

Appendix B

Situation Analysis

Identification of Local Level Responsibilities for the Environment

Department of Environmental Affairs and Tourism

Development of a Core Set of Environmental Performance Indicators to
be integrated into IDP, EIP/EMP and SoE Reporting Processes

Situation Analysis
Identification of Local Level Responsibilities for the Environment

March 2004

Palmer Development Group

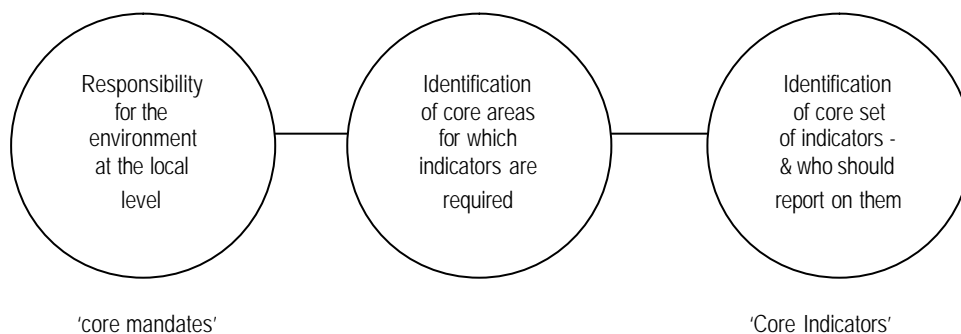
Table of Contents

1.	Introduction.....	4
2.	Definition of Terms.....	4
3.	Legal and Policy Context	5
3.1.	The Bill of Rights.....	5
3.2.	Schedules 4 & 5 of the Constitution.....	7
3.3.	Broad Environmental Legislation.....	9
3.3.1.	NEMA.....	9
3.3.1.1.	EMPs & EIPs.....	10
3.3.2.	Environmental Conservation Act and EIA Regulations.....	12
3.4.	Local Government Legislation.....	12
3.4.1.	The Constitution.....	12
3.4.2.	Municipal Systems Act.....	13
3.4.3.	White Paper on Local Government– developmental local government.....	13
3.4.4.	Municipal Structures Act – ‘two tier’ local government.....	15
3.4.5.	Summary.....	17
3.4.6.	Municipal Demarcation Board – norms and standards.....	17
3.4.7.	The Role of the IDP.....	19
3.4.7.1.	‘Environment’ as a cross-cutting dimension.....	20
3.4.7.2.	Minimum Content Requirements of an IDP.....	21
3.4.7.3.	Sectoral Plans.....	22
3.4.7.4.	IDP Reporting and Existing Indicators.....	22
3.5.	Sectoral Legislation.....	24
3.5.1.	Air Quality.....	24
3.5.2.	Biodiversity and Protected Areas.....	25
3.5.3.	Pollution and Waste Management.....	26
3.5.4.	Water Services.....	27
3.5.5.	Water Quality and Control of Water Pollution.....	28
4.	Analysis.....	30
4.1.	Summary – mandated environmental functions of local government.....	30
4.2.	Summary – local level responsibilities of provincial and national government.....	35
5.	References.....	39

1. Introduction

Palmer Development Group has been tasked by the Department of Environmental Affairs and Tourism, with identifying a core set of environmental performance indicators for local level reporting – and specifically, for integration into the Integrated Development Planning, Environmental Implementation Planning/Environmental Management Planning and State of the Environmental Planning processes. As suggested in the project title, this work will focus on identifying a **core** set of indicators – a set which can be reported on by all municipalities and provincial governments involved in IDP, EIP/EMP and SoE reporting processes, regardless of size, resources, environmental/geographical characteristics or capacity. Such a ‘core set’ will by necessity be closely related to the mandate of provincial and local government – i.e. their statutory responsibility for ‘the environment’.

This paper sets out to identify what is meant by ‘the environment’ (the various components, issues and subject areas which fall under this heading) and to determine who is responsible for these at the local level (which sphere of government, and if local government – which **tier** of local government). This understanding will be the first step towards identifying the broad areas in which local level indicators can be developed.



Given the many pressures on all spheres of government, it is important that they are not asked to provide information on functions that are not within their mandates – and so the ‘source’ of this responsibility (for example, the Constitution, sector legislation, delegation from national government or voluntary initiatives from local government) will also be identified as this will help to determine which responsibilities are part of the core mandated and funded functions of a particular sphere of government.

This paper has been produced as a ‘desk-based’ exercise, involving an examination of relevant legislation, policy and regulations. It will be supplemented at a later stage by a survey of all provincial environment departments and a sample of municipalities.

2. Definition of Terms

‘Local Level Reporting’

Before proceeding with an explanation of the core mandates for the environment at the local level, it is important to clarify our understanding of the meaning of the term ‘local level’ in this context. ‘Local level reporting’ refers to the reporting of activity which is taking place within a municipal area (metropolitan, district or local).

However, even though the activity is taking place within a municipality, responsibility for the activity or its monitoring and reporting, may not necessarily lie with the municipality – but with another municipality (in the case of two tier local government) or even with provincial government or a national department. Thus local level reporting is not just reporting by local government – but could include reporting by provincial departments or in some cases by national departments, depending on who has the assigned responsibility for reporting on the specific activity.

The issue of waste management helps to illustrate this: general waste management has been identified as a function of local government (under the Constitution) but hazardous and industrial waste management is a function of provincial government. Thus, when it comes to reporting on these two activities in a particular locality, the relevant municipality is responsible for and will provide information on general waste management, while the province will do the same for hazardous and industrial waste.

Environment

For the purposes of this analysis, the term ‘environment’ refers to the biophysical element of the natural environment only. However, DEAT is also interested in issues where there is an overlap between the biophysical and social/economic elements of the environment. These are often the so-called ‘brown’ environmental issues such as waste management, water services, environmental health and so on. This study will therefore expand the meaning of the term environment somewhat to cover these areas of overlap, but the focus will remain mostly on the biophysical.

3. Legal and Policy Context

Responsibility for the environment at the local level in South Africa is not clearly defined within one or even a few pieces of legislation. Rather, it requires scrutiny of the Constitution, broad environmental framework legislation, legislation pertaining to the roles and responsibilities of local government and several pieces of sectoral legislation covering certain environmental sectors and issues. An analysis of the different instructions coming from these many sources is then required to come up with a clear summary of local level responsibilities for management, planning and reporting of the environment as defined within legislation and associated policy.

3.1. The Bill of Rights

In South Africa, environmental concerns have received significant attention in the new wave of policies and laws promulgated since 1994. The Constitution, which provides the point of departure for policy and law making, contains far-reaching clauses relevant to the environment. Embedded within the Bill of Rights is an environmental clause which provides that:

“Everyone has the right:

- a) To an environment that is not harmful to their health or well-being; and
- b) To have an environment protected for the benefits of present and future generations through reasonable legislative and other measures that:
 - i. Prevent pollution and ecological degradation
 - ii. Promote Conservation

- iii. Secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.”

Part b) of this clause gives government the responsibility to take reasonable measures to ensure that the environment is protected for the benefit of present and future generation. The Bill of Rights **must be adhered to by all spheres of government** and the people of South Africa.

This immediately begs the question as to what the responsibilities are that the spheres have to adhere to when it complies with the provisions of the Bill of Rights in respect of environmental matters. Section 7(2) of the Constitution imposes four different types of obligations on the state when it comes to the fundamental rights, entrenched in the Bill of Rights: the obligations to *respect*, *protect*, *promote* and *fulfil*. These obligations exist with regard to both rights of civil or political nature and with regard to economic, social and cultural rights.

1. The obligation to *respect* these rights means that the state must refrain from interfering with the enjoyment of such a right.¹
2. The obligation to *protect* means that the state must prevent violations by third parties.²
3. The obligation to *promote* fundamental rights means that the state must encourage and advance the realisation of these rights, which includes ensuring public awareness.
4. The obligation to *fulfil* fundamental rights means that the state must take appropriate legislative, administrative, budgetary, judicial and other measures towards realisation.³

The question is whether all three spheres of government, which make up ‘the state’, are jointly responsible for all of these four obligations or whether distinctions can be made. It is clear that national government can devolve powers and decentralise the effort to realise economic, social and cultural rights, but it remains fully accountable to its citizens for the realisation of these rights. Do provincial and local governments bear the same unqualified burden with regard to the realisation of economic, social and cultural rights?

It has been argued that, a qualification along the lines of the four types of obligations on the state, referred to above, must be made. This assertion is based on the premise that, when it comes to *fulfilling* an economic, social or cultural right in terms of taking legislative, administrative, budgetary, judicial or other similar measures, local government’s hands might be tied by its constitutional mandate. Local government’s aggregate budget consists of own revenue and is supplemented by intergovernmental grants and payments for the performance of agency functions.⁴ Local authorities raise revenue and receive grants, *based on their powers and functions determined by the Constitution*.⁵

¹ De Visser et al 2003: 28 and the references cited there.

² De Visser et al 2003: 28

³ De Visser et al 2003: 28

⁴ De Visser et al 2003: 29

⁵ De Visser et al 2003: 29

If one were to link section 7(2) with the constitutional division of competencies between the three spheres of government, the conclusion could be that a municipality is only responsible for the *fulfilment* of an economic, social or cultural right in terms of taking legislative, administrative or budgetary measures if the subject matter falls within the competencies set out in Schedule 4B and 5B of the Constitution or has been assigned to local government by national or provincial legislation. The other responsibilities to *respect*, *protect* and *promote* would then exist irrespective of the division of responsibilities.

3.2. Schedules 4 & 5 of the Constitution

Section 156 of the Constitution, together with Schedules 4 and 5, outlines the powers and functions of national, provincial and local government. Two subsections are particularly relevant in this context:

- (1) A **municipality** has executive authority in respect of, or has the right to administer
 - a. The local government matters listed in Part B of Schedule 4 and Part B of Schedule 5; and
 - b. Any other matter assigned to it by national or provincial legislation

- (4) The national government and provincial governments must assign to a municipality, by agreement and subject to any conditions, the administration of a matter listed in part A of Schedule 4 or Part A of Schedule 5 which necessarily relates to local government, if
 - a. that matter would most effectively be administered locally; and
 - b. the municipality has the capacity to administer it.

Schedules 4B and 5B contain a total of 38 '**local government matters**' which, under the subsections above, are the responsibility of local government. Of these, the following can be said to relate to the biophysical environment or its interface with social and economic issues:

- ? Air pollution
- ? Local tourism
- ? Municipal planning
- ? Municipal health Services
- ? Storm water management in built up areas
- ? Water and sanitation services (limited to potable water supply systems and domestic waste-water and sewerage disposal systems)
- ? Beaches
- ? Cleansing
- ? Local amenities
- ? Municipal parks and recreation
- ? Noise pollution
- ? Public places
- ? Refuse removal, refuse dumps and solid waste removal

Schedules 4A and 5A (which are concurrent national and provincial responsibilities but **can be** assigned to a municipality if this would be effective and if capacity is

available) contain the following areas which can be said to be related to the environment as defined in this context:

- ? Administration of indigenous forests
- ? Agriculture (?)
- ? Disaster Management
- ? **Environment**
- ? Nature conservation (excluding national parks, national botanical gardens and marine resources)
- ? Pollution control
- ? Regional planning and development
- ? Soil conservation
- ? Tourism
- ? Urban and rural development

The important issue to note is that in general, **the mandated responsibilities of local government are defined by the Schedules 4B and 5B of the Constitution.** However, these core responsibilities are not uniformly applied across municipalities. There is in fact a large amount of variation and uncertainty about the responsibilities for the environment within municipalities, for the following reasons:

- ? There is a lack of clarity of the exact meaning of the powers and functions assigned to the different spheres of government within Schedules 4 and 5 of the Constitution (although a new document produced by the Municipal Demarcation Board has provided definitions for these functions to try to reduce the confusion. These are provided in Appendix * for information).
- ? Functions can be assigned from one tier of government to another (e.g. from district to local municipalities) if there is more capacity and the issue is most appropriately dealt with at a specific tier
- ? National and Provincial functions can be assigned to local government, if the Minister or MEC decides that it is more appropriate to deal with the issue at the local level (and if there is capacity to do so).
- ? Activities are increasingly being delegated to local government from national departments and programmes (often without accompanying funding). This type of activity is, however, likely to be outside the core area of responsibility of local government.
- ? The responsibilities for the environment adopted by local government are also influenced by several pieces of sectoral legislation (which themselves assign responsibility to local government for certain activities⁶) and by the developmental nature of local government. This feature of local government means that municipalities have to respond to initiatives from government departments and provinces and to issues raised within their communities. As such, this means that they operate in a 'fluid' manner, taking on responsibilities as required in response to these pressures, which means that

⁶ However – if this legislation is allocating responsibilities which are not aligned with the powers and functions identified in Schedules 4b and 5b – municipalities have no obligation to implement these responsibilities. It is unconstitutional to assign responsibilities to local government beyond the powers and functions stated in Schedules 4b and 5b.

their current functions significantly transcend parts b of the Schedules in practice (ref 2003).

Subsequent sections of this paper will discuss some of these complexities in more detail.

3.3. Broad Environmental Legislation

3.3.1. NEMA

Two pieces of legislation are particularly important in this instance: the National Environmental Management Act (NEMA) and the Environmental Conservation Act (ECA).

The National Environmental Management Act (No. 107 of 1998) gives effect to the previous White Paper on Environmental Management Policy (May 1998) and provides a framework and a number of procedures and institutions for the integration of the environmental management activities of the various spheres of government. It aims to enable 'cooperative environmental governance' as well as provide procedures for decision-making, conflict management, compliance and enforcement.

Chapter 1 of NEMA contains a set of 'environmental principles' which apply to **all organs of state** that 'may significantly affect the environment'. Importantly, these principles extend not only to the implementation of NEMA itself, but to the "interpretation, administration and implementation of [this Act and] any other law concerned with the protection or management of the environment" (Chapter 1(2)(e)).

Chapter 3, section 16 of NEMA requires certain national departments and provinces to produce Environmental Implementation Plans and/or Environmental Management Plans. Under NEMA, local government does not have to prepare these plans but they must adhere to the environmental implementation plans produced by their relevant province and incorporate the NEMA principles into all of their planning and policy making activities. It is up to the provinces to make sure that this is done:

Section 3.3.1.1 below will discuss EIPs and EMPs in more detail.

NEMA also contains a section (s 46) concerned with environmental management bylaws for municipalities. Under this section, the Minister may make model bylaws "aimed at establishing measures for the management of environmental impacts of any development within the jurisdiction of a municipality". A municipality can then adopt these as municipal by-laws. The model bylaws must include measures for environmental management which may include:

- ? auditing, monitoring and ensuring compliance
- ? reporting requirements and the furnishing of information

Thus an opportunity for a reporting mechanism by municipalities on environmental management performance has been included within NEMA.

3.3.1.1. EMPs & EIPs

Environmental Implementation Plans and Environmental Management Plans and the requirement for their preparation were created through Chapter 3 of NEMA.

Their purpose is defined as:

1. To “coordinate and harmonise the environmental policies, plans, programmes and decisions of national departments⁷ and of provincial and local spheres of government, in order to:
 - ? Minimise the duplication of powers and functions; and
 - ? Promote consistence in the exercise of functions that may affect the environment
2. To give effect to the principle of cooperative government
3. To secure the protection of the environment across the country
4. To prevent unreasonable actions by provinces in respect of the environment that are prejudicial to the economic or health interest of other provinces or the country as a whole
5. To enable the Minister to monitor the achievement, promotion and protection of a sustainable environment (s 12).

All national departments with functions that impact on the environment must prepare Environmental Implementation Plans; departments with environmental management functions must prepare Environmental Management Plans. Some departments have both impacting and management functions and so have to prepare both. Schedules 1 and 2 of NEMA provide a list of the departments which fall into each category for clarity⁸. In addition **every Province** must prepare an Environmental Implementation Plan.

These plans must be prepared at least every four years and submitted to the Committee for Environmental Coordination by a date set by the Minister. This committee scrutinises all EPs and either recommends adoption of a plan (by the relevant Ministers and/or provincial premiers) or reports on how the plan fails to comply with the NEMA principles, the purpose and objectives of EIPs – or any relevant environmental management plan. Once adopted, EIPs must be published in the Gazette within 90 days of approval. All EMPS must be published in the Gazette by the relevant department within 90 days of submission to the CEC.

Note: at present, there is **no requirement** within legislation for municipalities to prepare Environmental Management Plans. However, some municipalities are preparing these plans at present and establishing Environmental Management Systems following ISO 14001 standards. This activity is probably coming from a proactive will on behalf of municipalities to improve their environmental management and to demonstrate their compliance with NEMA principles, Provincial EIPs and other

⁷ specifically those departments that exercise functions that may affect the environment or are entrusted with powers and duties aimed at the achievement, promotion and protection of a sustainable environment.

⁸ Department of Environmental Affairs and Tourism, Department of Land Affairs and Department of Water Affairs & Forestry produce both EMPs and EIPs; Department of Minerals & Energy, Department of Labour and Department of Health produce EMPs; National Department of Agriculture, Department of Defense, Department of Health, Department of Trade and Industry and Department of Transport prepare EIPs.

legislation. It is possible that some may be being asked to prepare these plans by provinces, again to demonstrate compliance with NEMA, provincial EIPs etc.

