

EIA REFERENCE NUMBER: 16/3/3/1/D1/9/0011/20
NEAS REFERENCE: WCP/EIA/0000814/2020
ENQUIRIES: Ms Jessica Christie
DATE OF ISSUE: **14 APRIL 2021**

ENVIRONMENTAL AUTHORISATION

APPLICATION FOR ENVIRONMENTAL AUTHORISATION IN TERMS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT ACT, 1998 (ACT 107 OF 1998) AND THE ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS, 2014: PERIODIC MAINTENANCE OF TR2/12 – KURLAND TO EASTERN CAPE BORDER (BLOUKRANSPAS) – UPGRADE OF THE DR 1797, REDFORD ROAD

With reference to your application for the abovementioned, find below the outcome with respect to this application.

DECISION

By virtue of the powers conferred on it by the National Environmental Management Act, 1998 (Act No. 107 of 1998) ("NEMA") and the Environmental Impact Assessment ("EIA") Regulations, 2014, the Competent Authority herewith **grants Environmental Authorisation** to the applicant to undertake the listed activities specified in section B below with respect to **the Preferred Alternative**, described in the Final Basic Assessment Report ("FBAR"), dated 30 November 2020 as prepared and submitted by *Hatch*, the appointed environmental assessment practitioner ("EAP").

The applicant for this Environmental Authorisation is required to comply with the conditions set out in section E below.

A. DETAILS OF THE APPLICANT FOR THIS ENVIRONMENTAL AUTHORISATION

The Head of Department

WESTERN CAPE GOVERNMENT: DEPARTMENT OF TRANSPORT AND PUBLIC WORKS

% Mr A. November

9 Dorp Street

Cape Town

8001

Tel: 021 483 0536

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

The abovementioned applicant is the holder of this Environmental Authorisation (hereinafter referred to as "**the Holder**").

B. LIST OF ACTIVITIES AUTHORISED

Listed Activities	Activity/Project Description
Environmental Impact Assessment Regulations Listing Notice 1 of 2014, Government Notice No. 983 of 4 December 2014	
<p>Activity Number: 12 Activity Description:</p> <p>The development of—</p> <p>(i) dams or weirs, where the dam or weir, including infrastructure and water surface area, exceeds 100 square metres; or</p> <p>(ii) infrastructure or structures with a physical footprint of 100 square metres or more;</p> <p>where such development occurs—</p> <p>(a) within a watercourse;</p> <p>(b) in front of a development setback; or</p> <p>(c) if no development setback exists, within 32 metres of a watercourse, measured from the edge of a watercourse; —</p> <p>excluding—</p> <p>(aa) the development of infrastructure or structures within existing ports or harbours that will not increase the development footprint of the port or harbour;</p> <p>(bb) where such development activities are related to the development of a port or harbour, in which case activity 26 in Listing Notice 2 of 2014 applies;</p> <p>(cc) activities listed in activity 14 in Listing Notice 2 of 2014 or activity 14 in Listing Notice 3 of 2014, in which case that activity applies;</p> <p>(dd) where such development occurs within an urban area;</p> <p>(ee) where such development occurs within existing roads, road reserves or railway line reserves; or</p> <p>(ff) the development of temporary infrastructure or structures where such infrastructure or structures will be removed within 6 weeks of the commencement of development and where indigenous vegetation will not be cleared.</p>	<p>The development of the major culvert at km 0.705 of DR1797 over a tributary of the Whiskey Creek. The culvert structure will be 5 metres wide X 3 metres high X 19.5 metres long (i.e., ±850 m²), with the culvert extension outside the road reserve.</p>
<p>Activity Number: 19 Activity Description:</p> <p>The infilling or depositing of any material of more than 10 cubic metres into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock of more than 10 cubic metres from a watercourse;</p> <p>but excluding where such infilling, depositing, dredging, excavation, removal or moving—</p> <p>(a) will occur behind a development setback;</p> <p>(b) is for maintenance purposes undertaken in accordance with a maintenance management plan;</p> <p>(c) falls within the ambit of activity 21 in this Notice, in which case that activity applies;</p> <p>(d) occurs within existing ports or harbours that will not increase the development footprint of the port or harbour; or</p> <p>(e) where such development is related to the development of a port or harbour, in which case activity 26 in Listing Notice 2 of 2014 applies</p>	<p>More than 10 m³ of soil, sand, pebbles or rock will be infilled at the tributary of the Whiskey Creek, for the development of the major culvert at km 0.705 of DR1797. In addition, the vertical and horizontal realignment between km 0.00 and km 4.87 will entail cut and fill operations, which may entail the infilling of soil, etc. from water courses along the route.</p>

The abovementioned list is hereinafter referred to as “**the listed activities**”.

The Holder is herein authorised to undertake the following alternative that includes the listed activities as it relates to the development and development footprint area:

The development and construction of a major culvert at km 0.705 (on the DR 1797) over a tributary of the Whiskey Creek, is proposed as part of the road upgrade. This will involve the construction of a new double cell reinforced concrete culvert with cell dimensions of 2.4 m wide x 1.5 m high. Downstream, the culvert will have wing walls and an apron slab with erosion protection works consisting of a gabion mattress. At his point in the road, the level of the road will be raised which will reduce the blind rises of the road on either side of the culvert.

