INVI.TATION TO BID

YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF THE
DEPARTMENT OF ENVIRONMENTAL AFFAIRS

BID NUMBER: E1211 CLOSING DATE: 6-04-2012 CLOSING TIME: 11:00

DESCRIPTION: Appointment of a service provider for outsourcing of the finalisation of the Theme report: Governance, Administration & Impact and Instruments (THEME 1 ) in terms of the combined two Themes identified for the National Environmental Impact Assessment and Management strategy for a period of April 2012 to November 2012

The successful bidder will be required to fill in and sign a written Contract Form (SBD 7).

BID DOCUMENTS MAY BE POSTED TO: DIRECTOR GENERAL Department of Environmental Affairs
P/Bag X 447, PRETORIA 0001

OR

DEPOSITED IN THE BID BOX SITUATED AT (STREET ADDRESS) 2nd Floor, Fed Sure Forum Building v/o Van Der Walt and Pretorius Street.

Bidders should ensure that bids are delivered timeously to the correct address. If the bid is late, it will not be accepted for consideration.

The bid box is generally open 24 hours a day, 7 days a week.

ALL BIDS MUST BE SUBMITTED ON THE OFFICIAL FORMS – (NOT TO BE RE-TYPED)

THIS BID IS SUBJECT TO THE PREFERENTIAL PROCUREMENT POLICY FRAMEWORK ACT AND THE PREFERENTIAL PROCUREMENT REGULATIONS, 2011, THE GENERAL CONDITIONS OF CONTRACT (GCC) AND, IF APPLICABLE, ANY OTHER SPECIAL CONDITIONS OF CONTRACT

THE FOLLOWING PARTICULARS MUST BE FURNISHED
(Failure to do so may result in your bid being disqualified)

NAME OF BIDDER
POSTAL ADDRESS
STREET ADDRESS
TELEPHONE NUMBER CODE NUMBER.
CELLPHONE NUMBER
FACSIMILE NUMBER CODE NUMBER
E-MAIL ADDRESS
VAT REGISTRATION NUMBER

HAS AN ORIGINAL AND VALID TAX CLEARANCE CERTIFICATE BEEN SUBMITTED? (SBD 2) YES or NO

HAS A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE BEEN SUBMITTED? (SBD 6.1) YES or NO

IF YES, WHO WAS THE CERTIFICATE ISSUED BY?

AN ACCOUNTING OFFICER AS CONTEMPLATED IN THE CLOSE CORPORATION ACT (CCA).
A VERIFICATION AGENCY ACCREDITED BY THE SOUTH AFRICAN ACCREDITATION SYSTEM (SANAS); OR
A REGISTERED AUDITOR

(TICK APPLICABLE BOX)

(A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE MUST BE SUBMITTED IN ORDER TO QUALIFY FOR}
ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS / SERVICES / WORKS OFFERED?

NO.

[IF YES ENCLOSE PROOF]

SIGNATURE OF BIDDER: ........................................................................................................................................

DATE: ................................................................................................................................................................

CAPACITY UNDER WHICH THIS BID IS SIGNED ................................................................................................

TOTAL BID PRICE................................................................................................................................. TOTAL NUMBER OF ITEMS OFFERED

................................................................................................................................................................

ANY ENQUIRIES REGARDING THE BIDDING PROCEDURE MAY BE DIRECTED TO:

Department: Department of Environmental Affairs
Contact Person: Ina Leneley / Jonas Nkitseng
Tel: (012) 310-3558 / 3064
Fax: (012) 320 2894
E-mail address: ilensley@environment.gov.za

ANY ENQUIRIES REGARDING TECHNICAL INFORMATION MAY BE DIRECTED TO:

Contact Person: Ms. M. Oosthuizen
Tel: 012) 395 1862 or 082 499 2313
Fax: ..........................................................................................................................................................
TAX CLEARANCE CERTIFICATE REQUIREMENTS

It is a condition of bid that the taxes of the successful bidder must be in order, or that satisfactory arrangements have been made with South African Revenue Service (SARS) to meet the bidder's tax obligations.

1. In order to meet this requirement bidders are required to complete in full the attached form TCC 001 "Application for a Tax Clearance Certificate" and submit it to any SARS branch office nationally. The Tax Clearance Certificate Requirements are also applicable to foreign bidders / individuals who wish to submit bids.

2. SARS will then furnish the bidder with a Tax Clearance Certificate that will be valid for a period of 1 (one) year from the date of approval.

3. The original Tax Clearance Certificate must be submitted together with the bid. Failure to submit the original and valid Tax Clearance Certificate will result in the invalidation of the bid. Certified copies of the Tax Clearance Certificate will not be acceptable.

4. In bids where Consortia / Joint Ventures / Sub-contractors are involved, each party must submit a separate Tax Clearance Certificate.


6. Applications for the Tax Clearance Certificates may also be made via eFiling. In order to use this provision, taxpayers will need to register with SARS as eFilers through the website www.sars.gov.za.
## Purpose

Select the applicable option

If "Good standing", please state the purpose of this application

### Tenders:  
Good standing

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### Particulars of applicant

<table>
<thead>
<tr>
<th>Name/Legal name</th>
<th>Trading name</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Initials &amp; Surname or registered name)</td>
<td>(if applicable)</td>
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<thead>
<tr>
<th>ID/Passport no</th>
<th>Income Tax ref no</th>
</tr>
</thead>
<tbody>
<tr>
<td>VAT registration no</td>
<td>Customs code</td>
</tr>
<tr>
<td>Telephone no</td>
<td>E-mail address</td>
</tr>
<tr>
<td>Physical address</td>
<td>Postal address</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Company/Close Corp. registered no</th>
<th>PAYE ref no</th>
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<tbody>
<tr>
<td>SDL ref no</td>
<td>UIF ref no</td>
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### Particulars of representative (Public Officer/Trustee/Partner)

<table>
<thead>
<tr>
<th>Surname</th>
<th>First names</th>
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<tr>
<th>ID/Passport no</th>
<th>Income Tax ref no</th>
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<tr>
<td>Telephone no</td>
<td>E-mail address</td>
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<tr>
<td>Physical address</td>
<td>Fax no</td>
</tr>
</tbody>
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**Particulars of tender (If applicable)**

- **Tender number**
- **Estimated Tender amount**: R
- **Expected duration of the tender**: year(s)

**Particulars of the 3 largest contracts previously awarded**

<table>
<thead>
<tr>
<th>Date started</th>
<th>Date finalised</th>
<th>Principal</th>
<th>Contact person</th>
<th>Telephone number</th>
<th>Amount</th>
</tr>
</thead>
</table>

**Audit**

Are you currently aware of any Audit investigation against you/the company? **YES** **NO**

If "YES" provide details:

**Appointment of representative/agent (Power of Attorney)**

I the undersigned confirm that I require a Tax Clearance Certificate in respect of Tenders or Goodstanding.

I hereby authorise and instruct SARS the applicable Tax Clearance Certificate on my/our behalf.

**Signature of representative/agent**

Name of representative/agent

**Date**

**Declaration**

I declare that the information furnished in this application as well as any supporting documents is true and correct in every respect.

**Signature of applicant/Public Officer**

Name of applicant/Public Officer

**Date**

**Notes:**

1. It is a serious offence to make a false declaration.
   (a) fails or neglects to furnish, file or submit any return or document as and when required by or under this Act; or
   (b) without just cause shown by him, refuses or neglects to-
       (i) furnish, produce or make available any information, documents or things;
       (ii) reply to or answer truly and fully, any questions put to him ... 
       As and when required in terms of this Act ... shall be guilty of an offence ...
3. **SARS will, under no circumstances, issue a Tax Clearance Certificate unless this form is completed in full.**
4. Your Tax Clearance Certificate will only be issued on presentation of your South African Identity Document or Passport (Foreigners only) as applicable.
NAME OF BIDDER: ................................................................. BID NO.: E1211
CLOSING TIME 11:00 CLOSING DATE: 6-04-2012

OFFER TO BE VALID FOR ...... 60 ...... DAYS FROM THE CLOSING DATE OF BID.

DESCRIPTION: Appointment of a service provider for outsourcing of the finalization of the Theme report: Governance, Administration & Impacts and Instruments (THEME 1) in terms of the combined two Themes identified for the National Environmental Impact Assessment and Management strategy for a period of April 2012 to November 2012

BID PRICE IN RSA CURRENCY NO
"*(ALL APPLICABLE TAXES INCLUDED)

1. The accompanying information must be used for the formulation of proposals.

2. Bidders are required to indicate a ceiling price based on the total estimated time for completion of all phases and including all expenses inclusive of all applicable taxes for the project.

3. PERSONS WHO WILL BE INVOLVED IN THE PROJECT AND RATES APPLICABLE (CERTIFIED INVOICES MUST BE RENDERED IN TERMS HEREOF)

4. PERSON AND POSITION

HOURLY RATE DAILY RATE

5. PHASES ACCORDING TO WHICH THE PROJECT WILL BE COMPLETED, COST PER PHASE AND MAN-DAYS TO BE SPENT

5.1 Travel expenses (specify, for example rate/km and total km, class of air travel, etc). Only actual costs are recoverable. Proof of the expenses incurred must accompany certified invoices.

DESCRIPTION OF EXPENSE TO BE INCURRED

RATE QUANTITY AMOUNT

TOTAL: R

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- 2 -

Name of Bidder: .................................................................

**"all applicable taxes" includes value-added tax, pay as you earn, income tax, unemployment insurance contributions and skills development levies.

5.2 Other expenses, for example accommodation (specify, eg. Three star hotel, bed and breakfast, telephone cost, reproduction cost, etc.). On basis of these particulars, certified invoices will be checked for correctness. Proof of the expenses must accompany invoices.

<table>
<thead>
<tr>
<th>DESCRIPTION OF EXPENSE TO BE INCURRED</th>
<th>RATE</th>
<th>QUANTITY</th>
<th>AMOUNT</th>
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<td>TOTAL: R. ........................................</td>
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</table>

6. Period required for commencement with project after acceptance of bid

7. Estimated man-days for completion of project

8. Are the rates quoted firm for the full period of contract?

9. If not firm for the full period, provide details of the basis on which adjustments will be applied for, for example consumer price index.

* [DELETE IF NOT APPLICABLE]

Any enquiries regarding bidding procedures may be directed to the –

Department of Environmental Affairs
Ms IJ Lensley/Mr. J Nkitseng

Tel: 012 310 3558/3064

Or for technical information –
Ms. M. Oosthuizen

Tel: 012 396 1862 or 082 499 2313
ANNEXURE B

DECLARATION OF INTEREST

1. Any legal person, including persons employed by the state, or persons having a kinship with persons employed by the state, including a blood relationship, may make an offer or offers in terms of this invitation to bid (includes an advertised competitive bid, a limited bid, a proposal or written price quotation). In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons employed by the state, or to persons connected with or related to them, it is required that the bidder or his/her authorised representative declare his/her position in relation to the evaluating/adjudicating authority where-

- the bidder is employed by the state; and/or

- the legal person on whose behalf the bidding document is signed, has a relationship with persons/a person who are/is involved in the evaluation and or adjudication of the bid(s), or where it is known that such a relationship exists between the person or persons for or on whose behalf the declarant acts and persons who are involved with the evaluation and or adjudication of the bid.

2. In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.

2.1 Full Name of bidder or his or her representative: .................................................................

2.2 Identity Number: ....................................................................................................................

2.3 Position occupied in the Company (director, trustee, shareholder, member): ........................................

2.4 Registration number of company, enterprise, close corporation, partnership agreement or trust: ......................

2.5 Tax Reference Number: ............................................................................................................

2.6 VAT Registration Number: ........................................................................................................

2.6.1 The names of all directors / trustees / shareholders / members, their individual identity numbers, tax reference numbers and, if applicable, employee / PERSAL numbers must be indicated in paragraph 3 below.

"State" means:
(a) any national or provincial department, national or provincial public entity or constitutional institution within the meaning of the Public Finance Management Act, 1999 (Act No. 1 of 1999);
(b) any municipality or municipal entity;
(c) provincial legislature;
(d) national Assembly or the national Council of provinces; or
(e) Parliament.

"Shareholder" means a person who owns shares in the company and is actively involved in the management of the enterprise or business and exercises control over the enterprise.
2.7 Are you or any person connected with the bidder presently employed by the state?  
   YES / NO

2.7.1 If so, furnish the following particulars:

<table>
<thead>
<tr>
<th>Name of person / director / trustee / shareholder / member:</th>
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<tr>
<td>Name of state institution at which you or the person connected to the bidder is employed:</td>
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<td>Position occupied in the state institution:</td>
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<td>Any other particulars:</td>
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2.7.2 If you are presently employed by the state, did you obtain the appropriate authority to undertake remunerative work outside employment in the public sector?  
   YES / NO

2.7.2.1 If yes, did you attach proof of such authority to the bid document?  
   YES / NO

(Note: Failure to submit proof of such authority, where applicable, may result in the disqualification of the bid.)

2.7.2.2 If no, furnish reasons for non-submission of such proof:

|----------------------------------------------------------|----------------------------------------------------------|

2.8 Did you or your spouse, or any of the company's directors / trustees / shareholders / members or their spouses conduct business with the state in the previous twelve months?  
   YES / NO

2.8.1 If so, furnish particulars:

|----------------------------------------------------------|----------------------------------------------------------|

2.9 Do you, or any person connected with the bidder, have any relationship (family, friend, other) with a person employed by the state and who may be involved with the evaluation and or adjudication of this bid?  
   YES / NO

2.9.1 If so, furnish particulars:

|----------------------------------------------------------|----------------------------------------------------------|
2.10 Are you, or any person connected with the bidder, aware of any relationship (family, friend, other) between any other bidder and any person employed by the state who may be involved with the evaluation and or adjudication of this bid? YES/NO

2.10.1 If so, furnish particulars.

2.11 Do you or any of the directors / trustees / shareholders / members of the company have any interest in any other related companies whether or not they are bidding for this contract? YES/NO

2.11.1 If so, furnish particulars:

3 Full details of directors / trustees / members / shareholders.

<table>
<thead>
<tr>
<th>Full Name</th>
<th>Identity Number</th>
<th>Personal Income Tax Reference Number</th>
<th>State Employee Number / Personal Number</th>
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DECLARATION

I, THE UNDERSIGNED (NAME).................................................................

CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 2 and 3 ABOVE IS CORRECT.
I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME SHOULD THIS
DECLARATION PROVE TO BE FALSE.

Signature.................................................... Date

Position.................................................... Name of bidder

November 2011
THE NATIONAL INDUSTRIAL PARTICIPATION PROGRAMME

INTRODUCTION

The National Industrial Participation (NIP) Programme, which is applicable to all government procurement contracts that have an imported content, became effective on the 1 September 1996. The NIP policy and guidelines were fully endorsed by Cabinet on 30 April 1997. In terms of the Cabinet decision, all state and parastatal purchases/lease contracts (for goods, works and services) entered into after this date, are subject to the NIP requirements. NIP is obligatory and therefore must be complied with. The Industrial Participation Secretariat (IPS) of the Department of Trade and Industry (DTI) is charged with the responsibility of administering the programme.

1 PILLARS OF THE PROGRAMME

1.1 The NIP obligation is benchmarked on the imported content of the contract. Any contract having an imported content equal to or exceeding US$ 10 million or other currency equivalent to US$ 10 million will have a NIP obligation. This threshold of US$ 10 million can be reached as follows:

(a) Any single contract with imported content exceeding US$10 million.

(b) Multiple contracts for the same goods, works or services each with imported content exceeding US$3 million awarded to one seller over a 2 year period which in total exceeds US$10 million.

(c) A contract with a renewable option clause, where should the option be exercised the total value of the imported content will exceed US$10 million.

(d) Multiple suppliers of the same goods, works or services under the same contract, where the value of the imported content of each allocation is equal to or exceeds US$ 3 million worth of goods, works or services to the same government institution, which in total over a two (2) year period exceeds US$10 million.

1.2 The NIP obligation applicable to suppliers in respect of sub-paragraphs 1.1 (a) to 1.1 (c) above will amount to 30% of the imported content whilst suppliers in respect of paragraph 1.1 (d) shall incur 30% of the total NIP obligation on a pro-rata basis.

1.3 To satisfy the NIP obligation, the DTI would negotiate and conclude agreements such as investments, joint ventures, sub-contracting, licensee production, export promotion, sourcing arrangements and research and development (R&D) with partners or suppliers.
1.4 A period of seven years has been identified as the time frame within which to discharge the obligation.

2 REQUIREMENTS OF THE DEPARTMENT OF TRADE AND INDUSTRY

2.1 In order to ensure effective implementation of the programme, successful bidders (contractors) are required to, immediately after the award of a contract that is in excess of R10 million (ten million Rand), submit details of such a contract to the DTI for reporting purposes.

2.2 The purpose for reporting details of contracts in excess of the amount of R10 million (ten million Rand) is to cater for multiple contracts for the same goods, works or services; renewable contracts and multiple suppliers for the same goods, works or services under the same contract as provided for in paragraphs 1.1.(b) to 1.1. (d) above.

3 BID SUBMISSION AND CONTRACT REPORTING REQUIREMENTS OF BIDDERS AND SUCCESSFUL BIDDERS (CONTRACTORS)

3.1 Bidders are required to sign and submit this Standard Bidding Document (SBD 5) together with the bid on the closing date and time.

3.2 In order to accommodate multiple contracts for the same goods, works or services; renewable contracts and multiple suppliers for the same goods, works or services under the same contract as indicated in sub-paragraphs 1.1 (b) to 1.1 (d) above and to enable the DTI in determining the NIP obligation, successful bidders (contractors) are required, immediately after being officially notified about any successful bid with a value in excess of R10 million (ten million Rand), to contact and furnish the DTI with the following information:

- Bid / contract number.
- Description of the goods, works or services.
- Date on which the contract was accepted.
- Name, address and contact details of the government institution.
- Value of the contract.
- Imported content of the contract, if possible.

3.3 The information required in paragraph 3.2 above must be sent to the Department of Trade and Industry, Private Bag X 84, Pretoria, 0001 for the attention of Mr Elias Malapane within five (5) working days after award of the contract. Mr Malapane may be contacted on telephone (012) 394 1401, facsimile (012) 394 2401 or e-mail at Elias@thedti.gov.za for further details about the programme.

4 PROCESS TO SATISFY THE NIP OBLIGATION

4.1 Once the successful bidder (contractor) has made contact with and furnished the DTI with the information required, the following steps will be followed:

a. the contractor and the DTI will determine the NIP obligation;

b. the contractor and the DTI will sign the NIP obligation agreement;
c. the contractor will submit a performance guarantee to the DTI;
d. the contractor will submit a business concept for consideration and approval by the DTI;
e. upon approval of the business concept by the DTI, the contractor will submit detailed business plans outlining the business concepts;
f. the contractor will implement the business plans; and
g. the contractor will submit bi-annual progress reports on approved plans to the DTI.

4.2 The NIP obligation agreement is between the DTI and the successful bidder (contractor) and, therefore, does not involve the purchasing institution.

<table>
<thead>
<tr>
<th>Bid number</th>
<th>Closing date</th>
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<tr>
<th>Name of bidder</th>
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<th>Postal address</th>
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<table>
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<th>Signature</th>
<th>Name (in print)</th>
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<tr>
<th>Date</th>
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</table>
PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2011

This preference form must form part of all bids invited. It contains general information and serves as a claim form for preference points for Broad-Based Black Economic Empowerment (B-BBEE) Status Level of Contribution.

NB: BEFORE COMPLETING THIS FORM, BIDDERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF B-BBEE, AS PRESCRIBED IN THE PREFERENTIAL PROCUREMENT REGULATIONS, 2011.

1. GENERAL CONDITIONS

1.1 The following preference point systems are applicable to all bids:

- the 80/20 system for requirements with a Rand value of up to R1 000 000 (all applicable taxes included); and
- the 90/10 system for requirements with a Rand value above R1 000 000 (all applicable taxes included).

1.2 The value of this bid is estimated to exceed/not exceed R1 000 000 (all applicable taxes included) and therefore the ......................... system shall be applicable.

1.3 Preference points for this bid shall be awarded for:

(a) Price; and
(b) B-BBEE Status Level of Contribution.

1.3.1 The maximum points for this bid are allocated as follows:

<table>
<thead>
<tr>
<th>POINTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.3.1.1 PRICE 90</td>
</tr>
<tr>
<td>1.3.1.2 B-BBEE STATUS LEVEL OF CONTRIBUTION 10</td>
</tr>
</tbody>
</table>

Total points for Price and B-BBEE must not exceed 100

1.4 Failure on the part of a bidder to fill in and/or to sign this form and submit a B-BBEE Verification Certificate from a Verification Agency accredited by the South African Accreditation System (SANAS) or a Registered Auditor approved by the Independent Regulatory Board of Auditors (IRBA) or an Accounting Officer as contemplated in the Close Corporation Act (CCA) together with the bid, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.

1.5 The purchaser reserves the right to require of a bidder, either before a bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the purchaser.
2. DEFINITIONS

2.1 "all applicable taxes" includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies;

2.2 "B-BBEE" means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;

2.3 "B-BBEE status level of contributor" means the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;

2.4 "bid" means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of services, works or goods, through price quotations, advertised competitive bidding processes or proposals;

2.5 "Broad-Based Black Economic Empowerment Act" means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);

2.6 "comparative price" means the price after the factors of a non-firm price and all unconditional discounts that can be utilized have been taken into consideration;

2.7 "consortium or joint venture" means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract;

2.8 "contract" means the agreement that results from the acceptance of a bid by an organ of state;

2.9 "EME" means any enterprise with an annual total revenue of R5 million or less.

2.10 "Firm price" means the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, levy, or tax, which, in terms of the law or regulation, is binding on the contractor and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract;

2.11 "functionality" means the measurement according to predetermined norms, as set out in the bid documents, of a service or commodity that is designed to be practical and useful, working or operating, taking into account, among other factors, the quality, reliability, viability and durability of a service and the technical capacity and ability of a bidder;

2.12 "non-firm prices" means all prices other than "firm" prices;

2.13 "person" includes a juristic person;

2.14 "rand value" means the total estimated value of a contract in South African currency, calculated at the time of bid invitations, and includes all applicable taxes and excise duties;

2.15 "sub-contract" means the primary contractor's assigning, leasing, making out work to, or employing, another person to support such primary contractor in the execution of part of a project in terms of the contract;

2.16 "total revenue" bears the same meaning assigned to this expression in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act and promulgated in the Government Gazette on 9 February 2007;
2.17 "trust" means the arrangement through which the property of one person is made over or bequeathed to a trustee to administer such property for the benefit of another person: and

2.18 "trustee" means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person.

3. **ADJUDICATION USING A POINT SYSTEM**

3.1 The bidder obtaining the highest number of total points will be awarded the contract.

3.2 Preference points shall be calculated after prices have been brought to a comparative basis taking into account all factors of non-firm prices and all unconditional discounts.

3.3 Points scored must be rounded off to the nearest 2 decimal places.

3.4 In the event that two or more bids have scored equal total points, the successful bid must be the one scoring the highest number of preference points for B-BBEE.

3.5 However, when functionality is part of the evaluation process and two or more bids have scored equal points including equal preference points for B-BBEE, the successful bid must be the one scoring the highest score for functionality.

3.6 Should two or more bids be equal in all respects, the award shall be decided by the drawing of lots.

4. **POINTS AWARDED FOR PRICE**

4.1 **THE 80/20 OR 90/10 PREFERENCE POINT SYSTEMS**

A maximum of 80 or 90 points is allocated for price on the following basis:

\[
P_s = 80 \left(1 - \frac{P_t - P_{\text{min}}}{P_{\text{min}}}\right) \quad \text{or} \quad P_s = 90 \left(1 - \frac{P_t - P_{\text{min}}}{P_{\text{min}}}\right)
\]

Where

- \(P_s\) = Points scored for comparative price of bid under consideration
- \(P_t\) = Comparative price of bid under consideration
- \(P_{\text{min}}\) = Comparative price of lowest acceptable bid

5. **Points awarded for B-BBEE Status Level of Contribution**

5.1 In terms of Regulation 5 (2) and 6 (2) of the Preferential Procurement Regulations, preference points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below.
<table>
<thead>
<tr>
<th>B-BBEE Status Level of Contributor</th>
<th>Number of points (90/10 system)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>10</td>
</tr>
<tr>
<td>2</td>
<td>9</td>
</tr>
<tr>
<td>3</td>
<td>8</td>
</tr>
<tr>
<td>4</td>
<td>5</td>
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<td>4</td>
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<tr>
<td>6</td>
<td>3</td>
</tr>
<tr>
<td>7</td>
<td>2</td>
</tr>
<tr>
<td>8</td>
<td>1</td>
</tr>
<tr>
<td>Non-compliant contributor</td>
<td>0</td>
</tr>
</tbody>
</table>

5.2 Bidders who qualify as EMEs in terms of the B-BBEE Act must submit a certificate issued by an Accounting Officer as contemplated in the CCA or a Verification Agency accredited by SANAS or a Registered Auditor. Registered auditors do not need to meet the prerequisite for IRBA’s approval for the purpose of conducting verification and issuing EMEs with B-BBEE Status Level Certificates.

5.3 Bidders other than EMEs must submit their original and valid B-BBEE status level verification certificate or a certified copy thereof, substantiating their B-BBEE rating issued by a Registered Auditor approved by IRBA or a Verification Agency accredited by SANAS.

5.4 A trust, consortium or joint venture, will qualify for points for their B-BBEE status level as a legal entity, provided that the entity submits their B-BBEE status level certificate.

5.5 A trust, consortium or joint venture will qualify for points for their B-BBEE status level as an unincorporated entity, provided that the entity submits their consolidated B-BBEE scorecard as if they were a group structure and that such a consolidated B-BBEE scorecard is prepared for every separate bid.

5.6 Tertiary institutions and public entities will be required to submit their B-BBEE status level certificates in terms of the specialized scorecard contained in the B-BBEE Codes of Good Practice.

5.7 A person will not be awarded points for B-BBEE status level if it is indicated in the bid documents that such a bidder intends sub-contracting more than 25% of the value of the contract to any other enterprise that does not qualify for at least the points that such a bidder qualifies for, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.

5.8 A person awarded a contract may not sub-contract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level than the person concerned, unless the contract is sub-contracted to an EME that has the capability and ability to execute the sub-contract.
6. **BID DECLARATION**

6.1 Bidders who claim points in respect of B-BBEE Status Level of Contribution must complete the following:

7. **B-BBEE STATUS LEVEL OF CONTRIBUTION CLAIMED IN TERMS OF PARAGRAPHS 1.3.1.2 AND 5.1**

7.1 B-BBEE Status Level of Contribution: = (maximum of 10 or 20 points)

(Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 5.1 and must be substantiated by means of a B-BBEE certificate issued by a Verification Agency accredited by SANAS or a Registered Auditor approved by IRBA or an Accounting Officer as contemplated in the CCA).

8. **SUB-CONTRACTING**

8.1 Will any portion of the contract be sub-contracted? **YES / NO** (delete which is not applicable)

8.1.1 If yes, indicate:

(i) what percentage of the contract will be subcontracted? .....................................%

(ii) the name of the sub-contractor? ..............................................................

(iii) the B-BBEE status level of the sub-contractor? ........................................

(iv) whether the sub-contractor is an EME? **YES / NO** (delete which is not applicable)

9. **DECLARATION WITH REGARD TO COMPANY/FIRM**

9.1 Name of company/firm .................................................................

9.2 VAT registration number ..............................................................

9.3 Company registration number ........................................................

9.4 **TYPE OF COMPANY/FIRM**

- Partnership/Joint Venture / Consortium
- One person business/sole propriety
- Close corporation
- Company (Pty) Limited

[TICK APPLICABLE BOX]

9.5 **DESCRIBE PRINCIPAL BUSINESS ACTIVITIES**

........................................................................................................

9.6 **COMPANY CLASSIFICATION**

- Manufacturer
- Supplier
- Professional service provider
Other service providers, e.g. transporter, etc.

9.7 Total number of years the company/firm has been in business?

9.8 I/we, the undersigned, who is/are duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the B-BBEE status level of contribution indicated in paragraph 7 of the foregoing certificate, qualifies the company/firm for the preference(s) shown and I/we acknowledge that:

(i) The information furnished is true and correct;
(ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form.
(iii) In the event of a contract being awarded as a result of points claimed as shown in paragraph 7, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;
(iv) If the B-BBEE status level of contribution has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have—

(a) disqualify the person from the bidding process;
(b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
(c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
(d) restrict the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, from obtaining business from any organ of state for a period not exceeding 10 years, after the audi alteram partem (hear the other side) rule has been applied; and
(e) forward the matter for criminal prosecution

WITNESSES:

1. ..................................................  

SIGNATURE(S) OF BIDDER(S).

2. ..................................................  

DATE: ..........................................
ADDRESS: .....................................
CONTRACT FORM - RENDERING OF SERVICES

THIS FORM MUST BE FILLED IN DUPLICATE BY BOTH THE SERVICE PROVIDER (PART 1) AND THE PURCHASER (PART 2). BOTH FORMS MUST BE SIGNED IN THE ORIGINAL SO THAT THE SERVICE PROVIDER AND THE PURCHASER WOULD BE IN POSSESSION OF ORIGINALLY SIGNED CONTRACTS FOR THEIR RESPECTIVE RECORDS.

PART 1 (TO BE FILLED IN BY THE SERVICE PROVIDER)

1. I hereby undertake to render services described in the attached bidding documents to (name of the institution) in accordance with the requirements and task directives/proposals specifications stipulated in Bid Number at the price(s) quoted. My offer(s) remain binding upon me and open for acceptance by the Purchaser during the validity period indicated and calculated from the closing date of the bid.

2. The following documents shall be deemed to form and be read and construed as part of this agreement:

(i) Bidding documents, viz:
- Invitation to bid;
- Tax clearance certificate;
- Pricing schedule(s);
- Filled in task directive/proposal;
- Preference claims for Broad Based Black Economic Empowerment Status Level of Contribution in terms of the Preferential Procurement Regulations 2011:
- Declaration of interest;
- Declaration of bidder’s past SCM practices;
- Certificate of Independent Bid Determination;
- Special Conditions of Contract;

(ii) General Conditions of Contract; and

(iii) Other (specify)

3. I confirm that I have satisfied myself as to the correctness and validity of my bid; that the price(s) and rate(s) quoted cover all the services specified in the bidding documents; that the price(s) and rate(s) cover all my obligations and I accept that any mistakes regarding price(s) and rate(s) and calculations will be at my own risk.

4. I accept full responsibility for the proper execution and fulfillment of all obligations and conditions devolving on me under this agreement as the principal liable for the due fulfillment of this contract.

5. I declare that I have no participation in any collusive practices with any bidder or any other person regarding this or any other bid.

6. I confirm that I am duly authorised to sign this contract.

NAME (PRINT) .............................................
CAPACITY .............................................
SIGNATURE .............................................
NAME OF FIRM .............................................
DATE .............................................

WITNESSES

1 .............................................
2 .............................................
DATE: .............................................
CONTRACT FORM - RENDERNING OF SERVICES

PART 2 (TO BE FILLED IN BY THE PURCHASER)

1. I, .................................................................................... in my capacity as ........................................................................................................, accept your bid under reference number ................................... dated ........................................ for the rendering of services indicated hereunder and/or further specified in the annexure(s).

2. An official order indicating service delivery instructions is forthcoming.

3. I undertake to make payment for the services rendered in accordance with the terms and conditions of the contract within 30 (thirty) days after receipt of an invoice.

<table>
<thead>
<tr>
<th>DESCRIPTION OF SERVICE</th>
<th>PRICE (ALL APPLICABLE TAXES INCLUDED)</th>
<th>COMPLETION DATE</th>
<th>B-BBEE STATUS LEVEL OF CONTRIBUTION</th>
<th>MINIMUM THRESHOLD FOR LOCAL PRODUCTION AND CONTENT (if applicable)</th>
</tr>
</thead>
<tbody>
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<td></td>
</tr>
</tbody>
</table>

4. I confirm that I am duly authorised to sign this contract.

SIGNED AT .......................................................... ON ..................................................

NAME (PRINT) ..........................................................

SIGNATURE ..........................................................

OFFICIAL STAMP

WITNESSES

1 ..........................................................

2 ..........................................................

DATE: ..........................................................
DECLARATION OF BIDDER’S PAST SUPPLY CHAIN MANAGEMENT PRACTICES

1 This Standard Bidding Document must form part of all bids invited.

2 It serves as a declaration to be used by institutions in ensuring that when goods and services are being procured, all reasonable steps are taken to combat the abuse of the supply chain management system.

3 The bid of any bidder may be disregarded if that bidder, or any of its directors have-
   a. abused the institution’s supply chain management system;
   b. committed fraud or any other improper conduct in relation to such system; or
   c. failed to perform on any previous contract.

4 In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.

<table>
<thead>
<tr>
<th>Item</th>
<th>Question</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.1</td>
<td>Is the bidder or any of its directors listed on the National Treasury’s Database of Restricted Suppliers as companies or persons prohibited from doing business with the public sector? (Companies or persons who are listed on this Database were informed in writing of this restriction by the Accounting Officer/Authority of the institution that imposed the restriction after the <em>audi alteram partem</em> rule was applied).</td>
<td>Yes</td>
<td>No</td>
</tr>
</tbody>
</table>

   The Database of Restricted Suppliers now resides on the National Treasury’s website [www.treasury.gov.za](http://www.treasury.gov.za) and can be accessed by clicking on its link at the bottom of the home page.

   4.1.1 If so, furnish particulars:

| 4.2  | Is the bidder or any of its directors listed on the Register for Tender Defaulters in terms of section 29 of the Prevention and Combating of Corrupt Activities Act (No 12 of 2004)? The Register for Tender Defaulters can be accessed on the National Treasury’s website [www.treasury.gov.za](http://www.treasury.gov.za) by clicking on its link at the bottom of the home page. | Yes | No |

   4.2.1 If so, furnish particulars:

| 4.3  | Was the bidder or any of its directors convicted by a court of law (including a court outside of the Republic of South Africa) for fraud or corruption during the past five years? | Yes | No |

   4.3.1 If so, furnish particulars:
<table>
<thead>
<tr>
<th>4.4</th>
<th>Was any contract between the bidder and any organ of state terminated during the past five years on account of failure to perform on or comply with the contract?</th>
<th>Yes □ No □</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.4.1</td>
<td>If so, furnish particulars:</td>
<td></td>
</tr>
</tbody>
</table>

**CERTIFICATION**

I, THE UNDERSIGNED (FULL NAME) ............................................................. CERTIFY THAT THE INFORMATION FURNISHED ON THIS DECLARATION FORM IS TRUE AND CORRECT.

