

## CHAPTER FOUR: ENVIRONMENTAL IMPACT ASSESSMENT PROCESS AND PUBLIC PARTICIPATION

### 4.1 INTRODUCTION

This Chapter of the report provides the legal context for this Scoping and Environmental Impact Assessment (Scoping and EIA) in line with Appendix 2, Section 2, of the NEMA EIA Regulations 2014 (as amended). This includes an overview of the approach, as well as a schedule to the Scoping and EIA Process, with a focus on the Public Participation Process as follows:

- As required in GN R326, Appendix 2 2. (1) (e) *“a description of the policy and legislative context within which the development is proposed including an identification of all legislation, policies, plans, guidelines, spatial tools, municipal development planning frameworks and instruments that are applicable to this activity and are to be considered in the assessment process”*; and
- As required by GN R326, Chapter 6, Regulation 39 to 44, the steps to follow regarding the Public Participation Process for the Scoping Phase of the assessment.

The plans, guidelines, spatial tools, municipal development planning frameworks and instruments which have been considered in the Scoping Phase of this assessment are listed below and are discussed in more detail in Chapter One and Three of this report.

### 4.2 LEGAL CONTEXT FOR THIS EIA

Section 24(1) of NEMA (as amended) provides as follows:

*"In order to give effect to the general objectives of integrated environmental management laid down in this Chapter, the potential impact of the environment of listed activities must be considered, investigated, assessed and reported on to the competent authority charged by this Act with granting the relevant environmental authorization."*

The reference to "listed activities" in section 24 of NEMAA relates to the NEMA EIA Regulations 2014 (as amended), which came into effect on the 8 December 2014 and were amended on the 7 April 2017 by Government Notice R326, 327, 325 and 324 published in Government Gazette 40772. The Government Notices published are collectively referred to as the NEMA EIA Regulations 2014 (as amended) and amongst others, comprise listed activities that require either Basic Assessment (BA), or a Scoping and EIA, which is to be undertaken prior to the commencement of any activities on site. This proposed project on Umgambo requires full Scoping and EIA in order to obtain Environmental Authorisation for activities listed in GN R327, 325 and 324, for which the decision-making authority is the Provincial Department of Economic Development, Environmental Affairs and Tourism (DEDEAT), Sarah Baartman Region.

The listed activities that potentially require Environmental Authorisation are outlined in the table below (Table 4.1). At this stage of the assessment process a cautious approach has been adopted towards the identification of listed activities, and where there is uncertainty as to whether a listed activity applies to this project, it has been included in the table below. As noted in Chapter One of this report, and in correspondence dated the 22 May 2018, DEDEAT was notified in writing of the intention to commence with a Scoping and EIA Process for the proposed project. Included with this correspondence was a Background Information Document (BID) on the project which, amongst others, outlined the approach to this Scoping and EIA Process, potential listed activities and included a locality map for the development. The applicability of listed activities will be refined during the course of the Scoping and EIA Process and DEDEAT will be notified accordingly.

The Scoping and EIA Process is a planning, design and decision-making tool which needs to show the competent authority, DEDEAT, and the project proponent, what the consequences of their choices will be in biophysical, social and economic terms. As such, it identifies potential impacts that the project may have on the environment, as well as identifying potential constraints the environment may place on the development. The EIA Report makes recommendations to mitigate potentially negative impacts and maximize potentially positive impacts associated with the project.

*Table 4.1: Listed activities according to GN R327, 325 and 324 requiring Environmental Authorisation in terms of the NEMA EIA Regulations 2014 (as amended).*

GN R327 – Listing Notice 1 requiring Basic Assessment	
Listed Activity	Description of Project Activity
<p>9. <i>The development of infrastructure exceeding 1 000 metres in length for the bulk transportation of water or storm water—</i></p> <p>(i) <i>with an internal diameter of 0,36 metres or more; or</i></p> <p>(ii) <i>with a peak throughput of 120 litres per second or more;</i></p>	<p>To supply the proposed development with the necessary irrigation water, a pipeline with an internal diameter of 0.5 metres and a length of ~1,500 metres is proposed to be installed on an adjacent property, Portion 523 of Farm No. 42 Strathsomers Estate. The dimensions and throughput capacity of the proposed pipeline will be confirmed through the assessment process.</p> <p>This listed activity will require Environmental Authorisation.</p>
<p>10. <i>The development and related operation of infrastructure exceeding 1 000 metres in length for the bulk transportation of sewage, effluent, process water, waste water, return water, industrial discharge or slimes—</i></p> <p>(i) <i>with an internal diameter of 0,36 metres or more; or</i></p> <p>(ii) <i>with a peak throughput of 120 litres per second or more;</i></p>	<p>The proposed logistical services area will require the management of domestic sewerage and domestic waste water. The combined length of the pipes and throughput capacity will be determined by the project's civil engineer.</p> <p>The applicability of this listed activity requires confirmation through the assessment process.</p>
<p>13. <i>The development of facilities or infrastructure for the off-stream storage of water, including dams<sup>1</sup> and reservoirs<sup>2</sup>, with a combined capacity of 50 000 cubic metres or more, <b>unless such storage falls within the ambit of activity 16 in Listing Notice 2 of 2014.</b></i></p>	<p>A new dam will be required to store the necessary irrigation water for the proposed development. It is proposed that the dam will have the capacity to store ~80 000 cubic metres, will have a maximum wall height of ~6 metres and will measure about ~4 hectares in extent. However, the dimensions, capacity and location of the new dam will be confirmed through the assessment process.</p> <p>This listed activity is <b>not triggered</b> because Activity 16 in Listing Notice 2 to applies.</p>
<p>24. <i>The development of a road—</i></p> <p>(ii) <i>with a reserve wider than 13,5 meters, or where no reserve exists where the road is wider than 8 metres;</i></p> <p><i>but excluding a road—</i></p> <p>(c) <i>which is 1 kilometre or shorter</i></p>	<p>While the reserve of internal roads between orchards are not anticipated to be wider than 13.5 meters, access to the proposed logistical services area is required for heavy vehicles, and the width of this road, including turning circles, may exceed 8 meters. If the access road will be less than 1 kilometre in length, this listed activity will not apply. The width and length of the roads will be determined by the project's civil engineer.</p> <p>The applicability of this listed activity requires confirmation through the assessment process.</p>

<sup>1</sup> In terms of the EIA Regulations 2014 (as amended), the following definition for a 'dam' is provided: "when used in these Regulations means any barrier dam and any other form of impoundment used for the storage of water, excluding reservoirs;"

<sup>2</sup> As per the meeting with DEDEAT (18 April 2017) regarding the applicability of listed activities, the following explanation was provided for a 'reservoir': "a reservoir refers to a structure constructed outside of a watercourse for the off-stream storage of water. A reservoir is not considered a watercourse, since water does not flow naturally into or out of a reservoir; it is pumped through pipes."

<b>GN R325 – Listing Notice 2 requiring Full Scoping and EIA</b>	
<b>Listed Activity</b>	<b>Listed Activity</b>
15. <i>The clearance of an area of 20 hectares or more of indigenous vegetation ...</i>	<p>The area under assessment measures ~154.28 hectares in extent. The area proposed to be developed will exceed 20 hectares. The preferred layout will be informed by the specialist input forming part of this assessment process.</p> <p>This listed activity will require Environmental Authorisation.</p>
16. <i>The development of a dam where the highest part of the dam wall, as measured from the outside toe of the wall to the highest part of the wall, is 5 metres or higher or where the highwater mark of the dam covers an area of 10 hectares or more.</i>	<p>A new dam will be required to store the necessary irrigation water for the proposed development. It is proposed that the dam will have the capacity to store ~80 000 cubic metres, will have a maximum wall height of ~6 metres and will measure about ~4 hectares in extent. However, the dimensions, capacity and location of the new dam will be confirmed through the assessment process.</p> <p>This listed activity will require Environmental Authorisation.</p>
<b>GN R324 – Listing Notice 3 requiring Basic Assessment</b>	
<b>Listed Activity</b>	<b>Listed Activity</b>
<p>2. <i>The development of reservoirs, excluding dams, with a capacity of more than 250 cubic metres.</i></p> <p><b>a. Eastern Cape</b></p> <p>ii. <i>Outside urban areas, in:</i>            (dd) <i>Critical biodiversity areas as identified in systematic biodiversity plans adopted by the competent authority or in bioregional plans;</i></p>	<p>The proposed development will require the construction of a new dam, which is anticipated to have the capacity to store ~80 000 cubic meters.</p> <p>The site is located within the Eastern Cape, outside an urban area and the area under assessment falls within a Terrestrial and Aquatic Critical Biodiversity Area (BLMC2 and ABLMC 2a and 2b) in terms of the Eastern Cape Biodiversity Conservation Plan. The dimensions, capacity and location of the new dam will be determined through the assessment process.</p> <p>This listed activity will require Environmental Authorisation.</p>
<p>4. <i>The development of a road wider than 4 metres with a reserve less than 13,5 metres.</i></p> <p><b>a. Eastern Cape</b></p> <p>i. <i>Outside urban areas:</i>            (ee) <i>Critical biodiversity areas as identified in systematic biodiversity plans adopted by the competent authority or in bioregional plans;</i></p>	<p>It is anticipated that internal vehicle tracks in excess of 4 meters will be required to service the proposed orchards. In addition, a new access road and service road is required for the proposed logistical services area.</p> <p>The site is located within the Eastern Cape, outside an urban area and the area under assessment falls within a Terrestrial and Aquatic Critical Biodiversity Area (BLMC2 and ABLMC 2a and 2b) in terms of the Eastern Cape Biodiversity Conservation Plan. The width of the internal roads will be determined through the assessment process.</p> <p>This listed activity will require Environmental Authorisation.</p>
<p>10. <i>The development and related operation of facilities or infrastructure for the storage, or storage and handling of a dangerous good, where such storage occurs in containers with a combined capacity of 30 but not exceeding 80 cubic metres.</i></p> <p><b>a. Eastern Cape</b></p> <p>i. <i>Outside urban areas:</i>            (ee) <i>Critical biodiversity areas as identified in systematic biodiversity plans adopted by the competent authority or in bioregional plans;</i></p>	<p>The proposed development will require the temporary storage of chemicals on site within a facility which will have a capacity to store ~30 cubic metres.</p> <p>The site is located within the Eastern Cape, outside an urban area and the area under assessment falls within a Terrestrial and Aquatic Critical Biodiversity Area (BLMC2 and ABLMC 2a and 2b) in terms of the Eastern Cape Biodiversity Conservation Plan.</p> <p>This listed activity will require Environmental Authorisation.</p>

### 4.3 LEGISLATION AND GUIDELINES APPLICABLE TO THIS EIA

As per Appendix 2 of GN R326 (Regulation 2 (1) (e) the scope and content of this report has been informed by the following legislation, policies, plans, guidelines, spatial tools, municipal development planning frameworks, instruments, and information series documents, which are potentially applicable to this project and considered in the assessment process:

#### 4.3.1 National Legislation

##### 4.3.1.1 *The Constitution of the Republic of South Africa (Act 108 of 1996):*

The Constitution is the supreme law of South Africa and provides the legal framework for legislation regulating environmental management in general, against the backdrop of the Bill of Rights contained in Chapter Two of the constitution and enshrining fundamental human rights. Section 24 of the Constitution states that everyone has the right:

- “a) to an environment that is not harmful to their health or well-being; and*
- b) to have the environment protected, for the benefit of present and future generations through reasonable legislative and other measures that:*
  - (i) prevent pollution and ecological degradation;*
  - (ii) promote conservation; and*
  - (iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.”*

**Applicability to this proposed project:** The proposed development must be implemented in a manner to 1) prevent pollution and ecological degradation; 2) promote conservation; and 3) secure ecologically sustainable development and use of natural resources, while promoting justifiable economic and social development. The State has a duty to promulgate legislation and take other steps that ensure that these rights are upheld and that, among other things, ecological degradation and pollution are prevented.

##### 4.3.1.2 *National Environmental Management Act (as amended) and the Environmental Impact Assessment Regulations 2014 (as amended), published under Chapter Five of NEMA (GN R326, GN R327, GN R325 and GN R324):*

The NEMA sets out a number of principles (Chapter One, Section 2) to give guidance to developers, private land owners, members of public and authorities. The proclamation of the NEMA gives expression to an overarching environmental law. Various mechanisms, such as cooperative environmental governance, compliance and non-compliance, enforcement, and regulating government and business impacts on the environment, underpin NEMA.

NEMA, as the primary environmental legislation, is complemented by a number of sectoral laws governing marine living resources, mining, forestry, biodiversity, protected areas, pollution, air quality, waste and integrated coastal management. Principle number 3 determines that a development must be socially, environmentally and economically sustainable. Principle Number 4(a) states that all relevant factors must be considered, inter alia i) that the disturbance of ecosystems and loss of biological diversity are avoided, or, where they cannot be altogether avoided, are minimized and remedied; ii) that pollution and degradation of the environment are avoided, or, where they cannot be altogether avoided, are minimised and remedied; vi) that the development, use and exploitation of renewable resources and the ecosystems of which they are part do not exceed the level beyond which their integrity is jeopardised; and viii) that negative impacts on the environment and on peoples' environmental rights be anticipated and prevented, and where they cannot be altogether prevented, are minimized and remedied.

**Applicability to this proposed project:** The activity requires full Scoping and EIA in order to obtain Environmental Authorisation for activities listed in GN R327, 325 and 324, for which the competent authority is the Provincial Department of Economic Development, Environmental Affairs and Tourism (DEDEAT), Sarah Baartman Region. This report serves to inform the process and governing principles of NEMAA and the requirements of the NEMA EIA Regulations 2014 (as amended).

In terms of the requirements for good governance prescribed by the Act, there is an obligation to use all available information when making decisions, and to ensure that decisions are informed by the most up to date and relevant information available.

#### 4.3.1.3 *National Environmental Management Biodiversity Act (Act 10 of 2004):*

The NEMBA provides for the protection of listed endangered ecosystems and restricts activities according to the categorization of the area (not just by listed activity as specified in the NEMA EIA Regulations 2014 (as amended)). It promotes the application of appropriate environmental management tools to protect biodiversity. Chapter Three allows for the publication of bioregional plans. Chapter Five of the Act refers to the introduction and control of alien invasive species. The Threatened or Protected Species (TOPS) Regulations, in terms of Section 97 (Chapter Eight), requires an authorization/ permitting process to be followed.

**Applicability to this proposed project:** The site falls within the Sundays River Valley Municipality (SRVM) and no bioregional plans have been gazetted for this region. However, environmental management tools that are available for this region include, the Eastern Cape Biodiversity Conservation Plan (ECBCP), as well as the Sundays River Valley Municipality Biodiversity Sector Plan (SRVM BSP). These biodiversity planning frameworks must be consulted to inform decision making. Amongst others, these documents identify Aquatic and Terrestrial Critical Biodiversity Areas and Ecologically Sensitive Areas, which are coupled with relevant land use guidelines. However, these planning frameworks only serve as an identification tool and thus, require site verification, the results of which need to be considered by the development proposal.

Any threatened or protected species in terms of the NEMBA Threatened or Protected Species (TOPS) list cannot be removed without a permit. Alien species listed in terms of NEMBA identified on a site are required to be controlled and/ or eradicated. This assessment process includes a Vegetation and Aquatic Specialist Assessment which will include a consideration of the abovementioned planning frameworks and applicable legislation.

#### 4.3.1.4 *National Forests Act (Act 84 of 1998):*

The NFA (Act 84 of 1998) allows for the protection of certain tree species. The Minister has the power to declare a particular tree to be a protected tree. According to Section 12 (1) d (read with Sections (5) 1 and 62 (2) (c)) of the National Forest Act (Act 84 of 1998), a license is required to remove, cut, disturb, damage or destroy any of the listed protected trees. The most recent list of protected tree species was published in December 2016. The Department of Agriculture, Forestry and Fisheries (DAFF) is authorised to issue licences for any removal, cutting, disturbance, damage to or destruction of any protected trees.

**Applicability to this proposed project:** The protected trees that commonly occur in this region are *Sideroxylon inerme* (Milkwood). The presence of these trees on site will be confirmed as part of the Vegetation Specialist Assessment, to be conducted during the EIA Phase.

#### 4.3.1.5 National Heritage Resources Act (Act 25 of 1999):

The NHRA (Act 25 of 1999) introduces an integrated and interactive system for the managements of national heritage resources (which include landscapes and natural features of cultural significance). The protection of archaeological and paleontological resources is the responsibility of a provincial heritage resources authority and all archaeological objects, paleontological material and meteorites are the property of the State.

#### **Archaeology, palaeontology and meteorites:**

*“Section 35 (4) No person may, without a permit issued by the responsible heritage resources authority:*

- a) destroy, damage, excavate, alter, deface or otherwise disturb any archaeological or palaeontological site or any meteorite;*
- b) destroy, damage, excavate, remove from its original position, collect or own any archaeological or palaeontological material or object or any meteorite;*
- c) bring onto or use at an archaeological or palaeontological site any excavation equipment or any equipment which assist in the detection or recovery of metals or archaeological and palaeontological material or objects, or use such equipment for the recovery of meteorites.”*

#### **Heritage resources management:**

*“38. (1) Subject to the provisions of subsections (7), (8) and (9), any person who intends to undertake a development categorized as:*

- a) the construction of a road, wall, power line, pipeline, canal or other similar form of linear development or barrier exceeding 300 m in length;*
- b) the construction of a bridge or similar structure exceeding 50 m in length;*
- c) any development or other activity which will change the character of the site –*
  - (i) exceeding 5000 m<sup>2</sup> in extent, or”*

**Applicability to this proposed project:** A Phase 1 Archaeological and Paleontological Impact Assessment will be undertaken for the proposed development, as part of the EIA Phase of the assessment. The East Cape Provincial Heritage Resources Agency (ECPHRA) is required to provide comment on these reports to assist DEDEAT in their decision making. In order to facilitate their input, the respective reports will be loaded onto the SAHRIS website and the ECPHRA will be provided with copies of reports during the various stages of the assessment process.

#### 4.3.1.6 National Water Act (Act 36 of 1998):

The NWA is concerned with the overall management, equitable allocation and conservation of water resources in South Africa. It controls and manages water use in terms of water abstraction, water storage, wastewater discharge, impact on watercourses, altering watercourse flow and the determination of the Reserve. The General Authorizations in terms of Section 39 of the Act identify certain activities that require registration or licensing via the Department of Water Affairs that impact aquatic resources (watercourses and wetlands).

Section 144 states the Departments view on development surrounding water resources: 144) For the purposes of ensuring that all persons who might be affected have access to information regarding potential flood hazards, no person may establish a township unless the layout plan shows, in a form acceptable to the local authority concerned, lines indicating the maximum level likely to be reached by floodwaters on average once in every 100 years. In other words, the township developer must delineate the 1:100-year flood line on a map when developing a

township. Measures must be implemented that prevent pollution and ecological degradation of aquatic resources i.e. rivers and wetlands.

A water use licensing application or registration is generally processed in the event that a proposed development lies within 500m of wetland habitat, in close proximity to aquatic features (wetlands, dams, rivers) or where a development crosses a watercourse; in terms of Section 21(c): impeding or diverting flow in a watercourse and 21(i): altering the beds and banks etc. of a watercourse. Application is made in terms of the Dam Safety Regulations for dams exceeding 50 000 m<sup>3</sup> and with a berm wall height exceeding 5 m in height.

**Applicability to this proposed project:** Due to the potential occurrence of water resources (wetlands, irrigation/ storage dams and watercourses) in close proximity to the proposed development, an Aquatic Specialist Assessment will be undertaken. The results of the full Aquatic Specialist Assessment will be included in the Final EIA Report.

It is proposed that a new dam be constructed on Portion 525 (Umgcambo) in order to irrigate the proposed agricultural development. The preferred layout of the proposed agricultural development, as well as the capacity and dimensions of the proposed new dam will be informed by a qualified irrigation specialist through the EIA Process.

Confirmation is required from the Department of Water and Sanitation (DWS) whether the undertaking of activities within 500m of a wetland (irrigation dam) that has been preliminarily identified outside the southern boundary but within a 500m radius of the farm, will require a General Authorisation (GA) or the submission of a Water Use Licence Application (WULA) in terms of Section 21 (c) and (i) of the Water Act.

The proponent has obtained a Water Use Licence from DWS for the taking of water from a water resource in terms of Section 21 (a) of the National Water Act which entitles them to utilise 100ha (9000 000m<sup>3</sup> per annum) of water from the LSRWUA canal system. Water from the LSRWUA canal system is not readily available during the day and is only released during prescribed times. Balancing dam/ s are thus needed to access and temporarily store the water from the LSRWUA canal system during the prescribed time periods. DWS must confirm if a Water Use Licence will be required for the construction of the dam for the temporary storage of water received from the LSRWUA scheme. The DWS has been included on the database for this project.

#### *4.3.1.7 National Environmental Management: Protected Areas Act (Act 57 of 2003):*

The NEMPAA provides for the declaration of Protected Areas (PAs) in three forms (Chapter Three), namely Special Nature Reserves (Part 2), Nature Reserves (Part 3) and Protected Environments (Part 4). National Parks are the equivalent of National Protected Areas. Section 10 states that a Protected Area, declared in terms of provincial legislation, is either a nature reserve or protected environment.

**Applicability to this proposed project:** The nearest boundary of the Addo Elephant National Park is located more than 10km north of Portion 525 (Umgcambo) and therefore, project activities proposed to take place on this property do not trigger listed activities which would require the assessment of impacts on the National Park. The installation of the irrigation water pipeline is proposed to take place on Portion 523, which is adjacent to Portion 525 (Umgcambo). While Portion 523 is located within 10km of the Addo Elephant National Park, the installation of the irrigation water pipeline on this property does not trigger any listed activities, which would require

the assessment of impacts on the National Park (i.e. listed activities in Listing Notice 3 – GN R324). Therefore, representatives of SANParks and Addo Elephant National Park have not been included on the database for this project as a commenting authority.

#### 4.3.1.8 *Conservation of Agricultural Resources Act (Act 43 of 1983):*

The objectives of the CARA (Act 43 of 1983) are to provide for the conservation of the natural agricultural resources of South Africa by the:

- Maintenance of the production potential of land;
- Combating and prevention of erosion and weakening or destruction of the water sources; and
- Protection of the vegetation and the combating of weeds and invader plants.

The CARA states that no land user shall utilise the vegetation of wetlands (a watercourse or pans) in a manner that will cause its deterioration or damage. This includes cultivation, overgrazing, diverting water run-off and other developments that damage the water resource. The CARA includes regulations on alien invasive plants. According to the amended regulations (GN R280 of March 2001), declared weeds and invader plants are divided into three categories:

- Category 1 may not be grown and must be eradicated and controlled,
- Category 2 may only be grown in an area demarcated for commercial cultivation purposes and for which a permit has been issued, and must be controlled, and
- Category 3 plants may no longer be planted and existing plants may remain as long as their spread is prevented, except within the flood line of watercourses and wetlands. It is the legal duty of the land user or land owner to control invasive alien plants occurring on the land under their control.

The provisions of Regulation 2 of CARA relate to the cultivation of virgin or new land. The landowner or proponent must obtain permission or authorisation in terms of Regulation 2 of the CARA Act, before virgin soil may be disturbed mechanically.

**Applicability to this proposed project:** The Vegetation Specialist Assessment will identify CARA listed species on site. Should alien plant species occur within the study area; this will be managed in line with the EMP. The Land Use and Soil Management Directorate of the Department of Agriculture, Forestry and Fisheries, as well as the Provincial Department of Rural Development and Agrarian Reform, Resource Planning Section, have been included on the project database and will be notified in writing of the various stages to comment on the assessment process. As part of the Water Use License Application, a Soil Reconnaissance Survey was undertaken by Agrimotion, and based on this report, the Department of Agriculture, Forestry and Fisheries has granted the proponent a permit for the Cultivation of Virgin Soil, see copy attached as Appendix G.

#### 4.3.1.9 *Other Applicable National Legislation:*

- Occupational Health and Safety Act (Act 85 of 1993), as amended by Occupational Health and Safety Amendment (Act 181 of 1993);
- Hazardous Substances Act (Act 15 of 1973)

### 4.3.2 **Provincial and Local Legislation**

#### 4.3.2.1 *Cape Nature and Environmental Conservation Ordinance (Act 19 of 1974):*

The Ordinance allows for conservation of the natural environment; and the protection of wildlife. Certain biota are scheduled and, therefore, protected. A permit must be obtained from the Provincial DEDEAT, Biodiversity Section, to remove or destroy any plants listed in the Ordinance.

**Applicability to this proposed project:** A Vegetation Specialist Assessment will be undertaken during the EIA Phase of the assessment. DEDEAT's Biodiversity Division have been included on the project database and will be notified in writing of the various stages to comment on the assessment process.

#### 4.3.2.2 *Eastern Cape Provincial Heritage Resources Act (Act 9 of 2003):*

This Act provides for the establishment of a statutory body to identify, manage, conserve and promote heritage resources in the Province and matter related thereto.

**Applicability to this proposed project:** As noted under 4.3.1.5, a Phase 1 Archaeological and a Paleontological Impact Assessment will be undertaken for this project. The ECPHRA is registered on the project database and all reports as a result of this assessment process will be uploaded onto the SAHRIS website to facilitate their input. In addition, the ECPHRA is emailed an electronic copy of reports during the comment period for the various stages of this assessment process.

#### 4.3.2.3 *Other Applicable Provincial and Local Legislation:*

- SRVM Integrated Development Plan (IDP), 2015/ 2016
- SRVM Spatial Development Plan (SDP), 2013
- Section 8 Zoning Scheme Regulations

### 4.3.3 **Policies and Guidelines**

The policies and plans listed below have been considered in the compilation of this report. The applicability of the relevant conservation and other planning frameworks is discussed in more detail in Chapter Three of this report and will be considered by the relevant specialists in their respective assessments as part of the EIA Phase of the assessment.

- South African National Development Plan, 2011.
- Integrated Environmental Management Information Series (Booklets 0 to 23) published by the Department of Environmental Affairs (DEA) over the period 2002 to 2005.
- Integrated Environmental Management Series Guidelines:
  - Guideline 7: Public Participation in the EIA Process, (DEA, 10 October 2012, No 35769).
  - Guideline on Need and Desirability (DEA 2017).
- Conservation and Other Planning Frameworks:
  - National Biodiversity Assessment (NBA).
  - National Freshwater Ecosystem Priority Areas (NFEPAs).
  - National Protected Areas Expansion Strategy (NPAES).
  - South African Heritage Resources Agency (SAHRA).
  - Agricultural Geo-Referenced Information System (AGIS).
  - Eastern Cape Biodiversity Conservation Plan (ECBCP).
  - Subtropical Thicket Ecosystem Programme (STEP).
  - Sundays River Valley Municipality Biodiversity Sector Plan (SRVM BSP).

#### 4.4 OVERVIEW OF THE SCOPING AND EIA PROCESS

The Scoping and EIA Process for this assessment has been divided into the following phases and is discussed in more detail below:

##### Pre-Application Scoping Phase (Section 4.5)

- Project Announcement and Registration of I&APs (30 days)
- Draft Consultation Scoping Report Review (30 days) **(WE ARE HERE NOW)**

##### Application and Scoping Phase (Section 4.6)

- Submit Application form for Environmental Authorisation to DEDEAT
- Consultation Scoping Report Review (30 days)
- Submit Final Scoping Report to DEDEAT

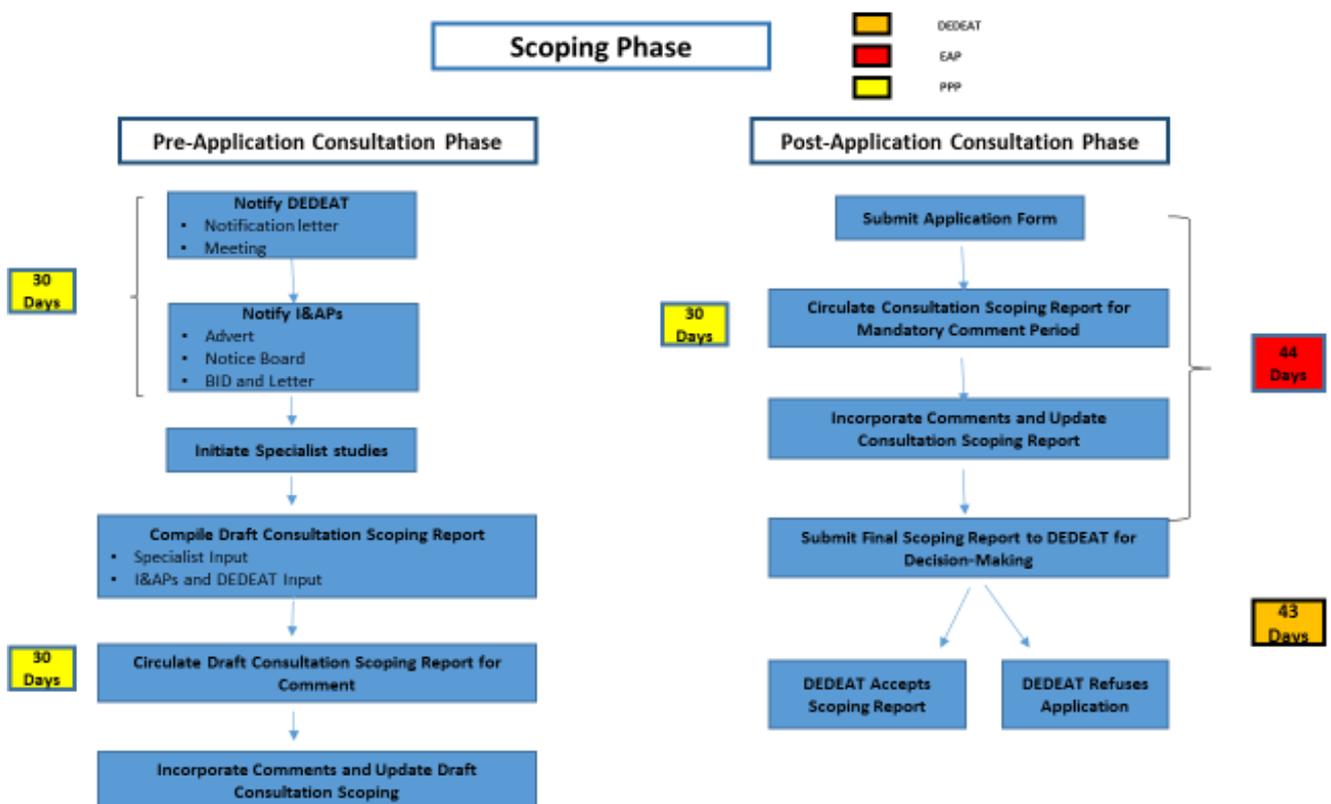
##### Environmental Impact Assessment Phase (see Chapter Six of this report)

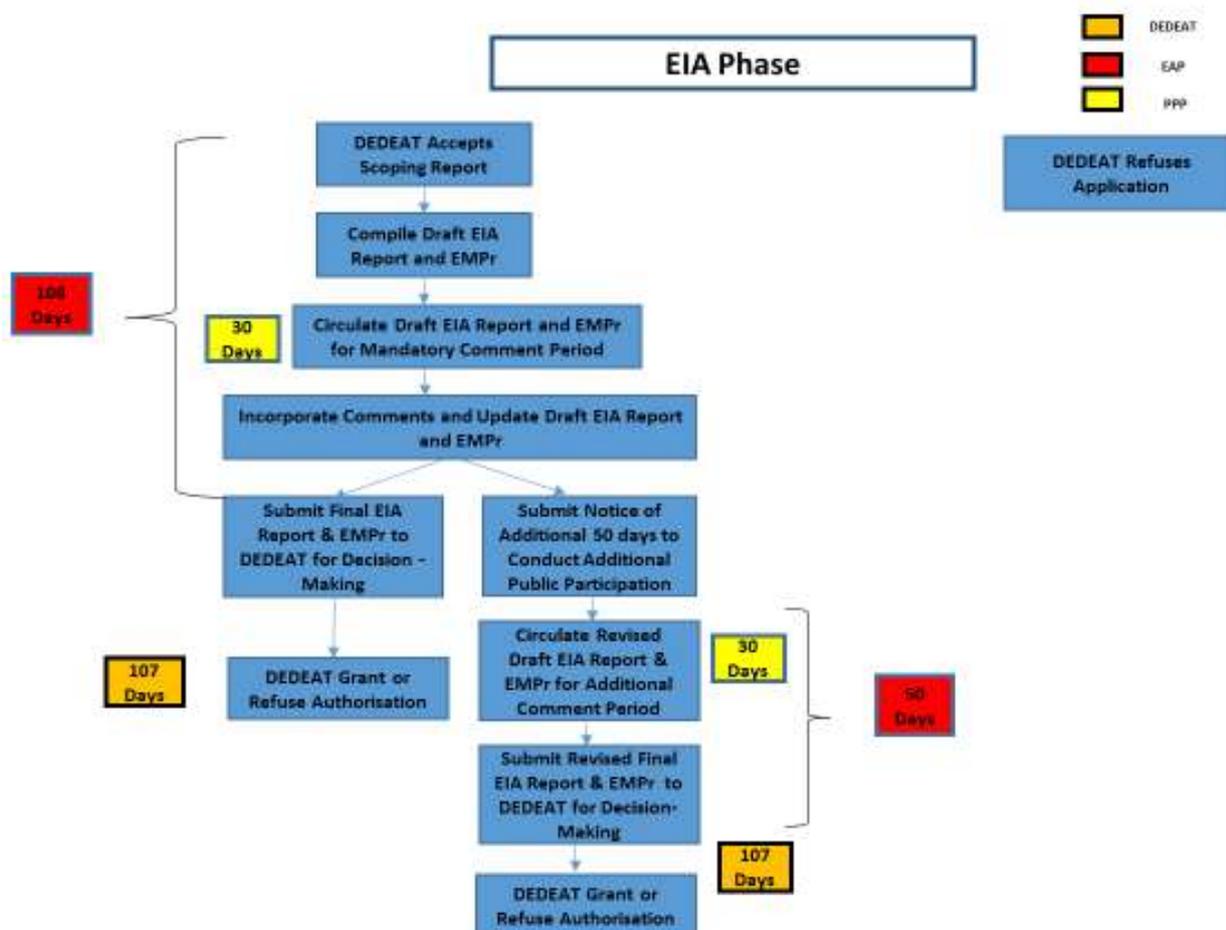
- Draft Environmental Impact Assessment (30 days)
- Submit Final Environmental Impact Assessment to DEDEAT

##### Decision Making and Appeal Period (see Chapter Six of this report)

- Notice to I&APs of Decision and Appeal Period

The project is currently at the stage where a **Draft Consultation Scoping Report (Draft CSR)** is being released for a minimum 30-day competent authority and I&AP review. This step in the process will be followed by the submission of the Application Form to the competent authority and the legislated 30-day comment period on the Consultation Scoping Report (CSR). The diagram below depicts the Scoping and EIA Process being implemented for the proposed project.





#### 4.4.1 Principles for Scoping and Public Participation

The Scoping and EIA Process is being driven by a stakeholder engagement process that will include inputs from the competent authority, affected Organs of State, Interested and Affected Parties (I&APs), specialists and the project proponent.

Guideline 7 on “Public Participation in the EIA Process”, published by DEA in October 2012, states that Public Participation is one of the most important aspects of the Environmental Authorisation process. This stems from the requirement that people have a right to be informed about potential decisions that may affect them and that they must be afforded an opportunity to influence those decisions. Effective Public Participation also improves the ability of the competent authority to make informed decisions and results in improved decision-making as the view of all parties are considered (DEA, 2012: pg. 5). An effective Public Participation Process could therefore result in stakeholders working together to produce better decisions than if they had worked independently. The Guideline (DEA, 2012) further notes that the benefits of Public Participation include the following:

- *“it provides an opportunity for I&APs, EAPs and the competent authority (CA) to obtain clear, accurate and understandable information about the environmental impacts of the proposed activity or implications of a decision;*
- *it provides I&APs with an opportunity to voice their support, concerns and questions regarding the project, application or decision;*
- *it provides I&APs with the opportunity of suggesting ways for reducing or mitigating any negative impacts of the project and for enhancing its positive impacts;*
- *it enables an applicant to incorporate the needs, preferences and values of affected parties into its application;*

- *it provides opportunities for clearing up misunderstandings about technical issues, resolving disputes and reconciling conflicting interests;*
- *it is an important aspect of securing transparency and accountability in decision-making; and*
- *it contributes toward maintaining a healthy, vibrant democracy.”*

The Scoping Process is designed to, amongst others, satisfy the requirements of Chapter 6 (Regulations 39-44) of GN R326 of the NEMA EIA Regulations 2014 (as amended), which relates to the Public Participation Process and the registration of I&APs and the acknowledgment of their comments on the proposed project. Issues raised during the Scoping Process have been included in a Comments and Responses Trail as part of this chapter of the report. Copies of comments received from I&APs and requests to register interest on the project database are included in Appendix F of this report.

Regulation 43 (1) states the following:

43. (1) ***“A registered interested and affected party is entitled to comment, in writing, on all reports or plans submitted to such party during the public participation process contemplated in these Regulations and to bring to the attention of the proponent or applicant any issues which that party believes may be of significance to the consideration of the application, provided that the interested and affected party discloses any direct business, financial, personal or other interest which that party may have in the approval or refusal of the application.”***

#### 4.4.2 Authority Consultation

All Public Participation documentation (Draft and Final Reports) will be sent to the competent authority (DEDEAT), as well as other Organs of State, which may have jurisdiction over an aspect of the project and are included on the I&AP database. Authorities are required to provide their input into the assessment process, within the timeframes stipulated. Input from authorities will be included in the Comments and Responses Trail for the Scoping and EIA Process.

In order to initiate the Scoping and EIA Process, notification of the intention to commence with a Scoping and EIA Process, was submitted to the DEDEAT on the 22 May 2018 and Organs of State on the 23 May 2018. Included with this correspondence was a Background Information Document (BID), locality map and a comment form. Correspondence to DEDEAT, I&APs, and Organs of State, are attached as Appendix B and E of this report, respectively.

Organs of State and/ or state Departments, which may be required to issue a licence or permit prior to commencement of the project, will be consulted and are included on the project database. Appendix D.2 includes the database of Organs of State and/ or state Departments, which may have jurisdiction over an aspect of the project, with their contact details. The following National, Provincial and Local Government Departments, as well as other Organs of State, were proactively identified and included on the database for this project prior to advertising the Scoping Process (Pre-Application Phase) and have been notified of the various stages to comment on the Scoping Process:

- National and Provincial Government Departments (Potential Juristic Organs of State)
  - National Department of Agriculture, Forestry and Fisheries
  - Provincial Department of Economic Development, Environmental Affairs and Tourism (Competent Authority)
  - Provincial Department of Economic Development, Environmental Affairs and Tourism (Biodiversity Section)
  - Provincial Department of Rural Development and Agrarian Reform

- Provincial Department of Water and Sanitation
- East Cape Department of Roads and Public Works
- East Cape Provincial Heritage Resources Agency
- Other Organs of State and Government Departments
  - Sundays River Valley Municipality: Local Authority
  - Lower Sundays River Water Users Association
  - Sundays River Valley Municipal Ward Councillor, Ward 7

These Organs of State/ State Departments will remain on the database for the duration of the Scoping and EIA Process for this project and receive information in the format as agreed to with the relative departments (hard copy, CD or email). Information available for I&AP review will be placed on the website [www.publicprocess.co.za](http://www.publicprocess.co.za) for the duration of the Scoping and EIA Process.

#### **4.4.3 Database Development, Maintenance and Ongoing Information Sharing**

The following provides an outline of the approach to the development of the database for the Project Announcement Phase of the Scoping Process, as well as the maintenance of the database and ongoing information sharing throughout the Scoping and EIA Process.

Prior to advertising the Scoping and EIA Process, the EAP, drawing on experience in the local Sundays River Valley municipal area and by means of a deed search, developed an initial database of potential I&APs for the initiation of the Scoping Process. Adjacent landowners/ tenants were identified through a deeds search (Windeed) and, where required, contact information was confirmed by telephonic communication. This database included, amongst others, adjacent landowners/ tenants, affected/ Juristic Organs of State and the competent authority (as outlined in Section 4.4.2 above), the Councillor for Ward 7 and other potential I&APs. A copy of the database for the project is included as Appendix D.1 of this report and **at the time of advertising the Scoping and EIA Process, included 23 registered IA&Ps.**

I&APs were notified of the requirement to register their interest on the database for this project from the outset of the Scoping Process, via Letter 1 to I&APs. However, the identification and registration of I&APs will be ongoing for the duration of the Scoping and EIA Process. While not required by the regulations, those I&APs identified at the outset of the Scoping Process will remain on the project database and will be kept informed of all opportunities to comment and will only be removed from the database by request.

One comment was received during the project announcement phase from Mr Peter Lotter, EC Department of Roads and Transport. Mr Lotter was proactively identified as a commenting authority prior to the commencement of the Scoping Process and will remain on the database for the duration of the project. Mr Alan Southwood (DEDEAT: Biodiversity Section) has been replaced by Mr Luzuko Dali. The comments received from I&APs have been recorded in the Comments and Responses Trail and copies of the comments are included in Appendix F. At the time of the **release of the Draft CSR the database of I&APs included 22 registered I&APs.**

I&AP details on the database will be regularly captured and automatically updated as and when information is distributed to or received from I&APs, throughout the assessment process. This ongoing and up-to-date record of communication will be an important Public Participation component which accurately reflects the interaction with I&APs throughout the assessment process. Appendix D.1 includes a copy of the I&AP database for the project.

The sections below provide an overview of the tasks that have been undertaken and which are to be undertaken in the Scoping Phase of the assessment, with an emphasis on providing a clear record of the Public Participation Process followed, to ensure that the objectives for Public Participation and the Scoping Process for this EIA are achieved.

#### 4.5 PRE-APPLICATION SCOPING PHASE

As indicated in section 4.4 above, the Scoping Phase of this Assessment has been divided into a Pre-Application and Application Scoping Phase.

The purpose of this approach is to, amongst others, achieve the following:

- To ensure I&APs (including authorities and affected Organs of State) have access to information on the proposed project from the outset of the Scoping and EIA Process.
- To facilitate the identification of issues of concern, to inform the range of specialist studies being conducted for this EIA.
- To assist in the identification of alternatives for assessment.
- To facilitate the refinement of the project description, and preferred development footprint within the property under assessment.

The following activities have been/ will be undertaken during the Pre-Application Phase:

- Project Announcement and Registration of I&APs (30 days)
- Draft Consultation Scoping Report Review (30 days)

##### 4.5.1 Project Announcement and Registration of I&APs

In order to notify and inform the public, potential I&APs, as well as Organs of State and the competent authority of the proposed project, the opportunity to register as an I&AP, as well as raise issues of concern, the Scoping and EIA Process was announced as follows:

- Advertisement in one local newspaper:
  - The Herald, 23 May 2018 (Provincial distribution).
- Site Notice Board:
  - A notice board announcing the Scoping and EIA Process, identifying the area under assessment, potential listed activities and contact details for further information and registration as an I&AP, was placed on the fence at the entrance to Portion 525, as well as Portion 523, off the gravel road DR01976.
- Letter 1 to I&APs - Notice of the Scoping and EIA Process, Comment and Registration Period:
  - Letter 1 to I&APs included a Background Information Document (BID), locality map and comment form. On 23 May 2018, written notification of the Scoping and EIA Process (Letter 1) was sent to all I&APs on the project database via normal mail and email. A 33-day comment and registration period was allowed for I&APs to register their interest on the project database and raise issues of concern for inclusion in the Draft CSR. This period extended from **23 May 2018 to the 25 June 2018** (taking into account a public holiday which fell over this period and that the comment period ended on a Saturday).
  - As outlined in Section 4.4.2 above, all affected Organs of State including the competent authority, received notification of the assessment process via Letter 1 to I&APs.
- Website:
  - Letter 1, the BID and comment form for the project were placed on the following website: [www.publicprocess.co.za](http://www.publicprocess.co.za)

Appendix C contains photos of the site notice boards placed at the respective sites and a copy of the newspaper advertisement placed in "The Herald". Appendix E contains a copy of the correspondence sent to all I&APs, as well as Organs of State on the project database. Appendix F contains copies of correspondence received from I&APs in response to the project announcement. The following provides a summary of the issues raised during the project announcement phase,

the number in brackets indicates the number of times a specific issue has been raised by I&APs during this phase of the assessment process:

- Traffic Impacts (1)

The issues raised have been included in the Comments and Responses Trail in Section 4.7 below and copies of these comments are included in Appendix F of this report.

#### **4.5.2 Draft Consultation Scoping Report Review (CURRENT STAGE)**

As part of the Pre-Application Phase, a Draft CSR (this report) is being released to I&APs, including authorities and Organs of State, for a 30-day comment period.

The following indicates the process for the distribution and sharing of information during the review period of the Draft CSR:

- Letter 2 to I&APs – Notice of comment period for Draft CSR:
  - All I&APs on the project database will be notified in writing, via letter 2, of the 30-day comment period. Included with this correspondence will be a comment form and an executive summary of the Draft CSR. Correspondence will be sent via normal mail and email.
- Report Distribution:
  - Organs of State and/ or State Departments will be provided with a hard copy, CD or an electronic version of the report, as agreed to with the respective State Department.
  - The Councillor for Ward 7 will be provided with a CD copy of the report.
- Website:
  - A copy of the report, including an executive summary of the Draft CSR and comment form will be placed on the following project website: [www.publicprocess.co.za](http://www.publicprocess.co.za)

All issues and concerns raised by I&APs during the review of the Draft CSR will be included in the Consultation Scoping Report (CSR), for a legislated minimum 30-day I&AP review period.

#### **4.6 APPLICATION AND SCOPING PHASE**

This phase in the Scoping Process entails the following, which is outlined in more detail below:

- Submission of Application Form for Environmental Authorisation to DEDEAT
- Consultation Scoping Report Review (30 days)
- Submit Final Scoping Report to DEDEAT

##### **4.6.1 Submission of Application Form for Environmental Authorisation to DEDEAT**

The first step in this phase of the process will entail the submission of the Application Form for Environmental Authorisation to the competent authority, DEDEAT, which has 10 days within which to respond to the submission of the application. The applicant must within 44 days of receipt of the application by the competent authority, submit a Scoping Report to the competent authority, which has been subjected to a Public Participation Process of at least 30 days. Failure to comply with the timeframes will result in the application having deemed to be lapsed by the competent authority.

##### **4.6.2 Consultation Scoping Report Review**

In parallel to the submission of the Application Form to the competent authority, the CSR will be released for a minimum legislated 30-day comment period. The following indicates the process for the distribution of information during the review period of the CSR:

- Letter 3 to I&APs - Notification of comment period on the CSR:

- All I&APs will be notified in writing of the 30-day comment period and receive an executive summary of the CSR, as well as a comment form.
- Report Distribution:
  - It is proposed that Organs of State and/ or State Departments are provided with a hard copy, or electronic version of the report (CD or Email), as agreed to with the respective State Department
  - The Councillor for Ward 7 will be provided with a CD copy of the report.
- Website:
  - A copy of the report, including an executive summary of the CSR and comment form will be placed on the following project website: [www.publicprocess.co.za](http://www.publicprocess.co.za)
- One on one meetings will be held as and when necessary with key I&APs, upon request.

#### **4.6.3 Submit Final Scoping Report to DEDEAT**

The FSR, together with the Plan of Study for EIA, will be prepared for submission to the DEDEAT for their decision-making, within 44 days of submission of the Application Form. The FSR will include all the comments received from I&APs during the Pre-Application (project announcement and Draft CSR), as well as Application Phase of the assessment (CSR). The following indicates the process for the distribution of information during the submission of the FSR:

- Letter 4 to I&APs – Notification of the submission of the FSR:
  - All I&APs on the project database will be provided with written notification of the submission of the FSR to DEDEAT for their decision making. No additional comment period is proposed for the FSR.
- Website:
  - A copy of the report, including an executive summary of the FSR will be placed on the following project website: [www.publicprocess.co.za](http://www.publicprocess.co.za)

DEDEAT will have 43 days from receipt of the Scoping Report to either accept the Scoping Report, with or without conditions, or refuse Environmental Authorisation.

This step marks the end of the Public Participation Process for the Scoping Phase of the EIA Process. The steps in the Public Participation Process to be undertaken for the EIA Phase of the assessment are outlined in Chapter Six of this report: Plan of Study for EIA.

#### **4.7 SCOPING AND IDENTIFICATION OF ISSUES**

An important element of the Scoping Process is to identify issues for inclusion in the EIA Phase of the assessment. These issues provide input towards the assessment of alternatives, the scope and Terms of Reference for the specialist assessments. To ensure that a comprehensive range of issues are identified, the following sources have been used for the identification of issues and the development of the Draft CSR:

- Site visit undertaken by Public Process Consultants on the 23 May 2018.
- Preliminary input and consultation from identified specialists:
  - Vegetation
  - Aquatic
  - Soil
  - Heritage (archaeological and paleontological)
  - Traffic
- Review of existing conservation planning frameworks:
  - Regional and National Biodiversity Planning Frameworks/ Guideline Documents: ECBCP, NBA, SRVM BSP, STEP.
- Technical Information provided by Umgcambo Trading (Pty) Ltd.
- Scoping of issues with I&APs:

- Issues and concerns raised via email and written correspondence during the Project Announcement Phase
- Scoping of issues with relevant authorities:
  - EC Department of Roads and Transport

The specialist studies which are proposed to form part of the EIA Process are outlined in Chapter Six of this Report.

During the Scoping Process, it is important to evaluate and prioritise the issues raised through the interactions with authorities, I&APs, specialists on the EIA team, and the project proponent. In accordance with the philosophy of Integrated Environmental Management, it is necessary to focus the EIA on the key issues raised.

To assist in the identification of key issues, a decision-making process is applied to the issues raised, based on the following criteria:

- Whether the issue falls within the scope and responsibility of this EIA.
- Whether sufficient information is available to respond to the issue raised without further specialist investigation.

Where an issue is considered to fall beyond the scope of this assessment process, sufficient reasoning needs to be provided. Table 4.2, the Comments and Responses Trail below, indicates the comments made to date during the Scoping Process. Appendix F contains copies of the comments made via fax, email or written correspondence. In line with the criteria outlined above, a response to the comment/ issue raised has been provided by the EIA team. The following provides a summary of the issues raised, the number in brackets, indicates the number of times a specific issue has been raised by I&APs.

- Traffic Impacts (1)

Table 4.2: Comments and Responses Trail.

## 1. Traffic Impacts

NO	ISSUES RAISED	COMMENTATOR	DATE	RESPONSE
<b>ISSUES RAISED BY I&amp;APS DURING THE PROJECT ANNOUNCEMENT</b>				
1.1	All access roads and traffic impacts on public roads must be considered. Approval is required for all construction within the road reserve and building line.	Peter Lotter, EC Department of Roads and Transport	23 May 2018, email and comment form	<p>The commentator has been registered on the database for this project and will receive notification of opportunities to comment on the various stages of the Scoping and EIA Process.</p> <p>A Traffic Impact Assessment will be undertaken during the EIA Phase of the Assessment, which will, amongst others, assess the impact on roads and increase in traffic. A wayleave servitude will be required for the pipeline which is proposed to cross under the DR01976. The assessment will need to consider approval for the irrigation pipe on Portion 523 of Farm No. 42 Strathsomers Estate, which will run within the fenceline of Portion 523 and adjacent to the DR01976.</p>

#### **4.8 CONCLUDING REMARKS**

No comments have been received, which require additional specialist studies or assessment of alternatives, other than those identified to date.

The Scoping Process is currently at the stage where a Draft CSR is being released for a non-legislated 30-day I&AP comment period. All comments received during the review of the Draft CSR will be included in the CSR, before it is released for a legislated 30-day comment period.