CULLINAN & ASSOCIATES
Environmental and green business attorneys

ENVIRONMENTAL LAW GUIDELINE FOR THE ROBBERG COASTAL CORRIDOR PROTECTED ENVIRONMENT JUNE 2017

Prepared for:

The Robberg Coastal Landowners Association ('RCCLA')

Prepared by:

Cullinan & Associates Inc.

23 June 2017

Our ref. S Kvalsvig/TB/R21-002

CULLINAN & ASSOCIATES
Environmental and green business attorneys

TABLE OF CONTENTS

INTRODUCTION 1

PART A: 2

A QUICK GUIDE TO LEGAL REQUIREMENTS FOR LAND DEVELOPMENT ACTIVITIES IN THE CORRIDOR 2

PART B: 8

A DETAILED GUIDE TO LEGAL REQUIREMENTS FOR OWNERS AND DEVELOPERS IN THE CORRIDOR 8

1. LEGAL STATUS OF THE CORRIDOR 8

2. WHICH LAND DEVELOPMENT ACTIVITIES MAY HAVE A DETRIMENTAL ENVIRONMENTAL IMPACT? 8

3. LAWS APPLICABLE TO ACTIVITIES WITHIN THE CORRIDOR 9

3.1. GENERAL ENVIRONMENTAL LAWS 9

3.2. WATER 10

3.3. WASTE 15

3.4. BIODIVERSITY CONSERVATION 19

3.5. ATMOSPHERIC EMISSIONS 25

3.6. COASTAL MANAGEMENT 32

3.7. HERITAGE 37

3.8. LAND USE PLANNING 39

3.9. AGRICULTURE AND SOIL CONSERVATION 48

3.10. MINING ACTIVITIES 56

INTRODUCTION

About this Guideline

This Environmental Law Guideline is compiled as a legal update to the *Robberg Coastal Corridor Environmental Law Guideline for a Coastal Corridor* which was prepared for the Robberg Coastal Corridor Landowners Association ("the RCCLA") in February 2012. The Guideline incorporates changes in the law since February 2012 and takes an activity-based approach to setting out the law applicable to the Robberg Coastal Corridor ('the Corridor').

The Guideline is compiled primarily for existing and prospective landowners and developers within the Corridor who have commenced or plan to develop their land within the Corridor. It is intended to make owners and developers aware of environmental and planning law requirements before they undertake land development activities in the Corridor.

How to use this guideline

This guideline has two parts:

Part A: a quick guide to:

- the kinds of land development activities that trigger legal requirements;
- the authorisations needed for various kinds of development activities; and
- the applicable legislation.

Part B: a more detailed guide to the legal requirements for owners and developers within the Corridor.

CULLINAN & ASSOCIATES
Environmental and green business attorneys

PART A:

A QUICK GUIDE TO LEGAL REQUIREMENTS FOR LAND DEVELOPMENT ACTIVITIES IN THE CORRIDOR

In most cases landowners will be required to obtain authorisation, permits or licences before undertaking any land development activities. The authorisation process usually entails an assessment of the effect of the proposed activity on the Corridor's sensitive environment. The activities listed below trigger legal requirements for landowners. This list is not exhaustive and should be used only as a quick guide to the kinds of laws that will apply to different activities.

ACTIVITY	AUTHORISATION/ACTION REQUIRED	LEGISLATION
Undertaking a listed land development activity (consult NEMA Listing Notices) (some specific activities are also listed below)	Environmental authorisation	National Environmental Management Act, 107 of 1998 EIA Regulations, 2014. Listing Notices 1, 2 and 3 of 2014.
Undertaking a listed waste management activity (consult NEM:WA list of waste management activities) (some specific activities are also listed below)	Waste management licence	National Environmental Management: Waste Act, 59 of 2008. List of Waste Management Activities that have or are likely to have a detrimental effect on the environment, 2013
Storage, use, disposal of water	Water use licence/general authorisation	National Water Act, 36 of 1998
Receiving water from an alternative water service provider (other than the municipality)	Written permission from the relevant local authority	Water Services Act, 108 of 1997

Carrying out activities relating to heritage resources such as the demolition or alteration of buildings that are older than 60 years	Heritage permit	National Heritage Resources Act 25 of 1999
Developments that may affect heritage resources (linear developments, bridges, developments changing the nature of a site exceeding 5000m2, multiple erven, involving rezoning)	Heritage impact assessment and heritage approval	National Heritage Resources Act 25 of 1999
Carrying out restricted activities involving threatened or protected species (TOPS) i.e. hunting, catching, capturing or killing, gathering, collecting or plucking, picking parts of, cutting, chopping off, uprooting, damaging, destroying, importing, exporting, having in possession or exercising physical control over, growing, breeding, moving or translocating, or selling a specimen of a listed or protected species	TOPS Permit	National Environmental Management: Biodiversity Act, 10 of 2004 Threatened or Protected Species Regulations, 2007

Importing, exporting, re-exporting or introducing from the sea, any specimen of a species listed in terms of the CITES (Convention on International Trade in Endangered Species)	CITES permit	National Environmental Management: Biodiversity Act, 10 of 2004 CITES Regulations, 2013
Construction of ports, harbours and coastal marinas	Environmental authorisation	National Environmental Management Act, 107 of 1998
Undertaking activities that affect indigenous forests, state forests or protected forests/ trees	Licence	National Forest Act, 84 of 1998
Constructing or upgrading landing strips or helipads	Environmental authorisation	National Environmental Management Act, 107 of 1998
Mining (including moving sand or rock or other natural materials in the area)	Prospecting/mining right and Environmental authorisation	Mineral and Petroleum Resources Development Act, 28 of 2002
Discharging effluent generated on land into coastal waters	General authorisation/coastal waters discharge permit	National Environmental Management :Integrated Coastal Management Act 24 of 2008
Subdivision, alienation, transfer, lease or agricultural land	Ministerial consent	Subdivision of Agricultural Land Act, 70 of 1970
Cultivation of virgin soil or establishing plantations or fields for agriculture	Written permission of the Executive Officer	Conservation of Agricultural Resources Act,43 of 1983

Other intensive farming such as aquaculture, or farming with vegetable of flower tunnels (including sea-based aquaculture facilities	Environmental authorisation	National Environmental Management Act, 107 of 1998
Activities relating to the use, importation, exportation, trial release or general release of Genetically Modified Organisms	Permit	Genetically Modified Organisms Act 15 of 1997
Exportation, importation and conveyance in transit of animals through South Africa	• Export Health Certificate; • Import or transit certificate	Animal Health Act, 7 of 2002
Importation and conveyance of potential vectors of plant diseases, potential pests, transport live animals and potential vectors of animal diseases	Permit	Agricultural Pests Act, 36 of 1983
Storage, treatment and processing of animal waste	Waste Management Licence	National Environmental Management: Waste Act 59 of 2008
Use of certain herbicides and pesticides for agricultural purposes	Registration with the Department of Agriculture Forestry and Fisheries	Fertilisers, Farm Feeds, Agricultural Remedies and Stock Remedies Act,36 of 1947
Establishing feeding lots or breeding lots e.g. chicken, pig or dairy farming	Environmental authorisation	National Environmental Management Act, 107 of 1998

Disposing of hazardous waste, such as old oil and chemicals on land	Waste Management Licence	National Environmental Management : Waste Act 59 of 2008
Constructing, upgrading or expanding dwellings, hotels, lodges, tented camps and the related infrastructure, for instance roads, water and electricity supply, sewerage treatment and storm water control	Environmental authorisation	National Environmental Management Act, 107 of 1998
Constructing or upgrading roads or dams	Environmental authorisation	National Environmental Management Act, 107 of 1998
Undertaking commercial or subsistence fishing; Fishing in the high seas	Fishing right and fishing permit; High seas fishing vessel licence	Marine Living Resources Act, 18 of 1998
Hunting and conveyance of indigenous animals	Licence/Permission and/or Landowner's consent	Nature Conservation Ordinance, 19 of 1974
Clearing of indigenous vegetation and disturbing or removing indigenous forest or protected trees, when clearing for other development in harvesting indigenous wood or wild flowers	Environmental authorisation	National Environmental Management Act, 107 of 1998

Burning vegetation (which may result in veld or forest fires	Prepare and maintain a fire break on their property along the boundary with any adjoining property	National Veld and Forest Fires Act, 101 of 1998
Undertaking activities which result in atmospheric emissions (consult NEM:AQA listed activities)	Atmospheric emissions licence	National Environmental Management : Air Quality Act, 39 of 2004
Construction of major hazard installations	Notification of local authorities prior to construction /compulsory risk assessments/preparation of on-site emergency plan/reporting of risk in emergency circumstances	Occupational Health and Safety Act 85 of 1993 Major Hazard Installation Regulations, 2001
Development of facilities or infrastructure for transmission and distribution of electricity	Environmental authorisation	National Environmental Management Act, 107 of 1998
Construction of new buildings, the alteration or extension of buildings or changing the use of existing buildings	Minor works permit or building approval	National Building Regulations and Building Standards Act, 103 of 1977

Landowners may require additional authorisations for any one of these activities and it is essential to identify whether other authorisation requirements are triggered, before commencing any development activities. More detail on the authorisations is provided below as well as an analysis of the particular activities, which could potentially trigger the requirement to obtain authorisation.

PART B:

A DETAILED GUIDE TO LEGAL REQUIREMENTS FOR OWNERS AND DEVELOPERS IN THE CORRIDOR

1. LEGAL STATUS OF THE CORRIDOR

The Corridor was declared a Protected Environment in terms of the National Environmental Management: Protected Areas Act, 57 of 2003 (NEM:PAA).[1]

The NEM:PAA establishes a framework for the declaration and management of protected areas, the integration of protected areas within broader national planning instruments, cooperative governance in respect of protected areas, and the promotion of local community participation in the management of protected areas. It designates the State as the trustee of the nation's protected areas. This responsibility is largely shared between the National Environment Minister (Environment Minister) and Members of Provincial Executive Councils (MEC's), to whose portfolio environmental affairs has been allocated (Environment MEC's).

2. WHICH LAND DEVELOPMENT ACTIVITIES MAY HAVE A DETRIMENTAL ENVIRONMENTAL IMPACT?

There are many land management and development activities which would have a detrimental impact on the environment in the sensitive Corridor.

