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## CHAPTER 1: TERMINOLOGY AND DEFINITIONS

### NOTE:

[The definitions as per the SANRAL Act are not repeated in this Chapter.]

### 1.1 DEFINITIONS AND TERMINOLOGY

1.1.1	“Egress” or Exit from a National Road	Any public or private road, ramp, driveway or path which intersects or crosses or is connected to a national road, providing a thoroughfare for exiting from a national road.
1.1.2	“Ingress” or entrance from a National Road	An access from a national road to an adjacent property allowing an exit from a national road to that property.
1.1.3	Access onto a National Road	Any public or private road, ramp, driveway or path which intersects or crosses or is connected to a national road, providing a thoroughfare for entering onto a national road.
1.1.4	Applicant	A Person, Juristic Person, Organ of State, State Department and other body or entity that has cause to interact with SANRAL in terms of the Act and who is seeking a statutory authorisation, approval, permission or consent from SANRAL.
1.1.5	Authorities:	National Infrastructure, Telecommunication and other Authorities including but not limited to: Telkom and all registered cell phone organisations and telecommunications entities, private and state.
1.1.6	COLTO	Committee of Land Transport Officials.
1.1.7	Concessionaire	A private Entity which may be a Joint Venture and which is contracted to SANRAL for the management and operation of a defined section(s) of the National Road Network.

1.1.8	COTO	Committee of Transport Officials.
1.1.9	Financial Manual	SANRAL's Financial Management Manual.
1.1.10	GIS	A Geographical Information System.
1.1.11	Guideline	SANRAL's Statutory Control Guideline.
1.1.12	Guideline for Tribal and Urban/ Densified Areas	SANRAL's Guideline to address complex issues in rural / tribal regions of South Africa.
1.1.13	Interchange	A system of roads to provide either an entrance, an exit or both by means of ramps leading from and to other grade-separated intersecting roads. Grade separation means the intersecting road is not at the same level as the main road.
1.1.14	Intergovernmental Relations Act	Intergovernmental Relations Framework Act, Act 13 of 2005.
1.1.15	Investment Property	The term Investment Property (IP) originates from International Financial Reporting Standards and is defined as land or building held to earn rentals or for capital appreciation, rather than for use in the production or supply of goods or services, or for administrative purposes, or for sale in the ordinary course of business.
1.1.16	Investment Property Register	Property (land and or a building or part of a building or both) held (by the owner or by the lessee under a finance lease) to earn rentals or for capital appreciation or both, rather than for: <ul style="list-style-type: none"><li>- Use in the production or supply of goods or services or for administrative purposes; or</li><li>- Sale in the ordinary course of business.</li></ul>
1.1.17	IT IS	SANRAL's Integrated Transportation Information System.

1.1.18	LAC Guidelines	SANRAL's Guideline for Land Acquisition for Consulting Engineers.
1.1.19	Lease Policy	SANRAL's Lease Policy.
1.1.20	LTO	Local Tourism Organisation.
1.1.21	Municipal SDFs	A Spatial Development Framework for a Municipality as per SPLUMA Act.
1.1.22	National Road Network	The South African National Road Network declared in terms of Section 40 of the Act.
1.1.23	National SDFs	National Framework for South Africa as per the SPLUMA Act.
1.1.24	NEMA	National Environmental Management Act, 108 of 1998.
1.1.25	PAJA	Promotion of Administrative Justice Act, Act 3 of 2000.
1.1.26	PIE Act	Prevention of Illegal Eviction and Unlawful Occupation of Land Act, 19 of 1998.
1.1.27	Policy Road Planning and Design	SANRAL's Policy with respect to Section 25 and 26 of the Act.
1.1.28	PPSP	SANRAL's Property Portfolio Service Provider.
1.1.29	Provincial Proclamation	Any declaration made by a competent Provincial Authority in accordance with the powers vested in it by its Provincial Legislation and duly promulgated in the relevant Province's Provincial Gazette
1.1.30	Provincial SDFs	A Spatial Development Framework for a Province as per SPLUMA Act.



1.1.31	Regional Manager	SANRAL's Regional Manager with respect to four regions.
1.1.32	Regulations on Advertising	SANRAL's published regulations in terms of the Act.
1.1.33	Rest and Service Facilities Policy	SANRAL's Policy with respect to "Rest and Service Facilities" within the National Road Network.
1.1.34	RM	Route Manager.
1.1.35	Road Reserve Boundary	The Road Reserve Boundary of a National Road and which has been declared by description or on co-ordinates as per the National Survey Co-ordinates System, in terms of Section 40 of the Act .
1.1.36	Roads Authority	A provincial and / or Municipal roads authority / department.
1.1.37	RRM	Routine Road Maintenance.
1.1.38	RRM Manual	SANRAL's Routine Road Maintenance Manual.
1.1.39	RRMC	Routine Road Maintenance Contractor per Section(s) of the National Road Network.
1.1.40	RTLCL	Regional Tourism Liaison Committee.
1.1.41	SADC-RTSM Manual	South African Development Community Road Traffic Signs Manual.
1.1.42	SANRAL	The South African National Roads Agency SOC Limited.
1.1.43	SANRAL Board	The board of SANRAL as per section 12 of the Act.

1.1.44	SANRAL's Jurisdiction Guidelines	A SANRAL Guideline to formalize SANRAL's Jurisdiction on the National Road Network (Previously known as the N14/15/6 Guidelines.).
1.1.45	SARC – AM Manual	South African Road Classification and Access Management Manual.
1.1.46	SARTSM Manual	South African Road Traffic Signs Manual.
1.1.47	SCA	Statutory Control Administrator in each region of SANRAL.
1.1.48	SCO	Statutory Control Officer in each Region of SANRAL.
1.1.49	SCOMS	SANRAL Statutory Control Management System as contained in ITIS.
1.1.50	SPLUMA:	Spatial Planning And Land Use Management Act, Act 16 Of 2013.
1.1.51	The Act:	The South African National Roads Agency Limited And National Roads Act, Act 7 Of 1998.
1.1.52	The Municipal Planning By-Laws	Municipal Planning By-Laws Promulgated By A Municipality In Terms Of SPLUMA.
1.1.53	TMH 11	Technical Methods for Highways: Standard Survey Methods; Approved "Draft" released to wider industry for implementation.
1.1.54	TMH 15	Technical Methods for Highways: South African Engineering Service Contribution Manual for Municipal Road Infrastructure Approved "Draft" released to wider industry implementation.
1.1.55	TMH 16	Technical Methods for Highways: Traffic Impact and Site Traffic Assessment Manual Assessments Approved "Draft" released to wider industry implementation.

1.1.56	TMH 17	Technical Methods for Highways: South African Trip Data Manual Approved “Draft” released to wider industry implementation.
1.1.57	TRH 3	Surfacing Seals for Rural and Urban Roads COTO Approval of final TRH3.
1.1.58	TRH 11	Guidelines for the conveyance of abnormal loads COTO Approval of final TRH 11.
1.1.59	TRH 20	Structural Design, Construction and Maintenance COTO Approval of Final TRH 20.
1.1.60	TRH 21	Hot Mix Recycling COTO Approval of Final TRH 21.
1.1.61	TRH 26	Road Class an Access Management Approved “Draft” released to wider industry for implementation.
1.1.62	TRH 27	Services in Road Reserve Approved “Draft” released to wider industry for implementation.

## CHAPTER 2: PRINCIPALS AND GENERAL NOTES TO USER

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## 2.1 OVERVIEW

- 2.1.1 In terms of the “pre-amble”, section 25 and 26 of the Act, SANRAL, in addition to it being an agency is also a Statutory Authority;
- 2.1.2 This Guideline therefore interprets those sections of the Act in order to guide the officials within SANRAL charged with the management of such sections. To generally ensure that where administrative decisions are conveyed to any Person, Juristic Person, Organ of the State, State Departments and any other body that has cause to interact with SANRAL in terms of the Act, the procedures of PAJA are followed.
- 2.1.3 Where this Guideline contradicts the provisions of Act, the Act shall prevail.
- 2.1.4 This Guideline follows the numerical order of the relevant sections of the Act but also includes chapters where SANRAL’s rights, as a National Roads Authority are described and how SANRAL ought to respond in such instances where these rights are being affected and/or impacted on. This is more particular with reference to proposed developments alongside the National Road but where in terms of the Act, SANRAL does not have specific statutory jurisdiction.
- 2.1.5 SANRAL have established a sophisticated management system in ITIS, known as “SCoMS” and which will also serve as a workflow system. This is described at Chapter 22. The SCoMS system will include a database and/or library of all standard documentation, agreements and related information that the SCO will utilize when compiling the response to applications made in terms of Act.

The principal being to ensure as far as is possible that decisions made by SANRAL are consistent across all four regions of SANRAL and such decisions are defensible and compliant with PAJA

## 2.2 LETTERS OF AUTHORISATION, APPROVAL, PERMISSION OR CONSENTS AND AGREEMENTS

- 2.2.1 Reference is made to a legal opinion at Annexure 2.3.1 to this Chapter.

2.2.2 This opinion and which has been accepted by SANRAL, clearly sets out the SANRAL’s statutory function and where such function is executed in an Authorisation, Approval, Permission or Consent as determined by the relevant section of the Act.

By example: Section 44 “Access to Egress from National Road”:

“Such an [authorisations] must be reduced to writing and may be granted by the agency ”

Section 48 “Structures and other works on, over or below national roads or certain other land”

At Section 48(1)

“Except as provided ..... without the Agency’s written [permission].....”

2.2.3 Need for an Agreement between an Applicant and SANRAL.

An agreement will be concluded where the Applicant is giving effect to a condition(s) of the “Authorisation etc. and is required to fulfil a set of additional detail criteria, specifications and where both the Applicant and SANRAL will interact in order for the Applicant to satisfy that condition of authorisation etc.

By way of example:

Where an authorisation has been issued to an Applicant in terms of Section 44 and the Applicant is required to make specific improvement to the affected section of the National Road, then the design and construction thereof would be constructed by SANRAL in terms of an “Access to the National Road” agreement.

The SCoMS system incorporates a data base and library of all generic agreements to cover a range of circumstances encountered over time (historical and ongoing).

These generic agreements will serve as a guide and will require the requisite approval before being signed by a delegated official of SANRAL.

#### 2.2.4 Agreements in terms of the Intergovernmental Relations Act

SANRAL may from time to time be approached by other Organs of State who are subject to the provisions of the SANRAL Act in regards to a statutory matter.

In addition to granting such Organ of State an authorisation etc. SANRAL would define aspects and/or provisions of such Authorisation etc. in such an agreement.

This maybe due to the fact that the Organ of State may wish to establish a progressive right within National Roads when it 'rolls' out its infrastructure across for e.g. the country.

A typical example of such an agreement would be with respect to the provision of Telkom infrastructure within the National Road Network.

Such agreements have far reaching implications for SANRAL and must be carefully considered in order to avoid circumstances where SANRAL's powers as a Statutory Authority are compromised.

SCoMS will not only store such agreements but display the spatial implication of such agreement. This will assist SANRAL to spatially adjudicate similar applications made by other Organs of State and to avoid conflicts before approval and the entering into of an agreement with that Organ of State.

It must be noted that SANRAL has entered into a number of agreements to date with telecommunication private entities, both private and the state.

**2.3 ANNEXURES**

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**Annexure 2.3.1 LEGAL OPINION RE AUTHORISATIONS VS AGREEMENT**

TO : HORNBY, SMYLY, GLAVOVIC INC.  
ATTENTION : ODWA DILIZO  
IN RE : SANRAL // STATUTORY CONTROL GUIDELINE

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OPINION

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1.

This opinion is prepared for the MA Joint Venture (delegated agents of SANRAL) on the instructions of Hornby, Smyly, Glavovic Incorporated.

2.

My instructions are that the MA Joint Venture (MAJV) is in the process of preparing an updated Statutory Control Guideline. Part of this process entails recommending to SANRAL what procedures and protocols to adopt when performing its statutory functions.

3.

This opinion, although applicable broadly to SANRAL's protocols and procedures with regard to the granting of statutory consents (authorisations, authorities, permissions and/or approvals in terms of the SANRAL Act), is focused primarily on the process which SANRAL follows when performing the following functions:

Granting an authority to a person to create or use an entrance to or exit from a National Road in terms of section 44 of the SANRAL Act;

- a. Giving permission to erect structures or other works on, over or below National Roads or certain other land in terms of section 48 of the SANRAL Act; and

- b. Giving approval for the division of certain land in terms of section 49 of the SANRAL Act.

4.

SANRAL's current procedure or protocol with regard to the granting of such authorities, approvals or permissions can be found in a document dated 31 March 2016 titled "Clarification in Respect of the Granting of Statutory Consents in Terms of the Act". The procedure is essentially that once the statutory consent is granted or given (even if it is granted or given subject to conditions) an agreement is then to be concluded by SANRAL with the applicant for such consent expressly stating that such agreement arises out of that consent and then stipulating all of the conditions of the consent.

5.

My instructions are that the MAJV wishes to propose that a new approach or procedure be adopted whereby the statutory consent is simply given or granted to the Applicant by SANRAL with such consent, and the conditions it is subject to, being communicated to the applicant in writing. No agreement would then be entered into with regard to SANRAL's consent as the MAJV's view is that such an agreement is unnecessary in the circumstances.

6.

The purpose of this opinion is to establish whether the current or MAJV's proposed procedure or protocol with regard to statutory consents is the correct approach to follow.

**AUTHORITY, APPROVAL AND/OR PERMISSION:**

7.

The above terms are all used in different sections of the SANRAL Act to denote different forms of statutory consent:

- a. Section 44(2): Only the Board and any person acting on its written authority may provide or authorise an entrance to or exit from a National Road;
- b. Section 48(1): Except as provided in subsection (2), no person may do any of the following things without the Agency's written permission...;
- c. Section 49(1): If any land or any part of land... is situated in a building restriction area, a surveyor-general may not approve the diagram or general plan of any division of that land or part... unless the Agency in writing has given its approval for the division.

8.

As per the above, the terms “authority” (s44), “permission” (s48) and “approval” (s49) are all used in the SANRAL Act at different sections when discussing various acts requiring SANRAL's statutory consent.

9.

The Concise Oxford English Dictionary (9<sup>th</sup> edition) defines:

- a. authority as being the “right or power to enforce obedience (esp. administrative or political)” while authorise is defined as being to “sanction” or “to give authority”.
- b. approve as meaning to “confirm or sanction” while approval is defined as being “the act of approving”.
- c. permission as meaning “consent or authorisation”.

10.

As can be seen above, the meanings of these terms is almost identical and my submission is that the only reason that SANRAL refers to its statutory consent using these different terms is because these are the terms used in the SANRAL Act.

11.

In my opinion if SANRAL were to “approve” or “permit” an entrance to or exit from a National Road, such approval or permission would still constitute a statutory consent and would be binding on SANRAL despite the word “authority” or “authorisation” not being used.

### **CORRECT APPROACH TO STATUTORY CONSENTS IN LAW**

12.

SANRAL is an Organ of State as contemplated by section 239 of the Constitution.

13.

From the following definition of “decision” in section 1 of the Promotion of Access to Just Administrative Action Act 3 of 2000 (PAJA) any statutory consent granted or given by SANRAL would qualify as a “decision” as contemplated by PAJA:

*"decision"*

*means any decision of an administrative nature made, proposed to be made, or required to be made, as the case may be, under an empowering provision, including a decision relating to-*

- a. making, suspending, revoking or refusing to make an order, award or determination;
- b. giving, suspending, revoking or refusing to give a certificate, direction, approval, consent or permission;

*and a reference to a failure to take a decision must be construed accordingly.*

14.

Further, from the definition of “administrative action” in section 1 of PAJA that any statutory consent granted or given by SANRAL would qualify as administrative action:

*"administrative action"*

*means any decision taken, or any failure to take a decision, by-*

- a. an organ of state, when-
- b. exercising a public power or performing a public function in terms of any legislation.

15.

Administrative Action occurs during relationships between authoritative bodies or administrators and private persons. Such relationships are administrative and are relationships of inequality. The Organ of State wielding more power in the relationship than the private person.

16.

Although not all contracts or agreements between two private persons relate to equal relationships (for example employment contracts), they are at least voluntary in nature.

17.

The relationships that arise between SANRAL and successful applicants as a result of approvals, authorities or permissions granted in terms of the above sections are not truly voluntary relationships. SANRAL’s duties are set out in the SANRAL Act and it is obliged to act in conformity with those powers while the applicant is obliged to form a relationship with SANRAL and is bound to adhere to the conditions that SANRAL impose as long as those conditions are in terms of the SANRAL Act.

18.

The relationships that arise out of the above statutory consents are not voluntary agreements between equal persons. For example, section 44(3)

provides that SANRAL after granting an authority for entrance onto a National Road and making same subject to certain conditions “may at any time alter, substitute or cancel such condition or impose a new condition and insert it in the authorization”. In a voluntary agreement between two parties it would be unlawful for one party to unilaterally impose a new term of an agreement on the other. There would no longer be agreement between the parties.

19.

Thus, if SANRAL does reduce the terms of its statutory consent to writing in the form of an agreement and then conclude such agreement with the relevant applicant, the requirements for a private agreement or contract will be satisfied but the true nature of the relationship never the less remains an administrative one.

20.

The subsequent agreement “arising out of” the statutory consent is unnecessary as all of the sections referred to above provide for SANRAL to impose conditions on an applicant when any statutory consent is given by SANRAL. Once reduced to writing, the statutory consent itself and the conditions upon which it is granted are the terms of the relationship between the parties.

21.

Those terms are all enforceable as the SANRAL Act expressly empowers SANRAL to enforce the conditions of its consent<sup>1</sup>.

### **POTENTIAL RISKS ASSOCIATED WITH CURRENT PROCEDURE:**

22.

As mentioned above, incorporating the content of SANRAL’s statutory consents into an agreement is unnecessary. Aside from that however

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<sup>1</sup> Section 44(8)(b), Section 48(4)(c) and Section 49(5)(b).

there is a risk of such agreement being in conflict with the content of the actual consent itself which may give rise to a dispute as to whether the agreement itself is in fact is the actual statutory consent.

23.

Such a risk is unnecessary and can be avoided by adopting the procedure proposed by the MAJV.

### **ANNEXURE 9.7.3 OF THE STATUTORY CONTROL GUIDELINE**

24.

Annexure 9.7.3 is an example of a standard agreement for At-Grade intersection. It is unclear whether this is an agreement as referred to in the document dated 31 March 2016 titled “Clarification in Respect of the Granting of Statutory Consents in Terms of the Act” in which all of the conditions of the consent are to be stipulated.

25.

Without having any knowledge of the content of this agreement nor the approval that it relates to, this agreement is not simply an agreement where all of the conditions of the consent are stipulated.

26.

This agreement concerns the construction of the project which required SANRAL’s approval or consent. In respect of this agreement SANRAL is contracting as a private person not an administrator and in performing its obligations in terms of the agreement SANRAL’s actions would not constitute administrative action.

27.

The agreement contained at annexure 9.7.3 is not an agreement stipulating all of the conditions of SANRAL’s consent and thus the content and criticisms set out above and aimed at such an agreement would not apply to annexure 9.7.3.

## CONCLUSION

28.

The MAJV's proposed procedure or protocol with regard to the granting of statutory consents is legally a more accurate reflection of the relationship between the parties in the circumstances and further is more legally efficient and risk averse.

GARETH RANGLES  
Advocates Group One  
20<sup>th</sup> Floor the Marine 5  
December 2017



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## CHAPTER 3: DECLARATION OF NATIONAL ROAD – SECTION 40

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### 3.1 OVERVIEW

- 3.1.1 In terms of section 40 of the Act, the Minister<sup>1</sup> may declare a road to be a National Road, subject to certain requirements.
- 3.1.2 The Minister is also empowered to amend or withdraw the declaration of a National Road by notice in the Government Gazette<sup>2</sup>.
- 3.1.3 The declaration, or de-declaration or amendment of a declaration, must take place by notice in the Government Gazette<sup>3</sup>.
- 3.1.4 In the case where an existing road is declared a National Road, this can be undertaken by way of a description of such road<sup>4</sup>.
- 3.1.5 If a new route is to be declared a National Road, the declaration must refer to the boundaries of such road which must be fixed by survey<sup>5</sup>.

### 3.2 AUTHORITY OF AND/OR RESTRICTIONS PLACED ON SANRAL

- 3.2.1 The Minister may only declare an existing road to be a National Road if:
  - 3.2.1.1. SANRAL has recommended such declaration<sup>6</sup>; and
  - 3.2.1.2. agreement has been reached with the Premier of each province in which the road is situated<sup>7</sup>.

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<sup>1</sup> The Minister of Transport in the national sphere of government

<sup>2</sup> Section 40(1)(b)

<sup>3</sup> Section 40(1)

<sup>4</sup> Section 40(1)(a)

<sup>5</sup> Section 40(1)(a)

<sup>6</sup> Section 40(2)

<sup>7</sup> Section 40(2)(a)

- 3.2.2 For the purpose of obtaining the agreement of a Premier, SANRAL and the Premier must act in a manner and spirit consistent with the principles of co-operative governance as prescribed by section 41 of the Constitution<sup>8</sup> and the Intergovernmental Relations Framework Act, 13 of 2005.
- 3.2.3 If the Premier's agreement cannot be obtained after having made every reasonable effort to settle the dispute or difference and having exhausted all the mechanisms and procedures available for that purpose, then the matter may be referred to the Constitutional Court for a decision<sup>9</sup>.
- 3.2.4 The Minister may only declare a new route (greenfield scenario) to be a National Road if:
- 3.2.4.1. SANRAL has recommended such declaration<sup>10</sup> and
- 3.2.4.2. if the new road will have a substantial impact on the traffic flows in any one or more provinces, then after consultation with the Premiers of such provinces<sup>11</sup>.
- 3.2.5 After a National Road has been declared, SANRAL must submit a written request to the Registrar of Deeds, having jurisdiction over the land concerned, to endorse the fact of that declaration on the title deeds of the land affected by the declaration<sup>12</sup>.
- 3.2.6 Roads or routes which were previously declared National Roads under the National Roads Act<sup>13</sup> and which existed as a National Road on 19 May 1998 (the date of incorporation of SANRAL), shall be regarded and treated for all purposes as National Roads declared under the Act<sup>14</sup>.

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<sup>8</sup> Section 40(3). Section 41 of the Constitution spells out fundamental principles of co-operative government and intergovernmental relations which are applicable to all spheres of government and all organs of state.

<sup>9</sup> Section 40(3). The matter may be referred to the Constitutional Court in terms of section 167(4)(a) of the Constitution.

<sup>10</sup> Section 40(2)

<sup>11</sup> Section 40(2)(b)

<sup>12</sup> Section 44; the process required is described in the N14/5/6 manual

<sup>13</sup> Act 54 of 1971

<sup>14</sup> Section 40(5)

### **3.3 GUIDELINES AND PROCEDURES**

#### **3.3.1 Types of declaration**

3.3.1.1. As stated above, there are two methods for the declaration of a National Road.

3.3.1.2. If an existing provincial road is declared a National Road, this can be undertaken by way of a description of such road<sup>15</sup>.

3.3.1.3. If a new route is to be declared a National Road, the declaration must refer to the boundaries of such road which must be fixed by survey<sup>16</sup>.

#### **3.3.2 Declaration of an existing provincial road as a National Road**

3.3.2.1. If an existing road is to be declared a National Road, the Provincial Department of Transport should have details of the road reserve.

3.3.2.2. SANRAL must source all relevant information relating to that road from the Provincial Roads' Authorities.

3.3.2.3. Such information will include details of the proclamations in terms of which the provincial road was proclaimed and information relating to the properties affected by the road.

3.3.2.4. SANRAL must provide SANRAL's PPSP with the information that has been obtained. This is however often sourced by the PPSP.

3.3.2.5. SANRAL's PPSP will undertake a historical declaration investigation and prepare a report, including a schematic diagram of the historical and current declarations of the road, which will serve as an annexure to the declaration investigation report. A protocol for this report has been determined by SANRAL.

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<sup>15</sup> Section 40(1)(a)

<sup>16</sup> Section 40(1)(a)

- 3.3.2.6. SANRAL's PPSP will use this report to prepare the draft wording for publication in the Government Gazette of the declaration of the existing road as a National Road and will submit this to SANRAL.
- 3.3.2.7. If it is intended to declare an existing road as a National Road, the Premier of each affected province must be approached by SANRAL in order to obtain his agreement to the declaration of an existing road as a National Road. The Minister should be informed of this communication.
- 3.3.2.8. Once such agreement has been obtained, a memorandum must be prepared for consideration by the Board of SANRAL
- 3.3.2.9. If the Board of SANRAL approves the declaration of the existing road as a National Road, then SANRAL shall submit a memorandum to the Minister recommending such declaration, and requesting approval of the draft declaration
- 3.3.2.10. If the Minister approves the declaration of the existing road as a National Road, the declaration wording must be submitted to the Government Printer in order for it to be published in the Government Gazette.

### 3.3.3 Declaration of a new route as a National Road

- 3.3.3.1. Where a new route is to be declared a National Road, the consulting engineers responsible for the route alignment of that road will provide SANRAL with the centre lines of several possible route alignments. SANRAL will thereafter choose an alignment and the width of the road reserve will be determined during the detailed design stage of the road.
- 3.3.3.2. When SANRAL has chosen an alignment, SANRAL's PPSP must prepare a declaration key plan depicting the preferred road reserve.
- 3.3.3.3. SANRAL's PPSP must obtain:
- a. the Surveyor-General diagrams for the affected properties;

- b. a cadastral key-plan must then be prepared in order to depict the road reserve with reference to the cadastre in order to create a declaration key plan;
- c. the preparation of cadastral key-plans is dealt with in detail in TMH 11.

- 3.3.3.4. Once the declaration key-plan has been prepared, declaration sketches can be prepared<sup>17</sup>.
- 3.3.3.5. The actual road reserve will be determined taking into account all relevant factors including topographical features<sup>18</sup>.
- 3.3.3.6. After compilation of the declaration sketches, SANRAL's PPSP will prepare a draft declaration to be published in the Government Gazette and will submit this to SANRAL with the declaration sketches.
- 3.3.3.7. In the case of a new route and provided there will be a substantial impact on traffic flows in one or more provinces, the Premier of each affected province must be consulted by SANRAL prior to the declaration of the route as a National Road.
- 3.3.3.8. Thereafter, a memorandum for the declaration of the National Road must be prepared for consideration by the Board of SANRAL.
- 3.3.3.9. If the Board of SANRAL approves the declaration of the route as a National Road, then SANRAL shall submit a memorandum to the Minister recommending such declaration, and requesting approval of the draft declaration.

If the Minister approves the declaration of the route as a National Road, the declaration wording and sketches must be submitted to the Government Printer in order for it to be published in the Government Gazette.

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<sup>17</sup> See the specifications in TMH 11

<sup>18</sup> See in the Guideline Manual - Guidelines to formalise SANRAL's Jurisdiction on National Roads (in terms of Act 7 of 1998 (Revised N14/5/6 Manual)

### 3.3.4 Process for the amendment of an existing declaration

- 3.3.4.1. It may be necessary to amend an existing declaration of a National Road because, for example, SANRAL wishes to dispose of land which is no longer required for road building purposes.

### 3.3.5 Process to be followed for the de-declaration of a National Road

- 3.3.5.1. It may be necessary to de-declare an existing declaration of a National Road in its entirety or de-declare only a section of a National Road because, for example, a previously declared national route (or section) is no longer required by SANRAL.
- 3.3.5.2. In this event, SANRAL must instruct its PPSP to proceed with the necessary steps to withdraw the previous declaration, or to de-declare a specific section of the previously declared road, by notice published in the Government Gazette.
- 3.3.5.3. If the National Road has been declared a Toll Road, SANRAL must simultaneously with the de-declaration of the National Road arrange for the road to be de-declared as a Toll Road.
- 3.3.5.4. SANRAL must also inform the Service Provider of their future intention with the de-declared road, as it will determine the processes to be followed – for example will the road become the responsibility of another road authority, e.g. Province or Local Municipality; or was the road reserve as yet an un-constructed road?
- 3.3.5.5. **A number of actions will run parallel with the de-declaration process, namely:**
- a. The PPSP will prepare a draft de-declaration wording and forward it to SANRAL for comments.
  - b. On receipt of SANRAL's response on the draft de-declaration, the required changes, if any, will be made and the de-declaration will be submitted to SANRAL for submission to the Minister of Transport for signature and subsequent publication thereof.

- c. The draft de- declaration must be integrated into ITIS.
- d. The PPSP will compile a provisional list of the affected properties and update the “Notes” field in the Land Register to reflect that the “De-declaration of National Road is in progress”. A copy of the list will be distributed to all role players.
- e. Any further negotiations will be placed on hold until the section of the National Road has been de-declared. Acquisition plans not yet processed will be kept on hold and no further plans will be compiled.
- f. Upon receipt of the published de-declaration the “Declaration Register” must be updated.
- g. The published de-declaration must then be integrated into ITIS (EDMS).

**3.3.5.6. Identification of properties affected by the de-declaration and updating of Land Register – the following is relevant:**

- a. By making use of the original declaration and the newly published de-declaration, a comprehensive list of all properties affected by the de-declaration must be compiled, which must include the current ownership status of each property.
- b. The Service Provider will remove the provisional comments in the “Notes” field that the de-declaration of National Road is in progress and update the “Roads Network” field to the effect that it is a “De-declared Road”.
- c. The ownership status of all properties which are still in the “proposal” stage, i.e. for which agreements have not yet been concluded, will be changed to “Cancelled”, whilst the status of properties held under “Title”, Expropriation, Acquisition, Designated, Land ID and Vesting will remain unchanged.



**3.3.5.7. Vested Land (RSA) – the following is relevant:**

- a. Careful attention must be paid to the effect of Section 7 of the SANRAL Act. Where however the National Road was declared after May 1998 then properties in title of the State must not be transferred to SANRAL.

**3.3.5.8. The actions to be taken to finalize all processes in respect of affected land entered into the Land Register in respect of “greenfields” roads where only a National Road proclamation is involved, thus the existing/original declaration was proclaimed by the National Department of Transport/NTC/SARB/SANRAL over land where no previous road declaration existed and the road will not be declared by another Road Authority, then the process per status will be as follows:**

- a. Title: These properties will now be viewed as surplus land and may be classified as “Confirmed investments” in the Investment Property Register. The Property Manager must submit a proposal to SANRAL with regards to the future utilization or disposal of these assets.
- b. Expropriated and/or Designated Land: The ownership of properties or portions of properties held under expropriation or designation vests in SANRAL – it is thus an asset and the Property Manager must arrange transfer thereof into SANRAL’s name. Once registered, the “Title” process applies.
- c. Acquisition – Deed of Sale concluded and compensation paid to either landowner or Conveyancing Attorney: SANRAL must provide directive to the Property Manager whether to negotiate the cancellation of the Deed of Sale and the return of the compensation amount with the seller (preferred option), or whether the transaction must be registered and the “Title” process followed.
- d. Land ID – Donation Agreement signed: SANRAL must provide directive to the Property Manager whether to negotiate the cancellation of the Donation Agreement with the seller (preferred option), or whether the transaction must be registered and the “Title” process followed. It is important to keep in mind

that there might be cases where a Deed of Sale was concluded with – and the compensation paid out to - the previous landowner and the new landowner signed a Donation Agreement purely to facilitate the registration process.

- 3.3.5.9. “Greenfields” and constructed National Roads declared subsequent to Provincial/Municipal declarations, thus where the existing/original declaration was declared by the National Department of Transport/NTC/SARB/SANRAL over land where a previous road declaration existed and the previous declaration by another Road Authority will now be re-instated. The PPSP must submit a full report to SANRAL in which the process is outlined. SANRAL and the PPSP will then engage with the relevant Roads Authority to discuss and determine the process to give effect hereto.
- 3.3.5.10. Listing surplus land in the Investment Property Register
- a. Where unconstructed roads are de-declared as National Roads all the land that was acquired will be classified in the Investment Property Register as “Confirmed Investments”. Circumstances where the road reserve will however revert to a provincial Roads Authority and/or when land was acquired for road widening purposes then these situations will give rise to anomalies to the Investment Property Register and will require special attention.
- 3.3.5.11. Re-instatement of the Provincial Proclamation pursuant to the de-declaration of a National Road.
- 3.3.5.12. This is a complex process and the PPSP will prepare a detailed report and procedure to be followed and submit same to SANRAL. The PPSP will then be instructed to give effect to the consequences thereof.
- 3.3.5.13. Surplus Land arising from de-declaration of a National Road and the extensive administrative processes that must be executed.

3.3.5.14. The PPSP will prepare a comprehensive report and procedure to be followed and submit same to SANRAL. The PPSP will then be instructed to assist with the giving of effect to the above and where SANRAL's ITIS system must be updated.

### 3.3.6 **Process to have the “underlying” Provincial Proclamation Withdrawn**

3.3.6.1. The PPSP must compile a report to SANRAL where the history of the road declarations are investigated.

3.3.6.2. In many such instances the provincial Road Authorities do not have an interest in such road and where a Municipality wishes to “take over” the road.

