



REFERENCE NO: 16/3/3/6/3/C3/13/0201/23
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The Head of Department
Western Cape Government: Department Infrastructure
Road Programme Management
PO Box 2603
Cape Town
8000

Attention: Mr. Dirk Immelman

E-mail: Dirk.Immelman@westerncape.gov.za

Dear Sir,

ADOPTION & DEFINITION OF A MAINTENANCE MANAGEMENT PLAN IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998) AND THE ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, 2014 (AS AMENDED): THE PROPOSED PERIODIC MAINTENANCE OF TRUNK ROAD 16/8 AND TRUNK ROAD 16/9 BETWEEN MURRAYSBURG AND THE NORTHERN CAPE BORDER

With reference to your request for the abovementioned, please find below the outcome with respect to the request.

1. DECISION

By virtue of the powers conferred on it by the National Environmental Management Act, 1998 (Act No. 107 of 1998) ("NEMA"), the Environmental Impact Assessment Regulations, 2014, (as amended), the Competent Authority hereby **adopts** and **defines** the final Maintenance Management Plan ("MMP") for the abovementioned proposal dated 6 September 2023, compiled by Ms. Hetlie Liebenberg of *Guillaume Nel Environmental Consultants* ("GNEC") as received by this Directorate on 26 September 2023.

The MMP is for the purposes of periodic maintenance of culvert and bridge structures along Trunk Road 16 Section 8 (TR16/8) and Trunk Road 16 Section 9 (TR16/9) located between the settlement of Murraysburg and the Northern Cape Border.

The adoption of the MMP is subject to the conditions and the aspects which are defined by the competent authority set out in Section D below.

2. DETAILS OF THE HOLDER

THE HEAD OF DEPARTMENT
WESTERN CAPE GOVERNMENT: DEPARTMENT INFRASTRUCTURE
ROAD PROGRAMME MANAGEMENT

PO Box 2603
CAPE TOWN
8000

For attention: Mr Dirk Immelman
E-mail: Dirk.Immelman@westerncape.gov.za
Tel.: 021 483 0580

The abovementioned juristic person is the holder of the Maintenance Management Plan and is hereinafter referred to as "**the Holder**".

3. SITE DESCRIPTION AND LOCATION

The proposed maintenance will be undertaken on various culverts and bridges on the following roads between the settlement of Murraysburg and the Northern Cape border:

- Trunk Road 16/8: One bridge and five culvert structures; and
- Trunk Road 16/9: four bridges and approximately 60 culvert structures.

Refer to Annexure 1 for the Locality Plan of this Environmental Authorisation.

The above is hereinafter interchangeably referred to as "**the site**" or "**the sites**".

4. REQUIREMENTS ATTACHED TO ADOPTING OR DEFINING THE MMP:

1. The Holder must confirm acceptance of the conditions of this decision in writing, within **14 (fourteen) calendar days** of the date of the decision, failing which the decision to adopt the MMP is suspended until such time that the conditions are accepted.

Scope of the Maintenance Management Plan

2. This MMP for the periodic maintenance of Trunk Road 16 Section 8 (TR16/8) and Trunk Road 16 Section 9 (TR16/9) between the settlement of Murraysburg and the Northern Cape Border, is granted for a period until **31 January 2034**.
3. The MMP includes periodic maintenance along Trunk Road 16 Section 8 (TR16/8) and Trunk Road 16 Section 9 (TR16/9). The activities associated with the maintenance include the cleaning of all the inlets and outlets of culverts which are blocked by sediment and / or vegetation. The maintenance activities as per the MMP include, *inter alia*:
 - Clearing of sediment, vegetation and debris;
 - Repairs to headwalls/wingwalls;
 - Cracked culvert barrels must be repaired/sealed;
 - Repairs to culvert floor;
 - Repairs to apron slabs;
 - Reinstatement/repairs to concrete slopes;
 - Repairs to existing gabions and reno-mattresses for erosion control;
 - Removal of overgrown vegetation blocking road signs;
 - Handrailing and gabions at major culverts need to be repaired; and
 - Daylighting of culvert required; daylighting might extend beyond the fence line / road reserve. Daylighting is required to prevent stagnant water within the culvert and next to the road.

