

Annexure A: CapeNature's Requirements Regarding Development Applications

The aim of this annexure is to provide stakeholders with guidelines to consider the biodiversity and ecological infrastructure of the Western Cape when drafting development applications. To assist stakeholders and planners to incorporate the Western Cape Biodiversity Spatial Planning handbook¹ with strategic and practical guidelines for their planning and decision-making.

Guidelines and biodiversity plans

1. The Western Cape Department of Environmental Affairs and Development Planning (DEA&DP) has produced a series of guideline documents (March 2013) that provide clear guidance on the EIA process². Specifically, they aim to improve the capacity of environmental assessment practitioners (EAPs) and specialists to draft appropriate terms of reference that meet the information requirements for informed environmental decision-making. The guideline must be read in conjunction with the National Environmental Management Act (NEMA), the NEMA EIA regulations, relevant specific environmental management Act (SEMA(s)) and their regulations. In addition, the Fynbos Forum Ecosystems Guidelines for Environmental Assessment in the Western Cape, Edition 2 (2016)³ provides appropriate terms of reference for Botanical Assessments. All stakeholders should also make use of the CapeNature Western Cape Biodiversity Spatial Plan (WCBSP, 2017) Land Use Advice (LUA) Handbook. The implementation of relevant recommendations and/or actions as stipulated in the documents below should be critically considered, regardless of whether a Scoping, Basic Assessment, and EIA or any other authorisation process is to be undertaken. By consulting these documents and meeting the requirements for submission of accurate and relevant information, EAP's, specialists and stakeholders can support efficient and accountable decision-making. We kindly request that your environmental assessment is informed by the following documents:
 - a. Brownlie S (2005) *Guideline for involving biodiversity specialists in EIA processes: Edition 1*. CSIR Report No ENV-S-C 2005 053 C. Republic of South Africa, Provincial Government Western Cape, Department of Environmental Affairs and Development Planning, Cape Town⁴.
 - b. De Villiers C.C., Driver A., Clark B., Euston-Brown D.I.W., Day E.G., Job N., Helme N.A., Holmes P.M., Brownlie S. and A.B. Rebelo (2016). *Ecosystem Guidelines for Environmental Assessment in the Western Cape*, Edition 2. Fynbos Forum, Cape Town.
 - c. Pool-Stanvliet, R., Duffell-Canham, A., Pence, G. & Smart, R. (2017). *The Western Cape Biodiversity Spatial Plan Handbook*. Stellenbosch: CapeNature.
 - d. The third National Biodiversity Assessment (2018)⁵ provides information about the state of South Africa's threatened ecosystem status.
 - e. The latest provincial biodiversity framework (conservation plan), which reflects identified Critical Biodiversity Areas; currently is the WCBSP 2017, available on SANBI's Biodiversity GIS website⁶. The most recent conservation plans, and their associated reports and guidelines are available at the SANBI Biodiversity GIS Unit website⁷. The mapping tools are useful, but please note that while these tools can help

¹ Pool-Stanvliet, R., Duffell-Canham, A., Pence, G. & Smart, R. 2017. The Western Cape Biodiversity Spatial Plan Handbook. Stellenbosch: CapeNature.

² <https://www.environment.gov.za/sites/default/files/docs/guidelineontransitionalarrangements.pdf>

³ http://biodiversityadvisor.sanbi.org/wp-content/uploads/2012/04/Ecosystem_Guidelines_Ed2.pdf

⁴ https://www.westerncape.gov.za/Text/2005/10/deadp_biodiversity_guideline_june05_final.pdf

⁵ <http://biodiversityadvisor.sanbi.org/planning-and-assessment/national-biodiversity-assessment-nba-2018/>

⁶ https://www.westerncape.gov.za/text/2005/4/dea&dp_guidelines_issues-response_trail_final_19april05.pdf

⁷ <http://bgis.sanbi.org> or email BGISHelp@sanbi.org

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to identify potential issues, the use thereof does not constitute a biodiversity assessment.

- f. The Western Cape Provincial Spatial Development Framework (2014) (Department of Environmental Affairs & Development Planning)⁸.
- g. The Department of Water and Sanitation's Draft Guideline (2014): Assessment of activities/developments affecting wetlands⁹.
- h. The Mining and Biodiversity Guideline (2013) outlines six principles that should be applied during any stage of the mining for decision-making. The document uses biodiversity information for decision-making throughout the mining cycle¹⁰.
- i. The Western Cape Land Use Planning Guidelines: Rural Areas (2019) aims at Safeguarding priority biodiversity areas and their functionality and ecological infrastructure and ensuring sustainable development in rural locations throughout the Western Cape¹¹.
- j. DEA&DP 2015. *Western Cape Guideline on Biodiversity Offsets*. Prepared by Susie Brownlie and Mark Botha for DEA&DP, Cape Town¹².
- k. South African National Biodiversity Institute and Department of Water and Sanitation 2016. *Wetland Offsets: A Best Practice Guideline for South Africa*. Prepared by D Macfarlane, SD Holness, A von Hase, S Brownlie, JA Dini, V Kilian. WRC Report No. TT 660/16¹³.

