

3. Legislative context

3.1. Introduction

According to Appendix 1 Section 3 (1), of the 2014 EIA Regulations (as amended in 2017), a Basic Assessment Report must include “(e) a description of the policy and legislative context within which the development is proposed including—

- (i) an identification of all legislation, policies, plans, guidelines, spatial tools, municipal development planning frameworks, and instruments that are applicable to this activity and have been considered in the preparation of the report; and
- (ii) (ii) how the proposed activity complies with and responds to the legislation and policy context, plans, guidelines, tools frameworks, and instruments;”

The proposed development is subject to various legislative requisites in relationship with the South African environmental law. This section provides a brief overview of relevant legislation and their applicability to the proposed development. The proposed development's construction and operation must adhere to all applicable legal requirements pertaining to environmental management. The following acts and policies and their relevance to the proposed development are briefly summarised:

-  The Constitution of South Africa Act, 1996 (Act No. 108 of 1996);
-  National Environmental management: Air Quality Act, 39 (Act 39 of 2004);
-  National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008), as amended
-  National Environmental Biodiversity Act, 2004 (Act No. 10 of 2004);
-  The National Water Act, 1998 (Act No. 36 of 1998);
-  The White Paper on Integrated Pollution and Waste Management for South Africa;
-  Environmental Conservation Act, (Act No. 73 of 1989);
-  Occupational Health and Safety Act, 1993 (Act No. 85 of 1993);
-  The National Heritage Resources Act (Act 25 of 1999);
-  The National Forest Act (Act No. 84 of 1998):
-  The Northern Cape Nature Conservation Act (Act No. 9 of 2009);
-  National Environmental Management Act (Act No. 107 of 1998); and
-  Environmental Impact Assessment Regulations, promulgated in terms of the National Environmental Management Act, 1998 (Act No. 107 of 1998).



3.2. The Constitution of South Africa Act, 1996 (Act No.108 of 1996):

The Constitution is the supreme law of the Republic, and all law and conduct must be consistent with the Constitution. The Bill of Rights emphasises several provisions relevant to securing the protection of the environment. Section 24 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.”

The Constitution, therefore, compels the government to give effect to the people's environmental rights and places the government under a legal duty to act as a responsible custodian of the country's natural environment. The Constitution compels the government to pass legislation which protects the environment, prevents pollution and ecological degradation, promotes conservation, and secures sustainable development.

The proponent must ensure that the proposed development does not contravene the Constitution by ensuring that no pollution or ecological degradation results from the activities undertaken and by undertaking the development in an ecologically sustainable manner.

Note: It is however important to note that though an activity may be allowed in terms of an Act of Parliament, or a permit issued under a statute, it may still be declared unlawful if it is harmful to human health or well-being.

Relevance to the proposed development:

The proponent must ensure that the proposed development's construction or operation does not contravene the Constitution. The proponent should comply with the Constitution by providing that no pollution or ecological degradation occurs due to the proposed development and by conducting environmentally sustainable developmental practices.

3.3. National Environmental management: Air Quality Act, 39 (Act No. 39 of 2004):

The National Environmental Management: Air Quality Act 39 of 2004 provides for the setting of national norms and standards for regulating air quality monitoring, management and control and describes specific air quality measures to protect the environment and human health or well-being by:

- Preventing pollution and ecological degradation; and
- Promoting sustainable development through reasonable resource use.







The National Environmental management: Air Quality Act also includes reference to the control of offensive odours whereby reasonable steps to prevent the emission of any offensive odours caused by activities on a premises are required. Also relevant is the establishment of national ambient dust fall out levels that may be relevant to the construction and operation of the cattle feedlot.

Relevance to the proposed development:

The proposed cattle feedlot line does not trigger registration or licensing in terms of this Act, however during the construction phase, generation of dust and noise could become a factor to surrounding land users. However, it remains the proponent's responsibility to remain within the acceptable limits as stipulated in the NEM:QA (Act No. 39 of 2004)

3.4. National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008), as amended:

The National Environmental Management: Waste Act (NEM:WA) aims to reform the law regulating waste management to protect health and the environment. This is achieved by:

- Providing reasonable measures for the prevention of pollution, ecological degradation and, securing ecologically sustainable development;
-  providing for the national norms and standards for regulating the management of waste by all spheres of government;
-  providing for specific waste management measures;
-  providing for the licensing and control of waste management activities;
-  providing for the remediation of contaminated land;
-  providing for the national waste information system; and
-  providing for compliance and enforcement thereof.






The NEM:WA indicates that certain waste management activities must be licensed, and according to Section 44 of the Act, the licensing procedure must be integrated with an environmental impact assessment process per the EIA Regulations promulgated in terms of the NEMA. Government Notice 921, published in Government Gazette No. 37083, on 29 November 2013, lists the waste management activities that require licensing. A distinction is made between Category A waste management activities, which require a Basic Assessment, and Category B waste management activities, which require the S&Elr process to be followed.

Relevance to the proposed development:

The construction and operation of the proposed cattle feedlot will not trigger any of the activities listed within the National Environmental Management: Waste Act, 2008 as the generated waste will be used as fertiliser for the surrounding crop fields.

