

## Final report

Legislative Review: Green Agri Portal

February 2017



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## Executive summary

Agrifusion (Pty) Ltd (" the Service Provider") was the successful bidder in terms of an undated Terms of Reference issued by DEDAT, titled *Terms of Reference for the Procurement of a Professional Service Provider to Summarise and Map Legislative Triggers for Placement on the Green Agri Portal*.

Through the course of this project “trigger maps” will be developed, and these trigger maps will be placed on the GreenAgri web portal, developed by Green Cape in conjunction with the Western Cape Department of Agriculture. This information will be available free of charge to any person that wishes to obtain further clarity on the legislation or pursue one of the relevant application processes. The following legislative focus areas were identified through an inclusive stakeholder engagement process - their importance having been highlighted within the context of climate smart agricultural development:

- Environmental Impact Assessments;
- Water Use Licences and Water Use Validation and Verification;
- Disaster and Risk Management; and
- Conservation of Agricultural Resources.

This document constitutes the final report, which will provide an initial overview of the four legislative focus areas.

The following elements are covered in this report:

- An overview of the mandating legislation;
- The various approvals needed in terms of the legislation and the process for each;
- Typical actions that would “trigger” the need for approvals; and
- Best practice examples, opportunities for alignment with other processes, information and contact details of relevant authorities and links to relevant guidelines and forms.

As explained, the purpose of this exercise is ultimately to provide the users of the GreenAgri web portal with summaries and visual representations of what they need to better understand the complex legislation underpinning the focus areas and how it affects their operations – thus enabling greater economic growth and employment creation in this key economic growth sector.

This report should be read in conjunction with the summaries included in the web tool that was developed for use on the GreenAgri portal.

Where the report provides the complete body of information, it was our intention that the information provided on the GreenAgri portal is:

- *“To-the-point”* – Web users do not spend hours on end reading long sections of text. They want get the gist of the story in 5 to 10 minutes and then have the option of clicking through to a more lengthy document such as this report;
- *Visually attractive* – By using visual representations, we will engage the right brain together with the left brain, thereby creating a greater opportunity for learning; and

- *Factually correct* – It is very important that the information provided is still factually 100% correct and that no gap is left for a misinterpretation of any nature.

## List of abbreviations

ADRM	Agricultural Disaster Risk Management
BGCMA	Breede-Gouritz Catchment Management Agency
BOCMA	Berg-Olifants Catchment Management Agency
CARA	Conservation of Agricultural Resources Act, Act 43 of 1983
CMA	Catchment Management Agency
DAFF	Department of Agriculture, Forestry and Fisheries
DEA&DP	Department of Environmental Affairs and Development Planning, Western Cape
DEDAT	Department of Economic Development and Tourism, Western Cape
DMA	Disaster Management Act, Act 57 of 2002
DORA	Division of Revenue Act
DWS	Department of Water and Sanitation
EA	Environmental Authorisation
EAP	Environmental Assessment Practitioner
EIA	Environmental Impact Assessment
EMPR	Environmental Management Programme
GA	General Authorization
IEM	Integrated Environmental Management
NDMC	National Disaster Management Centre
NEMA	National Environmental Management Act, Act 107 of 1998
NEM:AQA	National Environmental Management: Air Quality Act, Act 39 of 2004
NEM:BA	National Environmental Management: Biodiversity Act, Act 10 of 2004
NEM:ICMA	National Environmental Management: Integrated Coastal Management Act, 24 of 2008
NEM:PA	National Environmental Management: Protected Areas Act, Act 57 of 2003
NEM:WA	National Environmental Management: Waste Act, Act 59 of 2008
NWA	National Water Act, Act 36 of 1998
PDMC	Provincial Disaster Management Committee
PSP	Professional Service Provider
SALA	Subdivision of Agricultural Land Act, Act 70 of 1970
SEMA	Specific Environmental Management Acts
V&V	Validation and Verification
WCDMC	Western Cape Disaster Management Centre
WCDOA	Western Cape Department of Agriculture
WMA	Water Management Area
WULA	Water Use Licence Application

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## 1. Context

This report is the final deliverable for the project - Legislative Review: Green Agri Portal ("the project"). The project is mandated by the Red Tape Reduction Unit of the Department of Economic Development and Tourism ("DEDAT").

Agrifusion (Pty) Ltd ("the Service Provider") was the successful bidder in terms of an undated Terms of Reference issued by DEDAT, titled *Terms of Reference for the Procurement of a Professional Service Provider to Summarise and Map Legislative Triggers for Placement on the Green Agri Portal*. The Service Provider's bid outlined the proposed methodology and phasing for the project, which was presented to DEDAT by Agrifusion on 24 October 2016.

The intention for the project is to provide a simplified overview of complicated legislation identified in the Terms of Reference and to identify the legislative triggers that hinder climate smart development within the context of this legislation. Various stakeholders were contacted and offered an opportunity to give inputs. They include representatives from the following entities:

- Western Cape Department of Agriculture;
- GreenCape; and
- Department of Environmental Affairs and Development Planning, Western Cape.

The project is aimed at empowering agricultural producers to better understand the complex legislation surrounding the above topics, and to facilitate economic growth and employment creation through demand-led private sector support for agriculture as a key growth sector.

## 2. Project scope, process and methodology

Through the course of this project “trigger maps” were developed, and these trigger maps were designed in a web site format for use on the GreenAgri web portal, developed by Green Cape in conjunction with the Western Cape Department of Agriculture. This information will be available free of charge to any person that wishes to obtain further clarity on the legislation or pursue one of the relevant application processes. The following legislative focus areas were identified through an inclusive stakeholder engagement process - their importance having been highlighted within the context of climate smart agricultural development:

- Environmental Impact Assessments;
- Water Use Licences and Water Use Validation and Verification;
- Disaster and Risk Management; and
- Conservation of Agricultural Resources.

The legislative focus areas were identified by Green Cape and the Western Cape Department of Agriculture in conjunction with a number of stakeholders. Although a larger number of focus areas were initially identified, it was determined that the specific areas mentioned are of key importance.

This document constitutes the Final report, which will provide an overview of the four legislative focus areas. Inputs were obtained from the steering committee on our Phase 1 report and the result is this final report. The following elements will be covered in this report:

- An overview of the mandating legislation;
- The various approvals needed in terms of the legislation and the process for each;
- Typical actions that would “trigger” the need for approvals;
- Best practice examples, opportunities for alignment with other processes, information and contact details of relevant authorities and links to relevant guidelines and forms.

For the purposes of this project, “trigger map” will be defined as follows:

- i. An interactive guideline;*
- ii. Showing the operation of pre-determined regulatory approvals;*
- iii. Defined by the specific actions that would trigger the need for each approval;*
- iv. Enabling prospective applicants to understand and follow the substantive and procedural requirements needed to obtain the relevant approvals.*

The purpose of this exercise was ultimately to provide the users of the GreenAgri web portal with summaries and visual representations of what they need to better understand the complex legislation underpinning the focus areas and how it affects their operations – thus enabling greater economic growth and employment creation in this key economic growth sector.

These simplified summaries have been developed and will be added to the GreenAgri Portal by Green Cape.

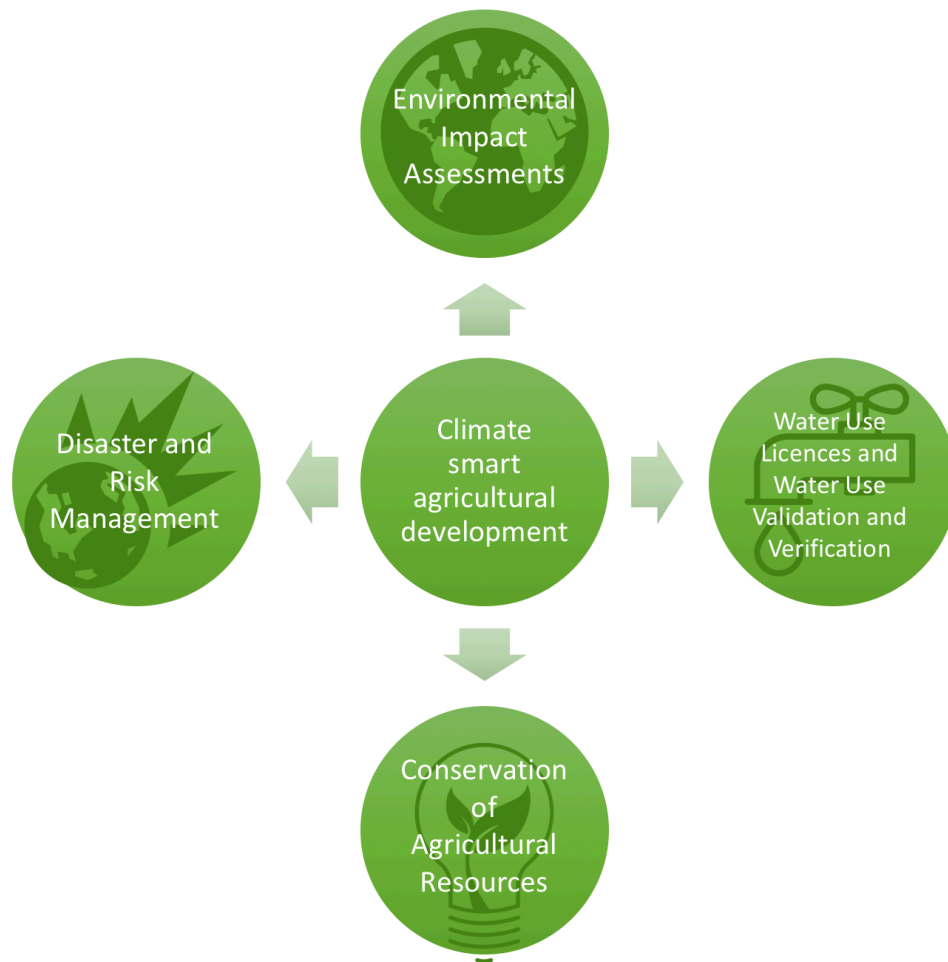
The audience of the website and therefore also the summaries and trigger maps developed here, include, but are not limited to:

- Primary producers / farmers; and
- Agribusinesses.

### 3. Discussion of legislative focus areas

In this chapter, the four legislative focus areas will be discussed in detail. They are the following:

- Environmental Impact Assessments;
- Water Use Licences and Water Use Validation and Verification;
- Disaster and Risk Management; and
- Conservation of Agricultural Resources.



*Figure 1 – Legislative focus areas*

### 3.1 Environmental impact assessments

#### 3.1.1 Mandating legislation

##### **National Environmental Management Act, Act 107 of 1998 ("NEMA")**

The aim of NEMA is to provide a framework for cooperative environmental governance, in line with Section 24 of the Constitution. It establishes principles for environmental management and very importantly, decision-making. NEMA provides procedures for coordinating environmental functions exercised by organs of state and provides for certain aspects of the administration and enforcement of other environmental management laws. Although all three spheres of government are responsible for the implementation of NEMA, certain functions have been assigned to a specific sphere. In the case of the Western Cape, provincial mandates have been assigned to the Department of Environmental Affairs and Development Planning (DEA&DP).

An important element in NEMA is that of integrated environmental management (IEM). The specific principle of IEM highlights that the effects of decisions on all aspects of the environment must be considered towards establishing the best practicable environmental option. NEMA and its associated regulations recognise EIA as the tool for this purpose.