3.3.6.3. The PPSP, acting on behalf of SANRAL, will engage the relevant provincial Road Authority and Municipality and determine a process to achieve the speedy transfer of the de-declared National Road or a portion thereof to the Municipality.

### 3.3.7 **Declaration of a National Road and effecting the requirements to have the affected title deeds endorsed**

3.3.7.1. The PPSP must ensure that the necessary conveyancing procedure is followed and ensure that all affected title deeds are endorsed to the effect that a declared National Road exists over such properties.

## **CHAPTER 4: TOLL ROADS – SECTION 27**

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## 4.1 OVERVIEW

- 4.1.1 SANRAL is empowered, with the Minister's<sup>1</sup> approval, to declare any specified National Road or portion thereof, including any bridge or tunnel on a National Road, to be a toll road, subject to certain requirements<sup>2</sup>.
- 4.1.2 SANRAL is also empowered, with the Minister's approval, to amend or withdraw any such declaration<sup>3</sup>.
- 4.1.3 SANRAL is also empowered to levy and collect tolls<sup>4</sup>, grant exemption from the payment of tolls<sup>5</sup>, restrict the levying of a toll on a particular toll road to specific times<sup>6</sup>, suspend the levying of a toll on a particular toll road for a specified period, whether for all vehicles or vehicles within a particular category<sup>7</sup>, and withdraw such exemption, restriction or suspension, as the case may be<sup>8</sup>.

## 4.2 GUIDELINES AND PROCEDURES

### 4.2.1 Definition of the National Road or portion thereof to be a toll road

- 4.2.1.1. In terms of the Act, only SANRAL, with the Minister's approval, may declare a National Road or portion thereof, including any bridge or tunnel on a National Road, to be a toll road.
- 4.2.1.2. Details of the declaration of the National Road will therefore already be available and the declaration of such road or portion thereof as a toll road should make reference to such declaration details.

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<sup>1</sup> The Minister of Transport in the national sphere of government

<sup>2</sup> Section 27(1)(a)(i)

<sup>3</sup> Section 27(1)(a)(ii)

<sup>4</sup> Section 27(1)(b)

<sup>5</sup> Section 27(1)(c)

<sup>6</sup> Section 27(1)(d)

<sup>7</sup> Section 27(1)(e)

<sup>8</sup> Section 27(1)(f)

## 4.2.2 Schematic Diagram

4.2.2.1. SANRAL's PPSP must prepare a schematic diagram indicating the proposed positions of the main line and ramp toll plazas.

4.2.2.2. The schematic diagram must be provided to SANRAL.

## 4.2.3 Declaration process

4.2.3.1. The Minister will not give approval for the declaration of a toll road unless:

- a. SANRAL has given notice, generally, of the proposed declaration<sup>9</sup> and has given the general public the opportunity to comment on the proposed declaration and any other matter with regard to the toll road (and particularly as to the positions of the toll plazas) within a specified period (which may not be shorter than 30 days);
- b. SANRAL has in writing requested the Premier in whose province the road proposed as a toll road is situated, to comment on the proposed declaration and any other matter with regard to the toll road (and particularly as to the positions of the toll plazas) within a specified period (which may not be shorter than 60 days)<sup>10</sup>;
- c. SANRAL has in writing given every municipality in whose area of jurisdiction the road is situated the same opportunity to comment<sup>11</sup> on the proposed toll road, as the aforementioned opportunity granted to the Premier of the relevant province;
- d. SANRAL has, with its application to the Minister for approval of the declaration, forwarded its proposals in that regard together with a report:

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<sup>9</sup> Section 27(4)(a)

<sup>10</sup> Section 27 (4)(b)(i)

<sup>11</sup> Section 27 (4)(b)(ii)

- i. providing details of comments and representations that have been received;
- ii. indicating the extent to which any of the matters raised in such comments and representations have been accommodated in such proposals<sup>12</sup>;
- iii. indicating why any other comments or representation received cannot or have not been accommodated in the proposals;
- iv. the Minister is satisfied that SANRAL has considered the comments and representations received.

4.2.3.2. If SANRAL has failed to give notice of the proposed declaration of a National Road as a toll road, or has not called for comments from the Premier in whose province the road proposed as a toll road is situated, or has not called for comments from municipalities in whose area of jurisdiction the proposed road is situated, or has not provided the Minister with the required report, then the Minister is obliged to refer SANRAL's application and proposals back to it and to require proper compliance with the provisions of the Act.

4.2.3.3. Likewise, if the Minister is not satisfied that SANRAL has considered comments and representations received, then the Minister must refer the application and proposals back to SANRAL and order it to properly consider such comments and representations, before the application and SANRAL's proposal will be considered for approval<sup>13</sup>.

4.2.3.4. If the Minister approves the declaration of any specified National Road or any specified portion thereof to be a toll road, such declaration will only become effective fourteen days after a notice to that effect, by SANRAL has been published in the Government Gazette<sup>14</sup>.

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<sup>12</sup> Section 27 (4)(c)

<sup>13</sup> Section 27 (4)

<sup>14</sup> Section 27 (2)

- 4.2.3.5. Any National Road or portion of a National Road (including any bridge or tunnel thereon) which:
- a. was declared a toll road under the previous Act;
  - b. which immediately before the incorporation date of SANRAL existed; and
  - c. which immediately before the incorporation date of SANRAL operated as a toll road under the previous Act, will be regarded and treated for all purposes as if it had been declared a toll road under the Act<sup>15</sup>.

#### **4.2.4 Amendment of an existing declaration of a toll road**

- 4.2.4.1. SANRAL may not amend the declaration of a toll road or any portion thereof without the approval of the Minister.
- 4.2.4.2. In the event that the proposed amendments are a substantial variation of the existing declaration of the National Road or portion thereof as a toll road, then SANRAL shall follow the process set out in the paragraph “Declaration Process” in this Guideline and shall thereafter submit its application and proposals to the Minister for approval.
- 4.2.4.3. Notice of the amendment must be published in the Government Gazette and shall take effect fourteen days after the date of publication.
- 4.2.4.4. In practice, where appropriate, the sheets of the existing declaration which are affected by the proposed amendment are replaced and this is referred to in the amending declaration.

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<sup>15</sup> Section 27 (6)



#### **4.2.5 Withdrawal of declaration**

- 4.2.5.1. The Minister may not withdraw the declaration of a toll road or any portion thereof without the approval of SANRAL.
- 4.2.5.2. Notice of the withdrawal must be published in the Government Gazette and shall take effect fourteen days after the date of publication.
- 4.2.5.3. Reference must be made to the section on “withdrawal of the declaration of a National Road“ in Chapter 3 above.

#### **4.2.6 Publication of toll tariffs, exemptions, restrictions and suspensions**

- 4.2.6.1. If a National Road or any specified portion thereof has been declared a toll road, the amount of toll that may be levied or any rebate thereon and any increase or reduction thereof will be determined by the Minister on the recommendation of SANRAL<sup>16</sup>.
- 4.2.6.2. The amount of toll that may be levied may differ in respect of:
  - a. different toll roads;
  - b. different vehicles or different categories of vehicles driven or used on a toll road;
  - c. different times at which any vehicle or any vehicle of a particular category is driven or used on a toll road; and
  - d. different categories of road users, irrespective of the vehicles driven or used by them<sup>17</sup>.
- 4.2.6.3. The amount of toll that is levied on a particular toll road must be published in a notice in the Government Gazette by SANRAL.

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<sup>16</sup> Section 27 (3)(a). The determination of the toll may take some time after the declaration of the National Road as a toll road.

<sup>17</sup> Section 27 (3)

- 4.2.6.4. The toll that will be payable, will be payable from a date and time determined by the Minister on the recommendation of SANRAL. This date and time must be specified in the notice published in the Government Gazette. The date may not be earlier than fourteen days after the date on which the notice is published in the Government Gazette<sup>18</sup>.
- 4.2.6.5. SANRAL is empowered to levy and collect the toll which has been determined by the Minister. Such toll is payable at a toll plaza by any person driving or using a vehicle that travels through the toll plaza, or at any other place subject to conditions that SANRAL may determine. If a toll is payable at a place other than a toll plaza, notice thereof must be given in the Government Gazette in accordance with the provisions described above<sup>19</sup>.
- 4.2.6.6. SANRAL is entitled to grant exemption from the payment of toll on a particular toll road in respect of:
- a. all vehicles of a category determined by SANRAL; or
  - b. the vehicles of a category determined and specified which are driven or used on the toll road at a time determined and specified by SANRAL<sup>20</sup>.
- 4.2.6.7. SANRAL may also grant exemption from the payments of toll on a particular toll road to:
- a. all users of the road of a category determined by SANRAL, irrespective of the vehicles driven or used by them on the toll road; and
  - b. users of the road of a category determined and specified when driving or using vehicles on the toll road at a time determined and specified<sup>21</sup>.

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<sup>18</sup> Section 27 (3)(d)

<sup>19</sup> Section 27 (1)(b)

<sup>20</sup> Section 27 (1)(c)(i)

<sup>21</sup> Section 27 (1)(c)(ii)

- 4.2.6.8. SANRAL may restrict the levying of toll on a particular toll road to the hours or other times determined by SANRAL<sup>22</sup>.
- 4.2.6.9. SANRAL may suspend the levying of toll on a particular toll road for any specified or unspecified period further:
- a. in respect of all vehicles generally; or
  - b. in respect of all vehicles or a category determined by SANRAL<sup>23</sup>.
- 4.2.6.10. If the levying of toll on a specified toll road is suspended for a specified or unspecified period, SANRAL is entitled to resume the levying of toll after the suspension<sup>24</sup>.
- 4.2.6.11. Notice of any exemption, restriction or suspension granted in terms of the Act will only become effective fourteen days after notice to that effect by SANRAL has been published in the Government Gazette<sup>25</sup>.

#### 4.2.7 **Contravention of the Act**

- 4.2.7.1. Any person liable for toll who, at a toll plaza or other place for the payment of toll determined and made known by SANRAL, refuses or fails to pay the amount of toll that is due is:
- a. guilty of an offence and punishable on conviction with imprisonment for a period not longer than six months or a fine, or both the term or imprisonment and fine; and
  - b. is liable in addition, to pay SANRAL a civil fine of R1000-00<sup>26</sup>.

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<sup>22</sup> Section 27 (1)(d)

<sup>23</sup> Section 27 (1)(e)

<sup>24</sup> Section 27 (1)(e)

<sup>25</sup> Section 27 (2)

<sup>26</sup> Section 27 (5) The civil fine of R1000-00 may be increased annually in accordance with the increase in the official consumer price index for each year, as published in the Government Gazette.

- 4.2.7.2. SANRAL may, with the Minister's approval, set up and apply a points demerit system with regard to persons who refuse or fail to pay the amount of any toll for which they are liable<sup>27</sup>.
- 4.2.7.3. Such points demerit system shall provide for:
- a. recording a specified number of demerit points against the name of the offender for each occasion on which the offender refuses or fails to pay the toll;
  - b. imposing any specified civil penalty and other sanction on any offender whose demerit points equal or exceed a specified number<sup>28</sup>.
- 4.2.7.4. The Minister shall not grant approval for the establishment of a points demerit system unless:
- a. SANRAL has given notice of the proposed introduction of the points demerit system and in the notice:
    - i. has broadly outlined the proposed system; and
    - ii. has invited interested persons to comment on the proposed points demerit system, and in particular on the civil penalties and other sanctions proposed; and
    - iii. has allowed interested persons thirty days to furnish their written comments and representations to SANRAL;
  - b. SANRAL has provided its proposal to the Minister with:
    - i. a report on the comments and representations received;

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<sup>27</sup> Section 29 (1)

<sup>28</sup> Section 29 (1)

- ii. an indication in such report of the extent to which any of the matters raised in such comments and representations have been accommodated in the proposals; and
  - c. the Minister is satisfied that SANRAL has properly considered the comments and representations received<sup>29</sup>.
- 4.2.7.5. If the Minister is not satisfied that SANRAL has given proper notice of the proposed points demerit system or properly considered the comments and representations received, then the Minister must refer the application and proposals back to SANRAL and order it to properly comply with the provisions of the Act, or consider such comments and representations before the application, and thereafter SANRAL's proposal will be considered for approval<sup>30</sup>.
- 4.2.7.6. If the Minister approves the implementation of a points demerit system, the provisions of such system must be published in the Government Gazette and will take effect and become enforceable and binding thirty days after publication<sup>31</sup>.
- 4.2.7.7. SANRAL shall be entitled to provide for the increase in the number of demerit points recorded per occasion of non-payment of toll to be increased in accordance with a specified sliding scale or formula:
- a. for second and subsequent cases of non-payment of toll;
  - b. according to the size of the amounts determined as toll, so that the greater the amount determined as toll, the higher the number of demerit points recorded upon not paying the toll<sup>32</sup>.
- 4.2.7.8. SANRAL is entitled to impose any one of the following sanctions on offenders in appropriate circumstances, in addition to or instead of a civil penalty:

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<sup>29</sup> Section 29 (3)

<sup>30</sup> Section 29 (3)

<sup>31</sup> Section 29 (4)

<sup>32</sup> Section 29 (2)(a)

- a. a reprimand and a warning issued in writing; or
- b. suspension of the offender's right to use the toll road concerned for such period determined by SANRAL and specified in writing in the notice of suspension furnished to the offender; or
- c. a prohibition on the use of that road, issued in writing by SANRAL; or
- d. any prescribed sanction that is less than that provided for above<sup>33</sup>.

4.2.7.9. SANRAL may not impose any civil penalty or other sanction on any person unless it has first applied the rules of natural justice with regard to such person. This implies, at the very least, that such person is given an opportunity to present his or her case as to why the amount of any toll was not paid<sup>34</sup>.

4.2.8 SANRAL is entitled to institute legal proceedings to recover toll monies owing to it<sup>35</sup>.

4.2.9 **SANRAL's right to institute legal proceedings is not adversely affected by:**

4.2.9.1. the conviction and sentencing of the person in terms of the Act;

4.2.9.2. the payment by such person of a civil fine in terms of the Act; or

4.2.9.3. the imposition of a civil penalty or other sanction on such person in terms of the Act<sup>36</sup>.

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<sup>33</sup> Section 29 (2)(b)

<sup>34</sup> Section 29 (5)

<sup>35</sup> Section 30 (1)

<sup>36</sup> Section 30 (2)

### 4.3 ANNEXURES

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**Annexure 4.3.1 PRECEDENT OF A NOTIFICATION TO THE GENERAL PUBLIC OF THE PROPOSED DECLARATION OF AN EXISTING NATIONAL ROAD OR NATIONAL ROUTES AS A TOLL ROAD**

*(This is an example only and must be adapted to suit the circumstances)*

**NOTIFICATION OF INTENTION TO DECLARE NATIONAL ROAD FROM ..... TO ..... AS A TOLL ROAD, WHICH WILL BE KNOWN AS THE ..... TOLL ROAD**

By virtue of the powers vested in me by section 27(4)(a) of the South African National Roads Agency Limited and National Roads Act (Act No. 7 of 1998), the South African National Roads Agency Limited (“the SANRAL”) hereby gives notice of its intention to recommend to the Minister of Transport the declaration of National Route ..... from a point ..... metres south of the intersection between the centrelines of the N ..... section ..... and N ..... section ..... , along the proclaimed National Road to the \* Border at \* to be a continuous Toll Road.

The extent of the proposed Toll Road and the approximate positions of the proposed Toll Plazas are indicated on the sketch attached hereto (figure 1).

By virtue of section 27(4)(a)(ii) of said Act all interested persons are herewith invited to make written representations to the SANRAL on the proposed declaration of the proposed Toll Road and positioning of the Toll Plazas within 30 (thirty) days from the date of this notice. All written representations must be addressed to the Regional Manager, .....Region, Private Bag ....., ....., ....., and can be faxed to ..... :Attention .....

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Chief Executive Officer

The South African National Roads Agency Limited



**Annexure 4.3.2 PRECEDENT OF A LETTER TO THE PREMIER GIVING NOTIFICATION OF THE SANRAL'S INTENTION TO DECLARE AN EXISTING NATIONAL ROAD OR NATIONAL ROUTE AS A TOLL ROAD**

*(This is an example only and must be adapted to suit the circumstances)*

**NOTIFICATION OF INTENTION TO DECLARE NATIONAL ROAD ..... FROM ..... TO ..... AS A TOLL ROAD, WHICH WILL BE KNOWN AS THE ..... TOLL ROAD**

By virtue of the powers vested in me by section 27(4)(b)(i) of the South African National Roads Agency Limited and National Roads Act (Act No. 7 of 1998), the South African National Roads Agency Limited (“the SANRAL”) hereby gives notice of its intention to recommend to the Minister of Transport the declaration of National Route \* from a point \* metres south of the intersection between the centrelines of the N ..... section ..... and N ..... section ..... along the proclaimed National Road to the ..... Border at ..... to be a continuous Toll Road.

The extent of the proposed Toll Road and the approximate positions of the proposed Toll Plazas are indicated on the sketch attached hereto (figure 1).

Please would you provide us with your written comments on the proposed declaration or any other matter with regard to the toll road (and particularly, as to the positions of the toll plazas) within 60 (sixty) days from the date of this notice.

All written representations must be addressed to the Regional Manager, ..... Region, Private Bag ....., ....., and can be faxed to ..... :Attention .....

\_\_\_\_\_  
Chief Executive Officer

The South African National Roads Agency Limited

**Annexure 4.3.3 PRECEDENT OF THE CONTENT OF A LETTER TO A MUNICIPALITY REQUESTING COMMENT OF THE SANRAL'S INTENTION TO DECLARE AN EXISTING NATIONAL ROAD OR NATIONAL ROUTE AS A TOLL ROAD**

*(This is an example only and must be adapted to suit the circumstances)*

**NOTIFICATION OF INTENTION TO DECLARE NATIONAL ROAD  
..... FROM ..... TO ..... AS A TOLL ROAD, WHICH  
WILL BE KNOWN AS THE ..... TOLL ROAD**

By virtue of the powers vested in me by section 27(4)(b)(i) of the South African National Roads Agency Limited and National Roads Act (Act No. 7 of 1998), the South African National Roads Agency Limited (“the SANRAL”) hereby gives notice of its intention to recommend to the Minister of Transport the declaration of National Route \* from a point \* metres south of the intersection between the centrelines of the N ..... section ..... and N ..... section ..... , along the proclaimed National Road to the ..... Border at ..... to be a continuous Toll Road.

The extent of the proposed Toll Road and the approximate positions of the proposed Toll Plazas are indicated on the sketch attached hereto (figure 1).

Please would you provide us with your written comments on the proposed declaration or any other matter with regard to the toll road (and particularly, as to the positions of the toll plazas) within 60 (sixty) days from the date of this notice.

All written representations must be addressed to the Regional Manager, ..... Region, Private Bag ....., ....., ..... ,and can be faxed to ..... :Attention .....

\_\_\_\_\_  
Chief Executive Officer  
The South African National Roads Agency Limited

**Annexure 4.3.4 PRECEDENT OF A PROPOSED DECLARATION OF AN EXISTING NATIONAL ROAD OR NATIONAL ROUTE AS A TOLL ROAD**

(This is an example only and must be adapted to suit the circumstances)

**NATIONAL ROAD ..... FROM ..... TO ..... DECLARATION AS A TOLL ROAD**

By virtue of the powers vested in me by section 27(1)(a)(i) of the South African National Roads Agency Limited and National Roads Act (Act No. 7 of 1998), I hereby declare National Route ..... from a point ..... metres south of the intersection between the centrelines of the N ..... section ..... and N .... section ....., along the proclaimed National Road to the ..... Border at ..... to be a Toll Road.

\_\_\_\_\_  
Chief Executive Officer

The South African National Roads Agency Limited

**Annexure 4.3.5 PRECEDENT OF A PROPOSED DECLARATION OF AN EXISTING NATIONAL ROAD OR NATIONAL ROUTE AS A TOLL ROAD MATTERS TO BE CONTAINED IN THE MEMORANDUM TO THE SANRAL'S BOARD OF DIRECTORS REQUESTING APPROVAL FOR THE PROPOSED DECLARATION OF AN EXISTING NATIONAL ROAD OR NATIONAL ROUTE AS A TOLL ROAD**

*(This is an example only and must be adapted to suit the circumstances)*

**MEMORANDUM PERTAINING TO THE PROPOSED DECLARATION OF AN EXISTING NATIONAL ROAD OR NATIONAL ROUTE AS A TOLL ROAD**

This memorandum must contain the following information:

- a. details of the National Road for which the toll road declaration is proposed;
- b. details of the proposed positions of the toll plazas contemplated for the proposed toll road;
- c. the reasons for the proposed declaration of the National Road as a toll road;
- d. proof of compliance with the notice provisions of the Act;
- e. details of any comments and/or representations received from the general public, municipalities (in whose area of jurisdiction the proposed toll road would be situated), and the Premier (in whose province the proposed toll road would be situated);
- f. a report on these comments containing an analysis thereof and an indication of the extent to which such comments have been or could be accommodated;
- g. the budget required in the event that the existing National Road or national route is declared a toll road

**Annexure 4.3.6 MATTERS TO BE CONTAINED IN THE MEMORANDUM TO THE MINISTER OF TRANSPORT REQUESTING APPROVAL FOR THE PROPOSED DECLARATION OF AN EXISTING NATIONAL ROAD OR NATIONAL ROUTE AS A TOLL ROAD**

*(This is an example only and must be adapted to suit the circumstances)*

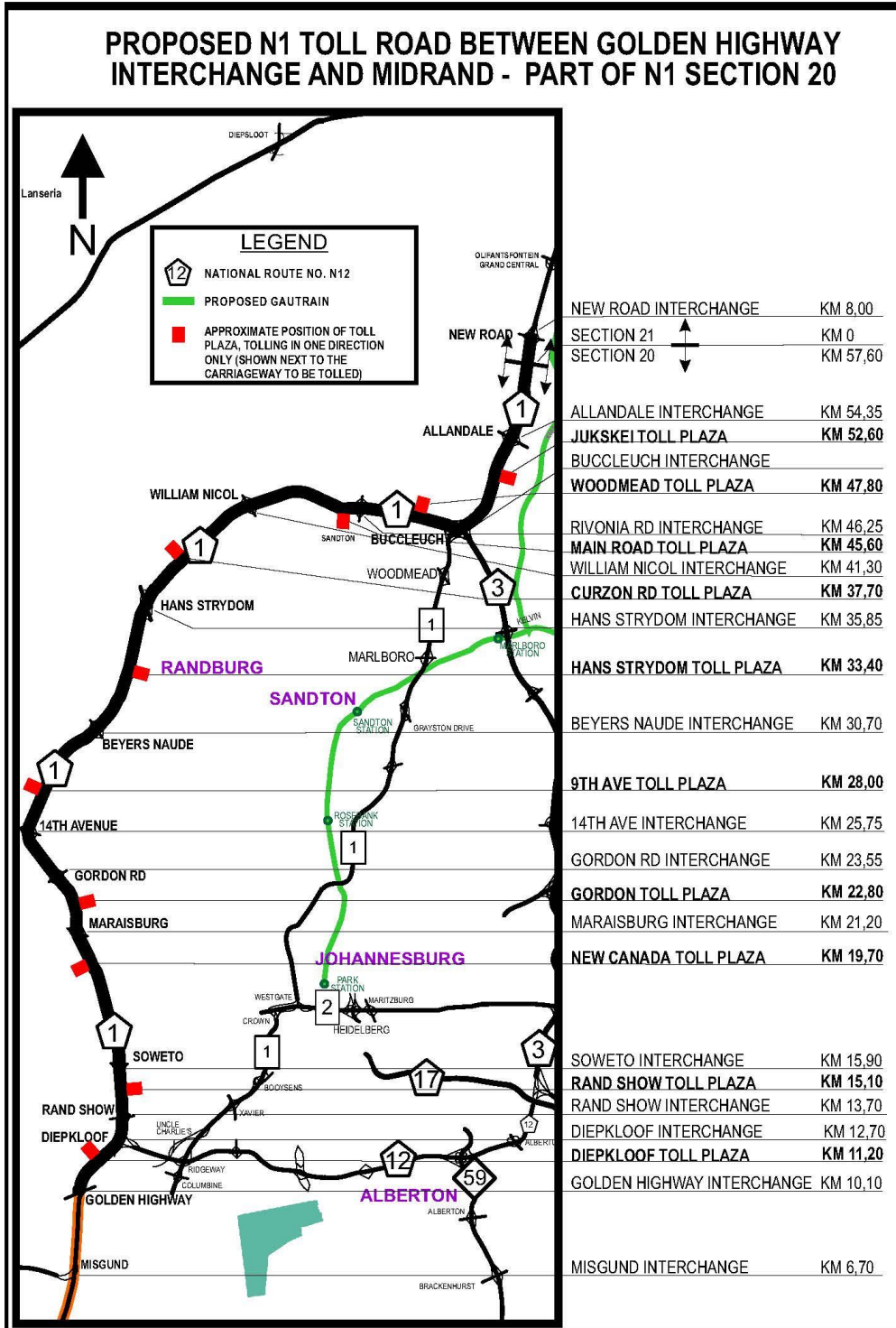
**MEMORANDUM PERTAINING TO THE PROPOSED DECLARATION OF AN EXISTING NATIONAL ROAD OR NATIONAL ROUTE AS A TOLL ROAD**

This memorandum must contain the following information:

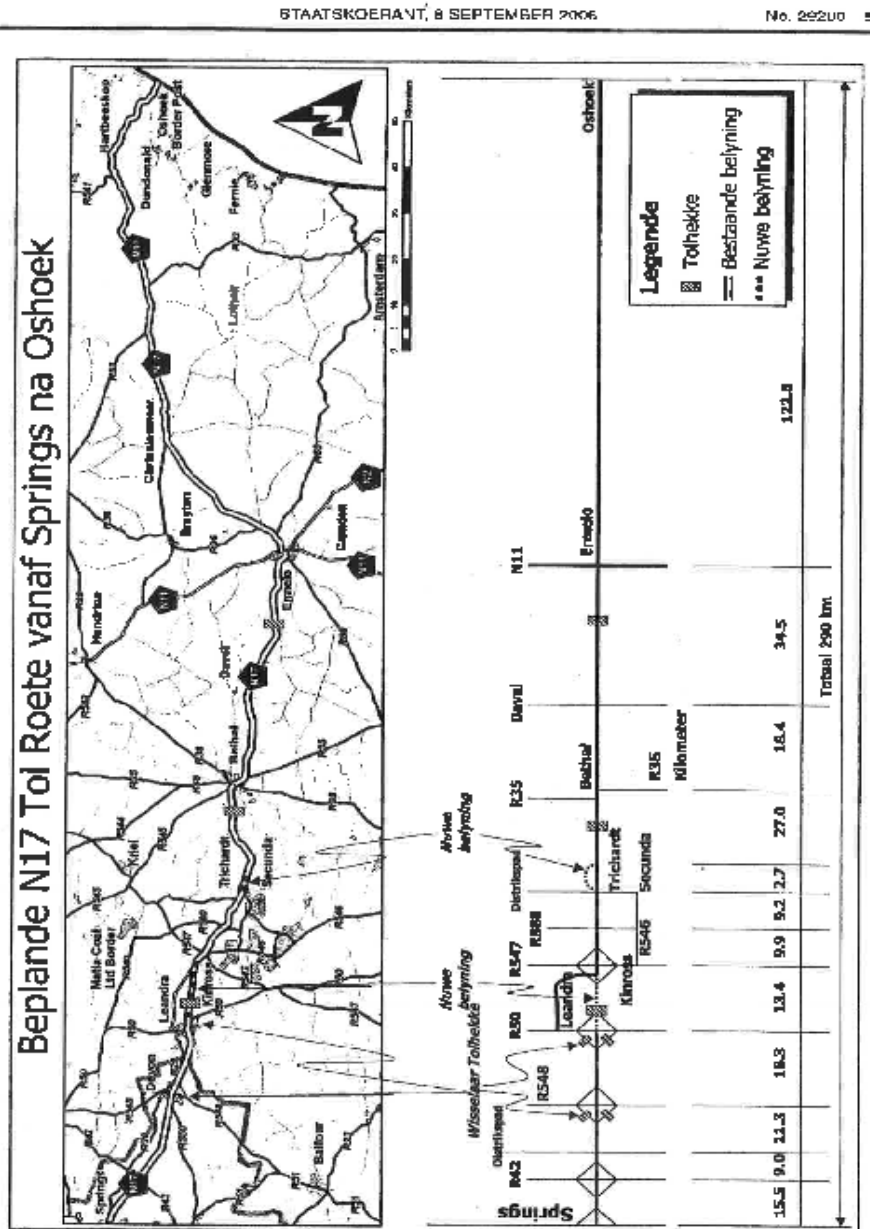
- a. details of the National Road for which the toll road declaration is proposed;
- b. details of the proposed positions of the toll plazas contemplated for the proposed toll road;
- c. the reasons for the proposed declaration of the National Road as a toll road;
- d. proof of compliance with the notice provisions of the Act;
- e. details of any comments and/or representations received from the general public, municipalities (in whose area of jurisdiction the proposed toll road would be situated), and the Premier (in whose province the proposed toll road would be situated);
- f. a report on these comments containing an analysis thereof and an indication of the extent to which such comments have been or could be accommodated;

- g. the budget required in the event that the existing National Road or national route is declared a toll road.
  
- h. The minutes of the meeting of SANRAL's Board of Directors at which the decision was taken to apply to the Minister for the declaration of the National Road as a toll road.

Annexure 4.3.7 EXAMPLE OF A SKETCH PLAN SHOWING TOLL PLAZA POSITIONS



Annexure 4.3.8 EXAMPLE OF A SKETCH PLAN OF ATTACHED TO GOVERNMENT NOTICE FOR THE DECLARATION OF A NATIONAL ROUTE AS A TOLL ROAD





## **CHAPTER 5: LAND ACQUISITION – SECTION 41**

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## 5.1 OVERVIEW

5.1.1 SANRAL is required to acquire ownership of all land within National Road reserves.

5.1.2 **In terms of the Act, on the incorporation date<sup>1</sup>, the following immovable property passed to and vested in SANRAL:**

5.1.2.1. the immovable property of the South African Roads Board consisting of land, and any servitudes on or over land, on which National Roads are situated<sup>2</sup>;

5.1.2.2. land and any servitudes or other real rights with regard to land (including any right to use land temporarily), acquired by the South African Roads Board or the State in terms of the previous Act<sup>3</sup> for the purposes of or connection with National Roads<sup>4</sup>;

5.1.2.3. any other immovable property of the South African Roads Board acquired in terms of the previous Act from monies made available from that National Roads Fund<sup>5</sup>;

5.1.2.4. any State land on which a National Road is situated, or any servitude or other real right with regard to land held by the State for the purposes of or in connection with a National Road situated on the latter land<sup>6</sup>.

5.1.3 In the event that SANRAL requires further land for National Road purposes, it must do so by agreement with the owner of the land or holder of any relevant right in respect of the land, as the case may be, failing which SANRAL may request the Minister to expropriate such land or right<sup>7</sup>.

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<sup>1</sup> 19 May 1998

<sup>2</sup> Section 7(2)(a)

<sup>3</sup> National Roads Act, 54 of 1971

<sup>4</sup> Section 7(2)(b)

<sup>5</sup> Section 7(2)(c)

<sup>6</sup> Section 7(2)(d)

<sup>7</sup> Section 41(2)

5.1.4 SANRAL may also, in consultation with the Minister, approach the Minister of Public Works to make State land available for transfer to SANRAL for the purposes of or in connection with a National Road<sup>8</sup>.

## 5.2 GUIDELINES AND PROCEDURES

5.2.1 Whenever possible, SANRAL attempts to acquire land for National Road purposes by agreement.

5.2.2 Apart from the acquisition of land held by freehold tenure, SANRAL also recognises informal rights held over land in terms of the Interim Protection of the Informal Land Rights Act<sup>9</sup>.

5.2.3 This involves negotiations with communities and traditional authorities and other leaders.

5.2.4 When dealing with communal land, community resolutions are obtained in collaboration with the Department of Rural Development and Land Reform.

5.2.5 Compensation agreements are concluded and compensation is generally paid into communal banking accounts.

5.2.6 Informal rights held by individuals are acknowledged by SANRAL and individuals are compensated for the loss of their rights.

5.2.7 In all cases, the amount of compensation payable is determined in accordance with the provisions of the Expropriation Act<sup>10</sup>.

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<sup>8</sup> Section 42(1)

<sup>9</sup> Act 31 of 1996

<sup>10</sup> Act 62 of 1975

- 5.2.8 The land acquisition procedures are dealt with in detail in the relevant chapters of the - Guidelines to formalise SANRAL's Jurisdiction on National Roads (in terms of Act 7 of 1998 (Revised N14/5/6 Manual) and SANRAL's Land Acquisition Guideline for Consulting Engineers.
- 5.2.9 Land Acquisition is undertaken by SANRAL's Property Portfolio Service Provider.