Maintenance and upgrade activities will also be conducted on the DR 1797 from km 0.00 (from the intersection off the N2) up to km 4.87 whereby the gravel road will be surfaced and various culverts in the road will be upgraded and replaced in the same footprint and other side drains will be restored. The maintenance will be done in accordance with the maintenance management plan.

Culvert no. 12270 at km 0.705 over a tributary of the Whiskey Creek will be constructed as follows, as part of the DR 1797 Road upgrade:

- ❖ Construction of a new double cell reinforced concrete culvert with cell dimensions of 2.4 m wide x 1.5 m high. Downstream, the culvert will have wing walls and an apron slab with erosion protection works consisting of a gabion mattress
- ❖ The culvert is to be constructed in two phases for traffic accommodation purposes. The traffic will be accommodated to either the existing road or on the new culvert, once completed
- ❖ The final road fill on top of the culvert will be 5 m high and traffic will be required to be switched over multiple times as the layer works are constructed. The traffic is to be accommodated on the opposite side to where construction is taking place. No traffic or fill will be allowed on the structure prior to the concrete having achieved its design strength.

A final design plan must be submitted to this Directorate within the EMP.

C. SITE DESCRIPTION AND LOCATION

The DR 1797 is a minor road off the N2 Highway in the Bitou Local Municipality of the Western Cape. This road is a dual lane, single carriageway and is situated in the jurisdiction of the Garden Route District Municipality. It is approximately 1.4 km before the turn off from the N2 to Kurland village.

Coordinates of the proposed development and development footprint site of the major culvert to be constructed on the Dr 1797:

Position:	Latitude (South)	Longitude (East)
Position of culvert	33° 57' 00.32"	23° 28' 10.79"

Coordinates of the proposed maintenance activities along the DR 1797 where maintenance activities will occur:

Position:	Latitude (South)	Longitude (East)
Start	33° 57' 16.96"	23° 28' 29.06"
Middle	33° 56' 19.90"	23° 27' 21.30"
End	33° 55' 38.84"	23° 26' 11.16"

SG digit code of RE/290 (registered street parcel): RE/290: C0390000000029000000

Refer to Annexure 1: Locality Plan of this Environmental Authorisation.

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

D. DETAILS OF THE ENVIRONMENTAL ASSESSMENT PRACTITIONER (EAP)

HATCH AFRICA (PTY) LTD.
% Ms Michelle Miles or Ms. Paula Tolksdorff
Private Bag X20
GALLO MANOR
2052

Tel: 011 612 4587
E-mail: michelle.miles@hatch.com || paula.tolksdorff@hatch.com
Website: <https://www.hatch.com/>

E. CONDITIONS OF AUTHORISATION

Scope and Validity Period of authorisation

1. This Environmental Authorisation is granted for the period from date of issue until **30 November 2026**:
2. The non-operational component of the Environmental Authorisation is subject to the following:
 - 2.1 The holder must commence with the listed activity and conclude the development activity (construction phase) by **30 November 2022**. The construction of the major culvert at km 0.705 and rehabilitation must be completed by said date; and
 - 2.2 The holder must finalise the post construction rehabilitation and monitoring requirements within a period of 6-months from the date the development activity (construction phase) is concluded.
3. The post-construction and maintenance component (operational phase) of this Environmental Authorisation is granted until **30 November 2026** during which period maintenance to the minor culverts and side drains and monitoring requirements and reporting must be finalised.

Note: The maintenance monitoring requirements should be completed at least six (6) months prior to expiry of the validity period of an environmental authorisation to ensure the Holder is able to comply with the environmental auditing requirements in time.

Failing which, this Environmental Authorisation shall lapse, unless the environmental authorisation is amended in accordance with the relevant process contemplated in the Environmental Impact Assessment Regulations promulgated under the National Environmental Management Act, 1998 (Act no. 107 of 1998).

4. The Holder is authorised to undertake the listed activities specified in Section B above in accordance with the Preferred Alternative described in the FBAR dated 30 November 2020 on the site as described in Section C above.

This Environmental Authorisation is only for the implementation of the Preferred Alternative for the site which entails:

The development and construction of a major culvert at km 0.705 (on the DR 1797) over a tributary of the Whiskey Creek, is proposed as part of the road upgrade. This will involve the construction of a new double cell reinforced concrete culvert with cell dimensions of 2.4 m wide x 1.5 m high. Downstream, the culvert will have wing walls and an apron slab with erosion protection works consisting of a gabion mattress. At this point in the road, the level of the road will be raised which will reduce the blind rises of the road on either side of the culvert.

Maintenance and upgrade activities will also be conducted on the DR 1797 from km 0.00 (from the intersection off the N2) up to km 4.87 whereby the gravel road will be surfaced and various culverts in the road will be upgraded and replaced in the same footprint and other side drains will be restored. The maintenance will be done in accordance with the maintenance management plan.