I ACCEPT THAT, IN ADDITION TO CANCELLATION OF A CONTRACT, ACTION MAY BE TAKEN AGAINST ME SHOULD THIS DECLARATION PROVE TO BE FALSE.

<table>
<thead>
<tr>
<th>Signature</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Position</th>
<th>Name of Bidder</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Js363W</td>
</tr>
</tbody>
</table>
1 This Standard Bidding Document (SBD) must form part of all bids\(^1\) invited.

2 Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging).\(^2\) Collusive bidding is a *pe se* prohibition meaning that it cannot be justified under any grounds.

3 Treasury Regulation 16A9 prescribes that accounting officers and accounting authorities must take all reasonable steps to prevent abuse of the supply chain management system and authorizes accounting officers and accounting authorities to:

   a. disregard the bid of any bidder if that bidder, or any of its directors have abused the institution’s supply chain management system and/or committed fraud or any other improper conduct in relation to such system.

   b. cancel a contract awarded to a supplier of goods and services if the supplier committed any corrupt or fraudulent act during the bidding process or the execution of that contract.

4 This SBD serves as a certificate of declaration that would be used by institutions to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid-rigging.

5 In order to give effect to the above, the attached Certificate of Bid Determination (SBD 9) must be completed and submitted with the bid:

\(^1\) Includes price quotations, advertised competitive bids, limited bids and proposals.

\(^2\) Bid rigging (or collusive bidding) occurs when businesses, that would otherwise be expected to compete, secretly conspire to raise prices or lower the quality of goods and/or services for purchasers who wish to acquire goods and/or services through a bidding process. Bid rigging is, therefore, an agreement between competitors not to compete.
CERTIFICATE OF INDEPENDENT BID DETERMINATION

I, the undersigned, in submitting the accompanying bid:

(Bid Number and Description)

in response to the invitation for the bid made by:

(Name of Institution)

do hereby make the following statements that I certify to be true and complete in every respect:

I certify, on behalf of: _______________________________ that:

(Name of Bidder)

1. I have read and I understand the contents of this Certificate;
2. I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder;
4. Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign the bid, on behalf of the bidder;
5. For the purposes of this Certificate and the accompanying bid, I understand that the word "competitor" shall include any individual or organization, other than the bidder, whether or not affiliated with the bidder, who:

(a) has been requested to submit a bid in response to this bid invitation;
(b) could potentially submit a bid in response to this bid invitation, based on their qualifications, abilities or experience; and
(c) provides the same goods and services as the bidder and/or is in the same line of business as the bidder
6. The bidder has arrived at the accompanying bid independently from, and without
consultation, communication, agreement or arrangement with any competitor. However
communication between partners in a joint venture or consortium\(^3\) will not be construed
as collusive bidding.

7. In particular, without limiting the generality of paragraphs 6 above, there has been no
consultation, communication, agreement or arrangement with any competitor regarding:

(a) prices;

(b) geographical area where product or service will be rendered (market
allocation)

(c) methods, factors or formulas used to calculate prices;

(d) the intention or decision to submit or not to submit, a bid;

(e) the submission of a bid which does not meet the specifications and
conditions of the bid; or

(f) bidding with the intention not to win the bid.

8. In addition, there have been no consultations, communications, agreements or
arrangements with any competitor regarding the quality, quantity, specifications and
conditions or delivery particulars of the products or services to which this bid invitation
relates.

9. The terms of the accompanying bid have not been, and will not be, disclosed by the
bidder, directly or indirectly, to any competitor, prior to the date and time of the official
bid opening or of the awarding of the contract.

\(^3\) Joint venture or Consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill
and knowledge in an activity for the execution of a contract.
10. I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

Signature

Date

Position

Name of Bidder

Js914w 2
The Director General

I/we hereby request and authorise you to pay any amounts, which may accrue to me/us to the credit of my/our account with the mentioned bank.

I/we understand that the credit transfers hereby authorised will be processed by computer through a system known as "ACB - Electronic Fund Transfer Service", and I/we understand that no additional advice of payment will be provided by my/our bank, but that the details of each payment will be printed on my/our bank statement or any accompanying voucher. (This does not apply where it is not customary for banks to furnish bank statements).

I/we understand that the Department will supply a payment advice in the normal way, and that it will indicate the date on which the funds will be made available on my/our account.

This authority may be cancelled by me/us by giving thirty days notice by prepaid registered post.

Please ensure information is validate as per required bank screens.

I/we understand that bank details provided should be exactly as per record held by the banks.

I/we understand that the Department will not held liable for any delayed payments as a result of incorrect information supplied.

---

Company / Personal Details

Registered Name
Trading Name
Tax Number
VAT Number
Title:
Initials:
Full Names
Surname
Personal Number

Address Detail

Address
Physical
Postal

(Compulsory if Supplier)

Postal Code

New Detail

☐ New Supplier information  ☐ Update Supplier information

Supplier Type:

- Individual
- Department
- Company
- Trust
- CC
- Other (Specify)
- Partnership

Department Number
### Supplier Account Details (To be Verified by the bank)

(Please note that this account MUST be in the name of the supplier. No 3rd party payments allowed).

<table>
<thead>
<tr>
<th>Account Name</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Account Number</td>
<td></td>
</tr>
<tr>
<td>Branch Name</td>
<td></td>
</tr>
<tr>
<td>Branch Number</td>
<td></td>
</tr>
</tbody>
</table>

#### Bank screen info

- ABSA-CIF screen
- FNB-Hogans system on the CIS4/CUPR
- STD Bank-Look-up-screen
- Nedbank- Banking Platform under the Client Details Tab

#### Account Type

- [ ] Cheque Account
- [ ] Savings Account
- [ ] Transmission Account
- [ ] Bond Account
- [ ] Other (Please Specify)

<table>
<thead>
<tr>
<th>ID Number</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Passport Number</td>
<td></td>
</tr>
</tbody>
</table>

*Company Registration Number*  

*Please include CC/CK where applicable*

#### Supplier Contact Details

<table>
<thead>
<tr>
<th>Business</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Area Code</td>
<td></td>
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<tr>
<td>Telephone Number</td>
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<tr>
<td>Extension</td>
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<tr>
<th>Home</th>
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<tbody>
<tr>
<td>Area Code</td>
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<tr>
<td>Telephone Number</td>
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<td>Extension</td>
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<tr>
<th>Fax</th>
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<tr>
<td>Area Code</td>
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<td>Telephone Number</td>
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<th>Cell</th>
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<tr>
<td>Area Code</td>
<td></td>
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<tr>
<td>Fax Number</td>
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</tr>
</tbody>
</table>

| Email Address |  |

| Contact Person: |  |

### NB: All relevant fields must be completed
DEA as an organ of state subscribes to and propagates both the notion of Broad Based Black Economic Empowerment (BBBEE) Act, No. 53 of 2003 and the Preferential Procurement Policy Framework Act, No. 5 of 2000 and the Preferential Procurement Regulations 2011.


PART ONE

1. REQUEST FOR PROPOSAL (RFP)

1.1. The objective of this RFP is to appoint suitable independent service provider/s that can support Department of Environmental Affairs ("DEA") with the:

1.1.1. finalisation of the first draft Theme Report prepared by DEA as part of the development of the National Environmental Impact Assessment and Management Strategy (EIAMS).

1.1.2. interrogation of specific proposals, recommendations and concerns which are critical to the development of the EIAMS (set out in section 3 of the first draft Theme report and Annexure B).

1.2. Preference may be given to service provider/s that is/are not already performing consultancy work within DEA.

1.3. Companies/service providers who were engaged in the drafting of the Terms of Reference will not be considered to undertake the project.
2. BACKGROUND, PURPOSE, CONTEXT, MANDATE AND PROJECT STRUCTURE

2.1 BACKGROUND

The Framework for sustainable development was compiled in order to articulate South Africa's national vision for sustainable development and indicate strategic interventions to re-orientate South Africa's development path in a more sustainable direction.

Integrated Environmental Management (IEM) enforced by Chapter 5 of National Environmental Management Act, 1998 (Act No. 107 of 1998) (NEMA) is one of the policy directives towards giving effect to Section 24 of the Constitution and the sustainable development imperatives of the Rio Earth Summit in 1992. The primary purpose of Chapter 5 of NEMA is to promote the application of appropriate environmental management tools in order to ensure the integrated environmental management of activities.

Regulations regulating Environmental Impact Assessments were promulgated in 1997 in terms of the Environment Conservation Act, 1989. These Regulations were implemented by both the provincial and national spheres of government. The post-1994 evolution of law in SA and the problems with the implementation of the EIA Regulations necessitated the development of new EIA Regulations. NEMA (as amended) made provision for the development of the new EIA Regulations to replace the 1997 EIA Regulations, which came into effect in July 2006.

After the implementation of the 2006 NEMA Regulations the time was right to evaluate the efficiency and effectiveness of EIA in South Africa. DEAT therefore launched an extensive investigation and reviewed the efficiency and effectiveness (REE) of EIA practice as implemented over the period of 10 years. The REE culminated in the "Ten Years of EIA in South Africa Conference" and the findings of the issues were reported. It was agreed that the current system giving effect to the objectives of IEM as indicated in Section 23 of NEMA is inadequate. At the Conference it was agreed that an Environmental Impact Assessment and Management Strategy (EIAMS) should be formulated for SA.
A desired future was sketched and it was agreed that the strategy should be developed and implemented to map the road in achieving such new system.

Since 1 May 2009, the EIA system also had to be implemented and administrated in adherence to amendments affected to NEMA through the National Environmental Management Amendment Act, 2008 (Act No. 62 of 2008). The process of amending the 2006 EIA Regulations was completed with replacement Regulations which were promulgated on 2 August 2010.

Although the White Paper and the objectives of Chapter 5 of NEMA envisaged tools for all elements defined in terms of NEMA, the system which was adopted and implemented only addressed command and control (through EIA) and was in its application very much limited to "projects" as opposed to the wide range included in the definition of 'activities' in NEMA. "Activities", when used in Chapter 5, means, policies, programmes, processes, plans and projects.

2.2 Purpose

2.2.1 Purpose of the EIAMS

The purpose of the EIAMS process is to facilitate a participatory process in order to compile a strategy that gives effect to the objectives of IEM as contained in Section 23 of NEMA (within the context of the environmental management principles enshrined in section 2 of NEMA).

The strategy must look at the desired future state for the Environmental Impact Assessment and Management and must formulate a path towards achieving the desired future state within the mandate provided by Chapter 5 of NEMA.

2.2.2 Vision for the EIAMS

The PSC meeting on 28 July 2010 accepted the following Vision for the EIAMS:

"To give effect to the framework for integrated environmental management by providing for a diverse range of regulatory and other mechanisms to ensure proactive assessment and management that are implemented through cooperative governance and accountable, transparent and participatory decision-making, to achieve sustainable development".
2.2.3 Strategic goals/objectives of the EIAMS

The strategic direction of the EIAMS is framed principally in terms of giving effect to Chapter 5 of NEMA. In this regard, the desired future includes giving effect to an efficient and effective EIAMS, consisting of voluntary and regulated instruments, in the next 5 years, in terms of which:

- Environmental Impact Assessment and Management takes place within a strategic context of environmentally informed spatial instruments, sector strategies and policies;
- IEM is given effect to through a variety of instruments that would, depending on the nature of activities and/or the receiving environment supplement, compliment or replace EIA;
- the inefficiencies and ineffectiveness of the current Environmental Impact Assessment and Management system have been corrected and the efficiencies and effectiveness optimized;
- regulated EIA is used only when it is the most appropriate tool for giving effect to IEM;
- authorities are sufficiently capacitated with skilled and experienced officials;
- other stakeholders are capacitated and empowered to ensure maximum impact on the effectiveness and efficiency of the strategy;
- regulatory processes have been, as far as possible, integrated, or at least aligned; and
- All stakeholders are equally committed to make it work: Government, EAPs, developers, community etc.

2.3 Context

The EIAMS will be developed within the context of existing legislative and policy framework. The EIAMS will need to respond to the current legislative context but should also influence it.

2.4 Mandate of the EIAMS

The Mandate for the development of the EIAMS stems directly from Chapter 5 of NEMA, with specific reference to the general objectives being to promote the application of appropriate environmental management tools in order to ensure the IEM of activities. (The term 'activities' in this instance is defined in NEMA as meaning policies, programmes, processes, plans and projects).
Section 24 of NEMA currently gives effect to the objectives contained in Section 23 of NEMA only through environmental authorizations. Environmental Authorizations include mainly 3 themes:

- Identification of activities which require authorization.
- Process/procedures for authorization (including instruments).
- Implementation of authorization.

Section 24 however previously failed to allow for usage of instruments such as norms and standards that do not fall within the scope of the definition of “norms and standards” as provided for in section 1 of NEMA.

2.5 EIAMS Project Structures

At the Ten Years of EIA in SA Conference held in 2008, the project structures for the EIAMS were agreed to and include the following:
2.5.1 **Project Management Team (PMT), including the Project Coordinator (PC)**

Madeleine Oosthuizen: Project Coordinator appointed in February 2010

Simon Moganetsi: Director: Environmental Impact Management Systems and Tools

Chantal Engelbrecht: Deputy Director Environmental Impact Management Strategy

Assistant Director: Environmental Impact Management Strategy (To be appointed)

2.5.2 **Project Steering Committee (PSC)**

The PSC was established in February 2010 and confirmed the three Themes for the project and developed concept subthemes.

2.5.3 **Theme Coordinating Committees (TCC)**

The TCCs were established in May 2010 and finalised the following subthemes:

i. **Theme 1: Governance and Administration:**

Subtheme 1: Procedures and Organisational Structures

Subtheme 2: Knowledge and Information

Subtheme 3: Public participation

Subtheme 4: Monitoring and Enforcement

Subtheme 5: Quality assurance and Independence of EAP's

ii. **Theme 2: Capacity, Skills & Transformation**

Subtheme 6: Representative demographics within service providers and civil society

Subtheme 7: Empowerment of marginalized communities

Subtheme 8: Skills of EAPS and Government Officials

iii. **Theme 3: Impacts and Instruments**

Subtheme 9: Existing and new Environmental Impact Management Tools

Subtheme 10: Cooperative Governance: EIM tools

Subtheme 11: Quality Management EIAM Tools

2.5.4 **Subtheme Task Teams (STTT)**
The 11 Subtheme Reports have been finalized. The PSC considered the recommendations in the Subtheme Reports and identified common recommendation trends, possible disagreement and shortcomings in terms of specialist inputs.

2.5.5 Advisory Group (AG)

This is a group of individuals identified in terms of their specific skills and knowledge who advise DEA and the PSC on project outputs and transversal sub-themes. The group of individuals serving on it however does not have any decision-making powers.

3. PURPOSE OF THE THEME REPORTS

3.1. Given the outcomes of the Subtheme Reports the EIAMS Sub-themes were re-organized by the EIAMS PSC to integrate the various Subthemes into two Theme Reports, namely:

i. Governance, Administration, Impacts and Instruments (THEME 1)
The Theme 1 draft Report encompasses the following sub-themes:

- Subtheme 1: Procedures and Organisational Structures
- Subtheme 4: Monitoring and Enforcement
- Subtheme 9: Existing and New EIAM Tools
- Subtheme 10: Cooperative governance: EIAM tools
- Subtheme 11: Quality Management EIAM tools and System

ii. Capacity, Skills, Knowledge, Transformation & Public Participation (THEME 2)

The Theme 2 draft Report encompasses the following sub-themes:

- Subtheme 2: Knowledge and Information
- Subtheme 3: Public Participation
- Subtheme 5: Independence of EAPs
- Subtheme 6: Transformation of Sector
- Subtheme 7: Empowerment of marginalised communities
- Subtheme 8: Skills of EAPs and government officials

In terms of this Theme Report, please note that PSC members, Richard Summers, Paul Hardcastle, Chris Galliers, Angela Andrews and Francois Relief are acting as Theme Coordinators on a rotating basis and will play a major role in the facilitation of any workshops that may be held in terms of the Theme Reports.

3.2. The 11 Subtheme reports were collated into first Draft Theme Reports by the DEA in terms of the EIAMS.

3.3. The purpose of this project is to expand and finalise the first draft Theme reports. The final theme report should interrogate, integrate and collate the findings, recommendations and concerns identified in the previous phase of the project (which culminated in the preparation of the Subtheme Reports and collated draft Theme report) in order to enable the development of the EIAMS within the context of the strategic goals and objectives of the Strategy.
4. SCOPE AND EXTENT OF WORK

4.1. The Service Provider will be appointed to expand and finalize the draft Theme Report and to render specialist inputs in the proposed issues to be interrogated as part of these TORs for the Theme Report. Those submitting proposals will therefore be required to provide a quotation per task/deliverable to be developed for this specific Theme Report. The issues to be interrogated include the issues identified within Section 3 of the collated first Draft Theme 1 report (as attached) as well as the specific questions rendered in terms of Annexure B.

4.2. Whilst it is intended that the specialist input provided by the Service Provider will inform the preparation, formulation and implementation of the EIAMS, it is not expected that the Service Provider will in fact compile the Strategy. The deliverables produced by the Service Provider will however directly inform the next phase of the EIAMS.

4.3. The appointed Service Provider/S will undertake the following scope of work:

4.3.1. Determine whether the first Draft Theme Report capture appropriately the strategic goals/objectives of the EIAMS by *inter alia*:

4.3.1.1. Critically analyzing how (and which) of the objectives of Integrated Environmental Management (set out in section 23 of NEMA) are addressed by the draft Theme Report.

4.3.1.2. Critically analyzing how the recommendations and/or issues raised in the Theme Report will contribute to the achievement of relevant NEMA principles (section 2 of NEMA).

4.3.2. Determine whether the issues considered and recommendations made in the Subtheme Reports and the draft Theme Report appropriately address and/or capture all the issues required to give effect to the strategic goals/objectives of the EIAMS.

4.3.3. Formulate recommendations and/or proposals to give effect to the strategic goals/objectives of the EIAMS.
4.3.4. Consider emerging trends, recent South African Work studies and experiences in other countries/regions in order to evaluate the balance between addressing past problems and anticipating future challenges.

4.3.5. Integrate the results of the analysis, recommendations and/or findings into the final Theme Report.

4.3.6. In addition the Service Provider shall:

4.3.6.1. Interrogate the specific issues/areas of concern set out in section 3 of the Draft Theme Reports and ANNEXURE B, also in terms of their ability to achieve the strategic goals/objectives of the EIAMS.

5. DELIVERABLES

5.1. Depending on the availability of funds and the quotes received, the DEA is seeking the assistance of a specialist or group of specialists with the relevant expertise and experience to undertake the scope of work described in SECTION 4.

5.2. The Service Provider shall:

a. Prepare an Issues Report which address the issues/areas of concern set out in section 3 of the Draft Theme Report according to prioritized issues as identified in Annexure B.

b. Compile a second draft Theme Report informed by the Issues report in 5.2.a. Provide a concise Executive Summary in a simple understandable language.

c. Finalize the draft Theme Report by:

i. Integrating and incorporating the recommendations for addressing the strategic goals/objectives of the EIAMS strategy.

ii. Making any necessary further recommendations for achieving the strategic goals/objectives of the EIAMS strategy.
iii. Detailing final proposals for the implementation of the EIAMS based on the report referred to in 5.2a. as indicated above.

iv. Capturing the inputs referred to in (i) – (iii) above in a concise Executive Summary in a simple understandable language.

5.3 The draft theme report and/or any deliverables must be finalized / compiled within the following parameters:

5.3.1 The pre-determined desired outcome, process flow and participation paradigm as have been determined and approved within the business plan of the project. The desired outcome for the strategy is not to be debated and it should be clear that the strategy does not intend to include a state of the environment report or a strategy for sustainable development.

5.3.2 All recommendations must be framed within the strategic context of the EIAMS and within the mandate of Chapter 5 on NEMA and the specific objective of giving effect to IEM in terms of section 23 of NEMA. The Service Provider shall clearly differentiate between recommendations which fall within and outside the mandate of the EIAMS (in section 2.4 of this RFP). All recommendations should be implementable within the mandate of Chapter 5 of NEMA and if this is not possible (e.g. proposed amendments on legislation) the Service Provider/s should indicate this.

5.3.3 In evaluating the issues set out in Annexure B, the Service Provider/s shall have due regard to other jurisdictions and have regard to best practice in the impact assessment and management field.

5.3.4 Conflicting recommendations in the first draft Theme Report should be pointed out, interrogated and a professional judgement must be made in the final recommendations.

5.3.5 The final Theme Report should focus primarily on recommendations and may not duplicate the status quo or literature overview of the subtheme reports. The Service Provider/s should however portray/ refer to additional specialist research, where appropriate.
5.3.6 The Service Provider/s shall make provision for, and participate in 5 workshops in order to debate recommendations and to coordinate between the two Theme Reports and identify concerns from the Theme Coordinating committees and the PSC.

5.3.7 The Service Provider/s must be objective during all debates and consider the views from all the participants in order to accommodate other viewpoints.

5.3.8 The Service Provider/s must come prepared to all workshops and should study all documentation on the Subtheme Reports. The Service Provider/s must present proposals/concepts at the workshops which will then be brainstormed/interrogated/debated.

5.3.9 The Service Provider/s must finalize the draft Theme Report in a manner that is coordinated and integrated with the recommendations in the other Theme Report in order to identify a clear strategic path for the final EIAMS.

5.3.10 The Service Provider/s must provide a concise comment and response table after receipt and consideration of comments on the deliverables prepared in terms of Section 5 and should indicate how the comments were included or not. The timeframe for the consideration of the comments and finalization of the Theme Report will be included within the target date of the project timeframes in Annexure A.

5.3.11 The Service Provider/s must prepare an Executive Summary of the Theme Report in question. The Executive Summary should be concise and must be written in simple, straightforward language.

5.4 Specific tasks and deliverables have been set in Annexure A.

5.5 The Service Provider/s shall submit a preliminary budget containing the hours and amount to be spent on each objective and deliverable, before work can commence. The proposal must be broken down and budgeted for in line with the required objectives and deliverables and will not be considered if the budget has not been indicated per deliverable. It may result that the scope of the project be narrowed down to include only certain deliverables based on costing per deliverable. PLEASE use the table in Annexure A for a breakdown of cost per deliverable. All travel and
accommodation arrangements as a result of workshops to be attended will be carried by the DEA.

5.6 The prospective Service Provider/s may be invited to give a presentation as and when required.

6 TIMING OF ASSIGNMENT
All work is to be carried out in accordance with the time schedule as agreed with the Programme Manager/ Project Coordinator.

7 PERFORMANCE MEASURES
The performance measures for the delivery of the service will be closely monitored by DEA in terms of the quality of the work conducted, the quality of the reports and delivery in terms of each specific task or deliverable.

8 REPORTING
The Service Provider/s will submit progress reports to the Programme Manager, at a 2 week frequency for the duration of the project.

9 MONITORING PROGRESS ON ASSIGNMENTS
The Programme Manager shall be responsible for the ongoing management of the service level agreement (SLA).

10 CONTINUITY AND PROFILE OF SENIOR STAFF ON THE PROJECT
The Service Provider/s must guarantee the presence of the senior consultant in charge of fieldwork throughout the duration of the contract. If the senior consultant has to leave the project, a period of at least a month is required in which the senior consultant must work in parallel with the successor (senior consultant with similar expertise and equal years of experience) appointed to be able to transfer skills and knowledge.

11 CONDITIONS OF BID
11.1 Bids will be subject to Supply Chain Management Conditions as follows - The Preferential Procurement Policy Framework Act (Act No. 05 of 2000), and its revised Regulation 2011. In accordance with this Act, submissions will be adjudicated in two stages: firstly, on functionality which
must be done in terms of the evaluation criteria indicated in section 17 and the minimum threshold referred to in paragraph 12.3 below. A bid must be disqualified if it fails to meet the minimum threshold for functionality as per the bid invitation and secondly, only the qualifying bids will be evaluated in terms of the 90/10 preference points systems, where the 90 points will be used for price only and the 10 points are used as per the B-BBEE Contributor level.

11.2 The proposal should include, amongst other, the following:
   11.2.1 A proposed plan of action also per deliverable;
   11.2.2 A list of references;
   11.2.3 Ability to ensure continuing of staff on the project.

12 SPECIAL CONDITIONS
12.1 The Curriculum Vitae (CV) of the staff who will be available for the duration of the work; NOTE: Failure to submit the CV’s will invalidate your bid proposal.

12.2 The bid proposals should be submitted with all required information containing technical information as well as cost information (NB: DEA Entity Maintenance form included in the bid documents must be completed and returned with the bid proposals).

12.3 Only bidders who score at least 75 % (52.5 points) for the technical information will be preferred.

12.4 Service Providers are requested to submit the B-BBEE accreditation certificates from reputable service providers accredited by SANAS (check www.sanas.co.za), failing which the B-BBEE points claimed will be forfeited.

12.5 Preference will be given to B-BBEE companies or firms with strong B-BBEE partnerships, in order to address South Africa’s socio-economic disparities in line with the Broad Base Black Economic Empowerment legislation. Service providers that do not meet this requirement may be disqualified.

12.6 A proposal should be included on how capacity building and transfer of skills will take place to previously disadvantaged individuals during the project.
12.7 A service level agreement shall be signed with the preferred bidder. DEA reserve the right to terminate the contract should the successful bidder no longer meet the B-BBEE requirement.

12.8 DEA reserves the right to invite short listed companies to present their bid proposals for final decision.

12.9 Bidders must be prepared to work at rates not exceeding those prescribed by the office of the Auditor-General or the Department of Public Service and Administration (DPSA).

13 ADDITIONAL INFORMATION ON BID PROPOSAL

13.1 The service provider should provide details of staff training, highlighting training and development policies and procedures, with specific reference to affirmative action policies and initiatives.

13.2 A breakdown of the hourly tariff inclusive of value-added tax for services rendered. Expenditure incurred without the prior approval of the Programme Manager will not be reimbursed.

13.3 In so far as possible, a comprehensive budget, showing the charge out rates of all the staff to be involved in investigations. NB: ALL TRAVEL AND ACCOMMODATION ARRANGEMENTS AS A RESULT OF WORKSHOPS TO BE ATTENDED WILL BE CARRIED BY THE DEA.

13.4 How a joint venture (if the bidders are a joint venture between a BEE firm and a non BEE firm) will split the work between the firms. The detail must be such that DEA can audit the actual work allocation during the delivery to enforce the transfer of skills between the two firms. (The percentage involvement of each company in the joint venture should also be indicated). Please note that all members of the joint venture should sign the contract and are jointly and severally liable for the entire assignment.

13.5 DEA will not be held responsible for any costs incurred by the bidder in the preparation and submission of the bids.
13.6 Please take note that DEA is not bound to select any of the firms submitting proposals. DEA reserves the right not to award any of the bids and not to award the contract to the lowest bidding price as well as to renegotiate the bid of the preferred applicant.

13.7 Time spent or incurred between home and office of consultants and DEA head office will not be for the account of DEA, unless otherwise specified.

14 FURTHER INFORMATION
14.1 Should you require any further information in this regard, contact Ms M Oosthuizen at telephone number 012 395 1862.

15 INFORMATION REQUIRED
15.1 Bid Evaluation can only be done on the basis of information which is requested. The comprehensiveness of the bid can therefore be decisive in the awarding thereof.

16 PAYMENT TERMS
16.1 DEA undertakes to payout in full within 30 (thirty) days all valid claims for work done to its satisfaction upon presentation of a substantiated claim. No payment will be made where there is outstanding information/work not submitted by the Service Provider/s until that outstanding information is submitted.
17 EVALUATION CRITERIA

17.1 All bid proposals submitted will be evaluated in accordance with the 90/10 principle and the evaluation criteria should be as follows:

Values: 1 = Poor; 2 = Average; 3 = Good; 4 = Very Good; 5 = Excellent

Total points scored by bidder for functionality = \frac{Weighted value score}{Maximum Potential Score (350)} x Percentage allocated for functionality (70)

<table>
<thead>
<tr>
<th>No.</th>
<th>Category</th>
<th>Weight</th>
<th>Value awarded (1-5)</th>
<th>Score (Weight X Value awarded)</th>
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<tbody>
<tr>
<td>A.</td>
<td>PRICE</td>
<td>90</td>
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<td>B.</td>
<td>FUNCTIONALITY</td>
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<td>1.</td>
<td>Bidder understands of the brief and the methodology to be employed.</td>
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<td>No.</td>
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<td>Score (Weight X Value awarded)</td>
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<td>Weight</td>
<td>Value awarded (1 - 5)</td>
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<td>2.</td>
<td>Demonstrating a clear understanding of the EIAMS Process and the recommendations made to date</td>
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<td>3.</td>
<td>Capability (number of project team members to handle the project/ submit names and the CV). Preference will be given to a team of specialists with diversified experience related to the specified deliverables</td>
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<tr>
<td>4.</td>
<td>The experience and educational background of the personnel proposed to provide the service. Assessment of the condensed Curricula Vitae of personnel involved on the projects.</td>
<td>25</td>
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</tbody>
</table>
- Relevant past experience in
- Environmental impact assessment and management in a strategic context
- The legal framework for EIA & IEM (skills and experience in the legislative process)
- Functional experience in EIA

Experience should include both the public sector and the private sector. Specialist should have a minimum experience of 10 years in the applicable specialist field.

5. A proposed plan of action to achieve the objectives should be submitted for evaluation.
   - Adequacy of approach and methodology
   - Presentation and effort (well-organized, straightforward, concise)
<table>
<thead>
<tr>
<th>No.</th>
<th>Category</th>
<th>Score (Weight X Value awarded)</th>
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<tbody>
<tr>
<td></td>
<td></td>
<td>Weight</td>
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<tr>
<td></td>
<td>- Manpower allocations</td>
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<td>- Schedule in line with programme in TOP?</td>
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<tr>
<td></td>
<td>Score total</td>
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</table>

**Total points scored by bidder for functionality**

<table>
<thead>
<tr>
<th>C.</th>
<th>B-BBEE Status Level Contributor</th>
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<tbody>
<tr>
<td>1</td>
<td></td>
<td>10</td>
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<tr>
<td>2</td>
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<td>9</td>
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<td>5</td>
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<td>4</td>
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<tr>
<td>No.</td>
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<tr>
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<tr>
<td>7</td>
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<tr>
<td>8</td>
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<td>1</td>
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<td></td>
<td>Non-compliant contributor</td>
<td>0</td>
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</table>

NB: A bid will not be disqualified from the bidding process if the bidder does not submit a certificate substantiating the B-BBEE status level of contribution or is a non-compliant contributor. Such a bidder will score 0 out of a maximum of 10 points for B-BBEE.

IN EVALUATING THE TECHNICAL INFORMATION CONTAINED IN THE BID, THE EVALUATION COMMITTEE WILL BE GUIDED BY THE FOLLOWING:

- Bidder’s understanding of the brief – The bid provides a clear indication that the bidder fully understands the purpose and scope of the work and the bidders’ own roles and functions in this regard.
• Capability – The bid provides a clear indication that the bidder’s team comprises people with the necessary experience, skills, qualifications, knowledge and skills required to ensure the efficient and effective generation of the required deliverables to the highest standards of quality.

• Track Record – The bid provides clear information on previous, relevant projects that confirm that the bidder has the required experience and success track record in the area of general project management and management related projects.

• Quality of the Bid – The bid is structured, laid-out, formatted and organized in such a way that the evaluation committee is easily able to access the bid in accordance with the evaluation criteria and is provided with an insight into the quality of deliverables that may be expected from the bidder if successful.

• Affirmative action – The bid clearly describes the bidder’s contribution to ensuring the transformation of this project management services sector through affirmative action programmes and provides insight into the success, or otherwise, of these programmes.

• Skills transfer – The bid clearly describes the bidder’s contribution to ensuring the transformation of this work (be specific) e.g. environmental management services sector through, among others, mentorship, bursary, on-the-job-training and/or other initiatives that successfully transfer skills to historically disadvantaged individuals.

**Empowerment and BEE Strategy**

4.10.1 Involvement of Target Groups

The Department has stated as a specific Project Goal, the maximisation of participation of Target Groups in the Project. The provisions of this clause 4.10 in relation to Empowerment and the B-BBEE strategy. The objective is to ensure that these Target Groups will be optimally, actively and equally involved, in the entire life-cycle opportunities of the Project, at all levels i.e. ownership, management and service delivery. The Department deliberately wants to encourage the optimal participation of Black Women, Disabled Persons and Target Group Enterprises. Accordingly, the Department has set target for companies that are more than 50% (fifty percent) black-owned and companies that are more than 30% (thirty percent) black women-owned.

Extract from Table 6 – Project Balanced Scorecard (Annexure)
Annexure A:

SCHEDULE OF PAYMENTS (Please note that all travel and accommodation arrangements as a result of workshops to be attended will be carried by the DEA.)