## **CHAPTER 6: ENTRY UPON LAND – SECTION 43**

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## 6.1 OVERVIEW

- 6.1.1 In order to comply with its obligations under the Act, SANRAL will, from time to time, have to enter upon a third party's land.
- 6.1.2 Apart from merely having access to such land, SANRAL may be required to carry out certain work on the land of a third party.
- 6.1.3 Section 43 of the Act deals with the circumstances under which SANRAL, or its duly authorised agent ("SANRAL's delegate"), may enter upon the land of a third party.

## 6.2 AUTHORITY OF AND/OR RESTRICTIONS PLACED ON SANRAL

- 6.2.1 **Entry upon a third party's land is only allowed under specific circumstances<sup>1</sup>:**
  - 6.2.1.1. SANRAL's delegate gaining entry must either be a member or employee of SANRAL or must be authorised in writing by the Board<sup>2</sup>;
  - 6.2.1.2. the purpose of gaining entry must be to carry out, on or below the surface of the land, or in connection therewith, any investigation, survey, observation or other act necessary or in connection with the exercise or performance of a power, function or duty conferred or imposed on SANRAL in terms of the Act;
  - 6.2.1.3. the owner of the land must have granted permission for such entry.
- 6.2.2 SANRAL's delegate may take workers, machines, vehicles, equipment, tools, instruments or materials on to the land in order to undertake the required work<sup>3</sup>.
- 6.2.3 If the owner of any land refuses to allow SANRAL's delegate to gain entry upon his or her land, then an application can be made to the High Court having jurisdiction over that land for an order authorising such entry, provided that the Court is satisfied

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<sup>1</sup> Section 43(1) of the Act

<sup>2</sup> In terms of resolution \*, \* has delegated authority to sign such an authorisation to \*.

<sup>3</sup> Section 43(1) of the Act

that the entry is reasonably necessary and justifiable in the circumstances. In determining this, the Court will take the following factors into account:

- 6.2.3.1. the purpose for which SANRAL's delegate requires entry upon the land;
  - 6.2.3.2. the importance of the purpose of the owner's refusal to allow entry;
  - 6.2.3.3. the nature and extent of the refusal to allow entry;
  - 6.2.3.4. the relation between the refusal to allow entry and its purpose;
  - 6.2.3.5. ways in which the objectives of both parties can be achieved<sup>4</sup>.
- 6.2.4 SANRAL is not entitled to apply to Court to gain access to a dwelling or other building on the land which is used for residential purposes. However, if the occupier of such dwelling or residential building is prepared to allow access for the purposes described above, then SANRAL may gain entry by agreement<sup>5</sup>.
- 6.2.5 A Court allowing entry to land will specify precisely the purpose of such access and the basis on which it must take place<sup>6</sup>.
- 6.2.6 SANRAL is also required to repair or pay for any damage arising from its entry upon land<sup>7</sup>.

### 6.3 **GUIDELINES AND PROCEDURES**

- 6.3.1 In the event that SANRAL appoints a surveyor, engineer or other third party ("SANRAL's delegate") to undertake investigations, survey, observation or any other act on its behalf, SANRAL shall grant such person authority to gain entry upon land.

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<sup>4</sup> Section 36(1) of the Constitution

<sup>5</sup> Section 43(1)(b) of the Act

<sup>6</sup> Section 43(1)(c) of the Act

<sup>7</sup> Section 43(2) of the Act

- 6.3.2 **Such authority shall provide for the following:**
- 6.3.2.1. SANRAL's delegate shall not gain entry to the land without the permission of the owner of such land;
  - 6.3.2.2. SANRAL's delegate shall approach the owner and request such permission;
  - 6.3.2.3. if permission is granted, then SANRAL's delegate may proceed with the required work;
  - 6.3.2.4. SANRAL's delegate must retain details of when and where such permission was granted and by whom.
- 6.3.3 If permission is not granted, then SANRAL's delegate shall report this to SANRAL.
- 6.3.4 SANRAL shall then issue SANRAL's delegate with a letter addressed to the owner, formally requesting the owner to allow SANRAL's delegate to enter upon the owner's land for the purposes described above.
- 6.3.5 In the event that the owner still refuses to allow SANRAL's delegate to gain entry to the land, then SANRAL shall address a further letter to the owner and thereafter, if necessary, an employee of SANRAL shall arrange to meet with the owner in an attempt to persuade the owner to comply with his or her statutory obligations.
- 6.3.6 In the event that the owner refuses to co-operate, then SANRAL shall apply to the High Court for an order compelling the owner to allow SANRAL's delegate to gain entry upon the land, and shall seek an order for costs.
- 6.3.7 Prior to the commencement of any legal action, the written approval of SANRAL's Chief Executive Officer must be obtained.
- 6.3.8 In the event that it is necessary to proceed with an application to court, the person signing affidavits on behalf of SANRAL must have delegated authority to do so.



**6.4 ANNEXURES**

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**Annexure 6.4.1 PRECEDENT OF A LETTER REQUESTING AUTHORISATION TO ENTER UPON LAND**

*(This is an example only and must be adapted to suit the circumstances)*

**TO WHOM IT MAY CONCERN**

Dear Sir/Madam

**DESCRIPTION OF NATIONAL ROUTE / PROJECT**

The South African National Roads Agency Limited (“the SANRAL”) is undertaking a feasibility study with respect to the above-named project.

It is necessary for the SANRAL to undertake certain investigations along the proposed route for the benefit of the feasibility study and design process. This work includes, but is not limited to:

- a. land surveying work including topographical mapping, the establishment of survey beacons, the establishment of stone crosses and stone beacons;
- b. conducting geotechnical investigations, which may include the drilling of holes or excavation of material.

We confirm that the following persons have been authorised to undertake this work on behalf of the SANRAL:

i.....

ii.....

We would be grateful if you would grant permission for the above-named persons to gain entry to your land in order to undertake the required work.

We confirm that we shall instruct the above-named persons to ensure that all gates on your property are kept closed. Wherever possible, use shall also be made of existing roads.

We look forward to receiving your co-operation in this matter.

Yours faithfully

**Annexure 6.4.2 PRECEDENT OF A LETTER REQUESTING AUTHORISATION TO ENTER UPON LAND IN THE EVENT THAT AUTHORISATION IS INITIALLY REFUSED**

*(This is an example only and must be adapted to suit the circumstances)*

Dear Sir/Madam

**DESCRIPTION OF NATIONAL ROUTE / SECTION / PROJECT SPECIFICATION**

We refer to our letter to you dated ....., a copy of which is attached for ease of reference.

We have been advised that you have refused to authorise ..... to gain entry to your land in order to undertake the work we require to be done.

Please note that in terms of section 43(2) of the The South African National Roads Agency Limited and National Roads **Act, Act 7** of 1998, if you do not grant such permission, the South African National Roads Agency SOC Limited (“SANRAL”) may apply to the High Court for an order entitling it and its agent to such access. Should such an application be necessary, the SANRAL shall seek an appropriate order for costs.

We wish to deal with this matter without recourse to litigation. We would appreciate it therefore if you would advise us, within \* (depending on circumstances) days of date of this letter whether you are prepared to allow \* to enter on your land, failing which we will have no option but to take such steps as may be necessary.

All our rights are hereby reserved.

Yours faithfully

## CHAPTER 7: ACCESS TO AND EGRESS FROM NATIONAL ROADS – SECTION 44

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## 7.1 OVERVIEW

- 7.1.1 In this chapter the general obligations of SANRAL to manage access to and egress from National Roads (Access Control), and the Guidelines, procedures and processes pertaining thereto are described to guide the SCO in assisting applicants, planners, designers and operators of facilities when making such applications and to guide the SCO in the compiling of a statutory response.
- 7.1.2 **This chapter considers the issues under the following headings:**
- 7.1.2.1. the statutory authority and/or restrictions placed on SANRAL;
  - 7.1.2.2. Guidelines and procedures relating to applications for access to and / or egress from a third party's land and or SANRAL's land;
  - 7.1.2.3. unlawful accesses or egresses and unlawful developments.
- 7.1.3 This chapter reflects SANRAL's basic and general requirements and places no limitations on SANRAL to obtain further information, to impose further conditions or to relax any condition or requirement, as circumstances, in the opinion of SANRAL, may require.
- 7.1.4 The authority to apply access control is granted in section 44 of the Act, which empowers SANRAL to provide or authorise access to National Roads. Generally there are no outright restrictions placed on SANRAL to allow access and it may impose any conditions that it sees fit, including conditions regarding the nature and position of the proposed access.
- 7.1.5 When considering issues and factors relating to access, there are no absolutes. However since the majority of accidents take place at intersections where vehicle paths and speeds conflict, it is essential to consider safety, mobility and capacity when considering access.

7.1.6 As more than 90% of the National Road Network managed by SANRAL consists of single carriageway (2, 3 or 4 lane) roads, this chapter of the guideline concentrates mainly on at-grade intersections.

7.1.7 This chapter of the Guideline serves as a guide to statutory matters such as procedures, legal requirements and issues arising from the Act. For information on the design, layout and spacing of intersections, Geometric Guidelines, SANRAL's typical drawings, the SARC-AM Manual and other literature on road design must be consulted.

## 7.2 STATUTORY AUTHORITY AND RESTRICTIONS PLACED ON SANRAL

7.2.1 The authority to apply access control is granted in terms of section 44 of the Act, which empowers SANRAL to provide or authorise access to National Roads.

7.2.2 SANRAL has a duty of care to ensure that the safety of road users is not compromised.

7.2.3 Any access compromises road safety and mobility. Therefore, no person may, without SANRAL's written permission or contrary to that permission<sup>1</sup>:

7.2.3.1. take a vehicle onto a National Road except at an entrance provided for that purpose;

7.2.3.2. take a vehicle off a National Road except at an exit provided for that purpose;

7.2.3.3. enter a National Road which is fenced, except at an entrance provided for that purpose; and

7.2.3.4. leave a National Road which is fenced, except at an exit provided for that purpose.

7.2.4 Only the SANRAL Board and any person acting on its written authority may provide or authorise an entrance to or an exit from a National Road<sup>2</sup>.

---

<sup>1</sup> Section 44(1)

<sup>2</sup> Section 44(2)

- 7.2.5 Such an authorisation must be reduced to writing and may be granted by SANRAL subject to any conditions that it considers desirable, including conditions with regard to the nature of the entrance or exit that is authorised, the place where or manner in which the entrance or exit may be erected, constructed or otherwise provided, or its use<sup>3</sup>.
- 7.2.6 SANRAL may at any time alter, substitute or cancel such a condition or impose a new condition and insert it in the authorisation<sup>4</sup>.
- 7.2.7 Such amended condition(s) may include a requirement for upgrading or relocation if deemed necessary. Factors affecting such review can include, but are not limited to:
- 7.2.7.1. changed traffic volumes (vehicular or pedestrian), patterns or composition;
  - 7.2.7.2. recorded or foreseen road safety concerns;
  - 7.2.7.3. adverse weather conditions (including blinding by the sun at certain times, mist or fog, etc.);
  - 7.2.7.4. access consolidation for mobility considerations; and
  - 7.2.7.5. any other considerations in the interests of the travelling public.
- 7.2.8 **An entrance to or exit from a National Road<sup>5</sup> -**
- 7.2.8.1. provided or authorised in terms of a previous Act (Act 54 of 1971 or Act 21 of 1940) or in terms of any other law repealed by the Act, which is in existence and in use immediately before 1 April 1998;

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<sup>3</sup> Section 44(3)

<sup>4</sup> Section 44(3)

<sup>5</sup> Section 44(4)



- 7.2.8.2. which is lawfully in existence and in use immediately before the date on which the road or route in question is declared under section 40(1)(a) to be a National Road, and
- 7.2.8.3. will until SANRAL has issued a written authorisation in respect of it or has removed or closed it<sup>6</sup>, be regarded and treated for all purposes as if it had been provided or authorised under the Act<sup>7</sup>.
- 7.2.9 Despite any contrary provision of any other law, an entrance to or exit from any National Road, or to or from any road in a building restriction area<sup>8</sup>, may be removed or closed to traffic by SANRAL which may, if considered necessary, provide another entrance or exit and take whatever other steps it considers necessary to make the other entrance or exit suitable for use.
- 7.2.10 SANRAL in its discretion may compensate a person who suffers a damage as a result of the removal or closure of an exit<sup>9</sup>. However, in considering compensation, SANRAL must take into account the existence of an alternative entrance or exit or the provision of another entrance or exit<sup>10</sup>.
- 7.2.11 In exercising its authority to grant permission for the establishment or construction of an access or when closing an access, SANRAL must take into account the right to administrative action that is lawful, reasonable and procedurally fair<sup>11</sup>.
- 7.2.12 The Constitution also provides that everyone whose rights have been adversely affected by administrative action has the right to be given written reasons<sup>12</sup>.

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<sup>6</sup> In terms of section 44(5)

<sup>7</sup> In terms of section 44(2)

<sup>8</sup> Mentioned in paragraph (b) of the definition of “building restriction area” under Definitions in section 1 of the Act

<sup>9</sup> Under section 44(5)

<sup>10</sup> Section 44(6)

<sup>11</sup> Section 33(1) of the Constitution of the Republic of South Africa, 1996

<sup>12</sup> Section 33(2) of the Constitution of the Republic of South Africa, 1996

- 7.2.13 The Constitution provides that national legislation must be enacted to give effect to these rights<sup>13</sup> and The Promotion of Administrative Justice Act (“PAJA”) has been enacted to give effect to these constitutional provisions<sup>14</sup>.
- 7.2.14 PAJA may be regarded as a code of administrative practice and procedure since it prescribes the minimum requirements for administrative legality and procedure. It defines administrative action to include any decision taken, or any failure to take a decision, by an organ of state when exercising a power in terms of the Constitution or a provincial constitution or exercising a public power or performing a public function in terms of any legislation.<sup>15</sup>
- 7.2.15 Since SANRAL is an organ of state<sup>16</sup>, PAJA (and the Regulations made thereunder) is applicable to it. Administrative action which materially and adversely affects the rights or legitimate expectations of any person must be procedurally fair.<sup>17</sup>
- 7.2.16 **A person is guilty of an offence**<sup>18</sup>
- 7.2.16.1. if he or she takes a vehicle onto or off a National Road except at an entrance or exit provided for that purpose, and liable on conviction to a term of imprisonment not longer than three months, or a fine; or
- 7.2.16.2. if he or she provides or makes an entrance to or exit from a National Road without SANRAL’s written authorisation, and liable on conviction to a term of imprisonment not longer than six months, or a fine, or to both the term of imprisonment and the fine.
- 7.2.16.3. SANRAL is empowered to charge a levy, fee or rent for any authorisation, approval or permission that may be granted as a result of any application under the Act<sup>19</sup>.

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<sup>13</sup> Section 33(3) of the Constitution of the Republic of South Africa, 1996

<sup>14</sup> Act 3 of 2000

<sup>15</sup> Section 1 of Act 3 of 2000

<sup>16</sup> Section 239 of the Constitution of the Republic of South Africa, 1996

<sup>17</sup> Section 3(1) of Act 3 of 2000

<sup>18</sup> Section 44(8)

<sup>19</sup> Section 26(g)

- 7.3 GUIDELINES AND PROCEDURES RELATING TO ACCESS TO AND / OR EGRESS FROM A THIRD PARTY’S LAND AND / OR SANRAL’S LAND**
- 7.3.1 This chapter must be read with SANRAL’s latest Policy in respect of Road Planning and Design document, as well as Geometric Guidelines.
- 7.3.2 SANRAL, as the custodian of the National Road network, has a duty of care to ensure that the road planning and geometric design process enhances the safety and mobility of road users in balance with other values. In the approval of new accesses and the upgrading of existing accesses, social, economic, safety and environmental impacts should be ranked alongside technical issues so that the final result is in the best overall public interest. Designs should also allow different transportation modes to work together effectively.
- 7.3.3 In rural areas, provided that the road is not a freeway, one access per farming unit traversed by a National Road will generally be allowed. Several properties will be regarded as a farming unit if the combined properties are operated as a single unit. Where several farms operate as single units and it is not possible for safety or road capacity reasons to provide an access for each from the National Road, a service, or frontage road should be provided by SANRAL if an access is closed as a result of SANRAL realigning or widening a National Road.
- 7.3.4 On freeways, direct at-grade access from private properties is strictly prohibited, with the exception of service and rest areas approved by SANRAL<sup>20</sup>. Direct grade separated access for private properties via an interchange should only be considered in exceptional cases, as such access is mostly reserved for public roads. This implies that access for private properties should be obtained from lower order roads, and not from freeways.
- 7.3.5 In designing accesses on National Roads, SANRAL’s Geometric Design Guidelines should be followed. Reference should also be made to TRH 26: “South African Road Classification and Access Management Manual”, developed by the Committee of

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<sup>20</sup> Consult Rest and Service Facilities Policy

Transport Officials (COTO). The requirements of other relevant road authorities and the findings of the Environmental Impact Assessment and Environmental Management Plan (if applicable) must also be considered.

7.3.6 When considering an application for access, the following obligations on SANRAL must be borne in mind:

7.3.6.1. to provide access to adjacent areas in a safe and controlled manner;

7.3.6.2. to provide access in terms of an access management plan for the National Road;

7.3.6.3. to promote the continuity of intersecting local street or road systems;

7.3.6.4. to provide or maintain consistency of design of the National Road;

7.3.6.5. to protect the functional integrity of the National Road; and

7.3.6.6. to plan and implement improvements to accommodate motorised and non-motorised growth in transport demand, whether in the form of bridges, interchanges, road widening, traffic circles, traffic lights or any other development or solution deemed fit.

7.3.7 The following factors will therefore be taken into account when considering any application:

7.3.7.1. the Spatial Development Framework of the local municipality and other plans arising from the implementation of the Spatial Planning and Land Use Management Act, 16 of 2013 and related legislation;

7.3.7.2. the number of accesses on a National Road should be kept to a minimum, consistent with the optimum use of the road facility in order to ensure good mobility;

7.3.7.3. if SANRAL is satisfied that an application has merit, it may grant authorisation for such application subject to fulfilment of various conditions. [This condition may require the applicant who has been granted the requisite authorisation to conclude

an agreement(s) with SANRAL with respect to the implementation of the conditions of such authorisation. The approval of the design by SANRAL will be specifically required and must be had before any construction or action arising from the authorisation is taken]. The design must satisfy the requirements set out in the Geometric Guidelines;

- 7.3.7.4. for certain sections of National Roads, access management plans are available, which indicate all accesses in a particular area, as well as those which should be combined or closed;
- 7.3.7.5. in urbanised areas, including rural residential areas and smallholdings, applications for new, relocated or upgraded accesses will be assessed in the context of an access management plan for entire sections of the affected National Road, if this is available;
- 7.3.7.6. this access management plan, if available, will be based on a road master plan for the area, which defines an integrated functional road network, addressing, inter alia, the need for mobility and access in a structured manner;.
- 7.3.7.7. issues that require consideration are the longer term impact of an access, the development trends and possible change in character of the general area, traffic volumes and the functional classification of the National Road (note: this reference shall be the desired functional classification which may differ from the status quo), and permanency of an access once established; and
- 7.3.7.8. such an authorisation must be reduced to writing and may be granted by SANRAL on any conditions that it considers desirable, including conditions with regard to the nature of the entrance or exit, or both, that is authorised, the place where or manner in which the entrance or exit may be erected, constructed or otherwise provided, or its use<sup>21</sup>.

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<sup>21</sup> Section 44(3)

7.3.8 SANRAL may at any time alter, substitute or cancel a condition that has been imposed or impose a new condition and insert it in the authorisation<sup>22</sup>. Such amended condition(s) can include a requirement for upgrading or relocation if deemed necessary. Factors affecting such review may include, but are not limited to:

7.3.8.1. changed traffic volumes, patterns or composition;

7.3.8.2. recorded or foreseen road safety concerns;

7.3.8.3. adverse weather conditions (including blinding by the sun at certain times, mist or fog, etc.);

7.3.8.4. access consolidation for mobility and road safety considerations;

7.3.8.5. the Spatial Development Framework of the local municipality and other plans arising from the implementation of the Spatial Planning and Land Use Management Act, Act 16 of 2013 and related legislation; and

7.3.8.6. any other considerations in the interests of the road user.

#### 7.4 **APPLICATION PROCESS FOR ACCESS TO AND EGRESS FROM A THIRD PARTY'S LAND OR SANRAL'S LAND<sup>23</sup>**

7.4.1 The application for access to a link in a road network is principally a land use issue that may impact on a wide range of interested and affected parties. SANRAL is but one of these parties and in its general approach of co-operative governance, strives to play its part in the processes in a consultative manner within its mandate.

7.4.2 The applications for access received by SANRAL cover a wide range of developments from major activity centres to driveways and the amount of information

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<sup>22</sup> Section 44(3)

<sup>23</sup> Consult Rest and Service Facilities Policy

that must be evaluated can therefore vary widely. Applications originate from various sources.

- 7.4.3 Where an application involving access to or an exit for a National Road is made to a municipality in terms of a provincial or municipal planning law, the municipality must refer the application to SANRAL for consideration.
- 7.4.4 The applicant must demonstrate that he or she has locus standi to bring the application. Any authorisation granted by SANRAL will be with respect to a specific property or properties and the applicant must prove that he or she is either the owner of such property or properties or is duly authorised to act on behalf of the owner. The approval will therefore be binding on the applicant and his or her successors-in-title.
- 7.4.5 The applicant or authority requesting an access to a National Road must submit sufficient detail in an application report that should, at least cover the following topics:
- 7.4.5.1. The need for the access, or improvement to an existing access should be motivated in a report. This should be based on the functional classification of the National Road, an access management plan for the appropriate section of the National Road (if available), and/or an integrated road master plan for the area concerned (if available).
- 7.4.5.2. The application should include land use and trip generation scenarios, including existing land rights and undeveloped rights, envisaged future rights for different horizon years and the possibility of additional land rezoning as a result of the proposed access.
- 7.4.5.3. When required in terms of generally accepted warrants, the access application report must include the traffic impact assessment of both the status quo and the changes applied for. In the case of an application for a new access, the traffic impact assessment must include inter alia as one option an assessment of the development scenario without the new access. Warrants and all other requirements for traffic impact assessments are defined in the TMH 16 and TMH 17.

- 7.4.5.4. The type of access/intersection control required or proposed (such as priority controlled, roundabout, butterfly intersection, traffic signal, etc.), and the impact this will have on the mobility and capacity of the National Road should be dealt with.
- 7.4.5.5. The report must make reference to the road number and section and kilometre marker reference and must include a locality plan.
- 7.4.5.6. Road upgrade proposals to mitigate traffic impact and consequential proposals regarding cost apportionment responsibilities regarding all road and access upgrades must be provided. (It should be noted that no costs incurred in the provision of the proposed access and related road upgrades will be borne by SANRAL, unless fully motivated and explicitly accepted by SANRAL).
- 7.4.5.7. The report must disclose the functional classification of the road (desired class not current).
- 7.4.5.8. There must be reference to the appropriate design speed and posted or proposed speed limit.
- 7.4.5.9. The impact that such access can potentially have on road safety matters like increased pedestrian movements along and/or across the National Road, public transport needs, etc., and the corresponding proposals for accommodation of public transport and pedestrians must be considered. (The inherent danger of accommodating pedestrians along high speed mobility roads is generally not advisable and should therefore be carefully assessed where relevant).
- 7.4.5.10. The report must include an assessment of the need for lighting, dependent on considerations of road safety and hours of general use of the access.
- 7.4.6 Typical intersection layouts are provided in SANRAL's book of typical drawings which are available on SANRAL's website.
- 7.4.7 In the case of an application for a new interchange, the fatal flaw procedure as provided for in SCoMS must be followed.



- 7.4.8 In general, unless otherwise agreed to, the applicant shall obtain the services of a suitably qualified engineer to:
- 7.4.8.1. provide a Traffic Impact Assessment;
  - 7.4.8.2. design the access; and
  - 7.4.8.3. supervise the construction thereof.
- 7.4.9 The applicant must guarantee any work undertaken within the National Road reserve for 1 (one) year after completion of construction whereafter SANRAL shall accept responsibility for and maintain it at its own cost.
- 7.4.10 The engineer shall in writing certify compliance with all SANRAL requirements and the quality of the work, before the access shall be allowed to be opened for general use.
- 7.4.11 Should any maintenance or repairs be required during the first year, it shall be undertaken by the applicant's contractor under the supervision of the consulting engineer. Repainting of road markings shall be a requirement after the expiry of the one year defects liability period.
- 7.5 **ADDITIONAL GUIDELINES AND PROCEDURES RELATING TO APPLICATIONS FOR ACCESS TO AND / OR EGRESS FROM SANRAL'S LAND**
- 7.5.1 It should be noted that land owned by SANRAL may only be leased to third parties or alienated in accordance with SANRAL's published Policy(s) which requires that a tender process be followed to determine the preferred lessee or purchaser of SANRAL's land, as the case may be. Should an Applicant wish to lease or acquire SANRAL owned land and then apply for access to or egress from that property to a National Road, the applicant must first establish *locus standi* to make such application. The applicant must therefore secure rights over the land before submitting the application.

- 7.5.2 Should the applicant wish to develop a service and rest area on SANRAL owned land, SANRAL’s latest “Policy in respect of Road Planning and Design and the “Guidelines in respect of Road Planning and Design” shall apply in addition to these requirements<sup>24</sup>.
- 7.5.3 In the event that the applicant is proposing to develop land owned by SANRAL, the applicant must first conclude a lease agreement with SANRAL.
- 7.5.4 SANRAL’s Lease Policy requires that an open public tender procedure be followed before land is leased to a third party.
- 7.5.5 An applicant must approach SANRAL’s Property Portfolio Service Providers with a request to lease land that he or she wishes to develop.
- 7.5.6 SANRAL’s regional office will then determine whether the land in question may be required for future road purposes. If it will be, the land will not be leased for development purposes.
- 7.5.7 In the event that SANRAL is prepared to lease the land in question, SANRAL’s Property Portfolio Service Providers will obtain a valuation of the property.
- 7.5.8 Where the Lease Policy requires an open public tender process to be followed then bids will be opened at the time and place specified in the tender notice.
- 7.5.9 The bids will be determined in accordance with the evaluation criteria provided for in the tender document.
- 7.5.10 SANRAL’s Property Portfolio Service Providers will then make a recommendation to SANRAL as to whether the property should be leased or not and if the submission for a lease is approved, a lease agreement may be concluded. The lease agreement will be suspensive on the approval of the application for access and / or egress.

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<sup>24</sup> Consult Rest and Service Facilities Policy

7.5.11 It is important to note that service and rest area applications are dealt with by the of SANRAL Board, which considers the proposal as a whole, and makes a resolution regarding the proposed development and the conclusion of the lease simultaneously.

## 7.6 UNLAWFUL ACCESSES TO AND EGRESSES FROM NATIONAL ROADS AND UNLAWFUL DEVELOPMENTS

7.6.1 In 1998, SANRAL established a RRM Manual which covers the entire National Road network.

7.6.2 A Routine Road Maintenance Manual<sup>25</sup> has been established as a tool to assist those involved in Routine Road Maintenance.

7.6.3 RMs have been appointed to deal with the day to day management of Routine Road Maintenance Contracts.

7.6.4 The duties of the RRMC include monitoring of all approvals granted by SANRAL for applications relating to Statutory Control, including access and developments within the building restriction area.

7.6.5 Where an access has been approved, it will always be for a specific purpose. The applicant may not alter, amend or extend a development utilising the approved access without SANRAL's prior written approval.

7.6.6 The RRMC must interact with the SCO to ensure that if any new development alongside a National Road is taking place, even off an approved access, such new or further development is inspected to ensure that it was approved by SANRAL and complies with the conditions. If not, SANRAL must take action at the earliest possible stage to restrict or prevent such unlawful development.

7.6.7 The RRMC does not have the power to enforce statutory control but must monitor and report any infringements to SANRAL without delay.

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<sup>25</sup> The Second Edition dated January 2009 is available on SANRAL's website.

- 7.6.8 The SCoMS system has and maintains a data base of approved and unapproved accesses and developments so that these can be monitored and action can be taken where necessary.
- 7.6.9 The SCO will, if the documents are available, provide the RRMC with a data base of approved accesses and developments, as well as details of unapproved accesses and developments that he or she is aware of, as soon as possible after the commencement of the RRMC's contract.
- 7.6.10 The RRMC shall immediately notify the SCO of any rejected development or accesses that it becomes aware of to enable SANRAL to take such action as it deems necessary. Details of such unapproved developments or accesses will be added to the data base by SANRAL's SCO.
- 7.6.11 The RRMC shall report monthly on the status of each and every approved and unapproved development and access that is listed in SCoMS.
- 7.6.12 In the event that an illegal access is being used or developed or unapproved development is taking place within a building restriction area, the SCO will address a written notice, to the owner of the property from which the access is taken.
- 7.6.13 If the addresses are known, the notice will be forwarded by registered post, telefax and email, failing which it will be hand delivered by the RRMC.
- 7.6.14 The owner of the property will be given 30 (thirty) calendar days to respond to the notice.
- 7.6.15 If no response is received to the notice, arrangements will be made for the access to be physically closed and the owner of the land on which the access is located must be held responsible for the cost related to the access closure.

- 7.6.16 In taking a decision to close an access, SANRAL will be taking an administrative action as defined in the PAJA<sup>26</sup>.
- 7.6.17 If the owner challenges SANRAL's decision to close an access, SANRAL will comply with the provisions of PAJA.
- 7.7 DIRECT ACCESS FOR CLASS THREE (3) AREAS ALONG A NATIONAL ROAD**
- 7.7.1 Where SANRAL has granted approval for direct access for class 3 service areas along a National Road, this will have been subject to the conclusion of an agreement between the applicant and SANRAL.
- 7.7.2 One of the requirements that an applicant must comply with if SANRAL has granted such authorisation is to provide as-built plans that conform with the detailed design approved by SANRAL.
- 7.7.3 It is required of the applicant to procure the rezoning of the property on which the direct service area is constructed.
- 7.7.4 The applicant cannot proceed with further development on the property without SANRAL's authorisation and possibly without first changing the zoning controls.
- 7.7.5 The RRMC must therefore monitor any development at a service area and ensure that this is not in breach of the approved development since this can have a serious impact on traffic safety.
- 7.7.6 If unapproved development takes place, the SCO should be notified immediately to enable SANRAL to take appropriate action. This may include an application to the High Court for an interdict prohibiting further unlawful development.
- 7.7.7 It is imperative that the earliest possible action be taken where unlawful development takes place

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<sup>26</sup> Act 3 of 2000

## CHAPTER 8: CLOSING OR DIVERTING OF A NATIONAL ROAD – SECTION 45

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## 8.1 OVERVIEW

- 8.1.1 SANRAL may close a National Road to traffic or divert the roadway of a National Road whenever in its opinion it is necessary or desirable to do so<sup>1</sup>.
- 8.1.2 The closure or diversion of a National Road to traffic may arise in a number of situations:
- 8.1.2.1. where SANRAL wishes to undertake the maintenance or upgrading of the road;
  - 8.1.2.2. where a third party requires the road to be closed or diverted;
  - 8.1.2.3. where SANRAL is obliged to close the road because it is unsafe as a result of an accident or factors beyond the control of SANRAL;
- 8.1.3 Any person who without the permission of SANRAL uses a National Road that has been closed to traffic, is guilty of an offence and liable on conviction to a term of imprisonment not longer than three months, or a fine, or to both the term of imprisonment and the fine<sup>2</sup>.

## 8.2 GUIDELINES AND PROCEDURES

- 8.2.1 SANRAL must at all times manage and control National Roads with a view to providing for the convenience and safety of road users<sup>3</sup>.
- 8.2.2 **Closure or diversion of a National Road for the maintenance or upgrade thereof**
- 8.2.2.1. It may be necessary, from time to time, to close or divert a National Road in order to undertake the maintenance and/or repair of such road.
  - 8.2.2.2. SANRAL must take adequate steps to accommodate the traffic during the entire period the National Road is to be closed or diverted.

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<sup>1</sup> Section 45(1)

<sup>2</sup> Section 45(2)

<sup>3</sup> Section 26(e) read with section 25(1)

- 8.2.2.3. If it is necessary to stop traffic or close off some lanes of traffic, SANRAL shall ensure that the road user is given a warning in advance by means of:
- a. the publication of not less than 2 (two) advertisements in local newspapers advising of the impending road diversion or closure;
  - b. the airing of not less than 2 (two) announcements on local radio stations advising of the impending road diversion or closure; and
  - c. the erection of signs in the vicinity of the proposed closure or diversion, at least 14 (fourteen) days prior, warning thereof.
- 8.2.2.4. The advertisements and announcements should be not more than 10 (ten) days in advance of the impending road diversion or closure.
- 8.2.2.5. SANRAL must warn Provincial and Municipal Traffic Authorities at least 30 (thirty) days in advance so that adequate arrangements can be made for traffic control.
- 8.2.2.6. SANRAL must ensure that warning signs are erected throughout the period that the National Road is closed or diverted.
- 8.2.2.7. SANRAL must ensure that all open trenches and pits are temporarily safe-guarded until the re-instatement of such trenches and pits are completed.
- 8.2.2.8. In the event that a contractor is appointed to undertake the maintenance and/or repair of a National Road, such contractor shall be made liable for compliance with all procedures relating to the closure or diverting of a National Road, as well as any legislation pertaining thereto, including the Occupational Health and Safety Act, 85 of 1993, and the regulations published thereunder.
- 8.2.2.9. The contractor shall be made contractually liable for any loss or damages suffered by a third party as a result of the closure or diversion of the National Road. The contractor shall indemnify SANRAL against all or any costs or damages which it may incur arising from the closure or diversion of the National Road.