Culvert no. 12270 at km 0.705 over a tributary of the Whiskey Creek will be constructed as follows, as part of the DR 1797 Road upgrade:

- ❖ Construction of a new double cell reinforced concrete culvert with cell dimensions of 2.4 m wide x 1.5 m high. Downstream, the culvert will have wing walls and an apron slab with erosion protection works consisting of a gabion mattress
- ❖ The culvert is to be constructed in two phases for traffic accommodation purposes. The traffic will be accommodated to either the existing road or on the new culvert, once completed
- ❖ The final road fill on top of the culvert will be 5 m high and traffic will be required to be switched over multiple times as the layer works are constructed. The traffic is to be accommodated on the opposite side to where construction is taking place. No traffic or fill will be allowed on the structure prior to the concrete having achieved its design strength.

A final design plan must be submitted to this Directorate within the EMPr.

5. This Environmental Authorisation may only be implemented in accordance with an approved Environmental Management Programme ("EMPr").
6. The Holder shall be responsible for ensuring compliance with the conditions by any person acting on his/her behalf, including an agent, sub-contractor, employee or any person rendering a service to the Holder.
7. Any changes to, or deviations from the scope of the alternative described in section B above must be accepted or approved, in writing, by the Competent Authority before such changes or deviations may be implemented. In assessing whether to grant such acceptance/approval or not, the Competent Authority may request information in order to evaluate the significance and impacts of such changes or deviations, and it may be necessary for the Holder to apply for further authorisation in terms of the applicable legislation.

Notification and administration of appeal

8. The Holder must in writing, within 14 (fourteen) calendar days of the date of this decision—
 - 8.1. notify all registered Interested and Affected Parties ("I&APs") of –
 - 8.1.1. the decision reached on the application;
 - 8.1.2. the reasons for the decision as included in Annexure 3;
 - 8.1.3. the date of the decision; and
 - 8.1.4. the date when the decision was issued.

- 8.2. draw the attention of all registered I&APs to the fact that an appeal may be lodged against the decision in terms of the National Appeal Regulations, 2014 (as amended) detailed in Section G below;
- 8.3. draw the attention of all registered I&APs to the manner in which they may access the decision;
- 8.4. provide the registered I&APs with the:
 - 8.4.1. name of the Holder (entity) of this Environmental Authorisation,
 - 8.4.2. name of the responsible person for this Environmental Authorisation,
 - 8.4.3. postal address of the Holder,
 - 8.4.4. telephonic and fax details of the Holder,
 - 8.4.5. e-mail address, if any, of the Holder,
 - 8.4.6. contact details (postal and/or physical address, contact number, facsimile and e-mail address) of the decision-maker and all registered I&APs in the event that an appeal is lodged in terms of the 2014 National Appeals Regulations (as amended).
- 8.5. The listed activities, including site preparation, must not commence within 20 (twenty) calendar days from the date the applicant notified the registered I&APs of this decision.
- 8.6. In the event that an appeal is lodged with the Appeal Authority, the effect of this Environmental Authorisation is suspended until the appeal is decided i.e. the listed activities, including site preparation, must not commence until the appeal is decided.

Written notice to the Competent Authority

- 9. Seven calendar days' notice, in writing, must be given to the Competent Authority before commencement of any activities.
 - 9.1. The notice must make clear reference to the site details and EIA Reference number given above.
 - 9.2. The notice must also include proof of compliance with the following conditions described herein:
Conditions no.: 8, 11, 13 and 22.
 - 9.3. Seven calendar days' notice, in writing, must be given to the Competent Authority on the commencement of any maintenance activities in the watercourses on the DR 1797 during the period that the environmental authorisation is valid.
- 10. Seven calendar days' written notice must be given to the Competent Authority on completion of the construction activities.

Management of activity

- 11. The draft or Environmental Management Programme ("EMPr") submitted as part of the application for Environmental Authorisation is hereby **approved**, subject to the following requirements:
 - 11.1. The EMPr must be amended to incorporate the following —
 - 11.1.1. All ECO monthly compliance monitoring reports **must** be submitted to this Directorate on a monthly basis.
 - 11.1.2. Incorporate all the conditions given in this Environmental Authorisation;
 - 11.1.3. Include the final design for the major culvert at km 0.705
 - 11.2. The amended EMPr must be submitted to the Competent Authority prior to the construction activities commencing on site.
- 12. The EMPr must be included in all contract documentation for all phases of implementation.

Monitoring

13. The Holder must appoint a suitably experienced Environmental Control Officer ("ECO"), for the duration of the construction and rehabilitation phases of implementation contained herein.
14. The ECO must–
 - 14.1. be appointed prior to commencement of any works (i.e. removal and movement of soil);
 - 14.2. ensure compliance with the EMPr and the conditions contained herein;
 - 14.3. keep record of all activities on the site; problems identified; transgressions noted and a task schedule of tasks undertaken by the ECO;
 - 14.4. remain employed until all development activities are concluded, and the post construction rehabilitation and monitoring requirements are finalised.
15. A copy of the Environmental Authorisation, EMPr, any independent assessments of financial provision for rehabilitation and environmental liability, closure plans, audit reports and compliance monitoring reports must be kept at the site of the authorised activities and be made available to anyone on request, and where the Holder has website, such documents must be made available on such publicly accessible website.
16. Access to the site referred to in Section C must be granted, and the environmental reports mentioned above must be produced, to any authorised official representing the Competent Authority who requests to see it for the purposes of assessing and/or monitoring compliance with the conditions contained herein.

