

N2 WILD COAST TOLL HIGHWAY ENVIRONMENTAL MONITORING COMMITTEE (EMC)

TERMS OF REFERENCE

Preamble

The N2 Wild Coast Toll Highway extends over a distance of approximately 410km between the Gonubie Interchange (near East London in the Eastern Cape) and the Mtamvuma River (near Port Edward). The N2 national road will follow a new route through the area known as the Wild Coast and will connect major centres including East London, Butterworth, Idutywa, Mthatha, Ndwalane, Lusikisiki, Port Edward, Port Shepstone and Durban. The new route will be approximately 85km shorter than the existing N2 via Mount Frere, Kokstad and Harding and will lead to a travel time saving of approximately 3 hours between East London and Durban.

The South African Government's Strategic Integrated Projects (SIPs) were adopted in the National Infrastructure Plan in 2012 with the aim of transforming the economic landscape while simultaneously creating significant numbers of new jobs and strengthening the delivery of basic services. The SIPs cover social and economic infrastructure across all nine provinces (with an emphasis on lagging regions) and include catalytic projects that can fast-track development and growth. The N2 Wild Coast Toll Highway forms part of SIP 3: South-Eastern node and corridor development.

Approximately 96 km of the N2 Wild Coast Toll Highway will be on a greenfields alignment between Mzimvubu River (near Port St Johns) and the Mtamvuna River (near Mzamba).

The project includes:

- Two mega-bridge structures on the Msikaba and Mtentu Rivers, and associated haul roads;
- Seven additional major river bridges and three interchange bridges;
- Approximately 96 km of new class one road and 17 km of "brownfield" class one road;
- New interchanges, pedestrian walkways and bridges as well as agricultural underpasses; and
- Local collector / access roads, underpasses and overpasses.

It should be noted that the current construction programme commences with the two mega-bridges and associated haul roads and excludes any work in KwaZulu-Natal.

Environmental authorisation for the construction of the N2 Wild Coast Toll Highway was granted in a Record of Decision (RoD 12/12/20/701) by the Department of Environmental Affairs on 19 April 2010. The authorisation was granted subject to various conditions and condition 6.2.5 required the establishment of an Environmental Monitoring Committee (EMC) as follows:

- *The applicant must establish an environmental monitoring committee (EMC) for the duration of the construction phase.*
- *The EMC must meet on a quarterly basis or as decided by the members of the EMC.*
- *The EMC must be chaired by an independent chairperson appointed by the EMC and must consist of representatives of the key authorities (i.e. DEA, relevant provincial*

environmental authorities, Department of Water Affairs and relevant local municipalities, etc.), the ECO, a representative of the Tribal Authorities and the main contractor.

- *The applicant must supply the secretariat services for the EMC.*
- *The EMC must report to the Director: Environmental Impact Management at DEA from the start of the project until such time as the completed works is handed over to the applicant for operation.*
- *All costs associated with the functioning of the EMC and secretariat services shall be borne by the applicant.*

The purpose of the EMC would be to execute the following:

- a. To monitor and audit the project compliance with specific conditions of this environmental authorisation and the requirements of the approved environmental management plan (EMP).*
- b. To make recommendations to the Director on issues related to the monitoring and auditing of the project implementation.*
- c. To advise the department on issues related to non-conformance reports (NCRs) raised against the applicant by the ECO.*

The first Environmental Monitoring Committee meeting was convened on 15 November 2016.

This document sets out the EMC's Terms of Reference.

1. NAME

The name of the committee established to monitor and audit the project compliance with specific conditions of the environmental authorisation and the requirements of the approved environmental management plan (EMP) for the N2 Wild Coast Toll Highway is the **N2 Wild Coast Toll Highway Environmental Monitoring Committee (EMC)**.

2. GUIDING PRINCIPLES

- 2.1 All participants in the EMC shall act in an accountable and responsible manner and behave with dignity and self-control.
- 2.2 Good faith, common understanding and necessary urgency shall underline all EMC proceedings and members shall commit themselves to achieving consensus wherever possible.
- 2.3 The activities and discussions of the EMC shall be transparent.
- 2.4 All members of the EMC shall have access to information relating to the EMC's activities.
- 2.5 When making recommendations the EMC shall take cognisance of the principles stated in the National Environmental Management Act (NEMA) Act 107 of 1998 as amended and seek to balance developmental and environmental considerations.
- 2.6 The EMC does not limit or have any influence over the relationship between a competent authority and its licence, permit or authorisation holder.

