

CHAPTER 4:	LEGISLATIVE AND POLICY REQUIREMENTS	2
4.1	ENVIRONMENTAL CONTEXT	2
4.1.1	The Constitution	2
4.1.2	The Environment Conservation Act, 1989 (Act No. 73 of 1989) (ECA)	2
4.1.3	National Environmental Management Act, 1998 (Act No. 107 of 1998) (NEMA)	2
4.1.4	National Heritage Resources Act, 1999 (Act No. 25 of 1999) (NHRA)	3
4.1.5	Conservation of Agricultural Resources Act, 1983 (Act No. 43 of 1983) (CARA)	3
4.1.6	National Water Act, 1998 (Act No. 36 of 1998)	3
4.1.7	Mineral and Petroleum Resources Development Act, 1991 (Act No 50 of 1991)	3
4.1.8	City of Cape Town: Policy for Development Control Near Watercourses	3
4.2	TRANSPORT CONTEXT	4
4.2.1	The South African National Roads Agency and National Roads Act, 1998 (Act No. 7 of 1998) (National Roads Act):	4
a.	Declaration Of National Roads	5
b.	Declaration Of A Toll Road	5
c.	Land Acquisition	5
d.	The SANRAL's Biodiversity Policy	5
4.2.2	National Land Transport Transition Act, 2000 (Act No. 22 of 2000)	5
4.2.3	Western Cape Toll Roads Act, 1999 (Act No. 11 of 1999)	6
4.2.4	Draft Western Cape Toll Roads Policy, 20 April 2001	6
4.2.5	Moving South Africa - The Action Agenda (September 1998)	6
4.3	TOWN PLANNING CONTEXT	7
4.3.1	National Legislation	7
4.3.2	Provincial Acts And Legislation	7
4.3.3	Local Level Legislation	7
a.	Zoning Schemes	8
b.	The Forward Planning Context	8
i.	Provincial Policies And Plans	8
ii.	Metropolitan Policies And Plans	8
iii.	Local Area Policies And Plans	8
	Blaauwberg Administration	8
	City Of Tygerberg Administration	9
	City Of Cape Town Administration	9
	Oostenberg Administration	9
	South Peninsula Administration	9

CHAPTER 4: LEGISLATIVE AND POLICY REQUIREMENTS

In both the Environmental, Town Planning and transport contexts, there are a wide range of national and provincial acts and local level legislature, which are considered of relevance to this project. In addition, applicable national, provincial, metropolitan and local forward planning policies and frameworks exist, which may influence this proposal.

4.1 ENVIRONMENTAL CONTEXT

4.1.1 The Constitution

In terms of the Constitution, 1996 (Act No. 108 of 1996) everyone has the right to an environment that is not harmful to their health or well-being. The Constitution states that government must act reasonably in order to protect the environment by preventing pollution and promoting conservation and sustainable development and further, that it must secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development (Section 24).

4.1.2 The Environment Conservation Act, 1989 (Act No. 73 of 1989) (ECA)

Work for this environmental assessment has been undertaken in concurrence with the requirements of the EIA Regulations promulgated by the ECA. Activities that may be detrimental to the environment are listed in the Government Notice R1182 of the 5 September 1997 (Amended by GN R 1355 of 1997-10-17, GN R 448 of 1998-03-27 and GN R 670 of 2002-05-10.)

The following listed activities may apply to this project:

- The construction or upgrading of roads, railways, airfields and associated structures; here "road" means -
 - any road determined to be a national road in terms of section 40 of the South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998), including any part of such road;
 - any road or track in an area protected by legislation for the conservation of biological diversity or archaeological, architectural or cultural sites or an area that has been zoned open space or an equivalent zoning; or
 - any road or track in an area regarded by the relevant authority as a sensitive area.
- the construction or upgrading of canals and channels, including structures causing disturbances to the flow of water in a riverbed.
- the change of land use from agricultural or zoned undetermined use or an equivalent zoning to any other land use.
- the change of land use from nature conservation or zoned open space to any other land use.
- the reclamation of land below the high water mark of the sea and in inland water including wetlands.

4.1.3 National Environmental Management Act, 1998 (Act No. 107 of 1998) (NEMA)

The NEMA gives effect to the constitutional imperative to respect, protect, promote and fulfill the environmental right in the Bill of Rights. It creates an enabling framework for co-operative governance in the environmental sector, and gives effect to the environmental principles in the White Paper on Environmental Management. It lays down co-operative governance procedures and provides mechanisms for civil society participation. The Act provides principles and procedures to improve the quality and consistency of decisions that may have a significant effect on the environment.

Section 24(1) of the Act states that any proposed activity which requires authorisation or permission by law and which may significantly affect the environment must be considered, investigated and assessed before implementation and "reported to the organ of state charged by law with authorising, permitting or otherwise allowing the implementation of an activity".

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

The NHRA allowed for the establishment of the South African Heritage Resources Agency (SAHRA) in 1999. SAHRA is tasked with protecting heritage resources of national significance. Under Section 38 of the NHRA, all new developments, which will change the character of a site exceeding an area of 5000m², must submit an impact assessment report to SAHRA or a provincial heritage resources authority. This heritage impact assessment (HIA) must be carried out by a person or persons approved by the responsible heritage resources authority, with relevant qualifications and experience and professional standing in heritage resources management. However, such an assessment is not required if the evaluation of the impact of development is required in terms of the ECA, or the Minerals Act of 1991, or any other legislation. The consenting authority must ensure that such an evaluation fulfils the requirements of the relevant heritage resources authority, and any comments and recommendations of the relevant heritage resources authority with regard to such development have been taken into account prior to the granting of the consent.

4.1.5 Conservation of Agricultural Resources Act, 1983 (Act No. 43 of 1983) (CARA)

The aim of the CARA is to provide for the conservation of natural agricultural resources of South Africa "... by the maintenance of the production potential of land, by the combating and prevention of erosion and weakening or destruction of water sources, and by the protection of the vegetation and the combating of weeds and invader plants".

The relevance of this Act to the project is that the Department of Agriculture must approve the use of arable agricultural land for the road, as well as the impacts of the road on farm units. Furthermore, revegetation and the maintenance of the road reserve must not include prohibited invasive plants.

4.1.6 National Water Act, 1998 (Act No. 36 of 1998)

The purpose of this Act is to "... ensure that the country's water resources are protected, used, developed, conserved, managed and controlled." This Act takes into account the meeting of basic human needs of present and future generations, equitable access to water, redressing the results of past discrimination, efficient, sustainable and beneficial use of water in the public interest, and other factors. The Act is administered by the Department of Water Affairs and Forestry (DWAF).

The Act sets out general principles for regulating water use, which includes the alteration of the bed, banks, course and characteristics of a watercourse.

Application is to be made to the responsible authority (DWAF) for authorisation of proposed structures below the 100-year floodline of rivers, on riverbanks and in wetlands, where these occur along the proposed route.

4.1.7 Mineral and Petroleum Resources Development Act, 1991 (Act No 50 of 1991)

This Act provide for equitable access to and sustainable development of the country's mineral and petroleum resources and for the protection of these resources.

As the proposed road would transect two existing mines (these are Brick and Clay, located on farm 152/2 and 152/3 as well as the sand mine located one erf 585 Schaapkraal), the department of Minerals and Energy has to comment on and approve of the project and its impacts on these mineral resources.

The quarries that would be required during the construction phase of the proposed road would also require permits from the Department of Minerals and Energy.

4.1.8 City of Cape Town: Policy for Development Control Near Watercourses

This policy has been prepared in terms of the Council's Catchment, Stormwater and River Management Strategy: 2002 – 2007, which was adopted in July 2002. It provides a framework for the control of development near watercourses in a manner that minimises potential flood damage and protects and enhances the environment.

