

Robberg Coastal Corridor

Environmental Law Guideline for a Coastal Corridor



Responsible land use in the coastal zone through the application of environmental law
in the Western Cape Province of South Africa

Commissioned and funded by



Robberg Coastal Corridor Landowners Association

Compiled by



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Supported by



WATCH HILL CHARITABLE FOUNDATION

February 2012

Acknowledgements

Inputs from the Robberg Coastal Corridor Landowners Association, especially Dr. Robbie Robinson, Chris von Christierson and Andrew Hill, are acknowledged. Their drive and support has made this initiative a reality. Further inputs from Maretha Alant at SANParks and Henk Niewoudt at CapeNature, are appreciated. Gratitude is also extended towards the photographers who donated their images towards this publication. Finally, recognition must be given to the other members of the **bluepebble** team, who donated additional time, making this high-quality work possible.

Thank you to all,

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Kingwill, J. M., Joubert, P. A., and Bester, C. D. 2012. *Robberg Coastal Corridor: Environmental Law Guideline for a Coastal Corridor*. bluepebble independent environmental agency. Commissioned and funded by the Robberg Coastal Corridor Landowners Association.

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Forward

In his definitive book “The Diversity of Life” published in 1992, Pulitzer Prize winner and eminent Harvard University scientist, Professor Edward O. Wilson, traces through time the processes that have created, and destroyed, living species and global diversity over the past 600 million years. “Five enormous blows to the planet (such as meteorite strikes and climate changes) required 10 to 100 million years of evolutionary repair. The sixth great threat of extinction on earth – caused this time by humans – may be the one”, he warns, “that breaks the crucible of life”.

Wilson identifies certain “hot spots” on the planet which house species found nowhere else and which are in the greatest danger of extinction from human activity. One such hot spot is the Cape floristic province on the southernmost tip of Africa which houses a unique heathland called “fynbos”, one of the world’s most unusual and diverse floras. In this minute region, some 9,000 plant species have been identified, of which 70% exist nowhere else in the world. However, over one third of the fynbos has already been lost to development, agriculture and the invasion of alien plant species. What remains is being rapidly fragmented and degraded and already some 30 fynbos species are known to be extinct and some 1,700 are threatened (a total exceeding the entire flora of the British Isles). To quote Wilson: “unless swift action is taken, South Africa will lose a large part of its greatest natural heritage”.

Within this diminishing floristic province lies the ecologically sensitive and threatened Robberg Coastal Corridor (RCC, or Corridor), an 18 kilometre stretch of beautiful, pristine coastal land that links the Robberg Nature Reserve in the east to the Garden Route National Park in the west – rich in fynbos of numerous varieties. By connecting the two protected areas which adjoin it, consolidation of the Corridor, once achieved, would extend its length to over 30 kilometres from the tip of Robberg Peninsula to Noetzie - more than sufficient to sustain a hiking trail along a coastline equally as spectacular as the famous Otter Trail on the Tsitsikamma Coast.

The preservation of the RCC from encroachment and development, and linking it to these two core protected areas, will protect and facilitate the natural movement of the flora and fauna along the Corridor, thereby preserving the diversity of genetic species and enabling better adaptation to the vagaries of climate change. Most important, it will also secure the last remaining ecological lifeline to the increasingly isolated Robberg Peninsula.

This crucial and achievable ecological challenge mobilised a group of concerned Corridor landowners to constitute the Robberg Coastal Corridor Landowners Association (RCCLA) in October 2010. To this end, the RCCLA, in a groundbreaking initiative, and with the support of The Eden to Addo Corridor Initiative, The Garden Route Initiative, SANParks, CapeNature, WWF and the two municipalities that host the extended Corridor, subsequently made application in early 2011 to the Minister for Environmental Affairs and Development Planning of the Western Cape Province, to declare its members’ properties a Protected Environment (PE) in terms of the National Environmental Management: Protected Areas Act.

Included with the PE application is a draft Management Plan compiled by CapeNature in collaboration with the RCCLA, which sets out how the PE will be managed, adhering to ecologically best practice. It includes ongoing clearing of alien plants and trees; wetland / water protection; pollution and waste disposal monitoring; fire protection; controlled burning of the fynbos; security; maintenance of appropriate fencing; addressing non-essential visually polluting structures; and general monitoring, patrolling and protection of the PE.

These requirements naturally address the vital question of local employment opportunities, through education, training and practice in all aspects of Corridor management. Efficient and organised

management should lead to further job creation for local people, especially in the field of tourism. Consider the beauty, the uninterrupted coastal views, the flora, the geology, archaeology, the cultural heritage of the adjoining communities, the land-art sites – there are boundless opportunities for local individuals of all ages to be inspired through education and guidance to pursue futures in marketing their unique part of the world to tourists from near and far. Further employment opportunities also remain to be explored in sustainable fynbos harvesting, as practised successfully in the Agulhas Plain.

To-date, Corridor landowners representing some two thirds of the length of Corridor have either already committed their properties to the RCCLA and therefore the PE, or indicated willingness to do so, with only small number of outstanding owners yet to do so at this time.

In order to alert and assist existing landowners (both RCCLA and non-RCCLA members), as well as prospective Corridor landowners and owners of land adjoining or in close proximity to the Corridor, to be more aware and to better understand the numerous South African environmental laws and procedures that apply to any activity undertaken within such a highly environmentally sensitive area, the RCCLA has commissioned and funded **bluepebble independent** environmental agency to compile this Robberg Coastal Corridor Environmental Law Guideline. This Guideline is aimed to promote and assist responsible coastal development through greater understanding of and better adherence to environmental law in the Western Cape Province. We believe this too is another first initiative of its kind in South Africa, which hopefully will also benefit the wider environmental audience of the Country.

Alarmingly, there are people and constituencies who maintain that immediate economic returns from ecologically insensitive development of this coast outweigh the inevitable extinction of the irreplaceable treasures this Corridor offers the world. Fortunately, this Guideline now offers a counter to this thinking. For it brings into stark reality the irrefutable facts about the way forward in the 21st Century which have been painstakingly researched by scientists in all relevant disciplines, now harnessed in the comprehensive and diverse environmental legislation that South Africa is fortunate to have, and sets out in layman's terms what can and cannot be done.

Finally, to conclude on a note of optimism: there is overwhelming evidence against insensitive economic development for short term gain at the expense of the environment, in the form of the numerous tangible examples within South Africa and abroad, of the significant value enhancement of undeveloped properties owned within corridors or adjacent to national parks and reserves, over the longer term, not only in monetary terms, but in terms of value to society and our planet - such areas are becoming increasingly scarce and therefore increasingly valuable!

Please join us to protect this very special and threatened Corridor by supporting the RCCLA and its objectives.

Chris von Christierson

Chairperson: Robberg Coastal Corridor Landowners Association (RCCLA)

January 2012

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HOTLINES for Reporting Incidents



044 805 8600

Compliance Monitoring and Enforcement, George
Department of Environmental Affairs and Development Planning



021 483 5564

Compliance Monitoring and Enforcement, Cape Town
Department of Environmental Affairs and Development Planning



0800 205 005

National Hotline, Pretoria
Environmental Crimes and Incidents



0800 00 44 24

Reporting Hotline
South African National Parks Board



**BLUE
SCORPIONS**



0800 200 200

Complaint's Call Centre, Pretoria
National Department of Water Affairs (DWA)



021 941 6179

Gouritz Water Catchment Area Manager, Cape Town
Department of Water Affairs (DWA)

Who are the GREEN SCORPIONS and BLUE SCORPIONS?

Popularly called the Green Scorpions or Blue Scorpions, the **Environmental Management Inspectors (EMIs)** enforce illegal activities under the National Environmental Management Act and other legislation such as the National Water Act. They do not currently form part of any one "unit", based in a single institution. Instead, they form a network of environmental enforcement officials based in different institutions across all the spheres of government. So there is no central contact point for EMIs, and members of the public must therefore contact the relevant institutions employing EMIs, such as the provincial or national **Department of Environmental Affairs, Department of Water Affairs, Department of Forestry, SANParks, or CapeNature.**

How to use this Environmental Law Guideline

This Environmental Law Guideline ('Guideline') is compiled primarily for **existing and prospective land owners within the Robberg Coastal Corridor** ('Land Owners'), with the object of **guiding land management**, as well as **current and future development activities** within the Corridor. It is based on the *assumption* that the Robberg Coastal Corridor has been declared as a Protected Environment in terms of the National Environmental Management: Protected Areas Act (Act No. 57 of 2003), for which application has been made.

This Guideline presents an **introduction** to the most relevant South African **environmental and planning legislation**. Note that any act, regulation or ordinance must always be considered together with other relevant legislation; the legislative framework thus fitting together like the pieces of a puzzle. **The legislation introduced relates specifically to typical activities within the Robberg Coastal Corridor area, and caution must be exercised when applying this Guideline in other areas.**

A Land Owner planning an activity within the Robberg Coastal Corridor should **check the proposed activity** against the **legislation** provided in this Guideline, and thereby **identify possible requirements that may need to be adhered to**. It is strongly recommended that Land Owners take a **precautionary stance**, and if there is any possibility of legal requirements, the **specific legislation should then be investigated in greater detail**. In other words, while this Guideline is not a decisive and definitive document, it is designed rather to highlight, inform and alert Land Owners of potential legal requirements and obligations with respect to the current application of environmental law in the Western Cape Province of South Africa.

Finally, the **legal application of environmental management is ever-changing**, and this Guideline therefore presents **information that is current at the time of writing**. This is further reason for any planned activities to be checked with the relevant decision-making authority to determine those legal requirements that may be applicable.

Note on Shoreline Boundary Determination

The shoreline boundary, used in the maps in this Guideline, is sourced from the most accurate dataset available, being that of local land surveyor Shaun McMillan. The Admiralty Reserve adjacent to 433/P76, 433/P33 and 433/R is described in the relevant Surveyor General Diagrams as being 200 Cape Feet (62.97 meters) above the high-water mark. The Admiralty Reserve is graphically depicted as such in this Guideline, and contradicts the Surveyor General graphic information dataset, which is outdated and serves as an indication only.¹ For the purpose of this exercise the high-water used for the Admiralty Reserve corresponds to a line developed for the C.A.P.E Marine Conservation Plan for the Agulhas Bioregion. To locate the high-water mark and shoreline boundary more precisely, it is best to make use of the professional services of a land surveyor, such as locally based Shaun McMillan Land Surveys (044 533 3072).

¹ Pers. Comm. Shaun McMillan 11 January 2012.