Auditing

17. The Holder must, for the period during which the environmental authorisation; and EMPr remain valid ensure the compliance with the conditions of the environmental authorisation and the EMPr, is audited.
18. The frequency of auditing of compliance with the conditions of the environmental authorisation and of compliance with the EMPr, must adhere to the following programme:
 - 18.1. Auditing during the non-operational phase (construction activities):
 - 18.1.1. During the period which the activities have been commenced with on site until the construction of the major culvert and post construction rehabilitation and monitoring requirements have been completed, the Holder must ensure annual environmental audit(s) are undertaken and the Environmental Audit Report(s) submitted annually to the Competent Authority.
 - 18.1.2. A final Environmental Audit Report for the construction phase (non-operational component) must be submitted to the Competent Authority within **three (3) months** of completion of the post construction rehabilitation and monitoring requirements.
 - 18.2. Auditing during the operational phase (post construction and maintenance activities):
 - 18.2.1. During the post-construction and maintenance phase, the Holder must ensure annual environmental audit(s) are undertaken for a period three (3) consecutive years following the completion of the construction phase and the Environmental Audit Report(s) submitted annually to the Competent Authority.

Note: The final auditing requirements should be completed and submitted at least three months prior to expiry of the validity period of the environmental authorisation to ensure the Holder is able to comply with all the environmental auditing and reporting requirements and for the competent authority to be able to process it timeously.

19. The Environmental Audit Report(s), must –

- 19.1. be prepared and submitted to the Competent Authority, by an independent person with the relevant environmental auditing expertise. Such person may not be the ECO or EAP who conducted the EIA process;
- 19.2. provide verifiable findings, in a structured and systematic manner, on–
 - 19.2.1. the level of compliance with the conditions of the environmental authorisation and the EMPr and whether this is sufficient or not; and
 - 19.2.2. the ability of the measures contained in the EMPr to sufficiently provide for the avoidance, management and mitigation of environmental impacts associated with the undertaking of the activity.
- 19.3. identify and assess any new impacts and risks as a result of undertaking the activity;
- 19.4. evaluate the effectiveness of the EMPr;
- 19.5. identify shortcomings in the EMPr;
- 19.6. identify the need for any changes to the avoidance, management and mitigation measures provided for in the EMPr;
- 19.7. indicate the date on which the construction work was commenced with and completed or in the case where the development is incomplete, the progress of the development and rehabilitation;
- 19.8. indicate the date on which the maintenance/ rehabilitation was commenced with and the progress of the rehabilitation;
- 19.9. include a photographic record of the site applicable to the audit; and
- 19.10. be informed by the ECO reports.

20. The Holder must, within 7 calendar days of the submission of the audit report to the Competent Authority, notify all potential and registered I&APs of the submission and make the report available to anyone on request and on a publicly accessible website (if applicable).

Specific Conditions

21. The No-Go areas must be physically and clearly demarcated prior to any earthworks commencing. This area may not be used to store any materials. All construction related activities such as materials storage and site camp establishment must occur within an identified area approved by the ECO.
22. A final design plan of the proposed major culvert at km 0.705 on DR1797 must be submitted to the Competent Authority prior to the construction of the major culvert commencing. This final design plan must be included in the amended EMPr that must be submitted to the competent authority.
23. Should any heritage remains be exposed during excavations or any other actions on the site, these must immediately be reported to the Provincial Heritage Resources Authority of the Western Cape, Heritage Western Cape. Heritage remains uncovered or disturbed during earthworks must not be further disturbed until the necessary approval has been obtained from Heritage Western Cape.

Heritage remains may only be disturbed by a suitably qualified heritage specialist working under a directive from the relevant Heritage Resources Authority.

Heritage remains include: meteorites, archaeological and/or paleontological remains (including fossil shells and trace fossils); coins; indigenous and/or colonial ceramics; any articles of value or antiquity; marine shell heaps; stone artefacts and bone remains; structures and other built features with heritage significance; rock art and rock engravings; shipwrecks; and/or graves or unmarked human burials including grave goods and/or associated burial material.

F. GENERAL MATTERS

1. Notwithstanding this Environmental Authorisation, the Holder must comply with any other statutory requirements that may be applicable when undertaking the listed activities.

Amendment of Environmental Authorisation and EMPr

2. If the Holder does not start with all listed activities and exceed the threshold of each listed activity within the period referred to in Section G, this Environmental Authorisation shall lapse for that activity, and a new application for Environmental Authorisation must be submitted to the relevant Competent Authority.

Where a validity period has been specified for operational aspects, the onus is on the Holder to ensure the activities are always undertaken in terms of a valid environmental authorisation.

If the Holder wishes to extend a validity period specified in the Environmental Authorisation, an application for amendment in this regard must be made to the relevant Competent Authority prior to the expiry date of such a period.

Note:

- (a) Failure to lodge an application for amendment prior to the expiry of the validity period of the Environmental Authorisation will result in the lapsing of the Environmental Authorisation.
 - (b) It is an offence in terms of Section 49A(1)(a) of NEMA for a person to commence with a listed activity if the competent authority has not granted an Environmental Authorisation for the undertaking of the activity.
3. The Holder is required to notify the Competent Authority where any detail with respect to the Environmental Authorisation must be amended, added, substituted, corrected, removed or updated.

In assessing whether to amend or correct the EA, the Competent Authority may request information to evaluate the significance and impacts of such changes or deviations, and it may be necessary for the Holder to apply for further authorisation in terms of the applicable legislation.

The onus is on the Holder to verify whether such changes to the environmental authorisation must be approved in writing by the relevant competent authority prior to the implementation thereof.

Note: An environmental authorisation may be amended or replaced without following a procedural requirement contained in the Regulations if the purpose is to correct an error and the correction does not change the rights and duties of any person materially

4. The manner and frequency for updating the EMPr is as follows:
 - (a) Any further amendments to the EMPr, other than those mentioned above, must be approved in writing by the relevant competent authority.

(b) An application for amendment to the EMPr must be submitted to the Competent Authority if any amendments are to be made to the impact management outcomes of the EMPr. Such amendment(s) may only be implemented once the amended EMPr has been approved by the competent authority.

The onus is however on the Holder to confirm the legislative process requirements for the above scenarios at that time.

5. Where an amendment to the impact management outcomes of an EMPr is required before an environmental audit is required in terms of the environmental authorisation, an EMPr may be amended on application by the Holder of the environmental authorisation.

Compliance with Environmental Authorisation and EMPr

6. Non-compliance with a condition of this environmental authorisation or EMPr is an offence in terms of Section 49A(1)(c) of the National Environmental Management Act, 1998 (Act no. 107 of 1998, as amended).
7. This Environmental Authorisation is granted for a set period from date of issue, during which period all the listed activities must be commenced with and concluded, including the post-construction rehabilitation; monitoring requirements and environmental auditing requirements which must be concluded.

The validity period and conditions of the environmental authorisation has been structured to promote the effective administration of the environmental authorisation and guidance has been provided to ensure the compliance thereof within the validity period, for example:

- ❖ Failure to complete the post construction rehabilitation and monitoring requirements at least six months prior to expiry of the validity period of an environmental authorisation may result in the Holder not being able to comply with the environmental auditing requirements in time.
 - ❖ Failure to complete the final auditing requirements at least three months prior to expiry of the validity period of the environmental authorisation may result in the Holder not being able to comply with all the environmental auditing and reporting requirements and may result in the competent authority not being able to process the audit timeously.
8. This Environmental Authorisation is subject to compliance with all the preemptory conditions (i.e. 6, 7, 9 and 11). Failure to comply with all the preemptory conditions prior to the physical implementation of the activities (including site preparation) will render the entire EA null and void. Such physical activities shall be regarded to fall outside the scope of the Environmental Authorisation and shall be viewed as an offence in terms of Section 49A(1)(a) of NEMA.
 9. In the event that the Environmental Authorisation should lapse, it is an offence in terms of Section 49A(1)(a) of NEMA for a person to commence with a listed activity, unless the competent authority has granted an Environmental Authorisation for the undertaking of the activity.
 10. Offences in terms of the NEMA and the Environmental Impact Assessment Regulations, 2014, will render the offender liable for criminal prosecution.

G. APPEALS

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

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

By facsimile: (021) 483 4174; or

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

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

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

H. DISCLAIMER

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

Your interest in the future of our environment is appreciated.

Yours faithfully

MR. GAVIN BENJAMIN
DIRECTOR: DEVELOPMENT MANAGEMENT (REGION3)
WCG: DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING

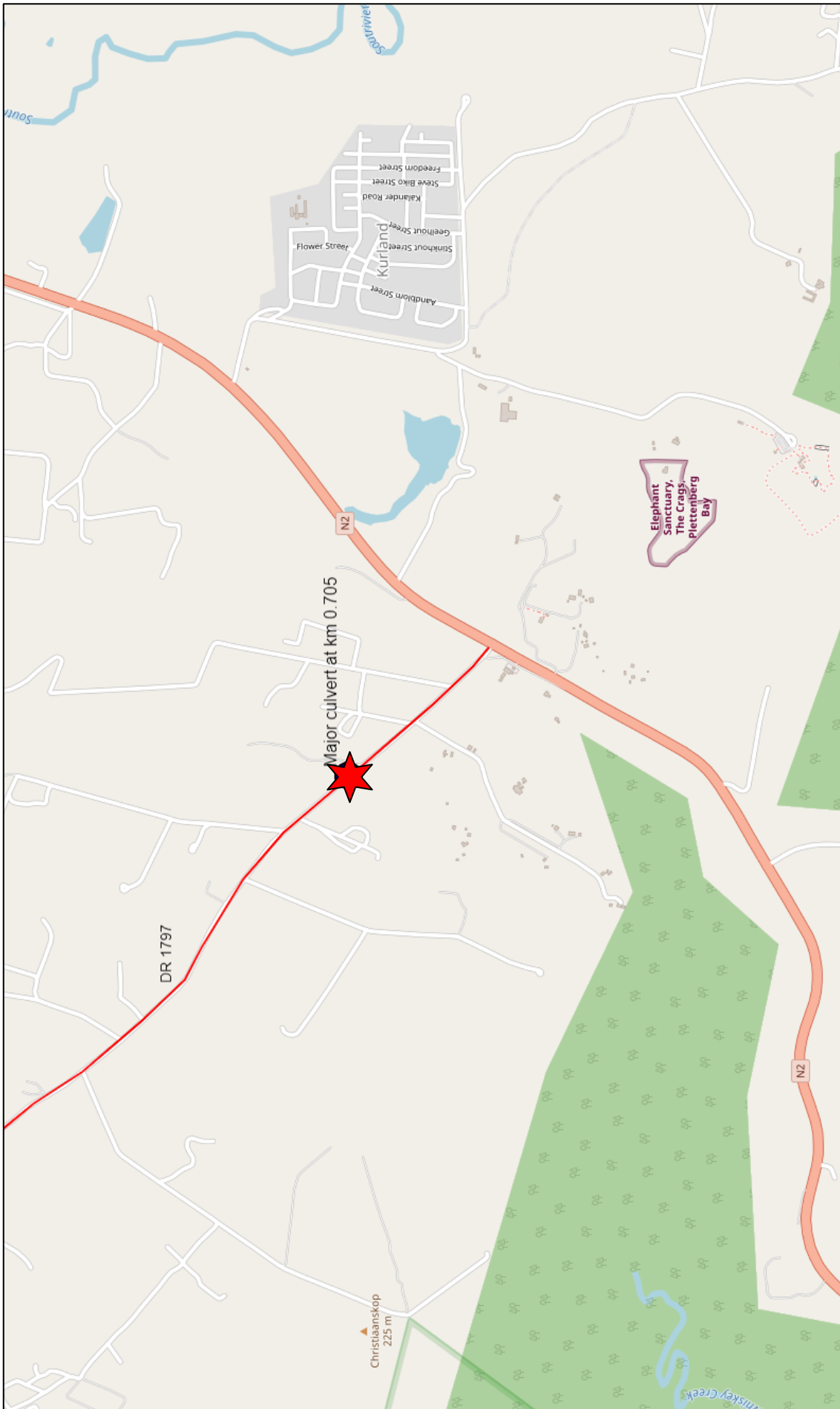
DATE OF DECISION: **14 APRIL 2021**

FOR OFFICIAL USE ONLY:

EIA REFERENCE NUMBER: 16/3/3/1/D1/9/0011/20
NEAS REFERENCE: WCP/EIA/0000814/2020

ANNEXURE 1: LOCALITY MAP





ANNEXURE 2: REASONS FOR THE DECISION

In reaching its decision, the Competent Authority considered, *inter alia*, the following:

- a) The information contained in the Application Form received on 11 September 2020, the Final Basic Assessment Report (FBAR) and EMPr submitted together with the FBAR on 3 December 2020;
- b) Relevant information contained in the Departmental information base, including the Guidelines on Public Participation, Alternatives (dated March 2013);
- c) The objectives and requirements of relevant legislation, policies and guidelines, including section 2 of the National Environmental Management Act, 1998 (Act No. 107 of 1998);
- d) The comments received from I&APs and responses to these, included in the FBAR dated 30 November 2020;
- e) The balancing of negative and positive impacts and proposed mitigation measures; and
- f) A site inspection and meeting with the EAP attended by Ms Jessica Christie, Mr Francois Naudé and Mr Steve Kleinhans on 20 October 2020.

All information presented to the Competent Authority was taken into account in the consideration of the application for Environmental Authorisation. A summary of the issues that were considered to be the most significant for the decision is set out below.

1. Legislated Requirements

The major culvert is the only section of the upgrade which requires environmental authorisation. The rest of the maintenance work that will be done along the road will entail the replacement and upgrade of culverts and side drains which will occur within the proclaimed road reserve but will be done in accordance with the Maintenance Management Plan that was included in the Basic Assessment Process and approved in this Environmental Authorisation as part of the EMPr.

2. Public Participation

A sufficient public participation process was undertaken, and the applicant has satisfied the minimum requirements as prescribed in the EIA Regulation 2014 for public involvement. The public participation process included:

- identification of and engagement with interested and affected parties (I&APs) including organs of state which have jurisdiction in respect of the activity to which the application relates;
- fixing a notice board at the site and at the site since September 2020;
- giving written notice to the owners and occupiers of land adjacent to the site and any alternative site where the listed activities are to be undertaken, the municipality and ward councillor, and the various organs of state having jurisdiction in respect of any aspect of the listed activities on 24 2020;
- the placing of a newspaper advertisement in the '*Knysna-Plett Herald*' in 24 September 2020; and
- making the draft Basic Assessment Report available to I&APs for public review from 2 October 2020 until 2 November 2020.

