



**MINISTER
FORESTRY, FISHERIES AND THE ENVIRONMENT
REPUBLIC OF SOUTH AFRICA**

Reference: LSA 153819

APPEAL DECISION

**APPEAL LODGED AGAINST THE ENVIRONMENTAL AUTHORISATION GRANTED TO
THE SOUTH AFRICAN NATIONAL ROAD AGENCY SOC LTD IN RESPECT OF THE
CONSTRUCTION OF THE NEW ROUTE P166 1/2, WITHIN THE LOCAL MUNICIPALITY
OF MBOMBELA, IN THE MPUMALANGA PROVINCE**

The South African National Roads Agency Limited, and
Others

First Appellant

Department of Forestry, Fisheries and the Environment:
Chief Directorate: Integrated Environmental Authorisations

Competent Authority

Appeal: This is an appeal lodged by the South African National Roads Agency Limited (SANRAL) (the applicant), the Mbombela Local Municipality, the Mpumalanga Department of Public Works, Roads & Transport, and Buscor (Pty) Ltd (collectively referred to as the first appellant) against the decision taken by the Acting-Chief Director: Integrated Environmental Authorisations (CD:IEA) of the Department of Forestry, Fisheries and the Environment (the then Department of Environmental Affairs) (the Department), taken on 09 May 2016, to grant an Environmental Authorisation (EA) to the applicant, for listed activities pertaining to the

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proposed construction of the New Route P166 1/2, within the Local Municipality of Mbombela, in the Mpumalanga Province.

1. BACKGROUND AND APPEAL

- 1.1. On 10 July 2012, the applicant lodged an application for an EA with the CD: IEA, for listed activities pertaining to the proposed construction of the New Route P166 1/2, within the Local Municipality of Mbombela, in the Mpumalanga Province. This EA application was lodged and processed in terms of the Environmental Impact Assessment Regulations, 2010 (2010 EIA Regulations), promulgated under the National Environmental Management Act, 1998 (Act No. 107 of 1998) (NEMA), as amended.
- 1.2. The applicant commissioned an independent environmental assessment practitioner (EAP), namely Royal Haskoning DHV, to conduct an Environmental Impact Assessment (EIA) for the application.
- 1.3. On 22 March 2016, the EAP submitted the final Environmental Impact Assessment Report (EIR), prepared in respect of the EA application, to the CD: IEA for consideration and decision-making purposes.
- 1.4. On 9 May 2016, after evaluating the final EIR and all relevant information submitted in respect of the above application, the Acting CD: IEA granted an EA to the applicant, under reference number: 14/12/16/3/3/2/384, authorising the White River North alternative route for the construction of new route P166-1/2, as opposed to the applicant's preferred route for the road.
- 1.5. In his decision to approve the alternative route, the Acting-CD: IEA took the following into consideration (on page 12 of the EA):

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- *The existing P166 servitude in White River has colonies of the nationally threatened Aloe simii, which are likely to constitute a large portion of the known population of this species in the wild.*
- *Aloe simii is a Critically Endangered species which is currently facing extinction. There is one recorded case study of translocation of the Aloe simii which took place 13 years ago, where several plants were removed from the development of a sports field in White River. All the species that were translocated died 3-4 years later. Given the lack of evidence to support any translocation, the Mpumalanga Tourism and Parks Agency (MTPA) would be strongly opposed to issuing a permit to translocate several Critically Endangered plants out of a habitat where they are known to persist and thrive.*
- *There are only 566 mature plants (of the Aloe simii species) known to occur in the wild and the proposed development (along White River Area), would potentially destroy 20% of the known global population.*
- *The existing P166 White River servitude has been classified as a Critically Endangered Biodiversity Area (CBA) by a freshwater assessment of the MBSP Plan 2013 and was also identified as being sensitive through in-field analysis as part of the Surface Water Specialist study.*
- *The development of the original P166 servitude, more specifically along the wetland that runs through the open space within the proposed White River in which the servitude is located, would result in a significant degree of wetland habitat loss, and would have a significant impact on the functionality and state of the wetland. More importantly, effective mitigation of these impacts would be very difficult to achieve without consideration of wetland offset or implementation of costly design measures to avoid the direct transformation of the wetland habitat.*
- *There are two legally declared protected nature reserves located immediately adjacent to the original servitude of the P166 and the White River North Alternative will ensure that these nature reserves are not affected by the proposed development.*
- *The existing P166 servitude traverses through wetlands located north of the suburbs of White River and this would result in the transformation of a significant proportion of wetland area with or without mitigation.*