4. The proposed maintenance activities must be limited to the road reserve of along Trunk Road 16 Section 8 (TR16/8) and Trunk Road 16 Section 9 (TR16/9).
5. The agreement excludes the development of new structures or infrastructure or the expansion of existing structures or infrastructure which constitutes any other activity listed in the Environmental Impact Assessment Regulations Listing Notices of 2014.

Management and monitoring of activity

6. The Holder shall be responsible for ensuring compliance with the MMP and conditions, by any person acting on its behalf, including but not limited to, an agent, sub-contractor, employee, or any person rendering a service to the Holder.
7. The Holder must appoint a suitably experienced Environmental Site Agent ("ESA") or Control Officer ("ECO") for the duration of each maintenance project related to the *rehabilitation of erosion as a result stormwater runoff and the repair of damage to existing boardwalks and staircases along the foredune*.

The ESA / ECO must—

- 7.1. be appointed before commencement of any maintenance activities;
 - 7.2. be on the site where maintenance will be undertaken for the duration of the works to monitor and provide guidance relating to the conditions of this MMP;
 - 7.3. ensure that the mitigation measures and recommendations referred to in the MMP are implemented, and where such measures are not implemented that it is recorded and reported to the Competent Authority;
 - 7.4. conduct the necessary monitoring;
 - 7.5. collect photographic material demonstrating the before-, during- and post-maintenance activities; and
8. A copy of this decision and the adopted MMP must be kept at the site whenever maintenance activities will be undertaken. The aforesaid documents must be produced to any authorised official of the Department who requests to see the documents and such documents must be made available for inspection by any employee or agent of the Holder who works or undertakes work at the site.

Written notices to the Competent Authority

9. The Holder must, for the period during which the MMP remains valid, give written notice to the Competent Authority (for attention the Directorate: Development Management Region 3) of the implementation of the maintenance activities. Such notice must—
 - 9.1. provide the date of commencement of the maintenance activities on the site;
 - 9.2. make clear reference to the reference number given above; and
 - 9.3. provide proof of compliance with the requirement to appoint an ESA / ECO and provide the details of the ESA / ECO.
10. The Holder's written notice must be submitted to the Competent Authority prior to the commencement of the maintenance activities and prior to each subsequent maintenance project.

Environmental Auditing

11. The Holder must submit an MMP Audit Report, ("audit report") to this Directorate within **30 days** after the maintenance activities have been completed; or each subsequent maintenance project is completed.

This Directorate may require remedial action should the audit report reflect that rehabilitation is inadequate. The audit report must

12. The Audit Report must –
 - 12.1. be prepared by the appointed ESA/ ECO;
 - 12.2. indicate the date on which the maintenance/repair work was completed;
 - 12.3. detail compliance with the MMP and the conditions of this agreement as well as the status of the rehabilitation programme;
 - 12.4. include detailed designs or plans at a legible scale, for each of the sites where the maintenance work was undertaken; and
 - 12.5. include a photographic record of the completed site or sites;

Notification and administration of appeal

13. The Holder must within **14 (fourteen)** calendar days of the date of the decision give written notice to all the interested and affected parties and organs of state which were identified and engaged by Anchor Environmental (Pty) Ltd and NCC Environmental Services (Pty (Ltd) during the public participation process (hereinafter "the I&APs). The notice must –
 - 13.1. inform the I&APs of –
 - (a) the outcome of the decision;
 - (b) the date of the decision; and
 - (c) the date of issue of the decision;
 - 13.2. inform the I&APs of the fact that an appeal may be lodged against the decision in terms of the National Environmental Management Act: National Appeal Regulations (GN R.993 of 8 December 2014 as amended); and
 - 13.3. draw the attention of all the I&APs to the manner in which they may access the decision.
14. Appeals must comply with the provisions contained in the National Appeal Regulations 2014 (as amended).

5. APPEALS

1. An appellant (if the holder of the decision) must, within 20 (twenty) calendar days from the date the notification of the decision was sent to the holder by the Competent Authority –
 - 1.1. Submit an appeal in accordance with Regulation 4 of the National Appeal Regulations 2014 (as amended) to the Appeal Administrator;
 - 1.2. Submit a copy of the appeal to any registered I&APs, any Organ of State with interest in the matter and the decision-maker i.e. the Competent Authority that issued the decision; and
 - 1.3. Submit a copy of the appeal to the decision-maker (i.e., the Competent Authority that issued the decision) at:

Zaahir.Toefy@westerncape.gov.za;
Gavin.Benjamin@westerncape.gov.za; and copied to
DEADPEIAAdmin.George@westerncape.gov.za

2. An appellant (if NOT the holder of the decision) must, within 20 (twenty) calendar days from the date the holder of the decision sent notification of the decision to the registered I&APs–
 - 2.1. Submit an appeal in accordance with Regulation 4 of the National Appeal Regulations 2014 (as amended) to the Appeal Administrator; and
 - 2.2. Submit a copy of the appeal to the holder of the decision, any registered I&AP, any Organ of State with interest in the matter and the decision-maker *i.e.*, the Competent Authority that issued the decision.
 - 2.3. Submit a copy of the appeal to the decision-maker (*i.e.*, the Competent Authority that issued the decision) at:
Zaahir.Toefy@westerncape.gov.za; and copied to
Gavin.Benjamin@westerncape.gov.za;
DEADPEIAAdmin.George@westerncape.gov.za
3. The holder of the decision (if not the appellant), the decision-maker that issued the decision, the registered I&AP and the Organ of State must submit their responding statements, if any, to the appeal authority and the appellant within 20 (twenty) calendar days from the date of receipt of the appeal submission.
4. The appeal and the responding statement must be submitted to the Appeal Administrator at the address listed below:

By post: Western Cape Ministry of Local Government, Environmental Affairs and
Development Planning
Private Bag X9186
CAPE TOWN
8000

By facsimile: (021) 483 4174; or

By hand: Appeal Administrator
Attention: Mr Marius Venter (Tel: 021 483 3721)
Room 809
8th Floor Utilitas Building, 1 Dorp Street, Cape Town, 8001

Note: For purposes of electronic database management, you are also requested to submit electronic copies (Microsoft Word format) of the appeal, responding statement and any supporting documents to the Appeal Authority to the address listed above and/ or via e-mail to DEADP.Appeals@westerncape.gov.za.

5. A prescribed appeal form as well as assistance regarding the appeal processes is obtainable from the Appeal Administrator at: Tel. (021) 483 3721, E-mail DEADP.Appeals@westerncape.gov.za or URL <https://www.westerncape.gov.za/eadp/resource-library/forms>.

6. GENERAL MATTERS

Amendment, Suspension or Withdrawal of the Maintenance Management Plan

1. The Holder may submit a written request to the Competent Authority for an extension of the validity period of the MMP prior to the validity period lapsing. Such a request must contain a review of the MMP in terms of the need and desirability of such an extension and the objectives contained in the MMP. The review must make recommendations on possible amendments to the MMP or give reasons for maintaining the status quo.
2. Any changes to, or deviations from, the project description or maintenance activities set out in the adopted MMP must be approved in writing, by this Department, before effect may be given to such changes or deviations. In assessing whether to grant such approval or not, the Department may request such information as it deems necessary to evaluate the significance and impacts of such changes or deviations and it may be necessary for the Holder to apply for further authorisation in terms of the regulations pertaining to environmental impact assessments under sections of the National Environmental Management Act, 1998 (Act No. 107 of 1998).

Any erection/construction of new structures or the expansion of an existing structure or infrastructure, which constitutes any other activity listed in the NEMA Listing Notices (currently Government Notice R.983; R.984 or R.985 of 4 December 2014) may require environmental authorisation. This must first be confirmed with the competent authority.

3. This Department reserves the right to —
 - revise the adopted MMP or its initial comments; or
 - define further measures to be incorporated into the MMP,based on any new or revised information received and to request further information from the Holder where necessary.
4. This Department may suspend or withdraw the MMP based on any non-compliance with the MMP or a condition as defined in this decision.