In South Africa, NEMA as the framework legislation with regards to matters pertaining to the environment requires that an EIA be conducted for identified listed activities. An EIA is a comprehensive process in which the potential impact of these listed activities is considered, assessed and reported on to the competent authority. It is also a participatory process, as interested and affected parties are invited to comment on the proposed activity which is the subject of the EIA. A decision in terms of NEMA is issued as an Environmental Authorisation (EA).

There are a number of acts that apply to land use changes and agricultural land development, including innovative agricultural activities such as biogas production and waste recycling.

NEMA is a framework legislation that makes provision for a number of Specific Environmental Management Acts (SEMA). The SEMA's and related legislation are listed below – it also includes any regulation or other subordinate legislation made in terms of any of these Acts:

- Environment Conservation Act, 1989 (Act 73 of 1989);
  - National Environmental Management: Protected Areas Act, Act 57 of 2003 (NEM:PA);
  - National Environmental Management: Biodiversity Act, Act 10 of 2004; (NEM:BA);
  - National Environmental Management: Air Quality Act, Act 39 of 2004; (NEM:AQA);
  - National Environmental Management: Integrated Coastal Management Act, Act 24 of 2008; (NEM:ICMA);
  - National Environmental Management: Waste Act, Act 59 of 2008 (NEM:WA);
  - National Water Act, Act No. 36 of 1998 (NWA); and
  - World Heritage Convention Act, 1999 (Act No. 49 of 1999),
- and includes any regulation or other subordinate legislation made in terms of any of those Acts.

The National Environmental Management: Waste Act, Act 59 of 2008 (NEM:WA), the National Environmental Management: Air Quality Act, Act 39 of 2004 (NEM:AQA) and the National Water Act, Act 36

of 1998 (NWA) (dealt with in Paragraph 3.2 of this document) are most likely to apply to agricultural activities together with the NEMA and the Conservation of Agricultural Resources Act, Act 43 of 1983.

### 3.1.2 Key definitions to understand

- *Proponent*: A proponent is a person intending to submit an application for environmental authorisation and is referred to as the applicant once an application for environmental authorisation is submitted;
- *Applicant*: A person who has submitted an application for an environmental authorisation to the competent authority and has paid the prescribed fee;
- *Environmental Assessment Practitioner (EAP)*: For an application for environmental authorisation in terms of NEMA the proponent/applicant must appoint an EAP at own cost to manage the application. An EAP must be independent and must have no business, financial, personal or other interest in the activity or application. There must be no circumstances that may compromise the objectivity of the EAP; and
- *Environmental authorisation (EA)*: The “licence” to conduct a certain activity. If an EA is issued, the applicant is responsible for complying with all conditions associated with the EA.

### 3.1.3 Approvals that need to be obtained

Should any activities that are identified in terms of NEMA, NEM:AQA or NEM:WA be undertaken (triggered) then formal applications must be submitted to the relevant authority for approval. Approval needs to be obtained prior to commencement of the activity.

- Should the development constitute/“trigger” a listed activity in terms of the EIA Regulations, 2014 then an **Environmental Authorisation (EA)** is required ;
- Should the development constitute/“trigger” a listed activity in terms of the NEM:WA then a **waste management licence** is required; and
- Should the development constitute/“trigger” a listed activity in terms of NEM:AQA then an **atmospheric emissions licence** is required.

The application procedures for the waste management licence and atmospheric emissions licence are similar to that of NEMA.

These applications are brought to DEA&DP, except where an activity is being applied for that may affect state land (e.g. a National Park), if the activity is for the generation of electricity or in the coastal zone. These applications are not delegated and application is made to the National Department of Environment Affairs.

### 3.1.4 Opportunities for alignment

South Africa has established a “One Environmental System” to integrate and synchronise aspects of environmental processes and decision making assigned to the national authority.

If both NEMA and the National Environmental Management: Waste Act (NEM:WA) apply to a proposed development, one environmental application process must be followed, but one integrated decision or two separate decisions can be issued (namely an EA in terms of NEMA and a waste management licence in terms of NEM:WA). This situation is compounded if the EIA activity is a decision assigned to the provincial authority and the NEM:WA activity is assigned to the national authority an undelegated decision (e.g. a hazardous waste application). In such a case, separate applications are lodged with the competent authorities and separate decisions are issued by both provincial and national departments.

In terms of the Listed Activities in of Section 21 of NEM:AQA, installations such incinerators and boilers may also require licenses in terms of NEM:AQA and hence *Activity 6 of Listing Notice 2 of NEMA* will apply. In addition, Activity 28 of Listing Notice 2 relates to the commencing of activities that require an air emissions licence.

The process for authorisation in terms of NEM:AQA is determined in terms of the EIA process (please see “**Annexure A**”), and depending on the listed activity may be a Basic Assessment or Scoping & Environmental Impact Reporting process. At the same time an Atmospheric Emissions License will be required. NEM:AQA prescribes the licensing authority. The atmospheric emissions licence process must run concurrently with the EIA and/or waste management licence application.

### 3.1.5 Actions that would trigger the need for approvals

The actions differ according to the applicable legislation, as outlined below.

#### **In terms of NEMA:**

Sections 24(2) and 24D of NEMA make provision for the Minister to identify a list of activities that would trigger the need to perform an EIA. The EIA Regulations, 2014, provides such a list of activities which will require an EA if a listed activity is triggered (refer to “**Annexure A**”). A number of these activities may be triggered when land is developed for agricultural purposes or modifications to existing agricultural land uses are introduced. There are three “Listing Notices” that contain lists of activities that if a proponent wishes to undertake, are subject to an EIA and obtaining Environmental Authorisation *prior* to the activity commencing. It is an offence to commence with a listed activity without prior authorisation.

Should one of the listed activities be undertaken during the development of land or during ongoing agricultural activities, then an EIA would be required. There are two types of EIA, namely:

- Basic Assessment: a shorter-form process with less stringent process requirements; or
- Scoping and Environmental Impact Reporting (S&EIR): a lengthier process.

These two types depend on the activities that are triggered, as outlined below.



Listing notice 1 is a list of activities which require a proponent to follow the Basic Assessment process to acquire environmental authorisation. These activities are applicable nationally (Notice No. 983 published in Gazette 38282 on 4 December 2014).

Listing notice 2 is a list of activities which require a proponent to follow the S&EIR process to acquire environmental authorisation. These activities are applicable nationally. (Notice No. 984 published in Gazette 38282 on 4 December 2014).

Listing notice 3 is a list of activities which require a proponent to follow the Basic Assessment process to acquire environmental authorisation. These activities are applicable to geographical areas based on environmental attributes (Notice No. 985 published in Gazette 38282 on 4 December 2014).

A simplified table indicating the list of activities that may specifically affect agricultural practices is attached to this document, marked “**Annexure A**”. Listing notice 3 activities are those specific to designated geographical areas per each province however those listed in annexure A are those applicable to the Western Cape Only.

#### **NEM:WA**

As in the case of NEMA, NEM:WA has a list of activities that might trigger the need for applications in terms of these acts.

Some of the activities in the tables below may apply (Department of Environmental Affairs, 2013). The applicability of these activities would however depend on the scale and type of the agricultural activity being undertaken.

<b>Category A – Basic Assessment</b>	
<b>Number</b>	<b>Description</b>
<b>1</b>	The storage of general waste in lagoons
<b>6</b>	The treatment of general waste using any form of treatment at a facility that has the capacity to process in excess of 10 tons but less than 100 tons
<b>7</b>	The treatment of hazardous waste, including animal carcasses, using any form of treatment at a facility that has the capacity to process in excess of 500kg but less than 1 ton per day excluding the treatment of effluent, wastewater or sewage
<b>9</b>	The disposal of inert waste to land in excess of 25 tons but not exceeding 25000 tons, excluding the disposal of such waste for the purposes of levelling and building which has been authorised by or under other legislation
<b>10</b>	The disposal of general waste to land covering an area of more than 50m <sup>2</sup> but less than 200m <sup>2</sup> and with a total capacity not exceeding 25 000 tons
<b>11</b>	The disposal of domestic waste generated on premises in areas not serviced by the municipal service where the waste disposed exceeds 500kg per month

<b>12</b>	The construction of a facility for a waste management activity listed in (not in isolation to associated waste management activity)
<b>13</b>	The expansion of a waste management activity listed in Category A or B which does not trigger an additional waste management activity
<b>14</b>	The decommissioning of a facility for a waste management activity listed in Category A or B of this Schedule

*Table 1 - NEM:WA category A activities*

Category B – Scoping and Environmental Impact Reporting	
Number	Description
1	The storage of hazardous waste in lagoons excluding storage of effluent, wastewater or sewage
2	The reuse or recycling of hazardous waste in excess of 1 ton per day, excluding reuse or recycling that takes place as an integral part of an internal manufacturing process within the same premises
4	The treatment of hazardous waste in excess of 1 ton per day calculated as monthly average; using any form of treatment excluding the treatment of effluent, waste water or sewage
5	The treatment of hazardous waste in lagoons, excluding the treatment of effluent, wastewater or sewage
6	The treatment of general waste in excess of 100 tons per day calculated as a monthly average, using any form of treatment
7	The disposal of any quantity of hazardous waste to land
8	The disposal of general waste to land covering an area in excess of 200m <sup>2</sup> and with a total capacity exceeding 25 000 tons
10	The construction of a facility for a waste management activity listed in Category B of this Schedule (not in isolation to associated waste management activity)

*Table 2 - NEM:WA category B activities*

Category A activities must follow the Basic Assessment process as set out in NEMA while category B activities are required to follow the S&EIR process.

### 3.1.6 Approval process – Basic Assessment

For the basic assessment, the procedure is as follows:

- **Pre-application:** This phase is not legally required, but is recommended due to the very limited time allowed for in the statutory processes in terms of the EIA Regulations. This process normally starts with the submission of a Notice of Intent. Preparation work is undertaken and for projects where objections are expected, a Pre-application Basic Assessment Report is compiled and a pre-application public participation process must be followed. During this phase, preliminary public comment and comment from the competent authority is considered and a Draft Basic Assessment report with an Environmental Management Programme (EMPR) is compiled and made ready for public comment during the statutory process.

- **Application form submission:** An application form is submitted to the competent authority and an acknowledgement of receipt of the application form must be issued by the competent authority within 10 calendar days. An application fee is applicable prior to or on submission of the application form (if required).
- **Statutory public participation process:** During this phase a Draft Basic Assessment report and EMPR is made available for public comment for a minimum 30-day comment period. Comments are received and responded to and the final report with comments and responses is submitted to the competent authority for a decision. This report must be submitted to the competent authority within 90 days from the date of receipt of the application. This submission date can be extended under certain circumstances.
- **Decision making:** Within 10 days of submission of the final report the competent authority must acknowledge receipt of the final report. Within 107 days of receipt of the final BAR the competent authority must grant or refuse the application. The decision must be communicated to the applicant within 5 days of the date of the decision.
- **Appeal:** The applicant must, within 14 days of being notified of the decision, notify interested and affected parties of the outcome of the application and the right to appeal. An appeal may be submitted within 20 days of the date the notice was sent.

See a schematic of the basic assessment process overleaf.