<table>
<thead>
<tr>
<th>Tasks/ Deliverable</th>
<th>Principles/ actions to be considered</th>
<th>Hours</th>
<th>Time Period and target date for completion</th>
<th>Total Amount</th>
</tr>
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<tbody>
<tr>
<td>6.1 Deliverable 1:</td>
<td>- Consideration should also be given to the desired future of the strategy, NFSD and NSSD, Presidential Outcome - Inception meeting with DEA and Theme coordinators - Workshop to coordinate with other theme - Workshop with theme coordinators - Presentation to Theme Coordinating Committee</td>
<td>31 May 2012</td>
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<td>6.2 Deliverable 2:</td>
<td>Compile a second draft Theme Report informed by the Issues report in deliverable 1. Provide a concise</td>
<td>29 June 2012</td>
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<tr>
<td>Tasks/ Deliverable</td>
<td>Principles/ actions to be considered</td>
<td>Hours</td>
<td>Time Period and target date for completion</td>
<td>Total Amount</td>
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<tr>
<td>Executive Summary in a simple understandable language.</td>
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<td><strong>SUBTOTAL</strong></td>
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<td><strong>6.3 Deliverable 3:</strong> Finalize the draft Theme Report by:</td>
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<td><strong>29 June 2012</strong></td>
<td></td>
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<tr>
<td>i. Integrating and incorporating the recommendations for addressing the <strong>strategic goals/objectives</strong> of the EIAMS strategy.</td>
<td>- 6 week period for comments by various sectors and reference group on second draft theme report</td>
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<tr>
<td>ii. Making any necessary further recommendations for achieving the <strong>strategic goals/objectives</strong> of the EIAMS strategy.</td>
<td>- 1 month period to consider comments on second draft theme report as in deliverable 1 and 2 as indicated above by means of a comments and response table</td>
<td></td>
<td><strong>28 September 2012</strong></td>
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<tr>
<td>iii. Detailing final proposals for the</td>
<td>- Finalise reports</td>
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<td></td>
<td>- Presentation to PSC</td>
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<tr>
<td>Tasks/ Deliverable</td>
<td>Principles/ actions to be considered</td>
<td>Hours</td>
<td>Time Period and target date for completion</td>
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<td>implementation of the EIAMS based on the report referred to in 5.2a (deliverable 1 and 2). iv. Capturing the inputs referred to in (i) – (iii) above in a concise Executive Summary in a simple understandable language.</td>
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<td>28 September 2012</td>
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<td>SUBTOTAL</td>
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ANNEXURE "B" - SPECIFIC ISSUES REQUIRED TO BE CONSIDERED BY THE SERVICE PROVIDER:

Note: All issues should be considered within the context of section 3 of the Draft Theme report and should therefore consider common recommendations, agreements, disagreements and provide for final recommendations in this regard.

1. INSTITUTIONAL ARRANGEMENTS

1.1. Please consider recommendations for improving institutional arrangements (including changes to existing governance and administration structures and systems) required in order to give effect to the strategic goals/objectives of the EIAMS (i.e. giving effect to the objectives of IEM as it relates to environmental impact assessment and management). [NOTE: The Service provider shall clearly distinguish between objectives which can be given effect to through the existing policy and/or statutory framework and those situations where objectives can be given effect to through law reform.]

1.2. Please consider recommendations made in section 3 of the draft theme report and interrogate the options contemplated therein (e.g. Planning Commission/ Commissioner/ Panel/ Change in hierarchy of decision making/ Arbiter/ Conflict resolution mechanism Appeal Body/ Public hearings /Formal Appeal body/ Tribunal/ Conflict resolution mechanisms and combined/balanced approach between top-down approach (Planning Commissioner) and bottom up approaches (i.e. decentralised approach of environmental units in other departments).

1.3. What institutional arrangements should be considered to improve the quality of impact management not only in the EIAM context but also in the context of integrating the section 2 NEMA principles into decisions falling outside the scope of impact assessment legislation? For example:

1.3.1. Interrogate whether impact management (in cases where EIAs are legally required as well as instances where EIA is not a legal requirement, but the NEMA principles must guide decision making) would be better served if all line function departments establish internal environmental management expertise?

1.3.2. Interrogate whether a specific unit within environmental management line departments should be established to ensure the integration of environmental management into planning and policy formulation (i.e. the unit would not necessarily be responsible for environmental decision-making).

1.3.3. Interrogate the proposal to establish an Environmental/Planning Commissioner / Arbiter/ Tribunal as well as the decentralisation of environmental functions with environmental units within other departments.
A possible top down (stick) and bottom up (changing behaviour within other sectors) should be considered in combination in order to ensure cooperative governance.

1.3.4. Consider whether current constitutional mandates (spheres of competence) impede giving practical effect to the legal mandate to give effect to sections 2 and 23 of NEMA? Do current constitutional mandates provide the optimal governance approach for achieving the objectives of IEM? (This raises the question regarding the extent to which the environmental considerations are required to be taken into account at all levels and across all spheres of government as opposed to a narrow specific constitutional mandates).

1.4. Specific recommendations are required regarding any institutional changes or arrangements required for achieving:

1.4.1. The promotion of the application of appropriate environmental management tools in order to ensure the integrated environmental management of activities.

1.4.2. The optimal efficiency of the current IEM system (i.e. in the context of being a developing country, the current lengthy time EIA processes and the cost thereof must be addressed). What measures could be implemented to rationalise impact assessments, through for example, ensuring that the level of assessment is consistent with the level of impact of an activity?

1.4.3. The optimal effectiveness of the current IEM system (i.e. achieving and giving effect to sustainable development). In this regard the following specific questions are relevant:

1.4.3.1. What institutional arrangements are needed to address the challenge of improving the focus on sustainability (and the mitigation hierarchy) as an outcome of IEM?

1.4.3.2. What institutional arrangements are needed to improve the link between the strategic context and environmental management tools including project level EIA?

1.4.3.3. What institutional arrangements are needed to move from being base-line led to being objectives-led (i.e. focused on sustainability outcomes) for all environmental management tools?

2. CO-ORDINATION

2.1. Environmental Implementation Plans (EIPs) and Environmental Management Plans (EMPs) were supposed to coordinate environmental management (and impact management) across different spheres of government and different line function departments. Why did EIP not succeed and what institutional changes could be made to improve the effectiveness of EIPs?

3. INTEGRATION
3.1. Currently there is a serious concern with regard to process issues (i.e. duplication of processes and over-regulation). The Service Provider is required to interrogate the feasibility, advantages and disadvantages of (1) a 1-stop process whereby the information gathering processes and application processes are integrated but the ultimate decisions are rendered by different authorities; and (2) a 1-stop process resulting in a single decision. Specific attention should be paid to:

3.1.1. Whether or not sections 24K and 24L of NEMA are adequate or whether additional enabling provisions are required to facilitate integration?

3.1.2. What other institutional arrangements/requirements are needed (lacking) to facilitate integration?

3.1.3. How can one best respect different mandates and sectors without unnecessarily replicating application and decision-making processes?

3.1.4. How can it be ensured that the procedural rights and right to public participation of interested and affected parties are not reduced in integrated decision-making processes?

3.1.5. Existing MOUs should be interrogated as a means of facilitating integration (including recommendations on how the use of MOUs could assist in achieving integration).

3.1.6. The principles of integrated permitting should be considered (including what is meant by the principle and what should be allowed for in terms of this). Concrete examples are required of the circumstances in which integrated permitting can happen and where it cannot happen.

3.1.7. The theme report should consider forums as proposed within the Subtheme reports, and should consider their functions and the powers needed in order to be effective. Specific forums for implementation should be proposed.

3.2. The Service Provider is also required to interrogate and make recommendations regarding possible ways of integrating:

3.2.1. Socio-economic and biophysical considerations to ensure a more integrated approach to achieving the "triple bottomline".

3.2.2. Different assessment techniques or assessment methodologies used in the current impact assessment system (e.g. biophysical assessments, risk assessments, social impact assessments, etc.).

4. SCREENING

Screening is defined as a process to determine whether or not particular activities (as defined in NEMA) require environmental authorisation/planning or not, and if such an activity will give rise to potential impacts which require some form of environmental assessment or strategic planning before being approved, and if so, the type and level of assessment/plan (including other tools not only EIA) that is appropriate. A screening process should be an efficient process and must not add to a significant delay or overburden of the current process.
4.1. How could screening be utilised as a mechanism for improving the efficiency and/or flexibility of all IEM tools (including EIAs) without compromising (1) the effectiveness of the tool or (2) the procedural rights of interested and affected parties?

4.2. If so what checks and balances should be introduced to minimise the abuse of discretion, the unfair limitation of procedural rights (public participation, access to information, disclosure to the public of applications for authorisation and screening) and to ensure that impacts of listed activities are consistently assessed, minimised and mitigated in terms of the NEMA principles and section 23

4.3. If screening is to take place what is the most appropriate legal structure to undertake such screening, and which levels of government and stakeholders should be represented on the panel?

4.4. In considering whether it is appropriate for a panel screen EIAs' please advise to what extent this would necessitate some deliberative process involving public participation

4.5. Is the current screening process provided for in the legislation sufficient? Please consider other tools provided for in the Act as well as tools proposed in Subtheme 9 report and determine suitability of a screening process (other than only a list of activities) in order to identify the most appropriate tool to be used and level of assessment. Please consider this within the existing legislative context and make recommendations which are within the mandate of chapter 5.

4.6. Is screening in the context of environmental assessment and authorisation more suited to certain kinds of activities? For example is screening more appropriately applied to town planning decisions and conservation authorisations as opposed to authorisations of activities which give rise to pollution emissions, due to uncertainties as to possible impacts thereof (both individual and cumulative impacts)?

4.7. Investigate the option of employing screening (to enable the selection of the appropriate level of and types of assessments):

4.7.1. at a strategic level (i.e. policy and program level) in addition to project level; and

4.7.2. in instances where an activities is not listed in terms of NEMA (e.g. activities regulated exclusively by municipalities in the consideration of a planning decision).

4.8. Would it be possible to improve flexibility in the EIA process through the implementation of a discretionary screening process, without watering down the substantive goal of achieving sustainability?

4.9. Three possible options for screening are included in order to guide the study. The study should not be limited only to these examples:

4.9.1. Screening could take place by a panel against various criteria/guidelines.

4.9.1.2. Alternatively, screening could be facilitated by the way in which activities are listed. The lists could indicate in certain limited cases that the activity could be screened and in such cases indicate guidelines for
the exercise of discretion if screening is undertaken, and provide for public input or objection.

4.9.1.3. Alternatively screening could happen within the EIA itself, and certain impacts not assessed because they fall within desired outcomes.

5. IMPROVEMENT OF EXISTING TOOLS AND PROPOSED NEW TOOLS
Subtheme 9 proposes the improvement of certain existing tools and Subtheme 9 and 11 propose the development of new tools namely Sustainability audits/social indicators, compliance assessment and monitoring reporting and public participation plan.

5.1. Assess the practical implementation and implications of the proposed new tools namely Sustainability audits/social indicators and compliance assessment and monitoring reporting, in terms of possible impact on existing timeframes and costs. Assess the possible value to be added by these proposed tools.

5.2. Refer to the recommendations made in Subtheme 2 on the proposed Public Participation plan as tool and consider impact on existing time frames and costs within this Theme report.

6. OUTCOMES BASED APPROACH (OBA)
6.1. The Service provider is required to interrogate the proposal of utilising an OBA for giving effect to IEM in South Africa, by addressing the following issues:

6.1.1. What exactly is meant by an OBA (more information and a critical analysis of the OBA contained in Subtheme 11 report should be provided). Specific reference should be made to experiences in other jurisdictions, if available.

6.1.2. Would it be possible to utilise the OBA to set specific targets as well as outcomes that are non-target, (soft vs hard targets into e.g. NEMA chapter 2 principles). Discuss the use of OBA in instances where no specific target (e.g. pollution threshold) has been set. For example, achieving the outcome of a development proposal with reduced dependency on natural resources of integration of segregated communities.

6.1.3. How can an outcomes based approach be made consistent with the duty under NEMA to minimise impacts?

6.1.4. Can the OBA be applied to both Strategic tools and EIAs in the South African context? The advantages and disadvantages should be investigated.

6.1.5. In the EIA context, would it be appropriate to limit the use of an OBA to certain types of activities only.

6.1.5.1.1. For example an outcomes based approach might be suitable for land use decisions but not to decisions involving pollution emissions (due to uncertainties as to cumulative impacts and known emissions).
6.1.6. Please consider available options on how desired outcomes can be demonstrated e.g. quantitative/qualitative targets for acceptable levels of change, desired state of the environment, design and technology and demonstration of social targets.

7. SUSTAINABILITY INDICATORS:

7.1. Interrogate the principle of utilising sustainability indicators as evaluation criteria for implementing IEM tools (including EIA) in order to fully give effect to IEM in South Africa.

8. MONITORING AND ENFORCEMENT:

8.1. The Service Provider shall interogate the following issues in more detail:

8.1.1. Will a significant shift in investment or shift of resources into monitoring give effect to or achieve IEM (section 23) and improve, based on currently available data as well as international experience?

8.1.2. Will a system of administrative penalties substantially improve enforcement as compared to the current system of criminal enforcement?

8.1.3. What is the relationship between and what are the differences between regulatory compliance, co-regulation and self regulation?

8.1.3.1. What are the advantages and disadvantages of each?

8.1.3.2. In particular, what is the distinction between the principles of self and co-regulation?

8.1.3.3. Should Rules and guidelines for co-regulation be laid down?

8.1.4. What kind of market based instruments could be utilised to improve compliance and enforcement? Investigate the use of market based instruments to incentivise sustainable development, and to promote self-regulation. Reference should be made to experiences in other jurisdictions, if available, and the relevance thereof to the South African context.

8.1.5. What institutional arrangements is needed to promote the implementation of market based tools (e.g. enabling provisions in legislation, policies or resources)
THE DEPARTMENT OF ENVIRONMENTAL AFFAIRS

ANNEXURE C

THEME 1: GOVERNANCE AND ADMINISTRATION & IMPACTS AND INSTRUMENTS:

Madeleine Oosthuizen: DEA

References from Subtheme reports:
Subtheme 1: Enact International
Subtheme 4: SE Solutions
Subtheme 9: SSI Environmental
Subtheme 10: Green Connection
Subtheme 11: DEA (Madeleine Oosthuizen) and NGO:FSE (Mercia Komen)

environmental affairs
Department
Environmental Affairs
REPUBLIC OF SOUTH AFRICA
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2.5.2 OBJECTIVE:

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2.6 SUMMARY RECOMMENDATIONS SUBTHEME 11 REPORT: QUALITY OF TOOLS AND SYSTEM
(Please refer to Subtheme 11 report compiled by DEA (Madeleine Oosthuizen) and
Mercia Komen (NGO: FSE)

2.6.1 PROBLEM STATEMENT

2.6.2 OBJECTIVE OF SUB-THEME 11:

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2.6.5 Service Standard: fit for purpose tools

2.6.6 Product Standard: Fit for use

2.6.7 Quality System – Managing for Quality

2.6.8 Anticipated concerns/ Problems/ risks with an Outcome Based Approach

3 MAIN RECOMMENDATION TRENDS WITHIN ALL SUBTHEME REPORTS,
AGREEMENTS, DISAGREEMENTS AND SHORTCOMINGS

3.1 NEMA principles guideline document and consolidation of existing guideline document:

3.2 Coordination and Integration of Environmental Planning and Land Use Planning

3.3 Planning Commission/ Commissioner/ Panel/ Change in hierarchy of decision making/
Arbiter/ Conflict resolution mechanism Appeal Body/ Public hearings /Formal Appeal body/
Tribunal/ Conflict resolution mechanisms

3.4 One stop process rather than one stop shop: A more successful use of MOUs, integrated
permitting, formal forums such as environmental management committees, a "MINTECH type"
of system also on Local Authority level and a combination of informal arrangements should
transpired in order to ensure a one stop process.

3.5 Legislative changes are necessary: Amendment of existing environmental laws is
required in order to reduce duplication and procedures need to be clarified where not
coordinated. Law reform is needed to refuse applications which do not contribute to national
strategic objectives.

3.6 Integrated government with a wide monitoring and review system

3.7 Delegation and responsibility of Local Authority to increase wrt non-listed activities,
SEAs and EMFs integrated into SDFs and IDPs.

3.8 Delegation of certain tools e.g. norms and standards for listed activities to LA

3.9 Provincial Environmental Forums: Formal MINTECH/ MINMECH type of forum on local
level to filter through information from Provincial to Municipality level (formalised in
legislation).
3.10  Peer review on demand or random?

3.11  Outcome based approach (OBA):

3.12  Change in reporting format – how will development contribute to achieving sustainable development/ desired sustainability outcome

3.13  Conditions of Authorization to be compiled in terms of the desired outcomes. No conditional approvals will therefore be allowed.

3.14  Cooperative governance mechanisms aimed at ensuring ecological sustainability should be strengthened by addressing the principle in policy frameworks and incorporating ecological sustainability considerations in strategic policy frameworks

3.15  The EIP and EMP for government departments as required in terms of chapter 3 of NEMA should be used more successfully

3.16  Identify/ redefine environmental damaging government policies and programs. Full integration of environmental policy via budgetary, planning and auditing processes. Linking achievement of ecological sustainability objectives directly to performance and delivery outcomes

3.17  Availability and applicability of State of Environment reporting, baseline information and Desired State of the Environment to be developed.

3.18  A proposed hierarchy of instruments: Integrated Planning, SEAs and EMFs on National, Provincial and Local Level to be integrated into SDFs and IDPs. EIAs and/or other tools on project level. SDPs and Building plans on “project site” level. There should be a more important role for strategic tools and the usage of sustainability enhanced planning tools and maps needs to be promoted. The hierarchy implies a need for a more robust flow of information between tools.

3.19  Strategic environmental plans for other governmental department’s policies and programs. Integrate environmental tools within other departments processes/plans and policies.

3.20  Proposal of Strategic environmental plans (SEAs and EMFs) for different sectors e.g. agriculture, forestry, fisheries, energy, industry, transport, waste, water, telecommunication, tourism and land use planning

3.21  IEM includes four phases namely Plan, Do, Check, Act and an additional step of IMPROVEMENT. The pool of tools can be linked to certain IEM phases but can span over one or more phase.

3.22  Screening tool/process to determine: Most appropriate tool to be used for activity, program, plan or policy under discussion and level of public participation.

3.23  Criteria for a screening process/tool:

3.24  New tools proposed: Sustainability audits/social indicators, compliance assessment and monitoring reporting and public participation plan.

3.25  Any number of tools can be used or integrated to inform process

3.26  Each tool also include a plan, do, check and act phase within itself

3.27  Off sets to be allowed for

3.28  Co- and self regulation by means of compliance monitoring reporting by proponent/industry to government and communities and government auditing reports. Monitoring by
communities, schools and NGOs: data collection, training, funding, monitoring committees, relations with enforcement officers etc. Protection for whistleblowers.
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<tr>
<td>AHP</td>
<td>Analytic Hierarchy Process</td>
</tr>
<tr>
<td>Baseline</td>
<td>Current conditions - also referred to as 'baseline environment' or 'status quo'</td>
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<td>CA</td>
<td>Competent Authority</td>
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<td>DEA</td>
<td>Department Of Environmental Affairs</td>
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<td>EAPs</td>
<td>Environmental Assessment Practitioners</td>
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<td>ECA</td>
<td>Environmental Conservation Act</td>
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<td>ECO</td>
<td>Environmental Control Officer</td>
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<td>EIA</td>
<td>Environmental Impact Assessment</td>
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<td>EJAMS</td>
<td>Environmental Impact Assessment Management Strategy</td>
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<td>EMF</td>
<td>Environmental Management Framework</td>
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<td>EMP</td>
<td>Environmental Management Programme/Plan</td>
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<tr>
<td>GIS</td>
<td>Geographic information System</td>
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<tr>
<td>GPS</td>
<td>Global Positioning System</td>
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<tr>
<td>I&amp;APs</td>
<td>Individuals, communities or groups, other than the proponent or the authorities, whose interests may be positively or negatively affected by a proposal or activity and/or who are concerned with a proposal or activity and its consequences.</td>
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<tr>
<td>IAIA</td>
<td>International Association for Impact Assessment</td>
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<td>IDP</td>
<td>Integrated Development Plan</td>
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<td>IEM</td>
<td>Integrated Environmental Management</td>
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<td>MOU</td>
<td>Memorandum of Understanding</td>
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<td>NEAS</td>
<td>National Environmental Assessment System</td>
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<td>SDF</td>
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<td>Spatial Data Infrastructure</td>
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<td>SEA</td>
<td>Strategic Environmental Assessment</td>
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<td>ScE</td>
<td>State of the Environment Reporting</td>
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1. BACKGROUND AND CONTEXT

1.1. Purpose of the Environmental Impact Assessment and Management Strategy for South Africa, Desired Future/Outcome and vision of the Strategy

Following the promulgation of the new EIA Regulations of 2006 promulgated in terms of the National Environmental Management Act, No. 108 of 1998 and concerns raised about these, it became clear that certain roleplayers perceive the environmental impact assessment (EIA) process as not really adding value, or even addressing critical sustainable development issues. In response to these concerns, the Environmental Quality and Protection Branch of the Department of Environmental Affairs (DEA) embarked on a process to review the efficiency and effectiveness of EIAs (REE) as a tool for environmental management in South Africa. The recommendations from the report are being considered in this strategy named the Environmental Impact Assessment and Management Strategy (EIAMS) and will describe an improved way forward for environmental impact management by identifying, developing, improving and implementing more appropriate tools and mechanisms for impact assessment, mitigation, management and governance. The department committed to a participatory, consultative approach and has started the mobilisation of stakeholders by establishing a project steering committee, theme coordinating committees, subtheme task teams, an advisory group and a reference group. The themes to be interrogated in the strategy relate to the focus areas of the strategy viz Governance and Administration, Capacity, Skills & Transformation, Impacts and Instruments.

Purpose of Strategy process

The purpose of the EIAMS process is therefore to facilitate a participatory process in order to compile a strategy that gives effect to the objectives of integrated environmental
management as contained in Section 23 of NEMA within the context of the principles of sustainable development (Section 2 of NEMA).

The strategy must look at the desired future state for the EIAM system and path the way to achieve it within the mandate provided by Chapter 5 of NEMA and within a strategic policy context.

The desired future includes an environmental impact assessment and management system, consisting of voluntary and regulated instruments in the next 5 years, where -

- the inefficiencies and ineffectiveness of the current system have been corrected and the efficiencies and effectiveness optimized;
- regulated EIA is used only when it is the most appropriate tool;
- IEM is given effect through a variety of other instruments that would, depending on the nature of activities and/or the receiving environment supplement, compliment or replace EIA;
- EIAM takes place within a strategic context of environmentally informed spatial instruments, sector strategies and policies;
- authorities are sufficiently capacitated with skilled and experienced officials;
- other stakeholders are capacitated and empowered to ensure maximum impact on the effectiveness and efficiency of the strategy;
- government regulatory processes have been as far as possible integrated, or at least aligned and
- all stakeholders are equally committed to make it work: Government, EAPs, developers, community etc.\(^1\)

The National Environmental Impact Assessment Strategy for South Africa will be developed within the context of existing legislation, policies, NEMA, plans including National, Provincial, and Local Integrated Development plans. The Strategy will need to respond to the current legislative context but should also influence it.\(^2\)

\(^1\) page 2 http://nem.gov.za/docs/DEH/EIA_HFA_26Oct2010_D86159.doc

Vision for the Strategy
A Vision for the process has been compiled by the PSC namely:
"To give effect to the framework for integrated environmental management by providing for a diverse range of regulatory and other mechanisms to ensure proactive assessment and management that are implemented through cooperative governance and accountable, transparent and participatory decision-making, to achieve sustainable development".

1.2. Legislative Context and Mandate:
1.2.1 Constitution of South Africa
The Constitution of the Republic of South Africa, 1996, for the first time placed people and not conservation at the centre of environmental management.
The White Paper on Environmental Management Policy (1997) includes an overarching framework policy developed through a comprehensive participatory process known as the Consultative National Environmental Policy Process (CONNEPP). The White Paper, amongst other things, defines the nature of sustainable development and introduces sustainable development as the accepted approach to resource management.
The Framework for sustainable development was compiled in order to articulate South Africa’s national vision for sustainable development and indicate strategic interventions to re-orientate South Africa’s development path in a more sustainable direction.3

Section 24 of the Constitution requires, amongst other things, that the environment is protected through reasonable legislative and other means to secure ecologically sustainable development and use of natural resources. Chapter 1 section 2 of NEMA and Chapter 5 of NEMA seeks to give effect to this imperative by National environmental principles (chapter 1 and 2) and secondly by promoting the application of appropriate environmental management tools to ensure the integrated management of activities that may impact on the environment (chapter 5). Section 24 of NEMA provides for consideration, investigation, assessment and reporting of the potential

consequences for or impacts on the environment of listed activities (or specified activities) to the competent authority. 4

1.2.2 NEMA Chapter 1 and 2: NEMA principles (s 2 NEMA) – impact assessment and minimization of impacts
As indicated above Chapter 1 section 2 of NEMA lays down National environmental management principles. The principles set out in the section apply throughout the Republic to the actions of all organs of state that may significantly affect the environment.

1.2.3 Mandate of the EIAMS in terms of NEMA SECTION 23 and 24: Integrated Environmental Management.
The Mandate of the Strategy stems from NEMA chapter 5 with specific reference to:
Section 23: General objectives: Integrated Environmental Management
The purpose of Chapter 5 is to promote the application of appropriate environmental management tools in order to ensure the integrated environmental management of activities. The general objective of integrated environmental management is to -

- promote the integration of the principles of environmental management set out in Section 2 into all decision making which may have a significant effect on the environment;
- identify, predict and evaluate the actual and potential impact on the environment, socio-economic conditions and cultural heritage, the risks and consequences and alternatives and options for mitigation of activities, with a view to minimising negative impacts, maximising benefits, and promoting compliance with the principles of environmental management set out in Section 2;
- ensure that the effects of activities on the environment receive adequate consideration before action is taken;
- ensure adequate and appropriate opportunity for public participation in decisions that may affect the environment;

• ensure the consideration of environmental attributes in management and decision making which may have a significant effect on the environment; and
• identify and employ the modes of environmental management best suited to ensuring that a particular activity is pursued in accordance with the Principles of environmental management set out in Section 2.

In this chapter, activities mean policies, programmes, processes, plans and projects.

Currently Section 24 gives effect to the objectives contained in Section 23 of NEMA only through environmental authorizations. Environmental Authorizations include mainly 3 themes:

- Identification of activities which require authorization.
- Process/procedures for authorization (including instruments).
- Implementation of authorization.

Section 24 also will allow for usage of instruments such as norms and standards that fall within the scope of the definition of "norms and standards" as provided for in section 1 of the Act.
The following Tools are also referred to by NEMA chapter 5, Section 24 (5) (bA):

EIA, EMF, SEA, EMProgram, Environmental Risk assessments, Environmental Feasibility assessments, Norms and Standards, Spatial development tools, and other relevant environmental management instruments that may be developed in time e.g. Strategic Forward Planning tools, Spatial development tools and Spatially informed instruments.

1.2.4 INTEGRATED ENVIRONMENTAL MANAGEMENT

As previously indicated the purpose of Chapter 5 is to promote the application of appropriate environmental management tools in order to ensure the integrated environmental management of activities. IEM as previously defined by the Department of Environmental Affairs and Tourism, (1998) is:

- A philosophy which prescribes a code of practice for ensuring that environmental considerations are fully integrated into all stages of the development process in order to achieve a desirable balance between conservation and development.
- The previously defined vision for IEM is to lay the foundation for environmentally sustainable development based on integrated and holistic environmental management practices and processes.

Although the term IEM has been debated by various authors, the following generic characteristics for IEM are proposed by Hendrik Andries Strydom, R. F. Fuggle, Marinus André Rabie (2008).

- The scope may range from green to brown to economical, social and ecological issues including issues related to patterns of consumption and production. This may be attributed to the wide and almost all-encompassing definition of the environment.
- Environmental Management should be fundamentally a management and public administration science which is amongst others based on other disciplines such as law and economics as well as natural, human and engineering disciplines.
- The scope of environmental management is expanding fusing with concepts such as sustainability, triple bottom line, corporate governance and corporate social investment.
• Environmental management should be **executed by both the private and public sector** and should address planning, doing, checking and acting elements.
• Environmental management is not concerned with managing the environment: primary focus should be to manage the behaviour of humans and performance of organisations in line with the environmental principles, criteria, standards and legislation
• Activities, products and services should be managed
• Focus of environmental management should be **preventive, supported by corrective or reactive action** where required
• Environmental management should manage both the negative and positive impact of activities, products services and facilities, requiring trade-offs between positives and negatives including the brown, social, ecological and economic dimensions of the environment
• Environmental management should be a **series of cyclical processes** that consist of a number of steps or phases linked or interfaced with supporting processes. This include project, product and management cycles
• There are various **tools and mechanisms available for environmental management**. These tools or mechanisms should as a minimum, have **planning, doing checking and acting** characteristics.
• Although IEM is not clearly defined in SA and may mean different things, depending on by whom it is used and in which context it is used, IEM should be an integrated management strategy which primarily should be **aimed at integrating the current fragmented management and governance effort**.
• Co-operative governance as it is firmly embedded in the current legal framework can also contribute to establish a more sustainable environmental management or governance effort and should as a consequence, address some of the complexities and challenges facing environmental management in South Africa. (Strydom, Fuggle, & Rabie, 2009, pp. 31-33)\(^5\)

1.2.5 NATIONAL FRAMEWORK FOR SUSTAINABLE DEVELOPMENT (NFSD) AND NATIONAL STRATEGY AND ACTION PLAN FOR SUSTAINABLE DEVELOPMENT FOR SOUTH AFRICA (NSSD): STRONG ECOLOGICAL SUSTAINABILITY VS SUSTAINABLE DEVELOPMENT:

While the concept of sustainable development has been on the international agenda since the UN Conference on the Human Environment in Stockholm in 1972, the terms sustainability and sustainable development have been used and interpreted in widely different ways.

In terms of the NSSD sustainability (or a sustainable society) is seen as the overall goal of the NSSD, while sustainable development is the process by which we move towards that goal.

Further, sustainability implies ecological sustainability, which recognises firstly, that the maintenance of healthy ecosystems and natural resources are preconditions for human wellbeing, and secondly, that there are limits to the goods and services which they can provide. In other words, ecological sustainability acknowledges that human beings are part of nature and not separate from it. Sustainable development, then, implies the selection and implementation of a development option which allows for the achievement of appropriate and justifiable social and economic goals (based on meeting basic needs and equity) without compromising the natural system on which it is based.

The NFSD spells out South Africa's vision of a sustainable society as follows: “South Africa aspires to be a sustainable, economically prosperous and self-reliant nation state that safeguards its democracy by meeting the fundamental human needs of its people, by managing its limited ecological resources responsibly for current and future generations, and by advancing efficient and effective integrated planning and governance through national, regional and global collaboration.”

This vision is underpinned by a number of principles:

**Fundamental principles**: these are related to the fundamental human rights guaranteed in the Constitution, namely:

- Human dignity and social equity;
- Justice and fairness; and
- Democratic governance.

**Substantive principles**: these are based on sustainable development principles already enshrined in South Africa law and underscoring a systems approach to achieving sustainable development:
- Efficient and sustainable use of natural resources;
- Socio-economic systems are embedded within, and dependant on, eco-systems; and
- Basic human needs must be met to ensure resources necessary for long-term survival are not destroyed for short term gain.

Process principles: these apply to the implementation of the NFSD, namely:
- Integration and innovation;
- Consultation and participation; and
- Implementation in a phased manner.

The National Framework provides a valuable step in defining key sustainable development principles for the country, while being mindful of global challenges and growth ideals.\(^6\)

In South Africa, as in the rest of the world, the situation of continuing inequality, accompanied by a deteriorating resource base, makes it imperative for us to go beyond thinking in terms of trade-offs and the simplicity of the ‘triple bottom line’. We must acknowledge and emphasise that there are non-negotiable ecological thresholds; that we need to maintain our stock of natural capital over time; and that we must employ the precautionary principle in this approach. We must accept that social, economic and ecosystem factors are embedded within each other, and are underpinned by our systems of governance.

This definition is universally accepted and best illustrated by the diagram below:\(^7\)

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\(6\) http://www厅蒙古政府.gov.za/docs/DEA11_B2_201103061998.doc

\(7\) NFSD Draft for Public Comment 290906.doc p19
The diagram represents a systems approach to sustainability because the economic system, socio-political system and ecosystem are seen as embedded within each other, and then integrated via the governance system that holds all the other systems together within a legitimate regulatory framework. Sustainability implies the continuous and mutually compatible integration of these systems over time; sustainable development means making sure that these systems remain mutually compatible as the key development challenges are met via specific actions and interventions to eradicate poverty and severe inequalities. This is preferable to the more commonly used image of the three separate intersecting circles which depict sustainable development as limited to a fragile space where all three circles intersect.

FIGURE 2: DEFINITION SUSTAINABLE DEVELOPMENT

The emphasis is therefore that ecological sustainability should be the key desired outcome of sustainable development.\(^8\)

1.2.6 "12 PRESIDENCY OUTCOMES"

The Cabinet has approved "12 Outcomes" that collectively address the main strategic priorities of the Government.

The President has signed Performance Agreements with each Minister and Delivery Agreements which outline the specifics of each Outcome. The specifics include detailed and precise descriptions of activities and the context in which implementation must happen - existing legislation, regulations, institutional arrangements; funding; actions needed to achieve the outcomes; indicators, baselines and targets; implementing partners; etc.

\(^8\) See Thulahoe report: [Link](http://www2.mf.gov.za/PA%20system%20%2816%20Nov%29.pdf) p161
Outcome 10 is identified as "Environmental assets and natural resources that are well protected and continually enhanced".

