SAPOA

THE VOICE OF COMMERCIAL PROPERTY

www.sapoa.org.za

# COMMENTS ON THE EFFICACY OF SOUTH AFRICA'S ENVIRONMENTAL IMPACT ASSESSMENT REGIME: A CALL FOR RESPONSES TO GOVERNMENT'S LEGISLATIVE AND POLICY FRAMEWORK TO STRENGTHEN ENVIRONMENTAL GOVERNANCE AND THE SUSTAINABILITY OF OUR DEVELOPMENT GROWTH PATH

SAPOA welcomes the process of improving the EIA process. In our view the current process is often overly complex, long and expensive. There seems in fact to be consensus on this across government, NGOs, business and academics. We believe the process can be substantially slimmed down.

SAPAO believes that environmental issues are important and should be effectively dealt with. SAPOA believes however, that the current process is not achieving this in an effective way. We also believe, along with the other stakeholders, that the key to what must be improved is implementation. Our focus therefore is on delivery and implementation.

We have therefore various suggestions for how this can be accomplished.

**Executive Summary**

The essence is

1. to develop faster, more rational and more cost effective processes for achieving the goals of the EIA process – we spell this out in detail.
2. to remove as many unnecessary types of EIA from the process (e.g. petrol stations). This is bipartisan: environmental Groups at the meetings also are wanting lesser EIAs for small developments
3. to remove EIAs from situations where standards can replace EIAs – ie when the risks and mitigating procedures are well known
4. to make the process less burdensome in cases where EIA are needed but the environmental risks are relatively minor
5. to identify spatial zones where previous EIAs or possibly SEAs and EMFs have revealed that the environmental risks are small or large and require EIAs, partial EIAs or no EIAs based on this information.
6. to devote the resources of the department to the smaller number of cases where the risks are significant.

Our comments in this section are converted into proposed new sections to the regulations in Appendix A.

## 1. Efficient Processes

1.1. Standardised and less onerous procedures must be designed for commonly occurring applications resulting from commonly occurring situations. In many cases these should not be EIAs but simply a question of standard procedures that must be followed when building and particular permissions from various departments.

## 2. Reduced Requirements

Before we start to look at how to make regulatory processes more efficient, we need to ask if the particular regulations should exist in the first place. Getting rid of regulations that don't pass a cost/benefit analysis is always the first priority.

2.1. Identifying situations where EIAs are not necessary.

A process must be developed to identify situations where an EIA or certain aspects of an EIA are not required

Land not identified as sensitive on EMPs must not require EIA, but a lesser kind of study

EIAs must not be required for situations like Petrol Stations (for example). Other areas will be identified.

Where receiving environment is the least sensitive then less or nothing should be required.

The committee must identify situations where PPP is not required. Different categories must be prioritised and deprioritised. Some processes need only notice and comment and not full PPP. Perhaps anything under R2 millionfor example.
Some processes should only require that it is discussed with surrounding neighbours.
On the other hand we accept that there may be some issues where greater studies would be required.

2.2. Reduce the need for service by not requiring certain(less important) kinds of EIAs until capacity reaches a level where it can cope with that kind. In other words, certain kinds of EIAs are only required only the province has the capacity to process them within a week or so at each stage.

2.3. Measure and publish online the average times that application are taking with violations triggering other measures such as recruiting more staff, contracting out, not requiring EIAs for certain types of application for a while (perhaps rather registering on a website as an alternative so the department is at least aware of these situations). Measures can become

more sophisticated with time to weight differently for longer and more extensive types of application.

2.4. Contracting out to private companies if time limits exceeded. This is a particularly useful strategy in two main circumstances.

2.4.1. The first is where budget is available but the authority has not been able to train or recruit sufficient staff. It is submitted that there will always be some EAPs and other professionals available to pick up the slack at some price.

2.4.2. The second is where external companies are able to process applications at a cheaper price per application than is possible internally. In this case, private companies should be used in preference to expanding the department staff and existing staff should not be replaced when they leave.