Landowners must be aware of the legal requirements for activities currently undertaken within the Corridor and where new developments are planned the legal requirements must be understood and complied with before development activity commences.

As a general rule, most activities that may have a significant impact on the environment (including any conditions that affect the wellbeing of people), will require one or more authorisations under environmental legislation.

[1] Provincial Notice 305 in Provincial Gazette 7483 of 4 September 2015 (PN305/2015)

If there is reason to believe that an authorisation may be required, a landowner must check the various lists of activities for which an authorisation is required.

If one or more authorisations is required, the next step is to review the applicable legislation (and particularly the relevant regulations) to determine the process to be followed. For example it may be necessary for a landowner to appoint an independent Environmental Assessment Practitioner to undertake either an environmental impact assessment ('EIA') as part of the application process. Either a basic EIA (referred to as a "basic assessment") or a full EIA (referred to as a "scoping and environmental impact report" or "S & EIR" process) is required in order to obtain an environmental authorization, a waste management licence, or an atmospheric emission licence.

3. LAWS APPLICABLE TO ACTIVITIES WITHIN THE CORRIDOR

3.1. GENERAL ENVIRONMENTAL LAWS

The EI

In order to prevent or minimise the risk of harm to the environment, environmental legislation prohibits the undertaking of certain activities in the Corridor that are regarded as likely to create a risk of harm to the environment, except in accordance with an authorisation.

These activities are identified by the publication of a 'listing notice' in the *Government Gazette*and consequently are often referred to as 'listed activities'. In some cases an activity is only regulated if it occurs within a particular area, and these are called 'specified activities' as defined in the National Environmental Management Act 107 of 1998 ('NEMA'). This is to distinguish them from the general 'listed activities' for which an environmental authorisation is always required.

Additionally, environmental legislation imposes duties on landowners to take reasonable measures:

- to prevent harm, or the risk of harm, to the environment; and
- to mitigate and remedy any harm that does occur.

This is commonly referred to as the 'duty of care' and applies even to authorised activities. For example a landowner that holds a water use licence that authorises the discharge of a certain quantity and quality of effluent into a river, must still take all reasonable measures to reduce the volume and toxicity of that effluent to below the maximum permitted in the licence.

In practice the most important duties of care imposed by national environmental legislation are the duties to take all reasonable measures:

- to prevent pollution or environmental degradation from occurring, continuing or recurring (in terms of NEMA);
- to prevent pollution of a water resource from occurring, continuing or recurring (in terms of the NWA); and
- to avoid generating waste and where it is unavoidable, to reduce, re-use, and recover waste and to manage it lawfully in a manner that minimises the risks to the environment and human health in terms of the (NEM:WA))

3.2. WATER

The National Water Act[2] (NWA) is the principal Act regulating the use and protection of freshwater resources while the Water Services Act[3] ('WSA'), is the principal Act regulating water supply. Landowners must determine whether or not a particular water use or proposed water use within the Corridor, is lawful or identify the requirements that must be met for it to be lawful as detailed below. In practice, that means determining whether a water use licence is required for the particular type of use.

3.2.1. Lawful Permissible Water Uses

The first step is for landowners is to assess whether their water use is listed in Schedule 1 of the NWA. If so, it is a lawful permissible water use and a water use licence is not required. The NWA provides that a water use licence is not required if the intended water use is a permissible use listed in Schedule 1 of the NWA. The following are permissible uses:

[2] 36 of 1998
[3] 108 of 1997

(i) Reasonable Domestic Use

It is permissible for a landowner to use water for reasonable domestic use in their household if the water is obtained:

- directly from a water resource to which the person has lawful access; or
- from a source on land occupied or owned by the person.

Reasonable domestic use is not defined in the NWA. In terms of its ordinary meaning, water use will be reasonable and domestic if:

- it is used exclusively for the landowner's household (e.g. for drinking, cooking, cleaning and bathing or showering); and
- the quantity used is not excessive.

(ii) Using water on land

Landowners are permitted to take water which is on or forms the boundary of land owned or occupied by them, for:

- reasonable domestic use, as already mentioned above;
- small gardening not for commercial purposes; and
- the watering of animals which graze on that land within the grazing capacity of that land.

The conditions for using water in terms of this category are that:

- the water must be used on the land from which it is taken, so it cannot be used on other land;
- it must not be used to water animals in feedlots; and
- the use must not be excessive in relation to the capacity of the water resource and the needs of other users.

(iii)Runoff water from a roof

A landowner may store and use runoff water from his or her roof. Schedule 1 does not set maximum storage volumes, however the storage of runoff will cease to be a Schedule 1 water use if the amount of water stored exceeds 50 000m3.

(iv)Emergency situations

In emergency situations any person can to take water from any water resource for human consumption or firefighting. Emergency situations are not defined in the NWA however, section 30A of NEMA describes it as, "*a situation that has arisen suddenly that poses an imminent and serious threat to the environment, human life or property, including a 'disaster' as defined in section 1 of the Disaster Management Act*[4] *but does not include an incident referred to in section 30 of [NEMA]*". Similarly the ordinary meaning of the term refers to a situation which poses an immediate risk to health, life, property, or the environment, and which requires urgent intervention to prevent a worsening of the situation. Fires, drought or natural disasters may all create an emergency situation.

(v) Recreational purposes

Land users in the Corridor may make use of the water and surface of a water resource for recreational purposes, if they have lawful access to the water resource. For instance if the particular recreational activity is boating, it also allows the landowner to use the land adjacent to a watercourse for portage of the boat or canoe being used.

(vi)Discharging waste or runoff

It is permissible for landowners in terms of Schedule 1 to discharge waste, water containing waste, or runoff water into a canal, sea outfall, or other conduit controlled by a person authorised to undertake the purification, treatment, or disposal of waste or water containing waste. It is important to note that Landowners may be required to obtain additional approvals in terms of municipal by-laws. Runoff water includes storm water from residential, recreational, commercial or industrial sites.

[4] 57 of 2002

3.2.2. Existing Lawful Water Use

An existing lawful water use is described in the NWA as a water use that took place at any time during the period of 2 years immediately before the date of commencement of the NWA (that is at any time between 30 September 1996 and 1 October 1998) and which:

- was authorised by or under any law which was in force immediately before the NWA commenced (on 30 September 1998); or
- is a streamflow reduction activity (e.g. the use of land for commercial afforestation); or
- a controlled activity (for example, the irrigation of land with water containing waste from industrial activity or a waterworks, or a power generation activity which alters the flow regime of a water resource) or
- a water use which a responsible authority has declared under section 33 to be an existing lawful water use

A landowner (or that person's successor-in-title) may continue with an existing lawful water use subject to:

- existing conditions or obligations attaching to that use;
- compliance with any other limitation or prohibition in the NWA; and
- if the responsible authority so requires, registration of that existing lawful water use.

3.2.3. General Authorisation

General authorisations permit landowners to undertake specific water use activities, subject to the conditions specified in the authorisation. General authorisations are in force for a limited period and do not necessarily apply uniformly across South Africa. In some cases different conditions apply to different catchments, quaternary drainage regions or other geographical areas.

The Minister of Water is empowered to publish general authorisations in the Government Gazettes. Once an authorisation is published and it applies to the landowner, it is not necessary to obtain a water use licence for a water use that is authorised under a general authorisation.

3.2.4. Water Use Licence

If a water use is not:

1. a permissible in terms of Schedule 1; or
2. an existing lawful water use; or
3. authorised under a general authorisation

then it may not be undertaken without a water use licence. This requirement applies unless the Water Minister or Catchment Management Agency has exercised their powers in terms of the NWA to dispense with the need for a water use licence, on the basis that the purpose of the NWA has been met by the granting of a licence, permit or other authorisation under another law.

A water use licence is required for any water use activity listed under section 21 of the NWA, if such water use is not an existing lawful water use or authorised under a general authorisation. These activities are as follows:

- taking water from a water resource;
- storing water;
- impeding or diverting the flow of water in a watercourse;
- engaging in a stream flow reduction activity (e.g. commercial forestry);
- engaging in a controlled activity identified as such in section 37(1) or declared under section 38(1);
- discharging waste or water containing waste into a water resource through a pipe, canal, sewer, sea outfall or other conduit;
- disposing of waste in a manner which may detrimentally impact on a water resource;
- disposing in any manner of water which contains waste from, or which has been heated in, any industrial or power generation process;
- altering the bed, banks, course or characteristics of a watercourse;

- removing, discharging or disposing of water found underground if it is necessary for the efficient continuation of an activity or for the safety of people; and
- using water for recreational purposes.

3.3. WASTE

3.3.1. Legislative framework for waste management

The primary law regulating waste management in South Africa is the National Environmental Management: Waste Act[5] (NEM:WA) which commenced on 1 July 2009. NEM:WA is a specific environmental management Act, and must therefore be read together with the National Environmental Management Act[6] (NEMA), and must be interpreted in light of the national environmental management principles set out in section 2 of NEMA.

The NEM:WA regulates a broad range of waste management activities which may be conducted by landowners, including the generation, recovery, re-use, recycling, storage, treatment, transport, disposal, import and export of many types of waste (including solid, liquid, hazardous and general waste). Waste management is also regulated by national, provincial and municipal legislation. Landowners are therefore especially advised to review any relevant by-laws when considering the legal requirements for waste in a particular area. These by-laws are usually available on the website of the municipality, or by contacting the legal division of the municipality.

3.3.2. What are waste management activities?

One of the pertinent features of the NEM:WA is the listing of waste management activities under section 19. The listed waste management activities are those activities that have, or are likely to have, a detrimental effect on the environment. Persons who conduct listed waste management activities either require a waste management licence to do so, or must comply with published norms and standards for that activity.

The listed waste management activities relate to:

- storage of hazardous and general waste;

[5] 58 of 2009
[6] 107 of 1998

- recycling or recovery of hazardous and general waste;
- treatment of general and hazardous waste;
- disposal of hazardous and general waste; and
- the construction, expansion and decommissioning of facilities for any of the above.

Therefore landowners intending to conduct any of the above activities should first consult the list of waste management activities to determine whether the proposed activity falls within the listed activity thresholds.