EIPs and EMPS must contain the following information:

<p>Environmental Implementation Plans</p>	<ul style="list-style-type: none"> ? Description of policies, plans and programmes that may significantly affect the environment ? Description of how the national department or province will ensure that the policies, plans and programmes (above) will comply with the general NEMA principles and any norms or standards published by any Minister (for the purpose of achieving the promotion and protection of the environment). ? Description of how the national department or province will ensure that its functions are carried out in a way which complies with relevant legislation (including NEMA principles and any relevant norms and standards published by Ministers). ? Recommendations for the promotion of the objectives and plans for the implementation of procedures and regulations for Integrated Environmental Management (Chp 5 NEMA).
<p>Environmental Management Plans</p>	<ul style="list-style-type: none"> ? Description of the functions exercised by the department in respect of the environment ? Description of the norms and standards set or applied by the department ? Description of the policies, plans and programmes of the department that are designed to ensure compliance with its policies by other organs of state and persons. ? Description of priorities regarding compliance with the relevant department's policies by other organs of state and persons ? Description of extent of compliance with the relevant department's policies by other organs of state and persons ? Description of arrangements for cooperation with other national departments and spheres of government – with a bearing on environmental management ? Proposals for the promotion of objectives and plans for the implementation of the procedures and regulations for IEM (Chp 5 NEMA).

Note: no indicators have been developed for inclusion within EIPs/EMPs or the annual reports prepared on implementation performance.

In terms of local level environmental planning and reporting, all organs of state that have published a plan (EIP or EMP) must report annually (within 4 months of end of financial year) to the Director General of DEAT and the CEC on the implementation of its adopted plan(s).

In addition, each provincial government must ensure that :

- ? Each municipality in its province complies with the provincial environmental implementation plan
- ? Municipalities adhere to the relevant EIPS and EMPs and the NEMA principles in the preparation of any policy, programme or plan, including the establishment of IDPs and land development objectives.

Under NEMA, municipalities have no requirement to produce their own EIPs or EMPs.

3.3.2. Environmental Conservation Act and EIA Regulations

The Environmental Conservation Act 1989 was superceded by NEMA. However, Environmental Impact Assessment Regulations have been promulgated in terms of this act and are still in force. These regulations list a number of activities that may be harmful to the environment and as such require authorization from the relevant **Provincial** department. At the local level, certain projects carried out by local government may also require an environmental impact assessment to be carried out.

The Environment Conservation Act requires EIAs to be undertaken for certain land-use changes (e.g. agriculture to residential). It is local government's responsibility to ensure that developers comply with EIA regulations in the case of land-use change.

Under the Local Government: Municipal Planning and Performance Management regulations (No. R796, August 2001), a "strategic assessment of the environmental impact of the spatial development framework" of the IDP prepared by a municipality must also be carried out. More will be said about the IDP process in section 3.2.6 below.

3.4. Local Government Legislation

The local government responsibilities for the environment contained within the Constitution (Schedules 4 and 5) have already been discussed above in section 3.1.1.

In addition to the Schedules, several pieces of legislation which establish and delineate the structure, powers and functions of local government help to identify those local level environmental issues which can be identified as the responsibility of local government

3.4.1. The Constitution

Section 152 (1) of the Constitution outlines a set of 'Objects of Local Government'. These are:

- a. To provide democratic and accountable government for local communities;
- b. To ensure the provision of services to communities in a sustainable manner;
- c. To promote social and economic development;
- d. **To promote a safe and healthy environment;** and
- e. To encourage the involvement of communities and community organizations in the matters of local government.

Section 152 (2) states that a "municipality must strive within its financial and administrative capacity, to achieve the objects set out in subsection (1)".

Thus, the promotion of a safe and healthy environment for its residents is a primary object of local government, which it must try to achieve within the capacity it may have.

3.4.2. Municipal Systems Act

Section 73 of this Act outlines several requirements which municipalities must ensure in the fulfillment of their duties. In terms of general duties, a municipality must:

“give effect to the provisions of the Constitution and

- a. give priority to the basic needs of the local community;
- b. promote the development of the local community; and
- c. ensure that all members of the local community have access to at least the minimum level of basic municipal services” (Section 73(1)).

In terms of municipal services, these must:

- a. be equitable and accessible
- b. be provided in a manner that is conducive to
 - i) the prudent, economic, efficient and effective use of available resources
 - ii) the improvement of standards of quality over time
- b. be financially sustainable;
- c. be **environmentally sustainable**
- d. be regularly reviewed with a view to upgrading, extension and improvement.

Environmental sustainability is thus yet another overarching requirement for municipalities to observe in the provision of services.

3.4.3. White Paper on Local Government– developmental local government

The White Paper expands local government’s mandate to include environmental management responsibilities and charges it with adopting sustainable approaches in performing its functions. The White Paper also provides for inclusion of environmental consideration in the Integrated Development Planning process. Section 2.2 states that “planning for environmental sustainability is not a separate planning process but is an integral part of the process of developing municipal integrated Development Plans”.

The White Paper also introduces the concept of ‘**developmental local government**’- a concept which also appears in the Constitution. Acting 'developmentally' represents one of the greatest challenges being faced by local government, a challenge in understanding firstly what it means and secondly how to make it happen.

The White Paper on Local Government defines developmental local government as follows:

“local government that is committed to working with citizens and groups within the community to find sustainable ways to meet their social, economic and material needs and improve the quality of their lives.

In addition to meeting the broad objects as set out in section 152 of the Constitution, a municipality must also meet certain developmental duties. These are articulated in Section 153 as:

- a. Structure and manage its administration, and budgeting and planning processes to give priority to the basic needs of the community, and to promote the social and economic development of the community; and
- b. Participate in national and provincial development programmes.

The combination of the responsibilities assigned by Schedules 4&5, reaction to local community issues and the pressure to undertake responsibility assigned to them through numerous national programmes, means that municipalities have to operate in a 'fluid' manner, taking on responsibilities as required in response to these pressures, which means that their current functions significantly transcend parts b of the Schedules in practice (HSRC 2003).

"Municipalities have inherited many functions which are not allocated to them in the Schedules. There is progressive delegation of functions to them by a range of national departments, as envisaged in various white papers and also a wider range of functions where creeping delegation can be seen. In both these latter cases, the function is being envisaged but often without concomitant transfer of funds or allocation of a capacity building mechanism." (HSRC 2003).

There is great "confusion regarding municipalities' authority and appropriate functions – where national or provincial departments request or require municipalities to undertake functions not listed in the schedules. Municipal functions, as currently conceptualized in terms of 'developmental local government' are of much greater importance to many municipalities than are the lists in the Schedules. At the same time, issues such as housing provision, land reform, environmental management and local economic development are not included in the schedules"

However, not only does there seem to be confusion as to what the role of municipalities is and what can or should be delegated to them, but each national department seems to adopt different approaches to or interpretation of what municipalities can be asked to do with regard to nationally initiated programmes. These approaches include: non-involvement; decentralization; delegation; prescription; 'creeping delegation'; assignment; inherited function; 'creeping centralization'; and municipal initiative.⁹

Different national departments also chose to combine these approaches in different ways, which causes the following problems:

- ? Some sectors are ambiguous about the role of municipalities (eg. housing, health)
- ? Some sectors are increasingly looking to a municipal role, without any clear assessment of the financial and capacity issues (e.g. transport planning, land reform, environmental management)
- ? There is lack of synergy between competencies
- ? Municipalities are increasingly involved in programmes for which they have not received adequate funding, particularly for hidden overhead costs and management costs (e.g Working for Water, Integrated Nutrition Programme, Community Based Public Works Programme).

⁹ Definitions of these terms are provided in Appendix *

- ? In some cases the municipal role is simply not clear yet, despite evidence and acknowledgement that municipal involvement is very important (e.g. HIV/AIDs, Poverty Alleviation Programmes) (HSRC 2003).

The HSRC identified the following environmental activities which are currently being undertaken by some municipalities – in response to sectoral policies, programmes and activities being driven by provincial or national departments:

- ? Disaster management
- ? Community-based forestry
- ? Eradication of alien vegetation
- ? Land management
- ? Land reform
- ? Land tenure reform
- ? Provision of water for irrigation

The above activities cannot be said to be core activities of local government, falling as they do outside the matters for local government identified by the Constitution. Thus it is unlikely that core environmental indicators will be developed for these. However, it does illustrate that the environmental activities taken on by municipalities may vary considerably from one municipality to the next, depending on how they have reacted to local priority issues and responsibilities allocated to them by other spheres of government. It is these activities that would be measured by an additional set of ‘peripheral’ indicators, supplementing the core set of indicators.

3.4.4. Municipal Structures Act – ‘two tier’ local government

Category A municipalities (metropolitan areas) have responsibility for all the functions listed in Schedules 4B and 5B. However, outside the six metropolitan areas there exists a two tier system of local government: a wall to wall system of district (category C) and local (category B) municipalities – and the functions listed in Schedules 4B and 5B have been allocated between these two tiers by the Municipal Structures Act.

Chapter 5 of the Municipal Structures Act 117 of 1998 outlines how functions and powers should be divided between a district and local municipality within the area of the district municipality.

Under section 84(1) (amended), a **district** municipality has the following functions and powers. The ones underlined are related to the environment (as previously defined)

- a. Integrated development planning for the district municipality as a whole including a framework for integrated development plans of all municipalities in the area of the district municipality;
- b. Potable water supply systems
- c. Bulk Supply of electricity
- d. Domestic waste-water and sewerage disposal systems
- e. Solid Waste disposal sites
 - i. Determination of a waste disposal strategy
 - ii. Regulation of waste disposal

- iii. Establishment, operation and control of waste disposal sites, bulk transfer facilities and waste disposal facilities for more than one local municipality in the district
- f. Municipal roads
- g. Regulation of passenger transport services
- h. Municipal Airports
- i. Municipal Health Services
- j. Fire Fighting Services
- k. Establishment, conduct and control of fresh produce markets and abattoirs
- l. Establishment, conduct and control of cemeteries and crematoria
- m. Promotion of local tourism
- n. Municipal public works relating to any of the above functions or any other functions assigned to the district municipality
- o. Receipt, allocation and, if applicable, distribution of grants made to the district municipality
- p. Imposition and collection of taxes, levies and duties as related to the above functions or as may be assigned to the district municipality in terms of national legislation.

Under section 84(2), a **local** municipality has the functions and powers as assigned by sections 156 and 229 of the Constitution – excluding the functions and powers outlined in 84(1) (listed above) in the district whose area it falls.

However, under section 84(3), a local authority **may** be authorised (by the Minister by notice in the Government Gazette) to carry out a function or power related to one of the nationally assigned functions i.e.

- ? potable water supply systems
- ? bulk supply of electricity
- ? domestic waster water and sewerage disposal systems
- ? municipal health services.

Provincial MECs have similar power for the remaining functions which are provincially mediated. In practice, the outcome of this has varied across the country but the typical situation relating to the major functions is as follows:

- ? Districts have the municipal health function (now restricted to environmental health).
- ? Districts have the water supply and sanitation function for areas where the capacity of local government is relatively low.
- ? The electricity function remains as it was before 2000 which implies that in the formerly defined transitional local council areas (mainly urban areas) the function is assigned to local municipalities. Therefore districts have little to do with electricity presently, contrary to the provisions of the Municipal Structures Act.
- ? Districts have certain responsibilities for municipal roads, although there is considerable uncertainty regarding roads definitions.

For other functions there is considerable variation in the outcome across the country.

3.4.5. Summary

Using the definition of environment outlined at the start of this document and based on the discussion on roles and responsibilities above, the following interpretation of the division of environmental responsibilities has been developed.

Note: this list does not include those functions which lie with provincial government (under Schedules 4 & 5 of the Constitution) but which may have been delegated to a district or local authority by an MEC.

District	Local
Preparation of IDP for district municipality – and framework for all IDPs in district	Preparation of IDP for local municipality
Potable water supply systems (where capacity of local government is low)	<i>Potable Water Supply systems – where there is capacity</i>
Sanitation: Domestic waste water and sewerage disposal (where capacity of local government is low)	
Solid Waste Disposal Sites	
Municipal Health (environmental health)	
	Air pollution
	Local Tourism
	Storm water
	Beaches
	Municipal parks and recreation
	Local Amenities
	Noise pollution
	Refuse removal
	Public places

3.4.6. Municipal Demarcation Board – norms and standards

The Municipal Demarcation Board (MDB) has identified responsibilities of national and provincial governments, district and local municipalities for each of the functions listed in Schedules 4b and 5b (MDB 2003). These are contained in a report on Schedule 4b and 5b definitions, norms and standards published in 2003. This information provides more detail as to what is expected from each sphere/tier of government with regard to these mandated responsibilities. In summary:

Provincial Responsibility: the provincial legislature has the power to pass legislation with regard to any matter within the functional areas listed in Schedules 4 and 5, which by implication, includes the enactment of legislation on municipal functions. For each of the functions, a provincial government must therefore:

- ? determine if there is existing legislation and its current applicability and constitutionality
- ? determine the need for a review of such legislation or the drafting of new legislation
- ? build the capacity of municipalities to perform this function
- ? monitor the performance of the municipality in exercising its executive and legislative authority pertaining to this function

- ? adjust the performance of the function to the district municipality if there is a lack of capacity and if the MDB so recommends
- ? ensure that the performance of this function is addressed in the municipality's IDP.

In the case of concurrent national and provincial responsibility, provinces must investigate whether this function can most effectively be administered locally and whether a municipality has the capacity to administer it. If so, the function must be assigned to the municipality by agreement and subject to any conditions as provided for in section 156(4) of the Constitution.

Concurrent national and provincial responsibilities (related to the environment)
--

- | |
|---|
| <ul style="list-style-type: none"> ? air pollution ? health |
|---|

Where a function is a district responsibility, the district municipality must:

- ? exercise any power concerning, or incidental to, the effective performance of the function
- ? determine a service delivery mechanism for the performance of the function (internal or external)
- ? If performed internally, develop or maintain the capacity to perform the function
- ? Make provision for the function in the IDP
- ? Make provision for the function in the operating budget
- ? Include indicators in the performance management system
- ? May make and administer by-laws in terms of section 156(2) of the Constitution
- ? Perform this function in the DMA area as per the responsibilities listed for local municipalities.

District Functions (related to the environment)

- | |
|---|
| <ul style="list-style-type: none"> ? Municipal Health Services ? Water and Sanitation Services ? Municipal Planning (shared function) ? Solid Waste (Shared function – refuse removal responsibility of local municipalities) |
|---|

If this function is delegated to a local municipality (authorised) – by the national Minister for Provincial and local Government, the above responsibilities are carried out by the local municipality (with the exception of performing the function in the DMA)

If the function is the responsibility of a local municipality, a similar set of responsibilities applies:

The local municipality must:

- exercise any power concerning, or incidental to, the effective performance of this function
- determine a service delivery mechanism for the performance of the function (internal or external)
- If performed internally, develop or maintain the capacity to perform the function
- Make provision for the function in the IDP
- Make provision for the function in the operating budget
- Include indicators in the performance management system
- May make and administer by-laws in terms of section 156 (2) of the Constitution
- Ensure coordination with related functions.

Local Municipality Functions (related to the environment)	
?	air pollution
?	local tourism
?	municipal planning (shared)
?	beaches and amusement facilities
?	cleansing
?	local amenities
?	municipal parks and recreation
?	noise pollution
?	public places
?	refuse removal, refuse dumps and solid waste (shared)

There may be some other specific responsibilities for each function – in addition to these general requirements.

When the function lies with a local municipality, the district municipality also has the responsibility to build capacity within the local municipalities to perform this function where capacity is lacking – and to perform this function in DMAs¹⁰ (as per the responsibilities listed for local municipalities).

3.4.7. The Role of the IDP

Chapter 5 of the Municipal Systems Act provides the legislative framework for the preparation of IDPs by municipalities. IDPs are at the foundation of the planning process of municipalities and they play a key role in co-ordinating the full range of municipal functions and linking with provincial planning initiatives. Huge effort has been made over the last 8 years to entrench sound integrated development planning in local governments and much has been achieved with every local authority having a plan and most updating this regularly.

The adoption of the Integrated Development Planning process for municipalities is an important achievement for environmental management and sustainable development. Taking an integrated approach to planning and development is commonly recognised as one of the keys to improved environmental management. In addition, the planning process adopted for the drafting of IDPs in South Africa is very similar to the planning approach recommended by Local Agenda 21 to achieve sustainable development within local areas. However, as the IDP process is new, a problem that is sometimes experienced is that while the design and intention of the process is the implementation of activities in an integrated way, integration is often lost at the level of implementation. In addition, some IDPs have not included environmental and sustainability issues sufficiently (Hologram, 2003).