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- *The social impacts associated with the original P166 servitude through the Msholozhi area would create a significant social impact.*
- 1.6. The Directorate: Appeals and Legal Review (Appeals Directorate), within the Department, received several appeals against the decision that was taken to issue the EA. These are as follows:
- 1.6.1. On 13 June 2016, 24 June 2016 and 27 June 2016, from (i) the applicant, (ii) the Mbombela Local Municipality, (iii) the Mpumalanga Department of Public Works, Roads & Transport, and (iv) Buscor (Pty) Ltd, respectively (collectively referred to as the first appellant); and
- 1.6.2. On 27 June 2016, from Ivan Pauw and Partners, on behalf of Chrispieto Beleggings CC and Piso Boerdery (Pty) Ltd (the second appellant).
- 1.7. On 27 June 2016, the White River Ratepayers Association submitted a responding statement to the applicant's appeal.
- 1.8. On 12 August 2016, the CD: IEA submitted their comments on the grounds of appeal.
- 1.9. On 02 September 2016, the applicant submitted a responding statement to the second appellant's grounds of appeal.
- 1.10. The first appellant's appeal is premised on the grounds set out in paragraphs 2.1 to 2.1.9 below.
- 1.11. The appeal by the second appellant was premised on the grounds that they have land use rights (granted by the Mbombela Municipality) for the establishment of a mixed-use township along the original P166 servitude/ road reserve.
- 1.12. On 28 July 2017, the then Minister responsible for the Department (the previous Minister) reached a decision (reference number: LSA 153819) (2017 Appeal Decision) to:

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- 1.12.1. Condone the late filing of the applicant's responding statement to the second appellant's appeal;
 - 1.12.2. Dismiss the second appellant's appeal; and
 - 1.12.3. Adjourn the first appellant's appeal for three years, in terms of section 43(6) of NEMA, to allow the applicant an opportunity to prove whether they could successfully propagate *Aloe simii* and, in so doing, assist with the conservation of the species. In this respect, the previous Minister directed the applicant to undertake trials for the propagation of *Aloe simii* during this period, under the stewardship of the MTPA and the South African National Biodiversity Institute (SANBI), and to thereafter submit a report on the outcomes of the trials, including the comments on the report from interested and affected parties (I&APs), to the Minister for consideration.
- 1.13. On 22 September 2022, the applicant submitted the Final Outcome Report: SANRAL *Aloe Simii* Propagation Study, White River, Mpumalanga Province, dated August 2022 as prepared by CES Environmental and Social Advisory Services (i.e., the Final Outcome Report for the *Aloe simii* propagation trial) in accordance with the 2017 Appeal Decision.
- 1.14. I will now deal with the first appellant's grounds of appeal, considering the findings of the *Aloe simii* report. Due to the nature of my decision, and for the sake of completeness, I decided to merely summarise the grounds of appeal submitted by the first appellant and the applicant's response to the appeal. It should be noted that the crux of the appeal relates to whether *Aloe simii* can be successfully propagated, to allow for the approval of the applicant's preferred alternative (i.e., the original servitude through White River).

2. GROUNDS OF APPEAL

- 2.1 The first appellant's appeal is premised, in summary, on the following grounds:
- 2.1.1 Key factors of the EA were incorrectly/incompletely considered and misapplied when the CD: IEA approved the alternative route and not the preferred route, as they were only fully relevant to P166, inclusive of the original White River section.