The following Organs of State provided comment on the proposal:

- ❖ *Heritage Western Cape;*
- ❖ *Breede Gouritz Catchment Management Agency*
- ❖ *CapeNature; and*

The following NGOs and Neighbouring property owners and general public provided comment on the proposal:

- ❖ Redford Conservancy
- ❖ Municipal Ward Councillor –
(Ms J. Kamkam)
- ❖ Anton Wolfaardt
- ❖ Drew Scott
- ❖ Tony Bilgnaut
- ❖ Emma Irvine
- ❖ Veronique Erasmus
- ❖ Thandi Davis
- ❖ Peter Fourie
- ❖ Peter Gage
- ❖ Gill Richardson
- ❖ Jack Goedhals
- ❖ Fred Oelschig

All the comments and issues raised by the respective *Organs of State* that were captured in the Basic Assessment Report were responded to by the EAP. The general consensus was the support of the upgrade. The Competent Authority is satisfied with the responses obtained from the EAP and the additional consultation with *Organs of State*.

3. Alternatives

Alternative 1 - Preferred Alternative (Herewith Approved):

The development and construction of a major culvert at km 0.705 (on the DR 1797) over a tributary of the Whiskey Creek, is proposed as part of the road upgrade. This will involve the construction of a new double cell reinforced concrete culvert with cell dimensions of 2.4 m wide x 1.5 m high. Downstream, the culvert will have wing walls and an apron slab with erosion protection works consisting of a gabion mattress. At this point in the road, the level of the road will be raised which will reduce the blind rises of the road on either side of the culvert.

Maintenance and upgrade activities will also be conducted on the DR 1797 from km 0.00 (from the intersection off the N2) up to km 4.87 whereby the gravel road will be surfaced and various culverts in the road will be upgraded and replaced in the same footprint and other side drains will be restored. The maintenance will be done in accordance with the maintenance management plan.

Culvert no. 12270 at km 0.705 over a tributary of the Whiskey Creek will be constructed as follows, as part of the DR 1797 Road upgrade:

- ❖ Construction of a new double cell reinforced concrete culvert with cell dimensions of 2.4 m wide x 1.5 m high. Downstream, the culvert will have wing walls and an apron slab with erosion protection works consisting of a gabion mattress
- ❖ The culvert is to be constructed in two phases for traffic accommodation purposes. The traffic will be accommodated to either the existing road or on the new culvert, once completed
- ❖ The final road fill on top of the culvert will be 5 m high and traffic will be required to be switched over multiple times as the layer works are constructed. The traffic is to be accommodated on the opposite side to where construction is taking place. No traffic or fill will be allowed on the structure prior to the concrete having achieved its design strength.

Due to the DR 1797 being an existing linear activity, no property or site alternatives were considered. A realignment of the gravel road was considered to be in the best interest to the users of the road and the local community due to the unsafe conditions of the road. The construction of the major culvert and raising of the road level proposed was considered the best alternative to that section as there is a substantial valley that leads to a driver's blind rise in both directions and is dangerous. Designs depicting the vertical and horizontal alignment of DR1797 (including the crossing) were provided and considered adequate to inform the decision. A final design of the new major culvert at km 0.705 will be submitted with the amended EMP.

"No-Go" Alternative

Should the DR 1797 Road upgrade not proceed an opportunity will be lost to provide smaller communities with improved accessibility and a potential improved economy.

The no-go alternative will entail leaving the DR 1797 gravel road in its present state. This would require an increased amount of maintenance. In addition, in some instance, the minor culverts could remain blocked due to overgrown vegetation, including alien invasive vegetation, and may result in an impact on drainage water patterns and the roads integrity.

4. Impact Assessment and Mitigation Measures

4.1 Activity need and desirability

The WCG Department of Transport and Public Works' responsibility is to upgrade, rehabilitate and maintain provincial roads within the Western Cape Province, provide EPWP work opportunities, develop emerging CIDB contractors and contribute towards black economic empowerment within the local communities.

The DR 1797 is currently a gravel road. The main purpose of this project is to upgrade the road from a gravel road (Class 4) to a tarred road (Special Class 4). The upgrade of DR 1797 Road will be from km 0.00 (left off the N2 and just past The Crags Petrol Station) to km 4.87, this includes the limit for construction as well.

The drainage along the DR 1797 Road has been compromised due to the lack of maintenance that has resulted in debris build-up and vegetation blockages. The majority of the DR 1797 Road has no side drains, resulting in an increased amount of erosion along the edge of the roadway. As part of the upgrade, subsoil drains and unlined side drains will be constructed along the road edge.

The area drains from the north-east of the DR 1797 Road in a south-westerly direction as there is a mountainous area situated north. Due to this, the only drainage along the DR 1797 Road is through culverts and side drains. The drainage through the DR 1797 Road has not been maintained and the pipe and box culvert barrels will be replaced as part of the road upgrade. All culvert inlets and outlets will be shaped to ensure free drainage along the road and chevron danger plates will be installed at culvert crossings on each side of the road shoulder.

Currently, there are no major culverts along the DR 1797 Road. However, the development of a major culvert at km 0.705 over a tributary of the Whiskey Creek, is proposed as part of the road upgrade. This will involve the construction of a new double cell reinforced concrete culvert with cell dimensions of 2.4 m wide x 1.5 m high. Downstream, the culvert will have wing walls and an apron slab with erosion protection works consisting of a gabion mattress.