¹⁰ DMA: District Management Area

3.4.7.1. 'Environment' as a cross-cutting dimension

Integrated Development Planning focuses on local issues and is driven by local priorities. It is not driven by sectors or by broader cross-cutting 'dimensions'¹¹. In terms of integrated development planning, the natural environment is identified as a 'dimension' for municipalities. Thus the natural environment has to be taken into account throughout the planning process but is not likely to drive the process itself unless 'the environment' is raised as a particular local concern. The approach to specific sectors (such as health, education, energy, transport and so on) is similar – again these are considered only where they are **relevant** to particular local priority issues¹².

Because the environment is seen as a dimension, it is generally dealt with throughout the planning process and is integrated into the main body of the IDP. The following guidelines from DPLG on how to deal with the environment in the IDP planning process reinforces this approach. In the planning process, municipalities should:

- ? ensure that environmental considerations are taken into account
- ? ensure that environmental principles set out in policy and legislation are adhered to in all its planning and development processes
- ? be aware of and ensure that its planning and implementation is **aligned** with environmental management measures that are prepared by other spheres of government (such as Environmental Management Plans and Environmental Implementation Plans)
- ? Ensure that Environmental Impact Assessments are carried out for certain land use changes or development applications as required by legislation/regulations
- ? drive or participate in Strategic Environmental Assessments¹³ if required by local circumstances. The Guideline document for SEA recommends that SEA is not regarded as a separate process but rather that certain elements of the process are incorporated into the IDP process.

In terms of process, the following steps are suggested:

- ? Define how to deal with natural environmental issues in the municipal area: i.e. understand the current state of the natural environment; identify environmental opportunities and constraints to consider in later alternative formulation and decision-making processes.
- ? Identify how environmental issues can be included in the participation process: i.e. involve participants with environmental knowledge or competence in the process; ensure alignment and coordination of activities with other municipalities and spheres of government that have a stake in the realisation of environmental sustainability.

¹¹ Dimensions are defined as cross-cutting concerns or principles throughout the planning process which underlie the very concept of development

¹² A sector is relevant if it has a place in municipal priorities identified during the Analysis and projects phases of the IDP planning process.

¹³ SEA is defined as a process to assess "the environmental implications of a proposed strategic decision, policy, plan, programme, piece of legislation or major plan" (White Paper on Environmental Management Policy for SA 1998)

- ? Mainstream the natural environment throughout the planning process: all planning decisions should be assessed against their fulfilment of localised environmental principles, taking environmental constraints into account and using environmental opportunities. If environmental issues are identified as a specific priority issue in the IDP process, specific strategies and projects must then be identified to address these. Environmental principles that are set at a national level must be localised and regional context must be taken into account. At the integration phase of the planning process and development of operational plans, environmental impacts (cumulative and long term) must be assessed.
- ? Certain environmental plans and processes should be considered during the planning process: EIPs, EMPs, EIAs and SEA.
 - o *Note:* the spatial development framework for a IDP must now contain a strategic assessment of the environmental impact of the spatial development framework (under regulations R796 2001).

3.4.7.2. Minimum Content Requirements of an IDP

A draft national framework document entitled “Strengthening Sustainability in the Integrated Development Planning Process” explains how the required sections of an IDP can be used to ensure that environmental issues and the goal of environmental sustainability are built into an IDP. The following table contains a summary of the link between the required sections and environmental sustainability.

Requirement	Link to environmental sustainability
Assessment of existing levels of development	Assessment of environmental assets upon which this development depends or will depend
	Assessment of environmental opportunities and constraints in terms of service provision and development
	Identification of causal factors of environmental degradation and environmental risks linked to current development
Development priorities and objectives, including local economic development aims	Major environmental problems and threats must be reflected in the objectives
Development strategies, which must be aligned with national and provincial plans and planning requirements	Specific strategies should be closely aligned with the goals of environmental strategies and guidelines and should meet the requirements of environmental legislation and policy
Spatial development framework, including basic guidelines for land use management	An environmental sensitivity map which includes all environmental assets, problems and areas of environmental sensitivity should inform the SDF. The ‘value’ of various environmental assets should also inform the SDF
Operational Strategies	Certain operational strategies will require detailed environmental assessment, mitigation measures and even environmental management plans. Operational strategies to achieve the aims of environmental policies will also need to be developed and should be linked to environmental strategies, environmental policies and environmental management plans
Disaster Management Plans	Should include environmental risks and hazards
Financial Plan	Budget should be made available for specialist environmental studies and the use of environmental

Requirement	Link to environmental sustainability
	management tools and implementation environmental management plans. Budgets should reflect the real costs and value of environmental resources where possible.

3.4.7.3. Sectoral Plans

There are certain sectors which are also related to the environment, such as air, water, biodiversity and so on. Some sectoral legislation requires specific sectoral plans to be prepared by municipalities as part of the IDP planning process. DPLG gives the following guidance on how sectoral planning should relate to the IDP process:

- ? Sector planning requirements contained in national sectoral legislation in respect of municipal functions such as water and the environment should be dealt with as part of the IDP process, **where they are relevant to the local priority issues**. Additional aspects of sectoral planning requirements not fully covered in the IDP process would then require a parallel planning process to the IDP.
- ? Specific sectors which fall beyond the ambit of local competencies (such as education) may be directly related to the priority issues identified in a specific municipal area. As the municipality is not the implementation agency attention will still need to be given to the planning process from analysis to integration to facilitate alignment and coordination with other spheres of government and institutions. What is proposed (in the IDP guide pack) is that even for sectors where there is no legally prescribed planning requirements, local government can use the integrated planning process to lever national and provincial sectoral contributions (funds and support) for local development by ensuring compliance with national and provincial policy principles and sectoral guidelines.

The following table was originally published by DPLG to provide guidance on which sectoral legislation mandated the production of sectoral plans for inclusion in the IDP process. This has been amended to include sectoral plans required by more recent legislative changes (or proposed changes) and to reflect only those sectors related to the environment.

Sector Department	Legal Requirement for Plan	No separate plan required – sector planning incorporated within IDP	Legally Binding compliance requirement	Value adding contribution but not a legal requirement
DLA	LDOs (to be replaced with spatial component of IDPs)	Proposed that environmental and land reform planning be incorporated within IDPs	DFA Chapter 1 principles	
DEAT	Sub-sector plans such as : waste management plans; oil-spill	Coastal management issues must be considered in local integrated planning as a component of IDP where relevant to IDP priority issues	NEMA: NEMA principles, EIPs and EMPs Air Quality Bill	Local Agenda 21 principles (integration of social, economic and environmental

Sector Department	Legal Requirement for Plan	No separate plan required – sector planning incorporated within IDP	Legally Binding compliance requirement	Value adding contribution but not a legal requirement
	contingency plans; Air Quality Management Plans; Alien Species Control Plans;	or parallel for legal requirement aspects not relevant to IDP priority issues. Sector planning tools applicable in IDP process esp. SEAs in analysis phase and EIAs in project planning	Biodiversity Act	issues; concern for future; community partnership; recognise ecological limits; local and global impacts; equity justice and accountability) Strategic Environmental Assessment (SEA)
DWAF	Water Services Development Plans and plans for provision of basic services	WSDP is seen as water services component of IDP where relevant to IDP priority issues or parallel for legal requirement aspects not relevant to IDP priority issues		
DOT	Integrated Transport Plans			
DPLG	Integrated Development Plan	Spatial Framework, infrastructure planning, LED, within the IDP		LED approach; social plan

3.4.7.4. IDP Reporting and Existing Indicators

Under the local government: municipal planning and performance management regulations (no. 796 2001), municipalities must adopt performance management systems and set key performance indicators and targets related to their IDPs. The regulations prescribe the following General KPIs:

- ? % households with access to basic level of water, sanitation, electricity and solid water removal
- ? % households earning less than R1100 per month with access to free basic services
- ? % of a municipality's capital budget actually spent on capital projects identified for a particular financial year in terms of the municipality's integrated development plan
- ? number of jobs created through municipality's local economic development initiatives including capital projects
- ? number of people from employment equity target groups employed in the three highest levels of management in compliance with a municipality's approved employment equity plan
- ? % of a municipality's budget actually spent on implementing its workplace plan
- ? financial viability (as expressed by ratios given in regulations).

These KPIs must be reviewed annually by municipalities.

3.5. Sectoral Legislation

The previous section alluded to the new requirements of sectoral legislation for the production of specific sectoral plans for environmental issues within IDPs. This section extends the examination of sectoral legislation to identify legislation which has an implication for the responsibility of environmental issues at the local level.

3.5.1. Air Quality

The National Environmental Management: Air Quality Bill creates a new framework within South Africa for the management of air quality. The following sections of this Bill relate to the management, monitoring, planning and reporting of local air quality and outlines what is to be done and who is to do it. Those sections which help to clarify the relationship between the three spheres of government are also included.

Note: much of the detail as to how the management of air quality will happen in practice (e.g. substances to be monitored; standards to be applied) will be contained within a national framework for air quality and/or a set(s) of regulations that may be published by the Minister, MECs responsible for air quality and/or municipalities themselves. These have not yet been produced and so few details are yet available as to how the legislative framework will be implemented in practice. However, the main implications within the Act for local level air quality management, planning and reporting (and responsibility) are as follows:

- ? A national framework will be created by national government. This framework **may** establish standards for the:
 - o Monitoring by municipalities of ambient air quality and point and non-point source emissions
 - o Monitoring by provinces of: ambient air quality and the performance of municipalities in implementing this legislation (s 8a and 8b)
- ? Provinces (MEC) may also identify substances that are likely to cause harm to health or the environment and establish provincial standards for these (ambient air quality and/or emissions from point and non point sources). These standards can only be stricter than any national standards for the same substances. (s 9(1) and (2)).
- ? Municipalities can also create by-laws in order to identify substances that may cause harm to health or the environment in the municipal area and establish local standards for these (emissions from point and non-point sources).
- ? Both provinces and municipalities **must** appoint an air quality management officer to be responsible for coordinating air quality management (s13 (2) and (3)).
- ? Air Quality Management Plans **must** be prepared by provinces and national departments (who normally prepare an EIP and/or EIP) and by municipalities who normally prepare an IDP. The AQMP must be included in the IDP (s15-17). The proposed content of these plans is contained in s16.
- ? In terms of reporting on implementation of the air quality management plans, any EIP or EMP to be submitted (under section 16(1)(b) of NEMA) must report on the implementation of the AQMP plus:
 - o air quality management initiatives undertaken by it during the reporting period;

- the level of its compliance, with ambient air quality standards;
 - measures taken by it to secure, compliance with those standards;
 - its compliance with any priority area air quality management plans applicable to it; and
 - its air quality monitoring activities.
- ? The Minister, MEC or municipality may enter into an **environmental cooperation agreement** with any person or community – in order to promote compliance with the NEMA principles as they relate to air quality (s26).
 - ? All Metropolitan and district municipalities are responsible for implementing the atmospheric emission licensing system (s29).

3.5.2. Biodiversity and Protected Areas

The Protected Areas Act and Biodiversity Act were passed into law in 2003. Both of these pieces of legislation have implications for responsibilities for the management of biodiversity and protected areas at the local level. The relevant sections are outlined below.

Protected Areas Act 2003:

- ? Declaration of nature reserves (and determining the type of reserve declared): this can be done by the Minister, a MEC or a municipality (s42 & 43)
- ? Declaration of protected environments (and allocation of type and name): this can also be done by the Minister, MEC or a municipality (s 46 & 47)
- ? Municipalities **must** follow an appropriate consultation process before designating a reserve or protected environment (s52).
- ? Local protected areas: these must be managed by the municipality itself or management must be assigned to a municipal entity (in accordance with the Local Government Municipal Finance Act) under the sole or shared ownership control of the municipality (s59).
- ? Local Protected Area management plans: a municipality **must** prepare a management plan for a local protected area and submit a copy of the plan to the MEC for environmental affairs in the province for approval (s 60(2)). Section 62 contains reference to the required contents of the management plan¹⁴.
- ? Performance Indicators for monitoring performance of managed of provincial and local protected areas and the management of biodiversity in those areas **may** be established by the MEC for environmental affairs in a province (s64 (2)).

¹⁴ The management plan for a protected area must include:

- a. the management objectives for the area
- b. a zonation of the area indicating what activities may take place in different sections of the area, and the conservation objectives of those sections;
- c. a development plan for the area
- d. norms and standards for the management of the area
- e. **indicators for monitoring compliance with these norms and standards**
- f. health promoting education and malaria control measures if malaria causing mosquitos are present in the area
- g. arrangements for the involvement of local communities in the development plan.

Biodiversity Act:

The Biodiversity Act will be largely implemented via a National Biodiversity Strategy and Action Plan (in preparation). Much of the legislation is concerned with outlining what might be contained within this strategy – but until the strategy is prepared and published, little more can be said about what it will contain or what the implications will be for the management, planning and reporting on biodiversity at the local level. The contents of the Act that are relevant are as follows:

- ? National, provincial and local government are all considered ‘competent authorities’ for the control of an alien species or a listed invasive species.
- ? The National biodiversity framework **may** contain norms and standards for provincial and municipal environmental conservation plans (s38(2)).
- ? Bioregional plans may be produced by the Minister at the request of a province or municipality (s 39(2)(b)).
- ? Any organ of state that must produce an EMP (under NEMA) and all municipalities that have to prepare IDPs, must make sure that:
 - o The EMP/IDP is aligned with the national biodiversity framework and any applicable bioregional plan
 - o The EMP/IDP incorporates provisions of the national biodiversity framework or a bioregional plan that specifically apply to it;
 - o c) The EMP/IDP demonstrate how the national biodiversity framework and any applicable bioregional plan will be implemented by that organ or state or municipality (s46(2))
- ? **All organs of state in all spheres of government** must prepare an invasive species monitoring, control and eradication plan for land under their control. This must be included within EMPs. Municipalities must include this plan as part of their IDP. Municipalities may be able to get help with preparation of this plan from the National Biodiversity Institute (with the consent of Minister) (s71).

3.5.3. Pollution and Waste Management

The policy framework for this sector is provided by the White Paper on Integrated Pollution and Waste Management. This White Paper identifies the various elements of pollution and waste management and assigns responsibilities for these between the three spheres of government.

Provincial environmental departments will be responsible for monitoring and enforcing pollution and waste management issues within their province. Specific functions to be carried out by provincial government (and related to local government) include:

- ? Reviewing first generation integrated waste plans received from municipalities and where necessary, assisting with the drafting of these
- ? Monitor compliance with provincial implementation plans
- ? Intervene if the implementation plans are not being complied with
- ? Develop provincial guidelines and standards
- ? Develop and enforce provincial regulations

- ? Developing and enforcing provincial regulations for general waste collection and supporting local government in the implementation of waste collection services.
- ? Responsibility for hazardous and industrial waste will also rest with provincial governments.

Municipalities will be responsible for providing waste management services, and managing waste disposal facilities. Specific functions to be carried out by municipalities will include:

- ? Compiling and implementing general waste management plans, with assistance from Provincial government
- ? Implementing public awareness campaigns
- ? Collecting data for the Waste Information System
- ? Providing general waste collection services and managing waste disposal facilities within their areas of jurisdiction
- ? Implementing and enforcing appropriate waste minimization and recycling initiatives, such as promoting the development of voluntary partnerships with industry, including the introduction of waste minimization clubs
- ? Where possible, regional planning, establishment and management of landfill sites, especially for regionally based general waste landfills.

In terms of the preparation of *Integrated Waste Management Plans*, the following responsibilities have been assigned:

- ? The national Department of Environmental Affairs and Tourism (DEAT) will draft and promulgate regulations and guideline documents for integrated waste management planning for all waste types.
- ? The provincial environmental departments will develop hazardous waste management plans and prepare provincial environmental and waste management plans that incorporate the integrated waste management plans submitted by local government and industry. These will be submitted to the CEC for approval, which will facilitate inter-provincial coordination, particularly in relation to planning for facilities for treatment and disposal of waste.
- ? Local Government will develop and submit plans for integrated general waste management to the respective provincial environmental departments.
- ? Waste management plans for *industrial* waste that is disposed of at private and/or dedicated disposal facilities, will be prepared by the *developers/owners* and submitted to the respective provincial environmental departments.

3.5.4. Water Services

Water services has a reasonably well developed legislative and institutional framework, centred on the Water Services Act 108 of 1997. The preamble of this act acknowledges that “although municipalities have authority to administer water supply services and sanitation services, all spheres of government have a duty, within the limits of physical and financial feasibility, to work towards this object.”

A water services authority is defined as “any municipality, including district or rural council as defined in the Local Government Transition Act 1993, responsible for

ensuring access to water services. In terms of planning and responsibilities, the Act requires:

- ? Preparation of a water services development plan by **municipalities as part of an IDP**
- ? Provision of measures by all water services authorities for realization of the right of every citizen to free basic water supply (within WSDP).

Situation in practice – within two tier local government

Like other sectors, there is some lack of uniformity of approach to water services provision across the country due to the relationships between the two tiers of local government (B&C), and the various water service institutions in existence or created by the WS Act (water services authorities, water service providers and water boards).

The Water Services Act established the separation of a *water services authority* (the municipality with statutory responsibility to ensure that water services are provided) from *water services provider* (the body actually responsible for operating the service). With the coming of two-tier local government in the country this provided a new challenge for the sector, to decide whether the local or district municipality should be the water services authority. The Municipal Structures Act implied it should be the latter but a process was initiated by DPLG to decide where **local** municipalities should be the authority. **This process, completed in 2002, resulted in a non-uniform outcome with 23 district municipalities being the authority in largely underdeveloped areas and 126 local municipalities having this function for the rest of the country.**

The relationships between DMs and LMs

In the case where districts have been made the water services authority, a large effort is required for them to select water services providers as, in the rural areas most of them serve, such providers have been absent in the past. Further, in urban areas within these districts the water services capacity generally lies with local municipalities. So district municipalities are going through a process of either appointing these municipalities as providers or taking over their staff if the district decides to be the provider itself. All this needs to happen in terms of the Municipal Systems Act (Section 78) procedures for identifying external providers. Currently the situation is one of considerable flux.

Expanding responsibilities as DWAF schemes are transferred

Municipalities which are water services authorities with largely rural areas are currently in the process of taking transfer of water supply schemes previously operated by DWAF. This implies a rapid increase in responsibilities – and funding obligations – for these municipalities.

3.5.5. Water Quality and Control of Water Pollution

Water is a national issue and responsibility for water quality lies with the national department (Department of Water Affairs and Forestry, DWAF) although it may be

administered at a local level via its regional offices. However, Catchment Management Agencies, local Water Service Providers and Water Service Authorities also have a role to play in the prevention of water pollution.

Under the National Water Act 36 of 1998, water quality falls under 'protecting the water resource' and is the responsibility of national government. Under this Act, each water resource must be classified and a set of 'resource quality objectives' identified. These objectives will cover:

- ? the Reserve;
- ? the instream flow;
- ? the water level;
- ? the presence and concentration of particular substances in the water;
- ? the characteristics and quality of the water resource and the instream and riparian habitat;
- ? the characteristics and distribution of aquatic biota;
- ? the regulation or prohibition of instream or land-based activities which may affect the quantity of water in or quality of the water resource; and
- ? any other characteristic, of the water resource in question.

In terms of pollution prevention and requiring polluters to take remedial action, the responsibility for this lies with Catchment Management Agencies.

Water Service Providers and Water Services Authorities have a role in the control of industrial water pollution under Section 7 (Industrial Use of Water) of the Water Services Act 108 of 1997 as follows:

- ? a person can only dispose of industrial effluent in a manner approved by the Water Services Provider nominated by the Water Services Authority with jurisdiction in that area (s72)
- ? Any Water Services Authority which a) provides water for industrial use; or b) controls a system through which industrial effluent is disposed of, must make bylaws covering:
 - o Standards of service
 - o Technical conditions of provision and disposal
 - o Determination and structure of tariffs
 - o Payment and collection of money due
 - o Circumstances under which the provision and disposal may be limited or prohibited.

Under the National Water Act, DWAF (Regional Offices) has responsibility for licensing 'water use' – which can include discharging waste or water containing waste into a water resource; disposing of waste in a manner which may detrimentally impact on a water resource; and disposing in any manner, water which contains waste from, or which has been heated in any industrial or power generation process.

Section 22 of the Act states that water use requires a license unless it is listed as a permissible use (in Schedule 1 of the Act). Note, that if waste is being discharged into a sewer, this is listed as a Schedule 1 activity and no license is therefore required, although the discharge must comply with local regulations regarding use of

the sewer as set by the local authority- under their responsibility for sewage disposal systems (water and sanitation). These standards are set by the Water Services Authority – in line with national norms and standards.

4. Analysis

4.1. Summary – mandated environmental functions of local government

The environmental-related responsibilities of local government (those they **must** carry out as per the Constitution, Municipal Structures Act and other relevant legislation) are presented in table 1 a-c below.

Note these are the general broad responsibilities as contained in the legislation and before any delegation or assignment of responsibilities is carried out by the Minister or provincial MEC (as per their powers under the Constitution and other legislation outlined above).

Table 1 presents these responsibilities in three main categories:

- 1a. Broad functional areas
- 1b. Planning responsibilities
- 1c. Monitoring/reporting responsibilities

Within table 1, the tier of local government responsible for the functions is identified, as is the source of the mandated responsibility (Schedule 4 & 5 of the Constitution or other legislation) and any relationship with provincial or national competencies.

Table 1 (a-c). Local Government Responsibilities which relate to the environment.

1a. Broad responsibilities (functions)

Function	Mandated under Schedule 4b and 5b of Constitution?	Tier of Government Responsible (under Municipal Structures Act)	Other relevant legislation	Related provincial or national legislated competency (under Schedule 4 and 5)
Air Pollution - air quality	Yes	A,B	Air Quality Bill	Pollution management and control
Noise Pollution	Yes	A,B		Pollution management and control
Refuse Removal, refuse dumps and solid waste disposal	Yes	A,B,C Refuse removal: A,B Domestic waste water and sewage disposal: A,C Solid Waste Disposal: A,C	White Paper on Integrated Pollution and Waste Management	Waste Management
Storm water management in built up areas	Yes	A,B		
Water and Sanitation Services	Yes	A,C Including industrial pollution standards and permission ?		
Beaches	Yes	A,B		
Municipal Parks and Recreation	Yes	A,B		
Local amenities	Yes	A,B	Protected Areas Act (management of local protected areas)	Nature Conservation
Public Places	Yes	A,B		

Areas where there is lack of clarity as to whether a function is mandated or not include:

- ? Eradication of alien vegetation (on local government owned land). This requirement comes from the new Biodiversity Act, but is not aligned to a Schedule 4B or 5B function.
- ? Designation and management of local protected areas by local authorities (under the new Protected Areas Act). It is assumed that the function 'local amenities' includes local protected areas (see definition of this function in Appendix 2) – but

this may be open to interpretation. If local protected areas cannot be included under the definition of 'local amenities' – then this requirement of the Protected Areas Act will also not be aligned to a Schedule 4b/5b function and then may not be mandatory.

Non-mandated functions currently being carried out by some municipalities include:

- ? Disaster planning
- ? Community forestry (devolved to some from DWAF)
- ? Land reform and land tenure reform
- ? Provision of water for irrigation

1b. Local Government Responsibilities for Planning

Planning Responsibility	Mandated under Schedule 4 and 5s	Tier of Government Responsible	Other Relevant Legislation	Related provincial or national competency
Incorporation of NEMA principles into all plans	No	All	NEMA	
Municipal Planning	Yes	All		Regional Planning and Development
Preparation of IDP and associated plans <ul style="list-style-type: none"> - Spatial Development Framework - Strategic Environmental Assessment of SDF - Environmental and land reform planning - Air Quality Management Plan - Invasive species monitoring, control and eradication plan - Waste Management Plan and Integrated General Waste Management Plan 	(Municipal Planning – yes)	All	Local Government Regulations Air Quality Bill Biodiversity Act White Paper on Integrated Pollution and Waste Management	Provincial Air Quality Management Plan Provincial Invasive Species Monitoring, Control and Eradication Plan Review of Municipal Integrated General Waste Management Plans; Hazardous waste management plans for province; Provincial environmental and waste

Planning Responsibility	Mandated under Schedule 4 and 5s	Tier of Government Responsible	Other Relevant Legislation	Related provincial or national competency
<ul style="list-style-type: none"> - Oil Spill Contingency Plan (where relevant) - Water Services Development Plan - Plans to provide access to basic water services - Alignment of IDP with national biodiversity framework and bioregional plans - Demonstration in IDP of implementation of national biodiversity framework and bioregional plans 			<p>Water Services Act</p> <p>Water Services Act</p> <p>Biodiversity Act</p> <p>Biodiversity Act</p>	management plans
Compliance with provincial EIPs/EMPS and adherence to EIP/EMP in all planning, policy or programmes	No	All	NEMA	
Preparation of management plans for local protected areas	No	All	Protected Areas Act	Review of municipal management plans for protected areas; preparation of management plans for provincial protected areas

Note: sectoral legislation is adding to the sector plans that are to be included within IDPs. No mention in the legislation is made of any additional finances or other resources to help municipalities to achieve these extra planning requirements. Implications of this are therefore not clear at present.