Biodiversity 'red flags' in the Western Cape

2. The following factors must be considered during project planning and assessment:

- a. CapeNature *does not support* activities that may negatively impact on the following habitats and their ecological functioning:
 - i. Rivers, wetlands, flood plains, estuaries, tidal flats or salt marshes and groundwater-dependent communities or ecosystems.
 - ii. Representative habitat in Critically Endangered and Endangered ecosystems.
 - iii. Any area that has been identified as a Critical Biodiversity Area or Ecological Support Areas as identified by the most recent systematic conservation plan (WCBSP, 2017).
 - iv. Any other special habitats that may contain a unique assemblage of species. This could include *inter alia*, dolomite outcrops, quartz or ferricrete patches.
 - v. Any habitat that may contain rare, threatened or range-restricted floral or faunal species (Species of Conservation Concern).
 - vi. Natural or mostly natural habitat in an ecological corridor or along a vegetation boundary (including frontal dune systems).
 - vii. Remaining natural forest habitat without approval from the DFFE as a custodian of forestry resources in South Africa.

Appropriate buffers must be determined by a suitably qualified specialist to avoid impacting on these habitats and particular attention should be paid to avoiding the loss of intact habitat, maximizing connectivity at a landscape scale, maximizing habitat heterogeneity, and reducing fragmentation at a local and regional scale. The buffers should guide the development plans in order to reduce any present or future impact

⁸ https://www.westerncape.gov.za/eadp/files/atoms/files/PSDF%20Executive%20Summary_English.pdf

⁹ [http://www.houtbayheritage.org.za/Developments_in_wetlands_Summary_of_Items_11_12_\(vers_7\)1.pdf](http://www.houtbayheritage.org.za/Developments_in_wetlands_Summary_of_Items_11_12_(vers_7)1.pdf)

¹⁰ <http://biodiversityadvisor.sanbi.org/industry-and-conservation/conservation-and-mining/understand-2/mining-and-biodiversity-guideline/>

¹¹ https://www.westerncape.gov.za/eadp/files/atoms/files/Rural%20Areas%20Guideline_web_0.pdf

¹² <https://www.westerncape.gov.za/eadp/files/atoms/files/DeadP4-Offsets%20Guideline%2025%20March%202015%20%27clean%27.pdf>

¹³ http://www.wrc.org.za/wp-content/uploads/mdocs/TT%20660%20-%20Jo_web.pdf

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on the habitat. Once suitable buffers have been mapped it should be illustrated on a map and included in the application.

Invasive alien species threaten indigenous species and have numerous negative impacts on ecosystem functioning. Please also note that an infestation by alien plants does not necessarily mean that an area is not important for biodiversity conservation, nor is the subsequent removal of alien vegetation from a property regarded as a mitigation measure as this is a legal requirement¹⁴.

- b. The Cape Floristic Region is largely a fire-dependent system and natural fire regimes must be maintained and managed in the landscape. The exclusion of fire from certain habitats will be considered unacceptable as this may ultimately cause the loss of species. In terms of section 12 (1) and 2 (a) of National Veld and Forest Act¹⁵ Where appropriate, adequate fire-breaks must be prepared and maintained around the property to reasonably prevent the spread of unwanted fires in the area. The fire-breaks may be considered part of the development footprint. Fire-breaks must be brush-cut and vegetation must not be completely removed. Brush-cutting under power lines must occur as infrequently as possible as brush-cutting will lead to loss of species diversity over time. A fire-risk assessment can help inform an appropriate layout for developments adjacent to fire-prone vegetation. Landowners are encouraged to apply for membership with their local Fire Protection Association (FPA) and EAPs are encouraged to obtain comment from them on development applications.
- c. CapeNature has concerns regarding land uses or activities within declared Mountain Catchment Areas (MCA), especially activities which may affect the quality or volume of water downstream of any of these regions. These activities could *inter alia* include buildings, hard infrastructure, canalization, cut-off drains and cultivation within these regions. WCBSP categories are not mapped within formally protected areas such as MCAs, as it is assumed that the objectives of the MCA Act apply. The MCA objectives are that these areas will be managed in a manner consistent with the prevention of soil erosion, the protection of natural vegetation, and the management of invasive alien plants (a.k.a., 'intruding vegetation'). In addition to which, the purposes of NEM: PAA (to be read, interpreted and applied in conjunction with the NEM: BA), need to be upheld. These NEM: PAA purposes are: *"To provide for the protection and conservation of ecologically viable areas representative of South Africa's biological diversity and its natural landscapes and seascapes; ...[and] for the management of those areas..."*. In relation to a protected area, management includes control, protection, conservation, maintenance and rehabilitation of the protected area, with due regard to the use and extraction of biological resources, community-based practices and benefit-sharing activities in the area in a manner consistent with the NEM: BA.
- d. Water is a limited resource in the Western Cape. Water requirements for proposed activities and the potential impact on broader surface and ground water resources must be rigorously assessed and considered by an aquatic/freshwater specialist and/or ground water specialist, including the cumulative impact if other developments are also taking place in an area. Cumulative impacts on infrastructure such as Waste Water Treatment Works must also be considered. It is also recommended that where possible all developments should consider recycling grey water for suitable usage.

¹⁴ Government Gazette No. 37885, GN No. R. 598 (2014) National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004) Alien and Invasive Species Regulations, 2014.

¹⁵ National Veld and Forest Act 1998 (Act 101 of 1998) Government Gazette: 19515

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Groundwater use for bulk supply purposes and irrigation must be assessed rigorously with specific reference to the possible groundwater-surface water interfaces. Groundwater use assessments must include the identification of possible groundwater dependent ecosystems and/or possible interfaces with surface resources and not only potential anthropogenic uses. Aquifers need to be described in terms of: aquifer type, aquifer characteristics, aquifer condition, as well as aquifer recharge and yield¹⁶.

- e. Rehabilitation of any disturbed ecosystems is only considered successful when the ecosystem has returned to an ecologically functional state and has a similar species assemblage as its natural state. Such applications must have a complete rehabilitation plan appended to submitted documentation. It should also be noted that CapeNature will not support new mining applications on property where previously mined areas have not been suitably rehabilitated to an ecologically functional state and have been officially closed by the DMR. Mining is not permitted within a NEM: PAA registered protected area and CapeNature will not support any development proposal or amendment which contravenes this.
 - f. Activities which may cause fragmentation of CBAs leading to loss of ecological connectivity are not supported by CapeNature.
3. Specialist assessment(s) should be undertaken if any of the above-mentioned circumstances prevail or if there is any doubt about the biodiversity value of the potentially impacted areas. The opportunities and constraints of the receiving environment should be used to inform the desirability and layout of any development proposal to ensure that developments do not compromise the biodiversity value of the area. When assessing the impact of the development on CBA, the EAP must investigate the reasons (features) behind the determination of the CBA and critically assess whether these will be negatively impacted by the proposed construction or operational phase activities.
 4. The Mitigation Hierarchy in terms of the Department of Environmental Affairs and Development Planning guideline documentation must be adhered to.

Commissioning of biodiversity specialists

5. A specialist should be involved if the proposed activity will have a significant impact on the environment and its processes or where there is insufficient information to determine whether unavoidable impacts would be significant. A suitably qualified and experienced specialist is critical to ensuring that the necessary information is provided for informed decision-making. Please take note of the following recommendations¹⁷:

Biodiversity specialists should:

- a. Be competent at interpreting and evaluating information and able to explain the direct and indirect consequences of an activity to biodiversity;
- b. Have appropriate formal training in his/her field of expertise;
- c. Have sufficient practical experience working in the specific ecosystems of the affected region and thereby adding value to the planning and design of the proposed project/activity;
- d. Be able to trace impact pathways and identify indirect or cumulative impacts and consider ecosystem goods and services;

¹⁶ For groundwater-related assessments, consult: Saayman, I (2005) *Guideline for involving hydrogeologists in EIA processes: Edition 1*. CSIR Report No ENV-S-C 2005 053 D. Republic of South Africa, Provincial Government of the Western Cape, Department of Environmental Affairs & Development Planning, Cape Town.

¹⁷ For more information/details please refer to the Guideline for involving biodiversity specialists in EIA processes (DEA&DP 2005).

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- e. Have good knowledge relating to assessment techniques and to relevant legislation, policies and guidelines;
- f. Be independent; and
- g. Be registered with the South African Council for Natural Scientific Professions (SACNASP).

CapeNature also requests that specialists be asked to review the information in the report to be submitted for decision-making to confirm that their opinion has been adequately reflected.

Permit requirements

6. Please note that according to Section 63(1) of the Western Cape Nature Conservation Laws Amendment Act No. 3 of 2000¹⁸:

No person shall—

- (a) uproot the plant in the process of picking the flower of any flora;
- (b) without a permit—
 - i. pick any endangered or protected flora, or
 - ii. pick any flora on a public road or on the land on either side of such road within ninety meters from the center of such road, or
- (c) pick any protected or indigenous unprotected flora on land of which he or she is not the owner, without the permission of the owner of such land or of any person authorised by such owner to grant such permission.

If these activities will be involved in the application (for example search and rescue) make sure to apply for a CapeNature permit to carry out these activities. CapeNature is the regulatory authority in the Western Cape for the issuing of permits for fauna, flora, hunting and CITES. To obtain such permits please contact the relevant Conservation Services Officials at the nearest CapeNature Regional Office or contact the Permit Office on 087 087 4088. The following website address <http://www.capenature.co.za/permits-information/> provides information for the self-service permit portal.

Mining and Prospecting Applications

7. Please note that the DMRE no longer sends copies of applications to commenting authorities. It is now the responsibility of the consultant working for the applicant to ensure that all commenting authorities receive the relevant documents. Therefore, point 5 above applies to mining and prospecting applications as well. The consultant must also provide electronic copies of the EA once received.

¹⁸ This will be repealed when the Western Cape Biodiversity Bill is promulgated
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