3.3.3. Application for waste management licence

Landowners intending to conduct any listed waste management activities should apply for a waste management licence, before commencing those activities. Waste management licence applications must be submitted to the prescribed licensing authority. If an application is submitted to the incorrect authority, it cannot be considered. The licensing authorities are the Environment Minister, the Minister of Mineral Resources (Minerals Minister) or the relevant Environment MEC, depending on the nature of the activity being applied for.

The Environment Minister is the licensing authority in the following circumstances:

- If the waste management activity involves the establishment, operation, cessation or decommissioning of a facility at which hazardous waste has been or is to be stored, treated or disposed of, unless otherwise indicated by the Environment Minister by notice in the Government Gazette;
- if the waste management activity involves obligations in terms of an international convention, including the importation or exportation of hazardous waste;
- if the waste management activity is to be undertaken by—
    - a national department;
    - a provincial department responsible for environmental affairs; or
    - a statutory body, excluding any municipality, performing an exclusive competence of the national sphere of government;
- if the waste management activity will affect more than one province or traverse international boundaries; or

- if two or more waste management activities are to be undertaken at the same facility and the Environment Minister is the licensing authority for any one of those activities.

The Minerals Minister is the licensing authority where the waste management activity is, or is directly related to:

- prospecting or exploration of a mineral or petroleum resource;
- extraction and primary processing of a mineral or petroleum resource; or
- residue deposits and residue stockpiles from a prospecting, mining, exploration or production operation.

The Environment MEC is the licensing authority for all other waste management licence applications.

3.3.4. Is it necessary to appoint an Environmental Assessment Practitioner?

As NEM:WA currently stands, there is no specific requirement to appoint an environmental assessment practitioner (EAP), to manage the application on the applicant's behalf. However, waste licence applications are subject to the procedures set out in the 2014 Environmental Impact Assessment Regulations[7], which requires that applicant appoint, for the applicant's own account, an environmental assessment practitioner to manage the application.[8] By implication a landowner who applies for a waste management licence, must appoint an environmental assessment practitioner to manage the waste licence application processes.

3.3.5. Decisions on waste management licence applications

Provided that the landowner has followed all the prescribed procedures, and has submitted all relevant information, the licensing authority should be in a position to make a decision on the application. The licensing authority must consider the information received from the landowner, comments received from organs of state, interested persons or the public, and any guidelines issued by it. Thereafter the licensing authority may either:

- grant the application, and issue a licence with conditions;

[7] GNR 982 in GG 3822 of 4 December 2014
[8] Regulation 12

- refuse the application, which may be resubmitted if it contains new and material information which was not previously submitted; or
- reject the application if it does not comply with the requirements in NEM:WA. If the application is rejected, the applicant may amend and resubmit the application, but a new application fee will have to be paid.

A waste management licence once granted may be varied, transferred, suspended, reviewed or renewed on condition that the landowner complies with any conditions imposed by the licencing authority, in respect of any of these processes.

3.3.6. Additional obligations relating to Waste Management

Landowners who have obtained a waste management licence for a particular activity, may be required to obtain an additional environmental permit in order to carry out that activity. This may include:

- environmental authorisation under NEMA;
- a water use licence or registration under the National Water Act;
- a coastal waters discharge permit under the NEM:ICMA.[9]

However, the competent authority responsible for issuing an environmental authorisation under section 24 of NEMA, may regard an authorisation issued under other legislation to be a section 24 environmental authorisation, provided that the authorisation meets the standard of prescribed environmental assessment requirements.[10] This means that the Department of Environmental Affairs (DEA) or the provincial Environment Department should not issue both a NEMA section 24 environmental authorisation and a waste management licence in respect of the same waste management activity since they can either be integrated into a single integrated permit or the waste management licence may be regarded as a NEMA section 24 environmental authorisation.

[9] Act 24 of 2008
[10] Sections 24(4) and sections 24L(4)

3.4. BIODIVERSITY CONSERVATION

3.4.1. Nature Conservation Legislation

Indigenous species of plants, animals and ecosystems in the corridor are protected by national, provincial and municipal legislation. The most important national legislation in this regard includes:

- the NEMA;
- the National Environmental Management: Biodiversity Act (NEM:BA)[11]; and
- the National Environmental Management: Protected Areas Act (NEM:PAA)[12];

The regulations promulgated under NEM:BA are particularly significant and these include:

- the Threatened or Protected Species Regulations (the TOPS Regulations)[13];
- National list of ecosystems that are threatened or in need of protection[14]
- the Regulations on Bio-Prospecting, Access and Benefit Sharing ((the ABS Regulations)[15];
- the Convention on International Trade in Endangered Species of Wildlife Fauna and Flora (CITES Regulations)[16]; and
- the Alien and Invasive Regulations (the AIS Regulations).[17]

Western Cape Nature and Environmental Conservation Ordinance (NECO).[18]

In the provincial sphere, the NECO specifically provides for the administration and management of provincial nature reserves such as the Robberg Nature Reserve as well as other local and private nature reserves in the Western Cape Province. Outside of such reserves, NECO deals with the monitoring and management of rare and endangered species. Specifically, NECO requires landowners to obtain a permit for the collection,

[11] 10 of 2008
[12] 57 of 2003
[13] GNR 152 of 23 February 2007
[14] GN 1002 of 9 December 2011
[15] GNR 138 of 8 February 2008
[16] GNR 629 of 23 August
[17] GN 598 of 1 August 2014
[18] 19 of 1974

removal, harvesting, possession, transport, export, purchase, sale, donation, and any other manner of acquisition or disposal of such species. CapeNature administers NECO and its mandate extends to the management of 'problem' animals such as baboons.

3.4.2. Protected areas legislation

In terms of the NEM:PAA, a landowner may request the Environment Minister or an Environment MEC to declare conservation-worthy private land to be a special nature reserve, national park, nature reserve or protected environment the Environment Minister or Environment MEC must consider such request.[19]

The Corridor's declaration as a protected environment means that landowners are empowered to take collective action to conserve biodiversity on their land.[20]

Management Authorities for Protected Areas

A management authority must be appointed for each protected area. Management authority is defined to mean '*the organ of state or other institution or person in which the authority to manage the protected area is vested*'.[21] The Environment Minister may assign the management of a privately owned protected environment to a suitable person, organisation or organ of state provided that the owner and lawful occupier must have requested or consented to that assignment, and the Environment Minister has given the owner and lawful occupier notice in writing. The management authority for the Corridor is the RCCLA.

Each management authority must prepare a management plan to ensure the protection, conservation and management of the area. The management authority must submit the draft management plan to the Environment Minister or Environment MEC for approval. The management authority must consult with other organs of state, local communities and other affected parties before granting approval. A management authority's mandate may be terminated if it fails to fulfil its designated management functions.

[19] NEM:PAA section 35
[20] Section 28(b) NEM:PAA
[21] Section 1 NEM:PAA

The NEM:PAA provides that the Environment Minister or MEC may regulate activities in a protected environment by publishing a notice in the Gazette restricting or regulating

(a) development that may be inappropriate for the area given the purpose for which the area was declared; and

(b) the carrying out of other activities that may impede such purpose.[22]

Failure to comply with such a notice is an offence.[23]

The Environment Minister has published *Norms and standards for the management of protected areas in South Africa*[24] which apply to the management of protected environments.

3.4.3. Hunting, harvesting or using indigenous species

In terms of the common law, wild plants are owned by the owner of the land on which they are growing and wild animals are not owned by anyone (*res nullius*) but anyone who captures or kills a wild animal acquires ownership of it. However the common law position has been substantially altered by legislation, for instance:

- the rules determining the ownership of "game" have been substantially altered by the Game Theft Act 105 of 1991;
- the hunting and capture of many species of wild animal may not be undertaken without a permit issued either under provincial nature conservation legislation or under the TOPS Regulations made under the National Environmental Management: Biodiversity Act, 10 of 2004 (NEM:BA); and
- the harvesting of wild plants (even by the owners and occupiers of the land on which the plants are growing) is regulated, particularly by provincial nature conservation legislation, but also by the TOPS Regulations.

3.4.4. Non-statutory protection measures

[22] Section 51
[23] Section 89(1)(b)
[24] GN 382 of 31 March 2016

Private landowners may also wish to use their land for biodiversity conservation without incurring statutory implications. For example, neighbouring landowners may enter into contracts with one another to establish conservancies. Landowners may also transfer ownership of the land to a trust and define the objects of the trust and powers and duties of the trustees in a way that ensures that the land will be used for conservation purposes in perpetuity.

Other legal techniques for conserving ecosystems include imposing title deed restrictions (although these may be removed by successors-in-title) and imposing conservation servitudes.

3.4.5. Duties of landowners in respect of alien and invasive species

The regulatory framework relating to alien and invasive species (AIS), is aimed at preventing and managing the occurrence, as well as the spread of alien and invasive species. Landowners must therefore obtain a permit in order to carry out certain restricted activities involving listed alien and invasive species, in terms of the NEM:BA. This permit may only be issued after an assessment of the risks and potential impacts on biodiversity has been conducted. Such assessment must comply with the AIS Regulations[25], which provide requirements for the risk assessment framework, facilitator, procedure and report. The Environment Minister may exempt certain landowners from the requirement of a permit or risk assessment.

In terms of the AIS Regulations if the holder of an AIS permit sells a specimen of an alien or listed invasive species, or property on which a specimen of an alien or listed invasive species is under the permit-holder's control, the new owner of the specimen or property must apply for a permit in terms of the NEM:BA. Before concluding a sale agreement, the seller must inform the potential purchaser of the property, in writing, of the presence of the listed invasive species and the new owner of the land will be bound by the same conditions as the previous permit holder

The Conservation of Agricultural Resources Act (CARA)[26] imposes additional requirements on landowners in respect of controlling invasive species. The CARA Regulations[27] augment the CARA and categorise certain declared weeds and invader plants. Landowners must implement the measures prescribed in the regulations

[25] GNR 598 of 1 August 2014
[26] 43 of 1983
[27] GN 1048 of 25 May 1984

in order to combat certain weeds and invasive plants (which may include uprooting, biological control or burning).

