reserves the right to revise or withdraw initial comments or request further information from you based on any new or revised information received.

Yours faithfully

pp _____

HEAD OF DEPARTMENT

ENVIRONMENTAL IMPACT MANAGEMENT SERVICES: REGION 3

DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING

Copied to: EAP: Sharples Environmental Services CC

E-mail: betsy@sescs.net