The delivery agreement provides the context for determining the Outcomes agreed to by the Department of Environmental Affairs:

"Unaddressed, these issues could seriously undermine South Africa's ability to pursue a sustainable development path. Spatial planning and spatial development decisions are still fragmented and there is still a need to address competing land uses and ensure that industry and infrastructure development programmes ensures the long term sustainability of natural systems and the environment"

FIGURE 3: LOGIC MODEL FOR THE 12 OUTCOMES

This summary suggests the need to address four critical problems:

1. Water is unsustainably used and the quality and quantity of water resources is in decline;
2. Reduce greenhouse gas emissions, prepare strategies to cope with projected climate change impacts and reverse the rising trend in relation to the release of pollutants into the atmosphere;
3. Proper and better management of the environment; and
4. Protection of biodiversity."9

9 Delivery Agreement:
To ensure that Environmental Assets and natural resources are well protected and continually enhanced, the key partners will focus on four key outputs and related sub-outputs:10
TABLE 1: OUTCOME 10

<table>
<thead>
<tr>
<th>Outputs</th>
<th>Sub-Outputs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Enhance the quality and quantity of water resources</td>
<td>Water demand (reduction of water loss)-Reduction of water loss from current levels of approximately 30% to 18% by 2014 Water resource protections- preserve groundwater resources and prevent further loss of wetlands. Number of wetlands rehabilitated should increase from 95 to 150 per year Regulation of water quality – 80% of sewage and wastewater treatments plants should be upgraded by 2015 and percentage of wastewater treatment plants meeting water quality standards should increase from 40% to 80% by 2014</td>
</tr>
<tr>
<td>Reduced greenhouse gas emissions, climate change and improved air/atmospheric quality</td>
<td>Reduction of Emission of CO₂ by 34% by 2020 Reduction in atmospheric pollutants Renewable Energy deployment Adapting to the impacts of climate change Energy Efficiency</td>
</tr>
<tr>
<td>Sustainable Environmental Management</td>
<td>Restoration and Rehabilitation of degraded ecosystems – percentage of land affected by soil degradation to decrease from 70% to 55% Deforestation and forest management – Net deforestation to be maintained at not more than 5% by 2020 and protection of indigenous forest assets by appropriate conservation and relevant agencies Less and better managed waste- percentage of households with basic waste collection and disposal facilities to increase from 50% to 80%, 25% of municipal waste to be diverted from landfill sites for recycling by 2012 Management of environmental impacts from mining and related activities Sustainable land use management – ensure integrated planning, a clear plan that will ensure that environmental issues are integrated into land use planning and incorporated into national, provincial and municipal plans</td>
</tr>
<tr>
<td>Protected Biodiversity</td>
<td>Expansion of the conservation estate – land protection and rehabilitation by increasing the percentage of land mass under conservation from 6% to 9% and the hectares of land rehabilitated per year should increase from 624ha to 1000ha by 2014 Percentage of coastline prohibiting harvesting should increase from 9% to 11%, percentage of coastline with partial protection to increase from 12% to 14% Preserve biodiversity and protect ecosystems and species – the number of species under formal protection should increase and the proportion of species threatened should decline from current levels of 6,5 %: Reduced climate change impacts on biodiversity Protected ecosystems and species Valuing the ecosystem services Protection of agricultural land</td>
</tr>
</tbody>
</table>
1 COLLATION/ SUMMARY OF SUBTHEME REPORT RECOMMENDATIONS

2.1 STRUCTURES AND PROCESS FLOW OF STRATEGY

As indicated in the previous section of this report various project structures indicated in figure 4 were established to facilitate the Strategy process. The process agreed on includes a bottom-up process starting with the compilation of 11 specialist Subtheme report to be collated into 3 Theme reports and thereafter the compilation, development and implementation of the Strategy.

![Project Structures Diagram]

The Three Themes identified for the Strategy include:
The PSC agreed on 11 Subthemes under the three themes:

**Theme 1: Governance and Administration:**
- Subtheme 1: Procedures and Organisational Structures
- Subtheme 2: Knowledge and Information
- Subtheme 3: Public Participation
- Subtheme 4: Monitoring and Enforcement
- Subtheme 5: Quality assurance and Independence of EAP's

**Theme 2: Capacity, Skills & Transformation**
- Subtheme 6: Representative demographics within service providers and civil society
- Subtheme 7: Empowerment of marginalized communities
- Subtheme 8: Skills of EAPS and Government Officials

**Theme 3: Impacts and Instruments**
- Subtheme 9: Existing and new Environmental Impact Management Tools
- Subtheme 10: Co-operative Governance: EIAM tools
- Subtheme 11: Quality Management: EIAM Tools

After the Subtheme reports were compiled and considered by the PSC it was decided to reorganise the Themes and Subthemes under **two Themes** namely:
- Theme 1: Governance and Administration & Impact and Instruments.
- Theme 2: Capacity, Skills, Knowledge, Transformation and Public Participation, in order to integrate the recommendations more successfully.

This Theme report will therefore firstly focus in section 2 on the collation of the recommendations from the Subtheme reports: Procedures and Organisational Structures, Co-operative Governance, Monitoring and Enforcement, Existing and new Environmental Impact Management Tools, EIAM.
tools, Quality Management: EIAM Tools. In the third section of this report the most important recommendation trends through the entire relevant subtheme reports will be identified and agreements, disagreements and shortcomings will be indicated.

2.2 SUMMARY RECOMMENDATIONS SUBTHEME 1 REPORT: PROCEDURES AND ORGANISATIONAL STRUCTURES (please refer to the Subtheme 1 report prepared by Enact International)11

Subtheme 1 report focuses on the role that procedures and organisational structure plays and should play in ensuring cooperative governance within IEM.

2.2.1 PROBLEM STATEMENT

Current procedures and/or organisational structures are not necessarily achieving integrated decision-making and/or co-operative governance and as a result, there is a failure to properly achieve the objectives of IEM as set out in section 23 of NEMA. Section 23(1) of NEMA provides that the purpose of Chapter 5 of NEMA (which deals with integrated environmental management) is to promote the application of appropriate environmental tools in order to ensure the integrated environmental management of activities. In addition, section 23(2) provides that the general objective of integrated environmental management is, (among other things), to promote the integration of the principles of environmental management set out in section 2 into the making of all decisions which may have a significant effect on the environment.

2.2.2 OBJECTIVE

The stated objective for this sub-theme is to ensure integrated decision-making and co-operative governance so that NEMA’s principles and the general objectives for integrated environmental management of activities (as prescribed in section 23 of NEMA), can be achieved.

2.2.3 SHORT DISCUSSION ON BACKGROUND AND STATUS QUO

Status quo assessment

11http://enact.environment.gov.za/docs/DEA1_HFA_14/arg2013044805.doc
The Report starts with an assessment of the status quo which considers who the decision makers are, what structures they operate within and what procedures are currently in place to encourage integration, co-operation or at least, alignment of functions and decisions. There are many pieces of legislation and a number of different authorities involved in authorising a development project and regulating land use. The Report considers the empowering legislation to determine firstly, who the competent authorities are, and secondly, the rules that are in place to encourage interaction and integrated decision-making.

The report also analyses the key problems and problem areas regarding some procedural and institutional shortcomings in the current regulatory and institutional framework. Officials involved in implementing the EIA system and stakeholders have, through the EIAMS process, identified a number of short-comings and inefficiencies in the current system. These include:

- **Misalignment with the objective of promoting ecologically sustainable development**: the EIA system is designed to reduce the harm caused by specific projects rather than to promote the overall objective of attaining ecologically sustainable development while promoting justifiable social and economic development. This means that in making decisions in relation to a specific project there is often insufficient attention given to the context in which the decision is being made and to whether or not the implementation of the project would have a positive impact on the attainment of ecologically sustainable development and can be considered to be “justifiable” socio-economic development.

- **Decision-making criteria and consistency of goals**: another area of concern is that of inconsistencies and lack of clarity regarding the criteria and approach the decision-makers apply in deciding on applications for environmental authorisations. Some commentators drew attention to the fact that it would be helpful to have greater clarity as to what environmental governance was seeking to achieve and what approaches were regarded as appropriate.

- **Multiple rather than integrated decision-making processes reduce effectiveness and efficiency**: the need for enhancing inter-governmental co-operation and improved decision-making that is inclusive, take into account a wide range of factors and is linked to land use planning approvals was raised repeatedly by stakeholders.

- **The role of municipalities**: the role of municipalities in conserving the environment and promoting ecological sustainable development is often not fully recognised and many
commentators identified the lack of integration between national and provincial environmental management systems and municipal land use planning and control systems as a significant shortcoming.

- *Enforcement*: several commentators drew attention to the need to strengthen post-approval monitoring of compliance with conditions in environmental authorisations and enforcement where there has been non-compliance.

**Synthesis of proposals**

To determine whether or not the current IEM procedures and institutional structures are successful in meeting the objectives spelt out in NEMA, and promoting integrated decision-making and cooperative governance, it is necessary to return to first principles. This is so because the current procedures and institutional structures which attempt to enhance integrated decision-making and co-operative governance do not necessarily result in sustainable development.

IEM procedures and institutional structures should firstly **adhere** to the environmental right enshrined in the Constitution by ensuring ecological sustainability; secondly **ensure** the environmental right through monitoring which will show whether the procedures and policies that are being followed actually do lead to ecological sustainability; and thirdly be **aligned** with the national vision of sustainable development spelt out in the National Strategy on Sustainable Development (NSSD). Ecological sustainability does not preclude or devalue the interests of society or the economy – ensuring ecologically sustainable use of the environment must occur at the same time as the promotion of justifiable economic and social development, but inappropriate trade-offs must be avoided. Ecological sustainability is the imperative for achieving social and economic intergenerational equity.

The report indicates that the way in which the NEMA Chapter 5 objectives (which promote the integrated environmental management of activities) are being implemented, and in particular, the “basket” of environmental management tools that have been made available to date, do not adequately answer the question referred to above. Some things have to change.”

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2.2.4 RECOMMENDATION PROPOSALS (please refer to the subtheme 1 report prepared by Enact International)\textsuperscript{13}

The Subtheme report provides for recommendations to be presented on 3 levels by means of:

- Tweaking the existing system
- Minor amendments
- Complete Overhaul

2.2.4.1 Tweaking the existing system to reap "low-hanging fruits"

- **Change of Reporting Format for EAPs**

  "The current reporting system during the EIA process does not gather the right sort of information and also does not present it in such a way that a decision-maker\textsuperscript{14} can easily see if a project will be ecologically sustainable. Providing more complete information in a proper framework makes it easier to achieve integrated decision making.

  EIA reports need to be written in a manner that helps decision-makers. Firstly, EAPs must respond properly to any issues raised by I&APs and should not gloss over issues by using terminology such as "noted". EAPs must enhance understanding by creating a framework for proper responses. Secondly, as is the case in planning applications (where compliance with certain planning tools must be "ticked off" or else the gap must be explained), **EAPs should have to indicate how the proposed development will contribute to achieving ecological sustainability, what legislative principles are meet and if the development does not meet specific principles, then they must indicate why not.** Similarly, like planners, they should also be able to **show what public sector plans apply to their project and indicate whether they comply with these plans or not**.\textsuperscript{15}

- MOUs

\textsuperscript{13} P47 http://www.environment.gov.zw/docs/A4E1_HFA_19Aug2011_064108.doc

\textsuperscript{14} http://www.environment.gov.zw/docs/EIA1_HFA_19Aug2011_064108.doc

\textsuperscript{15} http://www.environment.gov.zw/docs/EIA1_HFA_19Aug2011_064108.doc
“Memoranda of Understanding (MOUs), whether legally binding or not, can be utilised to promote co-ordination and alignment. Given the current levels of legislative fragmentation MOUs can facilitate integrated decision-making; streamline administrative and decision-making processes; and reduce duplication of effort between the parties in regulating activities and monitoring and enforcing compliance.”16

- Promoting the use of “sustainability enhanced” planning tools and maps

“The Planning Profession Act 36 of 2002 defines a “planner” as someone who “exercises skills and competencies in initiating and managing change in the built and natural environment in order to further human development and environmental sustainability”. In most instances the changes envisaged by planners are predicated on the existence of maps and these are created after much prior technical research and discussion around what is needed and desired for a particular land use area. By using planning tools more comprehensively, decision makers can not only decide (for instance) where it would be best to situate a factory but also find out where ecologically sensitive areas exist or what the extent of the water resource in a particular area is - in this manner planning tools can capture both zoning designation and environmental overlays, so that more sustainable decision making results.

The participative processes that inform the development of planning tools should frame all decision making that also affects the environment but the EIA decision making process currently only allows for limited engagement around strategy. Strategic decisions need to be fully canvassed at the outset so that planning frameworks include ecological sustainability and can be relied upon by the parties to the EIA process at a time when the application is being considered, not adjudicated. The integration of environmental and land use management criteria in decision-making by planning authorities would be achieved more effectively if they can refer to planning tools that have already taken ecological sustainability into account.

Ecological sustainability should be a major consideration when developing Spatial Development Frameworks ("SDF"). Planning regulations require the authorities to consult and decide upon the desired "use of space" and so ecological sustainability is a logical consideration at this point. Greater use of SEAs, EMFs and also Bioregional Plans (provided for under NEMBA) in the process of compiling planning tools and maps should be promoted to ensure that these tools are premised on ecological sustainability considerations and informed by sustainability indicators.

Once planning tools and maps make allowance for answers to the questions of need\(^1\) and desirability\(^1\) (such as these concepts are described and understood in their wider sense by Hardcastle\(^1\)) in a manner that incorporates the demands of ecological sustainability, decision-making at the micro/authorisation level will link more closely to the macro plan. This will serve to "close the gap" and ensure greater integration between planning and IEM.

The incorporation of some planning references and tools into the EIA process has already occurred.\(^2\) The NEMA Regulations require that Environmental Management Frameworks ("EMFs") may be completed and that these must indicate what activities would be undesirable in the area (or part of the area). The EIA Regulations also make reference to tools such as bioregional plans and biosphere reserves (provided for under NEMBA) and require a basic assessment for certain activities in these areas. Therefore, taken together, the "environmental bolstering" of the IDP and SDF tools, and their use in conjunction with the information gathered from EMFs, SEAs or from bioregional plans, would enable a development proposal to be viewed strategically, so that the achieving ecological sustainability (unless there is a justified departure in the interests of society) would be more realistic.

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17 "Need" would have to be addressed in terms of asking "is it wise land use?" or "is it the right time and place for the particular land use proposed?" or "is it a "societal priority"?"

18 "Desirability" would need to be assessed in terms of the idea of "placing" and the question would be "is it going to compromise the IDP and the SDF or the EMF for the area?"

19 Hardcastle and others in "Sustainability Criteria for Planning and EIA in South Africa" and "Planning and EIA in South Africa: Our Sustainability Mandate"

20 See for instance, Regulations 22(2)(g) and 31(2)(f) of GN R543 in GG 33306 of 18 June 2010.
If re-vamped planning tools are brought in at the application stage, they can serve as indicators of how easy (or difficult) it would be for applicants to get environmental authorisation for a project and decision makers can avoid becoming involved in projects that should never be considered. As described above, when submitting applications EAPs should have to say whether they comply with certain things, (such as specified planning frameworks) and if they do not, they should have to motivate why the project should even be considered. This presupposes that (along the lines of the requirement in Listing Notice 3) an activity is only triggered if it falls into an area where a specified type of plan (which has needs to have been specifically adopted by the competent authority), exists. This ensures that only ecologically sustainable plans are relied upon.21

- Linking the achievement of ecological sustainability objectives directly to performance and delivery outcomes

"Government has a well developed performance management system that can be utilised to support greater effectiveness in achieving ecological sustainability and bring about efficiency gains in the sector. To ensure that ecological sustainability objectives are met; integrated decision-making is achieved; and cooperative governance is promoted, clear targets in relation to these objectives should be incorporated in performance agreements and delivery outcomes. In addition it would be helpful to set up a system of incentives to encourage the right sort of decision making. These measures can be incorporated into all spheres of government, and at both political and executive levels, and thereby ensure that government as a whole works towards achieving the same objectives."22

2.2.4.2 Minor interventions needed to achieve greater efficiency and effectiveness gains

- Development of Guidelines

"In order to assist both decision-makers and applicants, there should be more emphasis on coordinating and consolidating the development and use of guidelines. There are numerous

guidelines in place\textsuperscript{23} and in our opinion there is a need to coordinate the development of guidelines and to prioritise which are the most appropriate guidelines given the overarching objective of achieving ecological sustainability and giving effect to the objectives spelt out in chapter 5 of NEMA. Officials (particularly in the local government sphere) are often not familiar with the existence and content of these guidelines and do not always know how to use and interpret the guidelines. There is a need to also address the issue of ensuring the consistent interpretation and application of guidelines across all spheres and in all sectors of government. It may therefore be advantageous to develop guidelines for officials that build capacity\textsuperscript{24} on, and facilitate, for example:

- the consistent interpretation and application of the NEMA principles;
- the determination and application of sustainability criteria;\textsuperscript{25}
- decision-making which impacts on the environment; and
- The implementation of legislation which relates to the environment (including clarifying the relationship between planning and environmental legislation).

With the view to ensuring the effective coordination of developing guidelines and to avoid duplication of effort, we suggest that the priority should be on ensuring that 'first order' guidelines (such as one on the interpretation and application of the NEMA principles, need and desirability, sustainability criteria and a general procedural guideline) are developed, communicated and implemented. 'Second order' guidelines, which focus on the more technical and operational aspects related to specific sectors, activities, projects etc can follow suit. Operating under guidelines (such as those that provide specific sustainability criteria and indicate the sort of projects that are likely to be authorised), is something that could be put into effect relatively quickly. Consideration should also be given to reviewing all existing guidelines to determine the extent to

\textsuperscript{23} We identified 50 guidelines in 2009 when we were drafting the Five Sectors Guidelines for DEA and this was not an exhaustive list.

\textsuperscript{24} The brief to our sub-theme did not include capacity building and training and we have consequently not addressed this at all. This however does not mean that we do not recognize the need for building capacity and in fact view it as one of the critical building blocks that are needed to ensure ecological sustainability objectives are met.

\textsuperscript{25} Such as suggested by Paul Hardcastle \textit{et al}, 2010 and Gerber \textit{et al}, 2010 in paper on "Sustainability Criteria for Planning and EIA in South Africa". They propose such a guideline to ensure that the planning and EIA processes are objectives-led and don't become merely a compliance exercise to ensure that legislated procedural steps have been followed.
which these guidelines address sustainability issues and, where necessary, to revising guidelines that do not address this issue adequately.\textsuperscript{26}

- Development and use of Norms and Standards

"Standards are appropriate where it is possible to make a precise objective distinction between what is acceptable and what is not and are generally technical in nature whereas norms are more of a qualitative test and linked to the use of reasonable measures.

Norms and standards would be very useful as alternative tools to EIA in defined environments where the receiving environment is not sensitive and the impacts of the activity and project in question are known and can be avoided through adherence to standards. In this manner, some listed activities- even though they may have some detrimental effect on the environment – can be managed without going through a cumbersome assessment process. Consideration could also be given to combining the use of norms and standards with EMF's and other planning tools which identify geographical areas based on the environmental attributes and link these to specific activities. Thus certain activities can either be automatically regulated by a compulsory adherence to norms and standards or they may need to be fully assessed through the scoping and EIR procedure and be regulated by licence conditions.

Although reliance on norms and standards may seem to exclude I&AP involvement and oversight, it can have the effect of improving the chances of ecological sustainability because these tools are research and outcome based and there is less discretion for independent (and sometimes arbitrary) decision-making. Furthermore, using norms and standards as an alternative to the EIA process does not mean that there are no checks and balances. As indicated above they can be used in association with maps or be linked to an EMF. In other words, planning tools can be used to strengthen the option.\textsuperscript{27}

- Monitoring

\textsuperscript{26} http://greenenvironment.gov.zw/docs/44_43_1117_/14Aug2011_044205.docx
\textsuperscript{27} http://greenenvironment.gov.zw/docs/44_43_1117_/14Aug2011_044205.docx
"Monitoring at present relates mostly to compliance monitoring by the authorities (who tend to lack capacity) and does not include enough overview by civil society." To address the lack of attention given to monitoring in the wider sense within the current IEM system, an appropriate and objective-driven monitoring system (including sustainability indicators) must be developed and implemented.

This should include measures that verify the extent to which the overarching objective of ecological sustainability and NEMA principles are being applied in planning, assessing impacts, decision-making, implementation and enforcement. The system should be relevant to both project and policy/plan interventions and should apply across all spheres of government. In other words it should be integrated in the government-wide monitoring and review system to ensure alignment with government's monitoring system for reviewing IDP's, government performance against delivery outcomes etc. This will ensure that ecological sustainability is measured and addressed in IDP's, SDF's and other planning tools and that there is alignment between these tools and EIP's and EMP's under NEMA. It will also facilitate in greater emphasis being placed in practice on ensuring effective and consistent implementation of requirements that are already essentially covered in law."

- Legislative changes – amending existing environmental laws

"Although there is already some alignment between various pieces of legislation such as between the NEMA EIA Regulations and the NEMWA, the NEMA EIA Regulations and NEMQA, the NEMA EIA Regulations and ICMA, the NEMA EIA Regulations and Heritage Impact Assessments and the NEMA EIA Regulations and Health Impact Assessments, studies (such as the Cliffe Decker legal audit report) illustrate that there is much duplication, fragmentation and lack of co-ordination with regard to the area of environmental management regulatory functions in terms of national legislation. These hinder the imposition of fully functioning integrated permitting.

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28 For instance where mining is concerned, the public can appeal to REMDEC but they have no other influence on the decision.

Therefore legislative reform should take place to amend where duplication exists and to clarify procedures where they are not co-ordinated.\(^{31}\)

In order to achieve ecological sustainability there is also a need for certain more substantive amendments to be made. NEMA should actually say that if a decision-maker is not satisfied that ecological sustainability and the sustainable use of natural resources will be achieved, the application must be refused. Development should not be allowed to go ahead with just the mitigation of negative effects (developers should not be able "to do the wrong thing right"). The law needs to be changed to impose an obligation on the competent authority to refuse applications for projects that cannot demonstrate that they will contribute to the national strategic objectives of achieving ecologically sustainable and socially just development.

The Constitutional Court has held that if the legislation provides for authorities to have a discretion (such as to grant or refuse an authorisation), it must also provide guidance on how the discretion should be exercised. To some extent this is achieved by providing that NEMA’s principles must be taken into account by all organs of state when making decisions that affect the environment, but the law should be amended to go further.

Another suggestion is to require decision makers to adopt spatial plans that take account of ecological antenna and then take them into account when making decisions. This idea is very much along the lines of the procedure that is already prescribed in Listing Notice 3 where if the CA has adopted certain plans (such as bioregional plans), these must be taken into account. There is scope for this procedure to be expanded and further reliance on adopted plans would ensure that cumulative impacts (which are vital to sustainability) would be taken care of.

Consideration should also be given to amending the provision in the EIA regulations pertaining to the independence of EAP’s. In order to ensure a balanced and objective assessment of sustainability considerations it is important that the EAP should be autonomous from the developer.

\(^{31}\) We understand that a section 24(8) K and L guideline is apparently in the pipeline and its development is supported.
yet involved in planning and design to ensure that environmental factors are considered early in the process and integrated in order to influence the scope of a proposal.\(^{32}\)^{33}

- **Increased structured alignment between planning and the environment (laws and policies)**

"In order to connect the planning imperatives more closely with those of the environmental authorisation system, there must be a more structured alignment than that which exists at present. At the moment alignment issues are covered by the Local Government Municipal Systems Act 32 of 2000 (MSA), which provides that municipalities must ensure the co-ordination and alignment of district and local municipalities' IDPs (and all its component plans including SDFs) with the plans, strategies and programmes of national and provincial organs of state. Section 32 of the MSA calls for the evaluation of such alignment by the MEC responsible for Local Government. In addition, NEMA states in section 16(4) that IDPs (including the SDFs) must comply with environmental management principles.

The need for alignment and integration should be specifically considered during town planning applications. In this regard, unlike the old order legislation which basically ignores environmental issues, the new generation provincial planning laws such as the KZN Planning and Development Act 6 of 2008 ("KZN PDA") are doing just this by bringing environmental considerations into decision making. For instance the KZN PDA refers to the potential impact of a proposal or application (such as rezoning or subdivision) on "the environment, socio-economic conditions, and cultural heritage" as an issue that needs to be considered.

Attempts have been made to integrate the environment even further at the local level by using town planning schemes to formalise environmental considerations. For instance, Durban has developed a biodiversity mapping "overlay" called D'MOSS (Durban Municipal Open Space) and moves are afoot to have this changed from purely a mapping tool with guideline status to a legal

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\(^{32}\) We acknowledge the justification and suggestions made in this regard in Richard Hill's comment on our report.

requirement. If the proposal succeeds, D'MOSS will be adopted as a control attached to particular zones. However, there are constitutional problems with this proposal as legislating the environment (amending a scheme has the status of amending a by-law and is therefore legislative in nature) is not a municipal function. As useful as the idea may be, we are not convinced that the law allows for this type of intervention at this time. In any event, though in a more discretionary manner, (as described above), the KZN PDA does require the environment to be considered in decision-making.

For some time attempts have been made to get a framework environmental and planning law off the ground. Significant changes have had to be made to allow for the Constitutional Court's ruling about the role of municipal planning in the City of Johannesburg case and its insistence on the separation of powers in that regard. We understand that it will not involve a complete overhaul of planning laws (so that the environment is fully integrated with planning) but that it will meet NEMA half-way by mirroring its provisions that enable various forms of joint decision making. Consideration should be given to lobbying and making representations to the Department of Rural Development and Land Reform at the highest level, on the need to ensure alignment between planning and environmental authorisations processes and spatial planning frameworks (such as SDF's, SEA's and EMFs).

Implementation of these alignment provisions alone is not adequate to ensure the achievement of ecologically sustainable development. Alignment requirements and targets for all organs of state that impact on the environment should be included in the relevant sector plans and in the outcomes delivery agreements for political heads.35

- Strengthening cooperative governance mechanisms aimed at ensuring ecological sustainability is addressed in policy frameworks

34 Pers. communication from Stephen Berrisford (legal drafter of new planning law)
The current legislative framework makes provision for the development and implementation of various policy and planning frameworks that specifically address cooperative governance and ensuring ecological sustainability across all spheres of government. NEMA, for example, provides for the development of, and adherence to, environmental implementation and management plans (EIP's and EMP's) by national departments and provincial governments. It further places an obligation on provincial governments to ensure that the relevant provincial EIP is complied with by each municipality within its province, and requires municipalities to adhere to these plans, and the principles in the preparation of any policy, programme or plan, including the establishment of IDPS and land development objectives. Under the MSA municipalities are obliged to undertake developmentally orientated planning in the form of IDP's, which are required to ensure that municipalities, together with other organs of state, contribute to the progressive realisation of fundamental human rights, including specifically section 24 of the Constitution. Furthermore, municipalities are required to ensure that IDPs are aligned with, and complement, the development plans and strategies of other organs of state so as to give effect to the principles of co-operative government.

These are appropriate and adequate mechanisms to ensure ecological sustainability across all spheres and to facilitate cooperative governance in this regard. However, interventions are needed to address current institutional weaknesses and failures (such as capacity and resource constraints, management crisis in municipalities and delivery backlogs) which result in the lack of alignment in developing such plans and these plans not being adhered to in practice (when for example decisions are made at micro level to approve developments).

- **Incorporating ecological sustainability considerations in strategic policy frameworks**

  "Strategic policy frameworks are a key mechanism for ensuring that ecological sustainability is mainstreamed in government strategies and programmes. Consideration should be given to ensuring that specific objectives, targets and performance indicators for achieving ecological

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36 Contained in section 2 of the Act.
37 Approximately 48 municipalities have been placed under provincial administration
sustainability are included in the compilation of strategic documents such as the National Strategic Planning Green Paper; sector plans (for example the Agriculture, Forestry and Fisheries Integrated Growth and Development Plan); sector strategies (such as the Industrial Policy Action Plan); departmental strategic plans; provincial growth and development plans; IDPS. In addition, the review and implementation of EIPs and EMPs that are required under NEMA, should be elevated to the cluster level and FOSAD to ensure that these plans are implemented and sector and departmental plans and strategies are aligned with the relevant EMP and/or EIP.\textsuperscript{39}

- **Conflict Resolution**

“This mechanism can be used in at least two instances. Firstly, within the public participation process (where it would also be necessary to decide upon the triggers for instances where conflict resolution might be applicable) and secondly where departments with different mandates come together. In the former case, a constraint would be the additional cost, which would need to be borne by the applicant. Conflict resolution should be dealt with at the macro level (possibly by a commissioner or ombudsman) where there is no vested interest - this would assist in circumstances where one department (such as Mining) needs a project to go ahead, while another (such as Forestry) finds it to be detrimental.\textsuperscript{40}

2.2.4.3 Complete Overhaul

- **Authorisation of projects, not activities**

“One of the criticisms of the EIA process is that it is the specific listed activities that are assessed and authorised, whereas they should be focussed on the impact of the proposed project as a whole. We propose that there should be a paradigm shift from a system that is activity based and driven to a more integrated and holistic one in which activities are merely “first stage triggers” and

\textsuperscript{39} http://opens.environment.gov.za/docs/DEA-1102-16Aug2011-044868.doc
\textsuperscript{40} http://opens.environment.gov.za/docs/DEA-1102-16Aug2011-044839.doc
a greater emphasis is placed on assessing and authorising the development as an integrated whole. This "project" emphasis would of necessity involve a better consideration of the cumulative impacts of a development and that in turn, would influence the prospects for ecological sustainability.

The current regulatory regime does not provide an effective 'threshold of significance' that must be exceeded to trigger the EIA process. Screening is an internationally accepted part of the EIA process that is used to determine whether or not an EIA is required. Consideration should be given to introducing screening into the regulatory regime to focus EIAs on projects that will have the greatest impact on the environment and to identify the most appropriate tool for assessment.

The EIA practice should shift away from the consideration of constraints, problems and impact mitigation, to a developmental process focussed on opportunities that enhance ecological sustainability and finding sustainable alternatives and solutions. A move in this direction is the introduction of environmental management frameworks (EMFS) which are informed and defined by the environmental attributes of geographical areas. These should be used to provide an effective framework for the search for solutions in projects.

In order to change the focus from activities to projects, there would need to be a significant level of re-drafting of the legislation, not just in terms of the framework legislation but also of all the environmental management Acts which link in with activity based permitting systems. In addition, if this approach is taken, there would also of necessity be more synergy between planning and the environment and planning laws would need to be amended to cater for this.41

- Identify and redefine environmentally damaging government policies and programmes

"To ensure alignment with the overarching objective of ecological sustainability, an investigation into the nature and level of government expenditure, programmes and policies should be initiated

to identify those that contribute to environmentally damaging practices and natural resource production and use that are not ecologically sustainable. It should also recommend what policy shifts are needed to address expenditure patterns, programmes and policies that hinder sustainability and which sectors can contribute to ecological sustainability. The goal of ecological sustainability needs more emphasis so that it becomes embedded in political will.\(^{42}\)

- **Full Integration of environmental policy via budgetary, planning and auditing processes**

"In order to ensure that environmental policy translates into ecological sustainability outcomes, it is important to integrate it into as many avenues as possible. The aim is to strengthen the contribution of whole administrations towards environmental protection and sustainable development and to do so in a way that ensures cost effective action without suppressing innovation in the different departments. As far as budgeting is concerned, the report found that even where financial resources are earmarked for activities that help to push environmental integration down through all the sectors of the administration, the risk is that it does not keep pace with developing demands such as the increasing demands of the impact assessment process and public consultation procedures. Nevertheless budgeting for the inclusion of environmental policy is important and should be factored into every department, whether or not their mandates differ. Furthermore, if government departments open up their budget debates to civil society, then in the end there will be mutual accountability towards the environment and ecological sustainability will be a more likely outcome.

Nevertheless, sustainable development cannot be achieved without EPI. The way to integrate environmental policy is to ensure that regular budgetary and audit exercises reflect EPI priorities. Environmental responsibilities must be reflected in the internal management regime of each department. There should be a strategic department/unit/committee in charge of coordinating and guiding EPI across sectors and there must be mechanisms to ensure environment/sector coordination and communication between departments and between different levels of governance. EPI requires environmental issues to be taken on board in the work of all

government departments. This requires a move away from a culture of fragmentation and "policy silos" so that departments are less single minded and more receptive to environmental issues.\(^{43}\)

- **Change in hierarchy of decision making**

"In our view, provision needs to be made for a change in the hierarchy of decision-makers. It is not new to suggest an environmental ombudsman or commissioner, but it is an idea that we support. The Western Cape Constitution provides for the establishment of a "Commissioner for the Environment" but this has not occurred.\(^{44}\) The underlying principles of the envisaged Commissioner are that:

  i. In the exercise of his or her powers and functions the Commissioner must ensure the conservation of the environment, and must give attention to the need to balance the goals of environmental conservation and sustainable development.

  ii. The Commissioner is independent and subject only to the national Constitution, this (the provincial) Constitution and the law, and must be impartial and must exercise the powers and perform the functions of the office of Commissioner without fear, favour or prejudice.

  iii. Other provincial organs of state must assist and protect the Commissioner to ensure the independence, impartiality, dignity and effectiveness of the office of Commissioner.

  iv. No person or provincial organ of state may interfere with the functioning of the Commissioner.

The Western Cape Constitution further provides that the Commissioner will have the following powers and functions:

- monitor urban and rural development which may impact on the environment;
- investigate complaints in respect of environmental administration;


\(^{44}\) To date the provisions relating to the Commissioner for the Environment have not been implemented.
• Recommend a course of conduct to any provincial organ of state or municipality whose activities have been investigated; and act in accordance with the principles of co-operative government and intergovernmental relations referred to in Chapter 2.45

2.3 SUMMARY RECOMMENDATIONS SUBTHEME 10 REPORT: COOPERATIVE GOVERNANCE: EIAMS TOOLS (Please refer to Subtheme 10 report compiled by Green Connection) 46

2.3.1 PROBLEM STATEMENT

The necessary MOUs for integrating permitting, inter- and intra- governmental agreements, cooperation and efficiency within the context of EIA have not been established.

However, based on the research done in the Subtheme report, the problem statement should be broadened beyond MOUs to examine the key barriers to cooperative governance as applied to EIAMS tools.

2.3.2 OBJECTIVE:

To ensure suitable, acceptable and efficient co-operative governance:

2.3.3 SHORT DISCUSSION ON BACKGROUND AND STATUS QUO

"The status quo section of the report outlines a brief overview of the legislative status of cooperative governance, drawing on the DEA documentation provided. The report also summarises the initial PSC concerns, interview results and provides a summary of case studies.

with possible lessons that can be applied. The report considered the following as part of the status quo assessment:

- The Legal audit of all environmental management legislative requirements as was completed during mid 2010 by Cliffe Decker Hoffmeyer.
- The draft guideline in Section 24(8), 24(K) and 24(L) by DEA.
- The PSC findings and issues raised.
- International literature on European Union study.
- Local case studies which included various interview results as undertaken by the service provider.