8.2.2.10. The contractor must also ensure the safety of all workers employed to assist in the required construction, maintenance or repair during the period that the National Road is closed or diverted.

8.2.2.11. All costs relating to the control of traffic and the closing or diversion of the National Road will be the responsibility of the contractor or service provider.

### **8.2.3 Closure or diversion of a National Road on the request of a third party**

8.2.3.1. It may be necessary, from time to time, to close or divert a National Road in order to allow for the construction, maintenance or repair of utility services that have been or are to be constructed within the road reserve of a National Road. It may also be necessary because of activities that do not involve the National Road, but are adjacent to it, such as blasting.

8.2.3.2. The service provider must make application to SANRAL for consent for the closure or diversion of the National Road<sup>4</sup>.

8.2.3.3. SANRAL must take adequate steps to accommodate the traffic during the entire period the National Road is to be closed or diverted.

8.2.3.4. If it is necessary to stop traffic or close off some lanes of traffic, SANRAL shall ensure that the road user is warned well in advance by means of:

- a. the publication of not less than 2 (two) advertisements in local newspapers advising of the impending road diversion or closure;
- b. the airing of not less than 2 (two) announcements on local radio stations advising of the impending road diversion or closure;
- c. the erection of warning signs in the vicinity of the proposed closure or diversion, at least 14 (fourteen) days prior.

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<sup>4</sup> See application form annexed hereto

- 8.2.3.5. SANRAL must warn Provincial and Municipal Traffic Authorities at least 30 (thirty) days in advance so that adequate arrangements can be made for traffic control.
- 8.2.3.6. SANRAL must ensure that warning signs are erected throughout the period that the National Road is closed or diverted.
- 8.2.3.7. SANRAL must ensure that all open trenches and pits are temporarily safe-guarded until the re-instatement of such trenches and pits are completed.
- 8.2.3.8. The service or utility provider must be made contractually liable for any loss or damages suffered by a third party as a result of the closure or diversion of the National Road. The service or utility provider shall indemnify SANRAL against all or any costs or damages which it may incur arising from the closure or diversion of the National Road.
- 8.2.3.9. The service or utility provider must also ensure the safety of all workers employed to assist in the required construction, maintenance or repair during the period that the National Road is closed or diverted.
- 8.2.3.10. All costs relating to the control of traffic and the closing or diversion of the National Road will be the responsibility of the service or utility provider.
- 8.2.4 **Closure or diversion of a National Road as a result of *Force Majeure***
- 8.2.4.1. It may be necessary, from time to time, to close or divert a National Road because of reasons beyond the control of SANRAL, such as flooding, a landslide or a fire.
- 8.2.4.2. SANRAL must take adequate steps to accommodate the traffic during the entire period the National Road is to be closed or diverted.
- 8.2.4.3. If it is necessary to stop traffic or close off some lanes of traffic, SANRAL must take all reasonable steps to warn road users. SANRAL must make arrangements to broadcast announcements regarding the road closure or diversion on local radio stations.

- 8.2.4.4. If the closure is likely to be for an extended period, then road users must be given further notice thereof by the publication of not less than 2 (two) advertisements in local newspapers advising of the expected period of the road diversion or closure.
- 8.2.4.5. Further announcements should be broadcasted on local radio stations to keep road users abreast of the situation.
- 8.2.4.6. SANRAL must immediately make arrangements for the erection of warning signs in the vicinity of the closure or diversion.
- 8.2.4.7. SANRAL must immediately interact with Provincial and Municipal Traffic Authorities so that adequate arrangements can be made for traffic control.
- 8.2.4.8. SANRAL must ensure that warning signs are erected throughout the period that the National Road is closed or diverted.

### **8.3 INFORMATION REQUIRED BY SANRAL**

- 8.3.1 A third party requiring the closure or diversion of a National Road must provide SANRAL with the following:
  - 8.3.1.1. a detailed motivation setting out the reasons a closure or diversion of the National Road is required;
  - 8.3.1.2. a plan showing the proposed closure or diversion;
  - 8.3.1.3. an example of the newspaper advertisement that will be placed in a local newspaper;
  - 8.3.1.4. details of the proposed radio advertisement;
  - 8.3.1.5. a programme for the work to be undertaken by the contractor or service provider, showing the period during which the National Road must be closed or diverted;
  - 8.3.1.6. details of signage that will be erected;

- 8.3.1.7. details of additional steps that will be taken to ensure the safety of road users and persons working on site.
- 8.3.2 If SANRAL approves an application for the closure or diversion of a National Road, it will impose conditions applicable to such approval.

## CHAPTER 9: DAMAGING OF NATIONAL ROAD – SECTION 46

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## 9.1 OVERVIEW

- 9.1.1 Any person who wilfully or negligently damages a National Road is guilty of a criminal offence and liable on conviction to a term of imprisonment not longer than one year, or a fine, or to both the term of imprisonment and the fine.<sup>1</sup>
- 9.1.2 The provisions referred to above also apply to service providers such as Telkom, Eskom etc. Whilst the conditions of approval or wayleave agreement allowing a service provider to proceed with work on, over or below a National Road may deal with the obligation to compensate for any damage caused, SANRAL will always be entitled to rely on the provisions of section 46(1) of the Act to recover its damages, regardless of whether such conditions or wayleave agreement exist<sup>2</sup>.
- 9.1.3 The amount of damages caused to a National Road may be recovered pursuant to a conviction in terms of section 46(1)<sup>3</sup>.
- 9.1.4 If a court grants an order for a person to pay SANRAL an amount equal to the amount of damage caused, such order will have the force of a civil judgment and may be enforced in the same manner as a civil judgment<sup>4</sup>.
- 9.1.5 There is a duty on land owners and occupiers of land adjoining any National Road to take all measures on their land as may be reasonably necessary to prevent the occurrence of any damage to the National Road<sup>5</sup>.
- 9.1.6 There is also a duty on land owners and occupiers of land adjoining any National Road to refrain from doing or permitting anything on or below the surface of that land which is likely to cause damage to that National Road<sup>6</sup>.

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<sup>1</sup> Section 46(1)

<sup>2</sup> See chapter 12 dealing with structures and other works on, over or below the National Road or certain other land

<sup>3</sup> Section 46(2)(a)

<sup>4</sup> Section 46(2)(b)

<sup>5</sup> Section 46(3)(a). This will include any measures that may be prescribed from time to time for this purpose.

<sup>6</sup> Section 46(3)(b)

- 9.1.7 Non-compliance with the duty referred to above creates a liability for any damage to the National Road which was or reasonably should have been foreseen and which could have been avoided had the land owner or occupier taken steps to comply with his or her obligations. Failure to comply with the duty therefore has legal consequences.<sup>7</sup>
- 9.1.8 SANRAL is empowered to issue a written notice to the owner or occupier of any land adjoining the National Road to take specified measures, or refrain from specified acts in order to prevent the occurrence of any damage which in the opinion of SANRAL is likely to be caused.<sup>8</sup>
- 9.1.9 SANRAL is entitled to order the removal, filling in, alteration, relocation or establishment of any dam or canal, trench, wall, sluice, pipe, excavation, structure or other works, or the cessation of such an act on the land.<sup>9</sup>
- 9.1.10 SANRAL may apply for a High Court Order to compel compliance with the provisions referred to above.<sup>10</sup> In this event, the court may order either of the parties to bear the costs of complying with that order, depending on whatever may be fair and just in the circumstances, and may make any order as to the costs of the proceedings that it considers fit.<sup>11</sup>
- 9.1.11 SANRAL has a discretion, in deserving cases, without prejudice to its rights, and with the Minister's approval, to pay for the costs, or part thereof, incurred by a land owner or occupier in complying with a notice issued by SANRAL under this section.<sup>12</sup>

## 9.2 **AUTHORITY OF AND/OR RESTRICTIONS PLACED ON SANRAL**

- 9.2.1 According to section 46(1) any person who wilfully or negligently damages a National Road is guilty of a criminal offence.

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<sup>7</sup> Section 46(4)

<sup>8</sup> Section 46(5)

<sup>9</sup> Section 46(5)(b)

<sup>10</sup> Section 46(6)

<sup>11</sup> Section 46(6)(c)

<sup>12</sup> Section 46(5)

- 9.2.2 The Act does not define “person”. The word “person” may include natural persons and legal person, such as a company or association with separate legal existence.
- 9.2.3 Damage is a word of wide and general import and ordinarily includes physical damage and pecuniary loss. Loss may be seen as a synonym for damage.<sup>13</sup>
- 9.2.4 Damage in its ordinary sense means value, estimated in money, of something lost.<sup>14</sup>
- 9.2.5 A “National Road”—
- 9.2.5.1. means any road or route declared a National Road under section 40 (1);
- 9.2.5.2. includes any road or route which, in terms of section 40 (5), is regarded and treated as a National Road so declared; and
- 9.2.5.3. includes any part of the road which is a toll road as defined in this section, as well as any “interprovincial bridge” and “interstate bridge” as so defined which is used in conjunction with a National Road.<sup>15</sup>
- 9.2.6 A “road” means a public road and includes, in addition to the roadway—
- 9.2.6.1. the land of which the road consists or over which the road reserve in question extends;
- 9.2.6.2. anything on that land forming part of, connected with, or belonging to the road; and
- 9.2.6.3. land acquired for the construction of a connection between a National Road and another road”<sup>16</sup>
- 9.2.7 “Wilful conduct” means with intentional conduct.

<sup>13</sup> Kangra Holdings (Pty) Ltd v Minister of Water Affairs 1998 (4) SA 330 (SCA) at 338 F-G

<sup>14</sup> Oxford English Dictionary quoted in Russell, Loveday, N.O. v Collins Submarine Pipelines 1975 (1) SA 110 (A) at 145 D-E

<sup>15</sup> Section 1

<sup>16</sup> Section 1 of act 7 of 1998



- 9.2.8 “Negligent conduct” is conduct which falls short of the standard of the reasonable person.<sup>17</sup>
- 9.2.9 SANRAL may institute criminal proceedings and make a complaint by alleging that a National Road has been damaged, and lay a charge to be prosecuted by the prosecuting authorities.
- 9.2.10 A checklist to ensure that criminal prosecution is properly launched is attached hereto as Annexure 6.3.1.
- 9.2.11 **Recovery of amount of the damage**
- 9.2.11.1. If a person is found guilty of damaging a National Road, the Court may, in addition to imposing a sentence as punishment for the criminal offence, also order such person to pay to SANRAL the amount of the damage caused.<sup>18</sup>
- 9.2.11.2. Although this order to recover damages will be made by a criminal court, such order will have the effect of a civil order in order that it may be enforced like a civil judgment.<sup>19</sup>
- 9.2.12 **Duty to prevent damage**
- 9.2.12.1. Section 46(3) creates a duty on owners and occupiers of land to prevent the occurrence of damage and refrain from acts which is likely to cause damage.
- 9.2.12.2. This section is of pivotal importance within section 46 because sub-sections 4(5) and (6) are designed to ensure compliance with section 46(3).
- 9.2.12.3. The duty in section 46(3) is obligatory, and not discretionary.
- 9.2.12.4. In relation to land “owner” means the registered proprietor thereof.<sup>20</sup>

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<sup>17</sup> Minister of Safety and Security v Rudman 2005 (2) SA 16 (SCA) at 40A

<sup>18</sup> Section 46(2)(a) of act 7 of 1998

<sup>19</sup> Section 46(2)(b)

<sup>20</sup> Apex Mines Ltd v Administrator, Transvaal 1988 (3) SA 1 (AD) at 15C

- 9.2.12.5. South Africa has a negative system of registration of ownership of land, which means that mere registration of ownership does not necessarily suffice as proof of ownership.<sup>21</sup>
- 9.2.12.6. An “occupier” means in general a person residing on land which belongs to another person.<sup>22</sup>
- 9.2.12.7. section 46(3) places a positive and a negative duty on owners and occupiers of land adjoining any National Road.
- 9.2.12.8. The positive duty is to take all measures that are necessary to prevent the occurrence of damage. Such measures may be prescribed by SANRAL in terms of section 46(5).
- 9.2.12.9. The negative duty is to refrain from doing or permitting anything to be done which is likely to cause damage to a National Road.
- 9.2.12.10. section 46(4) creates the basis of liability for damage which could have been avoided had section 46(3) been complied with.
- 9.2.13 Written notice to ensure compliance**
- 9.2.13.1. section 46(5) empowers SANRAL to issue a written notice demanding certain positive or negative conduct from the owner or occupier of neighbouring land in order to prevent the occurrence of damage.
- 9.2.13.2. The positive action includes to specify measures in the notice which must be taken.
- 9.2.13.3. The negative conduct includes to stop doing or permitting anything to be done on or below the surface of the land.

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<sup>21</sup> Knysna Hotel CC v Coetzee NO 1998 (2) SA 743 (HHA) at 753B-C

<sup>22</sup> Section 1 of the Extension of Security of Tenure Act, 62 of 1997

- 9.2.13.4. The measures which may be specified may include the removal, filling in, alteration, relocation or establishment of any dam, canal, trench, wall, sluice, pipe, excavation, structure or other works, or the cessation thereof.
- 9.2.13.5. A draft notice in terms of section 46(5) is attached as Annexure 8.3.2.
- 9.2.13.6. section 46(6) provides that SANRAL may apply for a High Court Order to ensure compliance with section 46(3).
- 9.2.13.7. section 46(7) creates a discretion for SANRAL, with the minister's approval, to pay costs, or part thereof, incurred by an owner or occupier of land as a result of complying with a notice issued in terms of section 46(5).

**9.3 ANNEXURES**

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<b>ANNEXURE 9.3.2 Pro Forma Notice In Terms Of Section 46(5) (Only Applicable To Adjoining Land Owners).....</b>	<b>102</b>

**Annexure 9.3.1 CHECKLIST FOR LAUNCHING CRIMINAL PROSECUTION**

1. Criminal prosecution is launched by submitting a sworn statement to a police inspector, or by making a sworn statement in front of a police inspector.
2. This statement must comprehensively detail all the relevant facts including:
  - 2.1. who is accused;
  - 2.2. what precisely is the damage caused (add photographs together with records of inspection and quotations for repair work if possible and record dates and names of persons taking photographs and drafting quotations);
  - 2.3. how is it alleged was the damage caused?
  - 2.4. where and when precisely was the road damaged?
3. In normal cause the criminal charges must be lodged at the police office closest to the place where the road was damaged.
4. The case must be followed through by the person who instituted it.

**Annexure 9.3.2 PRO FORMA NOTICE IN TERMS OF SECTION 46(5) (ONLY APPLICABLE TO ADJOINING LAND OWNERS)**

Note: Since section 46(5) is pivotal within the construction of section 46 and considering the vast mechanisms for ensuring compliance with a notice in terms of section 46(5), it is recommended that the issuing of such notice, and the contents thereof, be duly authorised in terms of a proper resolution on the same basis as if it were a criminal prosecution.

**NOTICE IN TERMS OF SECTION 46(5)**

**FROM SANRAL**

**TO the owner or occupier of land adjoining a National Road.**

**RE: PREVENTION OF THE OCCURRENCE OF DAMAGE WHICH IS LIKELY TO BE CAUSED**

We note that you are the registered owner / occupier of *(insert property description)*. *(If the Deeds Office description is not immediately known, a street address can be given or the property can be identified with reference to an attached diagram or plan)*.

SANRAL confirm that the above-mentioned property adjoins National Route/section *insert route number*.

In accordance with the powers and duties conferred on us by section 46(5)(a) of the South African National Roads Agency Limited Act and National Roads Act, 7 of 1998 we hereby demand that you:

- a. within insert period, take the measures referred to hereunder, alternatively, refrain from doing or permitting the matters referred to hereunder from being done, in order to prevent the occurrence of damage which is likely to be caused to the National Road;

- b. provide us with your written consent within insert period (the period will depend on the seriousness of the damage, the potential danger to road users and how urgent it is to undertake repairs) that we may take such measures ourselves at the cost to be determined for your account.

The measures that are to be taken / The matters you must refrain from doing or permitting are:

- a. .... (insert details)
- b. .... (insert details)

In the event that you do not timeously comply with the provisions of this notice, we may apply to the High Court for an order compelling you to do so and in that event, we shall seek an order for costs against you.

We also draw your attention to the fact that in terms of Act 7 of 1998, any person who damages a National Road wilfully or negligently is guilty of an offence and liable to a term of imprisonment not longer than one year, or a fine, or to both the term of imprisonment and the fine.

## CHAPTER 10: DISPOSING OF STORMWATER FROM A NATIONAL ROAD – SECTION 47

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## 10.1 OVERVIEW

- 10.1.1 In terms of the common law, a property owner is entitled to protection against interference with the natural flow of water from a neighbour's property as a result of the construction of artificial works.
- 10.1.2 In terms of the Act, SANRAL may divert storm-water from or under a National Road onto any land<sup>1</sup>.
- 10.1.3 If the diversion of such storm-water causes any damage, SANRAL must pay compensation for such damage<sup>2</sup>.
- 10.1.4 Where a township is established on land adjoining a National Road, the person establishing the township must receive and dispose of the storm-water discharged or diverted from the National Road<sup>3</sup>.
- 10.1.5 Where a township is established on land adjoining a National Road, SANRAL will not be liable for any damage caused in the township by the storm-water<sup>4</sup>.

## 10.2 GUIDELINES AND PROCEDURES

- 10.2.1 In terms of the Act, SANRAL is entitled to divert storm-water from or under a National Road onto any land and does not require the consent of the landowner to do so.
- 10.2.2 However, SANRAL may, in certain instances, be required to obtain environmental authorisation before diverting such storm-water<sup>5</sup>.

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<sup>1</sup> Section 47(1)

<sup>2</sup> Section 47(1) but subject to section 47(2)

<sup>3</sup> Section 47(2)

<sup>4</sup> Section 47(2)

<sup>5</sup> Authorisation is obtained in terms of section 24 of the National Environmental Management Act, 107 of 1998

- 10.2.3 The Minister of Environmental Affairs and Tourism has identified certain activities which may significantly affect the environment and which must be considered, investigated and assessed prior to their implementation<sup>6</sup>.
- 10.2.4 These activities may not be commenced without the prior authority of the Minister<sup>7</sup> or the MEC<sup>8</sup>.
- 10.2.5 The bulk transportation of sewage and water, including stormwater, in pipelines with an internal diameter of 0.36 metres or more, or a peak throughput of 120 litres per second or more, is an identified activity and the construction of such facilities will require the authorisation of the environmental authorities<sup>9</sup>.
- 10.2.6 In order to limit any damage to an adjoining landowner's property, SANRAL must comply with the requirements of the Drainage Manual<sup>10</sup>.
- 10.2.7 If a developer wishes to establish a township within a building restriction area<sup>11</sup>, the written approval of SANRAL is required<sup>12</sup>.
- 10.2.8 SANRAL is entitled to impose conditions and such conditions may relate to the manner in which stormwater must be disposed of from such township<sup>13</sup>.

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<sup>6</sup> List of activities and competent authorities identified in terms of section 24 and 24D of the National Environmental Management Act, 107 of 1998.

<sup>7</sup> Minister of Environmental Affairs and Tourism

<sup>8</sup> The Member of the Executive Council responsible in each Province for the administration and management of environmental affairs

<sup>9</sup> Usually the MEC responsible for environmental affairs in each Province

<sup>10</sup> SANRAL Drainage Manual can be accessed on SANRAL's website ([www.nra.co.za](http://www.nra.co.za))

<sup>11</sup> A building restriction area means the area consisting of land (but excluding land in an urban area)

(a) situated alongside a National Road within a distance of 60 metres from the boundary of the National Road;

(b) situated within a distance of 500 metres from any point of intersection.

This definition must be read with reference to the definitions of "urban area". An urban area means any area consisting of a township established or recognised as a township under any law, or by SANRAL in terms of the Act, but excluding land in that area which is commonage land, or which is used or destined to be used mainly for farming or horticulture or the keeping of animals, or which consists of any other open space which has not been developed or reserved for public purposes.

<sup>12</sup> Section 48 read with section 49(1)

<sup>13</sup> In terms of section 48(3)(b), when giving permission, SANRAL may prescribe-

(i) the specifications to which the structure, other thing, alteration or addition for which permission is asked, must comply;

(ii) the manner and circumstances in which, the place where and the conditions on which the structure, other thing, alteration or addition may be erected, constructed, laid and established or made; and

(iii) the obligations to be fulfilled by the owner of the land in question if the structure, other thing, alteration or addition is erected, constructed, laid or made.

10.2.9 A building restriction area does not apply to land in an urban area, except commonage land, land which is used or destined to be used mainly for farming or horticulture or the keeping of animals, or land which consists of any other open space which has not been developed or reserved for public purposes<sup>14</sup>. However, in any application for township establishment alongside a National Road, SANRAL will still be an interested and affected party and will be entitled to make submissions to the approving authority for consideration with such application. This will especially apply if the road reserve is contiguous to the land on which it is intended to establish the township.

10.2.10 In these instances, SANRAL must make submissions for the inclusion of appropriate conditions in any authorisation issued by the approving authority. Such conditions will relate to the design and construction of measures within such township to control stormwater<sup>15</sup>.

### 10.3 INFORMATION REQUIRED BY SANRAL

10.3.1 In the event that a claim is received for compensation for damage caused by the diversion of stormwater from or under a National Road, SANRAL must obtain the following detailed information in order to assess the claim:

10.3.1.1. when the alleged incident occurred;

10.3.1.2. where the alleged incident occurred;

10.3.1.3. how the alleged incident occurred;

10.3.1.4. the damage that was allegedly caused; and

10.3.1.5. details regarding the amount of compensation claimed and how it has been determined.

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<sup>14</sup> See definition of “urban area” in section 1 of the Act.

<sup>15</sup> An example of a standard condition is included in annexure 11.4.1 below

- 10.3.2 Any negotiations that are undertaken with respect to the alleged incident and the compensation payable should be conducted on a without prejudice basis in order to not prejudice any litigation that may arise should the matter not be settled.
- 10.3.3 In order to assess an application for the establishment of a township alongside a National Road, SANRAL must obtain at least the following information and documentation:
- 10.3.3.1. a copy of the town planning layout;
  - 10.3.3.2. engineering report;
  - 10.3.3.3. stormwater plan;
  - 10.3.3.4. a 1:50 and 1:100 year floodline certificate; and
  - 10.3.3.5. the draft conditions of establishment.
- 10.3.4 Copies of this information and documentation should be available from the developer or the relevant approving authority. Care must be taken to ensure that comments have been submitted to such approving authority within the period allowed for this purpose.

10.4 **ANNEXURES**

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**Annexure 10.4.1 NOTE TO SCO IN RESPECT OF CONDITIONS TO BE IMPOSED BY SANRAL.**

**NOTE:** Circumstances where a developer wishes to establish a township within a building restriction area or where the building restriction area does not apply and the intended township is located alongside a National Road SANRAL will be in position to impose certain conditions relating to how stormwater from the National Road and from the intended Township shall be dealt with. In the specific instance where the Township is located within the Building Restriction area then SANRAL acts as a Statutory Authority and the approval of SANRAL is required with regards to stormwater.

Township establishment and the division of certain land is specifically dealt with in Section 49 of the Act.

Given that a Township has the effect of “a division of certain land”, the disposal of stormwater is one aspect that SANRAL will consider.

Accordingly the conditions relating to an approval granted by SANRAL in terms of this section of the Act (Section 47) have been incorporated under Chapter 11 (Section 49) in terms of the Standard Letter of Approval and which is included as an annexure to Chapter 11.]

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**CHAPTER 11: STRUCTURES AND OTHER WORKS ON, OVER OR BELOW  
NATIONAL ROADS OR CERTAIN OTHER LAND –  
SECTION 48**

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<b>11.3 GUIDELINES AND PROCEDURES .....</b>	<b>123</b>

## 11.1 OVERVIEW

- 11.1.1 In terms of the Act, the main functions of SANRAL include the management, control and maintenance of National Roads<sup>1</sup>.
- 11.1.2 SANRAL must ensure that the safety of road users is not compromised in any manner whatsoever.
- 11.1.3 Therefore, no person may, without SANRAL's written permission or contrary to that permission:
- 11.1.3.1. erect, construct or lay, or establish any structure or other thing (including anything which is attached to the land on which it stands even though it does not form part of the land):
- a. on a National Road or land in a building restriction area;
  - b. over a National Road or land in a building restriction area;
  - c. below the surface of a National Road or land in a building restriction area<sup>2</sup>;
- 11.1.3.2. make any structural alteration or addition to a structure or thing situated on, over or below the surface of a National Road or land in a building restriction area<sup>3</sup>; and
- 11.1.3.3. give permission for erecting, constructing, laying or establishing any structure or thing on or over, or below the surface of, a National Road or land in a building restriction area, or for any structural alteration or addition to any structure or other thing so situated<sup>4</sup>.

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<sup>1</sup> Section 25(1)

<sup>2</sup> Section 48(1)(a)

<sup>3</sup> Section 48(1)(b)

<sup>4</sup> Section 48(1)(c)



- 11.1.4 Any person who acts contrary to the provisions referred to above is guilty of an offence and liable on conviction to a term of imprisonment not longer than one year, or a fine, or to both the term of imprisonment and the fine<sup>5</sup>.
- 11.1.5 These restrictions do not apply:
- 11.1.5.1. where the erection, construction, laying or establishing of the structure or other thing takes place on, over or below land in a building restriction area and such land is under the control of the South African Rail Commuter Corporation Limited<sup>6</sup>;
- 11.1.5.2. to a dwelling or any other structure erected in a building restriction area but on a farm used only for farming operations in the true sense<sup>7</sup>.
- 11.1.6 Although the restrictions do not apply in the case of the two instances described in paragraph above, SANRAL is still entitled to impose conditions that must be adhered to<sup>8</sup>.
- 11.1.7 SANRAL, in its discretion, may give or refuse the permission referred to above<sup>9</sup>.
- 11.1.8 If SANRAL elects to give permission, it may prescribe:
- 11.1.8.1. the specifications to which the structure, other thing, alteration or addition must comply<sup>10</sup>;

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<sup>5</sup> Section 48(8)

<sup>6</sup> Section 48(2)(a)

<sup>7</sup> Section 48(2)(b), provided that SANRAL may impose conditions in terms of section 49(3)(a). Farming in the true sense refers to the keeping of livestock and/or cultivation of crops for commercial production or subsistence purposes

<sup>8</sup> Section 48(2) empowers SANRAL to impose conditions under section 49(3)(a) in the event that any application is made to subdivide land in a building restriction area (and such land is under the control of the South African Rail Commuter Corporation or is land used for farming purposes).

<sup>9</sup> Section 48(3)(a)

<sup>10</sup> Section 48(3)(b)(i)

- 11.1.8.2. the manner and circumstances in which, the place where and the conditions on which the structure, other thing, alteration or addition may be erected, constructed, laid, established or made<sup>11</sup>; and
- 11.1.8.3. the obligations to be fulfilled by the owner of the land in question if the structure, other thing, alteration or addition is erected, constructed, laid, established or made<sup>12</sup>.
- 11.1.9 If a condition imposed by SANRAL includes an obligation to remove a structure or other thing, SANRAL may submit a written request to the Registrar of Deeds having jurisdiction in respect of the area concerned, for the obligation to be noted on the title deed of the affected property and in the appropriate register kept by the Registrar<sup>13</sup>, provided that SANRAL shall require the applicant to make such application at the Applicant's cost.
- 11.1.10 The costs incurred with respect to the noting of the condition by the Registrar will be for the account of the person to whom permission has been granted<sup>14</sup>.
- 11.1.11 SANRAL is entitled to enforce compliance with the condition that has been noted<sup>15</sup>.
- 11.1.12 SANRAL may grant its consent to the Registrar of Deeds for the cancellation of a condition which has been endorsed on a title deed<sup>16</sup>.
- 11.1.13 The cancellation of a condition by the Registrar must be made in writing by the owner of the land concerned, and must be accompanied by SANRAL's written permission and proof that all mortgagees (if any) have been notified of the proposed cancellation<sup>17</sup>.

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<sup>11</sup> Section 48(3)(b)(ii)

<sup>12</sup> Section 48(3)(b)(iii)

<sup>13</sup> Section 48(4)(a)

<sup>14</sup> Section 48(4)(b)

<sup>15</sup> Section 48(4)(c)

<sup>16</sup> Section 48(4)(d) read with section 49(6)(a)

<sup>17</sup> Section 48(4)(d) read with section 49(6)(b)

11.1.14 If a person has not obtained the permission of SANRAL as required above, or has not complied with the terms of any permission that has been granted, SANRAL may give written notice to such person to remove the unauthorised structure, other thing, alteration or addition within a reasonable period which:

11.1.14.1. must be stated in the notice; and

11.1.14.2. may not be shorter than 30 days calculated from the date of the notice<sup>18</sup>.

11.1.15 If SANRAL issues a notice to remove an unauthorised structure, other thing, alteration or addition, and the terms of the notice are not complied with, it may be removed by SANRAL which may recover the costs of removal from that person<sup>19</sup>.

11.1.16 If a National Road is declared<sup>20</sup> and a structure or other thing which was erected, constructed, laid or established prior to such declaration, is on, over or below the surface of the National Road, building restriction area or other land situated within a distance of such National Road which is prohibited in terms of a condition imposed by SANRAL<sup>21</sup>, SANRAL is entitled to remove or shift, to a place determined by it, such structure or other thing<sup>22</sup>.

11.1.17 The provisions referred to above do not apply to:

11.1.17.1. a structure or thing erected or constructed by the Passenger Rail Agency of South Africa on land under its control; or

11.1.17.2. any dwelling on a farm and any other structure on a farm used only for farming purposes in the true sense.

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<sup>18</sup> Section 48(5)

<sup>19</sup> Section 48(6)

<sup>20</sup> In terms of section 40 or previously under the National Roads Act, 54 of 1971

<sup>21</sup> In terms of section 49(3)(a)(iv)

<sup>22</sup> Section 48(7)(a)

11.1.18 If a power line or telephone line, any sewage disposal works or water reticulation, supply or disposal works has been erected, constructed, laid or established subject to a condition imposed under any law requiring any other person to remove or shift such structure or thing, then SANRAL may recover the cost of removal or shifting of such structure or thing from that person<sup>23</sup>.

11.1.19 SANRAL is empowered to charge a levy, fee or rent for any authorisation, approval or permission that may be granted as a result of any application under the Act<sup>24</sup>.

## 11.2 AUTHORITY OF SANRAL

11.2.1 In terms of the Act, the Minister<sup>25</sup> is entitled to declare any existing road, or any route of which the boundaries have been fixed by survey, to be a National Road<sup>26</sup>.

### 11.2.2 The declaration of a National Road may only occur:

11.2.2.1. on the recommendation of SANRAL<sup>27</sup>;

11.2.2.2. with the agreement of the Premier of each province in which the road is situated, in the case of an existing road<sup>28</sup> that is to be declared a National Road; and

11.2.2.3. in consultation with the Premier of each province potentially affected by the road, in the case of a new road that will have a substantial impact on the traffic flows in any one or more provinces<sup>29</sup>.

11.2.3 The consent of the local and district municipalities having jurisdiction over the area through which the route passes is not required.

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<sup>23</sup> Section 48(7)(b)

<sup>24</sup> Section 26(g)

<sup>25</sup> The Minister of Transport in the national sphere of government

<sup>26</sup> Section 40(1)

<sup>27</sup> Section 40(2)

<sup>28</sup> Section 40(2)(a)

<sup>29</sup> Section 40(2)(b)

- 11.2.4 The Spatial Planning and Land Use Management Act<sup>30</sup> (SPLUMA) provides that no other Act may prescribe an alternative or parallel mechanism, measure, institution or system on spatial planning, land use, land use management and land development in a manner inconsistent with SPLUMA<sup>31</sup>.
- 11.2.5 The land use of the National Road is derived from the provisions of the SANRAL Act. The National Road Network is incorporated in the National Development Framework which in turn should be incorporated in Provincial Development Frameworks and finally incorporated into Municipal SDF's.<sup>32</sup>
- 11.2.6 The land use as derived from the SANRAL Act should therefore be incorporated in the various Municipal and Provincial SDF's formalising the land use in their respective schemes. Where this has not happened, it is incumbent on the Municipality or Province to amend their SDFs or schemes accordingly to reflect SANRAL's lawful land use in terms of the SANRAL Act which preceded the adoption of these schemes/SDFs in terms of SPLUMA.
- 11.2.7 The declaration of a National Road has various consequences. These consequences include the provisions of section 48 empowering SANRAL to grant consent for the erection, construction, laying or addition to any structure on, over or below the surface of a National Road or land in a building restriction area.
- 11.2.8 SANRAL is given the power in terms of the Act to allow structures to be erected, constructed, laid or altered on, over or under a National Road or land in a building restriction area.
- 11.2.9 However, SANRAL's permission will not override other legislation such as but not limited to NEMA, 108 of 1998 and SPLUMA.