3.5. National Environmental Biodiversity Act, 2004 (Act No. 10 of 2004):

National Environmental Biodiversity Act, 2004 (Act No. 10 of 2004): The Biodiversity Act provides for the conservation and management of South Africa's biodiversity. It has been developed in alignment with NEMA for the conservation of species and ecosystems that warrant national protection, sustainable use of indigenous biological resources and fair and equitable sharing of benefits arising from bioprospecting involving indigenous biological resources. By recognising that biodiversity conservation must also occur outside of protected areas, the Biodiversity Act introduces tools including:

-  Development of a National Biodiversity Framework (NBF)
-  Development and publishing of bioregional plans to map and identify Critical Biodiversity Areas (CBAs); and provide guidelines for land-use planning and decision-making in these areas.
-  Development and publishing of Biodiversity Management Plans (BMP) for an ecosystem, an indigenous species, or a migratory species.
-  Publishing of threatened ecosystems and species in the Government Gazette, and the requirement for permits for carrying out a restricted activity involving a threatened species.
-  Prevention of the spread, and eradication of, invasive alien species.

3.5.1 Threatened or protected ecosystems and species:

NEMBA states that biodiversity loss through habitat loss, degradation or fragmentation must be avoided, minimised, or remedied. The loss of biodiversity includes the loss of threatened or protected species and the loss of localised endemics. Chapter 4 of the NEM:BA deals with threatened or protected ecosystems and species, and its purpose is "to—

- a) provide for the protection of ecosystems that are threatened or in need of protection to ensure the maintenance of their ecological integrity;
- b) provide for the protection of species that are threatened or in need of protection to ensure their survival in the wild;
- c) give effect to the Republic's obligations under international agreements regulating international trade in specimens of endangered species; and
- d) ensure that the utilisation of biodiversity is managed in an ecologically sustainable way."

Aspects concerning the loss of biodiversity through the loss of localised endemics, the loss of localised species diversity, the loss of ecological functions which support biodiversity are discussed in the ecological assessment report (Appendix G).

3.5 2 Bioregional spatial planning:

CBA Maps are provided with formal legal status through the National Environmental Management: Biodiversity Act (Act 10 of 2004), which introduced several new legislative tools to assist with conserving and managing South Africa's biodiversity. One of these is the declaration of "bioregions" and the publication of bioregional plans. Guidelines for the development of bioregional plans were developed by SANBI at DFFE's (then DEA) request and were published in the Government Gazette in 2009 as the "Guideline regarding the determination of bioregions and the preparation and publication of bioregional plans", referred to for short as the Guideline for Bioregional Plans (DEAT, 2009).

According to the Guideline for Bioregional Plans, the purpose of a bioregional plan is to provide a map of CBAs and ESAs with accompanying land-use guidelines, to inform land-use planning, environmental assessment and authorisations, and natural resource management by a range of sectors whose policies and decisions impact on biodiversity. A CBA Map is thus the core component of a bioregional plan. See below a summary of conceptual framework for CBA maps.

Table 4: Conceptual framework for CBA maps.











Map category	Landscape-level purpose	Broad management objective
Protected areas	Formal long-term protection for important biodiversity and landscape features. Together with CBAs, ensures that a viable representative sample of all ecosystem types and species can persist.	Must stay in largely natural ecological condition. Details determined by the management plan that is required for each protected area.
CBA: Critical Biodiversity Areas	Together with protected areas, ensures that a viable representative sample of all ecosystem types and species can persist.	Must stay in largely natural ecological condition.
ESA: Ecological Support Areas	Ensures the long-term ecological functioning of the landscape as a whole.	Must retain ecological processes, which often requires at least semi-natural ecological condition.
ONA: Other Natural Areas	Allows for range of other land uses, including intensive land uses.	Determined by other spatial planning tools (e.g. SDFs).
NNR: Areas with No Natural Habitat Remaining	Areas already severely or irreversibly modified by intensive land uses.	Determined by other spatial planning tools (e.g. SDFs).

Relevance to the proposed development:

The proposed expansion of the cattle feedlot is situated within an ESA2 although no species of conservational concern have been identified. The activities from the proposed development do not trigger any activities from the National Environmental Biodiversity Act, 2004.

3.6. The National Water Act, 1998 (Act No. 36 of 1998):

The National Water Act (NWA) administered by DWS aims to manage and protect the national water act resources to achieve sustainable use of water for the benefit of all water users. The purpose is to achieve sustainable use of water for the benefit of all water users. The purpose of the Act is to ensure that the nation's water resources are protected, used, developed, conserved, and managed in ways that consider:

-  Promoting equitable access to water;
-  Redressing the results of past racial discrimination;
-  Promoting the efficient, sustainable, and beneficial use of water in the public interest;
-  Facilitating social and economic development;
-  Providing for the growing demand water use;
-  Protecting aquatic and associated ecosystems their biological diversity;
-  Reducing and preventing pollution and degradation of water resources;
-  Meeting international obligations;
-  Promoting dam safety; and
-  Managing floods and drought.

Section 21 of the NWA sets out water uses that may require registration or licencing. In terms of the NWA, water uses include any activity involving the following:

- a) Taking water from a water resource.
- b) Storing water.
- c) Impeding or diverting the flow of water in a watercourse.
- d) Engaging in a stream flow reduction activity contemplated in section 36.
- e) Engaging in a controlled activity identified as such in section 37(1) or declared under section 38(1).
- f) Discharging waste or water containing waste into a water resource through a pipe, canal, sewer, sea outfall or other conduit.
- g) Disposing of waste in a manner which may detrimentally impact on a water resource.
- h) Disposing in any manner of water which contains waste from or which has been heated in, any industrial or power generation process.
- i) Altering the bed, banks, course or characteristics of a watercourse.
- j) Removing, discharging or disposing of water found underground if it is necessary for the efficient continuation of an activity or for the safety of people.
- k) Using water for recreational purposes.






Relevance to the proposed development:

The proposed development will utilise a borehole to supply water for the cattle feedlot and the activities related to the proposed development will trigger licensing in terms of the National Water Act, 1998. Application for Section 21 (a) and (g) will be required.

3.7. The White Paper on Integrated Pollution and Waste Management for South Africa

Integrated pollution and waste management is a holistic and integrated system and process of management aimed at pollution prevention and minimisation of source, managing the impact of pollution and waste of the receiving environment and remediation damaged environments.







The White Paper on Integrated Pollution and Waste management for South Africa represent a paradigm shift from dealing with waste only after it is generated (i.e., "end of pipe towards):

-  Pollution prevention;
-  Waste minimisation;
-  Cross media integration;
-  Institution integrated both horizontal and vertical, of department and spheres of government; and
-  Involvement of all sectors of society in pollution and waste management.

The government believes that pollution prevention is one of the most effective means of protecting South Africa people and environment. Pollution prevention eliminates costly and unnecessary waste and promotes sustainable development. It aims to reduce risks to human health and environment by trying to eliminate the causes rather than treating the symptoms of pollution.

This Integrated Pollution and Waste Management for South Africa apply to all government institutions, society at large and to all activities that impact on pollution and waste management. One of the fundamental approaches of this policy is to prevent pollution, minimise waste and to control and remediate impacts. The management of waste will be implemented in a holistic and integrated manner, and will extend over the entire waste cycle, from "cradle to grave" including the generation, storage, collection, transportation, treatment, and final disposal of waste.

The government aims to:





-  Encourage the prevention and minimisation of waste generation and thus pollution at source;
-  Encourage the management and minimization of the impact of unavoidable waste from its generation to its final disposal;
-  Ensure the integrity and sustained "fitness for use" of all environmental media, i.e., air, water, and land;
-  Ensure that any pollution of the environment is remediated by holding the responsible parties accountable;
-  Ensure environmental justice by integrating environmental considerations with the social, political and development needs and rights of all sectors, communities, and individuals; and
-  Prosecute non-compliance with authorizations and legislation.

3.8. Environmental Conservation Act, (Act No.73 of 1989)

In terms of section 20 (1) of the Environmental Conservation Act, 1989, (Act 73 of 1989), waste can only be disposed of at a facility that has a permit issued by the Minister of Water Affairs and Forestry. The facility must be sited, designed, operated, and monitored strictly in accordance with the permit conditions. These conditions will include the requirements, standards and procedures set out in the DWS waste management series.









It should be noted that section 20 (1) of the Environmental Conservation Act, 1989 has been amended in terms of the issuing of waste disposal permits and exemptions is now the responsibility of the minister of Environmental Affairs.

Section 24 of the Act allows the Minister to make regulation with respect to several waste management issues and include the following regulations:

-  Disposal site application;
-  Directions for control and management of general and small waste disposal sites;
-  Noise control regulations; and plastic bag Regulations; and
-  The waste will thus be subject to a permit issued under section 20 of the ECA.

3.9. Occupational Health and Safety Act, 1993 (Act No. 85 of 1993):

The Occupational Health and Safety Act 85 of 1993 is South Africa's principal legislation concerning health and safety of employees. It also aims to protect persons who are not at work against hazard to health and safety arising out of or in connection with the activities of persons at work. The Act places the responsibility on the employer to ensure a safe and healthy working environment and to cause every employee to be made conversant with health and safety requirements relevant to their work. At the same time the Act places the responsibility on the employee to follow its employer's health and safety procedures and instructions. Several Regulations have been promulgated under the Act that is relevant to development including the following:

-  General Administrative Regulations, 1994;
-  Asbestos Regulations, 2001;
-  Lead Regulations, 2003;
-  Regulations for Hazardous Chemical Substances, 1995;
-  Hazardous Biological Agents of 2001;
-  General Safety Regulations, 1986;
-  Environmental regulations for workplaces (Department of Labour, 1994); and
-  Construction Regulations, 2003.

Relevance to the proposed development:

All waste management activities need to be carried out in accordance with the requirements of the OHS Act and must include the following activities: