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DEPARTMENT OF FORESTRY, FISHERIES AND THE ENVIRONMENT

NO. 4362 **9 February 2024**

NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998
(ACT NO. 107 OF 1998)

CONSULTATION ON THE DEVELOPMENT AND ADOPTION OF THE KWAZULU-NATAL PROVINCIAL WATERCOURSE INFRASTRUCTURE STANDARD AND ASSOCIATED EXCLUDED ACTIVITIES AND PROPOSED EXCLUSION OF ACTIVITIES FROM THE REQUIREMENT TO OBTAIN AN ENVIRONMENTAL AUTHORISATION

I, Barbara Dallas Creecy, Minister of Forestry, Fisheries and the Environment, hereby publish my intention to develop and adopt, in terms of section 24(10)(a) of the National Environmental Management Act, 1998 (Act No. 107 of 1998), the *KwaZulu-Natal Provincial Watercourse Infrastructure Standard and Associated Excluded Activities*, and based on compliance with this Standard, exclude, in terms of section 24(2)(d) of the National Environmental Management Act, 1998 (Act No. 107 of 1998) identified activities, as set out in the Schedule, from the requirement to obtain an environmental authorisation.

Essential community services, including community access roads, pedestrian bridges and the provision of community water and sanitation reticulation play a fundamental role in social well-being and economic development by linking communities to basic needs and services and facilitating local economic development and employment opportunities. Most of these essential community service activities need to obtain an environmental authorisation in terms of sections 24(2)(a) and (b) and 24F(1) of the National Environmental Management Act, 1998 (Act No. 107 of 1998) prior to commencement, as parts of the infrastructure often fall within a watercourse or within 32 metres thereof, or would require the excavation or deposition of material into or out of a watercourse.

The National Environmental Management Act, 1998 (Act No. 107 of 1998) provides a framework for the development, adoption and implementation of a variety of environmental management instruments in order to achieve the objectives of integrated environmental management. Section 24(2)(d) of this Act provides for the exclusion of activities from the requirement to obtain an environmental authorisation based on compliance with prescribed norms or standards. These norms or standards provide the rules, guidelines or characteristics that can be commonly or repeatedly used for the purposes of achieving the objectives of the Act.

A strategic assessment was undertaken by the KwaZulu-Natal Department of Economic Development, Tourism and Environmental Affairs to evaluate the potential for the development of a standard to manage the impacts associated with activities related to community service infrastructure being constructed or established within watercourses for which an environmental authorisation is currently required. The assessment found that a high proportion of the applications for an environmental authorisation received within KwaZulu-Natal province, are for the formalisation, repair, replacement or upgrade of existing community access tracks and roads, pedestrian bridges or watercourse crossings and community water

and sanitation reticulation. Most of these projects are undertaken within the footprint of existing disturbed areas where community service infrastructure has already been established, either formally or informally.

The analysis established that the assessment requirements for the *in situ* formalisation and upgrade of service infrastructure was substantially routine and that the infrastructure being established was standardised. The assessment further found that the conditions of authorisation and mitigation requirements within environmental authorisations issued, were commonly repeated and standard. The assessment further identified specific circumstances where the impacts, the assessment process required, and the required mitigation measures deviated from the norm. These activities or areas are excluded from the application of the Standard.

As the impacts and mitigation measures to formalise, repair, replace or upgrade existing community access roads, pedestrian bridges or watercourse crossings as well as water and sanitation infrastructure are standard, they can be managed through a Standard and Generic Environmental Management Programme. The implementation of a Standard and Generic Environmental Management Programme would facilitate improved service delivery, reduce the cost burden on the state by not requiring the undertaking of environmental impact assessments for routine and repetitive projects and will allow development to occur in a more timely manner.

The requirements of the Standard and mitigation measures identified through the Generic Environmental Management Programme will adequately avoid and mitigate environmental impacts and ensure conformance to the principles and objectives of environmental management provided for in the National Environmental Management Act, 1998 (Act No. 107 of 1998).

The *KwaZulu-Natal Provincial Watercourse Infrastructure Standard and Associated Excluded Activities* establishes the processes and procedures for specified watercourse infrastructure activities to be excluded from the requirement to obtain an environmental authorisation, subject to registration of these projects with the competent authority and adherence to the provisions contained in the Generic Environmental Management Programme and the Standard.

Members of the public are invited to submit written comments or inputs, within 30 days after the publication of this Notice in the *Gazette,* to the following address:

By post to: The Director-General
Department of Forestry, Fisheries and the Environment
Attention: Dr D Fischer
Private Bag X447
PRETORIA
0001

By hand at: Environment House
473 Steve Biko Road
ARCADIA
0083

By e-mail: dfischer@dffe.gov.za

Any inquiries in connection with the notice can be directed to Dr D Fischer at dfischer@dffe.gov.za or (012) 399 8843. Comments or inputs received after the closing date may not be considered. The Standard

can be accessed at https://www.dffe.gov.za/projectprogrammes/environmental_management_instruments

The Department of Forestry, Fisheries and the Environment complies with the Protection of Personal Information Act, 2013 (Act No. 4 of 2013). Comments received and responses thereto are collated into a comments and responses report which will be made available to the public as part of the consultation process. If a commenting party has any objection to his or her name, or the name of the represented company/organisation, being made publicly available in the comments and responses report, such objection should be highlighted in bold as part of the comments submitted in response to this government notice.