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<sup>30</sup> Act 16 of 2013

<sup>31</sup> Section 2(2) SPLUMA

<sup>32</sup> Section 12 to 21 SPLUMA

- 11.2.10 Therefore, an applicant granted permission by SANRAL may also have to garner authorisations from other authorities such as a Municipality in terms of their Bylaws published under SPLUMA.<sup>33</sup> A SANRAL statutory authorisation may be one of a number of parallel but separate authorisations required before an applicant can exercise their right to erect or lay a structure over or under a National Road or land in a building restriction area. It is up to the applicant to determine what other authorisations may be required and to procure these.
- 11.2.11 In exercising its authority to grant permission for the erection, construction, laying or alteration of structures on, over or under a National Road, SANRAL must take into account the right to administrative action that is lawful, reasonable and procedurally fair<sup>34</sup>.
- 11.2.12 The Constitution also provides that everyone whose rights have been adversely affected by administrative action has the right to be given written reasons<sup>35</sup>.
- 11.2.13 The Promotion of Administrative Justice Act has been enacted to give effect to these constitutional provisions<sup>36</sup>.
- 11.2.14 This Act may be regarded as a code of administrative practice and procedure since it prescribes the minimum requirements for administrative legality and procedure.
- 11.2.15 It defines administrative action to mean any decision taken, or any failure to take a decision, by an organ of state when exercising a power in terms of the Constitution or a provincial constitution or exercising a public power or performing a public function in terms of any legislation.<sup>37</sup>
- 11.2.16 Since SANRAL is an organ of state, Act 3 of 2000 is applicable to it.

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<sup>33</sup> Maccsand Pty Ltd and others v and City of Cape Town and others

<sup>34</sup> Section 33(1) of the Constitution of the Republic of South Africa, 1996

<sup>35</sup> Section 33(2) of the Constitution of the Republic of South Africa, 1996

<sup>36</sup> Act 3 of 2000

<sup>37</sup> Section 1 of Act 3 of 2000

- 11.2.17 Administrative action which materially and adversely affects the rights or legitimate expectations of any person must be procedurally fair.<sup>38</sup>
- 11.2.18 A fair administrative procedure depends on the circumstances of each case.<sup>39</sup> In order to give effect to the right to procedurally fair administrative action, an administrator (such as a competent official referred to in section 52 of the Act) must give a person:
- 11.2.18.1. adequate notice of the nature and purpose of the proposed administrative action;
  - 11.2.18.2. a reasonable opportunity to make representations;
  - 11.2.18.3. a clear statement of the administrative action;
  - 11.2.18.4. adequate notice of any right of review or internal appeal, where applicable; and
  - 11.2.18.5. adequate notice of the right to request reasons.<sup>40</sup>
- 11.2.19 In determining the period of notice to be given therefore, the particular circumstances of the matter must be taken into account. If further particulars are required from an applicant to enable SANRAL to make a decision, the applicant must be given sufficient time to obtain such information and place it before SANRAL. SANRAL must give an applicant proper details of what SANRAL requires in order for SANRAL to make a decision. The applicant must be entitled to provide SANRAL with whatever information the applicant deems necessary in order for SANRAL to make an informed decision and must be given proper reasons for the decision of SANRAL.
- 11.2.20 In order to give effect to the right to procedurally fair administrative action, the competent official may, in his or her or its discretion, also give a person an opportunity to:

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<sup>38</sup> Section 3(1) of Act 3 of 2000

<sup>39</sup> Section 3(2) of Act 3 of 2000

<sup>40</sup> Section 3(2) of Act 3 of 2000

11.2.20.1. obtain assistance and, in serious or complex cases, legal representation;

11.2.20.2. present and dispute information and arguments; and

11.2.20.3. appear in person.<sup>41</sup>

11.2.21 If it is reasonable and justifiable in the circumstances, a competent official may depart from any of the requirements referred to above. In determining whether a departure is reasonable and justifiable, a competent official must take into account all relevant factors, including:

11.2.21.1. the objects of the empowering provision;

11.2.21.2. the nature and purpose of, and the need to take, the administrative action;

11.2.21.3. the likely effect of the administrative action;

11.2.21.4. the urgency of taking the administrative action or the urgency of the matter; and

11.2.21.5. the need to promote an efficient administration and good governance.<sup>42</sup>

11.2.22 It must be noted that whilst the powers of SANRAL to grant permission for the erection, construction, laying or alteration of structures on, over or under a National Road also extend to land in a building restriction area, a building restriction area excludes certain land in an urban area<sup>43</sup>.

11.2.23 The powers of SANRAL also do not apply to structures or services erected by the South African Rail Commuter Corporation on its own land, or dwellings or other structures on a farm used only for farming purposes.

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<sup>41</sup> Section 3(3) of Act 3 of 2000

<sup>42</sup> Section 3(4) of Act 3 of 2000

<sup>43</sup> The definition of "building restriction area" read with the definition of "urban area" in section 1 of the Act. An urban area excludes land within a township which is commonage land or is used mainly for farming or horticulture or the keeping of animals or which consists of any other open space which has not been developed or reserved for public purposes.



- 11.2.24 As noted above, in approving an application for development within a National Road or land within a building restriction area, SANRAL is entitled to impose conditions on certain specified issues, namely:
- 11.2.24.1. the specifications to which the structure, other thing, alteration or addition must comply<sup>44</sup>;
  - 11.2.24.2. the manner and circumstances in which, the place where and the conditions on which the structure, other thing, alteration or addition may be erected, constructed, laid, established or made<sup>45</sup>; and
  - 11.2.24.3. the obligations to be fulfilled by the owner of the land in question if the structure, other thing, alteration or addition is erected, constructed, laid, established or made<sup>46</sup>.
  - 11.2.24.4. Under the National Roads Act<sup>47</sup> which has, apart from section 2(1)(a), been repealed by the Act, the Department of Transport was entitled to impose building lines. This power has not been carried forward in the Act in favour of SANRAL.
- 11.2.25 SANRAL is however entitled to approve or reject applications for the erection, construction, laying or establishment of structures or any other thing on land within a building restriction area (or a National Road). In approving such an application therefore, SANRAL is entitled to impose conditions, including a building line, provided that the building line does not extend beyond the boundary of the building restriction area<sup>48</sup> (or the National Road, as the case may be).
- 11.2.26 Where possible therefore, a 10m (ten metre) building line will be applicable in urban areas for residential developments.

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<sup>44</sup> Section 48(3)(b)(i)

<sup>45</sup> Section 48(3)(b)(ii)

<sup>46</sup> Section 48(3)(b)(iii)

<sup>47</sup> Act 54 of 1971

<sup>48</sup> It must be noted that a building restriction area does not apply in an urban area save for land within a township which is commonage land or is used mainly for farming or horticulture or the keeping of animals or which consists of any other open space which has not been developed or reserved for public purposes.

- 11.2.27 SANRAL may allow the erection of a structure within the 10m building line but in that event, a clause (“a removal clause”) must be registered against the title deed of the relevant property entitling SANRAL to require the removal of such structure, should this be necessary at any time in the future.
- 11.2.28 The building line imposed on approval of an application for township development cannot be relaxed, but consent may be given to construct a non-permanent structure (such as a swimming pool, aviary, wendy house, concrete garage, carport, etc.), provided a removal clause is registered against the title deed of the relevant property.
- 11.2.29 Where possible, a 20m (twenty metre) building line will be applicable to industrial and light industrial developments. Such developments will generally include manufacturing concerns as opposed to commercial or retail developments.
- 11.2.30 Where possible, a 30m (thirty metre) building line will be applicable to service stations in rural areas<sup>49</sup>.
- 11.2.31 In determining such a building line, SANRAL must comply with the provisions of Act 3 of 2000, and must be able to justify the imposition of a building line on the grounds of safety or some such similar reason.
- 11.2.32 SANRAL is not entitled to impose a building line simply because it wishes to retain undeveloped land for some future, unspecified expansion of the National Road.
- 11.2.33 It is noted that building lines are generally imposed in order to reserve the area for future services as SANRAL does not allow parallel services inside the road reserve.

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<sup>49</sup> Such development must comply with SANRAL spacing requirements for service stations and reference must be made to the Geometric Design Manual

### 11.3 GUIDELINES AND PROCEDURES

#### 11.3.1 Building works

11.3.1.1. The provisions of the “Procedures for Road Planning and Geometric Design”<sup>50</sup> apply to construction of farm water supply pipes, power lines and telecommunication lines and these must be adhered to in considering any application under section 48.

11.3.1.2. SANRAL will not accept responsibility for any expenditure incurred in connection with the erection of any structure or other thing.

11.3.1.3. The applicant must indemnify SANRAL against and hold it harmless for any claim or damages that the applicant or its successor-in-title may suffer should the National Road be widened in the future.

11.3.1.4. The applicant must also bear responsibility for any damage caused to the National Road or a user thereof by the erection, use or removal of the structure erected by the applicant.

11.3.1.5. In the event that the application for building works is approved, SANRAL may conclude an agreement with the applicant in addition to the permission granted.

11.3.1.6. The RM must be provided with a copy of any conditions of approval to ensure that these are adhered to.

#### 11.3.2 Township development

11.3.2.1. The Chapter, dealing with section 49 of the Act, must be referred to in determining SANRAL’s rights and obligations with respect to applications for township development alongside a National Road.

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<sup>50</sup> Published by SANRAL in January 2003

- 11.3.2.2. If the land on which development is proposed falls within a building restriction area, then the developer must obtain the consent of SANRAL with respect to any portion of the proposed development which will fall within such building restriction area<sup>51</sup>.
- 11.3.2.3. Large areas of land adjacent to existing urban areas or in areas identified for tourism are currently being developed and SANRAL must determine in every case whether the development lies within the building restriction area or within an area that could have negative impacts on a National Road.
- 11.3.2.4. A developer is obliged to obtain development approval<sup>52</sup> and environmental authorisation for his or her proposed development.
- 11.3.2.5. In both cases, the applications will include public processes and SANRAL will be given an opportunity to advise on its requirements. For example, if a large residential development is proposed by a developer and the residents of such development are to gain access to the development via an existing off-ramp from a National Road, it may be necessary for the developer to upgrade the off-ramp. The developer may be responsible for the full costs of the upgrade or at least a portion thereof, depending on the circumstances.
- 11.3.2.6. Likewise, for reasons of public safety, it may be necessary for a developer to fence a development that is near or adjoins a National Road. SANRAL can argue that the developer of a private development should erect such fencing at its cost, prior to the developer allowing occupation of the development to any purchasers of sites therein. It may not be possible to recover the costs of fencing if a low income, government subsidised, and housing project is to be developed.
- 11.3.2.7. SANRAL must therefore ensure that it considers all applications for development approval when such applications are circulated to SANRAL by developers for comment and conditions. SANRAL must ensure they are cognisant of the final decision taken to ensure their conditions/comments are contained therein. If

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<sup>51</sup> Section 48

<sup>52</sup> SPLUMA and The Municipal Planning By-Laws .

SANRAL's comments and/or conditions are disregarded in the final decision, SANRAL may appeal the decision in terms of the Municipality's Planning By-Laws upon which the application was submitted. It is imperative that SANRAL act timeously where they wish to appeal a decision because the right to appeal lapses after a period of 21 days.<sup>53</sup>

11.3.2.8. Where a development application is received which may materially and substantially impact on the National Road Network, such application should be brought to the attention of the Minister of Transport where the Minister can join the application as a party.<sup>54</sup>

11.3.2.9. If SANRAL is prepared to allow development within the building restriction area, it must submit its proposed conditions of approval to the approving authority so that these can be included in the conditions of that authority, should the application for development approval be approved.

11.3.2.10. The RRM must be provided with a copy of any conditions of approval to ensure that these are adhered to.

### 11.3.3 **Agreements for permission for utilities / services**

11.3.3.1. The provisions of the "Guidelines for the Installation of Underground and Overhead Utilities within National Road Reserves"<sup>55</sup> which detail the application procedure, installation procedure and technical requirements and give guidelines on the reinstatement of the National Road after the completion of the works. This will include an obligation to submit a full set of as-built plans to SANRAL.

### 11.3.4 **National Infrastructure, Telecommunication and other Authorities.**

11.3.4.1. 'Authorities' referred to above include both public and private authorities;

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<sup>53</sup> Section 51 SPLUMA

<sup>54</sup> Section 52 SPLUMA

<sup>55</sup> Published by SANRAL on 6 November 2001

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- 11.3.4.2. SANRAL may and have concluded 'enabling' memoranda of agreements with such Authorities;
- 11.3.4.3. Accordingly the SCO must have regard to such memoranda of agreements in order to ensure that a permission granted in terms of Section 48 is not contradictory to such memoranda of agreements; and
- 11.3.4.4. The RRM must be provided with a copy of the permission granted by SANRAL such that RRM is able to assist SANRAL to monitor and ensure that all conditions of the permission granted are adhered to.

## CHAPTER 12: SUB-DIVISION OF LAND – SECTION 49

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## 12.1 OVERVIEW

- 12.1.1 Section 49 of the Act provides that if land or any part of land is situated in the building restriction area, a Surveyor-General may not approve the diagram or general plan of any division of that land or part (whether for the establishment or extension of a township or for any other purpose) unless SANRAL in writing has given its approval for the division<sup>1</sup>.
- 12.1.2 This provision does not apply to land or any part of land under the control of the South African Rail Commuter Corporation Limited.
- 12.1.3 SANRAL is only entitled to refuse to give its approval if it is satisfied that the division for which the approval is asked may frustrate any of the objects of this Act<sup>2</sup>.
- 12.1.4 Whilst Section 49 of the Act uses the terminology “division of certain land”, it is common that such division is referred to as the “Sub-Division of Land” and where such sub-division may be represented by a diagram and/or a general plan as contemplated by the Land Survey Act, Act 8 of 1997. Accordingly the term “Sub-Division of Land” will be used in this chapter. The establishment extension of a township will give rise to the sub-division of land.

## 12.2 AUTHORITY OF AND/OR RESTRICTIONS PLACED ON SANRAL BY SECTION 49 OF THE ACT

- 12.2.1 SANRAL’s approval for the subdivision of land is only required if such land or any part thereof is situated in a building restriction area<sup>3</sup>. A “building restriction area” means the area consisting of land (but excluding land in an urban area) –
- 12.2.1.1. situated alongside a National Road within a distance of 60 metres from the boundary of the National Road;

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<sup>1</sup> Section 49(1)

<sup>2</sup> Section 49(2)

<sup>3</sup> Section 49(1)



12.2.1.2. situated within a distance of 500 metres from any point of intersection<sup>4</sup>.

**12.2.2 An urban area means any area consisting of –**

- 12.2.2.1. a township which has been established or recognised as a township under any law, but excluding land in that area which is commonage land, or which is used or destined to be used mainly for farming or horticulture or the keeping of animals, or which consists of any other open space which has not been developed or reserved for public purposes<sup>5</sup>;
- 12.2.2.2. SANRAL is also empowered to recognise an area as a township and to give notice in the Gazette that it is declared an urban area for that purposes of the Act<sup>6</sup>; and
- 12.2.2.3. a township is defined as meaning an area divided into erven or plots, whether with or without public open spaces, and into streets bounded by the erven, plots of open spaces and which has been established or recognised as a township under any law, or which has been recognised by SANRAL as such in terms of the Act<sup>7</sup>.
- 12.2.2.4. Notwithstanding the restriction placed on SANRAL in terms of the Section 49 of the Act, the enactment of SPLUMA requires that for any sub-division and/or consolidation of land, the land owner shall have the requisite consent in terms of SPLUMA. This implies that the land owner and/or his or her agent must make applications to the relevant Municipality in which the land to be subdivided and/or consolidated is situated in. Where such land is adjoining a National Road, SANRAL will be an adjoining land owner and as roads authority and will have to be entitled to make representation to a Municipality in order to protect the National Road Network and to demand the imposition of specific conditions that deal specifically with the input that the subdivision of land and/or consolidation of land will have on the National Road. This is especially relevant where the intention is to establish a township with different land uses etc.

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<sup>4</sup> Section 1

<sup>5</sup> Section 1

<sup>6</sup> Sub-paragraph (b) of the Definition of "urban area" in section 1

<sup>7</sup> Section 1

- 12.2.2.5. It is therefore to be noted that the conditions that SANRAL imposes when approving an application made in terms of Section 49 and of the Act, the very same conditions may be imposed where the building restriction does not apply and SANRAL is making representation to the Municipality as contemplated above. In this case and should the Municipality not include SANRAL's conditions in their final approval/consent, then SANRAL may appeal the decision of the Municipality. SANRAL will therefore require to actively monitor such circumstances to ensure that SANRAL timeously serves such appeal upon the Municipality.
- 12.2.2.6. Accordingly it is important to note the annexures dealing with standard letters of approval must be utilized with the necessary changes where SANRAL makes representation to a Municipality pursuant to an application being made to a Municipality in terms of SPLUMA.
- 12.2.2.7. Further, other sections of the SANRAL Act, namely Section 44, 46, 47, 48, 50, 51, 52, may have an impact on an application made in terms of Section 49. Accordingly conditions of approval arising from these sections may require to be included in an approval by SANRAL in terms of Section 49.

For sake of not overly duplicating such conditions, the conditions that have been contained in the annexures to this chapter attempt to provide for the other sections. The SCO must however refer to those sections to ensure that there have been no omissions. Such conditions can then be included on "Special Condition" in the approval granted in terms of Section 49.

**12.2.3 If SANRAL gives approval for the subdivision of land, it may do so subject to conditions:**

- 12.2.3.1. prohibiting the division or further division of the land or of a specified part of it;
- 12.2.3.2. limiting the use to which the land or any specified part of it may be put;
- 12.2.3.3. limiting the number or extent of buildings or other structures which may be erected on the land or on any specified part of it; and

- 12.2.3.4. prohibiting the erection, construction or establishment of any structure or other thing on or over, or below the surface of, a specified part of it, within a specified distance from the road in question<sup>8</sup>.
- 12.2.4 In giving its approval, SANRAL may also stipulate that if the land or a specified part of it is consolidated with other land, the title to the consolidated land will be subject to a condition imposed by SANRAL under the Act<sup>9</sup>.
- 12.2.5 When considering an application for approval under section 49, the SCO should not consider that application in isolation and should bear in mind the potential impact of other sections of the Act. For example, a proposed development may require an improved access to or egress from a National Road, because of the anticipated volume of traffic that will be generated by the development.
- 12.2.6 In that case, approval will also have to be obtained by the developer in terms of section 44 of the Act and SANRAL may impose any conditions it considers desirable with regard to such access or egress<sup>10</sup>.
- 12.2.7 SANRAL will always be entitled to grant approval for non-compliance with a condition it has stipulated<sup>11</sup>.
- 12.2.8 If SANRAL has granted approval for the sub-division of land and imposed conditions for such approval, the person giving transfer of the land to which such conditions apply must insert each condition in the Deed of Transfer<sup>12</sup>.
- 12.2.9 The Registrar of Deeds must endorse the Title Deed of the land retained by the person giving transfer to show each of the conditions that apply to the land so retained<sup>13</sup>.

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<sup>8</sup> Section 49(3)(a)

<sup>9</sup> Section 49(3)(b)

<sup>10</sup> Section 44(3)

<sup>11</sup> Section 49(4)

<sup>12</sup> Section 49(5)(a)(i)

<sup>13</sup> Section 49(5)(a)(ii)

- 12.2.10 If a Certificate of Consolidated Title is issued in respect of consolidated land, this must contain every condition to which the title to that land is made subject in terms of a stipulation made under section 49<sup>14</sup>.
- 12.2.11 SANRAL may grant approval, in writing, for the cancellation of any condition by the Registrar of Deeds, which has been inserted in a Deed of Transfer or a Certificate of Consolidated Title or has been endorsed on a Title Deed<sup>15</sup>.
- 12.2.12 The cancellation of any title deed conditions may be done on the written application of the owner of the land in question and the owner must provide proof that all mortgagees (if any) have been notified of the proposed cancellation<sup>16</sup>.

### 12.3 APPLICATION PROCEDURES

- 12.3.1 The relevant prescribed Application Form, which Form can be obtained from all Regional Offices of SANRAL, must be used for the submission of all Applications for the sub-division of land.
- 12.3.2 Properly completed Application Forms that must be accompanied by all the required documents and relevant annexures, motivation reports, plans, diagrams and relevant documents, must be submitted to SANRAL's relevant Regional Manager, inclusive of prescribed fees.
- 12.3.3 **All applications must be accompanied by:**
- 12.3.3.1. a Power of Attorney in favour of the Applicant if the Applicant is not the registered landowner;
  - 12.3.3.2. copies of all relevant title deeds;
  - 12.3.3.3. a motivation report; and

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<sup>14</sup> Section 49(5)(a)(iii)

<sup>15</sup> Section 49(6)(a)

<sup>16</sup> Section 49(6)(b)

- 12.3.3.4. full details regarding the 1:100 year expected storm-water discharge from the finally developed township, as well as the capacity of the drainage structures of the National Road which may be affected by the said storm-water discharge (only relevant in respect of a proposed township development);
- 12.3.3.5. a locality plan and one copy of the layout plan on an acceptable scale of (1:1000 or 1:2000). both in electronic and hardcopy. The following information must be indicated on the plans:-
- a. the National Road reserve boundaries;
  - b. grid lines with WGS values;
  - c. a north point and plan number;
  - d. a reference or schedule indicating the usage of the various erven/sub-divisions/remainder;
  - e. the proposed and/or existing access to the township/sub-division/remainder;
  - f. the name of the township and the description of the land upon which it is to be established (where applicable);
  - g. proposed consolidations of the relevant sub-division(s) or the remainder of the property with any other land; and
  - h. the kilometre distance of the access from the National Road, which information can be found on the blue kilometre marker boards spaced every 200m along the National Road. (if applicable).

## 12.4 **GUIDELINES AND REQUIREMENTS**

- 12.4.1 Sub-Division of land for the establishment of new townships, the extension of existing townships or sub-division within existing townships.

The following requirements and/or stipulations of SANRAL in respect of the establishment of new townships and the extension of or sub-division within an existing township, must be adhered to at all times:

**12.4.1.1. Land Use:**

- a. Developments which may generate an abnormal flow of traffic or pedestrians on a National Road, or which may be hazardous to the users of a National Road (such as schools, hospitals, churches, business centres on erven adjacent or close to National Roads), must be properly motivated.

**12.4.1.2. Access & Egress:**

- a. Where township development takes place adjacent to a single carriage way National Road which is not planned as a freeway and which already have direct accesses and egresses, further direct accesses or egresses will only be allowed with specific approval thereof<sup>17</sup> by SANRAL.
- b. In the case of a dual carriage way National Road, access via a new interchange can be provided at the Developer's cost provided it can meet the minimum spacing and other requirements stipulated in the Geometric Guideline.<sup>18</sup>

**12.4.1.3. Internal and Collector Roads:**

- a. No roads or streets shall abut on a National Road.
- b. When it appears that a development adjacent to a National Road would be of such an extent that the National Road would function as a street within the township, SANRAL may demand that the developer construct a collector road adjacent to the National Road at its own cost.

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<sup>17</sup> See Chapter 9

<sup>18</sup> The Geometric Design Guideline Manual is on SANRAL's Website ([www.SANRAL.co.za](http://www.SANRAL.co.za)) or obtainable from all Offices of SANRAL.

- c. In such a case the on- and off-ramps between two interchanges, would be connected with the collector road. The collector road would under such circumstances be a one-way street and the building lines applicable on the erven directly adjacent thereto, would be the building line required by the municipality or 5 metres, whichever is the greater.

#### **12.4.1.4. National Road Reserves:**

- a. The declared National Road reserve shall not form part of the township. If the road reserve is not declared on co-ordinates, it is the applicant's responsibility to determine the exact position, by co-ordinates of the road reserve boundary in conjunction with SANRAL's Regional Manager prior to the submission of an application.
- b. It should be noted that an existing road reserve boundary fence does not necessarily represent the actual or declared National Road reserve boundary.

#### **12.4.1.5. Building Lines:**

- a. All building lines that are imposed, must be reasonable and defensible;
- b. SCOs must therefore guard against the imposing of building lines merely to prohibit development of land that may possibly be required in the short or long term for road building purposes as this may be interpreted as an "unreasonable sterilisation of land";

This may result in a landowner demanding the early acquisition of the land that will be sterilised. This may however be preferable as the compensation for the affected land will then be based on the value of land that is not affected by an approved township development;

- c. Although SANRAL reserves the right to impose any building line it considers necessary to protect current or future interests or requirements, current policy

stipulates that under normal circumstances, the following building lines measured from the proclaimed road reserve boundary, will be imposed:

- i. single Residential erven will be subject to a ten (10) metre building line;
- ii. all other erven (such as commercial or industrial) will be subject to a twenty (20) metre building line;
- iii. service stations will have a 30m building line;
- iv. agricultural land will have a 60m building line; and
- v. However, under certain circumstances, the aforementioned building lines can be reduced after due cognisance has been taken of all relevant aspects such as noise levels and road safety, etc. All approvals granted must however be in line with the relevant SANRAL Delegations of Authority.

**12.4.1.6. Stormwater infrastructure:**

- a. Concerning drainage, section 47(2) of the Act specifies that the township developer shall receive and dispose of the storm-water discharged or diverted from the National Road, and SANRAL will not be liable for any damage caused in the township by storm-water.
- b. In spite of the aforementioned, but especially in cases where a proposed township will drain towards the National Road, the developer shall, simultaneously with the submission of the scheme to the relevant Municipality, submit a drainage plan to SANRAL for approval. This must show that the effect of downstream drainage and not be constrained to the township alone; and
- c. However, all applications must be accompanied by full details in respect of:



- i. the 1:100 year expected storm-water flow that will be discharged or diverted from the finally developed township;
  - ii. the 1:100 year expected storm-water flow to be received from the National Road;
  - iii. the capacity of the drainage structures of the National Road which may be affected by the storm-water discharged or diverted from the township; and
  - iv. details of the proposed drainage structures and/or a storm-water management plan in respect of the township.
- d. Should SANRAL be of the opinion that the drainage structures or storm-water management referred to above are not sufficient to accommodate the expected storm-water flow and that the relevant application is therefore frustrating the objections of the Act, SANRAL should rather refuse to give approval until such time they can be satisfied that the sub-division will no longer frustrate the objectives of the Act. This must be achieved by insisting that the developer submit satisfactory proof that the relevant Municipality or Provincial Administration will ensure compliance with SANRAL's requirements by:
- i. including the costs for the upgrading or installation of additional drainage structures into the bulk services levies and guarantees and thereby accepting full responsibility for the relevant implementation; or
  - ii. the inclusion of the appropriately worded conditions into the township's Conditions of Establishment; and
  - iii. However, it must be ensured at all times that all costs in respect of the installation of additional infrastructure or the taking of such steps as may be required by SANRAL, should be for the account of the developer. This must include traffic management mechanisms.

**12.4.1.7. Frustrations of the objectives of the Act:**

- a. In circumstances where SANRAL is of the opinion that the only way to ensure that the objectives of the Act will not be frustrated by the approval of the relevant application (such as pedestrians gaining access to the road reserve or potential claims emanating from increased road noise levels), is to erect a specific type of boundary fence or wall or noise berm adjacent to the road reserve boundary, or provide pedestrian bridges over or subways under the National Road, SANRAL should again refuse to give approval until such time they can be satisfied that the sub-division will no longer frustrate the objectives of the Act.
- b. This must also be achieved by insisting that the developer submit a Pedestrian and/or Noise Management Plan and satisfactory proof that the relevant Municipality or Provincial Administration will ensure compliance with SANRAL's requirements in the manner described above.
- c. However, it must again be ensured that all costs in respect of the erection of the aforementioned pedestrian bridges/subways and/or boundary fences or walls, or noise berms, or the taking of such steps as may be required by SANRAL, should be for the account of the developer. This must include traffic management mechanisms.

**12.4.1.8. Extension of existing townships:**

Under normal circumstances an application in respect of the extension of an existing township or the sub-division of an erf within an existing township, which erf is considered to be within the Building Restriction Area, is always approved subject to the same building lines and other conditions where-under the initial township was approved.

- 12.4.2** Sub-division of land for any purpose other than the establishment of new townships and the extension of, or sub-division within an existing township

12.4.2.1. Where the sub-division of land is required for any purpose other than the establishment of new townships and the extension of or sub-division within an existing township, cognisance must be taken of the following requirements

#### **12.4.3 Future Land Use:**

12.4.3.1. In this regard, applications vary in that the future land use of the proposed sub-division(s) and/or the remainder of the property will both/all still be used solely for bona fide farming/agricultural purposes, or will be used for different purposes (i.e. some for bona fide farming/ agricultural purposes and some for any other as yet undefined purpose).

12.4.3.2. The Standard Conditions to be imposed in respect of each of the aforementioned types of applications differ.

12.4.3.3. SCOs and Applicants must therefore be aware of the fact that SANRAL does not consider activities such as collection and/or distribution points for farm produce, or the establishment of a guest house, as bona fide farming/agricultural activities. The utilisation of land for such purposes may generate an abnormal flow of traffic that may be hazardous to road users on the National Road. If an SCO suspects that a sub-division is required for this purpose, all aspects relating to safe access and egress to the sub-division<sup>19</sup> must be resolved in liaison with an engineer prior to the considering of the application for the sub-division, or the determining of the applicable Conditions that should be imposed.

#### **12.4.4 Access and Egress:**

12.4.4.1. Direct access to a National Road is normally only allowed in cases where the sub-division is adjacent to a single carriage way National Road which is not planned as a freeway and which already have direct accesses and egresses. However, further direct accesses or egresses will only be allowed with specific approval thereof by SANRAL.

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<sup>19</sup> See Chapter 9

12.4.4.2. Direct access to a sub-division adjacent to a limited access National Road (such as a freeway) is only allowed for the development of facilities such as service and rest areas. In this regard, also refer to the relevant Chapter of the Geometric Design Guideline Manual<sup>20</sup>.

#### **12.4.5 National Road Reserves:**

12.4.5.1. Where a National Road reserve boundary is not proclaimed on coordinates, but is to be used as a cadastral boundary of a proposed sub-division, it is the applicant's responsibility to determine the exact position of the road reserve boundary in conjunction with SANRAL's Regional Manager prior to the submission of an application. (Kindly note that an existing road reserve boundary fence does not necessarily represent the actual or declared National Road reserve boundary) suggest deletion.

#### **12.4.6 Building Lines:**

12.4.6.1. As was mentioned above, any building line that is imposed, must be reasonable and defensible. Although SANRAL reserves the right to impose any building line it considers necessary to protect current or future interests or requirements, current policy stipulates that a 20 (twenty) meter building line that must be measured from the proclaimed road reserve boundary, that has been determined in conjunction with SANRAL's Regional Manager, will be imposed under normal circumstances.

### **12.5 APPROVAL PROCESS**

12.5.1 Following the receipt of an application for the sub-division of land, the responsible Officer must firstly determine whether the land to be sub-divided is situated within or outside the Building Restriction Area where after the following processes and/or procedures must be followed.

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<sup>20</sup> The Geometric Design Guideline Manual is on SANRAL's website ([www.SANRAL.co.za](http://www.SANRAL.co.za)) or obtainable from all Offices of SANRAL.

- 12.5.2 If the land to be sub-divided is situated outside the Building Restriction Area and SANRAL therefore has no jurisdiction:
- 12.5.2.1. The Applicant must be informed that SANRAL has no jurisdiction and therefore has no further comments to offer.
- 12.5.2.2. Notwithstanding the restriction placed on SANRAL in terms of the Section 49 of the Act, the enactment of SPLUMA requires that for any sub-division and/or consolidation of land, the land owner shall have the requisite consent in terms of SPLUMA. This implies that the land owner and/or his or her agent must make applications to the relevant Municipality in which the land to subdivided and/or consolidated is situated. Where this land adjoins a National Road, SANRAL is the roads authority and will have legislative authority to make representation to a Municipality in order to protect the National Road Network and to demand the imposition of specific conditions that deal specifically with the effect that the subdivision of land and/or consolidation of land will have on the National Road. This is especially relevant where the intention is to establish a township with different land uses etc.
- 12.5.2.3. It is therefore to be noted that the conditions that SANRAL imposes when approving an application made in terms of Section 49 of the Act, the very same conditions may be imposed where the building restriction does not apply and SANRAL is making representation to the Municipality as contemplated above. In this case and should the Municipality not include SANRAL's conditions in their final approval/consent, then SANRAL may appeal the decision of the Municipality. SANRAL must therefore actively monitor circumstances to ensure that it appeals in good time.
- 12.5.2.4. Accordingly it is important to note that the annexures dealing with standard letters of approval must be utilized with the necessary changes where SANRAL makes representation to a Municipality pursuant to an application being made to a Municipality in terms of SPLUMA.