The objectives of the policy are to facilitate development that:

- Ensures the effective functioning of the stormwater system without creating or exacerbating flood risks elsewhere or prejudicing any proposed stormwater management scheme;
- Limits or reduces exposure to flood risk, thereby safeguarding life, health and property;
- Protects and restores where practicable, the functioning of natural floodplain areas;
- Reduces or mitigates any adverse impacts on natural ecosystems;
- Protects and enhances social, ecological and amenity value of watercourses and their associated floodplains;
- Prevents wasteful public expenditure on remedial works that would not have been required prior to any development;
- Minimises costly disaster management efforts associated with flooding usually undertaken at the expense of the general public; and
- Ensures that the purchasers of the property are made aware of potential flood hazards.

The policy applies to defined categories of development undertaken near watercourses, whether natural or constructed, within the boundaries of the City of Cape Town (CCT). It is applicable until reviewed and/or revised by Council. The policy is administered under the Transport, Roads and Stormwater Directorate, and supercedes the previously existing policies of the former municipal administrations comprising the CCT.

The policy outlines catchment planning, floodline determinations and the three development control zones (i.e. floodplain, flood fringe and environmental buffer zones). It also gives the framework for the assessment of development proposals, which provides recommended requirements and conditions for each type or use of development.

Any development, in particular those within or immediately adjacent to floodplain areas, should be undertaken in terms of the recommendations or requirements contained in the relevant, approved catchment and river management plan. Hydraulic information, including the 1:50 year floodline of a river must be obtained prior to development. The ecological buffer area of a river or watercourse must be protected.

4.2 TRANSPORT CONTEXT

The following key legislation and associated implications are relevant:

4.2.1 The South African National Roads Agency and National Roads Act, 1998 (Act No. 7 of 1998) (National Roads Act):

This Act is considered to be the most significant piece of national legislation, as it provides the framework for the project. It is the most important national law regulating national and toll roads. As a National Act, it also confers significant powers, which streamline the planning process.

Section 3 of the Act, provides for the establishment of the South African Roads Agency Limited¹ and the formation of its Board of Directors (the board). The main functions of SANRAL are provided for in Section 24.

The Act stipulates that the responsibility and capacity to perform these functions are entrusted to SANRAL only, unless otherwise specified. This means that SANRAL can only delegate functions that are specifically capable of delegation under the Act (Section 25(3)). Additional powers granted to the Agency are listed in Section 26, in twenty-three discrete categories. They include the power to appoint any private person, institution or body, in terms of a contract concluded for that purpose, in order to perform any work on behalf of the Agency with regard to the planning or design of a national road or proposed national road or its construction, operation, management, control, maintenance or rehabilitation, or in order to perform any work in the execution of a project or in connection therewith, and to monitor the execution and the work performance (Section 26 (6)). Other powers granted to the Agency are the power to provide, establish and maintain facilities on national roads for the convenience and safety of road users, (Section 26(e)), and the power to operate any national road or part thereof as a toll road and levy a toll on the users of

¹ Which is established by section 3 and in terms of the Companies Act (Act 61 of 1973)

such roads as provided for in the Act, and to collect the toll or have it collected by any authorised person, and for those purposes to provide, establish, erect, operate and maintain toll plazas on a national road, subject to the Act's other provisions². Toll roads and their operation are governed under Sections 27 and 28 respectively.

a. Declaration Of National Roads

The procedure whereby national roads are declared is important for the purposes of this proposal. National roads may only be declared by the Minister under Section 40(1) and only on SANRAL's recommendation. Agreement with the Premier of the province in which the road is situated must also be obtained³

b. Declaration Of A Toll Road

Section 27 of the Act requires that interested parties be invited to comment on the proposed declaration and the position of toll plazas. This information is included in this report, but will not be considered for the Record of Decision by the Department of Environmental Affairs and Tourism. It is the responsibility of the Minister of Transport to decide on this matter.

c. Land Acquisition

Land required for road building purposes must be acquired in terms of Sections 41 and 42 of the South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998). This process requires consultation with the affected party, in order to ensure that compensation would be fair and equitable (for both parties) taking into account the current use of the property, and the market value. Independent advisors are appointed to assist this process.

d. The SANRAL's Biodiversity Policy

This policy (Appendix 1.G) covers the implementation of the concept of biological diversity within the road reserve. It addresses issues such as planting/rehabilitation in the road reserve, control of undesirable vegetation and promoting biological corridors within the road reserve.