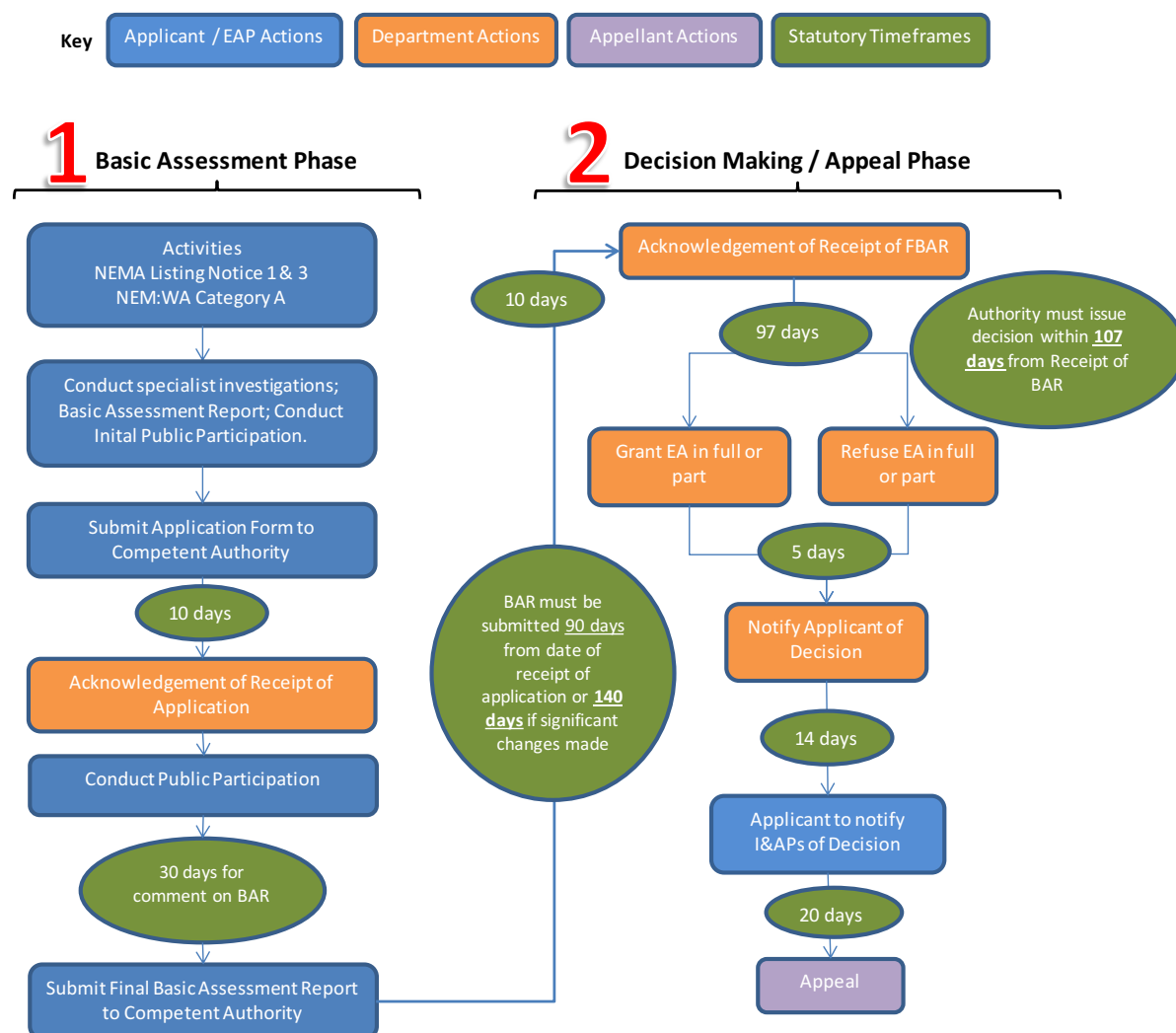


Figure 2 - Basic EIA process

### 3.1.7 Approval process – Scoping and Environmental Impact Reporting

For the Scoping and Environmental Impact Reporting (S&EIR), the process is as follows:

- **Pre-application:** This phase is not legally required, but is recommended due to the very limited time allowed for in the statutory processes in terms of the EIA Regulations. This pre-application takes place on a similar basis to the pre-application for the Basic Assessment process. It is also not legally required, but is recommended due to the very limited time allowed for in the statutory processes in terms of the EIA Regulations. This process normally starts with the submission of a Notice of Intent. While a Pre-application Basic Assessment Report is compiled and distributed in the Basic Assessment process, a Pre-application Scoping Report and plan of study for EIA is compiled and distributed in the S&EIR process.

- **Application form submission:** An application form is submitted to the competent authority and an acknowledgement of receipt of the application must be issued by the competent authority within 10 calendar days. An application fee is applicable prior to or on submission of the application form (if required).
- **Statutory public participation process – scoping phase:** During this phase a Draft Scoping Report is made available for public comment for a minimum of a 30-day comment period. Comments are received and responded to and the Final Scoping Report with comments and responses is submitted to the competent authority for acceptance. This Final Scoping Report must be submitted to the competent authority within 44 days from the date of receipt of the application. The competent authority must issue an acknowledgement of receipt of the Final Scoping Report within 10 days. Within 43 days of receipt of the Scoping Report the competent authority must refuse environmental authorization or accept (with or without conditions) the Scoping Report and plan of study for environmental impact assessment.
- **Statutory participation process – environmental impact assessment phase:** During this phase an Environmental Impact Assessment Report is prepared and submitted to the public for comment for a minimum period of 30 days. This report must be submitted to the competent authority within 106 days of acceptance of the Scoping Report. The submission date could be extended under certain circumstances.
- **Decision making:** Within 10 days of submission of the report to the competent authority, the authority must acknowledge receipt. Within 107 days of receipt of the report, the competent authority must grant or refuse the application. The decision must be communicated to the applicant within 5 days of the decision being made.
- **Appeal:** The applicant must, within 14 days of being notified of the decision, notify interested and affected parties of the outcome of the application and the right to appeal. An appeal may be submitted within 20 days of the date the notice was sent.

See a schematic of the S&EIR process overleaf.

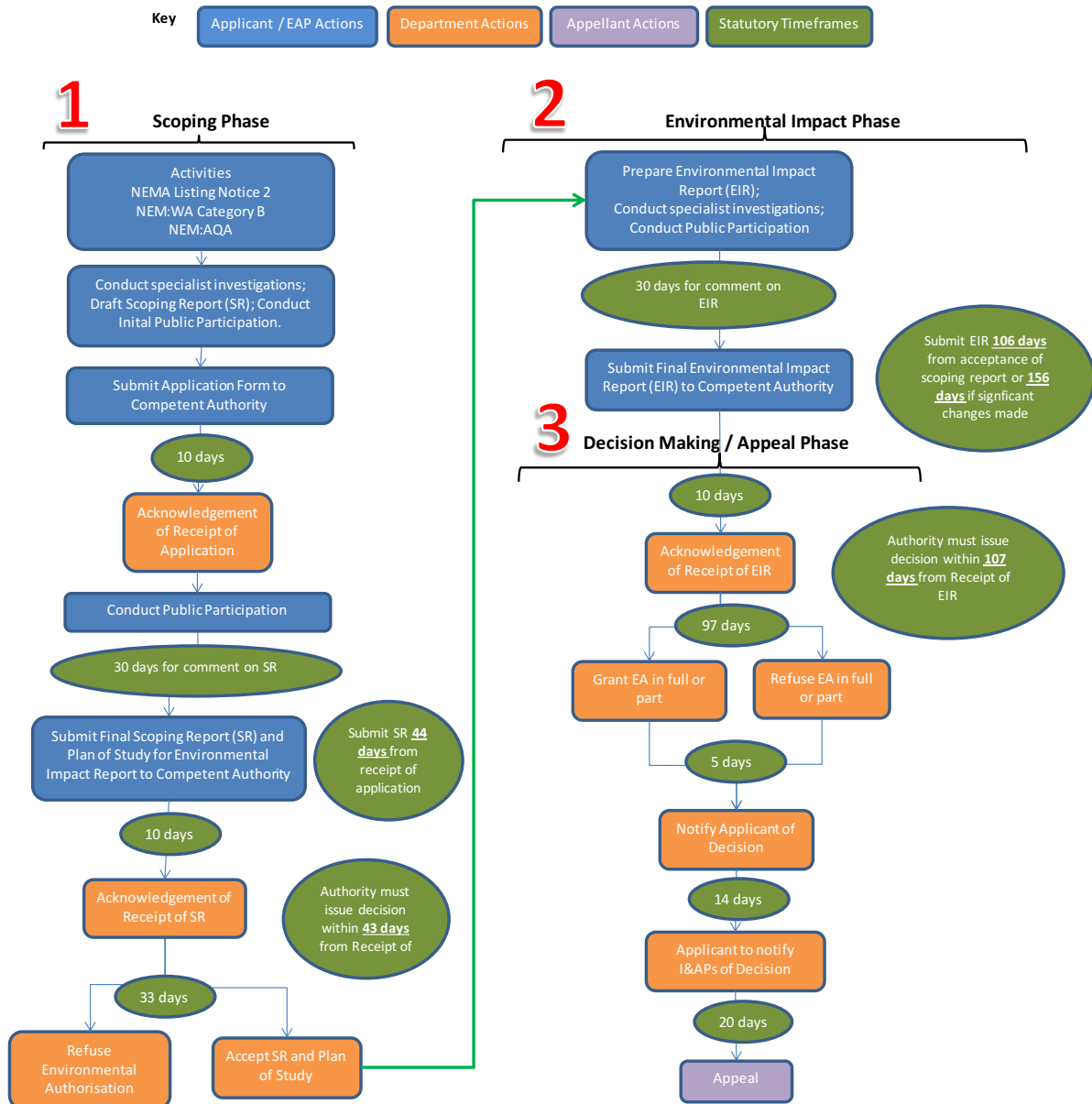


Figure 3 - Scoping and EIR process

### 3.1.8 Best practice

A farmer should evaluate his/her entire landholding from an agricultural and environmental perspective. From an agricultural perspective it should be determined where the good and medium potential areas are, in order to ensure successful agricultural production activities. From an environmental perspective, watercourses, sensitive vegetation areas and environmental corridors within the property and surrounding properties (where possible) should also be identified. Once these two layers of information are available a good picture of agriculture as opposed to environmental sensitivity can be obtained and used in future planning.

Before new land development takes place it is essential to get the Department of Agriculture on site. Most areas have regional offices and people available to assist. In practice, these officials will provide guidance with respect to agricultural requirements as well as environmental requirements in terms of the National Environmental Management Act (NEMA). The correct contact for environmental matters, however, is the Directorate Development Management at DEA&DP, who are available to provide guidance.

Regulation 8 of the 2014 NEMA EIA Regulations specifically provides for guidance to be provided to a proponent/an applicant. DEA&DP recommends that a proponent approach them as early as possible to obtain guidance on, amongst other things, whether or not the proposed development will trigger any listed activities, other approvals that might be required (e.g. WULA), the nature and extent of any processes to be followed, and decision support tools that must be taken into account during the EIA.

While it is advisable that a Pre-Application Screening and Guidance Meeting should be held once an EAP has been appointed, there might be instances where a proponent first wants to determine whether and/or which approvals might be required and obtain initial guidance prior to the appointment of the EAP. If such a preliminary meeting was held without an EAP being present, a follow-up meeting will have to be held once the EAP has been appointed.

If there are potential issues, for example clearance of indigenous vegetation or river crossings required, it is best to consult a specialist environmental consultant to provide guidance. There are many potential pitfalls when expanding agricultural activities and these are best avoided. Fines for contravention of NEMA requirements are significant but avoidable with good planning and proactive assessment.

#### 3.1.9 NEMA 24G

Should any listed activities be undertaken in contravention of the regulations in terms of the National Environmental Management Act, that is, without the required authorisation, the “transgressor” may be

- 1) required to rehabilitate a site to its original state,
- 2) apply in terms of Section 24G of NEMA for retrospective authorisation of the illegal activity
- 3) prosecuted

or in some cases a combination of these.

