CHAPTER 4  ENTRY UPON LAND

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4.1 OVERVIEW

4.1.1 In order to comply with its obligations under the Act, the SANRAL will, from time to time, have to enter upon a third party's land.

4.1.2 Apart from merely having access to such land, the SANRAL may be required to carry out certain work on the land of a third party.

4.1.3 Section 43 of the Act deals with the circumstances under which the SANRAL, or its duly authorised agent ("the SANRAL's delegate"), may enter upon the land of a third party.

4.2 AUTHORITY OF AND/OR RESTRICTIONS PLACED ON THE SANRAL

4.2.1 Entry upon a third party's land is only allowed under specific circumstances:

4.2.1.1 The SANRAL's delegate gaining entry must either be a member or employee of the SANRAL or must be authorised in writing by the Board;

4.2.1.2 The purpose of gaining entry must be to carry out, on or below the surface of the land, or in connection therewith, any investigation, survey, observation or other act necessary or in connection with the exercise or performance of a power, function or duty conferred or imposed on the SANRAL in terms of the Act;

4.2.1.3 The owner of the land must have granted permission for such entry.

4.2.2 The SANRAL's delegate may take obligations under the Act, the SANRAL will, from time to time, have to enter upon a third party's land in order to undertake the required work.

4.2.3 If the owner of any land refuses to allow the SANRAL's delegate to gain entry upon his or her land, then an application can be made to the High Court having jurisdiction over that land for an order authorising such entry, provided that the Court is satisfied that the entry is reasonably necessary and justifiable in the circumstances. In determining this, the Court will take the following factors into account:

4.2.3.1 the purpose for which the SANRAL's delegate requires entry upon the land;

4.2.3.2 the importance of the purpose of the owner's refusal to allow entry;

4.2.3.3 the nature and extent of the refusal to allow entry;

4.2.3.4 the relation between the refusal to allow entry and its purpose;

4.2.3.5 ways in which the objectives of both parties can be achieved.

4.2.4 The SANRAL is not entitled to apply to Court to gain access to a dwelling or other building on the land which is used for residential purposes. However, if the occupier of such dwelling or residential building is
prepared to allow access for the purposes described above, then the SANRAL may gain entry by agreement.

4.2.5 A Court allowing entry to land will specify precisely the purpose of such access and the basis on which it must take place.

4.2.6 The SANRAL is also required to repair or pay for any damage arising from its entry upon land.

4.3 POLICIES AND PROCEDURES

4.3.1 In the event that the SANRAL appoints a surveyor, engineer or other third party ("the SANRAL's delegate") to undertake investigations, survey, observation or any other act on its behalf, the SANRAL shall grant such person authority to gain entry upon land.

4.3.2 Such authority shall provide for the following:

4.3.2.1 the SANRAL's delegate shall not gain entry to the land without the permission of the owner of such land;

4.3.2.2 the SANRAL's delegate shall approach the owner and request such permission;

4.3.2.3 if permission is granted, then the SANRAL's delegate may proceed with the required work;

4.3.2.4 the SANRAL's delegate must retain details of when and where such permission was granted and by whom.

4.3.3 If permission is not granted, then the SANRAL's delegate shall report this to the SANRAL.

4.3.4 The SANRAL shall then issue the SANRAL's delegate with a letter addressed to the owner, formally requesting the owner to allow the SANRAL's delegate to enter upon the owner's land for the purposes described above.

4.3.5 In the event that the owner still refuses to allow the SANRAL's delegate to gain entry to the land, then the SANRAL shall address a further letter to the owner and thereafter, if necessary, an employee of the SANRAL shall arrange to meet with the owner in an attempt to persuade the owner to comply with his or her statutory obligations.

4.3.6 In the event that the owner refuses to co-operate, then the SANRAL shall apply to the High Court for an order compelling the owner to allow the SANRAL's delegate to gain entry upon the land, and shall seek an order for costs.

4.3.7 Prior to the commencement of any legal action, the written approval of the SANRAL's Chief Executive Officer must be obtained.

4.3.8 In the event that it is necessary to proceed with an application to court, the person signing affidavits on behalf of the SANRAL must have delegated authority to do so.
4.4 ANNEXURES

4.4.1 ANNEXURE 4.1 - Precedent of a letter requesting authorisation to enter upon land

4.4.2 ANNEXURE 4.2 - Precedent of a letter requesting authorisation to enter upon land in the event that authorisation is initially refused.
4.4 ANNEXURES

Annexure 4.4.1 Precedent of a letter requesting authorisation to enter upon land

This is an example only and must be adapted to suit the circumstances

TO WHOM IT MAY CONCERN

Dear Sir

DESCRIPTION OF NATIONAL ROUTE / PROJECT

The South African National Roads Agency Limited ("the SANRAL") is undertaking a feasibility study with respect to the above-named project.

It is necessary for the SANRAL to undertake certain investigations along the proposed route for the benefit of the feasibility study and design process. This work includes, but is not limited to:

1. land surveying work including topographical mapping, the establishment of survey beacons, the establishment of stone crosses and stone beacons;

2. conducting geotechnical investigations, which may include the drilling of holes or excavation of material.

We confirm that the following persons have been authorised to undertake this work on behalf of the SANRAL:

   (a) *
   (b) *

We would be grateful if you would grant permission for the above-named persons to gain entry to your land in order to undertake the required work.

We confirm that we shall instruct the above-named persons to ensure that all gates on your property are kept closed. Wherever possible, use shall also be made of existing roads.

We look forward to receiving your co-operation in this matter.

Yours faithfully
4.4 ANEXURES

Annexure 4.4.2 Precedent of a letter requesting authorisation to enter upon land in the event that authorisation is initially refused
This is an example only and must be adapted to suit the circumstances

Dear Sir

DESCRIPTION OF NATIONAL ROUTE / PROJECT

We refer to our letter to you dated *, a copy of which is enclosed for ease of reference.

We have been advised that you have refused to authorise * to gain entry to your land in order to undertake the work we require to be done.

Please note that in terms of section 43(2) of the South African National Roads Agency Limited and National Roads Act, 7 of 1998, if you do not grant such permission, the South African National Roads Agency Limited (“the SANRAL”) may apply to the High Court for an order entitling it and its agent to such access. Should such an application be necessary, the SANRAL shall seek an appropriate order for costs.

We obviously wish to deal with this matter without recourse to litigation. We would appreciate it therefore if you would advise us, within * days of date of this letter whether you are prepared to allow * to enter on your land, failing which we will have no option but to take such steps as may be necessary.

All our rights are hereby reserved.

Yours faithfully