4.2.2 National Land Transport Transition Act, 2000 (Act No. 22 of 2000)

This act provides for the measures to transform and restructure the Republic's land transport system, give effect to the national policy concerning the first phases of the process and to achieve a smooth transition to the new system applicable nationally. It deals with issues of both National and Provincial concern and stipulates National Land and Transport Principles and Policy.

This policy includes the following:

- All role players must strive to achieve an effective land transport system through integrated planning, provision and regulation of infrastructure and services and diligent and effective law enforcement;
- For the purposes of land transport planning and the provision of land transport infrastructure and facilities, public transport must be given higher priority than private transport;
- Investment in infrastructure and operations must promote economic, financial, technical and environmental sustainability;
- The participation of all interested and affected parties, including vulnerable and disadvantaged persons, in transport planning must be promoted, taking into account that people must have the opportunity to develop the understanding, skills and capacity necessary to achieve equitable and effective participation; and
- The principle of user charging or cost recovery from direct users must be applied wherever appropriate and possible, in that such users should pay for all or most of the costs related to the service or activity in question.

The Act also provides general principles for transport planning, and its relationship with land development, and states that:

² The reference to other provisions is specifically to the provisions of section 27 or 28. The power of the Agency's competence in this regard arises from the provisions of section 26(f)

³ In the first instance, by the Minister (see section 40(3)). If no agreement can be reached and 'after having made every reasonable effort to settle the dispute or difference and having exhausted all the mechanisms and procedures available for the purpose, the matter may be referred to the Constitutional Court in terms of section 167(4)(a) of the Constitution for decision'.

- Land transport planning must be integrated with the land development process, and the transport plans required for that purpose by this Act are designed to give structure to the function of "municipal planning";
- Land transport planning must be carried out so as to cover both public and private transport and all the modes of land transport relevant in the area concerned, and must focus the most effective and economic way of moving from one point to another in a system.
- Transport plans must be developed so as to:
 - enhance the effective functioning of cities, towns and rural areas through integrated planning of transport infrastructure, transport operations and public transport services within the context of those integrated development plans.
 - give higher priority to public transport than private transport by ensuring the provision of adequate public transport services and applying travel demand management measures to discourage private transport;
 - minimise adverse impacts on the environment.

4.2.3 Western Cape Toll Roads Act, 1999 (Act No. 11 of 1999)

The purpose of the Act is to provide for the tolling of provincial public roads in the Western Cape and for the planning, design, declaration, construction, operation, management, control, maintenance and rehabilitation of provincial toll roads. The principle of tolling is therefore accepted for provincial roads.

The Act outlines the process followed to result in the declaration of a toll road. The process invites interested and affected persons, including affected municipalities, to comment on or make representations regarding the proposed declaration of a new toll road, so that these comments can be considered in the proposals, before the toll road is declared by the Minister.

The Act also makes provision for possible joint ventures between the Minister and the road authorities or with a private person or body in regard to ventures involving provincial or other toll roads or infrastructure.

In terms of the Act, a provincial toll roads policy must be made known by the Minister by notice in the Gazette, which states the goals the province wishes to achieve with toll roads, the objectives to be pursued to realise these goals and general requirements for the declaration of toll roads or the levying of a toll or amendment thereof.

4.2.4 Draft Western Cape Toll Roads Policy, 20 April 2001

The Western Cape Toll Roads Policy, as published in the Provincial Gazette on the 20th April 2001, reflects the policy of the Province, as required in terms of Section 15 (1) of the Western Cape Toll Roads Act, 1999 (Act No. 11 of 1999). The purpose of the policy is *"to provide a policy framework for government, the private sector participating in toll roads, and the public affected by toll roads"*.

As required, the policy states the goals that the Province wishes to achieve through establishing toll roads, the policy objectives to be pursued to achieve these goals and the general requirements for the declaration of toll roads, the levying of a toll or the amendments thereof.

Furthermore, policy objective requires that all toll road projects will be subject to the Integrated Environmental Management (IEM) process, as required for all roads by regulations from the ECA, prior to the road being declared a toll road. This involves assessment of the full impact of the road on the natural, built and social environment from a pre-feasibility stage, subsequent construction stages to the management of the facility during its life. This includes consultation with all affected stakeholders.

4.2.5 Moving South Africa - The Action Agenda (September 1998)

Moving South Africa - the Action Agenda is the National Department of Transport's 20-year strategic framework for the transport sector. It recognises the role of transport infrastructure in economic growth and the requirement to meet the needs of customers and the nation. In addition, the strategy emphasises the need for the transport system to do so sustainably and in a manner that allows levels of service to be continuously upgraded.

Some of the key causes of the challenge of long-term sustainability of roads are:

- The insufficient balance between road costs and externality costs (those effects generated by transport, together with their associated costs, which are not fully paid for by users, but are rather pushed onto society as a whole); and
- Lack of adequate funding.

As a result of this, the basic principle established throughout the Action Agenda requires that users pay the full costs of the service provided. Road-use should be priced to fully recover the costs of infrastructure provision and maintenance, as well as externalities. Such a step will ensure long-term sustainability, reduce the negative externality effects, and create a self-supporting system that sends the right price signals for using roads. Correct price signals for different environments (i.e. urban and rural) will help to prevent congestion and pollution.

4.3 TOWN PLANNING CONTEXT

A town planning assessment was undertaken to determine the relevance of various Acts and policies relating to this proposal. Below are the results describing the associated implications of this research.

4.3.1 National Legislation

- a. **Land Use Management Bill:** If the Land Use Management Bill is enacted prior to the implementation of the proposed road, SANRAL would review for possible implications.
- b. **Physical Planning Act, 1967 (Act No. 88 of 1967):** The Guide Plan is to be withdrawn and superseded by the Metropolitan Spatial Development Framework (MSDF). The proposal will be sent to the City of Cape Town for comment on the alignment with the MSDF.
- c. **Development Facilitation Act, 1995 (Act No. 67 of 1995) (DFA):** There are no specific implications for the proposed road arising from the DFA.
- d. **Subdivision of Agricultural Land Act, 1970 (Act No. 70 of 1970):** As the proposed road would be vested in SANRAL, as a state organisation, the road would be exempt from the provisions of this Act.
- e. **Removal of Restrictions Act, 1967 (Act No. 84 of 1967):** The Title Deeds of all properties to be acquired or utilised for the road would need to be checked for Restrictive Conditions. Where such conditions exist, which are in conflict with the proposed road, a legal assessment would be undertaken as part of the land acquisition process. This would be undertaken as part of SANRAL's land acquisition process.
- f. **Servitudes and Restrictions denoted on Diagrams:** The Surveyor General's Diagrams for all component properties should be checked for restrictions.

4.3.2 Provincial Acts And Legislation

- a. **The Land Use Planning Ordinance (Act No. 15 of 1985) (LUPO):** LUPO provides the mechanisms for Rezoning and Subdivision. Where the proposed road is to be proclaimed a National Road, in terms of the National Roads Act, 1998 (No 7 of 1998) such rights will be conferred by way of declaration. Consequently, applications will not be required in terms of LUPO, unless portions of the proposed road are created/retained as non National Routes.
- b. **The Western Cape Planning and Development Act (PDA):** If or when this Act comes into effect, LUPO will be superseded. If the WCPDA comes into operation prior to the implementation of the proposed road, certain applications/processes may be required where the appropriate rights are not granted in terms of the National Roads Act, 1998 (No 7 of 1998).

4.3.3 Local Level Legislation

The following zoning schemes need to be addressed by the local authorities. Once proclamation of the road has taken place.

a. Zoning Schemes

In terms of the following zoning schemes, zoning requirements will be undertaken by:

- Regional Services Council Scheme (RSC/CMC Scheme)
- Durbanville Zoning Scheme
- Bellville Zoning Scheme
- Belhar Zoning Scheme
- Delft Proper/Delft South Zoning Schemes
- Mfuleni Zoning Scheme
- Brackenfell Zoning Scheme
- Kuils River Zoning Scheme
- Proclamation 1048/1988 Zoning Scheme Area
- CCT Zoning Scheme

b. The Forward Planning Context

Key forward planning documents and their associated implications are as follows:

i. Provincial Policies And Plans

The Coastal Zone Policy for the Western Cape (draft): The detailed road proposals should give cognisance to the principles set out in this policy, and mitigating measures may need to be explored in the conservation areas identified in the policy.

The Provincial Spatial Development Framework: The Provincial Spatial Development Framework, which is under preparation, is to be monitored, and any implications arising from it, assessed.

The Bio-Regional Planning and Management Principles: The proposals for the road have been tested with the relevant authorities with regard to the impact on, and the compatibility of the road with, the various components of the Bioregions, particularly the Natural "Core" areas of Blouberg and the Zeekoevlei/Strandfontein area. It was found that the route does not impact on any of the 37 core conservation areas for Cape Flats, nor on any Renosterveld patches in the north. It would form the boundary of the Blouberg Conservation area, as proposed by the city and their plans for the Blouberg East-West Arterial. The road would therefore not impact on this conservation area.

In the south, it was found that the proposed road could impact on the southern component (Cape Flats) of the CAPE bioersity network (See Figure 4.1). As shown in Figure 4.1, the proposed route would disturb less than 5% of the remnant vegetation in this area.

ii. Metropolitan Policies And Plans

The MSDF Portion of the proposed road are not planned for in the MSDF, but the framework exists for the road, provided that it meets the necessary criteria regarding public transport. High Mobility Routes are accepted components of the City as they complement and are necessary for the functioning of Activity Corridors. The route could also play a vital role in reducing the historic disjuncture between the outlying poor mono-functional dormitory residential areas, and places of employment/opportunities, by reducing commuting time, etc.

Ultimately it would be appropriate for the City of Cape Town to amend the MSDF should this proposal be realised.

iii. Local Area Policies And Plans

The following zoning schemes need to be addressed by the local authorities. Once proclamation of the road has taken place.

Blaauwberg Administration

- Blouberg Conservation Area: Development And Management Plan
 - Issues have been workshopped with the authorities.
- Blouberg Spatial Development Framework (BSDF)

- Blouberg Vlei Sub Regional Plan
 - For the reasons described above, the nature of the proposed toll road (i.e., high mobility, limited access) may be inconsistent with the nature of the envisioned east-west arterial. Negotiation would therefore be required with the authorities, to determine the acceptability of the nature of the road.

City Of Tygerberg Administration

- **Tygerberg Spatial Development Framework (TSDF):** The TSDF acknowledges the proposed road, although the section north of Durbanville is not seen as necessary now. This is an issue, which would need to be resolved with the authorities.
- **East Spatial Development Framework (ESDF):** As the northwards extension of the R300 is proposed in the plan, investigations can be limited to mitigatory measures and detailed design explorations.
- **North Spatial Development Framework (NSDF): In terms of the NSDF;**
 - Specific design proposals would be required to ensure the protection of the Kuils River MOSS;
 - Consideration must be given to the timing of the Durbanville leg of the proposed road; and
 - The extension of the R300 northwards needs to be linked to mitigatory planning interventions, which restrict the erosion of the urban edge.
- **The Southern Service Area Spatial Development Framework:** In terms of this policy, a study of the proposed Erica Drive extension across the R300 would be required, and pedestrian crossings, as well as landscaping/buffer proposals would need to be explored.
- **Kuils River Metropolitan Open Space System:** Detailed proposals need to be drawn up to ensure that the integrity of the Kuils River MOSS is not compromised, and that the principles set out in this policy document are incorporated into the planning and design of the road.

City Of Cape Town Administration

- Municipal Spatial Development Framework
- Sector 1 of the proposed road has been workshopped with the Local Authority in terms of its implications for the Municipal Spatial Development Framework.
- Greening the City
- Management Plan for the Philippi Horticultural Area

Oostenberg Administration

- Municipal Spatial Development Framework
- Greater Kuils River Strategic Spatial Planning Overview

South Peninsula Administration

- **South Peninsula Spatial Development Framework (SPSDF):** Detailed investigations have been carried out for the section of proposed road between Zeekoevlei and the CFWWTW.