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The contribution of EIA to decision making: A critical analysis of EIA refusals in South Africa

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Mini-Dissertation submitted in partial fulfilment of the requirements for the degree
Master of Environmental Management
North-West University (Potchefstroom Campus)

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NOVEMBER 2011

POTCHEFSTROOM

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ACRONYMS

BA	Basic Assessment
BAR	Basic Assessment Report
CA	Competent Authority
CEAA	Canadian Environmental Assessment Agency
DEA	Department of Environmental Affairs
DEAT	Department of Environmental Affairs and Tourism
DoE	Department of Environment (UK)
DWAF	Department of Water Affairs
EWT	Endangered Wildlife Trust
EA	Environmental Assessment
EAP	Environmental Assessment Practitioner
EARP	Environmental Assessment and Review Process (Canada)
ECA	Environmental Conservation Act (73) of 1989
EIA	Environmental Impact Assessment
EIF	Environmental Impact Form (China)
EIR	Environmental Impact Report (China, UK)
EIRF	Environmental Impact Registration Form (China)
EIS	Environmental Impact Statement
EMP	Environmental Management Programme
EPB	Environmental Protection Bureau (China)
EU	European Union
I&AP	Interested and Affected Party/Parties
IEM	Integrated Environmental Management
LPA	Local Planning Authority
NEMA	National Environmental Management Act (107) of 1998
NEMAA	National Environmental Management Amendment Act (62) of 2008
NEPA	National Environmental Policy Act of 1969 (US)
PAIA	Promotion of Access to Information
PPP	Public Participation Process
PSDP	Provincial Spatial Development Plan
S&EIR	Scoping and Environmental Impact Reporting
SEA	Strategic Environmental Assessment
SEPA	State Environmental Protection Agency (China)
UK	United Kingdom
US	United States of America

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ABSTRACT

The effectiveness of the Environmental Impact Assessment process has been questioned by its critics both locally and internationally, as there is a perception that EIA process is merely a rubber stamping exercise. The objective of this study was to determine whether or not the relevant provincial authorities in South Africa have issued EIA refusals and if so what the main reasons for refusal were. Both Basic Assessment and full EIA processes were considered.

Access to the EIA refusals from the various provincial environmental departments and environmental consultants was limited. Only seventeen EIA refusals were received after extended requests over a 12-month period, after which each of these were analysed. The reasons for the EIA refusals encountered in this study have been categorised into seventeen sub-classes relating to the following environmental issues: site location, socio-economics, land use/zoning, lack of justification, Spatial Development Framework (SDF), biodiversity, incompleteness of information, legislation discouraging development, visual/noise impacts, lack of alternatives, services issues, cumulative effects, groundwater, waste, specialist studies, gross non-compliance and air pollution. It is important to note that an EIA application could potentially have more than one screening trigger, and therefore it is possible that the percentages explained in this study can add up to more than 100%.

The highest number of the EIA refusals' screening triggers (8 of 17 = 47.06%) were found to be due to the transformation and rezoning of undeveloped or vacant land, and 5 of 7 (71.4%) of those particular EIA refusals were attributed to applications for residential development. Biodiversity and ecological sensitivity of the site location, as well as construction of infrastructure were next on the scale, with three (17.65%) EIA refusal screening triggers each. Finally, concentration of animals for production and storing and handling of hazardous substances both had two (11.76%) screening triggers. Only one EIA refusal did not include any substantive reasons for refusal and was refused on purely procedural grounds. The lack of justification of the development, lack of technical information and inadequate alignment with future spatial planning also constituted reasons for negative authorisations.

From the results it was evident that although it is usually the procedural issues that hinder EIA, this study encountered many substantive issues, making up the majority of the reasons for EIA refusal here. This goes against international opinion that EIAs are usually turned down due to lack of adherence to process. Other findings from this study of particular interest include that no database is maintained for the number and reasons of EIA refusals that are

processed, only for those that are authorised. It was also found that there were provinces that have never issued an EIA refusal. Furthermore, it was interesting to note that the reasons given in the findings for the analysed EIA refusals did not necessarily correlate with the screening triggers.

Keywords: EIA refusal; decision making; South Africa; EIA process; substantive reasons.

ABSTRAKTE

Die effektiwiteit van die Omgewings Impak Beoordelings proses word sowel plaaslik as internasionaal in twyfel getrek, omdat die indruk bestaan dat die OIB proses bloot 'n leë formaliteit is. Die doel van dié studie was om te bepaal of die betrokke provinsiale owerhede in Suid Afrika OIB afkeurings uitgereik het en indien wel, om te bepaal wat die hoof redes daarvoor was. Sowel BAR en volledige OIB prosesse is in ag geneem.

Toegang tot die OIB afkeurings van die onderskeie provinsiale omgewings departemente en omgewings konsultante was beperk. Na herhaalde versoeke, oor 'n tydperk van twaalf maande, is slegs sewentien OIB afkeurings ontvang en geanaliseer. Die redes vir die OIB afkeurings is op grond van die volgende omgewingskwessies, in sewentien kategorieë onderverdeel: perseel ligging, sosio-ekonomiese kwessies, grondgebruik/sonering, gebrek aan regverdiging, Ruimtelike Ontwikkelings Raamwerk (ROR), biodiversiteit, onvolledigheid van inligting, wetgewing wat ontwikkeling ontmoedig, visuele/geraas impak, gebrek aan alternatiewe, dienslewerings kwessies, kumulatiewe effekte, grondwater, afval, spesialis studies, growwe verontagsaming en lugbesoedeling. Let op dat 'n gegewe OIB aansoek meer as een keuringsgrondslag kan hê en die persentasies wat volg kan dus tot meer as 100% optel.

Die vernaamste keuringsgrondslag vir die OIB afkeurings in die studie (7 van 17, of 47.06%) was die transformasie en hersonering van onontwikkelde of onbeboude grond. In 5 van die 7 gevalle is die OIB afkeuring toegeskryf aan aansoeke vir residensiële ontwikkeling. Biodiversiteit en ekologiese sensitiwiteit van die perseel sowel as die konstruksie van infrastruktuur was, met drie afkeurings (17.65%) elk, gesamentlik die tweede mees algemene keuringsgrondslag. Die konsentrasie van diere vir produksie en die berging en hantering van

gevaarlike stowwe was elk verantwoordelik vir twee (11.76%) afkeurings. Slegs een OIB aansoek is om prosedurele redes afgekeur sonder dat enige ander redes verstrek is. 'n Gebrek aan motivering, 'n gebrek aan tegniese inligting en onvoldoende inagneming van toekomstige ruimtelike beplanning is ook verstrek as redes vir afkeurings.

Die uitslae dui daarop dat, alhoewel OIBs gereeld deur prosedurele kwessies gekortwiek word, is daar in die meerderheid van gevalle substantiewe redes vir OIB afkeurings. Dít druis in teen die internasionale siening dat OIBs meestal op grond van verontagsaming van prosedure afgekeur word. Verdere bevindinge van dié studie sluit in dat daar geen databasis in stand gehou word van die aantal OIB afkeurings, of die redes vir afkeuring nie, slegs van goedgekeurde OIBs. Dit is ook bevind dat sommige provinsies nog nooit 'n OIB afkeuring uitgereik het nie. Verder is dit interessant dat die redes vir afkeuring wat in die betrokke OIB aansoeke verstrek is, nie noodwendig ooreenstem met die keuringsgrondslae nie.

Sleutelwoorde: OIB- weiering, besluitneming, Suid-Afrika; OIB proses; substantiewe redes.

CHAPTER 1. INTRODUCTION

Environmental legislation emerged in the 1960s as a political response to the civil sector's increasing awareness of environmental degradation through development (Petts, 1999a; Clark, 2000; Cashmore *et al*., 2004) and therefore an increasing need arose to protect it. Under this pressure, the United States of America (US) promulgated the National Environmental Policy Act of 1969 (NEPA). As a result of this environmental awareness, legislation to promote sustainable development began to spread, and the first rough form of legislated EIAs started being undertaken in developed countries around the 1970s (Lee & George, 2000; Wood, 2003), later spreading to developing countries. Since then, awareness surrounding environmental concerns has become a noteworthy topic of discussion in the international community as a whole.

There is constant pressure on developing countries to improve their economic standing within the global context (Bartlett & Kurian, 1999). The need to be able to compete with already developed countries for a share of the international market means that developing countries are often looking for ways to boost their economies. One way of doing this is through the construction and continued development of various, mostly primary, sectors. If a project is seen to have potential significant impacts on the surrounding environment, then an Environmental Impact Assessment (EIA) is carried out in order to determine what the impacts will be and how best to mitigate those impacts. EIAs in South Africa, for example, are a legislated requirement and as such have to be authorised by a competent authority (CA) before any development can take place. This is one of the reasons that South Africa is one of the leading developing countries in EIA, although this process has also brought about financial and resource costs (Retief & Chabalala, 2009).

The concept of EIA is something that was first created in the developed world, and was then later imposed on developing countries by organisations such as the World Bank or International Monetary Fund (IMF), who set EIAs as a requirement for financial assistance through construction and development (Haeuber, 1992; Bartlett & Kurian, 1999; Lee & George, 2000; André *et* al, 2004; Glasson *et al,* 2005; Jay *et al*, 2007). There is a lot of pressure from the developed world and global markets for countries to progress, and this pressure is often forced onto countries that lack the financial resources, skills or administrative capacity (Duthie, 2001) to handle the task at hand. As a result of this, there is a perception among the international community that EIAs are never refused, particularly in developing countries

(Sadler, 1996; Wood, 2003, Ridl & Couzens, 2010), and therefore the conclusion has been drawn that EIAs are not seen to be working (Christensen *et al*, 2005).

There has been a plethora of studies, in both developed and developing countries, investigating the extent to which EIA is aiding in decision making and realising its goals (Baker & McLelland, 2003; Leknes, 2001; Cashmore *et al*, 2004; Jay *et al*, 2007). Wood (1999) argues that there are various principles, criteria and objectives that have been put forward in order to determine what aspects would need to be analysed in order for an EIA to be considered effective (Sadler, 1996; Wood, 2003). Many of the developed countries fulfil the criteria, while many developing countries lag behind (Wood, 2003). Regardless of this discrepancy, however, there is still a belief that EIA, on the whole, can be ineffective.

"In principle, EIA should lead to the abandonment of environmentally unacceptable actions" (Wood, 2003: p1), as this is the ultimate purpose of EIA as a management tool. Ridl & Couzens (2010: p82) are concerned regarding the state of EIA practice in South Africa, declaring that "environmental impact assessments are often undertaken simply because they are legally required, not because their purpose is seen as being valuable". The view that EIAs are seldom refused is because there is a general lack of information regarding the EIA refusals themselves. Therefore, in order to determine whether or not EIAs are actually adding value to the development process, a critical analysis of seventeen EIA refusals has been undertaken in this study in an attempt to determine the validity of this preconception.

1.1 Aims and Objectives

The aim of this study is to establish the extent to which EIAs are applicable as an adequate management tool in the refusal of projects, with the main question asked being: What is the grounding behind CA decisions to refuse an environmental authorisation of a proposed development project?

In order to answer this main question, three sub-questions will be addressed. Firstly, how many EIAs have been refused in the South African process till present?? The number of EIAs that could be located for this study is significant because it would give an indication of South Africa's process and progress since the implementation of EIA regulations since 1997.

Secondly, the study enquires: what types of EIAs are refused? Determining the sectors, screening triggers and descriptions of each project is an important step in helping the author categorise the refusals.

And finally, what reasoning is used in the refusal of EIA applications? Much focus and attention has been placed on EIA process so this sub-question goes a long way in determining whether the EIA was refused based on legislative process or if there was in fact a substantive reason supporting each refusal.

This dissertation presents the results of a first-hand study of 17 EIA refusals from 7 of the 9 provinces in South Africa, collected over a 12-month period. It begins in Chapter 2 by highlighting decision making theory and the international and South African contexts in which this takes place within the EIA process. Chapter 3 provides clarification of- and an elaboration on the research design and methodology used in this study. This is then followed in Chapter 4 by the publishable paper that is intended for submission, and includes the study's determined results and analysis of the collected data. As a final point conclusions are made in Chapter 5, as well as a few recommendations for further research. Chapter 6 displays the references used in this paper, while Chapter 7 provides additional information in the annexures.

CHAPTER 2. LITERATURE REVIEW

The idea of EIA was developed in the 1970s, at a time in human history when technical and rationalist thought was considered to be the mainstream doctrine (Weston, 2000; Cashmore *et al.*, 2004; Jay *et al*, 2007). The main trigger was the introduction in the US of NEPA in 1969, which was the first legislation anywhere in the world to require the submission of an EIA for federal projects (Glasson *et al*, 2005). It is a widely noted fact that EIA came about because of the civil pressure that grew out of popular concern for the environment (Lawrence, 1997a; Petts 1999a; Clark, 2000; Cashmore *et al.*, 2004). The solutions to environmental problems were applied using logical, scientific methods and observable, empirical evidence as a result of the rationalist view that was prominent at the time (Bartlett & Kurian, 1999; Wood, 2003). This laid the path for the assumption that EIA is "primarily a technique for generating, organising, and communicating information" (Bartlett & Kurian, 1999). EIA was therefore put into practice before there was any opportunity to work out the theory behind it (Wood, 2003; Jay *et al.*, 2007, Retief, 2010). As a result, the EIA community has learnt through empirical study and experience, rather than first hypothesising theories (Clark, 2000). For example, the concepts of scoping and project monitoring were not included in the original EIA concept under NEPA and as a result many EIA systems do not require these aspects (Wood, 2003). Beattie (1995) would argue that this is rightfully the case, as EIA cannot be thought of as a science, as EIAs are used to predict outcomes rather than to test theories.

After the introduction of NEPA, the concept of EIA grew to include most of the developed countries such as Canada, the United Kingdom (UK), Australia, The Netherlands and other parts of Europe (Wood, 2003; Glasson *et al,* 2005). The adoption of EIA in developing countries also became apparent although much of this was also as a result of organisations such as the World Bank and the IMF requesting that EIAs be carried out before funding could be given to those developing nations (Haeuber, 1992; Lee & George, 2000; Glasson *et al,* 2005; Jay *et al*, 2007). In other countries still, EIAs are carried out on a voluntary basis (Sowman *et al*, 1995; Duthie, 2001). Sadler (2006) states that more than 100 countries were practising some form of EIA by 1996 and that 70 developing countries have some form of EA legislation in place. Marara *et al* (2011: p286) state that "the socio-economic and political situation in developing countries plays an important role in the pace and efficacy with which legislative and institutional regimes for environmental management are developed and applied". It is in these varying manners that EIA has evolved and has grown into the system that it is today.

With regard to approval and refusal, Sandham & Pretorius (2008) found evidence that all of the EIAs in their study were approved, despite some important aspects of the EIAs not being thoroughly addressed. They therefore raise the question as to the contribution that the EIAs make to environmental protection and sustainable development if the documents do not attend to certain critical aspects, and yet are still approved. Sadler (1996) suggested that three elements should be used to test for the effectiveness of an EIA, namely: procedural; substantive; and transactive elements. The procedural aspect refers to the alignment of the EIA process with its principles. The substantive aspect – which is the aspect that this study will be focussing on – should investigate the extent to which EIA is achieving its goals of aiding decision making and in doing so protecting the environment. The transactive aspect deals with the efficiency and also the effectiveness of EIA but on a time- and monetary basis. Cashmore *et al* (2004) also suggest that most of the literature studies that have been done on EIA has focussed on the procedural issues attributed to EIA, instead of attempting to focus on the substantive goals of the process. This chapter will look at the established theory behind decision making, before looking at international EIA process models and how they relate to decision making theory. South Africa will be investigated in the same manner and then finally the practicalities of decision making will be addressed.

2.1. Decision Making Theory

There is currently significant debate with regard to the extent to which EIAs actually have a significant impact on the decision making process (Sadler, 1996; Bartlett & Kurian, 1999; Leknes, 2001; Cashmore *et al.*, 2004; Jay *et al.*, 2007; Wood, 1999; Retief, 2010). "The arguments for EIA vary in time, in space and according to *the perspective of those involved*" (Glasson *et al*, 2005; p13). The form of EIA that was born as a result of NEPA in the 1970s was also developed within the ideology of rationalism, as a means to highlight environmental concerns and incorporate them into the decision making process in a systematic way (Nilsson & Dalkmann, 2001). Kornov and Thissen (2000: p192) argue that a notion of "a model of the decision process as a sequence of logical steps" exists, which they believe to be flawed because the model is a normative one and therefore highlights an ideal model, which in reality does not usually follow such a rational procedure.

Nilsson and Dalkmann (2001) acknowledge that rationalism is criticised for being a solely normative perspective, concentrating on what the decision making process should be rather

than seeing it for what it is and how decisions take place in practice. In addition to the *rationalist model*, they go on to highlight two other models for decision making. The second approach is that of *Incrementalism*, a model of decision making taken in small steps in response to circumstances and thereby produces a process of gradual change. *Incrementalism* supports the idea that decision making cannot be entirely value free and also that not all alternatives or consequences can be known. More emphasis is placed on the structure of the process and how that structure is developed, rather than just focussing on the content of the decision, as is the case with the *rationalist model* (Nilsson and Dalkmann, 2001). The third of these models was first put forward by Etzioni in 1967 and is known as the *mixed scanning approach*. It essentially combines the two models of rationalism and incrementalism, taking various aspects of both models into account. “The shortcomings of the *rational* and *incremental models* can be overcome by employing a system of fundamental and incremental steps. Fundamental decisions set the context for numerous incremental ones, which in turn lead to new fundamental decisions” (Nilsson and Dalkmann, 2001: p312).

Of course, as is the case with anything, humans suffer from a state of severe subjectivity. This is what is referred to as bounded rationality (Simon, 1957; Nilsson and Dalkmann, 2001). This concept is somewhat related to the mixed scanning approach in that it supports the opinion that decision making on a personal level can attempt to be as rational as possible but, based on the fact that an individual is limited in terms of information, processing, perception, memory, and judgement, a decision cannot be value free or objective (Nilsson and Dalkmann, 2001).

In an attempt to clarify and classify the most popular assumptions made regarding EIA, Bartlett and Kurian (1999) also formulated six implicit models that aid in policy making through EIA, namely: the *information processing model*; the *symbolic politics model*; the *political economy model*; the *organisational politics model*; the *pluralists model*; and the *institutional model*. Each of these models relate to various theories and current debates on the influence of decision making in EIA. The *information processing model* will be the last of the six discussed.

The *symbolic politics model* suggests that sometimes EIA can be seen to be a simple formality and therefore only undertaken as a rubber stamping exercise in order to placate the environmental lobby and to allow development to continue (Bartlett & Kurian, 1999; Ridl & Couzens, 2010). It is seen to generate massive volumes of information that then hardly ever

get to see the light of day, let alone be used by decision makers (Beattie, 1995; Bartlett & Kurian, 1999). Under this model, EIA can also be "a process wherein the rhetoric of science is used to legitimise decisions already made for reasons of political expediency", and can be manipulated in order to either divert or to pre-empt any potential disagreement (Bartlett & Kurian, 1999: p419). These two opposing views within the same model – that of disregarding environmental concerns via propaganda and conversely of using environmental data to persuade CAs into approving developments – suggest that it is dishonest and double-faced in its format of formality versus that of a strategic political tool.

The *political economy model* deals with the notion that EIA is carried out by the private sector for the public sector, either on a voluntary, semi-voluntary or legislated basis or even because there has been a demand for it as a result of market influence (Bartlett & Kurian, 1999). The fact that EIA would make an impact on the economic markets makes sense as it was private sectors that first started carrying out EIA on behalf of the public sector, with the assumption of using EIA to change governmental politics and public policy processes (Bartlett & Kurian, 1999; Cashmore *et al*, 2004). This newer model has not been investigated as much as some of the other models in the literature and tends to lend itself to the idea of reputational value in that, as Bartlett and Kurian (1999: p419) put it:

> EIA occurs primarily through the way it alters financial opportunities, risks and constraints, with the attendant internalisation of externalities leading ultimately to anticipation and prevention of environmental harm… the *political economy model* can be found, for example, in various market-based programmes for ecolabelling and ecoauditing.

This means that – in order to create and secure the 'green market', to cut costs, and to improve efficiency – companies may voluntarily accede to systems such as the international environmental auditing standard, ISO 14001 or the European Union (EU) based Eco-Management and Audit Scheme (EMAS) (Bartlett & Kurian, 1999). Another example of this can be seen in the US, where the completion of EIAs has become a prerequisite before funding from certain institutions can be made available (Bartlett & Kurian, 1999). Further examples are the World Bank and IMF, who also require EIAs to be conducted before money is lent to developing countries for development (Haeuber, 1992; Bartlett & Kurian, 1999; André *et* al, 2004; Glasson *et al,* 2005). This model creates a symbiosis between environmental objectives and economic decision making.

Another model is the *organisational politics model*. The opinion surrounding this model is that the political structure of an organisation is the core of the decision making process for that establishment (Culhane *et al*, 1987; Bartlett & Kurian, 1999). The model does not deny the fact that there is always a political component to EIA (Beattie, 1995), but rather embraces this notion and in doing so puts forward the suggestion that EIA has the potential to shape and "change the internal politics of an organisation [that is] required to undertake or address [environmental concerns] in some way" (Bartlett & Kurian, 1999: p421). The idea here is that the organisation would slowly place the correct people into the correct positions of power and this would allow the values and virtues of EIA to trickle down through the organisation. This model is relatively idealistic as this is not usually the situation that develops in reality. This is mostly because EIA is a tool to aid decision making and is not a decision making process within itself (Weston, 2000; Connelly & Richardson, 2004). In real life, companies could potentially hire consultants to undertake the EIA application and implementation in a bid to save on financial resources, and would only institute environmental champions if there was a need to comply with legislation. Culhane (1990) elaborates on this by describing the forced diversification of agencies within the US under the new NEPA regulations.

The *pluralist politics model* is what Culhane (1987) referred to as the '*external reform' model*, as opposed to the '*internal reform' model* of the organisational politics model, and it is this model that assumes that EIA is influential in decision making on account of the "increased participation, involvement and leverage that it facilitates for the public and for organised interests" (Bartlett & Kurian, 1999: p422). This model essentially considers the role of public participation in the literature and considers EIA to be an instrument that allows for more democratic processes and practices through the requirement of citizen involvement (Bartlett & Kurian, 1999). Cashmore (2004: p413) states that:

> The perceived need for stakeholder participation results from two main factors: (1) a belief that there is a need to make environmental decision-making more responsive and transparent (democratising democracy, if not deliberative democracy); and, (2) recognition of the need to embrace (not just confront) the plurality of societal priorities and values.

The *pluralist politics model* therefore seeks to enhance the degree of democratic involvement in the decision making process in order to make it more transparent and accountable. The *pluralist politics model* believes that EIA can be used to achieve this (Bartlett & Kurian, 1999).

The *institutionalist model* partially links to the *organisational politics model* and centres around the idea that "political institutions generally define the framework within which politics takes place" (Bartlett & Kurian, 1999). They are the decision makers and therefore the means by which standards are set, environmentally or otherwise. EIA can play its role here as a decision making tool, because the amount of change brought about by EIA in terms of institutional behaviour and policy formulation can be a measure of its effectiveness. So, not only can EIA develop and change over time in response to changing world views or improvements in legislation, but it can also potentially influence those changes. This model is heavily based on science and has only been empirically examined within more developed countries (Bartlett & Kurian, 1999). In conclusion, the *institutionalist model* "integrates normative principles with its operative aspects… [and] sees the purpose of EIA as the transformation of institutional values by changing the ways of doing things in such a manner as to incorporate environmental issues" (Bartlett & Kurian, 1999). However, this model only deals with the biophysical environment and tends to neglect the social dimension that would be a determining factor in decision making.

As has been discussed, in the beginning of the environmental movement the EIA process was seen as a management tool, formed according to what Bartlett and Kurian (1999) would term the *information processing model*, a model where EIA researchers assumed technical and scientific rationality, a linear and holistic approach without bias (Glasson *et al*, 2005). As Kornov and Thissen (2000: p191) state:

> Much of the work in impact assessment is based on the belief or assumption that the provision of better, scientifically valid information or knowledge regarding a decision issue will contribute to a better, more rational decision.

The main contention with the *information processing model* is that there are human values involved in any decision-making process, which makes EIA less straightforward than the normative rationalist theory would have you believe (Lawrence, 1997a; Kornov and Thissen 2000; Weston, 2000; Nilsson and Dalkmann, 2001; Glasson *et al*, 2005). Richardson (2005) points out that value judgements based on political power, multiple rationality and ethics all have their part to play and it would be very difficult to separate these biases from environmental assessment (EA) as they are intrinsically linked. André *et al* (2004) elaborate on this point using Figure 1, indicating the various constraints and dimensions that can potentially influence a decision.

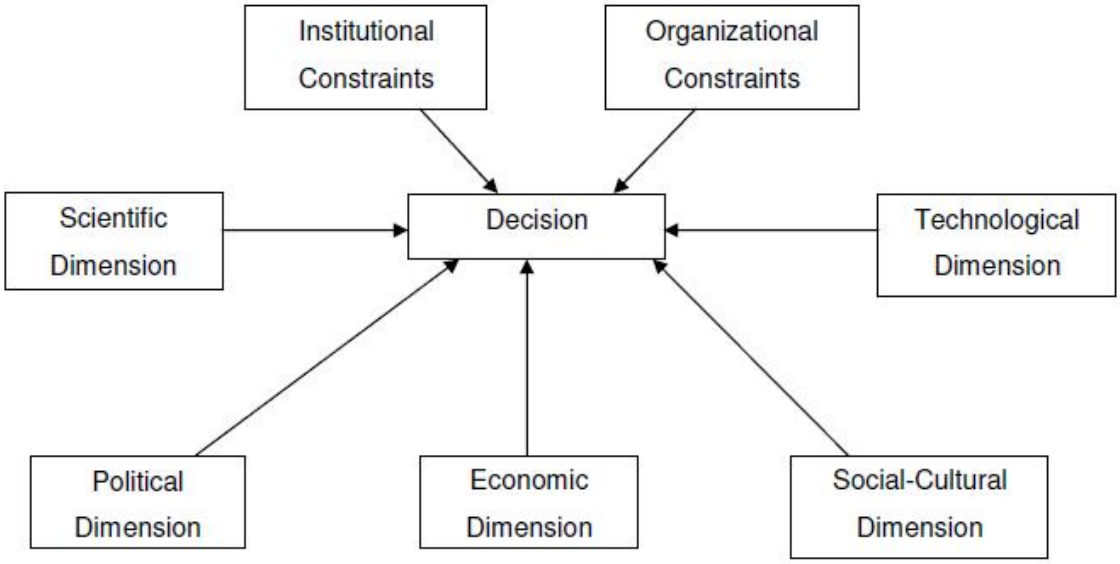

Figure 1: The complexity of the decision making environment at state level (André *et al*, 2004).

Institutional constraints are characterised by the beliefs, behaviour and values of institutions such as industry, universities and the judiciary system that have been formed over a period of time, and are often related to the fundamental grounding of communities and society as a whole (André *et al*, 2004). Organisational constraints have to do with the distribution of power, often within structures such as a company or different levels of government that result in conflicts that influence and affect the outcomes of decisions made within that structure (Kornov and Thissen, 2000; André *et al*, 2004). The public can also operate as an organisational constraint, as various groups can have differing opinions and interests based on EIA. Environmental- versus development- and employment lobbies would be one example of this. Technology can influence decisions made, depending on its availability, its economic and technical feasibility and also its operational viability (André *et al*, 2004). The social-cultural dimension has grown since EIA first started in the 1970s, with communities demanding public participation as a result of losing faith in institutional-led environmental management. The evolution of the Public Participation Process (PPP) means that decision makers now have another aspect that has to be taken into account when reaching a decision. The economic dimension refers to the economic circumstances of governments, and links to the notion that developing countries are more prone to pushing for development. This is carried out in a bid to increase economic stability and job security, while setting aside environmental issues (Duthie, 2001; Wang *et al*, 2003; Ridl & Couzens, 2010). The political dimension is often the source of one of the more common pressures that is exerted upon decision makers, and can either be

expressed at an international level (with one country influencing another); within one country through national, provincial and local levels of government; or even through an external institution such as the World Bank or IMF (Haeuber, 1992; Bartlett & Kurian, 1999; André *et* al, 2004; Glasson *et al,* 2005). The scientific dimension is one of the more significant factors that influence decision making, as differing opinions between specialists, for example, would complicate a decision maker's final ruling. In fact, Beattie (1995) has a separate opinion – that EIA should not be viewed as a science at all because the financial and time constraints imposed on the EIA process do not allow for scientific rigour. It is important to note that many decisions have been taken using EIAs that have been produced with imperfect information and strict time limits in place. This means that data gaps and simplified assumptions are more than likely to have been included (Beattie, 1995; Clark, 2000). In spite of this, the scientific dimension remains a significant influence in decision making.

Research has empirically validated the six models as discussed by Bartlett and Kurian (1999). Indeed, different parts of the models specified can be applied to EIA systems in countries around the world (Lawrence, 1997a; Wood & Jones, 1997; Cashmore, 2004; Morrison-Saunders & Bailey, 2009; Pölönen *et al*, 2011). Bartlett and Kurian (1999) believe that each model is a different means to the same end: a recognition that EIA should take the issues of environmental justice, social sustainability and environmental democracy into account. In other words, a more sustainable model of EIA should be established, and this will be achieved if substantive issues are investigated in addition to the normal procedural concerns (Cashmore *et al*, 2004). The reasons why process and procedure have been prioritised over theory and purposes are unquestionably varied (Cashmore, 2004). In the US, the Supreme Court interpreted NEPA to be procedural legislation (Wood, 2003) and this methodology stuck. The US was the pioneer in the implementation of EIA and because the rest of the world only had that one example to follow, procedure and process became the areas of focus. Cashmore (2004: p420) goes on the explain that:

> The preoccupation with procedure is also symptomatic of a more general problem affecting decision tools and processes: evaluation of substantive outcomes can produce uncomfortable results, with implications for individuals. Most important, in respect to the objectives of EIA, is that its substantive purposes are difficult to translate into definable outcomes. It is not possible to determine whether a decision to grant development consent is 'correct' when there is no objective standard by which to do so (Willis, 1995).

2.2. International EIA Process – Canada, the UK and China

Sadler (1996: p15) maintains that EIAs most often "take place under formal institutional arrangements and form the basis for authorization of a proposal and the establishment of terms and conditions for its implementation. These arrangements typically comprise a national or equivalent framework of the laws, regulations, procedures, and guidelines which set out the rules, steps, and activities by which assessments are undertaken". Figure 2 below describes the generic international EIA process model by Glasson *et al* (2005), which shows the flow of the important steps taken in the basic EIA process. It is important to note that not all the steps shown here are necessarily carried out by every country (Wood, 2003) but instead this diagram is designed to show an overarching approach to EIA. The first phase in the EIA process incorporates five main elements, namely: screening of the project to determine whether a full EIA is required or not; scoping of the project to establish what the most significant environmental impacts will be for the EIA to address (Glasson et al, 2005); the consideration of potential alternatives – regarding issues such as site location, project design and the 'no-go' option; the requirement of an environmental baseline to be able to measure the impact of the development against the state that the environment was in before the venture wanted to go ahead; as well as identification of key impacts of the proposed activity. These five elements are the most important stages in the EIA process as they "guide and directly affect the quality of much of the subsequent process" (Jones, 1999). From there the process moves onto the prediction of potential environmental impacts; the evaluation and assessment of their significance; as well as the identification of mitigating measures that could be put in place to prevent and/or minimise the impacts (Glasson *et al*, 2005; Wood 2003). The Environmental Impact Statement (EIS) is then presented, which is a vital step in the EIA. It has different names in different countries (such as Environmental Impact Report (EIR), and Environmental Assessment Report (EAR)), but essentially an EIS is the report that is written up as a result of the EIA study. An EIS is required to include a non-technical summary of the entire document, thereby making it more accessible and understandable for decision makers who may not necessarily possess a technical or scientific background (Wood, 2003). An EIS deficient of adequate information can easily undermine the entire process as it needs to be useful to stakeholders (Ross *et al*, 2006) and decision makers alike, and therefore must be completed properly (Cooper & Sheate, 2002; Glasson *et al*, 2005). The next step in the EIA process is that of decision making. The CA reviews all of the information received and then either grants or refuses the environmental authorisation. If the authorisation is granted then monitoring and regular auditing of the development and environmental impact are put into practice. Throughout the various stages of this model, the on-going process of public

participation is in motion and is critical to a proper evaluation of the EIA process (Wood, 2003).

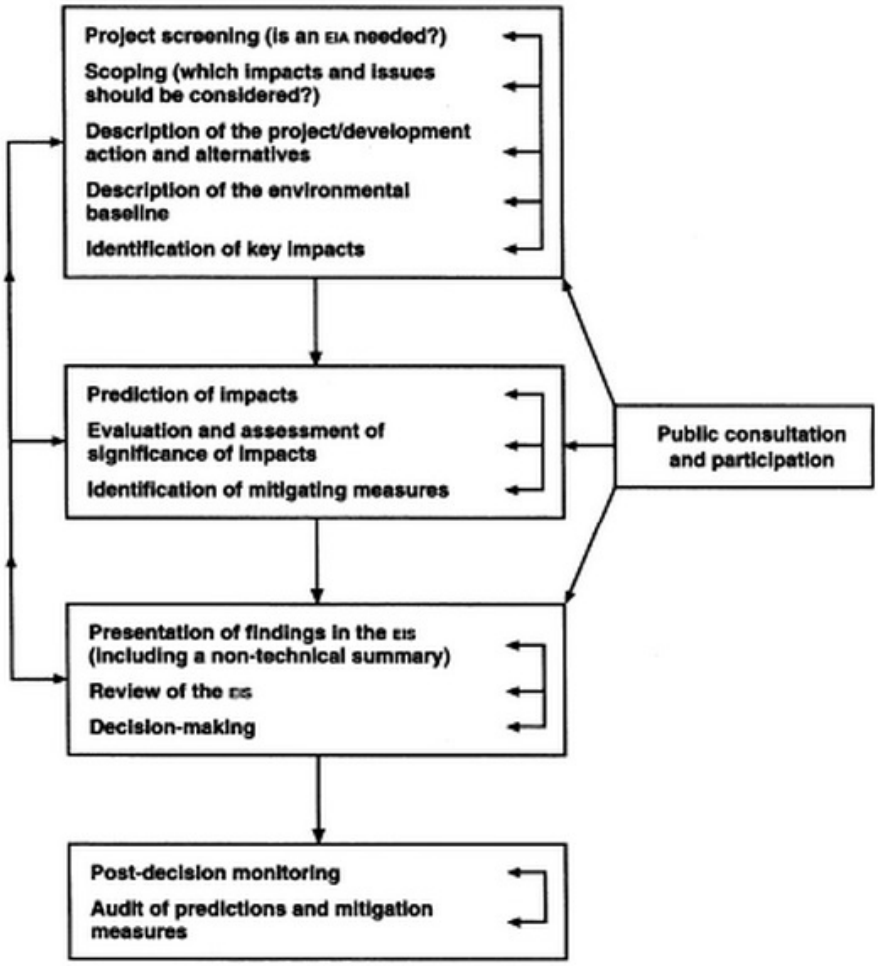

Figure 2: The EIA Process as shown in the third edition of (Glasson *et al,* 2005).

But EIA is not always considered to be beneficial. The presence of an EIA process within any country's legislative system can be seen by some to be a hindrance in terms of financial cost and skills training, especially within developing countries (Sadler, 1996) where the onus is on the government to grow and develop the economy. However, EIA is mostly beneficial in that it protects environmental resources such as water and biodiversity through preventing the unnecessary development – or even influencing the withdrawal – of unsound projects, and acts as a deterrent for any potential environmentally damaging developments that may otherwise have gone ahead (Glasson *et al*, 2005). The following sections take a look at three international examples, namely Canada, the United Kingdom, and China, in addition to South

Africa. This was thought to be an appropriate and diverse selection, as the first two countries are considered to be developed, while the last two are viewed as developing countries.

2.2.1. The EIA process in Canada

With the implementation of NEPA in the US in 1969, "it was inevitable that interest in EIA provisions… should spill over the border" (Wood, 2003: p70) into Canada. As a result, the EIA process has been used as a planning and decision making tool in Canada since 1974 (Andre *et al*, 2004). This was mostly born out of the Environmental Assessment and Review Process (EARP), which was set up by a combination of individuals in government, industry and civil society (Wood, 2003). These guidelines gradually grew to become more influential over time, even being upheld in court cases as a law of general applicability, and consequently the Canadian Environmental Assessment Act came into force early in 1995 (Wood, 2003). As a result of this, "a new, more autonomous agency – the Canadian Environmental Assessment Agency (CEAA) – replaced the pre-existing EARP Review Office and was given additional power over the EA process" (Wood, 2003). In some EIA cases – when it is deemed necessary for there to be strict autonomous assessment – the Minister of the Environment will elect an objective and independent review body, which usually consists of a group of experts that have been selected based on their knowledge and expertise, to review a project. A review panel may also be appointed in cases where: the proposed project is likely to cause significant environmental impacts; where the severity of those impacts is uncertain; where there is uncertainty regarding justification of the project; or where public concerns make it necessary (Glasson *et al*, 2005). The CEAA therefore plays a leadership and decision making role in the review of major projects, and also of those that are referred to a review panel (CEAA, 2011).

Glasson *et al* (2005) believe that Canada possess "a powerful and evolving system of environmental legislation". EIA is referred to as Environmental Assessment in Canada but will be referred to as an EIA in Chapter 2.2.1, for the sake of consistency. There are two main types of procedures in the Canadian EIA process and each of these has two potential paths to follow, each with its own steps. These procedures are called the self-directed assessment and the public review (Wood, 2003). The various steps and options can be perused in detail in Figure 3 below. Initially, the applicant would decide to apply to carry out the potential development and thus the self-directed assessment process begins. The proposal is submitted and the CA (in Canada the term Responsible Authority is also used) determines whether or not an EIA is required. If it is established that an EIA is necessary, then the next step is for the CA to decide which of four possible routes the applicant must follow, namely:

screening, comprehensive study, mediation, or panel review (Glasson *et al*, 2005). Screening involves providing documentation of the project's environmental effects as well as the recommended mitigation measures. This process is for projects that have known effects and therefore can be easily mitigated (Glasson *et al*, 2005) and is similar to that of a South African Basic Assessment or EIA (South Africa, 1998). If the CA feels that the normal screening route will not be thorough enough then a more comprehensive study is undertaken, although this is usually for much bigger developments, such as power stations or mining operations (CEAA, 2011). If an EIA screening or a comprehensive study is deemed to require further review, then it either goes through a mediator or a review panel. It is at this point that the self-directed assessment moves into the realm of independent, external assessment (Glasson *et al*, 2005). Mediation is defined by the CEAA (2011) as:

> a voluntary process of negotiation in which an independent and impartial mediator helps interested parties resolve their issues. The mediator is appointed by the Minister of the Environment after consulting with the responsible authority [or CA] and the interested parties. Mediation can be used to address all issues that arise in a project's environmental assessment or it can be used in combination with an assessment by a review panel.

A review panel, as discussed earlier, is chosen by the Minister of the Environment to help determine what the correct outcome of the EIA application should be. This usually occurs in situations where projects require a federal decision as well as a decision from another level of government (CEAA, 2011) However, the need for a review panel is highly infrequent, amounting to an average of two EIAs per year (Gibson, 2002; Wood, 2003).

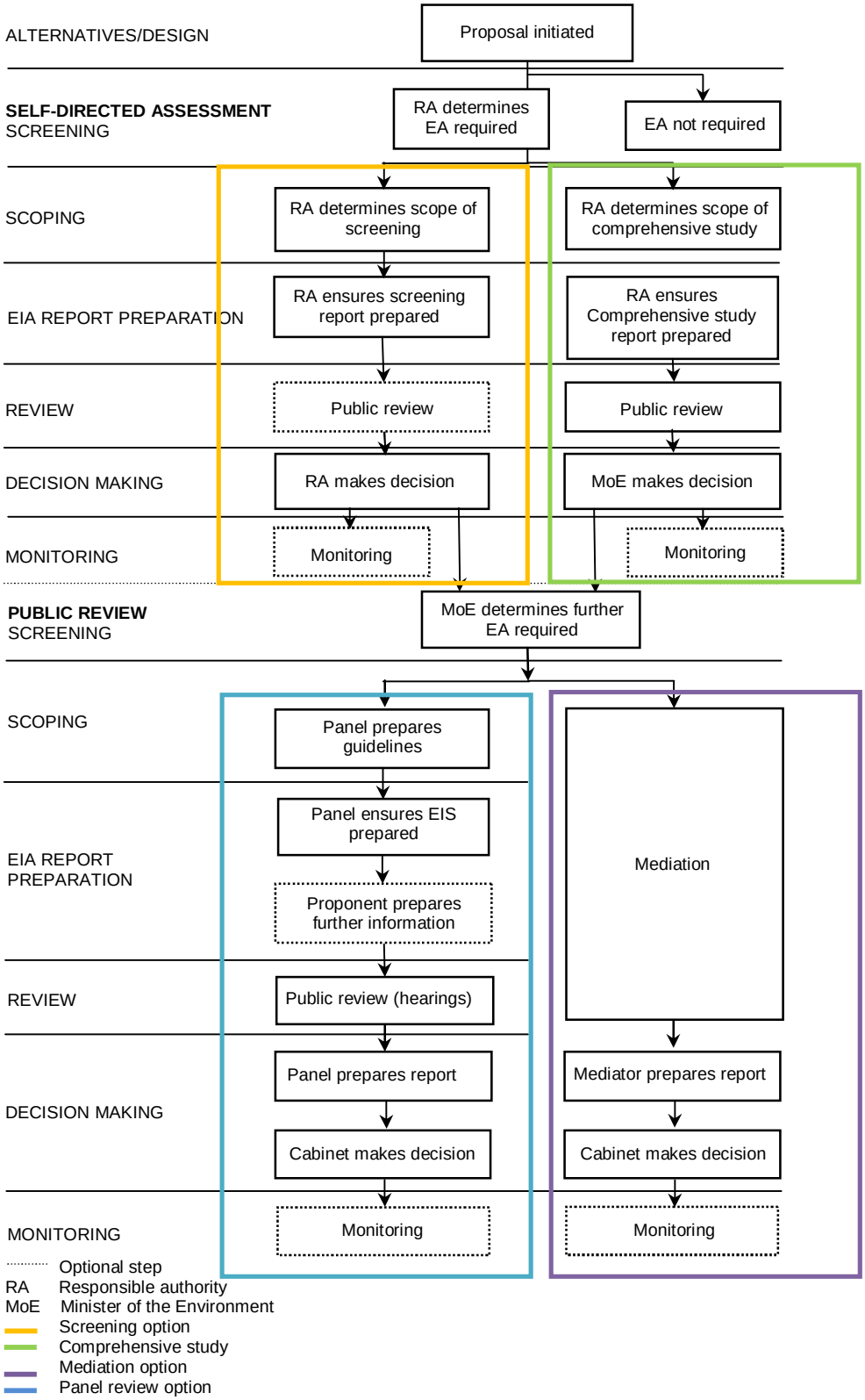

Figure 3: Main steps in the Canadian EA process (adapted from Wood, 2003).

The EIA system in Canada is characterised by three aspects, namely: the divergence in national and provincial legislative procedures; the relatively complex navigation of various

types of projects through different types of EIA processes; and resourceful approaches to mediation and public participation in EIA. Canada has a reputation as a leading authority when it comes to EIA legislation and implementation (Wood, 2003). One of the reasons for this is the accessibility of its data. Helpful information regarding the EIA process and even EIAs themselves are published online (Glasson *et al*, 2005). Decision making has also been made easier through the implementation of cooperative governance strategies between federal and provincial government, known as EIA harmonisation. The idea is for both spheres of government to use existing processes available in order to decrease the amount of work duplicated, thereby reducing inefficiency (Gibson, 2002; Glasson *et al*, 2005; CEAA, 2011).

2.2.2. The EIA process in the United Kingdom

The United Kingdom (UK) has a land-use planning system that has been in place for the past 60 years (Wood, 2003) and as such, the local planning authorities (LPAs) are regarded as the ultimate decision makers when it comes to new development. This includes their assistance in environmental protection through the implementation of environmental plans and policies of the LPAs (Wood, 2003). Before 1985, EIA in the UK was originally done on an impromptu and voluntary basis and even then mainly only in the fields of oil and gas production (Glasson *et al,* 2005). The UK government was initially resistant to take up the idea of EIA, despite its Department of Environment (DoE) appointing Catlow and Thirwall (1976) to conduct a research study on environmental impact analysis in the 1970s. In 1985 the EU implemented Directive 85/337/EEC, which involves the assessment of the effects that particular projects would have on the environment. The UK's aforementioned resistance continued even during the European Union's drafting of Directive 85/337/EEC, with the DoE remaining sceptical regarding the expense, necessity, resources required and overall practicality of incorporating EIA into the planning process (Glasson *et al,* 2005). The UK protested through the first part of the Directive 85/337/EEC process but eventually withdrew its objections in 1984 (Wood, 2003), and has since been greatly influenced by the development and implementation of the directive.

In addition to Directive 85/337/EEC, the Town and Country Planning (EIA) (England and Wales) / (Northern Ireland) / (Scotland) Regulations 1999 was probably one of the most fundamental pieces of legislation in cementing EIA as a requirement for development in the UK (Glasson *et al*, 2005). EIA in the UK applies to both the public and private sectors, unlike in the US where NEPA only pertains to any governmental development. The Regulations use a combination of criteria and screening thresholds very similar to, and even above and beyond

those stated in the EU Directive Schedules (Wood, 2003). The developer can also approach either the LPA or the Secretary of State in order to determine whether or not an EIA is necessary. The Department of the Environment, Transport and the Regions (DETR) and the National Assembly for Wales (2000: p5) state in their Guide to Procedures that:

> Developers are advised to consult the relevant planning authority well in advance of a planning application. Developers can decide for themselves that a given project falls within the scope of the Regulations so that an environmental statement will be needed. But the Regulations also provide a procedure which enables developers to apply to the planning authority for an opinion ('screening opinion') on whether EIA is needed in a particular case, as soon as a basic minimum of information can be provided about the proposal. This must include a plan on which the site of the proposed development is identified, and a brief description of its nature and purpose and of its possible effects on the environment. This can, of course, be supplemented with other information if the developer wishes.

If a developer is not satisfied that an EIA has been deemed necessary for his project then he can take his query to the Secretary of State, who will make the final decision. In both of these instances, the CAs can use their experience and discretion in order to advise the developer on the way forward (DETR & the National Assembly for Wales, 2000). This extra level of screening improves the EIA process as it removes any applications that may have been submitted unnecessarily. Figure 4 below demonstrates the submission of an EIA (also known as an Environmental Statement) in conjunction with their planning application to the LPA.

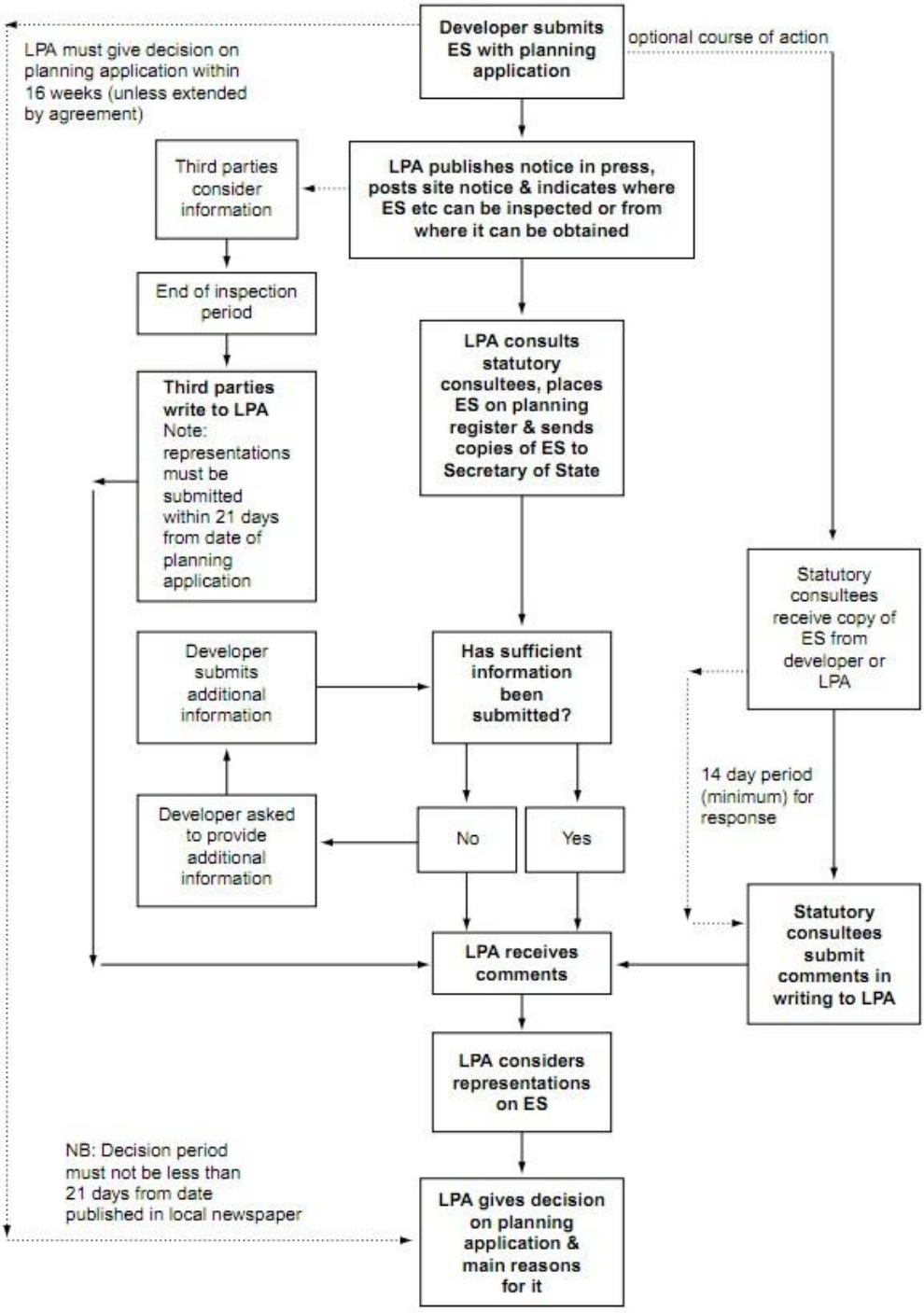

Figure 4: The EIA submission process for England and Wales, as found in Appendix 7 of the EIA Guide to Procedures (DETR & National Assembly for Wales, 2000).

There was some difficulty with regards to decision making in the UK as a result of the largely discretionary system for screening. Approximately 50% of the time, LPAs would require that an EIA be submitted only after a planning application was submitted (DoE, 1996). This negates the power of the EIA as a planning phase management tool. In addition to this, and

for the same reason, screening requirements and decisions on appeals varied considerably depending on the CA handling the application (Glasson *et al*, 2005).

The ultimate outcome of the EIA process in the case of the UK is the granting or refusing of what is known as a planning permission. Although the LPA is the general CA when it comes to granting or refusing EIA applications, there are myriad decision makers, such as Councillors and Secretaries of State (Weston, 1997), that each have their own value judgements and political agendas, which in turn trickle down and ultimately either restrict or influence the decisions made by the LPA. As Glasson *et al* (2005) state:

> By any standards, making decisions on development projects is a complex undertaking. Decisions for projects requiring EIAs tend to be even more complex, because by definition they deal with larger, more complex projects, and probably a greater range of interest groups.

The UK's decision making system is linked to the planning approval process, using a CA to assess the EIA and other additional information provided (Glasson *et al*, 2005). However, the impact of the EIA could potentially be further reaching than anticipated, forcing developers to improve design; mitigate and monitor potential impacts; and even consider site alternatives. An EIA in the UK does not form the basis of an environmental decision but instead only forms part of a more integrated procedure (Wood, 2003) and therefore is not necessarily as important as it could be. For example, once the planning permission has been obtained there is no enforced or legislated requirement for environmental monitoring reports on said development to be submitted for review, as "monitoring is not a mandatory step in many EIA procedures, including those current in the UK" (Glasson *et al*, 2005). This fact severely undermines the EIA process and negates any conditions that the LPA have stipulated and set in the planning permission regarding environmental protection.

2.2.3. The EIA process in China

"Many of the changes made or proposed [within EIA] were in response to industry- or company-specific developments. But a considerable number of reforms were contingent upon the adoption of new environmental legislation and EIA and planning requirements in the countries of operation" (Sadler, 1996). China was one of the countries that adopted EIA and took on new legislation. China's environmental history dates back to the 1970s and its EIA development has been divided into five phases, namely: the preparatory phase (1973-1978) when EIA was initially introduced to contend with the problem of pollution; the early EIA phase

(1979-1985), which marked the formal introduction of EIA in China; the main implementation phase (1986-1990), which saw the introduction of the autonomous governmental body – the State Environmental Protection Agency; the intensification phase (1991-1995), which is named as such because of the intensification of EIA legislation and supervision in response to the growth of development and the booming economy; and the consolidation phase (1996-present), in which China has now reviewed its EIA legislation, as well as restructured the institutional framework to give environmental protection agencies in all spheres of government more authority and autonomy (Wang *et al*, 2003). The Chinese Provisional Environmental Protection Law was drawn up in 1979 and introduced the idea of EIA into the system. This law was only promulgated ten years later, in 1989 (Wang *et al*, 2003; Glasson *et al*, 2005), however the promulgation of the first EIA regulations – the Management rules on Environmental Protection of Basic Construction Projects, in 1981 – made it easier for the application of EIA to expand (Mao & Hills, 2002). These regulations were revised in 1986 into what is now known as the Management of the Environmental Protection for the Construction Project and this was done in an attempt to improve on the process and procedures involved in EIA implementation, including specifying EIA requirements and defining the roles of administrative power along vertical and horizontal lines within government. These regulations were augmented again in 1990 in an attempt to strengthen the regulatory procedure (Mao & Hills, 2002). In October 2002 The Law of the People's Republic of China on Environmental Impact Assessment was passed but was only implemented on 1 September 2003, in a bid to give those affected by the new legislation enough time to prepare for it, although not much was changed in the way of EIA process (Wang *et al*, 2003).

In China an environmental authorisation is known as a certificate of approval, on which the approval or refusal thereof is decided by the varying competent authorities (Glasson *et al*, 2005). “China has a complex institutional framework for environmental protection, and specifically for impact assessment” (Wang *et al*, 2003). The State Environmental Protection Agency (SEPA) is in charge of developments taking place on a national or a strategic scale, while the provincial Environmental Protection Bureaus (EPB) make decisions regarding projects within their regional jurisdiction (Hoyle *et al*, 1999). There are also then city- and county-level based EPBs that aid in environmental protection on increasingly smaller scales (Mao & Hills, 2002, Wang *et al*, 2003).

The EIA process in China follows a similar pathway to the generic international model described in Chapter 2.2, with a few variations. The steps in the EIA process will be described below.

Screening: The State Council introduced the concept of category management during the intensification phase of China's EIA system, from 1991-1995. Proposed projects were divided into projects that required a full Environmental Impact Report (EIR), projects that required a less detailed Environmental Impact Form (EIF), and projects that only required a basic Environmental Impact Registration Form (EIRF) (Wang *et al*, 2003). There are two main criteria used to categorise the EIA applications. The first is the amount of pollutant discharge the project will produce and the second is based on the biological, historical and cultural sensitivity of the area. There are also thresholds in place in order to determine which category the project will be classified under (Wang *et al*, 2003).

Scoping for a project in China that requires a full EIA must be done by a licenced agency as approved by the SEPA. The agency is appointed by the developer to draw up an outline of the potential project's EIA and the steps required to conduct the initial analysis, the environmental baseline study, the significant impacts, the action class of each impact, and the EIA action outline. If this is approved by the CA, then the developer contracts the licensed agency to complete the EIA, including sections such as: baseline analysis; impact prediction; the evaluation of the significance of the impacts; mitigation measures that would be required; as well as various details surrounding the project (Wang *et al*, 2003).

The EIA is then submitted to the CA for review. This review process is done in conjunction with other relevant authorities that may have been involved in aspects of the development (Wang *et al*, 2003). If the EIA is considered to be sufficient then authorisation is granted and monitoring is carried out through both the construction phase and operational phase. It is interesting to note that China does not allow for EIA refusals to be appealed, even if the development has been given separate approvals in terms of planning permissions or land use authorisations (Wang *et al*, 2003). Instead, the proponent has to submit a new EIA application and go through the process again.

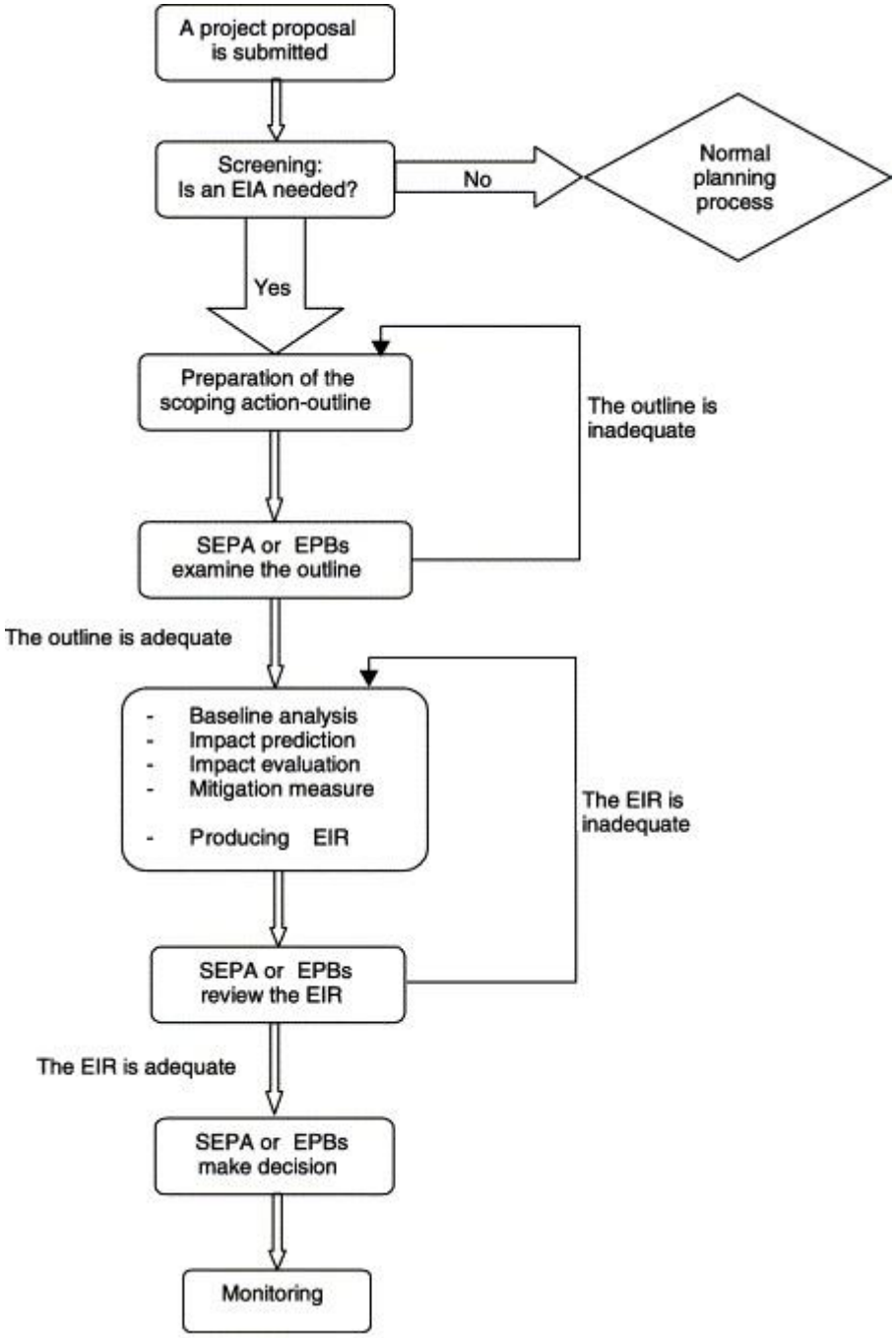

Figure 5: The EIA process model of China (from Wang *et al*, 2003).

China is considered to be a developing country under the 1997 Kyoto Protocol and therefore does not need to enforce compliance of its emissions limitation (UNFCCC, 1997). This in turn meant that many countries, including the UK, handed much of their manufacturing and industry to developing countries like China in a bid to lower their carbon emission and meet their limitation targets (Li & Hewitt, 2008). This is part of the reason for China's rapid economic growth boom in the early 1990s, and it meant that more projects within the country were in

need of EIA authorisation. In an attempt to speed up the process, many projects were either excluded from EIA requirements due to a loophole in the 1986 legislation or were exempted from the EIA process altogether (Mao & Hills, 2002). Many EIAs were conducted after the actual development had taken place, thereby negating the entire point of using EIA as a decision making tool (Hoyle *et al*, 1999; Mao & Hills, 2002; Glasson *et al*, 2005). Another issue is that the environmental administration operates under a dual-leadership system (as can be seen in Figure 6), which means that while local EPBs are held accountable to EPBs higher up and therefore essentially to the SEPA in terms of championing environmental protection, they receive their funding from local government. This means that there is potential conflict between the need to protect the environment and the development-orientated views of the local government (Wang *et al*, 2003). Because financial resources are received from local government, CAs are generally unwilling to potentially provoke other governmental departments or even some politicians who may be firmly in favour of some of the intended ventures (Glasson *et al*, 2005).

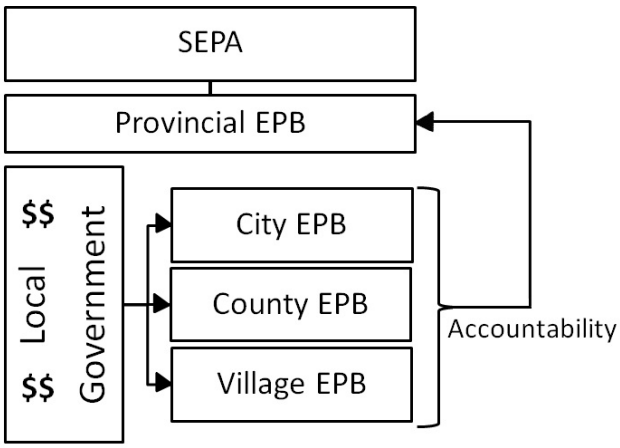

Figure 6: Statutory structure of environmental and financial power in China (adapted from Wang *et al*, 2003).

The rapid rate at which China is developing its economy, and also the administrative decentralisation of power, means that environmental aspects are often overturned in favour of development (Mao & Hills, 2002; Glasson *et al*, 2005). Mao & Hills (2002: p103) stand by this view by stating that:

> …it is widely agreed that [EIA] has played only a marginal role in controlling pollution from new sources and maintaining environmental sustainability in the course of rapid economic growth.

The situation in China is therefore relatively conflicted in that "local governments can design and enforce their own environmental policies, while local leaders have both incentive and means to impede the implementation of environmental regulations when deemed unfavourable for local economic growth" (Mao & Hills, 2002; also see Hoyle et al (1999)). Mao & Hills (2002) go on to argue that the impacts of China's economic–political reform on its environmental regulation in general, and EIA implementation in particular, are mixed and less than beneficial. However, the introduction of a proper PPP into the IEA process means that the government is required to be more transparent and therefore can be held accountable for its actions (Mao & Hills, 2002; Wang *et al*, 2003). In terms of decision making, China has an EIA system that is "operated by technocrats, for the benefit of political decision makers" (Wang *et al*, 2003: p571). In many ways China is still very much a developing nation, with many challenges to be overcome.

2.3. The South African EIA Process

South Africa's introduction to EIA is similar to that of the UK in that initially there was no legislated requirement or process in place and EIAs were therefore conducted on a voluntary basis (Sowman *et al*, 1995; Duthie, 2001; Wood, 2003; Ridl & Couzens, 2010). In 1980 the White Paper on a National Policy Regarding Environmental Conservation was produced, which held the view that EIA was "a valuable aid to decision making" (Wood, 2003). However, this was only a set of policy guidelines and therefore EIA was still not considered a legislated requirement in terms of development. The Environment Conservation Act 73 of 1989 (ECA) was the first piece of South African legislation to guide decision making in terms of the protection of the environment. Despite South Africa's proud history of EIA (Wood, 2003), Sowman *et al* (1995) believe that South Africa has been slow to develop procedures appropriate to its circumstances. For example, ECA was initially drawn up as early as 1982 but was only promulgated in 1989. The piece of legislation did include processes surrounding EIA but these lay dormant until it finally came into effect in 1997 (Wood, 2003), which brought with it the commencement of the first South African national EIA regulations. However, these regulations were considered to be a distilled version of the draft regulations that preceded them and were so cryptic that it was left up to consultants and government to fill in the gaps (Ridl & Couzens, 2010).

1989 was also the first time the term Integrated Environmental Management (IEM) was introduced by the advisory committee to the Minister of Environment Affairs through the

publication of a document called Integrated Environmental Management in South Africa (Council for the Environment, 1989). South Africa is a unique country with a complicated history, which made it apparent early on that the transference of developed-country EIA systems, such as that of the US or UK, would be inappropriate and irrational (Sowman *et al*, 1995). Wood (2003) quotes Sowman *et al* (1995) and Fuggle (1996) in explaining that there were four main factors that led to the current structure of South Africa's EIA system. The first was that a great deal of economic growth and development would be required in order to begin to address the previous inequality that Apartheid had left behind. The second factor was an acknowledgement of the fact that the number of environmental experts was severely lacking within the country and this had to be accommodated for. Thirdly, the empirical evidence indicated that the technocratic outlook of the Apartheid government had failed millions of people in terms of planning and decision making. As a result, a more holistic, integrated and ecocentric view of development had to be adopted. And finally, there was a "need for inclusive participatory democracy and empowerment in environmental decisions" (Wood, 2003: p85) in order to balance out the previous issues of "secretive, non-democratic and highly authoritative traditions, a vocal environmentally concerned middle class and low levels of literacy" (Wood, 2003: p85). Because of this, the historical position on the environment as viewed by the impoverished majority has been negative and even hostile (Sowman *et al*, 1995; Du Pisani & Sandham, 2006). There is a general lack of understanding that development and environmental issues can work hand in hand if given the opportunity (Sowman & Brown, 2006). With regards to this, "the [1997] Regulations themselves provided a broad framework within which the principles of integrated environmental management were to be applied" (Ridl & Couzens, 2010: p83). The production of the IEM document meant that the primary purpose of EIA in a South African context was taken into account, namely: "creating and maintaining the delicate tripartite balance between economic benefits, social upliftment and environmental integrity" (Ridl & Couzens, 2010). However, it is thought that the first set of EIA regulations were actually a missed chance by government to legislate the more holistic and integrated IEM procedure (Wood, 2003). As only the EIA and scoping portions of the IEM procedure were legislated, the major limitations have slowly become apparent (South Africa, 1998). One example of this is the subsequent issue surrounding the integration of environmental concerns with planning and development (Sowman *et al*, 1995; Lawrence, 2000; Richardson, 2005; Sowman & Brown, 2006).

The EIA screening process in South Africa took a turn for the better in 2006 with the promulgation of the new EIA Regulations. The EIA process was improved in this way through

better, more precise timeframes and a more comprehensive list of criteria and thresholds. This would allow developers to better determine the need for a basic assessment or a full EIA study, although expertise and resources were considered to be factors resulting in a slowed process both before (Duthie, 2001) and after (Ridl & Couzens, 2010) the new EIA regulations. The EIA screening process was further improved in August 2010 with the repeal of the 2006 EIA regulations and the introduction of the updated and improved 2010 EIA regulations. These 2010 regulations brought with them updated definitions, three listing notices of activities requiring environmental authorisation replacing the two previous listing notices, as well as further clarification on timeframes (WSP, 2010). The third listing notice, known as GNR546, is entirely new and is based on provincial boundaries, making it the first piece of South African environmental legislation to take geographic positioning and sensitive areas into consideration. This third listing notice is also centred more around activities that are typical of general infrastructure improvements, such as putting up road signs or communication towers or masts, the widening of roads, and development under the banner of tourism (South Africa, 2010).

In terms of administrative structure, South Africa currently has three spheres of government, namely national, provincial and local. There is one national environmental department, presently known as the Department of Environmental Affairs (DEA). At provincial level there is one provincial DEA office for each of the nine provinces in South Africa. The Minister or MEC at national level has delegated decision making powers in respect of applications for environmental authorisation to a regional departmental official (DEAT, 2005). Therefore, in most cases, the review and subsequent granting or refusal of EIAs as well as the issuing of environmental authorisations is handled by the competent authority at provincial level. If the EIA decision is appealed, then the Minister will then investigate the decision made by the provincial authority (DEAT, 2005). Under the 2006 and 2010 EIA regulations, the Minister or MEC may appoint an appeal panel to make recommendations. Ridl and Couzens (2010) believe this to be a positive step as it allows for independence in the process, based on the project's facts. This process was allowed under the 1997 EIA regulations but was seldom put into practice.

Wood (2003: p2) explains that "because EIA is part of a wider approach to environmental protection it is influenced by the system of which it is an element". South Africa is seen as a developing country but has some of the best environmental and constitutional legislation in the world (Du Pisani & Sandham, 2006). The South African EIA process follows most international

EIA processes to some degree, although it is hard to make generalisations on EIA practice and systems as Environmental Assessment (EA) literature is both country and context specific (Retief, 2010). The screening step in South African EIA process is twofold. The first step determines whether or not a full EIA is required and the second step determines the extent to which the environmental assessment will take place (DEAT, 2002a). In other words, the process splits, after the initial screening phase, into a Basic Assessment (BA) or a full EIA, depending on the requirements met in the EIA regulations criteria checklists, namely GNR544 (basic assessment) and GNR545 and GNR546 (scoping report and full EIA). These regulations consist of thresholds (numerical and geographical) in addition to the criteria checklists, but these are the only two types of screening applied. There is therefore little room for independent deliberation on the part of the CA to use his/her own discretion to decide whether or not an EIA should be undertaken for a particular project. The authorisations themselves are granted or refused based on information provided in either the BA report, or in the scoping report and later the full EIA. Figure 7 gives a simplified overview of the South African environmental authorisation process flow.

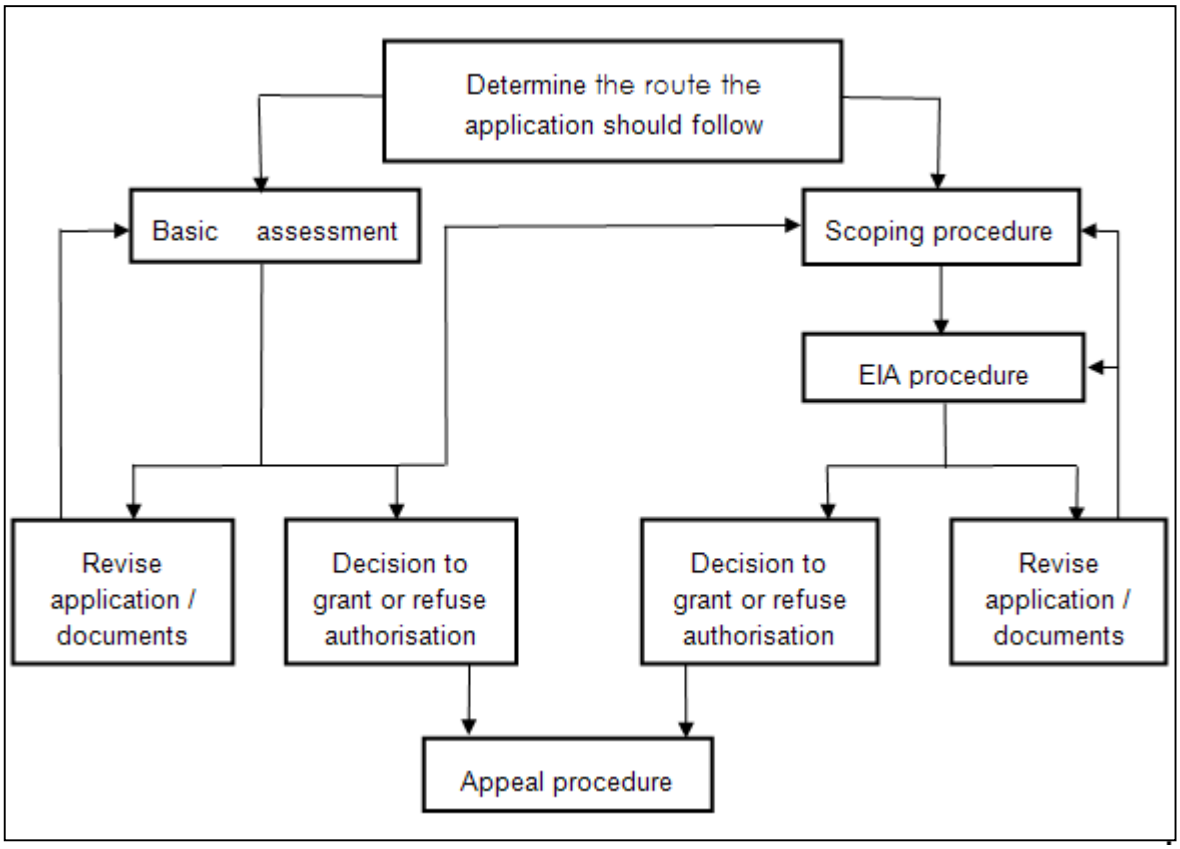

Figure 7: Abbreviated Process Flow (taken from DEAT, 2005).

As previously stated, South Africa operated under the 2006 EIA regulations until 18 June 2010. These have since been repealed and new, updated EIA regulations have come into effect. GNR544 has replaced GNR386 in terms of BA criteria and GNR545 has replaced GNR387 in terms of EIA screening criteria. The new regulations are much more intricate and give more detail on what is required in a BA or EIA. The ideal generic process would involve the consideration of alternatives (of site, design, structure, method etc.) during the planning phase of the proposal, followed by the screening of listed activities associated with the project to determine whether a BA or scoping report and full EIA are required. If a full EIA is required then the proposal moves into the scoping phase, where the significant impacts and their mitigation measures are determined and are put into a Scoping Report. Scoping is a critical phase in the EIA process because "it helps to focus the environmental assessment on issues which are important for decision making, and thus reduce[s] any delays in decision making due to requests for additional information" (DEAT, 2002b: p6). The CA reviews the Scoping Report and if it is deemed acceptable then the next phase of the EIA process begins, whereby the Environmental Assessment Practitioner (EAP) compiles the EIA, including any specialist studies or additional information required as agreed with the CA. The EIA is then submitted to the provincial DEA and is reviewed by the CA, after which an environmental authorisation is either granted or refused. If granted, then monitoring is set up and monitoring reports are sent to the CA on a basis predetermined by the EAP and CA. If the environmental authorisation is refused then the applicant can appeal against the decision. A more detailed process will now be outlined in the next few paragraphs.

If it has been determined that a BA is required then, in terms of Part 2 of the NEMA Regulations (GNR543), applicants are requested to submit a BA report, detailing the following:

1) the EAP who prepared the report and their expertise;
2) a description of the proposed activity;
3) a description and a map of the property on which the activity is set to take place, indicating the location of the activity;
4) a description of the environment that may be affected and the manner in which the geographical, physical, biological, social, economic and cultural aspects of the environment may be affected;
5) an identification of all legislation and guidelines that have been considered in the preparation of the BA report;
6) details of the public participation process (PPP) conducted;

7) a description of the need and desirability of the project;
8) a description of any identified alternatives to the proposed activity that are feasible and reasonable;
9) a description and assessment of the significance of any environmental impacts;
10) any environmental management and mitigation measures proposed by the EAP;
11) any inputs and recommendations made by specialists to the extent that may be necessary;
12) a draft environmental management programme (EMP);
13) a description of any assumptions, uncertainties or gaps in knowledge;
14) a reasoned opinion as to whether or not the proposed activity should be authorised;
15) any representations and comments received in connection with the application;
16) the minutes of any meetings held by the EAP with interested and affected parties (I&APs) and other role players;
17) any responses by the EAP to said representations, comments and views;
18) any specific information required by the competent authority; and
19) any other matters required in terms of Sections 24(4)(a) and (b) of NEMA.

Of particular importance is the fact that NEMA was amended in 2008 to include Section 24(4)(b)(i), a clause requiring written proof from the EAP, which must be submitted to the CA, detailing an "investigation of the potential consequences or impacts of the alternatives to the activity on the environment and assessment of the significance of those potential consequences or impacts, including the option of not implementing the activity" (South Africa, 1998). This is significant because there has been a tendency in the past to not properly address alternatives, especially the no-go option (Avis, 1994; Mulvihill & Baker, 2001; Benson, 2003; Wang *et al*, 2003; DEAT, 2004).

The EAP must submit the BA report to the CA within the timeframes stipulated by the CA. In turn, the CA must, within 14 days of receiving the BA report from the EAP, acknowledge in writing that the BA report has been received. The CA then has a further 30 days in which to consider the application and either accept or reject it. If the 30 days lapse and a decision has not yet been reached, then the CA is consequentially allowed a further 60 days in terms of Reg 9(2) of GNR543 in which to reach a final decision. In the case of refusal, the CA may refuse the BA report but must ask for additional information such as specialist studies or more detailed information on alternatives before refusal is given. The CA could also decide that the potential development be subjected to a Scoping and Environmental Impact Reporting

(S&EIR) process instead, meaning that the applicant would have to complete and submit a full EIA instead of a BA report. If this turns out to be the case, then the applicant must follow Part 3 of GNR543. The CA must notify the applicant of his/her decision within 10 days of that decision being made, and within 12 days of the date of the decision on the application, convey this information to all I&APs.

With regards to an EIA, in terms of Part 3 of the same NEMA EIA Regulations (GNR543), applicants in South Africa are required to initially fill out an application form for environmental authorisation of the relevant activity (found in GNR545 or GNR546), after which the EAP is to begin the PPP as well as begin compilation of the Scoping Report. This report should provide the following details:

1.1. the details of the EAP who prepared the report and their expertise;
1.2. a description of the proposed activity;
1.3. a description of any feasible and reasonable alternatives that have been identified;
1.4. a description of the property on which the activity is to be undertaken, and the location of the activity on the property;
1.5. a description of the environment that may be affected and the manner in which the environment may be affected;
1.6. identification of all legislation and guidelines that have been considered;
1.7. a description of environmental issues and potential impacts that have been identified, including cumulative impacts;
1.8. details of the PPP conducted in terms of regulation 27(a);
1.9. a description of the need and desirability of the proposed activity;
1.10. a description of identified potential alternatives to the proposed activity;
1.11. copies of any representations and comments received by I&APs;
1.12. copies of any minutes of meetings held by the EAP with I&APs;
1.13. any responses by the EAP to those comments, representations and views;
1.14. a plan of study for the EIA;
1.15. any specific information specifically required by the CA; and
1.16. any other matters required in terms of Sections 24(4)(a) and (b) of NEMA.

As is the case with the BA application, the CA must accept or refuse the report within 30 days of the EAP lodging the Scoping Report. If the Scoping Report is accepted, then the EAP must then proceed with the PPP and must prepare the EIA and a draft EMP in terms of Regulation

31 of GNR543. The details of the EIA are similar to that of the Scoping Report. In terms of the above points, numbers 1-2, 4-5, 8-10 and 15-16 that are laid out in the scoping report are also required for the EIA. However, in addition to NEMA (South Africa, 1998) requires that the following pieces of information be included:

1) an indication of the methodology used in determining the significance of potential environmental impacts;
2) a description and comparative assessment of all alternatives identified during the EIA process;
3) a summary of the findings and recommendations of any specialist report or report on a specialised process;
4) a description of all the environmental issues that were identified during the EIA process, an assessment of the significance of each issue and an indication of the extent to which the issue could be addressed by the adoption of mitigation measures;
5) an assessment of each identified potentially significant impact, including cumulative impacts, the nature, extent and duration of the impact, the probability of the impact occurring, the extent to which the impact could be reversed, the degree to which the impact may cause irreplaceable loss of resources, and the degree to which the impact can be mitigated;
6) a description of any assumptions, uncertainties or gaps in knowledge;
7) a reasoned opinion as to whether the activity should or should not be authorised, and if so, the conditions under which it should be authorised;
8) an environmental impact statement (EIS);
9) a draft environmental management programme (EMP); and
10) copies of any specialist reports and reports on specialised processes.

There is no time limit as to how long the EAP should take to complete this EIA. It is completely at the discretion of the CA, although the CA and EAP usually confer (Ridl & Couzens, 2010) and construct a realistic timeframe. However, once the EIA has been lodged, the CA must notify the EAP within 60 days whether the EIA has been accepted or refused. If it has been accepted, then the CA has another 45 days in which to grant or to refuse the environmental authorisation. As is the case with the BA report, in terms of Regulation 10(1) of GNR543, the CA has a further 10 days to relay this decision in writing to the applicant. The EAP is also required to relay the decision to all I&APs within 12 days of the date of decision.

The South African government has recognised the value of EIA as an aid to decision making compared to the voluntary processes that were conducted in the 1970s (Sowman *et al*, 1995). However, there is still a reluctance to integrate environmental considerations into the planning and decision making processes (Sowman *et al*, 1995; Ridl & Couzens, 2010). It is interesting to note that developed countries were originally resistant to the implementation of EIA. One concern in the UK, for example, was that "planning authorities in these areas lacked the experience and resources needed to assess the impacts of such large developments" (Glasson *et al,* 2005). Similarly, South Africa is currently attempting to implement legislation with limited resources, capacity and skills training (Duthie, 2001; Wood, 2003; Ridl & Couzens, 2010). However, the EIA consultancy sector in South Africa is considered to be quite strong (Wood, 2003) and this, combined with the requirement from NEMA that all EAPs be independent, has led to the formulation of the Environmental Assessment Practitioners Association of South Africa, which currently has an interim certification board while the organisation firms up on its systems (EAPASA, 2011). As is typical in South Africa, the definition of the term 'environment' is taken to mean all three pillars of sustainability, namely the biophysical, social and economic environments. Therefore, EAPs that are allowed to register will be from a diverse array of backgrounds (EAPASA, 2011).

2.4. Practicalities of Decision Making

Decision making takes place throughout the EIA process (Wood, 2003), whether it's by the applicant, the EAP deciding on the scope of the EIA, or the CA determining which specialist studies should be included. It is almost always a combination of all parties negotiating on a way forward. The most important decision taken in the EIA process is whether to grant or refuse the EIA environmental authorisation (Wood, 2003).

The quality of EIAs and EISs has been a concern in much of the literature (for example: Sadler, 1996; Lawrence, 1997b; Lee *et al*, 1999; Wood, 1999; 2003; Glasson *et al*, 2005; Ross *et al*, 2006; Sandham & Pretorius, 2008). The main reason behind this is linked to the fundamental fact that EIAs are supposed to be used as a management tool in order to aid CAs in making better decisions (Sandham & Pretorius, 2008). There is therefore a requirement that quality of the information provided be adequate otherwise the incomplete information can lead to bad judgments. Quality control of the EIA process needs to be done in order to be able to bridge practice and potential (Sadler, 1996). South Africa compares well to countries across Europe in this regard, a fact to which Sandham and Pretorius (2008) attribute

to the completion of voluntary EIA application prior to the legislation, and thus the development of a strong core of EAPs.

Quantitative outcomes might make decision making easier for technically minded people, such as engineers, but elected politicians are unlikely to have the time or the inclination to read a full EIA report (Wood, 2003). This indicates that a well written non-technical executive summary within the EIR would make evaluation of projects easier, although there are many non-environmental influences that might nevertheless overshadow a scientific evaluation. Wood (2003) states that there are always "likely to be value-laden trade-offs between environmental and socio-economic factors". As a result, there is often more incremental decision making involved in proposals that are subject to the EIA process. The unacceptable environmental impacts that could be mitigated through better design, the opposition of certain issues raised by the public, and the political circumstances surrounding the proposal all confirm that the environmental aspect of a development is only one factor to be considered amongst many others (Wood, 2003). That said, EIA has been seen to generate a significant number of changes to projects (Christensen *et al*, 2004).

If the modifications made to the EIA application are inadequate, or if the development is considered unacceptable, then the application is refused (Council of the European Communities, 1985; Canada, 1992; South Africa, 1998; Wood, 2003; Wang *et al*, 2003). This is technically an uncommon occurrence, for two reasons. Firstly there are many positive benefits to a development going ahead and therefore decision makers will usually grant the EIA authorisation (Wood, 2003; Ridl & Couzens, 2010) through, for example, setting conditions of improved mitigation and monitoring. Secondly, most potential developments are proposed for the purpose of financial gain. As such, thorough investigations would have been made by both the applicant and the EAP into all possible avenues and outcomes of the development, even before the application is lodged. Many of the problems that could arise are confronted and dealt with, typically at the planning phase before an EIA application is ever submitted to the CA (Christensen *et al*, 2004). This means that EIA applications that are submitted are done so with the confidence that the environmental authorisation will be granted and that the development will be able to go ahead. The fact then that some EIA authorisations are still refused means that something other than procedural issues was the motivating factor behind the decision makers' judgement. In fact, this phenomenon could be regarded as a potential increased level in EIA effectiveness, since the decisions that followed resulted in the

environment being improved through either the hindering or the entire cessation of the development.

Investigation into the refusals of EIA applications would therefore potentially lead to a deeper understanding of the reasoning behind the refusals. The following chapter deals with the methodology used in the analysis of the EIA refusals and also gives a brief summary of the information to be analysed.

CHAPTER 3. RESEARCH METHODOLOGY

To date, there has been a general lack of analysis of EIA refusals, and as such no current methodological process for this type of analysis exists. It was therefore decided that a mixed methodology approach – consisting of quantitative and qualitative analysis – would be beneficial as a basis from which any further future investigation could be done. The initial challenge for this study was in obtaining access to the EIA refusals themselves from each of the various provincial DEA departments, as well as from any environmental consultants. In most instances there was resistance from the provincial departments with regards to supplying the EIA refusals, and various levels of cooperation and bureaucracy were experienced. For example, although the EIA refusals are known to be public knowledge and should therefore be freely available to the community, Gauteng, Western Cape and the North West Province insisted that legislative procedure be followed. Access to the requested information would only be made available after a Promotion of Access to Information (PAIA) Form was completed in terms of Section 18 of the Promotion of Access to Information Act (2 of 2000). Gauteng in particular was interesting in that they would only supply a maximum of five EIA refusals, owing to capacity constraints. Some provinces, such as Mpumalanga, already had the EIA refusals from various districts within their province on file electronically and were able to supply these via email. Other provinces, such as Kwazulu Natal, required a specific reference number from their district branches before the information could be obtained, and this led to an impenetrable bureaucratic wall. Provinces such as the Northern Cape remained mute on the subject, in spite of numerous attempts at communication. Another issue that was experienced in some instances was the lack of EIA refusals available. The Free State has never before issued an EIA refusal and was therefore not able to supply any, while the Limpopo Province stated that they only had one available for analysis.

As a result of these various limitations, only seventeen EIA refusals were received for analysis after extended requests during a 12-month timeframe. The actual process that was followed in order to obtain the EIA refusals was as follows: initially the Directorate of Environmental Impact Assessment at national DEA level was approached via email, and that email was passed onto the Directorate of Capacity Development and Training, also at national level. It was through this department that it was possible to obtain – electronically – contact details for the correct provincial officials from each of the nine regions to approach for information. Contact was made with all nine provincial departments within South Africa, through both email and telephonic conversations. Consultants were also approached for EIA refusals, although

most had not received any. The list of people that were contacted for information can be found in Annexure 1.

It is important to note that information regarding legislated EIA refusal appeals and consequent granting or refusal of an EIA was not necessarily made available to the author and therefore any EIA refusal that could be obtained was investigated, regardless of the eventual outcome. EIA refusals issued under both the now-defunct Environment Conservation Act 73 of 1989 (ECA) and the current National Environmental Management Act 107 of 1998 (NEMA) were considered and analysed. Once all of the data were collected, each EIA refusal was assigned a number. Quantitative analysis of each EIA refusal was undertaken in order to determine what types of applications were rejected and, additionally, to investigate the reasons for the refusals. This quantitative analysis included looking at: the date of refusal; the provincial authority; the type of applicant (i.e. consultant, land owner etc.); the legislation the EIA was applied under; the sector the EIA application fell into; the screening triggers; the reason the EIA was being applied for; the legislated listed activities; the content of the EIA refusal; and the reasons given by the provincial authority for the refusal of the EIA application. Table 1 and Figure 8 elaborate on this. Comprehensive analysis of the EIA refusals can be found in Annexure 3.

The reasons have been divided into 2 categories, namely substantive issues and procedural issues, and these two categories have been subdivided further in order to determine the reasons why the EIAs were refused. As stated, each case study has been assigned a number, which will correlate to the results in the Results and Discussion Chapter, below. As stated, each case study has been assigned a number. A number was assigned to each EIA refusal as and when it was received by the author from the relevant provincial authority. These numbers correlate to the analysis and results that can be found in the next chapter, entitled Chapter 4: Results and Discussion. This next chapter looks at the data provided and uses both quantitative and qualitative analysis in the analysis of the documents provided to further investigate the three sub-questions laid out in Chapter 2.

CHAPTER 4. RESULTS AND DISCUSSION

The information in this chapter was gathered using the methodology explained in Chapter 3. The results have been broken down into three main categories, namely the number of EIA refusals, the type of EIA refusals and finally the reasons given by the provincial authority for each EIA refusal. Each section links back to the sub-questions highlighted in Chapter 2.

4.1. Number of EIA Refusals

In order to put the number of EIA refusals into perspective, it is important to first look at the amount of EIAs that go through the South African system. Retief et al (2011) determined that approximately 4000 EIAs are produced in the country on an annual basis. In addition to this, Wood (2003) stated in his comments on the treatment of decision making in EIA systems that South African EIA refusals are generally very rare. The fact that only seventeen EIA refusals could be obtained for analysis in this study not only substantiates Wood's claim but also negates the small number of refusals obtained when compared to the vast number of EIAs that go through the South African system every year. For example, even if 40 more EIA refusals could have been obtained for analysis from 2010 alone, it would still equate to less than 1.5% of the total. This is in line with international opinion that the number of EIAs that are refused remains negligible compared to the number of developments that are allowed to go ahead. Jay *et* al (2007: p290) state that "it is in the realm of decision making about specific projects that the influence of EIA can best be tested". Analysis of even a minimal number of EIA refusals is therefore valuable as it aids in the further evaluation of EIA effectiveness. In addition to this, some of the EIAs that were refused would have been relatively large projects, and therefore the refusal constitutes noteworthy prevention of potential negative environmental impacts.

4.2. Type of EIA Refusals

The EIA refusals ranged across eight sectors, namely: mining; tourism; industry; residential development; agriculture; fuel; and transport. Based on the seventeen EIA refusals that were analysed, the screening triggers were found to be: the clearing of natural vegetation (case studies 5, 7, 11, 12, 14, 16) and soil (case study 1); biodiversity and ecological sensitivity of a location (case studies 2, 3, 4); the concentration of animals for production (case studies 6, 13); the storing and handling of hazardous substances (case studies 8, 10); the construction of infrastructure (case studies 9, 16, 17); zoning and land use (case studies 15, 17); as well as the subdivision of land (case study 17). Table 1 (as seen below) has been drawn up in order to provide a broad summary and basic description of each of the EIA refusals.

Table 1: Breakdown of each EIA refusal based on date of issue of refusal, sector, province screening activity and description.

No.	Sector	Province	BAR/ EIA	Listed Activity	Screening Trigger	Short description of project
1	Mining	Gauteng	EIA	GNR 387: Item 7 & 8	Mining. Removal of 3000m^3 of soil	Proposed fluorspar opencast mine development and construction of associated infrastructure.
2	Tourism/ Residential development	Eastern Cape	EIA	GNR 387: Items 1(f), 1(g), 1(t), 2, 5 GNR 1182: Items 1(d), 1(m), 8, 10	Biodiversity & ecological sensitivity of location	A proposed development of the Madiba Bay Leisure Park along the Eastern Cape coastline. 5400 hectares in extent. Development consisted of residential and tourism development, including: an equestrian centre, water world, sports fields, golf course, office park, conference centers and accommodation.
3	Industry	Mpumalanga	BAR	GNR 386: Items 1(m) & 19	Building within a 1 in 10 year flood line or within 32m of a river bank	Upgrading through expansion of an industrial wire manufacturing premises.
4	Residential development	Mpumalanga	EIA	GNR 1182: Item 2(c)	Biodiversity & ecological sensitivity of location	Proposed development of a township over approximately 930 hectares of land, including the construction of 253 residential stands, septic tanks and French drains.
5	Residential development	Mpumalanga	BAR	GNR 386: Item 16	Transformation of undeveloped, vacant or derelict land	Proposed continuation of the development of a township.
6	Agriculture	Mpumalanga	EIA	GNR 1182: Item 3	Concentration of animals for commercial production	Construction of a small chicken abattoir on an existing farm.
7	Tourism	Mpumalanga	BAR	GNR 386: Items 16 & 20	Transformation & rezoning of undeveloped, vacant or derelict land	Development of 7 residential blocks comprising of 42 units, 56 covered parking bays, 21 uncovered parking bays, and a guest lodge. The guest lodge would be sold as a sectional title after the 2010 Soccer World Cup.
8	Fuel	Mpumalanga	EIA	GNR 1182: Item 1(c)	Storing & handling of hazardous substances	Construction and establishment of a filling station measuring approximately 3.2 hectares. Included in the development is: 150m^2 filling station, 1x 46,000ℓ diesel tank, 3x 23,000ℓ petrol tanks, 4 pump positions, carwash, workshop, convenience shop, as well as a truck stop with 20 truck parking bays, accommodation, ablution facilities and kitchen for 12 people.

9	Mining	Mpumalanga	EIA	GNR 1182: Item 1(d)	Construction of a railway siding	Construction and operation of a double railway siding. Siding to be max 2km in length and 48m wide, with storm water cut off trenches, a settling dam and an evaporation dam for storm water runoff. Also to be constructed: ablution facility, weighbridge, electricity, potable water and haul road. Operational phase would include stockpiling of coal for 2-3 days before being loaded onto trains to markets. Dubbed the 'Golfview coal siding project'.
10	Fuel	Mpumalanga	EIA	GNR 1182: Item 1(c)	Storing & handling of hazardous substances	Construction and operation of a filling station in Secunda, Mpumalanga.
11	Residential development	Gauteng	BAR	GNR 386: Items 12 & 16	Clearing of natural vegetation	Proposed development of an equestrian estate, to be named Floracadia North, in Gauteng.
12	Residential development	Gauteng	Exemption	Presumably GNR 386: Item 16	Doesn't say but looks to be - Transformation & rezoning of undeveloped, vacant or derelict land	Request for an exemption for the proposed development of a gentleman's estate in Gauteng.
13	Agriculture	Gauteng	BAR	GNR 386: Items 1(h)(v) & 16	Concentration of animals for commercial production	Establishment and operation of a chicken broiler production premises.
14	Residential development	Gauteng	BAR	Presumably GNR 386: Item 16	Building of 200 residential units	Proposed development of 200 residential units with a proposed density of 25-30 units per hectare.
15	Transport	Limpopo	EIA	GNR 1182: Item 2(c)	Agricultural or zoned undetermined use or an equivalent zoning, to any other land use	Development of a taxi holding area at the corner of Devenish Street and Nelson Mandela Drive in Polokwane, Limpopo.
16	Mining	North West Province	EIA	GNR 386: Items 1(a), (b),(c),(k), (l), 12, 15 & 16(b) GNR 387: Items 1(e), (s) & 2	Various – development of area larger than 20ha; construction of polluting facilities & rail transportation;	The construction and operation of a ferrochrome smelting project greater than 20 hectares, including generation of electricity, storage of ore, bulk transportation of sewage and water, removal of indigenous vegetation, and road construction.
17	Residential development	Western Cape	BAR	GNR 386: Items 15, 16 & 18	Various – Transformation & rezoning of undeveloped, vacant or derelict land; construction of a road; Subdivision of portions of land	Development of an upmarket sectional title scheme of 10 single residential units. Development would include subdivision of land and rezoning.

Table 2 summarises the screening triggers found in the EIA refusals. The most significant group of the EIA refusals' screening triggers (just under half (8 of 17 = 47.06%), though it is important to note that one EIA could potentially have various screening triggers) was found to be due to the transformation and rezoning of undeveloped or vacant land, and 5 of 7 (71.4%) of those particular EIA refusals were attributed to applications for residential development. One explanation for this could be that, in general, more applications for residential developments are processed. However, information to validate this is outside the scope of this paper.

Table 2: Screening trigger classification of the analysed EIA refusals.

Screening Trigger	Amount of EIA refusals	The EIA refusals that included this screening trigger
Transformation and rezoning of undeveloped or vacant land	7	1, 5, 7, 11, 12, 14, 15, 17
Biodiversity and ecological sensitivity of a location	3	2, 3, 4,
Construction of infrastructure	3	3, 9, 16
Concentration of animals for production	2	6, 13
Storing and handling of hazardous substances	2	8, 10,
Subdivision of land	1	17

Biodiversity and ecological sensitivity of a location, as well as construction of infrastructure, were the next screening triggers on the scale, with three EIA refusals (17.65%) each. Finally, concentration of animals for production; and storing and handling of hazardous substances both had 2 screening triggers (11.76%). The subdivision of land stood alone in the screening triggers, with only one EIA refusal (case study 17) being partially attributed to that (5.88%). However, it is more likely that the other screening triggers played a bigger part in the refusal, such as the project not falling in line with the municipality's SDF.

4.3. Reason for EIA Refusals

In terms of the international debate on the perception of EIA just being a rubber stamping exercise, Jay *et al* (2007) state that EIA is thought to be "an anticipatory environmental management tool [but it has] generated a considerable debate over the extent to which it is achieving its purposes". On a local level Ridl and Couzens (2010) also believe this to be the case, with emphasis on the notion that EIAs are done because of legislative requirement rather than the value they can offer decision makers. In terms of the literature, it is the actual EIA process in various countries that has historically been investigated the most (for example: Barker & Wood, 1999; Leknes, 2001; Jay *et al.*, 2007; Wood, 1999; Retief, 2010), and it is for this reason that there is an international perception that EIA is not only lacking in process, but is also seen to be very weak in arguing content. Generally it is thought that the role that EIA plays is an informative one, aiding in the conditions set by decision makers on developments (Bartlett & Kurian, 1999; Jay *et al,* 2007). However, this study has found that it is not necessarily the case that EIAs are judged on process alone, and in fact it was determined that the EIA refusals were based on substantive reasoning. This is thought to be a relatively new phenomenon as competent authorities are not legally required to take external influences, such as SDFs, into consideration in the decision making process and yet the evidence shows that this is being done. Table 2 presents a more detailed breakdown of the substantive reason(s) laid out by CAs within the 17 EIA refusal documents analysed.

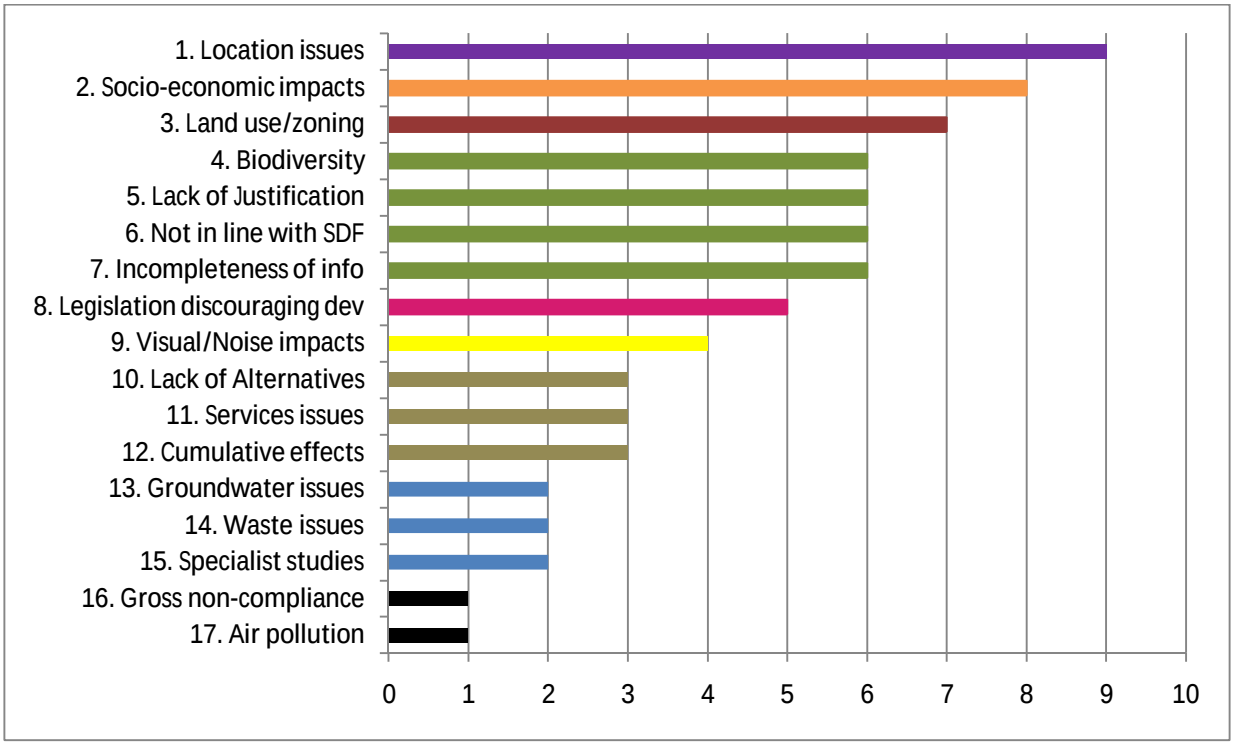

Figure 9: Substantive reasons given by the DEA for the refusal of EIAs.

The reasons for the EIA refusals have been broken down into seventeen issues, namely: location, socio-economic impacts, land use/zoning, lack of justification, Spatial Development Framework (SDF), biodiversity, incompleteness of information, legislation discouraging development, visual/noise impacts, lack of alternatives, service issues, cumulative effects, groundwater issues, waste issues, specialist studies gross non-compliance, and air pollution. Each of these substantive reasons will be dealt with in turn, starting with the most dominant.

4.3.1. Location

The most significant substantive reason found in the EIA refusals provided was that of location. There are nine EIA refusals that involve location as a reason in this study (case studies 1, 2, 4, 7, 8, 11, 12, 15 & 17). The issue of location refers to a specific geographical area within South Africa, and the reason for refusal is therefore tied into the location. Under this substantive issue, it should be reasonable to assume that any development, regardless of sector, would be considered irrelevant as it is the physical location itself that cannot be developed, and this can be confirmed by looking at Table 1. The EIAs can be seen to have been refused, regardless of the sector under which they are categorised. Of the nine refusals that were based on location, four stated that the development did not tie in with the SDF of the area, and specifically referred to the development not fitting into the municipal Urban Edge Policy. This does not initially seem significant, except when compared to the fact that there are

only six refusals based on SDF, of which the majority (four) are related to location. The SDF itself is a tool utilised by local government to monitor and oversee development and expansion within a certain area (City of Cape Town, 2010). It forms part of the municipality's five year Integrated Development Plan (IDP) and also includes a Strategic Environmental Assessment (SEA). It therefore makes sense that location as a reason for refusal would tie into the SDF.

4.3.2. Socio-economic impacts

Of the seventeen EIA refusals, eight stated socio-economic impacts (case studies 2, 3, 7, 10, 13, 14, 16 & 17) as one of the reasons for not allowing the development to proceed. Socio-economic impacts in this instance would be defined as the potential negative social or economic impact(s) that were either not taken into account by the applicant or were seen to be detrimental in terms of the outcome of the development. The social aspect of a refusal would include not informing, including, or in some cases simply ignoring local communities or interested and affected parties (I&APs), or just neglecting to take the potential social aspects into account. The economic aspect in general would take into account the development's potential costs and benefits to all I&APs, including the applicant. For example, a development might undermine existing business in the surrounding area by setting up there, even though the financial gain of the development for the local area and the province at large could be beneficial. All of these factors have to be determined before a decision is made. The reasons for refusal in this study, given by the provincial DEAs, were classified into one of two categories: either there was a lack of justification and/or desirability/need for the development; or there was no concern given to the impacts that would be incurred either socially or economically, or both in some instances, on the surrounding community.

The inclusion of socio-economic impacts in South African EIAs is essentially ahead of its time, because of the history that this developing country bears with it (Sowman *et al*, 1995). Developed countries have only recently begun incorporating these two pillars of sustainability into what nowadays is being termed a Sustainability Assessment Report (Morrison Saunders & Bailey, 2009). South Africa, on the other hand, has had to deal with righting inequality since the end of Apartheid in 1994 and, as part of the Constitution of South Africa, took social and economic interests into account from the start of the legislated EIA process. This is significant as this holistic approach of seeking solutions outside of given instructions can now be seen to be happening within the South African EIA system. In other words, the right checks are put in place so that EIA analysis goes above and beyond what is required before an EIA is granted or refused.

4.3.3. Land use and zoning

Land use and zoning are essentially linked, and were therefore regarded as one issue for the purposes of this study. There were seven EIA refusals (case studies 1, 3, 11, 12, 13, 16 & 17) that stated land use/zoning as one of the reasons for refusal. In the majority of instances (four out of seven case studies – 1, 11, 12 & 16), the application being submitted was for the purpose of residential development, while the land on which they chose to develop was zoned as agricultural. This is particularly noteworthy in a developing country such as South Africa, where primary and tertiary activities are constantly competing for market share against other primary activities such as mining and farming, economically as well as on a social level. The same number of EIA refusals is linked to socio-economic impacts in this study (case studies 3, 13, 16 & 17), but this is only relevant and directly related in one case (case study 3), where the proposed development is industrially based and the land is zoned as rural-residential. This is backed up by the fact that the development was also not in line with the SDF.

4.3.4. Biodiversity

In addition to the EIA refusal connection between location and SDFs, it is to be expected that the location of an area will tie into the ecological sensitivity of a habitat. This can be verified in this study, as just over half of the EIA refusals that were analysed and stated location as a reason, have also included biodiversity as a motivation for refusal. More importantly, any reason for refusal that was based on biodiversity also included location as a reason. It is on this basis that the impact on biodiversity of some of the developments was also found to be one of the more significant substantial reasons for EIA refusal. Of the six EIA refusals that stated that there would be negative impacts on biodiversity (case studies 1, 2, 7, 11, & 17), three of the sites (case studies 2, 7, & 11) were inhabited by red data species, while the remaining three had some form of topographical feature – namely a ridge in one instance (case study 7), a wetland downstream (case study 17), and a coastline (case study 1) – that would be adversely affected should the EIA be approved. Interestingly, only in the wetland case did the CA also include ‘cumulative effects’ as a reason for refusal. This could perhaps indicate that the term ‘cumulative effects’, stated in the refusal refer more to social and economic aspects of the EIA, rather than the biophysical realm. As stated previously, biodiversity ties in with location, as the three topographical features discussed (case studies 1, 7 & 17) would have all been site specific and therefore the CA would have refused any form of development, irrespective of type, impact or sector.

4.3.5. Lack of justification

There were six EIA refusals (case studies 1, 2, 3, 7, 10 & 17) that were considered to have "lack of justification" as a reason for refusal. Lack of justification means that all of these EIA refusals stated that there was no need or desirability for the proposed development, and as such the authorisation of said projects could not be justified. With the exception of case study 1, all of the EIA refusals stating 'lack of justification' have also stated socio-economic impacts as a reason for refusal. This is an acceptable outcome, as the need for development would obviously have been based on either a social or an economic drive. It is interesting to note that all of the EIA's PPPs were conducted and were therefore not given as a reason for refusal. However, it is important to note that public participation is a procedural issue and as such it has not been included as part of the substantial reasons for rejection.

4.3.6. Not in line with the Spatial Development Framework

The lack of the developments' ability to be aligned with the Spatial Development Framework was also a substantial reason for EIA refusal in this study. Elaboration on the relevance of an SDF can be found in Chapter 4.3.1. of this study. There were six EIA refusals (case studies 1, 3, 8, 11, 14 & 17) that were not in line with the SDF. Half of these (case studies 11, 14 & 17) stated that the applications specifically ignored the Urban Edge Policy that forms part of each municipal IDP. It was also stated in Chapter 4.3.1 that four out of six of the EIA refusals that were attributed to not being in line with the SDF were also linked to the issue of location. The finding that SDF is tied into location therefore suggests that the financial aspect of the IDP is not the only aspect being looked at by local government, but that SDFs are also potentially being incorporated into the municipality's decision making processes as well. This is significant as IDPs fall outside the scope of jurisdiction required to be investigated by the CA when making a decision regarding environmental authorisations.

4.3.7. Incompleteness of information

Another substantive reason given for EIA refusal that could be found in this study was the issue of 'incompleteness of information'. This reason for refusal is particularly interesting as one would assume the lack of information provided by either the applicant or the EAP would be a procedural rather than a substantive matter. There were in fact some EIA refusals in this study that were refused as a result of procedural errors, such as a lack of public participation being undertaken. While PPP may perhaps be considered a procedural as well as a

substantive issue (since it could also be categorised as part of the socio-economic reason), it has been classified a purely procedural issue in this study. Any substantial results gleaned from the PPP, however, have been taken into account if they were given as reasons in the EIA refusal findings. In addition to this, based on the comprehensive findings of this category, it has been established in this study that the 'incompleteness of information' is not simply a situation of the government decision makers not understanding what was given to them, but a substantive error on the applicant's part. In other words, it has been determined that it is not the CAs that do not understand the information provided so much as it is poor quality or inconclusive information provided by the applicant or EAP that resulted in this reason for refusal. Five EIA refusals (case studies 1, 2, 8, 9 & 12) included 'incompleteness of information' as a reason for refusal. It is interesting to note that some EIA refusals have similar or common threads linking each other individually, for example case studies 1 and 2 required more in the way of specialist studies, while case studies 8 and 9 both deemed the EIA to be inconclusive in general. However, there is no overarching common or main association across the board. One authority reported case study 12 to have required a full EIA and that a BA application was therefore not appropriate. Case study 2 was also deemed to be inconclusive with regard to alternatives provided for parts of the development. This category, which appears to have individual reasons for each EIA refusal, potentially points towards decisions on projects being made on a case-by-case basis. This is significant because South Africa's EIA process relies on criteria and thresholds as screening triggers (DEAT 2a, 2002). As a result, this does not necessarily allow decision makers any room to determine the outcome of EIA authorisations based on their discretion. The fact that this is happening could symbolise improved skills and capacity and therefore a general evolution of the decision-making process.

4.3.8. Legislation discouraging development

'Legislation discouraging development' was found in this study to be another reason given by South African decision makers for EIA refusal. Section 2 of NEMA elaborates on the principles to be taken up by the state in order to protect the biophysical, social and economic environment of the country. Of the five EIA refusals stating 'legislation discouraging development' as a reason (case studies 2, 3, 7, 8 & 17), three of them (case studies 3, 7 & 17) reverted to Section 2 of NEMA as a reference, while case study 2 used Objective C1.3 of Goal C1 of the White Paper for Sustainable Coastal Development in South Africa, which highlights that non coast-dependent activities will not be given preference. The last EIA refusal, case study 8, focussed more specifically on local policy guidelines, i.e. the Crocodile River Greenbelt Initiative Policy. Regardless of the legislation used, all of the EIA refusals in this

category appear to be focused on one goal, that of sustainability. This fact is noteworthy as it substantiates the notion that EIA in South Africa is seen to be more than just a rubber-stamping process to be followed in order for development to be approved.

4.3.9. Visual and noise impacts

Visual and noise impacts (case studies 1, 7, 16 & 17) were grouped together and this category was also revealed as one of the more substantial reasons for EIA refusal. Of the four EIA refusals that were identified, two of the three that were mining related fell into this category (case studies 1 & 16). Both mining companies that received the EIA refusals were involved in smelting operations, which would have had a detrimental health and social effect on the surrounding area. The third mining EIA refusal (case study 9) was the construction of a railway siding to a mine already in the operational phase and was refused in combination with the fact that the specialist studies (including that of visual and noise impacts) as part of the EIA were deemed to be inconclusive by the CA. Considering all of the potential, more crucial reasons for EIA refusal, it is interesting that the number of refusals based on visual and noise impacts are so high. In general, noise and visual impacts would be seen to be less of an issue than other factors such as groundwater pollution, for example, but this finding is indicative of the changing times. Granted, none of the EIA refusals were given based on this characteristic alone, and in fact many other reasons were included in the refusals that included visual and noise pollution. It seems significant, however, that this reason for refusal is used in such a way as to back up or potentially add weight to other reasons.

4.3.10. Lack of alternatives

Only three EIA refusals (case studies 1, 2 & 4) cited ‘lack of alternatives’ as a reason for refusal in this study. It should be understood that in some sectors it is obvious that the EIA applications cannot give an alternate location because the reason for the EIA application is in fact site related. Mining would be one example of this, where the resource is in a fixed location and cannot be moved or mined elsewhere. This was the case with case study 1, although the CA also felt that not enough attention had been paid to the no-go option. With regards to case study 2, the CA believed that the applicant could have provided alternative sites for some of the designs, such as roads and the recycling area, while the site alternatives for case study 4 were considered to be inconclusive. Only site alternatives were found in the EIA refusals analysed and not many of the refusals in this study were based on the lack of alternatives. This is in line with international opinion (Sadler, 1996) and more could be done on this subject, if government officials were given sufficient training.

4.3.11. Services issues

Services issues such as supply of water and/or electricity was also a reason given for EIA refusal in three cases (case studies 1, 7 & 11) in this study. The lack of sufficient water supply was the main reason for the refusal of case study 1, stating that a potential new mine would require a lot of water and therefore take up much of the area's existing supply. Case study 7 required extensive blasting in the area in order for services to be installed and the CA considered the environmental and social impact on the surrounding area to be too high. The granting of an EIA authorisation for case study 11 would have required bulk municipal services in the vicinity, where none currently existed. This reason for refusal ties in with 'not in line with SDF' in two of the three cases (case studies 1 & 11), which in turn shows the forethought and planning that is being undertaken by local municipalities in South Africa. The fact that these three EIAs were refused bodes well for integrated planning and future decision making.

4.3.12. Cumulative effects

'Cumulative effects' was one more reason for EIA refusal that was found in this study, although only three refusals (case studies 10, 14 & 17) provided 'cumulative effects' as a reason. Only case study 17 stated both biophysical, and to a much lesser extent, social cumulative effects as a reason – stating that the proposed development would not only negatively affect the existence of a wetland downstream, but that it would also endanger the sense of place that the area currently possesses. The reason for refusal in the cases of case studies 10 and 14 were purely based on social aspects i.e. the cumulative effects that the development would have on the community at large was considered to be detrimental. Not much has been investigated in the way of cumulative effects in South Africa, and the guidelines provided for aiding decision makers in this type of assessment are vague and generalised statements. This could be why fewer EIAs give 'cumulative effects' as a reason for refusal.

4.3.13. Groundwater

Another reason for EIA refusal is that relating to groundwater issues. South Africa is a water scarce country and as such it would make sense for developments to be refused based on potential negative impacts on the country's groundwater resource. The two EIA refusals case studies (5 & 15) were both based on the issue of sanitation facilities fouling the current

groundwater systems – case study 5 because long drops were going to be established in the development of a township and case study 15 because the toilets would potentially pollute the surface and groundwater. In both cases the Department of Water Affairs and Forestry (DWAF) was consulted and it was based on their recommendation – case study 15 in part and case study 5 wholly – that the EIAs were refused. It is heartening that DWAF was consulted in these cases, as it indicates cooperative governance between provincial departments, as is legislated in the Constitution and other legislation, and alleviates the pressure for expertise in all areas of decision making.

4.3.14. Waste

Waste is one of the less significant substantive reasons for EIA refusal, with only two refusals (case studies 2 & 15) being raised in this study. Case study 2 partly falls under the category 'incompleteness of information', as no communication was given to the CA regarding how the recycling or disposal of waste was going to be dealt with, despite the fact that the applicant had stated that the situation would be handled. Case study 15's waste issue is linked to the subject of groundwater, as the general sanitation of the area was being compromised as a result of the proposed development. The only reason for EIA refusal that ties into both of case studies 2 and 15 is that of location. This makes sense, as pollution in an ecologically sensitive area would be considered detrimental to the surrounding environment.

4.3.15. Lack of specialist studies

A further substantial reason for EIA refusal was that of the 'lack of specialist studies'. Two EIA refusals (case studies 1 & 9) included this reason as part of their refusals and focussed on the lack of biophysical studies such as air quality or flora and fauna. This substantive reason for refusal is obviously linked to the 'incompleteness of information' category, but had to have its own category as the studies that were carried out clearly did not communicate enough information to the CA in order for them to make an informed decision.

4.3.16. Air pollution

The concern surrounding air pollution in the case of case study 16, which was the proposed development of a new smelting project, was the one of two main reasons for the refusal of the EIA. However, another spin-off reason stemmed from the issue of potential air pollution, namely the socio-economic impact that the air quality would have on the communities based near the project. In a situation where the issue of air pollution could be looked at solely from a

biophysical point of view, it is worthwhile to note that the social aspect as well as environmental aspect are taken into consideration when dealing with this issue in South Africa. It may even be the case that the negative social effects are more cause for concern than the air pollution itself.

4.3.17. Gross non-compliance

The final issue raised in the EIA refusal reasons is one of gross non-compliance. This particular development (case study 15) commenced under the pretences of a false EIA authorisation. In this instance it was not the only reason as to why the EIA was refused, but the fact that the applicant was in violation of documented legislative procedure led the CA to immediately order the cessation and rehabilitation of the area in question. However, in this particular situation, an EIA authorisation for the same development was eventually granted just over six months later and the development was therefore allowed to go ahead.

Only one EIA refusal (case study 6) did not include any substantive reasons for refusal and was refused on purely procedural grounds. The erection of a chicken abattoir was of a scale big enough to require an EIA and was refused because the farmer firstly did not hire an independent consultant to carry out the application and secondly only submitted a BAR instead of an EIA and did not undertake any PPP.

4.4. Discussion

Development is undertaken for a number of reasons, but the leading motivation is one of commerce. In other words, the ultimate goal of development is to make a profit. If a certain aspect of a project is considered to be problematic by the EAP, the applicant will be consulted, as there is a chance that the CA will not authorise the EIA and this would in turn waste unnecessary time, capacity and financial resources. The EIA application process is therefore usually undertaken by the developer in a situation where both the developer and the EAP expect the EIA application to be approved. It is then fair to assume that all of the EIAs in this study that were submitted to the regional DEAs were done so under the supposition that the application would be approved. The fact that these 17 environmental authorisations were refused is then a positive indication that the South African environmental legislative process is not the only element of decision making being focussed on. Indeed, these refusals indicate a significant presence in refusals based on substantive grounding.

Another interesting point that has resulted from this study is the discovery that the South African government is attempting to look at the bigger picture, and appears to be doing so successfully. EIA applications are submitted for decision making to the regional (provincial) offices and the EIA is granted or refused at this level. However, some of the EIA refusals in this study were based on the application's lack of alignment with the SDFs. An SDF isn't technically within provincial government's jurisdiction but resides in the realm of local government. Although SDFs have started being integrated into Provincial Spatial Development Plans (PSDP), this is a recent development and if it was in place within the provinces when the EIAs were refused, it is not clear that they were acted upon before then. This could mean one of two things: either the provincial DEAs have taken the initiative and are consulting municipal SDFs of their own accord or, alternatively, it has become apparent, through training and/or employee experience within the departments, that there is a need for environmental aspects to be taken into consideration in planning and decision making.

It is also interesting to note that the reasons given in the findings for the EIA refusals do not necessarily correlate with the screening triggers. There was some correlation within the more sizeable groups - the largest number of EIA refusals fell under the screening trigger of 'clearing natural vegetation or soil', while the largest reason for refusal was based on location. Four of the EIA refusals fell into both the screening trigger and reason for refusal (1, 7, 11 & 12). The same four EIA refusals were also based on the fact that there was a concern surrounding biodiversity. This then makes clear the link between the clearing of vegetation and concern for the natural environment and hence the reason for refusal. However, as already stated, not all of the screening triggers matched the reasons given for the EIA refusal. In fact, there were only two instances where the screening trigger(s) related directly, either in part or entirely, to the reason for refusal. The first was EIA refusal number 2, a development of a leisure park – consisting of offices, residential housing, recreational areas and sports facilities – that was to be developed along the coast in the Eastern Cape. Among the five reasons given for the refusal of the environmental authorisation was the concern regarding location and the biodiversity of the coastal environment. The second instance was that of case study 17, a housing development in the Western Cape Province. This project triggered the need for a BAR based on points 15, 16 and 18 of GNR386 of the 2006 EIA Regulations. In other words, the screening triggers concerned the following listed activities: zoning and land use; construction of a road; and subdivision of portions of land. The reasons for refusal included the rezoning as well as the existing land use of the area. However, case study 17 has eight reasons for refusal, which happens to be the most reasons given of all of the EIA

refusals, so there was a significant chance of having one of the screening triggers included in the reasons for refusal.

An example where there was no correlation at all is EIA refusal number 10, which proposed the construction of a petrol station. The screening trigger for this, under Section 1(c) of GNR1182, the old 1997 EIA regulations, was the manufacturing, storage, handling, treatment or processing facilities for dangerous or hazardous substances. However, the reason for environmental authorisation refusal was due to, firstly, the potential cumulative effects that the petrol station would have on an area where there are already 2 existing petrol stations and secondly, the disregard of the public's comments based on the PPP. As a result of this, it was determined by the provincial DEA that there was a lack of justification for the project, as well as the existence of potential detrimental effects on the socio-economic impacts of the surrounding area. Another instance in which the reason for refusal did not correlate to the screening trigger was with EIA refusal number 15. This EIA was submitted under the old ECA 1997 EIA regulations, having been triggered by a need to convert the zoning of the land from agricultural to commercial in order to be able to establish a taxi rank. The reasons for refusal, however, were based on the fact that the proposed development would be situated next to a river and therefore could potentially result in pollution through poor waste and water management. It was DWAF that came to this conclusion, after being consulted by what was then DEAT. In this instance it was later discovered that initial construction had nevertheless begun on the site and an immediate directive was issued to cease construction and to rehabilitate the area. Further examples of incongruity between screening triggers and reasons for refusal exist, and this could indicate that more substantial investigations are going into the issuing of environmental authorisations than was previously anticipated. Every EIA refusal analysed in this study states in the document provided that a site visit was performed before the decision was taken. This could be contributing to the additional reasons for refusal outside of the screening triggers. The site visits do prove useful. For example, it was this action that uncovered that the taxi rank was being constructed without a valid environmental authorisation.

An additional three findings of particular interest were made during this study. The first (which was discovered in the data given to the author by the Assistant Director: Capacity Development and Training at national level DEA) is that, although South Africa does keep a database of EIA authorisations that gets updated by province on a quarterly basis, it does not on any level keep a record of the number of EIA refusals that are processed (Frederick, 2010).

In this instance, one recommendation might be that it would be beneficial to produce and provide this information to the provincial DEAs in the form of a database, as a guideline for future developments, especially if developers attempt to apply for the same piece of land under similar circumstances as those who obtained EIA refusals. Historical records of past EIA refusals would allow government employees to easily assess whether an EIA for an area has been refused in the past and on what grounds it was refused. Also, considering South Africa's current lack of skills and capacity within governmental departments, the production or storage of this information would aid in the retention of corporate memory. If an experienced employee were to leave, a new employee would be able to take his/her place with minimum historical information lost. It would also build up a library of refusals, so that CAs would have access to various templates and reasons for refusals.

The second point of interest, as communicated by the Free State's Deputy Director of Environmental Impact Management, is that the Free State province has never once issued an EIA refusal (Mkhosana, 2010). This is not to say that the Free State does not receive any EIA applications. The Assistant Director: Capacity Development and Training at national level DEA sent information to the author indicating that the Free State has handled approximately 142 EIAs on an annual basis from 2007 up to and including 2009 (Frederick, 2010). There could be a number of reasons for the lack of EIA refusals issued. The first of these is that there could be an enforced need for economic development within the province, thereby encouraging the Free State DEA to approve EIA applications as the economic and social benefits are seen to outweigh the potential negative environmental impacts. The second reason could be that there is a lack of skills and/or training with regards to how to draw up an EIA refusal. As previously stated, there are supposed to be guidelines on how an environmental authorisation or EIA refusal is issued, although the author has not been able to track down this document, despite asking numerous DEA employees from various regions. The third reason could simply be a lack of reasons to refuse the incoming EIAs, although this last explanation seems unlikely.

The third and final finding that has resulted from this study is an issue surrounding the incompleteness of information in the EIA refusal applications. The question to ask is: was there a lack of understanding from the government's side regarding the interpretation of the information given or was there a genuine lack of information supplied by the applicant? There was only one case where the applicant chose to not hire a consultant to complete the application (case study 6), and in this instance the EIA refusal was purely procedural and

based on a lack of information provided. Only five of the EIA refusals that were supplied showed that their EIAs either lacked sufficient information on particular studies provided or did not submit studies at all. This leads the author to believe that the lack of information supplied by the EAP only applied to a limited number of EIA refusals. However, this does not necessarily mean that there was a lack of understanding on the government's part. In fact, when looking at the 5 most prominent reasons for refusal – issues surrounding location; social and economic aspects not being taken into account; the issue of land use or zoning of the area; the development not being in line with the SDF; as well as the lack of justification for the proposed project – it appears that it was in fact the lack of background information that should have been gathered by the EAP prior to the application being submitted. It is the opinion of the author that the fact that the EAP neglected to investigate this background information lies at the heart of the reasons for most of the EIA refusals. One recommendation to fix this problem would be for EAPs to pay more attention to the municipal SDFs and IDPs, as this would either encourage the right kind of development in the right areas or would prevent EAPs and developers from submitting EIAs if they knew that the chances of the proposed project obtaining an environmental authorisation were slim or impossible. This would also potentially reduce the numbers of EIAs that are submitted in South Africa on an annual basis. It is interesting to note that, although it is usually procedural issues that hinder the EIA process, this study encountered mostly substantive issues, making up the majority of the EIA refusal. This goes against the perception that EIAs are usually turned down due to lack of adherence to process.

CHAPTER 5. CONCLUSION AND RECOMMENDATIONS

Future investigations into the reasons driving EIA refusals, such as the one outlined in Chapter 4, will better help researchers understand EIA's contribution to decision making in South Africa. EIA is a management tool that came about as a means of informing decision makers regarding the significant negative potential impacts of development on the environment. This started in the US in 1970 and the concept of EIA has rapidly spread throughout the globe. This happened at such a fast pace that EAPs were learning through practical experience rather than via established theory. The rationalist view in which EIA was established during the 1970s meant that the process was seen as a science, objective action was expected from decision makers, and aspects such as values and ethics were seen to remain outside the scope of decision making. However, it is impossible to ignore the individual values and political contexts within which decisions are taken. This has been proven, especially in developing countries where the political will and economic drive of the government overpowers the need for environmental – and sometimes even social – protection. The result of this is that many find EIA to be an unrealistic or idealistic process. In fact, there is a lot of debate with regard to the extent to which EIAs actually have a significant impact on the decision making process and is therefore declared to be an ineffective tool.

The models of *rationalism, incrementalism* and *mixed scanning* were discussed, as were Bartlett & Kurian's (1999) six implicit models that aid in policy making through EIA. The various constraints that are put on decision making were also deliberated. These include institutional; organisational; scientific; political; economic; socio-cultural; and technological constraints, all of which play a part in influencing decision making in their own context. Taking all of this into account, this dissertation explored a few examples of decision making and the EIA process. Firstly a generic EIA process was described to give an overview of the potential similarities and differences within differing country contexts. Then the international examples of EIA were presented in the form of Canada, the United Kingdom and China. Lastly South Africa's EIA decision making process was investigated.

Canada proved to be the most successful in terms of decision making within EIA. The divergence in national and provincial legislative procedures; the relatively complex navigation of various types of projects through different types of EIA processes; and resourceful approaches to mediation and public participation in EIA all play a part in making decision making more transparent and thereby strengthening it. By comparison, the UK's decision making system is linked to the planning approval process, and although the impact of the EIA

could potentially be more far reaching than anticipated, EIAs in the UK do not form the basis of an environmental decision but instead only form part of a more integrated procedure, and therefore is not necessarily as important as it could be.

The rapid rate at which China is developing its economy, and also the administrative decentralisation of power, means that environmental aspects are often overturned in favour of development. In this context EIAs are at a disadvantage as they can be done post-construction, thereby negating their purpose. The situation is therefore relatively conflicted in that local governments are left in charge of producing environmental policies in the face of local leaders, who are incentivised and have the power to obstruct the implementation of environmental regulations when they consider it to be unfavourable for local economic growth. In this instance EIA refusals would not fall under procedural or substantive reasoning, but political and economic influence.

It is evident that the EIA process develops differently in each country and in fact can only be understood and interpreted within context and "in relation to the policy and institutional framework within which it operates" (Sadler, 1996). EIAs reviewed in the EU have said to be divergent although not necessarily diverging. In other words, the processes under which EIAs develop may be different in each EU country but every one of them are ultimately working towards the same goal, that of achieving environmental sustainability. Similarly, this pattern can be seen in each of the countries included in this paper. For the most part, South Africa has followed the generic international EIA process although the screening phase operates on two levels. It is heartening to see that, while many would consider the EIA process a mostly rubber stamping exercise to get developments approved, there are in fact some projects that are being stopped and that the reasons for those EIA refusals are based on substantive reasoning rather than procedural issues.

The South African government has recognised the value of EIA as an aid to decision making since the voluntary EIA processes that have been conducted since the 1970s, although there is still a reluctance to integrate environmental considerations into the planning and decision making processes. The decision making processes in South Africa appear to be more holistic, taking into account the three pillars of sustainability, namely social, economic and environmental interests. The previous investigations that have been made have generally focussed on the procedural and not the substantive issues found within EIA. However, the

findings produced in this study indicate that the value of EIA is fast becoming more apparent to decision makers.

The 17 EIA refusals found for this study was a relatively low number, but thousands of EIAs are processed in South Africa on an annual basis and therefore it made little difference to the overall analysis whether 20 or even 60 more EIA refusals had been analysed. There were found to be 8 sectors within the 17 EIA refusals, which indicates that EIA refusals are not necessarily biased to one sector. There were also various screening triggers, most prolific of which was that of “removal of natural vegetation or soil”, while the most significant reason for refusal was based on the location of the proposed development. The analysis indicates that, for the most part, the screening triggers do not correlate to the reasons for refusal. This outcome is significant as it can be deduced from this that the DEA went above and beyond in their investigation into whether or not to provide the EIA authorisation. This also further gives weight to the suggestion that EIAs are a valuable management tool in the decision making process rather than a mere legislative requirement.

The reasons given in the findings for the EIA refusals do not necessarily correlate with the screening triggers. This means that EIAs that were submitted based on certain reasons were refused for entirely different reasons. This goes some way to show that the EIA process is not just a rubber-stamping exercise, thereby proving that EIA is being effectively used as a management tool. However, South Africa does not keep a record of the number of EIA refusals that are processed. This practice could be beneficial to the DEA and it is therefore recommended that some sort of record or database of EIA refusals be established. The benefits of this would be twofold. Firstly, it would help to produce a database of previous EIA refusals for employees to look back on and, secondly, it would aid in the retention of corporate memory. Two further findings were firstly that the Free State has never issued an EIA refusal before the time of researching this paper; and secondly that the reason for EIA refusal “incompleteness of information” is generally thought to be the fault of the EAP not doing enough research before submitting the EIA, and not the fault of the government officials not understanding the information provided.

The value of the DEA refusing environmental authorisations in order to protect important aspects such as biodiversity or socio-economic structures is significant and has been observed in this study, especially in the various CAs’ use of the information provided. The most notable example of these was the use of municipal SDFs, which are technically outside

the jurisdiction of the provincial departments, as well as the DEA's involvement with other departments such as Land Affairs and Water Affairs. From the results found in this study it was evident that although it is usually the procedural issues that hinder EIA, many substantive issues were encountered in the analysed documents, and this made up the majority of reasons for EIA refusal. In fact, only one EIA of the 17 was refused purely on procedural grounds. This finding goes against international opinion that EIAs are usually turned down due to lack adherence to process. Admittedly the results are few and far between, as the sample of EIAs analysed was less than 1%, but evidence nevertheless suggests that the DEA has managed to stop large-scale potentially damaging projects based on the information supplied to them in an EIA. One reason for this could be that the South African EIA legislation incorporates all three pillars of sustainability into the document, thereby allowing decision makers to investigate not only the environmental, but also the social and economic potential impacts of the project as well. Another potential reason for the substantive refusals could be the long term views being adopted by the departments though the application of local government SDFs and IDPs.

Judging from the research done on the number and type of EIA refusals, the screening triggers and also the reasons for refusal, it is the opinion of the author that there is indeed substantial grounding behind CA decisions to refuse an environmental authorisation of a proposed development project, based not only on process but also on sound substantive reasoning and arguments.

In conclusion, it appears that EIAs are indeed applicable as an adequate management tool and play an important role in the refusal of projects. The contribution of EIA to decision making in South Africa currently appears to be quite small in magnitude (based on the fact that only a low percentage of EIA refusals could be found for analysis) but it is still significant in terms of quality and effectiveness. It is recommended that further investigation into this field be done, as it would not only lend substance to the history of EIA but would also form a more comprehensive understanding of the part it plays in future decision making and sustainability.

REFERENCES

André, P., Delisle, C. E. & Revéret, J. P. (eds) (2004) *Environmental Assessment for Sustainable Development: Process, Actors and Practice* 2nd edition. Montreal: Polytechnique.

Avis, A. M. (1994) 'Integrated environmental management and environmental awareness in South Africa: where are we going?', *Journal of Environmental Planning and Management*, vol 37, pp 227-242.

Baker, D. & McLelland, J. (2003) 'Evaluating the effectiveness of British Columbia's environmental assessment process for the first nations' participation in mining development' *Environmental Impact Assessment Review,* vol 23, pp 581-603.

Bartlett, R. & Kurian, P. (1999) 'The theory of environmental impact assessment: implicit models of policy making', *Policy and Politics*, vol 27(4), pp 415-433.

Beattie, R. B. (1995) 'Everything you already know about EIA (but don't often admit)', *Environmental Impact Assessment Review,* vol 15, pp 109-114.

Benson, J. F. (2003) 'What is the alternative? Impact assessment tools and sustainable planning', *Impact Assessment and Project Appraisal*, vol 21(4), pp 261-280.

Canada. (1992) *Canadian Environmental Assessment Act*, Canada: Department of Justice.

Cashmore, M. (2004) 'The role of science in environmental impact assessment: process and procedure versus purpose in the development in theory', *Environmental Impact Assessment Review,* vol 24(4) pp 403-426.

Cashmore, M., Gwilliam, R., Morgan, M., Cobb, D. & Bond, A. (2004) 'The interminable issue of effectiveness: substantive purposes, outcomes and research challenges in the advancement of environmental impact assessment theory', *Impact Assessment and Project Appraisal,* vol 22(4), pp 295-310.

Catlow, J. & Thirwall, C. G. (1976) *Environmental impact analysis.* London: Department of Environment.

CEAA. (2011) 'Basics of environmental assessment', *The Canadian Environmental Assessment Agency,* [Online]. Available at: <http://www.ceaa-acee.gc.ca/default.asp?lang=En&n=B053F859-1#5> [Accessed 09 May 2011].

Christensen, P., Kornov, L. & Nielsen, E. H. (2005) 'Environmental impact assessment as regulation: does it work?', *Journal of Environmental Planning and Management*, vol 48(3), pp 393-412.

City of Cape Town. (2010) 'What is the Spatial Development Framework?', *City of Cape Town,* [Online] Available at: <http://www.capetown.gov.za/en/sdf/Pages/WhatisanSDF.aspx> [Accessed 17 March 2011].

Clark, R. (2000) 'Making EIA count in decision-making', in Pertidario, M. & Clark, R. (eds) *Perspectives on Strategic Environmental Assessment*, CRC Press: Boca Raton.

Connelly, S. & Richardson, T. (2004) 'Value-driven SEA: time for an environmental justice perspective?', *Environmental Impact Assessment Review*, vol 25(4), pp 391-409.

Cooper, L. M. & Sheate, W. R. (2002) 'Cumulative effects assessment: a review of UK environmental impact statements', *Environmental Impact Assessment Review,* vol 22(4), pp 415-439.

Council for the Environment (1989) *Integrated Environmental management in South Africa*, Pretoria: Council for the Environment.

Council of the European Communities, (1985) Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment', Official Journal no. L175, 05/07/1985, pp 40-48.

Culhane, P. J., Friesema, H. P. & Beecher, J. A. (1987) *Forecasts and environmental decision making*, Boulder, CO: Westview Press.

Culhane, P. J. (1990) 'NEPA's effect on agency decision making', *Environmental law,* vol 20, pp 681-702.

DETR & the National Assembly for Wales. (2000) *Environmental Impact Assessment: A guide to procedures,* Department of Communities and Local Government (UK), Thomas Telford Publishing.

DEAT. (2002a) *Screening, Integrated Environmental Management – Information Series 1,* Pretoria: Department of Environmental Affairs and Tourism.

DEAT. (2002b) *Scoping, Integrated Environmental Management – Information Series 2,* Pretoria: Department of Environmental Affairs and Tourism.

DEAT. (2004) *Alternatives in EIA, Integrated Environmental Management – Information Series 11,* Pretoria: Department of Environmental Affairs and Tourism.

DEAT. (2005) *Guideline 3: General Guide to the Environmental Impact Assessment Regulations, 2005, Integrated Environmental Management Guideline Series*, Department of Environmental Affairs and Tourism (DEAT), Pretoria.

DoE. (1996) *Changes in the quality of environmental impact statements.* London: HMSO.

Du Pisani, J. A. & Sandham, L. A. (2006) 'Assessing the performance of SIA in the EIA context: a case study of South Africa', *Environmental Impact Assessment Review,* vol 26(8), pp 707-724.

Duthie, A. G. (2001) 'A review of provincial EIA administrative capacity in South Africa', *Impact Assessment and Project Appraisal,* vol 19(3), pp 215-222.

EAPASA. (2011) 'Home page of the interim certification board', *Environmental Assessment Practitioners Association of South Africa*, [Online]. Available at: <http://www.eapsa.co.za/home.html> [Accessed 23 May 2011].

Etzioni, A. (1967) 'Mixed-scanning: a third approach to decision making', *Public Administration Review*, vol 27(5), pp 385-392.

Frederick, M. (2010) *Request for EIA refusals*. [email] (Personal communication, 11 August, 2010).

Fuggle, R. F. (1996) 'Integrated environmental management in South Africa: the conceptual underpinning', in Wood, C. M., Wynberg, R. & Raimondo, J. (eds) *Involving People in the Management of Change*. Fargo, ND: IAIA.

Gibson, R. (2002) 'From Wreck Cove to Voisey's Bay: the evolution of federal environmental assessment is Canada', *Impact Assessment and Project Appraisal*, vol 20(3), pp 151-160.

Glasson, J. & Bellanger, C. (2003) 'Divergent practise in a converging system? The case of EIA in France and the UK', *Environmental Impact Assessment Review,* vol 23, pp 605-624.

Glasson, J., Therivel, R. & Chadwick, A. (2005) Introduction to Environmental Impact Assessment (third edition). London: Routledge.

Haeuber, R. (1992) 'The World Bank and environmental assessment: the roles of nongovernmental organisations', *Environmental Impact Assessment Review,* vol 12(4) pp 331-347.

Hoyle, S., Power, S. & Hutchinson, S. (1999) 'Environmental impact assessment in the People's Republic of China: a case study of the Shanghai Second sewerage project', *The Environmentalist,* vol 19, pp 251-257.

Jay, S., Jones, C., Slinn, P. & Wood, C. (2007) 'Environmental impact assessment: Retrospect and prospect' *Environmental Impact Assessment Review,* vol 27, pp 287-300.

Jones, C. (1999) 'Screening, scoping and consideration of alternatives', in Petts, J. (eds) *Handbook of Environmental Impact Assessment: Volume 1.* Blackwell Science, Oxford, pp 201-225.

Kornov, L. & Thissen, W. A. H. (2000) 'Rationality in decision- and policy-making: implications for strategic environmental assessment', *Impact Assessment and Project Appraisal,* vol 18(3), pp 191-200.

Lawrence, D. P. (1997a) ‘The need for EIA theory building’, *Environmental Impact Assessment Review*, vol 17(2), pp 79-107.

Lawrence, D. P. (1997b) ‘Quality and effectiveness of environmental impact assessments: lessons and insights from ten assessments in Canada’, *Impact Assessment and Project Appraisal,* vol 12(4), pp 219-232.

Lawrence, D. P. (2000) ‘planning theories and environmental impact assessment’, *Environmental Impact Assessment Review*, vol 20, pp 607-625.

Leknes, E. (2001) ‘The roles of environmental impact assessment in the decision-making process’, *Environmental Impact Assessment Review,* vol 21, pp 309-334.

Lee, N., Colley, R., Bonde, J. & Simpson, J. (1999) *Reviewing the quality of environmental statements and environmental appraisals*, Department of Planning and Landscape: University of Manchester.

Lee, N. & George, C. (2000) *Environmental Assessment in Developing and Transitional Countries,* John Wiley and Sons, Chichester.

Li, Y. & Hewitt, C. N. (2008) ‘The effect of trade between China and the UK on national and global carbon dioxide emissions’, *Energy Policy*, vol 38, pp 1907-1914.

Marara, M., Okello, N., Kuhanwa, Z., Douven, W., Beevers, L. & Leentvaar, J. (2011) ‘The importance of context in delivering effective EIA: case studies from East Africa’, *Environmental Impact Assessment Review*, vol 31(3), pp 286-296.

Mao, W. & Hills, P. (2002) ‘Impacts of the economic-political reform on environmental impact assessment implementation in China’, *Impact Assessment and Project Appraisal* vol 29(2), pp 101-11.

Mkhosana, G. (2010) *Request for EIA refusals*. [email] (Personal communication, 11 August, 2010).

Morrison-Saunders, A. & Bailey, M. (2009) ‘Appraising the role of relationships between regulators and consultants for effective EIA’ *Environmental Impact Assessment Review,* vol 29(5), pp 284-294.

Mulvihill, P. R. & Baker, D. C (2001) ‘Ambitious and restrictive scoping: Case studies from Northern Canada’, *Environmental Impact Assessment Review*, vol 21(4), pp 363-384.

Nilsson, M. & Dalkman, H. (2001) ‘Decision making and strategic environmental assessment’, *Journal of Environmental Assessment Policy and Management* vol 3(3), pp 305–32.

Petts, J. (1999a) ‘Environmental Impact Assessment: Overview of Purpose and Process’, in Petts, J. (eds) *Handbook of Environmental Impact Assessment: Volume 1.* Blackwell Science, Oxford, pp 3-10.

Petts, J. (1999b) ‘Public Participation and Environmental Impact Assessment, in Petts, J. (eds) *Handbook of Environmental Impact Assessment: Volume 1.* Blackwell Science, Oxford, pp 145-177.

Pölönen, I, Hokkanen, P & Jalava, K (2011) ‘The effectiveness of the Finnish EIA system - what works, what doesn't, and what could be improved?’, *Environmental Impact Assessment Review*, vol 31(2), pp 120-128.

Retief, F. & Chabalala, B. (2009) ‘The cost of environmental impact assessment in South Africa’, *Journal of Environmental Assessment Policy and Management,* vol 11(1), pp 51-68.

Retief, F.P. (2011) *Performance of EIA Screening in South Africa: a comparative analysis between the 1997 and 2006 Regimes.* Presented at the IAIASA conference, Wilderness, South Africa.

Retief, F. P., Welman, C.N.J. & Sandham, L. A. (2011) 'Performance of environmental impact assessment (EIA) screening in South Africa: a comparative analysis between the 1997 and 2006 regimes', South African Geographical Journal, vol 93(2), pp 154-171.

Richardson, T. (2005) ‘Environmental assessment and planning theory: four short stories about power, multiple rationality, and ethics’, *Environmental Impact Assessment Review,* vol 25, pp 341-365.

Ridl, J. & Couzens, E. (2010) ‘Misplacing NEMA? A consideration of some problematic aspects of South Africa's new EIA regulations’, *PELJ/PER*, vol 13(5), pp 80-120.

Ross, W. A., Morrison-Saunders, A. & Marshall, R. (2006) ‘Common sense in environmental impact assessment: it is not as common as it should be’, *Impact Assessment and Project Appraisal,* vol 24(1), pp 3-22.

Sadler, B. (1996) ‘Environmental assessment in a changing world: evaluating practice to improve performance, final report of the international study of the effectiveness of environmental assessment’ Canadian Assessment Agency and International Association for Impact Assessment. Ottawa: Ministry of Supply and Services.

Sandham, L. A. & Pretorius, H. M. (2008) ‘A review of EIA report quality in the North West province of South Africa’ *Environmental Impact Assessment Review*, vol 28(4-5), pp 229-240.

Simon, H. (1957) *Administrative Behaviour*. London: MacMillan.

South Africa. (1989) Environment Conservation Act 73 of 1989. Pretoria: Government Press.

South Africa. (1998) National Environmental Management Act 107 of 1998. Pretoria: Government Press.

South Africa. (2006) Regulations in terms of chapter 5 of NEMA. Government Gazette 28753, Regulation Gazette Number 385-387.

South Africa. (2010) Regulations in terms of chapter 5 of NEMA. Government Gazette 33306, Regulation Gazette Number 544-546.

Sowman, M., Fuggle, R. & Preston, G. (1995) 'A review of the evolution of environmental evaluation procedures in South Africa', *Environmental Impact Assessment Review*, vol 15, pp 45-67.

Sowman, M. & Brown, A. L. (2006) 'Mainstreaming Environmental Sustainability into South Africa's Integrated Development Planning Process'*, Journal of Environmental Planning & Management*, vol 49(5), pp 695 – 712.

UNFCCC. (1997) 'Kyoto Protocol', *United Nations Framework Convention on Climate Change,* [Online]. Available at: <http://unfccc.int/essential_background/kyoto_protocol/items/1678.php> [Accessed 17 May 2011].

Wang, Y., Morgan, R. & Cashmore, M. (2003) 'Environmental impact assessment of projects in the People's Republic of China: new law, old problem', *Environmental Impact Assessment Review*, vol 23, pp 543-579.

Weston, J. (ed), (1997) *Planning and EIA in practice.* Harlow: Longman.

Weston, J. (2000) 'EIA, decision-making theory and screening and scoping in UK practice', *Journal of Environmental Planning and Management*, vol 43(2), pp 185-203.

Willis, K.G. (1995) 'Judging development control decisions', *Urban Studies,* vol 32(7), pp 1065–1079.

Wood, C. (1999) 'Pastiche or postiche? Environmental Impact Assessment in South Africa', *South African Geographical Journal,* vol 81(1), pp 52-59.

Wood, C. (2003) *Environmental Impact Assessment: A comparative review.* Prentice Hall: Harlow.

Wood, C. M. & Jones, C. (1997) 'The effect of environmental assessment on K local authority planning decisions', *Urban Studies,* vol 34(8), pp 1237-57.

WSP Energy & Environment. (2009) '2010 EIA regulations: effective 2 August 2010', *WSP Environment & Energy,* [Online]. Available at: <http://www.wspenvironmental.com/locations/2010-eia-regulations--effective-2-august-2010/en> [Accessed 1 May 2011].

ANNEXURES

Annexure 1: Contact details of Department of Environmental Affairs

Annexure 2: The first South African environmental regulations document, GNR 1183 of GG 18261 applicable to S21(1) of ECA until 1997

Annexure 3: Analysis table of EIA refusals

Annexure 4: The 17 EIA refusals used in the analysis

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Annexure 2:
The first South African environmental regulations document, GNR 1183 of GG 18261 applicable to S21(1) of ECA until 1997

Government Notice. R. 1183

Government Gazette No. 8261, Pretoria, 5 September 1997

ENVIRONMENT CONSERVATION ACT, 1989 (ACT No. 73 OF 1989)

REGULATIONS REGARDING ACTIVITIES IDENTIFIED UNDER SECTION 21 (1)

[Amended by GN R 1645 of 1998-12-11 and GN R 672 of 2002-05-10.]

The Minister of Environmental Affairs and Tourism has, under sections 26 and 28 of the Environment Conservation Act, 1989 (Act No. 73 of 1989), and with the concurrence of the Minister of Finance, made the regulations in the Schedule.

SCHEDULE

Definitions

1. In these regulations any word or expression to which a meaning has been assigned in the Act has that meaning, and unless the context otherwise indicates-

activity means any activity identified under section 21 of the Act;

alternative, in relation to an activity, means any other possible course of action, including the option not to act;

applicant means any person who applies for an authorisation to undertake an activity or to cause such activity to be undertaken as contemplated in section 22 (1) of the Act;

interested party means any person or group of persons concerned with or affected by an activity;

provincial authority means a competent authority as defined in section 1 of the Act;

relevant authority means the Minister, provincial authority or local authority contemplated in regulation 4 (2), (3) or (4), as the case may be;

the Act means the Environment Conservation Act, 1989 (Act No. 73 of 1989).

Application of regulations

2. (1) These regulations apply in respect of any activity which has been identified in Government Notice No. R. 1182 of 5 September 1997 under section 21 (1) of the Act.

(2) These regulations do not apply in respect of an activity referred to in Government Notice No. R. 879 of 31 May 1996, unless it forms part of an activity that has been identified in Government Notice No. R. 1182 of 5 September 1997.

Responsibilities in terms of regulations

3. (1) An applicant-

(a) must appoint an independent consultant who must on behalf of the applicant comply with these regulations;

(b) is solely responsible for all costs incurred in connection with the employment of the consultant or any other person acting on the applicant's behalf to comply with these regulations;

(c) must ensure that the consultant has no financial or other interest in the undertaking of the proposed activity, except with regard to the compliance with these regulations;

(d) must ensure that the consultant, while complying with these regulations, has-

(i) expertise in the area of environmental concern being dealt with in the specific application;

(ii) the ability to perform all the relevant tasks contemplated in these regulations;

(iii) the ability to manage the public participation process contemplated in paragraph (f);

(iv) the ability to timeously produce thorough, readable and informative documents;

(v) adequate recording and reporting systems to ensure the preservation of all data gathered; and

(vi) a good working knowledge of all relevant policies, legislation, guidelines, norms and standards;

(e) must ensure that the consultant provides to the relevant authority access to, and opportunity for review of, all procedures, underlying data, reports and interviews with interested parties, whether or not such information may be reflected in a report required in terms of these regulations;

(f) is responsible for the public participation process to ensure that all interested parties, including government departments that may have jurisdiction over any aspect of the activity, are given the opportunity to participate in all the relevant procedures contemplated in these regulations; and

(g) must indemnify the government of the Republic, the relevant authority and all its officers, agents and employees, from any liability arising out of the content of any report, any procedure or any action for which the applicant or consultant is responsible in terms of these regulations.

(2) If any provision of subregulation (1) is not complied with by the applicant and not immediately attended to, after having been made aware of it by the relevant authority, the application is regarded to have been withdrawn.

(3) The relevant authority must-

(a) ensure that officers, agents or consultants employed by the relevant authority to evaluate any reports submitted in terms of these regulations have-

(i) expertise in the area of environmental concern being dealt with in the specific application;
(ii) the ability to perform the evaluation tasks contemplated in these regulations efficiently;
(iii) the ability to timeously produce thorough, readable, and informative documents; and

(iv) a good working knowledge of all relevant policies, legislation, guidelines, norms and standards;

(b) ensure that the evaluation and decisions required in terms of these regulations are done or reached efficiently and within a reasonable time, and that the applicant is informed immediately of any delay and is provided with a written explanation for any delay that may occur;

(c) provide the applicant with any guidelines, as well as access to any other information in the possession of the relevant authority, that may assist the applicant in fulfilling its obligations in terms of these regulations; and

(d) try to keep the inputs required from the applicant to the minimum that are necessary to make an informed decision on the application, without putting any limitation on the rights that interested parties may have in terms of these regulations.

(4) While working for any applicant in terms of these regulations, a consultant may not work for any relevant authority in terms of these regulations in respect of the same application.

(5) Any interested party who wishes to participate in the public participation process contemplated in subregulation (1) (f) must respond within the time agreed to between the relevant authority and the applicant.

Application for authorisation to undertake activity

4. (1) Application must be made on a form obtainable from the relevant authority.

(2) An application must be submitted to the relevant provincial authority for consideration: Provided that an application in respect of an activity contemplated in subregulation (3) or (4) must be referred for consideration as indicated in those subregulations.

(3) Subject to subregulation (3A), the provincial authority must refer the application to the Minister for consideration-

(a) where the activity concerned has direct implications for national environmental policy or international environmental commitments or relations;

(b) *where the activity concerned will take place within an area that is demarcated as an area of national or international importance, but does not include the sea-shore, conservancies, protected natural environments, proclaimed private nature reserves, natural heritage sites, and the buffer zones and transitional areas of biosphere reserves and world heritage sites;*

(c) where the Minister and the provincial authority jointly decide that an application in respect of a specific activity should be considered by the Minister;

(d) *where a national government department, the relevant provincial authority or a statutory body other than a municipality contemplated in section 12 of the Local Government: Municipal Structures Amendment Act, 2000 (Act No. 33 of 2000) is the applicant; or*

(e) where the activity has the potential to affect the environment across the borders of two or more provinces.

(3A) Notwithstanding subregulation (3), the Minister and the provincial authority may jointly decide that an application *or classes of applications dealing with similar types of*

activities referred to in paragraphs (a), (b), (d) or (e) of that subregulation may be considered by the provincial authority: Provided that where the interests of more than one province are affected-

(a) the joint decision that the application be considered with the provincial sphere must be taken by the Minister and every provincial authority concerned; and

(b) the application must be jointly considered by every provincial authority concerned.

(4) If a local authority has been designated by the Minister in terms of section 22 (1) of the Act to issue authorisation for an activity specified by the Minister, the provincial authority must refer an application in respect of such activity to that local authority for consideration.

(5) The relevant authority must keep a register of all applications received.

(6) The relevant authority must inform the applicant whether the applicant must advertise the application, and of the manner in which this must be done.

Plan of study for scoping

5. (1) After considering the application made in accordance with regulation 4, the relevant authority may request the applicant-

(a) to submit a plan of study for scoping for the purposes of a scoping report referred to in regulation 6; or

(b) in a suitable case, to submit such scoping report without a prior plan of study.

(2) A plan of study for scoping must include-

(a) a brief description of the activity to be undertaken;

(b) a description of all tasks to be performed during scoping;

(c) a schedule setting out when the tasks contemplated in paragraph (b) will be completed;

(d) an indication of the stages at which the relevant authority will be consulted; and

(e) a description of the proposed method of identifying the environmental issues and alternatives.

(3) The relevant authority may, after receiving the plan of study referred to in subregulation (1) (a) and after considering it, request the applicant to provide additional information that the relevant authority requires to accept the plan of study for scoping.

Scoping report

6. (1) On being informed by the relevant authority that the plan of study submitted in accordance with regulation 5 (1) (a) has been accepted or on receiving the request referred to in regulation 5 (1) (b), as the case may be, the applicant must submit a scoping report to the relevant authority, which must include-

(a) a brief project description;

(b) a brief description of how the environment may be affected;

(c) a description of environmental issues identified;

(d) a description of all alternatives identified; and

(e) an appendix containing a description of the public participation process followed, including a list of interested parties and their comments.

(2) The relevant authority may, after receiving the scoping report referred to in subregulation (1) and after considering it, request the applicant to make the amendments that the relevant authority requires to accept the scoping report.

(3) After a scoping report has been accepted, the relevant authority may decide-

(a) that the information contained in the scoping report is sufficient for the consideration of the application without further investigation; or

(b) that the information contained in the scoping report should be supplemented by an environmental impact assessment which focuses on the identified alternatives and environmental issues identified in the scoping report.

(4) In the event of a decision contemplated in subregulation (3) (a), the relevant authority must consider the application in accordance with regulation 9.

Plan of study for environmental impact assessment

7. (1) In the event of a decision contemplated in regulation 6 (3) (b), the applicant must submit a plan of study for an environmental impact assessment, which must include-

(a) a description of the environmental issues identified during scoping that may require further investigation and assessment;

(b) a description of the feasible alternatives identified during scoping that may be further investigated;

(c) an indication of additional information required to determine the potential impacts of the proposed activity on the environment;

(d) a description of the proposed method of identifying these impacts; and

(d) a description of the proposed method of assessing the significance of these impacts.

(2) The relevant authority may, after receiving the plan of study referred to in subregulation (1) and after considering it, request the applicant to make the amendments to the plan of study that the relevant authority requires to accept the plan.

Submission of environmental impact report

8. After the plan of study for the environmental impact assessment has been accepted, the applicant must submit an environmental impact report to the relevant authority, which must contain-

(a) a description of each alternative, including particulars on-

(i) the extent and significance of each identified environmental impact; and

(ii) the possibility for mitigation of each identified impact;

(b) a comparative assessment of all the alternatives; and

(c) appendices containing descriptions of-

(i) the environment concerned;

(ii) the activity to be undertaken;

(iii) the public participation process followed, including a list of interested parties and their comments;

(iv) any media coverage given to the proposed activity; and

(iv) any other information included in the accepted plan of study.

Consideration of application

9. (1) After the relevant authority has made a decision contemplated in regulation 6 (3) (a), or has received an environmental impact report that complies with regulation 8, as the case may be, the relevant authority must consider the application and may decide to-

(a) issue an authorisation with or without conditions; or

(b) refuse the application.

(2) The relevant authority must determine the period of validity of the authorisation.

(3) *The relevant authority may, from time to time, on new information, review any condition determined by it as contemplated in subregulation (1)(a), and if it deems it necessary, delete or amend such condition, or at its discretion, determine new conditions, in a manner that is lawful, reasonable and procedurally fair.*

Record of decision

10. (1) The relevant authority must issue a record of the decision that was taken under regulation 9 (1) to the applicant, and on request to any other interested party.

(1A) *The record of decision contemplated in subregulation (1) must indicate the period within which, and the method how, the applicant must make the record of decision available to any interested party who has complied with regulation 3(5) or who is included in the appendix contemplated in regulation 6(1)(e).*

(2) The record of the decision must include-

(a) a brief description of the proposed activity, the extent or quantities and the surface areas involved, the infrastructural requirements and the implementation programme for which the authorisation is issued;

(b) the specific place where the activity is to be undertaken;

(c) the name, address and telephone number of the applicant;

(d) the name, address and telephone number of any consultant involved;

(e) the date of, and persons present at, site visits, if any;

(f) the decision of the relevant authority;

(g) the conditions of the authorisation (if any), including measures to mitigate, control or manage environmental impacts or to rehabilitate the environment;

(h) the key factors that led to the decision;

(i) the date of expiry or the duration of the authorisation;

(j) the name of the person to whom an appeal may be directed as contemplated in regulation 11;

(k) the signature of a person who represents the relevant authority; and

(l) the date of the decision.

Manner of appeal

11. (1) An appeal to the Minister or provincial authority under section 35 (3) of the Act, must be done in writing within 30 days from the date on which the record of decision was issued to the applicant in terms of regulation 10 (1).

(2) An appeal must set out all the facts as well as the grounds of appeal, and must be accompanied by all relevant documents or copies of them which are certified as true by a commissioner of oaths.

Access to information

12. After the record of the decision contemplated in regulation 10 has been issued by the relevant authority, any report submitted for the purposes of these regulations becomes a public document, subject to the rights of the owner of it.

Commencement

13. These regulations shall commence as set out in Schedules 1 and 2 of Government Notice No. R. 1182 of 5 September 1997.

Annexure 3:
Analysis table of EIA refusals

No.	Date	Provincial Authority	Type of Applicant	Legislation Applied Under	Sector	Screening Triggers	BA/ EIA for:	Activities	Content of EIA Refusal	Rejection Category	Reason/s Rejected
1.	27 May 2010	Gauteng	Consultant	NEMA	Mining	Mining. Removal of 3000m^3 of soil	EIA: Fluorspar Opencast Mine	GNR 387: Item 7 & 8	Comprehensive	Site specific; screening	• Falls within area earmarked for future tourism in EMF • Visual aesthetics • Biodiversity issues (sensitive area with red data species) • Lack of cumulative impact studies • Lack of alternatives, esp. No-Go option • Pre-scoping report = lack of adequate study: o flora & fauna; o water supply assessment o Land use potential o Noise impact o Visual impact o Mine closure & rehab
2.	9 Mar 2009	Eastern Cape	Consultant	ECA & then NEMA	Tourism	Biodiversity & ecological sensitivity of location	EIA: Madiba Bay Leisure Park	GNR 387: Items 1(f), 1(g), 1(t), 2, 5 GNR 1182: Items 1(d), 1(m), 8, 10	Comprehensive	Site specific; activity related; screening	• Lack of comprehensive information (supposed to be furnished by consultant) o No sustainability of the development • Relationship of applicant with landowner • Biodiversity issues o Coastline = high ecological significance o lack of detail on road infrastructure o lack of alternative locations • Visual & noise impacts not assessed • White Paper for Sustainable Coastal Development discourages activities that are not coast dependent • Socio-economic impacts o Lack of demonstration for need o Negative impacts on existing activities • Waste management • Impact on airport-related activities

No.	Date	Provincial Authority	Type of Applicant	Legislation Applied Under	Sector	Screening Triggers	BA/ EIA for:	Activities	Content of EIA Refusal	Rejection Category	Reason/s Rejected
3.	10 Feb 2009	Mpumalanga	Consultant	NEMA	Industry	Building within a 1 in 10 year flood line or within 32m of a river bank	BA: Upgrade of existing industrial operation	GNR 386: Items 1(m) & 19	Detailed	Activity related	• Socio-economic impacts o Zoned as rural-residential in 2005 SDF o Interferes with SDF o Not in line with NEMA principles o Lack of justification for economic dev.
4.	07 Dec 2006	Mpumalanga	Consultant	ECA	Residential development	Biodiversity & ecological sensitivity of location	EIA: Development of a township	GNR 1182: Item 2(c)	Basic	Screening; procedural	• Proposed access road is in an environmentally sensitive area. • Consideration of alternatives is inconclusive. • PP process is inconclusive.
5.	01 Aug 2007	Mpumalanga	Consultant	NEMA	Residential development	Transformation of undeveloped, vacant or derelict land	BA: Development of a township	GNR 386: Item 16	Detailed/ Basic	Activity related	• Groundwater pollution o Wanting to use pit latrines o DWAF does not support decision
6.	Site visit 26 Jan 2006	Mpumalanga	Owner	ECA	Farming	Concentration of animals for commercial production	EIA: Construction of a chicken abattoir	GNR 1182: Item 3	Basic	Procedural	• No EIA studies were conducted • No PP was conducted • No EMP has been drawn up
7.	15 Dec 2009	Mpumalanga	Consultant	NEMA	Tourism	Transformation & rezoning of undeveloped, vacant or derelict land	BA: Development of a guest lodge	GNR 386: Items 16 & 20	Detailed	Site specific	• Services installation • Topography of the site (slope) • Loss of habitat (ridges) • Noise pollution & visual impact • Socio-economic impacts o Lack of justification for economic dev. o Rights/ interests of other parties o Not in line with NEMA principles

No.	Date	Provincial Authority	Type of Applicant	Legislation Applied Under	Sector	Screening Triggers	BA/ EIA for:	Activities	Content of EIA Refusal	Rejection Category	Reason/s Rejected
8.	05 Feb 2007	Mpumalanga	Consultant	ECA	Fuel	Storing & handling of hazardous substances	EIA: Establishment of a filling station	GNR 1182: Item 1(c)	Basic	Activity related; site specific	• EIA was inconclusive • Site is on an ecologically sensitive area • Not in line with Mbombela SDF • Existence of the Crocodile River Greenbelt Initiative Policy
9.	Site visit 26 Jan 2006	Mpumalanga	Consultant	ECA	Mining	Construction of a railway siding	EIA: Construction and operation of a double railway siding	GNR 1182: Item 1(d)	Basic	Screening; procedural	• EIA was inconclusive • No mitigation measures for prevention of noise, air, visual and dust pollution. • PP process undertaken was inconclusive
10.	11 Aug 2001	Mpumalanga	Consultant	ECA	Fuel	Storing & handling of hazardous substances	EIA: Establishment of a filling station	GNR 1182: Item 1(c)	Basic	Activity related	• Existence of 2 filling stations to service that road • Results of PPP clearly demonstrate lack of need and desirability • Cumulative impact on social & economic aspects has been underestimated
11.	11 Mar 2010	Gauteng	Consultant	NEMA	Residential development	Clearing of natural vegetation	BA: Development of an Equestrian Estate	GNR 386: Items 12 & 16	Basic	Site specific; screening	• Potential for agricultural land use instead • Existence of red data species • Development occurs within 1km of a protected area • Development not situated within urban edge and therefore not connected to bulk municipal services
12.	03 Jul 2008	Gauteng	Owner	NEMA	Residential development	Assume - Transformation & rezoning of undeveloped, vacant or derelict land	Exemption: Development of Gentleman's Estate	Doesn't say – assume GNR 386: Item 16	Basic (bad quality)	Procedural	• Full Scoping/EIA process should be followed • No PPP was undertaken • Site zoned for agriculture • Existence of red data species

No.	Date	Provincial Authority	Type of Applicant	Legislation Applied Under	Sector	Screening Triggers	BA/ EIA for:	Activities	Content of EIA Refusal	Rejection Category	Reason/s Rejected
13.	26 Mar 2010	Gauteng	Consultant	NEMA	Farming	Concentration of animals for commercial production	BA: Establishment of a Chicken Broiler	GNR 386: Items 1(h)(v) & 16	Basic	Activity related; site specific	• Land is not zoned for such use • No financial assistance can be obtained
14.	04 Feb 2010	Gauteng	Does not state.	NEMA	Residential development	Building of 200 residential units	BA: Development of residential area	Doesn't say – assume GNR 386: Item 16	Basic	Screening	• In conflict with urban edge policy objectives • Would set a negative precedent for urban sprawl • Cumulative effects • Not in line with municipal SDF
15.	25 Jul 2007	Limpopo	Consultant	ECA	Transport	Agricultural or zoned undetermined use or an equivalent zoning, to any other land use	EIA: Development of a Taxi Holding Area	GNR 1182: Item 2(c)	Detailed	Site specific; procedural	• Development had commenced without an environmental authorisation • River in area, not allowed to build within 1:50 flood line – water and waste issues • Non-compliance of Scoping Report & EMP • No PPP was conducted • An illegal environmental authorisation (exemption) was found on site
16.	05 Oct 2010	North West Province	Consultant	NEMA	Mining	Various – development of area larger than 20ha; construction of polluting facilities & rail transportation;	EIA: Construction of smelting plant	GNR 386: Items 1(a), (b),(c),(k), (l), 12, 15 & 16(b) GNR 387: Items 1(e), (s) & 2	Detailed	Activity related; screening	• Air pollution - municipality worried about health effects of CO, Cr6 & PM_{10} • Area zoned for agriculture. • Close proximity of community to proposed smelter. • Visual impact significantly high.

No.	Date	Provincial Authority	Type of Applicant	Legislation Applied Under	Sector	Screening Triggers	BA/ EIA for:	Activities	Content of EIA Refusal	Rejection Category	Reason/s Rejected
17.	7 Jan 2011	Western Cape	Consultant	NEMA	Residential development	Various – Transformation & rezoning of undeveloped, vacant or derelict land; construction of a road; Subdivision of portions of land	BA: Development of a residential area	GNR 386: Items 15, 16 & 18	Comprehensive	Activity related; site specific	• Need & desirability must be consistent with the principles of sustainability – not so here. • Significant imbalance between benefits of dev vs benefits to society, at cost to env. • Benefits not justifiable or substantive enough. • Lack of proper motivation (rounding off of urban edge) or justification (no market research done). • Dev not consistent with provincial Urban Edge guidelines. • SDF identifies area as a buffer zone, for potential offsetting, therefore can't be used. i.e. not zoned for development. • Visual impact/ sense of place. • Cumulative biophysical impacts – wetlands downslope will be affected by hard-surfacing. • Authority comments CT did not support the development in the first place. Went ahead anyway.

Annexure 4:
The 17 EIA refusals used in the analysis

(1)

DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT

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Telephone: (011) 355-1900
Fax: (011) 355-1000
Email: gdace@gauteng.gov.za
Website: http://www.gpg.gov.za

Enquiries: Mr. Mpho Mavhega
Telephone: 011-355 1483

FAX COVER SHEET

Receiver's Details		**Sender's Details**	
To:	Micheal Grobler	From:	Mr. Mpho Mavhega
Company:	AGES (Pty) Ltd	Section:	Air Quality
Fax no.	(086) 607 2406	Floor:	8th Glencairn
Tel no.	(012) 809 3086	Tel:	(011) 355 1483
Date:		Pages:	6 (including fax cover sheet)
Re:	**Letter rejecting Scoping Report:** PROPOSED FLUORSPAR OPENCAST DEVELOPMENT AND ASSOCIATED INFRASTRUCTURE ON PORTION 4, 11 AND THE REMAINING EXTENT OF PORTION 2 OF THE FARM KROMDRAAI 209 JR AND PORTION 1 OF THE FARM NAAUWPOORT 208 JR		

Cc: Nokeng Fluorspar Mine (Pty) Ltd

Attn: Dr. Lelau Mohuba
Fax: (012) 665 3641
Tel: (012) 665 5060

24 (5) and 44 of the National Environmental Management Act, 1998 (Act 107 of 1998) (as amended) because, *inter alia,* -

1. The proposed development falls within the Dinokeng Project Area, a geo-spatial tourism destination which is a priority project of the Gauteng Provincial Government. The Dinokeng Project Area is a sustainable tourism destination based on conservation, game farming and the natural landscape with nodal development to enhance other tourism aspects related to cultural and historic components. Environment Management Framework (EMF) for Dinokeng Project Area has been concluded and is available (see http://www.tshwane.gov.za/documents/econdev/DinokengEMF/DinokengEMF_SEMPOct09.pdf). However the final administrative process of obtaining concurrence and publishing a notice in the Government Gazette still needs to be undertaken.
2. The proposed development site is located within an area earmarked as the "Dinokeng Rural North" in the EMF document. The land use guidance provided by the above document indicates that uses related to conservancies, tourism and recreational use are considered compatible land uses in this area. The proposed site is located within the future expansion area of the Dinokeng Game Reserve (DGR). Proposed development in close proximity of the DGR and future expansion areas needs to be sensitive to the DGR and its extension options.
3. It has been observed that the area under question is quite a pristine area within a catchment area, a mining activity of the nature proposed will certainly distract from the aesthetics of the area; and a section of the mine will be above ground, above tree line and cross the main road in the area.
4. The Departmental GIS revealed that the proposed site has the following environmental sensitivities:
    i. Conservation plan version 2.1 (C-Plan) reveals that the site is classified as an 'Important and Irreplaceable Area';
    ii. The presents of ecological processes as proclaimed in the C-Plan version 2;
    iii. *Eulophia coddii*, classified as 'Red Listed Plant' is present on the Southern and Northern parts of the site;
    iv. The site is habitat to *Eupodotis senegalensis*, classified as 'Priority Red Listed Bird';
    v. The site is a habitat to *Pyxicephalus adspersus* (Giant Bullfrog), classified as listed frog;
    vi. Primary vegetation (*Loskop Mountain Bushveld*) overlays the site;
    vii. There are wetlands and rivers on site;

6.5. Land Use Potential Evaluation: This report should not only be confined to the use of the land for agricultural practice, but should investigate the land use potential in terms of the strategic expansion of the DGR as indicated above.

6.6. Noise Impact Assessment: This investigation needs to clearly indicate the potential increase in noise at the mining sites as well as along the haul roads to be used. The potential noise increase needs to be indicated based on the mining methods to be used and noise contours should be overlain on the cadastral map and aerial photographs to clearly indicate potential future noise implications.

6.7. Visual Assessment: The consideration of viewpoints such as those from the D 567 and local dirt roads are considered to be "moderately sensitive". The undeveloped nature of the area in general and the extended views of natural undeveloped landscapes from these roads needs to be treated as highly sensitive in view of the tourism potential of the area. Views obtained from the major road (D 567) plays a critical role in the experience of the area by motorists and every effort should be made to limit visual intrusion from the road and surrounding development. The visual assessment should receive priority during the evaluation of the various impacts as it has certain long term negative impacts that will be difficult to mitigate in view of the position of the resource and the nature of the landscape. The placement of the plant, overburden, stockpiles and tailings needs to be carefully evaluated in view of the potential visual impact.

6.8. Surface and sub surface water management: Mining has major impacts on surface and sub surface water resources. It is vital to preclude any pollution of surface and under ground water (aquifer) resources in the proposed area. The aquifer is classified as having medium to high vulnerability (item 3.7.2, p.52) and therefore detailed hydrological and geo-hydrological studies are required.

6.9. Mine closure and rehabilitation plan: The general sensitivity of the site and the future intention to include the site as part of the DGR expansion process requires detailed planning and information on the rehabilitation options that will be investigated should the proposed mining operations receive approval. This closure and rehabilitation plan must at least address the inclusion of this site into the future expanded DGR and hence needs to provide detail in the closure plan on the end state that is desired to facilitate inclusion into the DGR.

In view of the above issues, the proposed development will have high negative impacts on the environmental sensitivities and it will disturb the ecological processes of the site.

Province of the
EASTERN CAPE
DEPARTMENT OF ECONOMIC DEVELOPMENT &
ENVIRONMENTAL AFFAIRS

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Att: Mr J. Dreyer
East Cape Showcase (Pty) Ltd
P O Box 13957
Humewood
PORT ELIZABETH
6013

Fax no: 041 583 3910
PER FACSIMILE

Dear Sir

APPLICATION FOR ENVIRONMENTAL AUTHORISATION IN TERMS OF THE ENVIRONMENT CONSERVATION ACT, 1989 (ACT NO. 73 OF 1989)/ PROPOSED MADIBA BAY LEISURE PARK DEVELOPMENT – 38-05/ECM1

With reference to the abovementioned application, please be advised that the Department hereby refuses authorisation. The reasons for the decision are set out in Annexure 1.

You are instructed to notify all registered interested and affected parties, in writing and within 7 (SEVEN) calendar days of the date of this letter, of the Department's decision in respect of your application as well as the provisions regarding the making of appeals that are described below.

Should you wish to appeal any aspect of the decision, you must lodge the appeal with the MEC within 30 (THIRTY) days of the date of this decision by means of one of the following methods:

By facsimile:	040 609 3211;
By post:	Private Bag X0054, BHISHO, 5605; or
By hand:	3rd floor Indwe House, BHISHO 5605

Before you lodge an appeal against this decision you must notify all registered interested and affected parties of your intention to appeal as well as where and for what period the appeal which will be submitted to the MEC will be available for inspection. Proof of such notification must be submitted to the MEC with the appeal.

Please note that the lodging of an appeal in no way entitles you to commence with the development prior to a decision from the MEC upholding the appeal. Your attention is also drawn to the provisions of regulation 81 of the Environmental Impact Assessment Regulations, 2006 which state that an application which is substantially similar to a previous application by the applicant that has been refused cannot be submitted unless a period of three years has elapsed or new or material information is submitted.

Yours faithfully

SAH Mfenyana
General Manager: Environmental Affairs

cc: Ms M Griffiths, CES, 046 622 6564
Adv G Richards, Nelson Mandela Bay Municipality, 041 506 3424

Annexure 1: Reasons for Decision

1. Background

The applicant, East Cape Showcase (Pty) Ltd, applied for authorisation in terms of section 21 and 22 of th Environment Conservation Act, 1989 (Act No. 73 of 1989) (ECA) and Regulations R1182 and R1183 (a amended) promulgated under sections 21, 22, 26 and 28 of ECA to carry on various activities related to th construction of the Madiba Bay Leisure Park (the development). (The activities which fall within the ambit of th Regulations are listed on page 5-79 of the Environmental Impact Assessment Report (EIR)).

The proposed development is situated along the southern coastline of the Nelson Mandela Bay municipal are and is approximately 5 400 hectares in extent. The development is made up of sixteen precincts.

The applicant appointed CES (the consultants) to manage the application process and to undertake a environmental impact assessment process.

The application process has been a lengthy one, during which a substantial amount of correspondence was exchanged between the applicant and the Department. More recently, on 25 August 2008, after submission of the final EIR, the applicant requested the Department to suspend its consideration of the application. On 6 February 2009 the applicant requested the Department to proceed with the evaluation of its application. The application is also complex. The Department accordingly appointed Ms Jenny Hall of environmental counsel cc and Mr Paul Claassen of Environomics CC to provide an independent review of the application which could be used to inform the Department's decision.

2. Information considered in making the decision

In reaching its decision, the Department took, *inter alia*, the following into consideration -

a) The information contained in the Scoping Report (SR) dated August 2005;
b) Plan of Study for EIA (POS EIA) dated December 2006;
c) Draft Environmental Impact Report (draft EIR) submitted during May 2008;
d) Final Environmental Impact Report (EIR) undated - submitted in parts during March and April 2008;

e) The comments received from interested and affected parties that were included in the scoping report ar environmental impact assessment report as well as those which were submitted directly to th Department;

f) Various correspondence from the applicant and the consultant;

g) Relevant information contained in the Departmental information base including –

(i) Subtropical Thicket Ecosystem Action Plans

(ii) Eastern Cape Biodiversity Conservation Plan

h) The objectives and requirements of relevant legislation, policies and guidelines, including section 24 of th Constitution and section 2 of the National Environmental Management Act, 1998 (Act No. 107 of 199 (NEMA);

i) The findings of the site visit undertaken by Mr A. Mfenyana and Ms L. Macanda on 25 August 2007; and

j) The review report compiled by Ms Jenny Hall of environmental counsel cc and Mr Paul Claassen Environomics CC dated 9 March 2009.

3. Key factors considered in making the decision

All information presented to the Department was taken into account in the Department's consideration of th application. A summary of the issues which, in the Department's view, were of the most significance are -

a) The comprehensiveness of the information submitted in support of the application;

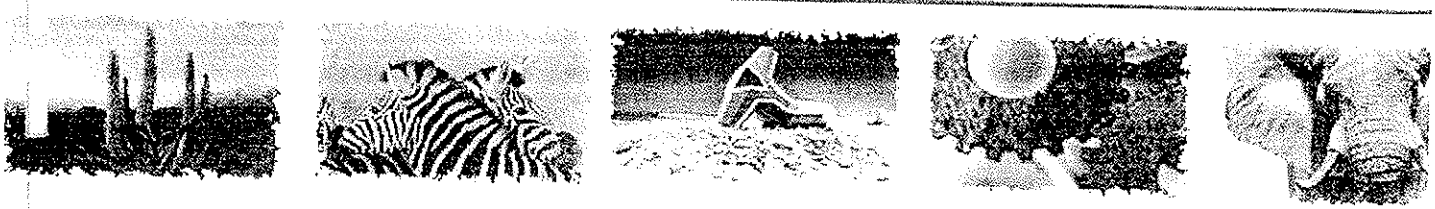
b) The sustainability of the development in general and with regard to the relationship of the applicant wit the landowner, Nelson Mandela Bay Municipality (NMM), in particular;

c) The impact of the development on the coastline, other areas of biological significance and the natur environment, including visual impacts;

d) Socio-economic impacts that may arise from the development;

e) Waste management; and

f) The impact of the development on airport related activities.



4. Findings

After consideration of the information the Department made the findings which are summarized below.

4.1 Adequacy of information to support the application

The Department requested the consultant to furnish certain information in its comments on the draft EIR. The applicant declined to furnish certain of this information as part of the application process. The failure of the applicant and/ or consultant to submit the information previously requested by the Department has resulted in the Department not being in a position to evaluate several relevant considerations and potentially negative primary and cumulative impacts associated with the development. These include the following –

a) There is no information which indicates that the development will be sustainable in the event of the lease agreement between the applicant and the NMM terminating. The Department considers this to be an important factor in view of the large scale nature of the development and the permanent changes that will take place on the land. The willingness of the NMM to be responsible for any conditions that may be imposed if the application were to be authorised on termination of the lease agreement cannot be assumed in view of the dispute that exists between the NMM and the applicant in respect of the lease agreement;

b) No information is provided regarding noise impacts and these could therefore not be assessed. The impacts of, for example, sporting events and music concerts are not known.

c) Only limited information is provided in respect of the proposed roads and bulk infrastructure and no detailed information is provided regarding the location of the roads and infrastructure. (The EIR notes that the exact location of the roads has not yet been determined). Without this information, the significance of the impacts of the roads and other infrastructure cannot be accurately evaluated because those impacts are highly dependent on the proposed location. This is considered to be important because the roads may traverse ecologically sensitive areas

d) Waste management has been dealt with superficially in the EIR. The EIR indicates that waste will be disposed of at the Arlington waste disposal facility, that certain waste emanating from animals cannot be handled as part of the waste management approach and that a zero waste policy will be adopted. The EIR does not assess the cumulative impacts or implications of waste disposal at the Arlington waste disposal facility. The management of the animal waste cannot be evaluated because it relies partly on the construction of a composting facility which is excluded from the application. The impacts of the facility have accordingly not been assessed and there is no certainty that the Department will approve the construction of the facility when that application is made. The feasibility of the zero waste policy also cannot be evaluated because it relies on the construction of the composting facility as well

as a recycling and sorting facility which is not detailed in EIR. The EIR also does not discuss how hazardous waste which is generated will be managed.

e) Although certain information is provided regarding the viability of the development, information was not provided regarding which components of the development are necessary to make the development feasible and sustainable as a whole. This is because the applicant has indicated that it does not wish the viability of the different components to be assessed separately. The Department is accordingly unable to evaluate the sustainability of the different components of the development and the consequent implications of approving certain aspects of the application and not others.

The Department's ability to evaluate the application was also complicated by an absence of detail for some of the activities in the development, such as the equestrian centre, and contradictory information contained in the EIR. For example, in some instances, the plans submitted as part of the EIR indicate that components of the development will be located in areas which have been classified as exclusionary or highly sensitive whereas the EIR report indicates that development will not take place in these areas. (See, for example, plan *4060_Sum-13 Revision 1* in respect of the Edu Precinct which indicates that a significant amount of development will take place in exclusionary or highly sensitive areas whereas the EIR on page 13-12 indicates that the development will only take place in degraded areas). In addition, the assessment of impacts on baptism and plant collection for *muti* was not assessed in a manner in which the impact can be evaluated.

The problems regarding the comprehensiveness of information identified above relate to significant environmental issues that affect the development as a whole. The Department therefore cannot authorise the development because it is not in a position to evaluate these impacts or define mitigation measures to ensure the protection of the environment as it is required to do in terms of it's legislative obligations.

2 **Impacts on the coastline, other areas of biological significance and the natural environment**

The land on which the development would be constructed includes some areas which have extremely high ecological significance. For example, the EIR identifies the coastal areas as being important for the protection of biodiversity (p 5-20) and the littoral active zone as being very sensitive to disruption. The development would result in some positive impacts on the natural environment as a result of proposed activities such as the clearing of alien vegetation and rehabilitation.

Notwithstanding this, certain components of the development which are located in areas classified as being exclusionary zones or areas of high sensitivity would result in unacceptable impacts on the natural

environment. These impacts could have been avoided by considering alternative locations in less sensitive areas. This is particularly relevant to the proposed coastal activities which are not coast dependent – an approach which is discouraged by the White Paper for Sustainable Coastal Development in South Africa.

There will also be a high impact on the fynbos in the Golf Precinct.
The visual impact of the coastal developments will be high and the sense place and aesthetic value of the coast will be permanently lost or altered.

4.3 Socio-economic impacts

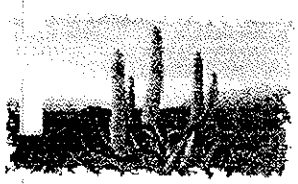
Apart from the absence of comprehensive information referred to above, the following findings were also made

a) Positive socio-economic impacts would occur as a result of the development including significant job creation – a proportion of which is of a temporary nature - and increased recreational and tourism facilities.
b) Based on the information provided, the need and desirability of certain aspects of the development is not demonstrated - the amount of accommodation, office parks and conference centres are likely to either not be feasible or alternatively will have negative impacts on existing similar activities.
c) The current use of the Eco Precinct area by the community for recreational purposes will be negatively affected by the levying of charges for the use of the area.

4.4 Aviation hazards

Although efforts have been made to reduce the risks to aviation hazards, the EIR indicates that aspects of the development related to the water world, sports fields and equestrian areas are not compatible with aviation safety requirements. The Department considers this risk to be unacceptable.

In view of the above, the Department is not satisfied that the proposed activity can be undertaken without conflicting with the environmental right set out in section 24 of the Constitution, the general objectives of integrated environmental management laid down in Chapter 5 of the National Environmental Management Act 1998 (Act No. 107 of 1998). The Department is also not satisfied that many of the significant detriment environmental impacts resulting from the proposed activity can be mitigated to acceptable levels, nor that the development as currently proposed will meet the needs of future generations. The application is according refused.





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DEPARTMENT OF AGRICULTURE AND LAND ADMINISTRATION
DIRECTORATE: ENVIRONMENTAL IMPACT MANAGEMENT

Litiko Letekulima Kanye Nekuphatfwa Kwemhlaba	Departement van Landbou, en Grondadministrasie	Umnyango Wezokulima, Nebhoduluko KweNarha

Enquiries: Robyn Luyt

Red Forest Investments (Pty) Ltd t/a Forest Wire (Pty) Ltd
P.O. Box 15742
Nelspruit
1200

Attention: Mr. A. Harris
Fax no: (013) 752 6367

Dear Sir

APPLICATION FOR ENVIRONMENTAL AUTHORISATION FOR THE PROPOSED UPGRADING OF EXISTING INDUSTRIAL PREMISES (FOREST WIRE) ON PORTION 93 (A PORTION OF PORTION 25) OF THE FARM CAIRN 306 JT, MBOMBELA LOCAL MUNICIPALITY, MPUMALANGA PROVINCE(Ref. 17/2/1/19MP-07).

The Department hereby refuses authorisation for the abovementioned application. The reasons for the decision are set out in Annexure 1.

Your attention is drawn to the provisions of regulation 78 in terms of which an applicant may not resubmit an application which is substantially similar to a previous application by the applicant and which has been refused unless a period of three years has elapsed or new or material information is submitted.

In terms of regulation 10(2) of the Regulations, you are instructed to notify all registered interested and affected parties, in writing and within 7 (SEVEN) calendar days of the date of this letter, of the Department's decision in respect of your application as well as the provisions regarding the making of appeals that are provided for in the regulations.

Your attention is also drawn to Chapter 7 of the Regulations which regulates appeal procedures. Should you wish to appeal any aspect of the decision, you must, *inter alia,* lodge a notice of intention to appeal with the MEC, within 10 days of receiving this letter, by means of one of the following methods:

By facsimile: (013) 7668 298

By post: Private Bag x 11219
Nelspruit
1200

By hand: Building 6, Government Boulevard,
Riverside Park Extension 2
Nelspruit
1200

Should you decide to appeal, you must serve a copy of your notice of intention to appeal to all registered interested and affected parties as well as a notice indicating where and for what period the appeal submission will be available for inspection.

Yours faithfully,

Director: Environmental Impact Management
For HOD: Agriculture and Land Administration

Date

cc: Mr. Riaan Visagie Eco8 Environmental Planners Fax: (013) 744 9469

Annexure 1: Reasons for Decision

1. Background

1.1 The applicant, Red Forest Investments (Pty) Ltd t/a Forest Wire (Pty) Ltd, applied for authorisation to carry out the following activities:

- The transformation of an existing facility for the conducting of manufacturing processes, warehousing and storage, which, including associated structures or infrastructure, occupies an area of 1000m^2 or more outside an existing area zoned for industrial purposes. **(Item 19 as identified in terms of Government Notice R 386 of 21 April, 2006).**
- The construction of facilities or infrastructure for any purpose in the one in ten year flood line of a river or stream, or within 32m from the bank of a river or stream where the flood line is unknown **(Item 1(m) as identified in terms of Government Notice R 386 of 21 April, 2006).**

On Portion 93 (a Portion of Portion 25) of the farm Cairn 306 JT, Mbombela Local Municipality, Mpumalanga Province.

Activity Description
The upgrade of an existing industrial operation that stores, processes and trades in wire products, which would entail the following:
- Construction of undercover storage / warehouse facilities
- Construction of a perimeter wall
- Paving of internal roads and parking areas
- Upgrade of the sewerage system

1.2 The applicant appointed the following Environmental Assessment Practitioner (EAP) to undertake a basic assessment process:

Eco8 Environmental Planners
P.O. Box 12898
Nelspruit
1200

Contact person: Riaan Visagie
Tel: (013) 744 9468
Fax: (013) 744 9469

1.3 The process that was undertaken is summarised as follows:

a) The EAP submitted a notice of intent to submit an application for authorisation to the Department on 20 July 2007.
b) The Department acknowledged receipt of the notice of intent to submit an application for authorisation on 23 July 2007.
c) The EAP arranged a site visit with the Department on 15 August 2007.
d) The EAP submitted a basic assessment report to the Department on 25 January 2008.
e) The Department requested outstanding information from the EAP on 30 January 2008.
f) The application form and additional information was submitted to the Department by the EAP on 2 October 2008.
g) The Department arranged a site visit with the EAP on 5 November 2008.
h) The EAP submitted additional information to the Department on 8 December 2008.

2. Information considered in making the decision.
In reaching its decision, the Department took the following into consideration:

a) The information contained in the basic assessment report, as well as additional information received with respect to the application, dated 2 October 2008 and 9 December 2008.
b) The objective and requirements of relevant legislation, policies and guidelines, including Section 2 of the National Environmental Management Act, 1998 (Act No. 107 of 1998);
c) The Mbombela Spatial Development Framework 2005;
d) The findings of site visits undertaken by Surprise Zwane on 15 August 2007, and Robyn Luyt and Jimmy Sekgale on 5 November 2008.

3. Key factors considered in making the decision.
All information presented to the Department was taken into account in the Department's consideration of the application. A summary of the issues which, in the Department's view, were of the most significance is set out below:

a) The handling of effluent waste
b) Dust pollution
c) Noise pollution
d) Visual Impact
e) Socio-economic impact / Need and desirability

4. Findings
After consideration of the information and factors listed above, the Department made the following findings:

a) The proposed upgrade would mitigate existing effluent waste, dust, noise and visual impacts associated with the existing industrial activities on the property through the following means:
   - Installation of grease traps and the replacement of existing soak-away drains with a biological treatment system;
   - Paving of the premises;
   - Incorporation of noise reducing material (cladding) in the construction of new and existing sheds;
   - The construction of sheds/warehouses to accommodate material and production processes, as well as the construction of a perimeter wall.

b) However, the application property has been zoned "Rural-Residential" in terms of the Mbombela Spatial Development Framework 2005, which also specifies the following development strategy:

> " The long term strategic solution to ensure the quality of living in the area lies with the phasing out of industries and relocation thereof at places more suitable therefore and also in line with the broader strategy of the Mbombela Local Municipality of strengthening existing development corridors and nodes. The existing industrialists should however be given ample opportunity to do so. A 5 year period is considered as ample for the phasing out of industrial and non residential uses. No expansion of existing activities should be allowed within this period and the developers should provide the Mbombela Local Municipality with a phasing out plan."

c) If the need and desirability of the proposed activity is measured against the contents of the Mbombela Spatial Development Framework 2005 (SDF), then the proposed activity neither meets the sustainable development vision, goals and objectives formulated in the SDF, nor is it congruent with the desired spatial form and pattern of land use reflected in SDF.

d) The proposed activity is therefore not in line with the National Environmental Management Principle that specifically requires that 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 all people in the environment by pursuing the selection of the best practicable environmental option.
e) While the importance of job creation and economic growth in Mbombela cannot be denied, the Constitution calls for *justifiable* economic development. The specific needs of the broader community must therefore be considered together with the distributional consequences in order to determine whether or not the development will be socially, economically and environmentally sustainable.

In view of the above, the Department is not satisfied that the proposed activity can be undertaken without conflicting with the general objectives of integrated environmental management as laid down in Chapter 5 of the National Environmental Management Act, 1998. The application is accordingly declined.

Director: Environmental Impact Management
For HOD: Agriculture and Land Administration

Date

(L+)

Mpumalanga Provincial Government

Drum Rock Complex
On R40 between Nelspruit
& White River
Nelspruit 1200
Republic of South Africa

Private Bag x 11219
Nelspruit, 1200
Tel: (013) 759 4000
Fax: (013) 759 4091
E-mail: nocawe@mpg.gov.za

DEPARTMENT OF AGRICULTURE AND LAND ADMINISTRATION
ENVIRONMENTAL IMPACT MANAGEMENT – EHLANZENI DISTRICT OFFICE

Litiko Letekulima Kanye Nekuphatfwa Kwemhlaba	Departement van Landbou, en Grondadministrasie	Umnyango Wezokulima, Nebhoduluko KweNarha

Enquiries: Nocawe Mthombothi

File No. 17.2.17.E - 228

Shanvale Developments (Pty) Ltd
P. O. Box 19658
NELSPRUIT
1200

To whom it may concern,

RE: APPLICATION TO UNDERTAKE A LISTED ACTIVITY IN TERMS OF SECTION 22 OF THE ENVIRONMENT CONSERVATION ACT, 1989 (ACT 73 OF 1989).

After due consideration of the facts presented to the administrators of the Department of Agriculture and Land Administration, I, the undersigned, through the powers vested to me in terms of Section 33(1) of the Environment Conservation Act, 1989 (Act 73 of 1989) (hereafter referred to as the Act), hereby deny authorisation in terms of Section 22(3) of the Act, for **the change of land use from agricultural or zoned undetermined use or an equivalent zoning for the development of a township on a Portion of Portion 12 of the farm Nelspruit Reserve 133 JU; Erf 3617, Nelspruit Ext. 35; and Portions of the Remainder and Portion 9 of the farm South African Prudential Citrus Estates 131 JU, Nelspruit (Schedule 1, item 2(c) of Government Notice No. R1182 of 5 September 1997).**

The Record of Decision and the reasons for the decision are attached.

Any appeal regarding the decision can be directed to the MEC: Agriculture and Land Administration, Private Bag X 11219, Nelspruit, 1200, within thirty (30) days from the date of the Record of Decision.

Director: Environmental Impact Management
For HOD: Agriculture and Land Administration

Date

Mpumalanga Provincial Government

Drum Rock Complex
On R40 between Nelspruit
& White River
Nelspruit 1200
Republic of South Africa

Private Bag x 11219
Nelspruit, 1200
Tel: (013) 759 4000
Fax: (013) 759 4091
E-mail: nocawe@mpg.gov.za

DEPARTMENT OF AGRICULTURE AND LAND ADMINISTRATION
ENVIRONMENTAL IMPACT MANAGEMENT – EHLANZENI DISTRICT OFFICE

Litiko Letekulima Kanye Nekuphatfwa Kwemhlaba | Departement van Landbou, en Grondadministrasie | Umnyango Wezokulima, Nebhoduluko KweNarha

Enquiries: Nocawe Mthombothi

File No. 17.2.17. E - 228

RECORD OF DECISION

Brief Description of Activity.

The proposed project involves the development of a township comprising of the following:

Shandon Hills
A Portion of portion 12 of the farm Nelspruit Reserve 133 JU:

- 40 "residential 1" stands (5 000 m² each) on ±36.055 ha
- 6 private open space stands on ± 27.20 ha
- 1 "Special" stand for a private access road on ±3.79 ha to link with John Vorster Drive (Dr Enos Mabuza)

Erf 3617, Nelspruit Extension 35:

- 50 "residential 1" stands (±10 000m² each) on ±23.17 ha
- 5 private open space stands on 58.97 ha
- 1 "Special" stand for a private access road on ±4.92 ha
- Water and sewage services connected to the municipal system

Shandon Views
Portions of the Remainder and portion 9 of the farm South African Citrus Estates 131 JU:

- 163 "residential 1" stands (± 10 000m² each) on ±176.17 ha
- 10 private open space stands on ±585.26 ha
- 4 "Special" stands for a private access road on ±15.41 ha
- Septic tanks and French drains
- Municipal water supply

Location.
The proposed development is located on a portion of portion 12 of the farm Nelspruit Reserve 133 JU; Erf 3617, Nelspruit Ext. 35; Portions of the Remainder and portion 9 of the farm South African Prudential Citrus Estates 131 JU. The site co-ordinates are:
25° 29' 13.7" S and 31° 01' 25.4" E (Shandon Hills [Nelspruit Reserve 133 JU])
25° 29' 29.5" S and 31° 01' 27.7" E (Shandon Hills [Erf 3617 Nelspruit Ext. 35])
25° 30' 18.0" S and 31° 03' 36.0" E (Shandon Hills)
25° 29' 04.8" S and 31° 00' 53.8" E (Access Road)

Applicant.
Shanvale Developments (Pty) Ltd
P. O. Box 19658
NELSPRUIT
1200

Contact person: Mr. Janti van Zyl
Tel: (013) 752 6870
Fax: (013) 752 4136

Consultant.
Enpact Environmental Consultants CC
P. O. Box 12027
NELSPRUIT
1200

Contact person: Mr. Heinrich Kammeyer
Tel: (013) 752 6766
Fax: (013) 752 6797

Site Visit.

Date:	October 27, 2005	
Present:	Ms Nocawe Mthombothi	Department of Agriculture and Land Administration (DALA)
	Ms Norma Mdhluli	Department of Agriculture and Land Administration (DALA)
	Mr Selby Hlatshwayo	Department of Agriculture and Land Administration (DALA)
	Mr Heinrich Kammeyer	Enpact Environmental Consultants CC
	Ms Marissa Steenkamp	Enpact Environmental Consultants CC
Date:	July 18, 2006	
Present:	Ms Nocawe Mthombothi	Department of Agriculture and Land Administration (DALA)
	Ms Norma Mdhluli	Department of Agriculture and Land Administration (DALA)
	Ms Busi Mahlangu	Department of Water Affairs and Forestry (DWAF)
	Mr Heinrich Kammeyer	Enpact Environmental Consultants CC
	Ms Marissa Steenkamp	Enpact Environmental Consultants CC
	Janti van Zyl	Shanvale Developments (Pty) Ltd
	Bennie van der Merwe	Umsebe Development Planners

DECISION.
After due consideration of the application for authorisation and the facts presented to the Department of Agriculture and Land Administration, authorisation is denied in terms of Section 22(3) of the Environment Conservation Act, 1989 (Act 73 0f 1989).

Key Factors.
1. The proposed access road will take place in an environmentally sensitive area and the consideration of access alternatives is inconclusive.
2. The public participation process regarding the gazetted land claim on the farm South African Prudential Citrus Estate 131 JU is inconclusive.

Appeal.
A formal appeal can be directed to the MEC: Agriculture and Land Administration, Private Bag X 11219, Nelspruit, 1200, within thirty (30) days from the date of the Record of Decision.

Director: Environmental Impact Management **Date**
For HOD: Agriculture and Land Administration

(5)

17/2/1/14 MP - 46

Mpumalanga Provincial Government

Building 6, Government Boulevard,
Riverside Park Extension 2
Nelspruit, 1200
Republic of South Africa

Private Bag x 11219
Nelspruit 1200
South Africa
Tel: ☎(013) 7666040
Fax: (013) 7668445

DEPARTMENT OF AGRICULTURE AND LAND ADMINISTRATION
DIRECTORATE: ENVIRONMENTAL IMPACT MANAGEMENT

Litiko Letekulima Kanye Nekuphatfwa Kwemhlaba	Departement van Landbou, en Grondadministrasie	Umnyango Wezokulima, Nebhoduluko KweNarha

Enquiries: Nocawe Mthombothi

Mbombela Local Municipality
P. O. Box 45
NELSPRUIT
1200

Attention: Mr. Ben Steyn
Fax no: (013) 759 2194

PER FACSIMILE/REGISTERED MAIL

Dear Sir

APPLICATION FOR ENVIRONMENTAL AUTHORISATION FOR THE DEVELOPMENT OF MATSULU WEST PHASE II TOWNSHIP ON PORTION 5 AND THE REMAINDER OF THE FARM SIGAMBULE 216 JU, MPUMALANGA PROVINCE.

With reference to the abovementioned application, please be advised that the Department has decided to decline authorisation. The reasons for the decision are attached herewith.

In terms of regulation 10(2) of the Environmental Impact Assessment Regulations, 2006, you are instructed to notify all registered interested and affected parties, in writing and within 7 (SEVEN) calendar days of the date of this letter, of the Department's decision in respect of your application as well as the provisions regarding the making of appeals that are provided for in the regulations.

Your attention is drawn to Chapter 7 of the Regulations, which regulates appeal procedures. Should you wish to appeal any aspect of the decision, you must, *inter alia,* lodge a notice of intention to appeal with the MEC, within 10 days of receiving this letter, by means of one of the following methods:

17/2/1/14 MP - 46

By facsimile: (013) 7668 445
By post: Private Bag x 11219
Nelspruit
1200
By hand: Building 6, Government Boulevard,
Riverside Park Extension 2
Nelspruit
1200

Should you decide to appeal, you must serve a copy of your notice of intention to appeal on all registered interested and affected parties as well as a notice indicating where, and for what period, the appeal submission will be available for inspection.

Yours faithfully,

Director: Environmental Impact Management
For HOD: Agriculture and Land Administration

Date

Mpumalanga Provincial Government

Building 6, Government Boulevard,
Riverside Park Extension 2
Nelspruit, 1200
Republic of South Africa

Private Bag x 11219
Nelspruit 1200
South Africa
Tel: ☎(013) 7666040
Fax: (013) 7668445

DEPARTMENT OF AGRICULTURE AND LAND ADMINISTRATION
DIRECTORATE: ENVIRONMENTAL IMPACT MANAGEMENT

Litiko Letekulima Kanye Nekuphatfwa Kwemhlaba	Departement van Landbou, en Grondadministrasie	Umnyango Wezokulima, Nebhoduluko KweNarha

Environmental Authorisation

Authorisations register number : 17/2/1/16(b) MP-8

Holder of Authorisation : MBOMBELA LOCAL MUNICIPALITY

Location of activity :PORTION 5 AND THE REMAINDER OF THE FARM SIGAMBULE 216 JU

1. Decision

The Department is not satisfied on the basis of the information available to it with regard to the provision of services (the use of pit toilets) for the proposed township, therefore the Department refuses authorization to undertake the proposed activity.

Details regarding the basis on which the Department reached this decision are set out in Annexture 1.

2. Activities Description

By virtue of the powers conferred on it by the National Environmental Management Act, 1998 (Act 107 of 1998) and the Environmental Impact Assessment Regulations 2006, the Department hereby refuse authorization:

Mbombela Local Municipality
P. O. Box 45
NELSPRUIT
1200

Contact person: Mr. Ben Steyn
Tel no: (013) 759 2225
Fax no: (013) 759 2194

to undertake the following activity (hereafter referred to as "the activity"): **The Development of Matsulu West Phase II township on portion 5 and the remainder of the farm Sigambule 216 JU. The site co-ordinates are: 25° 30.153' S and 31° 19.053' E; 25° 30.148' S and 31° 19.088' E; 25° 30.095' S and 31° 19.045' E; 25° 30.095' S and 31° 19.092' E** (Item (16) as identified in terms of Chapter 5 of the National Environmental Management Act, 1998 and Government Notice R 386 of 21 April 2006)

Annexure 1: Reasons for the Decision

1. Background

1.1 The applicant, Mbombela Local Municipality, applied for authorisation to continue with the following activity:

The development of Matsulu West Phase II Township on portion 5 and the remainder of the farm Sigambule 216 JU.

1.2 The applicant appointed the following Environmental Assessment Practitioner to undertake a basic assessment process:

Ecotechnik Environmental Consultants
P.O. Box 30029
STEILTES
1213

Contact person: Mr. Iain Garratt
Tel: (013) 755 2218
Fax: (013) 755 3358

2. Information considered in making the decision.

In reaching its decision, the Department took the following into consideration:

a) The information contained in the Basic Assessment Report.
b) The comments received from interested and affected parties as included in the basic assessment report.
c) The objective and requirements of relevant legislation, policies and guidelines, including Section 2 of the National Environmental Management Act, 1998 (Act No. 107 of 1998); and
d) The findings of the site visit undertaken by Nocawe Mthombothi from the Department, Donnelly McCleland and Iain Garratt from Ecotechnik Environmental Consulting (Pty) Ltd on the 06th September 2006.

3. Key factors considered in making the decision.

All information presented to the Department was taken into account in the Department's consideration of the application. A summary of the issue which, in the Department's view, was of the most significance is set out below:

a) Groundwater pollution

4. Findings

After consideration of the information and factors listed above, the Department made the following findings -

a) The use of pit latrines for the proposed development will have a significant impact on groundwater
b) The Department of Water Affairs and Forestry does not support the use of pit latrines, since they do not meet the minimum acceptable basic level of sanitation service.

In view of the above, the Department refuses authorization to undertake the above proposed activity. The application is accordingly not granted.

Director: Environmental Impact Management
For HOD: Agriculture and Land Administration

Date

(6)

Mpumalanga Provincial Government

Oak Tree
41 Cnr Kerk & Smuts Str
ERMELO
2351
Republic of South Africa

P.O. Box 2777
ERMELO
2350
Tel: (017) 819-1155
Fax: (017) 819-2072/2828

DEPARTMENT OF AGRICULTURE AND LAND ADMINISTRATION
GERT SIBANDE REGION

DIRECTORATE: ENVIRONMENTAL MANAGEMENT

Litiko Letekulima Nekuphatfwa Kwemhlaba | Departement van Landbou, en Grondadministrasie | Umnyango Wezokulima Nokuphathwa Komhlaba

Enquiries: Mr. Lazarus kutumela
Ref.: 17.2. 18 GS 05

Du Plessis Familie Boerdery
P O Box 3535
Secunda
2302
Tel/fax: (017) 6400004

To whom it may concern,

RE: AUTHORISATION TO UNDERTAKE A LISTED ACTIVITY IN TERMS OF SECTION 22 OF THE ENVIRONMENT CONSERVATION ACT, 1989 (ACT 73 OF 1989)

After due consideration of the facts presented to the administrators of the Department of Agriculture and Land Administration in Mpumalanga, I the undersigned, through the powers vested in me in terms of Section 22 (3) of the Environment Conservation Act, 1989 (Act 73 of 1989) (hereafter referred to as the Act), hereby denies the **authorisation for the erection of a small chicken abattoir on the Vlakfontein farm, Charl Cilliers, Mpumalanga,** (Activity 2(c) in terms of Government Notice R1182 of 5 September 1997).

Attached, please find the Record of Decision and Conditions under which the application for authorisation was denied.

Any queries in this regard can be directed to the MEC: Agriculture and Land Administration Private Bag X11219, Nelspruit 1200, within thirty (30) days of the date of this Exemption.

Director: Environmental Impact Management
For HOD: Agriculture and Land Administration

Date

Mpumalanga Provincial Government

Oak Tree
41 Cnr Kerk & Smuts Str
ERMELO
2351
Republic of South Africa

P.O. Box 2777
ERMELO
2350
Tel: (017) 819-1155
Fax: (017) 819-2072/2828

DEPARTMENT OF AGRICULTURE AND LAND ADMINISTRATION
GERT SIBANDE REGION

DIRECTORATE: ENVIRONMENTAL MANAGEMENT

Litiko Letekulima Nekuphatfwa Kwemhlaba | Departement van Landbou, en Grondadministrasie | Umnyango Wezokulima Nokuphathwa Komhlaba

Enquiries: Mr. Lazarus kutumela
Ref.: 17.2. 18 GS 05

RECORD OF DECISION

Brief Description of the Activity
The applicant intends to slaughter chickens twice a week and so seeks to erect a chicken abattoir.

Location
The site is located on a portion of the farm Vlakfontein, Charl Cilliers, Mpumalanga Province.

Applicant
Du Plessis Familie Boerdery
P O Box 3535
Secunda
2302
Tel/fax: (017) 6400004

Consultant
None

Site Visits
26 January 2006
M. L. Kutumela-Environmental officer (MDALA)
Mr. du Plessis the applicant

DECISION
After due consideration of the application for authorisation and the facts presented to the Department of Agriculture and Land Administration (hereafter referred to as this or the Department), authorisation is not granted for the erection of a chicken abattoir on the farm Vlakfontein, Charl Cilliers, the denial to continue with the proposed activity is in terms of Section 22(3) of the Environment Conservation Act, 1989 (73 of 1989).

Conditions
Refer to Annexure A to this Record of Decision.

Key factors for the Decision

1. No environmental impacts assessment studies were done.
2. The above includes public participation and development of an Environmental Management Plan.

Appeal

Any queries in this regard can be directed to the MEC: Agriculture and Land Administration, Private Bag X11219, Nelspruit, 1200, within thirty (30) days of the date of this Authorisation.

_____ _____

Director: Environmental Impact Management **Date**
For HOD: Agriculture and Land Administration

(7)

17/2/1/16 MP-110

Mpumalanga Provincial Government

Building 6, Government Boulevard,
Riverside Park Extension 2
Nelspruit, 1200
Republic of South Africa

Private Bag x 11219
Nelspruit 1200
South Africa
Tel: ☎(013) 7666040
Fax: 🖷 (013) 7668445

DEPARTMENT OF AGRICULTURE AND LAND ADMINISTRATION
DIRECTORATE: ENVIRONMENTAL IMPACT MANAGEMENT

Litiko Letekulima Kanye Nekuphatfwa Kwemhlaba	Departement van Landbou, en Grondadministrasie	Umnyango Wezokulima, Nebhoduluko KweNarha

Enquiries: Mr. Bheki Mndawe

EngPlan Development Consultants
P.O. Box 3795
Nelspruit
1200

Attention: Roelf Kotze
Fax no: (013) 759 2202

Dear Sir

APPLICATION FOR ENVIRONMENTAL AUTHORISATION FOR THE PROPOSED RESIDENTIAL AND GUEST LODGE DEVELOPMENT ON ERF 3169 NELSPRUIT, MPUMALANGA PROVINCE.

The Department hereby refuses authorisation for the abovementioned application. The reasons for the decision are set out in Annexure 1.

Your attention is drawn to the provisions of regulation 78 in terms of which an applicant may not resubmit an application which is substantially similar to a previous application by the applicant and which has been refused unless a period of three years has elapsed or new material information is submitted.

In terms of regulation 10(2) of the Regulations, you are instructed to notify all registered interested and affected parties, in writing and within 7 (SEVEN) calendar days of the date of this letter, of the Department's decision in respect of your application as well as the provisions regarding the making of appeals that are provided for in the regulations.

Your attention is also drawn to Chapter 7 of the Regulations which regulates appeal procedures. Should you wish to appeal any aspect of the decision, you must, *inter alia*, lodge a notice of intention to appeal with the MEC, within 10 days of receiving this letter, by means of one of the following methods:

By facsimile: (013) 7668 445

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Nelspruit
1200

By hand: Building 6, Government Boulevard,
Riverside Park Extension 2
Nelspruit
1200

Should you decide to appeal, you must serve a copy of your notice of intention to appeal on all registered interested and affected parties as well as a notice indicating where and for what period the appeal submission will be available for inspection.

Yours faithfully

_____ _____

Director: Environmental Impact Management **Date**
For HOD: Agriculture and Land Administration

cc: Ria Wilken UmSinsi Environmental Specialist Fax: (086) 6304 313

Annexure 1: Reasons for Decision

1. Background

1.1 The applicant, EngPlan Development Consultants, applied for authorisation to carry out the following activities:

Development of residential units and a guest lodge on erf 3169, Nelspruit, Mbombela Local Municipality, Mpumalanga Province. **(Items 16 and 20 as identified in terms of Government Notice R 386 of 21 April, 2006).**

Activity Description
The proposal would entail the development of 7 residential blocks comprising 42 units, 56 covered parking bays and 21 uncovered parking bays. The guest lodge would be sold as sectional title after the 2010 soccer world cup.

1.2 The applicant appointed the following Environmental Assessment Practitioner (EAP) to undertake a basic assessment process:

UmSinsi Environmental Specialists
P.O. Box 8164
Nelspruit
1200

Contact person: Ria Wilken
Tel: (013) 741 1512
Fax: (086) 6304 313

2. Information considered in making the decision.

In reaching its decision, the Department took the following into consideration:

a) The information contained in the basic assessment report, as well as additional information received with respect to the application.
b) The objective and requirements of relevant legislation, policies and guidelines, including Section 2 of the National Environmental Management Act, 1998 (Act No. 107 of 1998);
c) The Mbombela Spatial Development Framework 2006;
d) The findings of the site visit undertaken by Bheki Mndawe, Shereen Mgwenya (DALA), Vusi Zwane (Mbombela Local Municipality) and Ria Wilken (UmSinsi Environmental Specialist) on 25 September 2008.

3. Key factors considered in making the decision.

All information presented to the Department was taken into account in the Department's consideration of the application. A summary of the issues which, in the Department's view, were of the most significance is set out below:

a) Service installation
b) Topography of the site
c) Loss of habitat
d) Noise pollution
e) Visual Impact
f) Socio-economic impact / Need and desirability

4. Findings

After consideration of the information and factors listed above, the Department made the following findings:

a) The preliminary geotechnical assessment by Geo3 cc states that "extensive blasting is envisaged for all excavation, e.g. terraces for roads, installation of services etc" the neighboring properties and the environment will be heavily affected during the site preparation/ blasting activities

b) According to the preliminary geotechnical assessment the average slope of the stand varies between 35 to 55% (i.e. 20 to 30°). Slopes greater than 16% are sensitive to increased surface runoff, accelerated erosion, soil slippage, slope instability and destruction of unique vegetation and should therefore not be developed.

c) Topographical features such as mountains, hills and ridges are subjected to a range of development pressures, and the key reasons for protecting the proposed development site, which is characterized by steep slopes and rocky outcrops, include:
   - Ridges are characterized by high spatial heterogeneity due to the range of different aspect, slopes and altitudes resulting in different soil, light and hydrological conditions.
   - Ridges provide refuge for biodiversity in an urbanized landscape as they function as islands within the natural landscape due to their structural and environmental isolation from the landscape.
   - Ridges form vital habitat for many faunal species such as the Cape Dwarf Gecko. Cape Gecko, Southern Rock Agama, Montane Dwarf Burrowing Skink, Cape Skink, Variable Skink, Striped Skink, Transvaal Girldled Lizard, Drakensberg Crag Lizard and Spotted House Snake, all of whom rely on rocky ridges for habitat.
   - A wide variety of birds utilize ridges for feeding, roosting and breeding. Ridges are also important habitat for sensitive specialized species like bats.
   - Many invertebrates rely on rocky areas as thermal refugia from winter cold air drainage and for behavioural activities such as "hilltopping" as a mate-meeting activity.
   - Ridges are immensely important as natural corridors since they remain relatively self sustaining and do not require substantial management to counteract the influence of the surrounding areas.
   - Ridges have a direct effect on temperature/radiation, surface airflow/wind, humidity and soil types.
   - They also influence fire in the landscape by offering protection to species that can be described as "fire-avoiders".

d) The impact that the proposed development could have on the natural migratory movements of wildlife (eg. monkeys) has not been determined or assessed.

e) While the importance of job creation and economic growth in Mbombela cannot be denied, the Constitution calls for *justifiable* economic development. The specific needs of the broader community must therefore be considered together with the distributional consequences in order to determine whether or not the development will be socially, economically and environmentally sustainable.

f) The rights / interests of other parties are likely to be adversely affected by the proposed development.

g) The proposed development will negatively impact the visual character and sense of place in the area.

h) The proposed activity is therefore not in line with the National Environmental Management Principle that specifically requires that 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 all people in the environment by pursuing the selection of the best practicable environmental option.

According to NEMA the *best practicable environmental option* means the option that provides the most benefit or causes the least damage to the environment as a whole, at a cost acceptable to society, in the long term as well as in the short term. Due to the reasons listed above, this department concludes that the proposed development is not the best practicable environmental option for this site.

In view of the above, the Department is not satisfied that the proposed activity can be undertaken without conflicting with the general objectives of integrated environmental management as laid down in Chapter 5 of the National Environmental Management Act, 1998. The application is accordingly refused.

Director: Environmental Impact Management
For HOD: Agriculture and Land Administration

Date

(6)

Mpumalanga Provincial Government

Drum Rock Complex
On R40 between Nelspruit
& White River
Nelspruit 1200
Republic of South Africa

Private Bag x 11219
Nelspruit, 1200
Tel: (013) 759 4000
Fax: (013) 759 4091
E-mail: bszwane@mpg.gov.za

DEPARTMENT OF AGRICULTURE AND LAND ADMINISTRATION
ENVIRONMENTAL IMPACT MANAGEMENT – EHLANZENI DISTRICT OFFICE

Litiko Letekulima Kanye Nekuphatfwa Kwemhlaba	Departement van Landbou, en Grondadministrasie	Umnyango Wezokulima, Nebhoduluko KweNarha

Enquiries: Surprise Zwane

File No. 17.2.4. E - 53

Lake Kariba Maintenance & Contractors cc
P. O. Box 324
KANYAMAZANE
1214

To whom it may concern,

RE: AUTHORIZATION TO UNDERTAKE A LISTED ACTIVITY IN TERMS OF SECTION 22 OF THE ENVIRONMENT CONSERVATION ACT, 1989 (ACT 73 OF 1989).

After due consideration of the facts presented to the administrators of the Department of Agriculture and Land Administration, I, the undersigned, through the powers vested to me in terms of Section 22(3) of the Environment Conservation Act, 1989(Act 73 of 1989) (hereafter referred to as the Act), hereby denies the authorization in terms of Section 22(3) of the Act, for **the establishment of a filing station on a portion of Stand 2114 and 2115, and a portion of Friedenheim street, Mbombela, Mpumalanga Province, (Schedule 1, item 1 (c) of Government Notice No. R1182 of 5 September 1997).**

The MEC for Agriculture and Land Administration reserves the right to withdraw this authorization at anytime as he/she may deem fit, after furnishing reasons for the decision.

Attached, please find the Record of Decision and the Conditions under which the application for authorization was denied.

Any appeal regarding the said development can be directed to the MEC: Agriculture and Land Administration, Private Bag X 11219, Nelspruit, 1200, within thirty (30) days from the date of authorization.

Director: Environmental Impact Management
For HOD: Agriculture and Land Administration

Date

Mpumalanga Provincial Government

Drum Rock Complex
On R40 between Nelspruit
& White River
Nelspruit 1200
Republic of South Africa

Private Bag x 11219
Nelspruit, 1200
Tel: (013) 759 4000
Fax: (013) 759 4091
E-mail: bszwane@mpg.gov.za

DEPARTMENT OF AGRICULTURE AND LAND ADMINISTRATION
ENVIRONMENTAL IMPACT MANAGEMENT – EHLANZENI DISTRICT OFFICE

Litiko Letekulima Kanye Nekuphatfwa Kwemhlaba | Departement van Landbou, en Grondadministrasie | Umnyango Wezokulima, Nebhoduluko KweNarha

Enquiries: Surprise Zwane

File No. 17.2.4.E – 53

RECORD OF DECISION

Brief Description of Activity.
The proposed project entails the construction of a storage and handling facility for hazardous substances, on an area measuring approximately 3.2 hectares, and comprising of the following:

- A filling station in total will be 150m² in size,
- One (1) 46 000 litre diesel tank,
- Three (3) 23 000 litre petrol tanks,
- Four (4) pump positions,
- Canopy,
- A carwash,
- A workshop,
- Convenience shop, and
- A truck stop with 20 parking bays for trucks, accommodation, ablution facilities, and a kitchen for 12 people.

Location.
The proposed development is located east of the Nelspruit CBD, south of the R40 at the Friedenheim Street and Kanyamazane Road (2296) intersection on a portion of stands 2114 and 2115, and a portion of Friedenheim Street, Nelspruit Extension 12, Mbombela, Mpumalanga Province.
The co-ordinates of the proposed development are 25° 27'34. 9"S and 30° 59'18.6"E

Applicant.
Lake Kariba Maintenance & Contractors cc
P. O. Box 324
KANYAMAZANE
1214

Tel: (013) 752 4439
Fax: (012) 752 4437

Consultant.
Ecotechnik Environmental Consultants
P. O. Box 30029
NELSPRUIT
1200

Contact person: Mr. Iain Garratt

Tel: (013) 755 2218
Fax: (013) 755 3358

Site Visit.

Date:	July 20, 2005	
Present:	Mr. Surprise Zwane	Department of Agriculture and Land Administration (MDALA)
	Mr. Musa Luhlanga	Department of Agriculture and Land Administration (MDALA)
	Mr. Lucky Malaza	Department of Agriculture and Land Administration (MDALA)
	Mr. Titus Masenya	Department of Water Affairs and Forestry (DWAF)
	Ms. Sonto Nxumalo	Department of Health and Social Services
	Mr. Danie Neumann	Ecotechnik Environmental Consultants
	Ms. Merissa Steenkamp	Ecotechnik Environmental Consultants
	Mr. Sipho Mokoena	Lake Kariba Maintenance & Contractors cc (Applicant)

Follow up site visit.

Date:	November 30, 2006	
Present:	Ms. Norma Mdhluli	Department of Agriculture and Land Administration (MDALA)
	Ms. Buyisiwe Mabaso	Department of Agriculture and Land Administration (MDALA)
	Mr. Surprise Zwane	Department of Agriculture and Land Administration (MDALA)
	Mr. Iain Garratt	Ecotechnik Environmental Consultants

DECISION.

After an application for Authorization has been received by the Department, after the site visit of July 20, 2005 and follow up site visit of November 30, 2006 and after due consideration of the information presented to the Department of Agriculture and Land Administration, Authorization is not granted in terms of Section 22(3) of the Environment Conservation Act, 1989(Act 73 0f 1989).

Key Factors for the Decision.

1. The Environmental Impact Assessment undertaken is inconclusive.
2. The proposed development is located along a sensitive, irreplaceable ecological system (Crocodile River) and it is not in line with the Mbombela Spatial Development Framework.
3. The existence of the Crocodile River Greenbelt Initiative Policy which is seen as an environmental policy aimed at ensuring a safe, secure and sustainable green belt along the Crocodile River by conserving and improving natural resources.

Appeal.

A formal appeal can be directed to the MEC: Agriculture and Land Administration, Private Bag X11219, Nelspruit, 1200, within thirty (30) days from the date of authorization.

Director: Environmental Impact Management **Date**
For HOD: Agriculture and Land Administration

(9)

Mpumalanga Provincial Government

25 De Clercq Street
ERMELO
2351
Republic of South Africa

P.O. Box 2777
ERMELO
2350
Tel: (017) 819-1155
Fax: (017) 819-2072/2828

DEPARTMENT OF AGRICULTURE AND LAND ADMINISTRATION

GERT SIBANDE REGION

DIRECTORATE: ENVIRONMENTAL IMPACT MANAGEMENT

Litiko Letekulima Nekuphatfwa Kwemhlaba | Departement van Landbou, en Grondadministrasie | Umnyango Wezokulima Nokuphathwa Komhlaba

Enquiries: Mr. Lazarus kutumela
Ref.: 17.2. 5 GS 12

Golf View Mining (Pty) Ltd
P. O. Box 2876
Ermelo
2350
Tel (017) 8195380
Fax: (017) 8116333

To whom it may concern,

RE: AUTHORISATION TO UNDERTAKE A LISTED ACTIVITY IN TERMS OF SECTION 22 OF THE ENVIRONMENT CONSERVATION ACT, 1989 (ACT 73 OF 1989)

After due consideration of the facts presented to the administrators of the Department of Agriculture and Land Administration in Mpumalanga, I the undersigned, through the powers vested to me in terms of Section 22 (3) of the Environment Conservation Act, 1989 (Act 73 of 1989) (hereafter referred to as the Act), hereby denies the **construction and operation of a double railway siding on portion 13 of the farm Nooitgedacht 268 IT and portion 93 of the farm Van Oudshoornstroom 261 IT, Ermelo, Mpumalanga,** (Activity 1(d) in terms of Government Notice R1182 of 5 September 1997).

Attached, please find the Record of Decision and reasons under which the application for authorisation was denied.

Any queries in this regard can be directed to the MEC: Agriculture and Land Administration Private Bag X11219, Nelspruit 1200, within thirty (30) days of the date of this Exemption.

Director: Environmental Impact Management
For HOD: Agriculture and Land Administration

Date

Mpumalanga Provincial Government

25 De Clercq Street
ERMELO
2351
Republic of South Africa

P.O. Box 2777
ERMELO
2350
Tel: (017) 819-1155
Fax: (017) 819-2072/2828

DEPARTMENT OF AGRICULTURE AND LAND ADMINISTRATION

GERT SIBANDE REGION

DIRECTORATE: ENVIRONMENTAL IMPACT MANAGEMENT

Litiko Letekulima Nekuphatfwa Kwemhlaba | Departement van Landbou, en Grondadministrasie | Umnyango Wezokulima Nokuphathwa Komhlaba

Enquiries: Mr. Lazarus kutumela

Ref.: 17.2. 5 GS 12

RECORD OF DECISION

Brief Description of the Activity

The Golfview coal siding project involves the construction and operation of a double railway siding. Then two railway lines will be placed centrally in a 48m wide platform. The siding will be a maximum of 2km in length. Storm water cut off trenches (0.5m deep and 0.5m wide), a settling dam and evaporation dam will be constructed to retain dirty water from within the siding area. Other infrastructure required will be temporal buildings including ablution facility, a weighbridge, electricity, potable water and a haul road. The operational phase involves stockpiling of coal for 2 to 3 days before being loaded onto trains to markets.

Location

The proposed double railway siding will be constructed on portion 13 of the farm Nooitgedacht 268 IT and portion 93 of the farm Van Oudshoornstroom 261 IT, Ermelo, Mpumalanga Province.

Applicant

Golf View Mining (Pty) Ltd
P. O. Box 2876
Ermelo
2350
Tel (017) 8195380
Fax: (017) 8116333

Consultant

A van Zyl
P. O. box 11457
Aerorand
Middleburg
1050
Tel: (013) 282 6226
Fax: (013) 243 4767

Site Visits
26 January 2006
M. L. Kutumela-Environmental officer (MDALA)
A van Zyl – Anker Coal Sales and Export (Pty) Ltd

DECISION
After due consideration of the application for authorisation and the facts presented to the Department of Agriculture and Land Administration (hereafter referred to as this or the Department), authorisation is not granted for **the construction of a double railway siding on portion 13 of the farm Nooitgedacht 268 IT and portion 93 of the farm Van Oudshoornstroom 261 IT,** the denial to continue with the proposed activity is in terms of Section 22(3) of the Environment Conservation Act, 1989 (73 of 1989).

Key factors for the Decision
1. The Environmental Impact Assessment undertaken was inconclusive.
2. Noise, Air, visual and dust pollution impacts and mitigation measures studies undertaken were inconclusive.
3. Public participation process undertaken was inconclusive.

Appeal
Any queries in this regard can be directed to the MEC: Agriculture and Land Administration, Private Bag X11219, Nelspruit, 1200, within thirty (30) days of the date of this Authorisation.

_____ _____
Director: Environmental Impact Management **Date**
For HOD: Agriculture and Land Administration

(10)

Mpumalanga Provincial Government

Oak Tree
41 Cnr Kerk & Smuts Streets
Ermelo
2351
Republic of South Africa

P. O. Box 2777
Ermelo
Tel: (017) 8191155
Fax: (017) 819 282

DEPARTMENT OF AGRICULTURE AND LAND ADMINISTRATION
GERT SIBANDE REGION
DIRECTORATE: ENVIRONMENTAL IMPACT MANAGEMENT

Litiko Letekulima, Nelomhlaba, | Departement van Landbou, Grond Administrasie | Umnyango Wezokuli

Enquiries: **Mr. M. L. Kutumela**
File No.: **17. 2. 4. GS 61**

Phinda Properties
P. O. Box 221
Trichardt
2300

TO WHOM IT MAY CONCERN

AUTHORISATION TO UNDERTAKE A LISTED ACTIVITY IN TERMS OF SECTION 22 OF THE ENVIRONMENT CONSERVATION ACT, 1989 (ACT 73 OF 1989)

After due consideration of the facts presented to the administrators of the Department of Agriculture and Land Administration in Mpumalanga, I the undersigned, through the powers vested in me in terms of Section 33(1) of the Environment Conservation Act, 1989 (Act 73 of 1989) (herein referred to as the Act) and Government Notice R 1183 of 05 September 1997, hereby denies the authorisation of the **construction and operation of a Filling Station on a portion of portion 66 of the farm Driefontein 137 IS, corner D. F. Malan Street and P185-2, Secunda**, (Activity 1(c) in terms of Government Notice R 1182 of 5 September 1997).

Enclosed, please find the Record of Decision and Conditions under which the application for authorisation was denied.

Any queries in this regard can be directed to the MEC: Agriculture and Land Administration, Private Bag X11219, Nelspruit, 1200, within thirty (30) days of the date of this authorisation.

_____ _____

Director: Environmental Impact Management **Date**
For HOD: Agriculture and Land Administration

Mpumalanga Provincial Government

Oak Tree
41 Cnr Kerk & Smuts Streets
Ermelo
2351
Republic of South Africa

P. O. Box 2777
Ermelo
Tel: (017) 8191155
Fax: (017) 819 2828

DEPARTMENT OF AGRICULTURE AND LAND ADMINISTRATION
GERT SIBANDE REGION
DIRECTORATE: ENVIRONMENTAL IMPACT MANAGEMENT

Litiko Letekulima, Nelomhlaba,	Departement van Landbou, Grond Administrasie	Umnyango Wezokulir

RECORD OF DECISION FOR THE PROPOSED CONSTRUCTION OF A FILLING STATION ON A PORTION OF PORTION 66 OF THE FARM DRIEFONTEIN 137IS LOCATED ON THE CORNER D F MALAN STREET AND P185-2, SECUNDA

Enquiries: **Mr. M. L. Kutumela**

File No.: **17. 2. 4. GS 61**

Brief description of the activity
Phinda properties is proposing to develop a new Filling Station on a portion of portion 66 of the farm Driefontein 137 IS, corner D. F. Malan Street and P1852, Secunda.

Location
The proposed Filling station will be on a portion of portion 66 of the farm Driefontein 137 IS, corner D. F. Malan Street and P185-2, Secunda.

Applicant
Phinda Properties
P. O. Box 221
Trichardt
2300
Tel: (017) 634 7166
Fax: (017) 631 3102

Consultant
Synergistics Environmental Services
P. O. Box 13419
Vorma Valley
1686
Tel: (011) 805 2402
Fax: (011 805 2443

Site visit
The site visit was undertaken by M. L. Kutumela, Martin van Wyk and Neal Schoof, .on the 3th February 2004.

Decision

After due consideration of the application for authorisation and the facts presented to the Department of Agriculture and Land Administration, (hereafter referred to as the or this Department), I regret to inform you that this Department will not grant the authorisation for the proposed construction and operation of a Filling Station on a portion of portion 66 of the farm Driefontein 137 IS, corner D. F. Malan Street and P1852, Secunda.

Key factors for the decision:

1. There are already two Filling Stations in Trichardt (Raymor Motors and Trichardt Motor Works) that service the traffic from the Provincial Road P185-2 and N17.
2. The results of Public Participation Process clearly demonstrate that a new Filling Station must not be developed on the proposed location,(Objections raised by Sasol Secunda, Secunda Total, Teksa Motors, Secunda, Raymor Service Station, Multi Motors, Secunda Delta, Eastvaal Auto and Trichardt Motor Works), due to the lack of proven information on the need and desirability of the development.
3. The cumulative impact of the project on social and economic condition on the receiving environment has been underestimated.

General Conditions

1.1 This authorisation refers only to the project as specified above and described in the Record of Decision.

1.2 The applicant must within **five (05) days** inform (in writing) all registered Interested and Affected parties of the decision.

Appeal

Any queries in this regard can be directed to the MEC: Agriculture and Land Administration, Private Bag X11219, Nelspruit, 1200, within thirty (30) days of the date of this authorisation.

_____ _____

Director: Environmental Impact Management **Date**
For HOD: Agriculture and Land Administration

(11)

DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT

Diamond Corner Building, 68 Eloff & Market Street, Johannesburg
P.O. Box 8769, Johannesburg, 2000

Telephone: (011) 355-1900
Fax: (011) 337-2292

PROVINCIAL GOVERNMENT

Reference:	002/08 09/N0440
Enquiries:	Mahlako Mmola
Telephone:	(011) 355 1880
Email:	Mahlako.Mmola@gauteng.gov.za

[redacted]

Fascimile: [redacted]

BY FASCIMILE AND REGISTERED MAIL

Dear Sir/Madam

AUTHORISATION REFUSED: PROPOSED EQUESTRIAN ESTATE TO BE KNOWN AS FLORACADIA NORTH ON [redacted]

The Department has decided not to authorise the proposed development. The reasons for the decision are set out in Annexure A att.

Your attention is drawn to the provisions of Regulation 78 the Environmental Impact Assessment Regulations, 2006 ("Regulations") in terms of which an applicant may not resubmit an application which is substantially similar to a previous one and which has been refused unless a period of 3 (three) years has elapsed or new material information is submitted.

In terms of Regulation 10(2) of, you are instructed to notify all registered interested and affected parties, in writing and within 10 (ten) days of the date of this letter, of the Department's decision in respect of your application as well as the provisions regarding the making of an appeal(s) that are provided for in the Regulations.

Your attention is also drawn to Chapter 7 of the Regulations which regulates appeal procedures. Should you wish to appeal any aspect of the decision, you must, *inter alia*, lodge a Notice of Intention to Appeal with the MEC, within 10 (ten) days of the date of this letter, by means of one of the following methods:

By facsimile:	(011) 333 0620;
By post:	P O Box 8769 Johannesburg 2000; or
By hand:	10th Floor Diamond Corner Building 68 Eloff Street Johannesburg

Should you decide to appeal, you must serve a copy of your Notice of Intention to Appeal on all registered interested and affected parties as well as a Notice indicating where and for what period the appeal submission will be available for inspection.

A copy of the prescribed form is hereto attached. The form is also available on the Department's website, www.gdard.gov.za .

Yours faithfully

Dr S.F. Cornelius
Head: Agriculture and Rural Development
Date: 11/03/2010

CC

[redacted]

Attention: [redacted]
Telephone
Fascimile

[redacted]

Attention [redacted]
Telephone
Fascimile:

GDARD Compliance&Enforcement Branch Attention: Compliance Monitoring
Telephone: (011) 355 1815
Fascimile: (011) 355 1850

Annexure 1: Reasons for Decision

1. Background

The applicant, [redacted] applied for authorisation to develop an equestrian estate to be known as Floracadia North on [redacted]

The applicant appointed [redacted] represented by [redacted] to undertake a Basic Assessment process

2. Information considered

In reaching its decision, the Department took, *inter alia*, the following into consideration -

a) The information contained in the Basic Assessment Report dated 8 December 2009.
b) The comments received from interested and affected parties as included in the Basic Assessment Report.
c) Relevant information contained in the Departmental information data-base including –
   - The Geographical Information System (GIS);
   - The Gauteng Provincial Urban Edge (2008/2009);
   - The Gauteng Agricultural Potential Atlas Version 3 (GAPA 3); and
   - Gauteng Conservation Plan (C-Plan Version 2).
d) The objectives, principles and requirements of relevant legislation, policies and guidelines, including, *inter alia*,
   - Section 2 of the National Environmental Management Act, 1998 (Act 107 of 1998) (NEMA); and
   - The objectives of integrated environmental management set out in section 23 of NEMA.
e) The findings of the site inspection undertaken by Phuti Ngoasheng on 21 December 2009.

3. Key factors considered

All the information presented to the Department was taken into account in the Department's consideration of the application. A summary of the issues which, in the Department's view, were of the most significant is set out below:

a) Agricultural potential on the proposed site of development;
b) Sensitive environmental features;
c) Gauteng Provincial Urban Edge (2008/2009);
d) Availability of bulk services; and
e) Buffer zones around Protected Areas.

4. Findings

Having considered the information and factors listed above, the Department made the following findings -

a) According to the revised Gauteng Agricultural Potential Atlas Version 3 (GAPA 3) and the policy thereof, the site has high agricultural potential and falls within an important agricultural site and subsequently the loss or conversion of natural non-renewable resource is not a desirable land use option taking into account the limited availability

and distribution of such a resource in the Province and this cannot be discounted. The Gauteng Provincial Government and the Department have committed to maximising the use of high potential agricultural land to support farming activities which will contribute to food security and job creation in the Province.

b) The proposed site of development is affected by rivers, wetlands, ridges, and quaternary catchments which are associated with ecological processes such as groundwater dynamics, hydrological processes, nutrient cycling, wildlife dispersal, pollination and evolutionary processes. Sites designated as irreplaceable and/or important in terms of C-Plan Version 2 analyses are highly sensitive areas that are essential for the conservation of biodiversity in Gauteng and therefore must be protected from transforming land uses. The site under consideration for the proposed activity is designated as important and contributes towards the conservation of numerous red data species including, *inter alia, Tyto capensis, Cineraria longpipes and Eupodotis senegalensis.*

c) Part of the proposed development is located within 1km of a protected area (Suikerbosrand Nature Reserve). A protected area in a human-impacted landscape will be affected by a variety of inappropriate influences from surrounding activities, collectively known as edge effects. Edge effects can physically degrade habitat, endanger resident biota and reduce the functional size of protected areas and may include the effects of invasive plant and animal species, physical damage and soil compaction caused through trampling and harvesting, abiotic habitat alterations and pollution. All level 1 and 2 protected areas in Gauteng must therefore be protected by a 1km buffer zone to filter out these deleterious edge effects. Buffer zones are also valuable in providing more landscape needed for ecological processes such as fire.

d) The proposed site of development is situated outside the Provincial Urban Edge and as such is not connected to municipal bulk services. The suggested use of an individual package treatment plant is a matter of great concern to the Department because of the potential contamination of the underground water.

In view of the above, the Department is neither satisfied that the proposed activity can be undertaken without conflicting with the general objectives and principles of integrated environmental management laid down in Chapter 5 of NEMA, nor that any potentially detrimental environmental impacts resulting from the proposed activity can be mitigated to acceptable levels.

The application for authorisation is accordingly refused.

PROVINCIAL GOVERNMENT

AGRICULTURE, CONSERVATION, AND ENVIRONMENT
OFFICE OF THE HEAD OF DEPARTMENT
Diamond Corner Building, 68 Eloff & Market Street, Johannesburg
P O Box 8769, Johannesburg, 2000

Telephone: (011) 355-1900
Fax: (011) 337-2292

Reference:	Gaut002/07-08/N0837
Enquiries:	Mr Daniel Motaung
Telephone:	(011) 355 1560
Email:	Daniel.Motaung@gauteng.gov.za

[redacted]

Attention: [redacted]
Facsimile:
Telephone:

BY FACSIMILE AND REGISTERED MAIL

Dear Sir

EXEMPTION: PROPOSED DEVELOPMENT OF GENTLEMAN'S ESTATE ON [redacted]

The above matter and more specifically your application for exemption received by the Department on 7 May 2008 have reference.

The Department has decided not to grant [redacted] the exemption requested for based on the following reasons:

1. The proposed activities are listed in terms of the Environmental Impact Assessment Regulations 2006, (Government Notice R385) published under the National Environmental Management Act, 1998 (Act 107 of 1998) (as amended) (NEMA) and therefore a full Scoping - EIA process should be followed before the competent authority can make a decision.
2. A comprehensive public participation process should be undertaken to ensure that the rights of interested and affected parties are considered before a decision is made.
3. According to the Department decision support tool (GIS), the following have been noted regarding the sites:

3.1 The sites are bordered by the Vaal River (important water body) in the south from east to west.
3.2 The sites are outside the Protected Areas.
3.3 The sites are currently zoned "Agricultural" and so are other surrounding properties.

3.4 The sites do not exhibit an Agricultural High (HP, AHP) Potential. Please note the Department does not support the loss of high potential agricultural land due to pressure from the township developments, and

3.5 The sites are classified as "Important" due to the occurrence of Red Listed Plant Metapopulation Orange Plant, Red List Bird species, ecological sensitivity, non-perennial stream, wetlands and ridge

In light of the above findings, the Department advises that before any decision can be made in respect of the proposed development the applicant must submit a Scoping Report Plan of Study for Environmental Impact Assessment as well as the Environmental Impact Assessment Report as required in terms of the EIA Regulations 2006

Should you have any queries regarding the contents hereof please contact Mr Daniel Motaung on (012) 358 1360

Yours faithfully,

Dr S J Cornelius
Head: Agriculture, Conservation and Environment
Date: 03/07/2008

CC [redacted] Attention [redacted]
Telephone
Facsimile

[redacted] Attention:
Telephone:
Facsimile:

DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT

Diamond Corner Building, 68 Eloff & Market Street, Johannesburg
P O Box 8769, Johannesburg, 2000

Telephone: (011) 355-1900
Fax: (011) 337-1000

PROVINCIAL GOVERNMENT

Reference:	[redacted]
Enquiries:	[redacted]
Telephone:	[redacted]

[redacted]

Tel: [redacted]
Fax: [redacted]

PER FACSIMILE & REGISTERED MAIL

Dear Sir/Madam

REFUSAL OF ENVIRONMENTAL AUTHORISATION FOR THE PROPOSED NKITSENG DEVELOPMENT ON PLOT 79 [redacted]

The Department hereby refuses authorisation for the abovementioned application. The reasons for the decision are set out in Annexure 1 attached hereto.

Your attention is drawn to regulation 28 of the Environmental Impact Assessment Regulations, 2006 ("the Regulations") in terms of which an applicant may not resubmit an application which is substantially similar to a previous application by the applicant and which has been refused unless a period of three years has elapsed or new or material information is submitted.

In terms of regulation 10(2) of the Regulations, you are instructed to notify all registered interested and affected parties, in writing and within 10 (ten) days of the date of this letter, of the Department's decision in respect of your application as well as the provisions regarding the making of appeals that are provided for in the Regulations.

Your attention is also drawn to Chapter 7 of the Regulations which regulates appeal procedures. Should you wish to appeal any aspect of the decision, you must, *inter alia*, lodge a Notice of Intention to Appeal with the MEC within 10 days of the date of this letter, by means of one of the following methods:

By facsimile:	[redacted]
By post:	[redacted]
By hand:	[redacted]

[redacted]

Should you decide to appeal, you must serve a copy of your Notice of Intention to Appeal on all registered interested and affected parties as well as a Notice indicating where and for what period the appeal submission will be available for inspection. The appeal form is available on the Department's website: www.gdard.gov.za

Yours faithfully

Dr S I Cornelius
Head: Agriculture and Rural Development
Date: 26/03/2010

cc: [redacted]

Attn [redacted]
Tel
Fax

Attn [redacted]
Tel
Fax

Attn [redacted]
Tel
Fax

GDARD - General Waste Management

Attn Ms Lindokuhle Vilakazi
Tel 011 355 1354
Fax #086 604 2482

Annexure 1: Reasons for Decision

1. **Background**

The applicant, [redacted], applied for authorisation to carry on the following activity:

"Establishment of a chicken broiler on Plot 79, [redacted] which will trigger Listed Activities 1 (h)(vi) as well as 16 (b) as set out in Government Notice 386 of 21 April 2006."

The applicant appointed Ms. Alta van Dyk of Ivuzi Environmental Consultants to do an environmental impact assessment.

2. **Information considered in making the decision**

In reaching its decision, the Department took, *inter alia*, the following into consideration:

a) The information contained in the Basic Assessment Report received by this Department on 18 May 2009;
b) The comments received from interested and affected parties as included in the Basic Assessment Report;
c) Relevant information contained in the Departmental information base including the Geographic Information System (GIS) of the Department;
d) Copy of the letter *G/6/5PLAS601* dated 2 December 2008 from the Department of Land Affairs (now Land Reform and Rural Development);
e) The objectives and requirements of relevant legislation, policies and guidelines, including section 2 of the National Environmental Management Act, 1998 (Act No. 107 of 1998) ("the NEMA"); and
f) The findings of the site visits undertaken by Livhuwani Muluvhu on 24 February 2009 and also by Jonathan Malivha, Rendani Ramulumo and Faith Manjoro on 18 November 2009.

3. **Key factors considered in making the decision**

All information presented to the Department was taken into account in the Department's consideration of the application. A summary of the issues which, in the Department's view, were of the most significance are set out below.

The Department of Land Reform and Rural Development previously known as Land Affairs (DLA) and the Mulvaul Local Municipality do not support the development of a poultry farm at the site due to the property not being zoned for such use and has advised the applicant to identify other suitable properties for the proposed poultry farm.

4. **Findings**

After consideration of the information and factors listed above, the Department made the following findings:

a) The property is not suitable for poultry farming. It also does not have the support of the Mulvaul Local Municipality.

b The Department of Land Reform and Rural Development will not continue with its application for financial assistance under the land reform programme, which is the basis of the application and was advised the applicant to identify other suitable properties for the proposed poultry farm

c The applicant does not have the necessary funds to purchase the site in the absence of financial assistance from the Department of Land Reform and Rural Development

In view of the above, the Department is not satisfied that the proposed activity can be undertaken without conflicting with the general objectives of integrated environmental management laid down in Chapter 5 of the National Environmental Management Act 1998, and principles of co-operative governance in section 41 of the Constitution of the Republic of South Africa, Act 108 of 1996.

The application is accordingly refused.

(14)

DEPARTMENT OF AGRICULTURE AND RURAL DEVELOPMENT

Diamond Corner Building, 68 Eloff & Market Street, Johannesburg
P O Box 8769, Johannesburg, 2000

Telephone: (011) 355-1900
Fax: (011) 337-2292

Reference: Gaut 002/08-09/NM810
Enquiries: Mahlako Mmola
Telephone: (011) 355 1890
Email: Mahlako.Mmola@gauteng.gov.za

[redacted]

Tel: [redacted]
Fax: [redacted]
Attn: [redacted]

PER FACSIMILE/REGISTERED MAIL

Dear Sir,

ENVIRONMENTAL AUTHORISATION FOR THE PROPOSED RESIDENTIAL DEVELOPMENT ON PORTION 394 OF THE FARM [redacted]

The Department hereby refuses authorisation for the abovementioned application. The reasons for the decision are set out in Annexure 1

Your attention is drawn to the provisions of regulation 28 in terms of which an applicant may not resubmit an application which is substantially similar to a previous application by the applicant and which has been refused unless a period of three years has elapsed or new or altered information is submitted

In terms of regulation 10(2) of the Regulations, you are instructed to notify all registered interested and affected parties of the decision. A copy of the letter of notification to the Department must be forwarded in respect of your application as well as the proof of notification forwarded to all registered parties and objectors.

[illegible] Should you decide to appeal, you must serve a copy of your notice of intention to appeal on the Minister within 10 days of the date of this letter by means of one of the following methods:

By registered mail: [illegible]

By post: P.O. Box X567, Lebowa, 0699

By hand: 16th Floor Diamond Corner Building, 88 Hoff Street, Johannesburg

Should you decide to appeal, you must serve a copy of your notice of intention to appeal on all registered interested and affected parties as well as a notice indicating where and for what period the appeal submission will be available for inspection.

Yours faithfully,

Dr N F Cornelius
Head: Agriculture and Rural Development
Date: 04/02/2010

cc [redacted]
Consultants

Attn
Tel
Fax
Attn
Tel
Fax

[redacted]

Annexure 1: Reasons for Decision

1. Background

The applicant, [redacted] applied for authorisation to carry out the following activity

"The development of 200 residential units on Portion 394 of the farm [redacted] which falls under the jurisdiction of the Midvaal Local Municipality of the Sedibeng District Municipality"

2. Information considered in making the decision

In reaching its decision, the Department took, *inter alia*, the following into consideration -

a) The information contained in the:
   - Application for Environmental Authorisation form and Basic Assessment Report dated October 2009;
   - Midvaal Spatial Development Framework; and
   - The Gauteng Provincial Urban Edge (2008/2009).

b) Relevant information contained in the Departmental information base including:
   - The Geographical Information System (GIS);
   - Gauteng Conservation Plan (Version 2);
   - Gauteng Open Space Project (GOSP 3); and
   - Social PH

c) The objectives and requirements of relevant legislation, policies and guidelines, including section 2 of the National Environmental Management Act, 1998 (Act No. 107 of 1998).

d) Sustainable development requires the consideration of all relevant factors including the following:
   - That pollution and degradation of the environment are avoided, or, where they cannot be altogether avoided, are minimized and remedied [Section 2(4)(a)(ii)]
   - 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 [Section 2(4)(a)(v)]
   - That a risk-averse and cautious approach is applied, which takes into account the limits of current knowledge about the consequences of decisions and actions [Section 2(4)(a)(vii)]

e) [illegible]

3. Key factors considered in making the decision

All information presented to the Department was taken into account in the Department's consideration of the application. A summary of the issues which, in the Department's view, were of the most significance is set out below:

a) The proposed site of development lies in an area that is characterised by low density residential and recreational developments.

b) The proposed site of development falls outside the designated Provincial Urban Edge (2008/2009).

c) The spreading of development over a wider area may be detrimental to the environment (e.g. Vaal Dam) by increasing edge effects through the expansion of roads and other infrastructure to support the development.

d) The development is not compatible with the municipal land use guidelines of encouraging developments up to ten (10) units per hectare for the Vaal Dam area and would set a precedent for future high density townships.

e) Incompatibility of the development in terms of the following:

- Principles contained in section 2 of the National Environmental Management Act, 1998 (Act 107 of 1998 ("NEMA"), more specifically sections 2(4)(a)(vii), 2(4)(a)(v), 2(4)(b) and 2(4)(d);
- Objectives of integrated environmental management as set out in section 23 of NEMA, and
- The principles contained in section 3 of the Development Facilitation Act, 1995 (Act 67 of 1995) ("DFA") which advocate the promotion of efficient and integrated land development through *inter alia*:
  - Achieving a compact and structured urban form that result in greater emphasis on concepts such as infill development and densification by optimizing the use of existing infrastructure and land resources.

6. Findings

After consideration of the information and factors listed above, the Department made the following findings:

a) The proposed residential development at a density of 25 – 30 units per hectare will have a negative impact on the objectives of the urban edge policy and will encourage urban development and densification in order to prevent urban sprawl.

(b) The proposed development if allowed to occur would constitute a change of character of a predominantly rural residential atmosphere and set a negative precedent of urban sprawl in the area

(c) The proposed development at such a high density does not conform to the municipal spatial development framework set for the area

In view of the above the Department is not satisfied that the proposed activity can be undertaken without conflicting with the general objectives of integrated environmental management laid down in Chapter 5 of the National Environmental Management Act, 1998, or that any potentially detrimental environmental impacts resulting from the proposed activity can be mitigated to acceptable levels. Authorisation for development is accordingly refused

(15)

LIMPOPO
PROVINCIAL GOVERNMENT
REPUBLIC OF SOUTH AFRICA

Ref No : 16/1/10/3-114
Enq : Tebogo Kekane
Tel No : 015 295 5633
Fax No : 015 295 5015
E-Mail : Kekanect@ledet.gov.za

This Roo was faxed by EAP to the applicant on the 3/8/2007 to 015 290 2255.

The Municipal Manager
Polokwane Municipality
P O Box 111
POLOKWANE
0700

Fax: 015 290 2117 Cell.

Attention: Mr V Mothapo 082 827 8517. Derrick Botha Engineer

RE: ENVIRONMENTAL AUTHORIZATION

By virtue of the powers delegated by the MEC in terms of section 33(1) of the Environment Conservation Act (Act 73 of 1989) (ECA), the Department of Economic Development, Environment and Tourism hereby in terms of section 22(3) of the same Act, refuses to authorize -

DEVELOPMENT OF A TAXI HOLDING AREA AT CORNER DEVINISH STREET AND MANDELA DRIVE IN POLOKWANE TOWN: CAPRICORN DISTRICT MUNICIPALITY

Enclosed please find the Record of Decision and the conditions under which the application is refused.

All interested and/or affected parties registered for this project have to be notified of the decision and the conditions it is subjected to, within 14 days from the date on which the Record of Decision was signed.

Formal appeals can be lodged with the Honourable MEC Mr C Chabane. Such appeals should be lodged within 30 days from the date on which the Record of Decision was signed.

Yours Faithfully

SENIOR MANAGER
ENVIRONMENTAL IMPACT MANAGEMENT
DATE: 25/07/07

Cc: Khosa Development Specialist Pty (Limited) Attention: Mr Justice Khosa Fax: 015 297 9396

6. DECISION

In reaching the decision in respect of the application, the Department, have *inter alia*, taken the following information into consideration.

- The findings of the site visit conducted by Ms Tebogo Kekane of this Department on 20 April 2007,
- The information contained in the Environmental Scoping Report received on 24 March 2006; and
- Letter from the Department of Water Affairs and Forestry received on 02 may 2007.

In reviewing this information, the Department made the following findings.

- Findings of the site visit indicate that the development has already commenced and topsoil has been stockpiled on the banks of the Sterkloop river whereas the scoping report indicates, page 21 no 4.9, that there is an existing Sterkloop river that flows from the Southeast to the Northeast direction no development activities will take place above 1.50 year flood line and further indicates on page 39 that topsoil will be removed from all areas where physical disturbance of the surface would occur and stored in a properly demarcated area from where it would later be retrieved for reuse.

- Although the development has commenced without the environmental authorization, it further continues with non-compliance to some of the mitigation measures outlined in the scoping report and the Environmental Management Plan.

- According to your scoping report (page 32 no 6.2), one of the method used to inform the general public was through a public participation meeting which was held on 22 March 2006 at 109 General Muller Street, Welgelegen in Polokwane at 10:00. Appendix D of the same report indicates that no meeting was held hence no minutes of the meeting attached.

- Toilets have a tendency to pollute surface and ground water, this issues is not adequately assessed and no mitigation measures were proposed.

- An illegal environmental authorization (Exemption) was found on site during the site visit and it may have been used to commence with the development.

- Comments from the Department of Water Affairs and Forestry confirmed the finding of the site visit in terms of the development activities taking place on the banks of a river (topsoil stockpiles on the riverbanks) and within the 1:50 year flood line.

Having considered the above information, the Department has concluded that:

- The applicant must cease with development immediately, rehabilitate the site to its original state and consider other location alternatives.

- Should the Applicant wish to reapply, location alternatives must be considered and the application must be in terms of the Environmental Impact Assessment Regulations, 2006, in terms of Chapter 5 of the National Environmental Management Act (Act 107 of 1998).

This department has accordingly decided to refuse Authorization in terms of Regulations R 1182 and R 1183 (as amended) promulgated under sections 21, 22 and 26 of ECA subject to the above provisions.

7. SITE VISIT

Date: 20 April 2007
Participant(s): Ms Kekane CT of this Department.

8. APPEAL

Appeals in respect of this decision must be lodged with the MEC for Economic Development, Environment and Tourism, Limpopo Province, Mr OC Chabane within 30 (thirty) days of the date of this decision. Appeals can be submitted utilizing one of the following methods:

By facsimile : (015) 293 8317
By post : Private Bag X 9484, POLOKWANE 0700
By hand : 3rd Floor, Evridiki Towers, 20 Hans van Rensburg street, POLOKWANE

Appeals must comply with the provisions of Regulation 11 of Government Notice No. R. 1183 which reads as follows:
An appeal to the Minister or provincial authority under section 35(3) of the Act must be done in writing within 30 days from the date on which the ROD was issued to the applicant in terms of regulation 10(1);

An appeal must set out all the facts as well as the grounds of appeal, and must be accompanied by all relevant documents or copies of them which are certified as true by a commissioner of oaths.

Should any person wish to appeal any aspect of this decision, the person must notify and furnish copies of the appeal which will be submitted to the MEC, to all registered interested and affected parties. Proof of such notification must be submitted to the MEC with the appeal. Failure to comply with this provision may result in the Minister refusing to consider the appeal.

SENIOR GENERAL MANAGER
ENVIRONMENT AND TOURISM
DATE: 2007/7/25

LIMPOPO
PROVINCIAL GOVERNMENT
REPUBLIC OF SOUTH AFRICA

DEPARTMENT OF
ECONOMIC DEVELOPMENT, ENVIRONMENT & TOURISM

Enq: S Matome, Tel: 015 293 8507, Fax: 015 293 8317, Ref: 16/1/10/3 - 114

The Municipal Manager
Polokwane Municipality
P O Box 111
POLOKWANE
0700

For attention: Mr PLM Ledwaba **Fax:** 015 290 2117

1. The above matter has reference.
2. Kindly be informed that your appeal (received on 22/01/2008) has been upheld by our Member of Executive Council (MEC) and an authorisation (Record of Decision) has been issued and included as part of this letter.
3. The Record of Decision is valid for two (2) years, the expiry date being the date corresponding to the date on which MEC signed the ROD in 2008.
4. All interested and/or affected parties registered for this project have to be notified of the decision and the conditions it is subjected to, within 14 days from the date on which the Record of Decision was signed.

Sincerely,

Received:
Mojapelo R.D.
2008/02/04.
Original Copy Collected in person

S Matome
SENIOR MANAGER
OFFICE OF THE MEMBER OF EXECUTIVE COUNCIL
DATE: 05/01/2008

DECISION

The MEC hereby grants you a permission to go ahead with the development subject to the following conditions and are binding on the holder of the authorisation:

5. CONDITIONS

5.1 MANAGEMENT OF THE ACTIVITY

5.1.1 The holder of the authorisation shall be responsible for ensuring compliance with the conditions by any person acting on his or her behalf, including but not limited to, an agent, sub-contractor, employee or person rendering a service to the holder of the authorisation.

5.1.2 This activity may only be carried out at the property indicated above.

5.1.3 Any changes to, or deviations from, the project description set out in this authorisation must be approved, in writing, by the Department before such changes or deviations may be effected. In assessing whether to grant such approval or not, the Department may request such information as it deems necessary to evaluate the significance and impacts of such changes or deviations and it may be necessary for the holder of the authorisation to apply for further authorisation in terms of the environmental impact assessment (EIA) regulations.

5.1.4 This activity must commence within a period of 2 years from the date on which this permission was issued. If commencement of the activity does not occur within that period, the permission lapses and a new application for environmental authorisation must be made in order for the activity to be undertaken.

5.1.5 This permission does not negate the Applicant's responsibility to comply with any other statutory requirements that may be applicable to the undertaking of the activity.

5.2 RECORDING AND REPORTING TO THE DEPARTMENT

5.2.1 The applicant must appoint an independent environmental officer to prepare compliance monitoring reports every six (6) months from the date of this permission. The reports must indicate how the applicant is complying with each condition in this permission. These reports must be submitted to the Department within fourteen (14) days after the elapse of the six (6) months.

5.2.2 The department reserves the right to monitor and audit the development throughout its full life cycle to ensure that it adheres to all the conditions. Records of monitoring and auditing must be made available for inspection to any relevant authority inspecting the development.

5.3 CONSTRUCTION AND OPERATION OF THE ACTIVITY

5.3.1 The applicant must construct a strong solid wall with the minimum height of 2.0 m between the edge of the Taxi Holding Area and the bermwall. The length of the solid wall must be such that the entire affected portion of the stream is protected from the Taxi Holding Area to avoid any possible contamination or pollution of stream by wastewater and solid waste. The solid wall must be at least 10m away from the riparian area of the river to create a buffer zone.

5.3.2 Wastewater drain from the car washing bays must be connected to the sewer line to avoid pollution to the stream. Chemical sanitation facilities must be placed on site for construction workers and must be regularly serviced to avoid spills or leaks from toilets to groundwater. There must be permanent sanitation facilities on site during operation and the content thereof must be disposed of via the municipal sewer lines to be further treated.

5.3.3 All waste including builder's rubble generated on site, during construction and operation of the development must be removed at regular intervals and must only be disposed of at an authorized facility. Under no circumstances shall waste be burned on site.

5.3.4 The activity must cease upon the discovery of any archeological or historical attributes and the matter be reported to the South African Heritage Resources Agency immediately.

5.3.5 At the start of operation, all relevant As-built drawings must be submitted to the Department.

5.4 SITE CLOSURE AND DECOMMISSIONING

5.4.1 Environmental Management Plan for site closure and decommissioning of the proposed development must be submitted to this Department and the Department must be notified within 30 days prior to the decommissioning.

5.5 GENERAL

5.5.1 A copy of this authorisation must be kept at the property where the activity will be undertaken. The authorisation must be produced to any authorized official of the Department who requests to see it and must be made available for inspection by any employee or agent of the holder of the authorisation who works or undertakes work at the property.

5.5.2 Where any of the applicant's contact details change, including the name of the responsible person, the physical or postal address and/ or telephonic details, the applicant must notify the Department as soon as the new details become known to the applicant.

5.5.3 Non-compliance with a condition of this authorisation may result in criminal prosecution or other actions provided for in NEMA and the Regulations.

MEMBER OF EXECUTIVE COUNCIL
DEPARTMENT OF ECONOMIC DEVELOPMENT, ENVIRONMENT AND TOURISM
DATE: 1/02/2008

(16)

Department of Agriculture, Conservation & Environment

Reference:	NWP/EIA/42/2009
Enquiries:	Motshabi Mohlalisi
Tel No.:	(014) 597 3597
Fax No.:	(014) 592 3553
E-mail:	MMohlalisi@nwpg.gov.za

Attention: **Mr. Craig Bennett**
Beneficiation Company of Southern Africa (Pty) Ltd
Private Bag X15
GALLO MANOR
2052

Tel No.: (011) 233 7300
Cell No.: (082) 449 7903
Fax No.: 086 688 4524

PER FACSIMILE AND POST

Dear Sir

APPLICATION FOR ENVIRONMENTAL AUTHORISATION: BENFICOSA, FERROCHROME SMELTING PROJECT ON REMAINING EXTENT OF PORTION 10 AND PORTION 22 OF THE FARM ELANDSFONTEIN 44O JQ, BRITS, LISTED ACTIVITY NUMBER 1(e), 1(s) AND 2 OF GOVERNMENT NOTICE NUMBER. R. 387 AND LISTED ACTIVITIES 1(a)(i), 1(b), 1(c), 1(k), 1(l), 12, 15 and 16(b) OF GOVERNMENT NOTICE NUMBER. R. 386, MADIBENG LOCAL MUNICIPALITY, NORTH WEST PROVINCE (NWP/EIA/42/2009)

The Department hereby **refuses Environmental Authorisation** for the abovementioned application.

The reasons for the decision are set out in Annexure 1.

Your attention is drawn to the provisions of Regulation 78 of GNR 385 of National Environmental Management Act, 1998 (Act No. 107 of 1998) in terms of which an applicant may not resubmit an application which is substantially similar to a previous

Agricentre, cnr. Dr. James Moroka Drive & Stadium Road
(opposite Convention Centre) Mafikeng
Private Bag X2039, Mmabatho, 2735, South Africa
Tel: +27 (18) 389 5111

application by the applicant and which has been refused unless a period of **three (3) years** has elapsed or new or material information is submitted.

In terms of Regulation 10(2) of the GNR 385 of National Environmental Management Act, 1998 (Act No. 107 of 1998), you are instructed to notify all registered interested and affected parties, in writing and within **seven (7) days** of the date of this letter, of the Department's decision in respect of your application as well as the provisions regarding the making of appeals that are provided for in the regulations.

Your attention is also drawn to Chapter 7 of the Regulations of 21 April 2006 which regulates appeal procedures. Should you wish to appeal any aspect of the decision, you must, *inter alia*, lodge a notice of intention to appeal with the MEC within ten (10) days of receiving this letter, by means of one of the following methods:

By post: **The Member of the Executive Council**
Department of Agriculture, Conservation, Environment and Rural Development
Private Bag X 2039
MMABATHO
2735

By hand: Agricentre, cnr. Dr. James Moroka Drive & Stadium Road (Opposite Convention Centre) Mafikeng

By facsimile: Fax No.: (018) 384 2679
Enquiries: Tel No.: (018) 389 5111/5056

Should you decide to appeal, you must serve a copy of your notice of intention to appeal to all registered interested and affected parties as well as a notice indicating where and for what period the appeal submission will be available for inspection.

Yours Faithfully

Mr. Tshepo Moremi
Chief Director: Environmental Services
Department of Agriculture, Conservation, Environment and Rural Development

Date: 05/10/10

cc: ***Quanto Environmental Solutions cc***
Contact Person. Ms. Lulu Labuschagne
Tel No.: (011) 682 2111
Cell No : 072 124 5980
Fax No.: 086 520 0666

Madibeng Local Municipality
Ms M Mmope
Tel No.: (012) 318 9500
Fax No.: (012) 318 9556

Department of Water Affairs
Chief Director: Ms. M. Brisley
Tel No.: (018) 387 9500
Fax No.: (018) 384 0913/392 2998

Annexure 1: Reasons for Decision

1. Background

The applicant, Beneficiation Company of Southern Africa (Pty) Ltd applied for authorisation to carry on the following activities:

Government Notice No. R. 386 of 21 April 2006:

1. The construction of facilities or infrastructure, including associated structures or infrastructure, for-

1.1 The generation of electricity where the electricity output is more than 10 megawatts but less than 20 megawatts [listed activity 1(a)];

1.2 The above ground storage of 1000 tons or more but less than 100 000 tons of ore [listed activity 1(b)];

1.3 The storage of 250 tons or more but not less than 100 000 tons of coal [listed activity 1(c)];

1.4 The bulk transportation of sewage and water including storm water, in pipelines with (i) an internal diameter of 0.36 metres or more, or (ii) a peak throughput of 120 liters per second or more [listed activity 1(k)];

1.5 The transmission and distribution of electricity above ground with a capacity of more than 33 kilovolts and less than 120 kilovolts [listed activity 1(l)];

1.6 The transformation or removal of indigenous vegetation of 3 hectares or more or of any size where the transformation or removal would occur within a critically endangered or an endangered ecosystem listed in terms of Section 52 of the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004) [listed activity 12];

1.7 The construction of a road that is wider than 4 metres or that has a reserve wider than 6 metres, excluding roads that fall within the ambit of another listed activity or which are access roads of less than 30 metres long [listed activity 15];

2 The transformation of undeveloped, vacant or derelict land to residential, mixed, retail, commercial, industrial or institutional use where such

development does not constitute infill and where the total area to be transformed is bigger than 1 hectare [listed activity 16(b)];

Government Notice No. R. 387 of 21 April 2006:

3. The construction of facilities or infrastructure, including associated structures or infrastructure, for-

3.1 Any process or activity which requires permit or license in terms of legislation governing the generation or release of emissions, pollution, effluent or waste and which is not identified in terms of Government Notice No. R. 386 of 2006 [listed activity 1(e)];

3.2 Rail transportation, excluding railway lines and sidings in industrial areas and underground railway lines in mines, but including (i) railway, lines; (ii) stations; or (iii) shunting yards [listed activity 1(s)]; and

4. Any development activity, including associated structures and infrastructure, where the total area of the developed area is, or is intended to be, 20 hectares or more [listed activity 2]

which refers to the BenficoSA: Ferrochrome Smelting Project on the remaining extent of portion 10 and the remaining extent of portion 22 of the farm Elandsfontein 440 JQ, Madibeng Local Municipality, North West Province.

Please Note: Activities repealed by the National Environmental Management, Waste Act, Act No. 59 of 2008 have been excluded.

The applicant appointed **Quanto Environmental Solutions** cc to undertake an Environmental Impact Assessment Process.

2. Information considered in making the decision

In reaching its decision, the Department took, *inter alia,* the following into consideration -

a) The information contained in the Environmental Impact Assessment Report and Environmental Management Plan received on 25 January 2010 and the additional information received on 23 June 2010, 1 July 2010 and 4 August 2010 and 26 August 2010.

b) The Public Participation Report compiled by MasterQ Research in Appendix 13 of the report.

c) The comments received from interested and affected parties as included in the Environmental Impact Assessment Report (See Point (a) above) and the additional information received on the 23 June 2010, 1July 2010, 04 August 2010 and 26 August 2010.

d) The objectives and requirements of relevant legislation, policies and guidelines, including Section 2 of the National Environmental Management Act, 1998 (Act No. 107 of 1998, as amended)

e) The findings of the site visit conducted by Ms. Motshabi Mohlalisi and Mr. Percy Matlapeng, and Mr. James Wallis of this Department with Ms. Lulu Labuscagne of Quanto Environmental Solutions, and Ms. Diana Verster of MasterQ Research on the 7th of October 2009.

f) Relevant information contained in the Departmental information base including –

North West Department of Agriculture, Conservation, Environment and Rural Development, Special Report on PM_{10} Concentrations at Damonsville dated 1 September 2010.

3. Key factors considered in making the decision

All information presented to the Department was taken into account in the Department's consideration of the application. A summary of the issues which, in the Department's view, were of the most significance is set out below:

a) The comments received from Bojanala Platinum District Municipality (Madibeng Municipal Health Services) dated 17 December 2009 (sub-Appendix 6 of Appendix 13 of the Public Participation Report). The release of Carbon Monoxide (CO) and Chrome six (Cr 6) is of concern. The furnace which is a close furnace will to a large extent reduce the dangerous pollutants but the small amounts will be released could still cause a serious heath effect. The site is located close to

Damonsville and the prevailing winds from the plant may cause unpleasant health conditions (dust, fumes and noise) to the community.

a) The zoning certificate dated 23 September 2009 of Madibeng Local Municipality town planning (Appendix 14 of the Environmental Impact Assessment Report). The permitted land uses are dwelling houses and agricultural buildings

b) The North West, Department of Agriculture, Conservation, Environment and Rural Development Special Report of PM_{10} concentrations at Damonsville dated 1 September 2010. The results of monitoring suggest that air quality in the Damondsville area is poor with respect to PM_{10} and therefore detrimental to the health of human beings.

c) The proximity (0.7km) of communities to the proposed smelter is of concern.

d) Linking the design structure of the proposed smelter to aesthetics, visual impact of the smelter will be significantly high.

4. Findings

After consideration of the information and factors listed above, the Department made the following findings -

b) The area is zoned agriculture according to the town planning section of Madibeng Local Municipality. The permitted land uses are dwelling houses and agricultural buildings.

c) The air quality in the Damonsville area is poor with respect to PM_{10} emissions and therefore detrimental to the health of human beings. The addition of another source of PM_{10} emissions to the area should only be allowed if such a source puts in place abatement measures to drastically reduce its PM_{10} emissions. Should the PM_{10} emissions not be mitigated close to zero there will be detrimental health impacts to community of Damonsville.

d) The community of Damonsville is 0.7km away from the proposed smelter which is in close proximity.

e) Linking the design structure of the proposed smelter to aesthetics, visual impact of the smelter will be significantly high.

In view of the above, the Department is not satisfied that the proposed activity can be undertaken without conflicting with the general objectives of integrated environmental management laid down in Chapter 5 of the National Environmental Management Act, 1998, nor that any potentially detrimental environmental impacts resulting from the proposed activity can be mitigated to acceptable levels. The application is accordingly **refused.**

Yours Faithfully

Mr. Tshepo Moremi
Chief Director: Environmental Services
Department of Agriculture, Conservation, Environment and Rural Development

Date: 05/10/10

(17)

DEPARTMENT of
ENVIRONMENTAL AFFAIRS
& DEVELOPMENT PLANNING
Provincial Government of the Western Cape

LAND MANAGEMENT
REGION 2

adpeterse@pgwc.gov.za
Tel.:+27 21 483 2625/3185 Fax: +27 21 483 4372
1 Dorp Street, Cape Town, 8001
www.capegateway.gov.za/eadp

REFERENCE: E12/2/3/1-AS/455-0084/06
ENQUIRIES: Adrian Pietersen
DATE OF ISSUE: 2011-01-07

The Board of Directors
Cape Town Coastal Properties (Pty) Ltd.
32 Cockburn Close
SIMON'S TOWN
7975

Attention: Mr. Martin Kelly

Tel.: (021) 813 6935
Fax: (086) 679 9951

APPLICATION: THE PROPOSED DEVELOPMENT OF 10 HOUSING UNITS ON A PORTION OF ERF 1, SIMON'S TOWN

With reference to your application, find below the decision in respect of this application.

A. DESCRIPTION OF ACTIVITY:

The proposed development involves the subdivision of a 2.057ha portion of Erf 1 and the rezoning of this portion for the development of an upmarket Sectional Title scheme of 10 single residential units. This would involve activities identified in Government Notice No. R. 386 of 21 April 2006, as:

Item 15 *"The construction of a road that is wider than 4m or that has a road reserve wider than 6m, excluding roads that fall within the ambit of another listed activity or which are access roads of less than 30m long".*

Item 16 *"The transformation of undeveloped, vacant or derelict land to –*

(a) establish infill development of 5ha or more, but less than 20ha; or

(b) residential, mixed, retail, commercial, industrial or institutional use where such development does not constitute infill and where the total area to be transformed is bigger than 1ha."

Item 18 *"The subdivision of portions of land 9ha or larger into portions of 5ha or less."*

hereinafter referred to as "the activities",

B. LOCATION:

The proposed development site is located on Erf 1, Simon's Town at the end of De Villiers Way, Glencairn.

The SG21 Digit Code is C0160054000000100000

The co-ordinates of the site are:

34° 09' 28.88" South
18° 25' 28.56" East

hereinafter referred to as "the property/site".

C. APPLICANT:

Cape Town Coastal Properties (Pty) Ltd
c/o Mr. Martin Kelly
32 Cockburn Close
SIMON'S TOWN
7975

Tel.: (021) 813 6935
Fax: (086) 679 9951

D. CONSULTANT:

CCA Environmental (Pty) Ltd
c/o Mr. Jonathan Crowther
P. O. Box 10145, Caledon Square
CAPE TOWN
7905

Tel.: (021) 461 1118/9
Fax: (021) 461 1120

E. SITE VISITS:

None.

F. DECISION:

By virtue of the powers conferred on it by the National Environmental Management Act, 1998 (Act No. 107 of 1998) ("NEMA") and the Environmental Impact Assessment ("EIA") Regulations of 2006, the Department hereby **refuses authorisation**, for the execution of the activities described above.

G. CONDITIONS:

1. The applicant must, in writing, within 10 calendar days of receiving notice of the Department's decision –

1.1 notify all registered interested and affected parties ("I&APs") of the decision and the reasons for the decision; and –

1.2 specify the date on which the decision was issued;

1.3 inform all registered I&APs of the appeal procedure provided for in Chapter 7 of the Regulations; and

1.4 advise all registered I&APs that should they wish to appeal, they must lodge a notice of intention to appeal with the Minister, within 10 days of receiving notice of the Department's decision and, submit their appeal within 30 days of the lodging of their notice of intention to appeal, by means of one of the following methods:

By post: Provincial Minister of Local Government, Environmental Affairs and Development Planning
Private Bag X9186
Cape Town
8000

By facsimile: (021) 483 4174; or

By hand: 11th floor Utilitas Building
For Attention: Mr. J. de Villiers
1 Dorp Street
Cape Town
8001

1.5 inform all registered I&APs that a signed Appeal form obtainable from the Minister's office at tel (021) 483 3721/3195, email jedevill@pgwc.gov.za or URL http://www.capegateway.gov.za/eadp; must accompany the appeal.

1.6 inform all registered I&APs that should they wish to appeal, the appellant must serve on the applicant a copy of the notice of intention to appeal as well as a notice indicating where and for what period the appeal submission will be available for inspection by the applicant.

1.7 if the applicant decides to appeal, the applicant must –

- lodge a notice of intention to appeal with the Minister, within 10 days of receiving notice of this decision and,

- serve a copy of the notice of intention to appeal on all registered interested and affected parties as well as a notice indicating where and for what period the appeal submission will be available for inspection and,
- submit the appeal within 30 days of the lodging of the notice of intention to appeal

H. RECOMMENDATIONS:

None

I. KEY FACTORS AFFECTING THE DECISION:

In reaching its decision, the Department took, *inter alia*, the following into consideration -

a) The information contained in the Application Form and Basic Assessment Report ("BAR") dated 24 June 2010.

b) The Letter of comment from SanParks dated 23 February 2009.

c) Comment received from WESSA: Western Cape Region dated 16 February 2009.

d) The letter of comment from the City of Cape Town: Environmental Resource Management Department containing comments from the various internal branches/departments.

e) The botanical assessment specialist study prepared by F.E. Jones t/a Indigenous Vegetation Consultancy.

f) The heritage assessment specialist report prepared by Erin Finnegan and Tim Hart of the Archaeology Contracts Office, University of Cape Town, dated July 2007 and revised November 2007.

g) The terrestrial fauna specialist study prepared by P. le F.N. Mouton dated March 2007, revised May 2008.

h) The visual impact assessment specialist study prepared by Megan Anderson Landscape Architects dated November 2008.

i) The traffic impact statement prepared by EFG Engineers (Pty) Ltd dated November 2008.

j) The geotechnical report prepared by M. van Wieringen & Associates dated 24 August 2007.

k) The specialist report on the provision of civil engineering township services prepared by CIVtech Consultants dated 4 November 2008.

l) The draft Construction Environmental Management Plan ("CEMP") dated June 2010.

m) Comments received from this Department's Chief Town & Regional Planner: Spatial Planning (Region 3) with regards to the proposed development.

All information presented to the Department was taken into account in the Department's consideration of the application. A summary of the issues which, in the Department's view, were the most significant is set out below.

Need and Desirability

i. In terms of the NEMA EIA Regulations, when considering an application, the Department must take into account a number of specific considerations including *inter alia*, the need for and desirability of any proposed development. As stated in the *Guideline on Need and Desirability* of May 2009, the consideration of need and desirability is *inter alia* informed by the national environmental management principles as stipulated in Section 2 of the NEMA and the broader societal needs and desires.

ii. In addition and as a broad principle, need and desirability must be consistent with the principles of sustainability as contained in Section 2 of the National Environmental Management Act, Act 107 of 1998 ("NEMA"). In this context, EIAs play an important role by evaluating the need and desirability of development proposals, appropriateness of alternatives and cumulative implications. These aspects are integrally linked and must be informed by the strategic context within which the site/ development proposal is situated.

iii. NEMA requires that decisions taken must take into account environmental, social and economic impacts of the activities applied for, including the benefits and disadvantages. The negative impacts are to be minimised and the beneficial impacts are to be maximised. It is evident that a significant imbalance exists with regards to the benefits associated with the proposed development, and the weighing up of the benefits to society versus the costs that would be incurred at the expense of the environment. The potential benefits are not justifiable and substantive enough when the potential costs/negative impacts to the receiving environment are considered.

iv. The motivation provided for the proposed development, combined with the planning motivation ("rounding off" and softening of the existing development edge), is not considered sound justification for the proposed development. Furthermore, no investigation into the market demand/ need for such a high- to middle-income residential development in Simon's Town was undertaken.

Provincial Planning

i. The development proposal is not consistent with Provincial Urban Edge Guidelines (2005) whereby the urban edge, in this case, can be regarded as a hard edge i.e. an immediate transition from urban to rural use. In this case, a hard edge is employed due to the inherent steep slopes on the property.

Municipal Planning

i. The Peninsula Urban Edge Study (2001) states that land steeper than 1:4 is not conducive to conventional urban development. The proposed development would take place on land with a slope steeper than 1:4.

ii. According to the draft City of Cape Town Spatial Development Framework (2010), in terms of the biodiversity network plan, the subject property falls outside of the urban edge and falls within an area demarcated as Other Natural Vegetation (Buffer 1). These Buffer 1 areas are recognised as areas which could provide opportunities to establish biodiversity offsets.

iii. In terms of the Urban Structure Plan for the Cape Metropolitan Area: Volume 1: Peninsula Guide Plan (1988), the subject property is interpreted to be located within an area designated for Government Use by both the City of Cape Town and this Directorate.

Visual Impacts / Sense of Place

i. The Urban Edge Review (2008) found the subject area and specifically the erf abutting the subject property as a development pressure area. However, the review recommended that the urban edge should not be amended for this high visual impact area.

Biophysical Impacts

i. According to the botanical assessment/specialist report, the cumulative impacts on the erf's steep and rocky slopes in addition to the potential impacts to the wetlands further downslope from building and hard-surfacing is an important issue. The botanical assessment is clear in indicating that the "*no-development option is ecologically the most preferrable and favourable option, even under conditions where no further alien clearance is undertaken by the landowners.*"

Authority comments

i. In principle, the City of Cape Town: Environmental Resource Management Department did not support the application for this proposed development. This was due to issues with planning, visual impacts, high conservation value of indigenous floral component and the fact that the ceding of the remainder of Erf 1 to SanParks should not be used as motivation for this proposed development.

Alternatives

The applicant considered a single site alternative, two layout alternatives and the "no-go" option as the activity alternative.

Site alternative

The site is Erf 1 in Simon's Town, as described in Section B above.

Layout Alternative No. 1

This was the original concept proposed for 12 housing units across the site which would require two new roads. The proposed remaining undeveloped area would be 11, 660 m².

Layout Alternative No. 2

This was the revised concept proposed for 10 housing units across the site which would require only one new road. The proposed remaining undeveloped area would be 14, 851 m².

Activity Alternative i.e. the "no-go" option

The 'no-go' alternative entails not proceeding with the proposed activity. This means that the ownership would remain private and no development on the lower slopes would take place.

Public Participation Process ("PPP")

The PPP that was undertaken included the following:

i. Putting up an on-site notice board on 22 November 2006.
ii. Giving written notice to the municipality that has jurisdiction in the area.
iii. Giving written notice to the municipal ward councillor responsible for the area in which the project site is situated.
iv. Placing an advertisement concerning the application in a local newspaper, The False Bay Echo, on 23 November 2006, 7 December 2006 and 29 January 2009.
v. Giving written notice to SanParks to provide comment on the draft BAR.

vi. Giving written notice to the City of Cape Town: Environmental Resource Management Department to provide comment on the final BAR.

vii. Giving written notice to the owners and occupiers of land within 100m of the site where the development is to be undertaken.

viii. Opening a register of the I&APs that commented on this application and appending a record of their comments to the final BAR.

This Directorate is satisfied that the PPP that was conducted meets the legal requirements.

J. APPEAL:

Appeals must comply with the provisions as outlined in Chapter 7 of the Regulations. Should the applicant decide to appeal, the applicant must lodge a notice of intention to appeal with the Minister, within 10 days of being notified of this decision (the date of "being notified" is deemed to be the date of issue of the Department's decision). The applicant must also serve a copy of the notice of intention to appeal, on the same day that the notice of intention is lodged with the Minister, on all registered I&APs.

The applicant must also serve a notice indicating where the appeal submission may be inspected for a period of 30 days, that must start on or before the date the appeal is submitted to the Minister.

Should any other person wish to appeal, the person must lodge a notice of intention to appeal with the Minister, within 10 days of being notified of the Department's decision and serve a copy of this notice, on the same date of lodging the notice with the Minister, on the applicant and a notice indicating where the appeal submission will be available for inspection for a period of 30 days, that must start on or before the date the appeal is submitted to the Minister. All appeals must be submitted, within 30 days of the lodging of the notice of intention to appeal, by means of one of the following methods:

By post: Provincial Minister of Local Government, Environmental Affairs and Development Planning
Private Bag X9186
Cape Town
8000

By facsimile: (021) 483 4174; or

By hand: Attention: Mr. Jaap de Villiers

11th floor Utilitas Building
1 Dorp Street
Cape Town
8001

A prescribed Notice of Intent to Appeal form and Appeal form is obtainable from the Minister's office at Tel. (021) 483 3721, email ledevil@pgwc.gov.za or URL http://www.capegateway.gov.za/eadp.

Your interest in the future of the environment is greatly appreciated.

Yours faithfully

ANTHONY BARNES

DIRECTOR: LAND MANAGEMENT (REGION 2,

DEPARTMENT OF ENVIRONMENTAL AFFAIRS & DEVELOPMENT PLANNING

Copies to: (1) Duncan Bates	(Duncan Bates Professional Land Surveyors)	Fax: (021) 782 5492
(2) Jonathan Crowther	(CCA Environmental)	Fax: (021) 461 1120
(3) Pierre Evard	(City of Cape Town: South Peninsula)	Fax: (021) 710 8283