- 12.5.2.5. Further, other sections of the SANRAL Act, namely Section 44, 46, 47, 48, 50, 51, 52, may be relevant to an application made in terms of Section 49. Accordingly conditions of approval arising from these sections may need to be included in an approval granted by SANRAL in terms of Section 49.
- 12.5.2.6. SANRAL must establish whether the proposed sub-division will have a detrimental effect on the National Road network, such as an abnormal increase in traffic or storm-water flow that will have to be accommodated by the National Road infrastructure;
- 12.5.2.7. In such cases and in addition to the above, SANRAL must engage with the relevant Municipality or to protect its interests by the inclusion of appropriately worded conditions regarding the responsibility for costs that may have to be incurred for the upgrading or installation of such additional infrastructure, into their approval of the application.
- 12.5.3 If the land to be sub-divided is situated inside the Building Restriction Area and SANRAL therefore has jurisdiction:
- 12.5.3.1. it must be determined whether the application was accompanied by all the required documents and relevant annexures, motivation reports, plans, diagrams and other documents;
- 12.5.3.2. it must be determined whether all the required information has been indicated on the plans that were submitted with the application;
- 12.5.3.3. it must be ascertained whether the application is in respect of a sub-division required for the establishment of a new township, the extension of an existing township or a sub-division within an existing township, or a sub-division required for any other purpose;
- 12.5.3.4. the Application must be evaluated against the back-drop of the relevant existing Policy and accompanying motivation reports, plans, diagrams and other documents;

- 12.5.3.5. the submitted title deeds must be scrutinised in order to ascertain/identify whether any existing conditions of title require amendment or cancellation if the application is approved;
- 12.5.3.6. if required, further information and/or inputs must be obtained from the Applicant; and
- 12.5.3.7. the application must be referred to:
- a. the Regional Manager/relevant Engineer to obtain inputs relating to engineering matters and future road requirements;
  - b. the Routine Road Maintenance Service Provider for on-site inspection and comments;
  - c. the relevant concessionaire (if applicable);
  - d. the appointed PPSP to ascertain whether any SANRAL owned land is directly or indirectly affected by the proposed sub-division; and
  - e. the appointed PPSP to ensure that the relevant boundary of the proposed sub-division coincides with the road reserve (if declared by co-ordinates) or to establish the exact position of the road reserve (if not declared by co-ordinates).
- 12.5.3.8. Once the SCO is satisfied that all required information and inputs in order to take an informed decision with regard to the application is at hand, a recommendation in this regard must be submitted to the relevant Official authorised in accordance with the relevant Delegations of Authority.
- 12.5.3.9. On receipt of the approval/rejection by the aforementioned authorised official, the SCO must forward the appropriate letter of approval/rejection to the applicant.
- 12.5.3.10. The letter of approval/rejection must be accompanied by the appropriate annexures, plans, diagrams and other documents. If any existing conditions of title require amendment or cancellation, an appropriate letter addressed to the relevant Registrar

of Deeds, must also be provided to the applicant for submission to the relevant Registrar of Deeds.

**12.6 STANDARD CONDITIONS**

12.6.1 New townships, extension of existing townships or sub-division within existing townships

12.6.2 With the exception of existing structures, no structure or other thing, including anything that is attached to the land on which it stands even though it does not form part of that land, shall be erected, constructed, laid or established, within a distance of \*\*\* metres measured from the road reserve boundary of the National Road, without the written approval of SANRAL.

12.6.2.1. The land use for specified erf/erven shall be limited as follows:

- a. Residential: Erven .....
- b. (Business: Erven .....
- c. Industrial: Erven .....
- d. Commercial: Erven .....
- e. Special: Erven .....
- f. Institutional: Erven .....
- g. Educational: Erven .....
- h. Amusement and Leisure: Erven .....
- i. Municipal: Erven .....
- j. Public Garage: Erven .....



k. Public/Private open space: Erven .....

l. Cemetery: Erven .....

12.6.2.2. The applicant shall ..... (*Insert any appropriately worded further condition with regard to the matters such as limiting the number or extent of buildings or other structures which may be erected on any specified part of the land.*)

12.6.2.3. In the event of any of the approved sub-divisions being consolidated with other land, the title to the consolidated land shall be made subject to the above-mentioned condition.

12.6.2.4. The applicant shall, at his own cost and in accordance with the provisions of section 49(5)(a) and (b) of the Act, insert the foregoing conditions in all relevant Deeds of Transfer. The applicant shall, within ..... months from the date of this approval, furnish SANRAL with written proof that the aforementioned conditions have been inserted in the title deeds of the erven to which the above Conditions apply, including the Remainder of the parent property if applicable.

12.6.2.5. No direct access to or egress from the National Road will be permitted. Access to and egress from the National Road will only be obtained at the position as indicated on the attached Plan No ..... Detailed plans of the said access road must be submitted to SANRAL for approval prior to the construction thereof.

12.6.2.6. In accordance with the provisions of section 47(2) of the Act, all storm-water discharged or diverted from the National Road, shall be received and disposed of and SANRAL will not be held liable for any damage or diminishment in value of the property arising out of any impact the development hereby approved may have on existing storm-water discharged or diverted onto the development. In this regard, SANRAL hereby also reserves its right to impose further conditions that it may deem necessary.

- 12.6.2.7. The applicant shall, at his own cost and in accordance with SANRAL's stipulations, upgrade the existing storm-water structures and/or install additional storm-water structures. Detail plans of the proposed upgraded and/or additional structures must be submitted to SANRAL for approval prior to the upgrading and/or installation thereof.
- 12.6.2.8. The applicant shall, at his own cost and in accordance with SANRAL's stipulations, establish a noise berm/erect a permanent 2 metre high brick wall/security fence/palisade fence (*delete or add as applicable*) on the development's side directly adjacent to the common boundary of the relevant sub-divisions and the National Road reserve. Detailed plans of the proposed noise berm/wall/security fence/palisade fence (*delete or add as applicable*) must be submitted to SANRAL for approval prior to the establishment or erection thereof.
- 12.6.2.9. SANRAL will not be held liable should it be found at any future time that noise emanating from the road, presents a problem in the development adjacent to the road.
- 12.6.2.10. The applicant shall, at his own cost and in accordance with SANRAL's stipulations, erect, construct and/or establish a pedestrian bridge over or subway under the National Road. Detail plans of the proposed structures must be submitted to SANRAL for approval prior to the erection, construction and/or establishment thereof.
- 12.6.2.11. The applicant shall ..... (*Insert any other conditions deemed appropriate.*)
- 12.6.2.12. All the aforementioned conditions must be taken up in the relevant Township's Conditions of Establishment.
- 12.6.3 Agricultural land where the future land use of both the sub-division and the remaining extent of the property will remain agricultural
- 12.6.3.1. With the exception of existing structures, no structure or anything whatsoever shall be erected, constructed or established within a distance of 20/60 metres measured from the National Road reserve boundary, without the written approval of SANRAL.

- 12.6.3.2. Unless SANRAL granted written approval to the contrary, the land shall be used for *bona fide* farming operations only.
- 12.6.3.3. The applicant shall ..... (*Insert any further condition with regard to the matters such as limiting the number or extent of buildings or other structures which may be erected on any specified part of the land.*)
- 12.6.3.4. In the event of any of this land being consolidated with any other land, the title to the consolidated land shall be subject to the above mentioned conditions.
- 12.6.3.5. The applicant shall, at his own cost and in accordance with the provisions of section 49(5)(a) and (b) of the Act, insert the foregoing condition in all relevant Title Deeds. The applicant shall, within ..... months from the date of this approval, furnish to SANRAL with written proof that the aforementioned insertions have been done on the Title Deeds of the following properties:
- 12.6.3.6. No direct access to or egress from the National Road will be permitted. / With the exception of existing legal accesses, no further access to and egress from the National Road will be allowed./In addition to the existing legal accesses, an additional access to and egress from the National Road will only be allowed at the position as indicated on the attached Plan No ..... which has been duly stamped. (*Delete whichever is not applicable*). Details of the proposed access road must be submitted to SANRAL for approval prior to the provision thereof.
- 12.6.4 Agricultural land where the future land use of the sub-division will remain agricultural, whilst the land use of the remainder of the property will change (or *vice versa*).
- 12.6.4.1. In respect of ..... (List the sub-divisions of which the land use will remain Agriculture, including the Remainder of the parent property if applicable.)
- a. With the exception of existing structures, no structure or anything whatsoever, including anything that is attached to the land on which it stands even though it does not form part of that land, shall be erected, constructed or established

within a distance of 20/60 metres measured from the National Road reserve boundary, without the written approval of SANRAL.

- b. Unless SANRAL granted written approval to the contrary, the land shall be used for bona fide farming operations only.
- c. The applicant shall ..... (*Insert any further condition with regard to matters such as limiting the number or extent of buildings or other structures which may be erected on any specified part of the land.*)
- d. In the event of any of this land being consolidated with any other land, the title to the consolidated land shall be subject to the above mentioned conditions.
- e. The applicant shall, at his own cost and in accordance with the provisions of section 49(5)(a) and (b) of the Act, insert the foregoing condition in all relevant Title Deeds. The applicant shall, within ..... months from the date of this approval, furnish to SANRAL with written proof that the aforementioned insertions have been done on the Title Deeds of the relevant properties.
- f. *\*(Delete what is not applicable.)* No direct access to or egress from the National Road will be permitted./ With the exception of existing legal accesses, no further access to and egress from the National Road will be allowed./In addition to the existing legal accesses, an additional access to and egress from the National Road will only be allowed at the position as indicated on the attached Plan No ..... Details of the proposed access road must be submitted to SANRAL for approval prior to the condition thereof.

12.6.4.2. In respect of ..... (List the sub-divisions (including the Remainder of the parent property if applicable) of which the land use will change.)

- a. With the exception of existing structures, no structure or other thing, including anything that is attached to the land on which it stands even though it does not form part of that land, shall be erected, constructed, laid or established without

the written approval of SANRAL, within a distance of ..... metres measured from the road reserve boundary of the National Road.

b. Unless SANRAL granted written approval to the contrary, the land use for the following sub-divisions shall be limited as follows:

- i. Residential: Portion .....
- ii. Business: Portion .....
- iii. Industrial: Portion .....
- iv. Commercial: Portion .....
- v. Special: Portion .....
- vi. Institutional: Portion .....
- vii. Educational: Portion .....
- viii. Amusement / Leisure: Portion .....
- ix. Municipal: Portion .....
- x. Public Garage: Portion .....
- xi. Public/Private open space: Portion .....
- xii. Cemetery: Portion .....

c. The applicant shall ..... (*Insert any further condition with regard to matters such as limiting the number or extent of buildings or other structures which may be erected on any specified part of the land.*)

- d. In the event of any of the approved sub-divisions being consolidated with other land, the title to the consolidated land shall be made subject to the above-mentioned condition.
- e. The applicant shall, at his own cost and in accordance with the provisions of section 49(5)(a) and (b) of the Act, insert the foregoing conditions in all relevant Deeds of Transfer. The applicant shall, within ..... months from the date of this approval, furnish SANRAL with written proof that the aforementioned conditions have been inserted in the title deeds of the sub-divisions to which the above Conditions apply, including the Remainder of the parent property if applicable.
- f. *\*(Delete what is not applicable.)* No direct access to or egress from the National Road will be permitted./ With the exception of existing legal accesses, no further access to and egress from the National Road will be allowed./In addition to the existing legal accesses, an additional access to and egress from the National Road will only be allowed at the position as indicated on the attached Plan No ..... Details of the proposed access road must be submitted to SANRAL for approval prior to the condition thereof.
- g. All storm water discharged or diverted from the National Road, shall be received and disposed of and SANRAL will not be held liable for any damage or diminishment in value of the property arising out of any impact the sub-division hereby approved may have on existing storm-water discharged or diverted onto the sub-divided land. In this regard, SANRAL hereby also reserves its right to impose further conditions that it may deem necessary.
- h. The applicant shall, at his own cost and in accordance with SANRAL's stipulations, upgrade the existing stormwater structures and/or install additional stormwater structures. Detailed plans of the proposed upgraded and/or additional structures must be submitted to SANRAL for approval prior to the upgrading and/or installation thereof.

- i. The applicant shall, at his own cost and in accordance with SANRAL's stipulations, establish a noise berm/erect a permanent 2 metre high brick wall/security fence/palisade fence (*delete or add as applicable*) on the development's side directly adjacent to the common boundary of the relevant sub-divisions and the National Road reserve. Detailed plans of the proposed noise berm/wall/security fence/palisade fence (*delete or add as applicable*) must be submitted to SANRAL for approval prior to the establishment or erection thereof.
- j. SANRAL will not be held liable should it be found at any future time that noise emanating from the road, presents a problem in the development adjacent to the road.
- k. The applicant shall, at his own cost and in accordance with SANRAL's stipulations, erect, construct and/or establish a pedestrian bridge over or subway under the National Road. Detailed plans of the proposed structures must be submitted to SANRAL for approval prior to the erection, construction and/or establishment thereof.
- l. The applicant shall ..... (*Insert any further conditions.*)

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## CHAPTER 13: ADVERTISEMENTS ON OR VISIBLE FROM NATIONAL ROADS – SECTION 50

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## 13.1 OVERVIEW

- 13.1.1 SANRAL is obliged to provide, establish, erect and maintain facilities on National Roads for the convenience and safety of road users<sup>1</sup>.
- 13.1.2 The display of advertisements on or near a National Road is deemed to cause a distraction to road users thereby threatening the safety and well-being of those and other road users.
- 13.1.3 The Act therefore controls the display of advertisements which are on or visible from National Roads<sup>2</sup>.
- 13.1.4 **In terms of the Act, no person may:**
- 13.1.4.1. display an advertisement on a National Road, or permit it to be so displayed<sup>3</sup>; or
- 13.1.4.2. display, outside an urban area, any advertisement visible from a National Road, or permit any advertisement which is so visible, to be so displayed<sup>4</sup>;
- 13.1.4.3. display any advertisement visible from a National Road in an urban area, on any land adjoining the National Road or on land separated from the National Road by a street, or permit it to be so displayed<sup>5</sup>.
- 13.1.5 These restrictions do not apply in certain circumstances. If the advertisement is authorised in terms of the regulations made under the Act<sup>6</sup>, and also complies with the prescribed requirements relating to the matters referred to hereunder, then the advertisement is permitted<sup>7</sup>.

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<sup>1</sup> Section 25(e)

<sup>2</sup> Section 50

<sup>3</sup> Section 50(1)(a)

<sup>4</sup> Section 50(1)(b)

<sup>5</sup> Section 50(1)(c)

<sup>6</sup> Regulations on Advertising on or Visible from National Roads published in Government Gazette No 6968 of 2000

<sup>7</sup> Section 50(2)

13.1.6 The advertisement is also permitted if the advertisement is displayed on a building in which a business or undertaking is carried on and contains:

13.1.6.1. no more than the name of the business or undertaking; or

13.1.6.2. a description of its nature, the name of the proprietor and further information which is authorised in terms of the Regulations<sup>8</sup>.

13.1.7 The advertisement is also permitted if the advertisement is displayed on any vehicle, or is displayed on any other machine or implement and contains:

13.1.7.1. no more than the trade name of that machine or implement; and

13.1.7.2. the name of its manufacturer;

a. provided that the main purpose for which the vehicle, machine or implement is used, is not the displaying of the advertisement<sup>9</sup>.

13.1.8 The advertisement is also permitted if the advertisement is displayed in terms of an authorisation conferred, before or after the incorporation date<sup>10</sup>, under the Advertising on Roads and Ribbon Development Act, 21 of 1940, provided that the advertisement is displayed in accordance with the requirements which, in terms of that authorisation:

13.1.8.1. are applicable; or

13.1.8.2. were applicable to it immediately before the incorporation date<sup>11</sup>.

13.1.9 **The advertisement is also permitted if the advertisement is displayed:**

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<sup>8</sup> Section 50(2)(a)

<sup>9</sup> Section 50(2)(b)

<sup>10</sup> The date of incorporation of SANRAL being 19 May 1998

<sup>11</sup> Section 50(2)(c)

- 13.1.9.1. lawfully at any place immediately before the road or route in question is declared a National Road<sup>12</sup>;
- 13.1.9.2. for as long as it is displayed continuously in the same place; and
- 13.1.9.3. unless its removal has been directed by SANRAL<sup>13</sup> and the period for its removal has expired<sup>14</sup>.
- 13.1.10 **The advertisement is also permitted if the advertisement is displayed:**
- 13.1.10.1. by the State; or
- 13.1.10.2. by a body, established by or under any law, in the performance of its functions;
- 13.1.10.3. in accordance with any law requiring it to be displayed where and under the conditions it is displayed<sup>15</sup>; and
- 13.1.10.4. Any person who contravenes the provisions of the Act referred to above may be given not less than 14 (fourteen) days written notice by SANRAL to remove the advertisement in question<sup>16</sup>.
- 13.1.11 If a person fails to comply with a written notice from SANRAL requiring him to remove an advertisement, then SANRAL may remove the advertisement and recover the cost of doing so from such person<sup>17</sup>.
- 13.1.12 **Any person who displays an advertisement unlawfully<sup>18</sup> is guilty of an offence and liable on conviction to:**

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<sup>12</sup> In terms of section 40(1)

<sup>13</sup> In terms of section 50(3)

<sup>14</sup> Section 50(2)(d)

<sup>15</sup> Section 50(2)(e)

<sup>16</sup> Section 50(3)

<sup>17</sup> Section 50(4)

<sup>18</sup> It is unlawful to display an advertisement in contravention of section 50(1)

13.1.12.1. a term of imprisonment not longer than 6 (six) months; or

13.1.12.2. a fine<sup>19</sup>

## 13.2 PROCEDURE FOR OBTAINING AUTHORITY TO DISPLAY ADVERTISEMENTS

13.2.1 The regulation of advertising on or visible from a National Road is dealt with in detail in Regulations on Advertising on or visible from National Roads<sup>20</sup>.

13.2.2 SANRAL is entitled to designate areas outside of urban areas in which National Roads are situated as either natural areas or rural areas<sup>21</sup>. SANRAL is also entitled, in urban areas and after consultation with relevant Municipalities, to designate areas in which National Roads are situated as urban areas of maximum, partial or minimum control<sup>22</sup>. If however, a Municipality has already designated an area as one of these categories, SANRAL must designate it as such.

13.2.3 Where a National Road falls within an area which has not been designated into a particular category, the area in which it falls is deemed to be an area of maximum control<sup>23</sup>.

13.2.4 SANRAL is responsible for developing a map demarcating the areas of control which must be available for inspection to the public on request<sup>24</sup>. However, the relevant Municipality is, in the first instance, responsible for controlling advertisements<sup>25</sup>.

13.2.5 Regulation 6 which deals with road safety and traffic considerations applies to all advertisements<sup>26</sup>.

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<sup>19</sup> Section 50(5)

<sup>20</sup> The Regulations were published in Government Gazette No 6968 of 2000. These regulations contain provisions applicable to all advertisements, as well as the types of advertisements and the regulation and control of their erection or display

<sup>21</sup> Regulation 4(1)(a)

<sup>22</sup> Regulation 4(1)(b)

<sup>23</sup> Regulation 4(2)

<sup>24</sup> The information should also be available on SANRAL website under [www.nra.co.za](http://www.nra.co.za).

<sup>25</sup> Regulation 5(1)

<sup>26</sup> Regulation 5

- 13.2.6 Save for Regulation 6, the rest of the Regulations do not apply in an urban area where the relevant municipality has promulgated a by-law:
- 13.2.6.1. dealing substantially with the matters covered by the Regulations; and
  - 13.2.6.2. that is applicable to National Roads in that area; or
  - 13.2.6.3. in any urban area which the Minister has declared the Regulations not applicable by notice in the Government Gazette<sup>27</sup>.
- 13.2.7 In situations where the Regulations apply, an application for approval must be made by:
- 13.2.7.1. completing the application form prescribed in the Regulations<sup>28</sup>;
  - 13.2.7.2. lodging the completed form with SANRAL; or
  - 13.2.7.3. lodging the application fee determined by SANRAL from time to time<sup>29</sup>.
- 13.2.8 In situations where the Regulations do not apply, the municipality, when considering any application for an advertisement equal to or larger than 6 (six) square metres which will face a National Road, must make its approval conditional upon the applicant also obtaining the approval of SANRAL<sup>30</sup>.
- 13.2.9 In these situations, SANRAL, in considering the application, must consider only road traffic, road traffic sign and safety considerations<sup>31</sup>.
- 13.2.10 In the event that the application is approved, an agreement will be concluded with the applicant. The Authorisation granted has been recorded in the agreement due to the fact that the land owner and Applicant may be different parties.

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<sup>27</sup> Regulation 5(1)

<sup>28</sup> Annexure A to the Regulations, as prescribed in terms of Regulation 40– a copy of the application form is annexed as annexure 14.3.1

<sup>29</sup> Regulation 40(1)

<sup>30</sup> Regulation 5(2) and Masssand Pty Ltd and others V City of Cape Town and others

<sup>31</sup> As contemplated in Regulation 6

## CHAPTER 14: DISUSED VEHICLES OR MACHINERY AND OTHER RUBBISH ON OR NEAR NATIONAL ROADS – SECTION 51

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## 14.1 OVERVIEW

- 14.1.1 SANRAL is obliged to maintain National Roads for the convenience and safety of road users<sup>1</sup>.
- 14.1.2 Disused and immobile vehicles parked on the sides of National Roads are responsible for many accidents. SANRAL must take steps to prevent any threat to the safety and well-being of road users.
- 14.1.3 No person may deposit or leave a disused vehicle or machine or a disused part of a vehicle or machine, or any rubbish or other refuse on a National Road<sup>2</sup>.
- 14.1.4 SANRAL may remove a disused vehicle or machine or a disused part of a vehicle or machine, or any rubbish or refuse found on a National Road<sup>3</sup>. It must do so in order to comply with its obligation to maintain National Roads for the convenience and safety of road users<sup>4</sup>.
- 14.1.5 If SANRAL does remove a disused vehicle or parts, or a machine or parts, it may recover the costs of the removal from the person who deposited or left the disused vehicle, machine or part or the rubbish or other refuse on that road<sup>5</sup>.
- 14.1.6 Unless SANRAL's written permission is obtained, it is not permissible to deposit or leave any disused vehicle, machine or part, or any rubbish or other refuse, so that it is visible from a National Road if:
- 14.1.6.1. it is placed on land outside an urban area, but within 150 (one hundred and fifty) metres from the boundary of a National Road<sup>6</sup>; or

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<sup>1</sup> Section 26(e)

<sup>2</sup> Section 51(1)(a)

<sup>3</sup> Section 51(2)

<sup>4</sup> Section 26(e)

<sup>5</sup> Section 51(2)

<sup>6</sup> Section 51(1)(b)(i)

- 14.1.6.2. it is on land within an urban area and adjoining a National Road or is separated from a National Road by any street<sup>7</sup>.
- 14.1.7 SANRAL (or any person duly authorised by it) may give written notice to the person who deposited or left such disused vehicle, machine or part, or any rubbish or other refuse, to remove it from the land or take steps to render it invisible from the National Road. This notice may also be given to any person who is entitled to remove it<sup>8</sup>.
- 14.1.8 Items left on a National Road are obviously likely to be of greater danger to road users than items left off the road but within the restricted areas referred to above.
- 14.1.9 In situations where an item has been left on a National Road therefore, SANRAL may immediately remove that item without giving notice of its intention to do so. The safety of road users is of overriding and paramount importance.
- 14.1.10 Where the items are within the restricted areas referred to in paragraph 14.1.6 above, the period of the notice will depend on the particular circumstances of each matter. If there is an immediate risk to the safety of road users, then the period of notice will be short, and possibly hours only. However, given that this provision of the Act is dealing with a disused vehicle, machine or part, or any rubbish or refuse left off a National Road, there is less likelihood of it being a danger to road users, and therefore a longer period of notice, such as 7 (seven) days may be given.
- 14.1.11 If notice has been served on a person to remove a disused vehicle or machine (or parts thereof) or any rubbish or other refuse, then that person must comply with the notice within the period stated in the notice unless:
- 14.1.11.1. that person produces the written permission of SANRAL authorising the presence of that vehicle, machine, part, rubbish or other refuse on that land under the circumstances in question<sup>9</sup>; or

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<sup>7</sup> Section 51(1)(b)(ii)

<sup>8</sup> Section 51(3)

<sup>9</sup> Section 51(3)(a)(i)



14.1.11.2. that person is able to satisfy SANRAL that he did not leave the vehicle, machine, part, rubbish or other refuse there, and did not permit it to be left there<sup>10</sup>; or

14.1.11.3. where it was deposited or left there by an agent or employee of that person, the person can show he was not aware of that fact<sup>11</sup>.

14.1.12 If notice has been served on a person to remove a disused vehicle or machine (or parts thereof) or any rubbish or other refuse, and such notice has not been complied with, and SANRAL is satisfied that no-one has the written permission of SANRAL to place the articles where they are located, then:

14.1.12.1. SANRAL may remove the vehicle, machine, part, rubbish or other refuse from that land; or

14.1.12.2. take any steps that SANRAL considers necessary to render the vehicle, machine, part, rubbish or other refuse invisible from the National Road; and recover the costs of the removal or of those steps from the person who was under a duty to make the removal or take the necessary steps<sup>12</sup>.

14.1.13 Any person who contravenes the provisions referred to in paragraphs 14.1.3 and 14.1.6 above is guilty of an offence and liable on conviction to:

14.1.13.1. a term of imprisonment not longer than 6 (six) months; or

14.1.13.2. a fine; or

14.1.13.3. both the term of imprisonment and the fine<sup>13</sup>.

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<sup>10</sup> Section 51(3)(a)(ii)

<sup>11</sup> Section 51(3)(a)(ii)

<sup>12</sup> Section 51(3)(b)

<sup>13</sup> Section 51(4)

## 14.2 PROCEDURES

### 14.2.1 Items deposited or left on a National Road

14.2.1.1. In the event that SANRAL discovers a disused vehicle or machine or parts thereof on a National Road, SANRAL must take steps to have the items removed in order to ensure that the safety of road users is not prejudiced since such items may create a potentially dangerous and hazardous situation for road users.

14.2.1.2. If SANRAL is able to locate the person who deposited these items there, then SANRAL must obtain details from such person to enable SANRAL to recover any costs incurred by SANRAL in removing the items from the National Road.

14.2.1.3. If SANRAL is unable to immediately locate the person who deposited these items there, then SANRAL can investigate the matter thereafter to determine whether the person who deposited the items can be located and if so, whether it is possible to recover from such person the costs incurred by SANRAL.

14.2.1.4. Practically, problems have been experienced by Emergency Services with respect to the recovery of costs incurred by them where they have responded to and dealt with an incident on a National Road. SANRAL has therefore made funds available to meet these costs where the service provider is able to prove that every effort has been made to recover the costs incurred<sup>14</sup>.

### 14.2.2 Items deposited or left near the National Road

14.2.2.1. If any disused vehicle, machine or part, or any rubbish or other refuse is visible from a National Road and placed on land outside an urban area, but within 150 metres from the boundary of a National Road, or on land within an urban area, but adjoining a National Road or separated from a National Road by any street, then the action taken by SANRAL and the period of notice that is given in terms of the Act will depend on the circumstances pertaining in each particular matter.

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<sup>14</sup> Project number E08-000-02/1 of the National Roads Fund

14.2.2.2. If there is any likelihood of immediate danger to road users, then:

- a. if SANRAL is able to locate the person who deposited such items or any person who is entitled to remove them, written notice must immediately be given to such person to remove the items;
- b. if SANRAL cannot locate the person who deposited such items or any person who is entitled to remove them, then SANRAL must immediately take steps to have the items removed;
- c. if SANRAL removes the items, SANRAL can investigate the matter thereafter to determine whether the person who deposited the items can be located and if so, whether it is possible to recover from such person the costs incurred by SANRAL.
- d. If there is no immediate danger to road users, the period of notice that must be given to the person who deposited such items or who is entitled to remove them will depend on a number of factors, including:
  - e. nature of the item and its potential prejudice to the safety of road users;
  - f. length of time it has been situated in its current position; and
  - g. the ease with which the item can be removed.

14.2.2.3. The period of notice to be given will be reasonable depending on the circumstances.

14.2.2.4. If the person who deposited the item is not prepared to co-operate, then it will be necessary for SANRAL to obtain an order of Court to enforce its right to remove the item. In this case, SANRAL will recover the legal costs incurred from the person who deposited the item.

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- 14.2.2.5. Prior to the commencement of any legal action, the written approval of SANRAL's Chief Executive Officer must be obtained.
- 14.2.2.6. In the event that it is necessary to proceed with an application to court, the person signing affidavits on behalf of SANRAL must have delegated responsibility to do so.

**14.3 ANNEXURES**

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**Annexure 14.3.1 PRECEDENT OF A NOTICE TO BE SERVED WHERE A PERSON HAS DEPOSITED A DISUSED VEHICLE, MACHINE OR PART, OR RUBBISH OR REFUSE WITHIN THE RESTRICTED AREA REFERRED TO IN SECTION 51(1)(B)**

**Notice To Remove A Disused Vehicle, Machine Or Part, Or Rubbish Or Refuse**

1. In terms of section 51(1)(b) of the South African National Roads Agency Limited and National Roads Act, 7 of 1998, no person may, without SANRAL's written permission, deposit or leave, so as to be visible from a national road, any disused vehicle, machine or part, or any rubbish or other refuse:
  - 1.1. on land outside an urban area and within 150 metres from the boundary of a national road;
  - 1.2. on land within an urban area and adjoining a national road or separated from a national road by any street.
2. It has come to the attention of the South African National Roads Agency SOC Limited ("SANRAL") that you have deposited or left a disused vehicle, machine or part, or rubbish or other refuse within an area referred to above without SANRAL's written permission, and have therefore acted in contravention of the above-mentioned section.
3. We hereby give you notice that unless you remove such items and/or goods within 7 (seven) days of date hereof, we shall:
  - 3.1. lodge a complaint with the South African Police Services and request that you be prosecuted for a contravention of Act 7 of 1998;
  - 3.2. remove such items/goods and take such steps as we may deem necessary to render the items and goods invisible from a national road, and shall recover the cost of doing so from you.

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## CHAPTER 15: TRADING ON NATIONAL ROAD OR IN BUILDING RESTRICTION AREA – SECTION 52

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## 15.1 OVERVIEW

15.1.1 In terms of the Act, no person may, without SANRAL's written permission or contrary to that permission:

15.1.1.1. carry on any trade; or

15.1.1.2. expose, offer or manufacture for sale any goods on a National Road or in a building restriction area<sup>1</sup>.

15.1.2 Although the words 'trade' or 'trading' are undefined in the Act, the words may be given their ordinary meaning of "buying and selling goods and services".

15.1.3 A person who had already legally been carrying on the business in question on a date immediately before the road was declared a National Road may continue to do so without requesting the permission of SANRAL.<sup>2</sup>

15.1.4 However, if SANRAL requests such a person, in writing, to discontinue the business undertaking by a certain date, the person must do so<sup>3</sup>. If the person continues business after the specified date, he or she will be guilty of an offence.

15.1.5 A person who commits any of the above-mentioned acts (carrying on trade, exposing, offering or manufacturing for sale any goods on a National Road or in a building restriction area) without the required written permission is guilty of an offence<sup>4</sup>.

15.1.6 A person found guilty of this offence may be punished with a term of imprisonment not longer than three months, or a fine<sup>5</sup>.

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<sup>1</sup> Section 52(1)

<sup>2</sup> Section 52(2).

<sup>3</sup> Section 52(2)

<sup>4</sup> Section 52(4)

<sup>5</sup> Section 52(4)(b)



15.2 **AUTHORITY OF SANRAL**

15.2.1 The Act empowers various persons to implement section 52 of the Act<sup>6</sup>.

15.2.2 These persons (referred to as “the competent officials”) include:

15.2.2.1. any employee of SANRAL;

15.2.2.2. any person authorised in writing by SANRAL for the said purpose;

15.2.2.3. any employee of a municipality designated or appointed to perform law enforcement functions on a National Road by virtue of an agreement entered into between SANRAL and the municipality<sup>7</sup>;

15.2.2.4. any employee of a province designated or appointed to perform law enforcement functions on a National Road by virtue of an agreement entered into between SANRAL and the Premier of the Province<sup>8</sup>;

15.2.2.5. any person who, in terms of a road traffic law, is a traffic officer for the purpose of the road traffic law<sup>9</sup>.

15.2.3 Municipal employees appointed to exercise the law enforcement power provided for in section 52 may only do so on those National Roads which fall within their own municipal area. The same restriction applies to provincial employees appointed for the purpose of this law enforcement function.