3. FUNCTION AND PURPOSE

- 3.1 The primary role of the EMC is to monitor and audit the implementation of the construction EMP and compliance with the requirements of the N2 Wild Coast Toll Highway environmental authorisation (ROD) and all other authorisations and permits relating to the project and its related works such as quarries, etc.
- 3.2 To promote the participation of key stakeholders in environmental monitoring.
- 3.3 To ensure that the construction sites are developed and managed responsibly with minimal impact on the environment.
- 3.4 To provide a forum for discussing environmental issues relating to the construction sites and for raising, addressing and, where possible, resolving, any concerns.
- 3.5 To provide the opportunity to reach common understanding between interested groups about the nature, scope and results of monitoring and remedial actions undertaken in terms of the construction EMP and thereby increasing the scope for issues to be resolved amicably.
- 3.6 To provide a structured forum for discussion so as to make recommendations to the Director: Environmental Impact Management at DEA on issues related to the monitoring and auditing of the project implementation when appropriate.
- 3.7 To review the ECOs' audit and site inspection reports.
- 3.8 To advise the DEA on issues related to non-conformance reports (NCRs) raised against the applicant by the ECOs.
- 3.9 To evaluate the complaints procedure and the channels of communication with the public and to ensure improvements, where necessary.
- 3.10 It is important to note that the EMC:
 - a) is not a forum established primarily for dispute resolution (although mechanisms can be put in place for resolving disputes when they arise);
 - b) does not have any executive or decision-making power over the developer or project authorities;
 - c) is not a management committee;
 - d) does not become directly involved in monitoring but reviews and queries monitoring information provided by the ECOs (NB: The competent authorities retain the function of conducting their own compliance monitoring independently of the ECOs and EMC).

4. COMPOSITION OF THE EMC

- 4.1 The organisations represented on the EMC are:
 - Department of Environmental Affairs (DEA)
 - Eastern Cape Department of Economic Development, Environmental Affairs and Tourism (DEDEAT)

- Department of Water and Sanitation (DWS)
- Department of Agriculture, Forestry and Fisheries (DAFF)
- Department of Mineral Resources (DMR)
- Department of Rural Development and Land Reform (DRDLR)
- Eastern Cape Provincial Heritage Resources Authority (ECPHRA)
- Eastern Cape Parks and Tourism Agency (ECPTA)
- Wildlife and Environment Society of South Africa (WESSA)
- Delta Environmental Centre
- OR Tambo District Municipality
- Alfred Nzo District Municipality
- Port St Johns Municipality
- Ingquza Hill Municipality
- Mbizana Municipality
- Representative of the Traditional Authorities (Mvumelwano TA; Emtweni TA; Gunyeni TA; Qaukeni TA; Taweni TA; amaDiba TA)
- Representatives of the contractors
- Environmental Control Officers

As the current construction programme excludes any work in KwaZulu-Natal, the Kwazulu-Natal Department of Agriculture and Environmental Affairs (DAEA) and Ezemvelo KZN Wildlife do not form part of the EMC.

- 4.2 Should the principal representative be unavailable for a particular EMC meeting, the alternate member should attend in their place.
- 4.3 The South African National Roads Agency SOC Ltd (SANRAL), as the project proponent with final accountability and responsibility for the project, is also a member of the EMC.
- 4.4 SLR Consulting as the Project Environmental Manager (PEM) and EMC Secretariat shall attend all EMC meetings.
- 4.5 The Environmental Control Officers (ECOs) appointed on the project shall attend all EMC meetings.
- 4.6 The contractors appointed on the project shall attend all EMC meetings.
- 4.7 Any member organisation who fails to be represented at three consecutive meetings of the EMC shall be asked to re-commit to or withdraw from the EMC. Should a member withdraw from the EMC they accept that environmental issues relating to the project will be addressed by the EMC and they will not be entitled to raise issues or participate in matters related to the EMC.
- 4.8 The Chairperson may exclude any person who has or may have a conflict of interest from EMC meetings, either permanently or for particular discussions only; but may do so only after hearing representations from members of the EMC and any person potentially affected by the Chairperson's ruling. Should an EMC member feel that they will have a conflict of interest on any matter to be discussed at a particular EMC meeting, they may notify the Chairperson in advance of their intent to recuse themselves from the meeting when the matter in question is to be discussed.

4.9 Any person may attend EMC meetings as an observer provided that they have obtained permission to attend from the Chairperson at least one week in advance of the meeting in question. The Chairperson, after hearing representations from members of the EMC and any person potentially affected by the Chairperson's ruling, shall determine whether or not an observer should be granted speaking rights. If an observer is granted speaking rights, he / she must adhere to the guiding principles of the EMC. The number of observers shall not exceed five persons per meeting.

5. ACCOUNTABILITY AND RESPONSIBILITY OF EMC MEMBERS

5.1 Representatives are nominated by their organisations and are accountable to the organisations they represent, and are responsible for keeping these organisations informed of EMC proceedings.

5.2 Members must respect the confidentiality of discussions at meetings. The approved minutes serve as the record of the meeting.

5.3 Subject to clause 5.2 above, a member's participation in EMC proceedings should not be interpreted as a waiver of that member's right to challenge, comment upon or deal with any issue pertaining to the project outside the forum. However, where the EMC has already resolved an issue by consensus, a member intending to protest or challenge that issue must inform the EMC chairperson of their intention to do so.

5.4 Final accountability and responsibility for the project lies with SANRAL and its appointed representatives and contractors, but only in respect of their respective activities. The EMC is not a management committee and it is not legally responsible for project activities or for any consequences resulting from such activities.

5.5 The DEA is the primary regulatory authority (Competent Authority) and the ultimate decision-making authority in EMC matters within its jurisdiction. Other regulatory authorities are the Competent Authority in respect of matters within their jurisdiction.

5.6 The regulatory authorities are responsible for the enforcement of legislation and other provisions pertaining to the construction sites and must take steps to ensure that regulatory provisions are complied with.

5.7 The EMC has a monitoring function, not a management function, and its decisions usually take the form of recommendations to either the developer or the regulatory authorities. The regulatory authorities and developer must consider, but are not obliged to accept, the EMC's recommendations. Members are however obliged to implement EMC recommendations to which they have agreed.

5.8 Notwithstanding clause 5.7, the EMC has the power to decide issues relating to its own operation and activities, but has no power to impose its decisions on any of its members regarding matters falling outside these activities. Members are obliged to implement EMC decisions to which they have agreed.

5.9 Where consensus cannot be reached and it is necessary to make a recommendation, the issues of disagreement shall be recorded in writing and referred to the relevant authority for its decision.

6. MEETINGS

- 6.1 The EMC shall meet on a quarterly basis, at a suitable venue.
- 6.2 In the event of an unusual incident related to the N2 Wild Coast Toll Highway, the chairperson may, at his or her discretion, call a special meeting to deal with the incident, or if any three members request such a meeting. Such special meetings will be called in consultation with SANRAL.
- 6.3 The EMC shall deal with the following matters at its regular meetings:
- 6.3.1 Reports by SANRAL on progress and environmental matters relating to the N2 Wild Coast Toll Highway, including results of audits and monitoring programmes and complaints received from the public and action taken;
 - 6.3.2 Issues and areas of concern to the EMC (whenever possible, these should be forwarded in writing to the chairperson before the meeting for inclusion on the agenda, and also to anyone who will be able to provide answers, in order to facilitate fruitful discussion at the meeting);
 - 6.3.3 Any report back on issues, activities or meetings outside the regular EMC meetings, for example, subcommittee meetings and meetings between the regulators and SANRAL;
 - 6.3.4 Relevant reports in respect of the N2 Wild Coast Toll Highway, such as the ECOs' audit and site visit reports and Biodiversity Offset Agreement progress reports.
 - 6.3.5 Correspondence; and
 - 6.3.6 General matters.
- 6.4 All reports must be circulated prior to the meeting at which they are to be considered.
- 6.5 The EMC may appoint persons or subcommittees to deal with specific issues. Normally these should consist of EMC members, who may be assisted by technical specialists where appropriate. Subcommittees must report back to the EMC as soon as they have reached a conclusion or a resolution on an issue, which must be open for review at an EMC meeting.

7. CHAIRPERSON

- 7.1 The Chairperson shall ensure that EMC meetings and other EMC activities are conducted in an orderly fashion.
- 7.2 Where appropriate, the Chairperson shall mediate disputes between EMC members.
- 7.3 The Chairperson is accountable to the EMC and shall at all times act in an objective and unbiased manner and shall ensure that all members are given a fair hearing.

8. ADMINISTRATION

- 8.1 SLR Consulting, as the PEM, shall act as Secretary to the EMC and shall
- 8.1.1 convene meetings and prepare agendas;
 - 8.1.2 circulate all relevant documents and/or any other relevant information to EMC members;
 - 8.1.3 take and compile minutes and distribute them to EMC members (both principal and alternate representatives);
 - 8.1.4 file EMC records, other relevant documentation and maintain a record of all EMC activities; and
 - 8.1.5 perform any other administrative tasks designated by the EMC.
- 8.2 The PEM shall record the names and addresses of all members and their representatives. Members shall notify the Secretary in writing of any change in contact details. Any notice or correspondence sent to the recorded details of members shall be considered good service of such notice or correspondence.
- 8.3 The PEM shall ensure that all minutes and any other documentation received or generated by the EMC are properly kept and are available for inspection on request by any EMC member.

9. FINANCIAL MATTERS

- 9.1 SANRAL shall be responsible for all administrative costs and meet all the appropriate and reasonable costs associated with the EMC's effective functioning, as well as administrative disbursements, and specialist and/or professional service fees.
- 9.2 EMC members will not receive payment for their participation on the EMC.

10. INSPECTIONS AND SITE VISITS

- 10.1 Unless the EMC decides otherwise, a site visit for EMC members must be scheduled in conjunction with every EMC meeting.
- 10.2 SANRAL shall provide EMC members with reasonable access to all the sites on the N2 Wild Coast Toll Highway and provide information that is necessary for coordination purposes.
- 10.3 Members may accompany specialists who are visiting the sites on the N2 Wild Coast Toll Highway as part of an audit or specialist investigation.
- 10.4 EMC members are expected to comply with all safety instructions and procedures while on site.

11. AMENDMENTS

- 11.1 The EMC may at a duly constituted meeting amend these Terms of Reference with the consent of 75% of its members present.