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- 2.1.2 Development of P166 without the existing servitude in White River will not optimally satisfy the need for long distance mobility function in the area, thereby partially defeating the objectives, need and desirability of the project. In this regard, the White River Northern alternative (authorised route) cannot be conveniently connected with the R538 towards Numbi and Masoyi, and therefore approximately half of the traffic emanating north of White River, as well as public transport operating along defined routes in the area, cannot directly benefit from the P166 if the alternative route is implemented.
- 2.1.3 The authorised route is approximately 29 kilometres long and will therefore incur substantial additional costs, which it estimates to be between R40 million – R50 million.
- 2.1.4 It is incorrect that the proposed development along the preferred White River area would potentially destroy 20% of the global population of the *Aloe simii* species, because not all of the identified plants of the affected colony are directly affected and threatened by the road.
- 2.1.5 There is a factual base that seed harvesting and propagation is viable and that it has been proven to be highly successful. The Lowveld Botanical Gardens has already successfully grown seedlings from seeds.
- 2.1.6 In addition to the proposed seed harvesting and propagation, the first appellant proposes a trial translocation of limited numbers of mature plants to a site very close by, under the stewardship of the responsible conservation authorities. This would create the necessary ideal conditions within the same or very similar micro-climate, as opposed to the previous unsuccessful translocation to a totally different micro-climate (from White River to Nelspruit). If the trial translocation is successful, translocation of the entire identified colony can take place to the alternative site, where re-establishment of propagated seedlings is also proposed to further enhance the long-term viability of the total population.
- 2.1.7 Regarding the impact on wetlands in the White River Servitude, the description of the wetlands does not accurately reflect the current state of degradation of the wetland, nor the fact that the existing wetland has been compromised through lack of protection and a degree of subsistence farming which is taking place in the top section of the wetland. The current lack of protection and subsistence farming applies similarly to the preservation of the *Aloe simii* species.
- 2.1.8 The EA makes the assumption that mitigation of impacts on wetlands will be very difficult to achieve, ignoring well established road construction methods that can ensure continuity of

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water flow where the roads cross wetlands. Through road design it is possible to maintain water seepage and the flow of surface water. This can be designed to acceptable levels, as demonstrated by case studies of existing roads of a similar standard and function. The applicant is committed to reinstate the integrity of the balance of the wetland, both inside and outside the road reserve, thereby increasing the footprint of the functioning wetland.

- 2.1.9 The two declared nature reserves were proclaimed after the road declaration and would presumably have taken into consideration existing servitudes, as all the parts of the reserves seem to lie outside the declared road reserve. The nature reserves cannot negate the right of a legally declared road servitude or form the basis to refuse authorisation of the original White River alignment.

Response from the CD: IEA

- 2.2 The CD: IEA submits as follows:
- 2.2.1 The final EIR identified 4 alternative routes along the original P166 servitude, which includes the Maggiesdal Area, Pumulani 2 alternative, White River North alternative and White River Area alternative.
- 2.2.2 The need and desirability of the project was not divided as per alternatives assessed. While the Economic and Transport study recommended that the original P166 servitude through the White River area be approved, this route was not approved due to the environmental impacts associated with the alignment.
- 2.2.3 As a result of the objections to the approval of the preferred route alignment from the Mpumalanga Department of Agriculture, Rural Development, Land and Environmental Affairs (MDARDLEA) (the former Mpumalanga Department of Agriculture, and Land Administration (MDALA)) and the MTPA, the Acting CD: IEA took the decision not to approve this route.
- 2.2.4 The decision was taken to approve the White River North Alternative after due consideration of the negative impact on wetlands if the P166 servitude through the White River area was developed, as well as the destruction of the natural habitat within the wetlands and its margins for colonies of *Aloe simii*.

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EVALUATION (REASONS FOR THE DECISION)

- 2.4 At the onset, this appeal was focused on the decision that was taken by CD: IEA to approve the White River North alternative route for the construction of new route P166-1/2, as opposed to the applicant's preferred route for the development of the road within the existing P166 servitude through White River, primarily due to the presence of *Aloe simii* population(s), wetlands, and nature reserves along the preferred routes.
- 2.5 The previous Minister held this appeal in abeyance to allow the applicant an opportunity to undertake trials over a period of 3 (three) years for the propagation of *Aloe simii* to prove whether they could successfully propagate *Aloe simii*, and to submit a report on the outcomes of the trials, including comments on the report from interested and affected parties (I&APs), for consideration in the determination of this appeal.
- 2.3 I take note that the applicant has complied with the directive of the previous Minister, per the 2017 Appeal Decision, as follows:
- 2.3.1 By submitting the Final Outcome Report for the *Aloe simii* propagation trial on 22 September 2022.
- 2.3.2 The trials for the propagation of *Aloe simii* were initiated in 2019 and undertaken over a period of 3 (three) years, under the stewardship of SANRAL, the MTPA, SANBI and MDARDLEA (as indicated on pages 2-3 of the report).
- 2.3.3 The report includes the public consultation that was undertaken as follows:
- 2.3.3.1 Registered interested and affected parties (I&APs) identified during EIA process were notified via email that the Draft Outcome Report for *Aloe simii* Propagation was available for comments for a period of 30 days from 1 – 3 April 2022.
- 2.3.3.2 A notice of the availability of the report was also published in the Lowveld Local Newspaper on 31 March 2022.