15.2.4 A competent official who, on reasonable grounds, suspect that a person has performed an act for which SANRAL’s written permission is required in terms of

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<sup>6</sup> Section 52(3)

<sup>7</sup> Section 52(3) read with section 54(3)(a)

<sup>8</sup> Section 52(3) read with section 54(3)(b)

<sup>9</sup> Section 52(3)

section 52<sup>10</sup> is authorised to demand that the person produce such permission immediately.<sup>11</sup>

15.2.5 If the person fails to produce the written permission, or if the competent official suspects on reasonable grounds that a person has performed on a National Road or in a building restriction area any act that is unlawful in terms of section 52, the competent official may demand that the person furnish his full name and residential address immediately.<sup>12</sup>

15.2.6 Failure to furnish this information is an offence<sup>13</sup> which is punishable, upon conviction, with a term of imprisonment not longer than three months, or a fine.<sup>14</sup>

15.2.7 The competent official also has the power to order that person to remove, from the National Road or building restriction area, the following:

15.2.7.1. every article employed in the commission of the act<sup>15</sup>;

15.2.7.2. every article which he or she reasonable suspects to be destined for use in the performance of the prohibited act by that person;<sup>16</sup>

15.2.7.3. any structure, tent, vehicle, implement or other object in, on or with which that act has been performed, or in or on which there is such an article, or which the competent official suspects on reasonable grounds to be destined for use for or in connection with the performance of an act which will be in contravention of section 52(1).<sup>17</sup>

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<sup>10</sup> Specifically section 52(1)

<sup>11</sup> Section 52(3)(a).

<sup>12</sup> Section 52(3)(b)(i).

<sup>13</sup> Section 52(4)(a)(ii).

<sup>14</sup> Section 52(4)(b).

<sup>15</sup> Section 52(3)(b)(ii)(aa)

<sup>16</sup> Section 52(3)(b)(ii)(aa).

<sup>17</sup> Section 52(3)(b)(ii)(bb).

15.2.8 Upon failure to obey such an order given by a competent official, a person is guilty of an offence<sup>18</sup> and liable to punishment with a term of imprisonment not longer than three months, or a fine.<sup>19</sup>

15.2.9 The competent official may also personally remove from the National Road or the building restriction area any article, structure, tent, vehicle, implement or other object mentioned above or found on the National Road or in the building restriction area in circumstances reasonably related to a contravention of section 52(1).

### 15.3 RESTRICTIONS PLACED ON SANRAL

15.3.1 The Constitution states that “every citizen has the right to choose their trade, occupation or profession freely. The practice of a trade, occupation or profession may be regulated by law”<sup>20</sup>.

15.3.2 The question arises whether certain provisions of section 52 of the Act contravenes this constitutional right. For example, a person who avers that her chosen trade or occupation is to sell goods on the side of a National Road or in a building restriction area may argue that the provisions of section 52, prohibiting her from doing so, infringes her constitutional right to freedom of trade, occupation and profession.

15.3.3 Even if section 52 is considered to infringe section 22 of the Constitution, this would be a reasonable and justifiable limitation of a person’s right to freedom of trade, occupation and profession due to, inter alia, issues of public safety and attempts to reduce the number of deaths on National Roads. As such, section 52 of the Act should constitute a reasonable and justifiable limitation (in accordance with section 36 of the Constitution) when taking into account all relevant factors, including the nature of the right, the importance of the purpose of the limitation, the nature and extent of the limitation, the relation between the limitation and its purpose and less restrictive means to achieve the purpose.

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<sup>18</sup> Section 52(4)(iii).

<sup>19</sup> Section 52(4)(b).

<sup>20</sup> Section 22 of the Constitution of the Republic of South Africa, Act 108 of 1996

- 15.3.4 The implementation of section 52 of the Act by SANRAL must take into account constitutional restrictions on the exercise of administrative powers.
- 15.3.5 The constitutionally entrenched right to administrative action provides as follows<sup>21</sup>:
- 15.3.5.1. Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.
- 15.3.5.2. Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.
- 15.3.5.3. National legislation must be enacted to give effect to these rights.
- 15.3.6 At present the Promotion of Administrative Justice Act, Act 3 of 2000 (hereinafter referred to as “PAJA”) gives effect to section 33 of the Constitution. This Act may be regarded as a code of administrative practice and procedure since it prescribes the minimum requirements for administrative legality and procedure.
- 15.3.7 PAJA defines administrative action to mean any decision taken, or any failure to take a decision, by an organ of state when exercising a power in terms of the Constitution or a provincial constitution or exercising a public power or performing a public function in terms of any legislation.<sup>22</sup>
- 15.3.8 The term is also wide enough to include a natural or juristic person, other than an organ of state, when exercising a public power or performing a public function in terms of an empowering provision which adversely affects the rights of any person and which has a direct, external legal effect. It is submitted that SANRAL is an organ of state, alternatively that it exercises a public power or performs a public function and that, in the circumstances, PAJA is applicable.

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<sup>21</sup> Section 33 of the Constitution of the Republic of South Africa, Act 108 of 1996

<sup>22</sup> Section 1, PAJA.

15.3.9 Administrative action which materially and adversely affects the rights or legitimate expectations of any person must be procedurally fair.<sup>23</sup>

15.3.10 A fair administrative procedure depends on the circumstances of each case.<sup>24</sup> In order to give effect to the right to procedurally fair administrative action, an administrator (such as a competent official referred to in section 52 of the Act) must give a person:

15.3.10.1. adequate notice of the nature and purpose of the proposed administrative action;

15.3.10.2. a reasonable opportunity to make representations;

15.3.10.3. a clear statement of the administrative action;

15.3.10.4. adequate notice of any right of review or internal appeal, where applicable; and

15.3.10.5. adequate notice of the right to request reasons.<sup>25</sup>

15.3.11 In order to give effect to the right to procedurally fair administrative action, the competent official may, in his or her or its discretion, also give a person an opportunity to:

15.3.11.1. obtain assistance and, in serious or complex cases, legal representation;

15.3.11.2. present and dispute information and arguments; and

15.3.11.3. appear in person.<sup>26</sup>

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<sup>23</sup> Section 3(1), PAJA.

<sup>24</sup> Section 3(2), PAJA.

<sup>25</sup> Ibid.

<sup>26</sup> Section 3(3), PAJA.

15.3.12 If it is reasonable and justifiable in the circumstances, a competent official may depart from any of the requirements referred to above. In determining whether a departure is reasonable and justifiable, a competent official must take into account all relevant factors, including:

15.3.12.1. the objects of the empowering provision;

15.3.12.2. the nature and purpose of, and the need to take, the administrative action;

15.3.12.3. the likely effect of the administrative action;

15.3.12.4. the urgency of taking the administrative action or the urgency of the matter; and

15.3.12.5. the need to promote an efficient administration and good governance.<sup>27</sup>

#### 15.4 GUIDELINES AND PROCEDURES IN RESPECT OF ILLEGAL TRADERS

15.4.1 SANRAL must seek the co-operation and assistance of municipalities, provincial traffic authorities and the South African Police Services to prevent illegal trading within National Roads and building restriction areas.

15.4.2 Where possible, SANRAL should enter into agreements with municipalities and the Premiers of provinces in terms of which such municipality or provincial authority is authorised and undertakes to perform law enforcement functions on National Roads<sup>28</sup>.

15.4.3 If it comes to the attention of SANRAL that persons may be trading illegally<sup>29</sup> within a National Road or a building restriction area, then SANRAL, a duly authorised agent, or a duly authorised municipal or provincial employee (who undertakes law enforcement functions on National Roads by agreement with SANRAL)<sup>30</sup> (“the competent official”) must attend on the site and demand that the persons, who are

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<sup>27</sup> Section 3(4), PAJA.

<sup>28</sup> Section 54

<sup>29</sup> i.e. without the consent or contrary to the consent of SANRAL referred to in section 52(1)

<sup>30</sup> Section 54

alleged to be trading illegally, immediately produce proof that they have the written permission of SANRAL to trade within the National Road or building restriction area<sup>31</sup>.

15.4.4 If such persons are unable to produce such proof or if the competent official suspects that such persons are trading illegally, then the competent official must:

15.4.4.1. demand that the persons' full names and residential addresses be furnished immediately<sup>32</sup>;

15.4.4.2. order that the persons remove from the National Road or building restriction area:

a. every article with or in respect of which illegal trading has been perpetrated or which the competent official suspects on reasonable grounds will be used for illegal trading<sup>33</sup>;

b. any structure, tent, vehicle, implement or other object in, on or with which that act has been performed, or in or on which there is an article which the competent official suspects, on reasonable grounds, may be used for illegal trading<sup>34</sup>.

15.4.5 A notice should also be served on the illegal traders advising them that unless they cease trading in the National Road and building restriction area, SANRAL will:

15.4.5.1. lodge a complaint with the South African Police Services and request that such traders be prosecuted for a contravention of the Act<sup>35</sup>;

15.4.5.2. if necessary, apply to the High Court for an order that the traders remove any articles being sold, and structures, tents, vehicles and other implements on or in which trading is taking place<sup>36</sup>;

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<sup>31</sup> Section 52(3)(a)

<sup>32</sup> Section 52(3)(b)(i)

<sup>33</sup> Section 52(3)(ii)(aa)

<sup>34</sup> Section 52(3)(ii)(bb)

<sup>35</sup> Section 52(4)

<sup>36</sup> Section 52(3)

- 15.4.5.3. if necessary, apply to the High Court for an order that the traders be interdicted and restrained from trading further within the National Road and building restriction area.
- 15.4.6 If the traders are not present overnight, then SANRAL must obtain the assistance of the South African Police Services or, if necessary, a security firm, to prevent the traders from resuming their activities during daylight.
- 15.4.7 If articles used, or which could be used, in the perpetration of illegal trading are abandoned in the National Road or building restriction area, they should be removed by the competent official<sup>37</sup>. It is important to note that goods in the possession of a person may not be removed from that person without an order of court<sup>38</sup>.
- 15.4.8 In situations where traders have established themselves more permanently, SANRAL must appoint a security firm to:
- 15.4.8.1. prevent any further persons from trading in the area;
  - 15.4.8.2. undertake a survey of all persons illegally trading in order to obtain their full names and identity numbers;
  - 15.4.8.3. take photographs of the trading activities and problems this causes on the National Road or within the building restriction area;
  - 15.4.8.4. demolish any structures in the area which were previously used for illegal trading and which have been abandoned;
  - 15.4.8.5. observe the activities being undertaken in the area and to report on any illegal activities with a view to arranging intervention by the South African Police Services.

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<sup>37</sup> Section 52(3)(c)

<sup>38</sup> It is an important principle of South African law that a person may not take the law into his or her own hands. Section 52(3)(c) provides the legal authority for a court to issue an order allowing for the removal of goods.



- 15.4.9 If the illegal traders refuse to comply with the terms of the notice, then a complaint must be submitted to the South African Police Services and they must be requested to immediately proceed with the prosecution of the illegal traders for a contravention of the Act.
- 15.4.10 If the South African Police Services are unable or unwilling to take action against the illegal traders, then application must be made to the High Court for an order giving directions on the service of application papers on the traders.
- 15.4.11 Prior to the commencement of any legal action, the written approval of SANRAL's Chief Executive Officer must be obtained. The Chief Executive Officer must also be informed of any evictions arising from a response to illegal trading.
- 15.4.12 In the event that it is necessary to proceed with an application to court, the person signing affidavits on behalf of SANRAL must have delegated responsibility to do so.
- 15.4.13 SANRAL must instruct their attorneys to prepare application papers which must be served on the illegal traders in accordance with the terms of the order of court giving directions on service.
- 15.4.14 If the application to the High Court is successful, the order of court must be served by the Sheriff of the High Court. It may be necessary to arrange for the South African Police Services and/or a security firm to assist the Sheriff to execute the order of court.
- 15.4.15 After the illegal traders have been removed from the National Road and building restriction area, the area must be cleared and cleaned and thereafter monitored to ensure that the traders do not return.

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## CHAPTER 16: COMPENSATION FOR DAMAGES OR LOSS DUE TO THE ACTIVITIES OF SANRAL – SECTION 53

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## 16.1 OVERVIEW

- 16.1.1 In terms of the Act, SANRAL may, at its discretion and on any conditions it considers fit:
- 16.1.1.1. pay the costs or part of the costs incurred by a municipality or province in connection with a road or other works which, by agreement between SANRAL and the municipality or Premier of the province, as the case may be, may have become necessary as a result of the construction, maintenance or rehabilitation of a National Road<sup>1</sup>;
- 16.1.1.2. pay an amount to any person for any damage, loss or inconvenience which, in the opinion of SANRAL, has been or will be suffered by the person as a result of the exercise or performance of any of the powers, functions or duties entrusted to SANRAL or any other person by or in terms of the Act, and for which no compensation is payable in terms of the Act<sup>2</sup>.
- 16.1.2 This section allows SANRAL to enter into agreements with municipalities and provinces and authorises the expenditure that arises therefrom.
- 16.1.3 It also permits SANRAL to reach commercially sensible arrangements with persons who may otherwise have a claim against SANRAL. It allows SANRAL to be proactive in reaching a settlement and thereby avoiding expensive and protracted litigation.

## 16.2 PROCEDURES

- 16.2.1 Any agreement concluded between SANRAL and a municipality or provincial authority must be signed on behalf of SANRAL by a duly authorised representative. The person who signs the agreement must have delegated authority to do so on behalf of the Board of Directors of SANRAL.

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<sup>1</sup> Section 53(a)

<sup>2</sup> Section 53(b)

16.2.2 SANRAL has insured itself against claims by third parties and it is imperative that all claims are referred to the SANRAL's Risk Officer who will deal with the matter thereafter<sup>3</sup>. Any agreement or offer of settlement must be sanctioned by the insurers in order to ensure that the insurers do not revoke a claim because of such offer or admission of liability on the part of SANRAL.

16.2.3 Therefore, any agreement for the settlement of a potential claim must be authorised by a person who has delegated authority to reach such an agreement but in all cases, SANRAL must be careful to not prejudice itself and cause its insurers to revoke a claim as a result of a settlement or agreement that is concluded by it.

16.2.4 The terms and conditions of an agreement or offer of settlement will depend on the circumstances of each particular matter.

### 16.3 INFORMATION REQUIRED BY SANRAL

16.3.1 In the event that SANRAL is contemplating an agreement with a municipality or province in connection with a road or other works, SANRAL will require information on the following matters:

16.3.1.1. the parties must agree on the effective date of the agreement;

16.3.1.2. the duration or termination date of the agreement must be known;

16.3.1.3. the basis on which costs are to be apportioned must be determined;

16.3.1.4. the obligations of each of the parties must be clearly set out in the agreement (for example, if the matter in question is a construction project, the agreement must provide for who will be responsible for security);

16.3.1.5. in the event that authority is delegated by one party to another, the extent of that authority must be clearly set out (for example, if SANRAL delegates its authority to a municipality under section 52(3) to take action against a person who is unlawfully

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<sup>3</sup> The process for dealing with third party claims is attached as Annexure 15.4.1.

trading on a National Road, the agreement must prescribe what action the relevant municipal official may take and at what stage SANRAL must be consulted for instructions on further action).

16.3.2 In the event that SANRAL receives a claim for compensation for damage, loss or inconvenience caused by the exercise of any of the powers, functions or duties entrusted to SANRAL in terms of the Act, SANRAL must obtain the following information in order to assess the claim:

16.3.2.1. details as to the potential damage, loss or inconvenience;

16.3.2.2. proposals on how this can be avoided;

16.3.2.3. details regarding the amount of compensation claimed and how it has been determined.

16.3.3 SANRAL's insurers must immediately be notified of the claim and the process as provided for in SCoMS must be followed thereafter.

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## CHAPTER 17: EXTENSION OF PERIODS STATED, SPECIFIED OR PRESCRIBED IN NOTICES, ETC. – SECTION 56

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## 17.1 OVERVIEW

- 17.1.1 There are various provisions in the Act which entitle SANRAL to issue a notice to a person requiring him or her to perform, carry out, do or cease any act, activity or other thing within a specified or prescribed period<sup>1</sup>.
- 17.1.2 In terms of the Act, SANRAL may allow a person a further period for the performing, carrying out, doing or ceasing any act, activity or other thing required of him or her<sup>2</sup>.
- 17.1.3 The person concerned must make application to SANRAL for the extension of time to do what is required of him or her<sup>3</sup>.
- 17.1.4 SANRAL has a discretion as to whether such extension of time should be granted or not<sup>4</sup>.
- 17.1.5 If the application for an extension of time is allowed by SANRAL, then the further period will be regarded and treated for the purposes of the Act as if it were the period stated, specified or prescribed in SANRAL's notice or other document<sup>5</sup>.

## 17.2 PROCEDURES

- 17.2.1 If a person wants an extension of time to comply with his or her obligations in terms of the Act, that person must make written application to SANRAL for such extension.
- 17.2.2 Extensions of time should, wherever possible, be granted or refused in writing.
- 17.2.3 This will ensure that a dispute does not arise at a later stage as to whether or not the extension of time was granted and of so, what the period of the extension was.
- 17.2.4 In the event that an application for an extension of time is granted or refused orally, then this should be confirmed in writing as soon as possible thereafter.

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<sup>1</sup> For example, sections 43, 48, 49, 50, 51 and 52

<sup>2</sup> Section 56(1)

<sup>3</sup> Section 56(1)

<sup>4</sup> Section 56(1)

<sup>5</sup> Section 56(2)

17.2.5 The application for an extension of time must be made before the termination of the period in the notice or other document.

17.2.6 The decision as to whether an extension of time should be granted or not should be taken by the person who issued the notice or other document in order to ensure that the application for an extension is given due consideration and an informed decision is taken.

### 17.3 INFORMATION REQUIRED BY SANRAL

17.3.1 The person applying for the extension must provide SANRAL with the following information:

17.3.1.1. sufficient details must be given as to why the requirements of the notice or other document can allegedly not be met;

17.3.1.2. details of the extension applied for must be given;

17.3.1.3. the person must provide a breakdown of what he or she will do during the period of the extension to enable SANRAL to determine whether the person will be able to comply with his or her obligations within such further period.

17.3.2 Before granting or refusing an application for an extension, SANRAL must consider:

17.3.2.1. whether there is any prospect of the safety of road users being compromised as a result of a delay in compliance with a notice or other document issued by SANRAL;

17.3.2.2. whether any third parties such as a municipality or a service provider could be prejudiced as a result of the extension being granted;

17.3.2.3. whether a claim could be made against SANRAL by a third party if the extension of time is granted and compliance with the original notice or other document is not enforced;



- 17.3.2.4. whether SANRAL will suffer any financial prejudice as a result of the extension being granted and if so, whether the person making application for such extension is willing and capable of indemnifying SANRAL against the loss or damages it may suffer;
- 17.3.2.5. whether there is any reasonable prospect of the person making application for the extension thereafter complying with his or her obligations.

#### 17.4 TOWNSHIP DEVELOPMENTS

- 17.4.1 SANRAL must ensure that if it allows a township developer an extension of time to comply with its obligations, this will not prejudice SANRAL's ability to enforce its conditions thereafter<sup>6</sup>.
- 17.4.2 SANRAL must ensure that an extension of time does not prejudice the safety of road users<sup>7</sup>.
- 17.4.3 SANRAL must ensure that if an extension of time is granted, the township developer is willing and able to comply with its obligations thereafter<sup>8</sup>.

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<sup>6</sup> For example, it may be difficult to register conditions of title in terms of section 49(5) after transfer of an erf in a township to the purchaser thereof.

<sup>7</sup> For example, if the township is not to be allowed access to a National Road after a particular date, the safety of road users could be seriously prejudiced if people begin occupying the township and continue to make use of such access.

<sup>8</sup> If the township developer has sold and transferred all the sites within the township, it may not have any incentive to comply with outstanding obligations such as the construction of a wall between the township and the National Road.

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## CHAPTER 18: LIMITATIONS OF LEGAL PROCEEDINGS AGAINST THE AGENCY – SECTION 59

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## 18.1 OVERVIEW

18.1.1 It is necessary to distinguish between two different categories of claims that may arise against SANRAL:

18.1.1.1. claims that arise from road users who use a National Road;

18.1.1.2. other claims.

18.1.2 In terms of the Constitution, SANRAL is an Organ of State<sup>1</sup>.

18.1.3 Legal proceedings against SANRAL are limited by section 59 of the Act<sup>2</sup> and by the provisions of the Institution of Legal Proceedings Against Certain Organs of State Act, 40 of 2002.<sup>3</sup>

## 18.2 CLAIMS ARISING FROM ROAD USERS WHO USE OF NATIONAL ROAD

18.2.1 In terms of the Act, SANRAL will not be liable for any damage or loss suffered by any person through the use of any part of the National Road other than the roadway or as a result of the closure or deviation of a National Road under the Act<sup>4</sup>.

18.2.2 This means that SANRAL may be liable for loss or damage suffered by any person using a National Road, in two situations:

18.2.2.1. if it is caused on the roadway itself;

18.2.2.2. if it is caused as the result of the closure or deviation of a National Road under this Act.

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<sup>1</sup> Section 239 of the Constitution provides that an organ of State includes any functionary or institution exercising a public power or performing a public function in terms of any legislation. In terms of section 2 of the Act, SANRAL was established to take charge of the South African National Roads system and in terms of section 3, the State is the sole shareholder of SANRAL.

<sup>2</sup> Section 59 was amended by the institution of Legal Proceedings Against Certain Organs of State Act, 40 of 2002, published in Government Gazette 24112, dated 28 November 2002.

<sup>3</sup> Chapter 7 of the Manual deals specifically with the compensation payable by the SANRAL for damages or losses suffered by a person as a result, for example, the closure of an entrance to or exit from a National Road.

<sup>4</sup> Section 59(3) of the Act

- 18.2.3 The term “roadway” is not defined in the Act. However, the term “road” is defined and means “a public road and includes, in addition to the roadway –
- 18.2.3.1. the land of which the road consists or over which the road reserve in question extends;
  - 18.2.3.2. anything on that land forming part of, or connected with, or belonging to the road; and
  - 18.2.3.3. land acquired for the construction of a connection between a National Road and any other road”.
- 18.2.4 Furthermore, in terms of section 1 of the National Road Traffic Act, 93 of 1996, a “roadway” is defined as that portion of a road, street or thoroughfare improved, constructed or intended for vehicular traffic which is between the edges of the road way.
- 18.2.5 These definitions, read with the definitions of “shoulder” and “verge”, contained in Act 93 of 1996, imply that the roadway is that portion of the actual surfaced and improved portion of the road reserve over which persons normally drive. This may include a deviation of a portion of the “normal roadway”. The portion of the normal roadway, which is temporarily not in use, will therefore not comprise part of the “roadway” for the period that the deviation or detour is used.
- 18.2.6 In terms of the Act therefore, if a person suffers loss or damage off the roadway but within the road reserve, SANRAL is not liable for such loss or damage.
- 18.2.7 In terms of the Act, SANRAL may close a National Road to traffic or divert the roadway of a National Road whenever in its opinion it is necessary or desirable to do so.<sup>5</sup>

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<sup>5</sup> Section 45 of the Act

- 18.2.8 If the roadway has been diverted by SANRAL, it may be liable for loss or damage suffered by a person through the use of that diversion, but not as a result of a person's illegal use of that portion of the roadway itself which has been diverted.
- 18.2.9 A claim could also arise if the loss or damage was the result of the improper closure of the National Road.
- 18.2.10 The limitation on legal proceedings which applies to SANRAL also applies to:
- 18.2.10.1. any members of the Board;
  - 18.2.10.2. the Chief Executive Officer;
  - 18.2.10.3. any of the other employees of SANRAL acting in the performance of their duties;
  - 18.2.10.4. any person acting on behalf of SANRAL on the authority of the Board; or
  - 18.2.10.5. any person who operates or has constructed a National Road<sup>6</sup>.

### 18.3 OTHER CLAIMS

- 18.3.1 Claims may also arise against SANRAL for reasons other than the use of a National Road. For example, a supplier of services may institute an action against SANRAL for a payment allegedly due, or a person could institute action arising from a breach of an agreement of sale for the purchase of land.
- 18.3.2 In these instances, proceedings against SANRAL are affected by the Institution of Legal Proceedings against certain Organs of State Act, 40 of 2002, which came into operation on 24 November 2002.
- 18.3.3 The purpose of this Act was to regulate the prescription and to harmonise the periods of prescription of debts for which certain organs of state are liable, and to make

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<sup>6</sup> Section 59 (3)

provision for notice requirements in connection with the institution of legal proceedings against certain organs of state in respect of the recovery of debt.

18.3.4 SANRAL is specifically included in the Organs of State affected by this Act<sup>7</sup>.

18.3.5 Act 40 of 2002 defines a debt as meaning “any debt arising from any cause of action–

18.3.5.1. which arises from delictual, contractual or any other liability, including a cause of action which relates to or arises from any –

a. act performed under or in terms of any law; or

b. omission to do anything which should have been done under or in terms of any law; and

18.3.5.2. for which an organ of state is liable for payment of damages”<sup>8</sup>.

18.3.6 It is clear from this definition that Act 40 of 2002 not only applies to claims by contractors for payment for services rendered but also to claims arising from wrongful acts or omissions on the part of SANRAL.

18.3.7 The provisions of Act 40 of 2002 therefore apply to all claims against SANRAL including claims arising from the use of a National Road.

18.3.8 Act 40 of 2002 essentially deals with procedural issues and is applicable to all legal proceedings issued against SANRAL.

18.3.9 Legal proceedings may not be instituted against SANRAL for recovery of a debt unless the claimant has either given SANRAL notice in writing of his or her intention to institute the legal proceedings or, alternatively, SANRAL has consented in writing to the institution of the legal proceedings without such notice<sup>9</sup>.

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<sup>7</sup> Section 1 (vii) (e) of Act 40 of 2002

<sup>8</sup> Section 1(iii)

<sup>9</sup> Section 3(1) of Act 40 of 2002

- 18.3.10 The claimant is obliged to give notice to SANRAL within six months of the date on which the debt became due. The notice must briefly set out the facts giving rise to the debt and particulars of the debt as are within the knowledge of the claimant<sup>10</sup>.
- 18.3.11 A notice must be served on SANRAL by delivering it by hand or by sending it by certified or electronic mail or by transmitting it by facsimile. If the notice is sent by electronic mail or transmitted by facsimile, the creditor must –
- 18.3.11.1. take all reasonable steps to ensure that the notice has been received by the officer or person to whom it was so sent or transmitted; and
  - 18.3.11.2. within seven days after the date upon which the notice was sent or transmitted, deliver by hand or send by certified mail a certified copy of that notice to the officer or person to whom it was sent, which must be accompanied by an affidavit by the claimant:
  - 18.3.11.3. indicating the date on which and the time at which, and the electronic mail address or facsimile number to which the notice was sent;
  - 18.3.11.4. containing any proof that it was sent or transmitted;
  - 18.3.11.5. setting out the steps taken to ensure that the notice was received by the person to whom it was sent;
  - 18.3.11.6. indicating where the confirmation of the receipt of the notice has been obtained, and if applicable, the name of the officer or person who has given that confirmation<sup>11</sup>.
- 18.3.12 The claimant may not institute legal proceedings before the expiry of a period of thirty days after the notice has been served on SANRAL.

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<sup>10</sup> Section 3(2) of Act 40 of 2002

<sup>11</sup> Section 4(2) of Act 40 Of 2002

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18.4 **PROCEDURES**

- 18.4.1 In the event that notice is received of any claim against SANRAL, the Chief Executive Officer and the Regional Manager of the region affected by such claim, must immediately be notified of such claim and provided with a copy of the notice.
- 18.4.2 It must be determined whether the claimant has complied with the requirements of Act 40 of 2002.
- 18.4.3 Investigations must immediately be undertaken by the relevant regional office in order to determine the appropriate response to such claim. This may require an attorney to be appointed, if so directed by the Head of the SANRAL Legal Section.
- 18.4.4 In the event that legal action is instituted against SANRAL, the person signing affidavits or approving any pleadings on behalf of SANRAL must have delegated authority to do so



## CHAPTER 19: LEGAL AND/OR ILLEGAL SETTLEMENT ON LAND

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## 19.1 OVERVIEW

- 19.1.1 The functions of SANRAL include the management and control of National Roads for the Republic of South Africa.<sup>1</sup>
- 19.1.2 The SANRAL is not only empowered to exploit, for gain or reward, any immovable property belonging to it, but as a landowner, is also statutorily obliged to ensure that land which is part of a National Road reserve and land that is not immediately required by SANRAL is not invaded or occupied illegally.<sup>2</sup>
- 19.1.3 It is necessary to differentiate between situations where persons are in the process of moving onto SANRAL land or have only been there for a short period, and those situations where persons have been in occupation of SANRAL land for some time and have established structures thereon. In the first instance, one is dealing with land invasions and in the second, illegal occupants.
- 19.1.4 This chapter identifies the responses of SANRAL to these different situations.

## 19.2 STATUTORY AUTHORITY AND/OR RESTRICTIONS PLACED ON SANRAL

- 19.2.1 Although SANRAL is statutorily obliged to manage and control the immovable property which it owns, it must do so in accordance with the legislation applicable thereto.
- 19.2.2 In terms of the Constitution, no one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.<sup>3</sup>
- 19.2.3 The Constitution also provides that no one may be evicted from their home, or have their home demolished.<sup>4</sup>

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<sup>1</sup> Section 25 of the South African National Roads Agency Limited and National Roads Act, 7 of 1998.

<sup>2</sup> Section 26(l) of Act 7 of 1998.

<sup>3</sup> Section 25(1) of the Constitution of the Republic of South Africa, Act 108 of 1996.

<sup>4</sup> Section 26(3) of the Constitution.

- 19.2.4 As noted above, various legislation is applicable to the occupation of land within South Africa. Such legislation deals with the rights of both the occupiers and owners of land as well as the eviction of occupiers from land. This legislation includes:
- 19.2.4.1. the Prevention of Illegal Eviction from and Unlawful of Occupation of Land Act, 19 of 1998;
  - 19.2.4.2. the Interim Protection of Informal Land Rights Act, 31 of 1996;
  - 19.2.4.3. the Extension of Security of Tenure Act, 62 of 1997;
  - 19.2.4.4. the Land Reform (Labour Tenants) Act; 3 of 1996; and
  - 19.2.4.5. the Restitution of Land Rights Act, 22 of 1994.

### 19.3 **GUIDELINES ADOPTED**

#### 19.3.1 Land invasions

- 19.3.1.1. A bold approach should be taken with regard to the understanding of the term “occupation”. Occupation is more than merely a presence on the land. It suggests an habitual physical presence or a physical presence for a substantial period of time.
- 19.3.1.2. Persons who have not established an habitual physical presence on the land or who have not been there for a substantial period will not be regarded as illegal occupiers. In those cases, SANRAL will not regard Act 19 of 1998<sup>5</sup> as being applicable to it.
- 19.3.1.3. It is difficult to be prescriptive regarding how long this period is as it will depend on the degree to which the person has established himself or herself on the land.

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<sup>5</sup> The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 31 of 1996

- 19.3.1.4. Clearly, there may be exceptions that arise, particularly where the persons on the land have been there for a short period but have established proper structures already.
- 19.3.1.5. The emphasis at all times should be on the prevention of occupation of land in the first place. SANRAL's land should be monitored to ensure that the earliest possible response is made to any invasion of SANRAL's land. Land within the road reserve must be monitored by the Routine Road Maintenance Contractor. Land outside the road reserve must be monitored by the Property Service Provider.
- 19.3.1.6. In the event of SANRAL becoming aware of persons who have invaded its land but who are not yet in occupation, immediate steps must be taken to remove these persons from the land. Speed of response is of the absolute essence. This should either be done in conjunction with the South African Police Services, a municipality's security services or a private security firm.
- 19.3.1.7. Prior to removal of such persons, the following approach must be adopted:
- a. The responsible official within the region concerned must approach such persons and issue a verbal warning to them that they are acting illegally. The official should be accompanied by an interpreter, where necessary.
  - b. At the same time, the persons must be issued with a notice in English and preferably also in their own language advising them that unless they move off the land by a stipulated date and time, action will be taken to have them removed. If possible, the persons must sign a copy of the notice to acknowledge receipt but photographs should in any event be taken to confirm that notices have been handed over.
  - c. The date and time for vacation of the property must take into account the particular circumstances of the matter. If there is a serious threat to these persons' safety and the safety of road users, then a short period of time should

be given for them to remove their belongings. They may even only be given a period of several hours.

- d. If a few days are given, the area must be monitored to ensure that no further influx of people takes place and to prevent further or more permanent structures from being erected. This can be achieved by the appointment of a competent security firm.
- e. A few hours prior to the deadline, the occupiers must again be notified that they must vacate the property and remove their goods by the time given.
- f. If the persons still refuse to cooperate, then they must be moved off the property with the assistance of the South African Police Services, a municipality's security services or a private security firm.
- g. Photographs must be taken prior to, during and after the eviction of such persons.
- h. The land must then be monitored to prevent any reoccupation thereof.

### 19.3.2 Illegal Occupants

- 19.3.2.1. In situations where persons have been in occupation of SANRAL's land for long enough to establish themselves on such land, it is not possible to proceed on the basis set out in paragraph 5.3.1 above and SANRAL must either bring an application to court for an order evicting the occupiers from the land or, alternatively, make arrangements for their relocation to other land.
- 19.3.2.2. It must always be borne in mind that legal action in these circumstances is costly and there is little or no chance of recovering costs if a court application is successful.
- 19.3.2.3. Even if a court application is brought by SANRAL, SANRAL will still have to show that there is alternative land or accommodation available for the occupiers to move to, as this is required in terms of Act 19 of 1998.

- 19.3.2.4. A more positive approach should therefore be adopted to problems within this category and SANRAL should attempt, where possible, feasible and necessary, to make arrangements for the relocation of occupiers by agreement. If the land is not required for road purposes, SANRAL should also investigate whether the land can be disposed of without having to first relocate the occupants.
- 19.3.2.5. If it is established that persons are in occupation of land belonging to or under control of SANRAL, then evidence relating to such occupation should be obtained as soon as possible, including, but not necessarily limited to, the following:
- a. any evidence of imminent danger or damage to persons or property;
  - b. dated photographic evidence of the extent of occupation and the status of the structures;
  - c. the circumstances under which the unlawful occupier occupied the land and erected the building or structure;
  - d. the period of occupation;
  - e. information as to what controls were put in place to monitor unlawful occupation and why, despite such controls, unlawful occupation still took place;
  - f. evidence, including affidavits, with regard to any person receiving payments from illegal occupiers for the right to occupy that land;
  - g. a general assessment of the profile of the persons illegally occupying the land including, where applicable, the number of elderly persons, children, disabled persons, and women-headed households; and
  - h. where possible, the names of the persons illegally occupying the land.

- 19.3.2.6. Steps must immediately be taken to prevent any further occupation of the land and any person invading the land thereafter must be removed in accordance with the process described above.
- 19.3.2.7. An assessment must be made as to whether SANRAL requires the land which has been occupied and if not, it must be determined whether the land is suitable for residential occupation. The determination of this possibility should be done in conjunction with the municipality having jurisdiction over the land and should take into account the following factors:
- a. the technical and financial feasibility of developing the land;
  - b. development options for the land;
  - c. the community profile;
  - d. availability of housing opportunities to the illegal occupants;
  - e. availability of alternative land (State or private) to which the occupants could be relocated;
  - f. legal options<sup>6</sup>.
- 19.3.2.8. It must be noted that it is not SANRAL's task to become involved in the delivery of housing but SANRAL must seek to obtain the co-operation of other government bodies (including the Department of Land Affairs and the various Provincial Departments of Housing) and the municipality having jurisdiction over the land concerned, to identify land and source funds for its development. Subsidised housing in South Africa is driven by municipalities and it is essential that the relevant municipality be drawn into the process as soon as possible. It is likely that the majority of the illegal occupants will be able to access housing subsidies through the relevant Provincial Housing Department.

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<sup>6</sup> See paragraph 19.5.4 below

- 19.3.2.9. If the land in question is not required, and alternative land has been identified as is required by Act 19 of 1998, then that land can be developed and the illegal occupiers can be relocated. The SANRAL's land must be monitored to ensure that it is not re-occupied by other persons.
- 19.3.2.10. When identifying land for development, SANRAL should liaise with the municipality having jurisdiction over that land. However, if the municipality is not prepared to cooperate or does not have the capacity to do so, then SANRAL should liaise with the Provincial Department of Housing and, if necessary, the MEC for Housing for the particular province as that Department will be the source of housing subsidies which will be required for the development of the land.
- 19.3.2.11. Another possibility is for SANRAL to call for proposals and assistance from the private sector, and low-income housing developers can then attend to the necessary negotiations with the municipality and Provincial Department of Housing on behalf of SANRAL.
- 19.3.2.12. It must be noted that section 48(5) of Act 7 of 1998 provides that where a person has, without permission, erected, constructed, laid or established a structure on or over below the surface of a National Road or land within a building restriction area, such person must be given not less than 30 days' notice to remove the unauthorised structure. It is important to note that if such a notice is ignored and the structure is occupied, SANRAL is obliged to act in accordance with the provisions of Act 19 of 1998 as this Act applies in respect of all land throughout the Republic.<sup>7</sup>
- 19.3.2.13. If alternative land is identified but the illegal occupiers refuse to move, then SANRAL should proceed with an application for the eviction of such occupiers in accordance with the provisions of Act 19 of 1998<sup>8</sup>.
- 19.3.2.14. The possibility of bringing urgent proceedings for the removal of illegal occupiers must be borne in mind. It is possible that persons may have been in occupation for

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<sup>7</sup> Section 2 of Act 19 of 1998

<sup>8</sup> See paragraph 19.5.4 below



an extended period but that their occupation begins to cause danger for other people living in the area or for road users. In those circumstances, it may be necessary or possible for SANRAL to institute urgent proceedings in terms of Act 19 of 1998 and this possibility should not be overlooked.

#### **19.4 THE PIE ACT<sup>9</sup>**

This Act applies to all land, whether private or public, throughout South Africa. One of the main purposes of Act 19 of 1998 is to determine procedures for the eviction of unlawful occupiers. There are a number of important issues which must be considered with applications for eviction in terms of this Act.

##### **19.4.1 Applications for the eviction of persons who have been in occupation for less than six months<sup>10</sup>**

19.4.1.1. At least fourteen days' notice of the proceedings must be given to the unlawful occupier and the municipality in whose jurisdiction the land is situated.

19.4.1.2. The rules of the court in which application is being made must be followed with regard to service of the application. This means that if the application is brought in either the High or Magistrate's Court, the rules of that particular court must be complied with.

19.4.1.3. If it is not possible to obtain service in terms of these rules, then an application can be made to court for an order giving directions on service.

19.4.1.4. The court will only grant an order for eviction if it is of the opinion that it is just and equitable to do so, after considering all relevant circumstances, including the rights and needs of the elderly, children, disabled persons and households headed by women.

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<sup>9</sup> The Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, Act 19 of 1998

<sup>10</sup> Section 4 of Act 19 of 1998

- 19.4.1.5. If the court does grant an order for eviction, then it will determine a just and equitable date by which the unlawful occupier must have vacated the land. In deciding upon this date, the court will take into account all relevant circumstances, including the period the unlawful occupier and his or her family have resided on the land in question.
- 19.4.2 Applications for eviction of persons who have been in occupation for more than six months<sup>11</sup>
- 19.4.2.1. In these situations, apart from considering the factors described above, the court will also consider whether land has been made available or can reasonably be made available by a municipality or other organ of state or another land owner for the relocation of the unlawful occupier.
- 19.4.2.2. The court will also take the factors referred to above into account in determining the date by when the unlawful occupier must have vacated the land. If the unlawful occupier has been in occupation for a substantial period, then it can be expected that that person will be given an extended period of time to vacate the property.
- 19.4.3 Urgent proceedings for eviction.<sup>12</sup>
- 19.4.3.1. The court will grant an order for urgent proceedings if it is satisfied that:
- a. there is a real and imminent danger of substantial injury or damage to any person or property if the unlawful occupier is not immediately evicted from the land;
  - b. the likely hardship to the owner or other affected person if an order for eviction is not granted exceeds the likely hardship to the unlawful occupier against whom the order is sought, if any order for eviction is granted; and

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<sup>11</sup> Section 4(7) of Act 19 of 1998

<sup>12</sup> Section 5 of Act 19 of 1998

c. there is no other effective remedy available.

19.4.3.2. The unlawful occupier must still be given notice of these proceedings.

19.4.4 Eviction by an Organ of State.<sup>13</sup>

19.4.4.1. In addition to the factors described above, the court must also be convinced that it is in the public interest to grant such an order. “Public interest” includes the interest of the health and safety of those occupying the land and the public in general.

19.4.4.2. In these instances, the State must give information to the court on the availability to the unlawful occupier of suitable alternative accommodation or land.

19.4.4.3. It is noted that SANRAL is an organ of state.<sup>14</sup>

19.4.5 Other provisions

19.4.5.1. Urgent proceedings will be in the nature of interim proceedings and a final application will still be considered by the court in due course even if an order for the eviction of the illegal occupiers is given.

19.4.5.2. Anyone who evicts an unlawful occupier without the authority of an order of court is guilty of an offence.

19.4.5.3. The Magistrate’s Court has jurisdiction to issue an order in terms of Act 19 of 1998.

19.4.5.4. It is important to note that the provisions of Act 19 of 1998 apply to all occupants of land, whether such occupation is legal or illegal.

19.4.5.5. In instances where an occupant was given permission to occupy land SANRAL’s land, whether by SANRAL or by the previous owner, then the provisions of other

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<sup>13</sup> Section 6 of Act 19 of 1998

<sup>14</sup> Section 1 of Act 19 of 1998 read with section 239 of Act 108 of 1996.

legislation may also apply. In that event, the occupant could have informal rights to such land in terms of Act 31 of 1996<sup>15</sup>, Act 62 of 1997<sup>16</sup> or Act 3 of 1996<sup>17</sup>.

19.4.5.6. In that event, it will be necessary to also comply with the provisions of the particular legislation that is applicable if it is necessary to relocate or evict an occupant.

## 19.5 **GENERAL**

19.5.1 It is incumbent upon all employees of SANRAL as well as SANRAL's service providers to make every effort to ensure that SANRAL's land is not unlawfully occupied and that land invasions are dealt with expeditiously.

19.5.2 In the event that SANRAL receives a report of an invasion or occupation of land, immediate action must be taken in accordance with the abovementioned guidelines.

19.5.3 Prior to the commencement of any legal action, the written approval of SANRAL's Chief Executive Officer must be obtained. The Chief Executive Officer must also be informed of any evictions arising from a response to a land invasion.

19.5.4 In the event that it is necessary to proceed with an application to court, the person signing affidavits on behalf of SANRAL must have delegated responsibility to do so.

19.5.5 If alternative land is found to which illegal occupants can be relocated, and such land is developed with services and housing using subsidies granted by the Department of Housing, the cost of relocating the occupants to such land cannot be paid out of the subsidies. This cost will have to be borne by SANRAL unless alternative arrangements can be made with the Municipality having jurisdiction over the land concerned.

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<sup>15</sup> Interim Protection of Informal Land Rights Act

<sup>16</sup> Extension of Security of Tenure Act

<sup>17</sup> Land Reform (Labour Tenants) Act

## **CHAPTER 20: CHANGE IN USE (REZONING) OF LAND**

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## 20.1 OVERVIEW

- 20.1.1 Applications for a change in the use (rezoning) of land are not dealt with directly in the Act.
- 20.1.2 Until the Spatial Planning and Land Use Management Act<sup>1</sup> came into operation on 1 July 2015, there was a plethora of planning legislation in South Africa.
- 20.1.3 The use or zoning of land was governed by various provincial ordinances and legislation such as the Less Formal Township Establishment Act<sup>2</sup>, the Development Facilitation Act<sup>3</sup>, and some Provincial Acts<sup>4</sup>.
- 20.1.4 The Less Formal Township Establishment Act and the Development Facilitation Act have been repealed by SPLUMA<sup>5</sup>.
- 20.1.5 SPLUMA also provides that except as provided for in SPLUMA, no legislation which has not been repealed by SPLUMA may prescribe an alternative or parallel mechanism, measure, institution or system on spatial planning, land use, land use management and land development in a manner which is inconsistent with the provisions of SPLUMA<sup>6</sup>.
- 20.1.6 Whilst some provincial ordinances that have previously governed planning remain in force, they will only do so provided their provisions are not inconsistent with SPLUMA.
- 20.1.7 SPLUMA acknowledges that there are activities requiring authorisation in terms of SPLUMA which are also regulated in terms of another law<sup>7</sup>.

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<sup>1</sup> Act 16 of 2013, known as SPLUMA

<sup>2</sup> Act 113 of 1991

<sup>3</sup> Act 67 of 1995

<sup>4</sup> The KwaZulu-Natal Planning and Development Act, 6 of 2008

<sup>5</sup> Section 59 of SPLUMA

<sup>6</sup> Section 2(2) of SLUMA

<sup>7</sup> Section 30(1) of SPLUMA

- 20.1.8 The Act is such a law and there are various provisions of the Act which must be complied with separately and in addition to an application under SPLUMA<sup>8</sup>.
- 20.1.9 This chapter of the Guideline must therefore not be read in isolation and must be considered in conjunction with other chapters dealing with matters that may impact on an application for a change in land use or rezoning.
- 20.1.10 In some circumstances, SANRAL may have direct jurisdiction over a proposed change in land use as a result of conditions it previously imposed in accordance with the provisions of the Act. Such conditions have or should have been taken up in the conditions of establishment of the relevant township or the title deed of the affected land.
- 20.1.11 SANRAL may also have indirect jurisdiction over the proposed change in use of land if the land is situated within or partially within a Building Restriction Area.
- 20.1.12 It is noted that neither SPLUMA nor the Regulations<sup>9</sup> made thereunder stipulate what has to be provided to a municipality in a land development or land use application.
- 20.1.13 The SPLUMA Regulations<sup>10</sup> require a municipality to determine the manner and format in which applications must be submitted.
- 20.1.14 Municipalities are complying with this requirement by introducing by-laws to determine the procedure and documentation required for such applications.

## 20.2 PROCEDURES

- 20.2.1 All applications for the proposed change in land use (rezoning) that are submitted to SANRAL for comment, or are advertised, must be carefully scrutinised to determine whether SANRAL's comment is required.

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<sup>8</sup> Sections 44 (access), 48 (structures and other works on, over or below National Roads or certain other land), Section 49 (the subdivision of land), Section 50 (advertisements on or visible from National Roads) and 52 (trading on a National Road or in a building restriction area)

<sup>9</sup> Regulations made under section 54 of SPLUMA which came into operation on 13 November 2015

<sup>10</sup> Regulation 14(1)

- 20.2.2 Most municipalities dealing with applications for change in land use normally require an applicant to obtain comment from SANRAL but this is not always the case.
- 20.2.3 Each SCO should engage with municipalities within their region to establish a relationship with the municipal planners and to ensure that SANRAL is always given an opportunity to make comment if any application for rezoning is received.
- 20.2.4 SPLUMA requires that national, provincial and municipal spatial development frameworks be adopted<sup>11</sup>.
- 20.2.5 SANRAL must ensure that it is involved in the preparation of these spatial development frameworks to ensure that the existing and future National Road network is not compromised by other national, provincial or municipal planning initiatives.
- 20.3 **PROCESSES AND PROCEDURES: LAND DEVELOPMENT APPLICATION**
- 20.3.1 When an application for rezoning is received, SANRAL must determine whether its approval is required in terms of the Act and/or whether the proposed development will impact on the National Road network.
- 20.3.2 Where SANRAL becomes aware of an application or appeal which is lodged in which SANRAL's rights (as statutory authority or landowner) may be adversely affected but is not joined as a party or requested for comment then SANRAL must petition the Municipality to be joined as an interested party in the proceedings.<sup>12</sup>
- 20.3.3 SANRAL must provide comment on application within the timeframe applicable in terms of the bylaw.<sup>13</sup>

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<sup>11</sup> Chapter 5 of SPLUMA

<sup>12</sup> SPLUMA section 45,51 and regulation 31.

<sup>13</sup> SPLUMA Regulation 16(10)



- 20.3.4 SANRAL may request an extension of the timeframe within which to make comment in writing to the Municipality. It is important for potential appeal purposes that evidence of delivery (registered slip, signed receipt of request) is kept on file.
- 20.3.5 Where SANRAL does not comment within the timeframe specified in the Municipal bylaw, then SANRAL is deemed to have no objection to the application.<sup>14</sup>
- 20.3.6 Furthermore, the Municipal Planning Tribunal or Authorised Official may report the non-performance to the Minister of Transport.<sup>15</sup>
- 20.3.7 In the event that SANRAL's approval under a section of the Act is required, the processes and procedures described in this guideline for those sections should be followed<sup>16</sup>.
- 20.3.8 In considering applications for changing land use or rezoning, the SCO must take into account any previously approved applications, whether development thereunder has proceeded or not.
- 20.3.9 Whilst a proposed development on its own may not materially affect the National Road network or access thereto, the accumulative impact of approved developments may. This may, for example, lead to the latest developer having to contribute to the cost of an upgrade to an intersection as a result of the impact of additional traffic on an existing access.
- 20.3.10 Wherever possible, SANRAL should endeavour to have its requirements included in the conditions of approval or conditions of establishment for a proposed development.
- 20.3.11 If such conditions can be stipulated as title deed conditions, this will enable SANRAL to control future development more effectively.

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<sup>14</sup> SPLUMA Regulation 16(10)

<sup>15</sup> SPLUMA Regulation 16(10)

<sup>16</sup> Section 44, section 47, section 48, section 49, section 50, and section 52 of the Manual.

- 20.3.12 For standard condition, title deed conditions and conditions requiring the conclusion of an agreement reference must be made to the guideline dealing with the relevant sections applicable.
- 20.3.13 In circumstances where the 'Change in Use (Rezoning) of Land' will impact the National Road directly and/or indirectly but where such input is not provided for in the relevant sections of the Act, then the SCO must refer the matter for specific planning and legal input from SANRAL's planning and legal division and/or the Property Portfolio Service Provider.
- 20.3.14 SANRAL must ensure that it is informed of the final decision and provided with a copy of the Conditions of Establishment which must be kept on file.
- 20.3.15 SANRAL must compare the comments and conditions submitted during the administrative phase of the application with the final conditions granted by the MPT or authorised official. Where SANRAL's comments and conditions have not been adequately considered or catered for in the final decision then SANRAL must consider appealing the decision. SANRAL may consult with the PPSP in considering this action.
- 20.4 **PROCESSES AND PROCEDURES: APPEAL OR REVIEW OF A LAND DEVELOPMENT APPLICATION**
- 20.4.1 SANRAL must be guided by the Municipality's bylaws in appealing a land development decision which adversely affects SANRAL's rights.
- 20.4.2 The SCO should inform SANRAL's legal department of the intention to appeal a decision. SANRAL may also enlist the assistance of the Property Portfolio Service Provider.
- 20.4.3 SANRAL must within 21 days of being notified of the decision give written notice to the municipal manager of the intention to appeal and the reasons.<sup>17</sup>

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<sup>17</sup> SPLUMA section 51(1)

- 20.4.4 SANRAL may, in writing, call for further documents from the municipality as well as reasons for the decision in order to prepare the appeal.
- 20.4.5 Where it is apparent that a municipality did not follow the correct processes in terms of SPLUMA or their bylaws then the decision is also reviewable.
- 20.4.6 The appeal may either be heard by means of a written or oral hearing. This is determined by the appeal authority and will be communicated to SANRAL.<sup>18</sup>
- 20.4.7 The appeal authority after considering the appeal will confirm, vary or revoke the decision.<sup>19</sup>

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<sup>18</sup> SPLUMA regulation 23

<sup>19</sup> SPLUMA section 51(3)

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## CHAPTER 21: SIGNAGE - TOURISM (BROWN) AND LOCAL DESTINATION (WHITE) – REFERENCE TO SECTION 48

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## 21.1 OVERVIEW

- 21.1.1 Several types of Guidance Signs on which information such as route numbers and town suburb and street names are displayed, are provided adjacent to roads as navigational aids to decrease the pressures on drivers when they negotiate the road network. The location, design, establishment and other technical details regarding all such Guidance Signs are dealt with in detail in the South African Road Traffic Signs Manual (SARTSM)<sup>1</sup>.
- 21.1.2 Although there are many types of Guidance Signs, guidelines regarding the manner in which the location, design, establishment or the erection of Tourism and local destination Signs must be dealt with by the various road authorities, are clearly defined in Chapter 4 and Chapter 9 of the aforementioned SARTSM.
- 21.1.3 A decision as to whether to erect a Tourism or Local Destination Sign, or not, will almost certainly result from one of three circumstances, namely –
- 21.1.3.1. a written request for the erection of a Tourism or local destination Sign from the Operator of a specific facility, which request is either submitted directly to SANRAL or through a Regional or Area Tourism Committee; or
- 21.1.3.2. an investigation by SANRAL of all tourist facilities within a defined area; or
- 21.1.4 However, in order to ensure that a uniform approach is taken by all SANRAL Regional Offices when dealing with applications for the erection of Tourism and Local Destination Signs, which applications are referred to in paragraph 19.1.3(a) supra, only the statutory and other procedures required when dealing with such applications, will be addressed in this Chapter.

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<sup>1</sup> The SARTSM and SADC-RTSM is obtainable from The National Department of Transport, Private Bag X193, Pretoria, 0001

## 21.2 AUTHORITY

- 21.2.1 The South African National Roads Agency Limited and National Roads Act, 1998 (Act 7 of 1998) [the Act]<sup>2</sup> does not deal specifically with the erection of Tourism and Local Destination Signs. However, such signs are merely structures that are erected within a road reserve and the erection of such structures are governed by the provisions of section 48 of the Act. All applications for Tourism and Local Destination Signs will therefore have to be commented on or approved or rejected by SANRAL in accordance with the provisions of the afore-mentioned section of the Act.
- 21.2.2 It is, however, important to note that both the provisions dealt with in Chapter 4 and Chapter 9 of SARTSM Volume 2, as well as the SADC-RTSM Volume 4 Chapter 13., as well as the provisions of section 48 of the Act, will have to be taken cognisance of when dealing with an application for the erection of a Tourism or Local Destination Sign.
- 21.2.3 It is also recommended in the SARTSM that the processing of applications for Tourism Signs should be carried out by a Regional Tourism Liaison Committee (RTLCL)<sup>3</sup> and/or by a Local Tourism Organisation (LTO)<sup>4</sup>. However, as mentioned above, the statutory authority for the erection of any structure within the road reserve of a National Road, is vested in SANRAL. As this authority cannot be delegated to any other person or entity, all applications for the erection of Tourism Signs, whether they are submitted to SANRAL directly by an operator of a facility or through a Regional or Area Tourism Committee, can therefore only be commented on and/or approved or rejected by SANRAL.
- 21.2.4 SANRAL will either have no jurisdiction over the erection of a specific Sign, or if the Sign is to be erected within the road reserve and/or the building restriction area of a National Road, SANRAL will have direct jurisdiction to reject or approve the erection thereof.

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<sup>2</sup> See Terminology And Definitions

<sup>3</sup> See Terminology And Definitions

<sup>4</sup> See Terminology And Definitions

21.2.5 If SANRAL has jurisdiction and is prepared to approve the erection of a specific sign, SANRAL may also impose conditions in this regard.

### 21.3 GUIDELINES

21.3.1 SANRAL will not unilaterally approve or reject an application for the erection of a Tourism and Local Destination Sign. All applications must be dealt with in accordance with the Application Procedures described below, but cognisance must constantly be taken of the guidelines contained in the SARTSM and SADC-RTSM.

21.3.2 SANRAL will not be liable for any costs in respect of the design, manufacture, erection, maintenance or removal of any Tourism and Local Destination Sign. All such costs will be for the account of the Applicant.

21.3.3 Any rights granted in respect of the erection of a Tourism and Local Destination Sign will not constitute the granting of any servitude or real right capable of registration by a Registrar of Deeds.

21.3.4 Any rights granted for the erection of a Tourism and Local Destination Sign shall be non-exclusive and SANRAL may grant similar rights and/or other real or personal rights to Concessionaires and/or other third parties, or may itself exercise any such rights.

21.3.5 SANRAL is entitled to charge a fee, levy or rental for the processing of an application for the displaying of a Tourism and Local Destination Sign or for the right to display such a sign and/or the administration thereof<sup>5</sup>.

### 21.4 APPLICATION PROCEDURES

21.4.1 The relevant prescribed Application Form, which Form can be obtained from all Regional Offices must be used for the submission of all Applications for the erection of a Tourism Sign and Local Destination within the road reserve of a National Road.

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<sup>5</sup> See Section 26(g) of the Act.

- 21.4.2 Properly completed Application Forms that must be accompanied by all the required documents and relevant Annexures, motivation reports, plans, and diagrams, must be submitted to SANRAL’s relevant Regional Manager.
- 21.4.3 All applications must be accompanied by –
- 21.4.3.1. the prescribed Application Fee. All cheques are to be made out in favour of “The South African National Roads Agency SOC Limited”.
- 21.4.3.2. a Power of Attorney in favour of the Applicant if the Applicant is not the licenced Operator of the facility to be indicated on the required Tourism Sign;
- 21.4.3.3. a copy of the title deed of the property on which the facility to be indicated on the required Tourism and Local Destination Sign, is situated;
- 21.4.3.4. a motivation report and full details, as well as Promotional Brochures (where applicable) and/or advertisements regarding the facility to be indicated on the required Tourism Sign;
- 21.4.3.5. a copy of the Trading Licence (where applicable) in respect of the facility to be indicated on the required Tourism Sign;
- 21.4.3.6. a copy of the zoning certification as issued by the local municipality for said property;
- 21.4.3.7. a Grading Certificate from one of the following organizations:
- a. Tourism Grading Council of South Africa (TGCSA) ;
  - b. Qualitour; or
  - c. AA Travel Guides.
- 21.4.3.8. proof (if applicable) that the display of Tourism and Local Destination Signs in respect of the relevant facility on provincial roads or municipal streets, have been approved;



21.4.3.9. a map and/or locality plan on which the following information in respect of the facility to be indicated on the required Tourism and Local Destination Sign, must be indicated:-

- a. the location of the facility in relation to the National Road, as well as the access to the facility from public roads.
- b. the proposed location(s) of the required Facility Sign(s) to be erected within the National Road reserve boundary.
- c. the km value;
- d. existing signs at least 500m on either side of the access;
- e. any advertising signs related to the applicant;
- f. numbered routes;
- g. the distance the facility is situated from the National Road;
- h. the sight distance in all directions;
- i. the surface types of access road leading to facility;
- j. the posted speed on the applicable National Road;
- k. a north point and plan/diagram number.

## 21.5 APPROVAL PROCESSES AND PROCEDURES

21.5.1 Following the receipt of an application for the erection of a Tourism and Local Destination Sign, the SCO must firstly determine whether the sign is to be erected adjacent to a road over which SANRAL has jurisdiction or a road over which SANRAL has no jurisdiction, where-after the processes and/or procedures described hereunder must be followed.

21.5.2 Applications in respect of the erection of Tourism and Local Destination Signs adjacent to roads over which SANRAL has no jurisdiction:

If the required sign is to be situated outside the proclaimed road reserve and/or building restriction area of a National Road and SANRAL therefore has no jurisdiction over the specific road–

21.5.2.1. the Application must be dealt in accordance with SANRAL's filing policy at the time;

21.5.2.2. the Applicant or relevant Regional or Area Tourism Committee must merely be informed that SANRAL has no jurisdiction to object to the erection of the relevant Sign and therefore has no further comments to offer. [The relevant Standard Letter must be used in this regard]; and

21.5.2.3. any Application Fee that may have accompanied such an Application, must be refunded to the Applicant.

21.5.3 Applications in respect of the erection of Tourism and Local Destination Signs adjacent to roads over which SANRAL has jurisdiction.

If the required sign is to be situated inside the declared road reserve and/or building restriction area of a National Road and SANRAL therefore has jurisdiction over the specific road:

21.5.3.1. it must be determined / ascertained whether the prescribed Application accompanied the Application and whether it had been duly deposited.

21.5.3.2. if the Application was submitted without the prescribed Application Fee, it must (within 10 working days from receipt thereof) be referred back to the Applicant for resubmission. [**NOTE:** The relevant Standard Letter must be used in this regard].

21.5.3.3. If the Application was accompanied by the prescribed Application Fee, -

a. an appropriate Case File must be opened;

- b. it must be determined whether the Application was accompanied by all the required Annexures, motivation reports, plans, diagrams and other documents;
- c. it must be determined whether all the required information have been indicated on the plans that were submitted with the Application;
- d. the Application must be evaluated against the back-drop of the relevant existing Policy and accompanying motivation reports, plans, diagrams and other documents;
- e. the submitted title deeds must be scrutinised in order to ascertain whether the establishment of the relevant facility to be indicated on the required Signs, was or will not be in conflict with any title condition prohibiting the establishment of the said facility;
- f. if required, further information and/or inputs must be obtained from the Applicant; and
  - i. the Application must be referred to –
  - ii. the relevant Regional Manager/relevant Engineer to obtain inputs relating to engineering related matters and future road requirements;
  - iii. the RRM Service Provider for on-site inspection and comments; and
  - iv. the relevant Concessionaire (if applicable).

21.5.4 Once the SCO is satisfied that all required information and inputs in order to take an informed decision with regard to the Application is at hand, a recommendation in this regard must be submitted to the relevant Official authorised in accordance with the Delegations.

- 21.5.5 On receipt of the approval/rejection by the aforementioned authorised Official, the SCO must forward the appropriate Letter of Approval or Letter of Rejection to the Applicant.
- 21.5.6 The aforementioned Letters of Approval or Rejection must be accompanied by the appropriate Annexures, plans, diagrams and documents.
- 21.5.7 The GIS<sup>6</sup> must be updated in accordance with the GIS Manager's Standard Instructions in this regard;
- 21.5.8 The Case File must be pended for follow-up purposes re the approval of the design of the Tourism and Local Destination Sign, the actual erection thereof, as well as the administration and collection of all fees and levies charged in respect of the displaying and administration of the relevant Sign;
- 21.5.9 The Case File can only be deep-filed once the approval period in respect of the specific Tourism Sign has lapsed or the relevant approval has been withdrawn/cancelled and the relevant Sign has been removed;
- 21.5.10 All approvals are issued with an approved design for the tourism signs that complies with SANRAL's standard specifications in terms of SARTSM and SADC-RTSM.
- 21.5.11 All approvals are valid for 5 years and when the necessary approvals lapses, the applicant has to reapply accordingly.

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<sup>6</sup> See Terminology and Definitions.

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## CHAPTER 22: STATUTORY CONTROL MANAGEMENT SYSTEM (SCOMS)

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## 22.1 OVERVIEW

- 22.1.1 SANRAL has implemented an electronic Statutory Control Management System (SCoMS) that is accessible via the internet to both SANRAL officials and the public.
- 22.1.2 SCoMS is a comprehensive web-based information management system that systemises the way that SANRAL manages information pertinent to its statutory control function with respect to statutory applications including the approval/rejection, amendments, monitoring, reporting, filing and retrieval thereof in a regularised manner across all SANRAL Regions and in accordance with South African law.
- 22.1.3 SCoMS is a system under constant development as part of SANRAL's information system suite named ITIS.
- 22.1.4 Specifically, SCoMS accommodates for:
  - 22.1.4.1. The application process of statutory applications.
  - 22.1.4.2. The approval/rejection/amendment processes for statutory applications.
  - 22.1.4.3. The tracking of applications and reminders of renewals, expiries and stalled applications in the process.
  - 22.1.4.4. Development applications and their associated conditions.
  - 22.1.4.5. Outdoor sign applications, accommodating the application process and changes.
  - 22.1.4.6. Illegal sign monitoring.
  - 22.1.4.7. Illegal services monitoring over SANRAL road reserves.
  - 22.1.4.8. Development consent processes from application to approval/rejections stages.
  - 22.1.4.9. Access approval processes.

22.1.4.10. Building works applications and tracking.

22.1.4.11. Tourism sign approval and tracking.

22.1.5 SCoMS accommodates for various user levels: applicants, regional statutory control administrators, regional statutory control officers, regional managers, and guests. Each user type has specific rights with respect to the viewing, capturing, reporting or amending data in the system.

22.1.6 The system records dates and outcomes of all decisions and actions taken by the SANRAL.

22.1.7 SCoMS is workflow-based meaning that it tracks when applications are submitted, where they are in terms of the assessment process and who is dealing with which applications at any point of time.

22.1.8 The workflow incorporates triggers in the system to prompt applicants and SANRAL

## 22.2 **GUIDELINES AND PROCEDURES**

The procedure for logging an application in SCoMS and subsequent assessment of the application is as follows:

22.2.1 Applicants register on SCoMS using the ITIS registration module at <https://itis.nra.co.za/Portal>

22.2.2 Administrator approves user on the system who is notified by e-mail

22.2.3 The approved applicant logs into system and chooses whether they wish to begin the application process spatially (by logging the spatial location and extent of the application) or via the traditional text-based data capture interface.

22.2.4 Following the spatial capture stage, SCoMS enables the applicant to print a locality map for their application if so desired.

- 22.2.5 Through the traditional text-based interface the applicant captures all details pertaining to the application and uploads all supporting information pertaining to the application in digital format including plans, reports and photographs.
- 22.2.6 SCoMS enables the applicant to print a completed copy of their application which must be signed and posted together with their supporting documentation to the relevant SANRAL regional office.
- 22.2.7 SCoMS assigns the applicant an application reference number which is displayed and e-mailed to the applicant to confirm capture of the application.
- 22.2.8 The relevant Statutory Control Administrator will assess the submitted application for completeness with pre-determined timeframes and will inform the applicant via e-mail should the application be requiring further information and therefore being defective.
- 22.2.9 Once the application is deemed complete, the application is assigned a case number. SCoMS e-mails the applicant with an acknowledgement containing this new reference the number.
- 22.2.10 SANRAL reserves the right to request further information during the application assessment process should this be required.
- 22.2.11 The application proceeds through the statutory assessment workflow managed by SCoMS resulting in either further information being deemed defective (further information requested), an application approval or an application rejection.
- 22.2.12 SCoMS monitors timeframe deadline conditions of approval as well as date of expiry of consent periods and will send reminders to the applicant initially, then SANRAL officials closer to timeframe deadlines if these requirements remain unattended.