Definitions

coastal public property:	includes coastal waters, land submerged by coastal waters, any islands in coastal waters, the seashore, any Admiralty Reserve owned by the State, as well as any natural resources on or in the coastal public property.
construction activity:	means the building, erection or establishment of a facility, structure or infrastructure that is necessary for the undertaking of a listed or specified activity but excludes any modification, alteration or expansion of such a facility, structure or infrastructure, and excluding the reconstruction of the same facility in the same location, with the same capacity and footprint, as defined as a 'maintenance activity' below (also note 'expansion activity' below).
cultivation of virgin soil:	means an action by means of which topsoil is disturbed mechanically; virgin soil is land that has at no time during the preceding ten (10) years been cultivated.
development:	means any physical intervention, excavation or action, other than that caused by natural forces, which may result in a change in the nature, appearance or physical nature of a site or influence its stability and future wellbeing, including - (a) the construction, alteration, demolition, removal or change of use of a site or a structure on the site; (b) the carrying out of any works on, over or under the site; (c) the construction or putting up for display of signs or boardings; (d) any change to the natural or existing condition or topography of land; (e) any removal, clearing or destruction of trees or vegetation or the removal of topsoil; OR any listed activity under EIA Regulations, 2010.
development footprint:	in respect of land, means any evidence of physical alteration as a result of development.
ecological corridor:	means a geographical corridor area that allows for the movement of materials, energy, species and genetic information between core protected areas.
environment:	means the surroundings within which humans exist and that are made up of (i) the land, water and atmosphere of the earth; (ii) micro-organisms, plant and animal life; (iii) any part or combination of (i) and (ii) and the interrelationships among and between them; and (iv) the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and wellbeing.
expansion activity:	means the modification, extension, alteration or upgrading of a facility, structure, or infrastructure at which an activity takes place in such a manner that the capacity of the facility or the footprint of the activity is increased (also note definitions of 'maintenance activity' below and 'construction activity' above).
high-water mark:	means the highest line reached by coastal waters, but excluding any line reached as a result of (a) exceptional or abnormal floods or storms that occur no more than once in ten (10) years or (b) an estuary being closed to the sea.
indigenous vegetation:	means vegetation consisting of indigenous plant species that are naturally occurring in an area, regardless of the level of alien infestation and where the topsoil has not been lawfully disturbed during the preceding ten (10) years.
littoral zone:	means the dynamic interface between the marine and terrestrial environments.
maintenance activity:	means the reconstruction of an existing facility, in the same location, with the same capacity and development footprint (also note definition of 'expansion activity' above).
natural agricultural resources:	natural agricultural resources include the soil, the watercourses and the vegetation, excluding weeds and invader plants.
natural forest:	typically, a natural forest is defined as a generally multi-layered indigenous vegetation unit dominated by trees and where grasses are generally rare. Contact the local Forestry Office to determine if a vegetation unit falls within this definition or not.
responsible development:	development adhering to the environmental legislation and based on best practice.
Robberg Coastal Corridor:	in this Guideline, means the contiguous corridor along the coast between Robberg Nature Reserve and the Garden Route National Park (GRNP) as far west as the Noetzie River.
seashore:	means an area between the low-tide mark and the high-tide mark.
watercourse:	means a river, spring, natural channel or depression into which water flows regularly or intermittently; a wetland, lake or dam; or any collection of water designated as such by the Minister. Reference to a watercourse includes, where relevant, its bed and banks.
wetland:	means land which is transitional between terrestrial and aquatic systems where the water table is usually at or near the surface, or the land is periodically covered with shallow water, and which land in normal circumstances supports or would support vegetation typically adapted to life in saturated soil.

1. Aim

This Guideline aims to **inform and alert Land Owners** within the coastal corridor between Robberg Nature Reserve and the Noetzie River of their environmental rights and obligations, and what to consider in terms of **'best practice' land management** and the **responsible development** of this ecologically sensitive area. The Guideline covers **current environmental and planning law** in South Africa, with relevance to the **Robberg Coastal Corridor** and **typical development activities**.

The Robberg Coastal Corridor is a **unique and essential ecological link** for plant and animal species between Robberg Nature Reserve in the east and the Garden Route National Park in the west. This coastal corridor features significant biodiversity, which is not formally protected, and in a regional context it also forms **part of the broader Eden to Addo Corridor Initiative**.²



Natural corridor along the coastline



Indigenous forest in the Garden Route National Park



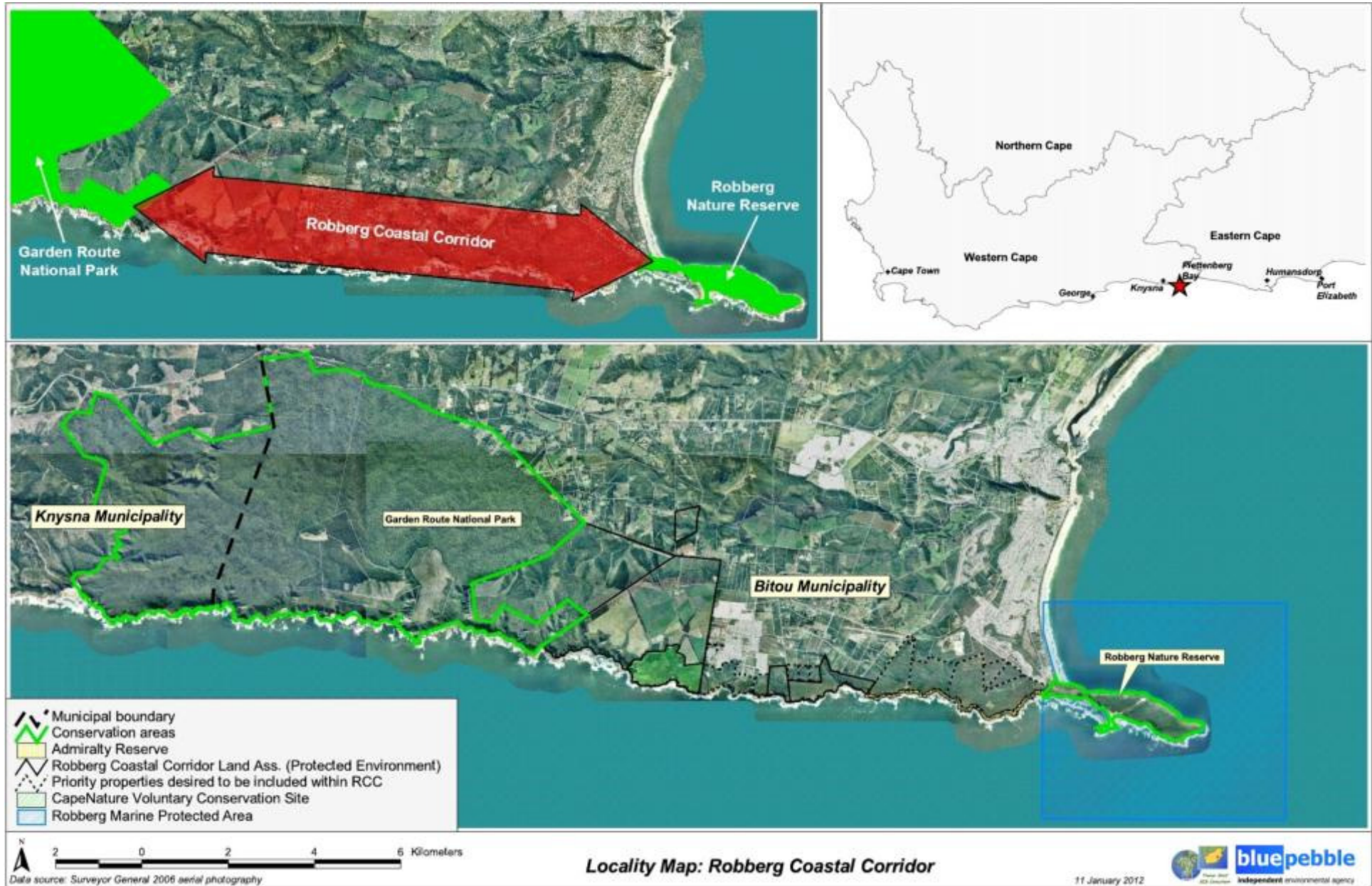
Active agricultural land on Cairnbrogie farm



Plettenberg Park in the Robberg Coastal Corridor

This Guideline introduces and highlights relevant legislative requirements governing development along this particular coastline, with a view to confining any future activity to **responsible development** within what is an area hosting **unique biodiversity** and **significant heritage resources**. Sustainable development supporting environmental protection, livelihood generation and land value enhancement, is possible along this coastline. Finally, it is worth noting that **prosecution under environmental law** has become a norm in South Africa, with examples of penalties and directives being issued to reverse unlawful activities. In terms of saving on legal costs specifically, it is more cost effective to review prevailing legislation and to make the appropriate applications prior to commencing with any activities. After all, the environmental laws are in place to support intelligent, sensitive and eco-friendly development.

² For more information on the Eden to Addo Corridor Initiative, see www.edentoaddo.co.za.



2. Incentives for Landowners to Declare Land for Conservation Purposes

There are various incentives available to landowners who formally declare their land for conservation purposes, including the increase in land value, municipal rates rebates, SARS tax incentives and support in terms of land management from the Eden to Addo Initiative, CapeNature, and South African National Parks (SANParks), as presented in more detail below.

Increase in land value:

It is well known that properties adjacent or near to protected areas increase in value for various reasons. As the area set aside for nature conservation is limited, with only incremental increases likely or even possible in the near future, such properties can be expected to increase in value. This appreciation in land value has been identified both in South Africa and elsewhere. Two illustrative South African examples are the western border of the Kruger National Park and the land bordering the Tsitsikamma National Park (TNP). In the second example, the prices of properties in the adjacent village of Nature's Valley sky-rocketed once the village was surrounded by the protected area, further making it impossible to increase the size of the urban area.

One potential form of conservation area is the proposed creation of 'ecological corridors' to link existing protected areas and to enable wildlife to disperse; an essential response to the threat posed by climate change. Such corridors offer the potential to create new areas of residential property which would gain value from their proximity to conservation areas. There is a delicate balance of respect and responsibility between protected areas and the residential areas bordering such national parks, nature reserves and ecological corridors. While the owners and tenants of such properties benefit from a privileged proximity to a precious and dwindling resource and property prices rise, the conservation area benefits from having neighbours that endorse genuinely sustainable development and appreciate the visual, spiritual, aesthetic and economic values of being close to nature.



The natural beauty and inherent spiritual value of the Robberg Coastal Corridor provide good opportunity for protection and the long-term increase in economic value of such land is possible

Rates incentive according to the Bitou Municipality Rates Policy:

The Bitou Municipality Property Rates Policy states that rebates for 'conservation, environment and animal welfare' will be considered. Applications for the rebate must be submitted before the end of October preceding the new financial year for which relief is sought. The municipality will decide according to its circumstances / needs what percentage rebate to grant. The Director of Financial Services will consider late applications.

National Government Tax Incentives:

Tax incentives in support of protected areas expansion and securing threatened ecosystems have recently been promulgated by the National Government. Landowners may enter into a Biodiversity Management Agreement (NEMBA), and declare either a Protected Environment, Nature Reserve or National Park in terms of the Protected Areas Act to conserve their land for biodiversity. In response to the commitments of landowners to secure biodiversity on their land, the National Treasury has recognised that landowners have forgone use rights to their land and often incur substantial costs in managing their land under these agreements. In response there are tax incentive mechanisms available to landowners (refer to detail on tax incentive mechanisms in Appendix D).

Incentives offered by the Eden to Addo Corridor Initiative:

Landowners who are committed to a formal Stewardship option brokered by the Eden to Addo Corridor Initiative could benefit by having access to:

- Project development for the purposes of implementing the Stewardship management plan and contributing towards optimising biological patterns and processes.
- Technical advice on environmental management, including biological control of invasive alien species, weed control, mammal monitoring, plant and mammal identification.

Incentives offered by CapeNature:

Landowners who are committed to one of CapeNature's Stewardship options could benefit by having access to:

- Expertise on the legal framework for private conservation within SA legislation.
- Professional support team of conservation extension expertise.
- Advice on land management interventions (e.g. invasive alien vegetation clearing).

Incentives offered by South African National Parks (SANParks):

SANParks will engage local authorities on a strategic level to ensure that biodiversity priorities (including the coastal corridor / Protected Environment) are mainstreamed in town planning initiatives. Where possible and within capacity constraints, SANParks will share experiences in conservation management and protected area network management that may benefit conservation activities within the Protected Environment, specifically in terms of fire management and alien plant control.

Further contact for Landowner Incentives	
Rates Rebates	Bitou Municipality, Director of Financial Services, 044 501 3000 (tel.)
Tax Incentives	Botanical Society, Conservation Unit, 021 799 8826 (tel.), OR Knowledgeable Local Tax Practitioner, OR SARS Contact Centre on 0800 00 7277 (0800 00 SARS)
Project support, alien vegetation clearing advice, biodiversity management expertise	Eden to Addo Initiative, 044 533 1623 (tel.); P O Box 1, Plettenberg Bay, 6600; admin@edontoaddo.co.za (email); www.edontoaddo.co.za , OR CapeNature, 044 533 2551 (tel.), OR SANParks, 044 302 5600 (tel.)
Declare a protected area	Eden to Addo Initiative, 044 533 1623 (tel.); P O Box 1, Plettenberg Bay, 6600; admin@edontoaddo.co.za (email). www.edontoaddo.co.za

3. What Activities have a Detrimental Environmental Impact?

There are many typical **land management** and **development activities** in the sensitive Robberg Coastal Corridor, which may have a detrimental impact on the environment. **Check the law** to see the requirements for what you are **currently doing**, or if you are **planning something new**, to see how it is regulated before you actually start. Otherwise you may be contravening the law.

- **Burning vegetation** and **disposing of hazardous waste**, such as old oil and chemicals on land.
- Constructing, upgrading or expanding **dwelling, hotels, lodges, tented camps and the related infrastructure**, for instance roads, water and electricity supply, sewerage treatment and storm water control.
- Constructing or upgrading **roads** or **dams**.
- Constructing or upgrading **hiking trails** or **boardwalks**.
- Clearing of **indigenous vegetation**, and disturbing or removing **indigenous forest** or **protected trees**, when clearing for other development or in harvesting indigenous wood or wild flowers.
- Establishing **plantations** or **fields for agriculture**.
- Establishing **feeding lots** or **breeding lots**, for instance chicken, pig or dairy farming.
- Other intensive farming such as **aquaculture**, or farming with **vegetable or flower tunnels**.
- **Mining**, for instance moving sand, or rock or other materials natural to the area.
- Constructing or upgrading **landing strips** or **helipads**.
- Providing **grazing** for stock and dealing with **problem animals**, such as monkeys or baboons.

***What is indigenous vegetation?**
Legally, vegetation consisting of indigenous plant species that are naturally occurring in an area, regardless of the level of alien infestation and where the topsoil has not been lawfully disturbed during the preceding ten years.*



Residential and agriculture activities



Livestock grazing



Infrastructure such as roads

All these activities potentially impact detrimentally on the natural flora and fauna, as well as the natural and heritage landscape. Any activity which impacts on **streams, wetlands** and **watercourses** is also of concern in such a **sensitive coastal area**. All of the above activities are regulated under **at least one of the laws** detailed in this Guideline.

4. Environmental Importance of the Robberg Coastal Corridor

The coastal area between Robberg Nature Reserve and the Garden Route National Park has **exceptional natural beauty** and hosts **threatened** and **endangered plant species**. The entire **Garden Route coastline** is already **under severe development pressure** and as a result, this specific area has been identified as a critical biodiversity area by the Garden Route Initiative. The remaining natural habitat within the area is in need of protection to ensure that the **biodiversity and ecosystem processes** remain intact and functional.

Very little of the unique vegetation types found along the coast west of Robberg are formally protected. Furthermore, many of the **endemic fynbos species** found in the Corridor occur nowhere else in the world. The remaining natural area between Robberg Nature Reserve in the east and the Garden Route National Park in the west is the last available option for a continuous natural corridor along this section of the coastline, and ensures that the Robberg Peninsula is not cut off from surrounding natural ecosystems.

This natural corridor allows for **essential ecological processes** such as seed, material and energy distribution and the movement of plant and animal genes. Furthermore, it provides an important east-west gradient for tracking changes in vegetation in response to the **effects of climate change**, as well as allowing rapidly-adapting species with a greater opportunity to shift their geographical habitats in response to such effects.³

Responsible management of this area will conserve the **ecological integrity** of this coastal environment.



Note the impact of the Pezula development west of the Noetzie River



The Robberg Coastal Corridor has a wilderness feel, lending itself to a new Otter Trail-type hiking trail



Note the urban coastal development, also encroaching on the ecologically critical Robberg vlei

³ Lombard *et. al.*, 2004.

The Robberg Coastal Corridor is situated along an important interface between **marine, intertidal, littoral zone** and **terrestrial habitats** and is therefore a critical area to maintain as a functioning ecological system. It also provides passage for local communities to access coastal resources, for cultural, recreational and subsistence purposes; in some cases, to provide much-needed protein for their families. The practice of collecting sea food along the Southern Cape coast is a cultural heritage that spans thousands of years, as can be seen by the **shell middens** and other important **archaeological sites** along this stretch of coast.

“The remaining natural area between Robberg Nature Reserve and Garden Route National Park is the last available option to form a continuous ecological corridor along this sensitive coast...”

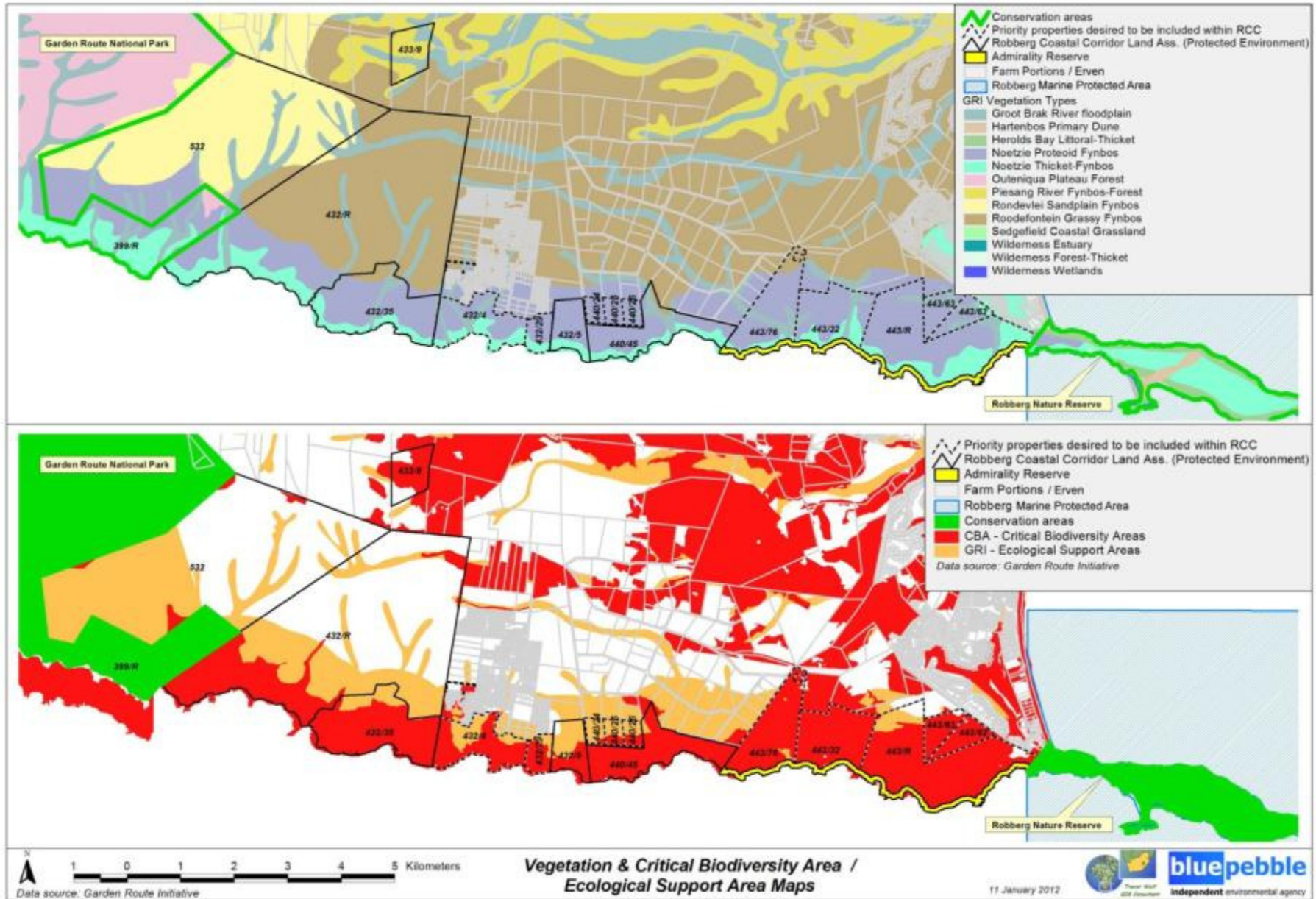


Marine, intertidal, littoral zone and terrestrial habitats all form part of the coastal ecosystem



Freshwater systems also play an important ecological function along the coast

The maps overleaf, which depict vegetation and critical biodiversity areas, as well as ecological support areas within the Robberg Coastal Corridor, clearly indicate where the Corridor needs to be protected in its natural state. Any proposal for maintenance, construction or development in these sensitive areas must be carefully considered in order to protect the environment and avoid negative impacts.