The 24G process is similar to the Basic Assessment process described above.

Whatever the decision the environmental authority makes with respect to the illegal activity/ies there will be an administrative fine associated with any decision made. The process is that the environmental authority requires that the fine is paid prior to releasing their decision. The minimum fines imposed are substantial and the quantum will depend on the environmental damage that has resulted from the activities that were undertaken.

#### 3.1.10 Information and contact details of relevant authorities

For NEMA and NEM:AQA the contact persons are as follows:



Western Cape Government: Environmental Affairs and Development Planning: Development Facilitation  
Mr. Zaahir Toefy  
Tel: 021 483 2700  
[zaahir.toefy@westerncape.gov.za](mailto:zaahir.toefy@westerncape.gov.za)

Mr. Henri Fortuin  
Tel: 021 483 5842  
[henryi.fortuin@westerncape.gov.za](mailto:henryi.fortuin@westerncape.gov.za)

Mr. Gavin Benjamin  
Tel: 041 805 8633  
[gavin.benjamin@westerncape.gov.za](mailto:gavin.benjamin@westerncape.gov.za)

For NEM:WA the contact person is as follows:

Mr Eddie Hanekom

Western Cape Government: Environmental Affairs and Development Planning: Waste Management  
[Eddie.hanekom@westerncape.gov.za](mailto:Eddie.hanekom@westerncape.gov.za)  
021 483 2728

For NEM:AQA the contact person is as follows:

Dr Joy Leaner

Western Cape Government: Environmental Affairs and Development Planning: Air Quality Management  
Planning

[Joy.Leaner@westerncape.gov.za](mailto:Joy.Leaner@westerncape.gov.za)  
021 483 2798

### **3.1.11 Links to recent guidelines and forms / other aids**

National Department of Environmental Affairs Act and Regulations:

<https://www.environment.gov.za/legislation/actsregulations>

Provincial Dept. Environmental Affairs and Development Planning Resource Library:

<https://www.westerncape.gov.za/eadp/your-resource-library>

## 3.2 Water use licence authorisations and validation and verification

### 3.2.1 Mandating legislation

Water use licence authorisations and water use validation and verification is mandated by the National Water Act, Act 36 of 1998 (NWA).

The NWA came into operation on 1 October 1998 and regulates all water uses in South Africa. It is administered by the Department of Water and Sanitation (DWS), which is a national department with regional offices. The NWA is aimed at the conservation and beneficial use of water as a resource and regulates the use thereof in commercial, industrial, agricultural and household terms.

Water use is regulated by catchment and the DWS is the final custodian of the management of water within a specific catchment. 9 Different Water Management Areas (WMA) were identified by the DWS – a Catchment Management Agency (CMA) will eventually be established in each WMA to manage and control all the water resources in the respective WMA. Until the CMA's have been set up and the Minister of Water and Sanitation has transferred these functions to the relevant CMA, these functions are administered by the DWS' Regional Offices.

To date, only the Breede-Gouritz CMA has been set up for the Breede-Gouritz WMA. For all other WMAs in the Western Cape, applications are made with the Department of Water and Sanitation (DWS), Western Cape. A CMA is also in the process of being established for the Berg-Olifants WMA, but is not operational yet. A schematic layout of the WMA's in the Western Cape is indicated in the figure below (the Berg-Olifants WMA would include the Berg and Olifants-Doorn WMAs as indicated in the diagram below).

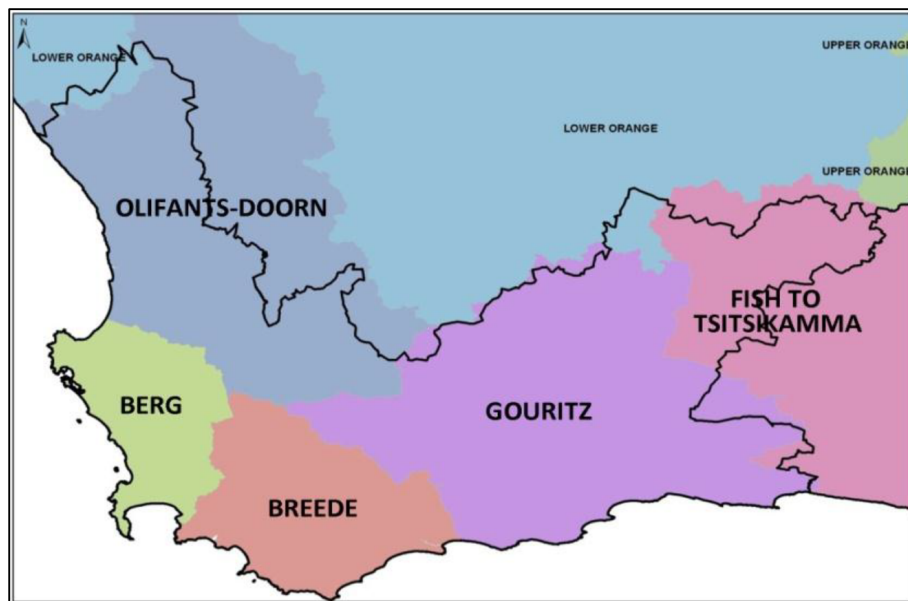


Figure 4 - WMAs in the Western Cape

### 3.2.2 Key definitions to understand

The following definitions are important within the context of the NWA:

- *Water use licence authorisation*: The authorisation issued by the DWS for a specific water use. It is generally referred to as a “water right” or “water licence”, although “water use licence authorisation” is the correct term;
- *Water use*: The specific activity that is regulated by legislation – there are 11 water uses as described under Section 21 of the NWA. Typical water uses will include taking of water and storing of water as further outlined in this chapter;
- *Existing lawful water use*: A water use which has taken place any time during a period of two years before the commencement of the NWA, or which has been declared an existing lawful water use under Section 33 of the NWA;
- *Validation and Verification (V&V)*: The process of determining existing lawful water uses, as further defined below. Please note that the NWA only identifies “Verification” and not “Validation”, although the term Validation and Verification is used;
- *Validation*: The process to determine whether the volume of water used in terms of the old Act is in accordance with the volume of water that is used and needed for each crop type at the time of validation;
- *Verification*: The process of determining and confirming the lawfulness of water uses that were exercised since the commencement of the NWA; and
- *Registration certificate*: a certificate showing the water uses that are registered with the DWS at a certain point in time. These water uses could be lawful or unlawful;
- *Quaternary catchment*: a specific sub-catchment as outlined by the DWS. General authorisations are determined by the quaternary catchment in which a property is situated.

### 3.2.3 Approvals that need to be obtained

The following approvals need to be obtained in terms of the NWA:

- *Water use licence authorisation*: an authorisation or licence giving the holder the right to certain water uses as outlined in the authorisation. It is issued in respect of a specific property, and may be issued to a natural or a legal person (DWAF, 2007). The quantity of allocated water use is indicated in cubic metre per year ( $\text{m}^3/\text{a}$ ). A water use licence authorisation is only obtainable through an application process with the DWS;
- *General authorisation*: certain water uses are regulated by general authorisations as outlined in the Government Gazette from time to time in the discretion of the responsible authority. It is not necessary to apply for these water uses and they are authorised without a licence, but these water uses should still be registered with the DWS;

- *Confirmation of existing lawful water use:* This is a letter obtained from the DWS or relevant CMA confirming that the water uses on a specific property have been validated and verified. When such a confirmation has been received it provides proof of existing lawful water use on face value, although a final registration certificate still needs to be obtained; and
- *Quaternary catchment:* a specific sub-catchment as outlined by the DWS. General authorisations are determined by the quaternary catchment in which a property is situated.

### 3.2.4 Actions that would trigger the need for approvals

Any owner of agricultural land that wishes to abstract water for irrigation purposes and / or build a dam, would need approval from the DWS. Depending on the nature of the water use, different approvals are needed – this would be either obtaining a new water use licence authorisation, registering a general authorisations and / or compliance with the Validation and Verification process of the DWS. Further detail is provided below.

#### 3.2.4.1 Water use licence authorisations

Any new water use that is not permitted by a general authorisation, require water use licence authorisation.

"Water use" is defined broadly, and includes a number of classes. If more than one water use needs to be applied for, an integrated licence application could be made addressing all relevant elements. The Section 21(c) and (i) water uses generally require the specialist inputs of a freshwater specialist, as the requirements are complicated.

Within the context of climate smart agricultural development, the relevant water uses are the following (DWAF, 2007):<sup>1</sup>

- **Section 21(a) - taking water from a resource:**

This is the most fundamental water use application, and entails the taking of water from a resource which might include a river, stream, dam, spring, aquifer (e.g. boreholes), wetland, a lake or a pan.

- **Section 21(b) - storing water:**

When water is taken and the applicant wishes to store water on its property, an application needs to be made for the storing of water. Every dam with a wall of more than 5 metres high, and which is capable of storing more than 50 000 m<sup>3</sup>, may pose a dam safety risk. The dam therefore needs to be classified by DWS Dam Safety Office and dam safety licences to construct and impound water are needed. Dam safety

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<sup>1</sup> Please note that dam safety permits are also required for dams bigger than 50 000 m<sup>3</sup> in size *and* with walls higher than 5m as described in Chapter 12 of the NWA. Please note however that dam safety is out of scope for the puposes of this report.

applications are made at the DWS' Dam Safety Office, which is seated on a National level. Section 21(b) applications often also require applications under Section 21(c) and (i).

- **Section 21(c) – impeding or diverting the flow of water in a watercourse:**

This water use entails causing an obstruction to the flow of water in a watercourse, or diverting some or all of the water in a watercourse, which will eventually be returned to the watercourse. An example of this would be the construction of temporary coffer dams, used to divert water while a bridge is being built, or the construction of a dam.

- **Section 21(f) – discharging waste or water containing waste into a water resource through a pipe, canal, sewer or other conduit:**

This entails the discharge of wastewater directly into a water resource. An example of this is the discharge of wastewater from a winery.

- **Section 21(i) – altering the bed, banks, course or characteristics of a watercourse:**

This water use refers to physical changes that are made to a watercourse, e.g. to widen or straighten the channel of a river. Alteration of the bed and banks of a river are usually required for construction and infrastructure development close to a river. An example of a situation where this authorisation would be required is where a pipeline crosses a river, or a bridge is built over a river. Any activity closer than 500 metres upstream or downstream from the boundary of any wetland or estuary is also a Section 21(i) water use.

#### 3.2.4.2 General authorisations

Certain general authorisations permit water uses to be exercised without a licence, in accordance with the requirements of the general authorisation. For the purposes of this study, the general authorisations for the taking and storing of water will be elaborated upon. General authorisations also exist for other water uses that are more complex and will require specialist inputs – this includes general authorisations under Section 21(c) and (i). A freshwater specialist would be able to advise on the operation of the general authorisations under Section 21(c) and (i), alternatively the BGCMA or DWS could be contacted for advice.

Please see a discussion of the position on general authorisations for the taking and storing of water below.

According to Section 22(1) of the NWA, a person may only use water without a licence if that water use is permissible:

- i. Under Schedule 1 of the NWA;
- ii. As a continuation of an existing lawful water use; or

iii. In terms of general authorisations issued under Section 39 of the NWA.<sup>2</sup>

Regarding point (i) above, Schedule 1 includes reasonable household and gardening uses, which falls outside of the scope of this report. Point (ii) refers to continuation of existing lawful water uses in terms of Section 34 of the NWA. This is a water use that has been confirmed lawful during the Validation and Verification process, which is discussed in the next section.