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- 2.3.3.3 Comments received from stakeholders, and responses thereto, were included in Appendix B of the Final Outcome Report for the *Aloe simii* propagation trial.
- 2.4 I am accordingly satisfied that the appellant has complied with the requirements of directive of the previous Minister per her 2017 Appeal Decision.
- 2.5 The focus of this appeal has accordingly shifted to a determination on whether the *Aloe simii* species can be successfully propagated, thus allowing for the approval of the applicant's preferred route.
- 2.6 I have taken into consideration the findings of the Final Outcome Report for the *Aloe simii* propagation trial. The report (on pages 2 and 42) confirms that the aim of the project was to prove whether it was possible to successfully propagate *Aloe simii* plants, and to determine under what conditions propagation would be most successful, and in so doing, to assist the conservation of the species.
- 2.7 On perusal of the report, I observed that the project aim was investigated by selecting suitable sites for out-planting trials of seedlings propagated in the Lowveld Botanical Gardens nursery. I also observed that the *AloeSimii* propagation project involved the following objectives:
- 2.7.1 To collect and germinate seeds from the White River populations;
 - 2.7.2 To transplant seedlings that had been propagated by the Lowveld Botanical Garden nursery at selected trials site at Uplands and White River;
 - 2.7.3 To monitor the survival and growth of the seedlings over a period of three years; and
 - 2.7.4 To statistically analyse the data to determine key factors of success.
- 2.8 I note that pages 2 and 42 of the report further indicate that it was not possible to test the success of transplanting/relocating mature plants from wild populations affected by the proposed road during the project period, because the MTPA had expressed unwillingness to provide a permit to move mature plants, however an initial step in this direction was made in

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that 6 individual plants (now 8 years old) from the set of older plants that were planted in March 2020 at Uplands, were transplanted in November 2021. I note that although none of the transplanted plants have died, and all of them have demonstrated comparable growth rates compared to other non-transplanted plants, and that this cannot be used as a conclusive case of successful transplantation. The transplanted plants have been provided with no additional care, such as water, therefore, the plants have had to cope with the disturbance unassisted. I take note that it may be possible to increase survival rate by additional watering to reduce plant stress, and that a follow-up assessment of the plants in November 2022 will provide stronger evidence with regards to survival rate, although this falls outside the timeframes of the project. The results of follow-up assessments could inform additional studies that would be necessary to determine survival rate of transplanted plants.

2.9 I have also taken note of the outcomes of the study with regards to propagation and relocation of the *Aloe simii* species respectively, as indicated on pages 2 and 43 of the Final Outcome Report for the *Aloe simii* propagation trial, as follows:

2.9.1 From the monitoring data, it can be stated with statistical confidence that propagation of *Aloe simii* can be achieved and that to maximise the survival of small seedlings, the plants need to be a minimum size of 16 cm in diameter and have at least 3 leaves. The larger the plant, the higher rate of survival can be achieved.

2.9.2 This study concludes that successful propagation of *Aloe simii* is possible and can be optimised/maximised by incorporating the following recommendations:

1. When out-planting seedlings propagated in a nursery, it is critical that:

- Plants are re-potted into larger pots for at least 12 months,
- Plants have at least 3 leaves and are a minimum of 16cm in diameter, and
- Out-planting takes place after the first good rains in the rain season (November – February).

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2. Transplanting *Aloe simii* from wild populations: At this stage, there can be no conclusive statement regarding the success of transplanting wild individuals of *Aloe simii*, however, the recommendations, emanating from the research and trials that have been undertaken over the last three years, are as follows:

- As much of the root stock and soil needs to be contained as possible.
- Transplanting should be undertaken during the wet season **if** transplanting to a new site is done immediately. Follow-up care, such as occasional watering, must be undertaken as necessary, for at least the first year, to minimise plant stress, as has been observed during this project.
- Transplanting **could** also take place when the plant is dormant (June-July). This should involve digging up the Aloe plant and potting it in sufficiently large pots using a combination of native soil, sand and compost, and cared for in a nursery until the plants have recovered. Environment conditions can be controlled in the nursery which may increase the chances of survival of the plant. Out-planting to pre-selected sites should take place in the following growing season (i.e., 18 months later) to increase out-planting success (as per seedling trials).
- The preliminary results of mortality of the seedlings recorded in the trial plots indicate that the Northern Bank of the White River trial sites (north and south bank) may be more favourable for *Aloe simii* due its relatively sandier soils. The soils along the south bank contained patches of clay. While the Southern Bank site may appear to be less favourable for small plants, larger plants may successfully establish there. The preferred site for out-planting is therefore currently inconclusive and continued monitoring of the White River trial sites, combined with soil analyses, could direct future transplanting/out-planting sites with higher confidence.
- Stakeholder recommendations include the design and implementation of a fire and pest management programme for transplanted plants, which would increase the likelihood of survival.

2.10 I take note that page 42 of the report further confirms that the study provided evidence of (i) successful seed collection from the wild populations at White River; (ii) successful germination of the seeds that were collected; and (iii) optimal out-planting conditions

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required to increase the survival of out-planted seedlings, both at the Uplands and White River trials sites, respectively. In addition, the project also achieved the following outcomes:

- Increased the Uplands population by over 100 individuals
- Increased the White River populations by almost 300 individuals (*although this figure may decrease over time*).
- Determined that:
 - Root development, which is linked to the number of leaves and size of the plant, and season of planting are closely correlated with the successful out-planting of nursery plants and;
 - Larger nursery plants are less affected by season, while small plants with smaller root systems are vulnerable to environmental stressors and are more likely to survive if allowed to increase root network combined with out-planting during the wet season.
- Identified natural and other threats that may be contributing towards the decline of the species.
- Extracted DNA from 3 populations to determine genetic divergence/similarity (although results will only be available later in the year, the information will be published).

2.11 I note further that the comments on the Final Outcome Report for the *Aloe simii* propagation trial were received from three I&APs, namely Mr Rob Palmer of Nepid Consultants CC, Dr Llew Taylor of Taylor Environmental, and MDARDLEA (as included in Appendix B of the report). In the main, these comments included recommendations for the implementation of a Pest and Fire Control Programme to improve the survival of relocated *Aloe* populations; and the need to assess the soil parameters for successful establishment of the *Aloe simii* plants. This was due to the finding in the report that the plants prefer sandy soils. In this regard, the Final Outcome Report for the *Aloe simii* propagation trial confirms that the observation that *Aloe simii* prefers sandy soils is preliminary, and requires further investigation, given that *Aloe simii* was recorded in varying soil conditions during site investigations.

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- 2.12 On further scrutiny of the Final Outcome Report for the *Aloe simii* propagation trial, I observed that the report proposed that the assessment of soil characteristics suitable for the species be a 'next step' in the research programme, because the soil characteristics of **all** known *Aloe simii* populations would need to be assessed to generate a scientifically robust description of favourable soil conditions, and this fell outside the scope of the current project, which focussed primarily on *Aloe simii* propagation potential, out-planting and transplanting, particularly with regards to the White River population and seedling material from the Uplands population. The sites selected for the out-planting and transplanting trials were all pre-selected due to the presence of historical or current populations in close proximity, rather than selection based on soil and distance to wetlands. When the sites were ground-truthed, the presence of *Aloe simii* plants was used as an indicator that soils would be suitable and this precluded the need for soil testing at that stage of the research. I note further that the report recommends the implementation of a Pest and Fire Control Programme per the I&AP recommendations. I am therefore satisfied that the comments from I&APs on the Final Outcome Report for the *Aloe simii* propagation trial were adequately addressed.
- 2.13 On the aspect of the wetlands, I note that one of the significant concerns regarding the impact to wetlands was the destruction of the natural habitat within the wetland and its margins for colonies of *Aloe simii*. In my view, the severity of this impact is lessened by the abovementioned study's findings, namely that the propagation of *Aloe simii* can be successfully achieved, thereby assisting in the conservation of the species. I note further that the EAP recommended several mitigation measures to reduce the severity of impacts on the wetlands, including road design and construction methods, as indicated on page 520 of the EIR. In this regard, I take note of the applicant's commitment to reinstate the integrity of the balance of the wetland, both inside and outside the road reserve, thereby increasing the footprint of the functioning wetland. I take cognisance that the wetland in this area is moderately modified, as indicated on page 530 of the EIR. I also take cognisance of the applicant's contention that the White River North Alternative will not optimally satisfy the need for long distance mobility function in the area, thereby partially defeating the objectives, need and desirability of the project. This was also indicated on pages 83 and 519 of the EIR, which states that the White River area is the technically preferred option (based on the

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applicant's technical assessment), and that, should the servitude in the White River area not be approved, the bypass road development would not achieve the technical aims of the project. I am therefore satisfied that the wetland impacts associated with the P166 Servitude in the White River area can be mitigated, and that the approval of the preferred route for the road within the existing P166 servitude through White River is justified from a technical perspective considering the need for the project.

- 2.14 Regarding the impacts on the two declared nature reserves, I note that the White River Rotary Bird Sanctuary, and the White River Nature Reserve, were declared in October 1978 and April 1994 respectively, this being after the road declaration in the Provincial Gazette Notice 827 of 23 May 1973. I am therefore satisfied that the applicant had a pre-existing right to the servitude area in this regard. Moreover, I note the applicant's contention that all the parts of the reserves seem to lie outside the declared road reserve. In this regard, page 203 of the EIR confirms that the majority of the nature reserves are located immediately adjacent to the original servitude, with only a small area of overlap on the pre-existing servitude. I note further that there is also active human activity / development in the bulk of the White River Rotary Bird Sanctuary, as indicated on pages 203 and 205 of the EIR.
- 2.15 Section 43 of the NEMA vests me with wide appeal authority, such that I may consider any new information that is placed before me on appeal. On the information before me, it is evident that it is possible to propagate *Aloe simii* to assist with the conservation of the species, which, in my view was the essence of the CD: IEA's approval of the White River North Alternative for the development of the P166 road. I am accordingly satisfied that I may consider the subsequent approval of the applicant's preferred route for the development of the road.
- 2.16 *In light of the aforementioned the appeal by the first appellant is upheld.*
- 2.17 In terms of section 43(6) of NEMA, I have the authority, after considering the appeal, to confirm, set aside or vary the decision, provision, condition or directive or to make any other appropriate decision. I deem an appropriate decision, terms of section 43(6) of NEMA, in the

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circumstances of this matter, is to vary the decision of the CD: IEA (being the approval of the White River North Alternative), with the approval of the applicant's preferred route for the road within the existing P166 servitude through White River. In this regard, I direct the CD: IEA to issue an amended EA to the applicant authorising the applicant's preferred route for the road within the existing P166 servitude through White River.

- 2.18 I take cognisance that condition 12 of the EA requires the applicant to amend the Environmental Management Programme (EMPr), submitted as part of the application for EA, to include, amongst others, the recommendations and mitigation measures recorded in the EIR and the final road alignment and design, and specific details of the final road design and associated infrastructure. The amended EMPr is to be submitted to the CD: IEA for written approval prior to commencement of the activity. In this regard, the CD: IEA must amend condition 12 of the EA to direct the applicant to include the following additional amendments to the EMPr:
- 2.18.1 The final road alignment, inclusive of the existing P166 servitude through White River, in line with condition 12.1 of the EA.
 - 2.18.2 The specific road design measures to mitigate impacts on the affected wetlands in the White River area and to increase the footprint of the functioning wetland. These road design and mitigation measures must be informed by the input of a wetland specialist.
 - 2.18.3 The recommendations emanating from the Final Outcome Report: SANRAL *Aloe Simii* Propagation Study, as set out in paragraph 2.9.2 above, inclusive of the recommendations for:
 - 2.18.3.1 The continued monitoring of the White River trial sites, combined with soil analyses, to determine the soil characteristics /conditions suitable for the *Aloe Simii* species and to direct future transplanting/out-planting sites with higher confidence.
 - 2.18.3.2 The design and implementation of a fire and pest management programme for transplanted plants, to increase the likelihood of survival.

APPEAL LODGED AGAINST THE ENVIRONMENTAL AUTHORISATION GRANTED TO THE SOUTH AFRICAN NATIONAL ROAD AGENCY SOC LTD IN RESPECT OF THE CONSTRUCTION OF THE NEW ROUTE P166 1/2, WITHIN THE LOCAL MUNICIPALITY OF MBOMBELA, IN THE MPUMALANGA PROVINCE

3. DECISION

3.1. In reaching my decision on this appeal, I have taken the following into consideration:

- 3.1.1. Relevant information contained in the project file (14/12/16/3/3/2/384), with specific reference to the EA dated 09 May 2016 and the Environmental Impact Assessment Report (EIR) dated December 2015;
- 3.1.2. The grounds of appeal submitted by the first appellant on 13 June 2016, 24 June 2016 and 27 June 2016 respectively;
- 3.1.3. The responding statement, dated 27 June 2016, submitted by White River Ratepayers Association in respect of the applicant's appeal;
- 3.1.4. The responding statement to the first appellants' grounds of appeal submitted by the Department on 12 August 2016;
- 3.1.5. The site visit report and minutes of the meetings held with the CD: IEA, CD: Biodiversity and Conservation, the first appellant, Nelspruit National Botanical Gardens, Project Design Engineer (Mr Wihan Venter), MDARDLEA and MTPA on 14 November 2016, 22 November 2016 and 23 November 2016, respectively.
- 3.1.6. The comments received from MTPA on 02 December 2016;
- 3.1.7. Additional information received from the applicant dated 9 February 2017;
- 3.1.8. Additional comments in response thereto received from MTPA and MDARDLEA on 16 February 2017;
- 3.1.9. Comments received from the Chief Directorate: Biodiversity and Conservation dated 10 March 2017;
- 3.1.10. Additional information received from the applicant on 06 June 2017; and
- 3.1.11. The Final Outcome Report: SANRAL *Aloe Simii* Propagation Study, White River, Mpumalanga Province dated August 2022 as prepared by CES Environmental and Social Advisory Services and received from the applicant on 22 September 2022.

APPEAL LODGED AGAINST THE ENVIRONMENTAL AUTHORISATION GRANTED TO THE SOUTH AFRICAN NATIONAL ROAD AGENCY SOC LTD IN RESPECT OF THE CONSTRUCTION OF THE NEW ROUTE P166 1/2, WITHIN THE LOCAL MUNICIPALITY OF MBOMBELA, IN THE MPUMALANGA PROVINCE

- 3.2. In terms of section 43(6) of NEMA, I have the authority, after considering the appeal, to confirm, set aside or vary the decision, provision, condition or directive or to make any other appropriate decision.
- 3.3. Having carefully considered the abovementioned information, and in terms of section 43(6) of NEMA, I have decided to:
- 3.3.1. Uphold the first appellant's grounds of appeal;
 - 3.3.2. Vary the decision of the CD: IEA (being the approval of the White River North Alternative), with the approval of the applicant's preferred route for the road within the existing P166 servitude through White River;
 - 3.3.3. Direct the CD: IEA to issue an amended EA to the applicant authorising the applicant's preferred route for the road within the existing P166 servitude through White River; and
 - 3.3.4. Direct the CD: IEA to amend condition 12 of the EA, as indicated in paragraph 2.18 to 2.18.3.2 above.
- 3.4. In arriving at my decision on the appeal, I have not responded to every statement set out in the appeal and/or response thereto, and where a particular statement is not directly addressed, the absence of any response thereto should not be interpreted to mean that I agree with or abide by the statement made.
- 3.5. Should any party be dissatisfied with any aspect of my decision; they may apply to a competent court to have this decision judicially reviewed. Judicial review proceedings must be instituted within 180 days of notification hereof, in accordance with the provisions of section 7 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) (PAJA).



MS B D CREECY, MP

MINISTER OF FORESTRY, FISHERIES AND THE ENVIRONMENT

DATE: 11/4/2023