3.4.6. Protection of indigenous trees

A landowner who wishes to protect any species of indigenous trees in the protected environment, may take the following steps:

- Submit a written request to the Environment Minister:
    - to list a species of tree as a threatened or protected species (TOPS) under the NEM:BA;
    - to protect the area where the trees are growing by declaring it to be a protected area under the NEM:PAA;
    - to list the ecosystem which the trees form part of to be an ecosystem that is threatened or in need of protection under NEM:BA;
- request the relevant provincial nature conservation agency or department to include the species in a category of protected species listed under provincial nature conservation legislation;

Alternatively, landowners may submit a written request to the Minister responsible for forests (the Minister of Agriculture, Forestry and Fisheries) to exercise powers under the National Forests Act ('NFA')[28]:

- to declare a group of indigenous trees to be a natural forest ;
- to declare a forest nature reserve, forest wilderness area or any other type of protected area recognised in international law or practice; or
- to declare a protected tree, group of trees, woodland or species; and
- to request the Registrar of Deeds to record any such declarations in the deeds registry..

[28] 84 of 1998

3.4.7. Management of veld and forest fires

General duties of landowners

The National Veld and Forest Fire Act 101 of 1998 (NVFF Act) sets out the general duties of landowners with respect to the control of veld and forest fires. It provides that every owner or occupier of land on which a veld fire or forest fire (referred to collectively in this Guideline as "wild fires") may start or burn or from whose land it may spread, must:

- prepare and maintain a fire break on their property along the boundary with any adjoining property[29] unless the owners of adjacent properties have agreed to position a common fire break away from the boundary;[30]
- have the equipment and clothing necessary for extinguishing fires and be in a position to extinguish, or help to extinguish, any veld fire;[31] and
- take all reasonable steps to warn adjoining landowners and fire protection associations of the presence of a fire.[32]

The firebreak must:

- be wide and long enough to have a reasonable chance of preventing a veld fire from spreading;
- not cause soil erosion; and
- be reasonably free of inflammable material capable of carrying a veld fire across it.[33].

Duties when clearing alien and invasive species or weeds

Owners and occupiers of land must ensure they minimise the risk of creating a wildfire if they use fire to clear alien and invasive species or weeds. The National Environmental Management: Biodiversity Act 10 of 2004 (NEM:BA) provides that the control and eradication of listed invasive species must:

- be carried out by means or methods that are appropriate for the species and the environment;
- be executed with caution;
- cause the least possible harm to biodiversity and damage to the environment; and
- be directed at the offspring.[34]

[29]NVFF Act, section 12
[30] Section 12(7)
[31] Section 17
[32] Sections 17 and 18
[33] Section 13
[34] NEM: BA section 75

Similarly, the regulations published under the Conservation of Agricultural Resources Act 43 of 1983 (GNR 1048 of 25 May 1984) provide that the clearing of declared weeds and invader plants must not cause a veld fire hazard.

Fire protection associations

An owner or occupier of land in an area where there is a risk of wild fires can reduce their risk by becoming a member of the local fire protection association.[35] Where a person brings civil proceedings against someone and proves that he or she suffered loss from a wild fire which:

- the defendant caused, or
- started on or spread from land owned by the defendant

the defendant is presumed to have been negligent in relation to the veld fire until the contrary is proven, unless the defendant is a member of a fire protection association in the area where the fire occurred.[36] (The plaintiff would, however, still need to prove that the defendant's action was wrongful.)

Land owners are therefore encouraged to join the Southern Cape Fire Protection Association (SCFPA) which can assist them in compiling a fire management plan. Such agreements may result in the strategic establishment of firebreaks around several Corridor properties rather than individual firebreaks around each property.

Municipal by-laws

Since municipal by-laws usually contain provisions which regulate open burning and veld fires it is important to check the municipal by-laws in order to avoid contravening the law.

3.5. ATMOSPHERIC EMISSIONS

3.5.1. Legislative Framework for Air Quality Management

Air quality management in South Africa is primarily regulated by the National Environmental Management: Air Quality Act[37] ('NEM:AQA'). The NEM:AQA empowers the Environment Minister or an Environment MEC, to publish and amend a list of activities which result in atmospheric emissions and which the Environment Minister or an Environment MEC reasonably believes have or may have a significant detrimental effect on the environment, including health, social conditions, economic conditions, ecological conditions or cultural heritage. Section 21 of NEM:AQA provides that a list published by an MEC only applies to the relevant province while one published by the Minister applies nationally.

[35] NVFF, section 3
[36] NFF, section 34
[37] 39 of 2004

Landowners therefore require an atmospheric emission licence ('AEL') or provisional AEL in order to undertake any of these listed activities. The listed activities, published in a Government Gazette[38], identify activities in ten categories, many of which have sub-categories. Those categories are:

Category 1:	Combustion installations
Category 2:	Petroleum Industry, the production of gaseous and liquid fuels as well as petrochemicals from crude oil, coal, gas or biomass
Category 3:	Carbonization and Coal Gasification
Category 4:	Metallurgical Industry
Category 5:	Mineral Processing, Storage and Handling
Category 6:	Organic Chemicals Industry
Category 7:	Inorganic Chemicals Industry
Category 8:	Thermal Treatment of Hazardous and General Waste
Category 9:	Pulp and Paper Manufacturing Activities, including By-Products Recovery
Category 10:	Animal Matter Processing

3.5.2. Applying for an AEL or Provisional AEL

Landowners must apply for an AEL to the licensing authority for the area in which the listed activity is, or is to be, carried out, and must use the application form prescribed by the licensing authority (if any). Metropolitan and district municipalities are primarily responsible for implementing the atmospheric emission licensing system and accordingly an application for an AEL must ordinarily be made to the metropolitan or district municipality for the area.

However the licensing authority will be a provincial organ of state if:

- the municipality has delegated its function of licensing authority to that provincial organ of state;

[38] GN 893 of 22 November 2013

- the Environment MEC has designated that provincial organ of state to be the licensing authority in respect of applications made by a municipality.

The licensing authority:

- may request the applicant to provide the licensing authority with additional information by a specified date, at the cost of the applicant, if it is reasonable to do so;
- may conduct its own investigation on the likely effect of the proposed licence on air quality;
- may invite written comments from any organ of state which has an interest in the matter; and
- must afford the applicant an opportunity to make representations on any adverse statements or objections to the application.

Landowners will be required to take appropriate measures to notify any relevant organs of state, interested persons and the public about the application. These steps must include the publishing of a notice in at least two newspapers, circulating in the area in which the listed activity applied for is to be carried out.

3.5.3. Environmental Assessment Requirement

The environmental assessment procedures set out in NEMA[39] apply to all AEL applications and both the applicant and the licensing authority must comply with NEMA and the NEMA environmental impact assessment regulations.[40] Therefore landowners must also obtain environmental authorisation if the proposed activity falls within Listing Notices, 1, 2 and 3[41] of NEMA. Examples of such activities include:

- the expansion of, or changes to, existing facilities which will trigger the need for an AEL[42];
- the development of facilities or infrastructure for any process or activity that requires an AEL[43]; and
- activity which requires an AEL except where such commencement requires a basic assessment in terms of the 2014 EIA Regulations.[44]

[39] Section 24
[40] EIA Regulations, 2014
[41] GNR 983, GNR 984 and GNR 985 of 4 December 2014
[42] Activity 34 in Listing Notice 1 (GNR 983 of 4 December 2014)
[43] Activity 6 in Listing Notice 2 (GNR 984 of 4 December 2014)
[44] Activity 28 in Listing Notice 2 (GNR 984 of 4 December 2014)

The application for an environmental authorisation under NEMA in respect of the above activities must be made to the competent authority identified in the 2014 EIA Regulations (in most cases this will be the provincial environment department). If the environmental authorisation is granted, the AEL licensing authority must make a decision on the AEL application within 60 days of the decision to issue an environmental authorisation.

3.5.4. Decision on AEL Applications

The licensing authority, after considering the application and taking account of all relevant considerations may grant or refuse the application for an AEL but the decision must be consistent the applicable legislation, the national environmental management principles set out in NEMA, relevant plans, policies, and standards, including ambient air quality standards and minimum standards for atmospheric emissions The licensing authority must inform the applicant of its decision within 30 days of the decision being reached.

If the application is successful, the licensing authority will issue a provisional AEL that authorises the commissioning or commencement of the listed activity subject to certain conditions and requirements. A provisional AEL is valid for the period specified in the licence but may be renewed once by applying to the licensing authority. The holder of a provisional AEL is then entitled to a (final) AEL when the commissioned facility has been in full compliance with the conditions and requirements of the provisional atmospheric emission licence for a period of at least six months.

Once an AEL is granted, the landowner may take any of the following steps, in consultation with the licensing authority:

- transfer the AEL;
- review the AEL;
- vary the AEL; or
- renew the AEL.

3.5.5. Technical Mechanisms and Measures

Upon obtaining an AEL, a landowner must (where applicable), also comply with the various technical mechanisms and measures relating to the regulatory framework for air quality. These technical mechanisms and measures are more specific and include norms and standards for matters relating to air quality management in terms of the requirements of NEM:AQA. Landowners must therefore observe these standards which are discussed briefly below:

Technical Mechanism	Application	Obligation on Landowner
Point Source Emission Standards	Point source emission means an atmospheric emission that emanates from a single identifiable source and fixed location, such as emissions from a smoke stack or residential chimneys. The emission standards that apply to a particular point source are usually specified in the atmospheric emission licence (AEL) that authorises the undertaking of the activities that cause those emissions.	An air quality officer may require a landowner to submit an Atmospheric Impact Report if there is reason to suspect that a person has failed to comply with the NEM:AQA or a provision of an AEL.
Vehicle Emissions	Vehicle emissions are regulated primarily through municipal by-laws but there is also a national tax on vehicles that are regarded as emitting high levels of carbon dioxide. In most municipalities there are restrictions on using vehicles (particularly diesel	Compliance with municipal by-laws

	vehicles) that emit dark smoke or other pollutants.	
Priority Areas	These are areas declared by the Environment Minister or MEC to in which there is significant air pollution and a priority area air quality management plan must be prepared[45]	Licencing authorities may impose stricter conditions in AELs, in order to fulfil the objectives of any applicable air quality management plan.
Controlled emitters	A controlled emitter is an appliance or activity which the Environment Minister or an Environment MEC has declared to be a controlled emitter. The following have been declared to be controlled emitters: • small boilers[46]; • temporary asphalt plants[47]; and • small-scale char and small-scale charcoal plants[48]	Operators of controlled emitters must comply with the standards setting the permissible amount, volume, emission rate or concentration of any specified substance or mixture of substances that may be emitted from the controlled emitter
Controlled fuels	A controlled fuel is any substance or mixture of substances which when used as a fuel in a combustion process, results in atmospheric emissions which through ambient	No substances have been declared to be controlled fuels to date.

[45] There are currently only declared priority areas (i) the Vaal Triangle Air-Shed priority area (GN 365 of 21 April 2006); (ii) the Highveld priority area (GN 1123 of 23 November 2007, Government Gazette 30518) and (iii) the Waterberg-Bojanala National priority area (GN 495 of 15 June 2012, Government Gazette 35435)

[46] GN 831 of 1 November 2013

[47] GN 201 of 28 March 2014

[48] GNR 283 in Government Gazette 38632 of 2 April 2015

	concentrations, bioaccumulation, and deposition or in any other way present a threat to health or the environment. A substance may also be declared a controlled fuel if the Environment Minister or an Environment MEC reasonably believes that it may present such a threat.	

3.5.6. Dust Pollution

Dust that produces a change in the environment which has an adverse effect on human health or well-being, or the environment falls within the definition of "pollution" in NEMA and other environmental legislation. The Environment Minister or an Environment MEC is also empowered to prescribe measures for the control of dust in specified places or areas, steps to prevent dust nuisance and any other measures aimed at controlling dust[49] and also gives both the Environment Minister and Environment MEC's wide powers to make regulations.

The National Dust Control Regulations promulgated under NEM:AQA[50] establish standards for acceptable rates of dust fall (that is, for the rate at which dust is deposited) in residential and non-residential areas. These regulations also empower air quality officers the power to give a notice to any person requiring them to undertake a dust fall monitoring programme, if the air quality officer reasonably suspects that that person is exceeding the dust fall standards or that person is conducting an activity for which a fugitive dust emission management plan is required. Additionally, a landowner who is required to implement a dust fall monitoring programme, may be obliged to submit dust fall monitoring reports and or a dust management plan to the air quality officer.

[49] Section 23 of NEM:AQA
[50] GNR 827 in Government Gazette 36974 of 1 November 2013

The National Building Regulations[51] also regulate the control of dust and noise resulting from excavation work.52 The regulations require the owner of any land on which any building is being erected or demolished, to take all reasonable precautions to limit the amount of dust emanating from those activities. Failure to comply with the regulation is an offence.

3.6. COASTAL MANAGEMENT

3.6.1. Undertaking Land Development Activities in Coastal Zones

The primary legal consequence for land falling within the coastal zone is that additional considerations will form part of a competent authority's assessment in determining whether to grant environmental authorisation for an activity occurring within this zone. When intending to undertake any activity within the coastal zone, or which affects the coastal zone, a landowner must first determine which area of the coastal zone the activity will take place or affect, and the purpose of the designation of that particular area. This will inform decisions relating to such activity by the relevant authorities, and therefore must be considered by a project proponent.

The environmental aspects of activities within the coastal zone are primarily regulated by the National Environmental Management: Integrated Coastal Management Act[53] (NEM:ICMA). The NEM:ICMA provides that the coastal zone:

" is the area comprising coastal public property, the coastal protection zone, coastal access land, coastal protected areas, the seashore and coastal waters, and includes any aspects of the environment on, in, under and above such areas".[54]

The NEMA Listing Notices[55] list a number of activities which require environmental authorisation by virtue of the proposed activity being located within the coastal zone. These are either activities that can only take place

[51] GNR 2378 of 12 October 1990
[52] Part F6
[53] 24 of 2008
[54] Section 1
[55] GNR 983, GNR 984 and GNR 985 of 4 December 2014

within the coastal zone (for example, the construction of ports, harbours and coastal marinas, or the construction of facilities for marine aquaculture) or that only trigger the need for an environmental authorisation when they occur within the coastal zone (for example, the construction of a road within 1 kilometre form the high-water mark).

Therefore any developments occurring within the coastal zone, are subject to a number of additional considerations, restrictions and requirements that would not apply if those developments were undertaken elsewhere. For example:

- certain activities require an environmental authorisation under NEMA if they occur within certain coastal areas (but not otherwise);
- there are additional requirements in relation to environmental impact assessments ('EIAs') of activities within two sensitive coastal areas (the Outeniqua Sensitive Coastal Area, and the Pennington and Umtamvuna Sensitive Coastal Area);
- additional considerations must be taken into account during the assessment and decision-making processes in relation to activities within the coastal zone.

3.6.2. Activities in Development Setback Lines

Certain activities cannot be undertaken without an environmental authorisation if they occur within a specified distance from the high-water mark (e.g. 100 metres, 200 metres or 1 kilometre, depending on the activity). However a development may not require environmental authorisation, if it is behind a development setback line which is set in relation to the sea, an estuary or a watercourse.

Therefore, where development in proximity to the coastal zone is being considered, it should first be established whether a set-back line has been determined and adopted by the competent authority. It is also important to appreciate that development set-back lines referred to in the NEMA listing notices are different to the coastal management lines provided for in NEM:ICMA.

3.6.3. Checklist of questions to consider when undertaking an activity in the coastal zone

It is advisable for any landowner who wishes to undertake an activity within the coastal zone, to consider the following aspects at an early stage in the planning process.

Question	Legislation	Check
1. Is the proposed activity likely to have an adverse effect on the coastal environment?	NEM:ICMA s 59	☐
2. Will the activity take place on coastal public property? If so, is a coastal use permit required?	NEM:ICMA ss 65 and 66	☐
3. Will the activity involve discharges of effluent into coastal waters? If so a coastal waters discharge permit will be required?	NEM:ICMA s 69	☐
4. Does the activity fall within the scope of any of the NEMA listed activities? If so an environmental authorisation will be required.		☐
5. Do the title deeds for the site on which the activities will take place or the applicable zoning map indicate that the site borders on, or is crossed by, the boundary of coastal public property, the coastal protection zone, a special management area or coastal access land?	NEM:ICMA ss 26, 31, 32	☐
6. If any authorisation is required for the proposed activities, consider the following questions: 6.1. What additional considerations would the decision maker have to take into account when deciding whether or not to grant an environmental authorisation because the proposed activity is within the coastal zone? 6.2. What additional information would have to be supplied to ensure that the decision-maker is able to make a properly informed decision in relation to these considerations?	NEM:ICMA s 63	☐
7. Does the site where the activities are to take place border on coastal public property or border on, or include any part of the coastal protection zone? If so, consider the following questions. 7.1. Has the Environment Minister or MEC published a notice in the Gazette or the Provincial Gazette advising that it intends to determine or adjust the boundary of coastal public property or the coastal		☐

protection zone in a manner that may affect the proposed activities? 7.2. Does the public need to gain access to coastal public property via the site? 7.3. Has the municipality published a notice in the Provincial Gazette advising that it intends to determine or adjust the boundary of public access land in a manner that may affect the proposed activities? 7.4. Is one of the activities the reclamation of any land from the sea? 7.5. Is the site susceptible to erosion by the sea?	Coastal access land is dealt with in NEM:ICMA ss 18 to 20 as read with s 13(a)) Coastal access land is dealt with in NEM:ICMA ss 18 to 20 as read with s 13(a)) Coastal access land is dealt with in NEM:ICMA ss 18 to 20 as read with s 13(a)) NEM:ICMA ss 14 and 15	
8. Has the MEC published any coastal management lines for that area in the Provincial Gazette? If so, are any development activities proposed seaward of such a coastal management line?	NEM:ICMA s 25	☐
9. Is the proposed activity within a sensitive coastal area (e.g. coastal public property, the coastal protection zone)?	NEM:ICMA ss 16 and 17	☐
10. . Will the proposed activities occur within a special management area declared by the Environment Minister in the Gazette? If so, are any of the proposed activities prohibited or restricted in that special management area?	NEM:ICMA s 23	☐
11. Is the proposed development consistent with the coastal management objectives ('CMOs') stipulated in the national, provincial and municipal coastal management programmes ('CMPs')?		☐
12. Has the municipality adopted municipal bylaws, a coastal planning scheme or land use scheme, a municipal coastal management programme (CMP), or an integrated development plan ('IDP') and spatial development framework ('SDF'), that contain restrictions, CMOs, policies or principles that are relevant to the proposed	NEM:ICMA, ss 48 to 52, and 56 to 57	☐

activities? If so, are the proposed activities consistent with those bylaws, coastal planning or land use scheme, IDP and SDF, and CMP?		
13. Will the proposed development be adjacent to or affect an estuary? If so, is it consistent with any estuarine management plan adopted in respect of that estuary?	NEM:ICMA s 34	☐
14. . Are there any structures on the site that were constructed unlawfully, or that is having or is likely to have an adverse effect on the coastal environment?	NEM:ICMA ss 60, 61 and 96	☐
15. Will the activities take place on any coastal public property or admiralty reserve land that is occupied under a lease?	NEM:ICMA, section 95	☐

3.6.4. Marine Pollution

NEM:ICMA also regulates land-based sources of marine pollution as well as dumping at sea and provides that effluent that originates from a source on land may not be discharged into coastal waters except in terms of general discharge authorisation or a coastal waters discharge permit (CWDP).[56] Effluent is defined in NEM:ICMA as:

> *"any liquid discharged into the coastal environment as waste, and includes any substance dissolved or suspended in the liquid or a liquid which is a different temperature from the body of water into which it is being discharged".*[57]

The Environment Minister may by notice in a Government Gazette, grant a general discharge authorisation, authorising a landowner, or a category of landowners to discharge effluent into coastal water. If a landowner intends to discharge effluent into an estuary, authorisation is granted only after consultation with the Minister responsible for water affairs.[58] Those persons not authorised to discharge effluent into coastal waters in terms of general discharge authorisation must apply to the Department of Environmental Affairs (DEA) for a CWDP. The Environment Minister has not published any such general authorisations to date.