1c. Responsibility for Monitoring and Reporting

Monitoring/reporting function	Mandated under Schedule 4 & 5 ?	Tier of Government Responsible	Other relevant legislation	Related Provincial or national competency
Auditing, monitoring and compliance measures (under model by-laws if created)	N	All	NEMA	
Reporting and provision of information (under model by-laws if created)	N	All	NEMA	
Reporting on Key Performance Indicators from IDPs	N	All		
Collection of data for waste management system	N	?	White Paper on Integrated Pollution and Waste Management	
Air Quality: monitoring of ambient air quality and point/non-point source emissions	(Under Air pollution)	A,B	Air Quality Bill	Provincial – monitoring of ambient air quality; monitoring performance of municipalities (compliance with legislation);n report on implementation of Air Quality Management Plan
Compliance with provincial EIP(check is municipalities have to prepare a report on their compliance)	N	All	NEMA	Annual report on implementation of provincial EIP
State of Environment Report	N	Voluntary at present	None	Provincial and national SoE reports

4.2. Summary – local level responsibilities of provincial and national government

Several functional areas which involve management, monitoring or reporting of an element of the environment **at the local level** fall outside the remit of local government and are thus the responsibility of either provincial or national government. This section will merely list these (see table 2a-2c). As for local government, these are divided into three categories:

- 2a. General functions
- 2b. Planning responsibilities
- 2c. Monitoring/reporting responsibilities

Table 2a. Local level provincial and national functions related to the environment

Functional Responsibility	Sphere	Mandated under Schedule 4 & 5	Other relevant legislation
Waste Management: hazardous and industrial waste	Provincial	Yes (under waste management)	White Paper on Integrated Pollution and Waste Management
Eradication of alien vegetation on provincially controlled land	Provincial	No	Biodiversity Act
Agriculture	Provincial/national	Yes	
Urban and Rural Development	Provincial/national	Yes	
Soil Conservation	Provincial/national	Yes	
Nature Conservation (other than local protected areas)	Provincial/national	Yes	
Environment	Provincial/national	Yes	
Disaster Management	Provincial/national	Yes	
Administration of indigenous forests	Provincial/national	Yes	
Water Quality and protection of water resources (pollution prevention)	National (regional offices of DWAF) Catchment Management Agencies	No	National Water Act
Coastal/marine	?	?	?

Table 2b. Local level responsibilities for planning and review of plans– provincial and national responsibilities

Responsibility	Sphere	Mandated under Schedule 4 and 5	Other relevant legislation
Preparation or provincial EIP	Province	N	NEMA
Ensuring municipalities comply with provincial EIP and adhere to EIPs and EMPs in their own plans, policies an programmes	Province	N	NEMA
Provincial Air Quality Management Plan (may link to municipal local air quality management plans)	Province	N	Air Quality Bill
Provincial Invasive Species Monitoring, Control and Eradication plans	Province	N	Biodiversity Act
Review of Municipal Integrated	Province	N	White Paper on

Responsibility	Sphere	Mandated under Schedule 4 and 5	Other relevant legislation
General Waste Management Plans			Integrated Pollution and Waste Management
Hazardous waste management plans	Province	N	White Paper on Integrated Pollution and Waste Management
Provincial Environmental and Waste Management Plans	Province	N	White Paper on Integrated Pollution and Waste Management
Review of municipal management plans for local protected areas	Province	N	Protected Areas Act

Table 2c. Monitoring and Reporting : local level responsibilities which lie with national and provincial government

Responsibility	Sphere	Mandated under Schedule 4 and 5	Other relevant legislation
Air Quality: monitoring of ambient air quality in province	Province	Y (under pollution control)	Air Quality Bill
Air Quality: monitoring compliance of municipalities with legislation	Province		Air Quality Bill
Air Quality: report on implementation of Air Quality Management Plan	Province		Air Quality Bill
EIP: Annual report on implementation of provincial EIP	Province – to CEC	N	NEMA
Water Quality	National (DWAf)	N	National Water Act

The information in the above tables will be used in the next phase of the project – i.e. to identify the areas for which core environmental performance indicators should be developed. It will also be supplemented with information from surveys and interviews with staff from provincial and local government environment departments.

Appendix 1: Definitions of Powers and Functions of Local Government (Schedule 4b and 5b) relating to the environment

Function	Definition
Air Pollution	Any change in the quality of the air that adversely affects human health or well-being or the ecosystems useful to mankind, now or in the future
Municipal Planning	<p>Compilation and implementation of an integrated development plan in terms of the Systems Act.</p> <p>For district municipalities, this also means: Integrated development planning for the district as a whole, including a framework for integrated development plans of all municipalities in the area of the district municipality.</p> <p>For local municipalities, this means integrated development planning for the local municipality in accordance with the framework for integrated development plans prepared by the district municipality and development and implementation of a town planning scheme or land use management scheme for the municipality including administration of development applications in terms of special consents and rezoning.</p>
Municipal Services	<p>Health</p> <p>To be defined as environmental health services – as defined in the latest draft of the National Health Bill: for the protection, promotion and maintenance of human health, potable water quality monitoring, food control, waste management, control of premises, communicable disease control, vector control, environmental pollution control, disposal of the dead, chemical safety and noise control but excluding port health, malaria control and control of hazardous substances.</p> <p>This definition includes aspects of other Schedule 4b and 5b functions (air pollution, noise pollution, solid waste removal and disposal, water and sanitation, licensing and control of undertakings that sell food to the public; control of public nuisances; facilities for the accommodation, care and burial of animals).</p> <p>In order for the above definition of municipal health services to be enforceable, an amendment to at least the Municipal Structures Act will be required.</p>
Storm Management in Built up Areas	<p>Water Systems</p> <p>The management of systems to deal with storm water in built up areas</p>
Water and Sanitation Services	<p>Potable water supply systems means:</p> <p>The establishment or procurement, where appropriate, operation, management and regulation of a potable water supply system, including the services and infrastructure required for the regulation of water conservation, purification, reticulation and distribution; bulk supply to local supply points, metering, tariffs setting and debt collection; and provision of appropriate education so as to ensure reliable supply of a sufficient quantity and quality of water and effective water use amongst end users, including informal households, to support life and personal hygiene.</p> <p>Domestic waste water and sewage disposal systems means:</p> <p>The establishment or procurement, where appropriate, provision, operation, management, maintenance and regulation of a system, including infrastructure, for the collection, removal, disposal and/or</p>

Function	Definition
	purification of human excreta and domestic waste-water to ensure minimum standard of services necessary for safe and hygienic households.
Beaches and Amusement facilities	<p>Beaches – means the area for recreational opportunities and facilities along the sea-shore available for public use and any other aspect in this regard which falls outside the competence of the national and provincial government</p> <p>Amusement facilities – means a public place for entertainment</p>
Local Amenities	The provision, management, preserve and maintenance of any municipal place, land and building reserved for the protection of places or objects of scenic, natural, historical and cultural value or interest and the provision and control of any such or other facility for public use but excludes such places, land or buildings falling within competencies of national and provincial governments
Public Places	The management, maintenance and control of any land or facility owned by the municipality for public use
Refuse Removal, Refuse Dumps and Solid Waste Disposal	<p>Reuse removal, refuse dumps and solid waste disposal means the removal of any household or other waste and the disposal of such waste in an area, space or facility established for such purpose and includes the provision, maintenance and control of any infrastructure or facility to ensure a clean and healthy environment for the inhabitants of a municipality.</p> <p>For District Municipalities it means: Solid waste disposal sites – in so far as it relates to:</p> <ul style="list-style-type: none"> i) determination of a waste disposal strategy for the district as a whole ii) regulation of waste disposal strategy for the district as a whole iii) establishment, operation and control of waste disposal sites, bulk waste transfer facilities and waste disposal facilities for more than one local municipality in the district <p>For local municipalities it means:</p> <ul style="list-style-type: none"> i) determination of a waste disposal strategy for the local municipality only ii) regulation of local waste disposal for the local municipality only iii) collection and removal of waste and transporting to a local waste disposal site, bulk transfer facility and district waste disposal site iv) establishment, operation and control of waste disposal sites, bulk waste transfer facilities and waste disposal facilities for the local municipality only.

5. References

- Committee for Environmental Coordination. May 2002. *Cooperative Environmental Governance Alignment Report*. Government of South Africa, unpublished.
- DEAT 2002. Guideline for Preparation of State of the Environment Reports. May 2002.
- De Visser, Cottle, Mettler, 2003 Realising the right of access to water: Pipe-dream or watershed, *Law Democracy and Development*, UWC (Butterworths)
- HSRC. 2003. Review of Schedules 4 and 5 of the Constitution. Prepared for DPLG (unpublished)
- McKenzie, M. (McIntosh Xaba and Associates) 2003. Environmental Management and Local Government. Hologram Horizontal Learning Programme, Newsletter 10 of 2003. www.hologram.org.za/newsletter/nl12-environmental%20management.htm
- Republic of South Africa 1998. White Paper on Local Government. Government Gazette, Notice 423 of 1998.
- Republic of South Africa. Government Notice No. R796, 24c August 2001. Department of Provincial and local Government 2001. *Local Government: Municipal Planning and Performance Management. Regulations*