BARBARA DALLAS CREECY
MINISTER OF FORESTRY, FISHERIES AND THE ENVIRONMENT

SCHEDULE

1. Definitions

In this Schedule a word defined in the National Environmental Management Act, 1998 (Act No. 107 of 1998) or the Environmental Impact Assessment Regulations, 2014, as amended has the same meaning, and unless the context indicates otherwise —

"**Environmental Impact Assessment Regulations**" means the Environmental Impact Assessment Regulations, 2014 published in terms of section 24(5) of the Act under Government Notice No. R. 982 in Government *Gazette* No. 38282 of 4 December 2014, as amended from time to time;

"**Generic EMPr**" means the generic environmental management programme as contained in Annexure 2 to the Standard and includes all method statements or standard operating procedures approved for the registered project;

"**project**" means an activity or set of activities undertaken for the formalisation, repair, replacement or upgrade of existing community access roads, pedestrian bridges or watercourse crossings and water and sanitation reticulation infrastructure;

"**the Act**" means the National Environmental Management Act, 1998 (Act No. 107 of 1998); and

"the Standard" means the KwaZulu-Natal Provincial Watercourse Infrastructure Standard, 2023.

2. The KwaZulu-Natal Department of Economic Development, Tourism and Environmental Affairs has prepared the draft *KwaZulu-Natal Provincial Watercourse Infrastructure Standard and Associated Excluded Activities* (the Standard).

3. The Standard is developed and intended to be adopted in terms of section 24(10)(a) of the National Environmental Management Act, 1998 (Act No. 107 of 1998) (the Act) for the purpose of excluding the activities contemplated in paragraph 5 of this Schedule, read with Annexure 1 of the Standard, from the requirement to obtain environmental authorisation prior to commencement, subject to compliance with the Standard and the Generic EMPr.

4. Based on compliance with the provisions of the Standard, the activities contemplated in paragraph 5 of this Notice are excluded from the requirement to obtain environmental authorisation in terms of section 24(2)(d) of the Act, when undertaken entirely within the KwaZulu-Natal province; and, on condition that the activities meet the inclusion criteria contained in Annexure 1 of the Standard and none of the eliminating criteria contained in Annexure 1 are applicable.

5. The following identified activities, read with Annexure 1 of the Standard, are hereby excluded from the requirement to obtain environmental authorisation:

    5.1. Environmental Impact Assessment Regulations Listing Notice 1 of 2014, as amended:
        5.1.1. Activity 12(ii);
        5.1.2. Activity 19;
        5.1.3. Activity 48(i); and

    5.2. Environmental Impact Assessment Regulations Listing Notice 3 of 2014, as amended:
        5.2.1. Activity 12(d)(iv) and (xii);

5.2.2. Activity 14(ii); and
5.2.3. Activity 23(ii);

or any combination of these activities.

6. The provisions of the Standard are not applicable if–
   (a) any activity not excluded as contemplated in paragraph 5, read with Annexure 1 of the Standard, is triggered, in which case environmental authorisation must be obtained for all applicable identified activities;
   (b) any portion of the project is intended to be undertaken outside of the KwaZulu-Natal province;
   (c) any portion of the project has commenced prior to its registration as a registered project; or
   (d) an excluded activity forms part of a mining application or constitutes a mining activity.

7. Compliance with the Standard does not negate the obligation of the proponent to comply with all other applicable legislation.

8. Where this Standard does not apply, with the exception of paragraph 6(c), the requirements of the Environmental Impact Assessment Regulations apply.

9. Failure to comply with the requirements of the Standard constitutes an offence in terms of section 49A(1)(bA) of the Act and failure to register a project prior to its commencement constitutes an offence in terms of section 49A(1)(d) of the Act.

10. The provisions of the National Appeal Regulations, 2014, as amended, are applicable to an appeal against any decision taken in terms of this Notice or the Standard.

11. An application for environmental authorisation submitted in terms of the Environmental Impact Assessment Regulations for identified activities contained in this Government Notice, which is pending on the date of coming into effect of the Standard and exclusion contemplated in this Notice, must be finalised in accordance with the procedures of the Environmental Impact Assessment Regulations or may be withdrawn.

12. An environmental authorisation issued prior to the coming into effect of the Standard and this Notice for activities that are excluded in terms of this Notice, remains valid as if the Standard and exclusion are not in effect.

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