5. The National Environmental Management Act (NEMA)

Environmental law in South Africa is principle-based and stands on Section 24 of **The Constitution of the Republic of South Africa, 1996**, which states that:

Everyone has the right to –

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

The protection of the Robberg Coastal Corridor will promote conservation and guide ecologically sustainable development that is economically viable and socially acceptable.

National Environmental Management Act, 1998 (NEMA)

The overarching framework for environmental law in South Africa is the **National Environmental Management Act or NEMA**, which came into effect in 1999. Here the term **environment** is defined.

One of the most important provisions of NEMA is that of '**Duty of Care**', which requires every person to take reasonable measures to prevent, minimise and rectify significant pollution and environmental degradation. This duty rests with those who cause, have caused, or may cause significant pollution or degradation of the environment, whether the activity is listed or not. NEMA also makes provision for **environmental impact assessment processes**.

Penalties for contravening the requirements of NEMA are severe and can result in fines of up to R5 million or ten years imprisonment, or both. There is allowance within NEMA for rectification of a contravention of the Act, whereby rigorous assessment of the environmental impact is conducted after the fact, and an administrative fine of up to R1 million can be issued.

What is the environment?

The surroundings within which humans exist and that are made up of -

- (i) the land, water and atmosphere of the earth;*
- (ii) micro-organisms, plant and animal life;*
- (iii) any part or combination of (i) and (ii) and the interrelationships among and between them; and*
- (iv) the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and wellbeing.*

**Some of the more relevant Principles of NEMA
for Land Owners within the Robberg Coastal Corridor:**

- Sensitive, vulnerable, highly dynamic or stressed ecosystems, such as **coastal shores**, estuaries, wetlands, and similar systems require **specific attention in management and planning procedures**, especially where they are subject to significant human resource usage and development pressure.
- Development must be **socially, environmentally and economically sustainable**.
- Sustainable development requires consideration such that the **disturbance of ecosystems, loss of biological diversity, pollution, degradation of the environment and disturbance of landscapes and sites that constitute the nation's cultural heritage** are avoided or, where they cannot be altogether avoided, are minimised and remedied. Furthermore, that **waste** is avoided where possible and the reuse or recycling of materials as well as responsible waste disposal occurs. In addition that the use and exploitation of **non-renewable natural resources** is responsible and equitable, and takes into account the consequences of the depletion of the resource and that the development, use and exploitation of **renewable resources**, and the ecosystems of which they are part, do not exceed the level beyond which their integrity is jeopardised.
- Environmental management must serve the **physical, psychological, developmental, cultural and social** needs of people and their interests equitably.
- A risk-averse and **cautious approach must be applied**, which takes into account the limits of current knowledge about the consequences of decisions and actions.
- Negative impacts on the environment and on people's environmental rights must be **anticipated and prevented**, and where they cannot be altogether prevented, they should be minimised and remedied.
- **Environmental management must be integrated**, acknowledging that all elements of the environment are linked and interrelated, and it must take into account the effects of decisions on all aspects of the environment and people by pursuing the selection of the best practicable environmental options.
- **Environmental justice** must be pursued so that adverse environmental impacts shall not be distributed in such a manner as to unfairly discriminate against any person, particularly vulnerable and disadvantaged persons.
- **Equitable access to environmental resources**, benefits and services to meet basic human needs and ensure human wellbeing must be pursued and special measures may be taken to ensure access thereto by categories of persons disadvantaged by unfair discrimination.
- Responsibility for the environmental health and safety consequences of a policy, programme, project, product, process, service or activity **exists throughout its life cycle ("cradle to grave")**.
- The **participation of all interested and affected parties** in environmental governance must be promoted, and all people must have the opportunity to develop the understanding, skills and capacity necessary for achieving equitable and effective participation, and participation by vulnerable and disadvantaged persons must be ensured.
- Decisions must take into account the interests, **needs and values of all interested and affected parties**, and this includes recognising all forms of knowledge, including **traditional and ordinary knowledge**.
- **Community wellbeing and empowerment** must be promoted through environmental education, the raising of environmental awareness, the sharing of knowledge and experience and other appropriate means.
- The **social, economic and environmental impacts** of activities, including disadvantages and benefits, must be considered, assessed and evaluated, and decisions must be appropriate in the light of such consideration and assessment.
- Decisions must be taken in an **open and transparent manner**, and access to information must be provided in accordance with the law.
- The **environment is held in public trust** for society, the beneficial use of environmental resources must serve the public interest and the environment must be protected as the **people's common heritage**.
- The **costs of remedying pollution, environmental degradation** and consequent adverse health effects and of preventing, controlling or minimising further pollution, environmental damage or adverse health effects **must be paid for by those responsible for harming the environment**.

6. The Land Use Planning Ordinance (LUPO)

The Land Use Planning Ordinance, 1985, (LUPO) governs **the change of any land use** and deals specifically with consolidation, subdivision and rezoning applications. The Municipal Systems Act, 2000, governs planning and calls for spatial planning tools, such as Structure Plans and Spatial Development Frameworks, to be developed. Making use of the following environmental planning and management principles provides a good start to managing and / or developing land.

‘Best Practice’ Principles in Environmental Planning and Management	
1.	Approach the relevant authorities to make sure all the necessary laws are being considered.
2.	Plan the entire property, fitting elements into the landscape and avoid significant environmental impacts.
3.	Include Sustainable Urban Drainage (SUDs) or Low Impact Drainage ideas early into the spatial planning.
4.	Make use of Green Building and Green Construction principles in the planning and implementation.
5.	Build recycling, reduction and re-use (RRR) into current management and early project thinking.
6.	Use integrated water resource management (IWRM) ideas in current management and any designs.
7.	Incorporate emissions reduction and auditing into land management and new project thinking.
8.	Plan on how to reduce energy requirements in management, planning and implementation.
9.	Rehabilitate transformed areas, plant indigenous species, protect and rehabilitate wetlands and watercourses.

All the coastal land portions in the Robberg Coastal Corridor, with the exception of the private nature reserve on 432/35, are zoned as Agriculture 1, and with the relevant **permits** and **licenses**, can be used for agricultural purposes. Under agricultural zoning there is allowance to construct one main dwelling and application can be made for a second dwelling for a manager, which must be located more than 1km from the sea. Where properties fall completely within the 1km zone, case specific decisions are made. Cottages for staff are also granted for land that is actively being used for farming. Any development on slopes steeper than 1:4 is not supported. Finally, all buildings require approval from the municipal planning office, which also takes into account local bylaws relating to waste management and air pollution, for instance.



Low impact coastal development on the Otter Trail in the Tsitsikamma Section of the Garden Route National Park (left) and the Fountain Hut in the Robberg Nature Reserve (right)

Any development within the Admiralty Reserve, which is administered by the national Department of Public Works in Pretoria, requires prior application to the relevant government departments, and approval under the laws listed in this Guideline.

Further contact: Bitou Municipality Planning Office, 044 533 6881 (tel.); Monks View, Church Street, Plettenberg Bay; www.plett.gov.za/what-we-do/depts/led-and-idp.

7. The Structure Plan and Bitou Spatial Development Framework

The Bitou Municipality has compiled a Spatial Development Framework (SDF). At this point in time, the provincial government of the Western Cape has not adopted the **Bitou SDF**. Distinction must be made between an adopted **urban edge** in terms of the Municipal Systems Act and 'urban areas' and 'urban edges' defined or adopted in terms of the Environmental Impact Assessment Regulations. It is best to consult with a knowledgeable local town planner in this regard.

In the absence of an adopted Municipal SDF, the previous legal planning framework, being the **Wilderness-Knysna-Plettenberg Bay Structure Plan** ('Structure Plan') remains relevant and legally binding. The Western Cape Provincial Spatial Development Framework (PSDF), which governs municipalities in which no municipal SDF exists, is also of relevance, especially in terms of **rural development** in the case of the corridor. Generally the provincial government of the Western Cape, as well as the Department of Agriculture, does not support the fragmentation of farming land or development projects changing the landscape within the context of small holdings and agricultural land.

Currently, any development within the Robberg Coastal Corridor falls within the urban edge as defined in the 'unadopted' Bitou SDF, yet falls outside the existing urban development envelope, as defined in the EIA Regulations, 2010. Yet all development must legally be considered within the provisions of the Structure Plan. In terms of the Structure Plan, all the land in the Robberg Coastal Corridor is designated as '**nature area**' as depicted in the plan below.⁴ In the case of a development proposal deviating from this designation, application must be made to the Western Cape Province Planning Department. Only once Structure Plan amendment is granted, can the Bitou Municipality consider any application in terms of the Land Use Planning Ordinance (LUPO). The debate on the urban edge currently lies within this mix.



Further contact: Town and Regional Planning, Department of Environmental Affairs and Development Planning (DEA&DP), 044 805 8600 (tel.); www.westerncape.gov.za/your_gov/gsc/406.

⁴ Contact **Shaun McMillan Surveys** on 044 533 3072 (tel.) for further information.

8. The Environmental Impact Assessment (EIA) Regulations

The EIA Regulations, 2010, provide detail on the requirements of the EIA process, as well as **three lists of activities ('Listed Activities')** that may have a detrimental effect on the environment. The Listed Activities are mostly determined by thresholds and it may be that a Land Owner's proposed activity exceeds the threshold, in which case the Land Owner requires an **environmental authorisation** prior to starting with any activity. Listed Activities also include pre-construction activities, such as vegetation clearing, or opening a road or footpath to a site, for instance.

These regulations are continually changing and it is strongly recommended that the Land Owner contact the Department of Environmental Affairs and Development Planning (DEA&DP) in George to check if an environmental authorisation is required or not. In some cases the application may be delegated to the national Department of Environmental Affairs in Pretoria. It is also important to note that all the provisions of the regulations are not yet in effect, for instance the provisions around mining and prospecting still remain regulated under the Minerals and Petroleum Resources Development Act. **Maintenance activities** do not require environmental authorisation, however only if an approved maintenance environmental management plan is in place. **Maintenance** is defined as the re-instatement of existing facilities, with no expansion. **Expansion** is determined by an increase in footprint or capacity of an activity.

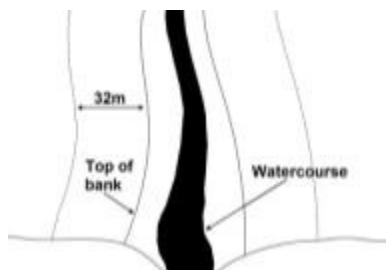
The **thresholds** for Listed Activities requiring environmental authorisation in the EIA Regulations, 2010, are defined by the scale of an activity, the location of activities in relation to watercourses, wetlands and the sea, as well as the current zoning or future land use of a site. It is best to contact DEA&DP or a **local certified environmental assessment practitioner (EAP)**, to check if a proposed development plan flags Listed Activities or not.