[56] Section 69(1)
[57] Section 1
[58] Section 69(2)

Additionally, NEM:ICMA prohibits the dumping of any waste or other material from a South African or foreign vessel, aircraft, platform or other man-made structure in the country's maritime spaces.[59] This is to give effect to the Convention on the Dumping of Wastes at Sea.[60] If a landowner wishes to dump waste or other materials in to the sea, he or she must apply in writing to the Minister for a permit allowing them to load waste or other material abroad a vessel, aircraft, platform or other structure and be dumped at sea. The NEM:ICMA lists the factors taken into consideration when deciding on an application as well as a list of what waste the Minister may grant authorisation for.[61] Dumping permits are issued for a specific period not exceeding two years and may only be renewed once for a period not exceeding two years.

3.7. HERITAGE

3.7.1. Protection of Heritage Resources

The National Heritage Resources Act[62] (NHRA) offers protection to any place or object of aesthetic, archaeological, historical, scientific, social, spiritual, linguistic or technological value or significance. Significant heritage resources are considered to be part of the national estate and are regulated by local and provincial heritage authorities under the oversight of the national South African Heritage Resource Agency ('SAHRA'). A landowner may not alter the state of a heritage resource without first making application to a heritage authority for a permit to do so.

3.7.2. Heritage Impact Assessments

Landowners will likely first encounter heritage law when developing land as the management of heritage resources is integrated with environmental resources. This means that before developments can take place, heritage resources must be assessed and, if necessary, rescued and the NHRA specifies the activities for which

[59] Section 70(1)(d) and (f)
[60] 13 November 1972, London
[61] Section 71(3) and (4)
[62] 25 of 1999

a heritage impact assessment ('HIA') may be necessary.[63] Where a development will include one or more of the activities the landowner must "at the very earliest stage of the development" notify the responsible heritage resources authority (usually the provincial heritage authority) of the:

- location;
- nature; and
- extent of the proposed development.

The heritage authority will then either require a heritage impact report, based on which approval for the development may be granted or refused, or notify the landowner that the section does not apply to the intended development. If an application for environmental authorisation is to be made for the development in terms of NEMA or in terms of other legislation, then separate authorisation under the NHRA is not necessary providing the requirements of the heritage resource authority are met by the environmental impact assessment process for that application.

3.7.3. Development within Heritage Areas

In terms of the NHRA, any area in South Africa which is of special environmental or cultural interest is worthy of being designated as a heritage area. Heritage areas will be reflected in town or regional planning schemes, spatial plans, or initiatives instigated by provincial heritage resource authorities.

The NHRA requires planning authorities to investigate the need for the designation of heritage areas to protect any place of environmental or cultural interest when these planning instruments are revised. A municipality may designate any area or land to be a heritage area on the grounds of its environmental or cultural interest or the presence of heritage resources, provided that it first consults with:

- the appropriate provincial heritage resources authority;
- any affected community; and

[63] Section 38

- any affected landowners in the area.

Heritage areas within municipal planning schemes normally limit or prohibit the extent to which the area may be altered or developed. If a proposed land development activity falls within a designated heritage area, the landowner risks prosecution for violation of that particular planning scheme, if development takes place without proper authorisation.

The special consent of the municipality is therefore required for any alteration or development affecting a heritage area. If work is carried out without the consent of the local authority, it has the power to require the landowner to stop this work immediately and restore the site to its previous condition within a specified period. If the landowner fails to do so, the local authority has the right to carry out the restoration work itself and recover the cost from the landowner.

3.8. LAND USE PLANNING

3.8.1. Legislative Framework

Land use planning in South Africa is regulated in the national sphere by the Spatial Planning and Land Use Management Act ('SPLUMA').[64] SPLUMA came into operation on 1 July 2015 and is aimed at creating a uniform system, to assist with restructuring and reflecting the priorities and principles of the democratic government. When considering any land development alternatives, consideration should also be given to the relevant provincial requirements contained in provincial planning legislation, which must be read together with municipal land use schemes.

Most provincial planning laws are in the process of being amended or replaced to align them with the SPLUMA. For instance, the Land Use-Planning Act[65] ('LUPA') has been enacted in the Western Cape. LUPA is a framework Act which seeks to bring planning legislation in the Western Cape in line with the Constitution and

[64] 16 of 2013
[65] 3 of 2014

ensure the effective integration of planning activities across the provincial and municipal governments. Consequently the Land Use Planning Ordinance[66] ('LUPO') no longer regulates planning in Cape Town but will continue to apply within other municipalities within the Western Cape until they are ready to implement LUPA.

3.8.2. Land Development Management

SPLUMA requires landowners to submit any land development applications, falling within the provided definition, to a municipality as the authority of first instance. Land development applications are defined in SPLUMA[67] as:

"the erection of buildings or structures on land, or the change of use of land, including township establishment, the subdivision or consolidation of land or any deviation from the land use or uses permitted in terms of an applicable land use scheme"[68]

Municipalities are required to establish Municipal Planning Tribunals (MPT's) to determine land use and development applications. An MPT comprises of at least 5 members or more who are officials in the full-time service of the municipality as well as persons appointed by the Municipal Council with knowledge and experience of spatial planning and land use management matters or law. When considering an application affecting the environment, an MPT must ensure compliance with environmental legislation and any persons who are interested in a particular land use planning application may petition the MPT or appeal authority to intervene in an existing application before them. However such person would have to be granted intervener status by the MPT in order to participate in the proceedings and the onus is on the person to establish her or his status as an interested person.

Persons whose rights may be affected include the applicant, the relevant municipality or an 'interested person' who may reasonably be expected to be affected by the outcome of the land development application proceedings. An 'interested person' must be a person having pecuniary or proprietary interest who is adversely affected or able to demonstrate that she or he will be adversely affected by the decision.

[66] 15 of 1986
[67] Section 33
[68] Section 1

3.8.3. SPLUMA Land Development Checklist

Landowners are advised to consult the checklist below, before undertaking or submitting any land development applications in terms of SPLUMA. The prescribed process for submitting such applications is also briefly discussed in the checklist.

Step	Action
1.	Identify the relevant land use management system (the relevant municipal land use scheme).
2.	Check whether: 2.1. the application is consistent with the municipal land use scheme; 2.2. the application is consistent with the MSDF; 2.3. there is any general policy and other guidance provided by the executive authority of a municipality; 2.4. there is a district municipal land use scheme and what land development rights are provided for in that scheme; 2.5. the area has been exempted from any of the provisions of SPLUMA by the national Minister and, if so, what that means for the application. An MPT may not make a decision which is inconsistent with a MSDF but may depart from it only if site specific circumstances justify such departure.
3.	Consider the record of previous applications and reasons for decisions. This provides a good indication of whether the development application is likely to be approved or not.
4.	Check if authorisation is required in terms of other laws and, if so, whether it is likely that an: 4.1. integrated authorisation could be issued; or 4.2. authorisation in terms of that other law meets all the requirements of SPLUMA and is regarded by the municipality as an authorisation in terms of SPLUMA. There may be a written agreement between the municipality and an organ of state seeking to avoid duplication in the submission of information relating to any aspect of an activity that also requires authorisation under SPLUMA. It is important to check if there has been such an agreement.

5.	Consider the relevant regulations relating to the application including the criteria to be prescribed by the Minister to guide the implementation of the provisions that deal with development applications that affect the national interest.
6.	Refer to the development principles and consider them in the application: spatial justice, spatial sustainability, efficiency and good administration.
7.	Check if the application complies with the norms and standards. Check that it takes account of: 7.1. public interest; 7.2. constitutional transformation imperatives; 7.3. rights and obligations of organs affected; 7.4. state level of engineering services, social infrastructure and open space requirements; 7.5. ensure compliance with environmental legislation to the extent possible (section 42(2) of SPLUMA); 7.6. Check compliance with relevant SDFs: 7.6.1. RSDF 7.6.2. PSDF 7.6.3. NSDF
8.	Check whether any remedial provincial measures are in place that were instituted by province to assist the municipality with its obligations in terms of SPLUMA or provincial legislation.
9.	If the development application is for residential purposes, make sure that provision has been made for parks or open spaces on site or that the municipality has agreed to provide these areas.
10.	Where the municipality is the competent authority and there is a condition of title, establishment of a township or an existing scheme that refers to consent or approval of the Administrator, the Premier, the Township's Board or any controlling body ensure that the application requests that approval as well.
11.	Submit the development application to the municipality (or identify the official that is to decide the application) as the authority of first instance: 11.1. if additional authorisations are required, submit application to those organs of state as well.
12.	Submit the application to the Minister where the applicant believes that the application is likely to affect the national interest (matters within the exclusive functional area of a national sphere; strategic national policy objectives, principles or priorities; or land use for a purpose which falls within the function of area of national sphere of government).

13.	Consider whether persons have petitioned to intervene as interested persons and, if so, what issues they have raised. It is likely that an applicant would be provided with an opportunity to respond to issues raised by interveners. [An interested person for the purposes of this section is a person who has a pecuniary or proprietary interest who is adversely affected or who are able to demonstrate that she or he will be adversely affected by the decision of the MPT or an appeal in respect of such a decision.]
14.	The decision of the official or MPT must be made within the period prescribed by the Minister.
15.	The applicant, the municipality or interested persons (who have satisfied the authorities that they meet the requirements for interested persons) may submit written appeals, including the grounds for the appeal, to the Municipal Manager within 21 days of notification of the decision. The Municipal Manager submits the appeal to the executive authority.
16.	The appeal authority (the executive authority of the municipality) must consider the appeal and confirm, vary or revoke the decision.
17.	The appeal authority may also be a body or an institution outside of the municipality or body regulated in terms of provincial legislation.
18.	Where title deed restrictions were removed, the applicant must ensure that the municipality has notified the Deeds Office and requested the Deeds Office to record the amendment.
19.	The applicant must obtain the certificate of compliance.

3.8.4. Subdivision and Consolidation of Land

Whilst undertaking land development activities, landowners may be faced with situations which require them to subdivide or consolidate land. For instance it may be necessary to subdivide a property in order to have individual land units registered in the Deed's Registry or to consolidate different erven so as to facilitate a development. In order for the land to be developed into units for housing it must be rezoned to a zoning that permits subdivision of that land. For example, property that is zoned as agriculture may not be subdivided unless it is rezoned appropriately.