2.4.3. Even when the cost per application is higher externally, this can still be used where there are backlogs, unexpected inflows, temporary staff absences (e.g. due to pregnancy) or where applicants are willing to pay extra for a fast track process. We will discuss this below.

**3. Dual Processes: one stop process**

3.1. **Concurrency/ Simultaneous Processing**

3.2. EIAs, Planning, heritage, water license, etc applications must be considered concurrently. Information submitted to one should be considered available to the other. Electronic systems to facilitate must be designed.

3.3. Efficiency and Streamlining in the EIA Process

The EIA approval process is at the current time somewhat inefficient and there is a great opportunity in these regulations to reduce these inefficiencies substantially. These include:

3.3.1. Requiring those departments that need to give permissions to do them simultaneously where currently they are sequential.[1]

3.3.1.1. - application for land development,

3.3.1.2. - application for authorization in terms of National Environmental Management Act, 1998

3.3.1.3. - - application for consent in terms of Section 53 of the Mineral and Petroleum Resources Development Act (MPRDA), 2002

[1] That is not to say they are at the current time always sequential. Sometimes now they are concurrent.

3.3.1.4. - application for consent in terms of the Subdivision of Agricultural Land Act, 1970

3.3.1.5. - application for permission in terms of the National Heritage Resources Act, 1999

3.3.1.6. - application for a permit in terms of the National Water Act, 1998

3.3.2. Requiring consultation and public comment periods under different acts to happen simultaneously rather than sequentially. In particular (but not restricted to), the following:

3.3.2.1. - application for land development,

3.3.2.2. - application for authorization in terms of National Environmental Management Act, 1998

3.3.3. The requirements of the various consultation processes must be streamlined and where possible become one process where the public can comment on all aspects of the process.

3.4. What is required, is a single application process for e.g. Act 70/70, EIA, heritage, zoning and sub-divisional applications and for the various departments involved in each of the various pieces of legislation to enable themselves to engage on a single application process. The new regulations should create the ability for this to occur. The DFA in a sense, accomplished this to a significant degree which is why it was so successful.

3.4.1. One document goes to 7 departments and they come together and agree.

3.4.2. It is understood that perhaps a one stop shop not feasible (where one decision makers decides for everyone) but a one stop process is possible. This is simply co operative government.

## 4. Making it Easier for the Administration

It is recognised that if the process is made easier for the administration then it will be quicker for their clients.

4.1. There must be a compulsory 15 page summary for EIA report (or 15% of the total whichever is less)

4.2. It should be considered that the two stage process (S&EIR) be replaced with one stage (but more involved than BAR).

## 5. Processing time

**Section 9 of the Current Regulations**

**9** (2) Where the applicable timeframes contemplated in regulations 24(1)(a), 25(1), 30(1), 34(2) or 35, as the case may be, are not met, those applicable timeframes are automatically extended by 60 days.

These timeframes are effectively 60 days longer than they appear.

The basic time frames ( before adding 60) are thus:

**Basic**
24 (1) allows 30 days to acknowledge receipt of a BAR[2] , accept it if it complies or reject it.
25 (1) allows 30 days to grant or refuse the authorisation of all or part of the activity.

**(Thus including the extensions, the whole process may take 30+60+30+60 = 180 days just for the administrations part in the process (not counting PPP and EAP work), without there being any legal redress.)**

**Scoping /EIAR**
30 (1) allows 30 days to accept or reject the scoping report; or request amendments.
34 (2) allows 60 days to accept or reject and EIAR[3]
35 allows 45 days grant or refuse the EIAR
**(Thus including the extensions, the whole process may take 30+60+60+60 +45+60 = 315 days just for the administrations part in the process, (not counting PPP and EAP work), without there being any legal redress.)**

5.1. Section 9 (2) must be deleted entirely.

5.2. These time frames must be reduced to one week for each government stage.

5.3. Time Frames

Overall, total time periods for zoning permission and for EIAs should each be less than three months (for basic assessment). As far as possible, where the two are submitted together they should be dealt with simultaneously and not require one to be completed for the second one to start.

Procedures must be put into place to ensure that particularly large developments where many jobs are at stake, should be processed without delay.

The time frames mentioned[4] need to be specified in the legislation, at least as default periods which municipal or provincial legislation can amend.

[2] Basic Assessment Report
[3] Environmental Impact Assessment Report
[4] Section 6 c iii quoted above.

In consultation with the South African Planning Institute (SAPI), presuming the changes under the above section are implemented, we recommend the following time periods for different types of applications (concurrently when this is not impossible):

5.3.1.- application for land development: Four (4) to six (6) months

5.3.2.- application for authorization in terms of National Environmental Management Act, 1998: Four (4) to six (6) months

5.3.3.- application for removal of restrictive title conditions in terms of the relevant legislation (depending on the province): Two (2) to four (4) months

5.3.4.- application for consent in terms of Section 53 of the Mineral and Petroleum Resources Development Act (MPRDA), 2002: Two (2) months

5.3.5.- application for consent in terms of the Subdivision of Agricultural Land Act, 1970: Two (2) to four (4) months

5.3.6.- application for permission in terms of the National Heritage Resources Act, 1999: Two (2) to four (4) months

5.3.7.- application for a permit in terms of the National Water Act, 1998: Two (2) to four (4) months

5.4. 9 (2) – repeal – time periods should not be made to be broken.

5.5. The numbers in regulations 24(1)(a), 25(1), 30(1), 34(2) or 35 reduced to 7 (seven) days in each case.

5.6. The procedures in 9 (3) may apply to 9 (4) also and further procedure discussed in this report must then be triggered to capacitate the process.

## 6. Procedures for lack of capacity

6.1. Staff and Training

6.1.1. Specific procedures must be adopted for ensuring that there are enough staff and enough trained staff in the legislation or that the processes are contracted out.

6.1.2. One possibility is partially trained staff who can only process one particular type of application and who don't necessarily have the breadth of fully trained staff. Such staff can be quicker to train if staff are needed urgently and may also be cheaper to employ until they reach full competency.

6.2. Meetings

6.2.1. Where possible a procedure should be established where rather than an application travelling from one department to another sequentially, there should be a meeting of all departments involved to agree each aspect of the proposal that affects their area.

6.3. Workflow

6.3.1. We suggest that regulations provide that a workflow process is set up either electronically or otherwise to ensure documents don't sit on someone's desk for weeks or months without moving forward. Time periods are necessary for how long it takes to begin an application as well as for how long the Town Planner takes to sign off at the end. These systems can also track the flow of applications to the applicant and ensure no application is forgotten about.

6.3.2. A similar time limit should be required for Mayoral committee[5] sign off if that is still going to be necessary, and a full quorum should not be required in most cases.

6.4. The process would benefit from being professionally re- engineered.

**7. Fast Track**

7.1. Special fast track EIA for infill, outfill, brownfields and other desirable developments.

7.1.1. That each of the authorities proactively designate 20 areas per year [or specify an area per year] that are desirable developments areas, that will automatically be approved or will benefit from a fast track process.

7.1.2. That there is a fast track process for infill developments (not restricted to those specified in one] that takes less than thirty days.

7.1.3. That provincial government establish a process for pre approving sites .

7.1.4. That this fast track process does not slow track other sites i.e. carrots are preferable to sticks.

7.2. Developer Financed fast tracking processes

One of the advantages of the previous land use system having the two acts that are being repealed by SPLUMB is that it meant that the developer could choose the most efficient forum in his area. This option is no longer available. Other mechanisms are therefore needed to provide more efficient options for developers who may be in a situation of losing millions per day in capital charges due to delays and inefficiencies in the process.

Provision should be made in the Act for fast tracking any development where the developer is willing to pay the additional administration cost of that process. This should never be a

[5] The primary reference to council or Mayoral sign off is to Town Planning applications but if the two processes were to be merged then this would have to be taken into account in EIA apps.

requirement imposed on a developer but an option permitted to him if he prefers a faster process time.

This could be done by the authority having a system in place whereby it knows of people who are willing to work overtime or retired or otherwise available. These people can be brought in when one or more developers wish to pay the cost of this additional process or where there is a backlog.

It is important that resources from the normal application process are not used for this purpose because then other developers who are not paying extra would be slowed down by the one who is. Ordinary applications should in fact be speeded up by this process as the fast track application is not using the ordinary staff.

The price for the fast tracking service should be close to its cost price and not an inflated price.

Alternatively, the whole fast track process can be outsourced to a third party company.

The obligation for government to establish a fast tracking process must be in the regulations.

7.3. Further Fast Track

7.3.1.Arbitration

Another form of fast track is allowing arbitration by a qualified arbitrator to replace or augment tribunals if they are taking longer than a month to hear a matter.

7.3.2.Development facilitation unit

Some provinces have developed special units to facilitate development.

## 8. Preapprovals

Certain land must be identified for pre approval.

One successful EIA can be looked at to provide pre approvals to those around, at least on certain things. These must be entered on a GPS system.
The administration must do this post approval, or at lease advertise willingness to do so within a certain time if anyone indicates interest.
Pre approval components last a certain amount of time depending on their changability. For example, presence or absence of red data species may need to be reviewed if such species are seen again in the area. Geology on the other hand is less likely to change.

8.1. Overall Screening

From the Subtheme report 9 section 4 " This could include screening for compatibility with plans, standards and guidelines in the areas they are proposed, prior to the identification and assessment of impacts and alternatives. Such a measure is heavily dependent though on the quality and content of the reference planning instruments. For example, if Spatial Development Frameworks are used as screening reference, there needs to be assurance that they were developed in such a way that sensitive or non sensitive environments have been identified accurately. The use of strategic references and planning could, however, be used in some situations to completely negate the need for site or project specific investigations."

This must be a constant theme of the new regulations: no EIA required because a prior study by government or otherwise has already identified impacts for that area.

8.2. EMFs must be in place and provide automatic authorisations.

"One of the consequences of the current inordinate reliance on the regulatory requirements of the EIA process is that related tools such as Environmental Management Programmes are neglected, thereby eroding the effectiveness of the entire environmental management cycle. The concern is that EMP compilation comes too late in the environmental assessment and management process. It is believed that many concerns of the public or government officials could be addressed in proper management of the environment as opposed to an obsessively detailed investigation. EMPs should therefore be used to describe the qualitative and quantitative environmental management measures to be employed during the actual development process, based on the information on environmental impacts and levels of acceptability established during the environmental assessment process. Closer contact and better communication should also be established between the development proponent, environmental assessment practitioners, contractors and building construction councils in order to make EMPs as practical and relevant as possible. Additionally, or alternatively, there should be allowance for peer review by persons with experience in construction/ implementation."

"EMPs do, however, need to be dynamic tools that can adapt to changing circumstances and conditions in order to ensure an optimal strategy for environmental management during project implementation. This becomes problematic when there are different stakeholders involved and amendment processes that take time to conclude. The principle and practice could therefore be at odds. "[6]

8.3. Proactively Identified Land

We applaud that there should be mechanisms for identifying land suitable for development[7]. We would like to extend that idea to include the concept that once such land has been identified, the authority must proactively approach land owners to tell them that the land can be fast tracked for development should they wish. If they do not wish to develop then the authority should continue with other land until they find land owners willing to develop in these areas.

[6] Subtheme report 9, section 4

[7] As with the new SPLUM S 8 (c) iv

Each authority should have the obligation to have a team (or at least a person) for this purpose

The regulations should explicitly state that the mechanism should be voluntary

If the mechanism is not voluntary is should state that full market value of the land should be paid in terms of Section 25 of the constitution and perhaps in excess of the market value. (If the owner had wanted to sell he would have done so already, so the property must be worth more than the market value to him.). If the mechanism is not voluntary then the appropriator must justify the measure fully in terms of a clear public interest where the benefits outweigh the costs by a considerable margin.

Further strict criteria should be introduced. A society that does not protect property rights strictly is not a society where rapid economic development occurs.

## 9. Improving the improving of the Planning Process

Not only should the regulations be improved once off in the manner we are discussing but processes must be designed so the regulations (or processes under the regulations) are in fact being continually improved.

### 9.1. Continual Improvement to the EIA Process

The regulations must provide for mechanisms whereby organs of state at all levels as well as industry bodies, NGOs and other groups can challenge the efficiency of the EIA process and suggest better, cheaper and quicker processes.
This could be done by at provincial level or as a last resort, at the High Court.

If the case is proven then the regulations must provide that the authorities then must implement these processes.

#### 9.1.1. Improving the Fast Tracking Processes

The process for how these decisions must be arrived at must be open and challengeable by an interested party who can suggest and better, cheaper or faster process that still delivers the EIA goals desired.

For provincial government to regularly re engineer and simplify the processes of the authorities and to establish a ways for interested parties to challenge the process should be a provision of the regulations.

9.2. Multiple Approvals

The provisions of Section 28 and 29 of the new SPLUMB Bill that allow for the approval processes to become single processes for multiple approvals must be made compulsory in the EIA regulations also. This is a priority.

## 10. The DFA and creating a bias for approvals

The DFA[8] called for "extraordinary measures to speed up development programmes and project with respect to land": the EIA regulations seem to have lost that urgency and need to reintroduce it.

DFA desired to facilitate:

> Section 3 General principles for land development
> (1) The following general principles apply, on the basis set out in section 2, to all land development:
> (a) Policy, administrative practice and laws should provide for urban and rural land development and should facilitate the development of formal and informal, existing and new settlements."
>
> This principle should also be included in the new bill.

The regulations must create an environment that is friendly to development.

10.1.1.1. That means it must create an environment where if there are no clear reasons why the proposal should not be accepted, that it should be, without unnecessary delays.

10.2. The emphasis overall should be on maximising positive impacts as well as minimising negative ones and the regulations should be changed to reflect this.

10.3. Also, "it is important to make explicit recognition of the need to promote and facilitate economic growth through new investment, economic development and employment development."[9] This should be an explicitly recognised principle.

10.4. In fact the DFA must be explicitly studies and modelled by the group to learn from it and from any lessons that come out of it. Simply because it cannot be applied at provincial level any more (after the Constitutional case) does not mean that much cannot be gleaned from its processes.

## 11. Developing New Processes

[8] Development Facilitation Act
[9] Sapoa member.

11.1. A process need to be developed for challenging the basis for when something is a listed item .

## 12. Decision making based on balance

Although it may seem obvious, the principle of balance should be explicitly states as the decision making mechanism for administrators:

High environmental cost to proceed /low economic cost to decline : Decline

Low environmental cost to proceed /High economic cost to decline: Proceed

We wish to avoid large, important project being held up or declined on behalf of very unimportant environmental criteria. We also wish to avoid matters of huge environmental concern being ignored for projects of small economic importance.

12.1. List of priorities.

The above concept of balancing involves something of a prioritising of environmental issues ,sometimes a difficult thing to do but very necessary. This enables us then, when we need to sacrifice growth and development, to do so only in proportionate to higher environmental values.

## 13. Environmental Impact Tools

Many of the issues highlighted in Subtheme 9 Section 4 we felt were of particular use:

13.1. Screening

"One of the main criticisms of the environmental assessment and management process is that it places onerous assessment requirements on projects that do not merit time and resource intensive investigation. Although the current EIA regulations go to great lengths to apply a screening framework to limit the need for unnecessary impact assessments, the common consensus is still that the current environmental assessment system can benefit from further 'streamlining' through additional levels of screening. "[10]

13.2. Reduce unnecessary activities

For example, EIAs are not appropriate for petrol stations so the latter should be governed by standards. There must be an ongoing process of moving areas from EIA to standards on a quarterly basis. Submissions should be continually received about this.

13.3. Reduce unnecessary components.

[10] Subtheme 9 Section 4

”The current EIA screening process already looks at project extent, context, geographic location, history and sensitivity, but once and EIA is triggered, a default application and assessment has to follow irrespective of the actual details of the development. It can be argued that there should be mechanisms to further reduce the requirements for the environmental assessments even if EIA authorizations are required.”

13.4. Reduce components earlier in the process

“A simple or rapid screening process could possibly be applied at an early stage in the assessment cycle in order to determine further requirements for assessment. “

13.5. Norms and Standards

“The use of Norms and Standards as a screening tool for EIA has been touted for some years now, and the enabling legal provisions already exist. The idea is that for standard activities where accepted norms and standards (e.g. SABS standards) exist, the need for additional assessments and authorizations should be eliminated in favour of a focus on self-regulation and heavy penalties for non-compliance. The application of norms and standards further allow for the control of activities that do not ordinarily require environmental impact authorizations yet have the potential to impact on the environment.”

13.6. De- bureaucratise EIA

“It has been presented variously in this report, that EIA has become too many things to too many people. What is expected of EIA goes way beyond what EIA as a mechanism can ever hope to achieve. In addition to this is the fact that as the sole regulatory process for authorising a whole suite of activities, EIA has become administratively heavy and is now largely a bureaucratic administrative process rather than the effective decision-making process that it should be. Again, as has been argued previously, the various amendments to the EIA regulations have not appeared to materially change the effectiveness of EIA in preventing impacts on the environment or indeed improve decision-making. For example, the opportunity for exemption has been almost eliminated despite the fact that it is well-recognised that there will always be ambiguity in the listed activities and that in some instances a technical definition of an activity forces a full-scale EIA process where nothing more than a basic assessment or even less is really required.”

“It is considered that one of the reasons for this bureaucratisation of the EIA process is a severe lack of capacity on the part of the authorities. This is not offered as a criticism of the authorities

necessarily but rather as a suggestion for better directing the resources that are available to the authorities. A single case officer may receive a multiplicity of applications that have to do with multiple activities and multiple potential impacts on the environment. It is simply unfair to expect of the official to be an expert in each and every one of these cases. As such it is considered that if an effective review process was developed and implemented that was outside the direct responsibility of the authorities, the authorities could then focus on the decision-making requirements of EIA. This would significantly reduce the workload of the individual case officers and create the space required for continual improvement of the decision-making process.[11]

## 14. Tribunals

14.1.1. It is desirable that the numbers in the tribunals be specified and that a specified number or proportion of private sector participants should be included on the tribunal and that a maximum of 50% be public servants.

14.1.2. The regulations must state that the Tribunals must answer any matter properly before them within 1 month and provide mechanism for providing additional tribunals when the current ones have a backlog of cases.

14.1.3. The Bill should also make specific reference to the need for the authority to be responsible for the effective and efficient management of the Tribunal – i.e. Funding, secretarial functions etc.

14.1.4. It must be specified that, in the event of under-capacity, certain types of decision can be referred to arbitrators who are qualified in the field. After a time period of 2 months has elapsed and the matter has not been heard, the applicant must have a right to take the matter to arbitration instead of the tribunal.

14.1.5. It should be clearly stated that only registered and affected people can appeal the decision and that it must be either a review of bad process or a matter of law. Retrials on the same facts should not be permitted just because a party disliked a decision.

14.1.6. The rules of the High Court or at least the Magistrates Court should apply to these tribunals or at least a simplified version. Tribunals that are not subject to any rules are subject to the risk of unjust process and no one has any guidance as to what they are expected to do or what is considered fair.

[11] Subtheme 4

## 15. Spatial Planning/ EDMs/ SEA/ EMF

15.1.1. Spatial planning should specify particular areas that have no issues, or no issues in certain categories and therefore don't need to specify such in their EIAs or may not need an EIA.

15.1.2. The defaults should be no regulation where there are no issues – we should reduce bureaucracy where it is not necessary.