The key barriers to cooperative governance were identified based on the above information and includes:

- The institutional arrangements of those key departments that shape the strategic environmental management context, are different in almost every province
- Need for an "environmental" champion
- Civil society and private sector do not have meaningful opportunity or capacity to participate in cooperative governance.
- Cooperative governance – involvement of stakeholders other than government.
- Compensation for contributions at cooperative governance structures.
- The role of traditional authorities in decision making.
- Fragmentation and duplication of permitting processes in EIAMS leads to frustration amongst government departments.
- Conflicting mandates of different commenting authorities or lead departments leads to frustration and lack of cooperation.
- Inappropriate use of EIAs hampers cooperative governance.
- Memoranda of Understanding are not THE “one size fits all” solution to ensure co-operative governance.

- Prioritisation through political delegation lesson learnt.

- Financial and staffing constraints.

2.3.4 RECOMMENDATION PROPOSALS

“The results of the literature review and the interviews reveal that the nature of the cooperative governance is not dependent on the EIAMs tool but the success of cooperative governance depends on a number of factors, including those identified as show-stoppers in the draft guideline document by DEA and the key barriers identified in the full subtheme report.”

The following recommendations are made:

2.3.4.1 Identification of short, medium and long term interventions:

“In a country with limited resources, the ideal EIAMs process is likely to be some years away. However, if cooperative governance arrangements are aimed at improving sustainability (economic, social, ecological), rather than mitigating impact, their effectiveness can be measured against their ability to contribute to sustainability. It is therefore useful to consider short, medium and long term priorities under the following headings.

1. What existing measures or mechanisms can be tweaked or improved with minimal intervention?
2. What can be done through making some minor legal amendments or new interventions?
3. What needs to be completely overhauled?”

TABLE 1: RECOMMENDATIONS SUBTHEME 10

<table>
<thead>
<tr>
<th>Priority</th>
<th>Measures proposed</th>
<th>Responsibility</th>
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<tr>
<th>Short term</th>
<th>Use of section 24(o) commenting periods to input into planning frameworks</th>
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<tbody>
<tr>
<td></td>
<td>Use of formal cooperative governance structures under other legislation in order to motivate for EMF or SEA as basis for planning decisions. For example, CMA, REMDEC etc.</td>
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<td></td>
<td>Use of sustainability criteria as guidelines for cooperative governance (common aims)</td>
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<td></td>
<td>Use of EMCAs to monitor environmental quality - either post ROD or with application of norms and standards.</td>
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<td></td>
<td>Good Neighbour agreements to be standard outcome of EIA and enforced</td>
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<td></td>
<td>Local govt, Civil Society, Private Sector</td>
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<td></td>
<td>Existing MOUs to be strengthened(^{50})</td>
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<td></td>
<td>DOE and relevant departments</td>
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<td></td>
<td>Increased use of formal, non-legislated forums/ task groups to address alignment issues</td>
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<td></td>
<td>Draw on best practice from different provinces</td>
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<td></td>
<td>Involvement of civil society stakeholders in cooperative</td>
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<td></td>
<td>DEA and provinces</td>
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\(^{50}\) Strengthened could mean amendment to MOU to involve more departments or re-alignment of the roles and responsibilities to ensure sustainability criteria met
<table>
<thead>
<tr>
<th>Medium term</th>
<th>Finalization and Implementation of the DEA draft guideline on cooperative governance</th>
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<tbody>
<tr>
<td>DEA</td>
<td><strong>What can be done through making some minor legal amendments or new interventions?</strong></td>
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<tr>
<td></td>
<td>use info gathered in IDPs, EIAs, SEAs etc to inform strategic target for monitoring improvements in environmental sustainability, monitoring and independent verification MOUs to be implemented to formalize existing informal arrangements (where this will increase effectiveness)</td>
</tr>
<tr>
<td>DEA, Provincial and local government</td>
<td><strong>Ensure MOUs in place so as to facilitate integrated process of one application that is then internally processed to result in integrated permit that promotes ecological sustainability.</strong></td>
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<tr>
<td>DEA</td>
<td><strong>Environmental forums between Environmental Dept officials and other relevant departments to ensure spatial development frameworks are aligned with environmental priorities.</strong></td>
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<tr>
<td>DEA, Environmental dept.s. At provincial and local government</td>
<td><strong>Build capacity of non-environmental management officials and politicians to enhance common understanding.</strong></td>
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<tr>
<td>DEA, in partnership with donor funding?</td>
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<tr>
<td>Long term</td>
<td>of EIAMs</td>
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</tr>
<tr>
<td>1. What needs to be completely overhauled?</td>
<td>Environmental and planning function to be contained within same provincial department.</td>
</tr>
</tbody>
</table>

| | Formal environmental management unit established between local government and provincial department | DEA to take to MINTECH, MINMEC |
| | The establishment of EIA units within environmental departments at provincial level that ensure all relevant departments are consulted. | |
| | The law needs to be changed to impose an obligation on the competent authority to refuse applications for projects that cannot demonstrate that they will contribute to the national strategic objectives of achieving ecologically sustainable and socially just development – practice adherence to results of EMFs, SEAs | DEA, law reform NPC |
| | Identification of mandates and responsibilities and subsequent incorporation of such obligations | |
2.3.4.2 Specific Recommendations to address "show-stoppers":

"The following suggestions are put forward towards what has been termed "a one stop process" that is hoped to move us towards improving environmental sustainability.

- **The strategic context:**

In order to enhance environmental sustainability, it is vital that environmental information is used to underpin planning decisions.

- EMFs should be conducted – initiated first in areas of particular sensitivity.
- EMFs should be integrated into provincial SDFs and local government IDPs, and incorporated into budgetary cycles of local government to ensure their practical implementation.
- Provincial Environmental forums or task groups should be established in each province. Such informal working arrangements between provincial environmental and other departments, and local and district government should also include non-government stakeholders. Their role is to ensure alignment of sustainability targets in different government departments and to ensure that civil society participates in such processes.

Given that EIAs are often the only space for the public to engage in environmental issues that affect them, such strategic discussions should inform specific conditions where EIAs are not appropriate (using sustainability criteria).

It is suggested that such a flexible cooperative approach is preferable to repeated amendments of NEMA and the EIA regulations.

- **The role of the EIA**

These recommendations assume that the status quo of Project level EIAs continues.

- Strategic level environmental planning framework are in place, as per previous section
- A project level assessment is triggered, e.g. EIA
A provincial level Environmental forum (informal working arrangement between provincial departments, environmental and other department, local government) meets. Their role could be to decide on the appropriate tool for assessment, or if the EIA is triggered, their inputs are then used to determine scope of EIA such that its results would be useful for subsequent permitting by other departments.

- Once the EIA is underway, the individual departments input into EIA either via forum or separately.

- Public input takes place as per best practice\(^3\)

- EIA decision made by competent authority

- EIA ROD used as input to other permitting processes. This would either be as one integrated permitting process (provided for via MOU) or EIA ROD used by individual departments as the environmental input into their specific decision-making processes. If individual departments have participated in earlier EIA process, their issues should have been addressed as part of the EIA – their permitting processes should therefore be streamlined.

- Post decision – The use of EMCAs (section 35 of NEMA) to set up environmental monitoring committee (EMC) to monitor compliance with EMP. Such a EMC should involve stakeholders outside government and should have means to respond quickly to non-compliance (through link with law enforcement for example)

- **Alignment of timeframes for commenting:**

To be applied to EIAs but also applicable to any EIAMS tool that has a role for intergovernmental commenting. The EIA is a project based tool and its nature is to provide sufficient, relevant, information to inform decision-making. The EIA assesses not only the biophysical environment but the social and economic complexities of the project, as well as its broader implications, through cumulative effects or externalities.

The example of mining is used for illustration. The EIA is a tool to inform decision-making while the mining EMPR is a plan to mitigate impacts once the decision to mine has been taken. The Dept of Mines mandate is to promote mineral extraction. The EMPR is a tool to improve the environmental and social practices of the approved mining activity.

\(^3\) Refer to subtheme 3 and 7.
The two tools should therefore not be equated but should be used synergistically. Conditional approvals are not supported as they lead to development expectations and general confusion in the minds of public and officials. A proponent could rather therefore prepare an EMPR in parallel with but based on the completion of the EIA, while understanding that the EMPR should not be approved unless the EIA is approved first.\(^{52}\)

- **Capacity issues:**

A programme of Capacity building at different spheres of government and inter-departmentally needs to be implemented. Such a training programme would focus on in terms of understanding of sustainability targets and the role of EIAs as one tool that could inform other permitting processes. Increased awareness and understanding of EIA was seen by all respondents to be highly effective in enhancing co-operation between departments.

A broader public awareness campaign should also be undertaken at the national level in order to provide an understanding of the aims of EIAMS. A centralized message from DEA could then dispersed. As such, “one set of materials (posters, flyers etc), be produced at the national level, and made available for all provinces”. Citizenry and officials would then receive “one consolidated message”, and “financial resources and time” in producing the awareness raising materials would be “once off”, rather than being “duplicated in effort and resources in each province.

A general lack of capacity to prepare and process adequate EIA reports leads to delays and extra work to review studies. It is hoped that the accreditation body for people working the EIAMS sector (EAPSA) will lead to increased competency. (Refer to Subtheme 8 and 5 on skills and capacity in the EIAM sector)

The proposed use of advisory officers to assist small business with environmental authorisations is supported.\(^{53}\) Such advice offices could be linked with existing advisory services such as community development officers in local government or to agricultural extension services. Such offices could also play a role in collating environmental information.

This requires that all government departments associated with planning need to become familiar with EMF’s (their purpose). When departments that have functions potentially affected by EMF’s

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\(^{52}\) LRC input

\(^{53}\) LRC input
understand the purpose of EMFs, they would recognize their need to participate in the EMF development process. Much capacity building is needed at all levels to raise awareness of EMFs in order to get “buy in” and genuine participation.

- Monitoring, Compliance and Enforcement:

There is a need to ensure that once a project or programme has been approved that adequate monitoring and enforcement takes place. Outputs from monitoring, auditing of environmental performance and failure to meet compliance targets, can be fed back into the amendment of the EMP. The use of voluntary self regulation within specified standards provides a mechanism to gather information that can inform broader environmental planning. Local communities can monitor agreed environmental standards and play a watchdog monitoring role working together with government enforcement agencies. Such arrangements can be formalized through Section 35 of NEMA.

Good Neighbour Agreements can be implemented both for new developments and for upgrading of existing activities. With such agreements, there is a need to ensure that there are conflict resolution procedures in place, for example, the use of mediation experts or possibly the use of retired judges (providing they have some expertise in this area). Where disputes arise over the quality or appropriateness of studies or monitoring reports, quality assurance should take place through peer review.

The EMP is used to manage post ROD compliance. Although the EMP prescribes that a person must take responsibility for operationalizing the EMP and reporting, there is no formal mandatory structure, e.g. an environmental monitoring committee (EMC) that has broad stakeholder representivity and can advise government on lack of compliance.

Provisions within other pieces of legislation could be used where appropriate and the use of EMCAs under section 35 of NEMA should be explored.

The illustrative examples above require institutional change and possibly law reform. Specific legal and institutional recommendations are beyond the scope of this subtheme and would be taken up
thin the ambit of subtheme 1 or the DEA law reform process. Their inclusion here is to reflect the possibilities that have arisen as a result of discussion during the review of this report."

2.3.4.3 Concluding Remarks:

"It is important to recognize that cooperative governance arrangements can be both formal or informal and that both have merit within the governance system.

A key part of effectively aligning authorization processes that have environmental implications is to ensure adequate time to achieve the desired level of environmental quality without unduly delaying decision-making. From the interviews, it appears that such alignment depends on relationships amongst officials that are built up over time. It would appear therefore that any liaison responsibility for ensuring an aligned approach between line function departments should be driven by experienced officials who have established a wide network of colleagues in the necessary departments.

Cooperative governance agreements must be in place for the entire planning cycle, and the extension of cooperative governance to include partners outside government could be an effective method of government extending its monitoring and compliance role, building an heightened environmental awareness amongst citizens, or in fact an implementation role where partner organisations take on specific roles and responsibilities.

It is encouraging to see departmental progress in this regard. Cooperative governance is a systematic approach to achieving sustainable development. It is our view that its success is closely linked to institutional arrangements and capacity and resources within the different spheres of government, rather than being determined by the particular tools.

Similar principles, powers and functions could be developed to cater for a national commissioner. A national commissioner should be outside of the national government departments and should be the final arbiter on all things environmental, subject only to review by the courts and certain necessary exclusions that cater for issues that are of national strategic importance."
2.4 SUMMARY RECOMMENDATIONS SUBTHEME 4 REPORT: MONITORING AND ENFORCEMENT (Please refer to Subtheme 4 report compiled by SE Solutions)56

2.4.1 PROBLEM STATEMENT

Compliance monitoring and enforcement is inadequate.

2.4.2 OBJECTIVE OF SUB-THEME 4:

To ensure that compliance monitoring and enforcement procedures within the organisational structure of IEM are adequate and effective.

2.4.3 SHORT DISCUSSION ON BACKGROUND AND STATUS QUO

"In this sub-theme report the concept of compliance and enforcement is addressed. The report has been structured to include a status quo description which is initiated with definitions of compliance and enforcement and a description of compliance and enforcement mechanisms. The regulatory framework is briefly reviewed but with a focus on the fact that there do not appear to be major obstacles in currently defined laws and regulations to enforcement actions. The previously problematic section 48 of the NEMA has since been repealed and this allows authorities to effect enforcement against organs of state. The establishment of a compliance enforcement function at the Department of Environmental Affairs has seen progressive growth in capability and extent. There appears to be difficulties with some elements of compliance and enforcement actions at provincial government and local authority spheres although the larger municipalities appear to be having successes in at least civil proceedings. The exclusion of decision-making on mining from the ambit of the NEMA is deemed to be problematic because an activity with potential for significant impact on the environment lies outside of the mandate of the DEA...

A range of issues at project level have been identified as problems in giving effect compliance and enforcement much of which relate to EIA. These problems include the fact that there seldom
verification of the EIA findings there is a fixation with authorising an activity where after little attention is paid to the conditions of that authorisation. There appear to be inconsistencies in compliance and enforcement actions where activities by one party are not deemed to be problematic while similar activities by another party are. Public participation post EIA authorisation appears to be both limited and ineffective and this extends also to environmental management committees that are proven in many instances also to be ineffectual. Transgressions reported to the authorities seldom result in an enforcement response as a function of lack of authority coordination, and clumsy and slow sanction. Self-regulation is argued is to be an important issue as is adaptive environmental management but there are other problems in the ambiguity of environmental management programs and the role of I&APs during project implementation.

A range of issues are highlighted in the report that are obstacles to effective compliance and enforcement. These include the scale and complexity of the task at hand, lack of authority capacity and the poor quality of authorisations and associated conditions. In addition complexities in the relationships between the three spheres of government provide additional complications and mean that efforts to target a specific compliance or enforcement activity require high levels of coordination between the three spheres of government. This coordination does not always work effectively and can undermine the effectiveness of compliance and enforcement actions. The so-called bureaucratisation of EIA is not deemed to help compliance and enforcement where authorities are tied up in administrative processes around issuing authorisations rather than conducting proper compliance and enforcement activities. Comments received from stakeholders on the draft report highlighted that the regulations are sometimes difficult to comply with (even if one wants to) and there is ignorance as to the legal requirements that must be met."

The following proposals emerge from the status quo review and the identification of obstacles to effective compliance and enforcement.57
2.4.4 RECOMMENDATION PROPOSALS

Immediate short-term outcomes: Specific proposals presented:

2.4.4.1 EIAs must define performance expectations

"Under the current EIA dispensation mitigation is inevitably defined in the form of actions that must be taken to reduce or prevent negative impacts on the environment and to enhance benefits that may accrue. In many instances this mitigation is weak and poorly conceptualised. It is argued that EIA would be improved by the prescription of performance expectations. Stated differently what is implied is that the specialist would detail a performance or outcome prescription that would render a potential impact acceptable. In implementing the project the expectation would be that the performance requirement would be measured rather than simply implementing the defined mitigation and 'hoping for the best'. Were EIA to define performance expectations then such performance expectations could be carried through to the conditions of approval and ultimately form the basis of unambiguous reporting on environmental management performance during implementation.

Another reason for defining performance requirements in EIAs rather than activity requirements is that an applicant may for example change the design of a project without any material change in environmental aspects (in fact the aspects may even reduce). However, given that the authorization is an authorization of activities a change in activity requires an amendment to the authorization regardless of whether or not there is any change in potential impact. This results in an additional bureaucratic hurdle and an unnecessary complication of compliance."56

2.4.4.2 Improve EMPs

"A key strategy for improving compliance and enforcement lies in radically improving the structure, content and implementation of Environmental Management Programs (EMP). It is interesting to note that an EMP is sometimes interpreted to mean Environmental Management Plan. There is a significant difference between a plan and a programme where the plan

suggests an intended set of actions whereas a programme implies mechanisms for the implementation of what is in the plan.

An EMP should contain as a minimum the environmental management philosophy that will be implemented during the implementation of the activity in question. This environmental management philosophy should detail how mitigation has been identified, and how it will be implemented and policed on an ongoing basis. The environmental management philosophy must also detail how performance will be reviewed on an ongoing basis and how corrective action will be identified and implemented quickly and effectively. The environmental management philosophy must also detail how links will be made to construction activities as well as to the design process. EMPs seldom contain a description of how environmental management will happen during implementation of the project. That description is not to be developed by the authorities but by the proponent and should detail what the proponent plans to do to set performance objectives, to define what will be done to measure performance, how that performance review will lead to adaptive responses and the required preventative and corrective action. EMPs would be more credible in the eyes of stakeholders if it was made clear how they work.

It is argued here that a considerable performance improvement could be achieved if a commensurate effort went into the development of the EMP and its implementation as currently goes into the development of Scoping and Environmental Impact Reports. EMPs must provide an effective bridge between the impact assessment process and implementation of the activity in question. The EMP does not serve as a rehashing of the requirements that need to be met nor a proxy for the conditions of the authorization, it simply provides a statement of how they conditions will be met during the implementation of the project. In the event of a compliance review it would be the conditions of authorization that are reviewed and which stand as the legal requirements that have to be complied with not the EMP."\(^56\)
2.4.4.3 Set performance outcomes (not inputs) and ensure reporting against outcome performance criteria

"The overriding requirement in ensuring that EMPs fulfil their potential as an aid to compliance and enforcement is to emphasise, strongly and unambiguously, performance criteria for the activity in question (see 2.4.4.1 above). This performance criteria must be clearly expressed in terms of indicators and targets. To support performance assessments there must be clear mechanisms detailed, that will provide the necessary information against which the targets and indicators can be reviewed on an ongoing basis.

If performance criteria is developed effectively then compliance and enforcement functions can focus quickly and effectively on performance relative to the criteria, as opposed to being swamped by the detail of whether mitigation has been implemented or not. This is the approach used in Western Australia where the focus is on so-called 'outcome based conditions'.

Outcomes-based conditions rather than specific mitigation measures ensure that is the performance achieved rather than the activities conducted that is subject to review by the authorities. Adaptive environmental management is crucial to the success of environmental management post EIA and the prescriptiveness of conditions together with the need to re-authorize any changes that get made to the EMP (the current dispensation) effectively stifles that adaptive ability. If the authorities make the outcomes clear the proponent can relatively easily define the necessary actions for achieving those outcomes. The necessary actions for achieving the outcomes can and should be changed as and when needed during project implementation if that will improve the outcome performance.

Outcomes based environmental management potentially holds some negative and unintended consequences, however, the rationale for outcomes based management within the context of compliance and enforcement is as follows:

- The more prescriptive the authorities are in issuing conditions the greater the compliance challenge;
- If the authorities prescribe through conditions, a certain set of mitigation actions then the proponent is compelled to implement those requirements regardless of their efficacy and
indeed in some instances, negative environmental consequences;

- If outcomes are defined, then the outcomes (which is ultimately what counts anyway) remain fixed while allowing flexibility for the proponent to pursue the most effective way (and this is not necessarily the most cost effective way) of achieving the outcome.

Cited criticisms of outcomes based environmental management are that it requires such close monitoring that it may be prohibitively expensive for the regulator and proper baseline information is essential. However, outcomes based conditions means fewer variables to monitor rather than more. With outcomes based conditions only performance variables need to be monitored as opposed to the status quo where both performance and the implementation of prescribed mitigation has to be checked. It is not clear why it is perceived that this burden falls to the regulator when the direct monitoring of outcomes can be a condition of approval and thus the responsibility of the proponent.

In respect of the need for an effective baseline the argument appears to be premised on how well the industry is known so that the outcome can be stretching without being destructive. That suggests that outcomes must be detailed as a function of the capability of the industry sector and not a function of meeting a standard that is defined to protect the environment. If that baseline is so important then that is a role that should be fulfilled by the EIA. EIAs should in any case be better geared to defining outcomes rather than the means of meeting the outcomes which is what they attempt to do currently.60

2.4.4.4 Massively improve reporting to the authorities by proponents

"Performance expectations as well as the performance itself must be readily available on an ongoing basis. Compliance monitoring should be able to be effected without authorities having to visit the site necessarily. For this to happen there must be a clear prescription in the authorisation as to the reporting requirements expected of the developer/applicant. Enforcement action should be implemented if the reporting requirements are not met. If an effective reporting regime can be implemented that is properly structured from both the sender..."
and receiver's point of view, then any number of projects could be readily and effectively reviewed over a much shorter period of time than is currently the case. In such cases the auditing function must include inter-alia verification of the accuracy of reporting.

If systems were in place as discussed above, this would have the effect of placing a far greater emphasis on the responsibility of the applicant to provide accurate and effective reporting to the authorities. Where that is the case and there is meaningful response to the reporting from the authorities (this requires effective and efficient institutional arrangements within competent authorities), applicants would be forced to recognise their own non-compliances and to take the necessary action to address those non-compliances without necessarily being instructed to do so by the authorities. Reporting on environmental management performance is not currently effectively driven by EMPs or by the authorities themselves.\textsuperscript{61}

Environmental and social reporting: Enable Corporate report on environmental reporting.

2.4.4.5 Facilitate responsible self-regulation

"In the submissions made on the draft report Mercia Komen includes a proposal for facilitating responsible self-regulation as a means to improved compliance and enforcement. That proposal is included here as it was submitted. When strategic tools are used to authorize applications more efficiently and effectively; and progress towards ecologically sustainable development is measurable and consistent with the desired outcome, it should be possible to increase self-regulation using incentives.

This should be done with the cooperation of other Departments and should have a very high public profile – i.e. where a business undertakes self-regulation, their public images should be "on the line" if they fail.

Where and if this strategy process identifies law reform, it should be drafted to include a system of incentives and disincentives, or "reflexive law".

\textsuperscript{61} http://www.environment.gov.zimbabwe/
Meaning, the resulting self-regulation must push business to:

- **internalise social and environmental goals** (e.g. environmental performance goals, health and wellbeing for surrounding communities), making these their own, including the marketing and public awareness of their efforts.

- **Innovatively self-manage operations** to constantly improve on their environmental / social performance goals.

**Tools should include** information disclosure (including environmental reporting) and stakeholder involvement (e.g. environmental or social forums).

**The emphasis should shift to companies to undertake their own improvement efforts and to decide the means for doing so.**

2.4.4.6 De-bureaucratise EIA

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

It is considered that one of the reasons for this bureaucratisation of the EIA process is a severe lack of capacity on the part of the authorities. This is not offered as a criticism of the..."
authorities necessarily but rather as a suggestion for better directing the resources that are available to the authorities. A single case officer may receive a multiplicity of applications that have to do with multiple activities and multiple potential impacts on the environment. It is simply unfair to expect of the official to be an expert in each and every one of these cases. As such it is considered that if an effective review process was developed and implemented that was outside the direct responsibility of the authorities, the authorities could then focus on the decision-making requirements of EIA. This would significantly reduce the workload of the individual case officers and create the space required for continual improvement of the decision-making process.

In their submission Morrison-Saunders and Pope draw the conclusion that there are simply too many EIAs in South Africa. The more EIAs, the more authorizations and the greater the compliance challenge. It was understood that as the SEMAS were gradually developed, so authorizations and conditions of authorization would become progressively replaced by the provisions of the SEMAs. In other words specific legal standards would start to substitute for assessment requirements in the manner of 'will this development result in the standard being compromised?' versus 'what are the impacts and their significance?' This raises the point that there needs to be effective alignment between the conditions of authorization and the requirements of the SEMAs. The risk from a compliance and enforcement point of view is extending the range of compliance responsibilities for the authorities through possible duplication of requirements.63

2.4.4.7 Improve quality of authorisations

"From the discussion with the compliance and enforcement function of the DEA it has also become clear that the quality of the authorisations that are produced by the authorities in many instances are not of sufficient quality. Effective compliance and enforcement requires that these authorisations are carefully and effectively crafted so that they readily lend themselves to the compliance and enforcement function. Again, if the authorities are freed up from the burden of reviewing extensive and often complex EIA's, the time would be better
spent in producing more effective authorisations where the conditions of authorisation unambiguously convey compliance requirements in terms of defined performance criteria, the mechanisms for ensuring that the information is routinely and consistently gathered, and finally and most importantly, an effective reporting regime exists between the applicant and the authorities.

There is a clear need to develop standardised approaches to approval condition writing along the lines of the Western Australian model outlined in the comments received from Morrison-Saunders and Pope. The setting of clear conditions of authorization is a critical success factor for effective compliance and enforcement.64

2.4.4.8 Create mechanisms for highlighting political interference

"The simplest way of highlighting political interference in preventing enforcement actions is by improving the transparency of the environmental management performance of activities that have the potential to impact negatively on the environment. Currently it is extremely difficult for stakeholders to determine whether individual activities are meeting the conditions of authorization and indeed the law. Were this information to be more readily available, then political interference or intervention to prevent enforcement actions would be much more obvious to civil society. Improving the transparency of environmental management performance would also have the effect of placing additional pressure on the authorities themselves to respond more decisively to poor environmental management performance and possible transgressions of the law."65

2.4.4.9 Create mechanisms for effectively reviewing performance reports and targeting specific compliance monitoring

"To ensure that improved transparency and reporting to the authorities results in the necessary enforcement response, mechanisms must be created to allow the authorities to
quickly and effectively review and assess the performance reporting, identify specific compliance problems and launch associated enforcement action."66

2.4.4.10 Massively improve provincial and local authority compliance and enforcement capacity

"It almost goes without saying that massively improving provincial and local authority compliance and enforcement capacity is an absolute prerequisite for successful compliance and enforcement. Improving capacity implies both adequate numbers of personnel that can fulfil a compliance and enforcement monitoring function, but also creating the skills and competence needed to source information required for compliance monitoring, assessing and interpreting compliance monitoring information, and deciding on and pursuing the necessary enforcement actions. The greatest challenge here is likely to be at local authority sphere (but excluding the larger municipalities such as eThekwini and Cape Town) where the capacity shortfall is at its most severe."67

2.4.4.11 Create performance expectations for compliance and enforcement

"By performance expectations it is implied setting targets for compliance and enforcement. Such targets would include but not be limited to:

- number of activities targeted for compliance audit;
- number of enforcement actions; and,
- Number of convictions as a percentage of enforcement actions.

Setting performance expectations around prosecutions and convictions may seem like a very negative approach to compliance and enforcement. The recommendation made here is made within the context that are currently multiple contraventions of the law that are going unpunished as a result of a failure to prosecute and convict. That is resulting in more contraventions of the law because those getting away with it are illustrating to others that they too can get away with it."68

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2.4.4.12 Provide proper environmental regulation of mining

"If the stated purpose of the environmental impact management strategy is the promotion of sustainable development, it is clear that the exclusion of mining and mining related activities significantly detracts from the achievement of that purpose. It is simply untenable that decision-making on the acceptability of proposed mining activities lies in the hands of a department whose stated purpose is the promotion of mining. It is very difficult to define specific actions that would bring about a renewal of the process of amending the MPRDA and moving decision-making on mining related activities to the DEA. It is clear that this is a complicated and highly politicised arena but that should not allow meek acceptance of the decision by the DMR to renege on the previous commitment to amend the MPRDA.

As a minimum there needs to be a concerted effort within the DEA to at least at a departmental level establish and solidify a desire and commitment to regulate mining. It is beyond the remit of this report on how to manage the political process so that a decision that is in the best interests of sustainable development be taken. What is argued here is that the process must be started by ensuring that the DEA themselves firmly and unambiguously commit to the importance of themselves regulating mining at least from environmental impact point of view, as opposed to that being done by the DMR, and then launch the necessary processes to achieve this outcome."69

2.4.4.13 Manage the implementation of regulations that 'criminalise' previously legal activities

"The submission made by Agri Wes Kaap highlighted strongly that farmers in particular may be compelled to choose between complying with the law and intervening immediately (without an authorisation) to prevent further damage to their farms. Farming is by implication being criminalised because certain farming practices, that may have developed over decades in response to a particular agricultural need and/or specific environmental circumstance (such as cultivation in floodplains that necessitate flood defences and drainage), have suddenly become unlawful. This is particularly problematic for farmers who need to manipulate rivers to

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either protect land, or to obtain access to water in low flow conditions, or to clear irrigation sumps channels after floods. These responses may by current standards and knowledge be unacceptable, but often represent the most practical way of dealing with potentially serious problems (erosion, rivers that cannot be forded, or crops or animals that cannot be watered or feed) – and, crucially, have been tacitly endorsed by the agricultural and water functions in the state for many years.\textsuperscript{70}

It is clear that in circumstances like this compliance will always be a challenge. It is argued here that where such circumstances exist the implementation of such regulations must be managed carefully and indeed in some case the regulations potentially changed (for example in allowing certain emergency repair work). As a minimum transition periods should be provided for that allow at least alternative approaches to be developed so that compliance can be engendered rather than necessarily enforced.

\textbf{2.4.4.14 Publicise environmental laws}

Compliance and enforcement would be improved through processes that seek to inform and educate people on their (especially new) legal obligations. Ignorance is no excuse for failing to uphold the law but there is obviously little value in having to prosecute individuals who break the law through ignorance rather than through malicious or criminal intent.

\textbf{2.4.4.15 Implement a civil and administrative penalty scheme}\textsuperscript{71}

A civil and administrative penalty scheme, using a civil standard of proof and higher maximum penalties, should be implemented to improve compliance with and enforcement of EIA authorisations and other environmental regulations. This will result in less reliance on the criminal justice system, less onerous prosecutions, faster determinations, the lodging of more

\textsuperscript{70} This input was submitted by the LR C, is fully supported, and has accordingly been repeated here verbatim.

\textsuperscript{71} This input was submitted by the LRC, is fully supported, and has accordingly been repeated here verbatim.
complaints, and ultimately, more environmental compliance. In addition, the monitoring and enforcement of environmental decisions could be much enhanced by making monitoring data available to the public (quoted verbatim from comments received by the LRC).  

2.4.4.16 Promote, support and implement the use of voluntary and incentive-based mechanisms

"It seems highly unlikely that compliance and enforcement will ever reach the desired levels of effectiveness through command and control approaches alone and additional supplementary measures will need to be considered and additional supplementary measures need to be considered. Previously voluntary and incentive-based mechanisms were described of the two it seems that incentive-based mechanisms are likely to be the more effective of the two assuming that they can be safely and effectively implemented. As voluntary mechanisms also hold the promise of improved compliance with a track record in southern Africa is not hugely encouraging. Even we're voluntary mechanisms may have yielded good results they are still perceived negatively by many of the environmental NGOs.

For voluntary mechanisms to add a meaningful role to compliance the credibility of the same needs to be improved through the highlighting of actual performance improvements as a result of voluntary mechanisms. Industries need to be encouraged to continue voluntary mechanisms and to tackle the current credibility problems with voluntary mechanisms self-regulation of is still sought by many private industries but environmental performance needs to be dramatically improved if this approach is to have any broader support. That notwithstanding additional supplementary measures have the potential to contribute meaningfully to improve environmental compliance in southern Africa."  

2.5 SUMMARY RECOMMENDATIONS SUBTHEME 9 REPORT: EXISTING AND NEW TOOLS
(Please refer to Subtheme 9 report compiled by SSI Environmental)
2.5.1 PROBLEM STATEMENT

Existing tools are inconsistently or inadequately applied. A need to identify new tools based on lessons learnt. EIAs need to be strengthened and enhanced and supplementary tools need to be developed.

2.5.2 OBJECTIVE:

To ensure that the most suitable, acceptable and efficient environmental impact assessment and management tools are developed, implemented and consistently, adequately and appropriately applied in order to give effect to Section 23 objectives and NEMA principles.

2.5.3 SHORT DISCUSSION ON BACKGROUND AND STATUS QUO

The subtheme report commences with the interrogation of how an environmental management tool can be defined. The section considers the principle of the Deming cycle as part IEM. "This IEM cycle is therefore visualized as an iterative process that starts with the collection and processing of data, the use of the new knowledge in decision-making, parallel processes, construction etc., the monitoring of the implementation actions, and finally a phase that takes stock of how implementation took place and implements corrective actions in terms of either the existing application or new iterations of the cycle. An analysis is done based on existing literature whether the current application of environmental management tools covers the project management cycle. It was concluded that the commonly perceived tools are potentially or likely to consist of combinations of steps that might cover several management phases. Consequently, the best systematic approach to be taken is to view the concept of environmental management as a framework of 'environmental management techniques' that can be used either in isolation or as a combination as 'environmental management tools'." 75

The report further indicates that environmental management should be moving towards more strategic approaches with sustainability objectives as outcome rather than individual focused impact assessments – i.e. a move away from EIA and towards the universal use of Strategic Environmental Assessment (SEA) and complete life cycle accounting.

The Legal basis of various tools is also considered including the following: Policy and Strategy, Integrated Environmental Planning, EIP, and permitting. Permitting includes EIA, Atmospheric Emissions License, Conservation Ordinances, EMPR, Waste Management Licenses, Water Use Licenses and authorisations, Heritage, Off road vehicles, Norms and standards, SEA, EMF, EMP, Risk Assessment, monitoring and reporting, fiscal policy, and public participation.