Compliance with MMP

5. This MMP as adopted/defined by the Competent Authority may only be implemented by the Holder. The Holder shall be responsible for ensuring compliance with the MMP by any person acting on his/her behalf, including an agent, sub-contractor, employee or any person rendering a service to the Holder.
6. Non-compliance with this MMP or a condition thereof, may be considered an offence in terms of Section 49A(1)(e) and/or 49A(1)(f) of the National Environmental Management Act, 1998 (Act no. 107 of 1998, as amended) ("NEMA").
7. In the event that the MMP should lapse, it is an offence in terms of Section 49A(1)(a) of NEMA for a person to commence with a listed activity, unless the competent authority has granted an Environmental Authorisation for the undertaking of the activity.
8. Offences in terms of the NEMA and the Environmental Impact Assessment Regulations, 2014, will render the offender liable for criminal prosecution.
9. Notwithstanding the adoption of the MMP, the Holder must still comply with any other statutory requirements that may be applicable to the undertaking of the maintenance activities.

7. REASON(S) FOR DECISION

In reaching its decision, the competent authority, *inter alia*, considered the following:

- a) Final Maintenance Management Plan ("final MMP") for the abovementioned proposal dated 6 September 2023, compiled on your behalf by Ms. Hetlie Liebenberg of *Guillaume Nel Environmental Consultants* ("GNEC"), received by this Directorate on 26 September 2023;
- b) The public participation process followed, and comments received from interested and affected parties;
- c) The sense of balance of the negative and positive impacts and proposed mitigation measures;
- d) The objectives and requirements of relevant legislation, policies and guidelines, including section 2 of the National Environmental Management Act, 1998 (Act No. 107 of 1998); and
- e) The MMP is adopted/defined in terms of –

Environmental Impact Assessment Regulations Listing Notice 1 GN No. R. 983 as amended on 7 April 2017 –

Activity 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

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.

Whereas—

"maintenance" means actions performed to keep a structure or system functioning or in service on the same location, capacity and footprint.

"maintenance management plan" means a management plan for maintenance purposes defined or adopted by the competent authority

- f) The National Environmental Management Principles (set out in section 2 of the NEMA, which apply to the actions of all organs of state, serve as guidelines by reference to which any organ of state must exercise any function when taking any decision, and which must guide the interpretation, administration and implementation of any other law concerned with the protection or management of the environment), *inter alia*, provides for:
 - the effects of decisions on all aspects of the environment to be taken into account;
 - the consideration, assessment and evaluation of the social, economic and environmental impacts of activities (disadvantages and benefits), and for decisions to be appropriate in the light of such consideration and assessment;

- the co-ordination and harmonisation of policies, legislation and actions relating to the environment;
- the resolving of actual or potential conflicts of interest between organs of state through conflict resolution procedures; and
- the selection of the best practicable environmental option.

In view of the above, the NEMA principles, compliance with the conditions stipulated in the adopted MMP, and compliance with the MMP, the competent authority is satisfied that the proposed activities will not conflict with the general objectives of integrated environmental management stipulated in Chapter 5 of the National Environmental Management Act, 1998 (Act No. 107 of 1998) and that any potentially detrimental environmental impacts resulting from the proposed activities can be mitigated to acceptable levels.

8. DISCLAIMER

The Western Cape Government, the Local Authority, committees or any other public authority or organisation appointed in terms of the adopted MMP shall not be responsible for any damages or losses suffered by the Holder, developer or his/her successor in any instance where construction or operation subsequent to construction is temporarily or permanently stopped for reasons of non-compliance with the conditions as set out herein or any other subsequent document or legal action emanating from this decision.

Notwithstanding the adoption of this MMP, the Holder must still comply with any other statutory requirements that may be applicable to the undertaking of the maintenance activity.

Your interest in the future of our environment is appreciated.

Yours faithfully

DIRECTOR: DEVELOPMENT MANAGEMENT
DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING

DATE OF DECISION: 28 November 2023