General authorisations in terms of Section 39 of the NWA are issued by Government Gazette and may cover water uses under Section 21(a), (b), (c), (f) and (i). These authorisations allow for certain water uses to be performed without a licence, but should be registered with the DWS under certain circumstances. The general authorisations may also be withdrawn at short notice, therefore a water user who needs an entitlement with a reliable duration should rather apply for a water use licence.

The general authorisations for the taking and storing of water have been revised through the Government Gazette No. 40243 of 2 September 2016. In terms of Section 2.1 thereof, these general authorisations will come into effect 6 months after publication, which would be 2 March 2017. They regulate the taking and storing of water by geographical area, based on the catchment within which a certain property is located.

The following general authorisations are relevant to this report:

- **Taking of water from a surface water resource:**

A person who has lawful access to a property may take water from a surface water resource on or along the boundary of the property, up to the maximum allowable volume during certain months of the year. If the abstracted volume is less than 2000 m<sup>3</sup> per year and abstracted at a maximum rate of 1 liter per second, the water may be taken at any time of year.

Table 1 in Appendix A of the General Authorisations of 2016 should be inspected in order to determine the specific volume and time period to which this general authorisation applies. It is however highly dependent on the specific quaternary catchment in which the property is situated, and the volumes vary greatly (between 2000 m<sup>3</sup> and 80 000 m<sup>3</sup> per year).

If the water taken in terms of this authorisation exceeds 18 250 m<sup>3</sup> per annum (50 m<sup>3</sup> per day on average over a year), it should be registered with the DWS. In addition to this, if the surface water is taken at a rate of more than 5 litre per second, the actual surface water abstraction volumes should be measured and recorded for reporting purposes.

- **Taking of water from a groundwater resource:**

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<sup>2</sup> DWS, 2016

A person who has lawful access to a property may take water from a groundwater resource up to a maximum annual volume based on the size of the property and the abstraction rate allowed per hectare. This maximum volume is however capped at 40 000 m<sup>3</sup> per year and depends on the location of the property. The calculation method is given in Table 2, Appendix B of the 2016 General Authorizations.

Any authorisation obtained under a General Authorization (GA) for the use of groundwater since 1 October 1999 that exceeds 40 000 m<sup>3</sup> per year, requires a water use licence. Hence if you were permitted to use 750 m<sup>3</sup>/ha/annum on a 100 ha farm during the period 1999 – 2004 and so registered the volume of 75 000 m<sup>3</sup>/annum, you now are required to apply for a licence for the full use thereof.

Prior to the above change, the level of capping was more leniently considered at 200 000 m<sup>3</sup>/annum. As the current GA reads, the capping has been set at 40 000 m<sup>3</sup>/annum. Although the maximum allowable volume in terms of the General Authorization is 40 000 m<sup>3</sup> per year, the maximum may in some cases be less than 40 000 m<sup>3</sup> per year. This depends on the GA for the particular quaternary catchment and the size of the particular property.

The GA in the Breede-Gouritz area, for example, varies between 45 m<sup>3</sup> per annum per property hectare to 400 m<sup>3</sup> per annum per property hectare. This figure needs to be multiplied by the size of the property, as per the title deed, in order to determine the GA maximum for that property, limited to a maximum amount of 40 000 m<sup>3</sup> per year.

For example, a 10ha sized property's maximum allowable General Authorization volume will range between 450 m<sup>3</sup>/annum and 4 000 m<sup>3</sup>/a, depending on the GA for that particular quaternary catchment. A 100ha property GA will range between 4 500 m<sup>3</sup>/year and 40 000 m<sup>3</sup>/year, i.e. the calculated 45 000 m<sup>3</sup>/annum upper end of the range will be limited to the maximum allowable 40 000 m<sup>3</sup>/annum. If the water taken in terms of this authorisation exceeds 3650 m<sup>3</sup> per annum (10m<sup>3</sup> per day on average over a year), it should be registered with the DWS. In addition to this, if the groundwater is taken at a rate of more than 2 litres per second, the actual groundwater abstraction volumes should be measured and recorded for reporting purposes.

- **Storing of water**

A person who owns or has lawful access to a property may store water (not containing waste) up to a maximum volume based on the quaternary catchment in which the property is situated. The total combined storage volumes are given in Table 1 in Appendix A of the General Authorisations of 2016 and varies between 2000 m<sup>3</sup> and 80 000 m<sup>3</sup>, depending on the location of the property.

It is a special condition however that the water may only be stored off-channel, i.e. not within a river bed, otherwise it would trigger authorisations in terms of Section 21(c) and (i). Furthermore, any retaining structures should have outlet works that enable the full storage volume to be released within 30 days. If more than 10 000 m<sup>3</sup> is stored in the specific property, the water use should be registered with the DWS.

- **Exclusions and special conditions**

If the person with lawful access to the property has another licence for the taking and storing of water, the person may not take or store more water than the person is otherwise entitled to take or than is allowable in terms of the General Authorisations of 2016, whichever is the largest. This means that if person X has a licence to store 200 000 m<sup>3</sup> and the general authorisations permit the storing of 50 000 m<sup>3</sup>, the total allowable storage on the property is still only 200 000 m<sup>3</sup> and not 250 000 m<sup>3</sup>. If the person does not have a licence, however, the person would be allowed to store 50 000 m<sup>3</sup>.

Additional exclusions include the following. These also partially relate to the 21(c) and (i) authorisations:

- i. No water may be taken in terms of the General Authorisations of 2016 within a 500m radius from the boundary of a wetland, pan or estuary;
- ii. No groundwater that is taken in terms of the General Authorisations of 2016 may be taken:
  - within a 500m radius from the boundary of a wetland or estuary;
  - within a 100m radius from the delineated riparian edge of a water course or state dam;
  - within a 500m radius of a state dam wall or within 500m from the high-water mark of an ocean.

#### 3.2.4.3 Compliance with Validation & Verification process

All agricultural land owners and water users are expected to take part in the Validation and Verification (V&V) process of the DWS. It was initially intended that this process will be completed shortly after the commencement of the NWA, but the process is still ongoing. The process takes place by geographical area and is determined by the catchment in which the specific property is situated. The V&V for the Breede-Gouritz Water Management area has been completed and is being finalised, while the V&V for the Berg-Olifants area is currently under way. The V&V for a number of other areas in South Africa still needs to take place.

The NWA came into operation on 1 October 1998. The V&V process is used to determine the water uses to which each property was entitled under the old Act in order to determine each property's entitlement under the NWA. Under the old Act, each water user was entitled to take and store water from a river that is riparian to the specific property and to abstract groundwater on a reasonable basis. If these entitlements were not exercised during the two-year period following the commencement of the NWA, however, the water user would lose its entitlement.

In order to determine the actual water uses exercised during the qualifying period, detailed aerial photographs taken during 2000 are used. If it is visible from the aerial photograph that the property did have irrigated development to justify a specific volume of water per hectare per year as determined by the crops planted, and these water uses are still exercised to date, these water uses could be determined existing lawful water uses under the NWA. If no water uses could be proved this way, water uses could not be determined lawful and the water user would lose its entitlement.



### 3.2.5 Approval process

#### 3.2.5.1 Water use licence authorisations

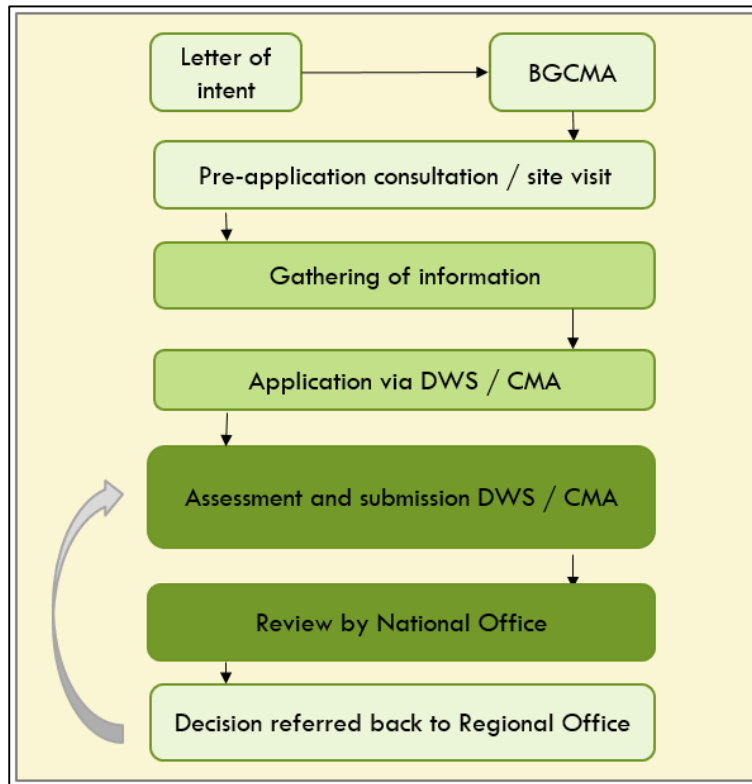
Anyone who is required or wishes to obtain a licence to use water, must apply to the relevant responsible authority in terms of Section 40 of the NWA. It should be noted that the general authorisations permit certain water uses that do not require a licence.

In terms of Section 41 of the NWA, an application for a water licence must be made in the form, contain the information and be accompanied by the processing fee as determined by the responsible authority. The responsible authority is given wide scope to scrutinise the application, make queries and request additional information or studies from the applicant. This includes obtaining an assessment of the effect on resource quality and also requesting an independent review of this assessment.

Although water use is regulated at a national level, applications are made on a CMA or regional office level. A recommendation is then made by the CMA or provincial DWS to the National DWS. If this recommendation is signed off by the National DWS, the water use licence authorisation could be granted by the DWS, Western Cape or the CMA.

In accordance with the "One Environmental System" principle, it is required that the water use licence application process must be integrated with the process for application under the National Environmental Management Act ("NEMA") and other related Specific Environmental Management Acts ("SEMA's"), e.g. the National Environmental Management: Waste Act ("NEM:WA") and the National Environmental Management: Air Quality Act ("NEM:AQA").

Please see below a schematic layout of the water use licence application process.



*Figure 5 - Water use licence authorisation process*

The water use licence application process is indicated below. In line with the “One Environmental System” principle, the timeline for water applications should be integrated into that of applications under NEMA or other SEMAs. At the time of the writing of this report, draft regulations (2015) for the WULA process has been promulgated, but these will be amended to fit with the EIA process. Please see however the general steps below (note that these steps will not be put on the Green Agri Portal – reference will only be made to the EIA process).

- Notice of intent to apply for a water use licence:** The prospective applicant is required to provide the responsible authority with a written letter of intent to apply for a licence. This letter should at least contain the property description, details of the property owner and intended water uses. The responsible authority is expected to respond to this letter, acknowledging receipt and indicating the steps that will follow. It is practice that an assessor be appointed to handle the application on behalf of the responsible authority.
- Pre-application meeting & site visit:** A pre-application meeting and site visit should take place after lodging the letter of intent. At this meeting the assessor is required to indicate whether the applicant may proceed with the application or not, and provide guidelines as to the contents of the application and the applicable water uses. The assessor will also indicate which other specialist documents might be required, e.g. a geo-hydrological report proving that water is available from the aquifer, or a freshwater hydrological study for surface water.

- **Compilation and submission:** If approval to proceed has been obtained during the pre-application meeting & site visit, the applicant is to compile and submit the full water application. This application must be made on the correct forms and an application fee is payable. It should be accompanied by relevant technical documents, e.g. a geo-hydrological report or a freshwater study, and a power of attorney if a consultant handles the application on behalf of the applicant. Under the new regulations, this application is to be submitted electronically. It is practice for consultants to compile a written motivation for the application on behalf of the applicant.
- **Acceptance or rejection:** On receipt of the application the assessor will determine whether the basic procedural and substantial requirements have been satisfied, and accept or reject the application. If the application has been rejected in principle, the applicant will have time to rectify the application and re-submit to the responsible authority.
- **Assessment of application:** An application for a water use licence is subjected to an administrative, technical and legal assessment to arrive at a decision. The assessor shall compile a Record of Recommendation ("RoR"), which is presented to the internal Water Use Authorisation Assessment Advisory Committee ("WUAAAC"). Tise recommendation is forwarded to the National WUAAAC for final recommendation to the responsible authority to approve or deny the licence.
- **Decision by responsible authority and communication to applicant:** The assessment of the application is to be completed and the decision should be communicated to the applicant. Applicants may request an extension of time at any point of the process. If the applicable timelines in respect of the responsible authority are not met, they could be extended.

For a water use licence authorisation, the following forms need to be completed. Numbers 1-4 should be completed for all applications, and the balance should only be completed if applicable. This is only a guideline and should be confirmed with the relevant case officer at the DWS or BGCMA.

Number	Form	Purpose
1	DW758	Applicant details
2	DW901	Property details
3	DW902	Property owner details
4	DW787	Existing and planned irrigation
5	DW788	Existing and planned industrial water uses (if any)
6	DW784	Pump technical data (if any)
7	DW760	Section 21(a) – taking water from a resource (if any)
8	DW762	Section 21(b) – storing water (if any)
9	DW763	Section 21(c) – impeding / diverting flow of water in a watercourse (if any)
10	DW768	Section 21(i) – altering the bed / banks, course of characteristics of a river (if any)
11	DW766	Section 21(f) – discharge of water containing waste into a water resource (if any)

*Table 3 - Water use licence authorisation - required forms*

According to the regulations, a water use licence application process should take no more than 300 days. This is however not always the case - provision should be made for the process to take longer than 300 days. The DWS is also making provision for electronic water use licence applications, but at the time of writing this report electronic applications were not in use yet.

### 3.2.5.2 General authorisations

Certain water uses are regulated by general authorisations and do not require a licence. Any water uses exceeding the volumes listed below, however, should still be registered with the DWS:

- Taking of surface water: 18 250 m<sup>3</sup>/a;
- Taking of groundwater: 3 650 m<sup>3</sup>/a;
- Storing of water: 10 000 m<sup>3</sup>.

The process for registration is fairly simple. The same forms that are required to be filled out for a water use licence authorisation should also be filled out to register a general authorisation. These forms should be submitted with the DWS, and the relevant official will forward it to the registration division (WARMS). When the WARMS database has been updated, the water user will be provided with an updated registration certificate proving the lawfulness of the water uses.

No specific permissions are needed, and the process could take a short period of time (even as little as two weeks in isolated cases). The same forms that are used for a full water application, should also be used to register general authorisations.

### 3.2.5.3 Validation and Verification

As was discussed above, the Validation and Verification (“V&V”) process takes place on a catchment basis. At the time of writing this Phase 1 report, the V&V for the Berg-Olifants Water Management Area is under

way and consulting engineers Aurecon have been subcontracted to perform the process on behalf of the DWS. It is estimated that the V&V for the Berg-Olifants area will be completed by March 2017.

As a part of this process, each water user within the Berg-Olifants area is supposed to receive two documents – the first document is a generic guideline on the process, and the second is a set of forms relating to each specific property. The set of forms needs to be completed and submitted to Aurecon, in order to take part in the V&V and have the applicant's water uses declared lawful. If no correspondence has been received by the water user, Aurecon should be contacted to obtain the correspondence and fill out the documentation.

Non-compliance with the V&V process could lead to a directive in terms of Section 53(1) of the NWA being issued to the water user, in terms of which the water user is demanded to finalise the V&V. If the water user does not comply with the directive, the water use becomes unauthorized / illegal and the continuation thereof is an offence.

### **3.2.6 Best practice**

Although it is possible to institute a water use licence application without the assistance of a specialist consultant, it is a time-consuming and complicated process. The case officer at BGCMA or DWS is supposed to guide the applicant sufficiently to know what to apply for, which forms to fill out and how to motivate an application. Even if the assistance of the case officer is used to complete and institute an application, it is necessary to follow up with the DWS on a regular basis and drive the process to completion.

For applications under Section 21(a), it needs to be determine whether there is enough water available in the source (albeit a river or groundwater). For this purpose, the inputs of a hydrologist or geo-hydrologist would be necessary to motivate water availability. For applications under Section 21(b), engineers might be necessary to design the dam and assist with dam safety authorisations (out of scope for the purposes of this report).

Another point where specialist assistance is desirable would be applications under Sections 21(c) and (i). These applications need the inputs of a freshwater specialist and even if a certain water use could be lawful through the operation of the general authorisations, the inputs of a specialist would be best to know exactly how the general authorisations operate. An example of the complicated nature of this, would be the definition of a wetland. No development is allowed within 500m of the boundary of a wetland, but a freshwater specialist would be the best person to identify wetlands on an applicant's property (which might not look like a wetland to the uninformed observer).

It is also a requirement with the DWS that all new water use licence applications should have an element of benefit to previously disadvantaged individuals as outlined in Section 27 of the NWA. In practice, applications for new water entitlements would require that a proportional benefit (between 30% and 50%) would go to previously disadvantaged individuals - in the form of black ownership or other

mechanisms. All new applicants should also be BEE Level 4 compliant in order to increase the chances of success.

### 3.2.7 Opportunities for alignment

In accordance with the “One Environmental System” principle, the processes for water use licence authorisation applications and environmental impact assessments could be aligned and should be done concurrently. Section 41(5) of the National Water Act states that the processes must be integrated.

It is required for environmental impact assessment purposes to provide proof of submission of a water application. In addition to this, it is a requirement that an Environmental Authorisation is obtained before a water use licence authorisation may be granted.

### 3.2.8 Information and contact details of relevant authorities

A Catchment Management Agency has been established for the Breede-Gouritz Water Management Area, namely the Breede-Gouritz Catchment Management Agency (“BGCMA”). The BGCMA has jurisdiction over the Breede-Gouritz Water Management Area, and the DWS’s Regional office in Bellville has jurisdiction over the balance of the Western Cape.

The contact details of the DWS are as follows:

Department of Water and Sanitation

Physical address: Spectrum Building, 52 Voortrekker Road, Bellville, 7530

Tel: 021 941 6000

The contact details of the BGCMA are as follows:

Breede-Gouritz Catchment Management Agency

Physical address: 51 Baring Street, Worcester

Tel: 023 346 8000

E-mail: [info@breedegouritzcma.co.za](mailto:info@breedegouritzcma.co.za)

Aurecon Group (implementing agent for Berg-Olifants V&V)

Annemie Mynhardt

Physical address: 1 Century City Drive, Century City, Cape Town, 7441

Tel: 021 526 9400

E-mail: [wateruse@aurecongroup.com](mailto:wateruse@aurecongroup.com)

[www.vandvms.co.za](http://www.vandvms.co.za)

### 3.2.9 Links to recent guidelines and forms / other aids

All licence application forms are available at the following address:  
<http://bgcma.co.za/documents/forms/>

More information on the V&V for the Berg-Olifants Water Management Area is available at the following address: <https://www.vandvms.co.za/>

### 3.3 Disaster and risk management

#### 3.3.1 Mandating legislation

Disaster and risk management in South Africa is mandated by the Disaster Management Act, No. 57 of 2002 (DMA), as amended by the Disaster Management Amendment Act, No. 16 of 2015. The purpose of this act and its amendment is to provide for an integrated and co-ordinated disaster management policy that focuses on preventing or reducing the risk of disasters, mitigating the severity of disasters, emergency preparedness, rapid and effective response to disasters and post-disaster recovery.

The National Disaster Management Framework (NDMF), published in the gazette on 29 April 2005, is the legal instrument specified by the Act to provide a coherent, transparent and inclusive policy on disaster management appropriate for the country as a whole. In this context, the NDMF recognises a diversity of risks and disasters that occur in southern Africa, and gives priority to developmental measures that reduce the vulnerability of disaster-prone areas, communities and households. Also, in keeping with international best practice, the national disaster management framework places explicit emphasis on the disaster risk reduction concepts of disaster prevention and mitigation as the core principles to guide disaster risk management in South Africa. The NDMF also informs the subsequent development of provincial and municipal disaster management frameworks and plans, which are required to guide action in all spheres of government.

#### 3.3.2 Programmes in place for the agricultural sector

For the purpose of this study we will focus our attention on disaster relief schemes for the agricultural sector. Floods, droughts and fires are all associated with an abundance or lack of water as a natural resource. The Western Cape Province is a semi-arid region where a lack of sufficient water is the most significant resource constraint on development.

In this regard the WCDOA has a sub programme under Sustainable Resource Management (SRM) called Agricultural Disaster Risk Management (ADRM), which focuses on disaster risk management. ADRM aims to lessen the impact of natural hazards and related risks through an integrated and coordinated approach.

The ADRM sub-programme offers the following services to the sector:

- *Institutional capacity*: The sub-programme aims to prevent and limit resource loss by compiling frameworks and plans to direct disaster risk management away from a reactive function to a proactive function within the broader framework of the National Development Plan (NDP). The NDP highlights improving disaster preparedness for extreme climate events by calling for increased investment in new agricultural technologies, research and the development of adaptation strategies for the protection of rural livelihoods and expansion of commercial agriculture.



- *Disaster risk reduction*: The sub-programme aims to promote the implementation of disaster risk reduction measures and conservation of agricultural resources as required by the Conservation of Agricultural Resources Act and other natural resources legislation.
- *Declaration of a disaster*: The sub-programme collaborates closely with the Western Cape Disaster Management Centre (WCDMC) in declaring local and/or provincial disasters. A submission is forwarded to the National Disaster Management Centre (NDMC) to classify the events as either a provincial or a local disaster in terms of the Disaster Management Act, Act 57 of 2002. The sub-programme further corresponds to local vulnerabilities by aiming to enable farming communities to access disaster relief funding schemes, by assisting professional service providers (PSPs) in the verification of damage assessments and ownership of farms.
- *Disaster response – rehabilitation and reconstruction*: The declaration of a disaster typically leads to the establishment of a disaster relief funding scheme. The sub-programme facilitates the planning and response efforts of allocated disaster relief funding schemes, including the administration of financial relief pay-outs in real time. Where possible, appropriate common or mutually supportive projects or programmes are created. For example, the sub-programmes Disaster Risk Management and LandCare both concentrate on resource conservation. The sub-programme: LandCare supports Disaster Risk Management in e.g. prioritising and managing the construction of river protection works (gabions, groynes and weirs). The construction work is monitored throughout the building phase, and upon completion.

### 3.3.3 Key definitions to understand

The following definitions are important within the context of the Disaster and Risk Management:

- *Climate change*: A change in the state of the climate that can be identified by the changes in the variability of its properties and that persists for an extended period, typically decades or longer;
- *Disaster*: A progressive or sudden, widespread or localised, natural or human-caused occurrence which (a) causes or threatens to cause (i) death, injury or disease; (ii) damage to property, infrastructure or the environment; or (iii) significant disruption of the life of a community; and (b) is of a magnitude that exceeds the ability of those affected by the disaster to cope with its effects using only their own resources;
- *Disaster management*: a continuous and integrated multi-sectoral, multi-disciplinary process of planning and implementation of measures aimed at preventing or reducing the risk of disasters, mitigating the severity or consequences of disasters, emergency preparedness, a rapid response to disasters and post disaster recovery;
- *Response, in relation to a disaster*: Measures taken during or immediately after a disaster in order to bring relief to people and communities affected by the disaster;
- *Statutory function*: A person performing a function assigned to that person by national, provincial or municipal legislation; and
- *Vulnerability*: The degree to which an individual, a household, a community or an area may be adversely affected by a disaster.

### 3.3.4 Approvals that need to be obtained

For the most part, the disasters that have been declared in recent years have been related to droughts or floods. The end users of the GreenAgri Portal would typically like to understand how a disaster can be declared and if it has been declared, how they can get their damage verified and how they can access government relief.

The following approvals need to be obtained

- *Declaration of a disaster*: There is a formal process by which a disaster is declared. This process will be explained in more detail below. The Provincial Cabinet makes the final decision to approve or disprove a (local or provincial) disaster declaration;
- *Damage verification*: Once a disaster has been declared, a professional service provider (PSP) is appointed through a tender process to verify the damage in an area. In this instance the approval is dependent upon the damage verification by the NDMC to conduct an independent assessment and verification done by the PSP; and
- *Damage survey forms*: When a disaster has been declared in an area, farmers in that area can complete damage survey forms which are then evaluated by ADRM to approve for relief. Funds are paid out by National Treasury and DAFF.

### 3.3.5 Actions that would trigger the need for approvals

In the Western Cape, we experience extreme climatic conditions such as strong winds, rainfall extremes, rising temperatures and coastal storm surges. These conditions lead typically to floods and droughts that can be declared as disasters in order to assist applicants with relief funds.

As mentioned, a disaster is “a progressive or sudden, widespread or localised, natural or human-caused occurrence which (a) causes or threatens to cause (i) death, injury or disease; (ii) damage to property, infrastructure or the environment; or (iii) significant disruption of the life of a community; and (b) is of a magnitude that exceeds the ability of those affected by the disaster to cope with its effects using only their own resources.

A disaster of this nature will trigger the *Disaster Declaration Process*. Once a disaster has been approved by the Provincial Cabinet, it will trigger the *Damage Verification Process* as well as *Damage Survey Forms* that will be issued to farmers in the area.

These processes focus more on reactive disaster management and not necessarily proactive management. There is a lack of focus on proactive management at this point, due to a lack of funds.

#### **When to declare a disaster**

The following criteria is important when considering to declare a disaster:

- Firstly, it should be determined whether the contingency arrangements of the municipality or the province adequately provide to deal effectively with an occurrence. Contingency arrangements refer to mechanisms to deal with the occurrence through the resources of the municipality or province, affected sectors, donations and other extraordinary measures;
- Secondly, if the occurrence or threatening occurrence is of such nature that those affected are unable to cope with its effects using their own resources;
- Thirdly it is important to look at other factors such as the magnitude and severity of the occurrence; and
- Finally, the existence of other legislation already applied in the area of jurisdiction of the municipality or the province, other than the DMA Section 2(1)(b), must be observed (i.e. the Animal Health Act, 1983).

### 3.3.6 Approval process

The reactive disaster management process is as follows:

#### **Disaster Declaration**

A certain area experiences a disaster as defined above. The local farmers in that area then notifies their local farmer's association, who will in turn notify Agri West Cape. Agri West Cape will escalate the matter to the Western Cape Department of Agriculture (WCDOA). The ADRM team will then assign a task team as soon as possible for field assessments. Concurrently with this action, the Municipal Manager from the local municipalities of the areas also need to sign a letter stating that they support the disaster declaration. Farmers can help to make sure that the Municipal Manager is involved in the process.

The results of field assessments, the letter from the Municipal Manager and other necessary documents are then forwarded to the Provincial Disaster Management Centre (PDMC). The role of the NDMC is to classify the disaster as local or provincial. This is done in terms of the guidelines set out in Section 23 of the DMA.

Section 23 of the Act authorises the NDMC to classify disasters and may reclassify any state of disaster in order to:

- Designate primary responsibility for the coordination and management of a disaster to a particular sphere of government;
- Ensure accountability in the management of a disaster; and/or
- Ensure appropriate intervention and support can be provided to the relevant sphere of government.

Note that spheres of government have the responsibility to advise the NDMC on the classification of disasters. Classification by the NDMC does not prohibit a sphere of government from dealing with the effects of a disaster.

Once the classification has been made, the Provincial Cabinet needs to support the classification. The Provincial Cabinet sits once every 4 to 6 weeks, therefore it is critical that the task team complete their assessment work proactively in order to ensure that the Cabinet makes a positive recommendation. If the disaster declaration is supported, then the case is escalated to the National Disaster Management Centre (NDMC), who will then, in collaboration with DAFF, apply to National Treasury for funds. National Treasury will publish allocations and disbursements in the Division of Revenue Act (DORA) of each concerned financial year by depositing the funds within the CASP conditional grant. This allocation is transferred by National Treasury to DAFF which, in turn, will transfer the money in tranches to the DOA.

### Damage Verification

Once the disaster is declared, a Professional Service Provider (PSP) is appointed by the NDMC to complete a Damage Verification process. This is done through a tender process. The role of the PSP is to verify the damage caused by the disaster and thereby determine which farmers need to obtain relief. A Memorandum of Agreement is set up between the NDMC and the appointed PSP. The PSP conducts a site visit, capturing GPS coordinates and taking photographs of the damage.

### Damage Survey Forms

Once the disaster is officially declared (approval is supported by Provincial Cabinet), Damage Survey Forms are made available for disaster relief in the specified area. Forms are submitted with the Local or District LandCare office and forwarded to WCDOA: ADRM. The funds are provided by National Treasury to DAFF, and transferred to WCDOA for payment. In the case of drought, relief may be provided in the form of animal feed or coupons to buy feed with. In the case of floods, reparations can be started the moment that a farmer receives a letter to notify that he or she is eligible for relief. Then the farmer can provide invoices to the District LandCare Office who will send it to ADRM for payment.

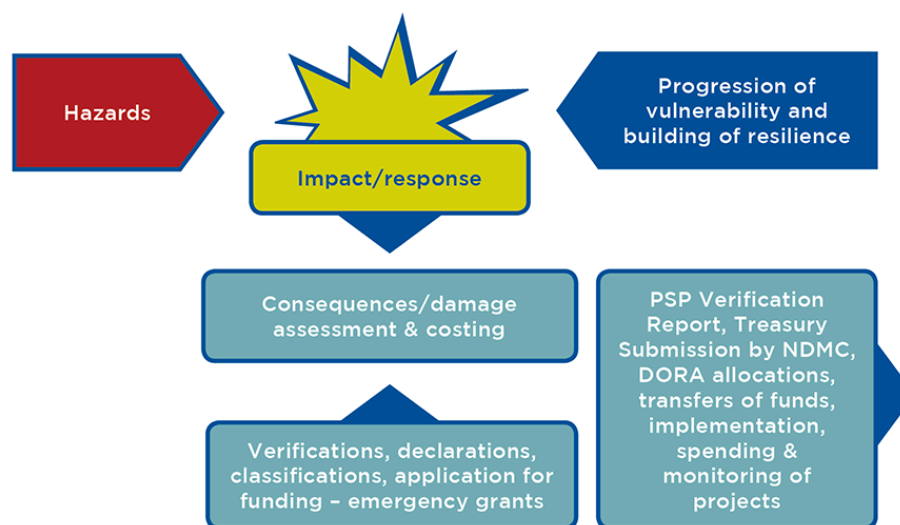


Figure 6 - Disaster process

There are four types of funding / grants available:

- *Municipal Disaster Grants [MDG]*: in cases of emergencies for disaster relief in favour of municipalities;
- *Provincial Disaster Grants [PDG]*: in cases of emergencies for disaster relief in cases of sector departments;
- *Municipal Disaster Recovery Grants [MDRG]*: for longer-term reconstruction and rehabilitation in favour of municipalities – introduced during 2013; and
- *Sector Conditional Grants*: for longer-term reconstruction and rehabilitation in favour of sector departments where the disaster funds are deposited within other sectorial conditional grants, e.g. CASP (Comprehensive Agricultural Support Programme) for Agriculture, Provincial Roads Maintenance Grant for Transport, Education Infrastructure Grant for Education, Human Settlements Development Grant for Human Settlements, etc.

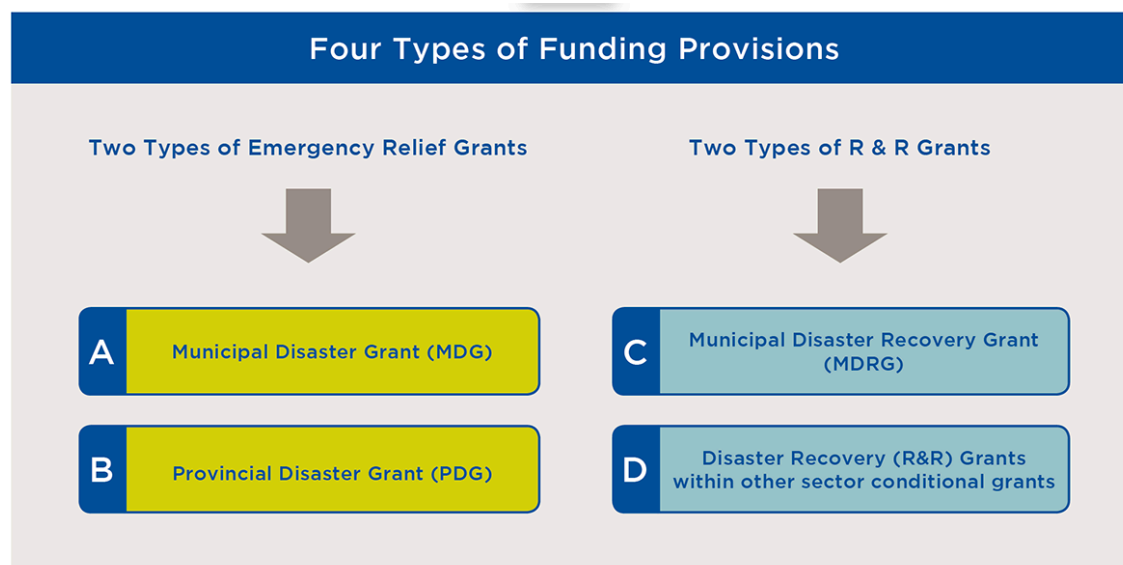


Figure 7 - Types of disaster funding

### 3.3.7 Best practice examples

The process, from physically experiencing a disaster to receiving relief, can be quite cumbersome and take a long time. Therefore, there is often apathy from applicants towards the process.

It is important for applicants to understand the following in terms of best practice in the reactive process:

- When a disaster is experienced, best practice is to make contact with Agri Wes Cape as soon as possible;
- Applicants can speed up the process by contacting their local Municipal Manager to complete the appropriate letter that needs to accompany an application for disaster declaration; and

- It will be beneficial for applicants to be cooperative in the verification process and assist PSPs who need to complete assessments;

It will also be beneficial to have a proactive approach towards best practice in the form of disaster risk reduction strategies. In this instance it becomes critically important that farmers implement mitigating strategies for climate change. As mentioned, the NDP highlights improving disaster preparedness for extreme climate events by calling for increased investment in new agricultural technologies, research and the development of adaptation strategies for the protection of rural livelihoods and expansion of commercial agriculture.

As seen in the graph below, the Disaster Recovery Process should go hand-in-hand with a Disaster Reduction Process.



*Figure 8 -Disaster recovery and reduction*

### 3.3.8 Opportunities for alignment

There is often overlap between the different legislative focus areas of environmental assessments, water use licensing, disaster management and conservation of agricultural resources.

It is perhaps significant to note that the declaration of a disaster under Disaster Risk Management might assist to speed up the NEMA and WULA process making use of emergency provisions in NEMA and the NWA. This, however, will be very case-specific.

### 3.3.9 Information and contact details of relevant authorities

The most important contacts for Disaster Risk Management are:

**DOA: Agricultural Disaster Risk Management (ARDM)**

Zaibu Arai

Telephone: (021) 808-5368

Fax: (021) 808-5370

Email: [ZaibuA@elsenburg.com](mailto:ZaibuA@elsenburg.com)

**WCDMC: Department of Local Government**

Richard Haridien

Telephone: (021) 9376361

Fax: (021) 9319031

Email: [Richard.Haridien@westerncape.gov.za](mailto:Richard.Haridien@westerncape.gov.za)

**Agri Wes Cape**

Carl Opperman

Telephone: (021) 860 3800

Fax: (021) 808-5370

E-mail: [carl@awk.co.za](mailto:carl@awk.co.za)

**3.3.10 Links to recent guidelines and forms / other aids**

A link could be provided to the Disaster Recovery Guidelines issued by WCDOA.

### 3.4 Conservation of agricultural resources

#### 3.4.1 Mandating legislation

Conservation of agricultural resources is mandated by the Conservation of Agricultural Resources Act, Act 43 of 1983 (CARA). CARA is an act with a National scope and is enforced by the Department of Agriculture, Forestry and Fisheries (DAFF) through its Directorate Land Use and Soil Management. CARA makes provision for the conservation of natural agricultural resources of South Africa through the following:

- Maintaining the production potential of land;
- Combating and preventing erosion;
- Preventing the weakening or destruction of water resources;
- Protecting vegetation; and
- Combating weeds and invader plants.

CARA is implemented on ground level in the Western Cape by the Western Cape Department of Agriculture (WCDOA), through the Sustainable Resource Management Directorate, sub-programme LandCare. It is rarely implemented in isolation, however, as its implementation forms part of programmes that also implements other acts and projects.

CARA applies to the above processes in certain instances, but funds are availed by other means as well, in order to fulfil the functions of the sub-programme. This includes the LandCare Grant to which this sub-programme has access in order to fulfil its functions.

The enforcement of CARA takes place through DAFF's Directorate Land Use and Soil Management; which also has a Regional office in the Western Cape. The Director of Land Use and Soil Management has delegated its powers to Resource Conservation Inspectors at Regional level (DAFF, 2010).

An amendment of CARA is also under way, although the impact of the amendment falls outside the scope of this report.

#### 3.4.2 Key definitions to understand

The following definitions are important within the context of CARA:

- *Extension Officer*: Extension Officers in our context are representatives of the WCDOA, that act as intermediaries between the Department and the land user or owner. They act as advisors and facilitators for all services provided by the WCDOA, including assistance with applications under CARA. There are a number of Regional offices of the WCDOA where the Extension Officers are situated;
- *Land user*: Any person (incl. a company, closed corporation or a trust) who is the owner of the land in question, who leases the land or has any legal right to use the land, the plants or other organic matter from the land, whether that person lives on the property or not;



- *Owner*: Any person (as above) in whose name the land in question is registered, or if such land has been purchased but not registered, the purchaser. The owner is also a person who has the right of ownership, even though the land has not been registered in such a person's name. If this person could not be found, the person's representative will be regarded as the land owner;
- *Natural agricultural resources*: The soil, water resources and vegetation, excluding weeds and invader plants.

### 3.4.3 Approvals that need to be obtained

The land user or owner needs to obtain a confirmation that it is CARA compliant from the WCDOA. This is obtainable through an application process with the local Extension Office of the WCDOA. Further details are provided below.

### 3.4.4 Actions that would trigger the need for approvals

If the land user intends to do any of the following actions, it would trigger the need for an approval under CARA. These actions are listed in the Regulations under CARA as amended (Department of Agriculture, 2001). They are the following:

- Cultivation of virgin soil;
- Cultivation of land with a slope of more than 12%;
- Protection of cultivated land from erosion - through both water and wind;
- Protection of soil from waterlogging / salinisation (increased salt content);
- Protection of "vlei's, marshes or water sponges";
- Regulating the flow pattern of run-off water;
- Utilisation and protection of veld;
- Grazing capacity of veld;
- Prevention and control of veld fires;
- Restoration and reclamation of eroded land;
- Restoration and reclamation of disturbed or denuded land;
- Managing bush encroachment – combating different categories of problematic indigenous plants; and
- Alien clearing - combating of different categories of alien plants.

Please note however that the specific triggers and approvals needed should be discussed with the extension officer within WCDOA that will assist the land user. In most cases, cultivation of virgin soil is the most frequent trigger. Another important trigger is applications to burn land, but it is standard practice in the Western Cape to apply through the local Fire Protection Association for the specific property.

### 3.4.5 Approval process

The most frequent application is one for cultivation of virgin soil. In practice, if a new land user makes contact with its local Extension Officer, the Extension Officer will consider CARA compliance as part of a

greater farm planning and advisory process. The Extension Officer will also assist the land user with advice on other approvals that might be needed.

Please see a description of the approval process under CARA below. Many of the procedural steps are not covered in regulations; the procedure is based on best practice as advised by the WCDOA.

- **Initial contact with district manager or WCDOA:** The land user will make contact with the District office of the WCDOA, or make contact with the WCDOA directly, in order to advise that it intends to develop virgin land;
- **Mapping of property:** For the cultivation of virgin soil, the Extension Officer will assist the land user to map the property, and indicate where new developments will take place;
- **Filling out of application form:** The application form is filled out together with the Extension Officer and signed by the District Manager. On the form for cultivation of virgin land, it is indicated which fields on the farm map will be cultivated;
- **Inspection by Extension Officer:** The Extension Officer will inspect the property and collect data, in order to determine whether any other activities in terms of CARA might be triggered;
- **Reporting to DAFF:** The Extension Officer will draw up a report outlining the application details and submit it to DAFF;
- **Feedback to land user by DAFF:** DAFF would then notify the land user of the specific triggers and what needs to be done to achieve compliance;
- **Filing of information:** DAFF would also send the outcome of the application to the local Extension Office, where it will be filed;
- **Further inspections and updating of file:** The Extension Officer will have the responsibility to inspect the property on an ongoing basis and update the land user's file once the land is cultivated or the relevant activity has taken place.

Compliance monitoring will take place through DAFF, which also has a Regional Office in the Western Cape.

See below a diagram of the process:

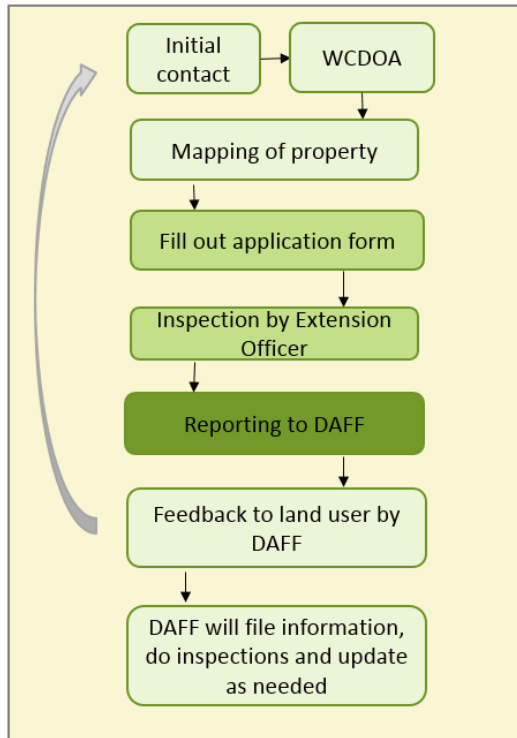


Figure 9 - CARA Process

### 3.4.6 Best practice

We can recommend the following for best practice:

- Ensure that you have a good relationship with your local extension Officer; and / or
- Contact an Environmental Impact Assessment (EIA) Specialist if you want to cultivate virgin soil (see the discussion below).

### 3.4.7 Opportunities for alignment

The application to cultivate virgin land goes hand in hand with approvals under NEMA for the same activity. This process could be done concurrently with the NEMA process, and in practice the one process would lead to the other, whether it is approached from a CARA perspective (through an Extension Officer) or from a NEMA perspective (through an Environmental Consultant or Departmental advisor).

### 3.4.8 Information and contact details of relevant authorities

The WCDOA Sustainable Resource Management Department, LandCare division is the custodian of this process for the Western Cape.

The main contact person at WCDOA is the following:

Francis Steyn

Physical address: Main Building, Elsenburg, Muldersvlei Road, Stellenbosch

Tel: 021 808 5090

E-mail: [franciss@elsenburg.com](mailto:franciss@elsenburg.com)

The District Managers for the various geographical areas in the Western Cape are as follows:

Name	Area	E-mail	Telephone
Jan Smit	West Coast	<a href="mailto:jans@elsenburg.com">jans@elsenburg.com</a>	022 433 2330
Hannes Muller	Eden	<a href="mailto:hannesm@elsenburg.com">hannesm@elsenburg.com</a>	044 803 3720
Phyllis Pienaar	Central Karoo	<a href="mailto:phyllisp@elsenburg.com">phyllisp@elsenburg.com</a>	023 414 2126
Dawie de Villiers	Overberg	<a href="mailto:dawiedV@elsenburg.com">dawiedV@elsenburg.com</a>	028 425 4826
Rudolph Röscher	Cape Winelands	<a href="mailto:rudolphr@elsenburg.com">rudolphr@elsenburg.com</a>	021 808 7801

*Table 4 - WCDOA District Managers*

### 3.4.9 Links to recent guidelines and forms / other aids

There is little online information available and the forms are provided to land users in hard copy. Most of the information in this report has been obtained verbally from the WCDOA and through their booklet "CARA Made Easy".

#### 4. The way forward

This was the Final Report for this project – a legislative review of four important areas of legislation in order to provide simplified summaries for use on the GreenAgri portal. This portal strives to provide assistance to primary agricultural producers and agribusinesses in their endeavours to farm sustainably.

As explained, the purpose of this exercise is ultimately to provide the users of the GreenAgri web portal with summaries and visual representations of what they need to better understand the complex legislation underpinning the focus areas and how it affects their operations – thus enabling greater economic growth and employment creation in this key economic growth sector.

We trust that the summaries, process maps, tips and tools provided here and on the web interface is going to be a valuable tool to add to the GreenAgri Portal and that it will prove to be easy to understand, creating a greater awareness and comprehension of the four legislative focus areas.

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National Environmental Management: Waste Act. Act 59 of 2008.

National Water Act. Act 36 of 1998

Notice No. 983 published in Gazette 38282 on 4 December 2014

Notice No. 984 published in Gazette 38282 on 4 December 2014

Notice No. 985 published in Gazette 38282 on 4 December 2014

Preservation and Development of Agricultural Land Framework Bill

Subdivision of Agricultural Land Act. Act 70 of 1970.