The report further indicates that environmental management tools consist of a range of actions or techniques through which information is gathered, processed and implemented. The section therefore considers the four phases of the environmental management cycle, and attempts to distinguish basic components that together constitute commonly known and used tools.

The report interrogates how to select the best environmental tools and refers to various literature in this regards concluding with the following proposal:

“It is suggested that at the very least, the first three questions must inform tool selection. Those three will steer the selection of tools and their implementation towards sustainability by:

- Improving the legitimacy of environmental management
- Improving the efficiency and effectiveness of environmental regulation
- Providing quality inputs into project and policy design.

As a basic process flow, deciding on the right tool to use needs to proceed through three steps namely:

1. Deciding whether the tool is required to set sustainability targets, or measure something against these targets.
2. (a) If the answer is NO, then decide whether the sustainability targets need to be set at objective, policy or project level
   (b) If the answer is YES, then decide whether the evaluation takes place for the purposes of regulatory control, planning or project design
3. For each output, decide what is uncertain, who is affected, and how much integration is required.  

2.5.4 RECOMMENDATION PROPOSALS

The following recommendation proposals were made after the issues above were considered:

2.5.1.1 IMPROVEMENTS TO EXISTING TOOLS

- SUSTAINABILITY OBJECTIVES AND ASSESSMENT

"Environmental planning on a strategic level, and specifically planning that drives decision making towards stated sustainability objectives, has the potential to act as a unifying force in environmental management practice. Some of the benefits of the use of more strategic environmental planning tools include:

- The formulation a clear and shared vision, goals and direction for specified locations, areas or regions.
- The opportunity to translate strategic objectives into practical measures to inform day-to-day decision such as competing land-uses or EIA applications.
- The formulation of a sustainability framework that serves as reference for the critical review of decisions or planning.
- Giving specific guidance to development planning, based on broader strategic considerations, to steer development away from sensitive areas.
- The use of strategic tools can assist in raising the profile of environmental issues in non-environmental forums, or serve in an integrative role.
- It provides information on the opportunities and constraints that the environment places on development.
- It streamlines project level decision making and authorization processes such as EIA."
The prerequisite is that specific sustainability objectives be defined and translated into measurable targets. These then need to be interpreted and applied at different levels of implementation, followed by a committed monitoring and reporting scheme. The results of the reporting framework must be fed back into the planning scheme in order to improve the implementation or inform revisions to the sustainability framework.

Such a closed loop system can consist of firstly a strategic planning exercise (such as an SEA), an implementation plan (e.g. EIP), and finally a monitoring and reporting programme (possibly a State of Environment Report). It must be enforced though, and results of the reporting programme used to inform the ongoing strategic planning.77

- **PUBLIC PARTICIPATION**

"The need to involve public stakeholders during the formulation of policies and plans that might affect their environmental rights is a constitutional imperative. It is, however, not always practical to involve stakeholders in all processes, partly because of the risk of stakeholder fatigue and partly because of the limited value of involving laypersons in technical procedures. Effort should therefore be spent on finding meaningful channels of participation for public stakeholders, and potentially forums that can combine related participation processes. For example, biodiversity planning could be 'participated' through the course of municipal spatial planning. Another opportunity could lie with regular well-publicized public meetings organized by the provincial or local authorities that would serve as the platforms for people to contribute on whichever stakeholder engagement processes are selected for the day.

A particular fear from stakeholders is that with an increasing focus on strategic issues and planning, their voice on individual matters that might be closer to 'home' could be drowned out. It is therefore important for stakeholder engagement processes to actively encourage participation and transparency, and to find the appropriate media, formats and messages that need to be communicated to protect the rights of stakeholders."78

- **SEA**

One of the ways in which other environmental management tools can be made more effective is to frame their application in a more strategic or spatial context through the use of SEA. The idea would be to use a strategic, contextualized and 'big picture' assessment to precede and inform detailed and site-specific assessments. The strategic level investigation can then effectively deal with off-site and cumulative impacts, and potentially create a framework through which detailed investigations can be streamlined.

Various forms of SEA can be used to fulfil this function – anything from the SEA component of spatial planning, to EMFs, and even strategic assessments of policy and programmes. Very seldom though is SEA used to define strategic objectives or inform the compilation of strategic planning. This creates a vacuum that is left for less appropriate tools like EIA to fill.

The imposition of Strategic Environmental Assessments as a mandatory tool is difficult though since it is inherently flexible and applied to a myriad of different planning systems. SEA is therefore not necessarily standardisable or enforceable. Typically in South Africa, legislation instructs decision-makers to refer to and take guidance from relevant SEA guidance but do not make it compulsory to comply with the guidance provided. There is also little legislative directive to ensure a wide application of SEA, and not much to guide non-environmental sectors and fields in the application of SEA. It is also difficult to determine at which scale SEA should take preference over EIA, and how the processes relate in practice.

The nature of the SEA process also means that the timelines of strategic projects can be long, stakeholder participation extensive and the appeal process vague. Public participation during an SEA can also be used or misused to reduce the opportunity for stakeholder engagement on more specific studies (such as an EIA falling within an EMF study area). A similar concern relates to the possibility for prominent sector stakeholders to manipulate strategic planning processes for their sector.

It is suggested therefore that once organizational processes for a revised EIAM system have been distinguished, that the role of SEA at different levels and for different purposes be determined. This determination will then dictate the appropriate SEA model to use, the output that must be achieved
for the particular type of SEA, and the performance criteria against which the SEA and its implementers will be measured.\textsuperscript{79}

- **EIP**

“Environmental Implementation Plans is a tool that is already legislated, and that captures the very essence of what is being pursued through the EIAMS project, namely the alignment of environmental management regulatory processes and a focus on sustainable outcomes. Unfortunately, the application of the tool is limited not by its design, but by the reluctance of the current governance system to embrace environmentally responsible actions as the mandate of sector departments rather than that of a central environmental affairs department. Whilst the EIP concept attempts alignment and integration of policy, process and resources between different government sectors and tiers, experience has shown that the compilation of EIPs is generally viewed as, and left to, the environmental department to coordinate, write and manage, This fails to generate any form of ownership outside of the environmental department, and certainly does not add environmental performance onto the performance scorecard of either individuals or entities within government structures.

Nevertheless, EIP must be seen as an immediate opportunity for intervention. It simply needs the right form of feedback loops to ensure that environmental performance becomes part of the day-to-day responsibilities of all organs of state. In particular, the following needs to change:

- Representation on coordination committees needs to be treated with more respect, and capacitated individuals allocated to the role
- EIPs must translate higher level sustainability objectives into performance targets at a more relevant level
- Environmental performance targets must be specified for institutions and individuals in performance plans
- EIPs at different levels or tiers must show a throughflow of information, a coordination of knowledge, and an alignment of performance targets Monitoring and reporting of performance must also include performance against specified sustainability targets\textsuperscript{80}

\textsuperscript{79} [Link](http://www.environment.gov.za/docs/DE_1_HPA_23Aug2011.01135.docx)

\textsuperscript{80} [Link](http://www.environment.gov.za/docs/DE_1_HPA_23Aug2011.01135.docx)
• FINANCIAL POLICY

"The use of financial planning, policy and regulation for the purpose of encouraging or compelling sustainable practices should not be underestimated.

At a high, or strategic, level financial policy can aid in giving direction to governance decisions and strategic planning. By pursuing ‘green’ budgets, for example, organs of state can bring real change in how their own projects and programmes are aligned with sustainability targets, and also aid in creating a stronger market for environmentally responsible supply chain practices.

Throughout the economic fabric though, financial incentives and disincentives can encourage more sustainable development. Many such mechanisms already exist – tax rebates, CDM trade agreements, carbon trading, subsidized retrofitting etc. What needs to happen though is for financial planning at the highest levels in both public and private institutions to be subjected to strategic environmental assessment. This would allow such planning to become increasingly aware of opportunities where more sustainable development can improve on the status quo.

Financial policy at all levels must be informed by sound economic principles. It is therefore necessary to ensure that the field of environmental economics be engaged. Various techniques can be used, but in principle, the opportunity costs and externalities of an activity or practice, as well as the base ecological resource value of the environment should be included in financial planning."\(^\text{81}\)

• EMF

"There are two major flaws in the EMF concept – firstly, it is predominantly a feel-good exercise that results in a shelved report but no action, and secondly, issues of scale undermine its usefulness.

In the first instance, the problem does not necessarily lie with the tool itself, but rather with the entities responsible for their implementation. Most EMF studies in the country are ‘ticked off’ against performance review targets, and then never used to inform any decision-making. In law, EMF recommendations and information must be taken into account in environmental and spatial planning decisions, but the EMF cannot dictate to other decision-making processes. It therefore soon becomes a white elephant.

The second issue is directly related to the design of EMF studies. EMF has been used in South Africa on a very wide range of scales, and sometimes even with overlapping scales. Since the scale determines the level of detail and level of local stakeholder participation, it follows that the larger the scale, the less informative it will be at local level. The question is therefore asked, should EMF be used at a very rough scale, or should that level rather be tackled by a less spatially determined SEA?

- BIODIVERSITY PLANNING

"Biodiversity planning is one of the specialist fields that inform the application of more universal environmental management tools. It is usually the basis from which ecological base data is originated, and the framework against which ecological impacts are evaluated. It is even used as a layer of screening in the EIA process.

Different tools sort under the heading biodiversity planning, and include systematic conservation planning, open space planning, bioregional planning, biodiversity strategies and action plans, and biodiversity management plans. A guideline regarding the determination of bioregions and preparation and publication of bioregional plans can be found as Government Gazette 32006, No. 291 of 16 March 2009. This programme of improving compatibility between biodiversity planning processes and information sets should be maintained and the lessons learnt communicated to similar fields with the need for integration and alignment.

Recent advances in systematic biodiversity planning have brought about a significant improvement in the overall understanding of conservation requirements, and the opportunity for consistent application of base information in practice. For example, systematically derived provincial scale conservation plans can now inform spatial planning and EIA alike, improving the consistency of decision making in both fields of application. Biodiversity planning should therefore be one of the key performance targets of all provinces, and of nodes with high levels of development pressure.

This central importance therefore means that there should be clear standards that allow ‘good’ biodiversity planning to be separated from ‘bad’ planning. Such standards should be set for both the planning process (methodology) and the national, provincial and local conservation targets that are to be achieved. Appropriate standards or legal status will also give structure to the manner in
which conservation planning can be challenged, to prevent challenges such as high-level modelling being accused of site-specific inaccuracy.

It is important though to ensure that appropriate public participation takes place as part of the compilation of the plans. Typically, the methodology for systematic conservation planning doesn’t include public participation in the process, although some examples in the Western Cape are exceptions to the rule. The need for stakeholder participation should therefore be determined in accordance with the intended use of the conservation planning, and the requirements of common law.

In order for biodiversity plans to be used appropriately, more awareness can be created in terms of how the different tiers of conservation planning relate to each other, and to external environmental management tools. This could potentially be linked to legal requirements for compliance with conservation planning by environmentally destructive activities such as mining and urban expansion.83

- NORMS AND STANDARDS

"The use of Norms and Standards as a screening tool for EIA has been touted for some years now, and the enabling legal provisions already exist. The idea is that where known impacts and known solutions to the impacts exist for standard activities, accepted norms and standards (e.g. SABS standards) can be used in lieu of additional assessments and authorizations. The application of norms and standards further allow for the control of activities that do not ordinarily require environmental impact authorizations yet have the potential to impact on the environment although enforcement of such ‘voluntary’ standards would be similarly unstructured.

Norms and standards can be linked to various other screening levels in order to incentivize appropriate forms of development. For example, in order to reduce development pressures in biosensitive areas the administrative controls on activities in non-sensitive areas can be reduced through the use of acceptable practice standards. It therefore functions as a proactive tool rather than reactive regulatory control, without taking any of the regulatory abilities of the enforcement entities away. Through proper monitoring and auditing procedures, performance monitoring information can be obtained, and corrective actions taken where necessary. Self-monitoring could

83 http://www.mining.co.za/Articles/2012/07/17/0731 block
even be considered, but only if the quality of the monitoring actions can be audited by an external entity.

The implementation of norms and standards for the sake of environmental management should, however, not affect stakeholder rights. The proposed standards must be made available to stakeholders to the same extent as individual development projects would have been – this is fair, since the impacts of poor standards will be felt at local scale. Proposed standards should therefore be run through a relevant stakeholder engagement process in order to create awareness around the particular standards and identify as many weaknesses in the standards as possible.

A closely related tool, the use of ‘limits of acceptable change’ can also be applied in the same manner. However, the application would be less certain due to the likelihood of differing opinions over acceptability and uncertainty with regards to cumulative impacts.

According to the Western Cape Provincial Government (as indicated during the peer review process of the EIAMS project) the following principles must be adhered to in the development of standards:

- The standard must describe and be based on best practice (and the application of the “best environmental option”);
- All aspects of the standard must be clear and measurable, to ensure that compliance to the standard is measurable;
- Consideration must be given to the environmental management principles in the development of standards. Particular attention must be paid to the “precautionary principle” (i.e. “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”).

As an IEM tool, every standard must then address the following aspects:

- Identify the listed activity(ies) that will be triggered/likely to be triggered;
- Describe the scope of the standard. The scope of a standard must clearly identify the circumstances to which the standard will apply (i.e. it must clearly identify what is included and excluded);
- The type of environments and the specific location within such environments where the standard will be applicable and not be applicable (i.e. it will be inappropriate for the
development activity to be situated within certain environments, such as dairy farming in close proximity to an aquatic environment);

- The development parameters (i.e. the standards will not apply to all types and scales of the development activity);

- An indication of the impacts that are relevant to the activity and which the standard aims to manage;

- Conditions in respect of procedural/administrative and/or managerial matters;

- Conditions in respect of environmental mitigation and protection measures;

- The development of guidelines associates with a standard to assist/facilitate its implementation (if needed). The rationale for the development of guidelines is to provide additional information to strengthen the standard and to provide more details information on the implementation thereof. Such guidelines should only be produced if needed;

- Clear compliance monitoring requirements must be set (i.e. the parameter to be monitored, the method of compliance monitoring, the type of proof required, the responsible person and the frequency) that are capable of enforcement.\(^\text{84}\)

- **CUMULATIVE EFFECTS ASSESSMENT**

  “Cumulative effects assessment should be one of the basic information sources that informs EIA and SEA, since the synergism between issues within a cumulative impact effect may result in different outcome as opposed to assessing only individual impacts. The EIA regulations specifically call for the evaluation of cumulative effects as part of an application (Regulation 22 (2) (i) (1); and 28 (1) (g)). However, cumulative effects are hard impossible to assess meaningfully at the level of project specific EIA in the absence of strategic objectives or targets against which to measure the assessment. This represents a compelling argument for the increased use of strategic level assessments that can provide such a reference framework.

  The study of possible cumulative effects is necessary in order to determine whether or not changes have been, or are likely to be set in motion that are detrimental to the long-term health of the environment and the people who rely on it. Cumulative effects could take effect over the course of

an individual project’s life, or due to the combined effects of multiple projects. Cumulative effect assessment will indicate the extent of the project’s contribution to environmental degradation, or to the required costs to offset the loss of ecosystem services over time. An accurate determination of the desirability of a project would then be possible, or alternatively a more correct assessment of the issues of priority associated with a particular project or project area.

There is nevertheless a concern that current contributions to the cumulative effect will be penalized for past contributions, which imposes a barrier to entry for new entrants to particular industries and absolves historic perpetrators.85

- LIFE CYCLE ASSESSMENT

"Life cycle assessment is one of the tools with which longer term, externalized, and hidden effects can be discovered and brought to bear on the assessment of development proposals. As a tool it is more common in business modelling, since by using a more encompassing perspective, the economic advantages of a development can be measured and the most suitable technology selected. Such considerations should inform environmental assessments and decisions as well, or alternatively, the life cycle environmental impacts of a project should be used to determine the nature and design of the project.

A particular field of application where life cycle assessment would add value and realism to environmental impact assessment is mining, where the environmental and social impacts over a long term can better inform the actual costs of the project and inform procedures and safeguards for mine closures.

The main concern with life cycle assessment is that it is not always possible to put a monitory value on environmental issues, and therefore the environmental costs cannot always be comfortably compared to non-environmental effects, especially if perceptions or value judgments are involved. It is also difficult in some cases to determine what constitutes the life span of a project. Nevertheless, theoretically it should be possible to put values to environmental resources and thereby make a business case for green processes within an industry if the actual effects of a given technology or development is calculated.

85 http://www.environment.gov.zw/people/ptどのように作ることができますか？
Issues that typically don’t, but should inform environmental impacts, and consequently should be included in life cycle assessment, include social and cumulative health impacts, long term effects on water resources (e.g. Acid Mine Drainage) and post-disposal effects. The full spectrum of impacts should therefore be accommodated in the environmental assessment and management process. In fact, environmental case law in South Africa dictates that environmental impact assessment includes social and economic issues in parallel with ecological matters (refer to the “Fuel Retailers” judgment in the Constitutional Court, case CCT 67/06).86

- **COST-BENEFIT ASSESSMENT**

“Cost-benefit assessment or analysis is the practice of comparing different project options in order to systematically weigh up the positive and negatives of each option, and then determine the best alternatives for different decision criteria. The practice is specifically aimed at measuring life cycle costs in order to inform a comprehensive portrait of given alternatives. As a sustainability tool, it can compare different policy or programme options, whereas as a tool in the hands of private sector it will inform project design by highlighting risks and benefits.

The value of Cost-Benefit Analysis lies in the ability to reduce complex lifetime costs and benefits of projects to simple comparable indices. If environmental costs and benefits, especially hidden costs, opportunity costs and externalised impacts are accounted for in this manner, more informed and better balanced policy and regulation could result.”87

- **EIA**

“Because EIA studies represent the complete spectrum of the environmental management cycle, just about every criticism that is levied against environmental management or its constituent parts will be applicable to the EIA process. It has been pointed out that EIA is often confused with the full spectrum of IEM, thereby leading to the confusion over the role and function of EIA studies (Retief & Kotze, 2008).

Concerns consequently relate to whether or not EIA is invoked in the correct instances, whether the process is robust, effective and efficient, whether EIAs lead to appropriate substantive outcomes, and whether there are enough linkages with other tools and processes. In addition,

concerns are raised about the necessary levels of competence and skills for EAPs. Nevertheless, EIA practice has an important role to play in environmental management, partly because of its potential to be applied in such a wide manner, but also because of its use at an early stage in the project cycle. Being used early on in the project cycle allows the impact assessment process to inform project design outside of the formal regulated environmental authorization process. This functions as a form of screening, by keeping inappropriate project designs out of the regulatory process, and improves project designs to better align with the objectives and decision criteria that will be used to review the projects during the permitting phases.

Other benefits of the EIA process include its role as a tool with which integration of issues can be managed, a platform for interaction between contributing sectors and study fields, a monitor of pressures on environmental resources and a process that allows stakeholders to be drawn into environmental and developmental debates.

In order for the EIA process to remain legitimate as an environmental management tool, its relevance should be ensured by placing more emphasis on its hidden benefits and by eliminating the need for irrelevant (paper exercise) assessments and extraneous specialist investigations. Coupled to this is the necessary efficiency in process execution and administration.

Ensuring the effectiveness of the EIA process is an involved issue. It relates to both the constituent components of the EIA process being made more relevant, accurate and useful, and the completion of the environmental management cycle to ensure that the outcome of the EIA serves to improve compliance with the objectives of environmental sustainability. Ideas that have been bandied about on how the EIA process can be improved include more selective requirements for assessment of development alternatives, the increased use of class assessments, and closer links with related processes such as spatial planning.

The EIA process can, however, also be improved through a more rigorous impact investigation and assessment phase. EIA investigations do not always apply other environmental management tools correctly, or in some cases completely omit them from the suite of investigative procedures. Specific concerns that have been raised is the absence or incorrect use of contextual issues, cumulative effects assessment, cost-benefit analysis, life cycle assessment and risk assessments (including health, social, ecological etc.) as well as poor linkages with EMPs. Correct application of appropriate constituent tools will improve the scientific accuracy of the EIA process, thereby improving the legitimacy, credibility and practical value of the assessment. For example, an
appropriate EIA process will result in information that can be used to inform emergency and disaster management plans to be in place immediately upon project implementation, thereby improving the certainty about environmental protection for stakeholders.

Necessarily, the improved application and use of the EIA process and its constituent parts will require the presence of the necessary skills and capacity of the EAPs administering the process.

The value of the EIA process will also be increased if post-approval tools are implemented more rigorously. This relates to ensuring compliance with conditions imposed and recommendations made in the specialist reports and EMP.

The following systematic improvements to the EIA process are therefore recommended:

- Reducing the required investigations to studies that are specifically suited to provide information on unknown or uncertain impacts. Specialist input should, in fact, inform project design rather than simply be used to assess impacts of a final design.
- Impact assessment and significance rating schemes need to be aligned with the impact management hierarchy - i.e. avoid, mitigate, compensate, manage (including compliance monitoring, auditing, enforcement).
- Allow for pre-EIA screening, i.e. a judgment on whether thorough investigations are required, based on an Environmental Impact Statement
- Measurement of impact significance in terms of the contribution towards the achievement of relevant sustainability outcomes
- Full life cycle accounting, but with a direct link to, or determined through, screening processes.
- Setting standards for Environmental Management Programmes, based on industry experience and related to impact investigation processes
- Strict requirements for monitoring of implementation and reporting against sustainability criteria
- Designing the EIA system in a way that will promote a throughflow of information from strategic planning, through the impact assessment and on into the environmental management programmes.
- Adherence to the principle of avoiding duplication – if parallel permitting processes are required, but the environmental uncertainties related, then there should only be one
coordinated process with shared information. As a related issue, the presence of EIA type processes such as the requirements for EMPR permits from the Department of Mineral Resources should not be allowed to persist. There should only be one environmental review process.**

- **SCREENING**

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

Screening should therefore be viewed as a tool that can be applied at two levels. Firstly, there is voluntary screening that occurs during project inception and design. At this stage project details are compared to sustainability outcomes applicable from spatial and resource use perspectives, in order to align the project design with the broader sustainability objectives of the authorities. If the sustainability objectives used as reference framework in this phase are the same as those being used during authority review of project designs, then the resulting alignment of the projects with the sustainability outcomes would filter out a number of potentially incompatible developments.

A simple or rapid screening process could then be applied as a second level of screening based on properly regulated criteria and responsibilities. It will occur early in the assessment cycle in order to determine further requirements for assessment. Effectively, this is exactly what the current EIA ‘listing’ process does, as the EIA screening process looks at project extent, context, geographic location, history and sensitivity to determine the applicable administrative controls.

However, once an EIA is triggered, the current regulatory regime requires that a default application and assessment has to follow irrespective of the actual details of the development. It is argued that there should be mechanisms to further reduce the requirements for the environmental assessment process.”

assessments even if EIA authorizations are required. For example, there could be different process requirements for large projects in brown field sites versus projects in green field sites.

An improved screening process would include screening for compatibility with plans, standards and guidelines in the areas they are proposed, prior to the identification and assessment of impacts and alternatives. Such a measure is heavily dependent though on the quality and content of the reference planning instruments. For example, if Spatial Development Frameworks are used as screening reference, there needs to be assurance that they were developed in such a way that sensitive or non sensitive environments have been identified accurately.

The use of strategic references and planning could, however, be used in some situations to completely negate the need for site or project specific investigations. It is, however, a more risky method of screening in the sense that it has a higher risk of misuse, since the application of government discretionary power to enforce or waive EIA assessment requirements will require strong enabling frameworks in order to keep decision-making consistent. Clear information on the principles to be applied in screening decisions must be made available to all stakeholders in order to use stakeholder monitoring as the control measure.

If a more extensive screening process is brought into being, it should:

- Start with a wide 'net', such as building approvals at Local Authority level
- Be applied in a rapid (i.e. 14 day turnaround) manner
- Allow for both less ('exemptions') and more (wider applicability or additional process) regulatory control
- Have no duplication in terms of authority levels or system entry points, and
- Build in strong provisions for appeal processes and environmental monitoring, reporting and enforcement of compliance.\(^\text{89}\)

- EMP

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

It should be noted though that even the best EMP becomes a paper exercise if there is no compliance or follow up to correct non-compliance or unanticipated environmental consequences. Monitoring of development impacts and compliance with the EMP should be a requirement, and should be used to inform Interested and Affected Parties about the environmental objectives and controls to be achieved, and the status of compliance.

EMP do, however, need to be dynamic tools that can adapt to changing circumstances and conditions in order to ensure an optimal strategy for environmental management during project implementation. This becomes problematic when there are different stakeholders involved and amendment processes that take time to conclude. The principle and practice could therefore be at odds.90

- EMS

“The role of International Standards Organisation (ISO) standards and certification, and other environmental management systems, can be expanded to allow for full life cycle environmental management. A properly constituted environmental management system would establish procedures for day-to-day environmental management, environmental incidents as well as

institutional procedures for continuous information management and iterative system improvements."\textsuperscript{91}

2.5.4.3 CONCLUSION

"The discussions in this report represent an attempt to make sense of the different conflicts and weaknesses inherent in the use and application of environmental management tools. Due to the complexity of the subject matter, omissions will be present, but adherence to the principle of focusing on sustainability outcomes on the one hand and only assessing uncertainties on the other should make it possible to improve the use of any environmental management tool.

This investigation into the use of environmental management tools shows that the reliance on EIA and similar control instruments comes at the cost of effective strategic coordination and planning, and a near absence of ‘learning’ through monitoring and review. The ‘problem’ is therefore not the lack of tools, or particular gaps where new tools are required, but rather the failure to use and implement tools appropriately. In fact, it can be stated that no ‘new’ tools are available to magically transform the current IEM system, but rather that more attention must be given to niche applications and tools that will address specific questions and uncertainties in the IEM cycle."\textsuperscript{92}

2.6 SUMMARY RECOMMENDATIONS SUBTHEME 11 REPORT: QUALITY OF TOOLS AND SYSTEM (Please refer to Subtheme 11 report compiled by DEA (Madeleine Oosthuizen) and Mercia Komen (NGO: FSE) \textsuperscript{93}

2.6.1 PROBLEM STATEMENT

Quality management is not sufficient: codifying of reporting requirements are not available for EIAs and other tools

\textsuperscript{91} http://teams.environment.gov.za/docs/DEA1_HPA_23Aug2011-011353.doc
\textsuperscript{92} http://teams.environment.gov.za/docs/DEA1_HPA_23Aug2011-011353.doc
\textsuperscript{93} http://teams.environment.gov.za/docs/DEA1_HPA_14Aug2011-052802.doc
2.6.2 OBJECTIVE OF SUB-THEME 11:

The objective as defined by the PSC is to ensure that Environmental Impact Assessment and Management tools as proposed within Sub-Theme 9 meet a specified quality standard. The report deliverables were reconsidered and extended to quality management systems.

2.6.3 SHORT DISCUSSION ON BACKGROUND AND STATUS QUO

The report starts with the expansion of "quality management" for the IEM tools to quality management for the IEM system as a whole.

Quality is then defined based on literature by Department of Trade and Industry.

The Subtheme findings from other subtheme reports is further considered in order to identify the needs for quality management within subtheme recommendations as well as the integration of recommendation in this regard.

"Based on the above it is proposed that there are three types of quality standard against which the concept of Quality in Tools is evaluated:

- **How well the tool is able to fulfil the purpose for which it is used**: A *service standard* specifies the requirements to establish the product's fitness for purpose.

- **How well the tool addresses needs and expectations**: A *product standard* specifies the requirements to establish the product's fitness for use. It details the various characteristics or parameters that a product should meet to conform to a specified standard or to *customer requirements*.

- **How well the organisation and management enables the tool**: A *quality system standard* defines the method of managing quality in an organisation. It therefore helps an organisation to consistently achieve quality levels. The quality system of an organisation comprises the organisational structure, procedures, processes and resources.

The above 3 types of quality standards are then elaborated on identifying what is available and what is lacking:
In terms of fitness for purpose: Section 24 gives effect to the objectives contained in Section 23 of NEMA only through environmental authorisations and includes the identification of activities which require authorisation. However, authorisation of the listed activities can at this stage only be obtained through Basic Assessment Reports (BAR), Environmental Scoping report or an EIA. Various other tools are however referred to but no criteria are provided for determining which tool is most appropriate to use for which purpose. The exception is listed activities, which are specifically subject to EIA.

In terms of fitness for use: The use and application of tools is guided by legislation, regulation and guidelines regulating the procedures, criteria and information required when using the tools. Various regulations, guidelines, information series, best practice, consistency are discussed in detail or referred to. These include amongst other procedural requirements, information requirements and set of performance criteria.

Quality management system is a structured, documented system describing the policies, objectives, principles, organizational authority, responsibilities, accountability and implementation plan of an organisation for ensuring quality in its work processes, products and services. Reference is made to ISO, the REE, international findings and trend on quality.

The Sub-Theme report then introduces two overarching principles first: Outcomes based approach, including three case studies and next, the principle of continuous improvement as captured in the PDCA Management Model (or Deming Model).

The report thereafter considers principles for -

- Service Standard, including principles for screening
- Product Standard, including principles for reporting
- Quality System Standard, extending principles over a range of processes/procedures

2.6.4 RECOMMENDATION PROPOSALS

2.6.4.1 Overarching principle of an Outcome based / objective led information

"The tools within the environmental impact management system should consider and respond to:

- The desired state of the environment
- Improvement of the quality of the environment
- Sustainable development

Attainment of Integrated Environmental Management and Sustainable Development relies in varying proportion on many factors, including the quality of tools, processes, procedures, structures and human resources. This Sub-Theme report proposes that the success of Integrated Environmental Management and Sustainable Development be monitored and tracked using an Outcome-based approach.

Through focusing on the outcomes which are desired, the quality of the tools and the overall environmental impact management system are addressed in a wider context, with immediate relevance.

By inference, the degree to which NEMA principles are applied within the process\(^5\) must be evaluated.

Consequently, a suite of indicators or criteria is appropriate. In 2001 the National Core Set of Environmental Indicators (for State of Environmental Reporting) was scoped, and recommendations were made. It is proposed that this study should form the basis for deciding on the Outcomes. The study considered the practical and cost implications in selecting particular criteria, and it would serve little purpose to re-do this work. What would be required is to determine which of the criteria should and could be stated as a Desired Outcome.

The series is grouped into eight categories, and over 170 indicators. The eight categories are:

- Atmosphere and Climate
- Biodiversity and Natural Heritage
- Human Well-Being

\(^5\) planning, assessing impacts, decision-making, implementation and enforcement
As indicated in 1.2.6 the Cabinet has also approved "12 Outcomes" that collectively address the main strategic priorities of the Government. Outcome 10 is identified as "Environmental assets and natural resources that are well protected and continually enhanced". Outputs in this regards has already been determined as indicated in 1.2.6.

It is important that the outcomes/outputs are addressed as part of strategic environmental planning including amongst others State of environment report, SEAs, EMFs, Sectoral plans, Departmental implementation or management plans, SDFs and IDPs. Proposals in strategic planning documents should be evaluated in terms of the pre-determined outputs in order to ensure quality management.

The Outcomes-based approach, can in line with outcome 10, also be applied for specific projects/activities.

Development of outcome-based conditions as part of specific project/activity:

All outcome-based conditions should be developed within the strategic context and strategic pre-determined outcomes/desired state of the environment. The development of outcome-based conditions can be undertaken via the four step process based on the Western Australia guideline model as detailed below.

Step 1: Identify the environmental outcome to be achieved by the proposal in relation to the environmental factor

This step is the most important part of the condition as it is the statement of what is to be achieved – the desired state of the environment. The environmental outcome is the proposal-specific interpretation of the environmental objective, defining the acceptable level of change to the environment as a result of the proposal. The description of the environmental outcome should use statements of realistic and measurable intentions, specific, achievable, clearly stated, time-related.
Step 2: Identify how the outcome is to be demonstrated

The most appropriate method is via monitoring. The reason for undertaking the monitoring and what it needs to demonstrate must be clear.

For example, “The proponent shall monitor xxx within the disturbance footprint to identify any significant change in abundance or condition . . .”

It is then the responsibility of the proponent to design the monitoring program so that it is able to support an evaluation of the level of change or significance in the environmental factor. A baseline will be required so that the allowable levels of change (impact) can be measured. Appropriate baselines should be established as part of the planning and EIA documentation.

Where the outcome is performance-based, it is possible that the monitoring requirements will need to be outlined in a schedule, as the monitoring frameworks and/or protocol will need to stipulate the desired levels of performance to be achieved; the indicators to be measured (including locations); and the various criteria to be met with reference to guidelines, trigger values and standards. The condition should include the interval of monitoring, including timing (e.g. seasonal) where this is critical, as well as the duration of monitoring. This must be relevant to the life of the proposal and the extent of the responsibility of the proponent. The condition needs to reflect the life of the proposal or impact, as defined by the proposal description contained in the condition statement, and require action accordingly.

Step 3: Identify reporting requirements

The condition must stipulate the reporting requirements regarding the monitoring, with reference to when, how by whom.