New roads wider than 4 metres require environmental authorisation



Development within 32m of a watercourse now requires environmental authorisation

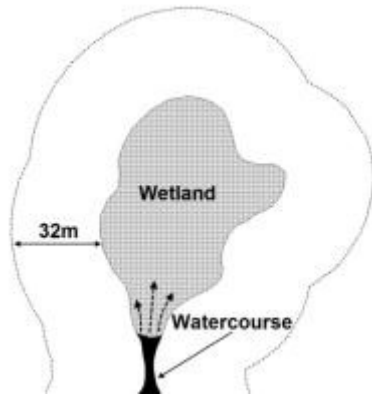


The threshold distance of 32m to a watercourse is measured from the top of the bank and not the centreline of the watercourse

What is a watercourse?

Legally, a watercourse is a river, spring, natural channel or depression into which water flows regularly or intermittently; a wetland, lake or dam; or any collection of water designated as such by the Minister.

Reference to a watercourse includes, where relevant, its bed and banks.



The threshold distance of 32m to a wetland is measured to the edge of the wetland, sometimes requiring specialist delineation

What is a wetland?
 Legally, a wetland is land which is transitional between terrestrial and aquatic systems where the water table is usually at or near the surface, or the land is periodically covered with shallow water, and which land in normal circumstances supports or would support vegetation typically adapted to life in saturated soil.

The list below summarises the Listed Activities, based on the assumptions that they occur a) outside the urban edge, b) within a protected area, c) where no development setback lines are in place; and d) as specific to the Robberg Coastal Corridor.

Summary of EIA Listed Activities likely relevant to Land Owners within the Robberg Coastal Corridor
Listed Activities in Listing Notices 1 require a Basic Assessment
1.1 The construction or expansion of facilities or infrastructure for the slaughter of animals, the concentration of animals, aquaculture, a hatchery or agri-industrial infrastructure.
1.2 The expansion of facilities for agri-industrial purposes , outside industrial complexes, where the development footprint of the facility will be increased by a 1 000 square metres or more.
1.3 The expansion of hatcheries , outside industrial complexes, where the development footprint of the hatchery will be increased by 2 000 square metres or more.
1.4 The construction or expansion of canals, channels, bridges, dams, weirs, or any infrastructure or structures where such construction occurs within a watercourse or within 32 metres of a watercourse, measured from the edge of a watercourse.
1.5 The construction or expansion of structures on coastal public property bigger than 50 square metres.
1.6 Construction or expansion of facilities or earth moving activities in an estuary, or within the littoral active zone or a distance of 100 metres inland of the high-water mark of the sea or an estuary , in respect of tidal pools, embankments, rock revetments or stabilising structures including stabilising walls, buildings, and infrastructure.
1.7 The planting of vegetation or placing of any material on dunes and exposed sand surfaces , within the littoral active zone for the purpose of preventing the free movement of sand, erosion or accretion, excluding where the planting of vegetation or placement of material relates to restoration and maintenance of indigenous coastal vegetation.
1.8 The infilling or depositing of any material of more than 5 cubic metres into, or the dredging, excavation, removal or moving of soil, sand, shells, shell grit, pebbles or rock of more than 5 cubic metres from a watercourse, the sea, the seashore, the littoral active zone, an estuary or a distance of 100 metres inland of the high-water mark of the sea or an estuary, whichever distance is the greater, but excluding where such infilling, depositing, dredging, excavation, removal or moving is for maintenance purposes undertaken in accordance with a management plan agreed to by the relevant environmental authority.
1.9 The establishment or expansion of cemeteries of 2 500 square metres or more.
1.10 The transformation of undeveloped, vacant or derelict land to residential, retail, commercial, recreational, industrial or institutional use, where the total area to be transformed is bigger than 1 hectare but less than 20 hectares.
1.11 The transformation of land bigger than 1 000 square metres in size, to residential, retail, commercial, industrial or institutional use, where such land was / is zoned open space, conservation or had an equivalent zoning.
1.12 The release of genetically modified organisms into the environment, where assessment for such release is required by the Genetically Modified Organisms Act, 1997 or the National Environmental Management: Biodiversity Act, 2004.

Listed Activities in Listing Notices 1 continued
1.13 The decommissioning of existing facilities or infrastructure for activities where the facility or the land on which it is located is contaminated .
1.14 The expansion of facilities for the off-stream storage of water, including dams and reservoirs, where the combined capacity will be increased by 50 000 cubic metres or more.
1.15 The expansion of a dam , where the highest part of the dam wall was originally 5 metres or higher and where the height of the wall is increased by 2,5 metres or more, or where the high-water mark of the dam will be increased by 10 hectares or more.
1.16 Phased activities for activities listed in Listing Notice 1, where any one phase of the activity may be below a threshold but where a combination of the phases, including expansions or extensions, will exceed a specified threshold.
Activities in Listing Notice 2 require a <u>Scoping Report and Environmental Impact Report</u>
2.1 The construction of runways or aircraft landing strips longer than 1,4 kilometres.
2.2 The construction of facilities, infrastructure or structures for aquaculture of 100 000 kg per annum or more.
2.3 Physical alteration of undeveloped, vacant or derelict land for residential, retail, commercial, recreational, industrial or institutional use where the total area to be transformed is 20 hectares or more.
2.4 The physical alteration of virgin soil to agriculture or afforestation , for the purposes of commercial tree, timber or wood production of 100 hectares or more.
2.5 The construction of a dam , where the highest part of the dam wall is 5 metres or higher or where the high-water mark of the dam covers an area of 10 hectares or more.
Listed Activities in Listing Notice 3 require a <u>Basic Assessment</u>
3.1 The construction of, or expansion of, reservoirs for bulk water supply with a capacity of more than 250 cubic metres.
3.2 The construction of masts or towers of any material or type used for telecommunication broadcasting or radio transmission purposes where the mast is placed on a site not previously used for this purpose and will exceed 15 metres in height, excluding attachments to existing buildings and masts on rooftops.
3.3 The construction of a road wider than 4 metres with a reserve less than 13,5 metres.
3.4 The widening of a road by more than 4 metres, or the lengthening of a road by more than 1 kilometre.
3.5 The construction of, or conversion of existing buildings into, resorts, lodges, other tourism accommodation facilities .
3.6 The expansion of a resort, lodge , hotel and tourism or hospitality facilities where the development footprint will be expanded.
3.7 The construction of aircraft landing strips and runways 1,4 kilometres and shorter, or the expansion of runways or aircraft landing strips where the expansion will be longer than 1,4 kilometres in length.
3.8 The construction or expansion of facilities or infrastructure for the storage, or storage and handling of a dangerous goods , where such storage occurs in containers with a combined capacity of between 30 and 80 cubic metres.
3.9 The construction or expansion of tracks or routes for the testing, recreational use or outdoor racing of motor powered vehicles, within 1km of the high-water mark or within areas of indigenous vegetation.
3.10 The clearance of an area of 300 square metres or more of vegetation where 75% or more of the vegetative cover constitutes indigenous vegetation, within identified critical biodiversity areas, threatened ecosystems, within the littoral active zone or within 100 metres inland from the high-water mark of the sea.
3.11 The construction or expansion of facilities, infrastructure or structures of any size for any form of aquaculture , within 100 metres from the edge of a watercourse.
3.12 The construction or expansion of facilities covering 10 square metres or more , in respect of buildings or infrastructure , where such construction occurs within a watercourse or within 32 metres of a watercourse, measured from the edge of a watercourse.
3.13 Phased activities for activities listed in Listing Notice 3, where any one phase of the activity may be below a threshold but where a combination of the phases, including expansions or extensions, will exceed a specified threshold.

Penalties with regard to the EIA Regulations are handled under the **NEMA** penalty procedures, including the option to rectify contraventions with the associated assessment and administrative fine of up to R1 million.

Further contact: Department of Environmental Affairs and Development Planning (George Office), 044 805 8600 (tel); 4th Floor York Park Building, 93 York Street, George, 6530; www.westerncape.gov.za/your_gov/gsc/406.

9. The National Heritage Resources Act (NRHA)

The National Heritage Resources Act, 1999, (NHRA) recognises the need to manage and protect the Nation’s heritage resources, as they are a **unique, precious and irreplaceable link to the past**. The NHRA regulates certain Listed Activities, as well as impacts on the National Estate, requiring information concerning the location, nature and extent of the activity to be submitted to **Heritage Western Cape (HWC)** prior to commencement of the activity. Following this submission, HWC may request additional studies, make recommendations and / or issue a **Record of Decision**. Furthermore, where Listed Activities under the **EIA Regulations** are triggered, the NHRA and EIA process are integrated, and the EIA documentation must be submitted to HWC, regardless of whether any heritage activities are triggered under the NHRA.

Listed Activities regulated under Section 38 of the NHRA
1. The construction of a road, wall, power line, pipeline, canal or other similar form of linear development or barrier exceeding 300m in length.
2. The construction of a bridge or similar structure exceeding 50m in length.
3. Any development or other activity which will change the character of a site (i) exceeding 5 000 m ² in extent; or (ii) involving three or more existing erven or subdivisions thereof; or (iii) involving three or more erven or divisions thereof which have been consolidated within the past five years; or (iv) the costs of which will exceed a sum set in terms of regulations by SAHRA or a provincial heritage resources authority
4. The re-zoning of a site exceeding 10 000 m ² in extent; or any other category of development provided for in regulations by the South African Heritage Resources Association (SAHRA) or a provincial heritage resources authority.
With reference to Section 3(2) of the NHRA, the national estate may include the following:
5. Places, buildings, structures and equipment of cultural significance as well as historical settlements and townscapes .
6. Places or objects to which oral traditions are attached or which are associated with living heritage .
7. Landscapes and natural features of cultural significance as well as geological sites of scientific or cultural importance.
8. Archaeological and palaeontological sites , including graves and burial grounds , including ancestral graves, royal graves and graves of traditional leaders, graves of victims of conflict, graves of individuals designated by the Minister by notice in the Gazette, historical graves and cemeteries and other human remains.
9. Sites of significance relating to the history of slavery in South Africa.
10. Objects recovered from the soil or waters of South Africa, including archaeological and palaeontological objects and material, meteorites and rare geological specimens .
11. Ethnographic art and objects, as well as objects of decorative or fine art .
12. Objects of scientific, technological or military interest.
13. Books, records, documents, photographic positives and negatives, graphic, film or video material or sound recordings, excluding those that are public records as defined in the National Archives of South Africa Act.



The Robberg Coastal Corridor landscape has a strong wilderness feel, hosts numerous caves and shell middens, and has an historic link to indigenous marine resource harvesting and the Griqua Community in the Kranshoek Settlement (left); thus representing significant heritage resources

The historical link between indigenous people and the use of the Corridor coastline as a source of food and subsistence livelihood, as well as the Griqua Community based in Kranshoek, together with the numerous caves and shell middens in the area, make the heritage value in this area of significant importance.

Further contact: Heritage Western Cape (Cape Town Office), 021 483 5959 (tel.); 021 483 9842 (fax); Protea Assurance Building, Greenmarket Square, Cape Town, 8000;
www.westerncape.gov.za/eng/directories/public_entities/1063/72512

10. The Integrated Coastal Management Act (ICMA)

The National Environmental Management: Integrated Coastal Management Act, 2008, (ICMA) recognises the need and shared responsibility to **manage the nation's coastal areas**, due to their unique natural resources and the range of human interactions. The principles of the ICMA include that **everyone has a right to access coastal resources**, that the diversity, health and productivity of **coastal ecosystems must be maintained** and restored where necessary, and that all people and organisations must act with due care to **avoid negative impacts** on the coastal environment and coastal resources.

The ICMA defines **coastal public property**, placing large areas of the coastal zone in the ownership of the citizens of South Africa. Such coastal public property is held in trust by the State. The State owned Admiralty Reserve, which stretches along a portion of the shoreline in the Robberg Coastal Corridor as illustrated overleaf, qualifies as coastal public property.



Historical access footpaths, for fishermen specifically, sustain subsistence livelihoods

Development activities within the **coastal protection zone**, stretching roughly 1 km inland, are also regulated in terms of the **EIA Regulations**. Aspects to consider in terms of such activities are the ecological integrity and natural capital value of land, as well as to protect people from risk and threats such as dynamic coastal processes, storm surges and sea level rise. The Bitou Municipality is also obliged by the ICMA to develop a Coastal Management Plan to ensure integrated coastal management and public access to the coast.

What is coastal public property?
Legally, coastal public property includes coastal waters, land submerged by coastal waters, any islands in coastal waters, the seashore, any Admiralty Reserve owned by the State, as well as any natural resources on or in the coastal public property.

Further contact: Department of Environmental Affairs Branch: Oceans and Coast (Cape Town Office), 021 819 2490 (tel.); East Pier Building, Pier Road, V&A Waterfront, Cape Town, 8000;
www.environment.gov.za/branches/marinecoastal/about.html



11. The National Forests Act (NFA)

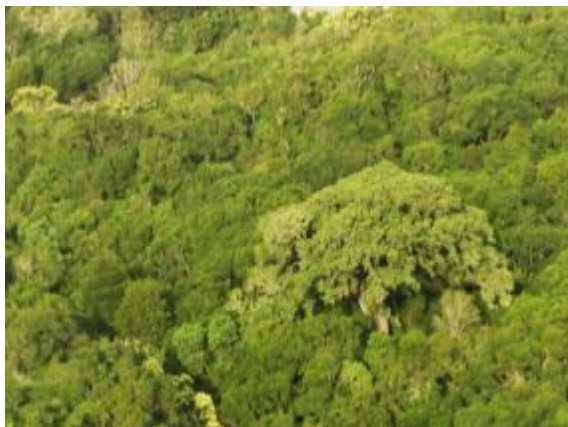
The National Forests Act, 1998, (NFA) recognises that natural forests and woodlands form an important part of the environment and need to be conserved and developed in a manner that is sustainable. The NFA further recognises that forests are utilised for environmental, economic, educational, recreational, cultural, health and spiritual purposes.

A **license** issued in terms of the NFA is required to cut, disturb, damage, destroy, possess, collect, remove, transport, export, purchase, sell, donate, or in any other manner acquire or dispose of **any trees in an indigenous forest or any protected tree anywhere else**, including any forest or tree product(s) derived from such a forest / tree. Such a license must be applied for with the **Department of Agriculture, Forestry and Fisheries (DAFF)** and obtained **prior to** undertaking the activity applied for.

Protected trees commonly found in the Garden Route include Assegai (*Curtisia dentata*), Cheesewood (*Pittosporum viridiflorum*), Outeniqua Yellowwood (*Podocarpus falcatus*), Real Yellowwood (*Podocarpus latifolius*), Stinkwood (*Ocotea bullata*) and White Milkwood (*Sideroxylon inerme subsp. inerme*). In other words, both the above listed trees and indigenous forests are protected.

What is a natural forest?

Typically, a natural forest is defined as a generally multi-layered indigenous vegetation unit dominated by trees and where grasses are generally rare. Contact the local Forestry Office to determine if a vegetation unit falls within this definition or not.



Indigenous forests contain protected trees, like the large Outeniqua Yellowwood (left) and both are protected

Penalties for contravening the NFA and / or issued license(s) are stringent and can result in the issue of a fine or imprisonment for a period up to three years, or both.

Further contact: Department of Agriculture, Fisheries and Forestry (Knysna Forestry Office), 044 302 6900 (tel.); 2nd Floor Derme Centre, Main Street Knysna, 6570;
<http://www2.dwaf.gov.za/webapp/ContactsRegionalForestryOfficers.aspx>

12. The Outeniqua Sensitive Coastal Area Extension (OSCAE) Regulations

The Outeniqua Sensitive Coastal Area Extension (OSCAE) Regulations, 1989 regulate certain activities on certain portions of coastal land in the Southern Cape that may potentially have a detrimental impact on the sensitive coastal environment. OSCAE Regulated activities include **disturbance of vegetation, earthworks, dredging and dune stabilisation** (including the planting of vegetation), and require an **OSCAER license** prior to commencement.



The following properties along the coastline, fall within the OSCAE regulated area: **432/4, 432/5, 432/29, 432/35, 432/R, 440/24, 440/25, 440/26, 440/45, 443/32, 443/62, 443/63, 443/76 and 443/R.**

Further contact: Bitou Municipality Planning Office, 044 533 6881(tel.); Monks View, Church Street, Plettenberg Bay; www.plett.gov.za/what-we-do/depts/led-and-idp.

13. The National Veld and Forest Fire Act (NVFFA)

The National Veld and Forest Fire Act, 1998, aims to **prevent and combat veld, forest and mountain fires**. In terms of the NVFFA all Land Owners are **wholly responsible** for the management, prevention and control of fire events on their land, and are liable for claims brought against them, such as for negligence or damages should a fire escape their land. This responsibility also includes for instance having sufficiently **trained personnel** available when there is a high fire risk, sufficient **protective clothing** and the necessary **fire-fighting equipment** as well as establishing **firebreaks** on their property. Land Owners must also notify the local **Southern Cape Fire Protection Association** (SCFPA) and neighbouring landowners in the event of a fire.



Firebreak between Caimbrogie farm and the MTO plantation

Land Owners are encouraged to join the SCFPA, which can assist them in compiling a **fire management plan** that can include for instance, identification of fire hazards, areas and schedules for controlled burns as well as fire management responsibility agreements among the member Land Owners. Such agreements may result in the strategic establishment of firebreaks around several Corridor members rather than individual firebreaks around each property for instance. If funds are made available, the SCFPA can arrange fire management training exercises for Land Owners.

Penalties for contravening the requirements of the NVFFA may result in the issue of spot fines up to R2 500, with the option that the case may be taken to the criminal court, where the court will determine a fine, or imprisonment, or both for larger offences.

Further contact: Department of Agriculture, Fisheries and Forestry (Knysna Forestry Office), 044 302 6900 (tel.); 2nd Floor Derme Centre, Main Street Knysna, 6570; www2.dwaf.gov.za/webapp/
Southern Cape Fire Protection Association: 044 302 6900 (tel.); www.scfpa.co.za

13. The Conservation of Agricultural Resources Act (CARA)

The Conservation of Agricultural Resources Act, 1983, (CARA) aims to maintain the **agricultural potential of land**, combat and prevent **erosion**, prevent the weakening or destruction of the **water sources**, protect **vegetation** and combat **weeds and invader plants**.



CARA regulates agricultural activities

Every Land Owner **must remove weeds and invader plants** on their land, and may not transport such plants or allow them to disperse. Such prohibited plants are listed as Category 1, 2 and 3 plant invaders in CARA. Furthermore, the **grazing capacity** of veld may not be exceeded, unless the veld is sufficiently protected against deterioration and destruction.

CARA regulates certain activities commonly undertaken by land users , which includes Land Owners, lessees or persons who have a legal right to use such land.
The land user must apply for written permission to:
1. Cultivate virgin soil.
2. Cultivate land with a slope of more than 12% .
3. Utilise vegetation in a vlei, marsh or sponge area , or within the flood area of a watercourse , in a manner that may cause the deterioration or damage to the natural agricultural resources .
4. Drain or cultivate a vlei, marsh or water sponge .
5. Cultivate within 10 metres horizontally outside the flood area of a watercourse .
6. Divert runoff water from a watercourse to any other watercourse.
7. Effect an obstruction that will disturb the natural flow pattern of runoff water or permit the creation of such an obstruction unless there is sufficient protection against water erosion .
8. Burn any veld or utilise as grazing any veld on a farm that has burnt.
The land user is obligated to :
9. Protect cultivated land effectively against water and wind erosion .
10. Protect irrigated land effectively against waterlogging and salination .
11. Remove vegetation in a watercourse to such an extent that it will not constitute an obstruction during a flood , that could cause soil erosion.
12. Protect the veld on a farm effectively against deterioration and destruction .
13. Effectively restore or reclaim land on which excessive soil loss due to erosion occurs or has occurred.
14. Effectively restore and reclaim any disturbed or denuded land on his / her farm.



Erosion has a detrimental environmental impact



Alien vegetation has a significant negative environmental impact

Penalties for contravening the requirements and obligations of CARA can result in the issue of a fine of up to R5 000 or imprisonment for a period up to two years, or both. A second conviction may result in escalated penalties.

What is cultivation of virgin soil?

Legally, cultivation means an act by means of which topsoil is disturbed mechanically; virgin soil is land that has at no time during the preceding ten years been legally cultivated.

What are natural agricultural resources?

Legally, natural agricultural resources include the soil, the watercourses and the vegetation excluding weeds and invader plants.

Further contact: Department of Agriculture, Forestry and Fisheries, Landuse and Soil Management Unit, 021 944 1425 (tel.); P O Box 380, Bellville, 7535; <http://www.daff.gov.za/>

15. The National Water Act (NWA)

The National Water Act, 1998, (NWA) recognises that water is a scarce and unevenly distributed national resource, and regulates certain water uses and impacts on water systems within South Africa. More specifically, a **Water Use License** is required for any activity which will **impede or divert the flow of water in a watercourse or alter the bed, banks, course or characteristics of a watercourse**.

It is important to note that **wetlands** are included into the definition of a **watercourse**. The implication of this is that **natural and artificial wetlands** are included in this definition. **It is strongly recommended that contact be made with an official at DWA to determine the requirements of any planned activity.**



Wet slopes in valleys are defined as wetlands



Artificial wetlands like dams are wetlands

Penalties for contravening the NWA or Water Use License requirements can result in the issue of a fine or imprisonment for up to a period of 5 years, or both. Repeat offences can result in escalated penalties, for instance, imprisonment up to ten years.

Further contact: Department of Water Affairs (Cape Town), 021 941 6000 (tel.); 17 Strand Street, Bellville, 7530;
<http://www.dwa.gov.za/contact.aspx>

16. The Nature and Environmental Conservation Ordinance (NECO)

The Nature and Environmental Conservation Ordinance, 1974, (NECO) deals with the administration and management of provincial reserves, such as Robberg Nature Reserve, as well as local and private nature reserves. Outside of such reserves NECO deals with the monitoring and management of **rare and endangered species**. The collection, removal, harvesting, possession, transport, export, purchase, sale, donation, or any other manner of acquisition or disposal of such species requires a **permit**. CapeNature administers NECO, which also covers the management of 'problem' animals such as monkeys and baboons.



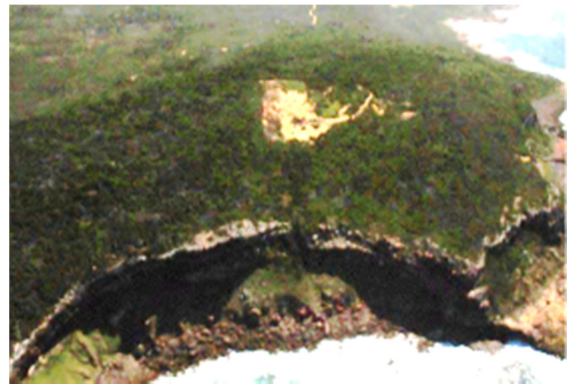
The Wilderness Forest Thicket (left) and Noetzie Proteod Fynbos (right) fall within the critical biodiversity area and contain rare and endangered species

Penalties vary in specific situations and may result in the issue of a fine up to R100 000 or imprisonment for a period of up to ten years, or both.

Further contact: CapeNature (George Office), 044 802 5300 (tel.); Private Bag X6546, George, 6530;
www.capenature.co.za

17. The Minerals and Petroleum Resources Development Act (MPRDA)

The Minerals and Petroleum Resources Development Act (MPRDA) requires all persons to apply for a **permit** prior to prospecting, mining, exploration, reconnaissance or production activities related to mineral resources, which **includes for instance borrow pits**, or the excavation of sand or for small-scale mining. Yet a Land Owner may for instance open up a borrow pit or excavate sand or other material for **personal use on their own land** without requiring such a permit; for example in upgrading the facilities and roads within their own land. However, the material may not leave the property; for instance being transported to a neighbouring property or sold commercially, without requiring such a permit.



Quarries and borrow pits are examples of activities that may require a mining permit

Permit applications are handled by the **Department of Mineral Resources (DMR)** and require the submission of an **Environmental Management Programme (EMP)**, and other information including a **financial guarantee** that the affected area will be rehabilitated. Mining related activities that affect areas greater than 1.5 hectares require a lengthy application for a **mining right**. Furthermore, no person may conduct commercial prospecting or mining activities within a protected environment without the written permission of the Minister of Environmental Affairs. It must be noted that over and above the MPRDA authorisations, LUPO and NEMA approval is also required for Listed Activities and rezoning and / or departures.

Penalties for commencing such activities without the required permits or rights generally include the issue of an instruction by the DMR to the offender to **rehabilitate the affected area at own cost**, as well as to apply for the required permit or right.

Further contact: Department of Mineral Resources (Cape Town Office), 021 427 1000 (tel.); 021 427 1046 (fax); Atterbury House, 9th Floor, c/o Lower Berg & Riebeeck Street, Cape Town, 8012; www.dmr.gov.za

18. The National Environmental Management: Waste Act (NEMWA)

The National Environmental Management: Waste Act, 2008, (NEMWA) aims to protect health and the environment by providing reasonable measures for the **prevention of pollution and ecological degradation** and for securing ecologically sustainable development. The Listed Waste Management Activities require a Waste License, involving an environmental impact assessment process under the **EIA Regulations**.



Litter and waste, south of Kranshoek

Summary of Waste Management Listed Activities <u>likely relevant</u> to the Robberg Coastal Corridor
1. The storage, including the temporary storage, of general waste at a facility that has the capacity to store in excess of 100m³ of general waste at any one time.
2. The storage, including the temporary storage, of hazardous waste at a facility that has the capacity to store in excess of 35m³ of hazardous waste at any one time.
3. The storage of waste tyres in a storage area exceeding 500m ² .
4. The sorting, shredding, grinding or bailing of general waste at a facility that has the capacity to process in excess of one ton of general waste per day, as applicable to the reuse, recycling and recovery of paper and cardboard, for instance.
5. The treatment of effluent, wastewater or sewage with an annual throughput capacity of more than 2 000m ³ .
6. The remediation of contaminated land .
7. The disposal of inert waste in excess of 25 tones and with a total capacity of 25 000 tons, excluding the disposal of such waste for the purpose of levelling and building which has been authorised by or under other legislation.
8. The disposal of general waste to land covering an area of more than 50m ² .
9. The storage, treatment or processing of animal manure at a facility with a capacity to process in excess of one ton per day.
10. The decommissioning of any listed activities.
11. The disposal, reuse, recycling or treatment of any quantity of hazardous waste.
12. The incineration of waste regardless of the capacity of such a facility.
13. The construction or expansion of facilities for listed activities, or as related to any amendment to a waste license.

Penalties with regard to the Waste Act are handled under the **NEMA** penalty procedures.

Further contact: Department of Environmental Affairs and Development Planning: Directorate of Waste Management, 021 483 2728 (tel.); www.westerncape.gov.za/your_gov/gsc/406 and click on "waste management".

19. Other Recent Legislation

A **List of Threatened Ecosystems** in need of protection was promulgated on 9 December 2011, under the National Environmental Management: Biodiversity Act, 2004 (NEMBA). It is important to note that remnants of both the Knysna Sand Fynbos biome and Garden Route Shale Fynbos biome are listed and fall within the Corridor. The **Garden Route EMF** was recently promulgated on 4 November 2011, under the Environmental Management Framework (EMF) Regulations. It identifies the extent of various environmental elements. This information must be taken into account in terms of municipal planning and environmental impact assessment processes.

Further contact: South African National Biodiversity Institute, 021 799 8738 (tel.); threatenedecosystems@sanbi.org.za or bgishelp@sanbi.org.za; <http://bgis.sanbi.org>, to access the GIS information
Sensitive Environments, Department of Environmental Affairs, 012 310 3911 (tel.)

References and Sources

- Dennis Moss Partnership. 2004. *Coastal Zone Policy for the Western Cape*. Department of Environmental Affairs and Development Planning of the Western Cape Province.
- Department of Environmental Affairs. 2010. *DRAFT National Strategy and Action Plan for Sustainable Development*.
- iKapa Enviroplan. 2009. *Western Cape PSDF: Guidelines for Rural Land Use Planning and Management*. Department of Environmental Affairs and Development Planning of the Western Cape Province.
- Kingwill, J. M., Bester, C. D., Dixon, J. 2010. *Implementation of Awareness Raising in the Garden Route MPAs*. C.A.P.E Programme., World Wildlife Fund for South Africa.
- Kingwill, J. M., Robinson, R. 2009. *Plettenberg Bay Vision Document and Operational Plan for the Bay: Bay Management Proposal*. Table Mountain Foundation, World Wildlife Fund for South Africa.
- Lombard, A. T., Clark, B.M. 2007. *A Marine Conservation Plan the Agulhas Bioregion: Options and Opportunities for Enhancing the Existing MPA Network*. C.A.P.E Programme.
- Lombard, A. T., Strauss, T., Stewart, W. I., Vlok, J. & Wolf, T. 2004. *A Rapid Conservation Assessment and Framework for a Conservation Plan for the Plettenberg Bay Municipality: BCU Report 2*.
- Van Tonder, C., Booth, P. May 2011. *DRAFT Management Plan for the Robberg Coastal Corridor Protected Environment*. CapeNature, Eden to Addo Corridor Initiative.

Legislation Cited

1. Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996)
2. National Environmental Management Act, 1998 (Act No. 107 of 1998)
3. Land Use Planning Ordinance, 1985 (Ordinance 15 of 1985)
4. Municipal Systems Act, 2000 (Act No. 32 of 2000)
5. Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000)
6. Wilderness-Knysna-Plettenberg Bay Structure Plan, 1983
7. GN No. R.543. Environmental Impact Assessment Regulations, 2010 (18 June 2010).
8. GN No. R544. NEMA Listing Notice 1. List of Activities and competent authorities identified in terms of sections 24(2) and 24D. (As corrected), 10 December 2010.
9. GN No. R545. NEMA Listing Notice 2. List of Activities and competent authorities identified in terms of sections 24(2) and 24D. (As corrected), 10 December 2010.
10. GN No. R546. NEMA Listing Notice 3. List of Activities and competent authorities identified in terms of sections 24(2) and 24D. (As corrected), 10 December 2010.
11. National Heritage Resources Act, 1999 (Act No. 25 of 1999)
12. National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008)
13. Minerals and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002)
14. GN No. 1199. Replacement of General Authorisation in terms of section 39 of the National Water Act, 1998 (Act No. 36 of 1998)
15. National Forest Act, 1998 (Act No. 84 of 1998)
16. GN R. 1526. Environmental Conservation Act 1989 (Act No. 73 of 1989) Identification of activities which may have a detrimental effect on the environment: Outeniqua Sensitive Coastal Area Extension, 27 November 1998.
17. National Veld and Forest Fire Act, 1998 (Act No. 101 of 1998)
18. Conservation of Agricultural Resources Act, 1983 (Act No 43 of 1983)
19. National Water Act, 1998 (Act No. 36 of 1998)
20. Nature and Environment Conservation Ordinance, 1974 (Ordinance 19 of 1974).
21. National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008)
22. GN No. 718. List of Waste Management Activities that have, or are likely to have a Detrimental Effect on the Environment, 3 July 2009.
23. GN No. 1002. National List of Ecosystems that are Threatened and in need of Protection, 9 December 2011.
24. GN No. 905. Adoption of the Environmental Management Framework for the Garden Route Area in the Eden District Municipality, Western Cape Province, 4 November 2011.

Appendices

APPENDIX A: Contact Details for land from Cairnbrogie Farm to Noetzie River

APPENDIX B: Property Zonation along the coastline

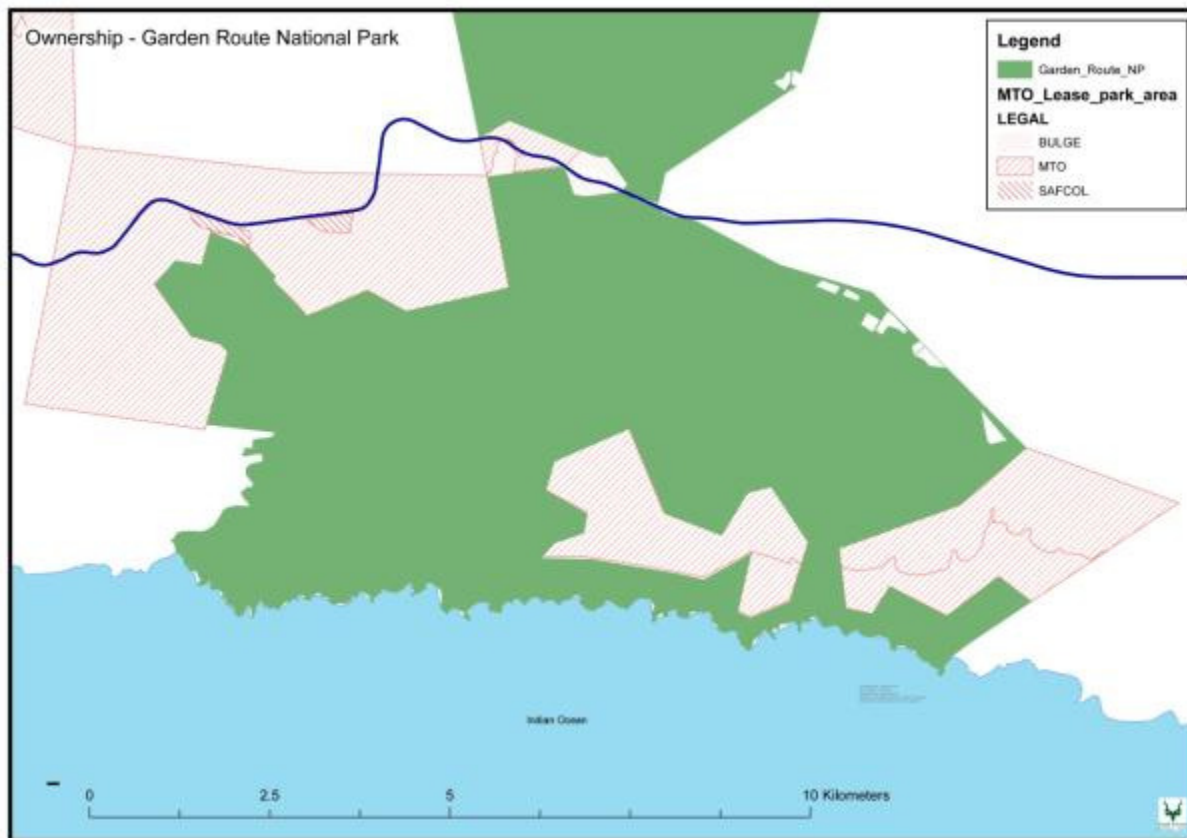
APPENDIX C: Contact Details for Organisations

APPENDIX D: Tax Incentive Mechanisms supporting Formal Protection

APPENDIX A: Contact Details for land from Cairnbrogie Farm to Noetzie River

GRNP contact details: Regional Manager, Garden Route National Park, 044 302 5600 (tel.); P O Box 3542, Knysna, 6570 and / or Thesen Island, Long Street, Knysna, 6570; http://sanparks.org.za/parks/garden_route/

MTO contact details: Area Manager, MTO Forest and Plantation, 044 375 0243 (tel.); Private Bag X009, Knysna, 6570



APPENDIX B: Property Zonation along the coastline

Property	Zoning
339/R	National Park
532	Forestry
432/R	Agriculture 1
432/35	Open Space 3 (Private nature reserve)
432/4	Agriculture 1
432/29	Agriculture 1
432/5	Agriculture 1
440/24	Agriculture 1
440/25	Agriculture 1
440/26	Agriculture 1
440/45	Agriculture 1
443/76	Agriculture 1
443/32	Agriculture 1
443/R	Agriculture 1
443/63	Agriculture 1
443/62	Agriculture 1

APPENDIX C: Contact Details for Organisations

Entity	Office	Contact Details
Bitou Municipality	Town Planning local office in Plettenberg Bay	044 501 3000 (tel.); 044 533 6881 (tel.); www.plett.gov.za/what-we-do/depts/led-and-idp
bluepebble independent environmental agency	Plettenberg Bay local office	082 777 0705 (tel.); 086 553 8837 (fax); jonathan@bluepebble.biz (email); Suite 30, Private Bag X1006, Plettenberg Bay, 6600; www.bluepebble.biz
CapeNature	George regional office	044 802 5300 (tel.); Private Bag X6546, George, 6530; www.capenature.co.za
CapeNature	Plettenberg Bay local office	044 533 2551 (tel.); www.capenature.co.za
Department of Agriculture, Fisheries and Forestry	Knysna Forestry regional office	044 302 6900 (tel.); 2 nd Floor Derme Centre, Main Street Knysna, 6570; http://www2.dwaf.gov.za/webapp/ContactsRegionalForestryOfficers.aspx
Department of Agriculture, Forestry and Fisheries	Landuse and Soil Management provincial office in Bellville	021 944 1425 (tel.); P O Box 380, Bellville, 7535; http://www.daff.gov.za/
Department of Environmental Affairs (DEA)	Oceans and Coast national office in Cape Town	021 819 2490 (tel.); East Pier Building, Pier Road, V&A Waterfront, Cape Town, 8000; www.environment.gov.za/branches/marinecoastal/about.html
Department of Environmental Affairs (DEA)	Sensitive Environments national office in Pretoria	012 310 3911 (tel.); dsmit@environment.co.za or frawjee@environment.co.za
Department of Environmental Affairs and Development Planning (DEA&DP)	Environmental Management regional office in George	044 805 8600 (tel.); www.westerncape.gov.za/your_gov/gsc/406
Department of Environmental Affairs and Development Planning (DEA&DP)	Town and Regional Planning in George regional office	044 805 8600 (tel.); www.westerncape.gov.za/your_gov/gsc/406
Department of Environmental Affairs and Development Planning (DEA&DP)	Waste Management provincial office in Cape Town	021 483 2728 (tel.); www.westerncape.gov.za/your_gov/gsc/406
Department of Mineral Resources (DMR)	Cape Town provincial office	021 427 1000 (tel.); 021 427 1046 (fax); Atterbury House, 9th Floor, c/o Lower Berg & Riebeeck Street, Cape Town, 8012; www.dmr.gov.za
Department of Water Affairs (DWA)	Cape Town provincial office	021 941 6000 (tel.); 17 Strand Street, Bellville, 7530; http://www.dwa.gov.za/contact.aspx
Eden to Addo Initiative	Plettenberg Bay local office	044 533 1623 (tel.); P O Box 1, Plettenberg Bay, 6600; admin@edontoaddo.co.za (email); www.edontoaddo.co.za
Garden Route National Park (GRNP)	Knysna regional office of South African National Parks (SANParks)	044 302 5600 (tel.); P O Box 3542, Knysna, 6570 and / or Thesen Island, Long Street, Knysna, 6570; http://sanparks.org.za/parks/garden_route/
Heritage Western Cape (HWC)	Cape Town provincial office	021 483 5959 (tel.); 021 483 9842 (fax); Protea Assurance Building, Greenmarket Square, Cape Town, 8000; www.westerncape.gov.za/eng/directories/public_entities/1063/72512
Robberg Coastal Corridor Land Association (RCCLA)	Plettenberg Bay local office	044 533 1623 (tel.); P O Box 1, Plettenberg Bay, 6600; admin@edontoaddo.co.za (email); www.edontoaddo.co.za
Shaun J McMillan Land Surveys	Plettenberg Bay local office	044 533 3072 (tel.); info@sjsurveys.co.za (email)
South African National Biodiversity Institute (SANBI)	Cape Town national office	021 799 8738 (tel.), threatenedecosystems@sanbi.org.za (email) or bgishelp@sanbi.org.za (email) http://bgis.sanbi.org
Southern Cape Fire Protection Association (SCFPA)	Plettenberg Bay local office	044 302 6900 (tel.); www.scfpa.co.za
Trevor Wolf GIS Services	Knysna local office	044 384 0084 (tel.); 086 689 3552 (fax); wolft@mweb.co.za (email)

APPENDIX D: Tax Incentives Mechanisms supporting Formal Protection

National Government recently promulgated tax incentive mechanisms in support of protected area expansion and securing threatened ecosystems. Landowners may enter into the following partnership agreements to conserve their land for biodiversity. In response to the commitments of landowners to secure biodiversity on their land as outlined above, the Treasury has recognised that:

- Landowners have forgone use rights to their land, which have inherent value, and
- Landowners often incur substantial costs in managing their land.

Land can be formally declared in the form of either:

- A Biodiversity Management Agreement (NEMBA)
- A Protected Environment (PAA) (Management Plan)
- A Nature Reserve or National Park (PAA) (Management Plan)

The latter two agreements also require formal declaration and restrictions on the land. The three different scenarios are addressed by the following tax incentive mechanisms:

A. Biodiversity Management Agreement (minimum contract of 5 years)

- All conservation and maintenance expenses in terms of a BMA are treated as expenditure in production of income.
- Only expenses reflected in the BMA are deductible.
- Capital expenses are not included.
- Deductions are only allowable on income generated from the land or land in close proximity.
- Deductions may not exceed the income in the year of deduction, however roll over deductions are permitted.
- If the taxpayer breaches the BMA, deductions will be recouped.

B. Protected Environment, Nature Reserve, National Park (minimum contract of 30 years)

- All conservation and maintenance expenses are deemed to be section 18A deductible donations.
- All expenses required by the Management Plan can be deducted from taxpayers taxable income.
- An 18A deduction may not exceed 10% of the taxpayers' taxable income.
- If the taxpayer breaches the agreement deductions will be recouped.

C. Nature Reserve, National Park (minimum contract of 99 years)

The value of the land is deemed to be a section 18A deductible donation. This deduction must follow certain prescribed guidelines, outlined below:

- The deductible amount does not include portions of the land over which the taxpayer has right of use (i.e residential footprint, commercial lodge).
- The deductible amount is initially equal to 10% of the lesser of, the cost to purchase the land or the market value of the land (using formula below).
- Deductions take place in the year of declaration and the following nine years.
- No roll over is allowed (i.e. no income no deduction).
- If the taxpayer breaches the agreement deductions will be recouped.

$$10\% \times \text{Lesser of cost or market value declared} \times \frac{\text{Market value of land declared}}{\text{Market value of land declared} + \text{market value of land rights retained}}$$