4.2 Biophysical Impacts

Aquatic environment:

The DR 1797 Road crosses over tributaries of the Whiskey Creek River, as well as a tributary of the Keurbooms River, with their instream dams and associated anthropogenic wetland habitats. Based on the Freshwater Specialist Study conducted the watercourses along this section of road have been classified as significantly modified, often with the instream dams immediately upstream or downstream of the road. As a result of the agricultural activities and disturbance of the aquatic habitats immediately adjacent to the road, as well as the flatter topography of the road, culverts are subject to high sediment deposition and will require regular maintenance.

The cumulative impact of this activity on the aquatic habitat will be of a low to very low significance short term impacts and in many cases, positive over the longer term. While these impacts to the

freshwater ecosystems are each of a low significance it is essential that they be adequately mitigated to minimise the potential cumulative impacts.

❑ *Agricultural Aspects*

The proposed upgrade and rehabilitation of the DR1797 roadway will have no significant negative effect on the agricultural potential/sensitivity, commercial outputs and/or have any significant negative impact on the agricultural considerations. Furthermore, the areas considered for the upgrade and road refurbishment and new development can be expropriated without significant impact to the agricultural sensitivities as long as all of the management and mitigation measures proposed as part of the management plan are implemented and enforced.

4.3 Biodiversity

The two vegetation types that would have originally occurred in the study area are *Tsitsikamma Sandstone Fynbos* and *Southern Afromontane Forest*. Only degraded remnants of fynbos and one patch of poorly-defined Southern Afromontane Forest remain along the DR1797 road. The vegetation types are not threatened according to the National List of Threatened Ecosystems (2011) and there will be no further significant loss of these ecosystems. The anticipated direct impacts, although negative, would be "Low" and with mitigation (avoidance where possible of natural vegetation) the impact can be reduced to "Very-Low".

Furthermore, the mitigation measures that will be taken to address the environmental impacts resulting from the undertaking of activity are regarded adequate. These mitigation measures have been included in the EMP.

4.4 Heritage / Archaeological Aspects

A Notification of Intent to Develop (NID) was submitted to Heritage Western Cape (HWC), outlining the project, as well as the history of the area. HWC confirmed that a Heritage Impact Assessment (HIA) is not required.

In considering the above, the view is held that the applicant has adequately considered the heritage and archaeological aspects and that the proposed development will not result in significant negative impact on the on these. The competent authority is satisfied that the evaluation fulfils the requirements of the relevant heritage resources authority in terms of the National Heritage Resources Act, 1999 and the comments and recommendations of the relevant heritage resources authority with regard to the proposed development have been taken into account.

4.5 Other Impacts

No other impacts of significance are anticipated.

5. **Scope and Validity Period of authorisation**

This environmental authorisation defines specific operational aspects. The applicant has indicated that the construction activities (non-operational aspects) should be completed within 15 months from the date of commencement and the post-construction maintenance activities should be completed during a three-year period thereafter. The environmental authorisation's validity period has been granted for a period of approximately five and a half (5.5) years, during which period the construction activities must commence and be concluded, including the post-construction rehabilitation and monitoring and submission of the final environmental audit. In light of the proposed implementation programme, the monitoring and post-construction rehabilitation can be adequately incorporated in the construction phase. The Holder is required to substantially implement the proposal and maintenance to structures within watercourses within a period of approximately 2.5-years after the

environmental authorisation is issued. Where the activity has been commenced with, the EIA Regulations, 2014 allow that (upon application) the period for which the environmental authorisation is granted may be extended for a further period of 5-years.

6. National Environmental Management Act Principles

The National Environmental Management Principles (set out in section 2 of the NEMA, which apply to the actions of all organs of state, serve as guidelines by reference to which any organ of state must exercise any function when taking any decision, and which must guide the interpretation, administration and implementation of any other law concerned with the protection or management of the environment), *inter alia*, provides for:

- the effects of decisions on all aspects of the environment to be taken into account;
- the consideration, assessment and evaluation of the social, economic and environmental impacts of activities (disadvantages and benefits), and for decisions to be appropriate in the light of such consideration and assessment;
- the co-ordination and harmonisation of policies, legislation and actions relating to the environment;
- the resolving of actual or potential conflicts of interest between organs of state through conflict resolution procedures; and
- the selection of the best practicable environmental option.

7. Conclusion

After consideration of the information and factors listed above, the Department made the following findings:

- (a) The identification and assessment of impacts are detailed in the FBAR dated 30 November 2020 and sufficient assessment of the key identified issues and impacts have been completed.
- (b) The procedure followed for the impact assessment is adequate for the decision-making process.
- (c) The proposed mitigation of impacts identified and assessed, curtails the identified negative impacts.
- (d) The EMPr proposed mitigation measures for the pre-construction, construction and rehabilitation phases of the development and were included in the FBAR. The mitigation measures will be implemented to manage the identified environmental impact during the construction phase.

Due consideration is also given to the person's duty of care described in Section 28 of NEMA:

"Every person who causes, has caused or may cause significant pollution or degradation of the environment must take reasonable measures to prevent such pollution or degradation from occurring, continuing or recurring, or, in so far as such harm to the environment is authorised by law or cannot reasonably be avoided or stopped, to minimise and rectify such pollution or degradation of the environment".

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

----- END -----