Step 4: Identify what is to be done if the outcome is not being met

The condition must include instructions on the actions required if the outcome is not being met. This should include the required action and timing of that action, and would likely be a tiered response, such as to carry out a preliminary management response; carry out a secondary management response; stop operations; criteria for re-starting operations; and action to remediate or mitigate impacts.
The draft guidelines compiled by Western Australia, titled "Draft Environmental Assessment Guideline No. 4: Towards Outcome Based Conditions," available at:

http://www.epa.wa.gov.au/Policies_guidelines/EAGs/Pages/default.aspx contains the following recommendations for ensuring that outcomes based conditions are effective and achievable:

1. The outcome must be able to be measured (or demonstrated) within a stated timeframe.
2. The location or area to which the condition is to apply must also be defined. Spatially defined outcomes provide greater certainty, particularly where areas of impact and/or no impact have been determined as part of the EIA process. Outcomes can be spatially defined via reference to a figure of appropriate scale or via a schedule which contains coordinates, or a combination of both. It is recommended that coordinates be incorporated wherever possible.
3. In most instances, a baseline will be required so that the allowable levels of change (impact) can be measured. Appropriate baselines should be established as part of the EIA documentation. Where this has not been established as part of the assessment process, possibly where insufficient reference information had been gathered, it will need to be included as a requirement in the condition. It must be noted that an appropriate period of time would then be required prior to a particular proposal activity commencing to establish the baseline.
4. The choice of measure, such as "abundance" or "condition" is an important element. There must be a direct relationship between the measure (or indicator) and the outcome. Preference should be given to the identification of well-defined measures which are not open to interpretation or do not involve a subjective assessment.
5. Consideration must also be given to the language and terminology which is used when drafting conditions. The use of descriptive words, such as "substantial", "minimise", "reduce", "approximately" and "major", should be avoided. The acceptable level of change should be quantified where possible, such as to "reduce by at least ten percent", or allow "no increase greater than five percent". Words such as "ensure" and "support" should not be used.
6. It is important to define the degree of change which is acceptable or unacceptable. It may be appropriate in some instances to require the identification of any statistically significant change (at a specified probability level) in the appropriate measure, where the level of statistical significance is justifiable or has been determined as part of the EIA and is considered to adequately reflect an environmentally significant degree of change.
7. Where the outcome is performance-based, it is possible that the monitoring requirements will need to be outlined in a schedule to the Ministerial Statement, as the monitoring frameworks and/or protocol will need to stipulate the desired levels of performance to be achieved; the indicators to be
measured (including locations); and the various criteria to be met with reference to guidelines, trigger values and standards.

8. The condition should include the interval of monitoring, including timing (e.g. seasonal) where this is critical, as well as the duration of monitoring.

9. The condition must stipulate the reporting requirements regarding the monitoring, with reference to the particular condition number.

10. The condition must include instructions on the actions required if the outcome is not being met. This should include the required action and timing of that action, and would likely be a tiered response, such as to carry out a preliminary management response; carry out a secondary management response; stop operations; criteria for re-starting operations; and action to remediate or mitigate impacts.

2.6.4.2 OVERARCHING PRINCIPLE OF The Management Cycle (Plan, Do, Check, Act - IMPROVE)

“The Deming Cycle - also referred to as Plan, Do, Check and Act (PDCA) illustrates the phases in management which are iterative, and described a means to reach a perfected output or operation.

FIGURE 5: DEMING CYCLE (ALSO CALLED PDCA)

http://permac.environment.gov.zazzle.com/plan_do_check_act_cycle.png
Early in the EIAMS process, DEA proposed a rendition of this Model, reflected in Error!
Reference source not found..

FIGURE 6: INTEGRATED ENVIRONMENTAL MANAGEMENT PHASES

"Tools are most effective when used for the purpose intended. A project level tool – such as EIA – will always be less effective influencing macro level policies than informing project level activities.

It is not the intention to use the Management Cycle as a tool in IEM, nor to assign tools rigidly to phases within the cycle. Rather, the Management Cycle is proposed to be referenced in the Quality Management System to ensure that the typical activities are conducted in a balanced manner, covering all phases, in the pursuit of continual improvement.

Also, in selecting the tool which is fit for purpose, the Management Cycle offers useful guidance."97

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97 [Link](http://environment.gov.zw/docs/DLA1_HFA_14Aug2011_052902.docx)
2.6.5 Service Standard: fit for purpose tools

Embedded within the overarching principles the following recommendations are made:

- Existing strategic planning tools and plans

“The type of tool to be used will be dependent on the availability or existence of strategic plans in an area in order to determine context of the receiving environment.

If information has already been collected, produced, interpreted as part of existing strategic plans or tools, the most appropriate tool should be used. The information should not be duplicated but instead be relevant to the proposed activity specific to the proposed location and the consequent environmental impacts.

Illustration

An EMF is approved and identifies as required, the development pressures, as well as environmental constraints and opportunities. The EMF (or SEA) integrated into the SDF and IDP should have considered cumulative aspects: social, health and human well-being considerations; demands on resources to provide infrastructure and services.

A zoning plan or Land Use Scheme exists and determines appropriate land use within the constraints of the local authority, referencing the SDF and IDP. A proposed activity e.g. light industry, must be sited in an appropriate location in terms of the EMF environmental development constraints, and the land use/zoning.

If the proposed activity conforms in both respects, the most appropriate tool for the site specific assessment is used, reducing the time, cost and complexity in the development application process.

Conversely, where a proposed development is inappropriate within the Zoning Plan/Land Use Scheme and will have a significant impact an area designated by the EMF as a high constraint zone, pursuing the application would be ill-considered, unnecessarily costly and complex, and very likely to result in a negative decision.

- Screening model

The Screening of activities, programs, policies and plans is proposed to ensure that the correct EM tool is used/ applied in order to determine the desired state of the environment/ environmental outcome and/or to identify possible avoidance of impacts, alternatives or impacts and/or to identify most applicable mitigation measures etc.

A screening model is proposed to be implemented that will address the principles outlined in chapter 5 of the document and above. Screening criteria should include:

- Fitness in terms of the hierarchy of the environmental tools/plans.
The purpose of a hierarchy is to provide the contextual framework for strategic planning to consider cumulative impacts, sustainability planning, trans-boundary effects, human well-being and dependency on ecosystem services, etc.

The ideal is to have strategic environmental plans and frameworks in place, in line with the predetermined desired outcomes, for All State Departments, Provincial Departments and Local Governments (e.g. SEAs for policies, plans and programs), Industries and Sectors (SEAs), Spatial planning for the country as a whole (SEAs or EMFs) and all SDFs.

This will enable detail planning and assessment to take place using the lower order tools such as EIA, EMP etc. The lower hierarchy tools/plans are typically more reactive, and mitigation of impacts or risk management is the most important aspect to be addressed.

The higher order tools address issues such as need and desirability, cumulative impacts, conservation, biodiversity, set acceptable limits for trade-offs and to identify offsets, etc. Practically, the higher order plans will have determined a context, and implemented decisions which shape the requirements of the lower order plans and tools.

Fitness of tool in terms of existing strategic planning tools, strategic context and available information on the receiving environment

- Existing strategic plans such as SEAs, EMFs, Conservation Plans, Bioregional plans, proclaimed protected areas etc. which have already identified sensitive or threatened receiving environments or areas necessary for ecosystem service rendering should direct selection of appropriate tools.

- Fitness in terms of the management phase / phases of the Deming cycle
  - Certain tools are more appropriate or fit for certain management phase/s

- Fitness in terms of Management and Governance Instruments
  - Command and control e.g. Effluent and emission standards in permits
  - Market-based instruments e.g. pollution taxes and tradable permits
  - Civil based instruments e.g. Eco-labelling, performance reporting, technical assistance
  - Agreement based e.g. International, covenants and EMCA's
- Self-regulation e.g. COP's and Voluntarism e.g. ISO 14001

- Fitness of use in terms of the:
  - Information to make an informed decision (what is known and unknown?)
  - Required information at the right scale and level of detail
  - Information on weaknesses identified in terms of available information
  - Available capacity to implement tool
  - Time constraints
  - Affected parties and level of public participation needed
  - Desired outcomes

- Screening panel:

It is proposed that the screening of the activities, plans, policies and programs be done by dedicated screening panels within the competent authorities on national and provincial level. Existing land use panels can be utilised on local level to screen non listed activities.

The Panel should consist of officials, registered independent EAP (on rotating basis) and specialists (if required).

It is proposed that the above criteria be used as steps to identify/ determine the most appropriate EM tool to be used.

- Purpose of the screening model:
  - To ensure that the most appropriate, effective and efficient tool is used.
  - To reduce the number of EIAs (in line with the desired future of the EIAMS) and allow for a more important role of strategic tool or other relevant tools.
  - To consider existing information on the receiving environment at the earliest stage of the screening process and indicate to proponents the no-go areas in terms of strategic plans.
  - To focus Environmental Assessments on activities/ projects/ policies/ programs that will have the biggest impact on the environment.
- To ensure the most appropriate level of Public participation within the selected tool.
- To ensure that the necessary skills for IEM are built at Local Authority level and the necessary responsibility is taken on by local level authorities.
- To improve cooperative governance between different spheres of government.
- To establish better integration of environmental issues within land use planning and infrastructure planning.

**NEW TOOLS**

A new tool, "Public Participation Plan" is recommended. The purpose of this plan is to—

- Define the anticipated degree of public participation the project will require.
- Identify the stakeholder groups and individuals.
- Propose the most suitable method of engagement e.g. open house meetings, workshops.
- Indicate the duration of the public participation process.
- Indicate any known social conditions to be considered.

A newly proposed tool: Compliance Assessment Reports have been effectively used by Treasury in South Africa as well as in the European Union. While the focus of these successful reports is fiscal compliance, the principle may be extrapolated.99

2.6.6 Product Standard: Fit for use

2.6.6.1 Consistency on how tool is applied: Guideline documents

"Guideline documents and regulations must continue to ensure the quality of tools.

Considerations include—

- A list of required information
- Departmental guidelines and policies
- Predetermined and clear terms of reference
- Defined Terminology
- Clarity on Scope

- Pre-determined performance criteria
- Competency
- Certification and registration of EAPs
- Independent review
- Correctness of information gathering and capturing
- Accepted standards and formats for datasets
- Scale and accuracy of relevant baseline information
- Input from I&APs

Additionally -
- Develop guidelines for the use of all tool identified in Sub-Theme 9
- Develop guidelines for any new Tools proposed
- Develop guidelines for the Outcomes Based Approach, including for decision making criteria, and outcomes specific authorisations
- Prioritise the guidelines/information documents for tools identified in Sub Theme 9 as most likely to be “first tier” alternatives to EIA
- Ensure the supporting documentation about the tools is readily accessible to Stakeholders

The guidelines series should be improved by focussing on describing the use and application of
- project specific outcome indicators,
- sustainability criteria
- review of applications with a focus on the outcomes based approach"100

2.6.6.2 Short Courses

"Prioritise short courses as proposed by Sub Theme Skills of EAPs and Government Officials, specifically in the selection and use of other tools."101

2.6.6.3 Review

"Peer Review is a necessity in order to ensure or quality of reports."102

2.6.6.4 Reports

100 http://environment.gov.za/docs/DFSA1_HPA_14Aug2011_052902.docx
Recommendations to improve reporting include –

A summary in non-technical language outlining specifically the extent of the impact the development will have on the environment, the implications of the impact, residual impacts and the long term consequence of the development on the environment.

The summary should indicate precisely the contribution to sustainable development and the desired Outcome.

The summary should specify how monitoring will take place and what the key measures are for the Desired Outcome. It should also indicate where the monitoring information can be accessed by I&APs, and specifically the impacted community.¹⁰³

### 2.6.7 Quality System – Managing for Quality

The link to other Sub-Themes is very important in order to ensure a quality IEM system:

#### 2.6.7.1 Organisational structure and procedures

*Sub-Theme 1 addressed Procedures and Organisational structure and Co-operative governance:

- In terms of Chapter 3 of NEMA: EIPs and EMPs are required for other state and provincial departments. The success of these plans in achieving integrated environmental management or achieving sustainable development seems limited. Based on this assumption, it is proposed that it will be more appropriate to introduce the requirement of SEAs/EMFs for the different national and provincial department’s policies, programs and plans as well as for IDPs and SDFs in terms of Chapter 5 of NEMA in order to ensure IEM.
- SEAs/ EMFs for industries and sector’s policies, should also be made compulsory in terms of chapter 5.
- A duplication of a relevant Minmech and Mintech on a local level is necessary to ensure coordination between provincial and municipal authorities.
- A formal Appeal body/tribunal is necessary to ensure quality of decision-making for all parties.

- The possibility of an arbiter should be investigated in order to support the Appeal body.
- A formal forum between competent authorities and municipalities should be established to discuss environmental/land use applications or plans in an integrated paradigm.
- A formal environmental screening panel is proposed at competent authorities within central and provincial government to determine the "fitness for purpose" tool to be used for a development, activity, plan or policy or program based on the screening criteria proposed in 6.3.2.
- An informal integrated environmental and land use screening panel at local authority is proposed to consider non-listed activities in order to identify possible need for environmental tool and most appropriate tool to be used.
- Proposed integration of environmental planning and town planning proposed in Subtheme 1: It is a noble idea but with the associated risk that environmental planning becomes absorbed into other line functions. Although this structural integration may be the ultimate integrated approach, there is concern that the necessary duty of care may not exist in town planning. However, Western Cape Provincial Government is recognised as an example that works and where lessons may be learnt.104

2.6.7.2 Information
- "Applications should avoid replicating "known" (i.e. strategic, regional information) and concentrate on improving existing information through ground-truthing, research and fieldwork.
- Central repositories of information, and in particular portals, should be well-resourced, properly maintained and provide an indispensable service to EIAMS.
- Studies submitted for authorisations are public domain documents, and only information which is potentially harmful to the environment should be withheld from the public.
- Information must be presented in a manner that clearly demonstrates how the development will meet sustainability criteria, and if it does, a motivation for the consideration of the application should be included.

1. The proponent must present a monitoring plan; monitoring must involve I&APs in order to be regarded as effective, and in particular must consult and inform in an ongoing manner on residual impacts and unforeseen impacts.105

2.6.7.3 Decision Making

- "Criteria used in decision making must be recorded and be available for scrutiny, including the names of the participants in the decision making, the criteria considered, the findings in relation to the criteria and any conditions imposed.
- Some indication of how the decision making process addressed the following should be given—
  - Ensuring transparency in decision making
  - Ensuring intergovernmental coordination
  - Resolving conflicts between organs of state
  - Discharging global and international responsibilities
  - Enforcing the polluter pays principle
  - Recognising the role of women and children in environmental management
  - Giving specific attention to sensitive, vulnerable, stressed or dynamic environments"106

2.6.7.4 Public Participation and Marginalised Communities

- "The Public should play an important role in determining outcomes, acceptable level of change, and in compliance monitoring.
- A public participation plan is to be submitted in the earliest stage of an application process in order to determine level of public participation, how and when public participation is to be undertaken in line with specific needs of relevant communities.
- A simpler, more readable summary of all reports is proposed."107

2.6.7.5 Monitoring and Enforcement:

- "Monitoring should be done against the pre-determined outcomes/goals to determine success and quality of tools used to bring about integrated environmental management as provided for in Chapter 5 of NEMA."
Monitoring should rely on identified indicators as a means to demonstrate the environmental change or result of an activity, project or programme, and should lead to responsive/adaptive action where required.

- In order to ensure a successful Outcome based introduction of serious fines in terms of co-regulation and compliance monitoring reporting will be required.  

2.6.7.6 Compliance

- "Administrative fines to be more widely used and be significant enough to be a deterrent.
- Fines should be calculated in a transparent and logical manner to combat corrupt practices.
- Rectification of Non–compliance, as typically dealt with under Section 24G, should be more onerous than the application process.
- Fines for non-compliance must be extended to include failure to monitor, inaccurate reporting and inadequate mitigation."

2.6.7.7 Availability of resources

ST 2: Knowledge and Availability of Information:

- "Knowledge should be created in terms of the proposed desired outcomes based approach, the evaluation thereof and the compilation of authorisation in terms of such an approach.
- All information on desired outcomes, existing strategic plans, authorizations, compliance monitoring reports etc. and guideline documents should be available and accessible."

2.6.7.8 EAPS

ST 5, 6 and 8: Independence and skill of EAPS, skills of government officials and representivity within the Sector.

- "Independence and registration process for EAPs and other professions is still a necessity to ensure quality.
- Urgent training is needed to ensure the implementation of an outcome based approach and other proposed tools, information systems etc."}

2.6.7.9 Review

- "A system of random peer review is proposed. The selection of the project should be truly random so as not to create bias. A sliding scale in the ratio review to application is proposed, reducing the incidence of reviews over a period, with the proviso that reviews find more consistency over time.
- The cost of the review should be built into the fee for adjudicating an application. Every application contributes a portion of the fee to the random review."

2.6.7.10 Biodiversity

_The legal requirement for all municipalities to have an integrated development plan and spatial development framework has provided probably the single most strategic opportunity for building biodiversity opportunities and constraints into land-use planning and decision-making at the local level._

Recognising the significance of Biodiversity, the Delivery Agreement for Outcome 10 requires in respect of Biodiversity conservation various targets to be achieved – please refer to discussion in 1.2.6. 113

2.6.7.11 Offsets (WWF, 2006)

- "Offsets should not be pursued if the area impacted contains exceptionally rare, endangered, or threatened biodiversity values, nor where the values lost cannot be quantified or replaced.
- Conservation offsets should be in the context of a multi-stakeholder engagement process that takes into account scientific knowledge.
- Conservation offsets should not be adopted as a generic tool.
- Conservation offsets as a response to biodiversity losses should be treated on a case-by-case and experimental basis.
- Conservation offset should not impinge upon the rights of traditional and indigenous peoples particularly to sustainable natural resource use.

Conservation offsets should not be established without the informed consent of traditional and indigenous peoples at both the development site and the site proposed for a conservation offset.

The debate on offsets should occur within the context of environmentally and socially responsible development, including requirements that companies have also satisfied the highest performance standards in their industry.

Conservation offsets should only be discussed after a project requiring the offset has received a “go” decision that is supported by local and traditional communities.

Damage to biodiversity from exploration and development, should be considered when designing an offset.

Establishing conservation offsets should not be the option of first resort for financing conservation efforts.

When accepting conservation offsets, governments should establish a separate, transparently managed fund for allocation of money received for an offset.

An independent monitoring and verification body should be established to monitor and oversee the offset, to ensure it continues to maintain the characteristics for which it was set aside.

Independent monitoring and verification will be required to ensure that the area set aside as an offset truly compensates for biodiversity losses.\(^{114}\)

### 2.6.7.12 Awareness

"Ensure consistent interpretation and application of guidelines across all spheres and in all sectors of government. Develop guidelines for officials that build capacity on, and facilitate, for example:

- Consistent interpretation and application of the NEMA principles;
- Determination and application of sustainability criteria;\(^{115}\)
- Decision-making which impacts on the environment; and


\(^{115}\) Such as suggested by Paul Hardcastle in his paper on “Sustainability Criteria for Planning and EIA in South Africa” Hardcastle proposes such a guideline to ensure that the planning and EIA processes are objectives-led and don’t become merely a compliance exercise to ensure that legislated procedural steps have been followed."
2.6.7.13 Cooperative Governance

"The Intergovernmental Relations Framework Act makes provision for structures and processes which could ease cooperative governance, and be used in conflict resolution. It is recommended that these options are used more widely, with less reliance on MoUs."117

2.6.7.14 "The Planning Commission should be informed of the EIAMS strategy and its objectives in order that synergy and cooperation may be explored."118

2.6.8 Anticipated concerns/ Problems/ risks with an Outcome Based Approach

"The concerns/ problems/ risks anticipated with an outcome-based approach are as follows:

- The detailed desired state of the Environment has not been determined BUT the outcome has been compiled.
- All goals/outcomes for environmental quality control have not been determined.
- Where goals/outcomes may have been determined, it was not done within a cooperative governance paradigm.
- The baseline status quo has not been determined yet, and SoE and Biodiversity reporting is not sufficient for this purpose.
- Presently, quality of Tools is managed by means of regulations (NEMA), checklists as part of tool application content/documents, guideline documents and other standards. However the checklist/requirements are not available for all tools and guidelines are not drafted to cater for the outcome-approach.
- In terms of the monitoring of the success of EIA in South Africa, the REE focused mainly on the evaluation of EIA content/process in order to determines success of EIA as tools in South Africa. The REE did not focus on how or if EIA was successful in improving the quality of the environment.
- Performance measures within Government are based on finalization of authorisations within regulated timeframes and not against the achieved environmental outcomes.
- During a transition period, the granting of authorisations may take longer. It would be important to demonstrate efficiency and effectiveness is attainable.
The implementation of an outcome based approach should be phased in for certain activities; reviewing the implementation is imperative before the approach is implemented across all activities and projects.

EAPs, including officials, do not necessarily have the skills or capacity to adopt the outcome-based approach without attending a bridging course. A level of expertise and experience will also be a pre-requisite in decision-making and the use (preparation) of strategic tools.

There may be resistance to change.

Local authorities will also have to recognise ecological sustainability, and capacity problems may be aggravated.

The concern is that an outcomes-based approach that is not strictly tied to carefully formulated criteria will lead to more pollution, not less.

There is conflicting viewpoint and a concern that the approach is suitable for planning and conservation but not for activities having impact on air and water quality and on health. The contrary debate is however also put forward that physical planning, spatial patterns and infrastructure planning can be influenced and directed by clear targets/ criteria in terms of water quality and air pollution.

The cost and inefficiency of monitoring in order to ascertain whether the desired outcomes have been achieved is a concern. The counter argument (and practice in Western Australia) is to place the onus for monitoring on the proponent with random auditing by the regulator.

The success is therefore dependent on a successful co-regulation system enforcing compliance monitoring reporting by proponents, monitoring by authorities and strict heavy fines for non-compliance.

An outcomes based approach must be tied to pollution control at source through the appropriate tools at project/activity level and should not depend only on strategic outcomes determined in strategic planning documents.

A successful outcome based approach is dependent on commitment from all role players striving towards ecological sustainability.
3 MAIN RECOMMENDATION TRENDS WITHIN ALL SUBTHEME REPORTS, AGREEMENTS, DISAGREEMENTS AND SHORTCOMINGS

After consideration of the draft Subtheme reports by the various sectors, detailed comments as received from the sectors were interrogated and the reports were finalised by the applicable authors. The final reports were again considered by the various sectors and by the PSC meeting dated 19-20 September BUT the PSC members weren’t prepared to approve the reports. The common recommendation trends were however discussed in detail and agreements, disagreements, shortcomings and issues to be interrogated as part of theme reports were identified. The following session will provide a short discussion on the major trends identified within the Subtheme reports which were discussed in Section 2 of this document. However it is important to refer back to the original documentation to understand the recommendations as it cannot be duplicated in detail. Various recommendations didn’t correlate and this section of the report will identify such disagreements but will not discuss it in detail. Reference will be made to detailed comments from sectors if necessary.

COMMON RECOMMENDATION TREND

3.1 NEMA principles guideline document and consolidation of existing guideline document:

A common recommendation was made in various subtheme reports e.g. Subtheme 1, Subtheme 10 and 11 indicating the necessity to explain and interrogate the NEMA principles with the purposes to capacitate decisionmakers, private sector and the public on the intent of the NEMA principles. The following was proposed:

- A NEMA-guideline document to be compiled and training to be initiated for various roleplayers
- The coordination and consolidation of existing guideline documents to ensure consistent interpretation and application of NEMA principles and determination and application of sustainability criteria.
- The need for other guideline documents to be reconsidered and to be revised to include/ensure a consistent interpretation of NEMA principles

Agreement was reached on this principle BUT it was also agreed that the Theme reports should include a more detailed discussion on the principles of sustainable development (already included
in 1.2.5) of this reports. The Theme report should further consider how existing guidelines can be rationalized and should identify existing gaps.

3.2 Coordination and Integration of Environmental Planning and Land Use Planning

Subtheme 1, 10 and 11 addressed the lack of Coordination and integration of environmental planning and land use planning within Local, Provincial and Central Government. Subtheme 10 supported the integration into one department while Subtheme 1 and Subtheme 11 promoted the increased structured alignment between planning and environment (law and policies). Formal integrative forums to ensure the consideration of environmental and land use application in an integrated paradigm were also proposed. It was further explicitly proposed to split economic development and environmental Departments.

There is definitive disagreement on the principle of integrating environmental planning and land use planning into one department. Major concerns include the possibility of conflicting mandates or limitations on the separation of powers. Agreement exists that a structural alignment should be ensured but that the separation of powers/mandate between the 2 departments should prevail. Mandates should be met halfway and it should be ensured that the different laws reflect the principles of the other e.g. spatial/land use/planning laws should reflect environmental issues and therefore ensure better alignment and coordination between environmental and spatial concerns. A balance of power is required. The need to influence behaviour and integration of environmental issues within other departments becomes more important for the success of cooperative governance - please refer to comments by Richard Hill. Consideration should therefore be given to creating environmental sections in other departments.

The following issues should be interrogated in the Theme reports in more detail:

-As there is agreement that some kind of integration/structural alignment should take place, more research is required on possible integration. Cooperative governance should be promoted, but mandates should be retained. This matter must be unpacked more and

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international examples considered focussing on implementation of what is already contained in existing legislation.

- The alignment of SDFs, IDPs and strategic environmental planning/issues within one department can possibly be implemented successfully, however problems with alignment in decision-making on application level will occur as the mandates differs. If horizontal integration is to happen- what would the practicalities be and how will it be implemented, considering the challenges at local authority level in terms of capacity?

- Certain legislation can't align e.g. MPRDA and NEMA. The reports must clearly say WHY something is not working- whether it is the law, structures, capacity, relationships, knowledge or the lack thereof.

- If ecological sustainability is being pursued in accordance with the Constitution, clear cut examples of fundamental showstoppers must be clearly indicated.

3.3 Planning Commission/ Commissioner/ Panel/ Change in hierarchy of decision making/ Arbiter/ Conflict resolution mechanism Appeal Body/ Public hearings /Formal Appeal body/ Tribunal/ Conflict resolution mechanisms

The principle of a higher or overarching authority (within the presidency’s office) that should make environmental decisions or final decisions on conflicting mandates is proposed within Subtheme 1 and 10.

Various conflict resolution mechanism/appeal bodies are proposed within Subtheme 1, 10 and 11.

Various concerns and disagreement with the principle of a higher overarching authority were raised—refer to comments made by Richard Hill and DEA. There is consensus that a combined/balanced approach between top-down approach (Planning Commissioner/ stick) and bottom up approach (uncentralised approach of environmental units in other departments) should be considered. The Theme report should interrogate this viewpoint further.

- The Theme report should indicate what law reform will be required to implement a Planning Commissioner to ensure an integrated land use and environmental planning mandate. If a commissioner is supported, it should be indicated how it will fit within the mandate of Chapter 5 of

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121 http://mpano.environment.gov.zw/docs/DEA1_HPA_06aad2011_092573.doc
NEMA. It is agreed that all proposals made should be within the mandate of Chapter 5 but should also consider necessary institutional arrangements beyond legislation required to ensure success.
- Proposed conflict resolution mechanisms should be interrogated using examples of successful integration and a final recommendation should be made on a conflict resolution mechanism.

3.4 One stop process rather than one stop shop: A more successful use of MOUs, integrated permitting, formal forums such as environmental management committees, a "MINTECH type" of system also on Local Authority level and a combination of informal arrangements should transpire in order to ensure a one stop process.

The integration of different authorization licenses or permits is promoted within Subtheme 1 and 10 in order to promote cooperative governance, reduce duplication of processes and promote integration.
- There is agreement on the principle of a one stop process as opposed to a one stop shop. The Theme reports should however consider in detail which/what processes/tools are in place, what are functioning successfully, why others are not successful and what should be amended.
- Existing MOUs should therefore be interrogated - if it is successful and if not what should be amended? New/improvement of existing MOUs should be proposed.
- The principles of integrated permitting should be considered: The theme report should indicate what is meant by the principle and what should be allowed for. Concrete examples are required in terms of what can happen and where it can happen.
- The theme report should consider forums as proposed within the Subtheme reports, and should consider their functions and the powers needed in order to be effective. Specific forums for implementation should be proposed.

3.5 Legislative changes are necessary: Amendment of existing environmental laws is required in order to reduce duplication and procedures need to be clarified where not coordinated. Law reform is needed to refuse applications which do not contribute to national strategic objectives.

There is agreement in Subtheme 1 and 10 that certain amendments to existing environmental law is necessary in order to reduce duplication provided that procedural rights are not compromised (right to appeal, right to reason etc.)
The Theme report should indicate clearly and exactly what amendments are necessary. Consideration must be given to the ICMA and new proposed NEMA amendments. Amendments of other legislation outside Environmental sphere should reflect environmental issues. Specific recommendations should be made in this regard.

3.6 Integrated government with a wide monitoring and review system

The recommendation was made within the Subtheme 1 report. There is agreement on the principle of integrated government but the Theme report should further interrogate the concept of “integrated” and unpack it.

3.7 Delegation and responsibility of Local Authority to increase with regards to non-listed activities, SEAs and EMFs integrated into SDFs and IDPs.

Various Subtheme reports (Subtheme 4 and 11) mention the increasing role that Local Authorities can play in IEM.
- There is agreement on the principle to increase the responsibility of Local Authorities (not necessarily delegation) with regard to IEM, but it will be dependent on the capacity at local level.
- The importance of the role and framework of approved SDFs informed by EMFs is stressed.
- There is however disagreement on the principle of delegation of powers to municipalities in terms of legislation. The case made is that decision-making in terms of the environment is a mandate of National and Provincial government and that Local Authorities are not mandated decision-makers. However, consideration should be given to more responsibility for Metros or Local Authorities.
- There is agreement that in terms of non-listed activities the LAs should take increased responsibility for EIM. Integration of EMFs into the SDF process should be considered in more detail and mandated in terms of Chapter 5 in this regard. As Local authorities differ widely in terms of capacity, a survey on the capacity of municipalities is needed and recommendations on how to assist them will be required before LA responsibility can be increased. Consideration of the allocation of National or Provincial officials at Local Authorities, in order to address capacity limitations at LA level, should be considered.
3.8 Delegation of certain tools e.g. norms and standards for listed activities to LA
- There is major disagreement on the principle of delegating mandates to the LA.
- Consideration should be given in the Theme report to the lack of capacity on LA, how it should be addressed, phasing in of processes etc. Recommendations should not be implemented across the board. There should be insurance that any delegations/mandate to local authorities should be accompanied by sufficient capacity at LA level. There is further disagreement if Local authorities should not/should be a champion for EIM as mandates should prevail with Province and National.

- The theme reports should investigate the circumstances and prerequisite under which certain EIM functions can be performed at LA level. (Investigate conflict of interest, political will, capacity, type of activities that can be included and the international experience). Consideration should be given to delegation of responsibility for implementation of certain tools.

3.9 Provincial Environmental Forums: Formal MINTECH/ MINMECH type of forum on local level to filter through information from Provincial to Municipality level (formalised in legislation).

Informal integrated environmental and land use panel between spheres of government "good neighbour" agreements.

The principle to utilise formal forums as well as informal agreements to ensure cooperative governance comes through strongly in Subtheme 10 and 11. There is principled agreement on the utilization of formalised forums and good neighbourly agreements for strengthening cooperative governance.

- The Theme report should interrogate all proposals within the Subtheme reports for forums, informal and formal, in terms of advantages and disadvantages. Existing arrangements should be interrogated e.g. Gauteng’s MEC/ MMC forum in order to determine what is successful and why.

- There is agreement that formal Provincial Environmental Forums with Municipalities: (where LU applications and EIM issues are discussed between LAs and provinces) should be established in all provinces. The Theme report needs to consider the merits and demerits of such a forum.

- The Theme report should consider the IGRFA and use the principles of this act as basis in order to understand what can be implemented within the Chapter 5 mandate.
- There is agreement that the procedures and organisational structures for the implementation of Strategic Environmental Assessment in South Africa were not sufficiently addressed in the Subtheme 1 report and need to be addressed in detail in the Theme report.

3.10 Peer review on demand or random?
There is consensus that the possibility for requesting the peer review of a document should depend on the level of assessment and should be initiated on demand and not random. There is however disagreement on when it should be requested and who should pay.

3.11 Outcome based approach (OBA):
Various of the Subtheme reports including Subtheme 1, 4, 9, 10 and 11 focus on/propose that strategic environmental reporting, impact assessment and decision-making and enforcement should be based on an OBA.
Agreement was reached that in terms of the approved National Outcome 10 (as was discussed in 1.2.6) and the outputs determined as part of outcome 10, all Strategic environmental plans should be developed and evaluated against pre-desired outcome.
Acceptable levels of change/trade-offs, performance requirements, sustainability criteria and incremental implementation are all possible mechanisms which can be utilised as part of an outcome based system. Please refer to comments made by GPWC\textsuperscript{122}.
Strong disagreement was however expressed by NGOs and LRC if an outcome based approach can be utilised for individual environmental impact assessments specifically referring to pollution-related activities. Please refer to comments made by LRC.\textsuperscript{123}, Angus Morisson Saunders and Jenny Pope (Western Australia)\textsuperscript{124} \textsuperscript{125} and Mercia Komen\textsuperscript{126}.

There wasn't consensus on the proposal that should an OBA is to be used for impact assessment of listed activities, assessments should include specification of actions that proponent may take / mitigation needed to achieve pre-determined outcome.
The theme report should therefore interrogate:

\textsuperscript{122} http://deams.environment.gov.za/docs/DEAT_HPA_05Jul2011.104022.docx
\textsuperscript{123} http://deams.environment.gov.za/docs/DEAT_HPA_05Jul2011.105013.docx
\textsuperscript{124} http://deams.environment.gov.za/docs/DEAT_HPA_05Jul2011.124708.docx
\textsuperscript{125} http://deams.environment.gov.za/docs/DEAT_HPA_05Dec2011.040602.docx
\textsuperscript{126} http://deams.environment.gov.za/docs/DEAT_HPA_05Dec2011.040118.docx
-What exactly is meant by an OBA (information in Subtheme 11 report should not be duplicated - value should be added). Can the OBA be applied to only Strategic tools or also EIAs in the South African context? The advantages and disadvantages should be investigated also considering South African policies and legislative context in this regard.
-Is it appropriate to limit the use of an outcomes based approach to certain types of activities only? As example, an outcomes based approach might be suitable for land use decisions but not to decisions involving pollution emissions (due to uncertainties as to cumulative impacts)? Are there certain types of listed activities which are more conducive to outcome based approach?
- Regarding activities which generate significant pollution emissions: Can an outcomes based approach be used in an assessment when the impacts are not known at the outset of the investigation or there are multiplicity of impacts or uncertain cumulative impacts? More particularly can this approach be used, if not all pollution emissions or potential impacts for the activity have designated desired outcomes/outcome limitations?
-Consideration should be given to international models where appropriate to inform the investigation.
-The possible usage of sustainability criteria and usage of alternative layouts and design on how outcome can be achieved should be interrogated.
-Investigate the possibility of utilising OBA to set specific targets as well as outcomes that are non-target specific e.g. soft vs. hard targets in terms of e.g. NEMA chapter 2 principles.