15.1.3. Existing IEAs and new ones as they are submitted should be added to a publicly available online database arranged spatially. This would prevent work being duplicated and ultimately could lead to much better and/or easier environmental spatial planning.

15.1.4. Existing EIAs and specialist reports can thus be tied together

15.1.5. It must be compulsory in the regulations for the EAP or administrator, to upload the specialist reports onto this spatial website at some point (and to read the existing ones where relevant). At the current time the regulations might only specify that the text is needed until SA develops better internet bandwidth capacity for larger graphical files.

15.1.6. Intelligence must be applied to use EMF/SEA type strategies to link this information into a coherent whole to inform when EIAs are completely unnecessary for most activities in a region and where higher degrees of studies are always going to be needed.

## 16. Environmental Trading

16.1. The department must where possible allow the trading of environmental goods.

16.2. For example,

16.2.1. where species are rare, if a developer can genuinely make them sufficiently common at a number of other locations by actively breeding them, then he should be allowed to eliminate them at one location (other things being equal).

16.2.2. Where he develops X brownfield, infill units in one place, he should be able to develop Y units on a greenfield site.

16.2.3. Other examples can (and should) be multiplied.

16.2.4. A similar concept is to allow a developer to make an environmental violation in one place in return for creating a much greater environmental good somewhere else. This involves trying to make environmental choices explicit.

16.3. Where possible active, online trading markets should be established for theses environmental goods.

## 17. Self certification/ insurance

17.1. In some instances processes can be facilitated with the use of insurance. Developer insurer ensures everything is in order and insurer pays out if there is later a problem to clean it up. Thus insurer is the effective regulator of insured. This technique is more useful in some contexts than others but can be an effective way to speed up administration without loss of environmental effect.

17.2. Self certification is like self insurance. In certain circumstances the developer can self certify that everything is in order without submitting an EIA in return for a guarantee against property to pay a certain fine if it turns out not to be. This enables the process to go faster. Care must be taken, of course, that the incentive is not for the developers to always override important environmental principles and that the fine is not enough to create a counter- balancing environmental good.

## 18. General Regulatory Principles

18.1. Regulatory processes in general should involve an outcomes based approach ('the water is clean') or detailed regulations ('do these 20 steps to the water'). Fulfilling either is compliance.

## 19. Other Matters

There were many matters discussed at the meeting that we agreed with the rest of the consensus or various members opinions including:

19.1. **Agreement**

19.1.1. The process for informing local government if SALGA continued not to turn up.

19.1.2. We are comfortable with the dispute resolution mechanisms and the desire to try and reach consensus.

19.1.3. Independence of EAPs - we note that it is a requirement[12] for one who is dismissed to brief the new auditor about any issues. This ensures that an auditor is not dismissed simply because he has found out something the client wished to conceal from him. The regulations should require an outgoing and incoming EAP to meet and for the latter to have a duty to brief him about anything material that he should know.

[12] Or at least normal practice.

19.2. **Rejections**

19.2.1. We reject the idea that the developer should pay for anything beyond what it pays at the moment.

19.2.2. We reject the proposal that the EAP should be paid for by the state.

Appendix One : Draft Sections to be Added to the Bill

[This drafting is conceptual and will need to be redrafted by the appropriate department making the appropriate changes taking into account all the usual factors. ]

1. [to be inserted in Definitions]
    a. Applications Flow: the average number of EIA applications received per day over the course of a specified period
    b. Backlog: there is a backlog when the total stock is greater than the flow for seven days
    c. Processed Flow: the average number of EIA applications processed per day over the course of a specified period
    d. Specified period: unless otherwise defined, will be one year.
    e. Stock: the total number of applications due to be processed by the department at a given time at all stages.
2. EIA Administration
    a. The authority has a duty to administer EIA applications using the most efficient, speedy and cheapest process.
    b. The parts of the application process must run concurrently where possible
    In particular,
        i. applications for permission must run concurrently, without requiring proof of other permissions, in particular:
        [List]
        ii. all consultation and public comment processes must be permitted to run concurrently, in particular:
        [List ]
        iii. Permission for environmental permissions under NEMA and for EIA permission under these regulations must run concurrently, and duplication of submissions must be eliminated
    c. The time limits for various application types are listed below
        [List]
    d. Authorities can make these time limits stricter but not less strict.
    e. Where the time limits are being regularly violated, the authority must take the same steps as when there is a backlog.
    f. All internal requests for permissions within the authority must be answered within 7(seven) days, including:

i. [List of internal permissions]

g. Where the application flow exceeds the processed flow for more than one month, the authority will take steps to ensure that processed flow rises to equal or exceed application flow.
h. Where there is a backlog, the authority must take steps to eliminate the backlog.
i. In taking the steps contemplated in subsections g and h the authority must consider taking some or all of the following steps:
    1. internal training in the department
    2. more active management of the department
    3. authorising overtime
    4. hiring further staff
    5. coming to an agreement with other authorities to process applications on its behalf
    6. for staff to be transferred from other authorities on a temporary or permanent basis
    7. the outsourcing of some applications or some kinds of application to private companies who are capable of processing these applications
j. Where it is known from previous experience that the application flow varies on a predictable basis, this should be taken into account in taking the steps considered in Subsection i.
k. Administrative Approval
    i. Where possible, applications should be approved by administrative officers rather than by Council.
    ii. Council must subsequently be provided with copies of the application and must consider whether any of the applications required their input, and if the applications do, then they must convene a meeting within two weeks to consider the matter.
    iii. The following types of application always require a meeting of Council to consider
    [List]
    iv. The following types of application do not require a meeting of Council to consider, unless specifically required by Council, or unless special circumstances apply.
l. The authority must devise processes to ensure the constant improvement of performance of the authority
    i. Authorities must measure the stock, flow and backlog (if any) and any other such measures they might devise or as the Province or National Government may by publication in the Gazette require.
    ii. These measures must be sent to the Province on a monthly basis and published monthly on the internet or in the Gazette.
    iii. For those authorities in the bottom 20% for that month, steps must be taken to remedy the situation and improve performance.
m. In taking the steps contemplated in subsection l (iii), the DEA may contemplate
    i. Training in better procedures and practices

ii. Aiding the authority in locating more or more productive staff
iii. Financial aid to help the authority hire more staff
iv. Hiring consultants that can help improve or reengineer processes
v. Coordination between authorities with capacity and those without capacity
vi. Contracting out processing of applications to private firms.

n. National government must and provincial and municipal government may, set up websites, blogs and other such forum to encourage debate and the exchange of ideas by practitioners on how to improve processes and procedures.
o. Two years after this Act comes into force and thereafter once every five years, the Department must carry out a Regulatory Review to consider how the planning process can become more efficient and implement the conclusions of that Review.

**Sections of the Regulation**

9 (2) – repeal – time periods should not be made to be broken

The procedures in 9 (3) to apply to 9 (4) also and further procedure discussed in this report must then be triggered to capacitate the process.

The numbers in regulations 24(1)(a), 25(1), 30(1), 34(2) or 35 reduced to 10 (ten) days in each case.

23(2) down to 2 days to acknowledge receipt.

Technical

18 1 b is ambiguously drafted as 17 can refer to more than simply independence.

On a rejection in terms of 24 the clock does not begin to run anew but is frozen and 5 days added only as long as the application is resubmitted after less than 3 months from the date rejected. I.e. 25 1(b) needs amended to take out that 30 days and redraft as above.

Make 21 and 27 identical if that is the intention or just have one section for both BARs and S&EIP.

22 and 28 made the same?

22c and 28d harmonised re map.

Is it intended that 22d and 28e differ in this way.

Surely the scoping report and BAR are so similar that they can be reduced to one entity.

Can we make 31 read : the contents of the Scoping Report plus the following additional information since much of it is duplicated.

**Contact person:** Advocate Portia Matsane
Manager: Legal Service Department
SAPOA
(011) 883 0679)