.

Where property is subject to a consent use right or temporary land-use departure and is subsequently subdivided, the consent use right or temporary land-use departure, unless stated otherwise by the municipality, applies to only one of the subdivided portions.

3.8.5. Subdivision of Agricultural Land

The aspects discussed in section 3.8.4 also apply to the subdivision of agricultural land. However, there is an additional requirement for this category of land. The Subdivision of Agricultural Land Act[69] (SALA) provides that agricultural land shall not be divided unless the Agriculture Minister has consented in writing. Landowners must therefore obtain the Agricultural Minister's consent in order to subdivide agricultural land. This is to prevent agricultural land being divided into units that are not economically viable. Agricultural land is defined in the SALA to mean:

"any land, except land situated in the jurisdiction of a municipal council (section 1). Given that South Africa has back-to-back municipalities it may appear that no land is agricultural land in terms of SALA"[70]

3.8.6. Consolidation of Land

In order to consolidate land, landowners must consult either the relevant land use planning scheme or provincial or municipal planning laws. An application for consolidation of land is subject to approval by a municipality in whose area the land is situated.

The application must be made by the owner of the land or a person acting with the written consent of the landowner. Additional requirements for the application may be that an evaluation by a registered planner and recommendation on the proposal is required. Other matters to be taken into account include comments received from the public, the potential impact of the proposal on the environment, socio-economic conditions, and cultural heritage and the provision and standard of engineering services.

3.8.7. Building Plan Approval

The National Building Regulations and Building Standards Act [71] (Building Standards Act) promotes the uniform regulation of buildings within the jurisdiction of a local authority. In terms of the Building Standards

[69] 70 of 1970
[70] Section 1
[71] Act 103 of 1977

Act, no new buildings may be built or structural alterations or additions made to existing buildings, unless the municipality has approved building plans for that work. The process for deciding whether or not to grant approval is set out in the Building Standards Act. Landowners will require approval when undertaking most building activities. This would include the construction of new buildings, the alteration or extension of buildings or changing the use of existing buildings. In some instances.

As a first step a landowner must determine whether the intended work is defined in the National Building Regulations[72] as a 'building' or '*minor building works'* in the National Building Regulations. If the intended structural work falls within the definition of 'minor building works', the landowner must obtain authorisation from the relevant municipality's building control officer (unless the activity is specifically excluded in the regulations). If the structural work is defined as a 'building' it will be necessary to prepare and submit building plans to the local authority. The landowner must gather the following information in order to prepare the building plan submissions to the local authority:

- a registered survey diagram from the Surveyor General's office;
- correct zoning and development parameter or restrictions information from the nearest local district planning office;
- a copy of any previous approved building plans held by the Council at the nearest local district building development management office;
- copies of existing approved building plans, where these may be necessary in the case of extensions, additions or alterations, can be requested from the Council's approved building plan records database at the local district building development management office at a set tariff.

The table below provides examples of building activities which require building approval:

Activity	Approval Required	Threshold	SACAP Registration requirement
House extensions	Yes		Yes

[72] GNR 2378 of 12 October 1990

Change of use of an existing building	Yes		Yes
Erection of hoardings at large construction sites	Yes		No
Entire (or partial) demolition of a building	Yes		No
Minor repairs to my house or shop	No	E.g. removing or rebuilding a substantial part of a wall, underpinning a building or reroofing (with a different type, e.g. thatching, heavier tiles etc.)	Yes
Carport	Yes	Less than 40m2	No
Erection of any temporary structure	Yes		No
Conversion of house into flats	Yes	Even where no construction work is intended	Yes

Once it is established that building plan approval is in fact required and the necessary background information has been obtained, the landowner must comply with the various submission requirements relating to scale of the plans, including the information in the relevant forms, the size of plan sheets and content of site plans.

In terms of the Architectural Professions Act[73] as well as the Code of Professional Conduct[74], the architect or draughtsperson of any building plans may be required to register with the South African Council for Architectural Profession (SACAP), in order to submit those plans to the local authority. The Building Standards Act also requires that the author's name and SACAP registration number must appear on all plans and documents prepared and submitted to the local authority. Additionally, all building plan applications should also be accompanied by an Architectural Compliance Certificate, as required in terms of the Architectural Professions Act.

3.8.8. Major Hazard Installations

The Occupational Health and Safety Act[75] (OHSA) defines major hazard installations ('MHI's') as:

an installation—

- *where more than the prescribed quantity of any substance is or may be kept, whether permanently or temporarily, or*
- *where any substance is produced, processed, used, handled or stored in such a form and quantity that it has the potential to cause a major incident[76].*

A major incident is defined as an occurrence of catastrophic proportions, resulting from the use of plant or machinery, or from activities at a workplace.

A determination of whether or not a facility is an MHI must be done by an organization approved by the Chief Inspector in the Department of Labour, as an 'approved inspection authority' for the purposes of the MHI regulations.[77] Usually these organisations will do a preliminary assessment and only if they conclude that it is likely to be classified as an MHI, will they prepare a full risk assessment for the purposes of the MHI regulations[78] and determine the separation distances that should maintained between the MHI and other buildings or developments.

[73] Act 44 of 2000
[74] BN 154 of 27 November 2009
[75] 85 of 1993
[76] Section 1
[77] GNR 692 of 30 July 2001
[78] GNR 692 of 30 July 2001

3.8.9. Obligations in Respect of Major Hazard Installations

Landowners who operate MHI's must strictly comply with obligations set out in the MHI regulations, in respect of such sites. The MHI regulations:

- require landowners to notify local government authorities prior to the construction of an MHI;
- impose restrictions on the altering of an existing MHI;
- require landowners to notify interested and affected parties of the construction or alteration of a MHI, by publishing a newspaper advertisement regarding the MHI;
- require compulsory risk assessments of MHI's to be done every 5 years;
- require the preparation of on-site emergency plan; and
- require the reporting of risk in emergency circumstances.

A risk assessment exercise must entail the process of collecting, organising, analysing, interpreting, communicating and implementing information in order to identify the probable frequency, magnitude and nature of any major incident which could occur at a MHI, and the measures required to remove, reduce or control the potential causes of such an incident. Off-site emergency plans outside the premises of the MHI are the responsibility of local government

3.9. AGRICULTURE AND SOIL CONSERVATION

3.9.1. Protection of Agricultural Land from Erosion and Degradation

Landowners in the coastal corridor bear a general in terms of NEMA duty of care to take reasonable measures to prevent environmental degradation from occurring, and to mitigate or remediate where it has occurred.[79] This duty also applies to the degradation of soil by erosion or loss of fertility. The Conservation of Agricultural Resources Act[80] (CARA) applies to agricultural land and has as one of its objects the conservation of natural agricultural resources by the combating and prevention of soil erosion.

[79] Section 28
[80] 43 of 1983

CARA provides for the control of various agriculture-related activities in order to promote soil conservation. These activities include:

- the irrigation of land;
- the utilisation and protection of land which is cultivated; and
- the cultivation of virgin soil (defined as land which has not been cultivated at any time during the preceding ten years).

Additionally the CARA regulations prescribe specific soil conservation measures that must be taken by "land users". Land user is defined to include owners, occupiers, lessees and servitude holders among others).

Land users must:

- protect cultivated land effectively against excessive soil loss as a result of the action of water, for example by constructing feeder channels and irrigation furrows and ensuring that irrigation dams are impermeable to prevent uncontrolled seepage of water and wind
- take measures to prevent erosion when cultivating sloping land;
- protect veld against erosion by water, wind or through over-grazing; and
- restore or reclaim eroded land to the satisfaction of the authorities.

3.9.2. Cultivation of virgin soil

A landowner may not cultivate virgin soil except with the written permission of the executive officer (an official designated by the Agriculture Minister). This authority must be sought at least three months prior to the commencement of cultivation. Additionally, landowners must conduct an environmental impact assessment and obtain environmental authorisation in respect of the physical alteration of 100 hectares or more of virgin soil for agricultural purposes is a listed activity.[81]

CARA also empowers the Agriculture Minister to establish schemes for providing financial assistance for, among other things, the establishment of soil conservation works and other soil conservation measures. A

[81] Activity 13 in NEMA Listing Notice 2 (GNR 984 of 4 December 2014)

soil conservation scheme was established in 1984 and applies to the whole country.[82] Landowners must therefore abide by this scheme which provides for the payment of subsidies in respect of specified soil conservation works, including:

- a weir constructed to stabilise a water;
- a barrier that has its object to prevent the scouring of a donga head; or
- a storm water furrow, contour bank or waterway that has it subject to protect cultivated land against excessive soil loss.

3.9.3. Subdivision and transfer of agricultural land

As discussed in section 3.8.5, the purpose of the Subdivision of Agricultural Land Act (SALA) is to prevent farms from being subdivided into portions that are too small to farm economically. It is important to note that the Subdivision of Agricultural Land Repeal Act[83] repeals SALA, however the date of commencement of that Repeal Act has not yet been published and consequently the SALA is still in force.

In terms of the SALA, landowners require the written consent of the Agriculture Minister:

- to subdivide, sell, transfer or lease of agricultural land;
- to enter into a lease of agricultural land for a period of more than 10 years;
- to sell or advertise a portion of agricultural land for the purposes of a mine as defined in section 1 of the Mineral and Petroleum Resources Act[84] ('MPRDA') and to sell or grant a right in such portion of agricultural land for a period of more than 10 years or for the natural life of any person or to the same person for periods aggregating more than 10 years, or to advertise for sale or with a view to any such granting, except for the purposes of a mine as defined in the MPRDA; and
- subject to certain exceptions, to register a servitude over agricultural land.

[82] GNR 1047 of 25 May 1984
[83] 64 of 1998
[84] 28 of 2000

An application for consent for these and other activities must be lodged by landowner concerned in the prescribed form and it must be accompanied by any plans or documents, as required by the Agriculture Minister.

3.9.4. Irrigation

The use of water for irrigation is regulated by the National Water Act (NWA) and the CARA. An environmental authorisation under NEMA is likely to be required for the construction of associated infrastructure such as dams and reservoirs. Additionally a landowner may require a water use licence or a general authorisation if irrigation water is:

- sourced by abstracting water from a watercourse or removing it from underground; or
- sourced from waste water or water containing waste.

Additionally landowners undertaking irrigation activities may be required to obtain environmental authorisation for the following activities:

- development of dams and weirs exceeding 100 square meters[85];
- development of a dam where the dam wall is over 5 meters high or where the dam covers 10 hectares or more[86];and
- development of dams and weirs exceeding 10 square meters or development of dams and weirs exceeding 10 square meters[87]

The Environment Minister has also published an Irrigation Improvement Scheme[88] under CARA, with the aim of preventing soil from becoming waterlogged and salinized and the better utilisation and protection of water sources. Landowners can apply for certain subsidies under this scheme when erecting listed water utilisation works.

[85] Listing Notice 1 (GNR 983 of 4 December 2014): Activities 12 and 48
[86] Listing Notice 2 (GNR 984 of 4 December 2014): Activity 16
[87] Listing Notice 3 (GNR 985 of 4 December 2014): Activities 2,16 and 23
[88] GNR 1487 of 29 September 1995

3.9.5. Agricultural Chemicals

Any farming activities in the coastal corridor, will inevitably involve the use of a wide range of chemicals and pharmaceuticals for yield protection and enhancement purposes. This includes fertilizers, pesticides, herbicides, animal feeds (farm feeds) and medicines for livestock (stock remedies). These are regulated primarily under the Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act[89] (FFFARSR Act) and the regulations made under the FFFARSR Act and landowners are required to strictly observe these standards and requirements.

The FFFARSR Act defines an agricultural remedy as any chemical substance or biological remedy, or any mixture or combination of any substance or remedy intended or offered to be used for the destruction, control, repelling, attraction or prevention of any undesired microbe, alga, nematode, fungus, insect, plant, vertebrate, invertebrate, or any product thereof, but excluding any chemical substance, biological remedy or other remedy in so far as it is controlled under the Medicines and Related Substances Control Act[90] or the Hazardous Substances Act.[91] This legislative framework:

- prohibits the acquisition, disposal, sale or use of certain agricultural remedies;
- prohibits the use of unregistered agricultural remedies; and
- prohibits the use of unregistered agricultural remedies.

Landowners should also observe any restrictions pertaining to containers of such remedies and establishes labelling requirements, advertisement requirements and manufacturing establishment practices amongst other aspects.

The control of weeds using pesticides is also a regulated activity in terms of the CARA. A Weed Control Scheme has been published by the Agriculture Minister aimed at maintaining the production potential of land. [92] In terms of this scheme, landowners in certain areas may be provided with weed killer (herbicides) in order to control the type of weed subject to control in that area. Landowners may apply to participate in this scheme

[90] 101 of 1965
[91] 15 of 1973
[92] GNR 1044 of 25 May 1984

by submitting an application to the relevant Department of Agriculture's extension office in the area concerned. Importantly, The Weed Control Scheme must be read in conjunction with the Alien and Invasive Species Regulations[93], as certain restricted activities involving specified weed species, may require a permit, an Invasive Species Management Programme or any other control measure as specified in the NEM:BA.

3.9.6. Control of Plant and Animal Diseases and Pests

The introduction of animals and plant material into the coastal corridor, may result in the spreading of agricultural pests and diseases harmful to crops and farm animals in the protected area. As such, landowners may be required to obtain permission before introducing any potentially harmful vectors as well as limit and contain any outbreaks.

The Agricultural Pests Act[94] (APA) provides for various measures to control plants and prevent plant diseases and agricultural pests. It prohibits landowners from importing 'controlled goods' without a permit. A number of regulations have been promulgated in terms of the APA which provide for the importation of various controlled goods, control measures to prevent and control the spreading of pathogens, insects and exotic animals, permitting, controlled goods in respect of which permits for importation may not be issued, and the importation of 'genetically manipulated organisms'. The APA also requires landowners to notify the authorities when certain pests (such as locusts) are present on their land.

Additionally, the importation, exportation or conveyance (in transit) of any animal in the Republic, is strictly regulated in terms of the Animal Health Act.[95] No animal may be exported without an export health certificate AHA and permits for the import and transit of animals are required beforehand. Landowners are also prohibited from importing and conveying of any animal, parasite, or contaminated or infectious thing which has been declared as a controlled animal or thing without a permit. These activities are regulated in terms of the Animal Diseases Act.[96] Controlled measures have been declared relating to foot and mouth disease, avian influenza and classical swine fever and import permits and the detention of controlled animals.

[93] GNR 598 of 1 August 2014
[94] 36 of 1983
[95] 7 of 2002
[96] 35 of 1984

3.9.7. Genetically Modified Organisms

A genetically modified organism' is defined as '*an organism the genes or genetic material of which has been modified in a way that does not occur naturally through mating or natural recombination or both, and 'genetic modification' shall have a corresponding meaning'*. This definition is provided in the Genetically Modified Organisms Act.[97] Landowners are not prohibited from planting a GMO that has been authorised for general release, however a facility at which the contained use of GMOs takes place must be registered. If a landowner previously obtained a permit to undertake a GMO related activity, then an extension permit will be required to conduct or continue with that activity.

The following activities may only be undertaken after a landowner has obtained a permit in terms of the GMO Regulations[98]:

- commodity clearance of a GMO (which means that the GMO may be used as a food or feed, or for processing, provided that it is not planted or released into the environment);
- importation or exportation of GMO's with general release/commodity clearance approval;
- importation or exportation of a GMO that does not have a general release or commodity clearance approval;
- use of a GMO that do not have general release or commodity clearance approval in a contained environment (i.e. in a 'facility');
- the trial release of a GMO that does not have general release or commodity clearance approval; and
- for the general release of a GMO.

Landowners are required to conduct an Environmental Impact Assessment (EIA) before GMO's are released into the environment in certain circumstances. However in practice this is not required and only risk assessments are required for this purpose. Activity 29 in Listing Notice 1 of the 2014 Environmental Impact Assessment Regulations[99] provides that an EIA is required for the release of GMO's into the environment 'where the assessment for such release is required by the GMO Act or NEM:BA'. Therefore unless the

[97] 15 of 1997
[98] GNR 120 of 26 February 2010
[99] GNR 983 of 4 December 2014

Executive Council for Genetically Modified Organisms or the Environment Minister decides otherwise, an EIA is not required for any activity involving GMOs.

3.9.8. Agricultural Waste

Agricultural activities within the corridor may produce significant volumes of waste, most of which is organic and capable of being used to make compost and/or used to fuel bio digesters that generate methane gas. Certain wastes from agriculture are classified as 'hazardous wastes' because they have the potential to cause extensive pollution or health hazards, if not properly managed (for example abattoir waste and manure). Hazardous waste from agriculture, horticulture, aquaculture, forestry, hunting and fishing fall within the definition of 'business waste' in Schedule 3 of the NEM:WA and Non-hazardous wastes from agriculture are regulated as general waste.

Farmers or landowners are therefore required to obtain a waste management licence for the following activities:

- storing, treating or processing animal manure, including the composting of animal manure at a facility with a throughput capacity in excess of 10 tonnes per month;
- constructing a facility and associated structures and infrastructure for such storage, treatment or processing;
- processing waste at biogas installations with a capacity for receiving 5 tonnes or more per day of animal waste, animal manure, abattoir waste or vegetable waste; or
- constructing a biogas facility and associated structures and infrastructure to process animal manure and abattoir waste.

These activities are included in the List of Waste Management Activities published in terms of the NEM:WA.[100] Applicants must therefore follow a basic assessment process in accordance with the EIA Regulations, as part of the application process for such a waste management licence.

[100] Activities A10 and A11 in GN 921 of 29 November 2013

3.10. MINING ACTIVITIES

3.10.1. Authorisation for Mining Activities

The Mineral and Petroleum Resources Development Act[101] (MPRDA) is the principal legislation dealing with mining in South Africa. Many of the provisions that apply to the mining of mineral resources are similar to those that apply to the exploitation of petroleum resources (oil and gas), but the MPRDA uses different terms to make it clear whether a particular provision applies to mineral resources or to petroleum resources.

The MPRDA requires persons to apply for authorisation prior to conducting any prospecting, mining, exploration, reconnaissance or production activities related to mineral resources, which includes, for instance, borrow pits, or the excavation of sand or for small scale mining. However the Act exempts landowners from the requirement to obtain a permit or right if he or she "lawfully, takes sand, stone, rock, grave or clay for farming or for effecting improvements in connection with such land or community development purposes, is exempted from the provisions of in subsection (1) as long as the sand stone, rock, gravel or clay is not sold or disposed of."[102] Applications for authorisation are handled by the Department of Mineral Resources (DMR).

3.10.2. Environmental Authorisation for Mining Activities

The MPRDA provides that the Minerals Minister must grant a prospecting or mining right if, among other aspects, the mining "will not result in unacceptable pollution, ecological degradation or damage to the environment". Environmental Impact Assessments (EIAs) are used to assess whether or not the potential environmental impacts will be acceptable. The environmental impacts of undertaking these activities are regulated by requiring the holder of rights under the MPRDA, to implement an approved environmental management programme and to comply with conditions in the environmental authorisation.

A landowner who wishes to undertake certain activities that require authorisation under the MPRDA must therefore:

[101] Act 28 of 2002
[102] Section 106

- undertake an environmental impact assessment (EIA) process in accordance with the EIA Regulations, 2014;
- prepare an environmental management programme (EMP);
- apply simultaneously for the environmental authorisation under NEMA and the requisite authorisation under the MPRDA and include the EIA reports and the EMP with the application; and
- determine and make financial provision to guarantee the availability of sufficient funds to undertake rehabilitation and remediation of the adverse environmental impacts of prospecting, exploration, mining or production operations,[103] to the satisfaction of the Minerals Minister and as prescribed in the Regulations pertaining to the financial provision for prospecting, exploration, mining or production operations.[104]

Over and above the MPRDA and NEMA authorisations, landowners must also consider whether additional steps must be taken in respect of any planning aspects under SPLUMA as well as any rezoning and / or departures requirements.

---

[103] Section 24P of NEMA
[104] GNR 1147 of 20 November 2015