3.12 Change in reporting format – how will development contribute to achieving sustainable development/ desired sustainability outcome
-There is agreement that the reporting format should be amended to indicate how the development under discussion will contribute to achieving sustainable development.
- The theme report should interrogate this proposal in more detail, especially in line with recommendations made on the OBA and consider how reporting format should be amended.

3.13 Conditions of Authorization to be compiled in terms of the desired outcomes. No conditional approvals will therefore be allowed.
Various of the Subtheme reports including Subtheme 1, 4, 9, 10 and 11 focus on an OBA also indicated in 3.11.

Disagreement exists whether an Outcome based approach in terms of EIA Pollution control management can be implemented within an OBA system. Please refer to comments made by LRC.\textsuperscript{126}

The theme report should consider the issues raised in 3.11 and make recommendations on how conditions of authorisation can support/implement such a system.

3.14 Cooperative governance mechanisms aimed at ensuring ecological sustainability should be strengthened by addressing the principle in policy frameworks and incorporating ecological sustainability considerations in strategic policy frameworks. Agreement was reached on this recommendation mainly from Subtheme 1. The theme report should seek clarification on the issue of ecological sustainability called by the constitution in the context of sustainable development. It should specifically address how ecological sustainability fits into sustainable development considering the economic and social aspects. This issue was addressed in section 1 of this report point 1.2.5.

3.15 The EIP and EMP for government departments as required in terms of chapter 3 of NEMA should be used more successfully. The Theme report should consider why the existing system is not working effectively. Consideration should be given to possible advisory environmental units within other departments in order to address identified problems and to influence behaviour within other departments.

3.16 Identify/ redefine environmental damaging government policies and programs. Full integration of environmental policy via budgetary, planning and auditing processes. Linking achievement of ecological sustainability objectives directly to performance and delivery outcomes.

-Agreement exists on the above principles mainly from Subtheme 1. However, the implementation of these recommendations is not clear and should be addressed in the Theme report. The following should therefore be interrogated in this regard:

-Possible uncentralisation of environmental units within other departments.

\textsuperscript{126} http://from_environment.gov.za/docs/DEAT_HPA_06Jul2011_103019.docx
- Dedicated units for capacity building and compliance within Local Authorities. Possible allocation of DEA/ Provincial personnel to Local Authorities in order to assist with capacity building and compliance monitoring at local level.

- Possible delegation of powers to Local Authorities and conflicting mandates in this regard needs to be considered. It is however agreed that LAs need to have a definitive mandate (the principle of duty of care alone seems not to be sufficient), capacity and political will to implement the mandate.

- Possibility of specific performance indicators with regard to environmental outcomes to be included within other government departments.

3.17 Availability and applicability of State of Environment reporting, baseline information and Desired State of the Environment to be developed.

Various subtheme reports imply that a strong baseline is needed as well as specific desired targets be set for environmental reporting.

Agreement exists on the principle but the Theme report should interrogate the requirements for other government departments in terms of SOER reporting (new amendments). Please integrate recommendations in this regard within Theme 2.

3.18 A proposed hierarchy of instruments: Integrated Planning, SEAs and EMFs on National, Provincial and Local Level to be integrated into SDFs and IDPs. EIAs and/or other tools on project level. SDPs and Building plans on “project site” level. There should be a more important role for strategic tools and the usage of sustainability enhanced planning tools and maps needs to be promoted. The hierarchy implies a need for a more robust flow of information between tools.

The above principle is implied within the Subtheme 1, 9 and 10 reports but only verbalised in the Subtheme 11 report. Various of the other reports implies such an approach as the role of strategic tools is stressed.

There is agreement on the principle of a hierarchy of tools BUT the Theme reports needs to determine the method to decide on the right level of assessment or level of impact.

- The principle usage of Strategic level plans for specific projects or assessment at project level should be interrogated: There is agreement that EIA should not be replaced by SEA but should ensure that strategic context is set, desirable outcomes determined and duplication of SEA information avoided at EIA level.
3.19 Strategic environmental plans for other governmental department's policies and programs. Integrate environmental tools within other departments processes/plans and policies.

This principle was not discussed at the PSC. The theme report however needs to interrogate if this can be made enforceable in terms of chapter 5 of NEMA.

3.20 Proposal of Strategic environmental plans (SEAs and EMFs) for different sectors e.g. agriculture, forestry, fisheries, energy, industry, transport, waste, water, telecommunication, tourism and land use planning.

Various Subtheme reports imply the above principles but the recommendation is only verbalised in the Subtheme 11 report.

- The theme report however needs to interrogate if this can be made enforceable in terms of chapter 5 of NEMA.
- There exists agreement on the above principles but the Theme report should interrogate how to determine the most appropriate tool if the strategic contexts have been determined as well as the right level of assessment in such an instance. The most appropriate way of determining thresholds should be proposed e.g. discretion or fixed list of activities.
- Disagreement exists if an alternative tool other than EIA can be used on its own if strategic contexts have been determined. Please refer to comments made by LRC.

3.21 IEM includes four phases namely Plan, Do, Check, Act and an additional step of IMPROVEMENT. The pool of tools can be linked to certain IEM phases but can span over one or more phase.

The principle of the four phases of IEM comes through in most of the reports and specific emphasis is laid on the principle in Subtheme 4 as the poor implementation of the “Check and Act” phases results in the lacking emphasis on monitoring and enforcement. Subtheme 9 also focusses on the role of the phases within each tool and for IEM as whole and Subtheme 11 stress the importance that the full cycle should be completed for a quality management system.

-Agreement exists that IEM includes only 4 phases in line with Deming cycle. The Step 5 improvement is already implied in the 4th phase.

-Agreement exists that the pool of tools can be linked to certain IEM phases but can span over one or more phase.

3.22 Screening tool/process to determine: Most appropriate tool to be used for activity, program, plan or policy under discussion and level of public participation.

The principle of a screening tool/process is recommended specifically within Subtheme 9 and 11, while various of the other reports imply that some kind of discretion is necessary to determine level of assessments.

Definition:
Screening is the process to determine if a development proposal (or “activities” as defined in NEMA) requires environmental assessment (listed or not) or require a strategic assessment/plan/norms/standards and if so, the type and level of an assessment/plan or tool to be used that is appropriate.

-There is conformity that there should be some kind of screening process to determine level of assessment.

-Disagreement exists if a list of activities only, should be used as screening mechanism and if the refinement of the existing list of activities will provide for the necessary refined screening mechanism.

-Disagreement exists if any discretion should be allowed when determining level of assessment within EIA. Please refer to comments made GPWC[130]

-There is disagreement if existing screening should include more than the list of activities e.g. level of decision and receiving environment also to be considered. Please refer to comments made by LRC[131]

-Disagreement exists if a screening process can be used to determine usage of alternative tools as an alternative to EIA.

-Disagreement exists if number of EIAs should be reduced. Disagreement exists if other tools should be used under the umbrella of an EIA or if alternative tools can stand alone (not within EIA process).

-Agreement exists that some sort of screening is necessary outside the EIA listed activities.

-There is agreement that Local Authorities should be capacitated, empowered and mandated to undertake screening outside EIA listed activities.

-There is an understanding that in case the threshold of listed activities is reduced, LA may have more responsibilities and should be capacitated and empowered. The NGOs don't agree with the approach of changing the thresholds to change the decision maker to the local authority.

It is expected that this Theme report should interrogate the above issues and include an interrogation of the advantages and disadvantages of a streamlined screening process and how such a system will be constructed. The most appropriate structure for undertaking screening should be considered in the analysis. Is screening more appropriate for certain types of activities than others eg town planning and conservation decisions versus decisions authorising polluting activities.

The possibility of a screening panel into PAJA versus existing screening discretion as part of EIA process, or screening only via a list of activities should be interrogated and recommendations be made.

-In considering models for screening the report should indicate how such mechanism can be developed while ensuring checks and balances that minimise the abuse of discretion, the unfair limitation of procedural rights (public participation, access to information, disclosure to the public of applications for authorisation and screening) and to ensure that impacts of listed activities are consistently assessed and mitigated?

-The following screening options are provided for consideration (but not limited to) when undertaking the above analysis:

Screening could take place at the level of the panel against various criteria/guidelines.

Alternatively, screening could be facilitated by the way in which activities are listed. The lists could indicate in certain limited cases that the activity could be screened and in such cases indicate guidelines for the exercise of discretion if screening is undertaken, and provide for public input or objection.
Alternatively screening could happen within the EIA itself, and certain impacts not assessed because they fall within desired outcomes.

-Screening may therefore include different types of screening.

3.23 Criteria for a screening process/tool:

Subtheme 9 and 11 proposes certain criteria for screening in order to ensure that the most appropriate tool is used to ensure avoidance of or identify possible impacts and mitigation measures for certain activity, process, plan or policy. The following criteria are proposed to determine the most appropriate tool to be applied:

- The Tool will depend on the need to set sustainability targets or the tool may be used to measure an activity, plan or policy etc. against the sustainability targets.
- If sustainability targets are to be determined, at what level or project will the tool be needed to measure/inform sustainability targets.
- Level of integration analysis needed/required.
- Fitness in terms of the phase/s in the management cycle.
- Availability of existing strategic plans/tools/desired outcomes.
- Sensitivity of the receiving environment.
- Fitness of tools in terms of hierarchy of tools.
- Fitness in terms of management and governance instruments.
- What is known/unknown? Availability of the correct scale or detail of information.
- Weaknesses in terms of available information. Capacity available to implement authorisation conditions.
- Level of P/P that is needed in the process.

- There is major disagreement if the list of activities should be the only criteria for screening. Please refer to comments made by LRC\textsuperscript{132} and GPWC\textsuperscript{133}
- Disagreement exists on the proposed criteria for screening if used as an alternative for listed activities. Please refer to comments made by LRC.\textsuperscript{134}

\textsuperscript{132} http://environment.gov.za/docs/DEA1_HFX04Jul2011_163019.docx
\textsuperscript{133} http://environment.gov.za/docs/DEA1_HFX04Jul2011_163022.docx
\textsuperscript{134} http://environment.gov.za/docs/DEA1_HFX04Jul2011_163018.docx
- Disagreement exists on principle of a screening panel to allow for discretion within listed activities. There is disagreement if such a panel can really be transparent.

- There is however agreement that there should be a screening panel on LA level to screen non-listed activities as part of land use process and other plans, processes and programs. Agreement that capacity should be built in this regard and that the National Department should assist.

- The Theme report should interrogate the above issues and recommendations should be made.

3.24 New tools proposed: Sustainability audits/social indicators, compliance assessment and monitoring reporting and public participation plan.

- Improvement of existing tools that is already available e.g. Sustainability objectives and assessment, Public participation plan, SEA, EIP, Financial policy, EMF, Biodiversity planning, norms and standards, cumulative effect assessment, Life cycle assessment, cost benefit assessment, EIA, screening, AMP, EMS (ISO), Compliance Assessment/monitoring reporting. SEA should not replace EIA. EIA is still to be used when it is the most appropriate tool. Development of Norms and Standards becomes more important. Subtheme 9 and Subtheme 11 propose/ introduce the abovementioned new tools and Subtheme 9 also proposes the improvement of existing tools available.

- There is agreement that the proposed alternative tools should be available for usage.

- Disagreement exists if alternative tools should be used under the umbrella of EIAs or should be able to stand alone as an alternative to EIA. Please refer to PGWC comments.\textsuperscript{135}

- Agreement exists on the principle of a PPP. However, there is disagreement on when such a plan should be submitted – before initiation of assessment or during/as part of the assessment phase.

- There is disagreement on who should decide (decision maker) if the PPP can be approved as well as approval of assessment level.

- The Theme reports should therefore interrogate the above issues in further detail.

\textsuperscript{135} http://parks.environment.gov.za/docs/DEA_LPF_Y_05102011_10402.pdf
3.25 Any number of tools can be used or integrated to inform process
- In line with the Subtheme 9 recommendation there is consensus that any number of tools can be used to inform the decision-making process.
- There is however disagreement if the different alternative tools should resort under the umbrella of EIA or if all tools can stand alone. The Theme report should therefore interrogate this issue.

3.26 Each tool also include a plan, do, check and act phase within itself
- In line with the Subtheme 9 recommendation it was agreed that each tool in itself can include a plan, do, check and act phase.
- There is however disagreement on how each Subtheme applied the Deming cycle.

3.27 Off sets to be allowed for
The principle was not discussed and should be interrogated as part of the Theme report.

3.28 Co- and self regulation by means of compliance monitoring reporting by proponent/industry to government and communities and government auditing reports. Monitoring by communities, schools and NGOs: data collection, training, funding, monitoring committees, relations with enforcement officers etc. Protection for whistleblowers.
Various Subtheme reports including Subtheme 4, 9 and 11 propagate a move away from only command and control environmental management towards Market/Fiscal based instruments, agreement-based instruments and civil based instrument implying more co-regulation. Compliance and Enforcement should therefore include Command and control instruments as well as voluntary and incentive based instruments. Industry can provide for compliance monitoring reporting while government and civil society can play a more important monitoring role. The introduction of heavy fines versus criminal action only can ensure compliance more effectively.

- There is agreement that there should be a collective approach to monitor and enforce also through civil society, NGOs and government. The NGOs however don't agree that it is their responsibility as they lack resources. There is however agreement that NGOs can only assist in monitoring of activities depending on availability of resources but that they should play a bigger role to ensure that the resource base is levelled. NGOs should as a result be better resourced. NGOS have different roles to play including evaluation of EIAs. NGOs and civil society should be stronger and
partnerships need to be formed. NGOs need to improve their image and raise funding and see government as their partner – NGOs don’t agree on this statement.

-Agreement was reached on the principle of self and co-regulation to support command and control.

-Agreement was reached on the introduction of heavy fines.

The Theme report should however interrogate the following in more detail:

-What kind of market based instruments can be enabled to improve compliance and enforcement? Consider incentive based tools that is appropriate in giving effect to market based tools to achieve chapter 5 principles. Consideration should be given to incentives and penalties.

-The principles of self and co-regulation: What is the relationship between regulatory compliance, co-regulation and self-regulation? Unpack the relationship and interaction. Describe the principles, mechanisms and how they interact with each. Consider advantages and disadvantages of co-regulation in detail.

-Should Rules and guidelines for co-regulation should be laid down?.

-Will a significant shift in investment or shift of resources into monitoring give effect to or achieve IEM (section23) and improve, based on currently available data as well as international experience?

Will a system of administrative penalties substantially improve enforcement as compared to the current system of criminal enforcement?

-A final proposal should be made on what is to be taken forward, how it is to be implemented and for what type of impacts it should be considered more carefully.
4 REFERENCES FROM SUBTHEME REPORT


NOTES

The purpose of this document is to:

(i) Draw special attention to certain general conditions applicable to government bids, contracts and orders; and
(ii) To ensure that clients be familiar with regard to the rights and obligations of all parties involved in doing business with government.

In this document words in the singular also mean in the plural and vice versa and words in the masculine also mean in the feminine and neuter.

- The General Conditions of Contract will form part of all bid documents and may not be amended.
- Special Conditions of Contract (SCC) relevant to a specific bid, should be compiled separately for every bid (if applicable) and will supplement the General Conditions of Contract. Whenever there is a conflict, the provisions in the SCC shall prevail.
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General Conditions of Contract

1. Definitions

1. The following terms shall be interpreted as indicated:

1.1 “Closing time” means the date and hour specified in the bidding documents for the receipt of bids.

1.2 “Contract” means the written agreement entered into between the purchaser and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.

1.3 “Contract price” means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.

1.4 “Corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution.

1.5 “Countervailing duties” are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.

1.6 “Country of origin” means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.

1.7 “Day” means calendar day.

1.8 “Delivery” means delivery in compliance of the conditions of the contract or order.

1.9 “Delivery ex stock” means immediate delivery directly from stock actually on hand.

1.10 “Delivery into consignees store or to his site” means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.

1.11 “Dumping” occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the
1.12 “Force majeure” means an event beyond the control of the supplier and not involving the supplier’s fault or negligence and not foreseeable. Such events may include, but is not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.

1.13 “Fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.

1.14 “GCC” means the General Conditions of Contract.

1.15 “Goods” means all of the equipment, machinery, and/or other materials that the supplier is required to supply to the purchaser under the contract.

1.16 “Imported content” means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the supplies covered by the bid will be manufactured.

1.17 “Local content” means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place.

1.18 “Manufacture” means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.

1.19 “Order” means an official written order issued for the supply of goods or works or the rendering of a service.

1.20 “Project site,” where applicable, means the place indicated in bidding documents.

1.21 “Purchaser” means the organization purchasing the goods.

1.22 “Republic” means the Republic of South Africa.

1.23 “SCC” means the Special Conditions of Contract.

1.24 “Services” means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such
2. Application

These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services, sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.

2.2 Where applicable, special conditions of contract are also laid down to cover specific supplies, services or works.

2.3 Where such special conditions of contract are in conflict with these general conditions, the special conditions shall apply.

3. General

3.1 Unless otherwise indicated in the bidding documents, the purchaser shall not be liable for any expense incurred in the preparation and submission of a bid. Where applicable a non-refundable fee for documents may be charged.

3.2 With certain exceptions, invitations to bid are only published in the Government Tender Bulletin. The Government Tender Bulletin may be obtained directly from the Government Printer, Private Bag X85, Pretoria 0001, or accessed electronically from www.treasury.gov.za

4. Standards

4.1 The goods supplied shall conform to the standards mentioned in the bidding documents and specifications.

5. Use of contract documents and information; inspection

5.1 The supplier shall not, without the purchaser’s prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the purchaser in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only so far as may be necessary for purposes of such performance.

5.2 The supplier shall not, without the purchaser’s prior written consent, make use of any document or information mentioned in GCC clause 5.1 except for purposes of performing the contract.

5.3 Any document, other than the contract itself mentioned in GCC clause 5.1 shall remain the property of the purchaser and shall be returned (all copies) to the purchaser on completion of the supplier’s performance under the contract if so required by the purchaser.

5.4 The supplier shall permit the purchaser to inspect the supplier’s records relating to the performance of the supplier and to have them audited by auditors appointed by the purchaser, if so required by the purchaser.

6. Patent rights

6.1 The supplier shall indemnify the purchaser against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the goods or any part thereof by the purchaser.
### 7. Performance Security

**7.1** Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to the purchaser the performance security of the amount specified in SCC.

**7.2** The proceeds of the performance security shall be payable to the purchaser as compensation for any loss resulting from the supplier's failure to complete his obligations under the contract.

**7.3** The performance security shall be denominated in the currency of the contract, or in a freely convertible currency acceptable to the purchaser and shall be in one of the following forms:

(a) a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in the purchaser's country or abroad, acceptable to the purchaser, in the form provided in the bidding documents or another form acceptable to the purchaser; or

(b) a cashier's or certified cheque

**7.4** The performance security will be discharged by the purchaser and returned to the supplier not later than thirty (30) days following the date of completion of the supplier's performance obligations under the contract, including any warranty obligations, unless otherwise specified in SCC.

### 8. Inspections, tests and analyses

**8.1** All pre-bidding testing will be for the account of the bidder.

**8.2** If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of the Department or an organization acting on behalf of the Department.

**8.3** If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, the purchaser shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.

**8.4** If the inspections, tests and analyses referred to in clauses 8.2 and 8.3 show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by the purchaser.

**8.5** Where the supplies or services referred to in clauses 8.2 and 8.3 do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.

**8.6** Supplies and services which are referred to in clauses 8.2 and 8.3 and which do not comply with the contract requirements may be rejected.

**8.7** Any contract supplies may on or after delivery be inspected, tested or
analyzed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do comply with the requirements of the contract. Failing such removal the rejected supplies shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute supplies forthwith, the purchaser may, without giving the supplier further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the supplier.

8.8 The provisions of clauses 8.4 to 8.7 shall not prejudice the right of the purchaser to cancel the contract on account of a breach of the conditions thereof, or to act in terms of Clause 23 of GCC.

9. Packing

9.1 The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing, case size and weights shall take into consideration, where appropriate, the remoteness of the goods’ final destination and the absence of heavy handling facilities at all points in transit.

9.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the contract, including additional requirements, if any, specified in SCC, and in any subsequent instructions ordered by the purchaser.

10. Delivery and documents

10.1 Delivery of the goods shall be made by the supplier in accordance with the terms specified in the contract. The details of shipping and/or other documents to be furnished by the supplier are specified in SCC.

10.2 Documents to be submitted by the supplier are specified in SCC.

11. Insurance

11.1 The goods supplied under the contract shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified in the SCC.

12. Transportation

12.1 Should a price other than an all-inclusive delivered price be required, this shall be specified in the SCC.

13. Incidental services

13.1 The supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC:

(a) performance or supervision of on-site assembly and/or commissioning of the supplied goods;
(b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
(c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
14. Spare parts

14.1 As specified in SCC, the supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the supplier:

(a) such spare parts as the purchaser may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and

(b) in the event of termination of production of the spare parts:
   (i) advance notification to the purchaser of the pending termination, in sufficient time to permit the purchaser to procure needed requirements; and
   (ii) following such termination, furnishing at no cost to the purchaser, the blueprints, drawings, and specifications of the spare parts, if requested.

15. Warranty

15.1 The supplier warrants that the goods supplied under the contract are new, unused, of the most recent or current models, and that they incorporate all recent improvements in design and materials unless provided otherwise in the contract. The supplier further warrants that all goods supplied under this contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by the purchaser's specifications) or from any act or omission of the supplier, that may develop under normal use of the supplied goods in the conditions prevailing in the country of final destination.

15.2 This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise in SCC.

15.3 The purchaser shall promptly notify the supplier in writing of any claims arising under this warranty.

15.4 Upon receipt of such notice, the supplier shall, within the period specified in SCC and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to the purchaser.

15.5 If the supplier, having been notified, fails to remedy the defect(s) within the period specified in SCC, the purchaser may proceed to take
such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which the purchaser may have against the supplier under the contract.

16. Payment

16.1 The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.

16.2 The supplier shall furnish the purchaser with an invoice accompanied by a copy of the delivery note and upon fulfillment of other obligations stipulated in the contract.

16.3 Payments shall be made promptly by the purchaser, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.

16.4 Payment will be made in Rand unless otherwise stipulated in SCC.

17. Prices

17.1 Prices charged by the supplier for goods delivered and services performed under the contract shall not vary from the prices quoted by the supplier in his bid, with the exception of any price adjustments authorized in SCC or in the purchaser’s request for bid validity extension, as the case may be.

18. Contract amendments

18.1 No variation in or modification of the terms of the contract shall be made except by written amendment signed by the parties concerned.

19. Assignment

19.1 The supplier shall not assign, in whole or in part, its obligations to perform under the contract, except with the purchaser’s prior written consent.

20. Subcontracts

20.1 The supplier shall notify the purchaser in writing of all subcontracts awarded under this contracts if not already specified in the bid. Such notification, in the original bid or later, shall not relieve the supplier from any liability or obligation under the contract.

21. Delays in the supplier's performance

21.1 Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by the purchaser in the contract.

21.2 If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify the purchaser in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier’s notice, the purchaser shall evaluate the situation and may at his discretion extend the supplier’s time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.

21.3 No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.

21.4 The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the
supplier’s point of supply is not situated at or near the place where the supplies are required, or the supplier’s services are not readily available.

21.5 Except as provided under GCC Clause 25, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC Clause 22, unless an extension of time is agreed upon pursuant to GCC Clause 21.2 without the application of penalties.

21.6 Upon any delay beyond the delivery period in the case of a supplies contract, the purchaser shall, without canceling the contract, be entitled to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier’s expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.

22. Penalties

22.1 Subject to GCC Clause 25, if the supplier fails to deliver any or all of the goods or to perform the services within the period(s) specified in the contract, the purchaser shall, without prejudice to its other remedies under the contract, deduct from the contract price, as a penalty, a sum calculated on the delivered price of the delayed goods or unperformed services using the current prime interest rate calculated for each day of the delay until actual delivery or performance. The purchaser may also consider termination of the contract pursuant to GCC Clause 23.

23. Termination for default

23.1 The purchaser, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, may terminate this contract in whole or in part:

(a) if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by the purchaser pursuant to GCC Clause 21.2;

(b) if the supplier fails to perform any other obligation(s) under the contract; or

(c) if the supplier, in the judgment of the purchaser, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.

23.2 In the event the purchaser terminates the contract in whole or in part, the purchaser may procure, upon such terms and in such manner as it deems appropriate, goods, works or services similar to those undelivered, and the supplier shall be liable to the purchaser for any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.

23.3 Where the purchaser terminates the contract in whole or in part, the purchaser may decide to impose a restriction penalty on the supplier by prohibiting such supplier from doing business with the public sector for a period not exceeding 10 years.

23.4 If a purchaser intends imposing a restriction on a supplier or any
24. Anti-dumping and countervailing duties and rights

24.1 When, after the date of bid, provisional payments are required, or anti-dumping or countervailing duties are imposed, or the amount of a provisional payment or anti-dumping or countervailing right is increased in respect of any dumped or subsidized import, the State is not liable for any amount so required or imposed, or for the amount of any such increase. When, after the said date, such a provisional payment is no longer required or any such anti-dumping or countervailing right is abolished, or where the amount of such provisional payment or any such right is reduced, any such favourable difference shall on demand be paid forthwith by the contractor to the State or the State may deduct such amounts from moneys (if any) which may otherwise be due to the contractor in regard to supplies or services which he delivered or rendered, or is to deliver or render in terms of the contract or any other contract or any other amount which

person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated fourteen (14) days the purchaser may regard the intended penalty as not objected against and may impose it on the supplier.

23.5 Any restriction imposed on any person by the Accounting Officer / Authority will, at the discretion of the Accounting Officer / Authority, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first-mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of the Accounting Officer / Authority actively associated.

23.6 If a restriction is imposed, the purchaser must, within five (5) working days of such imposition, furnish the National Treasury, with the following information:

(i) the name and address of the supplier and / or person restricted by the purchaser;
(ii) the date of commencement of the restriction
(iii) the period of restriction; and
(iv) the reasons for the restriction.

These details will be loaded in the National Treasury's central database of suppliers or persons prohibited from doing business with the public sector.

23.7 If a court of law convicts a person of an offence as contemplated in sections 12 or 13 of the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004, the court may also rule that such person’s name be endorsed on the Register for Tender Defaulters. When a person’s name has been endorsed on the Register, the person will be prohibited from doing business with the public sector for a period not less than five years and not more than 10 years. The National Treasury is empowered to determine the period of restriction and each case will be dealt with on its own merits. According to section 32 of the Act the Register must be open to the public. The Register can be perused on the National Treasury website.
25. Force Majeure

25.1 Notwithstanding the provisions of GCC Clauses 22 and 23, the supplier shall not be liable for forfeiture of its performance security, damages, or termination for default if and to the extent that his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure.

25.2 If a force majeure situation arises, the supplier shall promptly notify the purchaser in writing of such condition and the cause thereof. Unless otherwise directed by the purchaser in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event.

26. Termination for insolvency

26.1 The purchaser may at any time terminate the contract by giving written notice to the supplier if the supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to the purchaser.

27. Settlement of Disputes

27.1 If any dispute or difference of any kind whatsoever arises between the purchaser and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.

27.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the purchaser or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.

27.3 Should it not be possible to settle a dispute by means of mediation, it may be settled in a South African court of law.

27.4 Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.

27.5 Notwithstanding any reference to mediation and/or court proceedings herein,

(a) the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and
(b) the purchaser shall pay the supplier any monies due the supplier.

28. Limitation of liability

28.1 Except in cases of criminal negligence or willful misconduct, and in the case of infringement pursuant to Clause 6;

(a) the supplier shall not be liable to the purchaser, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to the purchaser; and
29. Governing language

29.1 The contract shall be written in English. All correspondence and other documents pertaining to the contract that is exchanged by the parties shall also be written in English.

30. Applicable law

30.1 The contract shall be interpreted in accordance with South African laws, unless otherwise specified in SCC.

31. Notices

31.1 Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice.

31.2 The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.

32. Taxes and duties

32.1 A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the purchaser’s country.

32.2 A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to the purchaser.

32.3 No contract shall be concluded with any bidder whose tax matters are not in order. Prior to the award of a bid the Department must be in possession of a tax clearance certificate, submitted by the bidder. This certificate must be an original issued by the South African Revenue Services.

33. National Industrial Participation (NIP) Programme

33.1 The NIP Programme administered by the Department of Trade and Industry shall be applicable to all contracts that are subject to the NIP obligation.

34. Prohibition of Restrictive practices

34.1 In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder (s) is / are or a contractor(s) was / were involved in collusive bidding (or bid rigging).

34.2 If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No. 89 of 1998.
34.3 If a bidder(s) or contractor(s), has / have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered, and / or terminate the contract in whole or part, and / or restrict the bidder(s) or contractor(s) from conducting business with the public sector for a period not exceeding ten (10) years and / or claim damages from the bidder(s) or contractor(s) concerned.
DEPARTMENT OF ENVIRONMENTAL AFFAIRS

INVITATION FOR PROSPECTIVE SERVICE PROVIDERS TO REGISTER ON THE DEPARTMENTAL DATABASE OF SUPPLIERS FOR GOODS AND SERVICES. THE AIM OF THIS DATABASE IS TO INCLUDE AS MANY AS POSSIBLE SMALL BUSINESSES AND HISTORICALLY DISADVANTAGED INDIVIDUALS IN THE PUBLIC SECTOR PROCUREMENT PROCESS.

NB: This form must be accompanied by an original valid tax clearance certificate during registration, application form to register for tax at SARS is also attached for your conveniences.

DETAILS OF APPLICANT

1. NAME OF COMPANY

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2. INCOME TAX REGISTRATION NUMBER

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3. VAT REGISTRATION NUMBER

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4. COMPANY REGISTRATION NUMBER (copy of registration to be attached)

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5. POSTAL ADDRESS

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STREET ADDRESS

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6. **ANNUAL TURNOVER** per annum

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7. **SMME STATUS / BUSINESS ACTIVITIES**

- Office stationery, computer consumables and cleaning material
- Printing, layout, design, publications, portfolios and banners
- Office furniture, audiovisual equipment, office equipment and labour saving devices
- Communication specialist (writing and producing of information)
- TV, radio and exhibits production
- Entertainers i.e. dancers, musicians, poets, craftsperson etc
- Building maintenance: electrical, plumbing, office partitioning, painting, replacement of carpets, pest control etc
- Cleaning service (e.g. steam cleaning of carpets, curtains etc)
- Tracing
- Panel beating
- Event organizers: Conferences and accommodation
- Training and workshops (Project management, customer service, computer training, finance & budgeting, performance management, strategic planning, organizational development and team building, change management, competency test, management development programme, Negotiation skills, presentation skills, professional coaching services)
- Suppliers of aircraft and Helicopters
- Professional services specializing in the following categories:
  - Financial auditing, Forensic Auditing,
  - Feasibility studies, project implementation, determination of norms and norms and standard for the Expanded Public Works Programme (EPWP), development of training programme related to the environment and culture sector of the (EPWP),
  - Service providers who specializes in Waste Management, cleaner production and air quality, geotechnical investigation, archaeological survey, land survey, flood line investigation, environmental impact assessment, quantity survey, environmental engineering,
  - Environmental reporting, geographic information systems and environmental journalists, research compilation and publication of various environmental impact management related to guidelines and public information material, integrated environmental planning, alternative dispute resolution, environmental law,
legislation drafting, facilitation, integrated environmental management, sustainable development indicators and research,

- Environmental impact inspectors for Antarctica and Islands, environmental compliance, monitoring and auditing systems and software development, environmental crime risk and impact assessors, environmental crime liability assessors, environmental management authorization (e.g. landfill permitting),

- Project management and community participation management skills related to community base Natural Resources and land degradation/desertification, researchers related to listing of species and ecosystems researchers in cultural heritage researchers, institutional and legal expert on Biodiversity and Heritage,

- Economic impact assessment, Human Resource analysis of needs in Tourism sector,

- Environmental education specialist, researchers in environmental education, environmental law, environmental management, skills development, needs analysis, providers in capacity building, training and education facilitators, project managers, developers of resource material, designers of posters and promotional plastics

8 THE FOLLOWING SHOULD BE ATTACHED IN THE CASE OF CONSULTANTS:

- CV's OF KEY STAFF
- REFERENCES
- COMPANY PROFILE
- TRACK RECORD
- HOURLY/DAILY RATE
- IN THE CASE OF SUPPLIER OF FURNITURE & STATIONERY, CATALOGUE MUST BE SUPPLIED

9 GENERAL

Payment of suppliers through electronic banking transfer is compulsory (banking details will be requested for payment). The person/company should be able to deliver to the departmental street address.

10 ENQUIRIES

Department of Environmental Affairs
Private Bag X447
Pretoria
0001
Mr T Matheane, Tel (012) 310-3133
Fax (012) 320-3328
tmatheane@deat.gov.za

Database Administrator
Ms V Tshivhase, Tel (012) 310 3072
Fax (012) 320 3328
vtshivhase@deat.gov.za
<table>
<thead>
<tr>
<th>CATEGORY (Commodity Name)</th>
<th>ITEM (Description of supply/service)</th>
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"Commodities" Applicants should indicate in the column above, the categories of supplies/services which they would like to be registered for, as well as the specific items under the categories, for instance:

Category: Consultancy Service
Item: Financial Management

NB:

1. It shall be the responsibility of the registered supplier/service provider to inform the Department immediately in writing of any change of address, telephone and facsimile numbers and, in particular, of any changes in respect of the equity ownership by historically disadvantaged individuals (HDI Status) and the small/medium/micro enterprise (SMME) status of the business. Should a contract be awarded to a business as a result of incorrect particulars on the HDI/SMME status of that business, the Department shall have the right to, in addition to any other remedy that it may have in terms of the Preferential Procurement Regulations (2001), cancel the contract and to claim damages.

2. The Department reserves the right to enter into term contracts with any supplier (whether registered or not) for any category of goods or services if the frequency of procurement in the particular category warrants a term contract.

SIGNATURE OF AUTHORISED PERSON

DATE: